



GLOBAL COMPETITION AGENCIES MEET IN PORTO TO SHARE ADVOCACY AND ENFORCEMENT STRATEGIES

Delegates from more than 130 competition authorities and non-governmental agencies (NGAs) converged in the Portuguese city of Porto May 10th to 12th to share enforcement and advocacy strategies under the auspices of the International Competition Network (ICN) annual conference.

The more than 600 delegates shared best practices and experiences on six broad themes of advocacy, agency effectiveness, cartels, mergers, unilateral conduct as well as special projects they conducted. Topics under discussion included: proactive outreach strategies for deterrence, social media and website strategies for agency communication, online vertical restraints, challenges of big data and unilateral conduct, public interest considerations in merger review, and international cooperation in tackling cross border and global cartels.

Welcoming delegates to the conference, the President of the Portuguese Competition Authority Ms. Margarida Matos Rosa, said the annual flagship conference epitomises the mission of the ICN which is to promote the convergence of practices and procedures of competition enforcement and advocacy on a global level, facilitating co-



Botswana's delegation at the ICN Porto conference. From L to R: Dr. Onkemetse Tshosa, Ms. Gladys Ramadi, Ms. Magdeline Gabaraane, Mr. Kitso Mocominyane, Mr. Koonyatse Tamasiga, Ms. Tapiwa Masie

operation and mutual understanding. "The work of the ICN, evident in its rich catalogue of work products and events, is a fundamental resource for younger and mature agencies in their mission to defend competition," she said.

In his remarks to delegates, Mr. Andreas Mundt, the President of the German competition agency, and Chairman of the ICN Steering Committee, noted that competition and restraints on competition have become a global phenomenon and it is important to have an international network like the ICN which

provides a platform for international cooperation, the exchange of experiences and knowledge and the development of standards.

Mr. Mundt noted that globalisation has lifted many people out of poverty, digitalisation accelerated technological development, and companies have grown into global players within 20 years. These positive developments, he observed, have however raised concerns among policy makers around the

To Page 2

IN THIS ISSUE

Competition Community Shares Advocacy and Enforcement Strategies at ICN Conference Page 1

ICN Porto: Botswana Shares its experiences on Mergers and Bid-rigging Page 2

African Competition Forum publishes book on competition in Africa Page 4

Ms. Tapiwa Masie and other panellists during a session on Corruption and Bid-rigging



ICN CONFERENCE 2017: BOTSWANA SHARES ITS EXPERIENCES ON TACKLING MERGERS AND BID-RIGGING

Delegates from the Competition Authority (CA) and Competition Commission of Botswana were also represented at the Porto conference and Botswana had an opportunity to share its experiences in two sessions dealing with Corruption and Bid-rigging, and Public Interest Considerations in Merger Review.

The Manager for Legal and Enforcement, Ms. Tapiwa Masie, gave an overview of the strategies that Botswana's competition agency has so far employed to tackle bid-rigging in public procurement, mainly in conjunction with the public procurement and anti-corruption agencies. She told delegates that Government remains the largest procurer of goods and services, with public procurement accounting for about 60% of GDP in Botswana. She further stated that there are certain corruption prone areas that have been identified by the anti-corruption agency and these include procurement and supplies, as well as the construction sector.

"Some officials have found a way of colluding with service providers to engage in corrupt practices and in the construction industry there has been an increase over the years in the number of allegations of information leakage during the procurement process such as the leakage of the engineer's estimates and evaluation team recommendations to adjudication boards, resulting in undeserving

contractors being awarded tenders," Masie noted.

She said the CA has focused a lot of energy, time and resources on creating partnerships, educating relevant officials on bid-rigging as well as undertaking initiatives aimed at assisting the Authority to detect bid-rigging in particular. Bid-rigging was prioritised from the inception of the Authority in 2011 when a tripartite MoU was signed between the CA, the public procurement agency and the corruption agency. Masie said it was in recognition of the importance of public procurement to the economy, as well as the realisation that the benefits of public procurement of giving the Government value for money through a competitive process, could be distorted by corruption, fraud and bid-rigging.

Delegates were further informed that through the MoU, some joint activities were undertaken by the three agencies to tackle bid-rigging. These include continuous joint training workshops for central and local government officials, parastatals and state-owned enterprises on the detection of red-flags during the tender process; training of the business community to understand what amounts to cartel conduct and bid-rigging; and joint audits of mega projects launched in 2015 to look into large government

To Page 3

Global Competition Agencies

From Page 1

world. He said competition authorities need to be united to meet challenges such as protectionism, abuse of dominance and monopolistic tendencies.

