

COMPETITION BULLETIN

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CA Rejects Application for Exemption by Choppies Buying Group

The Competition Authority has rejected an application for Exemption from the provisions of the Competition Act by the Choppies Buying Group on grounds that the Exemption would likely lessen competition in the retailing of Fast Moving Consumer Goods (FMCG) or grocery retailing market where the Parties operate in similar geographic markets, which is not proportionate to the benefits for the public. The Choppies Buying Group comprises Choppies Distribution Centre (Pty) Ltd, Payless Supermarket (Pty) Ltd and Woodblock (Pty) Ltd.

Announcing its decision on September 18th, the Authority further said the structure of the Buying Group facilitates coordination with regard to prices, and would likely lead to a collusive outcome in the relevant market in contravention of section 25 of the Act, particularly



subsections 25(a) and (b) thereof. Further, it noted that Choppies is already a dominant enterprise in the market for retailing of FMCG or grocery retail market, the nature and features of the Buying Group would allow it to affect competition adversely.

The Authority further raised concern that the rationale for the Choppies Buying Group appears to be meant and guided to rescue Payless, as Payless was reported to have insufficient capital or even credit facilities to purchase its stock in large volumes. "As the Choppies Buying Group secures goods and/or products from suppliers on behalf of its members, this creates a financial dependency on Choppies by its members, which concerns the Competition Authority".

Furthermore, the Authority said that no empirical evidence was provided to indicate that the formation of the buying group had any offsetting benefits for the public (in relation to effects on competition) directly attributable to the arrangement as listed under section 32(1) (a) to (h) of the Competition Act. "Particularly, the parties failed to demonstrate through comprehensive economic and factual evidence that the formation of the Buying Group has, or would directly lead to the outcome of maintaining low prices, high quality or greater choice for consumers", said the Authority.

In relation to employment issues at Payless, the Authority was of the view that in the event that shareholders of Payless considered they could not profitably operate the business (which may lead to job losses), they could float the business for sale as a going concern.

"The Authority did not consider the adverse effects of the arrangement on competition to be proportionate to the benefits for the public in the grocery retailing market. Furthermore, the buying group was not considered to be the only remedy available for Payless in the long-term", stated the Authority.

The Authority directed that Payless and Woodblock should wean themselves from the Choppies Buying Group by the 30th November 2014, and provide a report of how they have weaned themselves from the Choppies Buying Group by 15th December 2014.

A buying group is the coming together of similar independent businesses to leverage their combined purchasing power to receive better pricing and terms on the products they buy. Buying Groups operate in most industry sectors at both the wholesale and retail levels.

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Parastatals Trained to Detect and Prevent Bid-Rigging



PPADB Executive Director Ms. Bridget John

Officers involved in public procurement in Parastatals were trained to detect and prevent bid-rigging in tenders at a workshop organised by the Competition Authority in Gaborone on 7th July.

Giving the keynote address at the workshop, the Executive Director of the Public Procurement and Asset Disposal Board (PPADB), Ms Bridget John, said bid-rigging is harmful to the economy, procuring entities and to the public who ultimately have to bear the cost as taxpayers and consumers.

“It is acknowledged that bid rigging agreements, as is the case with other corrupt practices can be very difficult to detect as they are typically negotiated under the cloak of secrecy. It is, therefore, necessary to constantly be looking for clues such as unusual bidding tendencies, pricing patterns, or something that the contractor says or does. We need market intelligence and to be on guard throughout the entire procurement process to understand market dynamics and players” John said.

Ms. John however cautioned that finding signs of possible bid-rigging does not necessarily mean that bid-rigging is occurring but simply shows that there may be a problem. “In this instance, the best thing for procurement officials to do is to contact the Competition Authority and have it investigate the signs detected”.

Ms. John told participants that the PPADB is deeply concerned by very high tender prices quoted by contractors for procurement that attract better prices and quality elsewhere, the dominance of certain contractors in the local construction industry, as well as frequent requests for cost increases during project execution as these create a fertile ground for bid rigging.

Participants were further informed that in its 2013-18 Strategic Plan, the PPADB has committed to reducing the use of less competitive procurement methods which create room for collusive bidding and other corrupt practices in favour of the default method of procurement which is open domestic bidding. “Some may see competitive bidding as a lengthy and frustrating process but it is a necessary evil as there is value in fair competition” John said.

Earlier, when explaining the objectives of the workshop, the Chief Executive of the Competition Authority Mr. Thula Kaira, said procuring officers as the front-line designers and evaluators of tenders can only prevent bid-rigging if they know the clues or indicators that ought to raise their suspicion of bid-rigging.

