



COMPETITION AUTHORITY LAUNCHES 2014/15 ANNUAL REPORT

The Competition Authority's 2014/15 annual report was launched on October 20th. Launching the report at a press conference at the CA offices in Gaborone, the CEO, Mr. Thula Kaira, said the Authority's operations are expected to create a business environment that is unfettered by any conduct, arrangement or understanding that prevents, restricts and distorts competition.

He said the Authority made a number of interventions in the market that added value to consumers, business and government through enforcement and advocacy activities. Highlights included the removal of barriers to entry which saw four new market participants in the physiotherapy equipment, sugar supply, the cash-in-transit and alarm and response, and the electrical supply markets respectively. Further, two



The CEO Mr. Thula Kaira handing a copy of the annual report to the Chairperson of the Competition Commission Dr. Onkemetse Tshosa

bid-rigging cases were successfully investigated and referred to the Commission by the end of the financial year. "Both cases coincidentally affect Government procurement and were tenders worth P117 million for sugar beans and another worth P10 million for infant formula milk" Kaira said.

Kaira indicated that the enforcement process was not without bottlenecks as cases in the car panel beating cartel were withdrawn following discovery that the respondents had not been served with Notices of Investigation, while for others there were some procedural errors. To address this, the Authority engaged in re-training of staff in investigations as well as streamlining the coordination of investigations. Fur-

ther, the Authority engaged KPMG as internal auditors to review the investigation process and their recommendations have been under implementation.

The Authority also intervened in a number of mergers. "Our target was 35 mergers and we handled 32 (down from 33 in 2013/14). It is estimated that the Authority facilitated the injection of over P145 million into existing businesses in Botswana, that is expansion of existing businesses.

It further facilitated technological and skills transfer, creation and retention of 740 jobs, as well as citizen empowerment" Kaira said.

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COMPETITION COMMISSION HAS A NEW CHAIRPERSON

The Minister of Trade and Industry, Honourable Vincent Seretse, has appointed Dr. Onkemetse Tshosa as the new Chairperson of the Competition Commission. Dr. Tshosa takes over from Dr. Zein Kebonang who was the Chairperson of the Commission since its inception. Kebonang resigned as Chairperson when he was appointed Acting Judge of the High Court in April 2015.

Dr. Tshosa is a lawyer who served in many capacities in his illustrious legal career. He graduated from the University of Botswana with an LL.B after which he proceeded to the University of Lund in Sweden where he attained his senior law degree (LLM). He gained his doctoral degree from the renowned law citadel at the University of Edinburgh.

Dr. Tshosa is currently in private practice and a senior partner at the law firm Tshosa and Company. He has taught law at the University of Botswana where he started as a staff development fellow and rose through the ranks at the Law Department to lecturer, senior lecturer until he reached the pinnacle to become head of department.

Amongst his many appointments, he has served as external examiner at the University of Namibia and the North West University in South Africa. Dr. Tshosa has published extensively on a wide spectrum of legal issues. He has been a visiting scholar at some regional institutions and beyond including, at Fordham Law School in New York where he was a Visiting Professor of Law.

He has served in the Administration of Justice as magistrate, acting principal magistrate and in 2009, he was appointed judge of the High Court, a position he held until he resigned in 2012. Prof, as he is affectionately known to colleagues, friends and former students alike, had a long stint (2005-2015) as a part-time



Dr. Tshosa speaking at the launch of CA's 2014/15 Annual Report on 20th October 2015

Judge of the Windhoek based Southern African Development Community (SADC) Tribunal. Prof practiced as a private attorney at some of the well-known law firms such as Moeletsi and Motumise Attorneys.

Before Dr. Tshosa's appointment, Mr. Gaylard Kombani, the Deputy Chairperson of the Commission had been holding the fort as the Acting Chairperson of the Competition Commission. The Competition Commission is the governing body of the Competition Authority and also serves as the adjudicating body (Tribunal) on competition matters that are investigated by the Authority.

