



BOTSWANA TO SUBJECT ITSELF TO COMPETITION LAW ENFORCEMENT PEER REVIEW

The Competition Authority has requested to be subjected to a voluntary peer review in 2018 to ascertain the effectiveness of competition law enforcement in Botswana. The request was made on 5th July 2017 in Geneva, Switzerland, at a meeting of the International Group of Experts (IGE) on Competition Law and Policy hosted by the United Nations Conference on Trade and Development (UNCTAD).

Delivering Botswana's statement at the IGE, the Manager for Policy Coordination and International Liaison, Ms. Bonyana Ndubiwa, said the exercise would identify the strengths that the Authority should leverage on, and the weaknesses that need to be addressed on the legal and institutional framework, in order to improve its effectiveness.

Ndubiwa said the Government of Botswana has had a long term relationship with UNCTAD, and thanked the organisation for the establishment of the legal and institutional framework on Competition Policy and Law, which resulted in the establishment of a Competition Authority of Botswana in 2011. She said in the six years of existence, the Authority has made some notable progress in the enforcement of the Competition Law. It has assessed and determined 180 merger no-



Manager for Policy Coordination and International Liaison, Ms. Bonyana Ndubiwa, delivering Botswana's statement at the IGE on Competition Law and Policy in Geneva on 5th July 2017

tifications, investigated a total of 56 cases, prosecuted five cases and conducted eight market studies.

"We further wish to thank the SADC Secretariat for their unwavering support in organising capacity building programmes in the region, to strengthen the enforcement capacities of SADC member states. We also recognise and thank the African Competition Forum (ACF) for having put in place initiatives for African countries to undertake joint research programmes on issues of common interest to the continent. These initiatives

have greatly enhanced the capacity of the Competition Authority of Botswana" Ndubiwa said.

Ms. Ndubiwa further extended gratitude to countries such as Kenya, South Africa and Zambia, for having mentored the Competition Authority of Botswana by availing their resources and expertise to enhance the growth and effectiveness of the agency.

UNCTAD Voluntary Peer Reviews on Competition Law and Policy are under-

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CA'S MANDATE TO WIDEN TO INCLUDE CONSUMER PROTECTION

CONSUMER PROTECTION



The mandate of the Competition Authority of Botswana (CA) is set to widen to include enforcement of the Consumer Protection Act.

The Consumer Protection Amendment Bill and the Competition Amendment Bill were recently gazetted and will be tabled before Parliament to be enacted into laws.

In the proposed amendments, the Competition Authority will change its name to the Competition and Consumer Authority (CCA) while the structure of the organisation will also be changed to remove any conflict of interest within its governing body, the Competition Commission.

The Commission currently serves as the adjudicating body in competition cases presented to it by the CA, and also serves as the governing board of the CA.

This arrangement poses conflict of interest concerns and has been the

subject of contention by aggrieved parties who challenged the propriety of the structure while appearing before the Competition Commission.

The amendment Bills propose a new governing body called the Competition and Consumer Board, which will be responsible for the governance of the affairs of the Competition and Consumer Authority.

A new tribunal known as the Competition and Consumer Tribunal will also be established to play an adjudicative role.

At the commencement of the amended Consumer Protection Act, the consumer protection office shall cease operations as a government department, and its functions and duties shall be transferred to the CCA, reads the Bill.

All the staff of the consumer protection office shall be seconded to the Au-

thority for a period of 12 months while all pending cases within the department will be taken over by the CCA.

Some of the proposed amendments to the Competition Act include a new provision for criminal sanctions for officers or directors of enterprises who contravene the provisions of the Act by engaging in cartels and practices such as price-fixing and bid-rigging.

Under the proposed sanctions, any officer or director is liable for a fine not exceeding P100,000 or a term of imprisonment not exceeding five years, or both.

The current Competition Act does not provide for criminal sanctions.

On the merger control provisions of the amended Competition Act, a new section will be introduced, which allows participants to, within 14 days after a decision to reject a merger is made, make an application to request the CCA to re-consider its decision by providing a presentation of new facts or evidence that were not submitted with the original notification.

Additionally, the merger control provisions are to introduce a fine not exceeding 10% of the consideration or the combined turnover of the parties involved in a merger, implemented in contravention of the Competition Act. This means that enterprises implementing a merger without notifying the Authority will be liable to the fine.

The Minister of Investment, Trade and Industry Honourable Vincent Seretse is set to present the bill before Parliament. **Source: Additional reporting by Mmegi**

Competition Law Enforcement

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taken by competition policy experts and serve as a basis for peer review examination during the annual sessions of the (IGE). According to UNCTAD, the peer review process provides a unique opportunity to examine and draw lessons from experiences of, and challenges

faced by, countries in the implementation of competition policies.

