



## COMPETITION AUTHORITY APPROVES WITH CONDITIONS THE ACQUISITION OF KFC FRANCHISES IN BOTSWANA



One of the KFC outlets in Gaborone, Botswana

The Competition Authority has approved with conditions the acquisition of KFC franchises in Botswana by Bradleymore's Holdings (Pty) Ltd. Bradleymore's is a special purpose vehicle that was set up for the proposed transaction and is a joint venture between Vivo Energy Africa Holdings and Baobab Khulisani South Africa. Vivo Energy Botswana is a marketer of various oil products including retail fuels, commercial fuels and lubricants through its network of Shell-branded retail service stations in Botswana. On the other hand, Baobab Khulisani is a South

African KFC franchisee which operates 11 stores in that country.

The acquiring enterprise is acquiring the assets and the business of the target enterprises as a going concern from Nigel Dixon-Warren in his capacity as liquidator. The business of the target enterprise is operated through three wholly owned subsidiaries of VPB Propco (Pty) Ltd, in liquidation. The subsidiaries of the target enterprises which are all in liquidation are QSR Food Company, Boitumelo Dijo, and Greenax which operate 12 KFC franchises in Botswana. Announcing its decision on 7th February 2018, the Authority

said it determined through the analysis of the facts of the merger, that the proposed transaction is not likely to result in the prevention or substantial lessening of competition, or endanger the continuity of the services offered in the market for quick-service or fast food restaurants. Nonetheless, the Authority took cognisance of the commitment by the merging parties in their intention to continue sourcing from local supplies approved by the KFC franchisor YUM. The Authority further took note of the commitment made by Bradleymore's to develop a robust supply chain that would be aimed at ensuring that local suppliers are capacitated to enable them to meet the supply requirements set by YUM i.e., adhering to the franchisor's quality standards.

In this regard, and pursuant to the provisions of section 60 of the Competition Act; the Authority approved the proposed sale of the business and assets of the target enterprises with the conditions that: Bradleymore's shall source a significant portion of their input requirements locally by continuing to source from existing suppliers that were engaged by VPB, provided they are YUM accredited; as well as consider sourcing from any other YUM accredited suppliers based in Botswana

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# PARLIAMENT PASSES COMPETITION AND CONSUMER PROTECTION BILLS

Parliament on 7th December 2017 approved the Competition Bill which seeks to provide for the establishment of the Competition and Consumer Authority by bringing implementation of the Consumer Protection Act under the ambit of the Competition Authority (CA). It also establishes the Competition and Consumer Board as well as the Competition and Consumer Tribunal. Currently the Competition Commission serves as both the governing board of the CA and a tribunal adjudicating competition cases brought to it by the Authority.

Presenting the Bill to Parliament, the Assistant Minister of Investment, Trade and Industry, Mr. Biggie Butale, said the administration of the two laws under a single Competition and Consumer Authority will result in improved coordination of the policies, enhance consumer welfare and effectively address anti-competitive practices.

He said the structural separation of the investigative and adjudicative functions of the Authority is considered an important revision of the Act, which should serve to ensure procedural fairness and enhance public confidence and trust in the organisation.

Several MPs who spoke supported the bill, saying it was overdue as Botswana have long suffered as a result of unfair practices in the business environmen



Assistant Minister Hon. Biggie Butale during a visit to the Competition Authority in 2017

of bringing into effect good pieces of legislation but failing to avail sufficient financial and human resources to ensure their successful implementation.

MP Dithapelo Keorapetse of Selebi-Phikwe West highlighted the need to continue efforts to prevent and stem out corrupt practices, arguing that the violation of competition often comes in the form of corruption.