Competition Authority Launches 2014/15 Annual Report

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On Communications and Advocacy, the Authority engaged in a number of national and international activities. "At national level, we engaged in a number of activities on our own as well as in partnership with our strategic partners such as DCEC and PPADB. These engagements focused primarily on awareness around bid-rigging detection and prevention. Such training included central and local government procurement units, parastatals and suppliers to government. Our adjudication cases also brought a lot of publicity both in the mainstream and social media and these activities earned the Authority the 'Most Media Visible Parastatal' award from the Ministry of Trade and Industry" said Kaira.

At regional and international level the Authority continued to be part of the SADC Competition and Consumer Policies Committee, the African Competition Forum, the International Competition Network and the UNCTAD Intergovernmental Group of Experts (IGE) on Competition Law and Policy, he said.

In aggregate terms the Authority had a performance rating of 82% out of a target of 90%. Kaira said while below the target, it is commendable noting the financial and human resource constraints that the Authority faced in the year. "A worthy credit is due to the hardworking staff of the Competition Authority". He further expressed concern about the high case to staff ratio and was hopeful that this would be addressed in the short term, by engaging Inspectors and temporary employees, while an organisation-wide restructuring is awaited.

Present at the launch was the newly appointed Chairperson of the Competition Commission Dr. Onkemetse Tshosa, and the Vice Chairperson of the Commission, Mr. Gaylard Kombani.



Ms. Tapiwa Masie and Mr. Kesego Modongo addressing students of Botho University and Ba Isago University on 8th October 2015

CA BRIEFS BOTHO AND BA ISAGO UNIVERSITY STUDENTS ON COMPETITION LAW

Students of Botho University and Ba Isago University have been briefed on Competition Law as part of the Competition Authority's objective to educate students, who are future entrepreneurs, about the mandate of the Authority, as well as operating competitive businesses that comply with the Competition Act of Botswana.

A presentation was made to Botho University students and Alumni during their Entrepreneurship Activation session as well as to Ba Isago University students and lecturers from the Faculties of Law, Business, Education and Sciences. The presentations were made at the two institutions on 8th October 2015 by Ms. Tapiwa Masie and Mr. Kesego Modongo of the CA's Legal Depart-

ment. The students were informed that section 27 of the Act covers all horizontal and vertical agreements which have as their object or effect the lessening or prevention of competition.

Masie and Modongo informed the students that cartels are the most serious form of anti-competitive conduct and that the most common cartel activity investigated in Botswana is bid-rigging.

They further said increased market concentration through mergers and acquisitions may, by reducing the number of participants in the market, make the adoption of anti-competitive behaviours easier. As future or budding entrepreneurs, the students were implored to be aware of their

own and competitors' conduct to avoid finding themselves in breach of the Competition Act.

"Anti-competitive conduct manifests itself in many forms and the Competition Authority cannot enforce the Competition Act on its own. It is important for the public and students like yourselves to be aware of what anti-competitive behaviour is and what is required to ensure that market players remain competitive" Masie and Modongo said.

They further said the benefits of fair competition in the economy are immense, as consumers, taxpayers and the nation at large all benefit from markets that operate on a fair playing field.

FAREWELL FOR DR. KEBONANG AND WELCOME FOR DR. TSHOSA

The Competition Commission and the Competition Authority held a ceremony on 27th October to bid farewell to the founding and former Chairperson of the Competition Commission, Dr. Zein Kebonang, and also to welcome Dr. Onkemetse Tshosa as the Commission's new Chairperson.

Present at the event were the Honourable Minister of Trade and Industry, Mr. Vincent Seretse, his Assistant Honourable Advocate Sadique Kebonang, members of the Competition Commission, as well as executive management and staff of the Competition Authority and the Commission.