The process is interactive and combines the exchange of experiences with recommendations for possible improvements either in the formulation of the competition law or in its enforcement. Further, it provides interested developing countries with technical assistance

in case they are willing to implement the peer review recommendations.

The reports produced during the process regarding the state of competition law and enforcement in reviewed countries are impartial and rigorous, and are undertaken by competition policy experts from both developed and developing countries who have practical experience in implementing competition law.

Experts Converge in Geneva to Discuss Competition and Consumer Protection



Botswana's delegation at the IGE meetings L to R: Ms. Bonyana Ndubiwa, Dr. Selinah Peters, Ms. Magdeline Gabaraane, Ms. Thembisile Phuthego

The United Nations Conference on Trade and Development (UNCTAD) hosted the 2nd Session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy, and the 16th Session of the Intergovernmental Group of Experts on Competition Law and Policy in Geneva, Switzerland on July 3rd to 7th 2017.

The Intergovernmental Groups of Experts are the global fora for competition and consumer protection at the international and intergovernmental levels.

They provide a forum for discussion and exchange of good practices, and produce recommendations for member states on the implementation of the United Nations Set on Competition, and the United Nations Guidelines for Consumer Protection, respectively.

The Intergovernmental Group of Experts (IGE) on Competition Law and Policy is a body established under the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (UN Set) to monitor the application and implementation of the

Set.

The UN Set is a multilateral agreement on competition policy, which was negotiated and adopted by General Assembly resolution 35/63 on 5th December 1980.

The United Nations Guidelines for Consumer Protection are a set of principles outlining the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems.

They also assist interested member states in formulating and enforcing domestic and regional laws, rules and regulations that are suitable to their own economic and social and environmental circumstances, as well as promoting international enforcement cooperation, and encouraging the sharing of experiences in consumer protection.

Welcoming delegates to the meetings, the Secretary General of UNCTAD, Dr. Mukhisa Kituyi, recalled the 1962 landmark speech by US President Robert Kennedy which first laid out the founding principles of consumer rights, which is the right to safety, to be informed, to choose and to be heard.

He noted that international trade is taking place in a fast-evolving world, where developments such as e-commerce provide new opportunities, but also new challenges for consumer welfare.

"Consumers face even greater challenges in developing countries, where their access to quality products and information is often hampered by institutional constraints," Kituyi said.

Delegates from developing countries concurred, stressing the importance of technical support and cooperation for implementing consumer protection regimes, and taking full advantage of the digital economy.

The Competition Authority of Botswana is expected in the not too distant future to take over enforcement of the Consumer Protection Act.

Botswana was represented at the IGE meetings by Ms. Bonyana Ndubiwa and Ms. Magdeline Gabaraane from the Competition Authority, as well as Ms. Thembisile Phuthego and Dr. Selinah Peters from the Competition Commission.

Source: UNCTAD; CUTS Competition Online Forum

CHALLENGES IN THE DESIGN OF A MERGER CONTROL REGIME FOR YOUNG AND SMALL COMPETITION AUTHORITIES

Small and young competition agencies presented their merger control systems and the challenges they face in this area at a roundtable at the Intergovernmental Group of Experts (IGE) on Competition Law and Policy.

The roundtable explored the main elements that should be taken into account by legislators when designing a merger control system, particularly considering the constraints faced by small and young competition authorities.

Being a main pillar of competition regimes, merger control aims to preserve the competitive structure of markets where competition might be affected by mergers and takeovers.

Giving Botswana's perspective on merger control, the Director of Mergers and Monopolies Ms. Magdeline Gabaraane, said challenges faced include unavailability of credible data and market research required to understand the structure of the market and inform the decision, limited appreciation of the roles of key stakeholders in merger enforcement, legislative ambiguity and inadequacy, human and financial resource constraints, limited expertise and experience as it is a new field, diverse stakeholder expectations on the objective of merger control, implementation of mergers without notification, and alignment of national priorities with emerging trends in merger control.

Gabaraane said the Competition Authority of Botswana has addressed the challenges through several initiatives such as signing MoUs with custodians of credible data sources and



The Director of Mergers and Monopolies Ms. Magdeline Gabaraane, speaking at the IGE on Competition Law and Policy in Geneva

sector regulators, extensive benchmarking during merger assessments; extensive public awareness and stakeholder engagement, streamlined processes and procedures for fast tracking simple mergers, peer review of old cases by competition experts, proposed amendments of the Competition Act to address legislative inadequacies, and structured training through participation in the ICN, and use of ICN toolkits and enrollment of officers for the Post-graduate Diploma in Economics for Compe-

tion Law.

