



LPG MARKET IN BOTSWANA HIGHLY CONCENTRATED WITH EXCESSIVE PRICING



The Competition Authority (CA), through the African Competition Forum (ACF), collaborated with other competition agencies in the SADC region to conduct a market inquiry on Liquefied Petroleum Gas (LPG), and the findings have been released.

The study indicates that there is extreme market concentration in the LPG upstream market characterised by high profit margins. The possible anti-competitive behaviours found point to: market allocation in the upstream market; and abuse of dominance through cylinder exchange practice. Furthermore, in areas where some competitors are not present, consumers have limited choice as a result of difficulty in cross filling. The study

also depicts an indication of possible tax avoidance and/or evasion as the cost of products declared by importers to the Botswana Unified Revenue Service (BURS), at the border, seem to completely differ from the actual figure submitted to the CA.

The LPG market in Botswana is primarily dominated by two large importers; Afrox Botswana, and EasiGas, which command a 45% market share each, and their footprint is apparent around the country through the number of distributors they supply. Each importer has a distribution point or distributor in the two cities of Gaborone and Francistown, and some towns and major villages including; Maun, Serowe, Selebi-Phikwe, and Palapye. The exception being the southern region,

which is solely occupied by EasiGas. The other three importers possess less than 5% of the market share each, and, as such, are still generally localised around their bases in the central region of the country.

The study reveals that Botswana's LPG market is highly concentrated, with the concentration ratio of 94% by the top three firms, significantly higher than the international threshold for high market concentration, which is 70%. Furthermore, an HHI of 4 066 is well beyond the international threshold of 1 800. This is a result of a highly oligopolistic market, which has an indication of possible high barriers to entry.

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Because of the structure of the market there may be some level of coordination between competing firms.

Concentration ratio and HHI (2015)

| Importer | Market Share (%) | Cr3 | HHI |
|--------------|------------------|-----------|--------------|
| Afrox | 45 | 45 | 2 025 |
| EasiGas | 45 | 45 | 2 025 |
| Quick Gas | 3 | 4 | 9 |
| Airliquid | 4 | | 16 |
| Simsa Gas | 3 | | 9 |
| Total | 100 | 94 | 4 084 |

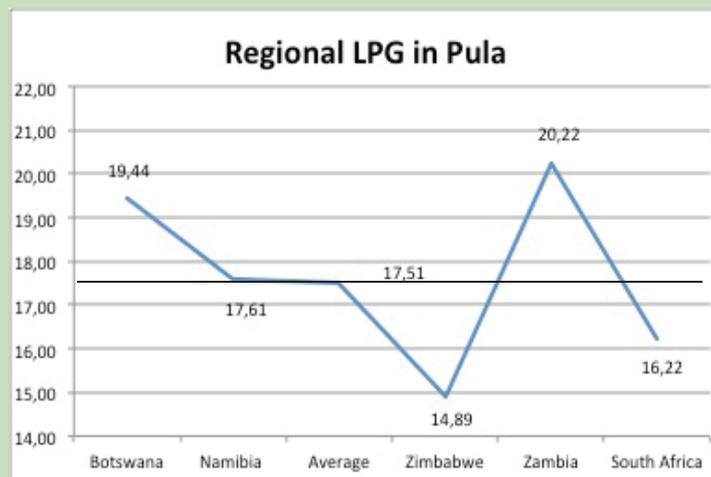
Source: CA data collection, 2016

Regionally, there are common LPG importers, mostly originating from South Africa, for example, Afrox, EasiGas and Total Gas. These exist in their own capacity or in partnership with local enterprises in different jurisdictions, and most of the supply of LPG in the region comes from South Africa. A comparison was made between regional prices per kg in Botswana, Namibia, South Africa, Zimbabwe and Zambia, and the prices were converted to Botswana Pula. It is reflected that regionally, LPG price is highest in Botswana, followed by Zambia.

The study established that business practices in the region are similar, whereby cross filling and cylinder hoarding are not prominent; and cross filling rarely occurs subject to expressed consent by cylinder owner. (Cross filling of an LPG cylinder is refilling gas from a competitor, e.g., filling up an Afrox cylinder at Easi Gas and vice versa).

With such homogeneity of market characteristics, the only pertinent variable will be transport costs. Therefore, if a country is much further than the primary supplier (South Africa) and has average price that is lower than in Botswana, then there is a reasonable indication of excessive pricing in Botswana.

