



## CA REJECTS 4MS TRANSPORT HOLDINGS MERGER

The Competition Authority has declined to approve the proposed acquisition of assets and cession of the main contract belonging to 4Ms Group Holdings (Pty) Ltd by Transport Holdings Ltd, citing competition concerns.

Announcing the decision on 13th January 2017, the Authority said it rejected the acquisition on the grounds that the facts, analysis and conclusions of the assessment have shown that there are competition and public interest concerns that arise in the line haul transportation services in the Botswana market on account of the proposed acquisition.

The Authority said it took cognisance of the fact that the proposed transaction is likely to result in reduced competition due to the removal of a competitor in the line haul transportation services market, implementation of the proposed merger is expected to result in the merged entity attaining a dominant position and that the proposed transaction is expected to result in retrenchments and citizen disempowerment.

In declining the proposed merger, the Authority further outlined some conditions.

“Given the competition and public interest concerns identified in this proposed transaction, and the fact that Transport Holdings (Pty) Ltd/Mulbridge Transport (Pty) Ltd is the only other entity apart from 4Ms having a contract with Kgalagadi Breweries (Pty) Ltd that expires in January 2020; Transport Holdings (Pty) Ltd/Mulbridge Transport (Pty) Ltd



or any other entity related in anyway with Transport Holdings (Pty) Ltd/Mulbridge Transport (Pty) Ltd is restrained from participating in the tender to be issued by KBL upon the expiry of the existing 4Ms contract with KBL in October 2017, and for the entire period leading up to the end of the Transport Holdings (Pty) Ltd/Mulbridge Transport (Pty) Ltd contract in January 2020, including any extension period that may be granted thereafter,” said a statement from the Authority.

The acquiring enterprise, Transport Holdings (incorporated in Botswana), is owned 80% by Imperial Holding Group (incorporated in South Africa) and the remaining 20% is held by a citizen of Botswana Mr. Anthony Lee,

the Managing Director of Transport Holdings. Transport Holdings, together with its subsidiaries are operational in Botswana, South Africa, Mozambique and Namibia.

The target enterprise, 4MS, is a company incorporated in Botswana. It was established in 2004 as a Citizen/Driver Empowerment Scheme by Kgalagadi Breweries Ltd (KBL), and it is in the line haul transport services market with 97% of its business coming from KBL. The Competition Authority held a public hearing on 9th December 2016 on the proposed acquisition, and heard arguments from representatives of the merging parties, their competitors in the transport industry and other interested parties.

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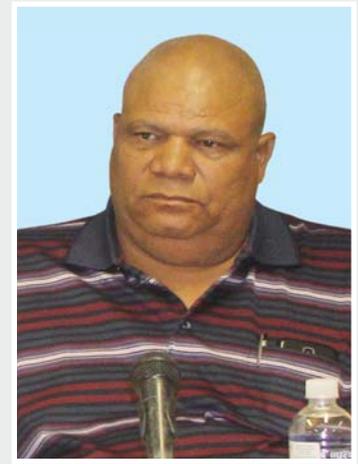
Mr. Cassius Mothudi



Mr. Mbakiso Matshambane



Mr. Hunter Modongo



Mr. Daniel Mokiri

## GIVING PERSEVERANCE NEW MEANING THE GENESIS OF 4MS

It is not a rare phenomenon in other countries to hear that a truck driver or an industrial class worker has been transformed from earning peanuts into running a multi-million dollar business. But the story of the quartet who established a transport service company, 4Ms Group Holdings (Pty) Limited, is worthy of recognition.

The uniqueness of the four - Daniel Mokiri, Mbakiso Matshambane, Hunter Modongo and Cassius Mothudi - is that they were all employed by Kgalagadi Breweries Limited (KBL) as truck drivers but now own a business which gets a distribution business from their former employer.

Mokiri, who is the company's managing director in charge of administration, has worked as a truck driver for 20 years, 11 of which were with KBL. Matshambane, the operations director in charge of marketing also has truck-driving experience spanning two decades, out of which 17 were with KBL. Despite their investment, both Mudongo and Mothudi preferred to be employed by their own company as supervisors of the driving team. The duo is on the ground, leading by example as they are also engaged in the day-to-day driving of the heavy-duty machines. Mudongo has been behind the driver's seat since 1982 as a mechanic before engaging in long distance driving and Mothudi also worked as a driver in 1979.

The quartet entered the transport business with one motive - to dislodge the grip and subsequently the dominance of foreigners in the local transport industry. The company's mission statement says; "To enter a market that is currently dominated by



Mr. Michael Stoneham

foreign transporters and with higher charges". However, they are well aware that the mission statement is just a dream and that it would take a great deal of energy to turn that into reality. They are gathering the necessary experience and arsenal to overturn a cartel of foreign moghuls, albeit in incremental steps. They have since added two important shareholders to the company. Michael Stoneham has been brought on board as finance director, and Venture Capital Botswana partners, who have since injected equity and apportioned 36 percent of the total shareholding. Stoneham was formerly a cost accountant at KBL before joining the quartet last September.

