



## CA SHARES FINDINGS OF SHOPPING MALLS AND IN-HOUSE BRANDS STUDIES

The Competition Authority has shared findings of two market studies on Shopping Malls and In-house Brands with industry stakeholders at a breakfast meeting that was held at Avani Hotel in Gaborone on 25th September.

Prompted by numerous complaints alleging unfair business practices, the Authority carried out a study in order to establish possible anti-competitive conduct that In-House Brands may pose on the retail sector, and make recommendations on issues that affect the regulatory framework. The study was also aimed at understanding the value, structure, terms of trade and business practices allied to In-House Brands. This was done in order to increase transparency and competition.

The study established that both traditional wholesalers and retail chain supermarkets have adopted In-House brands as a business strategy. Manufacturers as producers of Family Brands are also contracted to produce In-House brands for wholesalers and chain supermarkets and this makes Family brands and In-House brands direct competitors. The study revealed that wholesale and retail chain supermarkets In-House brands be priced cheaper than Family Brands, and the effect is that In-House brands shelf space is growing more than Family brands.



*The Manager for Investigations and Research Analysis Mr. Ernest Bagopi presenting findings of the studies*



*Some of the industry stakeholders who attended the Breakfast Meeting on 25th September*

The CA's probe revealed that prevalent terms of trade favour retailers and subject manufacturers to unfair trade conditions and may lead to their exit from the market.

Admittedly, many factors may contribute to the eventual shelf price in retail

stores, but the leverage that retail stores have in terms of retailer and bargaining power is to be considered as a possible avenue to anti-competitive behaviour.

Possible anti-competitive conducts include abuse of dominance where the most likely practices would be; margin squeeze, dictated pricing/vertical price fixing i.e. resale price maintenance, foreclosure and barriers to entry. The CA concluded that there is a need for an in-depth analysis of margin squeeze, dictated pricing/vertical price fixing, foreclosure and barriers to entry as well as the contractual agreements to ascertain their effect on competition. Further, vertical or horizontal integration of retail stores should be monitored to further control the leverage retail stores have over manufacturers.

The objective of the Shopping Malls Study was to understand the landscape of the shopping mall retail property market in order to increase transparency and competition; ascertain whether the existing tenant and landlord system takes into account aspects of competition when drawing up a tenant mix, identify competition aspects and make recommendations on issues that affect the regulatory framework.

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# HIGH COURT ORDERS CA TO REVISE ITS DECISION ON THE ACQUISITION OF 4Ms BY TRANSPORT HOLDINGS



Representatives of Transport Holdings and 4Ms at a public hearing on their proposed merger at the CA offices on 9th December 2016

In accordance with the Order of the High Court, the Competition Authority has revised a decision which was made on 13th January 2017, in respect of the proposed acquisition of assets and cession of the main contracts belonging to 4M'S Group Holdings (Pty) Ltd by Transport Holdings Ltd.

In the revised merger decision dated 22nd September 2017, the Authority states that, following the publication of the January decision, the merging parties lodged an application for the judicial review of the decision of the Authority with the High Court.

The parties and the Authority then determined to engage in settlement negotiations to reach an amicable settlement of the matter.

It states that through these discussions, it was agreed and subsequently

confirmed by Order of the High Court dated 5th July 2017 that: Transport Holdings is not precluded by the Authority from participating in the tender to be issued by KBL when 4MS' contract with KBL comes to an end; and that Transport Holdings shall be entitled to submit a merger notification for consideration by the Authority in respect of any new notifiable transaction it may conclude with 4Ms in terms of the Competition Act.

In its January decision, the Authority had declined to approve the acquisition of assets and cessation of the main contract belonging to 4Ms Group Holdings (Pty) Ltd by Transport Holdings Ltd on the grounds that there were competition and public interest concerns that arose in the line haul transportation services market on account of the aforementioned acquisition, in Botswana.

The Authority had indicated that the proposed transaction was likely to result in reduced competition due to the removal of a competitor in the line haul transportation services market; the implementation of the proposed merger was expected to result in the merged entity attaining a dominant position; and that the proposed transaction was expected to result in retrenchments and citizen disempowerment. Further, Transport Holdings had been restrained by the CA from participating in the tender to be issued by KBL upon the expiry of the existing 4Ms contract with KBL in October 2017, and for the entire period leading up to the end of the Transport Holdings (Pty) Ltd/Mulbridge Transport (Pty) Ltd contract in January 2020, including any extension period that may be granted thereafter.

