



## COMPETITION AND DISRUPTIVE INNOVATIONS - THE GOOD AND THE BAD

The Competition Authority commemorated World Competition Day (WCD) on 5th December 2017, with a panel discussion under the theme 'Competition and Disruption' to celebrate World Competition Day.

Panelists comprised Mr. Noble Katse from the Botswana Communications Regulatory, BOCRA; Mr. Obonye Galebotswe, a Senior Lecturer at the University of Botswana Economics Department, and Mr. Chandra Chauhan, the Group Managing Director of Sefalana Group, who was representing Business Botswana.

The panelists interrogated both the positives and negatives brought about by disruptive innovations. Some of the positive disruptive innovations cited by the panelists include mobile money, and mobile banking which have disrupted traditional banking services, online shopping which has disrupted traditional retail; and services like WhatsApp and Skype which are disrupting fixed and mobile phone companies, Uber which is disrupting the taxi industry and Netflix which is shaking the cable TV industry.

Panelists noted that when disruptors successfully challenge incumbent firms they first target those that have been left out in the lower end of the market and once they get into the mainstream that is when disruptions occur.

Smaller companies with fewer resources can unseat established, success-



Mr. Noble Katse - BOCRA



Mr. Chandra Chauhan - Business Botswana



Mr. Obonye Galebotswe - University of Botswana

ful businesses by targeting segments of the market that were neglected by incumbents, (typically because they were focusing on more profitable areas) and they deliver products or services suited to incumbent's overlooked customers at lower price. Disruption happens when incumbent mainstream customers start taking up the start-ups products or services in volumes.

In his discussion, Katse noted that quite often the ecosystem that delivers innovative products is primarily based on information and communication technology (ICT). "Existing service providers are shaken in the sense that their products are facing intense competition from widely adopted innovative products, that are cheaper, convenient, user friendly and do not seek long term contractual custom by the consumers."

In terms of regulation, the panelists agreed that disruptive innovations and technologies are posing a challenge to regulators such as the Competition Authority and BOCRA.

While the role of regulators is to promote competition in the market, disruptive innovation is always ahead of the existing policy and regulatory frameworks in terms of complexity and sophistication, as new products and services may not fit in the existing regulatory frameworks.

To Page 2

### IN THIS ISSUE

Competition and Disruptive Innovations  
Page 1

CA Celebrates Competition Week  
Page 2

Post Merger Impact Assessment Report Published  
Page 3

It is difficult for regulators to define the relevant markets in which innovation is taking place, for instance, what is the relevant market for mobile money? Katse wondered.

“Disruptive innovation creates tension between incumbents and Disruptors. Disruptors argue that they are not subject to existing regulatory framework. Incumbents argue that Disruptors must meet regulatory expectations and standards,” he said.

Katse noted that as part of the global community Botswana is affected by disruptive technologies such as WhatsApp, Facebook, Skype, Mobile Money, Netflix etc. Mobile money now makes it possible for unbanked people to participate in e-commerce and pay for services quicker using less costly platforms. Social information is transmitted quicker, improving interaction among people and the cost of communication has reduced through use of disruptive platforms such as WhatsApp.”

Katse said the regulatory framework needs adjustment in certain areas to deal with disruptive technologies where appropriate. Further, he called for forward-looking future proof policies that do not become bottleneck to innovations, and regular market reviews to assess current reality and emerging trends so as to adjust regulations.

“Intervene with a view to facilitate market participation by Disruptors as opposed to strangulating Disruptors. The current position is that we “watch, monitor and learn!” Katse said. In a nutshell,



CA's Nomathemba Dladla moderating the panel discussion

faced with a new regulatory environment, and in order to continue facilitating competition in the market and safeguarding consumer welfare, regulators have to strike a balance between oversight and not stifling innovation.

Mr. Galebotswe for his part posited that disruptive innovators promote competition because they keep the incumbents on their toes and make the market contestable. He said the disruptors also do well in terms of efficiency and are therefore able to bring goods and services to consumers at a lower costs.

However, on the flip side Galebotswe noted that disruptors may overtime become big and monopolistic and behave in an anti-competitive manner, make anti-competitive mergers, and also present challenges in defining their markets. He said disruptors should prompt competi-

tion agencies to sharpen their market definition tools, and ensure that they do not impede innovation, which is beneficial to consumers.

In his remarks, Mr. Chauhah said while competition agencies may be viewed negatively with the common excuse that they stifle growth, they are a necessary evil.

