

CCAbulletin

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THE ROLE OF CONSUMER GROUPS IN COMBATTING UNFAIR BUSINESS PRACTICES



Participants during WCRD on 15th March 2022 in Gaborone

The Competition and Consumer Authority (CCA) on 15th March joined the international consumer movement in celebrating World Consumer Rights Day (WCRD). The CCA celebrated the day under the national theme: The Role of Consumer Groups and their Efficacy. Consumer groups/organisations/associations seek to advocate for consumer rights and to protect consumers from unfair business practices. The Authority decided to come up with a national theme that is consistent with the current state and the vision to energise and resuscitate consumer groups in Botswana.

The CCA hosted a panel discussion to break down the theme. The panel of esteemed consumer rights personalities comprised John Kapito - Executive Director of the Consumer Association of Malawi, Joseph Selolo - Company

Secretary for the South African National Consumer Commission; and Richard Harriman the founder of Consumer Watchdog in Botswana.

Discussing the theme, Kapito said states need reputable consumer organisations to advocate and demand for better services and goods, protect people from corporate and state abuses, unsafe products, poor, false and misleading advertisements, as well as environmental degradation and pollution.

"Consumer organisations have the mandate to assist and advocate better for those consumers with no voice especially the disadvantaged and the poor. Activism is a collective use of consumer power for economic, social and political ends. It encompasses diverse actions which includes boycotts, advocacy campaigns and the naming and shaming of abusers," Kapito said.

The credibility of consumer organisations comes from a larger section of the society supporting the interests of consumers. Their reputation is from getting facts right through research and unbiased advocacy, independent from state and corporate control. "The consumer organisation must be apolitical not concerned with party politics. Being too close to the state and corporate world has always undermined the efficacy and independence of consumer organisations."

Touching on challenges, Kapito said developing countries lack independent consumer organisations due to lack of financial and technical resources. "Its membership is weak with no capacity to contribute for the success of the consumer organisation. Lack of resources have compromised

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the credibility and advocacy campaigns of many African consumer organisations,” Kapito said.

For his part Selolo said a consumer advocate is there to hold the consumer's hand. He emphasised the importance of assisting consumers how to lodge their complaints with the consumer regulator.

Selolo called on the authority to come up with guidelines for consumer groups, noting that Botswana's consumer protection law stipulates cooperation and support of the authority for activities carried out by consumer organisations.”

In his submission, the Founder of Consumer Watchdog, Richard Harriman, described consumer groups as the eyes and ears of regulators. He welcomed the enshrining of such groups in the Botswana law. According to the Consumer Protection Act of 2018, “the Authority may permit and consider representations made by any class of consumers and consumer organisation on any matter of consumer protection, and may cooperate with and support the activities carried out by consumer organisations.”



Harriman cited lack of resources, resistance, threats and fake clones as some of the challenges facing the Consumer Watchdog group.

The group was established in 2005 with the traditional approach of using broadcast and media print media, and has since moved predominantly to the use of social media. Harriman said the group was formed due to outrage over consumer abuse starting with the rip-off through hire purchase; for example an item bought at P199 cash, ended up with a total hire purchase price of P1,752.

Internationally, the theme for World Consumer Rights Day 2022 was: Fair Digital Finance, as announced by Consumers International; the mem-

bership organisation for consumer groups around the world. Digital financial services (DFS) comprises a broad range of financial services accessed and delivered through digital channels, including payments, credit, savings, remittances and insurance. It also includes mobile financial services. According to Consumers International, by 2024, digital banking consumers are expected to exceed 3.6 billion. In the developing world, the proportion of account owners sending and receiving payments digitally has grown from 57% in 2014, to 70% in 2017. Digital finance brings new opportunities – but also new risks that can lead to unfair outcomes for consumers.

TRADE ASSOCIATIONS CAN FACILITATE ANTI-COMPETITIVE BEHAVIOUR

Trade associations can raise competition concerns as they may facilitate coordination on prices, establish barriers to entry, or undertake other activities that diminish competition. The CCA's Acting Director of Investigations, Policy and Research Ernest Bagopi, cautioned during a presentation on competition issues, at a workshop for formation of the LPG Association of Botswana. The workshop organised by the Botswana Energy Regulatory Authority (BERA) on March 4th, addressed issues of concern in the formation of the association, including competition.

Bagopi noted that the LPG market in Botswana is highly concentrated. A study carried out by the CCA in 2018 revealed a concentration ratio of 94% by the top three firms, which is significantly higher than the 70% international threshold for a high market concentration.

“With the market highly concentrated and dominant firms being integrated along the supply value chain, this may facilitate infringements, such as margin squeeze, refusal to deal, excessive pricing and price fixing,” he said.

Touching on industry practices, Bagopi said cylinder exchange may

promote collusion and/or information sharing and reduces consumer choice.

