



CA INTERVENES TO REMOVE ANTI-COMPETITIVE CONDUCT IN THE MARKET

The Competition Authority has intervened to remove anti-competitive conduct in the Botswana market including refusal to deal and barrier to entry in several cases involving the supply of fly ash, sugar, explosives and physiotherapy equipment. In one case the CA, during the course of the Cement Market Inquiry, discovered an exclusive agreement between Botswana Power Corporation through Morupule Power Station, and one cement player PPC Botswana.

From the market enquiry which was under the auspices of the African Competition Forum, the Authority found out that the fly ash at Morupule Power Station was given on a contractual basis making it difficult for other cement players to source it.

Fly ash is one of the residues generated by coal combustion and is used in the



Fly ash

cement industry as an additive in the cement manufacturing process.

The Authority established that the agreement between Morupule Power Station and PPC Botswana was exclusive and anti-competitive in nature, as it created a barrier to access raw material (essential input). The duration of the agreement was over a period of 10 years renewable every five years wherein PPC Botswana was the sole beneficiary of the fly ash while other players were forced to find alternate sources.

Following the CA's intervention the agreement was terminated hence lifting barriers to the access of fly ash by other players. The agreement had been made before the advent of the Competition Act and continued even after enactment of the Act.

In another case, two enterprises en-



gaged in the supply of explosives were alleged to have entered into an exclusive distributorship agreement in which they allocated the market of mining operations amongst themselves. The

parties agreed to remove the barrier to entry clauses which limited new entrants and facilitated market allocation after the Authority's intervention. The two parties involved agreed to remove the anti-competitive clauses and revise the agreement. An undertaking was made by the parties not to re-insert the clauses identified as potentially anti-competitive, either in the current or future distributorship agreements with any of the respondents' distributors.

In yet another case, an anonymous person contacted the Authority having observed that two wholesalers, Trans Africa (Pty)

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SUN INTERNATIONAL SOUTH AFRICA AND PEERMONT ACQUISITION CONDITIONALLY APPROVED

The Competition Authority has approved with conditions the proposed acquisition of 100% interest in the issued share capital of Maxshell 114 Investments (Pty) Ltd (PeerMont Group) by Sun International South Africa (Pty) Ltd. In its decision on 30th July 2015, the Authority conditionally authorised the transaction in the markets for 3-4 star grading short-term accommodation and hotel facilities; as well as casino gaming in Botswana, with respect to the acquisition of Maxshell 114 Investments (Pty) Ltd by Sun International South Africa (Pty) Ltd.

The CA determined that although there are competition concerns that will arise in the 3-4 star grading short-term accommodation and hotel facilities market, they are less likely to result in substantial lessening of competition, as the market under consideration is highly contested. Further, no significant negative effect on public interest in Botswana has been identified, in relation to the provisions of section 59 (2) of the Competition Act.

Pursuant to the provisions of section 55 of the Act, the Authority approved the merger with the following undertakings that: (i) Sun International will, with immediate effect, remove its appointed director from the board of directors of Sun International Bo-



tswana (SIB) and will undertake all such steps as are necessary to remove any contractual right that it has to appoint such a director.

Furthermore, Sun International will within six months of the date of implementation of the transaction, procure that the Operating Management Agreement in relation to the SIB casinos is amended to reflect that; (i) Minor Hotel Group or any of its affiliates shall be solely responsible for determining all matters of any strategic importance in relation to the function, operation and marketing of the SIB casinos including in relation to price setting, promotions, giveaways and service standards; (ii) Sun International shall not be called upon to provide any input into any such matter and it shall at all times refrain from providing any such input; and (ii) Sun International will merely conduct the day to day operation of these casinos attending only to mat-

ters of no strategic or competitive importance or relevance.

Sun International was also directed by the CA to ensure that with immediate effect; none of its employees providing services within the operations of the SIB casinos will in any manner or capacity simultaneously be employed within the operations of any PeerMont casino within Botswana (and vice versa); and that all employees within the SIB casinos and PeerMont casinos in Botswana are subject to appropriate non-disclosure undertakings.

Given the undertakings, Sun international is expected to provide the Competition Authority with an annual and detailed report on execution of these undertakings, until such a time to be determined by the Authority. The report is to be compiled by an Independent Consultant approved by the Authority, and Sun International South Africa will bear the costs of engaging the consultant.