“I recall one of the larger wholesalers approaching me in 2010 (just before the CA was set up) whether we could buy them out as they were finding it difficult to compete with some of the larger businesses in the Fast Moving Consumer Goods (FMCG) sector. I wish now that I had carried out that transaction because if we were to do it now then I am sure it won't be allowed to happen. In my opinion we would have created a giant by now especially in the wholesale sector and I doubt that anyone else would have been able to enter the market. As it worked out, we did not make the transaction and as a result we see a lot more competition, which is probably better for the consumer,” Chauhan said.

He said innovation within FMCG has included online shopping at a lower price as it is cheaper to despatch from a warehouse than from a store. Chauhan said other services such as money transfer, and purchasing airtime, electricity etc through a mobile app can be viewed as competing against businesses such as banks delivery and insurance companies.

The panel discussion which was held at the Competition Authority office, was broadcast live on a national radio station RB2, so as to reach a larger audience.

## CA CELEBRATES COMPETITION DAY

The Competition Authority celebrated the inaugural Competition Week from 4th to 8th December 2017 with the objective of enhancing awareness on competition and its benefits to the economy and consumers.

Every year on 5th December competition agencies, consumer advocates and civil society organisations, celebrate World Competition Day under a chosen theme to highlight the benefits of competition in collaboration with Consumer Unity & Trust Society, CUTS International.

Another objective is to have the day formally recognised by the United Nations. It is on 5th December 1980 that the United Nations General Assembly adopted Resolution 35/63 on the Set of Multi-



laterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

The Authority started the week on Monday with competition themed adverts on Gabz FM radio station which ran throughout the week. On Tuesday 5th December the Authority hosted a panel

discussion with the theme ‘Competition and Disruption’. On the same day, the Director of Communications and Advocacy Mr. Gideon Nkala, and the Acting Director of Legal and Enforcement Ms. Tapiwa Masie were interviewed on Radio Botswana’s Masa a Sele Morning Show, and later fielded questions from members of the public on various competition issues.

Wednesday 6th December was reserved for the internal stakeholders being staff of the Authority. Staff heard presentations from the five departments of the Authority sharing experiences and introspecting on how they can efficiently execute the mandate of the organisation and be brand ambassadors.



Analyst Gorata Selelo presenting to staff on Mergers and Monopolies

On Thursday 7th December there was press conference to share results of the Post Merger Impact Assessment on some of the merger determinations and the conditions that were imposed on them.

Activities of the week culminated in a Corporate Social Responsibility (CSR) activity in the form of litter picking and donations to Tsolamosesse Ward in collaboration with the Village Development Committee.

There was also Fun Football with Tsolamosese Select Side which ended in a two - all draw in a fairly contested game!



HR Manager Tshepo Wadipeba giving a vote of thanks during staff presentations

# CA PUBLICISES POST MERGER IMPACT ASSESSMENT REPORT

The Competition Authority has been assessing mergers and acquisitions, and making determinations pertaining to mergers and acquisitions since November 2011. The Authority's mandate with regards to the assessment of mergers and acquisitions does

not end at the stage of issuing a decision but extends to the post-decision stage through conducting compliance monitoring and post-merger impact assessments. On 7th December 2017 the Authority hosted a press conference as part of Competition Week to share results

of the Post Merger Impact Assessment that the Authority conducted. Seven transactions were assessed during the 2015/16 and 2016/17 Post-merger Impact Assessments. Some of the assessed transactions are highlighted as follows:



Some journalists and staff members at the press conference on 7th December 2017

## G4S (BOTSWANA) AND SHIELD SECURITY

In November 2011, the Authority received a notification, for the proposed acquisitions by G4S (Botswana) Limited, of Trojan Security Services and Shield Security. The acquisition of Trojan and Shield by G4S raised competition concerns and was therefore rejected.

The merger was expected to result in reduced competition due to the removal of a small but significant competitor and enhanced market power for the acquiring enterprise.

Following the rejection of the acquisition, the Authority became aware of a transaction between the parties which would have the effect of circumventing the decision of the Authority. The parties claimed that Shield was in dire financial strain and as such would shut down its business; and dispose its assets, allowing G4S to acquire those assets in the open market.

In realising the potential effect of the transaction, the Authority intervened and prohibited G4S from acquiring the said assets.

Through the Authority's intervention, the management of Shield resolved that its assets, trading licence, trading name and clients list be transferred to a 100% citizen owned entity, Sancos MD Investment Enterprises (Pty) Ltd, owned by a minority shareholder in Shield.

The Authority further directed that the assets and employees should not be affected and should thus continue to be utilised as before, under Shield.