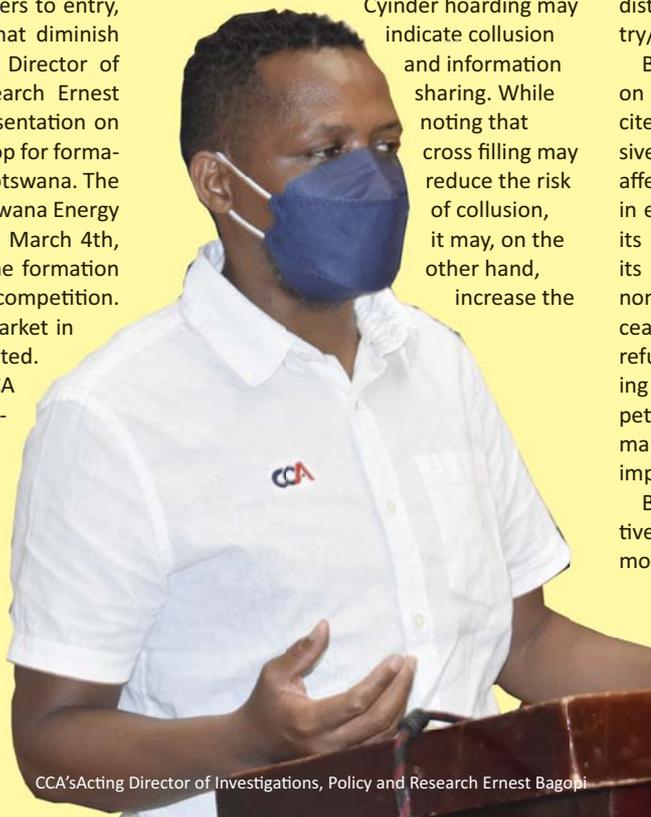
Cylinder hoarding may indicate collusion and information sharing. While noting that cross filling may reduce the risk of collusion, it may, on the other hand, increase the

prevalence of cylinder theft.

The high Cost of switching supplier by distributors also creates a barrier to entry/exit because of long term agreements.

Bagopi further briefed the workshop on forms of anti-competitive conduct. He cited exploitative conduct such as excessive pricing, and collusion, – which largely affects consumers. Firms may also engage in exclusionary conduct to evict a rival from its market (or deter a rival from entering its market), by engaging in pricing and/or non-price strategies that induce the rival to cease competing. Such strategies include refusal to deal or supply, predatory pricing and exclusive dealing. Other anti-competitive agreements include resale price maintenance – where the manufacturer imposes a selling price on the distributors.

Bagopi said the fundamental aim of effective competition in an economy is that the more players exist in a market, the more the behaviour of market players will answer to the needs of customers and consumers. “Where there is competition rival sellers, whether existing competitors or new or potential entrants in a market would keep this behaviour in check by offering better prices as well as better products and services,” he said.



CCA's Acting Director of Investigations, Policy and Research Ernest Bagopi

Warranty

Does it Warrant Peace?

Consumers, not only in Botswana, are generally not knowledgeable about many products and services they buy. Quite often the knowledge resides with shop assistants, marketers, suppliers and manufacturers. A decision to buy a product could turn into a daunting project which often ends with the seller shoving down a product on the arms of a not so skeptical but excited consumer.

WHAT CAN CONSUMERS DO?

It is hard to keep up with the many products that are churned out from the cauldron factories of the world that are forever competing for the attention of a fatigued consumer!

Thankfully, business and manufacturers have devised some quality disclosure mechanism to assure their prospective customers that the goods that they sell can be trusted to an extent of putting an assurance on the product, which is technically called a warranty. A warranty placed on a product says to the consumer, 'you can trust our product, it is reliable'. Some products carry a long warranty as long as a year and some as short as up to a year.

Warranties are either given by product manufacturers and or even given by stores where consumers get these commodities. The warranty is not only a functional assurance but has proven to be a customer attraction; it has taken the burden of intensive product knowledge on a variety of products away from consumers. Consumers as a consequence gravitate towards products that carry an expressed warranty.

Although consumers can access a number of warranties there are principally two types of warranties; the expressed (formal and written in a document) and the implied warranty.

Much as warranties are a growing trading phenomenon not all businesses offer warranties. Some stores do not give any form of warranty and they even try and void manufacturer's warranties on products they retail. The tragedy though is that this does not stop the product starved masses of consumers from coming to these stores to buy from these shops.

A warranty is a promise, a guarantee that a business gives to its customers. It's worth could be immeasurable; whenever the product is not functioning as it was supposed to or it is defective within the time period stipulated in the warranty, it gives the consumer the right to seek remedy. It says to a customer if this product does not do what was intended, it can be fixed or you can be restored the time before you bought this product.

