

# BOTSWANA COMPETITION AUTHORITY

# COMPETITION BULLETIN

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## CA DETERMINES THAT SOME PROVISIONS OF THE ARCHITECTS REGISTRATION ACT RESTRICT COMPETITION



Some industry stakeholders at a consultative meeting on 27th June 2018 where the CA shared its competition assessment report on the BIACT complaint against some provisions of the Architects Registration Act



Director of Communications and Advocacy, Mr. Gideon Nkala, presenting the competition assessment report to industry stakeholders on 27th June 2018

The Competition Authority has determined that some provisions of the amended Architects Registration Act of 2014 restrict competition and should be amended to develop a less restrictive law which would still achieve the desired objective of protecting the market and the consumers, as well as achieving globally acceptable standards without removing effective competition. The Authority came to this conclusion after a competition assessment of the Act following a complaint lodged by the Botswana Institute of Architectural and

Construction Technologists (BIACT) in 2016.

The Director of Communications and Advocacy, Mr. Gideon Nkala, presented the competition assessment report to industry stakeholders at a consultative meeting that was held at Avani Hotel in Gaborone on 27th June 2018.

Nkala told the participants that the Authority addresses alleged anti-competitive conduct through two main avenues being investigations under section 5(2)k of the Competition Act and through advocacy. Under section 5(2)e, the

Authority is mandated to "advise government on the actual or likely anti-competitive effects of current or proposed policies or legislation and where appropriate how to avoid those effects."

He said when laws and regulations unduly restrict competition in the market place, competition agencies seek to reduce the restrictions by subjecting laws to competition assessment to identify unnecessary restrictions. This assessment can be used to help draft new laws, assess and evaluate existing laws, and evaluate

To Page 2

### IN THIS ISSUE

Competition Assessment of the Architects Registration Act Page 1

Banner Group Makes an Undertaking to the Competition Authority Page 2

South Africa and e-Swatini Competition Agencies Sign MoU Page 5



the impact of regulation on competition.

Nkala said competition assessment follows a standard process as outlined in the Organisation for Economic Cooperation and Development (OECD) Toolkit which interrogates whether a law, policy or regulation; limits the number or range of suppliers, limits the ability of suppliers to compete, reduces the incentive of suppliers to compete, or limits the choices and information available to consumers.

The complainant, BIACT, has more than 200 members representing technologists, draftspersons, interior designers and others. It was formed in 2015 to maintain high professional standards and protect the public against unprofessional conduct. In its complaint, it maintained that section 23 of the amended Architects Registration Act leaves out other professions, section 48A on sign-off causes delays and channels work to architects, and that the provision on work restrictions brings unnecessary restrictions on the practice of architecture. Under the amended Act, all architectural work exceeding 25 M<sup>2</sup> of ground floor area is reserved for architects, work under 250 M<sup>2</sup> of ground floor area is reserved for architectural technologists while architectural work under 150 M<sup>2</sup> is reserved for architectural draftspersons.

Further, under the new Act, drawings are to be counter signed by an architect then submitted to Councils for validation. In the past, there were no thresholds. Architects, technologists and draftspersons

used to compete in the same wider market, with individuals and companies creating market niches for themselves, and consumers had a wider choice.

The Architects Registration Council (ARC) is a body that regulates activities of architects in Botswana. All architects, technologists and draftspersons must register with ARC to get a practicing license. It was established by the ARC Act of 2008 and the Amendment Act of 2014. The ARC, in its response, maintains that it does not see anything wrong with qualification criteria on section 23, that section 48A on sign-off is a quality assurance mechanism. It further submits that section 48 restrictions are commensurate with training and meant to protect the public.

