



CA REMOVES BARRIER TO ENTRY IN THE MACHINING/LINE BORING SERVICES MARKET



The Competition Authority has removed a barrier to entry in the machining/line boring services market following an intervention it initiated upon receipt of information that Komatsu Botswana (Pty) Ltd and Barloworld Equipment Botswana (Pty) Ltd were engaged in the conduct of abuse of dominance, by refusing to register or list suppliers on their vendors list for the provision of machining/line boring services. Line boring services is a term used for enlarging a hole that has already been drilled or cast, using one or more cutting tools held within a boring head. It is a specialised small component of the larger process of servicing /repairing/replacing machines or equipment used in mines.

The competition issue identified in the case was abuse of dominance through refusal to deal. Abuse of dominant position is prohibited under section 30 (1) of the Competition Act which states that “Any conduct on the part of one or more enterprises is subject to prohibition by the Authority if, following an investigation by the Authority, such conduct is determined to amount to an abuse of a dominant position in any market.”

According to the Competition Regulations, an enterprise is considered to be dominant if it supplies or acquires at least 25 percent of the goods or services in the market; or three or fewer enterprises supply or acquire at least 50 percent of the goods or services in

the market. Barloworld Equipment constitutes an estimated 39% of the market while Komatsu Botswana constitutes 61% and therefore are considered dominant players in the local market.

An investigation was conducted to establish if indeed Barloworld Equipment Botswana (Pty) Ltd and Komatsu Botswana (Pty) Ltd might have abused their dominance. It was established that Barloworld Equipment Botswana (Pty) Ltd and Komatsu Botswana (Pty) Ltd are the only two enterprises responsible for the supply of heavy plant equipment for the Botswana market and utilisation of line boring services.

The Authority’s investigators engaged both respondents to establish their listing process and to establish if it was open for competition. It was revealed that since its inception in the 1980s, Komatsu Botswana has never changed its contracted suppliers. Barloworld Equipment Botswana, on the other hand, revealed that listing was done by one site manager who recommended to its headquarters in Gaborone, where an appointment was made. The company acknowledged possible disregard of other players. The conduct by both enterprises showed that they engaged in refused to deal as their vendor listing processes were not open

To page 2

IN THIS ISSUE

CA Removes Barrier to Entry in the Machining/Line Boring Services Market Page 1

Milco SA Granted Conditional Approval to Acquire Clover Page 2

CA Bids Farewell to Competition Commission Chairman Page 4

for competition.

The conduct of refusal to deal had the effect of reducing the level of competition in the market since the machining/line boring services was controlled by the two enterprises, which created a barrier to entry into the mining market.

Following the investigation against Komatsu Botswana and Barloworld Equipment Botswana, both parties were sensitised of the anti-competitive conduct, and they acknowledged that their supplier appointment processes were flawed. Both Komatsu Botswana and Barloworld Equipment Botswana made

a declaration through a submission that will see both enterprises reviewing their supplier appointment and listing policies processes to be transparent, and to allow more opportunities for potential entrants.

Since the Authority's intervention, Barloworld Equipment Botswana has committed to improve its recruitment and communication strategy to allow for



more potential suppliers in the machining/line boring mining market, and also evaluate its vendor opening and contracting process to make it all inclusive and transparent. Komatsu Botswana has undertaken to amend its machining/line boring supplier requirement in order to allow for more machining/line boring suppliers, and has also committed to develop a new policy of appointing potential contractors.

This will allow for equal opportunity for potential new market entrants in the machining/line boring market.

MILCO SA GRANTED APPROVAL WITH CONDITIONS TO ACQUIRE 100% SHAREHOLDING IN CLOVER INDUSTRIES



Representatives of the merging parties at the Clover Public Hearing on 27th June 2019 at the Competition Authority offices

The Competition Authority has approved with conditions the proposed acquisition of 100% shareholding in Clover Industries Ltd by Milco SA (Pty) Ltd. The Authority determined through the analysis of the facts of the merger that the proposed transaction was not likely to result in the prevention or substantial lessening of competition, or to endanger the continuity of the services offered in the market under consideration, in Botswana.

Announcing its decision on 30th July 2019, the Authority said this was due to the fact that the proposed transaction would not alter the structure of the market under consideration, and the implementation of the proposed

merger would result in the merged entity inheriting a dominant position.

However, the Authority noted that the proposed acquisition gave rise to public interest concerns under section 59(2)(b) of the Competition Act of Botswana in that there may be spill over effects on the Botswana market as a result of subsequent changes emanating from the proposed merger.

Taking the public interest concerns and pursuant to the provisions of section 60 of the Competition Act, the Authority approved the proposed acquisition with the following conditions that: there shall be no retrenchment of any employee as a result of the proposed merger; the merged entity shall use all its powers to

ensure that the business of Clover Botswana is maintained in Botswana to retain business continuity with the local based dairy input suppliers; and in the event that the merged entity is compelled to change the Botswana business model, such intentions should be communicated to the Competition Authority with a clear justification for the decision.

