Experience on Competition Law from Botswana

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Overview

• Introduction and Background
• Laws and Regulations Affecting Competition in Botswana
• Nature of Market/Competition
• Competition Policy and Law
• Interface between Competition and Economic Regulation
• Regional Integration
• Conclusions
No competition law
Policy under development
1966 - Dependent mainly on agriculture.
1970s – Discovery of diamonds
Remarkable economic transformation since (avg 9% GDP growth)
Low rainfall, high temps, drought
Laws and Regulations Affecting Competition in Botswana

- Decided to focus on Laws and Regulations
- The Companies’ Act
- The Industrial Development Act
- The Telecommunications Act
- The Public Procurement and Asset Disposal Act
- Consumer Protection Act
The Company’s Act

• The first key statute regulating market entry or the establishment of a business in Botswana.

• Review to encourage a competitive or less restrictive commercial environment and would facilitate domestic commercial activity and the flow of foreign investment.

• Explicitly regarding SMMEs
Industrial Development Act

- Regulates entry into manufacturing businesses that are not otherwise regulated by specific pieces of legislation.
- Reserves some manufacturing businesses for citizens (uncompetitive)
- Better to pursue policies like citizen empowerment through measures other than regulation or restriction of entry into certain lines of businesses.
The Trade and Liquor Act

• Regulates entry into businesses for the supply of goods and services, mostly to end-users.

• Licenses have to be renewed within twelve months (Admin burden)

• Minister has powers 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.
Trade and Liquor Act (Cont’d)

• 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.

• May be better to introduce an appeals procedure
Public Procurement and Asset Disposal Act

- Concerned with procurement of works, supplies and services for Government and disposal of public assets.
- Pro-Competition
- ‘fair and equitable treatment of all contractors in the interests of efficiency and maintenance of a level playing field’.
- But; Preferential procurement and asset disposal schemes for citizen firms.
Telecommunications Act

• Regulates the provision of telecommunications services.
• Unlike PPAD Act, no profound citizen preference
• More – pro competition
• “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”
Telecommunications Act (Cont’d)

- Overlaps with model Competition Law
- Need for repeal and transfer competition issues to the competition authority
Consumer Protection Act

• Consumer protection office
• investigates “unfair business practices”, and would preside over the settlement of disputes relating to “unfair business practices”.
• Overlaps with model competition law
• Need for repeal and transfer competition issues to the competition authority.
Nature of Market

• Transport sector (CR3 of 65.7 percent).
• Hotel and Restaurants (CR3 of 64.8 percent).
• Agriculture (CR3 of 63.6 percent).
• Manufacturing and Finance sectors (50 and 55 percent).
• Wholesale and Retail Trade (26.8 percent) and Construction (40 percent).
Competition Policy and Law

- No competition Law
- Competition Policy under development
- Draft provides a framework for preventing anticompetitive practices and conduct by firms and creates a business friendly environment that encourages competition and efficient resource allocation.
Competition Policy (Cont’d)

- To be implemented by Botswana Competition Authority.
- Independence and insulation from external interference.
- Transparency and well designed administrative mechanisms and regulations.
- Clear separation of investigations of anticompetitive behaviour from the application of the Competition Law, prosecutions and adjudication functions.
Competition Policy (Cont’d)

• Checks and balances with rights of appeal, reviews of decisions, and access to information on legal and economic interpretations.

• Expeditious and transparent proceedings that safeguard sensitive business information.

• Provisions for imposing significant penalties.
Interface between Competition and Economic Regulation

• Financial Services
  - regulated and supervised by the Central Bank, the Bank of Botswana under the 1995 Banking Act.
  - entry into this sector by foreigners is largely unrestricted.
  - no discriminations between local and foreign banks.
  - entry into this market is encouraged through a 15% tax incentive, 10% lower than the prevailing 25% corporate tax, up to the year 2020.
Interface (Cont’d)

• Dominated by a monopoly government owned Botswana Power Corporation (BPC).

• Legally, any operator can generate electricity and sell at a price lower than that of the BPC.

• take into consideration, the existing or future plans of BPC with regard to the generation and supply of electricity for Botswana, giving precedence to the interests of the BPC (anti competitive).
Interface (Cont’d)

- **The Construction Sector**
  - regulated by the PPADB.
  - In terms of registration, the construction sector is quite liberal.
  - In terms of contracts awards, citizen contractors are given better incentives as compared to their foreign counterparts.
Regional Integration

• The New Southern African Customs Union (SACU), requires that members have a competition policy (Article 40).

• The Southern African Development Community (SADC) also recognizes the importance of a regional Competition Policy, but is yet to develop one.
Conclusions

• No Competition Law
• But opportune time
  – Lack of understanding of competition issues in general
  – Thankful to CUTS and hope
THANK YOU

CUTS

SACU/SADC

BOTSWANA