Speaking from a government policy perspective, the Portuguese Minister of Economy, Mr. Manuel Caldeira Cabral reiterated that competition is critical in enabling fair prices for consumers and stimulating economic growth. Caldeira said competition and the independence of a competition agency are key factors in instilling investor confidence and facilitating new market entrants and jobs. He told the conference that Portugal can attest to the value of an independent competition agency.

Cabral noted that technology and digitalisation have changed the competition landscape in traditional sectors like tourism and travel and other sectors ushering in new challenges such as concentrated digital platforms.

Meanwhile, conference delegates were informed that the Steering Group has taken a strategic decision to involve younger agencies in the ICN, and also promote diversity. To that end, the Singapore Competition Commission has been nominated to become a member of the Steering Group joining among others Australia, Brazil, Canada, Colombia, France, Korea, Germany, Japan, Italy, Mexico, the Netherlands, Portugal, Russia, South Africa, Turkey, the United Kingdom and the United States. India will host the 2018 ICN conference in Delhi from March 20th to 23rd.

Botswana was represented at the conference by the Chairperson of the Competition Commission Dr. Onkemetse Tshosa, Competition Commissioner Akoonyatse Tamasiga, the Competition Authority's Director of Mergers and Monopolies Ms. Magdeline Gabaraane, the Manager for Legal and Enforcement Ms. Tapiwa Masie, the Finance Manager Mr. Kitso Mocuminyane and the Manager for Communications and Advocacy, Ms. Gladys Ramadi.



Ms. Magdeline Gabaraane (extreme right) during a session on Public Interest Considerations in Merger Review

ICN Conference 2017

From Page 2

projects involving the construction of dams and roads, and large scale procurements of specialised equipment for the University Hospital and the Health Ministry to uncover any anti-competitive behaviour and corruption.

Other initiatives introduced by the CA and the anti-corruption and public procurement agencies include the introduction of a declaration of directors and shareholders form and anti-collusion certificate to ensure that the directors and shareholders do not use more than one company to bid for the same work; disclosure of pretender estimates for works tenders introduced in April 2016 after numerous reports of cases where the estimates were sold or leaked to bidders for valuable consideration resulting in bid-rigging arrangement, and the development of a checklist for detecting bid-rigging (adapted from the OECD Guidelines for Detecting Bid-rigging in Public Procurement).

In July 2016, the CA conducted a national training workshop in collaboration with the OECD, to equip public procurement officials to detect and

prevent bid-rigging, and to design tenders in a manner that reduces bid-rigging.

In another session, the Director of Mergers and Monopolies, Ms. Magdeline Gabaraane, briefed conference participants on the public interest aspects that Botswana's competition agency considers in its merger review process which include employment creation, export promotion, SMMEs development and citizen economic empowerment. The session explored whether there should be more to merger review than competitive effects and consumer welfare.

She said the CA is empowered by section 59(2) of the Competition Act to consider public interest during the assessment of mergers. "The inclusion of public interest considerations was a deliberate Government policy decision aimed at the attainment of government priorities such as employment, industrialisation and export promotion through the use of competition law, amongst other laws".

In response to whether Botswana has considered removing public interest considerations from the mandate of the CA, as is done in developed

countries, Gabaraane said at this stage the removal of public interest consideration is not on the table as the factors considered under public interest remain a priority to Government. She further informed delegates that the CA chairs the SADC Mergers Working Group, and through this structure, there is continuous collaboration and consultations throughout the assessment of mergers which includes benchmarking on the identified public interest concerns and likely remedies.

Some panellists during the session pointed out that public interest is not a very well-defined concept, and can include a wide range of economic, political and social issues. Some elements can include national interest, defence, food security, the environment etc.

There were questions as to whether competition authorities are the right agency to deal with public interest, given that they may often be ill-equipped to deal with such a wide range of issues, which could eventually damage the reputation and credibility of a competition agency. Some noted the potential "chilling effect" of adding public interest considerations for countries attempting to attract investors into newly liberalised sectors.

AFRICAN COMPETITION FORUM RELEASES BOOK ON COMPETITION IN AFRICA

The nature of competitive rivalry, and the power and interests of large firms and their owners, is at the heart of how countries develop. Large firms shape the economy as these firms can make the investments required in productive capacity, provide the upstream inputs and services required by smaller businesses and, in many areas, are also the main routes to market.