Regional country comparison: LPG price in Pula/Kg



NB: black line depicts the regional average

Source: CA data collection, 2016

The study recommends a further investigation into the market to determine if there is prevalence of abuse of dominance by firms through margin squeeze, refusal to deal, excessive pricing, market allocation and price-fixing. It also recommends assessment and monitoring of the contractual agreements between importers and distributors in order to ensure that agreements do not translate into any anti-competitive behaviour and/or create entry or exit barriers.

The Competition Authority has shared recommendations on identified possible anti-competitive practices and other infringements with the relevant stakeholders. The LPG market in Botswana, which had hitherto been unregulated, is now regulated by the newly established Botswana Energy Regulatory Authority (BERA). The full report can be accessed on the CA website.

BOTSWANA TO HOST 5TH ANNUAL COMPETITION AND ECONOMIC REGULATION (ACER) WEEK

The Competition Authority of Botswana, the National Energy Regulator of South Africa and the University of Johannesburg's Centre for Competition, Regulation and Economic Development (CCRED), will host the 5th Annual Competition and Economic Regulation (ACER) Week 15-19 July 2019 in Kasane, Botswana. ACER provides a platform for competition authorities and regulators to share knowledge, keep abreast of key developments across the region, and build networks for collaboration between agencies.

ACER Week combines professional training programmes (PTPs) from 15-17 July and a conference on 18-19 July. The 'Core Competition Economics, Regulation and Industrial Development' PTP addresses competition policy and regu-



lation in the context of industrial development, with a focus on African countries. The programme draws on the theory and empirical evidence from the growing body of research on regional

value chains, industrial policy, and barriers to entry and competition in Africa. The 'Law in Competition Policy and

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Economic Regulation' PTP is mainly targeted at legal practitioners, adjudicators and case handlers in competition authorities, economic regulators and government agencies in Southern Africa, as well as private practice and company in-house lawyers. The programme focuses on the practical application of legal principles to real-world case situations.

Finally, the 'Advanced Competition Economics' PTP targets experienced competition economists from authorities, regulators, public and private sector firms and private practice. This in-

tensive programme covers the latest developments in economic theory and their application to the analysis of competition cases. This year, the PTP also covers the key concepts in competition and economic regulation of digital platforms and high-tech markets, drawing on recent international cases.

Keynote speakers and facilitators expected at the ACER Week include Prof Sean Ennis (Professor at the University of East Anglia, and Director of the Centre for Competition Policy), Dr Rory Macmillan (Founding partner of Macmillan Keck Attorneys and Solicitors), Prof Simon Roberts (Professor at the University of

Johannesburg), and Prof Jonathan Klaaren, (Professor and former Dean of the School of Law at the University of the Witwatersrand). Heads of competition authorities and regulators in Southern Africa are also expected to share their insights from recent developments in the region. Prof Eleanor Fox (Walter J. Derenberg Professor of Trade Regulation at New York University School of Law) will also address the conference and launch her latest book.

Registration closes on Friday 28th June 2019.

Source: CCREd

CA WINS ROUND ONE IN ABUSE OF DOMINANCE CASE AGAINST GABCON



In a victory for the Competition Authority, the Competition Commission has dismissed all the points in limine that were raised by Gaborone Container Terminal (GABCON), in response to a referral by the Authority to the Commission.

Points in limine is a hearing on a specific legal point, which takes place before the actual case can be heard. It is a process that addresses the technical points, which are raised prior to getting into the merits of the case, and relates to matters of jurisdiction.

On 6th June 2017, the Authority received a complaint from a group of private hauliers who alleged that GABCON had imposed restrictions preventing them from

efficiently servicing their customers. The private hauliers said GABCON's behaviour negatively affected their businesses in that it had forcefully taken some of their customers, forced them to share deliveries with it, and coerced their customers to engage GABCON for deliveries. They said if this behaviour by GABCON continued without intervention, they would be forced to exit the market and close shop.

The Authority then instigated an investigation against GABCON, and subsequently referred the case to the Competition Commission on 26th November 2018. In response to the referral, GABCON raised points in limine on 10th and 21st December 2018 respectively,

alleging amongst other things that the Authority's referral was irregular, the proceedings were a nullity (based on numerous reasons put forward) and also challenging the authenticity of the supporting and replying affidavits filed by the Authority in support of the referral.

