



## COMPETITION COMMISSION DISMISSES SUGAR BEANS CASE

The Competition Commission has dismissed a case in which the Competition Authority had referred a case of bid-rigging and collusion against Creative Business Solutions and Rabbit Group. In its ruling, the Competition Commission observed that the referral by the Authority was made outside the prescribed time as outlined in the Competition Act, and as such the Commission reasoned that it does not have jurisdiction to entertain the matter.

The Commission's ruling came after Attorneys for the Respondents raised points of law challenging the time within which the referral was made and questioning the authority of the officer who made the referral. The points of law were to be determined by the Commission before they could hear arguments on the merit of the case.



Competition Commissioners (L to R) Mr. Gaylard Kombani, Mr. Tendekani Malebeswa, Ms. Thembisile Phuthego and Dr. Jay Salkin at the Sugar Beans Ruling on 12<sup>th</sup> May 2015

In deciding the question of time, the Commission ruled against the Authority and stated that "in terms of the Act when the Authority wrote to the PPADB on 21<sup>st</sup> November 2012, as well as applying to the Magistrate's court on 14<sup>th</sup> June 2013 for search and seizure warrants, this was in furtherance of an on-going investigation. We found that an investigation in this matter started on or about 21<sup>st</sup> November 2012, and a referral to the Commission should have been made by the 20<sup>th</sup> November 2013," reads part of the 139-page ruling which was delivered by Commissioner Tendekani Malebeswa on 12<sup>th</sup> May 2015.

The two companies were investigated by the CA for the possible rigging of a P114 million tender that was awarded by the Ministry of Local Government for the supply of 7,530 metric tonnes of sugar beans to schools in the country.

Creative Business Solutions was awarded tenders for Palapye, Selebi Phikwe, Francis-

town and Maun while the Rabbit Group was awarded tenders for Lobatse, Gaborone and Mahalapye. The CA submitted that it had evidence that the two companies divided the market amongst themselves, and colluded by systematically sharing pricing information.

The other point of law raised by the Respondents was that the case was referred to the Commission by an officer of the Authority other than the Executive Secretary. Section 39 (2) of the Competition Act states that "Within one year after an investigation is opened by the Authority, the Executive Secretary shall;

(a) subject to subsection(3), refer the matter to Commission if the Authority determines that a prohibited practice has been established; or

(b) in any other case, issue a notice of non-referral to the complainant, in the prescribed form."

The Commission did not order costs.

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A Shopping Mall in Molepolole, Botswana

## CA PROBES THE STATE OF COMPETITION IN SHOPPING MALLS

The Competition Authority is conducting a market inquiry to assess the state, nature and form of competition in the retail property market (shopping malls). Botswana has in the past few years seen the proliferation of shopping malls, in line with global trends in which customers are provided with one-stop shopping areas in aesthetically appealing structures that bring together different types of stores.

The current market study comes as a result of a number of complaints to the Authority about some anti-competitive elements in Botswana's shopping malls. In fact, the Authority intervened in a case at Molapo Crossing Shopping Mall in Gaborone which revealed the existence of an anti-competitive exclusive agreement between the shopping mall owner and the anchor tenant. The Authority was motivated to conduct a nationwide inquiry into the retail property market, to ascertain how agreements relating to leasing of the space are done, as per section 49 of the Competition Act.

The Molapo Crossing inquiry indicated the existence of an exclusive agreement between the shopping mall owner and the anchor tenant, Pick n' Pay, which restricted free competition within the mall by foreclosing the upstream market and eliminating

In retail an anchor tenant or anchor store is the leading tenant in a shopping centre whose prestige and name recognition attracts other tenants and, it is hoped, shoppers. Anchor tenants generally have their rents heavily discounted. They are normally located as far from each other as possible to maximise the amount of traffic exposure for other stores when shoppers walk from one anchor to another.

effective access of actual or potential competitors. This created a barrier to entry for any competitor who would have wished to enter the said market and possibly compete with the anchor tenant. Following the removal of these provisions upon the Authority's intervention, that specific market was opened up to free and fair competition.

Typically contracts between the anchor tenants and shopping mall developers tend to lean on provisions which are exclusionary, which in effect have a tendency to stipulate which businesses cannot be given space in the said mall. The signing of contracts is deemed necessary for the financial stability of shopping mall projects, and to draw retail traffic that would result in visits to the smaller stores in

the mall as well. Anchor tenants in the shopping malls have the potential to deprive other enterprises from setting up competing businesses in the mall, which is a breach of competition law.