Reassuring, isn't it? We all know and we have seen some promises broken. Some

warranties are broken and breached.

If the market operated only on the protections offered by the goodwill of business, consumers would be pitifully vulnerable. The reason why consumer remedies were effected was upon the realisation that businesses are not angels who can safeguard their profits and the rights of consumers at the same time. National consumer protection laws, even without warranties provided by industry, have taken it upon themselves to impose these protections.

In Botswana, the Consumer Protection Act which is the primary consumer protection law, stipulates at least three remedies that are available to the consumer once a warranty is breached. The consumer can either have their product repaired, replaced or even be given a refund.

Many consumers are clearly unaware of these protections and statutory rights as a consequence businesses sometimes violate these consumer rights and further shrink the consumer welfare space.

To a consumer in Botswana it should be gratifying to know that whether a warranty has been expressly given or not, for a new product a consumer is given a warranty of six months on new products that are returned in their original state or merchantable state.

STEPS THAT A CONSUMER SHOULD TAKE UPON REALISING THAT A PRODUCT IS DEFECTIVE OR NOT PERFORMING?

1. The consumer should first contact the store where they bought the item and inform them about their source of dissatisfaction concerning the goods they bought and inform the store how they want to be assisted? Whether they want a repair, replacement or a refund and based on the circumstances the store and customer will come to a workable agreement.
2. In the case of products that have manufacturer's warranty, the consumer could contact the manufacturer where it is feasible.
3. If these are rebuffed by the store or

manufacturer, the consumer should approach the CCA for resolution.

HOW HAS THE CCA DEALT WITH SIMILAR CASES?

The CCA has dealt with a number of cases where stores seem to suggest that the fact that they do not offer warranties on any of their goods exempts them from extending repairs, replacements or refunds on products that were sold as new. Some stores even intimidate consumers with big bold writings that the store does not allow; refunds, repairs or even replacements or exchanges. The CCA has been engaging these businesses through advocacy.

The other cases that the CCA has dealt with that had issues of warranties are used vehicles, particularly grey imports. Garages that sell these used cars give a limited warranty on used cars covering gear-boxes and engines for a period ranging from one month to three months. Even with this expressed warranty, it appears there are difficulties to honour the assurance made in such instances. The Authority is handling a number of cases in this area which in future would be brought before the Competition and Consumer Tribunal.

CONSUMER RESPONSIBILITIES

Even as regulators tout and extol the remedies available to consumers whenever there is an overreach, there are some iron clad consumer responsibilities that consumers cannot ignore. For instance when a product malfunctions purely because of non-compliance to the manual, mishandling the product and in the process damaging it, or at times bringing their complaint to the CCA or to the business outside the warranty period; for instance reporting after six months or expiry of the warranty period.

This article by CCA's Gideon Nkala originally appeared in The Monitor edition of 7th February 2022



HOW TO FILE A MERGER

In terms of section 45(1) of the Competition Act, a merger occurs when one or more enterprises directly acquires or establishes direct or indirect control over the whole or part of the business of another enterprise.

Acquisition of control over the whole or part of another enterprise may be achieved in any manner including: The purchase or lease of shares, an interest, or assets of the other enterprise in question; or amalgamation or other combination with that enterprise.

What is Acquisition of Control?

According to section 45(3) a person controls an enterprise if that person:

- Beneficially owns more than one half of the issued share capital of the enterprise;
- Is entitled to exercise a majority of the votes that may be cast at a general meeting of the enterprise, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that enterprise;
- Is able to appoint or to veto the appointment of a majority of the directors of the enterprise;
- Is a holding company, and the enterprise is a subsidiary of that company as contemplated in the

Companies Act.

- In the case of an enterprise being a trust, has the ability to control the majority of the votes of the trustees or to appoint or change the majority of the beneficiaries of the trust;
- In the case of the enterprise being a close corporation, owns the majority of the member's interest or controls directly or has the right to control the majority of members' votes in the close corporation; or
- Has the ability materially to influence the policy of the enterprise in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (f).

When Should the Authority be Notified of a Merger?

According to section 47 of the Competition Act a merger is subject to review if:

- The turnover in Botswana of the enterprise or enterprises being taken over exceeds P10 000 000.
- The assets in Botswana of the enterprise or enterprises being taken over exceeds P10 000 000.
- The enterprises concerned would, following implementation of the merger, supply or acquire at least 20 percent of a particular

description of goods or services in Botswana.

What Does the Authority Consider in Analysing a Merger?

In terms of section 52(1), in assessing a proposed merger, the Authority shall first determine whether the merger –

- Would be likely to prevent or substantially lessen competition or to restrict trade or the provision of any service or to endanger the continuity of supplies or services; and
- Would be likely to result in any enterprise, including an enterprise which is not involved as a party in the proposed merger, acquiring a dominant position in a market.

