



## Competition Commission Sets Date for the Sugar Beans Case

The case in which the Competition Authority has taken Creative Business Solutions and the Rabbit Group before the Competition Commission on charges of collusion and price-fixing has been set for 30th March 2015 for arguments.

The parties reached an agreement on the dates when they briefly appeared before the Competition Commission on 13th March 2015. The parties had come before the Competition Commission to discuss ways in which they could progress the matter. While the parties (the complainant and the respondents) agreed on the date of the hearing, they were however unable to agree on other issues such as the confirmation of the pre-hearing minutes and even on the general approach of the hearing.

The attorney for the second defendant (Rabbit Group) Mr. Mboki Chilisa, had intimated during the deliberations that



Attorneys Mboki Chilisa (L) and Otto Itumeleng (R) at the Pre-Hearing of the Sugar Beans Case on 13th March

the complaint before the Commission was not cognizable by reason of the fact that it has prescribed as it was not referred to the Commission within 12 months from the date of commencement of investigations. However, Attorney Abel Modimo, representing the Competition Authority, argued that the respondents had already taken this point in limine and as an afterthought were now calling it a special plea, in which case it would not be permissible for them to call oral evidence without leave of the Commission as issues in contention are set out in affidavits. The Commission Chairperson, Dr Zein Kebonang, who was presiding, weighed in to quell the heated discussion and said the Commission would take a permissive view and allow all issues, however formulated to be argued on the actual day of the hearing.

According to particulars of the case, the two companies were investigated for the

rigging of a 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 at a P114 million price tag.

Creative Business Solutions was awarded tenders for Palapye, Selebi Phikwe, Francistown and Maun while the Rabbit Group was awarded tenders for Lobatse, Gaborone and Mahalapye. The Competition Authority submitted in its papers that based on the evidence that it has collected, it is clear that the two companies divided the market amongst themselves and colluded by systematically sharing pricing information.

In the matter, the first respondent, Creative Business Solutions, is represented by Attorney Otto Itumeleng. The second respondent, Rabbit Group is represented by Attorney Mboki Chilisa while Attorney Abel Modimo represents the complainant, Competition Authority.

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Staff of the CA and CompCom at the CA offices in Gaborone on 13th March

# Botswana and South African Agencies Enhance Competition Cooperation

**T**he Competition Authority (CA) on 13th March 2015 hosted staff from the Competition Commission of South Africa, (CompCom). Through such visits, the two competition agencies aim to build rapport amongst staff and enhance cooperation in areas such as information sharing.

CA and Compcom staff held a workshop at the CA offices in which they shared information on various competition issues including post-merger impact assessment, cartel investigations, evidence-gathering techniques, as well as sharing ex-

periences on major cases they have handled.

Welcoming the visitors, the CEO of the Competition Authority Mr. Thula Kaira said as the most developed competition agency in the region, which has won an award as the best in Africa, the Competition Commission of South Africa is looked upon to engage other competition bodies and share expertise in various ways such as benchmarking attachments.

In his remarks, the Head of the Cartels Division Mr. Makgale Mohlala concurred that cooperation of competition agencies is essential

as their investigations can spill across borders. He said they have investigated some cartels in South Africa which might have migrated to Botswana, and if the two countries shared information it would be easier to catch the crooks, “the real thing we need to do is to share information and operationalise cooperation on investigations such as cartels, mergers and abuse of dominance” Mohlala said.

The visit of the CompCom staff to Gaborone followed a similar relationship-building visit to Pretoria by the CA staff in April 2014.

# CA ENGAGES MERGING PARTIES TO IMPROVE THE MERGER NOTIFICATION PROCESS

The Competition Authority on 11th February 2015 met with representatives of merging parties to brief them on the merger notification, merger assessment and merger determination processes as well as to receive feedback from them on their experiences and expectations, with the aim of improving the merger notification filing process.

Welcoming the participants to the meeting, the Director of Mergers and Monopolies, Ms. Magdeline Gabaraane, indicated that the consultation was very important as it would positively impact on the time taken to assess mergers by the Authority.

She further indicated that following the consultative meeting, it was expected that there would be improved working relations between the Authority and representatives of merging parties, which will in turn improve the merger assessment process to the benefit of both parties.

Briefing the participants, the Manager for Mergers and Monopolies, Mr. Innocent Molalapata, discussed factors which contribute to delays in the assessment and determination of mergers.

He said these include the submission of unaudited financial statements, failing to provide the required information, giving incorrect or misleading information and failure to provide the most recent version of all documents constituting the merger agreement.

Mr. Molalapata further informed the participants that the Authority may revoke its decision on any merger if it was discovered that the decision was based on materially incorrect or misleading information, or if any condition attached to the implementation of the merger is not complied with.

For their part, some representatives of the merging parties expressed concern with requests by the Authority for clarification or more information

near the expiry of the 30 day merger review window. They said this causes delays as it necessitates extensions, and suggested that requests for information or clarity should be made as soon as documents are filed with the Authority.

Some called for a review of the P10 million threshold for merger notification, indicating that it is too low, as well as for the review of the Competition Act. Participants were informed that the Authority was actively discussing the issue of thresholds looking at what prevails in the market, and that some proposed amendments to the Act had already been tabled and are with the Attorney Generals Chambers.

Ms. Gabaraane thanked the participants who included representatives from various law firms for attending the consultative meeting and assured them that their feedback was taken seriously, and that their concerns would be addressed.