The roundtable heard that effective merger control is fact-intensive, and hence requires adequate institutional resources and powers such as mechanisms to gather information from parties.

In order to ensure the adequacy of their merger assessment regimes, young and small authorities were advised to periodically review their merger control provisions.

Source: Additional reporting by CUTS Competition Online Forum



Acting CEO of the Competition Authority, Ms. Tebelelo Pule, and the Commissioner General of BURS Mr. Ken Morris during the MoU signing on 28th June 2017

COMPETITION AUTHORITY AND THE BOTSWANA UNIFIED REVENUE SERVICE SIGN MOU TO ENHANCE COOPERATION

The Competition Authority and the Botswana Unified Revenue Service (BURS) have signed a memorandum of understanding (MoU) which cements their relationship and formalises cooperation in fulfilling their respective mandates.

Speaking at the signing ceremony on 28th June 2017, the heads of the two institutions highlighted the timely sharing of credible and quality information as a key element that will be facilitated by the MoU.

In her remarks, the Acting CEO of the Competition Authority, Ms. Tebelelo Pule, said the CA will access credible data from BURS on company figures such as turnover for the purpose of calculating market shares, enabling it to understand the market structure and make informed decisions with respect to the effect of anti-competitive mergers and acquisitions and other restrictive business practices. “Turn-around times for the Authority’s decision making is very critical for

enterprises and the business community” she said.

Ms. Pule further noted that the partnership between the CA and BURS will not only improve the quality and speed of decision making, but will also save Government resources deployed when the two organisations execute their mandates.

For his part, the Commissioner General of BURS, Mr. Ken Morris, said in view of the key mandates of the two organisations, it is necessary to collaborate in order to serve the interests of Botswana better, noting that it is critical for either party to request information from another to validate the submissions made by companies.

“This MoU therefore sets in motion a formal and predictable framework that will allow us to exchange information that is mutually beneficial to the parties.”

Morris further said the signing of the MoU is in line with what is happening on the international front,

where owing to emerging developments such as tax base erosion and profit shifting by multinationals, more countries collaborate to sign exchange information frameworks in order to protect their tax base.

“This points to the need to open up even more within the local environment to share information,” he said.

Both leaders emphasised that the confidentiality of information received from individuals and enterprises will be preserved by the CA and BURS. Among others, BURS has been established to undertake tax assessments and collection on behalf of the Government of Botswana, and to take appropriate measures to counteract tax evasion, and to ensure high levels of taxpayer compliance.

The Competition Authority on the other hand, has been set-up to prevent and redress anti-competitive practices in the economy, and to remove constraints on the free play of competition in the Botswana market.

Google Fined Record €2.4bn by EU Over Abuse of Dominance in Search Engine Market

The European Union has handed Google a record-breaking €2.42bn fine for abusing its dominance of the search engine market in building its online shopping service, in a dramatic decision that has far-reaching implications for the company.

European regulators said by artificially and illegally promoting its own price comparison service in searches, Google denied both its consumers real choice and rival firms the ability to compete on a level playing field.

The Silicon Valley giant was on June 27th given 90 days to stop its illegal activities and explain how it will reform its ways or face fines of up to €10.6m a day, which equates to 5% of the average daily worldwide turnover of its parent company Alphabet.

On the back of the finding that Google is the dominant player in the European search engine market, the EU regulator is further investigating how else the company may have abused its position, specifically in its provision of maps, images and information on local services.



The Commission's decision followed a seven-year probe into Google's dominance in searches and smartphones. It is also now liable to face civil actions for damages by any person or business affected by its anti-competitive behaviour.

The EU official in charge of competition policy, Commissioner Margrethe Vestager, announced the fine, the largest ever made in an antitrust case.

"Google has come up with many innovative products and services that have made a difference to our lives. That's a good thing. But Google's strategy for its comparison shopping service wasn't just about attracting customers by making its product better than those of its rivals. Instead, Google abused its market dominance as a search engine by promoting its own comparison shopping service in its search results, and demoting those of competitors.

"What Google has done is illegal under EU antitrust rules. It denied other companies the chance to compete on the merits and to innovate. And most importantly, it denied European consumers a genuine choice of services and the full benefits of innovation," Vestager said.

Google immediately rejected the commission's findings, and signalled its intention to appeal, in an indication of the grueling legal battle to come between the two sides. A company spokesman said:

"When you shop online, you want to find the products you're looking for quickly and easily. And advertisers want to promote those same products. "That's why Google shows shopping ads, connecting our users with thousands of advertisers, large and small, in ways that are useful for both.

We respectfully disagree with the conclusions announced today. We will review the commission's decision in detail as we consider an appeal, and we look forward to continuing to make our case."