Moreover, the Authority directed that G4S would be restrained for a period of 24 months (as of June 2012), from soliciting any current clients of Shield. The restraint would only lapse and be of no further force and effect under the conditions that: Sancos t/a Shield closes down business or sells its business, subject to the closing down not being due to the fact that G4S directly or indirectly solicited clients as provided in the submitted client list during the twenty four month restraint period; and/or there is a change in management control and/or majority shareholder control in Sancos at any time whatsoever.

The Impact of the decision is that Shield has grown as shown by the number of employees and contracts that the company has managed to secure (for example, there was a 45.6% increase in number of contracts secured by Shield in the period 2012 to 2015).

With regards to employment, an increase of 64.1% was recorded for the same period). In a related industry transaction, in December 2014, the Authority approved for Security Services Botswana to acquire Hotline Security's client service contracts with the required associated equipment.

The acquisition availed a citizen owned enterprise an opportunity to compete in the cash-in-transit and alarm & response markets, which were previously dominated by a foreign owned enterprise, G4S.

## PUMA ENERGY BOTSWANA AND EASIGAS BOTSWANA

In January 2012, the Authority received a notification for the proposed acquisition of 100% interest in the operations of the Liquid Petroleum Gases (LPG) business of Puma Energy Botswana by Easigas Botswana. The Authority approved the acquisition of 100% interest in the operations of the LPG business of Puma Energy Botswana by Easigas Botswana on the condition that:

The merged entity does not engage in any conduct or activity that is tantamount to abusing its dominant market position since it is classified as a dominant firm as per Section 4(a) of the Competition Regulations; and that the proposed merging entities that during their establishment of the merger and their future existence, they should take cognisance of the need to advance citizen economic empowerment initiatives or enhance the competitiveness of citizen-owned small and medium sized enterprises.

The merged entity committed not to engage in any conduct or activity that is tantamount to abusing its dominant market position since it is classified as a dominant firm as per Section 4(a) of the Competition Regulations; and to take cognisance of the need to advance citizen economic empowerment initiatives or enhance the competitiveness of citizen-owned small and medium sized enterprises. The Impact of the decision is:

**Employment creation or maintenance:** As at the time of the transaction, there were no stand-alone employees dedicated to the running of the LPG division of Puma Energy Botswana but by end of January 2017, Easigas Botswana reported a staff complement of 20 Batswana working full time directly under Easigas Botswana.

Furthermore, through Easigas Botswana's leasing of their distribution plants to be independently managed, a total of 68 individuals were employed between the four different depots.

**Stability in the supply of LPG in Botswana:**

Easigas Botswana has managed to constantly supply LPG in Botswana following the consummation of the merger, and did not endanger continuity of supplies, as per section 59(1).

**Advancement of citizen economic empowerment initiatives:** The Authority has established that Easigas Botswana has since adopted a strategy to assist indigenous Batswana businesses, especially those that are youth-led, in retailing LPG to corporate clients.

Easigas Botswana's support to the youth-owned companies has been in the form of assisting these businesses to set up cages necessary for the required handling of LPG cylinders, as well as through offering those businesses credit facility. Moreover, Easigas Botswana provides technical support to these companies, in order to ensure service standards are maintained.

## SHELL BOTSWANA AND VIVO ENERGY

In June 2012, the Authority considered the proposed acquisition of 100% issued share capital in Shell Botswana by Vivo Energy Holdings B.V. The transaction was unconditionally approved as the merger was not likely to give rise to substantive competition concerns in the distribution of fuel and lubricants markets in Botswana.

However, considering the increasing levels of unemployment in Botswana, the Authority resolved to authorise the proposed transaction to take effect subject to the commitments made by the parties that the level of employment within Shell Botswana would not be negatively affected as a result of the transaction; and that Vivo Energy should present more opportunity for enterprises trading in the downstream market as fuel retailers through increased capital injection and by providing more start-up capital to aspiring entrepreneurs.

The impact of the decision is commitments

made with regard to levels of employment. Vivo Energy inherited a staff complement of fifty three (53) employees at the implementation of this transaction.

As at February 2016, Vivo Energy had seventy eight (78) permanent staff which represented a 47% growth in their employment levels for permanent staff, post-merger. This was a positive contribution towards the attainment of section 59(2)(e) on employment promotion.

**Retail Network Expansion:** Vivo Energy indicated in their acquisition notification that more opportunities would be presented to enterprises in the downstream petroleum industry for fuel retailers.

In 2012, Vivo Energy inherited forty three (43) retail sites when they acquired Shell Botswana; with eleven (11) new retail sites being opened, post-acquisition.

