



COMPETITION BULLETIN

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Companies Charged with Bid-Rigging Ordered to File their Defence



The Competition Commission at the Sugar Beans Case Pre-hearing on December 3rd

The Competition Commission on December 3rd heard arguments on the preliminary points of law that were raised by Creative Business Solutions, trading as Bread and Butter

Foods, and the Rabbit Group which were referred by the Competition Authority to the Commission after investigations revealed that the companies colluded in a multi-million pula tender for the supply of sugar beans to Government.

The two companies were investigated for rigging of Tender No PR: 8/6/2/11 (V) 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 at a P114 million price tag.

Bread and Butter Foods was awarded tenders for Palapye, Selebi Phikwe, Francistown and Maun while the Rabbit Group was awarded tenders for Lobatse, Gaborone and Mahalapye. During the pre-hearing, the respondents had argued that the complaint by the CA was non-suited as it was filed outside the 14 day period contrary to the Competition Commission's Order of the 10th September 2014. They had also

taken issue with how the CA's affidavit was commissioned but abandoned this point at the hearing.

After hearing arguments from the parties on the computation of time and interpretation of Orders of the Tribunal, the Competition Commission dismissed the points of law raised by the Respondents and ordered that the matter should proceed to the merits.

It held that the respondents should file their answering affidavit within 14 working days and the CA to file their reply, if any, 14 working days thereafter. No order as to costs was made. This Order by the Commission now means the matter will be proceeding to the merits.

The CA was represented by Mr. Abel Modimo and Mr. Duncan Morotsi, while Mr. Otto Itumeleng represented Creative Business Solutions. The Rabbit Group was represented by Mr. Mboki Chilisa.

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Mr. Thula Kaira, Mr. Dichaba Molobe and Dr. Mokubung Mokubung at the World Competition Day Panel Discussion

Competition Authority Celebrates World Competition Day

The Competition Authority joined other competition agencies and civil society organisations on December 5th to celebrate World Competition Day. This year the theme was ‘Competition Issues in Public Procurement’, and to observe the day, the Authority hosted a panel discussion based on the theme.

The panellists comprised the CEO of the Competition Authority, Mr. Thula Kaira, and the Director for Policy and Advocacy at the Botswana Confederation of Commerce, Industry and Manpower (BOCCIM), Mr. Dichaba Molobe.

In his remarks at the panel discussion, Mr. Molobe said the view from the private sector was that there was need to redesign the public procurement system so that the specifications were concise and clear, and tender requirements did not place a heavy burden on bidders.

He observed that placing the burden on bidders such as the costs of certifying documents, and submitting samples and reports could lead to price escalation as bidders would factor the

costs in their bids. Molobe further decried the lengthy time lapse between the assessment and award of tenders which he said could take up to a year, as well as the delay in paying suppliers. “We need to ensure that the procurement system is efficient”, he said.

For his part, Mr. Kaira described tenderpreneurship as an important aspect of any economy, noting that the largest buyer is government. He said tenders must always be designed in a manner that promotes competition, and if not so designed, would open up room for corruption.

Mr. Kaira said in order to deal with all the facets of public procurement, the Competition Authority saw the need to sign a memorandum of understanding with the Directorate on Corruption and Economic Crime (DCEC) and the Public Procurement and Asset Disposal Board (PPADB).

He implored the private sector to play a role in promoting competition, and decried excessive pricing by the sector when it comes to public procurement “when its business to busi-

ness prices are competitive and when its private to public the prices are inflated” Kaira noted. The panel discussion was moderated by Dr. Mokubung Mokubung, the CA’s Director of Competition and Research Analysis

On 5th December, 1980, the United Nations adopted the international standard for competition laws called the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, commonly known as the United Nations Set of Principles and Rules on Competition.

The set has guided a large number of developing countries in developing and enacting their competition laws.

To mark the 30th anniversary of the set, a proposal was made to observe 5th December as the World Competition Day by the International Network of Civil Society on Competition, which is an international coalition of civil society organisations, competition practitioners, researchers and legislators hosted by Consumer Unity and Trust International, CUTS.

ASSISTANT MINISTER OF TRADE AND INDUSTRY VISITS THE COMPETITION AUTHORITY

The newly appointed Assistant Minister of Trade and Industry, Honourable Sadique Kebonang, visited the offices of the Competition Authority and Competition Commission on November 26th and met with staff as part of his consultation and familiarisation tour of Parastatals and Departments under the Ministry.

