

CCA Bulletin

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COMPETITION AND CONSUMER AUTHORITY TACKLES CONSUMER COMPLAINTS ON VEHICLE REPAIRS



CCA's Obed Rankwe at DRTS for diagnosis of engine parts to resolve a consumer complaint



Cars in a dealership

The Competition and Consumer Authority has been inundated with an influx of consumer complaints emanating from vehicles which are taken to garage workshops for repair.

Consumers present their vehicles to these workshops after experiencing mechanical and electrical faults. The search for fault diagnosis and repairs often leads to a harrowing experience for many a consumer. Consumer complaints files at the CCA are bulging at the seams.

In the period between July, August and September, the Authority received a total of 175 such complaints from around the country. In an interview with Obed Rankwe of the CCA, he stressed that many consumers complain that garages often fit sub-standard parts or at worst used and defective spare parts in their vehicles while they claim to have fitted new parts. "In extreme cases, some garages are alleged to claim to have done basic routine service like draining old oil from a car and only to find the car with grime and sludge from the old oil," Rankwe said.

According to Rankwe, the litany of customer complaints include dodgy pricing of spares and resistance of garages to effect warranty terms. The Authority often engages the Department of Road Transport and Safety (DRTS) for technical expertise to assist the Authority in mediating and resolving the complaints. When dealing with such cases, the Authority's basic premise is that a consumer has a right to receive goods which are of good quality and in good working order, free from defects, unless the opposite has been clearly disclosed.

Rankwe further stressed that the Consumer Protection Act allows the consumer to return goods to a supplier in their merchantable state. He noted that even a reconditioned part installed during maintenance attracts warranty and that the period specified in the Act is three months. He advised consumers to be vigilant and take responsibility when taking their vehicles to garage workshops for repairs. Consumers should demand information on the defects of the vehicle, demand job cards or if possible

request for advice from experts or people conversant with the vehicles in question which will come in handy when there are disputes. This will assist the Authority to make informed decisions when adjudicating consumer disputes.

The table below shows cases per station the Authority handled for the period July to September 2021:

AREA	Number of Cases
Gaborone	96
Serowe	24
Francistown	32
Kanye	12
Selibe-Phikwe	4
Maun	3
Jwaneng	3
Kasane	1
TOTAL PENDING CASES	175

SUPPLIERS MUST DISPLAY THE PRICE OF GOODS AND SERVICES

Suppliers are mandated by the Consumer Protection Act to provide information which is accurate, clear and complete in relation to goods and services offered to consumers.

The information provided about the goods or services must include the characteristics of the goods or services being; the price of the goods or services, the instructions to use the goods or services, the warnings as to any risks in the maintenance of the goods or services, and the terms for the supply of the goods or services.

According to the Act, a supplier shall not display goods or services without displaying the price of the goods or services, and the price shall be displayed in Pula currency.

It must also be displayed in clear and legible letters on the goods or services; and in a prominent position where the goods or services are being supplied.

Furthermore, the price of goods or services shall be deemed to have been adequately displayed if a written indication on the price is annexed to, printed, stamped or located upon the goods or services sold; represented in a manner which may reasonably be inferred that the price is the price applicable to the goods or services in question; or published in relation to the goods and services in a catalogue, brochure or any publication presented to a consumer at a particular time.

Often consumers find the price of goods displayed at the shelves and then when they get to the till for payment the price is not the same.

The Consumer Protection Act expressly states that a supplier shall not charge a consumer more than the price indicated or displayed for goods or services.

Still on product labelling, a supplier selling a product to a consumer is mandated to attach a label on the product as required by the mandatory safety standards on labelling of goods for the relevant class of goods set by the Botswana



Credit: prisync.com

Bureau of Standards (BOBS) or any other international body recognised by BOBS.

The Act further prohibits deception stating that a supplier shall not apply a trade description to goods that is likely to mislead consumers as to any matter expressed in the description, and also shall not alter or remove a trade description or trade mark applied to any goods in a manner calculated to mislead consumers.

