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**IMPACT OF COMPETITION POLICY IMPLEMENTATION IN BOTSWANA - GOING BEYOND THE RHETORIC**

*Remarks by Thula Kaira, CEO Competition Authority at the Third National Competition Conference, Maun, Botswana, 13 March 2014.*

Batswana betsho, ke a dumedisa ka Pula!

Ebile ke leboga Modimo ka dipula tse di anameng le lefatshe lotlhe!

**Welcome!**

1. We are humbled this morning that you have spared some time to be with us as we talk about ‘Competition’. Competition is a term or concept that each of us know all too well from our own personal relations with our friends, neighbours, professional colleagues and rivals. Equally, for sports fanatics, the word ‘competition’ is very familiar. In the commercial or business context, there is the ‘competition’ that we deal with at the Competition Authority and the Competition Commission. This is about competition for the targeted buyer’s money. While all these are different forms of competition, the underlying similarity of all forms of competition is that the victor should have gained the victory through fair ‘over-hand’ (as opposed to ‘under-hand’) methods. Secret meetings, secret deals, golf-course or pub-gentlemen/women agreements make a mockery of fair competition to those who are left out of such interactions.
2. A lot of important questions are usually asked regarding the impact of competition policy in Botswana. Understandably, it is easier to set out a policy by getting a consultant to draft such, as well as have a legal framework to deal with certain aspects of the policy. Fortunately for Botswana, the setting up of the Competition Authority and the Competition Commission was by no means meant merely to create jobs for those of us who are privileged to work at the CA. It was a well-informed and deliberate consultative decision that was taken to create an institutional framework that was going to have a positive impact on the economy of Botswana.
3. The National Competition Policy of 2005 recognised that competition Policy is necessary because it provides, through competitive markets, the best means of ensuring that the economy's resources are put to their best use by encouraging enterprise efficiency and widening choice. The Policy also noted that competition is also necessary because where markets work well, they provide strong incentives for good performance, thus, encouraging firms to improve productivity, reduce prices and innovate whilst rewarding consumers with lower prices, and a wider choice of high quality goods and services (Part 4 of the NCP).
4. This morning, I wish to share with you on how we have gone beyond the historical-policy rationale and show results beyond the rhetoric; as well as bring to the fore our Global Competitiveness rakings in relation to competition and what measures we need to put in place. As we are all very aware, quoting the policy, the law and cases handled is mere rhetoric.

**Is the Competition Authority beyond the Rhetoric?**

1. Measuring impact of economic activity is an important part of justifying the existence of and continued support to institutions such as the Competition Authority. We are very aware that results, in tangible shapes or forms, are expected of us by both government and the public in relation to promotion of local competition; control abuse of dominant market power; and effectiveness of anti-monopoly policy.
2. I am pleased to state that, in 2013/14, the Competition Authority has actually gone beyond the rhetoric by producing certain noteworthy results, which I am going to share with you.

*In relation to Cartel Conduct*

1. Of a total of twenty (20) bid rigging and price-fixing cases largely related to Government procurement, medical aid industry and car panel beating industry, six (6) cartels were successfully investigated in 2013 and referred to the Competition Commission for adjudication. Dealing with such cases ensures that they not only result in penalties being meted out to the cartelists, but also send the right deterrent signal to businesses not to engage in anti-competitive conduct. This is good progress that would assist Botswana in the critical Goods Market Efficiency pillar of the global competitiveness rankings.
2. Now, what does this mean in terms of the impact? There has been self-evident impact in a suspected case of Bid-rigging in a tender for the supply of food rations to the Government - where the Authority investigated Ya Raheem Investments for colluding with a Director of its competitor to use the latter’s prices for bidding purposes in the tenders worth around P13 million. The Authority obtained an Undertaking from Ya Raheem not to engage in such conduct in the future.
3. After a tip-off from the DCEC, we uncovered a case of attempted bid-rigging by way of cover-quoting by Landmark Projects (Pty) Ltd and Twinco Enterprises (Pty) Ltd t/a Master Joinery & Aluminium. The two companies, owned by the same person, were used to bid for the same CTO Tender worth around P1.3 million. After CA intervened, the companies were disqualified from the tender. An Undertaking was received from the owner of the two companies to desist from future cartel conduct.
4. We also intercepted an attempted bid-rigging calculated to exclude all competitors from participating in a tender for the supply of communication equipment to Botswana Police Service. The bid award resulted in savings of P3.6 million to the Government and brought in a new entrant into the relevant market.

*In relation to Mergers and acquisitions*

1. Through merger/takeover reviews, CA increasingly ensures that it facilitates technological and skills transfer by making approvals conditional on foreign acquirers of local firms partnering with Batswana. These cases have included Ngami Toyota (here in Maun); and Broadhurst Motors (in Gaborone); Master Feeds (in the Poultry industry); and Suashish Diamonds Botswana and Lazare Kaplan Botswana (in the diamond cutting and polishing market). It is estimated that of the 19 merger cases handled in 2013/14, over P700 million was brought into the economy. About 2,000 new jobs are expected to be created from the implementation of the Bamagwanto Concession Limited (BCL) and Pula Steel merger and 150 new jobs from the implementation of the Lerala Mine and Kimberly Diamond merger (according to the parties’ submission).