Source: www.theguardian.com

SOUTH AFRICAN BRICK MANUFACTURERS CHARGED FOR CARTEL CONDUCT

Well-known South African manufacturer and supplier of bricks, pavers including clay and concrete blocks, Corobrik, and five other brick makers, have been charged with price fixing and division of markets.

This follows an investigation launched by the Competition Commission in April this year against Corobrik, Era Bricks (Pty) Ltd (Era Bricks), Eston Brick and Tile (Pty) Ltd (Eston Brick), De Hoop Brickfields (Pty) Ltd (De Hoop), Clay Industry CC (Clay Industry) and Kopano Brickworks Ltd (Kopano) for contravening the Competition Act, by engaging in price fixing and division of markets in the manufacturing and supply of bricks, pavers and blocks of clay and concrete. Corobrik entered into separate bilateral agreements with each of the above companies in terms of which they



agreed to divide the market by allocating specific products and/or customers. In addition, Corobrik and Era Bricks agreed to fix prices for selling bricks, pavers and blocks. Corobrik and Era Bricks concluded a Memorandum of Agreement in terms of which they agreed that: Era Bricks would not supply its products directly to customers in competition with Corobrik, but instead would sell directly to Corobrik who would then sell to customers in the open market; Era Bricks would not manu-

facture or sell any bricks other than the types it was manufacturing and selling to Corobrik. In addition, it would not manufacture or sell any competitive product capable of being utilised in the brick industry in substitution for bricks; and in the event that Era Bricks has excess products, Era Bricks agreed not to sell such excess products at prices that are lower than those charged by Corobrik. Corobrik further concluded separate bilateral distributorship agreements with each of four brick manufacturers wherein each agreed with Corobrik that they would not supply their respective products directly to customers in competition with Corobrik. Instead, they will each supply their respective products to Corobrik which would then sell directly to customers.

Source: *CompCom*

Dikago Seitiso

BCB: Tell us about yourself!

Dikago: My name is Dikago Seitiso from Tlokweng. I'm from a family of six siblings; but there are five remaining as one has passed on. I like travelling and learning new things. My name is usually abbreviated to "DK". My middle name, unknown to many, is Stephen.

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

Dikago: I was motivated by a desire to change environment and the fact that CA was relatively new. This meant new experiences and challenges.

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

Dikago: In brief, it involves managing the office of the CEO, that is, making the onerous tasks and duties of the CEO easier. I act as liaison between the CEO and key stakeholders. I'm the face of the CEO's office and by extension, the organisation. My responsibilities include connecting the office well with our authorities in The Ministry of Investment, Trade and Industry. I also liaise with all staff of the Authority through their departments and with other external stakeholders.

BCB: What did you do before joining the CA?

Dikago: I joined the Authority from the Bank of Botswana where I was engaged as Secretary in the Finance Department's Risk Management and Planning Division. I was compiling various risk documents that are the tools used to manage risk. I also organised meetings for Risk Champions. Other du-



Mr. Dikago Seitiso - PA to the CEO



ties included planning and business continuity management.

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

Dikago: There is so much exposure that comes with the job. You get to interact with various guests both local and international.

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

Dikago: The Agency Effectiveness Conference we hosted in 2016. I got to learn competition from an international perspective by getting to know what other countries were doing. The National Bid-Rigging workshop was also a highlight.

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

Dikago: The public expectation of the CA to fulfil its mandate which results in the attention that the CEO's office gets from clients. Almost everyone wants to see the CEO, so it's my duty to re-direct them to the relevant offices. Since in this office you work with all departments and staff members, the other challenge comes from internal customers.

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

Dikago: The Team Building sessions, Staff Retreats and Wellness Days/Weeks. All of these are refreshing.

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

Dikago: Since I am still new in the organisation, I still see myself at CA in the next five years, hopefully in a new and different role.

BCB: We understand that you are a pastor?

Dikago: Yes, that's true.

BCB: How do you juggle your time between your demanding role as a pastor and your job at the CA?

Dikago: Fortunately, my role as a pastor is still a supporting or subordinate one, and part-time for that matter. This helps in proper time management as most pastoral duties are after hours and on weekends.

BCB: What piece of wisdom has sustained you in your life?

Dikago: Change is an inside job.

COMPETITION AUTHORITY IN PICTURES

Competition Authority and BURS Sign MOU



Captions

1. CA and BURS Staff during MoU signing
2. The Manager for Legal and Enforcement Ms. Tapiwa Masie with Acting CEO Ms. Tebelelo Pule
3. Reporters who covered the MoU signing
4. BURS Commissioner General Mr. Ken Morris with Acting Director of Legal Services Ms. Linnet Mafukidze

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