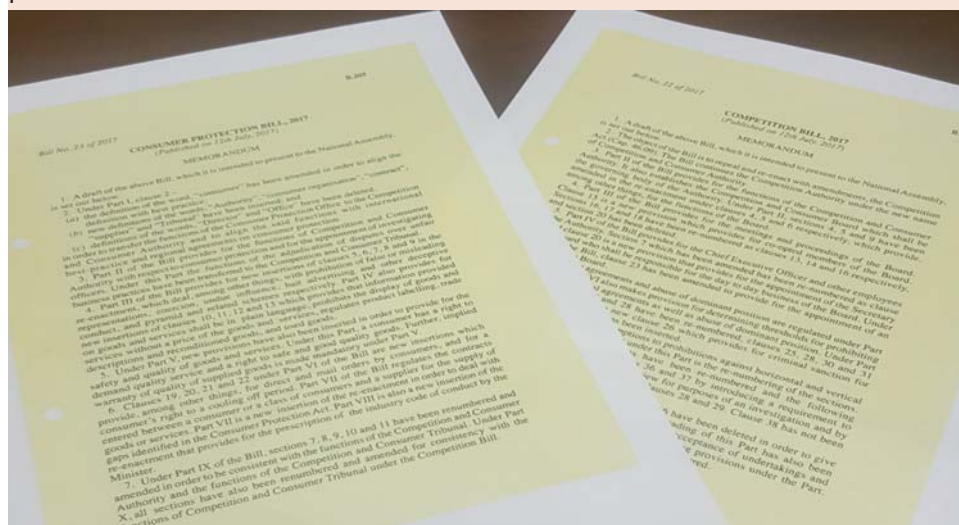
He further said the overarching objective of legislating competition should be about job creation hence the need to protect start-ups against the abusive behav-

Mmatli said the bill should enable small businesses to access the markets. In his contribution to the debate, Okavango MP, Bagalatia Arone, said there is little in terms of legislation to ensure that locals are given a fair deal in some sectors of the economy. He said it is important to enable Botswana, especially marginalised groups such as women and the youth, to start businesses and penetrate the market.

The MP for Nata-Gweta, Mr. Polson Majaga said he was happy that the proposed bill provides for the establishment of the Competition and Consumer Authority that would be responsible for investigating anti-competitive business practices. He said he supports consumer welfare and protection.

Mochudi West MP, Mr. Gilbert Mangole, said he welcomes the bill as it seeks to safeguard the interests of consumers as well as guard against the abuse of market power by dominant business players. The MP said once in place, the Competition and Consumer Authority should create awareness in the business community.

MP Samuel Rantuana of Ramotswa did not support the bill. He said government ought to have first addressed Botswana's concerns that statutory monopolies such as Botswana Power Corporation and Water Utilities Corporation are ripping them off with exorbitant charges. He said the monopoly enjoyed by BPC, WUC and other parastatals need



Gaborone Central MP, Dr. Phenyio Butale, described the bill as a step in the right direction to ensure a competitive environment in which consumers are protected. He however pleaded with government to capacitate the implementation of the bill, saying Botswana has a problem

such as predatory pricing that are often used by big businesses to push the smaller ones out of business. Mr. Keorapetse cited the poultry industry as one sector in which the few big players have pushed ordinary Botswana out in the cold.

Molepolole South MP, Dr. Tlamelo

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who are currently not supplying KFC; and Bradleymore's shall ensure that local suppliers are assisted in penetrating or meeting YUM's standards of accreditation with the aim of sourcing from these suppliers. Furthermore, the Parties shall not re-trench any employees of the target entities as a result of the acquisition for a period of three years from the implementation date. The retrenchments do not include voluntary separation, voluntary early retirement, unreasonable refusal to be deployed in accordance with the provisions of the labour laws of Botswana, resignations or retirements in the ordinary course of business, terminations in the ordinary course of business, and dismissals as a result of misconduct of poor performance. In order to properly monitor compliance with these conditions, Bradleymore's was further directed by the Authority to annually, for a period of three years from the implementation date, submit to the Competition Authority, a detailed report indicating any changes

to its employment records in the country and the reasons thereof; a list of its existing and new locally based suppliers (including the type of inputs they supply) and to within 12 months from implementation date submit to the Authority a copy of the strategy to be employed in building capacity of local suppliers to ensure that they meet YUM accreditation standards. The parties need to demonstrate to the Authority

efforts made in identifying potential suppliers in line with their expansion strategy.