During the development of most shopping malls in Botswana, the Competition Law was not yet in place to encourage competition within these structures. Anchor tenants in Botswana are usually the large retail chain stores such as Pick n' Pay, Choppies, Spar and Shoprite.

The inquiry will seek to establish among other things; the number of shopping malls and anchor tenants across the country, the process by which shopping mall tenants are awarded space, how shopping mall rentals are set, the number of shops existing in the shopping malls competing with anchor tenants, as well as competition complaints or concerns that exist in the market.

The inquiry is being conducted in Gaborone, Francistown, Selebi-Phikwe, Maun, Palapye, Jwaneng, Serowe, Kanye, Mochudi, Kasane, Ghanzi, Ramotswa, Molepolole, Lobatse, Mogoditshane. It is expected to contribute and help redress competition issues that may exist in the retail property market. The Competition Authority is currently analysing data from the shopping malls inquiry.



# Competition in the Skies: The CA Spreads its Wings to the Okavango Delta

The Competition Authority has embarked on a market inquiry in the aviation sector, with particular focus on the unscheduled passenger air transport or chartered flights in the Okavango Delta and how issues of competition are affected. The study was conceived due to a recommendation from the Aviation Pitso, an annual meeting of industry stakeholders. In commercial air transport services, a distinction is usually made between scheduled and non-scheduled air traffic; scheduled air transport provides services between various places of destination following a published time table for the flight departure and arrival times, while non-scheduled air transport offers services on ad hoc basis through flight charter.

Air transport has been found to be indispensable as most tourist destinations within the Okavango Delta are not accessible by road. Connectivity from Maun Airport into the Okavango Delta is critical for the tourism businesses within the

delta. Most of the tourist destinations within Okavango Delta are only accessible through domestic charter flights from Maun.

Any anti-competitive action by the domestic charter flights may adversely harm the market or even act as a barrier of entry into both domestic chartered flights market and the Okavango Delta tourism market, hence the market inquiry by the Authority.

Due to the crucial role played by air transport in the competitiveness of tourism businesses within the Okavango Delta, tacit indicators such as barriers to entry and vertical integration appear rampant across the air charter and tourism industries, as companies own accommodation, transport (air charters) and booking businesses unilaterally. Vertical integration occurs when a company owns businesses at different levels along the value chain. Though vertical integration has an economic benefit of cost reduction, improved

efficiency and improved turnaround time, it can be used as a platform of abuse of dominance in the form of refusal to supply downstream competitors and denied access to essential facilities.

The contribution of air charters and the Okavango Delta region itself as a tourist destination to the economic development of the country is clearly reflected by the high aircraft movements. It is necessary that both markets operate under a competitive environment, so that they can grow and increase their contribution to the economy.

Results from the study are expected to help the Authority to identify competition issues that need to be addressed in the air transportation market; to understand the air transportation and accommodation market, as well as to understand relationships between stakeholders along the value chain within the Delta. Data analysis from the aviation market inquiry is ongoing.



An Airplane flying over the Okavango Delta

# Fair Competition in the Supply Chain Key to Global Competitiveness

The Honourable Assistant Minister of Trade and Industry (MTI) says Botswana will never be globally competitive unless it produces excellent products and services for both the local and global markets. Officially opening the Fourth National Competition Conference in Gaborone on 26<sup>th</sup> March 2015, Advocate Sadique Kebonang said the starting point for global competitiveness is not just access to markets, but fair competition between the enterprises in the various stages of the supply chain.

He said the theme for the 2015 conference; 'Competition and the Supply Chain' was particularly relevant given today's market realities where a market cannot function and deliver without a fair supply chain from input supplies to consumption. "You will agree with me that there could not have been a more fitting theme to this



Honourable Assistant Minister Advocate Sadique Kebonang Officially Opening the Fourth National Competition Conference

conference, given our supply challenges in Botswana," he said.

Given the fact that businesses in the various sectors are integrated from production, supplies, transport, wholesale and retail, Advocate Kebonang said it is important to understand the massive contributions that each sector brings to the supply chain, not

just producers and suppliers, but countless value adding businesses along the chain.

He further said MTI came up with the Economic Diversification Drive (EDD), an initiative that is geared towards stimulating local manufacturing industries by ensuring that public institutions spend part of their procurement budget to purchase goods and services produced locally.

