



A NEW BEGINNING: COMMENCEMENT OF THE COMPETITION AND CONSUMER AUTHORITY

The Minister of Investment, Trade and Industry has through the Extraordinary Government Gazette of 2nd December 2019 published the Competition Act, and the Consumer Protection Act (Date of Commencement) Orders, thereby commencing the Competition and Consumer Authority, CCA.

The Ministry announced in a press release that the Competition Act and the Consumer Protection Act were reviewed in 2018 and approved the transfer of the function of the Consumer Protection Office to the new Authority, CCA, which replaces the Competition Authority. The new Authority therefore combines the mandates of the old Competition Authority and the Consumer Protection Unit which used to function under the Ministry of Investment, Trade and Industry.

“The general public and the business community are informed that the commencement of the new Competition and Consumer Authority and the Competition and Consumer Tribunal commenced operation on 2nd December 2019. The transfer of the mandate provides for speedy resolution of consumer complaints and enables the public to escalate unresolved complaints to the Competition and Consumer Tribunal,” the press release said.

Furthermore, the public was informed that services would continue at the cur-



The Minister of Investment, Trade and Industry Hon. Peggy Serame

rent Consumer Protection offices countrywide whereas the Tribunal is housed at the Botswana Bureau of Standards.

Through the Government Gazette notice, the Minister, Hon. Peggy Serame, also announced the appointment of members of the Competition and

Consumer Authority Board and members of the Competition and Consumer Tribunal.

The board will be a governance structure while the tribunal will be a specialised competition and consumer court unlike what used to obtain in the previous arrangement where the board had dual functions of governance and adjudication. Members of the Board appointed for a five year term commencing 1st October 2019 are Mr. Koonyatse Tamasiga, Ms. Kemmony Keitsile, Mr. Phodiso Valashia, Dr. Malebogo Bakwena and Dr. Selinah Peters.

Members of the Tribunal have also been appointed for four or five year terms commencing 1st October 2019. They are Ms. Sanji Monageng who is President, and Mr. Tendekani Malebeswa as Vice President. Other members are Mr. Kedibone Sekakela, Mr. Tshiano Mosojane, Mr. Leruo Moremong, Ms. Malebogo Lekgoa and Ms. Ruth Basele.

Alternate members of the Tribunal all appointed for five year terms are Mr. Karabo Masuku, Ms. Keneilwe Mere, Ms. Tidimalo Poonyane, Ms. Ruth Seipone, Ms. Tutu Tsiang, Ms. Pono Semane and Dr. Gape Kaboyakgosi.

The Competition Regulations 2019 and Consumer Protection Regulations 2019 can be accessed on the CCA website.

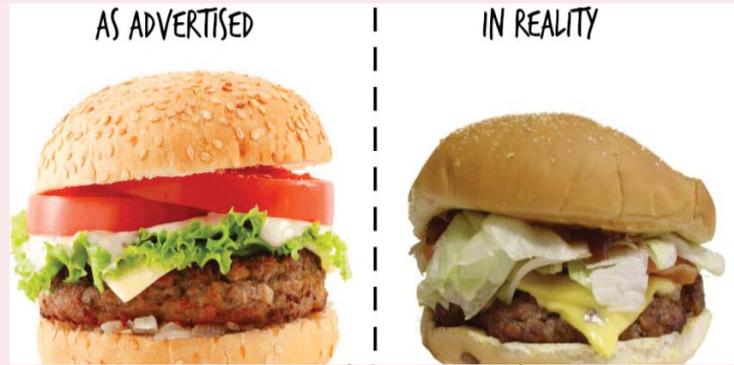
IN THIS ISSUE

A New Beginning – Commencement of Competition and Consumer Authority Page 1

Competition Authority and Botswana Energy Regulatory Authority Sign MoU Page 3

ICN and World Bank Launch 2019-2020 Competition Advocacy Contest Page 5

A NEW CONSUMER DAWN IS UPON US



Consumers are an important facet of any economy yet they are vulnerable. A number of consumer protection provisions are strewn across legislations in various sectors and disciplines in Botswana. The Consumer Protection Act 2018 is a dedicated overarching law that seeks to protect consumers. It contains some progressive provisions in consumer protection enforcement including Deceptive Advertising, Pyramid Schemes, Information on Goods and Services, Safety and Quality of Goods, and Unreasonable and Unjust Contract Terms:

Deceptive Advertising

Businesses and marketers have often profited from deceptive advertising, false and misleading representations which are geared towards luring even the discerning consumer to buy products and services which are inferior to the lofty standards they were made to be. The Act looks askance at such conduct and largely prohibits a wide array of misrepresentation including the use of bait advertising, force, coercion, undue influence, unfair tactics and others. Deceptive advertising attracts a fine of P50 000 or a term not exceeding three years, or both.