*In relation to Abuse of Market Power*

1. Large shopping malls have an anchor tenant, i.e., a flagship chain store that is used to attract property investment, other noteworthy tenants as well as customers. Anchor tenancy means that other chain stores may not be allowed to set up at a respective mall, including SMEs, without the consent of the anchor tenant. CA intervened at Molapo Crossing Shopping Mall in Gaborone, where anchor tenancy barred even a specialist SME from setting up any small grocer. Since intervention, a small butchery has set up at Molapo Crossing.
2. We also dealt with a case in the retail sector where a major retailer exclusively stocked ice-cream from only one supplier. Following an inquiry into the matter, another brand was allowed into this major retailer, raising the level of competition and providing choice to consumers.

**Our Global Competitive Report rankings in relation to Competition**

1. Unfortunately, despite the mentioned breakthroughs in relation to the enforcement of the Competition Act, Botswana still ranks very low in the Global Competitiveness Report’s indicators on ‘Competition’ under the Goods Market Efficiency Pillar. Our analysis of the statistics from the Global Competitiveness Report shows that Botswana’s rankings on competition indicated below have been declining drastically and require a national concerted approach:

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| **FACTOR** | **RANKING**  **2012-2013**  (Out of 144 countries) | **RANKING**  **2013-2014**  (Out of 148 countries) | **LOST**  **RANKING** |
| Intensity of Local Competition | 74 | 93 | -19 places |
| Extent of Market Dominance | 70 | 97 | -17 places |
| Effectiveness of anti-monopoly policy | 72 | 79 | -7 places |

1. The Statistics are from the Global Competitiveness Report for 2012/13 (page 115); and for 2013/14 (page 133). What do these figures tell us? And what are we all doing about this?
2. Our suggested solutions to these questions are not impeccable but we would attempt to include solutions such as the need to intensify the good things we have been doing and explain them in simpler terms and ways. Further, we need to review, monitor and somehow measure our proactive commitment to the principles of competition and how they inform all our decisions in the private and public sector. To dismiss the figures as mere ill-informed perceptions will still require that we develop strategies to deal with such misconceptions.
3. We wish to acknowledge the great efforts that Government has been making through the Cabinet sub-committees of National Doing Business and Global Competitiveness. We also wish to commend the Government through the Ministry of Trade and Industry for facilitating our first ever presentation to the Permanent Secretaries at their regular PIC Force Meeting on 28 February 2014. We took the opportunity to explain our mandate and how competition policy and law links into the overall national development cycle. We also explained how all of us in the civil and/or public service delivery system are required to consciously take charge of our roles as captured in the National Competition Policy. As the Competition Authority, we view our role as being twofold: Firstly, to advocate for knowledge of the law; and secondly, to enforce breaches of the law. The effectiveness of any policy goes beyond the efforts of only one or two institutions but is driven concerted high level national strategies. We are delighted that the Ministry of Trade and Industry has established a Technical Committee on Competition Policy (TCCP) that reports to the National Committee for Trade Promotion and Negotiations (NCTPN).
4. Following our presentation to the PIC Force, we have since engaged Government and made some recommendations. The foremost of these is that there is clear need to have ‘Competition Policy’ as part of a formal high-level national agenda and debate. We deem that the National Doing Business Committee (or other relevant committee) should include the top three factors in the 6th Pillar of Goods Market Efficiency in the Global Competitiveness Report as part of its accountable mandate to enhance Botswana’s business rankings. As noted in the Report, the three factors identified in the Goods Market Efficiency, under Domestic Competition are: Intensity of Local Competition *(i.e. whether markets are driven by competition, which increases innovation);* Extent of Market Dominance *(i.*e., *within the industrial sectors of the economy*); and Effectiveness of Anti-monopoly policy *(i.e., as driven by Government and its institutions*).

**Has our best been good enough???**

1. Evidently, there is more work that still needs to be done. Competition, its policy and law in Botswana require concerted efforts by both the private and public sector actors. While the global rankings show an overall improvement, it is clear that we are slipping in relation to the key competition indicators on the index. Obviously, this means there is a lot of work for both the Competition Authority and the Competition Commission to play our role as mandated. On the other hand, business is called upon to ensure that they have in-house competition compliance programs to enhance compliance and avoid the costly legal challenges that they may face from the Competition Authority. On the government side, we are optimistic that the ongoing efforts to effectively promulgate the NCP within the Government system will be sustained, as has been the case for corruption, citizen empowerment and procurement policies.
2. I will not want to end with challenges and how we are failing to overcome them. What I know is that there are currently no insurmountable challenges for us at the Competition Authority. I can only assure you that we are very alive to your expectations and I will ensure that my team and I do not sleep on the wheel.
3. To my colleagues at the Competition Authority, let us never tire to produce the results that Batswana expect from us. Competition is our lifeline, as connoted by the legendary Walt Disney, who is quoted to have said this:

*I have been up against tough competition all my life.*

*I wouldn't know how to get along without it.*

**KE A LEBOGA! PULA!**