Stakeholders were informed that to effectively address the complaint through the advocacy route, the Competition Authority held meetings with BIACT, ARC and the Ministry of Infrastructure and Housing Development, engaged BIACT and ARC through telephone interviews and questionnaires, engaged consumers of architectural services including companies and individuals, engaged Local Government Councils who validate drawings done by the architectural professionals under the Buildings Control Act, interviewed some draftspersons, technologists and architects, interviewed local colleges and universities offering architectural programmes, conducted a literature review and research on the practice

and compared similar complaints in other jurisdictions. It also analysed the BIACT complaint based on the OECD Competition Assessment Toolkit. In its assessment, the Competition Authority determined that in the new dispensation, the extra layers of quality assurance make the service more expensive, and much longer to access as consumers pay for validation by architects, and then pay for Council validations. Further, the provision would lead to excessive pricing of architectural services and is an incentive to collusion between service providers.

On the matter of the new thresholds, the Authority determined that the provision creates market allocations, confers market power on architects, reduces choice in the architectural services market, encourages collusion, creates barriers to entry in certain segments, and could remove effective competition.

In its recommendation, the Authority says the law should not restrict what consumers ought to do, but should provide information disclosures about the various architectural services, qualifications, training and allow the consumers to choose. It says the rigorous accreditation done by the ARC coupled with proper validation done by local Councils should be enough assurance to protect the architectural market. "These interventions would address quality issues and would allow consumers choice and bring vibrant competition in the market", the Authority maintains.

# TRIDENT BANNER GROUP MAKES AN UNDERTAKING TO THE COMPETITION AUTHORITY



A sample promotional pamphlet in which Trident Banner Group Members are advised to indicate that the prices therein are "Recommended Prices"



A sample promotional pamphlet in which Trident Banner Group Members are advised to indicate that the prices therein are "Recommended Prices"

In July 2017, the Competition Authority queried the Banner Group model operated by Trident Holdings (Trident) following a competitive analysis of the Wholesale and Retail sector in Botswana that the Authority conducted in 2013. After assessing the Wholesale and Retail sectors in Botswana, the Authority was of the view that retail price maintenance agreements, were common place in these sectors. Retail price maintenance is an agreement between a wholesaler and a retailer not to sell a commodity or product below a specified price. The Authority carried out a number of competition analyses, one of which involved Trident Wholesalers.

Trident acts as a wholesaler of grocery products and general merchandise to independent retailers throughout Botswana. It operates banner groups under the trade brand names Big 11, Fair Price and Saverite, in which the banner group members participate on a voluntary basis in monthly promotional activities undertaken under each banner group.

In addition to the extensive trade and retail support that Trident offers to about 500 independent retailers in its banner group member base, it has been able to offer highly competitive prices to local retailers throughout Botswana by means of group purchasing power and supply chain management. An important tool of the banner group model involves the use of monthly promotions in which Trident

and the banner group members jointly advertise promotional products in promotional pamphlets produced by Trident at a nominal cost to the members.

The Competition Authority was concerned that through the use of the aforesaid pamphlets, Trident had engaged in anti-competitive conduct in the form of resale price maintenance in contravention of section 26(1) of the Competition Act (CAP 46:09).

After extensive engagement with Trident and further assessment of the complaint, the Authority concluded that whilst the Trident Banner Group model does not strictly comply with the provisions of section 26(1) of the Competition Act, it serves a useful purpose to support the growth of local small independent retailers so that they are able to compete with large corporate retailers. The Authority further recognised that "without the support from Trident, the Banner Group Members would perish because they face competition from retailers from other banner groups."

Accordingly, the Authority has directed Trident to undertake remedial steps in relation to future conduct to ensure strict compliance with the Competition Act. These measures include Trident's undertaking to:

- Increase the awareness of Banner Group Members in relation to their rights and obligations under the banner group arrangement leveraging the

monthly members meetings and annual satisfaction survey, and through regular training on competition law;

- Ensure that printed promotional pamphlets for Banner Group Members bear the words "recommended prices" on every page of the pamphlet;

- Provide clear written communication to every existing and new Banner

Member of the flexibility to sell products at any other price besides the minimum recommended price;

- Ensure that there is no perceived or actual threat of expulsion from the Banner Group, or termination of the agreement where a Banner Group Member chooses to sell at any price other than the recommended price;

- Introduce regular and increased levels of communication to both Banner Group Members and customers, informing them of the Trident banner group promotions of select products/commodities at recommended discounted prices; and

- Formalise Banner Group Member engagement through a structured programme including, but not limited to initiatives that provide training, merchandising, marketing and store support.

