



## GOVERNMENT ROBBED OF COMPETITIVE PRICES DUE TO BID-RIGGING

**E**nvironmental Service Providers have been alerted on the signs of bid-rigging and what they can do to avoid it. The Manager for Legal and Enforcement at the Competition Authority Ms. Tapiwa Masie trained the service providers at a workshop organised by the Public Procurement and Asset Disposal Board (PPADB) in Gaborone on 28th August 2015.

Masie said anti-competitive conduct involves fraud, conspiracy and deceit by company officials. “If officials engage in bid-rigging they are fraudulent and if they allocate markets to each other and fix prices they are deceitful” she said.

Participants were informed that one of the most serious forms of cartel conduct is bid-rigging and is common particularly in Government tenders, robbing it of an opportunity of getting the most reasonable competitive fair prices. “Tax payer’s



Ms. Tapiwa Masie

money therefore funds high prices and low quality goods because the Government is the largest buyer and consumer of goods and services in the economy” Masie pointed out. The participants were informed that in the 2013/2014 financial year a total of 61 cases were handled by the Authority of which 19 were cartel cases. Of the 19 cartel cases investigated, 10 entailed bid-rigging. One bid-rigging case (Ya Raheem Food Rations Tender Case) was referred to the Commission.

In the 2014/2015 financial year three bid-rigging cases were referred to the Commission (Sugar Beans Case, Hukunsi Small Tools Tender Case and Infant Formula Milk Case. Masie said it is very important for all businesses to compete fairly for tenders and avoid bid-rigging. Officials should be watchful for their own and their competitors anti-competitive conduct in relation to

responses to tenders. Officials can avoid bid-rigging by complying with the Competition Act and ensuring that their employees are aware of and understand the law as well as to develop policies and procedures and train staff to avoid any risks of non-compliance. “Employees should know what can and cannot be shared with competitors, businesses should avoid discussing the pricing or terms and conditions of their tenders at industry association meetings, tenders should be prepared independently and contact or discussions with competitors should be avoided,” Masie said.

She further informed participants of the penalties for breaches which include a financial penalty of up to 10% of the turnover of the enterprise during the breach of the prohibition up to a maximum of three years and other fines imposed by the Commission in accordance with the Fining Guidelines. Masie also briefed them on the Leniency Policy which allows enterprises involved in cartels, to self-report their conduct and cooperate with the Authority in exchange for absolute immunity from prosecution or a reduction in penalties.

In conclusion Masie said public Procurement is very important to the development of any economy, particularly a developing economy like Botswana. “Defrauding and conspiring against what should be a fair and transparent system is not only illegal, but also leads to huge economic losses and stifles growth and innovation.”

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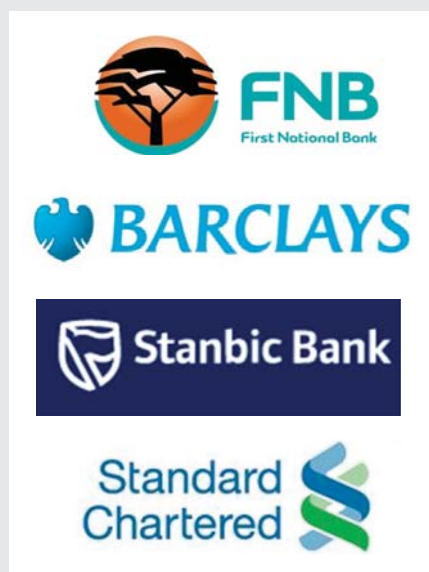
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# COMPETITION DECLINES IN BOTSWANA'S BANKING SECTOR

The level of competition in Botswana's banking sector has declined, according to the central bank. In its 2014 Banking Supervision Annual Report, the Bank of Botswana says the Herfindahl-Hirschman Index<sup>2</sup> (HHI) increased from 0.18 in 2013 to 0.20 in 2014, thus indicating deterioration in the level of competitiveness in the banking sector. The trend over a five year period from 2010 to 2014 shows that the HHI remained above the theoretical threshold of 0.18 for high concentration during this period, says the report. HHI measures the degree of competition in a market, and it takes into account the relative size and distribution of companies in a market. HHI approaches zero when a market consists of a large number of firms of relatively equal size.