This indicated a 25.6% increase in the number of new retail sites post-merger. All the 11 new sites are operated by Batswana in the following areas:

==> Hillview Filling Station in Mogoditshane  
==> A1 Service Station Northgate Mall in

Gaborone

==> Gabane Filling Station in Gabane village

==> Otse Filling Station in Otse village

==> Bangwaketse Filling Station in Kanye village

==> Sowa Town Filling Station in Sowa Town

==> Palapye Filling Station in Palapye village

==> Safari Filling Station in Maun village

==> Masters Valley in Maun

==> Matante Mews Filling Station in CBD in Gaborone

==> Ledumadumane Filling Station in Mogoditshane

**Provision of start-up capital to aspiring entrepreneurs:** The parties introduced programmes such as the Young Retailers Programme, which was intended to assist young locals with access to land and start-up capital for business.

These two aspects (land and capital) are critical for the successful running of the business as in most cases; they are not easily accessible to youth. One such beneficiary of the Young Retailers Programme manages and operates the Bangwaketse Shell Filling Station in Kanye.

# BOTSWANA'S VOLUNTARY PEER REVIEW COMMENCES



Members of the CA Peer Review Preparatory Committee with the UNCTAD Team From L to R: Allan Mlulla, Tapiwa Masie, Ebru Gokce, Magdeline Gabaraane, Gladys Ramadi, Elizabeth Gachuri, Bonyana Ndubiwa, Tshapo Wadipeba

The Voluntary peer review of the Competition Authority of Botswana has started. Representatives from the United Nations Conference on Trade and Development (UNCTAD) Elizabeth Gachuri and Ebru Gokce and a consultant Dr. Allan Mlulla were in Gaborone, Botswana from November 6th to 10th 2017 to conduct stakeholder interviews.

Stakeholders who were interviewed included the staff of the Authority and the Competition Commission, the parent Ministry of investment, Trade and Industry, the Ministry of Finance and Develop-

ment Planning, the Attorney General, sector regulators, academics, Complainants, Merging Parties, private law firms and Business Botswana.

A Peer Review is the scrutiny by peers of a Competition agency, its institutional arrangements and effectiveness in competition law enforcement. The peer review for any member State of UNCTAD is done on a voluntary basis after the relevant institution requests UNCTAD to undertake this exercise.

The main objective of a Peer Review is to identify areas for improvement in the legal and institutional framework thereby

contributing to enhancing the quality, efficiency and effectiveness of competition law enforcement in reviewed countries.

In the past peer review reports have come up with recommendations on various aspects such as law revision, institutional design; including ways of strengthening relations with government ministries, the judiciary, sector regulators and staffing matters, developing curriculum on competition at tertiary level; and advocacy and public awareness programs in order to create awareness and enhance voluntary compliance.

From Page 4

## PINKS FAMILY OUTFITTERS AND LEAPING EAGLES INVESTMENTS

In October 2013, the Authority considered the proposed acquisition of 100% controlling interest in Pinks Family Outfitters by Leaping Eagles Investments (Pty) Ltd (Woolworths Group).

This merger did not raise any competition concerns but rather raised some public interest concerns. The Authority was concerned that Woolworths Group (non-citizen owned entity) was acquiring total control of all the 22 Woolworths franchise stores in Botswana, thus taking away the involvement of local citizens in the ownership of Woolworths stores, which appeared against the spirit of citizen empowerment in line with section 59(2)(f) of the Competition Act on the advancement of citizen empowerment initiatives.

The Woolworths Group undertook to determine the commercial viability of imple-

menting the appropriate aspects of its Good Business Journey plan in Botswana, once it acquires the 22 Woolworths franchise stores in Botswana, and thereby facilitating citizen participation in the Woolworths Group's Business in Botswana. Woolworths Group further committed to doubling its sourcing from Botswana suppliers over the next two years, based on the value of its own current sourcing from Botswana suppliers, as well as, the current sourcing of Pinks Family Botswana.

The Impact of the decision is employment creation - at the time of the transaction, Woolworths had a total staff complement of three hundred and twenty five (325) and as at the 2016/17, there had been an increment of sixty (60) employees which translates to three hundred and eighty five (385).

Local procurement sourcing - Woolworths, in their efforts to promote local businesses, source various products locally, such as, free range eggs, free range fresh beef and other poultry products. It is also worth noting that

Woolworths continues to source from previous local suppliers (that is, those carried on from pre-transaction) for the supply of bacon, full cream milk, fresh produce, canned pet food and plastic shopping bags.