In agreeing with these and other related remedial actions, the Competition Authority noted that Trident's intention "was always to keep the general dealers afloat amid competition from the chain stores."

Commenting on behalf of Trident, Mr. Brian Leroni said "We are happy with the outcome of this constructive engagement with the Competition Authority which has resulted in an agreement that is in the best interests of both independent retailers and consumers."

For her part, the Chief Executive Officer of the Competition Authority, Ms. Tebelelo Pule, lauded the constructive outcome as the best way to restore competition in a sector that serves the vast majority of the rural and marginalised population of the country.

# SPEDU HOSTS ALL-MITI PARASTATALS GAMES



The Chairman of the SPEDU Board of Directors, Mr. Tlhotalheletso Yane, giving a vote of thanks at the ALL-MITI Parastatals Games in Selebi-Phikwe on 2nd June 2018

Selebi-Phikwe District Commissioner, Mr. Patson Dibotelo, has thanked parastatals under the Ministry of Investment, Trade and industry (MITI) for hosting their fourth annual games in the town. Welcoming participants to the 2018 ALL-MITI Parastatals Games in Selebi-Phikwe on 2nd June, he said bringing the games to the town supports revitalisation of the region's economy. The theme for this year's games, which were held at Kopano Primary School, was: "Keeping SPEDU Region Alive".

Mr. Dibotelo said since the closure of the mine in 2016, the Ministry has convinced Government to hold meetings and conferences in the SPEDU Region. "This initiative has benefitted both the informal and formal sectors as it has contributed to cash inflow of businesses into the Region. We therefore request that this initiative continues to be implemented in our region".

Dibotelo said Selebi-Phikwe Town leadership and the community enjoys very cordial relationships with the Ministry through engagement with SPEDU. He said in 2017, the Council signed a MoU with SPEDU that is aimed at investment promotion and ease of doing business within the planning area. The Council has given SPEDU land banks for agriculture, industry and tourism within the town to administer and award to investors. "I also like to thank your Ministry for declaring our region as a special economic zone and gazetting the attractive incentives for investors settling in the region",

said Dibotelo.

When giving the keynote address, the Town Clerk, Mr. Godimo Garegope, applauded the parastatals for participating in a sporting activity whose objectives are to promote team work, wellness and networking among the Ministry's parastatals.

He said while the participating parastatals serve different mandates under the Ministry, it is an opportunity to strengthen relationships and continue to identify areas of collaboration as well as branding and to create awareness about their work.

"I heard the Minister of Investment Trade and Industry at the recently held leadership retreat where she emphasised the imperative of a One-Team Ministry approach in which all Departments and Parastatals have to collaborate, cooper-

ate and share ideals of developing this country. I realise that the One-Team Ministry Approach starts here through sporting activities", Garegope said.

When giving a vote of thanks, the Chairman of the SPEDU Board of Directors, Mr. Tlhotalheletso Yane, thanked all the parastatals who participated in the games and the Organising Committee which was made up of all the parastatals, for keeping SPEDU Region alive. He also recognised the SPEDU CEO and Staff for hosting these games. "The SPEDU Team has proved that such an event can be hosted even under limited resources due to proper planning" Yane said.

The Botswana Bureau of Standards emerged as the overall winner of the Games, followed by CEDA in second place, while CIPA and the Gambling Authority share position three.



Selebi-Phikwe Town Clerk, Mr. Godimo Garegope, giving a keynote address at the 2018 ALL-MITI Parastatals Games

# SOUTH AFRICA AND eSWATINI COMPETITION AUTHORITIES JOIN FORCES TO STRENGTHEN ENFORCEMENT



South African Competition Commissioner Mr. Tembinkosi Bonakele, and eSwatini Competition Commission CEO Ms. Thabisile Langa, at the MoU signing ceremony on 26th June 2018

The Competition Commission of South Africa and eSwatini Competition Commission have signed a memorandum of understanding (MoU) to solidify relations and cooperation on competition policy enforcement.

