

CCA Bulletin

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Issue No. 2 2021

PARTICIPATION IN A PYRAMID SCHEME AN OFFENCE UNDER THE CONSUMER PROTECTION ACT

P pyramid schemes and other forms of deceptive schemes such as multiplication and chain letter schemes are on the increase in Botswana. Every day on social media platforms there is an invitation to consumers to participate in an arrangement that resembles a pyramid scheme in open contravention of the Consumer Protection Act of 2018, which prohibits participation in pyramid and related schemes.

The CCA has been scouring all social media platforms to monitor these unlawful activities in a bid to protect unsuspecting consumers from being lured into this intricate web of greed.

The Authority has opened up an investigation in a number of cases including WhatsApp Gifting, Mufhiwa and others. According to the CCA's Acting Director of Consumer Protection, Mosetsana Manyelela, the organisation is closely monitoring online platforms which she says are the principal avenue that pyramid schemes promoters use to advertise their schemes. "We implore consumers to be vigilant and be suspicious of any scheme that promises unjustified returns. We urge consumers to report these to the Authority than join and entrap themselves," she said. In readying itself to stem out this deceptive conduct, the Authority has made overtures to sister organisations in the region who have dealt with similar challenges. Recently CCA staff were inducted by the South African National Consumer Commission (NCC) on the full gamut of carrying out an investigation into a pyramid scheme.

The Acting Commissioner of the NCC, Joseph Silolo, told the CCA team that a pyramid scheme affects all who participate in it, and that even those who are invited are guilty of the offence. Silolo inducted CCA staff on ways to prove a case against a pyramid scheme.

For his part the CCA's Director of Legal Services, Kesego Modongo, said the CCA has made preparatory work to ensure that perpetrators of this criminal conduct are investigated and prosecuted. For effective implementation of the Act in relation to the said deceptive offences, the CCA is collaborating with the Botswana Police Service who are the entity responsible for criminal investigation and possible referral to the Directorate of Public Prosecutions (DPP).

"The success in investigating and possible prosecution of those involved in unfair business practices with criminal sanctions including pyramid schemes requires a strong tripartite relationship between the CCA, Botswana Police Service and the Directorate of Public Prosecutions.

The three parties recently discussed and clarified roles in respect of handling such investigations and the ideal steps that

should be undertaken to ensure successful investigations and possible prosecution of such offences including the topical pyramid and related schemes," Modongo said.

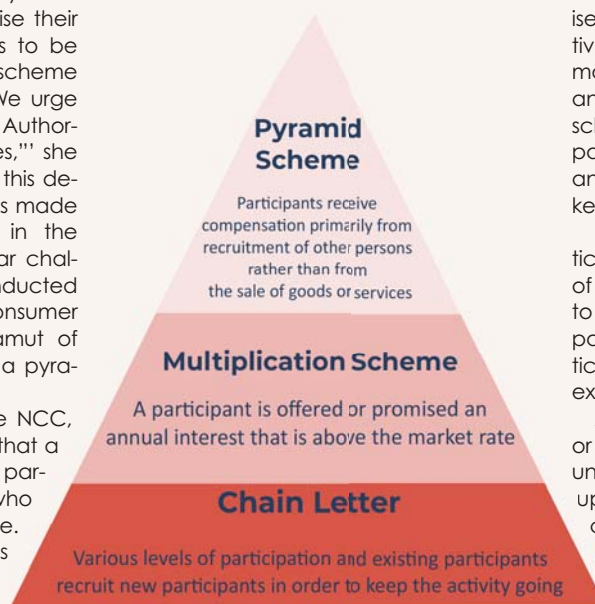
Section 9 (1) of the Consumer Protection Act states that "a person shall not directly or indirectly promote, or knowingly join, enter or participate, or cause any other person to promote, join, enter or participate in a pyramid scheme, multiplication scheme; a chain letter scheme; or any other scheme declared as such by the Minister."

A pyramid scheme is defined as an arrangement, agreement, practice or scheme where participants in the scheme receive compensation derived primarily from their respective recruitment of other persons as participants, rather than from the sale of any goods or services.

A multiplication scheme is defined as an arrangement, agreement, practice or scheme where a person offers, promises or guarantees a participant an effective annual interest rate that is above the market rate; while a chain letter scheme is an arrangement, agreement, practice or scheme in which there are various levels of participation, existing participants canvass and recruit new participants in order to keep the activity on-going.

Each successive newly recruited participant is required to make some form of payment which would be distributed to some of the previously existing participants, irrespective of whether the new participant receives any goods or services in exchange for that payment.

A person who participates in a pyramid or related schemes commits an offence under the Consumer Protection Act, and upon conviction, is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years, or to both.



