



COCA-COLA ACQUISITION OF K GALAGADI BREWERIES BOTTLING BUSINESS INJECTS MILLIONS INTO THE ECONOMY AND CREATES JOBS



The former Minister of Investment, Trade and Industry Hon. Bogolo Kenewendo officiating at the Coca-Cola can and returnable glass bottle factory in Gaborone on 14th October 2019

The former Minister of Investment, Trade and Industry Hon. Bogolo Kenewendo officially opened the Coca Cola can and returnable glass bottle factory in Gaborone on 14th October, 2019. Announcing the development, Kenewendo said this means that all beverages made in Botswana will be in glass bottles and cans made in Botswana, and they will also be used for production and export to the

SADC market starting with Namibia. “To date the company employs 240 people across the business with one bottling plant and two distribution centres in Gaborone and Francistown, and work is already underway for a third distribution centre scheduled to be commissioned in Palapye in early 2020,” Kenewendo said.

The Minister further said Coca-Cola intends to recycle all the material they

produce; recycling of plastic bottles are targeted at 50% this year, 75% by 2020 and 100% by 2021, and they have also started recycling collection competition for schools targeting 240 schools. “This Waste Management Campaign will also empower over 1000 women and youth,” Kenewendo said.

This development follows the acquisition of 50.1% of the share capital of Beverage Manufacturers (Botswana) (Pty) Ltd by Strategic Alliance J.V. from AB InBev Botswana B.V. and AB InBev Africa B.V. The Competition Authority had received a notification for the proposed acquisition on 6th August 2018, and went on to assess and approve the acquisition with conditions on 29th October 2018.

The proposed transaction entailed The Coca-Cola Company (TCCC), through Strategic Alliance, establishing control over the TCCC branded non-alcoholic ready-to-drink (NARTD) bottling business of Kgalagadi Breweries (Pty) Ltd (KBL) through the acquisition of 50.1% of the share capital of Botswana Softco from AB InBev Botswana and AB InBev Africa.

Following the acquisition of SABMiller Plc (SABMiller) Anheuser-Busch InBev SA/NV acquired indirect control of the Coca-Cola bottling operations within Coca-Cola Beverages Africa Proprietary Limited (“CCBA”). The change in con-

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control over SABMiller (KBL) entitled TCCC's affiliate Coca-Cola Holdings Africa Limited, in terms of the CCBA Shareholders Agreement, to require the exit of SABMiller/KBL as a shareholder in CCBA.

According to section 59(2) of the Competition Act, the Authority may, in addition to assessing the effect on competition of a proposed merger, consider any factor which bears upon the broader public interest.

In its decision following assessment of the Strategic Alliance- AB InBev proposed merger, the Authority announced that while its assessment did not identify competition concerns, the proposed acquisition however gave rise to public interest concerns. The Authority said it was also aware of the share swap between Sechaba Brewery Holdings Limited and AB InBev and was therefore concerned about the protection of the citizen shareholders of Sechaba, especially the minorities.

Taking the public interest concerns into account, the Authority approved the proposed acquisition with the conditions that; the merged entity should ensure that the manufacturing business of TCCC's non-alcoholic ready-to-drink beverages is maintained rather than turning it into a distribution point for imported products; that in the event that the merged entity is compelled to change the business model into a distribution point, such intentions



should be communicated to the Authority with clear justification for their decision.

Furthermore, the Competition Authority directed that there be no retrenchments as results of the merger, and that employees of the target enterprise be employed or transferred on terms and conditions substantially no less favourable than the terms and conditions of their employment prevailing at the time. Another condition imposed by the Authority was that the existing minority protection provisions in favour of Sechaba Holdings Limited in KBL must be replicated in Beverage Manufacturers (Botswana) (Pty) Ltd.

As part of its merger assessment on 27th August 2018, the Authority's investigations team had undertaken a site visit to KBL Coca-Cola plant in Gaborone to establish the level of operation of the plant. The Authority had been made aware of the closure of the can-line following the acquisition of SABMiller by Anheuser-Busch InBev. When approving the SAB

Miller-AB InBev Merger, the Authority had directed the parties to avoid relocating the KBL manufacturing business and thus rendering KBL a distribution facility.