The Authority further announced that as stated under section 66 of the Competition Act, the approval does not override or negate any other mandatory statutory approvals or processes that any of the parties to the merger must comply with under the Laws of Botswana.

BOTSWANA COMMITTED TO VIBRANT MARKETS THAT GUARANTEE FREE ACCESS TO ALL ECONOMIC PLAYERS

The Minister of Investment, Trade and Industry Honourable Bogolo Kenewendo says the Government of Botswana is committed to vibrant markets that guarantee free access to all economic players.

Delivering the keynote address at the ACER Conference in Kasane, she said the pursuit to open and liberalise trade has over the course of time seen Botswana's economy undergo a number of structural reforms culminating in the privatisation and deregulation of some key sectors which were previously run by state enterprises. "We are sold to the creed of competitive markets and truly believe that wealth creation and consumer welfare can only be ushered in when there is a robust and independent competition agency," Hon. Kenewendo said.

The Minister further told participants that Botswana hosted the ACER Week (15 - 17 July 2019) at an exciting time in the history of the Competition Authority of Botswana. "Many of you will be aware that the Authority recently subjected itself to the United Nations Conference on Trade and Development (UNCTAD) Peer Review Process and we are now at the implementation phase of the Peer Review recommendations. I have no doubt that



Minister of Investment, Trade and Industry Honourable Bogolo Kenewendo addressing the ACER Conference on its mandate," said Hon. Kenewendo. The erudite teachings gained from the ACER Conference will help complement the implementation of the UNCTAD Peer Review Recommendations," she said.

The peer review exercise provides a platform for competition agencies to undergo a process of self-evaluation by exploring their strengths and weaknesses with the view to making improvements. "Cumulatively all these interventions will help make the CA a better organisation that efficiently deliv-



ers on its mandate," said Hon. Kenewendo.

The Minister further indicated that Botswana will soon join a number of jurisdictions in the SADC region and internationally where the competition and consumer protection laws are implemented by one agency. She said almost all the processes have been undertaken to house the two legislations under one Authority. "In due time I shall commission the implementation of the Botswana Competition and Consumer Authority."

CA TARGETS STAKEHOLDERS AT THE GLOBAL EXPO



A member of the public at the CA stall at the Global Expo speaking to Communications and Advocacy officer Kelebogile Ngwenya

The Competition Authority (CA) joined multitudes of exhibitors and investors during the 2019 Global Expo Botswana held at Fairgrounds Ditshupo Hall in Gaborone from 6th to 9th August 2019. CA participated with the objective to bring its services and mandate closer to its clients and stakeholders.

The Global Expo, now in its 14th year, is a premier business to business and multi-

sectoral exhibition hosted and managed annually by the Botswana Investment and Trade Centre as mandated by the Ministry of Investment, Trade and Industry.

It is patronised by international companies, government agencies as well as private companies and attracts between 200 and 5000 number of exhibitors and visitors yearly. The theme for this year was "Harnessing the Power of Emerging Markets for Economic Growth." The Competition Authority used the platform provided by the Expo to interact with stakeholders, promote its mandate and spread the message about competition and its benefits to Botswana's economy.

The Global Expo Botswana also gives manufacturers, suppliers and service providers a platform to showcase their products and brands. The list of exhibitors is drawn from different sectors, amongst them, Information Communications Technology, Agriculture, Tourism, Textiles, Energy, Manufacturing, Engineering, Construction as well as Mining.



Members of the public at the CA stall at the Ghanzi Show speaking to CA's Director of Communications Gideon Nkala

Meanwhile the Competition Authority also participated at the Ghanzi Show from July 22nd to 27th as well as the Consumer Fair from August 26 to 1st September 2019 with the objective to interact with stakeholders and raise awareness on competition issues.

CA BIDS FAREWELL TO THE CHAIRPERSON OF THE COMPETITION COMMISSION

The Competition Authority and the Competition Commission officially bade farewell to the Chairperson of the Commission, Dr. Onkemetse Tshosa, at a ceremony that was held in Gaborone on 15th August 2019. Dr. Tshosa was appointed Chairperson of the Competition Commission in September 2015, replacing the founding Chairperson Dr. Zein Kebonang. The Commission in the current Act serves as the Board of the Competition Authority and also adjudicates cases brought before it by the Authority.

Speaking at the farewell ceremony, the then Acting Permanent Secretary in the Ministry of Investment, Trade and Industry, Ms. Ontlametse Ward, said when the history of competition is written in Botswana, copious pages will be written about Dr. Tshosa's stellar contribution. "He did not only steer the ships of the Commission and the Authority in the right direction but guided them through some of the watershed moments."

Ms. Ward said Dr. Tshosa leaves the Commission having overseen the UNCTAD Peer Review exercise and the restructuring of the Authority into the Competition and Consumer Authority, a process that is well on its way to maturity. "He can also be remembered, just to name a few, by chairing the adjudication on cases such as the resale price maintenance by four wholesaler groups in Botswana. Through proper adjudication, general dealers that subscribe to banner group membership business strategies are able to decide prices for their products."