Pyramid Schemes

In the social media era, one of the common businesses propositions that we have all been bombarded with at one point or the other is pyramid schemes. From now on you may have to think long and hard before you click that button to join a pyramid scheme. The new Act prohibits participation in a pyramid scheme, multiplication scheme and chain letter scheme. For interpretation purposes, the Act defines a pyramid scheme as an arrangement or practice where participants in the scheme receive compensa-

tion derived primarily from their respective recruitment of other persons as participants, rather than from the sale of any goods or services. The hefty fines and prison terms for participation in a pyramid scheme, multiplication or chain letter scheme should send a spine chilling effect to would be participants. A person who is found guilty of participation in a pyramid scheme is liable to a fine of P100 000 or a prison term not exceeding five years.

Information on Goods and Services

Often consumers are denied relevant information to enable them to make the right decisions and appropriate choices or purchases. This could take the form of information on the price of goods, instructions on how to use the goods, warning on risks, the price displayed being different from the price charged at the till, used or reconditioned goods not indicated as such, goods or commodities that are no longer good for use sold as being 'for sale.' Upon conviction, a fine of P50 000 or an imprisonment term not exceeding three years is applicable.

In our market, consumers are often confronted by goods that are priced in other currency, particularly the Rand. The law makes it mandatory that the price displayed shall be in Botswana Pula. Upon conviction on this offence the law reaches for the highest fine, in the pages of the Act, here a general fine of P500 000 or imprisonment term not exceeding three years or both shall be applied.

Safety and Quality of Goods

The Consumer Protection Act is generally premised on the expectation that a consumer has a right to receive goods which are of good quality, in good working order and free from defects, unless the opposite is clearly disclosed. Perhaps

one of the most profound provisions of the Act gives the CCA the power to recall goods, halt production, and to share information with the public when there is discovery of unsafe goods which do not conform to prescribed safety standards.

Unreasonable and Unjust Contract Terms

Consumers are invariably placed at the rough end of the stick when it comes to contracts. Big business has a tendency to insert provisions that protect businesses while consumers are saddled with terms that leave them with a great burden. The new Consumer Protection Act goes out to safeguard the rights of consumers from unfair, unreasonable and unjust contract terms. The law specifically prohibits a supplier from deceiving, depriving a consumer of any right protected under any other law, waiving the supplier's obligation in terms of any other law, and most importantly the law prohibits businesses from exempting their liability for any loss associated with the consumption of goods and services.

Collaborations

The advent of the CCA and in particular the introduction of a modern and enforceable consumer protection law is bound to elicit a lot of interest and excitement across the consumer space. However, we should be under no illusion that the presence of the law will be a magic wand that will vanish all the consumer abuses that have defined the consumer terrain over the years. There have to be active collaborations between the CCA, consumer groups, professional bodies, other regulators, the media and the public in order to roll back the heavy stone of consumer exploitation.

Editor's Note: This is an excerpt of an article by the Director of Communications and Stakeholder Relations Gideon Nkala which originally appeared on the Sunday Standard edition of 8th December and the Monitor edition of 9th December 2019

COMPETITION AUTHORITY AND BOTSWANA ENERGY REGULATORY AUTHORITY SIGN MOU TO ENHANCE COMPETITION REGULATION IN THE ENERGY SECTOR



The CEO of BERA, Ms. Rose Seretse, and the CEO of the CA, Ms. Tebelelo Pule at the MoU signing on 13th November 2019

The then Competition Authority (CA), and the Botswana Energy Regulatory Authority (BERA), signed a Memorandum of Understanding (MoU) on 13th November 2019, to formalise and enhance their cooperation on regulatory matters within the energy sector. The CEO of BERA, Ms. Rose Seretse, and the CEO of the CA, Ms. Tebelelo Pule, signed the MoU at the CA offices in Gaborone.

In her remarks, Ms. Pule said the CA will need technical expertise from BERA whenever it is seized with mergers as well as competition cases in the energy sector. “The CA will need knowledge, insights, qualitative and quantitative data, trends and even price structures in order to make informed determinations in the often technically opaque energy sector,” she said.

Pule further said the MoU will help facilitate issues of shared or concur-

rent mandates between the two organisations to obviate the need for forum shopping and duplicating regulatory efforts; and it will also meet the needs of customers through expeditious referrals.