Explaining the formation of the company, Mokiri said the four came together and registered the company in 2001 after picking up the business idea from their employer - KBL. At the time, the company thought of an empowerment scheme where it would outsource some of its services such as distribution to citizens, giving preference to employees. After the formation of the company, they tendered in their resignations, to capitalise on the op-

portunity. Unfortunately the KBL idea did not materialise for some reasons, but they had already injected a lot of money into the company.

"We used a lot of money. For instance, we spent about P18,000 on consultants to do a business plan for us," reminisced the MD. They had also sourced funds from Citizen Entrepreneurial Development Agency (CEDA) as start-up to buy two trucks and trailers. With the targeted market failing and the trucks running the risk of being idle, the four had to think long and hard. Perseverance did the trick. Whilst waiting in uncertainty to land the right contract or fold up, they kept the going by taking up menial jobs. Airshield Botswana subcontracted them to transport plastic containers to Zambia before the company went under. They proved the saying that optimists see opportunity in every danger by deciding to soldier on.

"They really struggled for the first year or so," explained the finance director. They explained that they survived on an ad-hoc basis. At times they were subcontracted to transport copper and nickel from Selebi-Phikwe or by Truck Africa to ferry bricks from Johannesburg, South Africa. Through these jobs, the company managed to keep afloat, covering costs even though they were not making profits. They claim profit was not a motive at the time, survival was imperative. They described their problems as teething and said they have gone through hard times. This is not to imply that it is smooth sailing today as they are

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yet to clear the rubbles ahead of their vision. They say they have learnt a lot from the past and present contracts because they went into business without the necessary and requisite business grasp.

It is these trials and tabulations that will prove handy in the next few years. They describe the current business relationship with their former employee as “going well. Although business is quite tough, we are learning a lot of things from the current contract”.

Stoneham adds that the contract is valuable to them as it gives them exposure “to be seen as a reputable company in so far as reliability is concerned. We have never disappointed KBL in any way with the distribution despite the fact that we are running 24 hours”. The company has since grown, with nine trucks and a staff complement of 19 employees. Their annual turnover is about P6 million but they emphasise that it is not yet time to cheer.

“Running trucks is not a joke. Trucks are big and everything about them is big, the costs are so high,” explains Stoneham. The cost situation is compounded by the recent devaluation and skyrocketing prices of fuel. Under normal circumstances, he said the biggest operational cost is associated with tyres.

Notwithstanding the underlying costs, the company still yearns for more business. “We cannot depend on KBL alone for business, we really need more business. We are seriously looking for additional work, a substantial contract,” Stoneham explained. Under the five year-contract they have signed with KBL, the company will distribute all KBL products inter-depot, from Gaborone to Francistown, Selebi-Phikwe, Palapye and Kanye.

The company is confident it will have the capacity to execute additional work because they are assured of equity assistance from venture partners, provided the job proves viable and profitable.

“We need the support of the manufacturing industries and all those companies that need to transport large tonnage,” Stoneham said.

Source: Phillimon Molaodi Mmegi newspaper 2005



The CEO of the Gambling Authority Mr. Thuli Johnson and the Acting CEO of the Competition Authority Ms. Tebelelo Pule during the MoU signing ceremony for the two organisations on 24th January 2017

## COMPETITION AUTHORITY AND GAMBLING AUTHORITY SIGN MOU TO CEMENT COOPERATION

The Competition Authority and the Gambling Authority have signed a Memorandum of Understanding (MoU) to enhance cooperation between the two institutions which would ultimately improve their internal processes and efficiencies.

The MoU was signed by the Acting Chief Executive Officer of the Competition Authority Ms. Tebelelo Pule and the Chief Executive Officer of the Gambling Authority Mr. Thuli Johnson in Gaborone on 24th January.

Speaking at the signing ceremony which was held at the Gambling Authority offices, Johnson described the signing of the MoU as an opportunity to cement a relationship that has already started in terms of collaborations in a number of key strategic areas, noting that the Competition Authority has already handled issues of competitiveness in the gambling industry.

For her part, Pule described the gambling industry as a complex one, with potential for anti-competitive issues to arise. She said besides looking out for abuse of

dominance by enterprises, the Competition Authority also considers public interest issues.

The basis of the MoU is that while the two organisations implement two separate mandates there are areas of intersection in their mandates and hence the need to cooperate. Gambling is an economic activity that affects the buying power of every individual who partakes in it, and the gambling industry generates large sums of money through competition.