At the same time, these firms tend to have market power if competition between them is weak. In crude terms, it is critical whether these firms are able to focus on extracting rents through market power, or whether the returns reward their effort, creativity and entrepreneurship.

Competition authorities and economic regulators are critical institutions in restraining the market power of firms while at the same time taking into account the need to incentivise investment. To that end, the African Competition Forum (ACF) has released a book on

competition in Africa. The book entitled *Competition in Africa - Insights from Key Industries*, is the result of a study in six ACF member countries of Botswana, Kenya, Namibia, South Africa, Tanzania and Zambia.

The book maps out key issues in competition through four key studies in the cement, sugar, poultry and fertiliser industries across Southern and East Africa. It considers the nature and extent of market power, the development of large firms, their production, investment and the prices of products across countries.

This takes into account the work of competition author-

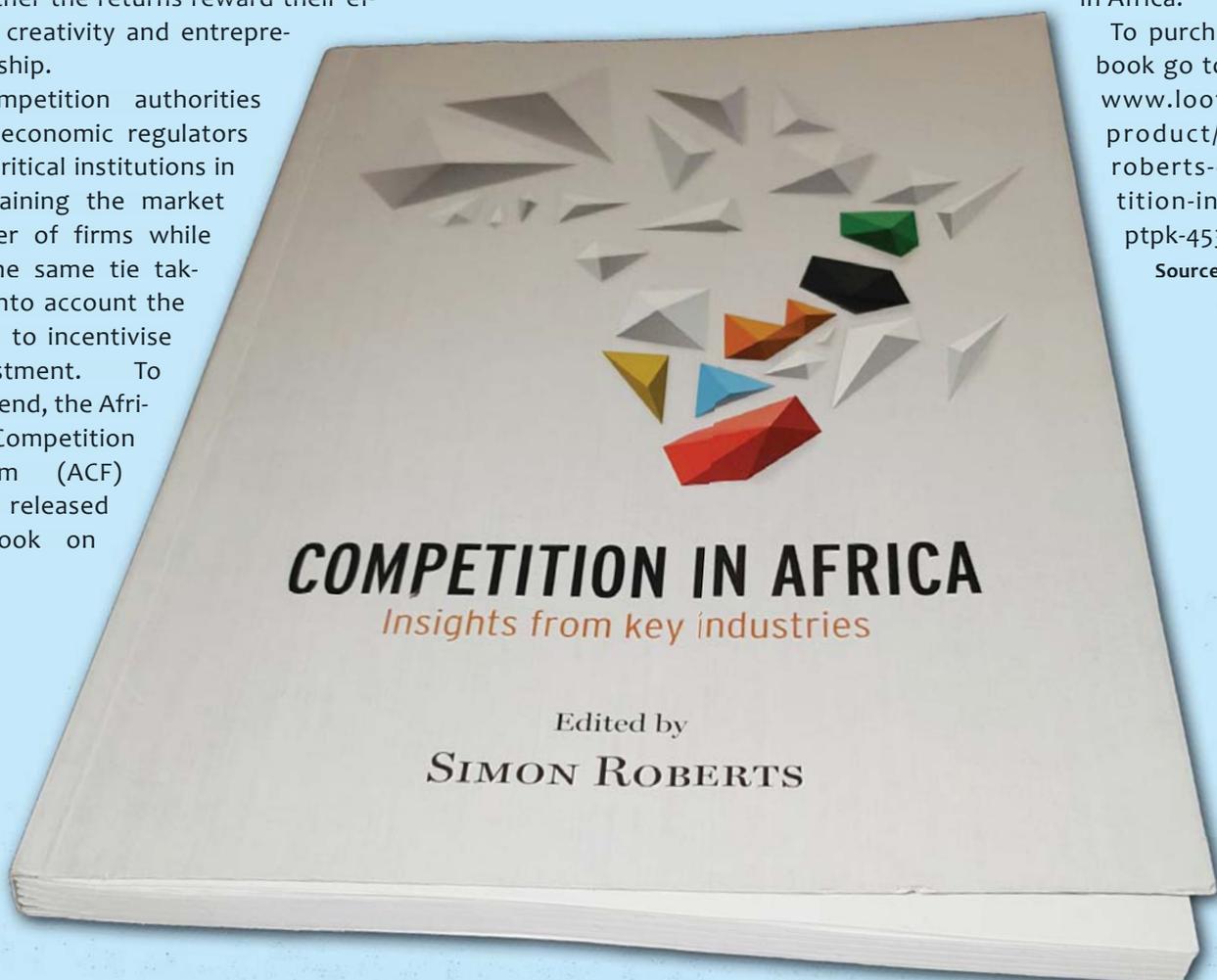
ities in the different countries and the implications of industrial policies. The concluding chapter draws out critical implications for competition, regional integration and economic development. This fills a big gap as there are no similar publications relating to this important topic.