What Happens after the Authority Assesses a Proposed Merger?

In terms of section 53 (1), in making a determination in relation to a proposed merger, the Authority may –

- a) Give approval for the implementation of the merger without conditions or subject to such conditions as it considers appropriate; or
- b) Decline to give approval to the implementation of the merger to the extent that it relates to a market in Botswana.

ICPEN Consumer Education Awards

The ICPEN Consumer Education Awards coordinators, Zambia and Peru, have announced the launch of the ICPEN 2022 Consumer Education Awards. The awards aim to acknowledge and reward great initiatives undertaken by ICPEN members in the area of consumer education. The Consumer Education Awards are created out of the understanding that effective enforcement and an informed and educated consumer go hand in hand. The organisers are looking for success stories from ICPEN members that demonstrate the tangible results of consumer education initiatives in the following categories:

Category 1: E-commerce and Sustainability

This award is aimed at recognising the agencies that have innovated different and/or best initiatives to promote sustainability and effective regulation and cooperation in e-commerce. This category is to be interpreted in a broad manner and could include a broad range of initiatives that are related to sustainability, effective regulation and cooperation in e-commerce. Examples of the initiatives could be; information about; consumer sustainability, online scams/ misleading advertising related to e-commerce, education provided to traditional consumers on information about e-commerce.

Category 2: Equality and Inclusion

This award aims to recognise the agency that has arranged the greatest and / or best initiatives to promote and educate consumers to reach equality and inclusion for vulnerable and hyper vulnerable consumers. For this category, the criteria will be to reward agencies that promote and educate consumers on the need to recognise equal rights for all consumers regardless of their differences in race, gender or other factors that may be the origin of discriminatory treatment by product or service providers. These initiatives might include: information campaigns, training programs, courses and talks, promotional activities, among others. The closing date for submissions is 2nd April 2022.

CCA LAUNCHES CORPORATE VALUES



CEO Ms. Tebelelo Pule with the Change Management Committee L to R: Tonny Kolanyane, Powell Kebinaefhe, Joyce Ngwako, Thabiso Mbongwe, Modimoosi Matebesu, Idah Joel

The CCA on March 4th launched its corporate values. The Authority's core values are; Professionalism, Teamwork, Integrity, Transparency, Proactiveness. Core Values support the vision, shape the culture and re-

fect what the Authority values the most. They are the essence of the Authority's identity.

Speaking at the launch, the CEO, Ms. Tebelelo Pule, said core values are the guiding principles that dictate human behaviour

and action and are the foundation of the organisation. "Core values can help us know what is right or wrong. They act as a guidance of code of conduct for decision making in the organisation, and are the building blocks of the corporate culture," Pule said.

The CEO said 80% of businesses publicly display their values. "Through our values we tell the world what we stand for as the authority, the rule of the authority becomes, if you are not sure of the action you wish to take, consult the corporate values," the CEO said.

As part of the launch, five teams of staff members representing the core values interrogated the values and presented to staff.

In her remarks, the Strategy and Risk Manager, Joyce Ngwako, said the values have been contracted in employee performance contracts for purposes of institutionalising the value system, and achieving the long term vision of the CCA.

"We therefore have to Walk and Talk the values to unlearn unwanted behavior practices, employees are encouraged to always be in contact with the value system in making decisions," Ngwako said.

CCA WELCOMES NEW TEAM MEMBERS



Tebogog Pulane Mogotsi – Human Resources Manager

Tebogog Pulane Mogotsi joined the CCA on 17th March 2022 as Human Resource Manager. She is an experienced Human Resources Professional who has worked in the mining, banking, and international development industries. She is also skilled in HR consulting, HR solutions, personnel management, strategic planning, employee relations and HR project management. Tebogog holds a Bachelor of Commerce (Management) from the University of Botswana, SAP Consultancy Certification – SAP Malaysia, and a Post Graduate Diploma in Human Resources Management. She is also a Board Member and Chairperson of the HR Committee of the Botswana Housing Corporation Board.



Some of the interns who joined the CCA in March 2022

The CCA in March 2022 welcomed 12 interns who will serve in various corporate divisions and units at the Gaborone and Francistown Offices. Constance Ntsomeng and Boitshoko Ramphaphana join the Investigations Unit and Katlego Motlhalamme joins the Mergers and Monopolies Division. Larona Letsholo joins the Procurement Unit while

Motlamorago Rapolikwe joins the Strategy and Risk Unit. Gomolemo Raditsile, Bonolo Chuma, Omphemetse Tiro, Same Gaobatwe, join the Consumer Protection Unit in Gaborone. Precious Majeremane and Nlingi Simon join the Francistown office under the Consumer Protection Unit. Lesego Seitei joins the Communications and Stakeholders Relations Division.

WELLNESS DAY 2022



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