

**REVIEW OF CAPACITY BUILDING  
ON AND TECHNICAL ASSISTANCE  
IN COMPETITION LAW AND  
POLICY**

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**COMPETITION AND CONSUMER TRIBUNAL, BOTSWANA**

**H.E. JUDGE SANJI M. MONAGENG,**

**PRESIDENT OF THE TRIBUNAL**

# BACKGROUND

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- The Competition and Consumer Tribunal was established in 2019, after review of the Competition Act, 2018.
- The review brought about a separation of the governance of the Competition Authority from the Adjudication arm – creating the Competition and Consumer Tribunal (CCT) and the Competition and Consumer Authority (CCA), as well as incorporating the Consumer Protection mandate, hence the Tribunal became an independent quasi-judicial body.
- The Tribunal has seven (7) substantive members and seven (7) alternates, all ad hoc.
- UNCTAD has been building capacity for the Competition and Consumer Authority throughout the development of the new Act.



# BACKGROUND

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- However, as a new entity, the Tribunal is on a journey to assert itself as an adjudicator and an independent entity from the Authority.
- The Tribunal will certainly benefit from capacity building and sharing of best practices which will ensure a seamless transition to the desired state.
- The Tribunal has started dealing with cases that have been referred to it by the Authority and these have mostly been about competition issues, e.g. merger appeals and abuse of dominance.
- The Tribunal is yet to test the Consumer Protection aspect and develop jurisprudence.

# THE NEED FOR CAPACITY BUILDING

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- In any formative stage of an organisation, there is need for capacity building to ensure a proper foundation for the work ahead.
- As a Country, Botswana is witnessing a significant increase in digital commerce, e.g. more and more people and entities are trading online, from negotiations to actual payment, everything is done online. The Tribunal should be in a position to understand the whole process and what the likely competition and consumer issues are. This is why information exchange is critical especially during this period where a lot of jurisdictions are in a digital transformation phase.
- Botswana acknowledges that the use of ICT and E-commerce have taken centre stage from the traditional way of trading. The country has been fortunate yet again to benefit from UNCTAD in the development of the National E-Commerce Strategy which was recently approved.



# THE NEED FOR CAPACITY BUILDING

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- The approval of the Agreement Establishing the African Continental Free Trade Area (AfCFTA) will enhance regional integration and this will also increase and optimise competition across borders.
- Even though the AfCFTA is a positive development, it is inevitable that new and evasive cartels will emerge in the markets which situation is not helped by the Covid19 pandemic where countries have experienced cases of abuse of dominant power and other anti-competitive conducts.
- The increase of cartels brought about by the opening of markets throughout Africa will certainly heighten the need for capacity building to ensure that the Tribunals are well equipped to understand the sophistication employed by such cartels and to impose appropriate sanctions.

# THE NEED FOR CAPACITY BUILDING

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- Some procurements may give rise to buyer power and exclusive dealing and this calls for determination of appropriate sanctions by Tribunals to serve as deterrence.
- Excessive pricing during Covid19 has proved to be a threat to consumer health, wealth and socio-economic wellbeing through unfair business practices, for example, the sale of expired goods during Covid19, increase in prices and shortage of essential goods during this period.
- All these challenges need a Tribunal which is conversant with contemporary issues so that when a case is notified the adjudicators know which resource to use.



# SUGGESTED SUPPORT

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- As Botswana is implementing the new Acts, both Competition and Consumer Protection, capacity building with both regional and international entities is crucial.
- A Training-of-Trainers programme for the Region and Botswana could be very beneficial as this will ensure resources are easily accessible.
- Study tours for the Tribunal members and staff would help in sharing of best practices and information exchange.
- Twinning arrangements where the Tribunal could cooperate with other Tribunals in the Region for ease of information sharing and skills transfers.

# SUGGESTED SUPPORT

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- UNCTAD recently hosted the Tribunal for an **Online Seminar on Competition and Consumer Protection for Botswana** which was found to be a resourceful and interactive seminar. Participants benefitted from this interaction with experts, and this offered networking opportunities with them as well as reference material from the seminar. We request that such support continues.
- Issues such as public interest in rejecting a merger/acquisition have not really been tested on appeal, this provides an opportunity to interrogate them further in terms of training, for example.
- The Tribunal is presently recruiting a substantive Registrar and this crucial position needs support from UNCTAD.



# CONCLUSION

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- Development of a robust advocacy programme for the Tribunal will ensure that the Legislative part of government is taken aboard the Competition and Consumer Protection laws.
  - Covid19 has challenged us to use ICT resources more, and the Tribunal envisages the procurement of a case management system as well as holding online hearings.
  - Competition and Consumer Tribunals could have a fora similar to what Competition Authorities have, where they could meet periodically in an International Conference to share experiences and network.

# CONCLUSION

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- Trainings on impacts of online markets on consumer safety, seeing that Botswana is recently engaging in online transactions.
- As consumers transact online, they may face challenges such as products dumping, inability to dispose of electronic waste and limited knowledge on product recall. The Tribunal will need to be trained on how to deal with such cases which may be cross border/jurisdictions.
- Explore ways of training the Judiciary in competition law adjudication. This is particularly important since the Tribunal's decisions are appealable to the High Court and Court of Appeal and this is a new area for the judiciary.



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THANK YOU