

# CCAbulletin



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Issue No.4 2021

## COMPETITION POLICY FOR AN INCLUSIVE AND RESILIENT ECONOMY

### WORLD COMPETITION DAY 2021

05<sup>th</sup>  
DECEMBER



Theme | Competition Policy for an Inclusive and Resilient Economy

The Competition and Consumer Authority once again this year joined the rest of the world in observing World Competition Day on 5th of December. The theme for 2021 was “Competition Policy for an Inclusive and Resilient Economy.”

In a press statement to mark the day, the CCA observed that the organisers couldn’t have selected a more apt and relevant theme as the Covid-19 pandemic has imposed serious challenges to most economies resulting in massive job losses across the sectors, millions of people face the spectre of reduced income while many more no longer have access to social protection facilities; with poverty and social inequalities widening by the day.

“These challenges will require robust strategies that will improve the resilience of economies. There can never be any denying that the old mould that churned out impressive gross domestic product (GDP) growth figures amidst alarming figures of poverty and social inequalities ought to be

discarded. There is now a greater demand for policies that are inclusive and resilient in order to take the world economy beyond the debilitating damages of Covid-19.” Admittedly, regulatory failures have over the years undermined the capacity of policies to yield dividends for citizens and consumers in general. Some of the regulatory failures, particularly in developing economies, have been attributed to over-regulation, in other instances under regulation or poorly designed regulation and lack of implementation capacity; this is often exacerbated by weak institutional capacity of most regulatory institutions.”

As part of the regulatory ecosystem, competition authorities recognise that competitive markets are one of the key drivers of economic growth. Not only do competitive markets bring about consumer welfare but they serve as a powerful complementary tool to alleviate poverty and to bring about social prosperity. “We find the World Bank characterisation of a concept stylised as

‘shared prosperity’ apt and compelling. The institution defines shared prosperity as a process to expand the size of the pie continuously and sharing it in such a way that the welfare of those at the lower end of the income distribution would rise as quickly as possible.

Competition policies by their nature bring about a contested economic environment evidenced by entry and rivalry of firms, while competition agencies are tasked with the enforcement of competition laws. Perhaps the crucial point to make about competition policies is that their lenses are aimed amongst other things at increasing opportunities for the less well-off households in competitive markets. This intervention brought to bear by competition policies will naturally go a long way in reducing poverty. The Competition Act in Botswana highlights ‘offsetting benefits’ such as lower prices, provision of social benefits, citizen economic empowerment as instances of exemptions even when

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considering some anti-competitive agreements. It is equally heartening to note that in Botswana, the determination of mergers is one policy process that has a tinge of inclusivity.

In the consideration of mergers, the legislation makes it clear that the process is not only focused on a linear application of economic assessment confined to substantially lessening of competition and dominance or market power. The broader public interests such as maintenance of jobs and advancement of citizen empowerment initiatives are some of the issues that are taken into account when making a merger determination.

Competition policies can be used to increase and to bring about the desired social outcomes. The natural outcome of competitive market is growth. The realities of our time dictate that policy formulation should be deliberate about growth that leads to real labour incomes which have been found to be the main drivers of poverty alleviation. In fact, the lower income groups are often the main social class that bears the heavy brunt of negative market outcomes such as anti-competitive behaviour of firms; they come out worse from restrictive regulations that are often imposed on markets by governments.

This has a direct implication on the tenor

and approach of policy-makers and strategists.

While competition policies have been entrusted with the mandate to address market hindrances and the promotion of multiple market players, the major thrust of competition policy is to ensure that the right incentives for firms to meaningfully participate in a market exist, so that there is shared benefit for all, including investors, employees and consumers.

Through robust policy advocacy and targeted enforcement initiatives the CCA continues to play its part to ensure that the economy is inclusive and resilient," the CCA statement said.

## COMPETITION AND CONSUMER TRIBUNAL ORDERS KATLEGO MOTORS TO REFUND CONSUMER FOR DEFECTIVE VEHICLE



**KATLEGO MOTORS (PTY)LTD**



The Competition and Consumer Tribunal on 22nd October 2021 ordered Katlego Motors in Mogoditshane to refund a complainant P37, 000 for a defective vehicle it sold. The case was referred to the Tribunal by the Competition and Consumer Authority (CCA) after concluding its investigations which revealed that Katlego Motors Pty Ltd contravened the provisions of section 15(1) of the Consumer Protection Act by engaging in an unfair business practice through the sale of goods which are not of good quality, in good working order and free of defects without informing the purchaser of the state of such goods.