Some representatives of merging parties at the CA meeting on 11th February



Participants at a Youth Entrepreneurs Workshop in Ghanzi on 26th January

# YOUTH ENTREPRENEURS ALERTED ON THE DANGERS OF BID-RIGGING

The Competition Authority has cautioned youth entrepreneurs about the dangers posed by bid-rigging to the country's economy. At least 30 young entrepreneurs who are beneficiaries of the Youth Development Fund were trained on what bid-rigging was, and how to detect it, at a workshop organised by the Ministry of Youth, Sports and Culture in Ghanzi on 26th January. Under this fund, young people are given allocated funds by the Government to start up their own businesses.

In her presentation at the workshop, the Manager for Legal and Enforcement at the Competition Authority Ms. Tapiwa Masie explained what cartels were and the anti-competitive behaviours that they could engage in such as price fixing, bid-rigging and allocation of geographic or product markets.

She said detecting cartels and taking action against their members is one of the Competition Authority's top enforcement priorities under the competition law. However, as cartels often operate secretly, the Authority may have to rely on information provided by others, notably the buyers of the goods or services in its effort to stamp out cartels.

Ms. Masie said this means that members of the business community and the public have a particularly important role to play in the detection of cartels, and reporting any suspicious activities to the Authority.

The young entrepreneurs were informed about signs of possible cartel activity which include suppliers raising prices by the same amount and at around the same time; offering the same discounts or charging identical or very similar prices. Furthermore,

cartels can occur in almost any industry and can involve goods and services at the manufacturing, distribution or retail levels.

The participants were also briefed on the merger assessment process undertaken by the Authority in order to prevent mergers that would substantially lessen competition in the market.

The Manager for Mergers and Monopolies, Mr. Innocent Molalapata, explained that the merger assessment process is a time-sensitive and highly interactive process

He said sound decisions depend on reliable and accurate information, as well as the cooperation of stakeholders and the merging parties. He said if a merger decision is made on materially incorrect or misleading information from the merging parties, the Authority may revoke the merger.

# Competition Authority Hosts Fourth National Competition Conference

The Competition Authority will hold the Fourth Annual National Competition Conference at the Gaborone International Convention Centre (GICC) on Thursday 26th March, 2015. The conference will be held under the theme; "Competition and the Supply Chain". The conference will be officially opened by the Minister of Trade and Industry, Honourable Vincent T. Seretse, and the keynote address will be delivered by Ms. Regina Sikalesele-Vaka, the Chief Executive Officer of Bramer Life Insurance.

The purpose of the conference is to create a platform for

the Competition Authority and the Competition Commission to engage with key stakeholders. It will draw participants from business, tourism, agriculture, labour, non-governmental organisations, civil society, government, academia and participants from the political sphere. The conference will deliberate on the impact of the interventions that have been made by the Competition Authority and the Competition Commission on the country's economy.

This year's conference will be structured in three panel discussions. The first panel discussion will feature Bo-

tswana's retail giants such as Sefalana, Choppies, Spar and Woolworths; and their representatives will discuss the supply chain and the state of competition in the retail industry. The second panel discussion will see producers such as the Millers Association of Botswana, Botswana Exporters and Manufacturing Association, and the Consumer Watchdog critique the supply chain in the Botswana market.

There would be no supply chain to talk of without considering public procurement. Government and public funded bodies handle tenders worth billions of pula annually and

these are accessed through long and often complex supply chain networks. To understand competition in this critical area, the Public Procurement and Asset Disposal Board, (PPADB) Botswana Confederation of Commerce, Industry and Manpower, (BOCCIM) and the Competition Authority, would each help to unpack how public procurement adds value to the supply chain and facilitates competition.

Based on the deliberations, the conference will adopt resolutions to further promote fair competition in Botswana's economy, and enhance a culture of competition.

## Group Five Construction Company Faces Penalty for Collusion

The Competition Commission of South Africa on 17th March referred a case of collusive tendering against Group Five Limited to the Competition Tribunal.

The collusive tendering was between Group Five and WBHO Construction (Pty) Ltd as well as with Concor Limited, a subsidiary of Murray and Roberts Limited, in respect of the rehabilitation of National Route 5, a road between Senekal and Vaalpenspruit in the Free State.

Group Five had bilateral collusive agreements with WBHO and Concor in terms of which Group Five would submit a bid price lower than those submitted by WBHO and Concor in order to ensure that Group Five won the tender.

The Commission's investigation found that there was sufficient evidence that Group Five colluded with WBHO and Concor in respect of the Senekal project.

The Commission has requested the Competition Tribunal to impose a maximum penalty of 10% of Group Five's annual turnover in respect of the contravention.



An extensive investigation by the Competition Commission had uncovered widespread collusion in South Africa's construction industry.

Many companies entered into settle-

ment agreements with the commission as a result. Others denied collusion and were referred to the competition tribunal for adjudication.

Sources: Competition Commission South Africa; Sapa

# COMPETITION AUTHORITY IN PICTURES

## Botswana and South Africa Enhance Competition Cooperation



### Captions

1 & 2. Participants at a workshop during the visit by CompCom staff to the CA in Gaborone, Botswana 3 & 4. Some of the CompCom staff who made presentations at the workshop



# Kaira's Boys Wallop CompCom FC Again!

The Competition Authority soccer team, Kaira's Boys, once again proved their mettle when they beat the Competition Commission of South Africa Football team 3-2 during their friendly encounter in Gaborone on March 14th.

In the Pretoria leg last year, CompCom went down 4-2 to Kaira's Boys in a penalty shootout. In fair competition, the men are separated from the boys!

## Captions

1. Kaira's Boys 2. CompCom FC

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