**SPEAKING NOTES FOR**

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**UNCTAD TRADE AND DEVELOPMENT COMMISSION, NINTH SESSION**

**27TH NOVEMBER – 1ST DECEMBER 2017**

**GENEVA, SWITZERLAND**

**PANEL DISCUSSION ON THE ROLE OF TRADE AS A CATALYST FOR ACCOMPLISHING THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT.**

**(TUESDAY, 28 NOVEMBER 2017)**

**SPEAKING NOTES ON THE IMPORTANCE OF COMPETITION POLICY AND LAW IN ACHIEVING THE SUSTAINABLE DEVELOPMENT GOALS: THE CASE OF BOTSWANA**

Excellencies, Distinguished Experts, Ladies and Gentlemen,

It is my pleasure to be here today to and participate in this Panel on the importance of Competition Policy and Law to the achievement of the 2030 Agenda for Sustainable Development. I also intend to use this opportunity to highlight our experiences with competition law and policy in Botswana.

Chairperson, before I proceed, allow me to congratulate you on your election, and to thank the Secretary-General of UNCTAD and his staff for the hard work they have put into the preparations for this meeting.

1. **Introduction and Background**

Let me start by pointing out that experience by most countries including African countries has shown that Competition Policy and Law have numerous economic benefits which are essential for driving their socio-economic development goals.

This is because opening markets to competition in various sectors of the economy can lead to productivity, efficiency, innovation, employment, lower prices and a greater variety of quality goods and services.

Such economic variables are key for any country to flourish, and are the drivers of sustainable economic growth and poverty reduction. On this basis, it should be obvious that Competition Policy and Law remain a key tool through which countries could grow their economies and attain the 2030 Agenda for Sustainable Development, including the Sustainable Development Goals (SDGs).

It has been observed by some such as Mehta (UNCTAD 2015) that there are direct and indirect links between the adoption of competition reforms and the achievement of some SDGs. He argues that the direct links may be found in the case of goal 8, which seeks to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all; and goal 9, which aims to build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation.

Less direct but real linkages also exist in other goals such as 3 -7 which address health, education, gender equality and women’s empowerment, water and sanitation and modern energy respectively. It is my view that these pro -poor and pro -welfare goals can indeed be achieved partly through competition policy and law, since the latter should contribute to faster and more equitable economic growth.

Be that as it may, it is also true that although important, Competition Policy and Law are not the only means through which countries could grow their economies.

There are success stories which have shown that other policies such as trade liberalisation, privatisation and deregulation are other instrumental means of enhancing competition in the market.

I must however hasten to caution that experience has shown that anti-competitive practices have the potential to erode the economic benefits generated by such policies if competition is left in the hands of the market. Therefore, adoption of the Competition Policy and Law is an indispensable economic reform for any country that wishes to attain sustainable developmental goals and ensure that the benefits to be derived from other policies are supported. It has therefore been observed that the design of competition law and policy should ensure complementarity with other socio-economic goals.

It is for this reason that the Government of Botswana joined the world in establishing a competition regime for the regulation of competition in the market. Botswana adopted the National Competition Policy in 2005, enacted the Competition Act in 2009, and subsequently established the Competition Authority in 2011.

Prior to this, Botswana had an open economy since independence in 1966 and consistently sought to strengthen the functioning of its markets by developing and implementing policies and programmes for promoting the development of a dynamic private sector. However, the emerging private sector and anti-competitive practices which undermined Government’s economic reform objectives, compelled us to put in place the Competition Policy and Law[[1]](#footnote-1).

The purpose of this intervention was, among others, to put in place a mechanism through which the Government could protect the benefits generated by competition from being eroded by anti-competitive practices. The policy and law making process also led to an increased awareness of the dangers of monopolies, and the importance of greater inclusion of other players in the economic space. This in turn fosters inclusive and sustainable development.

1. **Economic Benefits of Competition Policy and Law and their contribution to Sustainable Development Goals**

As pointed out earlier, Competition Policy and Law is the corner stone of economic elements that are necessary for attaining the sustainable development goals. First and foremost, **competition is the spur of productivity and economic growth**. Many developing countries have prioritised growth in their national development strategies. Because competition is a driver of productivity, it goes without saying that Competition Policy and Law should be an essential element of pro-growth strategies.

Botswana in its current National Development Plan (11), whose theme is ‘Inclusive Growth for Realisation of Employment Creation and Poverty Reduction’ has prioritised the following socio-economic developmental goals, among others: Diversified Sources of Economic Growth and Revenue; Social Development; and Sustainable use of Natural Resources.

These strategies are relevant in assisting the Government to attain the Sustainable Development Goals. The successful diversification of the economy from dependence on exports of mineral resources, will greatly depend on a robust Competition Policy and Law that could enhance the openness of markets and attraction of investors into the Botswana Market. This is being complemented by the reform of laws in certain key sectors in order to facilitate and remove obstacles to doing business in the country.

In addition, Botswana like other developing countries, is faced with developmental challenges such as poverty, unemployment, and income inequality. In order to address such ills, there is a need to induce pro-competition measures in sectors which have a high potential of providing solutions, and the Competition Policy and Law is expected to play a major role in enabling the Government to address such challenges.

Secondly, Competition Policy could be most effective in **reducing poverty and increasing shared prosperity** by boosting competition in sectors which are most relevant in enhancing the welfare of vulnerable groups, in particular the poor. Competition helps to empower the poorer segments of society by increasing their buying power and giving them greater economic opportunities.

Empirical literature shows that consumers pay artificial high prices for goods and services due to the existence of cartels and restrictive business practices. Removing barriers to competition in consumer markets will attract more players to the market and rivalry between these players will result in quality goods and services at lower prices – culminating in enhanced consumer welfare and poverty reduction.