During the site visit, the Authority established that the can-line and the returnable glass bottle operations had been indeed closed. The KBL officials stated that the can-line and the returnable glass bottle businesses had been closed because they were no longer profitable. They further indicated that other reasons for the closure were shortage of water and electrify load shedding. The Authority pleaded with them to re-visit the issue because the problems had been resolved.

The Authority therefore welcomes the opening of the Coca-Cola can and returnable glass bottle factory in Gaborone with the resultant job creation and boost to the country's economy as a result of Coca-Cola's acquisition of Kgalagadi Brewery's bottling business.

EFFECTIVE IMPLEMENTATION OF BOTSWANA'S PUBLIC PROCUREMENT POLICIES IN THE WAKE OF EXCLUSIVE DEALING AGREEMENTS



Manager for Investigations and Research Analysis Ernest Bagopi making a presentation at the Annual Capacity Building Workshop on Cartel Investigation in Mauritius on 8th October 2019

Botswana’s manufacturing sector has a few players in the upstream market and numerous customers in the downstream market and therefore an invitation to supply the government tends to attract manufacturers and their customers to compete for the same tender. Under this scenario, a manufacturer may decide not to issue out quotations to customers that would eventually be its direct competitors when it also bids; and a manufacturer may issue out quotations to customers and still bid for the same tender.

“Both these actions could be challenged, which begs the question: how should competition agencies and procuring entities deal with such instances, particularly in economies where there are barriers to import competition?” This was posed by the Manager for Investigations and Research Analysis Ernest Bagopi while addressing participants at the Annual ACF/SADC Capacity Building Workshop on Cartel Investigation in Mauritius on 8th October 2019.

Bagopi said exclusive dealing agreements between manufacturers, suppliers and/or dealers are generally pro-competition (inter-brand competition). However, when the firm using exclusive contracts is a monopolist or has market power, the focus shifts to whether such contracts would inhibit efforts of new entry or expansion (foreclosure effect) in the market under consideration. “Any inhibition of this nature would therefore constrain implementation of procurement policies;

as the market would be less competitive.”

The Competition Authority in Botswana considers exclusive dealing agreements under abuse of dominance provisions through section 30 of the Competition Act. Here, exclusive dealing conduct is judged under a rule of reason standard, which balances any pro-competitive effect against the anti-competitive effect. The test focuses on the state of competition within a well-defined relevant agreement. It requires an analysis of Definition of the relevant product and geographic market; the extent of market power of the entity with the alleged anti-competitive conduct; and the existence of substantial anti-competitive effects.

Citing Botswana’s Pharmaceutical Sector, Bagopi said the health sector is critical and, as such, is one of those apportioned the largest share of government spending. Through the Central Medical Stores, procurement of pharmaceuticals by government is centralised, and this centralised system sees the entry of pharmaceutical wholesalers and distributors into the local market. Bagopi said the nature of Botswana’s pharmaceutical industry, the manufacturing and wholesale stages of the supply chain, present fertile breeding ground for competition concerns.

“The current practice in Botswana’s pharmaceutical sector is that wholesalers (with sole distributorship rights) generally bid for the same tenders as their customers (retailers); This is because the retailers would have sourced quotations from the same wholesalers in order for

them to submit their bids; Having access to such information puts the sole distributor at an advantage of being able to utilise its competitors as a vessel to inadvertently cover bid , thus covertly bid rig.”

Bagopi said this may even be worsened by the fact that the competition act does not explicitly prohibit manufacturers from issuing out quotations to customers that wish to bid for a tender, and at the same time submit their own bids for the same tender.

Furthermore, “a manufacturer in the upstream may also choose the route of being a holding company and have subsidiaries to use for such tendering purposes; this allows such a manufacturer to submit multiple bids through its subsidiaries without raising alarm, considering that section 29 of the Competition Act exempts interconnected enterprises from cartel conduct.”