“Gambling establishments compete with one another for customers and competitors may enter into certain arrangements in order to maximize their profits and some, due to acquisitions, may become concentrated and abuse their dominant position” the MoU reads in part. As part of the cooperation agreement, the two institutions will among other things share relevant information, assist each other with investigation, research and analysis of cases that one party may be engaged in, and conduct joint training exercises.

# BOTSWANA'S COMPETITION AUTHORITY TURNS FIVE, PUNCHES ABOVE ITS WEIGHT



Established just five years ago, Botswana's Competition Authority has helped reinject millions of dollars into local businesses and save thousands of jobs in an economy where unemployment persists at around 20%. In sectors such as health, retail, tourism, and agriculture, it has investigated alleged cartels and bid rigging, and assessed hundreds of mergers and acquisitions. In doing so, it has helped the country to prepare for a post-diamond economy and to remain one of Africa's least corrupt and most prosperous.

"For such a young competition authority, these are very big achievements," says Elizabeth Gachuri, who, as an UNCTAD economist working on competition and consumer protection, helped establish the authority." Most com-

petition authorities in developing countries have not investigated cartels or done dawn raids like they have in Botswana," she adds.

Cartels and abuses of market power can push prices higher and quality lower, seriously affecting development goals in countries such as Botswana, where one in five inhabitants still lives in poverty. Recent research by a member of UNCTAD's Research Partnership Platform found that cartels decrease production by an average 15% and overcharge by 20%.

Concerns about competition in Botswana's economy surfaced about two decades ago when high levels of market concentration threatened to undermine the country's wider economic reforms.

"UNCTAD has worked with Botswana from the beginning, from

the economic mapping to the drafting of lay laws, right up to the recruitment of the authority's first CEO," Ms. Gachuri says.

Since then, Botswana has become more competitive and less reliant on diamonds. Mining's contribution to GDP is now less than half what it was just a decade ago. And the country's ranking in the World Economic Forum's annual index of competitiveness is now 65, up from 80 in 2011-2012.

The next step, she says, would be a volunteer peer review so the country can benchmark its competition laws and policies against international best practices. "This is something the Botswanan authorities have expressed interest in doing, and we look forward to discussing this further with them," she said.

Source: [www.unctad.org](http://www.unctad.org)

# SADC COMPETITION AUTHORITIES IDENTIFY SPECIFIC AREAS FOR FOCUSED COOPERATION

SADC competition authorities met in Pretoria on 14th December 2016 to sign detailed interagency cooperation frameworks on mergers and cartels. Following the May 2016 signature of a memorandum of understanding, SADC competition agencies have been engaged in negotiations on specific areas of cooperation, as well as in capacity building on tackling cartels. Closer cooperation between SADC competition authorities will enable more effective enforcement of competition laws across the region.

At an Extraordinary Meeting of the SADC Standing Committee on Competition and Consumer Law and Policy chaired by Swaziland, SADC competition authorities approved and adopted detailed frameworks for future cooperation on mergers and cartel investigations. Benefits to merging parties of increased cooperation among SADC competition agencies include reducing unnecessary duplication of work, delays and burdens for merging parties and agencies, reducing gaps in information available to agencies which increases analytical robustness and promoting convergence in the analysis of specific cases.

Information sharing between SADC competition authorities on legal frameworks, investigative processes, timetables, procedures and confidentiality

rules can increase transparency in agency practice to minimise uncertainty and increase predictability in merger review. Cooperation can also improve the quality of merger review and assist in enhancing the efficiency of merger review regimes. The SADC mergers cooperation framework spells out various methods of collaborating, ranging from sharing non-confidential information and general discussions on market definition, all the way through to more extensive cooperation, such as detailed discussions on evidence gathered or coordination on remedy design and implementation on the basis of waivers of confidentiality.

Given the benefits of cooperation, the SADC competition agencies therefore encourage mergers to be notified simultaneously in the different SADC countries and will commence a process to harmonise rules to ensure that there is simultaneous notification of transactions in SADC. The SADC Mergers Working Group, chaired by Botswana, has been operational for over a year and is in a good position to immediately implement the framework. Authorities have been sharing non-confidential information about mergers filed in their respective jurisdictions and an increase in coordination for analysis of mergers filed across several SADC states can be expected without de-

lay. Cartel conduct by companies is one of the most harmful forms of anti-competitive conduct. A recent World Bank study on competition policy in South Africa showed that by tackling four cartels in wheat, maize, poultry and pharmaceuticals, some 202 000 individuals were lifted above the poverty line through the lower prices that followed.

The agreement by the competition agencies also sees the adoption of a comprehensive SADC cartels cooperation framework which aims to promote greater regional cooperation and coordination in cartel investigation processes and to enable SADC members to improve the quality and efficiency of their cartel investigation processes. The cooperation framework also encourages interagency training and development.