For her part, Ms. Seretse said the MoU will assist both authorities in executing their mandates and achieving their strategic goals as they both have an obligation to ensure that services in the energy sector are provided in a competitive and non-discriminatory basis.

“This MoU will ensure that consumers of energy services are protected and that all competition barriers in the energy sector are removed. These will be achieved by sharing of information, joint investigations, consultations, research, referrals and capacitation of employees for both authorities,” she said.

Seretse further said BERA ensures tariffs in the energy sector are fixed on the

basis of a tariff methodology set up in a transparent manner taking into account government policy and issues licenses through a competitive process. “This therefore protects the interests of customers and consumers, and it is imperative that we enter into this MoU with the Competition Authority so that we may assist each other in stimulating competition in the energy sector,” said Seretse.

The MoU is expected to facilitate information sharing between the two organisations, joint investigations and research as well as joint training exercises.

The Competition Authority was established by the Competition Act of 2009, and is responsible for the prevention and redress for anti-competitive practices in the economy, and the removal of constraints on the free play of competition in the market. The Authority’s mandate has widened to include enforcement of the Consumer Protection Act, and it has transformed into the Competition and Consumer Authority.

BERA was established by the Botswana Energy Regulatory Act of 2016. The Act mandates BERA with oversight over the electricity, petroleum products, coal, natural gas, bio-energy, solar energy, renewable energy resources and other energy sectors. It is also responsible for setting and maintaining service standards, ensuring sustainable and secure supplies in the energy sector, as well as protecting the environment.

COMPETITION AS A DRIVER OF INDUSTRIALISATION

The Director of Communications and Stakeholder Relations at the Competition and Consumer Authority, Gideon Nkala, says competition is a catalyst that can help broaden industrial base. Speaking during the commemoration of Africa Industrialisation Day in Gaborone on 28th November 2019, he said innovation and productive efficiencies are some of the by-products of competition.

Nkala said market failures can be resolved through competition agency interventions, further noting that competition also leads to improved quality of goods and services, wider consumer choice and lower prices.

He cited the Authority’s interventions to open up market access of fly ash which



The Director of Communications and Stakeholder Relations Gideon Nkala speaking during the commemoration of Africa Industrialisation Day on 28th November 2019

is produced at Morupule Power Station. Initially the fly ash was sold to just one enterprise - a cement manufacturer. Fly ash is an essential product in the production of such products as cement and clay bricks. Ever since the removal of this trade barrier a lot more companies are now able to access fly ash including cement companies and clay bricks companies which are exporting products in the region.

He went on to give another barrier in the restricted sale of tallow to one company by the national abattoir. Tallow is also an essential ingredient in the manufacturing of soap. He said soap manufacturing could create more jobs

To page 4

and increase the country's exports.

Nkala also highlighted some sore areas which hinder industrialisation in the country and he mentioned some protectionist provisions that give an incentive to cartel behaviour particularly in the poultry sector.

"Poultry remains expensive and the industry has not matured to the level of export due to inefficiencies and possible cartel stranglehold. This industry has lot of potential to grow and innovate once the legislative strictures are removed," Nkala said.

Officiating at the commemoration, the Assistant Minister of Investment, Trade and Industry, Hon. Karabo S. Gare said there is need for positioning industries to access the African continental free trade area markets. He said the role of the manufacturing sector

remains pivotal in gaining access to International markets with competitive products.

Hon. Gare said in an endeavour to ensure meaningful participation in these markets, Government, through his Ministry and other stakeholders, is committed to enhancing competitiveness of businesses at both industry and enterprise level, and the Ministry has initiated a review of the Industrial Development Policy of 2014.

The 2019 African Industrialisation Day, commemorated under the theme, "positioning African industry to supply the African continental free trade area market," was concluded with a tasting of locally produced products from different manufacturers.

Source: Additional reporting by Ministry of Investment, Trade and Industry



Some local products displayed during the commemoration of Africa Industrialisation Day by the Ministry of Investment, Trade and Industry

COMPETITION AND CONSUMER AUTHORITY COMMEMORATES 2019 WORLD COMPETITION DAY



Competition agencies and consumer groups around the world commemorated World Competition Day (WCD) on 5th December. It was on this day in 1980 when the United Nations Conference approved the UN Set of Principles and Rules on Competition - Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. The theme for this year's World Competition Day was "Ensuring effective competition in an increasingly online world."