“Detection of bid-rigging and reporting suspicions thereof is an important feed into institutions such as the Competition Authority. We cannot, on our own, succeed in dealing with bid-rigging” Kaira said.

He further informed the participants that the Organisation for Economic Cooperation and Development (OECD) has estimated that developing countries lose at least US\$20 billion annually due to bid-rigging.

For its part, the Directorate on Corruption and Economic Crime (DCEC) made a presentation on how corruption and bid-rigging affect competition. In his remarks, DCEC Legal Officer Mr. Godknows Simon, said bid-rigging and corruption are flip sides of a coin and called for regular training for procurement staff on bid-rigging.



CA Reviews Jack's Gym Merger Decision

The Competition Authority has reviewed its decision of 7th March 2014 regarding the acquisition of all the assets and goodwill of Evolution (Pty) Ltd, Gym Active and CNS Gym by Humaree Investments (Pty) Ltd trading as Jack's Gym.

Announcing the review of its decision on 10th July, the Authority noted that Jack's Gyms are concentrated in the western side of Gaborone, where the Gaborone West Jack's Gym branch is located, than the eastern side where the Jack's Gym Village branch is located.

In view of this distribution, the Authority determined that the exiting of Jack's Gym in the western part of Gaborone would address the concentration concerns observed by the Authority more directly than the exit of Jack's Gym branch on the eastern side of Gaborone, where their presence is not as high.

On the basis of this, the Authority acceded to Jack's Gym request to divest the Gaborone West Jack's Gym branch by end of June 2016 in the event that Jack's Gym will still be considered to exercise significant market power in the Gaborone gym market at that time.

In this context, Jack's Gym will furnish the Authority with a list of its competitors in the relevant market as well as their market shares by January 2016 for the Authority to review the divestiture directive. In reviewing the directive, the Authority shall carry out its own market assessment and any required due process under the Competition Act.

BNP Paribas and Atlas Mara Acquisitions Approved

The Competition Authority has unconditionally authorised the proposed acquisition of 50% of the issued share capital in RCS Investment Holdings Limited by BNP Paribas Personal Finance S.A., as well as the proposed acquisition of 100% control in African Banking Corporation Holdings Limited by Atlas Mara Co-Invest Limited.

Approving the acquisitions on July 30th, the Authority said the proposed BNP Paribas acquisition is not likely to result in substantial lessening of competition, nor endanger the continuity of service, due to the absence of geographical overlap between the activities of the merging parties in Botswana.

It said even though the merged entity is regarded as a dominant enterprise in the relevant market in Botswana as defined under section 2 of the Competition Act, read together with regulation 4 of the Competition Regulations, the position was not attained as a result of the implementation of the merger, and no negative effect on public interest has been identified, in relation to the provisions of section 59(2).



Regarding the Atlas Mara acquisition, the Authority said the proposed transaction is not likely to result in substantial lessening of competition, nor endanger the continuity of service, due to the existence of post-merger competitive pressure that will continue to be posed by the top four commercial banks (First National Bank of Botswana, Barclays Bank of Botswana, Stanbic Bank Botswana and Standard Chartered Bank).

Similarly, the implementation of the proposed merger is not expected to result in the merged entity attaining a dominant position, and no significant negative effect on public interest in Botswana has been identified.



Kgosi Masego Olebile welcoming guests to Palapye at the Ministry of Trade and Industry Outreach Event

Ministry of Trade and Industry Takes its Services to Palapye

The Ministry of Trade and Industry and its Parastatals took their services to the Palapye community on 12th July. The outreach initiative was intended to educate Batswana about the Ministry of Trade and Industry, highlight its achievements and interact with and advise those that aspire to start businesses.

The event was officially opened by Kgosi Masego Olebile who noted that Palapye has since grown from being a village which people pass through on their way to other places to being a town in which aspiring business people look to if they want their businesses to grow.

The keynote address was given by the Minister of Trade, Honourable Minister Dorcas Makgato-Malesu who thanked those who were in attendance for making time learn more about the services offered by her Ministry. The Minister highlighted the Ministry's achievements and said it will continue to do its best to help the economy of Botswana grow.

The Competition Authority took the opportunity to educate the residents of Palapye about its mandate, Competition Law and its benefits to the economy.



