

# **Competition Scenario in Botswana**

**Monnane M Monnane**  
**Research Fellow**



**Botswana Institute for Development Policy Analysis**

Supported by  
**Consumer Unity & Trust Society**  
**(CUTS International)**

**June 2006**

Map of Botswana



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## DEFINITION OF TERMS

1. **Price fixing:** Competitors at any levels in the production-distribution process enter a collusive agreement (form a cartel) and fix prices.
2. **Market sharing:** Two or more firms agree to allocate markets amongst them, i.e., predetermine who shall deal with whom and where to avoid competition.
3. **Bid rigging:** Firms participating in a bid for a tender, secretly arrange among themselves to determine the eventual winner.
4. **Tied selling:** A supplier forces a buyer interested in a desired product to buy another product (tied-product) along with it, even when the buyer is not interested in the tied-product.
5. **Exclusive dealing:** Here the producer forces an agreement with the retailer prohibiting the latter from dealing with competing producers or distributors.
6. **Concerted Refusal to deal:** Firms at different levels of the same production-supply chain agree among themselves not to sell or buy from certain customers or suppliers.
7. **Resale Price Maintenance:** The producer dictates the resale price of the goods that would be charged by the retailers.
8. **Price discrimination:** This refers to a situation when a firm sets prices of its goods/services at will, depending on the circumstances.
9. **Entry barrier:** This refers to certain situations where the entry of new players in the market is hampered either by existing players/government or others.
10. **Predatory pricing:** A situation when a dominant enterprise charges low prices over a long period of time to drive a competitor out of the market, or deter others from entering the market and then raises prices to recoup its losses.
11. **Unfair Trade Practices:** These are anti-competitive practices mainly undertaken by individual firms as opposed to cartelisation whose net effect is it to curtail competition. One such practice is misleading advertisement.

## **TERMS OF REFERENCE**

The study was undertaken under the following broad reference:

To conduct an evaluation of the competition concerns, including their regional dimensions, faced in Botswana and the existing architecture for dealing with those concerns by identifying key constraints.

## **1 Introduction**

While Botswana does not have a Competition Law, a Competition Policy was passed in Parliament in August 2005 and is expected to pave way for the development of a Competition Law. This report, therefore, attempts to profile competition policy and law related issues in Botswana. The report is organised as follows. Section Two provides the Background to the study, and a brief country background follows it, while Section Four highlights the objectives of the study. The methodology is presented in Section Five, and the study limitations follow immediately in Section Six. Section Seven is the analysis, which is further broken down into Policies Affecting Competition in Botswana, Laws Affecting Competition in Botswana, and Nature of the Market and survey results. Section Eight discusses the Survey results while Section Nine is the Botswana's National Competition Policy. Section 10 is a brief account of the interface between competition and regulation. Finally, Section 11 is a brief account of how the policy will deal with regional issues.

## **2 Background of the Study**

Globalisation has led to integration of markets. In Africa, national markets have been integrating through three regional bodies, viz., the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), and the East African Community (EAC), with considerable geographical overlap. As a response to forces of globalisation, many countries of the world have adopted new policies of trade liberalisation, deregulation, and privatisation. While developing countries like Botswana continue to remodel their state-dominated economies into market economies, new challenges are emerging from these processes. One of them is to strengthen the functioning of market forces in an appropriate manner. In this context, the need for an effective competition policy and law, to achieve the maximum benefits from the process of liberalisation has been emphasised in several quarters.

However, it is apparent that not much is known about competition issues in many African countries. For example, in Botswana, the Competition Policy was only passed by Parliament, in August 2005. On the other hand, the India based Centre for Competition, Investment and Economic Regulation (CUTS C-CIER) reports queries from different developing countries (mostly from Asia and Africa) on various competition policy related aspects. This indicates the need to equip different stakeholders, especially civil society with knowledge on Competition Policy issues.

Responding to this need, the Centre has sponsored this study under the auspices of a regional project entitled 'Capacity Building on Competition Policy in Select Countries of Eastern and Southern Africa'. The project covers seven countries of the region: Botswana, Ethiopia, Malawi, Mauritius, Mozambique, Namibia, and Uganda. Therefore, the study is expected to help different stakeholders understand competition concerns in Botswana.

### **3 Background of the Country**

Botswana is a landlocked State bordered by South Africa to the South and South-seast, Zambia and Zimbabwe to the North-east and Namibia to the North and West. The country covers an area of 582, 00 km<sup>2</sup>. The climate is sub-tropical, ranging from continental to semi-arid.

The country has a population of about 1.7 million people (2001 estimate), with the eastern part, where major towns are located, being the most concentrated in the country. Between 1971 and 1981, the rate of population growth was 3.5 percent per annum, while it was 2.7 percent and 1.7 percent per annum between 1981 and 1991, and 1991 and 2001, respectively.

At Independence in 1966, Botswana was one of the poorest countries in the world. The dominant economic activity in the country was cattle rearing. However, the discovery of diamonds in 1967 brought rapid and sustained growth, allowing remarkable advances in both social and physical infrastructure. The economy has experienced continuous growth since then.

2001 onwards, Botswana has maintained investment grade A sovereign credit ratings, with a stable outlook by both Moody's and Standard and Poor's, which reflect the country's strong public sector balance sheet and political and macroeconomic stability. These ratings have been the highest in Africa ever since Botswana enlisted for such ratings from 2001. In addition, Botswana has been rated by the Heritage Foundation in collaboration with the Wall Street Journal as among the top 30 countries in the world (ahead of countries such as Spain and Norway) and number one in Africa with respect to economic freedom.

However, these positive attributes of the Botswana economy continue to be undermined by the challenges posed by HIV/AIDS and related diseases such as tuberculosis, with about infection rates of 17.3 percent of the entire population and about 37.4 percent of pregnant women between 15 and 49 years.

### **4 Objectives**

As per the terms of reference, the key objectives of this study are to;

1. Conduct an evaluation of the competition concerns, including their regional dimensions, faced in Botswana and the existing architecture for dealing with those concerns.
2. Develop the capacity of national stakeholders including the policy makers, regulators, civil society organisations, especially consumer associations and groups, academicians and the media through a participatory process to understand and appreciate the country's prevailing competition concerns.



## **5 Methodology**

The following is a description of the approach employed to assess competition concerns in Botswana. The methodology employed included two main activities, namely, data collection and review of several documents that may shed light on competition issues in Botswana.

### **5.1 Scope of Study**

The study targeted three main categories of respondents, business, government, and civil society/consumers. The requirement was that 50 – 75 respondents be interviewed, but the study managed to benefit from 48 respondents (16 from the government, 16 from the private sector and 16 from civil society), which by any standard is a good response rate. The respondents were randomly sampled from Government ministries, the private sector (the Botswana Confederation of Commerce Industry and Manpower members), and civil society (the Botswana Coalition of Non-governmental Organisations members and the general public). The study focused itself in Gaborone and surrounding areas.

### **5.2 Data Collection Methods**

The study used a combination of both self-administered questionnaires and interviewee-administered questionnaires with occasional follow-ups. Extensive literature review was undertaken, among others on - policies, regulations, and laws affecting competition in Botswana as well as previous related studies in Botswana.

## **6 Limitations of the Study**

The study was undertaken on the background of serious limitations. These included;

1. *Financial Constraints*: The study had serious financial constraints, which limited the geographical coverage of the study to Gaborone and surrounding areas.
2. *Representativeness*: The fact that the study focused mainly in Gaborone makes it less representative of the entire country, although there is no immediate reason why perceptions about anticompetitive practices should vary greatly between urban and rural areas.
3. *Comparative Study*: As a comparative study between different countries, the study design had to be the same for all the countries to allow for comparisons. While this is a welcome innovation as it allows for benchmarking and comparisons, it did not allow for adequate flexibility to take into account differences between countries.

4. *Questionnaire Design*: Coupled with financial constraints, the questionnaire design did not allow one to adequately measure competition within the market, but was only suited to capturing perceptions about the state of competition in the market. Measuring competition in a given market requires data that would allow the calculation of concentration indices (to be explained further in Section 7.3). The questionnaire design did not allow for that.
5. The study was very broad, requiring respondents to think in broad terms and the sample was very small. It is difficult to make generalisations from a small sample. This means that while results from this study are indicative of the Botswana scenario, caution is required in their interpretation. It is unlikely that respondents would know what is happening within the entire economy. Instead, it is more likely that respondents would be a lot more conversant with what is happening within an industry in which they operate, than the broad economy. A more focused study would have generated better results.

## **7 Analysis**

This section attempts to analyse competition issues in Botswana. The section starts off by reviewing policies that have a bearing on competition in Botswana, before reviewing laws with the same effect. It further discusses the survey results. The section benefits substantially from related previous studies.

### ***7.1 Policies Affecting Competition in Botswana***

There are some policies that by that may encourage or adversely affect competition in the market. Below is a discussion of such policies.

#### ***7.1.1 Trade Policy***

##### **Southern African Customs Union (SACU), 2002**

The main legislation affecting foreign trade in Botswana is the Southern African Customs Union (SACU) agreement. Along side South Africa, Namibia, Swaziland, and Lesotho, Botswana is a member of the SACU. Thus, Botswana's tariff policy is governed by SACU.

##### **Common External Tariff**

SACU imposes a common tariff (customs and excise duties) on goods imported from third countries, while goods circulate duty-free within SACU members. Thus, by virtue of being a member of SACU, Botswana imposes a SACU duty on all goods coming from non-SACU members, which may be seen as disadvantaging or rendering such goods uncompetitive within the Botswana market, relative to goods coming from within SACU.

### Protection of Infant Industries

On account of protection of infant industries, the SACU agreement allows Botswana, as a temporary measure, to levy additional duties on goods imported into the country from SACU members, provided that such duties are levied equally on goods grown, produced or manufactured in other parts of SACU and goods that were imported into other SACU members from non-SACU members, and later imported into Botswana. Such additional duties may also be levied on goods imported from non-SACU members. Such a provision, though temporary, gives local infant industries an unfair competitive edge over imports. However, it must be emphasised that the protection is temporary ( eight years) and it is meant to help infant industries gain ground before exposing them to competition. Operational and well-established companies that have benefited from this clause include Kgalagadi soap industries, a company specialising in soap production, a beer-producing company by the name of Kgalagadi Breweries, and Bolux Botswana, a company specialising in bread products.

There are however, other aspects of Botswana' trade policy that may be seen as encouraging Competition. These include;

### **The World Trade Organisation (WTO) Agreement, 1994**

Botswana has been a member of the WTO since its inception in December 1994. Thus, in acceding to the WTO agreement, Botswana acceded to the General Agreement on Trade in Services. Under this agreement, Botswana has already made commitments on the treatment of foreign providers in a number of sectors. A commitment in a services schedule is an undertaking to provide market access and national treatment for the service activity in question on the terms and conditions specified in the schedule. Thus, Botswana has opened up its market equally to all members of the WTO within the following sectors:

- (a) Business Services;
- (b) Professional services including architectural services, engineering services, integrated engineering services, medical and dental services, veterinary services, services provided by midwives, nurses, physiotherapists, paramedical personnel, and other medical services;
- (c) Computer related services, particularly consultancy services, installation of computer hardware, software implementation services, data-processing services, and data-base services and maintenance, and repair of office machinery and equipment;
- (d) Research and development services relating to social sciences and humanities (including law and economics);
- (e) Real estate services involving own or leased property, or on a free or contract basis;
- (f) Other business services, particularly maintenance and repair of equipment (excluding maritime vessels, aircraft or other transport equipment) and translation and interpretation services.

- (g) Communications Services inclusive of commercial courier services.
- (h) Tourism and Related services inclusive of hotel and restaurant catering, and travel agencies, and tour operators.

### **Southern African Development Community (SADC)**

Botswana has been a member of SADC, then the Southern African Development Conference (SADCC) on inception in 1980. While the objectives of SADCC were to reduce dependence on apartheid-driven South Africa, the objectives of post-apartheid SADC are geared towards promoting regional co-operation and integration towards a single regional market. To achieve this, SADC seeks to develop policies aimed at the progressive elimination of barriers to free movement of capital, labour, goods, and services (trade) and to mobilise support for national and regional projects.

SADC has therefore developed a Trade Protocol in 2000, which aims to establish a Free Trade Area (FTA) in the SADC region and provides for intra-SADC trade liberalisation, with the removal of non-tariff barriers within eight years from its entry into force. Thus, Botswana's trade policy in the context SADC has opened up the Botswana market for goods from other SADC member states, which has essentially encouraged competition within the Botswana market.

### **Botswana-Zimbabwe Trade Agreement, of the 1950s**

While this agreement has its origins in the 1950s, the current Botswana-Zimbabwe Trade Agreement was signed in October 1988. The agreement provides that trade is generally to be free of customs duties and quantitative export and import restrictions. The agreement states that in order to qualify for such treatment, goods must meet some qualifications, such as rules of origin and related documentation procedures. For manufactured goods to meet the requirements for rules of origin, they must have 25 percent or more of local content. Calculations for the local content include the cost of materials grown, produced, or manufactured in Botswana or Zimbabwe that are in turn used in the manufacture of goods. The definition excludes managerial salaries and locally-owned profit. It is, therefore, generally considered stringent and may be seen as restricting trade rather than facilitating trade, and hence not encouraging competition as one would expect of a trade agreement.