In a press release to mark the day, the Competition and Consumer Authority (CCA), said the world economies are evolving rapidly and conventional mar-

ket structures are giving way to new forms that do not have any resemblance to the rigid brick and mortar based markets of old. There are phenomenal innovations that have transformed global economies and the largest part of these changes have been brought to bear by technological advancement, particularly online-based reforms.

"A growing number of consumers purchase their products on online market places such as Amazon or Alibaba whilst using digital applications such as Apple Store, or Google Play, variously known as the Android market; and on social network sites such as Facebook. These market places are often accessed through con-

ventional search engines such as Google, Firefox and others," the release said.

Conventional markets are sustained by the volume of sales and the prioritisation of profits. Online markets on the other hand rely on data of customers (network effects) and the business model prioritises growth over profit in the short to medium terms. These platforms use algorithms to collect and process data which information is then used by companies to target consumers and to monetise their services and products.

"While online markets appear seemingly competitive in the short term; there are a number of regulatory concerns relating to issues of consumer data protection, privacy, consumer choice, and the ability of the consumer to be able to switch with ease from one supplier to the next without paying heavily or being locked to one supplier. Online markets are characterised by fewer dominant players who have a penchant to predate or force other small players out of the market through such schemes as locking or tying in customers," the CCA said.

In the wake of such anti-competitive behaviours and the desire to diminish consumer benefits, competition and consumer agencies around the world, including the CCA, are investing their collaborative efforts to curb this unwelcome phenomenon.

INTERNATIONAL COMPETITION NETWORK AND THE WORLD BANK GROUP LAUNCH 2019/20 COMPETITION ADVOCACY CONTEST



The International Competition Network (ICN) and the World Bank Group (WBG) have announced the launch of the 2019/20 Competition Advocacy Contest. The contest aims to highlight the key role competition agencies, sector regulators and other governmental bodies or non-governmental organisations play in promoting competition by showcasing their advocacy success stories.

The ICN defines competition advocacy as “activities that promote a competitive environment through non-enforcement mechanisms, such as building relationships with government entities, increasing public awareness about the benefits of competition, and identifying and removing anti-competitive policies and regulations.”

The general topic of the Contest is ‘Competition as a tool to reap the benefits and mitigate the costs of the new economy: jobs, industry and data.’ The ICN and the WBG are looking for success stories based on four thematic areas:

Theme 1: Unleashing competition for more and better jobs

Theme 2: Aligning industrial policies with competition principles

Theme 3: Promoting pro-competition data regulation

Theme 4: Boosting policy effectiveness through better coordination between enforcement and advocacy

Theme One entitled ‘Unleashing competition for more and better jobs’ posits that globalisation and technological change have been labelled as contributors to the recent fall in the labour share of income and concerns regarding the

capacity of economies to generate jobs which has led to public demands for reviewing market-based policies. In this context, competition authorities may be called to consider in their enforcement and advocacy actions objectives such as the protection of labour income or labour-intensive sectors. This presents an opportunity for competition agencies to show how competition can open markets, stimulate growth and create more and higher productivity jobs.

The second theme ‘Aligning industrial policies with competition principles’ recognises that competition authorities are often confronted with government plans or initiatives to boost the competitiveness of a sector by creating national champions, granting state aid, reinforcing the presence of state-owned enterprises, and protecting nascent or strategic industries. In a context where policymakers may regard competition rules as an obstacle to the implementation of industrial policies, competition authorities face the challenges of advocating the complementary role of these two tools, demonstrating how competition principles can increase the effectiveness of such policies.

Theme Three on ‘Promoting pro-competition data regulation’ prompts authorities to demonstrate how competition advocacy can help policy makers define principles to inform data regulation and identify how to ensure that markets that rely on data remain contestable. This is because data has become a strategic variable in the digital economy, particularly when used as a key input for market participation, innovation and expansion. “New rules related to the use of data need to account for not only the

concerns related to consumer protection and data privacy but also the need to provide access and interoperability between market players. In this context, competition advocacy can help policy makers define principles to inform data regulation and identify how to ensure that markets that rely on data remain contestable,” notes the ICN and the World Bank.

The fourth Theme; ‘Boosting policy effectiveness through better coordination between enforcement and advocacy’ highlights how competition law enforcement and advocacy have a critical and mutually reinforcing role in achieving pro-competitive market outcomes. Competition agencies may launch enforcement actions following an advocacy initiative if it was not enough to overcome market failures. At the same time, competition agencies may expand the impact of their enforcement actions by proposing pro-active advocacy initiatives.