In his address to staff, Hon. Kebonang announced that all parastatals under the Ministry fall under his portfolio, and that he will be the link between Government and parastatals.

Hon. Kebonang said he will oversee the separation of the Competition Commission and the Competition Authority as well as the transfer of the Consumer Affairs function from the Ministry to the Authority, and as a result there will be some restructuring.

The Minister said the role of his Ministry is to grow the economy and therefore all bottlenecks that impede business will have to be removed.

Earlier, when welcoming the Minister, the CEO Mr. Thula Kaira said the CA will deliver on its objectives. He said although the CA is operationally independent, it will account to Government.

Mr. Kaira thanked Hon. Kebonang for finding time in his busy schedule to meet and greet CA staff.

The new Minister of Trade and Industry is Honourable Vincent Seretse. The new leadership at the Ministry was ushered in after the October 2014 General Elections taking over from the former Minister, Honourable Dorcas Makgato, and Assistant Minister, Honourable Keletso Rakhudu.



Assistant Minister of Trade and Industry Honourable Sadique Kebonang



Best Overall Employee for 2014 Ms. Magdeline Gabaraane receiving an award from the CEO

Second Annual Staff Awards

The Competition Authority held its second annual Staff Awards on November 28th to reward staff members and teams for the good work they did throughout the year. The CEO, Mr. Thula Kaira, presented the award winners with certificates and plaques.

The Director of Mergers and Monopolies, Ms. Magdeline Gabaraane, was the star of the 2014 awards as she scooped Best Overall Employee, Most Professional, and Most Influential Employee awards. Ms. Gabaraane was voted by fellow staff members as the Most Professional Employee, who “always displayed good work ethics in whatever they did, and presented themselves in a dignified manner both on inter-personal and professional levels”. The Most Influential award was for an employee who “had a strong ability to get others to appreciate his/her point of view as well as tendency to inspire others”. The Best Overall Employee award was for an individual who was voted the best in more than one category.

The CEO’s Award of Excellence for 2014 went to the Department of Communications and Advocacy (DCA) which comprises Mr. Gideon Nkala, the Director; Ms. Gladys Ramadi, the Manager; and Ms. Kelebogile Ngwenya, the Communications and Advocacy Officer. The award was determined by the CEO and could have been for an individual or a department. Announcing the award, Mr. Kaira said the award for DCA was in recognition of the visibility that the Competition Authority has had in the media and other platforms, which was also recognised by the Ministry of Trade and Industry when it gave the Authority the 2013/14 MTI Most Media Visible Parastatal award earlier this year.

The Most Passionate Employee award went to Driver/Messenger Mr. Tonny Kolanyane which was for an individual who displayed “strong passion and excitement towards their job, bringing their best to work, had a desire to continuously improve, and not easily discouraged”.

The Office Assistant, Ms. Rebecca Rabakane, and the IT and Documentation Officer Mr. Mooketsi Ntwaagae shared the Most Trustworthy and Reliable award which was given to an employee who was “dependable, honest and loyal, responsible and responsive in carrying out their duties”.

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CA staff on World AIDS Day

CA STAFF URGED TO PLAY ROLE IN PREVENTION, REDRESS AND REMOVAL OF HIV AND AIDS

In line with their mandate of preventing, redressing and removing anti-competitive practices in the economy, staff of the Competition Authority have been urged to borrow the same theme of ‘prevention’, ‘redressing’ and ‘removal’ and extend the same principles to the fight against HIV and AIDS.

The call was made by the Chief Executive Officer, Mr. Thula Kaira, in his address to staff on World AIDS Day on December 1st. Mr. Kaira emphasised that prevention was the best remedy for preventing new infections.

“We as Team CA can prevent new infections amongst ourselves and our beloved by ensuring that we keep ourselves free from casual, illegal and immoral sexual activities”.

Regarding redress in relation to HIV/AIDS, he called for individuals to do so by looking at their own existing sexual activities. “Where we have made mistakes and by God’s grace we have not contracted HIV or AIDS, we need to ensure that we do not repeat the same mistakes.

Where we have been planning to play or are already playing with fire, let us ask ourselves whether we are ready to live with the burns” Mr. Kaira said.

Addressing the principle of removal, the CEO cautioned staff against apathy saying there was need to remove any feeling of indifference towards HIV/AIDS messages. “Let us remove the myth that we cannot discuss the topic with our teenage daughters and

sons who are exploring and vulnerable to learn from the most destructive forces. Where we have our heads in the sand and hope that by the time our head is out we will see the problem no more, we need to remove our heads right now because the problem requires our conscious and active intervention”.

