

3rd Annual National Stakeholders Competition Conference

organised by

the Botswana Competition Authority

13 March 2014

Welcome Address by Kiran Meetarbhan

Hon Dorcas Makgato Malesu, Minister of Trade & Industry,

Kgosikgolo Kealetile Moromi,

Mr Kebonang, Chairman of the Botswana Competition Authority,

Mr, Thula Kaira, Chief Executive of the Authority,

Respected Commissioners,

All protocols observed

Distinguished Guests,

Ladies and Gentlemen,

It is a great honour and a pleasure to be here during this 3rd National Stakeholders Competition Conference organised by the Botswana Competition Authority. I wish to extend my warmest thanks to Mr Thula Kaira for his invitation to address this morning's session and explore together with you all the 'Need for competition law and policy and the value it brings to businesses and consumers'.

The African continent finds itself at the crux of the history of competition law enactment and enforcement. A decade ago, only a handful of African countries had competition law regimes in place – today there are only a handful that do not. The year 2009 has been a crucial period for both Botswana and Mauritius in the competition law arena. Botswana passed its competition law in 2009 whilst Mauritian competition law became fully operative.

But five years down the line, we can proudly say that we are, together with our neighbouring competition agencies, paving our way to establish our authorities as respected agencies recognised for our integrity, professionalism and contribution to economic growth. The global trend of adopting competition laws and policies in developing countries, and the admiring effort on the part of Least-Developed Countries, provide an encouraging endorsement of the view that competition is not a luxury reserved for the rich; it is a necessity for the poor!

I know the questions on your mind today is what are the benefits of competition. Is it worth it? I will start with explaining the benefits of competition first and then discuss its value to consumers.

The benefits of competition

Competition is a process of rivalry between firms, each seeking to win customer's business. There are many ways in which this rivalry may occur. Some firms compete on price, others on quality of goods or services whilst others use research skills to develop new products. When competition is fierce, rivalry ensures that no part of the market remain unexplored. This result in prices being lowered down to an efficient level of costs & a wider choice in products that matches the heterogeneity of consumers needs & tastes and the rate of innovation will be high.

For many firms vigorous or fierce competition is mixed blessing. On the one hand, it keeps people working at their best on the other hand, on the other hand, competing in a very competitive market is hard work and not everyone wants to have a run at full speed all the time.

What role does competition law and Policy play in all this?

Competition law and policy regulated the current or potential power of companies on a certain market, on behalf of public interest. In practice competition law and policy prohibits the execution of restrictive competition practices, the acquisition of a dominant position in the market through the accomplishment of these practices and the abuse of dominant position.

The markets in competition produce greater benefits to society than the markets with monopolistic structures.

In a challenging low-growth environment, it becomes even more imperative for our developing economies to ensure the creation of conditions that are favourable to businesses and investors and that strengthen the ability of domestic companies and entrepreneurs to compete nationally and take their positions in world markets. A good competition policy and law lowers the entry barriers in the market and makes the environment conducive to promoting entrepreneurship and growth of small and medium enterprises. This has positive implications for development as small business and entrepreneurial activities promote employment growth. Maintaining open and competitive markets across the African continent is critical to build strong players that can operate efficiently and innovatively, and become internationally competitive. A strong and robust competition regime, where competition policy and law is enforced consistently and transparently, is no less than a challenging puzzle for developing countries but nevertheless remains a critical success factor.

Benefits to consumers

As enforcers and at times advocates of competition law, we often denote the importance of promoting consumer welfare through the application of competition law. We, as Authorities, carry out our enforcement duties on the presumption that ensuring the maintenance of competition in markets will ultimately benefit consumer welfare. However, the link between consumer welfare and the practical enforcement of competition law is not always straightforward. In fact, there may be a considerable gap between policy statements and the practical application of our competition laws. It is imperative that we close this gap because consumers remain one of the indubitable and intrinsic participants of competition enforcement and advocacy efforts. I mention here two reasons for saying so:

- (1) Consumers are ultimately the final beneficiaries of strong competition enforcement just as they stand to lose from a lack of competition that has a direct effect on costs, choice and quality. Whether it is a consumer good, a component of an end-product, a complementary service/product used in the manufacture of a consumer good, anti-competitive behaviour along the supply-chain has the potential to impact on costs and quality of the final end-product and thus affect the end-consumers. By boosting public confidence in the ability of competitive markets to deliver better outcomes, consumers feel they are able to engage with the issues raised by competition policy and enforcement;
- (2) By investing our advocacy resources towards informing and educating consumers and businesses about the different aspects of our work, consumers and businesses become the 'eyes and the ears' of our agencies. They help to bring valuable information about potential market failure to the attention of competition agencies. They also help us in understanding markets as consumers are best placed to explain directly how they perceive the impact of a particular action. By understanding the consumer viewpoint, we are better able to have a global view of all the different aspects of the market under consideration when identifying the potential harm of an alleged anticompetitive conduct and when proposing the remedies.