The degree of competitiveness in the banking sector is determined by the size and structure of the sector. Competitiveness ranges from highly competitive market conditions, for many banks (of more or less the same size) to uncompetitive and monopolistic conditions where the sector is dominated by one bank. More often, however, markets are oligopolistic, the main feature of which is a few players in the market, the bank notes.

A monopolistic market will have high concentration levels, which would result in an increase in market power, a factor that could lead to anti-competitive be-



haviour and consequently higher cost of banking services for customers. In an oligopolistic situation, the market will also be highly concentrated in a few large banks, having substantial market control, although not to the same extent as in a monopolistic situation. In general, a higher number of banks of comparable size in the market ensures that banks price competitively, thus reducing the degree of market power and opportunities for collusion, says the report. There are 11 commercial banks (including one offshore) three statutory banks, 56 bureaux de change and one micro-finance institution according to the report. The large banks are Barclays Bank of Botswana Limited, First National Bank of Botswana Limited, Stanbic Bank Botswana Limited and

Standard Chartered Bank Botswana Limited. A large bank is one with total assets that constitute 10 percent or more of the aggregate banking sector total assets as at 31st December 2014, the report says.

The Bank of Botswana further mentions in the report that during the year under review, it signed a Memorandum of Understanding (MoU) with the Competition Authority on 6th June 2014 which is consistent with the spirit and principles enshrined in the mandate of the Authority.

The main objective of the MoU is to "(a) foster supervisory cooperation between the Bank and the Competition Authority in the regulation of anti-competitive behaviour in the banking and financial services sector; (b) promote collaboration between the Bank and the Competition Authority in the investigation, analysis and combating of anti-competitive practices in the broader economy; and (c) facilitate smooth functioning of the financial system infrastructure.

"The MoU was entered into in recognition of the respective mandates of the institutions. It neither affects the operational independence nor abrogates the powers, responsibilities and any legally binding obligations; it also does not supersede any laws and regulations governing the respective institutions," the central bank notes in the report.

## Infant Milk Formula Application is Dismissed

The Competition Commission has dismissed an application made by the Competition Authority over suspected of bid-rigging of an infant milk formula tender worth P114 million by the Rabbit Group and Creative Business Solutions

In its ruling on 18th August 2015, the Commission maintained that the Applicant had no jurisdiction to file an application with the Commission as the one year period for investigation had lapsed on the 25th August 2014. "Consequently, the Commission also had no jurisdiction to hear the application and extend the period of investigation" Presiding Member

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## REATILE GAZ SEEKS TO ACQUIRE 40% ISSUED SHARE CAPITAL IN EASIGAS

**A** South African energy company Reatile Gaz (Pty) Ltd proposes to acquire a 40% stake in Easigas (Pty) Ltd according in a merger notification to the Competition Authority.

Reatile Gaz, the acquiring firm, is a company incorporated under the Laws of the Republic of South Africa and wholly owns Reatile Gaz Botswana (Pty) Ltd, a dormant company incorporated under the Laws of the Republic of Botswana. Reatile Gaz is 60% owned and controlled by Reatile Energy (Pty) Ltd, while Engen Petroleum (Pty) Ltd holds the remaining 40%. Both Reatile Energy and Engen Petroleum are companies incorporated under the Laws of the Republic of South Africa.

Engen Petroleum is present in Botswana through Engen Botswana (Pty) Ltd. Engen Botswana is involved in the sale of fuels and lubricants to non-retail sites in the manufacturing, transport and construction industries. 98% of the shares in Reatile Energy are held by Reatile Group (Pty) Ltd, also incorporated under the Laws of South Africa. Reatile Gaz, Reatile Energy and Reatile Group are all part of the Reatile Group of companies. Reatile Gaz currently has no operations, assets nor business interests in Botswana. Reatile Gaz is in the business of selling Liquefied Petroleum Gas (LPG) in South Africa and Mozambique.

Easigas (Pty) Ltd (Easigas South Africa), the target firm, is a company incorporated under the Laws of the Republic of South Africa.

Easigas South Africa is a wholly owned subsidiary of Rubis Energie SAS (Rubis Group), which in turn is wholly owned by Rubis SCA, a company incorporated under the Laws of France, and listed on the French Stock Exchange.