The facts of the case are that on 21st January 2020, the Authority received a complaint from Game Nthobatsang who lives in Jwaneng. She alleged that on the 20th September 2019, she travelled to

Mogoditshane to buy an Audi A3 vehicle from Katlego Motors for the sum of P37 000.000. Nthobatsang was given the vehicle and travelled back to Jwaneng, and the vehicle developed a mechanical problem along the way.

The vehicle would later fail a road-worthiness test at the Department of Road Transport and Safety (DRTS) which was conducted in order to register the vehicle and therefore could not be registered. The DRTS report indicated defects on the vehicle being; front shock and rear shock absorbers; control arm bushes; gear box (third, fourth and fifth gears not engaging); secure radio and engine light.

The vehicle was eventually returned to Katlego Motors and the complainant requested a refund. She was promised another Audi A3 which was to arrive

within a week. The complainant was loaned a courtesy car which she was to use pending delivery of another Audi A3. However, the said vehicle was never delivered to Ms Nthobatsang and she eventually registered a complaint with the Authority.

Investigations were carried out by the Authority in an effort to establish whether an unfair business practice was committed. The DRTS officer who tested the vehicle was interviewed and he confirmed that he tested the Audi A3 vehicle brought by the complainant, and that the vehicle failed the road worthiness test. The parties failed to reach an amicable solution to their dispute and the Authority conducted further investigations into the matter. The Authority concluded, after investigations, that the

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respondent's conduct amounted to an unfair business practice in contravention of section 15(1) of the Consumer Protection Act.

The Authority then referred the complaint to the Tribunal against Katlego Motors in terms of section 36(1)(a) of

the Act. The Authority had sought an order declaring that Katlego Motors had committed an unfair business practice against Game Nthobatsang, that she be refunded the sum of P37 000.00; that she return the courtesy car loaned to her by the respondent; as well as costs of the

suit. Through a default decision (because Katlego Motors failed to respond within the stipulated timelines) the Tribunal ordered that the complainant be refunded P37 000 within 21 days and for her to return the courtesy car with immediate effect. There was no order as to costs.

## CCA PARTNERS WITH BOCRA TO ENSURE CONSUMER PROTECTION IN THE MOBILE PHONE SECTOR

One of the measures adopted to ensure compliance and enforcement of statutes that relate to investigation, prohibition and control of unfair business practices is to conduct market intelligence through joint and routine inspections.

To that end, the Competition and Consumer Authority (CCA) in conjunction with the Botswana Communications Regulatory Authority (BOCRA) conducted inspections at two Gaborone Malls on 28th October 2021, with the primary focus being Type Approval Certificate, Display of Prices, Labelling of second hand gadgets and Warranties.

The purpose of the Type Approval procedure is to ensure that all radio communication and telecommunication equipment complies with international standards that are applicable for Botswana as a member of the International Telecommunication Union (ITU).

It is also intended to ensure that no counterfeit equipment that is likely to pose health and safety threats to consumers finds its way into the Botswana market.

Section 15 of the Consumer Protection Act alludes to Consumers' right to safe and good quality goods.

The Type Approval certification process seeks to ensure the availability of good quality service and experience for consumers in the country's telecommunication sector.

It also serves to protect consumers from products that are not compatible with the local telecommunication network and ensures that the operating frequency of all radio communication equipment is in conformity with the Botswana frequency spectrum allocation plan to avoid causing harmful interference to essential services, and to avoid causing harmful electromagnetic

radiation which can be detrimental to consumers over time, possibly leading to terminal illnesses like cancer.

A total of nine (9) businesses were inspected at Game-City Mall in Gaborone and one of the businesses was found to be non-compliant and charged P2000.00 by the Botswana Police Service for failure to label that goods are used, contrary to section 13(1) of the Consumer Protection Act. The business was selling refurbished I-Phones that were not labelled as such.

A similar inspection was carried out on nine (9) businesses at Rail Park Mall in Gaborone to check compliance.

Three (3) businesses were found to be compliant while 60 were found to be non-compliant with display of prices and labelling of used goods.

The non-compliant business were charged amounts ranging from P200.00, P500.00 and P1000.00.



