

**MEMORANDUM OF UNDERSTANDING**

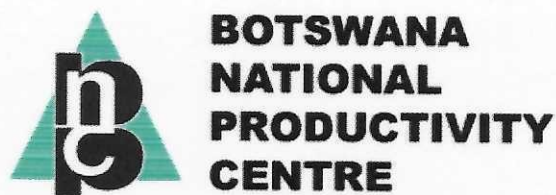
**BETWEEN**



**COMPETITION AND CONSUMER AUTHORITY (CCA)**

**AND**

**BOTSWANA NATIONAL PRODUCTIVITY CENTRE (BNPC)**



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**THIS MEMORANDUM OF UNDERSTANDING** is made this ...10<sup>th</sup>... day of ...MAY... 2022 and is intended to reflect the position reached by COMPETITION AND CONSUMER AUTHORITY (hereinafter referred to as "CCA"), and BOTSWANA NATIONAL PRODUCTIVITY CENTRE (herein referred to as "BNPC") and collectively referred to, in context, as "the Parties").

**WHEREAS** COMPETITION & CONSUMER AUTHORITY is established in terms of section 4 of the Competition Act No. 4 of 2018 with the principal objective of the prevention of, and redress for anti-competitive practices in the economy as well as the removal of constraints on the free play of competition in the market. Further, CCA is mandated to protect the rights of consumers against unfair business practices and to implement the Consumer Protection Act No 5 of 2018. The Competition Act empowers CCA to:

- a. Undertake general studies, whether by way of a market inquiry in terms of the Competition Act or otherwise on the effectiveness of competition in individual sectors of the economy.
- b. Liaise with and exchange information, knowledge and expertise with authorities entrusted with functions similar to those of the Authority.
- c. Hold regular consultations with, and receive advice from sector regulators in order to clarify who monitors and controls competition matters relating to those sectors.
- d. Collect information for the performance of its functions.

**WHEREAS** BOTSWANA NATIONAL PRODUCTIVITY CENTRE is established under Section 3 (1) of the Botswana National Productivity Centre Act of 1993, with the mandate to promote increased productivity in all sectors of the economy and to stimulate and generate productivity consciousness in Botswana.

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**WHEREAS** the specific functions of BNPC are explicitly set out in section 12 of the Botswana National Productivity Centre Act.

**AND WHEREAS** under Section 86 of the Competition Act, there is a general expectation for CCA to establish a mechanism through which it can maintain regular contact with other regulators regarding the exercise of its mandate.

**AND WHEREAS** under section 11(g) of the Botswana National Productivity Centre Act, BNPC is expected to establish links between the Centre and other productivity institutions. BNPC is charged with responsibilities of representing Botswana in reports that have a bearing on competitiveness including IMD Reports, Productivity Statistics Reports, Global Competitiveness Reports and Doing Business Reports.

To this end the parties have found it necessary and prudent to enter into a Memorandum of Understanding for purposes of discharging their respective functions.

**NOW THEREFORE**, the Parties agree to conclude this Understanding as follows:

#### **1. BASIS OF THIS UNDERSTANDING**

- 1.1. CCA is responsible for the prevention of, and redress for, anti-competitive practices in the economy, and the removal of constraints on the free play of competition in the market.
- 1.2. CCA is mandated to undertake general studies and analysis of identified sectors for an understanding of market structures and identifying anti-competitive practices for policy or enforcement purposes.
- 1.3. Sectors are studied to comprehend their formations and operations, and identify or ascertain any acts of anti-competitive behaviour.

- 1.4. Studies further keep CCA abreast of local, regional and international competition trends that could effectively inform the Authority about varied industry statistics, market information or specific scenarios of market analysis for benchmarking purposes.
- 1.5. One of BNPC's goals is to contribute towards national productivity and competitiveness. BNPC and CCA have a common goal in promoting competitiveness in the economy.
- 1.6. In order to improve the ratings of Botswana in relation to the level of domestic competition, and more importantly to enhance Botswana's competitiveness, CCA needs to collaborate with BNPC as the institution representing Botswana in the World Economic Forum.

## **2. OPERATIONAL PROCEEDURE**

- 2.1. The parties shall endeavour to inform each other in advance of regulatory changes or other materials that may have a significant impact on their joint operations or activities as herein described.
- 2.2. Areas of cooperation or information sharing shall include, but are not limited to:
  - (a) Sharing of information of findings of studies/reports that have a bearing on competitiveness including IMD Reports, Productivity Statistic Reports, Global Competitiveness and Doing Business reports;
  - (b) Coordination of preparations for sector studies in areas of common interest, to ensure extensive coverage of factors affecting competitiveness, e.g. Joint development of Questionnaires;
  - (c) Joint policy briefs and advocacy programmes pertaining to constraints on competition, regional and international competitiveness;
  - (d) Joint research activities;
  - (e) Capacity building in areas of common interest;

- (f) Adoption of measures to promote competitiveness;
  - (g) Stakeholder engagement and public awareness;
  - (h) Co-Funding of projects of common interest; and
  - (i) Development of Donor Funding and Technical Assistance Proposals.
- 2.3. All requests for information and joint researches shall be in writing and signed by the Heads of the Parties or their designated officers.
- 2.4. The request for information or joint research shall specify the following:
- a. A general description of the information sought by a Party or research proposed;
  - b. A general description of the matter which is the subject of the request and the purpose for which the information or research is for;
  - c. The desired time period for reply and, where appropriate, the reasons for the urgency thereof. In such urgent situations, the Parties will notify each other of the urgency of the matter and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of the efforts to address the situation; and
  - d. The requested Party may, where necessary, seek clarity on the research or information sought by the requesting party.