In terms of product pricing, Woolworths launched the Woolworths Rewards Programme in Botswana in February 2015, through which consumers get to enjoy some savings on their purchases. The Authority has noted that there has been a general decline in prices across a variety of seventy five fresh produce items between March 2014 and September 2015, with an average decrease of 2.4%.

Furthermore, the introduced WRewards Programme offers consumers the use of a WRewards card and eligibility to vouchers, thus providing more discounts/savings.

Access the report on: [www.competitionauthority.co.bw/sites/default/files/Post%20Merger%Impact%20Assessment.pdf](http://www.competitionauthority.co.bw/sites/default/files/Post%20Merger%Impact%20Assessment.pdf)

# MERGER ACTIVITY UPDATE QUARTER TWO 2017/18

During Quarter 2, the Authority handled a total of four (4) mergers which constituted a 55.6 percent decline, when compared to mergers handled in the same period during the 2016/17 financial year. These were also significantly less than the 10 mergers assessed in Q1 of the current financial year. With the acceleration of Botswana's economic growth in Q2; indicating a general increase in the country's economic activities, one would have expected increased merger activity in the reporting quarter.

Out of the four (4) finalised mergers, two (2) mergers were carried forward from Q1 while the remaining two (2) were received and finalised during Q2. Furthermore, three (3) mergers were classified as simple mergers and only one was a complex merger. In terms of average turnaround times for assessed and finalised mergers, the Authority assessed the simple mergers within an average of 20 business days; while the complex merger was assessed in 55 business days.

Of the four (4) mergers assessed in the period under review, there were no competition concerns identified and all the mergers were approved without conditions. The complex merger handled during the quarter pertained to the acquisition of the entire issued share capital of Auto City (Pty) Ltd from GH Investments (Pty) Ltd and Noor M. Riaan by both Shezan R. Motani and Rusdin Abdul S. Motani. In spite of the complex classification of the transaction, no competition concerns arose in its assessment. Furthermore, the Authority did not foresee any negative effects on public interest grounds on all transactions that were given the green light in Q2.

Table 1: Mergers Handled in Q2 of the 2017/18 Financial Year

Primary Acquiring	Primary Target	Market	Decision
Mr. Shezan Rusdin Motani and Mr. Rusdin Abdul Sattar Motani	Auto City (Pty) Ltd	Retail (Vehicle tyres)	Approved without Conditions
Blue Star Diamonds Botswana (Pty) Ltd	Blue Star Diamonds DMCC (Dubai)	Mining - Cutting, Polishing and exportation of rough diamonds	Approved without Conditions
Newsshelf 1329 (Pty) Ltd	Kamoso Distribution (Pty) Ltd	Retail	Approved without Conditions
Capital Management (Pty) Ltd	Lobatse Clay Works (Pty) Ltd	Manufacturing (Clay face bricks)	Approved without Conditions

## CA COMMEMORATES WORLD AIDS DAY



The CEO Ms. Tebelelo Pule giving a token of appreciation to Ms. Lindiwe Mogerita after her address to staff during World AIDS Day on 1st December 2017

Staff of the Competition Authority joined the rest of the world on 1st December 2017 in commemorating World AIDS Day under the theme Right to health "my health, my right."

Among other things staff watched an

inspirational video and shared messages of encouragement. The motivational talk for the day was delivered by Ms. Lindiwe Mogerita, a youth Activist who is living with HIV. She encouraged CA staff to go for voluntary testing, emphasising the

importance of knowing one's status.

Ms. Mogerita said she was motivated to live positively with the virus and publicly declare her status after she was counselled by renowned Activist Ms. Onalethata Mpebe who is also living with HIV.

For her part, the CEO of the Competition Authority Ms. Tebelelo Pule, also stressed the importance of testing to know one's status, noting that Government has availed programmes such as anti-retroviral drugs and prevention of mother to child transmission.

In the lead-up to World AIDS Day, UNAIDS launched the My Health, My Right Campaign. The campaign reminds people that the right to health is much more than access to quality health services and medicines, but also entails adequate sanitation, housing, healthy working conditions, a clean environment and access to justice.

# COMPETITION AUTHORITY IN PICTURES



Mr. Obonye Galebotswe from the University of Botswana and Mr. Chandra Chauhan from Business Botswana at a panel discussion to commemorate World Competition Day on 5th December 2017



Journalists at the Post Merger Impact Assessment Press Conference on 7th December 2017



The CA team during CSR litter picking event at Tsolamosese Ward on 8th December 2017



CA staff at the commemoration of World Aids Day on 1st December 2017

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