## CHAIRPERSON OF THE COMPETITION AND CONSUMER BOARD WINS COVETED LEADERSHIP AWARD



Dr Malebogo Bakwena - CCA Board Chairperson

The Competition and Consumer Authority Board Chairperson Dr Malebogo Bakwena recently won the coveted Strategic African Women in

Leadership (SAWIL) Award. She was one of the 10 SAWIL Trailblazers who won the 2021 award after a rigorous contest in which she was in the Top 30. According to SAWIL, over 300 quality nominations were received from members of the public, covering at least 15 African countries and the diaspora.

The CCA congratulated the Chairperson noting that she will be an inspiration to many women in the organisation and in the country. Dr Bakwena is an economist and Senior lecturer at the University of Botswana and Head of the Department of Economics.

She is also a Board member of the central bank, Bank of Botswana, where she is also the Chairperson of the Human Resource Committee of the Board. She also serves as Chairperson of a collaborative Masters and PhD Programme on Core and Electives committee of the African Economic Research Consortium (AERC) based in Nairobi, Kenya. She is currently a co-editor of the Botswana Journal of Economics.

SAWIL describes itself as a vehicle for women leaders, entrepreneurs and professionals in Africa seeking to advance their careers through leadership training, executive coaching, entrepreneurship training, masterclasses, board training, mentorship and networking.

In her bio in the SAWIL website, Dr

Bakwena is described as an avid researcher, who has undertaken policy based research projects focused on finding solutions to Botswana's socio-economic issues such as youth unemployment, poverty and gender inequalities.

She is passionate about empowering and nurturing young people, and over the years she has mentored several young people through engagement in organisations such as the Botswana SOS Children's village and the Girls for Girls (G4G) mentorship programme. In addition, she has been a benefactor of young girls and boys in rural Botswana schools such as the Tutume McConnel College, Leshititse and Sesung Primary schools.

"Her mentorship is also notable in the several research projects that she worked on with junior researchers not only from the University of Botswana but other local and international universities. Her student mentoring and advisory skills have consistently played themselves out in the successful mentoring of students in the department of economics on academic and non-academic matters including close research supervision at undergraduate and graduate (up to PhD) levels," reads the bio.

Source: SAWIL, University of Botswana

## DR WILLARD MWEMBA APPOINTED DIRECTOR AND CHIEF EXECUTIVE OFFICER OF THE COMESA COMPETITION COMMISSION

The Common Market for Eastern and Southern Africa (COMESA) Council of Ministers at its 42nd Meeting held on 9th November 2021 appointed Dr Willard Mwemba as Director and Chief Executive Officer of the COMESA Competition Commission (CCC)

Dr Mwemba has been with the CCC since January 2013 being its first Head of the Mergers and Acquisitions Department until his appointment as Acting Director and Chief Executive Officer on 1 February 2021, said a press release from the CCC. He acted in this capacity until 9th November 2021 when his appointment was confirmed. Prior to joining the CCC, Dr Mwemba was Director of Mergers and Monopolies at the Competition and Consumer Protection Commission of Zambia (CCPC).

"Dr Mwemba has been instrumental in the enforcement of competition and consumer laws both at national and regional level. At national level, he has assisted a number of national competition authorities in developing and operationalising their mergers and restrictive business practices divisions. At regional level, he has been instrumental in implement-



Dr Willard Mwemba

ing and reforming the COMESA Competition Law regime. He has written extensively on competition law and is widely consulted on the subject at global level," the release stated.

Dr Mwemba holds several qualifications among them Bachelor's degrees in Economics and Law from the University of Zambia. He also holds a Master's degree in Competition Law from Kings College London and a PhD from the University of Cape Town specialising in competition law.

COMESA is a regional economic community in Africa with 21 member states and was formed in December 1994, replacing a Preferential Trade Area which had existed since 1981.

Source: COMESA Competition Commission, Wikipedia

# KNOW YOUR COMPETITION ACT - Part IX Section 39: Consideration of Evidence, Acceptance of Undertakings and Enforcement of Directions

## Consideration of Evidence

39. (1) Upon commencing an investigation, the Authority may appoint an inspector to prepare a report to the Authority, on whether there is evidence in a particular case that an anti-competitive practice falling within the scope of section 25, 27 (1), (1) or 31 (1) may be occurring or may have occurred.
- (2) The inspector shall produce a report on the basis of the documents and information gathered pursuant to the provisions of Part VIII.
- (3) The Authority may in addition receive in evidence, any further statement, document, information or matter, not limited to material received pursuant to Part VIII that may, in its opinion, assist with its investigation.