### ***7.1.2 Reservation Policy***

Botswana reserves some economic activities for citizens to create economic opportunities and encourage their participation in the economy. Competition from foreign companies is restricted in some areas of commercial manufacturing, construction, and services activities. New licenses are reserved for citizens in the following commercial activities; taxi services, butcheries, and sale of fresh products, security guard services, hawkers and vendors, dairy, small general trading, petrol filling stations and bottle stores and bars (other than those in hotels), general trading (except for chain stores and franchises), non-specialised and unsophisticated clothing and footwear shops. Existing firms owned by non-citizens are allowed to continue their business not involving technologies or high technical skills.

Some industrial activities reserved for citizens include; uniforms, baked bricks, ordinary cement and sorghum milling, ordinary bread baking, school furniture, and burglar bars.

Certain aspects of road contract and railway maintenance are also reserved for citizens. These include maintenance of roads, fencing, drainage and culverts, maintenance of road reserves, transport and plant hire, carting gravel, bush clearing, road marking, resurfacing bitumen roads, and bridge painting.

In addition, under the Local Procurement Programme, 30 percent or less of Government purchases are reserved for resident manufacturers falling within the small and medium scale category. To qualify, firms must have 25 percent local content, and meet at least two of the following criteria:

- i. Annual turnover between P0.2 million and P5.0 million;
- ii. Less than 200 employees, and investment in plant of between P0.5 million and P5.0 million. There must also be at least one other firm producing the same products, with different directors and shareholders. While all the above have other good intentions, they restrict competition.

## **7.2 Laws and Regulations Affecting Competition in Botswana**

Both this study and the Economic Mapping Study, which informed the development of Botswana's Competition Policy, have identified a number of laws and regulations that have a negative impact on competition. The Economic Mapping Study is a study that was undertaken to inform the development of Botswana's competition policy.

### **7.2.1 The Companies Act, 1942**

The Companies Act<sup>1</sup> is the first key statute regulating market entry or the establishment of a business in Botswana. The Companies Act provides rules and regulations on the formation, registration, management and administration, and dissolution of various types of companies.

A review of the Act was commissioned with a brief that underlined the need for a legal and regulatory framework that would encourage a competitive or less restrictive commercial environment and would facilitate domestic commercial activity and the flow of foreign investment. Also required was a regulatory framework 'more friendly' to small businesses that would complement objectives of the policy on promotion of the role of SMMEs in the economy (SMME Policy, 1999).

The review of the Act has been completed. A new law is in the offing, proposing drastic changes of the rules, regulations and procedures on incorporation and registration, management and administration of some companies, and shareholding and dealings in shares.

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<sup>1</sup> Indications are there is a new Act. Attempts to have a look at the Act have been fruitless. However, it is inconceivable that areas discussed above may have changed drastically.

### **7.2.2 The Industrial Development Act, 1998**

This Act regulates entry into manufacturing businesses that are not otherwise regulated by specific pieces of legislation. The Act establishes an Industrial Licensing Authority responsible for, amongst others, the supervision of industrial development, and for the issue of licences for the manufacture of products offered for sale in Botswana.

Among the grounds listed in Section 5 that the Authority can invoke for refusing to grant a manufacturing licence are the following:

- a. that the capital, technical skills or raw materials available are, in the opinion of the Authority, inadequate to secure the successful establishment and operation of the enterprise, and failure of the applicant's enterprise might prejudice the successful development of the industry concerned;
- b. that a licence for the manufacture of the proposed product "has already been granted to some other person in respect of the same part of Botswana and such licence is an exclusive licence";
- c. that the granting of the licence, in the opinion of the Authority, would not be "in the best interests of the economy or public will of Botswana or of the particular industry concerned"; and
- d. that the applicant has already been issued with or applied for licences in respect of four or more manufacturing enterprises under this Act and could only be considered for a further licence with the written approval of the Minister.

These grounds reflect an attempt to effect an industrial development policy that has since undergone important revisions and reorientation.<sup>2</sup> Botswana's industrial development policy still is broadly concerned with diversification of the economy. The revised policy takes into account changes to domestic and international trading environments brought about by globalisation and regional and multilateral trading arrangements. It advocates reorientation of industrial development towards the opportunities and challenges presented by these developments. Exclusive manufacturing licences are not compatible with the new, highly competitive international trading environment and, particularly, with Botswana's commitments under the WTO. The revised policy recommends amendments to the Act to remove provisions relating to the grant of such licences.<sup>3</sup>

There are other aspects of the Industrial Development Act that should be revisited together with provisions on exclusive licences and some of the grounds enumerated in Section 5 are the duration of licences issued under the Act, and the policy of reserving some manufacturing businesses for citizens of Botswana. Licences are granted for a period of one year, renewable from year to year. This is

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<sup>2</sup> Republic of Botswana, *Industrial Development Policy for Botswana*, Ministry of Commerce and Industry, Government Paper No. 1 of 1998, Government Printer, Gaborone.

<sup>3</sup> Republic of Botswana, *Industrial Development Policy*, para. 3.18. p. 12.

probably too short a period and a strain on the administration of the licensing system. The reservations policy may serve other goals articulated in the policy on SMME's, such as: development of citizen entrepreneurial skills, empowering citizens to control increasing proportions of economic activity in the country, encouraging economic diversification and creation of sustainable employment opportunities. But, it so far has had the distasteful effect of allocating mostly menial activities to citizens.

As the SMME's policy also acknowledges, it has the potential of inhibiting the flow of foreign capital, technical and managerial skills into the reserved sectors, and of encouraging fronting, and other illegalities. The SMME's policy recommends relaxation of the reservation policy, so that joint ventures between citizens and non-citizens may be allowed in some medium scale enterprises, as long as citizen partners will have not less than 45 percent of the beneficial shareholding. It is better to pursue policies like citizen empowerment through measures other than regulation or restriction of entry into certain lines of businesses.

### **7.2.3 The Trade and Liquor Act of 1993**

This Act has been under review for some time.<sup>4</sup> The Act regulates entry into businesses for the supply of goods and services, mostly to end-users. It establishes a national authority and local licensing authorities for the issue of licences in respect of trades or businesses such as import and export, agency, auctioneers, pharmacy, general dealing, wholesale and retail, supermarket, motor dealers, garage and workshop, petrol stations, dry cleaning and laundromats, hairdressers and restaurants.<sup>5</sup> A distinct part of the Act also regulates the sale or supply of intoxicating liquor in specified places.<sup>6</sup>

The grounds for rejecting an application for a trade licence include: (a) that the applicant is a minor; or (b) that the issue of a licence would conflict with town planning or zoning schemes or health or other regulations.<sup>7</sup> (c) that licenses have to be renewed within twelve months, that the person is fully conversant with the business and (d) certain types of licences or businesses are reserved for citizens of Botswana.

Another issue of concern relates to the sweeping powers of the Minister to suspend, cancel, or withdraw a licence at any time if, in his/her opinion, this is in the interests of the inhabitants of a particular area or of Botswana generally. It is asserted that the Minister "shall not be obliged to furnish reasons for any decision taken by him in terms of this section, and such decision shall be final and shall not be questioned in any court". In order to promote a vibrant, competitive trading environment, this provision could be replaced by one suggesting that a tribunal or a competition

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<sup>4</sup> As this report is written a motion aiming at deferring some aspects of this Act is being discussed in parliament. Details of the Act are not yet available to the public.

<sup>5</sup> Sections 3, 4, 5 and 7.

<sup>6</sup> Part IV, sections 28 to 46.

<sup>7</sup> Section 14 as replaced by section 11 of the Trade and Liquor (Amendment) Act, No. 11 of 1993.

regulator shall consider appeals against decisions of the Minister or any other licensing authority.

#### **7.2.4 Public Procurement and Asset Disposal Act of 2001**

This Act is mainly concerned with procurement of works, supplies and services for the Government and disposal of public assets. It provides for a board, whose functions and powers include ensuring that some of the following principles are observed by procuring entities.

- (a) an open, competitive economy and changing external obligations in relation generally to trade and specifically to procurement, which dynamically impact on a continual basis on domestic procurement policy and practice;
- (b) competition among contractors by using the most efficient and competitive methods of procurement or disposal to achieve the best value for money;
- (c) fair and equitable treatment of all contractors in the interests of efficiency and maintenance of a level playing field.

However, Section 66(1) of the Act, which states that “Pursuant to its economic and social objectives, the Government may from time to time introduce reserved and preferential procurement and asset disposal schemes, which shall be consistent with its external obligations and its stable, market oriented, macroeconomic framework”. A disturbing observation is that while such schemes are expected to be time bound and non-discriminatory within targeted groups, they will exclude participation of some players. This may be construed by some as uncompetitive, and may be deemed to contradict the envisaged Competition Policy and Law, as well as the principles of competition outlined above.

#### **7.2.5 Telecommunications Act of 1996**

The Telecommunications Act regulates the provision of telecommunication services. Unlike, the Public Procurement and Asset Disposal Act discussed above, the Telecommunications Act has no profound citizen preference. The Act is also more explicit on the promotion of competition in the sector. Section 17(2) (c) states that, the regulator, the Botswana Telecommunications Authority shall

“promote and maintain competition among persons engaged in commercial activities for, or in connection with the provision of telecommunications services, and promote efficiency and economy on the part of persons so engaged”.

Section 20(1) states that the Authority “shall be responsible for monitoring competition in the telecommunications sector”. Section 20(2) gives the authority



the power to report any contravention to the Attorney General who shall then deal with any such contravention, as he considers appropriate.

In addition, Section 48(1) states that telecommunications services shall, as far as practicable, and within the framework of the licensing system established by the Act, be provided on a competitive and non-discriminatory basis.

While this Act is pro-competition, it has serious overlaps with a model competition law. For example, like a competition law, in addition to the above, the Act prohibits, among others, forming cartels, use of dominant position in a market for the purpose preventing entry into the market, collusion between operators etc. This means that the passing of the competition law and the establishment of a Competition Authority will necessitate the revision of this Act. The Act may require surgery to transfer the competition functions of the BTA to the Competition Authority.

### **7.2.6 Consumer Protection Act of 1998**

Botswana's Consumer Protection Act is fairly new (1998). The Act establishes a Consumer Protection Office, under a relevant Government Ministry. The main functions of the office include, among others, investigating 'unfair business practices', and would preside over the settlement of disputes relating to 'unfair business practices'. A business practice is described as such. It includes

- (a) any business agreement, accord or undertaking of a business nature;
- (b) any scheme, practice or method of trading, including any method of marketing or distribution; or
- (c) any advertising, type of advertising, or any other manner soliciting business.

It follows, therefore, that undertaking any of the above in an 'unfair' manner constitutes violation of the Consumer Protection Act. It is anticipated that the same would be in violation of the Competition Law once in place. This Act may therefore require substantial re-writing in light of the provisions of the Competition Law, once in place. Like in the case of the Telecommunications Policy, the Act may require surgery to transfer the competition functions of the Consumer Protection Office to the Competition Authority.

### **7.2.7 Botswana Meat Commission Act of 1965**

The act gives the Botswana Meat Commission statutory monopoly over the export of meat, canned meat, and live cattle. This is clearly anti-competitive as it completely denies any interested party willing to enter the meat export market to do so.

### **7.2.8 Road Transport Permits, CAP 69:03 (17)(3)**

The Transport Secretary may attach to a public service permit such conditions as he may think fit for securing that:

- (a) Fares are not unreasonable. Market forces thus do not control fares. A transport operator may therefore not reduce prices if he deems it fit to do so.
- (b) Where desirable in the public interest the fares shall be fixed as to prevent *wasteful competition* with alternative forms of transport, if any, along the routes specified in the permit. It is against this background that an aspiring operator may be denied the opportunity to enter the market even if he is convinced that it would be profitable to do so.

### **7.2.9 Banking Act, 1995 Section 9(5)**

No Bank shall open (or keep open) or close (or keep closed) an existing place of business, or change its location, without the prior written approval of the Central Bank. Thus, it can be argued that this has a potential of preventing a bank to do business in an area that best suits it if it want to compete with its rival.

## **7.3 Nature of Market Competition**

### **7.3.1 Market Concentration**

Market power is a central concept in the economic assessment of competition; but determining whether a firm has market power is not straightforward. While there are many measures of market power, one needs to be cautious about drawing direct inferences about market power from such measures. This section draws heavily from the Economic Mapping Study, where market power was measured by the turnover of the three largest firms in an industry relative to the total turnover in the industry; a measure known as the 3-Firm Concentration Ratio (CR3). It is assumed that not much change has happened to the ratios, thus the results are treated as current. Based on this measure, market characteristics are classified into five categories in table 7.3.1 below.