The Assistant Minister pledged his ministry's support to the Competition Commission and the Competition Authority, and urged stakeholders to keep the two institutions accountable. "Let me also implore all of us here today to keep the two institutions on their toes and ensure they deliver on their mandate and even according to your expectations," Advocate Kebonang said. (Access the full speech at <http://www.competitionauthority.co.bw/official-opening-fourth-national-competition-conference-advocate-sadique-kebonang>)

## Focus on the Supply Chain to Stimulate Competition - Sikalesele-Vaka

Sustainable businesses are those that have moved beyond the 3D management style to a multi-dimensional approach that focuses on the supply chain to stimulate competition, according to Ms. Sikalesele-Vaka, the CEO of Bramer Life Insurance.

Delivering the keynote address at the Fourth National Competition Conference, Ms. Regina Sikalesele-Vaka decried the practice by executive management to relegate the supply chain to lower levels within the organisation who do not command the required levels of power and authority to impose their requirements on suppliers.

She said through this management practice, suppliers consequently benefit from almost guaranteed business and are not put under the necessary pressure for quality services or

goods. Ms. Sikalesele-Vaka said it is this lack of executive management focus on the supply chain by both the private and public sector that is the greatest hindrance to competition because organisations are too comfortable with their suppliers to change the status quo.

Both the private sector and the Government were equally blamed for not playing their part in the supply chain. "Although as a private sector we are always quick to apportion blame to Government, in the case of the lack of management of the supply chain, the private sector is equally inadvertent. Of course Government as the biggest consumer of goods and services has more influence

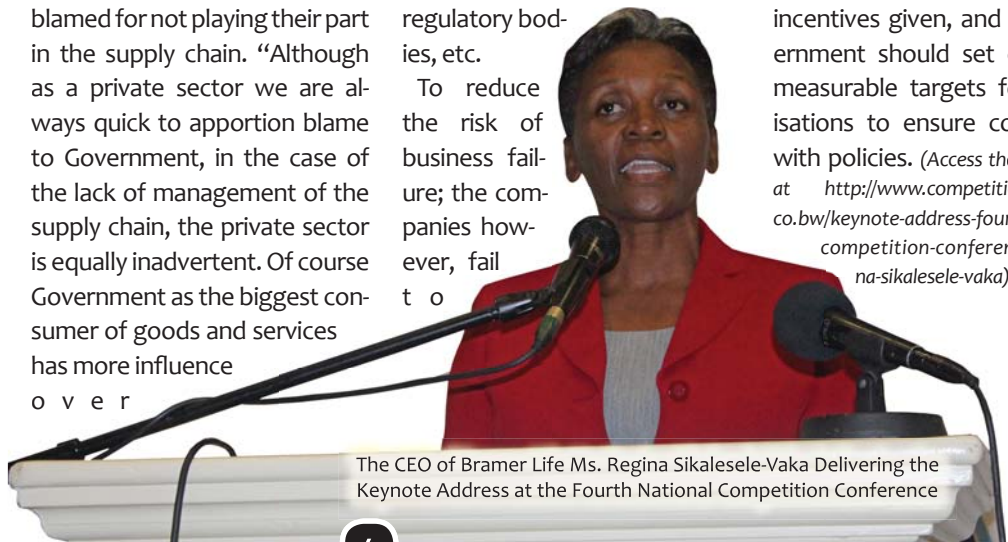
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shaping the competitive landscape and this influence has not been utilised resulting in the poor service delivery in some parts of Government. However, as a facilitator, Government has somewhat succeeded in creating an enabling environment for business and a comprehensive network of checks and balances involving legislation, policies, regulatory bodies, etc.

To reduce the risk of business failure; the companies however, fail t o

support the new entities preferring to remain within the comfort zone of the long established relationships, golf associates and in some instance family friends," said Sikalesese - Vaka.

Among others, the keynote speaker recommended that the supply chain should be constantly monitored and evaluated to maximise value and appropriate incentives given, and that Government should set clear and measurable targets for organisations to ensure compliance with policies. (Access the full speech at <http://www.competitionauthority.co.bw/keynote-address-fourth-national-competition-conference-ms-regina-sikalesele-vaka>)



The CEO of Bramer Life Ms. Regina Sikalesele-Vaka Delivering the Keynote Address at the Fourth National Competition Conference



# CA'S BOTSALO MAKOLO SCOOPS BOCCIM OFFICE MANAGER AWARD

The Competition Authority's Botsalo Makolo has won the coveted Office Manager of the Year Award from the Botswana Confederation of Commerce, Industry and Manpower, (BOCCIM). Mr. Makolo, who is the Authority's Receptionist-cum-Secretary, was announced the winner at the 26<sup>th</sup> annual BOCCIM Office Managers Convention which was held at the Gaborone Sun from 7<sup>th</sup> to 8<sup>th</sup> May 2015.

