

# COMPETITION BULLETIN

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## COMPETITION AUTHORITY HOSTS NATIONAL BID-RIGGING WORKSHOP



Mr. Antonio Capobianco, Ms. Tebelelo Pule, Hon. Minister Vincent Seretse and Dr. Onkemetse Tshosa at the official opening of the National Bid-rigging Workshop on 26th July 2016

The Competition Authority in conjunction with the Organisation for Economic Cooperation and Development (OECD) on 26th July 2016 hosted a national workshop on bid-rigging in Gaborone under the theme “Fighting Bid-Rigging in Public Procurement”.

The workshop brought under one roof procurement specialists and decision makers from the public service, parastatals, and local government authorities from across the country. It was officially opened by the Honourable Minister of Investment, Trade and Industry Mr. Vincent Seretse who said some enterprises which desire to make profit at all cost are determined to collude and rig bids, noting that every year the Competition Authority reports a growing number of bid-rigging cases which account for approximately 40 percent of the restrictive business cases it has handled since 2011.

Workshop participants were informed that amongst the bid-rigging cases the Authority has dealt with is a case where a government ministry floated a tender worth P110 million as part of a primary schools and clinics feeding programme. The Authority’s investigations

revealed a bid-rigging arrangement between the winning companies which enabled them to outsmart their competitors through a market allocation scheme. “The victims of bid-rigging are customers and in public procurement where the customer is the Government, the harm extends to the whole economy, as the high prices paid to unscrupulous bidders affect other developmental goals” the Minister said.

Hon. Seretse said the government would like to see public procurement in Botswana fully functional and transparent. “It is my wish that this workshop will go a long way in addressing the major weaknesses that undermine our anti-bid-rigging efforts and strengthen our procurement systems and framework to adequately deal with the encroaching challenge of bid-rigging,” the Minister said.

The objective of the workshop was to raise awareness among procurement officials about the costs and risks of bid-rigging, and to provide them with training on how to design tenders to reduce the risk of bid-rigging; how to identify possible instances of bid-rigging at an early stage during the procurement

process, and what to do when bid-rigging is uncovered at that stage.

The workshop discussed the concept of bid-rigging, when it is most likely to occur and how it is dealt with under the Competition Law of Botswana. It covered the main sections in the OECD Guidelines for Fighting Bid-Rigging in Public Procurement (2009), illustrating them with examples from OECD countries. The workshop was practical in its approach, and conveyed competition concepts to an audience of non-competition experts through real-life examples drawn from regional and international experiences in this area. Officials from the OECD, the Competition Commission of South Africa and the Competition Authority of Botswana made presentations at the workshop.

They included Antonio Capobianco and Ania Thiemann from the OECD, Adi Egozi from the OECD and the Israel Antitrust Authority, Mzi Rubushe from the Competition Commission of South Africa, and Duncan Morotsi from the Competition Authority of Botswana.

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# COMPETITION AUTHORITY SIGNS MoU WITH CIPA



Mr. Duncan Morotsi, Ms. Tebelelo Pule, Mr. Conductor Masena, Ms. Pego Aisam

The Competition Authority (CA) and the Companies and Intellectual Property Authority (CIPA) on 16th June 2016 signed a Memorandum of Understanding (MoU) which formalises cooperation between the two institutions. Through the MoU, CA and CIPA pledge to cooperate and share relevant information and communicate regularly on matters of common interest to enable ease of doing business in Botswana. They also pledge to share available resources and conduct joint training and workshops for awareness creation.

Speaking at the signing ceremony, the Acting Chief Executive Officer of the Competition Authority, Mrs. Tebelelo Pule, said the MoU will assist the CA in fast-tracking mergers assessment and investigations through the ease of obtaining information on companies from CIPA.

Pule noted that it has not been easy for the CA to access information when assessing mergers and during the conduct of investigations. “The Competition Authority will now have direct access and information about these companies,” she said.

Pule further said the MoU will also help in saving costs and resources spent in the collection of information. Pule made an assurance that the MoU will not affect the confidentiality of information of the parties that deal with the two institutions, noting

that the Competition Act is very explicit in the confidentiality of information.

For his part, the Registrar General of CIPA Mr. Conductor Masena, said the two organisations have a symbiotic relationship which, if properly nurtured, can assist Botswana to attain its economic

**“The Competition Authority will now have direct access and information about these companies”**

development aspirations, and sustainably drive the economic development agenda

for the benefit of Batswana.

“In furtherance of both institutions’ mandates, the mergers and acquisitions that have been approved by the Competition Authority have to be registered with CIPA as company amalgamations and also as a record of company shareholding. Moreover, the CA has to request companies to provide copies of their registration documents, issued by the Registrar of Companies at CIPA to ascertain the legitimacy of their registration and to ensure that proper shareholding information is provided prior to the merger or acquisition.”