# MERGERS ACTIVITY UPDATE QUARTER ONE 2017

The Competition Authority handled a total of 10 mergers in Quarter 1. All the mergers finalised during the quarter were simple mergers, with no competition effects. There were three (3) mergers brought forward from 2016/17 Q4 which were accounted for in Q1. From the finalised mergers, one merger was approved with a condition, nine approved without conditions, and no mergers were prohibited. In terms of average turnaround times of assessed and finalised mergers the Authority took 19 business days (28 calendar days).

No. of finalised mergers	Simple mergers	Complex mergers	Unconditionally approved	Conditionally approved	Prohibited mergers
10	10	0	9	1	0

The only conditionally approved transaction during the quarter was with regards to the acquisition of the entire issued shares in Cradle Arc Investments (Pty) Ltd from PenMin Botswana (Pty) Ltd by Alecto Minerals PLC and an acquisition of 60% shareholding in Alecto by PenMin. The parties are required to notify the competition Authority in the event PenMin acquires the 60% shares in Alecto after 12 months from the decision date.

As per the requirements of continuously identifying mergers that jump the gun (i.e., implemented without notification), the CA continuously identifies mergers that are implemented in this regard, such as the acquisition of 100% issued shares in Fleming Asset Management Botswana (Pty) Ltd from Robert Fleming Botswana Holdings (Pty) Ltd and Starfish (Pty) Ltd by Capital Management Africa (Pty) Ltd.

## Mergers Acquisitions & Takeovers

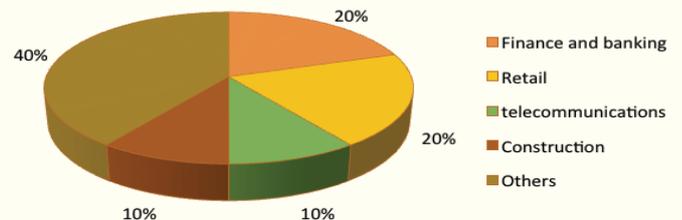


The Authority notes with concern the tendency by some enterprises to implement mergers without the prior consideration and approval of the Authority.

These transactions are typically identified through the Authority's market intelligence initiatives. The Authority will continue to intensify its market intelligence efforts so as to curb this trend of enterprises implementing mergers in violation of the Competition Act.

The pie chart below indicates that the single largest sector where notifications were received were the finance and banking, and retail sectors at 20%, with the telecommunication and construction sectors accounting for 10% respectively.

Merger Activity By Sector - Q1



Over and above the enforcement of mergers, the Authority is also empowered by Part X of the Competition Act to address public interest concerns. In this regard, the Authority managed to protect at least 54 jobs during the quarter through undertakings made by the parties to maintain the jobs.

In the quarter the CA further started a compliance monitoring exercise of four mergers that were conditionally approved from the previous years. The objective of the exercise is to ensure that the merged entities comply with the conditions stipulated on the mergers decisions as well as the commitments and undertakings that were considered by the Authority.

# Tebelelo Pule Appointed CEO of the Competition Authority

The Minister of Investment, Trade and Industry, Honourable Vincent T. Seretse has appointed Ms. Tebelelo Pule as the new CEO of the Competition Authority (CA). Ms. Pule had been the Acting CEO of the CA ever since the founding CEO, Mr. Thula Kaira, left in April 2016. Ms. Pule's appointment effected on 1st October 2017 to run for a period of five years.

Ms. Pule is a Bachelor of Commerce Graduate from the University of Botswana. She is a Fellow of the Botswana Institute of Chartered Accountants (BICA) and an Associate member of Chartered Institute of Management Accountants (CIMA) (UK).

Ms. Pule holds a Master of Business Administration from the University of Derby, UK, and is an experienced administrator having cut her teeth at the then Botswana Telecommunications Corporation (BTC) which she joined as a graduate trainee and rose through the ranks up to the position of General Manager (Finance).

While at BTC she was responsible for Treasury, Credit Control, Revenue Assurance, Cash Management, Budget and Budgetary control, Fixed Assets, Management and Statutory Accounts Reporting, Procurement and Costing.