The Authority naturally opposed the points in limine raised by GABCON, and the Parties appeared before the Competition Commission on 19th March 2019, for argument. On 28th May 2019, the Competition Commission handed down its ruling and dismissed all the points in limine that were raised by GABCON.

CA TO HOLD PUBLIC HEARING ON THE PROPOSED ACQUISITION OF 100% SHAREHOLDING IN CLOVER INDUSTRIES LTD BY MILCO SA (PTY) LTD

The Competition Authority will hold a public hearing on Thursday 27th June 2019 to allow the parties to the transaction, competitors and the general public to make verbal representations to the Authority on the proposed acquisition of 100% shareholding in Clover Industries Ltd by Milco SA (Pty) Ltd.

The hearing will be held at the CA offices at Plot 28, Matsitama Road, Main Mall starting at 09:30 Hrs. Other interested parties not party to the proposed transaction will be afforded an opportunity to voluntarily submit to the Authority any documents, affidavit, statements or other relevant information in respect of the proposed acquisition.

The acquiring enterprise, Milco SA, is a special purpose vehicle (SPV) incorporated in accordance with the Laws of South Africa and it is controlled by Milco Mauritius International Ltd (“MMI”) which is also an SPV incorporated according to the Laws of Mauritius for the purposes of the proposed transaction.

MMI is controlled by International Beer Breweries Ltd (“IBBL”) which is incorporated in Israel. IBBL manufactures and markets beer brands Carlsberg, Tuborg, Holsten and Stella Artois, as well as non-alcoholic beer brand Malty; and juice brands Prigat and Ocean Spray.

IBBL is a directly owned subsidiary of the Central Bottling Company Group (“CBC”), a company registered in accordance to the Laws of Israel. CBC is in-turn a privately-owned international food and beverage group, and, through its foreign subsidiaries, has manufacturing and distribution operations in Turkey, Romania, and Uzbekistan. CBC is the owner of Tara dairy, which is Israel’s second largest milk processing dairy, and Cat Foods, which is a juice operation with customers in over 70 countries.

The target enterprise, Clover, is incorporated in accordance with the Laws of South Africa. It is a branded consumer goods company in the food and beverage industry that is focused on the supply

of dairy products, soy products, olive oil, and olives, and the supply of non-alcoholic beverages as well as sales, merchandising and distribution of consumer goods.

Clover is listed on the Johannesburg Stock Exchange (JSE) and it is not controlled by any single shareholder or a group of shareholders. Clover’s shareholders holding 3% or more as at the end of its most recent financial year were: Clover Milk Producers Trust (12.42%); Allen Gray (7.87%); Government Employees Pension Fund (6.04%); Lekto Brosseau (5.79%); JH Vorster (4.50%); and HSBC (4.09%).

The Directors of Milco SA are Aran Ernest Oelsner; Joav Asher Nachson (both Israelis) and Andrew Stuart McLeod (South Africans). The Directors of Clover are JW Basson; SF Booyesen; WI Buchner; NV Mokhesi; JFM Morgan; B Ngonyama; FFF Scheepers; NA Smith; and JH Vorster (all South Africans).



File pic: Participants at a public hearing at the Competition Authority

STAKEHOLDERS BRIEFED ON THE PEER REVIEW EXERCISE

The Competition Authority has begun to implement recommendations following the Voluntary Peer Review exercise which was carried out by UNCTAD in 2017, with the aim to identify areas for improvement in competition law enforcement, in Botswana's legal and institutional framework.

Following the UNCTAD's submission of the Peer Review Report, the Authority will in this financial year hold Peer Review dissemination workshops to among others brief stakeholders who participated in the review about the findings, and map the way forward.

The following are some of the recommendations of the report to Government, the Competition Authority and the Judiciary:



CA staff with UNCTAD staffers Ebru Gokce- Dessemond and Elizabeth Gachuri who were in Botswana for the Peer Review Dissemination exercise

Recommendations to the Government

- i. There should be sufficient allocation of financial and human resources to cover the observed gaps so as to ensure sufficiency at the Authority;
- ii. The Authority should be enabled to exercise independence to vary working tools such as organisational structure without having the approval of the Ministry to allow more flexibility and increased efficiency of delivery; and
- iii. There is a need to promote the co-existence between sector economic regulation authorities and the Competition Authority, their independency and efficiencies.