The signing ceremony took place in Manzini, eSwatini on 26th June 2018. The MoU forms part of multilateral competition initiatives, with particular attention to the fight against international hard core cartels.

Speaking at the signing cer-

emony, Commissioner Tembinkosi Bonakele said "Competition regulation is not the only instrument to drive economic inclusion and change. Other interventions such as industrialisation, infrastructure and investment are equally important to achieve higher levels of growth and competitiveness".

"The MoU we sign today provides us with the opportunity to strengthen our bilateral cooperation on cross-border mergers and cartel enforcement. Both parties recognise the cross-border na-

ture of business between the two countries and indeed, in the neighbourhood.

"As chair of African Competition Forum (ACF) and the SADC Competition and Consumer Law and Consumer Policy Committee (CCPOLC), we appreciate the crucial role and contribution of eSwatini in the development of a competition law and policy regime for the region. Our common interests are better served if we continue to emphasise the 'developing country perspective' on competition issues at regional and international multilateral

platforms", he said.

South Africa has signed similar agreements with other African competition authorities including the Fair Trading Commission of the Republic of Seychelles, Namibian Competition Commission, Competition Authority of Kenya, and Competition Commission of Mauritius. The Commission has also signed an agreement with SADC cooperation in the field of competition policy and law enforcement.

Source: Competition Commission - South Africa

## Ernest Bagopi



The Manager for Investigations and Research Analysis -  
Mr. Ernest Bagopi

**BCB:** Tell us about yourself!

**Ernest:** I am a Chartered Marketer (CMSA) by Profession and a Competition Law Practitioner. I have ample work experience in both the private and public sector with an accumulation work experience of over 15 years.

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

**Ernest:** I like challenge and I saw one at CA. Competition Law is a new phenomenon and with my wealth of experience I thought I could bring my knowledge and also learn much from this law how businesses could benefit from an environment where all have an opportunity to contribute. My work experience has afforded me the opportunity to assess how a lot of businesses operate, that is, big and small. Perceptions have been that some business strategies out there may have been employed solely to suffocate

competition by those involved.

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

**Ernest:** Investigations of anti-competitive business strategies or behaviours and implementation of remedial actions. I also carry out research or market inquiries on various sectors of the economy in order to understand the market structure, level of market concentration and if there's any indication of possible anti-competitive behaviour that may need an investigation, or advocacy.

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

**Ernest:** I have worked at Delta Dairies (Pty) Ltd and at Botswana Vaccine Institute as Head of Sales and Marketing. Before then I was Assistant General Manager Marketing at Botswana Meat Commission. I have also worked at Senn Foods as Sales and Marketing Manager. I have had a stint at AON Botswana as an Insurance Broker.

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

**Ernest:** I have experienced a lot in terms of the process of investigation of businesses, professionalism and work ethics, importance of inter-regional cooperation, and the importance of continu

ous skills development.

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

**Ernest:** I have seen some impact in some corners of the economy as result of our interventions in various business cycles.

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

**Ernest:** My job is a challenge on a daily basis. I'm always dealing with new and complex challenges that keep me on my toes all the time.

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

**Ernest:** There is no one special moment, but I will always have memories of my team at Investigations and Research. They are such a wonderful bunch of people who get motivated by challenge. They master team work, and I have learnt a lot from them.

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

**Ernest:** I can't predict the future but I hope that I will still be alive!

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

**Ernest:** Respect, patience and humility will take you places.



Mr. Bagopi addressing a stakeholder meeting on 27th June 2018

# PICTORIAL



CA's Modimoosi Matebesu briefing a visitor to the CA stall at the Business Botswana Northern Trade Fair in Francistown on 25th May 2018



Some students who visited the CA stall at the Business Botswana Northern Trade Fair which was held in Francistown on May 23rd to 27th 2018



The CA donated some certificates and foodstuffs to Lapologang Primary School in Selebi-Phikwe for their prize giving ceremony on 17th May 2018



CA's Powell Kebinaefhe won the first prize for 100 metres at the 2018 All-MITI Parastatals Games in Selebi-Phikwe on 2nd June 2018

## Editorial Team

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