**Table 7.3.1: Concentration Categories and Market Characteristics**

<b>Concentration Category based on CR3</b>	<b>Market Characteristic</b>
0 – 20	Highly competitive without significant market share
20 – 40	Competitive with significant market share for 3 largest firms, but no dominant market share
40 – 60	Generally competitive, but 3 largest firms may have dominant market share and are likely to abuse market

	power
60 – 80	Concentrated - possibility of abuse of market power
80 – 100	Highly Concentrated - extremely high possibility of abuse of market power

The results indicate high levels of concentration in the long distance transport sector (CR3 of 65.7 percent in 2000) followed by Hotel and Restaurants (CR3 of 64.8 percent) and Agriculture (CR3 of 63.6 percent). The Manufacturing and Finance sectors had concentration ratios of between 50 and 55 percent. The least concentrated industries, and probably the most competitive industries, were Wholesale and Retail Trade (26.8 percent) and Construction (40 percent). It is important to note, however, that low concentration ratio does not in anyway guarantee lack of anti-competitive practices in the market. Instead, it simply shows lack of dominance in the market, which by extension reduces chances of practices such as price fixing and price discrimination.

Industry	CR3		
	1995	1997	2000
Agriculture	96.0	55.1	63.3
Manufacturing	33.1	43.8	50.2
Hotels and restaurant	66.2	63.5	64.8
Construction	59.2	37.7	40.0
Finance	51.4	56.2	55.0
Transport	69.2	65.4	65.7
Wholesale and Retail Trade	34.6	29.5	26.8

As we assess individual sub sectors' concentration ratios, we will realise that they are relatively higher than the sectors' ratios. This is not surprising as the sectors' ratios are essentially calculated from a denominator that combines all sub-sectors and the denominator only includes the top three firms.

### Agriculture

The Agriculture sector is the smallest sector in terms of number of firms.<sup>8</sup> It has 91 registered firms (2.2 percent of all registered firms in the Botswana market), making it least intense industry. Out of the 91 firms, 29 are Commercial Crop Farming, 46 are Commercial Livestock Farming, 14 are Commercial Poultry Farming and two are Commercial Wildlife Farming. However, we were only able to collect sales figures for six firms.

**Table 7.3.3: Market Concentration in Agriculture**

Sub-sectors	CR3		
	1995	1997	2000
Commercial Crop Farming	76	80	82

<sup>8</sup> Throughout the report, size is determined by the number of registered firms in a particular industry.

Commercial Livestock Farming	83	81	82
Commercial Livestock Farming	76	80	87
Commercial Wildlife Farming	100	100	100

Based on available data, the Agriculture sector is highly concentrated. All the four sub-sectors have concentration levels of at least 70 percent (Table 7.3.3). However, this does not necessarily reflect the actual level of market concentration in these sectors; it is mainly due to the extremely small sample size and the lack of data on most of the firms included in the sample. Only one firm in each sub-sector had its sales figures available at the Tax Department. In most economies, the agriculture sector is the most difficult industry to fully capture quantitatively in terms of its domestic competitiveness. The industry is characterised by about 500 commercial farmers who are given special tax treatment; hence, they may not file their tax returns, thereby making it difficult to fully capture the competitiveness of the industry. The situation is made difficult also because of the way in which tax returns are compiled: tax returns are currently compiled manually; and in a number of cases, the files are missing.

### Manufacturing

The manufacturing sector is the second largest sector in terms of number of registered firms (with 25.2 percent of the registered firms in the Botswana market). It has 1,042 registered firms. The sector is composed of 20 sub-sectors. Sales figures were collected for only 76 firms, which is small compared to the number of registered firms. Like agriculture, the industry is traditionally composed of a few large firms and a large number of small and medium size firms that usually do not correctly file their tax returns or do not file their tax returns. This makes the information obtained from tax returns on turnover less accurate.

Based on the sample information, the manufacturing sector is highly concentrated (Table 7.3.4). This appears to be a result of the structure of the industry. The manufacturing industry has 20 sub-sectors and 76 firms, which gives it an average of 3.8 firms per sub-sector. Therefore, it not surprising that most sub-sectors have 3-firm concentration ratios of at least 70 percent.

**Table 7.3.4: Market Concentration in Manufacturing**

Industry Sub-sectors	CR3		
	1995	1997	2000
Meat and Meat products	100.0	100.0	100.0
Dairy products	100.0	100.0	100.0
Grain Mill products	98.0	98.5	99.1
Bakery products	63.1	65.2	77.8
Other food products	99.8	98.6	45.8
Beverages	100.0	100.0	100.0
Textiles	94.3	95.6	92.2
Clothing and other wear apparel	83.6	88.2	92.0
Tanning and Leather products	100.0	100.0	100.0
Wood and Wood products	99.0	98.5	92.4

Paper and paper products	100.0	100.0	100.0
Printing and publishing	69.0	67.4	67.0
Chemical and chemical products	76.7	72.1	69.9
Rubber and plastic products	86.3	83.0	72.0
Non metallic mineral products	75.7	54.3	69.9
Basic Metals	99.0	99.0	98.0
Fabricated Metal Products	84.7	75.7	76.8
Office Accounting and Computing Machinery	100.0	100.0	100.0
Furniture (all items excluding wood and mattresses)	81.5	71.8	68.9
Manufacturing of jewelry	100.0	100.0	100.0

### Hotels and Restaurants

The Hotels and Restaurants industry is the fourth largest in terms of number of registered firms. The industry has 275 registered firms (6.6 percent of all registered firms in the Botswana market). The industry is divided into three sub-sectors: Hotels and Restaurants (with 44 registered firms); Restaurants, Cafes and Canteens (214); and Bars and Shebeens (17). The industry depicts a picture (7.3.5) of highly concentrated sectors in Hotel and Restaurants (92.5 percent) and Bars and Shebeens (89.8 percent). Restaurants, Cafes and Canteens are becoming more competitive. The concentration ratios have been decreasing from 73.6 percent in 1995 to 62.1 percent in 1997 and down to 59.6 percent in 2000.

**Table 7.3.5: Market Concentration in Restaurants**

Sub Sectors	CR3		
	1995	1997	2000
Hotels and Restaurants	84.1	86.1	92.5
Restaurants, Cafes and Canteens	73.6	62.1	59.6

### Construction

The construction industry is the third largest industry with 569 registered firms (representing 13.7 percent of all registered firms in the market). The industry is divided into four sub-sectors: Construction of Building and Houses; Construction/Civil Engineering; Building Installation Work; and Renting of Construction or Demolition Equipment. The Construction of Building and Houses is the largest sub-sector with 341 registered firms. Not surprisingly, the smallest sub-sector is the Renting of Construction or Demolition Equipment. Construction and demolition equipment is expensive.

The sample data indicate that the construction industry shows high levels of concentration (Table 7.3.6). As might be expected, the construction of building and houses and construction/civil engineering are the most competitive within the industry, even though the levels of concentration are still very high (around 70 percent).

**Table 7.3.6: Market Concentration in Construction**

Sub-sectors	CR3		
	1995	1997	2000
Construction of Houses	86.0	70.7	70.1
Construction/Civil Engineering	79.0	77.4	69.1
Building Installation Work	98.2	95.4	93.0
Renting of Construction or Demolition Equipment	90.3	92.7	88.7

## Finance

The Finance industry is composed of 107 registered firms (2.6 percent of all registered firms in the market). The industry is divided into three sub-sectors: Banking sector (with 75 firms), Insurance and Pension Funds sector (with 21 firms) and the Securities sector (see Table 7.3.7).

**Table 7.3.7: Market Concentration in Finance**

Sub-sectors	CR3		
	1995	1997	2000
Banking	71.5	77.3	79.9
Insurance and Pension funds	92.9	94.0	86.0

The Insurance and Pension Funds has the highest concentration in the Finance industry. However, the levels of concentration declined from 93 percent in 1997 to 86 percent in 2000. The Banking sector also indicates a high level of concentration. Unlike in the Insurance and Pension Funds, the concentration in Banking has been on the increase since 1995. The levels have increased from 71.5 percent in 1995 to 77.3 percent in 1997 and to 79.9 percent in 2000.

## Transport

**Table 7.3.8 : Market Concentration in Restaurants**

Industry	CR3		
	1995	1997	2000
Freight Transport by Road	77.2	74.5	76.2
Travel Agents, Tour Operators	79.9	81.2	81.4
Passenger Transport by road (excluding taxis)	81.0	86.0	89.0

The Transport industry is the fifth largest sector with 136 registered firms (3.3 percent of all registered firms). The industry is divided into four main sub-sectors: Road Transport (Freight and Passenger), Air Transport (Freight and Passenger), Rail Transport, and Travel Agents and Tour Operators (see table 7.3.8).

From the data collected, the Transport sector shows high levels of concentration. Actually, the evidence indicates no change in the concentration of Freight Transport by Road, but there is increasing concentration in Passenger Transport by road and Travel Agents and Tour Operators.

## Wholesale and Retail Trade

The Wholesale and Retail Trade industry is the largest industry in the economy. It has 1,918 registered firms (46.3 percent of all registered firms). The industry is also the

most competitive in the economy. Concentration levels have been steadily declining from 34.6 percent in 1995 to 29.5 percent in 1997 and 26.8 percent in 2000 (see table IV.3 above). The industry is divided into four sub-sectors: Sale of Motor Vehicles (with 45 registered firms); Maintenance and Repair of Motor Vehicles (the second largest sub-sector with 161 registered firms); Sale of Motor Vehicle Parts and Accessories (with 85 registered firms); and Wholesale and Commission Trade (the largest sub-sector with 304 registered firms).

Table 7.3.9 indicates that the Wholesale and Commission Trade sub-sector is the least concentrated within the industry. The concentration levels have decreased between 1995 and 2000, from 52.6 percent to 40.7 percent. The other sectors have not shown any notable changes. They remain highly concentrated with Sale of Motor Vehicle Parts and Accessories having the highest level of concentration (around 90 percent).

**Table 7.3.9 : Market Concentration in Restaurants**

Sub sectors	CR3		
	1995	1997	2000
Sale of motor vehicles	61.6	63.1	62.3
Maintenance and repair of motor vehicles	62.0	60.0	63.0
Sale of motor vehicle parts and accessories	93.3	88.1	88.4
Wholesale and Commission Trade	52.6	44.8	40.7

## 8 Survey Results

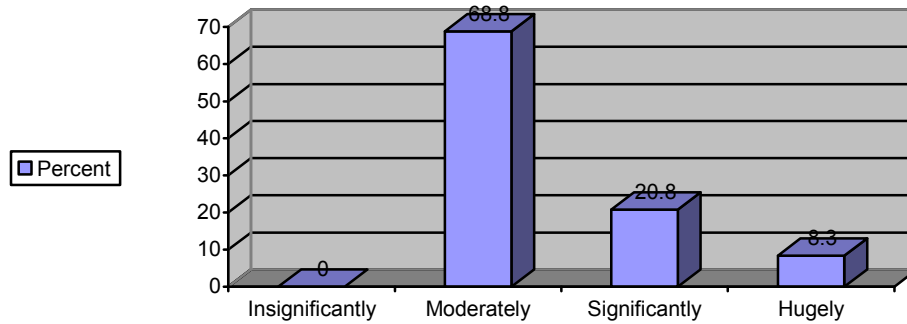
This section analyses the results from the field survey. The section is structured as follows. Section 8.1 discusses the overall picture, while sections 8.2, 8.2 and 8.3 discuss government, consumers, and business perspective, respectively.

### 8.1 Overall Picture

#### 8.1.1 Existence of Anti-competitive practises

Respondents were asked to rate the extent to which they thought anti competitive practises existed in Botswana. 68.8 percent of the respondents said that the existence of such practises was moderate, 20.8 percent said the existence was significant, while only 8.3 percent said the existence was huge.

#### Chart 8.1: Knowledge about the Prevalence of Anti-competitive Practices



This is in line with the Economic Mapping Study, which observed that there are anti-competitive business practices in the Botswana market. The question of how these practices affect consumers therefore arises.

### Effect of Anti-competitive Practices on Consumers

Generally, respondents were of the view that consumers are affected by anti-competitive practices.

**Table 8.1.1: Extent to which consumers are affected by Anti competitive practices**

<i>Extent of impact</i>	<i>No</i>	<i>Percent</i>
Insignificantly	2	4.2
Moderately	16	33.3
Significantly	22	45.8
Hugely	5	10.4
Non Response	3	6.3
<b>Total</b>	<b>48</b>	<b>100</b>

A majority of the respondents (45.8 percent) said that consumers are significantly affected by anti-competitive practices, while 33.3 percent said that consumers are moderately affected by the practices. Only 10.4 percent of the respondents said consumers were hugely affected the anti-competitive practices.