Students and teachers from Serowe who visited CA

CA HOSTS STUDENTS FROM SEROWE

The Competition Authority hosted Junior Achievement Botswana (JAB) students from Swaneng Hill School and Kgalemang Junior Secondary School in Serowe on 20th August.

JAB is a program sponsored by the Government of Botswana to mould young entrepreneurs and participants of the programme are selected from students who excel in subjects related to business and economics.

During their visit, the students were briefed on Competition Law and Policy, and the mandate of the Competition Authority. Officially welcoming the students and their teachers, the Communications and Advocacy Officer, Ms. Kelebogile Ngwenya thanked them for choosing to visit the Authority during their study tour to Gaborone.

"We are delighted to have you here, as future business entrepreneurs, it is very vital for you not only to be exposed to Competition Law, but also to understand why it is necessary to have Competition Law and how it benefits the business community and consumers," she said. The students also had an opportunity to ask questions about the Authority and future career prospects.

Zambia Competition Tribunal Quashes Puma Fine



The Zambian Competition and Consumer Protection Tribunal has quashed the Competition and Consumer Protection Commission's (CCPC) decision to fine Puma Energy Zambia two per cent of its annual turnover for non-compliance with a 2001 condition merger on the distribution of Castrol Oil products in the country.

Puma Energy Zambia Plc appealed an August 17, 2012 decision by the CCPC that it should be fined for not complying with the 2001 merger condition which stipulated that the distribution of Castrol products in Zambia should be done by an independent distributor other than BP Zambia.

The facts before the tribunal were that the CCPC's predecessor, the Zambia Competition Commission, granted conditional approval to BP Africa's acquisition of Castrol Oil in 2001, which culminated in the signing of a distribution agreement between BP Africa and Danatech Investments Limited (Dana Oil).

BP Africa, which at the time of signing the distribution agreement owned 75% interest in BP Zambia, the predecessor of Puma Energy Zambia, also signed another distribution agreement on Castrol products in 2008. "The approval of the distribution agreements between the BP Group and Dana were approvals of a merger," the Puma Energy Zambia representatives argued in file court documents.

Puma Energy Zambia in the appeal filed on 5th June 2013 stated that CCPC had no authority to impose the fine on it without seeking the tribunal's approval. According to the grounds of the appeal, Puma Energy Zambia argued that CCPC should have first applied for a mandatory order from the Tribunal before imposing the fine. "We submit therefore that the order fining the appellant two per cent was illegal," Puma Energy Zambia's appeal read. "We therefore pray that this honourable tribunal render it null and void."

But CCPC maintained that it did not err in law when it imposed the fine on Puma Energy Zambia because the basis was failure by the parties to adhere to a condition merger that it authorised.

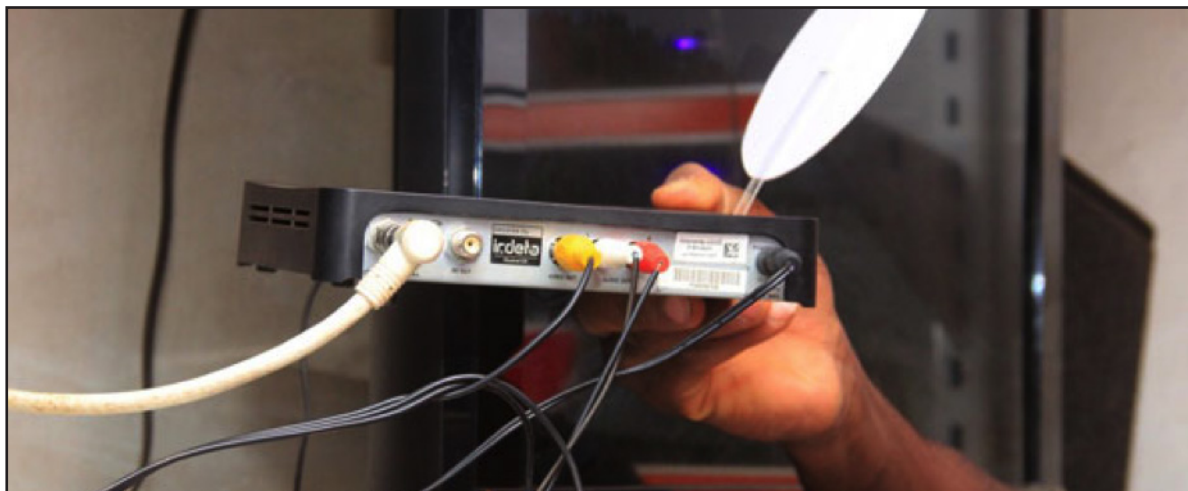
"This condition effectively precluded BP Zambia from Castrol rights," CCPC argued. "The directive to appoint an independent distributor clearly referred to the fact that BP Zambia Limited was allowed to market the Castrol products in Zambia only during the transition period until the distributor was appointed."