This, Masena said, clearly demonstrates the interdependency of the CIPA and the CA. He further said the MoU will go a long way in ensuring accuracy of data provided by businesses and enhancing data integrity.

The MoU with CIPA has brought to seven the number of public oversight institutions that the Competition Authority has signed MoUs with. The others are the Directorate on Corruption and Economic Crime (DCEC), the Public Procurement and Asset Disposal Board (PPADB), the Civil Aviation Authority of Botswana (CAAB), the Non-Bank Financial Institutions Regulatory Authority (NBFIRA), the Botswana Communications Regulatory Authority (BOCRA) and the Bank of Botswana.



# SADC Competition Authorities Formalise Cooperation



Swaziland CEO signing the MoU

Competition agencies of the Southern African Development Community (SADC) on 26th May 2016 signed a joint Memorandum of Understanding for Cooperation in the enforcement of competition at a ceremony which was held in Gaborone, Botswana. Chief executives or their representatives from nine out of the 15 SADC countries being Botswana, Madagascar, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania and Zambia signed on behalf of their agencies.

The agencies pledged to cooperate among others on; exchanging information on significant competition developments in their respective countries, joint capacity building initiatives and research, cooperation in the investigation of mergers, complaints and prosecution of cases as well as impact assessment of their interventions in markets. They will also to the extent possible harmonise rules and procedures for filing of mergers and applying for leniency or immunity.

A joint working committee is to be established to steer the implementation of the MoU constituted by a representative from member countries. A non-binding annual work plan of activities will be

drafted within the framework of the MoU.

The signing of the MoU was described as an important milestone in augmenting initiatives towards the liberalisation and integration of markets in the SADC region, as it provides a framework for the competition agencies to harness their

issues arising from cross border anti-competitive practices, which are a threat to the benefits of trade liberalisation and the integration of markets.

The MoU signing was preceded by the Seventh Meeting of the SADC Competition and Consumer Law and Policy Committee, which was established in 2009 following the SADC Heads of States Declaration on Regional Cooperation in Competition and Consumers Policy of 2008.

The committee, which comprises CEO's of the SADC competition authorities, was established primarily to foster cooperation and dialogue in the enforcement of competition and consumer laws in recognition of the important role such policies can play in promoting economic growth and development in the region.

*A joint working committee is to be established to steer the implementation of the MoU constituted by a representative from the member countries*



Mauritius CEO signing the MoU



# Public Hearing on Bluehearts and Warbler Holdings Proposed Acquisition



Bluehearts representatives Mr. Ramachandran Ottapathu and Mr. Kwadwo Osei-Ofei

The Competition Authority on 11th July, 2016 held a public hearing concerning the proposed acquisition of the entire issued shareholding of Warbler Holdings by Bluehearts. Bluehearts, the acquiring enterprise, is solely owned by Mr. Ramachandran Ottapathu, the CEO of the Choppies Group.

Warbler Holdings is a holding company for IT4Africa (Pty) Ltd, Goldtech (Pty) Ltd, Healthwest Africa (Pty) Ltd and Solid Logistics (Pty) Ltd, the target enterprises. The Director of Warbler Holdings is Mr. Meempat R. Narayan.

Warbler Holdings is incorporated in accordance with the Laws of the Republic of Botswana, and is a holding company for IT4Africa (Pty) Ltd, Goldtech (Pty) Ltd, Healthwest Africa (Pty) Ltd and Solid Logistics (Pty) Ltd, the target enterprises. The four subsidiaries are incorporated in accordance with the Laws of the Republic of Botswana and are primarily operational in Gaborone. The Director of Warbler Holdings is Mr. Meempat R. Narayan.

IT4Africa is a wholesaler and supplies the following products to air-corn dealers, value added providers, resellers and retailers in Gaborone and other parts of the country (Botswana): Computers; Cell phones; Tablets and accessories; Anti-virus and Security software products; Mobile Phones; Air-cons; Printers; Projectors; Scanners and Accessories. The following are brands that IT4Africa trades in: Acer Computers; eScan; Hisense; Epson; Lexmark; and Samsung.

Goldtech Holdings is a wholesaler and supplies the following products to retail stores, value added providers and resellers in Gaborone and other parts of the country (Botswana): Home and Kitchen appliances;

Personal Grooming Products; and Consumer Electronics under the brand name of Samsung; Kenwood; Wahl and Sinotec.

Healthwest Africa sells home appliances and consumer electronics; and personal grooming and kitchen appliances under the brand name of Hisense and Philips. Healthwest sells its products primarily in Gaborone. Solid Logistics provides logistics, warehousing and

**“The Competition Authority is yet to make a decision on the proposed acquisition”**

freight services currently to its associated companies being: IT4Africa; Goldtech and Healthwest Africa.