### **3. IMPLEMENTATION PROCEDURE**

- 3.1. Each request for information or any joint activity will be assessed on a case by case basis by the requested Party to determine whether assistance can be provided under the terms of this MoU.

- 3.2. In deciding whether and to what extent to fulfil a request, the requested Party may take into account the following:
- a. Whether the request conforms to this MoU.
  - b. Whether the provision of assistance would be so burdensome as to disrupt the proper performance of the requested Party's other functions.
  - c. Whether it would be contrary to public interest to give the assistance sought.
  - d. Whether it would be contrary to the laws, regulations and internal procedures and policies of the requested Party to give assistance sought.
  - e. Where necessary the requested Party may assemble a team to work with a team from the requesting Party during the assignment/ request period.
  - f. Where the Party to whom a request is made considers that it is unable to provide some or all of the information requested, that party may provide the requesting party with reasons for that position.
  - g. In any case where the request cannot be fulfilled in part or whole, the requested Party will consider whether there may be other assistance that can be provided to the requesting Party.

#### **4. HANDLING OF CONFIDENTIAL INFORMATION**

- 4.1. Any information communicated in any form under this MoU will be treated as confidential and shall be accorded protection and confidentiality similar to that accorded to the same kind of information under the governing laws and regulations of the Party supplying the information. Any restriction in the use of the information shall be notified in writing to the Party receiving that information.

- 4.2. The provisions of clause 4.1 above will not apply in respect of information that becomes public knowledge without the involvement of either Party.
- 4.3. Each Party or its employees will keep confidential all information which comes to it relating to the performance of the service or business function of either Party even where it is not relevant for the performance of the services. Each Party will disclose information to its employees, officers, approved valuers/sub-contractors and agents who either need to know it for the purpose of exercising or performing its rights and obligations under this MoU, and are informed of the confidential nature of the information divulged; and agree to act in compliance with this MoU.
- 4.4. Neither Party shall disclose information to any third party (other than its employees, officers, approved sub-contractors/valuators and agents in accordance with this clause) except for information that is already in the public domain at the time of disclosure, or becomes publicly known through no fault of its own employees, or is acquired by that third party without any breach of any obligation of confidence.
- 4.5. Notwithstanding any other provision of this MoU, it will not be breach of this MoU by either Party to disclose information given to it in connection with this MoU pursuant to a court order or a binding request from a regulatory body or other analogous authority with jurisdiction or from any other third party with statutory power to require the disclosure of such information, provided that the affected Party with statutory power to require the disclosure of such information gives a reasonable notice of such disclosure to the other Party.
- 4.6. This MoU may be quoted by any Party to it.

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4.7. Unless otherwise expressly stated herein, all researches done jointly or information sought or exchanged will be deemed to be usable by the either Party according to the legal framework/s governing them.

## **5. MARKETING AND PUBLICITY**

Neither of the parties to this MOU shall use the name, symbols, branding or marks of another party in any marketing and publicity without the written consent of the other party.

## **6. ESTABLISHMENT OF A JOINT WORKING COMMITTEE**

6.1 A Joint Working Committee ("the JWC") comprised of Six (6) members [three (3) from each organisation] as nominated by the Parties will be established pursuant to this MoU and will function on an ongoing basis.

6.2 The JWC will comprise of Manager, Research, Manager Enterprise Development; and Manager Merger Assessment, and Manager Stakeholder Engagement at BNPC. The JWC shall also comprise of Manager Communication and Advocacy, Manager Policy and Research and Manager Investigations at CCA.

6.3 The JWC may hold two (2) meetings per year to discuss issues of common interest and cooperation.

6.4 Meetings of the JWC will alternate between the parties and the hosting party shall provide the secretarial services to the meeting.

## **7. FUNCTIONS OF THE JOINT WORKING COMMITTEE**

7.1. The functions of the JWC shall include;

- a. Management and facilitation of meetings, cooperation, coordination, information sharing and consultation in respect of matters dealt with by each party in terms of this MoU;

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- b. Proposition, when necessary, any amendment of or supplementation to this MoU;
- c. Advisory services to the senior management of the Parties on issues affecting efficient and effective cooperation and implementation of the MoU and solutions thereto; and
- d. Any matter connected to or incidental to the MoU.
- e. The committee will identify and appoint an individual from each party who will be responsible for coordinating and facilitating meetings of the JWC.