### Most Prevalent Practices

**Table 8.1.3: The Most Prevalent Practices**

<i>Rank</i>	<i>Most prevalent Practice</i>	<i>% of respondents</i>	<i>Second Most prevalent Practice</i>	<i>% of respondents</i>	<i>Third Most prevalent Practice</i>	<i>% of respondents</i>
1	Price Fixing	39.6	Exclusive Dealing	39.6	Predatory Pricing	22.9

39.6 percent of respondents identified price fixing as the most prevalent anticompetitive practice.

The second most prevalent practice was said to be exclusive dealing, identified by 39.6 percent of respondents, the third most prevalent practice was said to be exclusive dealing,



identified by another 39.6 percent of respondents, while 22.9 percent of respondents identified predatory pricing as the third most prevalent practice.

### Most Prevalent Practices by Region

#### Local Level

<b>Table 8.1.4: Most Prevalent Practices at the Local Level</b>						
<i>Rank</i>	<i>Most prevalent Practice</i>	<i>% of respondents</i>	<i>Second Most prevalent Practice</i>	<i>% of respondents</i>	<i>Third Most prevalent Practice</i>	<i>% of respondents</i>
1	Price fixing	29.2	Market sharing	18.8	Unfair Trade practices	16.7

A total 29.2 percent of the respondents said that the most prevalent practice at the local region was price fixing. The second most prevalent practice at the local level is said to be market sharing (18.8 percent). The third most prevalent practice at this level has been identified as unfair trade practices (16.7 percent).

#### National Level

<b>Table 8.1.5: Most Prevalent Practices at the Local Level</b>						
<i>Rank</i>	<i>Most prevalent Practice</i>	<i>% of respondents</i>	<i>Second Most prevalent Practice</i>	<i>% of respondents</i>	<i>Third Most prevalent Practice</i>	<i>% of respondents</i>
1	Price Fixing	27.1	Bid Rigging	14.6	Unfair Trade practices	29.2

The analysis of anti-competitive practices at the National Level reveals that the most prevalent practice is price fixing, identified by 27.1 percent of the respondents. This is in line with respondents' perceptions about prevalence at the local level.

Bid-rigging is said to be the second most prevalent practice at the National Level as identified by 14.6 percent of respondents.

Identified by 29.2 percent and 12.5 percent of respondents respectively, unfair trade practices and price fixing are said to be the third most prevalent at the National level.

What emerges from the analysis on the prevalence of anti-competitive practices is that price fixing and unfair trade practices are the key concerns at both the local and national level. However, bid-rigging is also a major concern at the National Level. This is not surprising as bid-rigging is likely to happen at the national level because the stakes are higher as contracts are much larger, which is an incentive for bid-rigging.

This is not surprising as, in recent times, the Botswana media has been awash with allegations of corrupt practices with results similar to bid-rigging, in that the tenders are

alleged to have been awarded to non-deserving parties. While corruption is not theoretically defined as an anti-competitive practice and does not fall under the purview of a Competition Law, some acts of corruption can have similar implications as anti competitive as they restrict competition in the market. An example of a case where it was alleged that the tender award defeated the spirit of competition in the same way bid-rigging would do is discussed below. The case was reported in the Botswana Gazette, November 30, 2005.

*In this case, The Public Procurement and Asset Disposal Board (PPADB) is said to be considering appealing a High Court Judgment in which the Judge described the Board as attempting to “conceal important information from.... the Court and to pervert the interests of justice”. The Judge made the remarks in his ruling to overturn the awarding of a tender to computerise Botswana’s passports and border posts to IBS-IT and instead awarded the multi-million tender to Research Solutions Integrators (Pty) Ltd (formerly known as AST Botswana).*

*The case is said to have arose out of an award by the PPADB to IBS-IT in 2003 when PPADB over-ruled a Ministry of Labour and Home Affairs evaluation committee that recommended that the tender be awarded to AST Botswana because, in the opinion of the committee, the proposal from IBS-IT was “inferior” and did not meet the specifications required. The Botswana Gazette also notes that the Judge also found that the attitude of the Board “on the whole has been astonishingly risqué and veritably reticent. The PPADB’s answering affidavits are said to have been riddled with inscrutable and evasive responses, and their attitude is said to have been described as bearing all the hallmarks of a calculated strategy geared towards stymieing all efforts towards the ascertainment of the truth surrounding the award of this tender. “On three occasions when it had the opportunity to do otherwise, the (Board) produced versions of the record which excluded relevant information material...I can only conclude in the absence of such explanation, that these were calculated moves intended to conceal important information from the Applicant and the Court and to pervert the interests of justice...”*

*It is said that eight companies had responded to the tender and two were subsequently short-listed. These were AST Botswana, which had tendered for P75, 8 million and IBS-IT at P36, 9 million. In evidence presented to the Court, the Botswana Gazette reports that the system proposed by IBS-IT was adjudged by the evaluation committee to be inferior to that proposed by AST Botswana. This was primarily on account of its failure to demonstrate its passport booklet production sites, security at such booklet production sites, booklet security features and adequate forgery detection features. The system proposed by AST Botswana on the other hand addressed these matters. The evaluation committee, it is alleged, by a majority of three to one, came to the conclusion that the AST proposal was the best bid and recommended that it be awarded the tender, even though it was higher than the Department of Immigration’s budget of P52 million. It was hoped that the price could then be re-negotiated to bring it within the Department’s budget. However, it is reported that when the recommendation got to*

*PPADB, it was rejected and a hand written note on PPADB’s record of its decision entitled “Reject Award to AST Botswana and award to IBS-IT in the amount of P36 982 875-20” was recorded. According to the Judge, however, it was not clear who had signed the record, but the tender was subsequently awarded to IBS-IT. The case went to Court because AST Botswana appealed the decision to give the tender to IBS-IT. In the company’s evidence to the Court, AST Botswana claimed that the IBS-IT bid did not meet the tender requirements. Ruling in favour of AST Botswana, the Judge found that IBS-IT has bid as part of a joint venture with two other companies, even though the tender documents specifically stated that the tender must come from a single entity. The Judge also found that IBS-IT’s proposal had left out the cost of training, development testing and implementation, which would have cost an estimated additional P22 million. If this was taken into consideration, IBS-IT’s bid would also have been outside the Department’s budget. According to the Judge, leaving out the costs of part of the tender requirements in excess of P22 million gave IBS-IT an unfair advantage and had been “deliberately left out.” “By accepting IBS-IT’s non-compliant bid,” ruled the Judge, “ PPADB conferred an unfair advantage on it. The reality of the matter is that both sides were beyond the Departments budget. IBS-IT gained an unfair price advantage over its competitors at the selection stage whilst simultaneously reserving the right to increase its price to cover the un-costed items after the award of the tender”. The Judge also found that IBS-IT had failed to deposit a P75 000 security guarantee. Nor had it submitted audited financial statements, another requirement of the tender specifications. In over-ruling the decision of the Board, Judge said that PPADB “is a public body funded from public resources. It performs public functions. Its officers are servants of the public. It cannot be excused from performing its duties with the transparency and openness demanded of it by both the Act and the principles of good governance, simply because it is convenient for it to do so...” The judge is said to have noted that, “There is ample evidence, of PPADB bias against AST Botswana. This initially manifested itself in PPADB facilitating a situation where IBS-IT was given a significant unfair advantage over other bidders, by being allowed to submit a bid, which did not charge for services. “Thereafter PPADB sought to conceal this fact”.*

### **Sectors Most Affected by Anti-competitive Practices**

Attempt was made at identifying sectors in which anti competitive practices occur. Asking respondents which sectors they thought were mostly affected by the practices achieved this.

**Table 8.1.6: The Most Affected Sectors**

<b>Ran k</b>	<b>Most affected sector</b>	<b>% of respondent s</b>	<b>Second Most affected sector</b>	<b>% of respondent s</b>	<b>Third Most affected sector</b>	<b>% of respondent s</b>
<b>1</b>	Retail Sector	25	Retail Sector (excluding	14.6	Constructio n	14.6

			motor sector)			
2	Private Sector	18	Motor	10.4	Banking	14.6
3	Construction	16	Construction	8.3	Private Sector	8.3

The prevalence of anti-competitive practices seems to be high within the Wholesale and Retail Trade sector. 25 percent of respondents said that this sector is the most affected by such practices. A further 18 percent said that the sector mostly affected is the private sector (without necessarily breaking down the sector) and another 16 percent felt that the most affected is the construction sector. The Retail Sector is seen by 14.6 percent of the respondents as the second most affected sector. The motor retail and the construction sectors are also viewed as the second most affected sectors by 10.4 percent and 8.3 percent of respondents, respectively. The construction sector, Banking and the broad private sectors have been identified as the third most affected sectors by 14.6 percent of respondents for the former two sectors and by 8.3 percent for the latter.

#### Mini Case Study: Media Industry

This study had no intentions of undertaking in-depth sector specific analysis of competition issues. However, when conducting interviews, it occurred to the researcher that the private media companies (newspapers) were a lot more vocal about anti-competitive practices than companies from other sectors. It further occurred to the researcher that the companies' complaints emanated from their discomfort with competition from the government newspaper, the Daily news. This prompted a quick comparison of the advertisement rates of two key newspapers with that of the Daily news. Without the cost structure of the newspapers, the conclusions from this comparison should be interpreted with caution.

Space	Daily News	Newspaper A	Newspaper B
F/Page (f.c.)	P4, 500s	P7, 090	P6, 765
pcm	P17.0	P18.7	P17.5

There are a number of reasons why private competitors' acrimony may be justified. (i) The daily news charges lower prices despite the fact that it does not charge readers for its paper. This may be seen as undercutting its competitors. (ii) The daily news does not have direct overheads. Its employees, office space, etc., are paid from the government treasury. Since its competitors do not have this luxury, it can afford to charge lower prices at the expense of its competitors. (iii) The Government is known to be a bad collector of debt, a sizeable proportion of which may end up as bad debt. If the daily news is a poor debt collector, there is an additional incentive to place an advert with them, as the probability of paying them is lower than that of paying its competitors, thus defeating competition.

However, the possibility of the daily news being simply more efficient cannot be ruled out without evidence from a detailed assessment of competition issues within this sector, which is beyond the scope of this study.

## **State Owned Monopolies and Anti-competitive Practices**

In simple terms, a monopoly is an agent that undertakes a business activity without any competitor. It is a sole provider of a given service or product. In Botswana there are quite a number of monopoly service providers. These include the Botswana Power Corporation (BPC), which is the sole provider of electricity in the country, and the Botswana Telecommunications Corporation (BTC), which is the sole provider of fixed telecommunications services. Respondents were well aware of the existence of state owned monopolies in Botswana. 77.8 percent of the respondents reported knowledge of the existence of such monopolies, and 8.9 percent were not aware of state owned monopoly existence in Botswana. The rest were indifferent.

65.9 percent alleged that these state owned monopolies engage in anti-competitive practices, although respondents could not readily identify which anticompetitive practices the monopolies engage in.

## **The Origin of Anti-competitive Practices**

Majority of respondents (70 percent) felt that most anti-competitive practices originate from outside the country. This is not very surprising. For example, Botswana has two Mobile phone companies, Mascom and Orange. Mascom handsets are open, meaning a customer can buy a handset from Mascom and insert an Orange simcard. On the other hand, Orange handsets are not open, meaning that one cannot buy a handset from Orange and insert a Mascom simcard. An Orange handset goes along with only an Orange simcard. Essentially, Orange practices 'Tied-selling', in that buying an Orange handset forces the customer to buy the Orange simcard even if they have a Mascom simcard. This is an anti-competitive practice that came along with a multinational.

Furthermore, in June 2005, the South African Competition Commission published a report in which it revealed that DaimlerCrysler South Africa (Pty) Ltd, BMW South Africa (Pty) Ltd and Nissan Africa (Pty) Ltd and their dealers entered into franchise and dealer agreements which contained a number of restrictions that impact negatively on competition in the market within which they operate. The restrictions that were reportedly placed on dealers relate to, inter alia, the selling of new motor vehicles to unauthorised agents and the selling of new motor vehicles to exporters, imposition of minimum resale prices and price fixing.

Since the South African Competition Commission is territory bound, its investigations were limited to South Africa. However, the findings have a potential effect on all SACU members in which the South African car manufacturers have dealers, including Botswana. The key question then is, is the Botswana car dealership industry free from such anti-competitive practices? Without detailed investigations into this sector, which can adequately be undertaken by the Botswana Competition Authority, empowered by law to

do so, it cannot be ruled out that similar anti-competitive practices do not occur within the Botswana market.

This is more so that the Economic Mapping Study (2002) reported that collusion by foreign firms was found to be the major anti-competitive business practice in Botswana. The study reports that most Botswana companies felt that South African firms posed unfair competition to them, especially during tenders. Foreign companies (particularly South African firms supplying Botswana firms) quote high prices for local firms intending to participate in tenders, and they collude with other South African firms on submission of quotations (with prices relatively lower than local firms can quote), in the event deliberately causing local companies to lose tenders because they have relatively higher prices. Collusion by foreign companies is not only anti-competitive, it also inhibits progress of local companies. The study further reports complaints of Chinese companies imposing unfair competition on local companies.