“A supplier who offers any goods that have been reconditioned, rebuilt or re-made; and bear the trade mark of the original producers, shall label the goods, stating clearly that the goods have been reconditioned, rebuilt or re-made, as the case may be.

A supplier who offers used goods shall inform a consumer that the goods sold are used goods by placing a label on the goods that indicates that such goods are used goods and placing a notice on the invoice issued to a consumer,” the Act states.

The Act defines “used goods” a goods that have previously been supplied to a consumer, but does not include goods that have been returned to the supplier in terms of any provision of the

Act. A supplier who contravenes this section; or sells or offers for sale, used goods that are not safe for use, commits an offence and shall be liable, upon conviction, to a fine not exceeding P50 000 or to imprisonment for a term not exceeding three years, or to both.

The Competition and Consumer Authority promotes consumer welfare by ensuring compliance with the Act on display of prices as well as product labelling.

The Authority routinely carries out business inspections and if non-compliance is encountered, appropriate sanctions are taken against such businesses.

The Authority often collaborates with other relevant stakeholders such as the Botswana Police Service, BO-CRA, as well as city and town councils to conduct joint inspections.

For offences outside its mandate, the Authority engages implementers of the infringed law for appropriate action.

Between July, August and September 2021, the Authority carried out a total of 217 business inspections with regard to price display and labelling around the country, and some businesses were found to be non-compliant.

INTERNATIONAL COMPETITION NETWORK (ICN) CELEBRATES 20TH ANNIVERSARY

The International Competition Network (ICN) held its 20th annual conference from 13th to 15th October 2021. The event hosted by the Hungarian Competition Authority took place virtually due to the COVID-19 pandemic.

The ICN is the most important network of competition authorities worldwide. On 25th October 2001, antitrust officials from 14 jurisdictions launched the ICN as a network of agencies where agency representatives act as experts, not as representatives of governments. The ICN was founded, among other things, as a reaction to the growing number of multi-jurisdictional transactions, reviewed by an equally growing number of competition authorities.

This is one of the factors that allows the ICN to follow ambitious, future oriented projects which are not restricted by the current practice of the agencies involved. Together with non-governmental advisers (NGAs), which were involved from the beginning, ICN members have created a growing encyclopaedia of best practices, practical recommendations and other tools which are meant to be used and have a practical impact as international gold standard.

Currently, the ICN comprises 140 competition agencies from 130 jurisdictions including Botswana's Competition and Consumer Authority.

The ICN has nearly 150 work products across a full range of competition law and policy, and has organised events including 75 workshops and conferences.

At the annual conference, the ICN Steering Group re-elected Andreas Mundt, President



Mr. Andreas Mundt, ICN President

of the Bundeskartellamt, Germany's competition agency, as Chair for the 2021-2022 term. Speaking of the ICN's impact over the last 20 years, Mundt said the ICN meets its own high aspirations by providing authorities around the world with a comprehensive encyclopaedia of best practices, practical recommendations and other tools which serve as guidelines for agencies, advocacy tools for proposals to legislators as emphasised by the yearly Advocacy Contest organised together with the World Bank Group, and practical training material for case handlers.

"Capacity building remains a focus. We recently had to transform the classic ICN workshops into virtual events due to the pandemic, and despite the difficulties the network succeeded in bringing together members and NGAs and offered training and a forum for interaction and exchange as most recently at the Promotion & Implementation Skills workshop with 200 participants from over 60 jurisdictions." The ICN President noted that bringing together younger and more experienced ICN members also proved to be a successful approach as illustrated by the ICN Bridging Project, and cooperation between competition agencies will con-



tinue to play a crucial role when enforcers have to deal with global business models.

"Looking back at 20 successful years, the last of which has been particularly difficult, it is obvious that the ICN can rely on a solid foundation.

The virtual structure works and the connection between members is strong. Familiarity and trust built as a result of the multilateral cooperation in the ICN and the global standards established in our work products are the basis for answers to the questions raised by global developments. Together, we are well equipped to enter the ICN's third decade," said Mundt.