In his remarks, the Honourable Minister commended Dr. Kebonang for the good work that he did in ensuring that the Commissioners were sufficiently trained on Competition Law. He also assured Dr. Tshosa that he will be working in an organisation that already has a solid foundation because



The former Chairperson of the Competition Commission Dr. Zein Kebonang speaking at his farewell on 28th October 2015



The Minister of Trade and Industry Honourable Vincent Seretse speaking at Dr. Kebonang's farewell

of all the hard work that has been done by the Commission under the leadership of Dr. Kebonang. At the same event, the Honourable Minister also welcomed the new member Ms. Nelly Senegelo to the Competition Commission. Ms. Senegelo is Deputy Permanent Secretary in the Ministry of Trade and Industry.

Meet Otlaathusa Seforo

In this issue, *The Botswana Competition Bulletin* profiles Mr. Otlaathusa Seforo who clocked four years at the Competition Authority on 24th October 2015. He is employed as Driver/Messenger.



Mr. Otlaathusa Seforo

BCB: Tell us about yourself!

Seforo: My name is Otlaathusa Seforo, I am happily married to Ditebo Seforo and blessed with five kids, all boys, and my last born sons (the twins) were born a year after I started working for the Authority. Raising boys is no child's play, there is always something going, the scary injuries, the fights and so on but I do cherish my moments with the boys and proud to be their father. I started working at the young age of 22, I was very ambitious that is why I have managed to come this far. I am a hard worker and up until to this day I do part time jobs on weekends as a builder, landscaper and also I am a subsistence farmer.

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

Seforo: Well, CA offered a competitive remuneration and I also wanted to experience a different working environment from where I was.

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

Seforo: To collect and distribute mail, carry out transportation duties and banking tasks, assist with registry and administrative tasks.

BCB: What did you do before joining the CA?

Seforo: I worked for the government under the Department of Trade and Consumer Affairs as a driver

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

Seforo: I have mostly great experiences working with innovative people, who I now feel like they are family to me, they have contributed to my professional growth and I appreciate them so much.

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

Seforo: There have been several. What perhaps comes to mind is that since I came to the CA I pushed so hard to act on projects and dreams I have been holding on. I built my dream house and I bought a car. I try to get more out of every pula I get.

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

Seforo: There is a lot to be done and some of my duties depend on other workers like the delivery of mails, so it is difficult to plan for my work and come up with the right schedule as sometimes urgent mails have to be delivered when it is almost time to knock off.

BCB: Your colleagues at the CA have given you several nicknames. Tell us about some of your nicknames and how they came about.

Seforo: Captain as an appreciation to the good transportation service I provide to my colleagues. I ended being compared to a ship driver hence the name Captain. Shim-pundu is a name I got from Rre Kaira which

is a Zambian nickname to refer to a father of twins like me.

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

Seforo: The retreat sessions were awesome, we had a lot fun and I got to travel and explore other places I did not know. Working with my bosses especially Mr. Kaira who is a humble man and we get to crack a lot of jokes and also the dining room conversations I have with my colleagues over lunch.

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

Seforo: I want to be a well-established farmer with all the farming implements you can think of and eventually become a commercial farmer.

BCB: Is there any wisdom you wish to share?

Seforo: Monna o ja mofufutso wa phatla ya gagwe (A man lives off from the sweat of his brow) with this you cannot go wrong let us all learn to work hard!!!!!!

SOUTH AFRICAN COMPETITION COMMISSION FINALISES ITS INVESTIGATION OF THE CONSTRUCTION SECTOR

The Competition Commission of South Africa has referred to the Competition Tribunal (Tribunal), the last case arising out of its investigation of bid-rigging in the construction sector. The case is against WBHO Construction (Pty) Ltd which colluded with Group Five Construction (Pty) Ltd by fixing contractual conditions relating to the N17 link road between New Canada and Soccer City (N17 project).