### **Existence of Rules and Regulations to check on Anti-competitive Practices**

Asked whether there were rules, regulations or laws to check such practices, majority of the respondents (48.8 percent) said that they did not know whether such regulations and laws existed. Another 34.9 percent were of the view that there are no such laws and regulations. The remaining 16.3 percent were aware of the existence of laws and regulations aimed at checking on anti-competitive practices. This is indeed in line with reality as competition issues are new in Botswana. As noted elsewhere in this report, Parliament passed the Competition Policy only in August 2005, and a significant number of stakeholders do not have a feel of what relating to competition issues is on the ground.

Those who said they were aware of the existence of such laws cited among others, operators' licences in the Telecommunications Sector, which prohibit, among others, price discrimination. Others include commercial bank licences issued by the Central Bank, the Public Procurement and Asset Disposal Act, which aim at ensuring competition within tendering companies and the local authorities tendering process.

### **Implementation of Anti-competitive Rules**

To establish the extent to which the anti-competitive rules were implemented, respondents were asked whether any action was taken when the rules and regulations were violated. In response, 53.1 percent of those who are aware of the existence of such rules said that sometimes action is taken while 6.3 percent said action is always taken. The other 15.6 percent said that no action is normally taken, while only 25.0 percent of the respondents noted that they did not know whether action is normally taken against violators of anti-competitive rules, regulations, and laws.

### **Agencies that Provide Justice to Consumers**

Among others, we attempted to establish respondents' knowledge and perceptions about agencies that provide justice to consumers. Some of the agencies identified include the;

- (a) Consumer Protection Division of the Department of Trade and Consumer Affairs, whose mandate is to protect consumers against unfair business practices, including; providing consumers with adequate information on products, services and after sale services; taking care of, promoting and protecting the interests of consumers against any form of exploitation or ignorance, especially against malpractice in the market place. The division was singled out as providing justice to consumers by 43.8 percent of respondents.
- (b) The Public Procurement and Asset Disposal Board, whose mandate is, among others, to promote competition as the mechanism through which value for money can be achieved was also identified by 14.6 percent of respondents as providing justice to consumers.
- (c) Others that have been acknowledged as providing justice to consumers, albeit by insignificant number of respondents include the Botswana Telecommunications Authority (BTA), the Botswana Bureau of Standards (BOBS) and the Bank of Botswana.
- (d) Though not mentioned by a significant number of respondents, some respondents acknowledged the newly formed independent 'Consumer Watchdog' as representing the interests of consumers. The Watchdog prides itself with a number of initiatives that brought smiles to consumers of different commodities in Botswana. Below is an abstract from the Watchdog's website, <http://www.bes.bw>;

### ***Store Credit Schemes***

#### ***It's gone too far***

*Store credit schemes are getting out of control. Every week we hear from people who, for whatever reason, and however they've done it, are stuck with store credit schemes that are abusive, deceptive and vicious.*

#### ***Whose fault is it?***

*Ours. Yours. Oh yes, and the stores as well. But remember, a credit agreement is between two parties - you and the store. Both parties agree, in writing, to pay lots of money in return for a product. Surely then if we sign up for a wicked scheme we have to take some of the blame?*

#### ***However!***

*What if the stores are not quite as open and honest as we would hope? What if they went out of their way to hide their charges? But surely they wouldn't do such a thing? No?*

#### ***A real-life example***

*A customer was told that the furniture in question, on sale for P6, 999.95, could be purchased on a 3-month interest free credit scheme. However, the agreement that she actually signed turned out to be a 12-month, interest-bearing scheme, as follows:*

Basic price	P6, 999.95
Discount	P999.95
True Price	P6, 000.00

*The extra, hidden charges were:*

*Insurance P3, 036.00 = 51% of the true price*  
*Finance charges P1, 998.28 = 33% of the true price*  
*Other charges P185.00 = 3% of the true price*  
***Total extras P5, 219.28 = 87% of the true price***

*A statement from the supplier states that the "EFFECTIVE INTEREST RATE" is 27 percent. Unfortunately we can't find any way of making the numbers above come to an interest rate of exactly 27 percent. Can you?*

*The simple truth is that an item costing P6, 000 in fact costs this customer P11, 219.28, 87 percent more than she believed. Ironically, having paid a total of P4, 000 so far, she still owes P7, 219.28, more than the price of the item!*

*So what should be done?*

*We've been thinking a lot about how store credit schemes could be better.*

*Suggestion no.1 - Don't buy on credit*

*Yes, it sound simple and it's not always possible but some of schemes are designed to deceive you, get you hooked and then take huge amounts of money away from you.*

*Suggestion no.2 - Don't sign anything*

*At least not until you've had a chance to really read the agreement, think through the implications, calculate what it's really going to cost you and, most importantly, spoken to a friend or relative and listened to their advice.*

*Suggestion no.3 - Voluntary Store Credit Charter*



*We want stores that offer customers credit schemes to talk to us about setting up a Voluntary Store Credit Charter. We invite stores to sit down with us and help us construct a set of rules that will show us that they care about their customers and that will commit them to certain basic standards.*

### **Are the Existing Rules, Regulations and Laws sufficient to Check Anti-competitive Practices?**

An overwhelming 85 percent of the respondents said that the existing rules, regulations and laws are not sufficient to check anti-competitive practices, while 10 percent can't tell whether the regulations are sufficient to check anti-competitive practices and only five percent feel the regulations and rules sufficiently check anti-competitive practices. It, therefore, turned out to be an obvious reason why the majority of respondents (95.3 percent) felt that a comprehensive law should be enacted to check anti-competitive practices. The objectives of that law should, among others, be to;

- (a) Improve economic efficiency and consumer welfare, observed 75 percent respondents.
- (b) Consider socio economic issues, said 10 percent of the respondents.

Other objectives given by insignificant number of respondents included;

- (c) Facilitating fair trade practices within the market; and
- (d) Restoring investor confidence in the economy.

### **Coverage of the Law**

87.8 percent of the respondents felt that the law must cover all types of enterprises and the remaining 12, 2 percent are of the view that Small and Medium-scale Enterprises (SMEs) should be exempted from the application of the Competition Law, although some within this group are for partial exemption. For example, one of the respondents noted that practices such as concerted refusal to deal, price discrimination and bid-rigging should not be tolerated regardless of firm size.

### **Implementation of the Law**

Any Competition Law will have to be implemented by some agency. The most common forms are where the agency is an autonomous agency or the agency is under the relevant government department or ministry. Sometimes the agency may take whatever shape the government may deem appropriate. An attempt was made to establish the respondent's views on the nature of the implementing agency. 76.7 percent of the respondents preferred an autonomous entity, while the remaining 23.3 percent preferred an agency under a government department/ministry.

## Powers of the Implementing the Agency

*Investigation and Adjudication:* A large proportion of respondents (46.3 percent) advocated to have conferred on the implementing agency, only the investigative powers, and that the adjudicative powers be left with the courts. On the other hand, 34.1 percent of the respondents were of the view that the implementing authority be vested with both investigative and adjudicative powers, while only 19.5 percent said that the implementing authority should be tasked with both investigative and adjudicative roles.

**Table 8.1.7: Powers of the Implementing Agency (%)**

<b>Both investigative and adjudicative</b>	<b>Investigative only with adjudicative power vested with the courts</b>	<b>Investigative only with powers adjudicative powers vested with courts</b>	<b>Other: Initial investigation by sector regulators, and the implementing agency if no resolution.</b>
34.1	19.5	46.3	Insignificant

An insignificant number of respondents argued that in sectors with existing regulators (e.g. telecommunications), anti-competitive practices should initially be investigated and adjudicated upon by these regulators, and passed on to the competition law implementing agency only when the regulators fail to reach a resolution.

*Consumer Protection:* 82.2 percent of respondents said that the implementing authority should also deal with consumer protection issues. Some of the reasons given for this are that the Division of Consumer Affairs under the Department of Trade and Consumer Affairs is not well resourced to adequately deal with consumer issues. Their views may be vindicated by the emergence of a private Consumer Watchdog, whose popularity among consumers seem to be increasing very fast. On the other hand, 13.3 percent of respondents feel that the implementing agency should not be tasked with consumer protection issues. They argue, among others, that sector regulators such as the BTA and the Division of Consumer Affairs should continue to deal with the consumer protection office.

*Criminalisation of Violations of Law:* According to 79.1 percent of the respondents, violations of the law should be criminalised sometimes, depending on the circumstances and the weight of the violation. 16.3 percent were of the view that violations of the law should be criminalised at all times. Only 4.7 percent did not have a position as to whether violations of the law should be criminalised or not.

*Exemptions:* It is normal to have exemptions from the application of the Competition Law on public interest grounds. These include technological advancement, protection of SMMEs and/or socially advanced groups and even employment creation grounds. On such exemptions, 55.8 percent of the respondents were for a Competition Law with such exemptions, while 30.2 percent were against having such exemptions in the law. The remaining 14.0 percent did not have a position on the matter. Those supporting the

exemptions argued, among others, that SMEs are fragile and may need some special treatment. For example, they may be allowed to co-operate in areas such as sourcing materials to exploit economies of scale, and even discuss and collaborate on their pricing policies to avoid unnecessarily squeezing each other out of the market. Clearly, the latter would be some form of collusion, but proponents of the exemption felt it would go a long way in ensuring the success of SMEs.

Exemptions, by their nature are prone to abuse. For example, SMMEs may unlawfully extend the benefits of leverages given under the law to larger firms. It is therefore important that proper mechanisms be put in place to protect exemptions from abuse. Thus, respondents were generally in support of putting in place mechanisms to protect exemptions from abuse. 55.3 percent of the sample felt that there must be well-defined regulations, which ensure that the exemptions are not abused. 36.8 percent argued that the judiciary should ensure that the exemptions are not abused. Thus, their view is that abuse of the exemption rules should be a criminal offence punishable by law. The rest of the respondents did not have a position on the matter.

*Stakeholder Involvement:* The key to success of democratic and civil institutions is continuous stakeholder consultation. Competition Law has a bearing on different stakeholders, including the government, businesses, civil society, and consumers. It is against this background that each stakeholder must understand the functioning of the Competition Authority. Such understanding would help stakeholders appreciate the decisions of the Competition Authority. Because of this, respondents were asked to express their opinion on stakeholder involvement in the functioning of the Competition Authority. An overwhelming majority (90.7 percent) said that stakeholders must be involved in the functioning of the Competition Authority.

There is a feeling that the Competition Authority should involve stakeholders in a number of ways. These include structured consultative committees (cited by 74.4 percent of respondents) and occasional public hearings (20.5 percent).

## **8.2 Stakeholder Specific Picture**

Having established the overall picture, which aimed at looking at competition issues in aggregative form, we are now going to tease out important perceptions at the stakeholder level. To recap, these stakeholders are the government, businesses, and the civil society/consumers.

### **8.2.1 Government's Perspective**

This subsection discusses the government sector's perceptions about competition issues in Botswana.

## **Existence of Anti-competitive Practices**

**Table 8.2.1: Knowledge about Prevalence of Anti-competitive Practices by Government Agents**

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<i>Extent of existence</i>	<i>Percent</i>
Moderately	75.0
Significantly	18.7
Non Response	6.3

75 percent of Government agents were of the view that the existence of anticompetitive practices was moderate, which is in line with the overall picture of 68 percent. In addition, 18.7 percent said that the existence was significant, again in line with the overall picture of 20.8 percent.

### Effect of Anti-competitive Practices on Consumers

**Table 8.2.2: Government's Agents perceptions on Extent to which Consumers are affected by Anti- competitive Practices**

<i>Extent of impact</i>	<i>Percent</i>
Moderately	31.3
Significantly	50.0
Hugely	18.7
<b>Total</b>	<b>100</b>

31.3 percent of government agents felt that consumers are moderately affected by anti-competitive practices. This corresponds with the overall picture of 33.3 percent. 50.0 percent said that consumers were significantly affected by the practices, which is also not far away from the overall picture of 45.8 percent. However, at 18.7 percent, those who feel consumers are hugely affected by these practices are slightly above the overall figure of 10.4 percent.

### Most Prevalent Practices

**Table 8.2.3: The Most Prevalent Practices (Government)**

<i>Rank</i>	<i>Most prevalent Practice</i>	<i>% of respondents</i>	<i>Second Most prevalent Practice</i>	<i>% of respondents</i>	<i>Third Most prevalent Practice</i>	<i>% of respondents</i>
1	Price Fixing	37.5	Exclusive Dealing	43.8	Unfair Trade Practices	25.0

The views of government agents continue to be in line with overall picture. Represented by 37.5 percent of the respondents, government agents rates price fixing as the most prevalent practice, which corresponds with the national average which puts price fixing as the most prevalent with 39.6 percent of the responses. The second most prevalent practice is exclusive dealing (43.8 percent), which is also in line with the overall average

of 39.6 percent for the same practice. The third most prevalent practice is considered to be unfair trade practices, which represents a diversion from the overall picture where predatory pricing holds the position.