The Competition Authority of Botswana participated in the study and Mr. Ernest Bagopi and Ms. Thabiso Mbongwe from the Investigations and Research Department contributed to the poultry and cement study reports respectively.

The ACF is a network of 35 regional and national competition authorities in Africa.

To purchase this book go to <http://www.loot.co.za/product/simon-roberts-competition-in-africa/ptpk-4530-g040>

Source: ACF





Zambia's Competition and Consumer Agency Scoops World Bank/ ICN Advocacy Award

The International Competition Network (ICN), in conjunction with the World Bank, has awarded Zambia's Competition and Consumer Protection Commission (CCPC) for its efforts in levelling the playing field through competitive neutrality. The Commission was named winner of the 2016/17 Competition Advocacy contest at the ICN annual conference in Porto, in recognition for its contribution to fair markets in Zambia through its competition interventions. The CCPC, together with Australia's competition agency, scooped the first prize under the theme "levelling the playing field through competitive neutrality or by elevating competition policy to the economic policy agenda".

Through its advocacy interventions, the CCPC managed to contribute to improving markets on the Zambian pay television sector by disbanding the foreclosure relationship between Zambia National Broadcasting Corporation (ZNBC) and Multichoice Africa Limited in 2015. Commercial broadcasting service providers in Zambia are requested to carry at least 35% of local content as a condition of operation. When the state owned ZNBC, which controls 92% of the market, entered into an exclusive agreement with Multichoice, the pay-for-tv market was effectively foreclosed.

With the CCPC's intervention, the exclusive contract that ZNBC had with Multichoice was terminated, hence allowing any potential entrants in the sector to successfully enter the market, making the sector more competitive. New entrants are now offering similar cable packages at one third of the cost.

Accepting the award on behalf of the Commission, CCPC Chief Investigator for Mergers and Monopolies, Mr. Parret Muteto, thanked the World Bank and ICN for recognising the Commission's work and efforts in improving the Zambian economy.

Muteto stated that the recognition served to strengthen the Commission's resolve in ensuring that companies which operate in markets open to competition abide by the competition principles, and that the Commission is committed in discharging its mandate, and ensuring that markets work to the advantage of the ordinary Zambians. It was the only African competition agency to win the heavily contested awards amongst those which entered. Australia received the first prize under the levelling the playing field category for advocating for the inclusion of pro-competitive measures in the privatisation of some ports. Canada and Latvia got honorary mentions in the same category. Hong Kong and Ukraine emerged the winners under the theme of planning,

implementing and monitoring advocacy strategies. Hong Kong won for its campaign against bid-rigging cartels, while Ukraine advocated for reform to address regulatory bottlenecks and other barriers to competition. The Netherlands and Portugal received honourable mention in this category.

Argentina and Spain scooped first prize under the theme of advocacy in digital trade. The Argentinian competition agency advocated for policy reforms in the country's highly concentrated electronic payment system while its Spanish counterpart successfully challenged a municipal regulation and facilitated new market entrants through e-commerce in the accommodation market.

In the fourth category of implementing advocacy strategies at multiple levels, Mexico won the prize for its efforts in opening up to competition the monopolised state controlled gasoline industry. Poland also scooped first prize in this category for tackling abuse of dominance and collusion in the water and sanitation services sector. Serbia received honourable mention in this category. The aim of the ICN-World Bank Group's annual competition advocacy contest is to showcase successful advocacy interventions that elevate competition policies in economic policy agendas. Source: CCPC/World Bank Group

The Gambling Authority emerged overall winner of the 2017 All-MITI Parastatals Games



The Minister of Investment Trade and Industry Mr. Vincent Seretse officially opening the All-MITI Parastatals Games

COMPETITION AUTHORITY HOSTS THE 2017 ALL-MITI PARASTATALS GAMES

The Minister of Investment, Trade and Industry (MITI), Honourable Vincent Seretse says the sharing of information, joint projects and other forms of cooperation between the different parastatals under his ministry can be facilitated through sporting events, and translate into tangible results if replicated in the workplace.