The hearing was intended to allow the parties to the transaction to make verbal

representations to the Authority with respect to the transaction as well as allow their competitors and the general public to express their views on the acquisition. Representatives of Sefalana, a leading retailer in the Fast Moving Consumer Goods industry, Cash Bazaar Holdings and furniture store Furnmart were some of the industry players who attended the hearing.

Some of the industry players expressed opposition to the proposed acquisition. Sefalana representative Mahomad Osman said the proposed transaction would manifest a monopolistic position over time and would not allow Sefalana and Choppies to compete on a fair and level playing field. “In the event that the proposed transaction is allowed to be completed, Mr. Ottapathu would be a supplier to our Group, and would therefore have access to, and influence over the pricing offered to us” he stated when publicly reading a letter that was written by Sefalana to the Competition Authority.

Other industry players such as Mr. Odirile Merafhe of Cash Bazaar Holdings expressed concern about possible job losses if the acquisition is approved.

In response, Mr. Ottapathu told his competitors that there will be no job losses and that their ability to source products will not be affected. He revealed his plans to divest from Ritefurn which sells electronic products. “Choppies does not sell any electronic products and is a mass grocery retailer,” he stated.

The Competition Authority is yet to make a decision on the proposed acquisition.



Industry representatives Mr. Mohamed Osman of Sefalana and Mr. Odirile Merafhe of Cash Bazaar Holdings

# CHOPPIES BUYING GROUP GRANTED AN EXEMPTION



**T**he Competition Authority has granted the Choppies Buying Group an exemption in accordance with section 32(1) of the Competition Act. The decision followed an application for exemption from the provisions of the Act which was made by the buying group comprising Choppies Distribution Centre (Pty) Ltd, Payless Supermarket (Pty) Ltd and Woodblock (Pty) Ltd. The exemption is granted until 30th November 2017.

Following the decision of the Competition Authority of 16th September 2014, the Parties lodged an appeal with the Competition Commission on 17th September 2014 requesting it to set aside the decision of the Authority to reject the exemption application.

At its hearing of 18th September 2014, the Competition Commission ordered that the Parties institute a referral in accordance with the provisions of the Act, and in particular, that they refer the matter to the Competition Commission in terms of Regulation 14(1) of the Competition Regulations. The Authority was further ordered to place in abeyance paragraph (a) of its decision of 16th September 2014, in particular, until such a time that the Commission determines the referral.

*The Authority agreed to reconsider the application on grounds of public interest*

Having agreed to settle the matter without reference to the Commission, the

Authority agreed to reconsider the application on grounds of public interest. At its 2nd Special Exemptions Review Committee Meeting held on 16th December 2014, the Competition Authority granted the exemption as it found that the benefits for the public in the form of maintaining employment in Payless Supermarket (Pty) Ltd and Woodblock (Pty) Ltd, had the effect of offsetting the negative effects the Choppies Buying Group would have on competition. Such benefits were seen by the Authority as being directly attributable to the Parties belonging to the Choppies Buying Group.

A buying group is when similar independent businesses come together to leverage their combined purchasing power to receive better pricing and terms on the products they buy. Buying Groups operate in most industry sectors at both the wholesale and retail levels. In terms of section 32 of the Competition Act, the Competition Authority may grant exemptions in relation to certain agreements that may ordinarily infringe the Competition Act, if on assessment it can reasonably be expected that there will be offsetting benefits for the public directly attributable to such agreements.



# COMPETITION AUTHORITY IN PICTURES

## Competition Authority Signs MoU with CIPA



### Captions

1. Acting CA CEO Ms Tebelelo Pule and CIPA Registrar General Mr. Conductor Masena signing the MOU
2. Guests and journalists at the signing ceremony
3. CIPA Executive Management at the signing ceremony
4. CA staff and guests at the signing ceremony



# SADC COMPETITION AUTHORITIES FORMALISE COOPERATION



## Captions

1. Some heads of the SADC competition agencies
2. The Namibian Competition Commission CEO signing the MoU
3. Some delegates at the signing ceremony
4. The Tanzanian competition agency CEO signing the MoU



# PUBLIC HEARING ON BLUEHEARTS AND WARBLER HOLDINGS PROPOSED ACQUISITION



## Captions

1. Ms. Tebelelo Pule, Mr. Duncan Morotsi, Mr. Kitso Mocuminyane, Ms. Gladys Ramadi
2. Botswana Gazette reporter Vincent Mathumo talking to Bluehearts representative
3. Some of the participants at the hearing
4. Sefalana's Mohamed Osman and other industry representatives

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