#### **8. CONTACT PERSONS**

The Parties will each elect a contact person and avail their particulars and contact details to the other party. The contact persons will be responsible for facilitating timeous assistance for requests for information and any matter connected to or incidental to the MoU.

#### **9. SHARING RESOURCES**

The Parties may, where necessary and with prior arrangement, share each other's available resources in order to bring the provisions of this MoU into full effect; provided such a process is reasonable, does not compromise the respective security of the Parties and does not contravene any statute with which the two Parties must conform.

#### **10. STATUTORY LIMITATIONS**

- 10.1 The provision of, or request for, information under this MoU may be denied:
- a. Where compliance would require a Party to act in a manner that would violate any law in Botswana;

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- b. Under circumstances where there is an imminent risk to national security or other overriding public interest; or
- c. When compliance with a request or provision of information would interfere with an ongoing investigation in circumstances where prejudice to the investigation is likely to outweigh the adverse effects of denying the information.
- d. No provision of this MoU shall give rise to the right on the part of any person, entity or government authority other than the Parties herein, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this MoU.


## 11. FINANCIAL MATTERS

- 11.1 Each Party shall bear their own costs incurred in the process of securing information pursuant to the MoU and shall factor the aspects of this MoU in their respective budget unless such costs are voluntarily borne by the other.
- 11.2 The financing of cooperation projects should be decided by mutual consultation and agreement, according to the specific nature of each project.
- 11.3 This MoU, or any annexure that may be developed under this MoU, does not represent any commitment with regard to funding on the part of either CCA or BNPC. Any such commitment may be reflected in a separate arrangement as mutually decided by the Parties.

## 12. DISPUTE RESOLUTION

Any dispute between the parties arising out of the interpretation or implementation of this MoU will be resolved amicably and in good faith.

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### 13. **VARIATION OF THE MOU**

Any variation of this MoU will have no legal effect and will not be binding on the Parties unless reduced to writing and signed by Heads of the Parties or their designated officers to act on behalf of the Parties.

### 14. **COMMENCEMENT**

This MoU shall come into force on the date on which it is signed by persons authorised to act on behalf of both the Parties.

### 15. **DURATION AND TERMINATION**

- 15.1 This MoU will remain in force until it is terminated by either Party.
- 15.2 Either Party may terminate this MoU without cause upon ninety (90) days' written notice to the other.
- 15.3 Upon receipt of notice of termination of this MoU, the Parties will take all reasonable and necessary measures to conclude any activities already commenced in accordance with MoU.
- 15.4 The provisions of this MoU will survive any termination, to the extent necessary to permit an orderly settlement of accounts between the Parties.

### 16. **REVIEW OF THE MOU**

This MoU may be reviewed after every 2 years to ensure continued alignment to current best practices and any policy changes.

### 17. **DOMICILIUM CITANDI ET EXECUTANDI**

The Parties choose the following addresses as their respective *domicilium citandi et executandi* for purposes of this MoU:

Mr  
KM  
N.N.T.D

**THE COMPETITION AND CONSUMER AUTHORITY**

PRIVATE BAG 00101

GABORONE

PLOT 28, MATSITAMA ROAD.

TEL: +267 393 4278

FAX: +267 312 1013

EMAIL: [info@competitionauthority.co.bw](mailto:info@competitionauthority.co.bw)

**BOTSWANA NATIONAL PRODUCTIVITY CENTRE**

PRIVATE BAG 00392

Gaborone

Plot No. 21/222/254

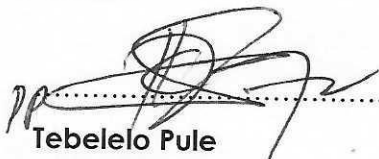
Tel : (+267) 3626300

Fax : (+267) 3913501

EMAIL: [info@bnpc.bw](mailto:info@bnpc.bw)

We, the undersigned, hereby agree to the terms and conditions contained in this Memorandum of Understanding.

Signed at Gaborone on behalf of the Competition and Consumer Authority on this 10<sup>th</sup> day of MAY 2022 in presence of the undersigned witness

  
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**Tebelelo Pule**

**Chief Executive Officer**

For and on behalf of **COMPETITION AND CONSUMER AUTHORITY**

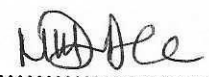
In the presence of:

WITNESS:

Name:

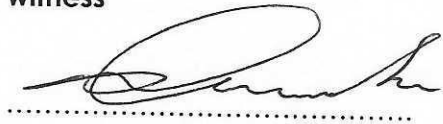
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Designation:

  
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NOMATHEMBA DLADLA  
PLOT 28 MATSITAMA  
DMU



Signed at Gaborone on behalf of the Botswana National Productivity Centre on this 10 day of MAY 2022 in presence of the undersigned witness



Christopher Mmusi Diswai  
Executive Director

TLEDZANI MAJALE  
GENERAL MANAGER

For and on behalf of **BOTSWANA NATIONAL PRODUCTIVITY CENTRE**

In the presence of:

WITNESS:

Name:

Matho Gemphe kgodi

Address:

P. Bag 00352 Gaborone

Designation:

Marketing manager

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