Earlier, when giving a Prayer and Motivational Talk, Pastor Mompoti Maruapula from the Anointed Gate Ministries called for love and support for those affected by HIV and AIDS, “we are all in this together, love them as you would love God” he said. Pastor Maruapula called for frank discussions and empowering people with information so that they can stay free from infection.



The Communications and Advocacy Team - Ms. Kelebogile Ngwenya, Mr. Gideon Nkala and Ms. Gladys Ramadi receiving the 2014 CEO Award of Excellence from Mr. Thula Kaira

Staff Awards

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Mr. Gideon Nkala scooped the Most Supportive and Most Considerate Employee awards. The Most Supportive award was for an individual who was “encouraging, helpful and always willing to assist others, both professionally and personally, had a spirit of caring and sharing and wanted to see others succeed”. The Most Considerate Employee was one who was “accommodating and compassionate, had high tolerance, and sensitive to the feelings of others as well as to their circumstances”.

There was also an award for Interns of the Competition Authority, and Mr. Keoagile Ntshaanana was voted the Most Committed and Dedicated Intern. The award was for an intern that had displayed high levels of commitment and dedication to their work, and exhibited eagerness to learn.

International Anti-Corruption Day 2014

The Competition Authority joined its partner, the Directorate on Corruption and Economic Crime, (DCEC), in commemorating International Anti-Corruption Day, on 9th December. The national commemoration was held in the city of Francistown, and the keynote speaker was the Permanent Secretary to the President, Mr. Carter Morupisi.

Mr. Morupisi told the audience that corruption kills the economy, and the collapse of any national economy will result in dire consequences such as increased levels of unemployment, poverty, soaring crime levels, social inequalities as well as a decline in the quality of life. He said as part of its strategy for combating corruption, the Government of Botswana has reviewed several laws which include the Corruption and Economic Crime Act, the Counter Terrorism Act, the Electronic Evidence Act, as well as the Proceeds and Instruments of Crime Act.

Mr. Morupisi said the Government established the DCEC to fight corruption and economic crime in all its forms, but the mission cannot be achieved by one institution alone. "That is why the DCEC is supported by other institutions such as the Ombudsman, Auditor General, Botswana Unified Revenue Service, Directorate of Intelligence Services, Financial Intelligence Agency, Public Procurement and Asset Disposal Board



Communications and Advocacy Officer Ms. Kelebogile Ngwenya addressing dignitaries who visited the CA stall at the Anti-Corruption Day in Francistown

(PPADB), Botswana Police Services and the Competition Authority" he said.

He further expressed delight that Botswana had once again been rated the least corrupt country in Africa, and among the least corrupt in the world according to the 2014 Transparency International Corruption Perception Index. Botswana ranked 31st out of the 173 countries surveyed.

In her remarks, the Director General of the DCEC Ms. Rose Seretse said any strategy

for attacking the problem of corruption required the commitment and participation of governments, private citizens and private businesses alike.

She said the DCEC will continue playing its role as facilitator and called upon members of the public to report acts of corruption wherever they came across such. Botswana was commemorating the day after ratifying the UN Convention Against Corruption in 2011.

Competition Commission Bids Farewell to Commissioner Tiny Kgatlwane

The Assistant Minister of Trade and Industry Honourable Sadique Kebonang on December 3rd met Members of the Competition Commission at a ceremony to bid farewell to Commissioner Tiny Kgatlwane, and welcome new members to the Commission.

Ms. Kgatlwane, who chaired the Human Resources Committee, was a founding member of the Commission from 2010 to 31st May 2014 when her tenure ended. The Assistant Minister noted that coming from the private sector, Ms. Kgatlwane contributed immensely to adding value in terms of governance and accountability that Government was very much concerned about. "As Government, running of parastatals is expected to be on the same efficiency and effectiveness levels as exist in the private sector... as Government, we wish to thank you Ms. Kgatlwane



Former Commissioner Ms. Tiny Kgatlwane

for the service that you rendered to the country while you served as a member of the Commission for 4 years" he said. Hon. Kebonang expressed confidence that the legacy left by Ms. Kgatlwane at the Commission as well as the Competition Authority shall continue to inspire greater service delivery.