## Acceptance of Undertaking or Settlement Agreement

40. (1) An enterprise may offer an undertaking to the Authority in order to address any concern that has arisen, or may be expected to arise, prior to or during an investigation in respect of an agreement falling within the scope of section 28 (1), or conduct falling within the scope of section 31 (1).
- (2) The Authority may conclude a case on the basis of a settlement agreement if the Authority considers that the settlement agreement satisfactorily covers all concerns it has over the adverse effects for competition of the agreement or the conduct, and such settlement agreement shall be taken to the Tribunal to be made an order of the Tribunal.

## Enforcement of Directions

41. (1) Where the Authority has reasonable grounds to believe that an enterprise has, without a reasonable excuse, failed to comply with a direction issued pursuant to the Authority's powers under this Act or with the terms of an exemption granted under section 33, the Authority may exercise the powers of investigation provided for in Part VIII.
- (2) Where the Authority proposes to determine that such failure has occurred, it shall give notice of its intention to the enterprise concerned and consider any representations the enterprise wishes to make.
- (3) The Authority may apply to the Tribunal for an order requiring the enterprise to make good the default within the time specified in the order.
- (4) The order may provide for all the costs of, or incidental to, the application for the order, to be borne by the enterprise in default.

# KNOW YOUR CONSUMER PROTECTION ACT - Part VI Direct and Mail Order Sales

## Direct Marketing

19. (1) A consumer may expressly or implicitly request or agree to direct marketing.
- (2) A person who negotiates direct marketing shall produce an identity document containing the following information —
- (a) the names of the person;
- (b) the contact details of the person; and
- (c) the name of the company, if any, that the person represents.

## Mail Order Sales

20. A supplier advertising the supply of goods or services through mail order shall give out the following information in the advertisement —
- (a) the name and licence number of the supplier;
- (b) the contact details of the supplier;
- (c) a detailed description of the goods or services offered;
- (d) the places and times where a sample of the goods may be inspected;
- (e) the price of the goods or services offered;
- (f) the cost of delivery, the manner of delivery and the time when the goods or services are expected to be delivered; and
- (g) the manner and form in which a complaint may be lodged.

## Direct or Mail Order Sales Contracts

21. A contract in respect of direct sales or mail order sales shall —
- (a) be in writing;
- (b) have a cooling-off period of 10 working days;
- (c) be signed by both the supplier and the consumer;
- (d) be delivered to the consumer; and
- (e) allow the consumer the right to cancel the contract anytime as long as it is within the cooling-off period.

## Consumer's Rights to Cooling Off

22. (1) This section shall not apply to transactions regulated under the Electronic Communications and Transactions Act.
- (2) A consumer may rescind a transaction resulting from any direct sale or mail order sale without reason or penalty, by notice to the supplier, in writing, within 10 working days after the date on which —
- (a) the transaction or contract between the supplier and consumer was concluded; or
- (b) the goods that were the subject of the transaction were delivered

- to the consumer:
- Provided that the goods are in the same merchantable quality as they were when the supplier delivered them to the consumer. 3) A supplier shall —
- (a) return any payment received from the consumer in terms of the transaction within 15 working days after —
- (i) receiving notice of the rescission, if no goods had been delivered to the consumer in terms of the transaction, or
- (ii) receiving from the consumer any goods supplied in terms of the transaction; and
- (1) not attempt to collect any payment in terms of a rescinded transaction.
- (4) A supplier shall not deliver goods or services in respect of a direct sale or mail order sale, until the cooling-off period has elapsed.
- (5) Where a consumer has requested a supplier, in writing, within 72 hours of the entering into a contract, to supply goods or services before the expiry of the cooling-off period, the consumer shall be deemed to have waived his right to cancel the contract.



*The Board, CEO and Staff  
of the Competition and  
Consumer Authority  
wish you a Merry  
Christmas and a  
Prosperous New  
Year!*



**Office Closed: 20<sup>th</sup> December 2021 to  
4<sup>th</sup> January 2022**

## **CCA**bulletin

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