The SADC Cartels Working Group, chaired by Zambia and South Africa, has been in operation since June 2015 and in that time has established two sub-groups, whose work plans were also approved. The SADC Cartels Working Group has already received training on investigative techniques and procedures facilitated by the Competition Division of the OECD, supported by the European Commission's Directorate General for Competition (DG Comp).

*Source: Competition Commission South Africa*



Heads of SADC competition agencies met in Gaborone, Botswana on 26th May 2016 to sign an MoU for cooperation

## Thabiso Mbongwe

**BCB:** Tell us about yourself!

**Employee:** My name is Thabiso Mbongwe. I am a dedicated professional. My beloved colleagues describe me as an ever smiling and determined investigation cog.

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

**Employee:** There is no particular reason that I can point out to. I saw an advert and I saw it as a possibility to try and do something I had never done before and in the process become diverse and grow in another field. I jumped at the opportunity and I submitted the necessary paperwork. God granted my wish.

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

**Employee:** As an Investigation and Research Analyst, my duties are to identify and investigate potential anti-competitive practices in the economy involving horizontal agreements (cartels), vertical agreements and abuse of dominance. I also carry out research to assess the effectiveness of competition in sectors of the economy and to provide relevant, reliable and valid information mainly for decision making in competition matters.

**BCB:** What did you do before joining the CA?

**Employee:** I worked as a Performance Auditor with the Office of the Auditor General (OAG). This is where I developed my career. As a Performance Auditor my job entailed carrying out value for money audits in the public and parastatal sectors by analysing the capacity of organisations at strategic and operational level. This was to ensure that organisations manage and carry out their activities in an economic, efficient and effective manner.

**BCB:** what are your experiences at the

Authority so far?

**Employee:** I have had a rewarding experience and everyday I am on an unending journey to learn and grow. Working for a Department that carries the core mandate

of the organisation, I engage with different stakeholders in various sectors of the market. This has exposed me to the different sectors hence broadening my horizon of the existing market dynamics. However, what stands out is the first dawn raid experience where there was suspected bid rigging in the market in 2012. Wheew - it was scary but the results were fulfilling.

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

**Employee:** Being a Research Team Leader on the Cement Study that saw the removal of barriers to entry into the market.

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

**Employee:** Wearing many hats and feeling like I can't give my all to any one aspect of my position. I enjoy what I do, but I need to concentrate on one aspect at a time and complete it without having other aspects vying for my immediate attention.

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

**Employee:** The staff retreats and capacity building events, especially when we visited Maropeng in South Africa.

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

**Employee:** I am driven to be the best at what I do and I want to work somewhere where I'll have opportunities to develop my skills, take on interesting projects, and work with people I can really learn from. Some of the most innovative thinkers in the industry work here and that's a big reason why I would love to build a career here.

**BCB:** Is there any wisdom you wish to share?

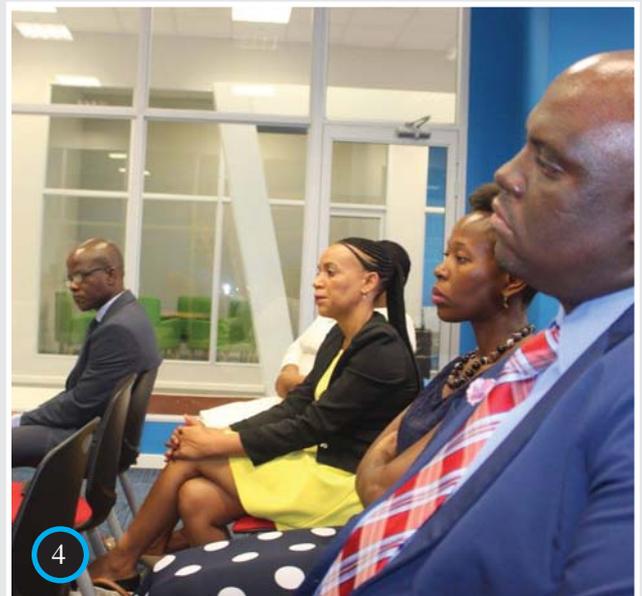
**Employee:** Perseverance is key.



Ms. Thabiso Mbongwe  
Analyst Investigations and  
Research Analysis

# COMPETITION AUTHORITY IN PICTURES

## Competition Authority and Gambling Authority Sign MoU



### Captions

1. Ms. Chandida Thembe Gambling Authority Chief Legal Counsel and the CEO Mr. Thuli Johnson 2. Mr. Solomon Moremong of the Gambling Authority directing the proceedings 3. Guests at the MoU signing ceremony 4. CA and Gambling Authority management

# Corporate Social Responsibility

The CA continues to give a helping hand to communities under its CSR programme. CA staff donated items such as clothing, toys and food to families at Dutlwe and Monwane over the Christmas holidays.



## Captions

1. Donation of clothing 2. Donation of toys 3 & 4. Food items

## HOW TO CONTACT US



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