CCPC further submitted that the 2002 distribution agreement was not the same as the 2008 one where the parties between themselves and without recourse to the CCPC directive of 2001 allowed BP Zambia to distribute Castrol products within Zambia.

"The respondent had no power under the Act to make orders punishing alleged non-compliance and which orders can only be made by the Tribunal," the Tribunal held in its judgment delivered on August 6. "Therefore the decision by the respondent that the appellant be fined two per cent of its turnover is accordingly quashed."

Source: <http://www.postzambia.com/news.php?id=681>

Content Sharing Rules Set to End DStv's Monopoly



Pay TV service providers are headed for a big market shift when regulations requiring them to re-sell exclusive content such as the English football Premier League rights to competitors come into force in Kenya.

The Communications Authority of Kenya's (CA) Director-General, Francis Wangusi, said sharing of content is part of the regulations the agency will use to license broadcasters, including pay television service providers.

"We are coming up with regulations that will require all pay television service providers to share premium content on a commercial basis," Mr. Wangusi said, adding that this will be part of the new licensing conditions. "I know I am going to rattle some players but that is it. CA is the regulator and does not expect all decisions to please all service providers."

The telecoms sector regulator told the Business Daily that the regulations, to be soon shared with industry players, would effectively deal with practices that give operators undue advantage over competitors.

The announcement is a big win for rivals of pay TV service provider DStv's rivals such as the Wananchi Group, who have been pushing the regulator to compel DStv to share its premium content.

The Authority said that unlike previously when it had to seek authorisation from the parent ministry to come up with such regulations, it had acquired enough room to independently legislate with input from stakeholders.

Mr. Wangusi said the new rules would come into force by October and that their formulation had borrowed from practices in markets such as Nigeria.

"DStv will have to put a price tag on their premium content but that value should not be set at a level that discourages other providers from buying the said rights," Mr. Wangusi said.

The guidelines are expected to come with a formula for the pricing of content sold to rival firms. Italy and the UK uses the same concept that is not only meant to increase competition but to also enable end users to access such content from providers of choice.

In the UK, the industry regulator has in the past instructed Sky TV, which had exclusive rights over the English Premier League (EPL) to re-sell to Virgin Media, a cable pay television.

A similar battle ensued in Nigeria pitting DStv against local pay TV operator HiTV in 2010. DStv finally prevailed when it won the right to buy the lucrative EPL matches from the Nigerian company.

In Kenya, however, the latest development marks a complete U-turn on a decision the CA made last July, when it dropped the bid to compel DStv to share premium content with local pay TV operators. The CA had then argued that there was no law to back the demand.

Source: nationmedia.com

COMPETITION AUTHORITY IN PICTURES

COMPETITION AUTHORITY WELLNESS DAY 2014



Captions

1. Mr. Keolopile Lekgoanyana and Ms. Gladys Ramadi 2. Mr. Othusitse Oetile at the gym room 3, 4 & 6. Staff dancing to Zumba 5. CA staff at the 2014 Wellness Day

PARASTATALS TRAINED TO DETECT AND PREVENT BID-RIGGING



Captions

1. CA Director of Legal and Enforcement Mr Duncan Morotsi 2. CA Director of Communications and Advocacy Mr. Gideon Nkala
3. CA Legal Officer Mr. Kesego Modongo 4. Mr. Godknows Simon of the Directorate on Corruption and Economic Crime 5 &
6. Participants at the workshop

CA HOSTS JUNIOR ACHIEVEMENT BOTSWANA STUDENTS FROM SEROWE



Captions

1. Ms. Kelebogile Ngwenya briefing the students from Swaneng Hill School and Kgalemang Junior Secondary School in Serowe 2 & 4. Students from Swaneng Hill School and Kgalemang Junior Secondary School 3. Ms. Kelebogile Ngwenya with the students and teacher

MINISTRY OF TRADE AND INDUSTRY TAKES ITS SERVICES TO RESIDENTS OF PALAPYE



Captions

1. Honourable Minister Dorcas Makgato-Malesu addressing the attendants 2. Some of the attendees at the CA stall 3. Some of the Palapye residents who attended the event 4. Traditional dancers provided entertainment

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