### Most Prevalent Practices by Region

#### Local Level

<i>Rank</i>	<i>Most prevalent Practice</i>	<i>% of respondents</i>	<i>Second Most prevalent Practice</i>	<i>% of respondents</i>	<i>Third Most prevalent Practice</i>	<i>% of respondents</i>
1	Price fixing	25.0	-Market sharing - Bid rigging - Tied selling	12.5 12.5 12.5	Predatory pricing	18.8

As with the overall picture, the most prevalent practice at the local level is price fixing (25.0 percent), which again is not far from (29.2 percent) for the national level. The trend follows for market sharing, which, as is the case with the overall picture takes the second spot. Others that take the second spot at the local level include bid-rigging and tied selling. The third most prevalent practice is said to be predatory pricing (18.8 percent).

#### National Level

<i>Rank</i>	<i>Most prevalent Practice</i>	<i>% of respondents</i>	<i>Second Most prevalent Practice</i>	<i>% of respondents</i>	<i>Third Most prevalent Practice</i>	<i>% of respondents</i>
1	-Price Fixing -Tied selling	25 25	Bid Rigging	25	Unfair Trade practices	25

The analysis of anti-competitive practices at the National Level reveals that the most prevalent practice is once again price fixing, identified by 25 percent of the respondents, which corresponds with the overall picture of 27.0 percent. Tied selling is also identified alongside price fixing. A further 25 percent (which is higher than the overall picture of 14.6 percent) of respondents picked bid rigging as the second most prevalent practice at the national level.

Unfair trade practices come third (25 percent), which is also in line with overall picture of (29.2 percent).

### Sectors Most Affected by Anti-competitive Practices

Attempt was made at identifying sectors in which anti competitive practices occur. Asking respondents which sectors they thought were mostly affected by the practices did the same.

**Table 8.2.6: The Most Affected Sectors (Government)**

<i>Rank</i>	<i>Most affected sector</i>	<i>% of respondents</i>	<i>Second Most affected sector</i>	<i>% of respondents</i>	<i>Third Most affected sector</i>	<i>% of respondents</i>
1	- Construction - Parastatal	18.8 18.8	Wholesale Trade (excluding vehicle trade)	18.8	- Government - Motor sector - Media	12.5 12.5 12.5

Government agents believe the prevalence of anti-competitive practices is the highest within the construction and parastatal sectors (18.8 percent). The wholesale trade sector, which is perceived to have highest prevalence of anti-competitive practices overall, is relegated to the second spot in government sector analysis. The motor retail and construction sectors, viewed as the second most affected sectors at the overall picture are placed third by government agents.

### State-owned Monopolies and Anti-competitive Practices

A good 75 percent of Government agents were aware of the existence of state owned monopolies in Botswana. However, only 43.7 percent said that government monopolies engage in anti-competitive practices, which is lower than the 65.5 percent recorded on the overall picture. 12.5 percent of the respondents said they do not.

### The Origin of Anti-competitive Practices

According to the majority (75 percent) of government respondents, some anticompetitive practices are imported. This is slightly higher, albeit in line with the overall picture of 70 percent.

### **Existence of Rules and Regulations to check on Anti-competitive Practices**

Asked whether there are rules and regulations to check anti-competitive practices, 43.7 percent of the respondents said they did not know, while 31.3 percent were of the view that there are no such rules and regulations. 6.3 percent alleged awareness about the rules, while the remaining lot was non-committal. This scenario mirrors the overall picture, where 48.8 percent of the respondents said that they did not know whether such regulations and laws existed and 34.9 percent were of the view that there are no such laws and regulations.

### **Implementation of Anti-competitive Rules**

31.2 percent of the respondents said that the rules are sometimes implemented when violations of competition are committed, while 6.3 percent said the rules are always implemented. The rest did not have any opinion on the matter.

### **Agencies that Provide Justice to Consumers**

A number of agents were identified as providing justice to the consumers. The PPADB seems popular with government agents in relation to the provision of justice to the consumers than it is at the national level. For example, 25.3 percent of the respondents picked it for the role as opposed to 14.6 percent it recorded at the national level.

The Consumer Protection Division of the Department of Trade and Consumer Affairs was the most popular with 37.5 percent of respondents picking it. 12.5 percent of the respondents picked the Botswana telecommunications Authority (BTA). Generally, these are government agencies.

### **Are the Existing Rules, Regulations and Laws Sufficient to Check Anti-competitive Practices?**

The existing rules, regulations and laws were generally viewed as not sufficient to check anti-competitive practices, as 68 percent of the respondents were doubtful about the effectiveness of the rules and regulations. 12.5 percent can't tell whether the regulations are sufficient to check anti-competitive practices, which is in line with the overall picture of 10 percent. As a result, the majority of respondents (81.2 percent) felt that a Comprehensive Law should be enacted to check anti-competitive practices. According to respondents, the law should, among others, improve economic efficiency and consumer welfare (62.5 percent of respondents) and consider socio- economic issues (22.7 percent).

## **Coverage of the Law**

50 percent of the respondents felt that the law must cover all types of enterprises, while 18.8 percent said it should not, arguing that it should exempt, among others, SMEs. The same argument was raised at overall stakeholder analysis.

## **Implementation of the Law**

68.8 percent of government agents believe that the implementing agency should be an autonomous entity. While this is below the overall picture figure of 76.7 percent, indicating governments' agents' confidence in the system, it still points out to the need to have an independent implementing agency. Only 12.5 percent were of the view that the agency should be under a government department or ministry. The rest could not take a stand.

## **Powers of the Implementing the Agency**

*Investigation and Adjudication:* 31.3 percent of respondents (which compares unfavourably with the (46.3 percent) for the overall picture) were of the view that the implementing agency should be vested with investigative powers with the adjudicative powers left with the courts. On the other hand, 25 percent of the respondents were of the view that the implementing authority be vested with both investigative and adjudicative powers and another 25 percent were of the view that the implementing authority should be tasked with both investigative and adjudicative roles

*Consumer Protection:* A significant 68.8 percent of respondents said that the implementing authority should also deal with consumer protection issues. An insignificant number of respondents (12.5 percent) were against such an arrangement, arguing that sector specific regulatory bodies should handle such issues.

*Criminalisation of violations of Law:* 81.2 percent of the respondents support a situation where violations of the law are sometimes criminalised. Otherwise the rest did not have any opinion on the matter.

*Exemptions:* Government sector (56.3 percent) is generally for exemptions of certain industries and sectors from the ambit of the Competition Law, while 12.5 percent is against such exemptions. The figure supporting exemptions is in line with the overall picture figure of 55.8 percent. In order to prevent abuse of exemptions, the government sector suggested that such abuse should be controlled through well-defined guidelines (37.5 percent), and through judicial scrutiny (43.7 percent).

## **Stakeholder Involvement**

A significant number (68.8 percent) of government sector respondents were of the view that the Competition Authority should involve stakeholders in a number of ways. These



include structured consultative committees (cited by 43.8 percent of respondents) and occasional public hearings (18.8 percent).

## 8.2.2 Civil Society

This subsection discusses civil society/consumers (herein referred to as consumers) sector’s perceptions about competition issues in Botswana.

### Existence of Anti-competitive Practices

**Table 8.2.2.1: Knowledge about Prevalence of Anti-competitive practises (Civil Society)**

<i>Extent of existence</i>	<i>Percent</i>
Moderately	75.0
Significantly	12.5
Hugely	12.5

According to 75 percent of consumers, the existence of anti-competitive practices in Botswana is moderate, lower than the overall picture figure of 68.8 percent. In addition, 12.5 percent said that the existence was significant, again below the overall picture figure of 20.8 percent.

### Effect of Anti-competitive Practices on Consumers

**Table 8.2.2.2: Extent to which Consumers are Affected by Anti-competitive Practices (Consumers)**

<i>Extent of impact</i>	<i>Percent</i>
Moderately	50.0
Significantly	31.5
Hugely	18.7
<b>Total</b>	<b>100</b>

50.0 percent of consumers felt that consumers are moderately affected by anti-competitive practices, which is higher than overall picture figure of 33.3 percent. 31.5 percent said the effect was significant. The figure is surprisingly lower than the overall picture figure of 45.8 percent. This may be because consumers in Botswana are generally not aware of both the benefits of competition and the dangers of lack of a competitive market. In addition, 18.7 percent of the respondents felt the impact was huge, which is slightly above the overall figure of 10.4 percent.

### Most Prevalent Practices

**Table 8.2.2.3: The Most Prevalent Practices (Consumers)**

<i>Rank</i>	<i>Most prevalent Practice</i>	<i>% of respondents</i>	<i>Second Most prevalent Practice</i>	<i>% of respondents</i>	<i>Third Most prevalent Practice</i>	<i>% of respondents</i>
1	Price Fixing	43.8	Exclusive Dealing	31.5	-Unfair Trade Practices -	18.8

Represented by 43.7 percent of the respondents, consumers rate price fixing as the most prevalent that corresponds with the overall picture, which also views price fixing as the most prevalent with 39.6 percent of the responses. The second most prevalent practice is exclusive dealing (31.5 percent), which is slightly below the overall average of 39.6 percent and the government figure of (43.8 percent) for the same practice. The third most prevalent practice is considered to be unfair trade practices (18.8), which represents a diversion from the overall picture whether the position goes to predatory pricing.

#### Most Prevalent Practices by Region

##### **Local Level**

**Table 8.2.2.4: Most Prevalent Practices at the Local Level (Consumers)**

<i>Rank</i>	<i>Most prevalent Practice</i>	<i>% of respondents</i>	<i>Second Most prevalent Practice</i>	<i>% of respondents</i>	<i>Third Most prevalent Practice</i>	<i>% of respondents</i>
1	Price fixing	31.3	Bid rigging	18.8	-unfair trade practices	25.0

As with the overall picture, the most prevalent practice at the local level is price fixing (31.3 percent). However, whereas the second most prevalent practice under the overall picture is market sharing, for consumers, the second spot is taken by bid rigging, which is somewhat abnormal, as in most cases one would not expect consumers to keep track of bid activities. 25 percent of consumers felt the third most prevalent practice is unfair business practices. This is in line with the overall picture, where unfair business practices were also considered third.

##### **National Level**

**Table 8.2.2.5: Most Prevalent Practices at the National Level (Consumers)**

<i>Rank</i>	<i>Most prevalent Practice</i>	<i>% of respondents</i>	<i>Second Most prevalent Practice</i>	<i>% of respondents</i>	<i>Third Most prevalent Practice</i>	<i>% of respondents</i>
1	Price Fixing	31.5	Bid rigging	25	Unfair Trade	31.5

					practices	
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At the National Level, most prevalent practice is price fixing, identified by 31.5 percent of the respondents, which corresponds with the overall picture, although the latter has lower percentage points of 27. Bid-rigging takes the second spot (25 percent), as is with the overall picture, while unfair trade practices goes third, again as is the case with the overall picture. Thus, price fixing comes out as the most prevalent practice at both the national and local levels, which makes an obvious contender for the overall first spot.

### Sectors Most Affected by Anti-competitive Practices

**Table 8.2.2.5: The Most Affected Sectors (Consumers)**

<i>Rank</i>	<i>Most affected sector</i>	<i>% of respondents</i>	<i>Second Most affected sector</i>	<i>% of respondents</i>	<i>Third Most affected sector</i>	<i>% of respondents</i>
1	Construction	25	Wholesale Trade (excluding vehicle trade)	18.8	-Financial sector(Banking) -Commercial Agric	12.5 12.5

Consumers' view is that the prevalence of anti-competitive practices is the highest within the construction sector (25 percent). The wholesale trade sector, which is perceived to have highest overall prevalence of anticompetitive practices is in the overall picture, like with government, is relegated to the second spot (18.8). The financial sector (banking) and commercial agriculture sectors are placed third (12.5 percent).

### **State- owned Monopolies and Anti-competitive Practices**

81.3 percent of consumers are aware of the existence of state owned monopolies in Botswana; this is slightly higher than then overall picture of 77.8 percent. A further 62.5 percent of consumers reported knowledge of cases when government monopolies have engaged in anti competitive practices. This is slightly lower than the 65.5 percent recorded on the overall picture.

### **The Origin of Anti-competitive Practices**

68.8 practices of consumers allege that some anti-competitive practices originate from outside Botswana. This is slightly lower than the overall picture of 70 percent.

### **Existence of Rules and Regulations to check on Anti-competitive Practices**

31.3 percent of consumers noted that there were no rules and regulations meant to check anti-competitive practices. This is in line with overall picture of 34.9 percent. Another 43.7 percent said that they did not know whether such regulations and laws existed or not. The figure is in line with the overall figure of 48.8 percent. Only 6.3

percent of the consumers noted that there were rules and regulations meant to check anti-competitive practices. This picture is not at all surprising, given that consumers in Botswana have been exposed to issues of competition in Botswana are relatively new.