The selection criterion for the award entailed a rigorous testing and interview process which included participants answering questions in the presence of others to test their confidence, a one-on-one interview, as well as assessments on modern communi-



CA's Botsalo Makolo who won the 2015 Office Manager of the Year Award from the Botswana Confederation of Commerce, Industry and Manpower (BOCCIM)

cation methods, office equipment and computer skills.

As the reigning BOCCIM Office Manager of the Year, Botsalo will receive two

weeks Supervisory Development Programme training, a Customer Service course at the Institute of Development Management (IDM), a float-

ing trophy which he will keep until the next convention, and a P500 dinner voucher at the Gaborone Sun.

Speaking to the *Botswana Competition Bulletin*, Makolo expressed delight in the award and the exposure that it will give him "I feel wonderful and it's a dream come true for me because I have made history as the only gentleman to win the BOCCIM Office Manager award in 26 years.

I think the award is going to give me exposure and growth in my career as now organisations know that there are male office managers out there," he said. Makolo thanked BOCCIM for the exposure as well as the Competition Authority for giving him the opportunity to take part in the competition.

## NEWS FROM THE 2015 ANNUAL CONFERENCE OF THE INTERNATIONAL COMPETITION NETWORK (ICN)

### Malawi and Kenya Win Inaugural ICN/World Bank Competition Advocacy Contest

The Competition and Fair Trading Commission of Malawi (CFTCM) and the Kenyan Competition Authority (KCA) have won the 2014 ICN and World Bank Contest in which competition agencies across the world showcase successful advocacy stories that promote competition and shared prosperity. Kenya and Malawi were winners under the theme 'Promoting Pro-competitive Reforms that Foster Growth and Reduce Inequality'.

In Malawi's submission, CFTCM worked in collaboration with the Ministry of Industry and Trade to deal with the monopolistic conditions in the sugar industry. This resulted in increased availability of sugar across the country and new entrants in the distribution market. KCA, on the other hand, engaged private health care providers to prevent the enactment of a 20% price increase

in healthcare services that was previously announced by the industry association. This had an impact on public welfare, potentially saving consumers more than \$100 million in medical bills over three years.

Ms. Charlotte Wezi Malonda took the award on behalf of the CFTCM, while Mr.

Francis W. Kariuki took the award on behalf of the KCA. Finland, Indonesia and Russia received Honourable Mention in this category for their advocacy stories. El Salvador was winner in the 'Promoting Awareness of the Benefits of Competition in a Time of Crisis' category, while Singapore was winner in the category of 'Promoting Cooperation with Relevant Public Bodies to Balance Competition Goals with Other Public Interests'.



Ms. Charlotte Wezi Malonda of Malawi (podium) and Mr. Francis W. Kariuki of Kenya (3<sup>rd</sup> from left) accepting the 2014 ICN-World Bank Advocacy Award on behalf of their agencies

# Ethics and Integrity Key to the Survival of Competition Agencies - Kaira

The 14<sup>th</sup> annual ICN conference was hosted by the Australian Competition and Consumer Commission (ACCC) in Sydney from 28<sup>th</sup> April to 1<sup>st</sup> May 2015. The Competition Authority of Botswana was represented at this flagship conference which brought together competition agencies and stakeholders from more than 100 countries. The delegation comprised Mr. Gaylard Kombani of the Competition Commission, the CEO Mr. Thula Kaira, the Director of Corporate Services Ms. Tebelelo Pule, and the Manager for Mergers and Monopolies, Mr. Innocent Molalapatla.

Mr. Kaira participated at a panel discussion on Ethics and Integrity hosted by the Agency Effectiveness Working Group, where he submitted that ethics and integrity are an important part of a competition authority's very existence as they affect the credibility of its operations and decisions.

"While the competition authority is an abstract person, the behaviour of individuals who work in the authority's leadership, administration, investigations, prosecution and adjudication functions is what the staff and the public see," Kaira said.

Emphasising that ethics and integrity start with leadership, he said unethical leaders cannot enforce ethical conduct and/or would be considered to be unqualified to do so by their subordinates. "When the leaders are unethical and without integrity, then the CA can never be ethical, nor perceived to be run by people with integrity."