Competition is of value to consumers in the same manner as consumers are of intrinsic value to competition assessment. Consumer welfare is a common theme for most Authorities throughout the world, albeit occupying different roles and degrees of importance in different legal regimes. At times, the legislator himself fixes consumer welfare as one of the central objectives of competition legislation. At other times, the legislator imposes upon the adjudicative arm of the competition agency, an assessment of the harm caused by an anti-competitive conduct on the final consumer as part of its determination.

Arguably, promoting consumer welfare may well be said to be inherent in the enforcement of competition and that consumer welfare is a natural result of (optimally implemented) competition law. Whether serving as a primary goal or an underlying goal of competition enforcement, defending the interests of consumers is and should remain at the heart of our competition policies. It is important that the thinking behind our competition policies be underpinned by an understanding of the needs and welfare of consumers.

One way to achieve this is by streamlining our internal ‘case prioritisation’ procedures by focusing resources on those cases where there is an effect on the market downstream which has the most detrimental effect on consumers’ lives and economic well-being. Doing so not only represents a good practice from a competition law perspective but also in terms of rationalizing the use of taxpayers’ money. We have all heard about it and none of us present here can remain insensitive to the burning issue that is: access to health. The widespread availability of and access to safe yet affordable pharmaceuticals is one component of the quality of health care services.

Where market regulatory mechanisms prove insufficient in achieving the desired objectives, competition law should apply in full to the pharmaceutical sector. As the import bill for pharmaceuticals depletes the government’s health budget, the Competition Commission of Mauritius strongly believes that dynamic competition should be allowed to play a prominent role in the pharmaceutical sector in order to derive better value for money by the end-consumers, both patients and the government health services as well and has in this respect, launched its market study within the pharmaceutical sector in November 2013 in order to assess the state of competition within this sector.

In addition to prioritising those markets where there is a clear downstream effect on consumers, it is equally vital to devote resources towards measuring, reporting upon and disseminating the outcome of competition interventions as a means of accounting to lawmakers, politicians and society and demonstrating the directly quantifiable social benefits of the Authority’s activities. There is no easy, non-contestable, practical method for quantifying economic and especially non-economic benefits to consumer welfare that will work for all cases. But, that work is required from us. It is based on this strong belief that the CCM embarked upon an Ex-Post Evaluation Report of the CCM’s first investigation into the block processed cheese market.

The investigated enterprise held around 90% share of the block processed cheese market owing to the very strong brand image and consumer loyalty attached to the product. Almost every household in Mauritius had been consuming that particular cheese brand for decades. The Report which was released during our 2011 annual Competition Workshop that crowned our second year of existence brought to the front clear-cut benefits of the CCM’s intervention: In addition to benefitting from the entry of two new incumbents into the processed cheese market, consumers benefitted directly from an average increase of only 4% in the price/unit for Sep. 2010 – Aug. 2011 (post-investigative period) as opposed to a 25% figure for the period Sep. 2007 – Aug. 2009. Consumer benefits from this intervention have been estimated at around USD 4 M at least.

True to say that the CCM has not systematically embarked on a ‘performance appraisal’ of every single competition intervention based on the consumer and other economic benefits reaped but we are well in the process of designing our own methodology for assessing the consumer benefits accruing from our investigations. There is no unified view of Authorities’ opinions as to defining the consumer welfare terminology nor what role the promotion of consumer benefits and consumer welfare should play in competition analysis. Whatever be the objectives that our respective legislations have endowed us with; as young competition agencies, we should continuously roll up our sleeves to ensure that firms and consumers understand how much they can benefit from competition as well as to make sure that they effectively reap the benefits of competition enforcement.

As young competition agencies, we have much to benefit from cooperation in the enforcement of our competition policies and in the sharing of our experiences regarding consumer benefits arising out of competition intervention.

Informed and active consumers are the actual levers behind a competitive market place. It is ultimately their choices and purchasing decisions at the end of the supply chain that drive a market's requirements and needs in the upstream market, and it is these choices made by consumers that dictate business decisions on future investment and innovation in order to reap a profitable and successful business. Where the benefits of this investment, innovation and any resulting efficiencies are passed on to end-consumers, consumers are further empowered to exercise informed choices, building a virtuous circle and a strong economy. The importance of competition law and policy is not and should not become a doctrine to our economy and our people.

A competition framework that fails to give due recognition to the importance of competition culture carries along a high risk of undermining the enforcement of competition law. There should be no doubt in our minds that our continued focus on and engagement with consumers will ensure that competition policy is of relevance to our consumers and citizens. It is not enough for us to 'think competition,' it is high time that we also 'think consumers'.

Ladies and Gentlemen, I sincerely hope that the upcoming sessions, will lead to promising reflection and rewarding exchange on the interaction between competition law and carefully selected economic sectors: tourism, financial services, the beef industry, aviation and procurement in the public sector. Our speakers bring to the table up-to-date yet challenging topics which need not compete for our attention!

I wish all of you a very informative and enjoyable day ahead.

Thank you for your attention.