In conclusion, Bagopi said Botswana’s centralised public procurement system seeks to ensure an efficient and effective procurement process, however, this can be thwarted by some anti-competitive effects brought about by factors such as exclusive dealing agreements. “The case of Botswana’s pharmaceutical sector, and potentially other sectors of the economy, indicates the need for scrutiny into agreements and relations between various players in the supply chain, to ensure that healthy competition is maintained,” he asserted.



Participants at the Annual ACF/SADC Capacity Building Workshop on Cartel Investigation which was held in Mauritius 7-8 October 2019

EMBEDDING COMPETITION IN KENYA'S PUBLIC PROCUREMENT



Competition Authority of Kenya Director-General Francis Wang'ombe Kariuki speaking at the 6th Annual Competition Symposium in Nairobi on 20th September 2019

Competition Law and Public Procurement was one of the topics that took centre stage at the Competition Authority of Kenya (CAK) 6th Annual Competition Symposium which was held in Nairobi on 20th September 2019.

In his opening remarks, CAK Chairman Ambassador Nelson Ndirangu revealed that the Kenyan government purchases goods and services worth about 7% of the GDP annually, and as thus, ineffective competition in public procurement exposes government to overpriced goods and services whose quality cannot be guaranteed. The theme for the symposium was 'Financial Inclusion and SMEs Growth Through Competition Regulation.'

Ambassador Ndirangu said "a country's economy is like a complex machine and all parts of the machine's cogwheels must work

optimally in order for it to be efficient and productive. Small and Medium Sized Enterprises are the cogs of the machine that is our economy. It is critical to reflect on the contribution that SMEs make to the country's economy and suggest interventions to remove the roadblocks impeding their growth."

It was further revealed that some interventions that CAK has undertaken to aid growth of SMEs is the development of 9 Rules and Guidelines to boost transparency, accountability and predictability of the Authority's activities; as well as the formation of a new department called Buyer Power. The department addresses concerns about market players abusing their superior positions in the value chain to disenfranchise suppliers.

Still on promoting SMEs access, the World Bank Group's Tania Begazo who is Global Lead for Markets and Competition Policy, said the OECD recommends increasing balance and encouraging participation of SMEs in public procurement through disseminating information online and possibility submitting online, dividing into lots, simplifying admin procedures for SMEs, and applying preferential fees or financial incentives for SMEs such as waiving fees or different payment deadlines.

Begazo said specifically for Kenya, conservative estimates show that ensuring competition in public procurement could free up KES28 billion per year. "Re-vamping efforts to boost competition in public procurement markets would be beneficial for fiscal consolidation, with a po-



Communications Managers - Mugambi Mutegi of the Competition Authority of Kenya and Gladys Ramadi of the Competition Authority of Botswana at the 6th Annual Competition Symposium in Nairobi on 20th September 2019

tential annual reduction of the fiscal deficit by at least 0.4 percentage points," she said.

Other topics that were deliberated on at the symposium were: Open Finance, and Leasing Versus Purchasing for SMEs. Leasing offers an alternative to purchasing an asset particularly for SMEs, and it has been identified as one of the programs under Kenya's Medium Term Plan III. On Open Finance, symposium participants were informed that financial institutions are opening up their data to third parties and this is going to disrupt the provision of services with real time sharing of data about a customer.

However, it was noted that while this ushers an entirely new financial services ecosystem, it also raises issues around data privacy, regulation, competition and consumer protection.

Cartels in the Age of Data-Driven Economy

The ICN annual Cartel Workshop was held in Foz do Iguacu, Brazil from 7th to 11th October and was hosted by the Administrative Council for Economic Defence of Brazil (CADE). The theme of the workshop 'Cartels in the Age of the Data Driven Economy' highlighted the growing phenomenon of digital markets and the implications of unique virtual store platforms on the bounds of competition law. The set-up of the conference was that of joint plenaries and break away sessions, which facilitated exchange of experiences, tools utilised to identify cartel behaviour and resolution of related cases by competition agencies.