Rubis Energie SAS also wholly owns Easigas Botswana (Pty) Ltd which in turn wholly owns Easigas Swaziland (Pty) Ltd and Easigas Lesotho (Pty) Ltd. Easigas Botswana does not manufacture any products; rather, it distributes LPG for Easigas South Africa in Botswana. Easigas Botswana's Directors are; Olivier M. J. B Nechad, Christian. H. Cochet, Frederic E. Royer and Martinus Nell.

The proposed transaction involves an internal restructuring of the Rubis Group such that Easigas Botswana falls within the portfolio of Easigas South Africa, and as such will be wholly owned by Easigas South Africa. Post this restructuring, then Reatile Gaz will acquire 40% of Easigas (Pty) Ltd. This therefore implies that Reatile Gaz will acquire joint control over Easigas South Africa, which in turn will control Easigas Botswana (Pty) Ltd.

According to section 57(3), of the Competition Act, "any person, including a third party not a party to the proposed merger, may voluntarily submit to the inspector or the Authority any document, affidavit, statement or other relevant information in respect of a proposed merger". The Competition Authority therefore seeks any stakeholder views for or against the proposed merger.

# Milk Formula

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Tendekani Malebeswa said when reading the ruling. No costs were awarded.

The facts of the case are that on 29th July 2013, the Authority received a complaint from a whistle blower concerning the awarding of a tender to supply 1 500 000 units of infant milk formula in 400 grams cans to the Ministry of Health. The Authority then initiated an inquiry to substantiate the allegations of bid-rigging for the tender.

Following analysis of the individual bids, the Authority had reasonable grounds to suspect that Creative Business Solutions (Pty) Ltd and Rabbit Group (Pty) Ltd had engaged in collusive tendering.

The Authority then decided to investigate the matter and referred it to the Tribunal for adjudication following the conclusion of investigations.

This was the second application lost by the Authority involving the Rabbit Group and Creative Business Solutions. On 12th May 2015 the Commission also dismissed an application brought by the two companies over the suspected rigging of a P114 million tender that was awarded by the Ministry of Local Government for the supply of 7,530 metric tonnes of sugar beans to schools in the country.

**Access the latest ruling on <http://www.competition-authority.co.bw/sites/default/files/Decision%20cc-cr-01-A-15%20I.pdf>**

## A Moment with Neo Gopolang

Ms. Neo Gopolang has been with the Competition Authority since 2011 and holds the position of Office Assistant. The Botswana Competition Bulletin (BCB) set down with Ms. Gopolang to get the lowdown on what makes her tick:

**BCB: When did you join CA?**

**Neo:** I joined the Competition Authority on 1st October 2011.

**BCB: What inspired you to apply for a position at the CA?**

**Neo:** I wanted to grow, experience the world, and face new challenges and also seek greener pastures.

**BCB: What is your role at the CA?**

**Neo:** My role is to assist in daily clerical duties.

**BCB: Before joining the CA what job did you do?**

**Neo:** I was a messenger at the Ministry of Lands and Housing, Department of Technical Services and the Department of Surveys and Mapping.

**BCB: It is almost four years now at the CA. How would you describe your stint at the CA so far?**

**Neo:** Oh, I am well grown and working in the corporate world means a lot in my life. I have excelled in my work performance as I acquire new skills.

**BCB: What do you like most about the CA?**

**Neo:** I like the fact that CA really groomed me to be who I am today, a dedicated and result-driven junior officer, self-motivated woman capable of working with a high degree of autonomy, able to exercise good judgement and willing to tackle new challenges head on. CA has never deprived me good opportunities looking at my background, instead I hold a Certificate in Procurement and Supply today through the motivation and the support I was given.



Ms. Neo Gopolang

**BCB: Even model organisations have areas to improve. In your view what can we do better at the CA?**

**Neo:** (Laughs) It is never enough, more pay!

**BCB: If you were to leave the CA now what treasured memories would you take with you?**

**Neo:** The love, motivation and team spirit of the employees.

**BCB: We always see this bubbling energetic woman ready to serve with a smile. What is driving you to always serve with a smile?**

**Neo:** (Smiling) I am a self-motivated person, willing to learn every day and tackle challenges that can help me grow.

**BCB: You are known to some as Mma Gopolang and to others as DeNeouza. In your own words who is Neo Gopolang?**

**Neo:** She is a beautiful Motswana woman, a Motalaote from Kgagodi at Mfaladi ward, the first daughter of Oemelenna Mfaladi; married to Lethata Gopolang of Mmadinare with three sons.