There is also a general view within consumers that when rules are violated, some times action is taken to redress the situation. This view is shared by 50 percent of consumers.

### **Agencies that Provide Justice to Consumers**

Consumers identified a few organisations that provide justice to the consumers. These include, the PPADB, identified by 18.8 percent of respondents, which is slightly higher than the overall figure of 14.6 percent.

56.3 percent of the consumers identified the Consumer Protection Division of the Department of Trade and Consumer Affairs. Other agencies received just 6.3 percent of the votes.

### **Are the Existing Rules, Regulations and Laws Sufficient to Check Anti-competitive Practices?**

The existing rules, regulations and laws were generally viewed as not sufficient to check anti-competitive practices, as 68.8 percent of the respondents were doubtful about the effectiveness of the rules and regulations. This is lower than the overall picture figure of 85.0 percent, but still high. 12.5 percent cannot tell whether the regulations are sufficient to check anticompetitive practices, which is in line with the overall picture of 10 percent. Thus, the majority of respondents (75 percent) felt that a Comprehensive law should be enacted to check anticompetitive practices. According to respondents, the law should focus on, among others, improving economic efficiency and consumer welfare and also consider socio-economic issues.

### **Coverage of the Law**

As for coverage of such a law, 50 percent of the respondents felt that the law must cover all types of enterprises and, while 25 percent were of the view that it should not, arguing that it should exempt, among others, SMEs. The same argument was raised at overall stakeholder and government analysis.

### **Implementation of the Law**

As to who should implement the law, 62.5 percent of consumers felt that it is best when the implementing agency is an autonomous entity. 25 percent, which represents a slight increase from the 23.3 percent observed at the overall level were of the view that the agency should be under a government department or ministry.

### **Powers of the Implementing Agency**

*Investigation and Adjudication:* A quarter (25 percent) of the respondents were of the view that the implementing agency should be vested with investigative powers with the adjudicative powers left with the courts. 12.5 percent felt that the implementing authority be vested with both investigative and adjudicative powers and a 50 percent were of the view that the implementing authority should be tasked with both investigative and adjudicative roles, which indicates the substantial confidence consumers put in the independence of the implementing agency.

*Consumer Protection:* 75.0 percent of respondents said that the implementing authority should also deal with consumer protection issues, while another 12.5 percent were against such an arrangement, primarily because their preference is to have consumer protection issues handled by sector specific regulatory bodies.

*Criminalisation of Violations of Law:* On the criminalisation of violations of such a law, 56.3 percent of the consumers prefer that violations of the law be sometimes criminalised. 31.3 percent were of the view that violations should be criminalised at all times.

*Exemptions:* The majority (81.3 percent) of consumers prefer to have a law with exemptions, including exemptions of SMMEs. This figure is way above the overall picture figure of 55.8 percent, suggesting that on average, consumers prefer exemptions than other stakeholders. In order to prevent abuse of exemptions, 50 percent of consumers suggested that such abuse should be controlled through well-defined guidelines and 31.3 percent suggested the use of judicial system.

*Stakeholder Involvement:* The involvement of stakeholders is well supported by consumers. For example, 75 percent said that the Competition Authority should involve itself through occasional public hearings and 12.5 percent said that the Authority should do so through structured consultative committees.

### 8.2.3 Business Perspective

#### Existence of Anti-competitive practices

**Table 8.2.3.1: Knowledge about Prevalence of Anti-competitive Practises by Government Agents**

<i>Extent of existence</i>	<i>Percent</i>
Moderately	56.2
Significantly	31.3
Hugely	12.5

56.2 percent of business perceives the existence of anti-competitive practices as moderate, which is lower than the overall picture of 68 percent, the government’s view of 75 percent, and the consumers’ view of 75 percent. However, it is interesting to find that while 20.8 percent, 18.7 percent, and 13.3 percent of the respondents on the overall

picture, government sector and civil society respectively rated the existence of anti-competitive practices as significant, a higher proportion of business (31.3 percent) rates the problem as significant. This is not surprising, given that business is essentially the perpetrator of anti-competitive practices, and is in a better position to know about the problem than other stakeholders.

### Effect of Anti-competitive Practices on Consumers

**Table 8.2.3.2: Extent to which Consumers are Affected by Anti-competitive Practices (business)**

<i>Extent of impact</i>	<i>Percent</i>
Moderately	18.8
Significantly	12.5
Hugely	0
<b>Total</b>	<b>100</b>

18.8 percent of business felt that consumers are moderately affected by anti-competitive practices. This is much lower than the overall picture of 33.3 percent, government (31.3 percent) and consumers (50.0 percent). Furthermore, only 12.5 percent of business said consumers were significantly affected by anti-competitive practices. This is again much lower than the corresponding overall figure of 45.8 percent, government's figure of 50 percent, and consumers' figure of 31.5 percent.

This is expected, since business is normally the perpetrator of anticompetitive practices, it is less likely to care about consumer welfare than other stakeholders. This calls on business to balance their business interests with consumer welfare, failing which the law should ensure that business does not make profits at the expense of consumer welfare.

### Most Prevalent Practices

**Table 8.2.3.3: The Most Prevalent Practices (Business)**

<i>Rank</i>	<i>Most prevalent Practice</i>	<i>% of respondents</i>	<i>Second Most prevalent Practice</i>	<i>% of respondents</i>	<i>Third Most prevalent Practice</i>	<i>% of respondents</i>
1	Resale price maintenance	43.7	Exclusive Dealing	50.0	Predatory pricing	18.8

Whereas all other stakeholders have price fixing as the most prevalent anti-competitive practice, business has a divergent view. Instead, they have resale price maintenance as their most prevalent practice. Business is essentially saying that they do not fix prices, although they admit to a somewhat lesser offence of dictating the resale price to the retailer. This may be seen as a lesser offence in that unless the manufacturers have agreed to fix the resale price, at least it may still give consumers options on the retail price. Like government, the overall picture and consumers, the second most prevalent practice is

exclusive dealing. The third most prevalent practice is predatory pricing, which has short-term benefit to the consumer but long-term consumer misery.

### Most Prevalent Practices by Region

#### Local Level

<i>Rank</i>	<i>Most prevalent Practice</i>	<i>% of respondents</i>	<i>Second Most prevalent Practice</i>	<i>% of respondents</i>	<i>Third Most prevalent Practice</i>	<i>% of respondents</i>
1	Price fixing	31.5	Unfair trade practices	18.8	Market sharing	18.8

As with the overall picture, government and consumers, the most prevalent practice at the local level is price fixing (31.5 percent). Unfair business practices take second spot, replacing market sharing in the case of the overall picture and relegating it to the third spot (18.8 percent).

#### National Level

<i>Rank</i>	<i>Most prevalent Practice</i>	<i>% of respondents</i>	<i>Second Most prevalent Practice</i>	<i>% of respondents</i>	<i>Third Most prevalent Practice</i>	<i>% of respondents</i>
1	Bid rigging	44.0	Exclusive Dealing	31.5	Predatory pricing	31.5

However, at the National Level, the most prevalent practice is bid rigging, identified by 44.0 percent of the respondents, a diversion from the overall picture, the local level, government and consumers' perspectives, where price fixing takes the lead. Exclusive dealing is the second most prevalent practice at the national level. Predatory pricing, identified by 31.5 percent of businesses is the third most prevalent practice. This may indicate increased business concern with the practice, more so that business as a key stakeholder in the bids 'insides-outs' is better placed to provide a better picture about bids.

### **Sectors most Affected by Anti-competitive Practices**

Attempt was made at identifying sectors in which anti competitive practices occur. Asking respondents which sectors they thought were mostly affected by the practices achieved this.

**Table 8.2.3.5: The Most Affected Sectors (Business)**

<i>Rank</i>	<i>Most affected sector</i>	<i>% of respondents</i>	<i>Second Most affected sector</i>	<i>% of respondents</i>	<i>Third Most affected sector</i>	<i>% of respondents</i>
1	Wholesale and retail sector	43.7%	Motor retail sector	25	Construction	25

Business believes the prevalence of anti-competitive practices is the highest within the wholesale and retail sector (43.7 percent), as is the case with the overall picture. The motor trade sector has the second highest (25 percent), followed by construction.

### **State-owned Monopolies and Anti-competitive Practices**

Business is aware of state owned monopolies in Botswana. A sizeable 62.5 percent (slightly lower than the overall picture of 65.5 percent) of businesses were aware of the existence of state-owned monopolies in Botswana, and all were of the opinion that state monopolies engage in anti-competitive practices.

### **The Origin of Anti-competitive Practices**

75 percent of business believes that some anti-competitive practices originate from outside the country. This is slightly higher than the overall picture of 70 percent.

### **Existence of Rules and Regulations to check on Anti-competitive Practices**

The majority of businesses (43.7 percent) cannot tell whether there are rules and regulations to check anti-competitive practices, which is slightly lower than the overall picture figure of 48.8 percent. 31.3 percent were of the view that there are no such rules and regulations, and 25 percent said that the rules existed. These include the PPADB regulations, district council tendering processes, the BTA regulations etc.

### **Violations of Anti-competitive Rules**

As to whether action is normally taken in case the rules are violated, 25 percent of the respondents said that the rules are sometimes implemented, while 31.3 percent said that the rules are always implemented.

### **Agencies that Provide Justice to Consumers**

The Consumer Protection Division of the Department of Trade and Consumer Affairs was singled out as the agency that provides justice to consumers by 38.0 percent of businesses.

### **Are the Existing Rules, Regulations and Laws Sufficient to Check anticompetitive practices?**



The existing rules, regulations and laws were generally viewed as not sufficient to check anti competitive practices, as 69 percent of the respondents did not have confidence in the effectiveness of the rules and regulations. Thus, the majority of respondents (87.5 percent) felt that a Comprehensive law should be enacted to check anticompetitive practices. They felt that the law should, among others, improve economic efficiency and consumer welfare.

### **Coverage of the Law**

75 percent of the respondents felt that the law must cover all types of enterprises. This represents a departure from other stakeholders' well-pronounced support for a law that exempts SMMEs.

### **Implementation of the Law**

As is the trend with all other stakeholders, the majority of businesses (75 percent) are of the opinion that the implementing agency should be an autonomous entity. Only 25 percent said that the agency should be under a government department or ministry.

### **Powers of the Implementing the Agency**

*Investigation and Adjudication:* 43.8 percent of respondents, which is a slight drop from the 46.3 percent for the overall picture, were of the view that the implementing agency should be vested with investigative powers with the adjudicative powers left with the courts. On the other hand, 31.3 percent of the respondents were of the view that the implementing authority be vested with both investigative and adjudicative powers left any other authority, while 31.3 percent were of the view that the implementing authority should be tasked with both investigative and adjudicative roles

*Consumer Protection:* An overwhelming 87.5 percent of respondents said that the implementing authority should also deal with consumer protection issues. This is in line with other stakeholders' views. Only 12.5 percent of businesses were against such an arrangement. Their view is that sector specific regulators should handle such issues.

*Criminalisation of Violations of Law:* 75.0 percent of the respondents support a situation where violations of the law are sometimes criminalised, while 12.5 percent were of the opinion that criminalisation should be at all times.

*Exemptions:* Only 12.5 percent of business respondents argued that the law should provide for exemptions. This is in contrast with the overall view, where 55.8 percent of respondents supported exemptions. However, the business sector suggested that in order to prevent abuse of exemptions, government must put in place well defined guidelines (43.8 percent) and through judicial scrutiny (12.5 percent).

*Stakeholder Involvement:* 100 percent of businesses were of the view that the Competition Authority should involve stakeholders in its functioning, especially

advocacy. Like with other stakeholders, suggested ways include structured consultative committees and occasional public hearings (18.8 percent).

## **9 National Competition Policy for Botswana**

### **9.1 Introduction**

Botswana's Parliament passed the National Competition Policy in August 2005. The decision by the Government to formulate the Competition Policy came out of, among others, governmental concerns about the likelihood of private anti-competitive practices emerging, thus undermining the Government's reform objectives. The Competition Policy aims to provide a coherent framework that integrates privatisation, deregulation, and liberalisation of trade and investment into a strategy for promoting a dynamic market-led economy.

The Competition Policy, therefore, is a strategy for enhancing Botswana's ability to promote free entry into the market place by investors and all firms, irrespective of their size; attraction of both domestic and foreign investment inflows, innovation and transfer of technology from intellectual property rights-holders, unfettered competition, acceptable business behaviour and conduct, fair business practices, efficiency, competitiveness, and consumer welfare.

### **9.2 Main Objectives of Competition Policy**

The main objectives of the Competition Policy are to:

- (a) enhance economic efficiency, promote consumer welfare and support economic growth and diversification objectives;
- (b) prevent and redress anti-competitive practices in the Botswana economy and remove unnecessary constraints on the free play of competition in the market;
- (c) prevent and redress unfair practices adopted by firms against consumers and small businesses in Botswana;
- (d) complement other Government policies and laws;
- (e) enhance the attractiveness of the Botswana economy for foreign direct investment by providing a transparent, predictable and internationally acceptable regulatory mechanism for firms in pursuit of the overall efficiency and competitiveness of the economy;

(f) support other policy initiatives such as citizen's economic empowerment and access to essential services without prejudice to the pursuit of the overall efficiency and competitiveness of the economy; and

(g) achieve deregulation where regulation is no longer needed.