Dr. Tshosa left the Commission to join the High Court of Lesotho as Judge. Ms. Ward noted that Dr. Tshosa came to the Commission preceded by a glowing reputation from the impressive work that he had done at the High Court of Botswana, and his rich resume as a scholar, a courtroom lawyer and a notable jurist. "When we see men move up to another calling we cannot be despondent, even as we lose some of our treasured resources. We can only celebrate the worthy contributions they have made in building this institution," said Ward.

In his remarks, Dr. Tshosa said he has worked with a wonderful team of people and hopes they made an impact on competition law in Botswana. He indicated that he has worked well with the former Minister of Investment, Trade and Industry, and the current one on the Apex Model, which identifies



Former Chairperson of the Competition Commission Dr. Onkemetse Tshosa at his farewell ceremony on 15th August 2019

SMMEs as the backbone of the economy.

"In Lesotho I will always remember the Competition Authority and the Competition Commission, especially the cooperation we had. I don't recall any negative reporting about the Authority and the Commission and that is encouraging," Dr. Tshosa said.

Ms. Thembisile Phuthego, the Vice Chairperson of the Commission, has

was also the Acting Director of Corporate Services, was one of the first employees of the Authority who joined it in August 2011, and was instrumental in setting it up. At a farewell ceremony on 22nd August 2019, colleagues described Ms. Wadipeba as a hard worker who made a valuable contribution in the establishment of the Authority, overseeing the development of human resource and numer-



Former Human Resources Manager, Ms. Tshepo Wadipeba at her farewell party on 22nd August 2019

been appointed the Acting Chairperson of the Competition Commission.

Meanwhile, the Authority also bade farewell to the Human Resources Manager, Ms. Tshepo Wadipeba, who left the employ of the Competition Authority on 30th August 2019. Ms Wadipeba, who

ous other policies. Ms. Wadipeba thanked colleagues for the support they rendered her over the years, and the personal and professional growth she gained during her time at the Competition Authority.

Lizaloze Ganaope



Mergers and Monopolies Analyst Ms. Lizaloze Ganaope

BCB: Tell us about yourself!

Liza: My name is Lizaloze K. Ganaope; a mother of two beautiful kids, a boy and a girl. I graduated in 2013 with an Honours Degree in Business Enterprise at the University of Derby through Botswana Accountancy College. My first working experience was with Gaborone Universal College of Law in November 2013, where I was an Intern Business Lecturer. In March 2014, I was offered an internship with the Competition Authority, which I embraced with zeal given that I aspire for personal growth and development. At the time I found the Competition Authority was, and is still

the rightful place for that exposure I sought. I was placed under the Department of Mergers and Monopolies. Nine months down the line I was offered the post of Temporary Assistant, a position that I held for over four years up to May 6th 2019, when the Competition Authority offered me the permanent position of Analyst, within the same department.

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

Liza: Given my business educational background and the acquired work experience in the competition and economic field, I

was driven to pursue a career in the same, and as such, I felt this position was a stepping stone for me to achieve my goal.

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

Liza: I assess mergers, acquisitions and business inquiries. In addition, I conduct Compliance Monitoring and Impact Assessment exercises. Through these exercises, the Authority monitors the compliance of enterprises to its decisions as well as its impact on the economy of Botswana.

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

Liza: The Authority is the employer of choice, given the personal growth and development exposure that I have experienced through competition seminars, conferences and other forums.

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

Liza: Attending the Annual Competition and Economic Regulation (ACER) Week and African Competition Forum (ACF) training course in Kasane and the Gambia, respectively. I felt the Authority had capacitated me to the brim, in such a short space of time, given that I attended the ACER Week and ACF training in a space of two weeks.

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

Liza: My current position entails new responsibilities, and new identity because through it, I will be able to test the skills and knowledge that I have acquired throughout the years to see if it takes the best out of me as a professional.

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

Liza: The professional exposure and networking.

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

Liza: In the first two to three years, I see myself becoming an expert and master at my role as an Analyst for Mergers and Monopolies at the Competition Authority. I am looking forward to immerse myself in the position and use opportunities availed to me to leverage on my weaknesses in order to make the CA team as efficient as possible, and this speaks to team spirit and professionalism as our CA values.

BCB: Is there any wisdom you wish to share?

Liza: In order to succeed in life; work hard, be determined and above all have a positive attitude.

PICTORIAL



Panelists during the ACER Conference in Kasane in July 2019



Participants at a training course during ACER Week in Kasane in July 2019



The CEO of the CA and current and former members of the Competition Commission at a ceremony to bid the Chairman Dr. Onkemotse Tshosa farewell on 15th August 2019



Some colleagues bidding HR Manager Tshupo Wadipeba farewell on 22nd August 2019

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