As part of the review process, a public hearing was held on 19th January 2018, at the Competition Authority Office to allow the parties to the transaction, their competitors, any other interested parties and members of the public to make verbal representations to the Authority and express their views on the acquisition.



Representatives of the merging parties Ms. Chabo Peo, Mr. Wayne Kingwill, Mr. Grant Wheatly and the Liquidator Mr. Nigel Dixon-Warren at a public hearing that was held on 19th January 2018

## CA TO HOST COMPETITION CONFERENCE IN SELEBI-PHIKWE

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### Parliament Passes Competition Bill

to be done away with, as that too constitutes unfair business practice. Meanwhile, legislators supported the draft Consumer Protection Bill No. 23 of 2017, which was also presented by Assistant Minister Butale.

The MP for Tlokwen, Mr. Kenneth Segokgo, said the draft Bill is a welcome development as the rights of consumers have been violated for a long time.

Shoshong MP Dikgang Makgalemele said he was delighted that the Bill finally reached Parliament at a time that consumers are exploited by retailers, who sell expired products.

The MP for Mahalapye West, Mr. Joseph Molefhe, called on Consumer Affairs officers to monitor the pricing of goods as some retailers overcharge clients because they do not pass on the South African Rand/Pula exchange rate benefit to consumers.

MP Noah Salakae of Ghanzi North said when coming up with such pieces of legislation, it is crucial to ensure that they take into account the interests of all Batswana, and not only those in urban areas. He further said it is critical to bring all Batswana up to speed with laws meant to protect them, so that they do not continue to be taken advantage of.

Source: BOPA/ DailyNews



The Competition Authority will on 22nd March 2018 host a one day National Competition Conference in Selebi Phikwe at Cresta Bosele Hotel. The objective of the conference is to highlight issues of competition and how competition can assist in making critical socio-economic transformations.

This year, the theme of the conference is *Economic Stimulation: Is Competition the New Hope?*. The theme was chosen to highlight that even when local and global economies face pressures such as unemployment, closure of firms, and other economic realities, a competitive environment is still an

essential requirement.

The conference will take place in Selebi Phikwe, a town that recently saw the closure of the BCL mine leading to massive job losses, and therefore issues of job creation and unemployment are relevant in Selebi-Phikwe. The Authority envisages that when these issues are discussed within the context of a competitive economy, it would bring to light another important dimension to the national discourse.

The conference would draw participants from the business community, local authorities, academia, research institutions, labour unions and other stakeholders.

# Competition Policy Helps Botswana to Achieve the Sustainable Development Goals



Ambassador Dr. Athaliah Molokomme Speaking at the 9th Session of the UNCTAD Trade and Development Commission in Geneva on 28th November 2017

Botswana's Ambassador and Permanent Representative to the Botswana Mission to the United Nations Office in Geneva, Dr. Athaliah Molokomme, says experience by most countries including Africa, has shown that Competition Policy and Law have numerous economic benefits which are essential for driving socio-economic development goals.

She says 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.

Dr. Molokomme was speaking at a panel discussion on the Role of Trade as a Catalyst for Accomplishing the 2030 Agenda for Sustainable Development at the 9th Session of the UNCTAD Trade and Development Commission in Geneva, Switzerland on 28th November 2017.

Further, she said 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 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," Dr. Molokomme said.

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, the Ambassador observed.

"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" she said.

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, she said.

The Panel was informed that 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, Dr. Molokome said.

Access the full speech on: <http://www.competitionauthority.co.bw/competition-policy-and-sustainable-development-goals-unctad-session-2017-dr-athalia-molokomme>



## Goitseone Modungwa



Ms. Goitseone Modungwa - Analyst, Department of Investigations and Research Analysis

**BCB:** Tell us about yourself!

**Goitseone:** I am a young lady from Mahalapye, a wife and a mother of three wonderful sons. I joined the Competition Authority in January 2012 as an Investigations and Research Analyst, the position I still hold. I have over 12 years of work experience spanning across research, investigation, marketing and business development. With regards to my academic qualifications, I hold a Bachelor's Degree in Business Administration (Marketing) and Postgraduate Diploma in Economics for Competition Law.