In a statement on 26th October, the Commission said its investigations found that at a meeting of the South African Federation of Civil Engineering Contractors Association (SAFCEC), WBHO and Group Five agreed on a preferred set of contractual conditions for the N17 tender issued by the South African National Roads Agency Limited (SANRAL). On the basis of this agreement, they requested SAFCEC to approach SANRAL on their behalf, to demand that SANRAL change its tender conditions and issue the tender with the conditions they agreed about. This amounts to fixing of trading conditions which contravenes section 4(1)(b)(i) of

the Act. WBHO was notified of this project during the Construction Fast Track Settlement Process and was invited to settle but rejected the offer. "This referral marks the end of the Commission's investigation of collusive conduct in the construction sector arising out of the fast track process. Our focus will now be on litigation of cases that were referred to the Tribunal for prosecution," said Commissioner Tembinkosi Bonakele.

"The construction sector remains one of the key sectors of the economy which government is prioritizing to drive infrastructure development. It is therefore necessary to address any collusive conduct which might inflate the costs of rolling out infrastructure development," added Commissioner Bonakele.

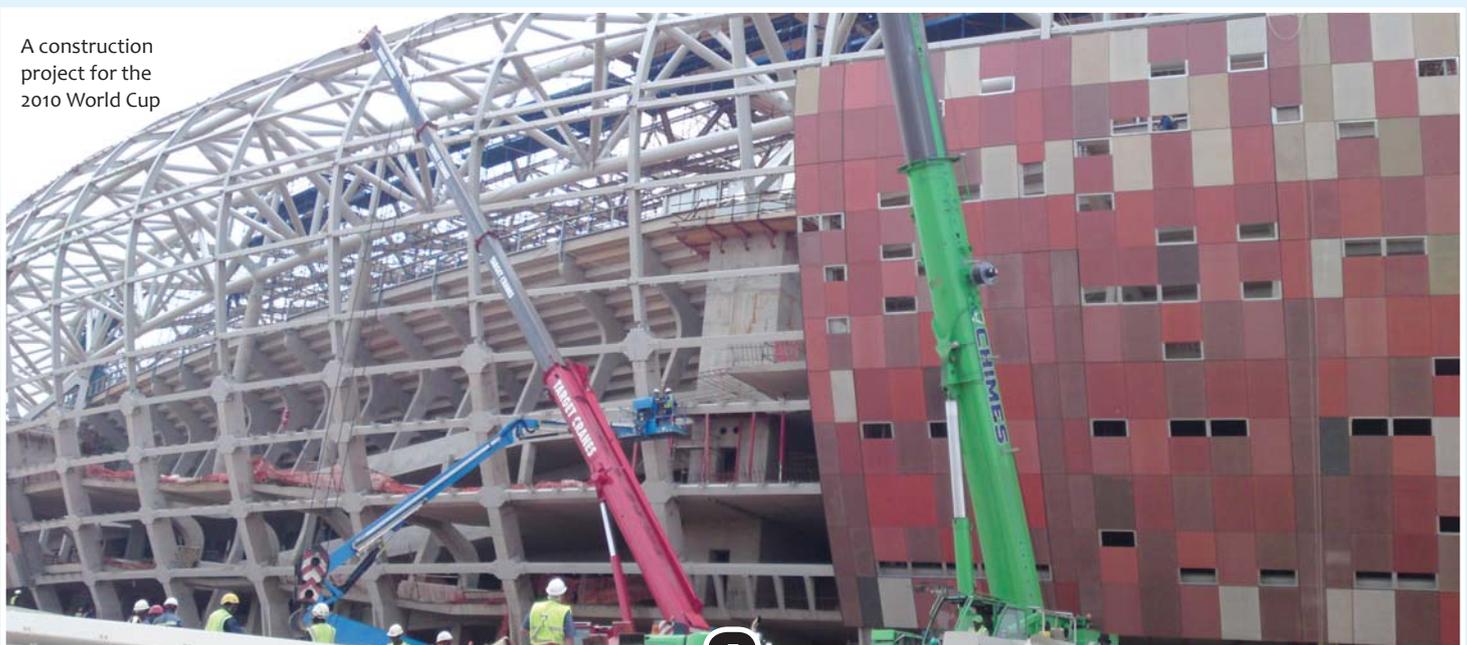
The Commission initiated investigations in the construction sector in 2009 after receiving evidence that collusion was pervasive in the sector. Subsequently, the Commission launched the Construc-

tion Fast Track Settlement Process (Fast Track Settlement) in February 2011 to expedite the resolution of these cases given their magnitude.

