



CA Conditionally Approves Acquisition of Supa Save And Mega Save by Choppies

The Competition Authority has approved with conditions the proposed acquisition of all issued shares of Supasave (Pty) Ltd and Megasave (Pty) Ltd by Choppies Enterprises.

Announcing its decision, the CA said the analysis of the facts of the merger assessment showed that there were substantial competition concerns that arose in the Fast Moving Consumer Goods market in Gaborone, Molepolole and Palapye, given the fact that the merging parties were close competitors in both product and geographic market dimensions.

It said the merger was also expected to enhance the acquiring enterprise's already existing dominance, which is 40.4% in Gaborone, 35% in Molepolole and 37.4% in Palapye. This dominance was in particular expected



The Director of Mergers and Monopolies Ms. Magdeline Gabaraane (second from left) led the CA team that explained the merger decision to the press.

to demonstrate itself in enhanced buyer power in the upstream market, which was not necessarily likely to result in Choppies being a low priced retailer as evidenced from the comparative pricing survey done by the Authority.

The Authority said given these competition issues, there was on the other hand a glaring reality that the target enterprises were confirmed competitive failures, that is, failing firms. "Ordinarily, this transaction should be rejected in the same manner as the Authority rejected the takeover of Shield Security by G4S in April 2012. Further, this transaction at hand does raise plausible competition concerns which on a balance of probability, cannot entirely be ignored despite the failing firm defence", CA said.

"Having satisfied itself with the peculiar failing firm realities of this case, in particular the absence of a counter-notification, the Authority would not want to have a

market situation that is uncontrollable and disastrous to the welfare of employees as a result of the imminent exit of Supasave and Megasave from the relevant markets in Gaborone, Molepolole and Palapye".

In view of the foregoing, the Authority announced that it cautiously and reluctantly approved the transaction with the following condition:

Choppies should take over the two entities as going concerns but Choppies should, within a period of five years from 2013 provide the Authority with a reasonable exit plan, including a public notice to divest from the target Supasave outlets which are within the vicinity of existing Choppies outlets in Mogoditshane, Broadhurst Extension 16, Gaborone Bus Rank/Gaborone West and Palapye.

The condition was envisaged to attract other entrants in the named retail spaces within the next five years.

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Assistant Minister of Trade and Industry Visits the Competition Authority



The Assistant Minister of Trade and Industry signing the VIP Visitors Book

The Assistant Minister of Trade and Industry Honourable Keletso Rakhudu visited the Competition Authority on May 28th to familiarise himself with its operations. In his remarks, Hon. Rakhudu thanked the Authority for helping the Ministry of Trade and Industry attain the top position in Government Ministries for performance. “If our statutory bodies were not performing we would not have attained number one position”, he said.

The Assistant Minister assured the Authority of the Ministry’s support in terms of legislation, policy and resources to enable it to effectively carry out its mandate.

He reiterated that his Ministry would ensure that Government was compliant and did not engage in anti-competitive practices, noting that some businesses could be inadvertently driven out of the market by Government.

“We may relax thinking Government will police itself with its policies but at implementation level individuals can defeat things”, he said.

Furthermore, Hon. Rakhudu called on the CA to benchmark with other jurisdictions to see what interventions they have put in place to deal with anti-competitive conduct by Government. He also called on the CA to brief Government Ministries and Departments such as the Supplies Department which may not be aware of the new competition policy thrusts.

Hon. Rakhudu acknowledged that a competition authority is one of the most expensive entities to have in place, requiring a lot of knowledge and expertise, and that was one of the reasons why it took long to set up the authority.

Briefing the Assistant Minister’s delegation, the Chief Executive Officer of the Competition Authority, Mr. Thula Kaira, said the CA has already embarked on meetings with Government Ministries to familiarise them with the provisions of the competition policy and legislation. He also



Honourable Rakhudu receiving Competition Authority literature

said one of the Authority’s roles is to advise Government. Mr. Kaira briefed the Minister on the mandate of the CA, its structure and the process of investigations.

He also briefed him about continental competition bodies such as the African Competition Forum, and international bodies such as the International Competition Network which the Authority closely works with.

He concluded that any systematic frustration of competition would lead to both economic and social loss for any country in the long term.



CA staff with the Zambia Anti-Corruption Commission Delegation

Zambia Anti-Corruption Commission Visits the CA

The Competition Authority on June 6th hosted a five-member delegation from the Zambia Anti-corruption Commission who came to Botswana on a benchmarking visit. The delegation was led by Senior Monitoring and Evaluation Officer, Ms. Inonge Kalimukwa.

The delegation was interested in knowing how the Authority deals with issues relating to corruption and in particular how the Authority collaborates with the Directorate on Corruption and Economic Crime (DCEC) in order to combat corruption.