In essence, the main objectives of the Competition Policy are to maintain and promote competition in order to achieve efficient use of resources, protect the freedom of economic action of firms and, as the ultimate goal, promote consumer welfare.

### **9.3 Strategic Policy Considerations**

The Government recognises that there are certain strategic considerations critical for the success of the Competition Policy. These are:

#### **(a) Establishment of the Competition Authority:**

- The authority will be established to implement the Competition Policy and its related legislation.

#### **(b) Development of the Competition Act**

- In order to ensure that Competition Policy is properly implemented, the Government will formulate a Competition Act, through which, competition in the market place will be regulated.

#### **(c) Ensuring Consistency of the Competition Policy with Other Government Policies:**

- In order to support the Government's other ongoing efforts to create and maintain a more conducive environment for stimulating and enabling the growth and diversification of the economy, the Competition Policy will be consistent with other policies such as the Policy on Small and Medium Scale Enterprises, Industrial Development Policy, and the Privatisation Policy.
- The Government will maintain a non-interference and competitive environment whilst ensuring consistency between this policy and other socio-economic development policy initiatives.
- The Government will work in collaboration and harmony with other countries and organisations at the bilateral and multilateral levels to respond to existing and potential cross-border anti-competitive practices, including but not restricted to, various types of anti-competitive behaviour,

abuse of dominant position in the market, and various types of anti-competitive combinations.

- The principles of competition should be embedded in the process of policy-making, legislation and enforcement, and applied at both local and central Government levels.

**(d) Development of Public Awareness and Support for Competition Enforcement:**

- Implementation of Competition Policy will be accompanied by the development and implementation of a strategy for educating the public and other stakeholders on the relevance and necessity of the Policy to the nation.

**(e) Interface between the Competition Authority with other Sector Specific Regulatory Bodies**

- The Government recognises the important role and advantages of having sector regulators such as the Bank of Botswana (BOB) and the Botswana Telecommunications Authority (BTA). However, all these will fall under the ambit of the Competition Law.
- There will be harmonisation of all legislation related to the Competition Policy in order to ensure consistency between them.
- In sectors characterized by economic/commercial activities, complex science, engineering and technology or having natural monopoly or other special elements, the Competition Authority and Sector Specific Regulators will collaborate and compliment each other.

**(f) Structural Reforms of Public Monopolies**

- The development of the Competition Policy does not in any way compromise the Government's commitment to restructuring public enterprises within the framework for increasing the role of the private sector in the economy. The Government's sector reform programme will therefore continue alongside the implementation of the Competition Policy.
- The Government, will however, retain monopoly powers, where necessary, to provide major infrastructure facilities whilst at the same time opening up activities like connection and distribution services to competition.

*Comment: Notwithstanding the qualification 'where necessary' this seems to contradict government pronouncement and subsequent initiatives on the Public Private Partnerships (PPPs) arrangement, through which the private sector can compete to provide such facilities though a PPP arrangement. Under the PPP arrangement, government would let the*

*private sector, through a competitive bid provide the infrastructure, and the government pays the private party some monthly payment. This would help in a number of ways. (a) It would open competition within the infrastructure service sector. (b) It would reduce government's development expenditure; thereby release funds for other purposes. (c) It would transfer, among others, construction risk from government to the private sector, as the government will only pay for the service rendered by the project at completion stage. As it stands now, government carries the risk of maintaining not well-designed and structurally faulty infrastructure, which would change under a PPP arrangement.*

- In line with the Privatisation Policy and the Competition Policy, the government will, prior to introducing competition in a market traditionally supplied by public enterprise or monopoly, undertake a review of the entity or entities concerned to determine the appropriateness of introducing competition.

**(g) Mergers and Acquisitions**

- In order to safeguard competition in the market place, Government will, if and when necessary, review mergers and acquisitions, including joint ventures and other forms of business alliances. This will ensure that they do not compromise competition within the market.

**(h) Professional Services**

- All professional associations will be put under the ambit of the Competition Policy. This is meant to ensure that their activities and laws controlling them do not inhibit competition within the market.

**(i) Consumer Protection**

- The Competition Policy and its related legislation will protect consumers from any deceptive and fraudulent behaviour by sellers. Thus the formulation of the Competition Act will take into account the provisions of the Consumer Protection Act.

*Comment: This is a welcome development, as is in line with survey results.*

**(j) Small-scale Firms**

- The Policy seeks to promote the efficiency and competitiveness of small-scale firms, which form a large proportion of the industrial base in Botswana. In this regard, small-scale firms will be included within the ambit of the Competition Policy in order to challenge and encourage them

to think and act strategically in building and sharpening their competitive edge.

*Comment:* Apart from the business sector, the government and consumer sectors have advocated for exemption of SMMEs. The policy does not provide such exemptions. It is therefore important that before the Law is developed, there be public debate on the merits and demerits of exempting SMMEs, so that the public have a clear understanding of why the SMMEs were not exempted. In addition, the Policy on Small, Medium and Micro Enterprises in Botswana states identifies “Excessive Government Laws and Regulations” as one of the problems and constraints facing SMMEs. Care should be taken that the Competition Policy does not come as yet another layer of regulations that have so many years burdened SMMEs.

### **(k) Exclusions and Exemptions**

There will be exemptions in the policy. These will take into account the following:

- i. The economic activity’s strategic importance and national interest to the country;
- ii. The extent to which social benefits gained from exclusions outweigh the costs;
- iii. The extent to which efficiency and external competitiveness will be enhanced as a result of exclusions and exemptions;
- iv. Convincing proof or evidence that a sector’s regulatory body acting within its powers expressly approves the firm or the organisation’s action in question.
- v. Convincing proof or evidence that the application and/or related legislation is displaced by sector specific regulatory regimes or other manifestations of state ownership or directive.

Taking these into consideration, the policy will exempt and exclude the following;

- **Public Utilities**

Infrastructural public utilities such as landline telecommunications, water and electricity require huge capital outlays, which take long to recoup given the paucity of Botswana’s population. Since this situation may constrain private sector investment in these sub-sectors, the Government may exclude and exempt the provision of some of the infrastructural facilities from this policy. But public utility connections and distribution may be put under the ambit of the Competition Policy.

*Comment:* As long as government is prepared to pay the private sector to ‘compete’ through a tendering process to provide the infrastructure, there is no reason why government has to exempt infrastructural projects. For

*example, at the moment, the government undertakes rural electrification and rural telecommunications through engaging 'commercially run' government entities. The same concept can be used with private companies, where a private company is asked to provide a service even when it is not commercially viable, and government pays the private company market rates for the service.*

- **Collective Bargaining**

In order to prevent employers from exploiting workers under the pretext of free competition, the Government will exempt and exclude collective bargaining by unionised workers from the ambit of this policy.

*Comment: It is not clear how this will work. First, labour laws safeguard the existence of unions in the work place. Second, there is normally only one union at the work place. Thus, no one can expect any form of competition between unions at the work place. Third, business is not competing with its employees.*

- **Intellectual Property Rights**

The Competition Policy recognises the important role of intellectual property rights (IPRs) in Botswana. Thus, as a way of protecting IPRs from infringement and in order to promote the development of creations and innovations, IPRs will be exempted and excluded from the ambit of this policy.

#### **9.4 Regulatory and Institutional Framework**

The effective implementation of the Competition Policy will require the establishment of a sound institutional infrastructure. While the Ministry of Trade and Industry will have the overall responsibility of formulation and monitoring of the Competition Policy, a Competition Authority will be established to implement the Policy and enforce the Competition Act.

Thus, the Competition Authority will be independent from government and will have the powers to

- i. Conduct investigations into claims of anti-competitive behaviour and determine whether there has been an infringement of the Law. The powers of investigation are a key requirement for deterring anti-competitive behaviour, as these powers will enable the Authority to obtain the information it needs in the process of applying the Competition Law.
- ii. Prosecute transgressions of the Competition Act.
- iii. Preside over disputes.

Parties aggrieved by the decision of the Competition Authority will have the right to appeal to the high court.

*Comment: This is a welcome provision. It is also in line with views and aspirations of stakeholders.*

## **10 Interface between Competition and Economic Regulation**

Botswana has only one regulator, although some are likely to be established in the future, following the recent completion of an infrastructure study by the Public Enterprises Evaluation and Privatisation Agency (PEEPA), which have been recommended as such. The existing regulator is the Botswana Telecommunications Authority (BTA), which regulates the telecommunication services providers. Hence the question of how the regulators will relate and work with the envisaged Competition Commission is an important one. The question, however, should not be viewed as a major concern because the competition policy recognises the important role and advantages of having sector regulators. The policy therefore ensures the continued existence and functioning of the regulators such as the BTA, but places them under the ambit of the Competition Law. The policy notes that:

- There will be harmonisation of all legislation related to the Competition Policy in order to ensure consistency between them.
- In sectors characterised by economic/commercial activities, complex science, engineering and technology or having natural monopoly or other special elements, the Competition Authority and Sector Specific Regulators will collaborate and compliment each other.

It is expected that the details of the interface between the Competition Authority and the independent regulators be spelt out in the Competition Law, which are yet to be developed.

## **11 Regional Integration**

Not much has been done at the regional level in terms of fostering regional competition through mechanisms such as the competition policy. For example, there is no SADC competition policy nor SACU competition policy, the two regional blocs that Botswana belongs to. However the importance of the competition policy is well recognized and there seems to be light at the end of the tunnel as far as a regional competition policy framework is concerned. The new Southern African Customs Union requires that members have a competition policy (Article 40). It states, “member states shall co-operate with each other with respect to the enforcement of competition laws and regulations. Article 41 also states that “the Council shall



develop policies and instruments to address unfair trade practices between Member States”.

As for SADC, a number of SADC countries including Malawi, South Africa, Zambia, Namibia, Tanzania, and Zimbabwe have competition legislation and Botswana has a competition policy and the legislation is being drafted. This shows that there is an increasing interest in competition issues within the SADC region, although a lot still has to be done. SADC as a regional body also recognises the importance of a regional Competition Policy, but is yet to develop one. Article 25 of the SADC Trade Protocol states that “Member States shall implement measures within the Community that prohibit unfair business practices and promote competition”.

As a result, the Competition Policy commits the Government to working in collaboration and harmony with other countries and organisations at the bilateral and multilateral levels to respond to existing and potential cross-border anti-competitive practices, including but not restricted to, various types of anti-competitive behaviour, abuse of dominant position in the market, and various types of anti-competitive combinations.

## **12 Conclusions**

Botswana Parliament passed the country’s Competition Policy in August 2005. The Competition Law is still to be developed. The country’s Competition Policy’s main objective is to promote competition in order to achieve efficient use of resources, protect the freedom of economic action of firms and, as the ultimate goal, promote consumer welfare.

It is against this background that the study has attempted to capture the competition concerns in Botswana. The following conclusions can therefore suffice:

- (a) There remain some policies that, while developed for a just cause, may be seen to be anti-competitive. These include the reservation policy and the policy on protection of infant industries.
- (b) However, there are policies that may be termed pro-competition. These include WTO Agreement, which has opened a number of sectors for international competition. These include
  - (b) Business Services,
  - (c) Professional services,
  - (d) Computer-related services,
  - (e) Research and Development services,
  - (f) Real estate services, and

- (g) Tourism and Related services: hotel and restaurant catering, travel agencies, and tour operators.
- (h) There are laws that contain clauses that may be seen to be anti-competitive. These include:
  - (i) The Industrial Development Act
  - (ii) The Trade and Liquor Act
  - (iii) Botswana Meat Commission Act
- (i) There are other laws that seem very pro-competition. These include;
  - (i) The Telecommunications Act
  - (ii) The Public Procurement and Asset Disposal Act
- (j) There are indications of high levels of concentration in the long distance transport sector (CR3 of 65.7 percent in 2000) followed by Hotel and Restaurants (CR3 of 64.8 percent) and Agriculture (CR3 of 63.6 percent). The Manufacturing and Finance sectors had concentration ratios between 50 and 55 percent. The least concentrated industries, and probably the most competitive industries, were Wholesale and Retail Trade (26.8 percent) and Construction (40 percent).
- (k) There is evidence of the existence of anti-competitive practices in Botswana, and the most prevalent practice is price fixing. Other notable practices are bid-rigging, unfair trade practices and market sharing.
- (l) Sectors with high prevalence of such practices include the retail sector, the motor retail sector, and the construction sector.
- (m) In line with the Competition Policy, an independent authority should implement the Competition Law.
- (n) While the development of Competition Policy is welcome, there seem no compelling reasons to exempt infrastructure at the expense of SMMEs.

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