The Minister said this on 13th May at the Bank of Botswana Grounds in Gaborone when he officially opened the fourth edition of the All-MITI Parastatals Games which brought together all parastatals under the ministry. The 2017 games were hosted by the Competition Authority. The objective of the games is to strengthen relationships and cooperation between parastatals that are under MITI, while at the same time promoting wellness and physical fitness.

“While the different parastatals under my ministry may be implementing different mandates, there is no doubt that there are a lot of instances where the work that they do

dovetails, and officials from these different parastatals interact in more ways than one”, Honourable Seretse said.

While Minister Seretse appreciated that the games are not about competition but help to induce rapport, he contended that the spirit of competition when kept within the confines of fairness would always give rise to excellence and encouraged a measure of competition even in the games.

In her welcome remarks to participants, the Vice Chairperson of the Competition Commission, Ms. Thembisile Phuthego, thanked the Minister for gracing the games, noting that it was his first time to officiate at the games since their inception four years ago. Ms. Phuthego said since the CA was declared host of the 2017 games a year ago, there has been a lot of preparations to ensure that the games achieve their objective of building rapport amongst staff and board members of the MITI parastatals, while also having fun and exercising.

She assured the teams and participants that the CA has incorporated feedback from past evaluation meetings with the aim to improve the games. One such recommendation was the banning of foreign players, that is, individuals who do not work for the parastatals, often professional sportsmen and women. “We have red-carded the use of foreign players in order to promote fair competition”, Phuthego said.

The Gambling Authority emerged the winner of the 2017 games while the CA got second position and the Botswana Bureau of Standards (BOBS) followed in third place. The other participating parastatals were Botswana Investment and Trade Centre (BITC), the Botswana Development Corporation (BDC), the Citizen Entrepreneurial Development Agency (CEDA), the Companies and Intellectual Property Authority (CIPA), the Local Enterprise Authority (LEA) and SPEDU, the Selebi-Phikwe Economic Diversification Unit. SPEDU will host the 2018 games.

Competition Authority Engages Stakeholders In Bobonong

The Competition Authority (CA) on May 27th participated in Motlhala-wa-Khumo exhibition in Bobonong. The annual exhibition is hosted by the Ministry of Investment, Trade and Industry to showcase services offered by its departments and parastatals.

Over 50 business persons and members of the public visited the CA stall to hear about its role and mandate and also to enquire about the services that the Authority offers to those who are already in business. Some members of the public also offered recommendations as well as constructive criticism in how the Authority could serve them better. This Bobonong exhibition was the first time the Authority extended its public outreach to the area.



CA's Thabang Tlhalerwa briefing a participant at the Motlhala-wa-Khumo exhibition

Students and residents of Bobonong sug-

gested that the CA would do well to visit secondary schools in the region to sensitise students about the mandate of the Authority. They further requested that investigations on competition issues should not only be based on businesses that are well established but should also be on small and emerging enterprises.

At the same event, the Mergers and Monopolies Analyst Mr. Ridwell Moremi had briefed the Bobonong community about the role and mandate of the Authority which he said is to prevent and redress anti-competitive practices in the economy, and the removal of constraints on the free play of competition in the Botswana market.

Innocent Molalapata

BCB: Who is Innocent Molalapata?

Innocent: My colleagues call me “The Yo”, which comes from my nickname Mayoyo, but my official name is Innocent Molalapata. Innocent is a husband and a father blessed with two beautiful kids, a girl and a boy. I am an Economist/Econometrician by profession. I hold: a Master of Commerce Degree (MCom) in Applied Econometrics, where I received a Merit Award for being the best masters student in Applied Econometrics from the University of the Free State; a Bachelor of Commerce Degree (BCom) in Economics and Econometrics from Rand Afrikaans University (now known as the University of Johannesburg); and a Post Graduate Diploma in Economics for Competition Law from Kings College in London. I currently work as Manager, Mergers & Monopolies in the Competition Authority. I am also a part time lecturer at the Botswana Institute of Bankers.

BCB: Why did you apply for a position at the CA?

Innocent: My decision to apply for a position at the Competition Authority was based on the need for professional growth and an opportunity for a new challenge. When I was doing my MCom in Applied Econometrics, I had an opportunity to learn about competition policy and when I saw the advert, I knew the position for Manager, Mergers & Monopolies was mine and therefore I did not hesitate in making an application.