In 2013, the Commission settled with 15 out of 18 firms that participated in and were found liable under the Fast Track Settlement. The settlement agreements with the 15 firms were confirmed by the Tribunal in July 2013, with a combined total of R1.4bn in administrative penalties levied against these firms. The confirmation by the Tribunal of the consent agreements concluded with the 15 firms completed the Fast Track Settlement.

The Commission settled with some of the firms investigated under the Phase Two Construction Investigation, referred to the Tribunal for prosecution cases against those firms that did not settle. Also, the Commission decided not to prosecute cases against certain firms where there was insufficient evidence against them or where the firms had been liquidated.

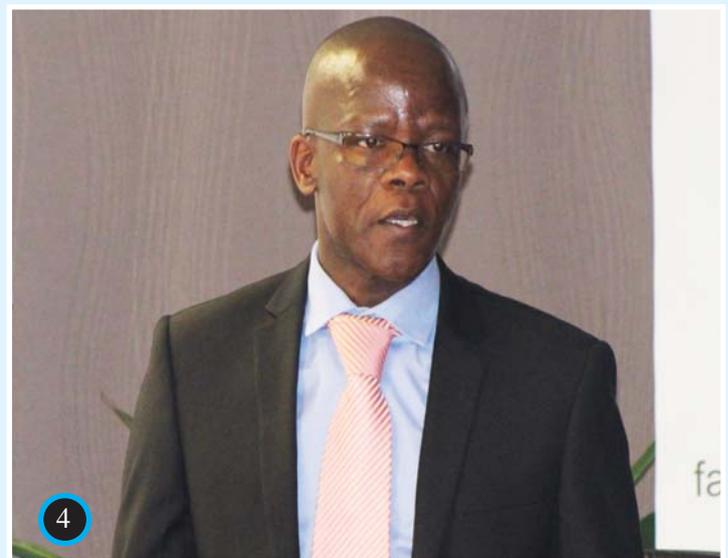
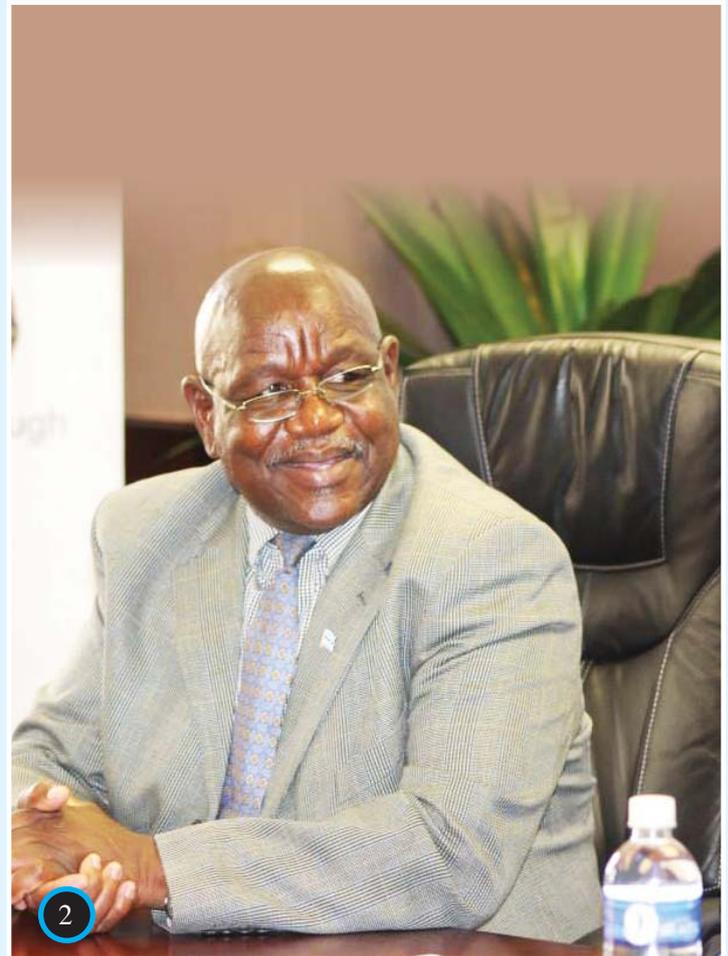
Source: South African Competition Commission