Briefing the delegation, the Chief Executive Officer, Mr Thula Kaira, said

while corruption law extends to deal with persons directly, competition law in Botswana deals with the corporate entity – thus fines are meted not to persons, but to firms.

He said competition and corruption in the public service were intertwined through ‘rent-seeking’. Rent Seeking is spending resources in order to gain by increasing one’s share of existing wealth, instead of trying to create wealth. The net effect of rent-seeking is to reduce total social wealth, because resources are spent, and no new wealth is created. Mr. Kaira said rent-seeking reduces competition and breeds corruption, and it is prevalent where there

are limited opportunities for growth and wealth creation.

He said as both corruption and anti-competitive practices lead to loss of competitiveness in any economy, information sharing and assistance in investigations by enforcement agencies should be a national interest issue.

To that end, the Competition Authority has signed a memorandum of understanding with the DCEC and the Public Procurement and Asset Disposal Board, (PPADB) to facilitate information sharing and jointly combat corrupt and anti-competitive practices such as bid-rigging.

MERGER DECISIONS BY THE COMPETITION AUTHORITY MAY TO JUNE 2013

In addition to the Choppies merger, the Competition Authority made the following merger decisions in May and June 2013:

❑ ACQUISITION OF 70% ORDINARY SHARES IN PROFESSIONAL WATER MANAGEMENT ANTICOR BY ROLFES HOLDING LIMITED

Pursuant to Section 60(4)(a)(ii) of the Competition Act, the CA on May 23rd authorised the acquisition of 70% ordinary shares in Professional Water Management Anticor (PWM Anticor) by Rolfes Holding Limited (Rolfes).

It approved the transaction on the grounds that there were no substantive competition concerns that arose in the water treatment and chemicals market in Botswana, on account of the acquisition of 70% ordinary shares in PWM Anticor by Rolfes.

Approving the merger the Authority determined that:

- The proposed transaction was not likely to result in substantial lessening of competition, nor endanger the continuity of the service, due to the absence of product overlap between the merging firms;
- The merged entity did not possess any market dominance and consequently no threat of abuse of dominant market power was anticipated, post transaction implementation, as defined under Section 2 of the Competition Act; and
- No significant negative effect on public interest in Botswana was identified, in relation to the provisions of Section 59(2).

❑ ACQUISITION OF 100% ISSUED SHARE CAPITAL IN RPC DATA LIMITED BY ITS SENIOR MANAGEMENT

The Competition Authority on June 7th authorised the acquisition of 100% issued share capital in RPC Data Limited by its Senior Management.

The Authority approved the transaction on the grounds that the analysis of the facts of the merger assessment showed that there were no substantial competition concerns that would arise in the Information Technology sector, on account of the acquisition of 100% issued share capital in RPC Data Limited by its Senior Management.

The Authority also took cognisance of the fact that the transaction was a Management Buy-Out, with no actual or likely adverse effects on competition.

However, pursuant to the provisions of Section 66 of the Act, this approval did not override or negate any other man-

datory statutory approvals or processes that any of the parties to this merger must comply with under the Laws of Botswana.

❑ DECISION ON THE PROPOSED ACQUISITION OF 100% ISSUED SHARE CAPITAL IN MOREMI SAFARIS (PTY) LTD BY CHOBE HOLDINGS LIMITED (DESERT & DELTA SAFARIS (PTY) LTD)

On June 3rd the Authority approved the proposed acquisition of 100% issued share capital in Moremi Safaris by Chobe Holdings Limited through Desert & Delta Safaris.

Approving the merger, the CA said the assessment showed that there were no substantial competition concerns that arose in the tourist lodges and camps market in Botswana, on account of the acquisition of 100% issued share capital in Moremi Safaris by Chobe Holdings Limited.

The Authority also took cognisance of the fact that:

- The availability of post-merger competitive constraints would remain post-merger, to ensure that rivalry continued to discipline the commercial behaviour of the merged entity;
- The merged entity was not considered dominant and consequently no threat of abuse of dominant market power was anticipated post transaction implementation, as defined under Section 2 of the Competition Act; and
- No significant negative effect on public interest in Botswana was identified, in relation to the provisions of Section 59(2).



Competition Authority at the BOCCIM Northern Trade Fair

The Competition Authority participated at the Botswana Confederation of Commerce, Industry and Manpower (BOCCIM) Northern Trade Fair which was held in Francistown from May 29th to June 1st 2013. The theme for the Fair was “Unlocking Opportunities to a Successful Citizen Participation in the Economy of Botswana.”