**BCB:** Why did you apply for a position at the CA?

**Goitseone:** Honestly speaking, I just saw an advertisement for positions in a new parastatal in Gaborone and I applied. At that time, what was important to me was relocating from Ghanzi to Gaborone. Fortunately, I landed the job.

**BCB:** What are your duties and responsibilities at the CA?

**Goitseone:** My two key responsibilities are conducting investigations for the complaints lodged or initiated by the Authority, as well as carrying out market studies and sectoral research with the objective of identifying prevailing anti-competitive conduct or any loopholes that may induce anti-competitive behaviour.

**BCB:** What did you do before joining the CA?

**Goitseone:** Prior to joining CA I worked for the Local Enterprise Authority (LEA) for four years as a Market Analyst. My key responsibility was to assist Small, Micro and Medium Businesses (SMMEs) to access the market and sell their products by identifying opportunities, devising targeted marketing strategies and business plans.

**BCB:** What are your experiences at the Authority so far?

**Goitseone:** My experience with the CA has been so rich and rewarding. I have really learnt a lot, considering that when I joined CA I didn't know a thing about Competition Law as it was a relatively new field in our country. I had to learn a lot within a short period of time and it was so demanding. But the support I received from the CA in the form of training, mentorship and most importantly, the support from my team, has made my journey in the CA quite an enjoyable one so far. I am so grateful!

**BCB:** What is the best thing that has happened to you at the CA?

**Goitseone:** CA has opened my eyes to so many things. But the one experience that was life changing for me was the knowledge I acquired through Investment in Excellence training. It challenged the way I viewed life, dared me to unlock my innate potential and opened my eyes to the endless opportunities surrounding me. I will forever treasure the experience gained; and not forgetting the knowledge acquired through technical trainings or forums where I had an opportunity to

learn from competition experts.

**BCB:** What do you find most challenging about the CA?

**Goitseone:** In my Department of Investigations and Research Analysis there is never a dull moment. It is either we are busy with research or investigating allegations of anti-competitive conduct. My main challenge is striking a balance between the two responsibilities that are the core business of our department. For the past five years, every year we find ourselves faced with a challenge of halting investigations to travel around the country collecting data for research, knowing very well that the investigations have to be completed within the statutory timeline. Limited resources, juggling research and investigations are the main challenges I face in our department.

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

**Goitseone:** I will carry with me so many beautiful memories from the CA but the fondest memories will always be the out of this world fun we usually have during staff retreats. The CA family is full of fun loving people. They work hard and play hard!

**BCB:** Where do you see yourself five years from now?

**Goitseone:** My aspiration is to serve mankind and my beautiful country in an environment that is dynamic and challenging, wherever I can utilise my skills and acquired knowledge, both technically and socially would be ideal.

**BCB:** Is there any wisdom you wish to share?

**Goitseone:** I believe we were created to serve each other. I also believe that identifying that act of service that gives each one of us the highest level of happiness is the greatest discovery every one of us can make in life. Service, thus, must be our constant pursuit because through it we gain a profound sense of achievement and a higher level of happiness that no amount of money can buy.

# COMPETITION AUTHORITY IN PICTURES



The Group Managing Director of Sefalana Group Mr. Chandra Chauhan at the KFC public hearing that was held on 19th January 2018



Mr. Grant Wheatly and the Liquidator Mr. Nigel-Dixon Warren at the KFC public hearing on 19th January 2018



The UNCTAD Peer Review Team. From L to R: Elizabeth Gachuri, Allan Mulla, Ebru Gokce, with CA's Magdeline Gabaraane at the CA offices in November 2017



Members of the public, journalists and CA staff at the KFC public hearing on 19th January 2018

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