**BCB: We have interacted with your husband and your boys, albeit in a limited way. You are the only woman in the house, isn't it? Tell us about your family.**

**Neo:** I am the only woman in the house yes, it is challenging sometimes, but I have set my mind to accept that I am the only woman with four boys. I thought I will be loaded with girl's responsibilities but it is the other way round. My boys are still young but I am training them not to rely on Mama and to think it's her role to see that things are in order. My husband is supportive too. All in all I take all the attention because they all need me, the one and only queen in the house!

**BCB: How do you balance family and your demanding work at the CA?**

**Neo:** Tricky question, they are all my life; I try to give them a fair share of me even though they are some challenging factors here and there.

**BCB: The year is 2020. Where do you see the CA and Neo Gopolang then?**

**Neo:** I see myself at one of the higher positions, excelling, very productive with a positive mind set and completed my CIPS studies and being a special asset of the CA. I see CA changing the lives of Botswana through its mandate by year 2020. One hundred per cent fair play in the economy of my country.





## MEGA MERGER WOULD GIVE COMPANY CONTROL OVER A THIRD OF THE WORLD'S BEER

The world's two biggest beer behemoths are considering the largest megamerger in brewing history, after Budweiser giant Anheuser-Busch InBev said it had pitched a takeover of SABMiller, its chief rival.

The deal would fold in some of the world's best-selling beers beneath a \$245 billion hyper-profitable brewing empire. But it would also likely put antitrust authorities on high alert, over fears that the loss of competition could drive up prices.

"What a terrible, terrible idea. This should be dead on arrival at the DOJ," (Department of Justice) said Diana Moss, President of the American Antitrust Institute. "There would be grave concerns over their power to control price ... and the effects on the craft-brewing industry would be devastating."

The long-speculated merger would

combine Budweiser, Coors, Miller, Peroni and other brands under one roof, controlling roughly a third of the world's beer supply and about half of the industry's profits.

At a time when investors are nervous and antitrust regulators are suspicious, the prospect of a \$100 billion-plus merger on the horizon may seem remote. Yet in a bold step toward creating a global colossus in beer, Anheuser-Busch InBev said it had approached its rival SABMiller about a potential takeover.

If successful, a merger of the companies, the world's biggest brewers, would put some of the most popular beers under one roof: Anheuser-Busch InBev's Budweiser, Corona and Stella Artois would join Miller Lite, Peroni and Grolsch from SABMiller.

Combined, the companies would have \$69 billion in annual revenue and command 30 percent of global beer sales,

according to the research firms Euro-monitor International and IBISWorld. Will a big beer deal be part of that dream? High hurdles await. The highest hurdle will be antitrust regulators, especially those in Washington and Beijing. In the United States, the two companies account for about three-quarters of the beer market.

"The competitive harm is pretty scary," said Diana Moss, the president of the American Antitrust Institute. "The concern is higher prices for consumers."

To win approval, from the Justice Department in the United States and regulators in Europe and China, the companies would almost certainly have to sell some brands or assets, including SABMiller's 58 percent stake in its Miller Coors joint venture in the United States, and its share of the CR Snow joint venture that owns Snow, China's best-selling beer brand.

Source: [nytimes.com](http://nytimes.com)

# COMPETITION AUTHORITY IN PICTURES

The Competition Authority Held its Fourth Annual Wellness Day on September 25th 2015 Under the Theme 'Your Health and Wellbeing is your Personal Responsibility, Invest in Yourself'



## Captions

1, 2, 3, & 4. CA Staff during the Wellness Day 5. Some of the facilitators and Staff during the Wellness Day



# PLAY HARD AND WORK HARD CA'S NEO GOPOLANG



## Captions

1. Ms. Neo Gopolang receiving a present from the CEO 2 & 3 Neo relaxing at the office and during Wellness Day

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