On 25th October 2021, the ICN celebrated its 20th Anniversary virtually with a panel of ICN's former ICN Steering Group Chairs and Vice Chairs, and they reflected on what the ICN has accomplished and the future of ICN, followed by a virtual reception for ICN members and NGAs. The 21st ICN Annual Conference will take place in Berlin from 4th to 6th May 2022.

Source: International Competition Network

IN MEMORIAM BAITSHEPI TEBOGO

Mr. Baitshapi Tebogo, passed away on 1st August 2021 at the Princess Marina Hospital.

Mr. Tebogo, who hailed from Shorobe, was the Competition and Consumer Authority's Director of Corporate Services.

Before joining the Authority in 2019, Mr. Tebogo was the General Manager Corporate Services at the Public Procurement and Asset Disposal Board (PPADB).

He also previously held positions at the Institute of Development Management (IDM), Botswana Accountancy College, Botswana Meat Commission, the Ministry of Finance and Development Planning and Maun Senior Secondary School.

May his soul rest in eternal peace.



KNOW YOUR COMPETITION ACT - Part VIII Section 37: Entry and Search of Premises

- 37 (1) Where the Authority has reasonable grounds that an enterprise has engaged in, is engaging in or is about to engage in a horizontal agreement, a vertical agreement or an abuse of dominant position prohibited in terms of section 25, 27 (1), 28 (1) or 31 (1) respectively, the Authority may authorise the entry and search of that enterprise's premises by an inspector appointed in writing by the Authority.
- (2) Subject to subsection (3), an inspector appointed and authorised in writing by the Authority may, at any time during business hours —
- enter into premises where information or documents are being kept by the enterprise;
 - search any person on the premises if there are reasonable grounds for believing that the person has possession of any documents or articles that have a bearing on the investigation;
 - examine any document or article found on the premises that has a bearing on the investigation;
 - require information to be given about any document or article by —
 - the owner of the premises,
 - the person in control of the premises,
 - any person who has control of the document or article, or
 - any other person who may have the information;
 - if information or documents are not provided, require any other person specified in paragraph (d) (iv) to state, to the best of his or her knowledge, how the relevant information may be retrieved or where the documents are to be found;
 - take extracts from or make copies of any book or document found on the premises that has a bearing on the investigation;
 - use any computer system on the premises or require the assistance of any person on the premises to use

- the computer system to —
- search any data contained in or available to that computer system,
 - reproduce any record from that data, or
 - seize any output from that computer system for examination and copying; and
- (h) attach and, if necessary, remove from the premises for examination and safeguarding, any document or article that has a bearing on the investigation.
- (3) An inspector appointed and authorised under subsection (1) may not enter and search any premises unless the inspector obtains a warrant authorising such entry and search in accordance with subsection (4).
- (4) If a magistrate's court is satisfied, upon an application made on oath or affirmation, that there are reasonable grounds for suspecting that it is necessary, in order to ascertain or establish whether any person has engaged in, is engaging in or is about to engage in a practice prohibited under section 25, 27 (1), 28 (1) or 31 (1), for an inspector to exercise the powers conferred by subsection (1), the magistrate may grant a warrant authorising a named inspector to exercise those powers in relation to any premises specified in the warrant.
- (5) Upon first entering any premises under a warrant, the inspector shall—
- provide to the owner of the premises or the person in control of the premises proof of —
 - the inspector's authority to enter the premises by handing a copy of the warrant to that person, and
 - the inspector's identity;
 - where none of the persons specified in paragraph (a) is present, affix a copy of the warrant to the premises in a prominent and visible position; and
 - allow an enterprise under investigation a reasonable period within which to obtain legal advice

- (6) Notwithstanding subsection (3), an inspector may, without a warrant, enter any premises other than a private dwelling, to exercise the powers conferred by subsection (1) if the owner of the premises or any other person in control of the premises consents to the entry and search of the premises and such consent shall not be unreasonably withheld.
- (7) An inspector exercising the powers conferred by subsection (1) by virtue of a warrant, or in terms of subsection (6), may be accompanied and assisted by other persons specified in the warrant.
- (8) An inspector who removes anything from any premises in accordance with subsection (2) (h) shall —
- issue a receipt for that thing to the owner of the premises or the person in control of the premises; and
 - return that thing as soon as it is practicable after achieving the purpose for which it was removed.
- (9) On leaving any premises which an inspector has entered by virtue of a warrant under this section, the inspector shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as found by that inspector.