Sun International South Africa will now acquire ownership and control over the Grand Palm Hotel Casino Convention Resort Gaborone (PeerMont Walmart, PeerMont Metcourt Inn and the Casino), the PeerMont Mondior Hotel Gaborone, PeerMont Metcourt Inn Francistown and Sedi-beng Casino Francistown.

Competition Commission Reserves Ruling on Infant Milk Formula Case

On the 2nd July 2015 the Competition Commission (Tribunal) sat to hear the matter between the Competition Authority and Rabbit Group and Creative Business Solutions concerning alleged bid-rigging of an infant milk formula tender worth P114 million. The Respondents Rabbit Group and Creative Business Solutions had raised preliminary points of law and argued that the complaint brought by the Competition Authority was not cognizable and that the Commission had no jurisdiction over the matter. They further argued that the complaint was referred to the Commission after the mandatory one year period.

The Authority on the other hand argued that on a proper interpretation of the Competition Act, and taking all the circumstances into their proper perspective, the complaint was brought within the said one year statutory timeframe,

and that the Commission had jurisdiction over the matter. After hearing the arguments from both parties, the Tribunal adjourned and reserved its ruling.

The facts of the case are that on 29th July 2013, the Authority received a complaint from a whistle blower concerning the awarding of a tender to supply 1 500 000 units of infant milk formula in 400 grams cans to the Ministry of Health. The Authority then initiated an inquiry to substantiate the allegations of bid-rigging for the tender.

Following analysis of the individual bids, the Authority had reasonable grounds to suspect that Creative Business Solutions (Pty) Ltd and Rabbit Group (Pty) Ltd had engaged in collusive tendering. The Authority then decided to investigate the matter and referred it to the Tribunal for adjudication following the conclusion of investigations.

CA Intervenes

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Ltd and Sefalana Cash and Carry (Pty) Ltd only sold Blue Crystal sugar and refused to sell other local sugar brands. The CA's intervention led to the lifting of barriers to entry when two local sugar brands Selati and Pure Sugar managed to enter the markets of the two wholesalers. Two new market entrants are expected to enter and access the market for Trans Africa and Sefalana Cash and Carry.

In a case involving refusal to deal, another complainant reported that the sole distributor of Ceragem equipment in Botswana refused to supply the complainant's company with Ceragem equipment so it could open a Cerahouse (a business which utilises Ceragem equipment). The market however normalised after the Authority's intervention and the complainant is now able to source the equipment. In another case involving Kebo Electrical, the CA handled another refusal to supply case involving Osram South Africa. Following the Authority's intervention Kebo Electrical was allowed to source supplies from Osram.

Lastly, the Authority made an inquiry about an allegation of anti-competitive behaviour in the real estate sector. From the inquiry, no competition issues were found. However, the Authority found out that there was a requirement by the Real Estate Institute of Botswana (REIB) that a probationer Property Auctioneers member had to be mentored by a practising full member for a period of 12 months in order to be accepted as a full member. At the end of the probation period, the mentor makes a recommendation for the probationer member to be issued with a membership or not.

However, this requirement created anti-competitive arrangement, as the competitor could refuse to mentor a potential competitor in an attempt to frustrate entry. The mentor could also decide not to recommend the probationer using unethical reasoning. Both REIB and the Real Estate Advisory Council were advised by the CA of the potential harm to competition that could emanate from the clause and agreed to amend the clause.



COMPETITION AUTHORITY IN PICTURES

Public Hearing
on Proposed
Sun International
South Africa and
Peermont Group
Acquisition on
30th June 2015



Captions

1. CA Merger Review Committee Members 2 & 3. Members of the public and CA staff who attended the hearing 4. Journalists who covered the hearing

VISION 2016 COUNCIL NATIONAL CONFERENCE AND EXHIBITION ON 30TH JULY 2015

The Competition Authority participated in the Vision 2016 National Conference and Exhibition themed; 'The Journey so far: In Pursuit of Prosperity for All by 2016', which was held on the 28th -30th July 2015 at Fairgrounds in Gaborone. The exhibition accorded the Authority, other parastatals, government ministries and businesses a platform to display their services and products to the public.



Captions

1. CA's Bonolo Motsamai and Kelebogile Ngwenya assisting customers at the Vision 2016 Exhibition 2. Customers at the CA stall
3 & 4. Participants at the Vision 2016 National Conference

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