In terms of administration, Kaira said ethics and integrity must unequivocally be embedded in the recruitment process itself. People joining a competition authority must be screened not just on academics and experience, but on their conduct, ethics and integrity. "Where there are doubtful loopholes, the risk of assuming that a suspected crook will change through rigorous training should ideally be avoided by not employing such."

Kaira argued that matters of performance review and promotion must include ethical behaviour. "Where unethical employees are seen to progress and have their way, then it becomes difficult for an Authority to justify the value of ethics and integrity, and this extends and/or spills over to investigations, prosecutions and adjudication."



COMESA Competition Commission CEO Mr George Lipimile, Botswana Competition Authority CEO Mr. Thula Kaira and Mr. Chilufya Sampa, CEO of the Zambia Competition and Consumer Protection Commission at the ICN conference in Sydney

He further informed his audience that like other competition agencies, Botswana's Competition Authority has a code of conduct and has also introduced Annual Staff Awards that inculcate the values and ideal ethical conduct in the organisation such as 'Most Trustworthy Employee', 'Most Dedicated Employee', 'Most Professional Employee', etc.

As part of a monitoring and review process, the Authority also engaged Deloitte to do a staff survey in 2014, which highlighted a number of issues around integrity, which are being addressed. Kaira further said while staff members are not required to disclose their assets as is the case in Russia, the adjudicators are expected to disclose their business interests and provide updates periodically. Failure to do so attracts a P30, 000 fine and/or imprisonment up to a maximum period of two years. Other panellists were from the Russian, Canadian and Norwegian competition agencies.

Meanwhile, Mr. Kaira recognised the work that was done by the ICN Special Projects Group on Vertical Restraints and the online Resale Price Maintenance (RPM) survey, in which Botswana took part. He indicated that online commerce has been increasing in Botswana, notably on travel and tourism, electronics, branded apparel and motor vehicles.

Speaking at a panel on Resale Price Maintenance (RPM), Kaira said complaints have been received in relation to brick and motor (or offline) agents whose prices are higher

than prices that would be obtained from online retailers. In some cases, there have been complaints where a manufacturer has refused to sell to a prospecting online buyer at a price lower than that sold to an offline agent.

Kaira noted that generally, online retailing is good for the consumer as it offers greater price transparency, lowers search costs and higher degree of choice. The problem is that in terms of pricing, it may disadvantage the offline retailer who has higher costs than the online retailer, hence the urge by a manufacturer or supplier to implement Across Platform Parity Pricing, which may be anti-competitive.

He further informed his audience that under the Competition Act of Botswana, there is no distinction made between online and offline RPM. While RPM is a per se prohibition under the Competition Act, the Competition Authority has not prioritised online RPM in any particular way as the complaints that have been received in this regard have not appeared to be of such magnitude.

While it was noted that about 30% of ICN member countries do not consider online RPM as likely to have adverse effects on competition, Kaira said this does not mean that competition issues may not arise. "In this context, Botswana will continue to support the work underway at ICN and ACCC on the subject matter, which is useful to assist competition authorities to begin to think of strategies of how to deal with online RPM," he said.



# COMPETITION AUTHORITY IN PICTURES

## Fourth National Competition Conference



### Captions

1. Panel Discussion on Procurement 2. Ms. Banusi Mbaakanyi–Department of Industrial Affairs 3. The CEO of the Gambling Authority Mr. Thuli Johnson  
4. Panel Discussion on Chain Stores 5. Panel Discussion on the Supply Chain 6. The CEO of the Local Enterprise Authority Dr. Tebogo Matome  
7. Ms. Gaobolae Seleka-Sekonopo–Fincraft Investment Management MD



# ALL- MTI PARASTATAL GAMES 2015



The second annual ALL-MTI Parastatal Games, which bring together all parastatals under the Ministry of Trade and Industry, were held at the Bank of Botswana Grounds on 9<sup>th</sup> May 2015. The Participating parastatals were the Botswana Development Corporation (BDC), Botswana Investment and Trade Centre (BITC), Botswana Bureau of Standards (BOBS), Citizen Entrepreneurial Development Agency (CEDA), Companies and Intellectual Property Authority (CIPA), Competition Authority (CA) and the Copyright Society of Botswana (COSBOTS).

CEDA emerged the overall winner of the games with 26 points followed by BITC with 17 points and BOBS in third place with 16 points. LEA, BDC and CIPA, CA and COSBOTS came in 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and last place respectively. The prize for best branded parastatal went to BOBS while LEA came second. The 2016 games will be hosted by COSBOTS.

## Captions

1. Netball 2. Soccer 3. Tug of War 4. Volleyball 5. Athletics

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