A construction project for the 2010 World Cup

COMPETITION AUTHORITY IN PICTURES

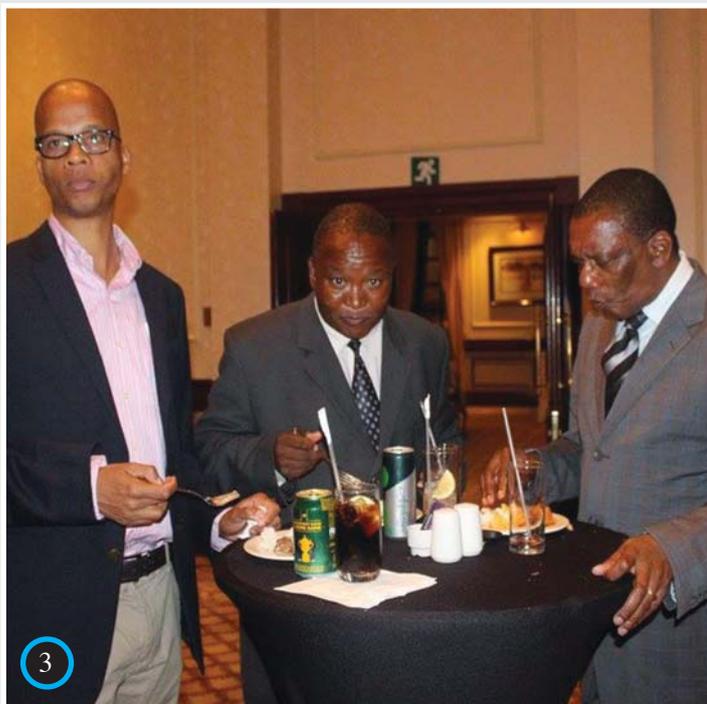
Competition Authority's 2014/15 Annual Report Launched



Captions

1. The CEO Mr. Thula Kaira launching the annual report 2. Vice Chairperson of the Competition Commission Mr. Gaylard Kombani 3. Some CA staff and journalists at the press conference 4. Director of Communications and Advocacy Mr. Gideon Nkala directing the proceedings

FAREWELL FOR DR. ZEIN KEBONANG AND WELCOME FOR DR. ONKEMETSE TSHOSA



Captions

1. Dr. Kebonang receiving a gift from Honourable Minister Vincent Seretse 2. From left: Commissioners Dr. Jay Salkin, Mr. Tendekani Malebeswa with Dr. Kebonang
3. Dr. Kebonang, Dr. Tshosa and Mr. Duncan Morotsi 4. Some CA staff at the farewell/welcome ceremony

CA Briefs Botho And Ba Isago University Students On Competition Law



Captions

1. A Botho University student asking a question 2. Students of Botho University 3. Students of Ba Isago University 4. A lecturer of Ba Isago University directing the proceedings

EMPLOYEE PROFILE

MEET OTLAATHUSA SEFORO



Captions

1, 2, 3 at work and play: Competition Authority's Mr. Otlaathusa Seforo

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