The ICN workshop came in the wake of several global and regional conferences on competition law this year organised by bodies such as the Centre for Competition Regulation and Economic Development and the American Bar Association, which discussed the issue of competition and digital markets.

Such conferences have revealed a very distinct difference between developed and developing markets with regard to digital markets.

Developed markets have ready infrastructure that allows ease of creating digital markets, and also have more technology savvy populations that provide a sufficient customer base to create large and productive networks. Developing countries, on the other hand, do not have the resource outlay necessary to create large platforms independently, and thus digital markets in developing countries present minimal incentive for tech giants to set up base.

In light of this, questions have been raised in relation to local and/or regional markets and these include; readiness in terms of governing legislation and technical exper-

tise, how and to what extent are smaller less developed markets affected; and how digital markets are affecting development at national level. Should the focus for example be on road infrastructure or online connectivity?

Younger competition agencies are faced with the same questions. For example should their focus be on conventional markets and physical infringements? More developed competition agencies such as the US Federal Trade Commission, the UK Competition and Markets Authority and the European Commission have had encounters with digital platform giants such as Google and Amazon.

The CA's Christson Damn attended the workshop.

What is the digital economy?

It's the economic activity resulting from the billions of online connections among:



Christson Daman

BCB: Tell us about yourself!

Daman: My name is Chris Daman, I have been with the Authority since August 2014. I am an Analyst in the Department of Investigations and Research Analysis, where I specialise primarily in economic analysis of markets, and conduct research studies in order to assess, monitor and redress any anti-competitive behaviour that may prevail.

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

Daman: In the early 2000's just after completing my studies at the University of Botswana, I ventured into the private business sector. That's when I encountered unfair business practices first hand, and this led to my realisation that there were entities that monitored such unfair practices in other countries. This made me eagerly await the formation of such an entity in Botswana. Later, I was employed by the then Central Statistics Office (CSO). CSO was poised to privatise into a parastatal body, and as fate would have it, both the Statistics Botswana and Competition Authority Bills were read in Parliament and passed as Acts in 2009. From then on, I aspired to join the newly formed Authority.

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

Daman: I Investigate, evaluate and redress anti-competitive behaviour in Botswana markets. This entails conducting economic analysis, compliance monitoring, and research studies into local markets in line with the Competition Act.

BCB: What did you do before joining the CA?

Daman: I was a statistician at Statistics Botswana since 2005. My initial responsibilities were survey design, formulation of guidelines, training of staff, and data quality control and management. Prior to my move to CA, I was a National Accounts Statistician.

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

Daman: The culture at CA is distinct from all other work environments that I have been in the past. The mantra of work-hard-play-hard sums it all up.



Mr. Christson Daman - Analyst, Investigations and Research Analysis

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

Daman: I further honed my research skills, report writing and presentation skills. As an investigator, my analytical and observational skills were also enhanced. I can now identify subtle signs of dishonesty from body language to communication.

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

Daman: In investigations and research analysis we deal with multiple industries within multiple sectors, this means that at any given moment an analyst faces varied and complex cases. Furthermore, the competition landscape is dynamic and changes all the time, this means analysts always have to be informed and up to date with the latest developments.

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

Daman: There are a lot of first time experiences that I have had at the Authority, but my most notable experience is the synergy and team work. Although not 100%, it is significant when compared to other organisations. Team CA is cool.

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

Daman: I hope to have progressed up the echelons of the Authority, and to be a notable competition expert regionally and beyond. I aspire to teach and offer consultancy services on competition law.

BCB: Is there any wisdom you wish to share?

Daman: I always survive by numerous adages, however I feel these three are key; tlong-botho; to each his own; and when times are hard let go and let God.

PICTORIAL



CA's Ernest Bagopi and Idah Joel (L to R) and other participants at the ACF/SADC Cartel Workshop in Mauritius 7-8 October 2019



Participants at the 6th Annual Competition Symposium in Nairobi on 20th September 2019



Competition Authority Staff during a team building retreat at the Grand Bay Botanical Gardens on 11th October 2019



CA management hosting a benchmarking delegation from Rwanda on 10th September 2019

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