Captions

1. CA's Botsalo Makolo with BOCCIM's Zoe Isaacs at the CA Stall 2. CA Intern Salvador Maruping with a customer at the CA stall 3. Ms. Zoe Isaacs and Ms. Maria Machailo-Ellis of BOCCIM with the Indian High Commissioner Mr. Madhava Chandra and BTC CEO Mr. Paul Taylor 4. CA's Kelebogile Ngwenya Speaking to Judges

Telkom Agrees to R200m Internet Fine

South Africa's competition watchdog has announced that fixed-line operator Telkom SA has agreed to pay a fine of R200 million over a three-year period, to settle complaints it used its dominant market position to the detriment of other Internet providers.

Telkom agreed in April to pay a separate R449 million fine for using its dominant position to block competition from other network providers.

The Competition Commission stated that the agreement was to “resolve a series of five complaints lodged against Telkom from 2005 to 2007 by Internet Service Providers (ISPs) and referred by the Commission in 2009, where it was alleged that the company had abused its dominance.”

It found that Telkom had contravened the Competition Act by engaging in a “margin squeeze” of its ISP competitors. Specifi-

cally, it charged an excessive price to customers for some services, refused to give a competitor access to an essential facility when it was economically feasible to do so; engaged in exclusionary acts and selling services by forcing the buyer to accept a condition unrelated to the contract.

The settlement package includes an admission of guilt; a financial penalty of R200m; functional separation between Telkom's retail and wholesale divisions along with a transparent transfer pricing programme to ensure non-discriminatory service provision by Telkom to its retail division and ISPs; effective monitoring arrangements of its future conduct; and wholesale and retail pricing commitments for the next five years estimated to yield R875m savings to customers.

The agreement was subject to confirmation by the Competition Tribunal. (Source: Moneyweb)

CONSTRUCTION FIRMS SETTLE FOR COLLUSIVE TENDERING CASES WITH R1.5 BILLION PENALTIES

The Competition Commission of South Africa has reached settlement with 15 construction firms for collusive tendering, in contravention of Section 4(1) (b) of the Competition Act. The firms have agreed to penalties collectively totalling R1.46bn.

In a statement, the Commission said the settlements were reached in terms of the Construction Fast Track Settlement Process, launched in February 2011. The fast-track process incentivised firms to make full and truthful disclosure of bid rigging in return for penalties lower than what the Commission would seek if it prosecuted the cases.

Twenty one firms responded to the Commission's offer of a fast-track settlement. While over 300 instances of bid rigging were revealed through this initiative. The settlements were reached only with respect to projects that were concluded after September 2006, before which transgressions were beyond the prosecutorial reach of the Competition Act. The breakdown of penalties per firm is as follows:

FIRM	SETTLEMENT AMOUNT (ZAR)
Aveng	306 576 143
Basil Read	94 936 248
Esorfranki	155 850
G Liviero	2 011 078
Giuricich	3 552 568
Haw & Inglis	45 314 041
Hochtief	1 315 719
Murray & Roberts	309 046 455
Norvo	714 897
Raubex	58 826 626
Rumdel	17 127 465
Stefanutti	306 892 664
Tubular	2 634 667
Viaming	3 421 662
WBHO	311 288
Total	1 463 814 392

Different combinations of firms coordinated tenders over different projects. Firms colluded to create the illusion of competition by submitting sham tenders ('cover pricing') to enable a fellow conspirator to win a tender. In other instances, firms agreed that whoever won a tender would pay the losing bidders a "loser's fee" to cover their costs of bidding. Sub-contracting was also used to compensate losing bidders.

Three firms did not accept the Commission's settlement offer in terms of the fast track process. These are: Group 5, Construction ID and Power Construction.

Construction firms that did not use the opportunity to disclose or settle contraventions will be investigated and prosecuted. The Commission will also investigate and prosecute firms that did not disclose any projects but were implicated by others or those that elected to settle only some of the projects that they were implicated in.

(Source: Competition Commission South Africa)

COMPETITION AUTHORITY IN PICTURES

Assistant Minister of Trade and Industry Visits the Competition Authority



Captions

1. The Assistant Minister touring CA offices 2. Honourable Rakhudu responding to the briefing

Zambia Anti-Corruption Commission Visits the CA



Captions

1. Member of the Zambian Delegation with Mr. Kaira and an official from the DCEC 2. Mr. Kaira presenting a gift to head of delegation Ms. Inonge Kalimukwa 3. Ms. Kalimukwa chatting with the Director of Legal and Enforcement Mr. Duncan Morotsi

Competition Authority FC locks Horns with Gaborone Sporting Club

As part of efforts to raise awareness and sensitise the public about its mandate, the Competition Authority organised a football match with Gaborone Sporting Club on June 14th.



Captions

1. CA staff with Gaborone Sporting Club team members 2. CA staff at the match 3. CA's Keoagile Ntshaanana, Kesego Modongo, Ernest Bagopi and Ridwell Moremi 4. CA's Gideon Nkala high fives with former Intern Kesego Potlako 5. CA's Goitseone Modungwa and Pono Semane share a light moment

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