BCB: What are your duties and responsibilities at the CA?

Innocent: My responsibilities at the Competition Authority include: to manage anti-competitive practices in mergers and acquisitions; to ensure implementation of policies and strategies to facilitate enforcement in accordance with the Competition Act, to facilitate the prevention, redressing and removal of unfair competition practices which may affect mergers and acquisitions in the economy.

BCB: What did you do before joining the CA?

Innocent: Before joining the Competition Authority I worked as an Economist for Bank of Botswana. I was based in the Modelling and Forecasting Unit which is responsible for modelling and forecasting Inflation. The unit also contributed to the production of Annual Reports, Monetary Policy Statements, Economic Policy Review and Recent Economic Development Board paper as well as inflation briefs. I also had a short stint with Standard



Mr. Innocent Molalapata receiving a present from the Acting CEO Ms. Tebelelo Pule during his farewell on May 31st 2017

Chartered Bank Botswana where I served in the sales department before joining Bank of Botswana.

BCB: What are your experiences at the Authority so far?

Innocent: The Competition Authority has given me an opportunity to be in management and the right experience to lead and to think strategically, and being part of the first team to implement the Competition Act in Botswana has been a wonderful and enriching experience.

BCB: What is the best thing that has happened to you at the CA?

Innocent: The year 2016 was my best in the Competition Authority. In 2016 my team, Department of Mergers & Monopolies, was the best performing team and I was rated as one of the Top Performing Employee and the Most Improved Employee. It was really an honour for me to receive such individual ratings and for my team to receive such an award.

BCB: What do you find most challenging about the CA?

Innocent: The challenge that I have experienced at the Authority is mainly having to adhere to the very strict statutory timelines in merger assessments and at the same time dealing with stakeholders who are still to fully appreciate the mandate of the Authority.

BCB: It is now official that you would be leaving

the CA at the end of May. Why are you leaving?

Innocent: I am leaving for professional growth and an opportunity for another challenge. I have done my part over the past 5 years that I have been with the Authority.

BCB: Where are you going?

Innocent: I am going back to Bank of Botswana.

BCB: It is very difficult to say goodbye. What would tear you up thinking about the CA?

Innocent: The wonderful team work in the Mergers and Monopolies Department, and in the Managers' wing is something that I will always cherish.

BCB: People don't get to decide what their legacy is. If you were given a chance to influence thoughts about you at the Authority, how would you want to be remembered?

Innocent: I would want to be remembered as the focused, dedicated and disciplined guy.

BCB: You seem to be a man on the move. Where do you see yourself five years from now?

Innocent: As either the Deputy Governor of Bank of Botswana or the CEO of the Competition Authority.

BCB: As a parting shot, would you want to impart any word of wisdom you have picked in your life journey?

Innocent: “We are what we repeatedly do. Excellence, then, is not an act, but a habit”.

COMPETITION AUTHORITY IN PICTURES

Competition Authority Hosts the 2017 All-MITI Parastatals Games on 13th May 2017



Captions

1. The Vice Chairperson of the Competition Commission Ms. Thembisile Phuthego welcoming guests to the Games 2. SPEDU will host the 2018 Games. L to R: A SPEDU official, CA Acting CEO Ms. Tebelelo Pule, SPEDU CEO Dr. Mokubung Mokubung, Honourable Minister Vincent Seretse 3. CA's Netball Team 4. CA's Relay Team

CA Bids Farewell to Innocent Molalapata and Keoagile Ntshaanana



Captions

1. Mr. Keoagile Ntshaanana receiving a present from the Acting CEO Ms. Tebelelo Pule
2. Innocent with his former supervisor Ms. Magdeline Gabaraane
3. A toast for Innocent and Ntshaanana
4. Ntshaanana, Kelebogile Ngwenya, Innocent and Kamogelo Ditsele

HOW TO CONTACT US



Editorial Team

GIDEON NKALA: gideon.nkala@competitionauthority.co.bw

GLADYS RAMADI: gladys.ramadi@competitionauthority.co.bw

KELEBOGILE NGWENYA: kelebogile.ngwenya@competitionauthority.co.bw

Phone: +267 3934278

Fax: +267 3121013

Postal: Private Bag 00101, Gaborone

Facebook: Competition Authority Botswana

Twitter: @CompetitionBots

Visit the Competition Authority website www.competitionauthority.co.bw where you can download the Competition Act 2009, Competition Regulations 2011, the National Competition Policy 2005 and other documents.