Ms. Pule was one of the dedicated team of professionals from diverse disciplines who managed to set-up and launch beMobile, Botswana's third mobile operator.

Amongst other notable projects such as beMobile, she managed the global connectivity project also known as the international undersea cable of the East African Submarine Cable System (EASSY) and the West Africa Cable



Ms. Tebelelo Pule - Chief Executive Officer

System (WACS). After leaving BTC Ms. Pule joined Bokamoso Private Hospital Trust where her portfolio covered Finance, Front Office and Records.

Her experience in the corporate world has not gone unnoticed in the varied boardrooms of Botswana. She serves the national electricity utility corporation, Botswana Power Corporation, as a board member where she chairs the Finance and Investment Committee and sits in the Audit and Risk Committee of the board.

She has served as the Chairperson of Botsnet Board during her time at BTC. Speaking to the Botswana

Competition Bulletin, Ms. Pule said her key priorities at the CA during her tenure would in be four areas.

“My emphasis would be on enforcement, advocacy, prioritisation of the Authority's activities and lastly I would like to ensure that we build collaborations with our international partners in order to gain the requisite expertise in key areas.

These would be the strategic areas that I would want to drive during my term.”

Mma P, as she is affectionately known to friends and colleagues, is married to Mr. Mabuse Pule, and they have been blessed with four girls.

## COMPETITION AUTHORITY REACHES OUT TO DISTRICT ADMINISTRATION TENDER COMMITTEES

The Competition Authority joined its MOU partner the Public Procurement and Asset Disposal Board (PPADB) to educate members of District Administration Tender Committees (DATC) in Francistown and Gaborone on bid-rigging.

The members of DATC were inducted on the importance of executing tenders efficiently. At the two workshops in Francistown on 10th October and

Gaborone on 25th October, the Director of Communications and Advocacy, Gideon Nkala, inducted the participants on the spectre of bid-rigging and how it undermines the bidding process. Participants were taught the various forms of bid-rigging and how it can be detected.

Most importantly, participants were also informed about ways in which public officers can facilitate bid-rigging.



# Assistant Minister of Investment, Trade and Industry Visits the CA

The Honourable Assistant Minister of Investment, Trade and Industry, Mr. Biggie Butale, visited the Competition Authority on 30th August 2017 to familiarise himself with its operations as the Authority is one of the parastatals that fall under his Ministry. In his address to staff, the Assistant Minister said anti-competitive conduct such as collusion and bid-rigging cost the government billions of pula which he said hit the poor very hard as they are denied developments. He advised CA staff not to allow themselves to be dissuaded or corrupted in the course of their duties, noting that the mandate of the Authority is welcomed and supported. "If you allow businessmen to blunt your teeth people will start to complain," Butale said.



Assistant Minister of Investment, Trade and Industry Mr. Biggie Butale addressing staff during his visit to the Competition Authority on 30th August 2017

He further said the Authority has done well to combat bid-rigging citing the referral of bid-rigging cases to the Competition Commission. For her part, the then Acting CEO of

the Authority Ms. Tebelelo Pule briefed the Assistant Minister about the implementation of competition law and the challenges faced by the Authority.

## From Page 1

The Authority had received numerous complaints of unfair business practices of shopping malls that continued to house certain chain stores, and the inquiry focused on major shopping malls across the country wherein 101 stores, 12 financial institutions and 11 property managers were interviewed. Exclusive agreements and Long term tenancy have some level of correlation and may give rise to anti-competitive behaviour.

The major findings were that Mall managers are not cognisant of competition law and hence do not consider it in the process of determining tenant mix. Most lease agreements have a clause that accounts for externalities through overage rentals as well as anchor rental subsidies. However, implementation has not been done yet. The study concludes that anchor tenants contribute 40% of the total rental revenue of shopping malls.

In terms of competition and policy issues, no exclusive agreements were discovered either during interviews with anchor tenants or in any clause in the lease agreements. However, some non-anchor stores reported that some implicit exclusivity prevailed, and this is because anchor tenants are integral to the planning and development of the shopping malls. Long term tenancy is mostly common with anchor tenants and can give birth to exclusive agreements, explicitly or implicitly. Other barriers to entry reported included



high rentals due to the high level of demand for store space, and high start-up costs. The study established that start-up costs are high, and the most prevalent barrier to entry in the market. This barriers possibly deters new market entrants.