Thirdly, Competition Policy helps create an **enabling environment for private sector development and wealth creation** by removing barriers to free entry and exit in the market, and levelling the playing field. Since the private sector is the engine of growth, any endeavour towards growing the sector will go a long way in enhancing attainment of the sustainable development goals.

In order to grow the private sector in Botswana, the Government has adopted an export-led strategy and continues to look for market access opportunities abroad, considering its small market size. Be that as it may, competitiveness is a prerequisite for any company to penetrate the foreign market. As a result, local companies have to be subjected to competition at home in order to withstand the pressure of competitors in these foreign markets.

It is also worth mentioning that, Competition policy has an important role in integrating SMMEs in the supply value chains by removing barriers to entry into markets. SMMEs provide income and employment to many people, particularly in developing countries. Since the Botswana market is also characterised by the existence of SMMEs, the implementation of the Competition Policy and Law is expected to enhance participation of this vulnerable sector in economic activities. This will reduce income inequality, which remains a challenge to the Government.

Lastly, a robust Competition Policy in public procurement increases the effectiveness of expenditure on publicly provided services such as education, infrastructure, health etc.

Experience has shown that where cartels and bid-rigging for provision of Government goods and services is rife, this diminishes what Governments are able to provide for their people from any given budget allocation. An effective enforcement of the Competition Law can address such concerns, and save Government revenue that could have otherwise been lost to cartels.

In Botswana, where the Government is the largest consumer of goods and services, the Competition Policy and Law plays a major role in ensuring that the Government is not charged exorbitant prices, and gets value for its procurement. The Competition Authority has for the past two years prioritised its resources to train public officers and parastatals involved in public procurement on how to detect and prevent bid- rigging.

The exercise was done with the aim to empower procurement officials to fight cartel arrangements looking at their harmful effect on Government spending. The initiative has resulted in two cases of bid-rigging being prosecuted in the Courts of Botswana. In addition, the Authority has entered into cooperation arrangements with local authorities to assist it in detecting collusive and bid-rigging arrangements. In this way, enforcement of competition law has enhanced transparency and complemented the anti -corruption efforts by government which have placed Botswana high on the list of least corrupt countries.

1. **How has the Competition Policy and Law of Botswana enhanced economic benefits**
2. It is still relatively early to isolate and quantify the general effects of the competition regime in Botswana because the Competition Law came into operation only six years ago following the establishment of the Competition Authority in 2011. However, the initiatives put in pace so far give indications that in the medium to long term, the enforcement of the law would enhance socio-economic benefits.

The Competition Authority has so far reviewed a total of 223 merger notifications, with majority of these notifications being transactions by foreign companies. The importance of such an activity is to prevent anti-competitive mergers as they have the potential to increase market concentration, raise prices and reduce quality of goods and services offered, in the long run. It is yet to be determined how merger activities by foreign investors have enhanced the developmental goals.

However, it is worth mentioning that about 15% of these assessed mergers were approved with conditions that induce social benefits, such as: empowering SMMEs to participate in economic activities by providing technical assistance; influencing shareholdings by citizens; procurement of products from local enterprises; and securing of employment which could have otherwise been lost as result of merger activities. Such interventions have the potential to enhance inclusive growth.

The Authority has also since undertaken market studies in the Retail, Cement, and Poultry Sectors to understand competition dynamics and consequently promote competition in such sectors. Work is currently on-going to conduct competition assessment in key sectors of the economy such as Agriculture, Health, and Construction. These sectors are crucial for the well- being, particularly of the poor and vulnerable. The construction sector in particular, provides the necessary input to infrastructural development and is key in enhancing the competitiveness of the private sector as well as social development goals.

It is hoped that by exposing and unearthing cartels and other undesirable restrictions in the key sectors of the economy, the Competition Authority will be able to open markets to more competition.

1. **Challenges in implementing the Competition Policy and Law to attain Sustainable Development Goals**

Despite the benefits of Competition Policy and Law in enhancing sustainable development goals, there exist challenges to the effective implementation of the Policy. This is the main reason why the impact of the adoption of the Policy has not been as good as it could have been in most countries.

Generally, capacity constraints are the major impediments to effective implementation of the Competition Policy and Law for developing countries. Due to budgetary constraints, as competition authorities are totally dependent on Government funding, there are often challenges in putting in place appropriate programmes for promoting competition in the markets.

Lack of proper skills and inadequate manpower also cripples the effective implementation of the Competition Policy, particularly for newly established authorities like Botswana. There is, therefore, need for continuous technical assistance. I should however commend UNCTAD for having adopted a technical assistance programme particularly to empower developing countries and to help those which have not adopted the Competition Policies and Laws to adopt one. Botswana has benefitted greatly from such cooperation arrangements.

The other constraint is the substantive and procedural legal hiccups which can manifest in difficulties in enforcing the Law. In Botswana, the Competition Law is currently being revised mainly to separate the investigative and adjudicative powers. This status has often jeopardised cases that could have otherwise ended up in prosecuting those who conduct restrictive business practices and cartels.

In view of the foregoing, we urge UNCTAD to continue conducting peer reviews to strengthen the legal and institutional frameworks of developing countries.

Lastly, and on behalf of the Government of Botswana, I wish to thank UNCTAD for the technical assistance that Botswana continues to enjoy towards improving the legal and institutional framework on Competition Policy. We have come a long way together since the early 2000s and are currently working towards a peer review exercise on the implementation of our competition law and policy.

We have no doubt that such collaborative efforts will go a long way in strengthening the competition regime in Botswana, including the review of the Competition and Consumer Protection laws. This is expected to complement Botswana’s efforts to attain the sustainable development goals.

1. National Competition Policy, 2005: chapter 1.3 [↑](#footnote-ref-1)