COMPETITION AND CONSUMER AUTHORITY ADMITTED INTO INTERNATIONAL CONSUMER PROTECTION ENFORCEMENT NETWORK (ICPEN)

Botswana's Competition and Consumer Authority (CCA) has been admitted into the International Consumer Protection and Enforcement Network (ICPEN). The CCA was admitted during ICPEN's annual conference which was held virtually June 23rd - 24th, and hosted by the Competition Bureau Canada. The CCA was nominated by five countries, consistent with ICPEN rules, and is now considered a partner, which is the first stage to full membership. ICPEN is the equivalent of ICN, the International Competition Network. It is a membership organisation consisting of consumer protection law enforcement authorities from across the globe. ICPEN provides a forum for developing and maintaining regular contact between consumer protection agencies and focusing on consumer protection concerns. By encouraging cooperation between agencies, ICPEN aims to enable its members to have a greater impact with their consumer laws and regulations. The mandate of ICPEN is to share information about cross-border commercial

activities that may affect consumer interests and to encourage international cooperation and collaboration among consumer law enforcement agencies in this scope. As a result, the CCA will benefit from the wide experience of new and old agencies on agency effectiveness, consumer protection investigations, processes, latest trends in consumer protection, cross-border collaborations and many more. Members of ICPEN usually meet at plenary conferences hosted by the country which is holding the ICPEN's annual rotating presidency.

The conferences allow ICPEN members to discuss key consumer issues from a global perspective, exchanging their experience regarding prevention and enforcement. The network operates under a rotating presidency, and Portugal assumed the role of the 2021-2022 ICPEN Presidency on 1st July. The presidency will transfer to Australia on 1st July 2022, under the stewardship of the Australian Competition and Consumer Commission.

Source: ICPEN



Josephine Palumbo - Competition Bureau Canada
ICPEN President 2020-2021

CCA AT COMPETITION LAW AFRICA 2021

The Competition and Consumer Authority (CCA) was part of the agencies and organisations that participated at the inaugural Competition Law Africa 2021 digital conference which was held on June 22nd. The conference, whose aim was to provide a Pan African perspective on current political challenges in competition law, brought together regulators, in-house counsel and competition law practitioners.

The CCA took part in the Regulators Roundtable: Current Enforcement and Policy Development panel. This panel had speakers from Competition agencies from Egypt (Mahmoud Mamtaz), South Africa (Hardin Ratshisusu), Zimbabwe (Bernard Chinhengo), Zambia (Maureen Mwanza) and Botswana (Gideon Nkala).

The panel discussed a wide range of issues including review of current enforcement, policy developments and advocacy initiatives across jurisdictions, cooperation between enforcers in the region, creating a more transparent and effective enforcement regime in Africa and the role of Competition Law in economic development. The upshot of Nkala's presentation was that transparency is an effective tool to attain compliance in a regulatory envi-

ronment. He maintained that when agencies are transparent about their decision making processes, sharing key information with the regulated enterprises, the public and oversight institutions, this would bring trust and confidence to the agency. Nkala said transparency would supplant the risk of the regulatory agencies receiving high number of appeals and their decisions being reviewed. "Competition agencies often shackle themselves under an opaque environment by mistakenly believing that because they deal with investigations their operations should be closed out. While it is true that agencies handle confidential information there is still a lot that agencies can do to open up their processes and it is a good thing to do," he said.

On the implications for policy development during Covid-19, Nkala said the pandemic has forced Governments to focus on economic recovery interventions and to stimulate the economy. He observed that Government priorities have an impact on the agency priorities plan.

Talking about the situation in Botswana, he said prioritised sectors such as health and tourism have had to be re-prioritised and in most instances exercising urgency on rescue mergers and to look into pro-

competitive suggestions in instances where Government is providing industry aid to ensure that competition distortions and restrictions are minimised. The CCA has had to ramp up its advocacy role by monitoring price increases and warning against excessive price increases of essential goods and services.

The CCA relied on the Government issued Statutory Instrument No. 61 of 2020 against excessive price increases.



CCA's Gideon Nkala



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PRICES OF ESSENTIALS REGULATED DURING STATE OF EMERGENCY

The increase of prices of essential supplies or products during the ongoing State of Emergency is regulated by a statutory instrument (Regulation 25 of Statutory Instrument Number 61 of 2020).

In terms of this instrument, traders are not allowed to increase the cost of essential products by more than the additional cost of procurement or cost of production of such commodities.

In the event that a trader contravenes

this provision, they commit an offence and are liable to a fine not exceeding P100 000, or to an imprisonment term not exceeding five years, or to both. An essential supply or product is defined as:

- food supplies;
- medical equipment and supplies including sanitisers, surgical gloves, soap, antiseptics, bleach, surgical spirit, methylated spirit, disinfectants, baby wipes, wet wipes and surgical

masks;

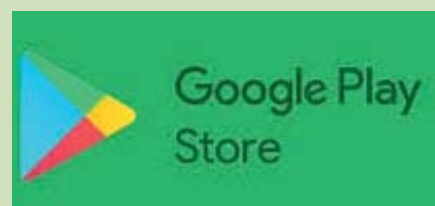
- pharmaceutical supplies;
- agricultural supplies;
- maintenance and hardware supplies;
- communication supplies;
- air supplies;
- rail supplies;
- water supplies, including chemicals and equipment required by the water sector; and
- mining supplies.