He further welcomed the new Commission Members, Dr. Selinah Peters and Ms. Thembisile Phuthego. Dr. Peters, an academic from the University of Botswana and a consumer protection ad-



Commissioner Ms. Thembisile Phuthego

vocate also heads the Botswana Consumer Centre for Advocacy and Research Orientation (BOCCARO). "The skills you bring on consumer protection are important for us as Government as we plan to re-position the way we have been dealing with consumer protection and house it in the Competition Authority".

Ms. Phuthego is from the private sector with a business management background. "This is equally important for the Commission to ensure that we run our parastat-



Commissioner Dr. Selinah Peters

als as efficiently as possible" Hon. Kebonang said.

The other members of the Commission comprise the Chairperson, Dr. Zein Kebonang, a lawyer, the Vice Chairperson, Mr. Gaylard Kombani, a former Deputy Permanent Secretary in the Ministry of Trade and Industry, Mr. Tendekani Malebeswa a private attorney, Mr. Boniface Mphethe, the Deputy Permanent Secretary in the Ministry of Trade and Industry and Dr. Jay Salkin, an Advisor at the Bank of Botswana.

BCL ACQUISITION OF TATI NICKEL MINING APPROVED

The Competition Authority has unconditionally authorised the acquisition of 85% shareholding interest in Tati Nickel Mining Company (Pty) Ltd by BCL Investments (Pty) Ltd. The implementation of the merger was expected to maintain a total of 1,932 employees at the Tati Nickel Mine.



were based outside Botswana. Similarly, the merger was not expected to affect the copper nickel smelting market as the transaction itself is not expected to affect the market structure in Botswana.

Furthermore, the implementation of the proposed merger was not expected to result in the merged entity attaining a dominant position in the relevant markets in Botswana, as the transaction was expected to only have a competitive effect in the overseas markets, where there were several other significant players across the globe. The Authority was also hopeful that the merged entity would intensify its participation in the growth of SMMEs in Botswana by outsourcing some jobs to, as well as sourcing from SMMEs in the country, and that the Government of Botswana will consider involving citizens in the shareholding of the merged entity.

Stakeholders, including the Botswana Chamber of Mines, the Local Enterprise Authority and Botswana Development Corporation supported the proposed merger with the anticipation that its implementation would lead to increased revenues for Botswana as a result of efficiencies, as well as growth of Small, Medium and Micro Enterprises (SMMEs) due to vertical linkages through the outsourcing of certain jobs.

stantive competition concerns that would arise in both markets for copper nickel mining and concentrating, as well as copper nickel smelting.

It determined that the proposed transaction was not likely to result in substantial lessening of competition due to the fact that both customers and competitors to the merging parties with regards to the mining of copper nickel

Announcing its decision on December 12th, the Authority said the analysis of the facts of the merger showed that there were no sub-

COMPETITION AUTHORITY IN PICTURES

Second Annual Staff Awards



Captions

1. Ms Kelebogile Ngwenya and Ms. Gladys Ramadi - CEO Award of Excellence
2. Ms. Magdeline Gabaraane - Best Overall, Most Professional and Most Influential Employee
3. Mr. Tonny Kolanyane - Most Passionate Employee
4. Mr. Gideon Nkala - CEO Award of Excellence, Most Supportive and Most Considerate Employee
5. Mr. Mooketsi Ntwaagae - Most Trustworthy and Reliable Employee
6. Ms. Rebecca Rabakane - Most Trustworthy and Reliable Employee
7. Mr. Keoagile Ntshaanana - Most Committed and Dedicated Intern

Assistant Minister of Trade Visits the Competition Authority



Captions

1. Assistant Minister addressing CA Staff 2. Assistant Minister receiving a token of appreciation from the CEO 3. Competition Authority Staff during the Minister's visit

World AIDS Day 2014



Captions

1. The Singing Quartet Ms. Kelebogile Ngwenya, Ms. Tapiwa Masie, Ms. Bonyana Ndubiwa, Ms. Katumelo Searobi - Mhutsiwa Thula Kaira, Pastor Mompoti Maruapula 2. Pastor Mpho Odubeng, Mr. 3. Competition Authority Staff during World Aids Day

CA CELEBRATES WORLD COMPETITION DAY



Captions

1. Mr. Dichaba Molobe, Dr. Mokubung Mokubung and Mr. Thula Kaira at the WCD panel discussion
2. Mr. Ernest Bagopi giving a vote of thanks
3. Some CA Staff and Journalists who attended the panel discussion

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