The deadline for submissions is 20th December 2019. The contest is open to all competition agencies and all public bodies and non-governmental organisations promoting competition policy. Joint submissions from ICN members with other governmental bodies as well as non-governmental organisations are welcome. Stories submitted to previous editions of the contest that were not awarded are eligible for resubmission, and there is no limit in the number of stories that each applicant can submit.

For further information and to apply visit the following web page:

<https://www.worldbank.org/en/events/2019/11/11/2019-2020-competition-advocacy-contest>

Source: ICN and World Bank Group

Joyce Sekhutlana Ngwako



Ms. Joyce Sekhutlana Ngwako - Performance Improvement Coordinator

BCB: Tell us about yourself!

Joyce: My name is Joyce Sekhutlana Ngwako, I joined the Authority in September 2018 as Performance Improvement Coordinator (PIC). As PIC I manage the Organisational Corporate Strategy. My primary role is to coordinate projects, monitor execution and evaluate the Strategic Plan to help the Authority to achieve its mandate. My secondary role is that of identification and assessment of Corporate Risk. I am qualified in Strategic Management, Risk Management, Monitoring and Evaluation, Project Management and I am a Balanced Scorecard certified practitioner.

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

Joyce: While at Botswana Bureau of Standards an opportunity availed itself and I was ready to transit. As a strategist and change agent, an opportunity for exposure in a new corporate environment arose. There is something novel and exciting about a new environment. I always view a new environment as fertile ground for motivation.

BCB: What are your duties and

responsibilities at the CA?

Joyce: I coordinate the development, execution and evaluation of the Authority's strategic plan; risk profiling and management. The current portfolio provides me with an opportunity to manage employee performance, which normally resides at the Human Resource Department. Additionally, this provides me with an opportunity to identify performance gaps and create strategic synergies between organisational performance and employee performance to achieve the Authority's mandate.

BCB: What did you do before joining the CA?

Joyce: I spent most of my employment life as a Strategy Coordinator, and before I joined the Authority I was with the Botswana Bureau of Standards (BOBS) as Coordinator Corporate Strategy. Previously I was with the Industrial Court of Botswana and the Ministry of Lands and Housing as Performance Improvement Coordinator. I started working at the Ministry of Education as Staff Development Coordinator as well as a Secondary School Teacher of Social Studies.

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

Joyce: The Authority is more of a family than a workplace, the value system entrenched in the business environment is an enabler for the employees to realise their own potential. Employee welfare at the Authority is a critical pillar in performance management and I will say it is duly taken care of, though it is still limited by a tight budget.

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

Joyce: As a change agent, I am very happy to be part of a historic moment when we are witnessing the integration of the Competition Authority and Consumer Protection Unit. I will live to cherish this moment. The fact that I will be coordinating the strategic direction of the Competition and Consumer Authority gives me an opportunity to grow professionally.

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

Joyce: Not a challenge as such but an opportunity to learn more about Competition and Consumer Protection laws and their applications.

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

Joyce: I experienced quite a number of memorable events but the one that stands out perfectly is when I coordinated the crafting of the current Annual Plan. These was an opportunity to put to test my planning and evaluation skills.

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

Joyce: My life plan dictates that I focus on journal publications and wind up my academic journey.

BCB: Is there any wisdom you wish to share?

Joyce: You can be what you want to be regardless of your faulty/delayed/disadvantaged start. Believe in your God given abilities. Endurance, Endurance and Endurance!

2019 IN PICTURES



Captions:

1 & 2 CA and CCRED hosted ACER Week in Kasane July 15th to 19th

3 Competition Symposium on 10th April

4 ALL-MITI Parastatal Games on 8th June

HOW TO CONTACT US



Editorial Team

GIDEON NKALA: gideon.nkala@competitionauthority.co.bw

GLADYS RAMADI: gladys.ramadi@competitionauthority.co.bw

KELEBOGILE NGWENYA: kelebogile.ngwenya@competitionauthority.co.bw

MODIMOOSI MATEBESU: modimoosi.matebesu@competitionauthority.co.bw

BABOLOKI MEEKWANE: baboloki.meekwane@competitionauthority.co.bw

Phone: +267 3934278

Fax: +267 3121013

Postal: Private Bag 00101, Gaborone

Facebook: Competition Authority Botswana

Twitter: @CompetitionBots

Visit the Competition Authority website www.competitionauthority.co.bw where you can download the Competition Act 2009, Competition Regulations 2011, the National Competition Policy 2005 and other documents.