Recommendations to the Competition Authority

- i. Capacity-building and training of staff should be given priority, including staff needs assessments to guide the training programmes to be developed;
- ii. With the new mandate on consumer protection, there is need to produce a road map report on the merging of the two functions and assign competencies in the two areas;
- iii. Work with local universities to develop a curriculum on competition and consumer protection to develop human resource capacities in this area.
- iv. Develop tailor-made advocacy programmes for specific target groups in the economy, including the business community, consumer organisations, government ministries and departments, the judiciary and business lawyers.

Recommendations to the Judiciary

- i. There is need for more interaction between CCA and the judiciary. Botswana now has a highly trained, experienced and responsible judicial system; however, there have been concerns about its efficiency and specialisation, especially in commercial matters such as competition law;
- ii. The judiciary should consider attending certain forums related to competition law enforcement to interact with other judges handling competition issues so as to enhance and sustain such knowledge and skills, as the Judiciary forms a critical part of competition law enforcement in Botswana through the appellants jurisdiction of the same.

The full report can be accessed on the CA website

BUSINESSES AND PUBLIC ENGAGED WITH FAIRS AND EXHIBITIONS



Minister Bogolo Kenewendo and some guests who visited the CA stall at Methlala ya Khumo Fair in Tsabong on 4th May 2019

The Competition Authority participated in several exhibitions in May 2019 in the continued effort to create awareness on competition issues and promote compliance with the Competition Act. The Authority participated in the Methlala-ya-Khumo Fair hosted by the Ministry of Investment, Trade and Industry (MITI) on 4th May 2019, in Tsabong. The annual event brings together various departments and parastatals under the ministry to showcase their services.

Delivering the opening remarks at the fair, the Minister, Honourable Bogolo Kenewendo, said the event is another way to reach out to the public, and bring her ministry's services and products closer to the people. She explained that although the departments and parastatals showcasing at the event have varying

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roles and responsibilities, their one common aim is to enrich the lives of every Motswana.

Hon. Kenewendo further informed the attendees of some of the changes done by the Ministry to improve its offerings. These include the development and implementation of the Apex Model which she described as a more coordinated approach towards SMME development, investment promotion and export development.

The Minister concluded her visit by meeting with entrepreneurs and village leaders in the Tsabong area. In addition to showcasing their products and services, the departments and parastatals under the ministry gave short pre-

sentations about their mandates, products and services.

The Authority also participated at the Palapye Business Expo that was held May 2nd to 4th 2019. The annual expo is aimed at promoting a culture of entrepreneurship. Officiating at the event, the then Assistant Minister of MITI, Honourable Moiserale Goya, said the expo enables small and new businesses to market and sell their products, and accords businesses an opportunity to share ideas, benchmark, and promote and develop the business sector in Palapye.

Hon. Goya, also the area Member of Parliament, said to avoid collapse, businesses must strive to retain their customers by provid-



ing world class products and services; as well as researching and understanding the business landscape they operate in. He further encouraged entrepreneurs to establish relationships with academic institutions, banks and other business institutions, noting that SMMEs are expected to play a role in diversifying the economy and creating employment.

Still on exhibitions, the CA

was among exhibitors at the Business Botswana Northern Trade Fair held in Francistown 29th May to 2nd June 2019. The trade fair was held under the theme: 'Innovate-Integrate-Industrialise'. Exhibition attendants who passed through the CA stall were briefed on the Authority's mandate, and in turn asked questions.

Sources: BOPA, Business Botswana, CA

ZAMBIA BUSTS CARTELS AND WINS ICN ADVOCACY CONTEST



ICN Advocacy Contest winners at the awards ceremony at the ICN annual conference in Cartagena, Colombia

The Competition and Consumer Protection Commission of Zambia (CCPC) emerged the winner of the 2018-2019 Competition Advocacy Contest organised by the International Competition Network (ICN), and the World Bank Group (WBG). Zambia won under Theme 1: "Understanding the effects of competition policy on poverty and inequality in both developing and developed countries." As defined by the ICN, competition advocacy refers to activities that promote a competitive environment through non-enforcement mechanisms, such as building relationships with government entities, increasing public awareness of competition's benefits, and identifying and removing

anti-competitive policies and regulations.