GOOGLE PLAY STORE TO REQUIRE APP PROVIDERS TO GIVE CONSUMERS DETAILED INFORMATION ON DATA COLLECTION

Google Play Store is to require App Providers to give Consumers detailed information on data collection following international intervention by consumer protection agencies from 27 countries that are members of the International Consumer Protection and Enforcement Network (ICPEN).

Google announced that app providers will be required to indicate on the Google Play Store what personal data each app keeps and potentially shares about its users.

This follows an open letter from ICPEN to digital businesses in 2018, followed by a letter from the group of 27 agencies to both Apple and Google in 2019 pressuring them to make the requested changes. This joint action was endorsed by the Global Privacy Enforcement Network (GPEN). With this update to the Google Play Store, these ICPEN members have successfully managed to ensure that two of the largest app stores must provide consumers with clear and comprehensive information enabling consumers to compare and



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choose apps based on how they use personal data.

Google is planning to roll this feature out in phases and will make this mandatory for all apps from 2022 onward. Apple already made similar changes in 2020.

Announcing the development in a press release on 27th May 2021, ICPEN said this joint initiative highlights the importance of international collaboration to ensure consumers are safeguarded in a world where they are spending an increasing amount of time online, where they interact with multiple apps daily.

"In a world where borders between nations are no longer a potential barrier to misconduct, international cooperation

and collaboration are fundamental for consumer protection of a global scale.

By harnessing the power of working together, we have ensured consumers are provided with clear and straightforward language regarding the personal data an app both collects and uses, which is essential for consumers to make informed decisions before downloading any app," the release stated.

ICPEN is an organisation of more than 65 consumer protection agencies from around the world working together to combat fraudulent, deceptive and unfair trading practices, while GPEN is a network of over 70 privacy regulators whose mission is to improve cooperation in enforcement of cross-border laws affecting privacy.

The Consumer Authority of Norway, The UK Competition and Markets Authority and The Netherlands Authority for Consumers and Markets led this joint action.

Source: ICPEN

OECD CELEBRATES 50 YEARS OF CONSUMER PROTECTION

The Organization for Economic Cooperation and Development (OECD) held a virtual international conference on 15-17 June 2021 themed "The Consumer Marketplace of the Future," to look back at 50 years of consumer policy and preview an agenda for a global, digital future.

The conference brought together experts from government, business and civil society to celebrate 50 years of consumer policy at the OECD and the Committee on Consumer Policy (CCP). Participants were invited to help shape a vision for the future of consumer policy through a series of moderated panel discussions on various topics including:

The rise of mobile and hyper-connected consumers, the role of online marketplaces in protecting consumers, developments in consumer product safety, consumers in the green economy, effective disclosures and dark commercial patterns online, improving the evidence base for consumer policy; and advances in cross-border enforcement co-operation.

The OECD Committee on Consumer Policy (CCP) addresses a broad range of consumer issues and helps public authori-

ties enhance the development of effective consumer policies. It does so by: carrying out research and analysis, and developing policy guidelines on topics of common interest; exchanging information on current and emerging issues and trends; and examining ways to strengthen policy outcomes, both among governments and with other stakeholders.

The Committee, which includes senior

consumer policy and enforcement officials from OECD governments, works closely with consumer policy and enforcement officials from OECD non-members, and experts from civil society and the business community.

In addition to its semi-annual meetings, the CCP organises workshops on specific issues in which stakeholders from non-members often take part.



A panel discussion at the virtual OECD Consumer Conference

IN MEMORIAM



Ms. Kegopotswe Phana Moaisi – MHSRIP

Ms. Kegopotswe Phana Moaisi passed away on 7th May 2021 at Bamalete Lutheran Hospital. She held the position of Principal Commercial Officer in the Department of Trade and Consumer Affairs. At the time of her passing, Ms. Moaisi was on secondment to the Competition and Consumer Authority based in Gaborone since 2nd December 2019. May Her Soul Rest In Eternal Peace.



Ms. Bitsang Bibi Kgosi - MHSRIP

Ms. Bitsang Bibi Kgosi passed on 28th June 2021 at Gaborone Private Hospital. She held the position of Human Resources Manager. Before joining the Competition and Consumer Authority, Ms. Kgosi had previously worked at the Local Enterprise Authority (LEA). May Her Soul Rest In Eternal Peace.

PYRAMID SCHEMES

!Beware of these Red Flags!



Promises of High Returns in a Short Period of Time



No Genuine Product or Service Sold



Primary Emphasis on Recruiting

CCAbulletin

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