Privileged Information

38. (1) Nothing in this Part requires a person or an enterprise to disclose or produce information or a document if the person or the enterprise would in proceedings in court be entitled to refuse to disclose or produce it on the grounds of legal professional privilege.
- (2) A person or an enterprise shall, where required to do so by the Authority in the exercise of its powers under this Act, disclose the name and address of a client to the Authority.

KNOW YOUR CONSUMER PROTECTION ACT - Part V Section 16: Implied Warranty of Quality

16. (1) A transaction or agreement for the supply of goods to a consumer shall contain a provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in this section, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer,

- as the case may be.
- (2) A consumer may return goods to a supplier in their merchantable or original state, within six months after the delivery of the goods, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in this section.
- (3) Where a consumer has returned goods to a supplier in accordance with

- subsection (2), the supplier shall —
- repair or replace the defective goods; or
 - refund the consumer the amount already paid as consideration for the goods.
- (4) Where a supplier repairs goods returned by a consumer under subsection (2), and within three months the same problem recurs in the goods, the supplier shall —

- (a) replace the goods; or
- (b) refund the consumer the amount paid by the consumer as consideration for the goods.

Warranty on repaired goods

- 17. (1) A supplier shall give a warranty on every new or re-conditioned part installed during any repair or maintenance work, and the labour required to install it, for a period of three months after the date of installation of the part or such longer period as the supplier may specify, in writing
- (2) A warranty in terms of this section shall
 - (a) be concurrent with any other deemed, implied or express warranty;

- (b) be void if the consumer has subjected the part, or the goods or property in which it was installed, to misuse or abuse; and
- (c) not apply to ordinary wear and tear, having regard to the circumstances in which the goods are intended to ordinarily be used.

Liability for damage caused on goods

- 18. (1) Subject to the provisions of subsection (2), a supplier is liable for —
 - (a) any damage caused by supplying unsafe goods; or
 - (b) any product failure, defect or hazard in any goods, where the supplier had prior knowledge of the potential damage, product

- failure, defect or hazard.
- (2) A supplier shall not be liable for any damage caused to goods supplied by the supplier where —
 - (a) the unsafe product characteristic, failure, defect or hazard that results in the damage is wholly attributable to noncompliance with the product manual instructions;
 - (b) the claim for damages is brought outside the period prescribed under the Prescriptions Act from the date the alleged damage took place or when the consumer had prior knowledge of the potential damage to the goods; or
 - (c) the damage is caused by mishandling of the product by the consumer.

The CCA FAMILY IS GROWING

The Competition and Consumer Authority (CCA) which in December 2019 was given an expanded mandate to implement the Consumer Protection Act, in addition to the original mandate of the Competition Act, has been on a recruitment drive to complete the integration of the competition and consumer mandates. Recently the CCA welcomed to its

fold some of the talented starlets who joined the organisation as part of an on-going recruitment drive. We are happy to welcome Powell Kebinaefhe and Mothusi Lotshwao who join the Mergers and Acquisitions Division.

The duo first joined CCA as interns in the same Division. In the same ecstatic vein, the CCA welcomes another talented workaholic,

Kgalalelo Motshwarakgole, who joins the Corporate Services Division as an Assistant Accounts Officer. She was also previously an intern in the Division. A young legal eagle, Nandi Moyo, joins the Legal Services Division as the Assistant Legal Officer. She was previously an intern in the Division.



Mothusi Lotshwao
Junior Analyst - Mergers



Kgalalelo Motshwarakgole
Assistant Accounts Officer



Powell Kebinaefhe
Junior Analyst - Mergers



Nandi Moyo
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