The CCPC led a sub-national awareness campaign to reduce cartel activity along the flour and bread value chain. After prosecuting and sanctioning bakeries for fixing prices up to 23% above competitive levels, the Commission embarked on public campaigns to inform the public about the costs of anti-competitive behaviour and the benefits of using the leniency program. As a result, more cartels among bakeries and flour mills that affected almost two million people in several municipalities were identified and dismantled. Consumers are now enjoying a reduction in the price of bread.

Germany, Latvia, Mexico, Peru and Russia were winners in other categories

while the European Commission, Japan and Portugal received honourable mention. By showcasing success stories of effective competition advocacy, this annual contest aims to raise awareness of the key role played by competition agencies, government entities and non-governmental organisations (including the private sector), in promoting competition.

The agencies which received awards were invited to present their stories at the Advocacy Group Session during the ICN Annual Conference in May 2019, to promote peer-to-peer learning. The Colombian Superintendence of Industry and Commerce hosted the ICN annual conference in Cartagena May 15th to 17th.

Source: World Bank/ ICN

Mooketsi Ntwaagae



Mr. Mooketsi Ntwaagae – IT and Documentation Officer

BCB: Tell us about yourself!

Mooketsi: I am a young man born in a town situated in a valley running north towards Gaborone, thus Lobatse. I come from a village located in the mountainous region of the southern of Botswana, and home of the Bangwaketse (Kanye). I am a family man who is happily married. I did my studies at the then NIIT and graduated as a qualified professional in e-Technology Computing. My colleagues consider me to be compassionate, loving and caring and I believe that's a gift that I have been blessed with. I guess it is safe to say I can be described as "What You See Is What You Get" (WYSIWYG). My hobbies are travelling and sightseeing, watching and playing soccer etc. I also did ballroom dance as a hobby and enjoyed the competitive side of it. I used to travel to neighbouring countries to take part in big competitions where I won honours. Not only did I win honours, but also won the heart of the beautiful lady that eventually became my wife

who was at the time my dancing partner.

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

Mooketsi: My primary target for applying for a position at the Competition Authority was basically for a new challenge. With the organisation being fairly new, it was a chance not to be missed as I wanted to continue growing and learning on the field, as well as taking on some new tasks that I haven't had the opportunity to tackle during my six years in the civil service.

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

Mooketsi: I have been tasked with overlooking the IT and Documentation Unit of the Competition Authority. From the IT perspective, my core responsibility is to provide ICT support to the CA and ensure the stability and effectiveness of all systems. From the Documentation side, one of the duties I perform is to receive documentation, evaluate and distribute it accordingly.

BCB: What did you do before joining the CA?

Mooketsi: Before joining the Competition Authority, I was working as a Principal Programmer at the Office of the President. I also had a stint with Associated Fund Administrators (AFA) where I worked as a temp within the Claims Department.

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

Mooketsi: When I joined I had no idea what Competition Law was all about. CA gave me a platform that enriched me with this new regulatory system. The young and vibrant culture of the CA makes me feel at home, there is that mutual respect among members of staff.

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

Mooketsi: I have had the opportunity to experience some of the best things with the CA but for me the outstanding experience will be the knowledge attained through the investment in excellence training. The training defied all I ever believed in and opened a new door for me to look at life in a different perspective.

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

Mooketsi: My job is a challenge on a daily basis and keeps me on my toes all the time as everyday new and complex issues arise. The other challenge that I have observed is a thin staff compliment which I believe hinders the desired impact the organisation should have in the economy.

BCB: If you were to leave the CA now what special memories would you take with you?

Mooketsi: Staff retreats, where we let loose and have fun to distract from working hard all year long.

BCB: Where do you see yourself five years from now?

Mooketsi: If I had the power to predict the future I would say my wish is to see myself having reclaimed my hours and not trading them for anyone.

BCB: Is there any wisdom you wish to share?

Mooketsi: Fail to plan, plan to fail!

PICTORIAL



Visitors at the CA stall at Metlhala-ya-Khumo Fair in Tsabong on 4th May 2019



Some of the participants at the Palapye Business Expo on 2nd May 2019



Some of the CA staff at the 2019 Diacore Marathon on 12th May 2019 in Gaborone



CA Netball Team at the 2019 ALL-MITI Games on 8th June 2019

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