The study concluded that exclusive agreements and long term tenancy have some level of correlation and may give rise to anti-competitive behaviour. It further revealed that it is a norm for anchor tenants to be contracted to shopping malls for much longer periods of time than non-anchor stores. Long term anchor tenancy provides both entities (the anchor tenants and shopping mall developers) with some form of security. Firstly, anchor tenants provide property developers with surety for investors/financiers. Anchor tenants presumably provide shopping malls with foot traffic attraction or

customer attraction to the malls, and a spin-off benefit to non-anchor stores. Anchor tenants are usually well established and marketed brand names. The study also found that anchor tenants initially invest heavily as compared to non-anchor stores when setting up in shopping malls and therefore require a much longer period of time to recoup these costs. These long period lease agreements imply exclusivity and pose barriers to new entrants.

Going forward, there is need to establish possible excessive pricing in this sector. This can lead to abuse as existing enterprises may use their existing market position and create entry barriers to potential rivals in order to maintain market share more especially where anchor tenants have bargaining power or control over shopping mall management. To resolve barriers to entry due to long term lease agreements, the lease agreement period (by anchor tenants) entered into with shopping mall establishments could be subject to the loan period; thereafter renewals after completing loan payment should be reasonable to allow for competition.

Further, the Authority should continuously monitor shopping mall developments to ensure that the prevalence of either explicit or implicit exclusive agreements in this industry is avoided, and to ensure that small, medium and micro enterprises (SMMEs) are not foreclosed in the long run.

# CA and CIPA JOINT EXHIBITION



CA and CIPA joint exhibition at Gaborone Main Mall on 20th October 2017

The Competition Authority, CA and the Companies and Intellectual Property Authority (CIPA) held a joint exhibition at Gaborone Main Mall in on Friday 20th October in an effort to reach out to stakeholders and share information regarding their mandates, products and services.

The CA and CIPA signed a Memorandum of Understanding (MoU) on 16th June 2016 in which they committed to cooperate and share relevant information and communicate regularly on matters of common interest to enable ease of doing business in Botswana. They also pledged to share available resources and conduct joint training and workshops for awareness creation. The two parastatals fall under the Minis-

try of Investment, Trade and Industry.

Formerly the Registrar of Companies and Intellectual Property, CIPA was established by an Act of Parliament in 2011 to promote and enable full protection of the rights of investors and right holders obtained under the Companies Act, Registration of Business Names Act, Industrial Property Act and Copyright and Neighbouring Rights Act. CIPA is mandated to register businesses and protect intellectual property rights through the administration of the four pieces of legislation.

The Companies Act which provides for the incorporation of companies; registration of post incorporation returns and notices; monitoring of post incorporation returns and reservation of company names, while the Registra-

tion of Business Names Act provides for registration of business names and post registration notices such as change of ownership and cessation of businesses.

The Copyright and Neighbouring Rights Act, provides for the protection of the rights of authors, artists and creators, as well as protection of their literary and artistic creations, which include novels, poems, plays, films, musical works, and artistic works such as drawings, paintings, photographs and sculptures.

The Industrial Property Act, provides for the protection of industrial property rights in relation to patents, trademarks, utility model certificates, industrial designs, traditional knowledge, layout designs of integrated circuits, geographical indications and handicrafts.

## CA at Metlhala ya Khumo in Masunga

The Competition Authority took the message of fair competition in the economy to Masunga where different departments and parastatals under the Ministry of Investment, Trade and Industry converged on October 27th 2017.

The annual Metlhala ya Khumo is a public outreach initiative meant to sensitise members of the public about the various ways in which they can play a meaningful role in the economy of Botswana.

The CA staff, Ernest Bagopi, Modimoosi Matebesu and Tumelo Motswiri were part of the team that explained the Au-



Masunga residents who visited the CA stall

thority's mandate to members of the public who came to the Authority's stall.

# COMPETITION AUTHORITY IN PICTURES



Industry stakeholders who attended a breakfast meeting on 25th September 2017 when the CA released findings of Shopping Malls and in-house Brand studies



Mr. Chandra Chauhan of Sefalana Holding Company giving a vote of thanks on behalf of industry participants at the breakfast meeting



CA and CIPA Joint Exhibition at Gaborone Main Mall on 20th October 2017



CIPA staff briefing members of the public at the joint exhibition

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