

SCC NEWSLETTER

SWAZILAND COMPETITION COMMISSION



Swaziland
Competition Commission



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NEWS OUTLINE

Page 3 - The Commission's New Faces.

Page 4 - Seven graduates join the Commission

Page 5 - The walk of awareness - World Competition Day

Page 6 - More on World Competition Day

Page 7 - Learning, training & development

Page 8 - The Commission live on air

Page 9 - Over 80% consumer cases resolved

Page 11 - Approved merger transactions

Page 12 - Trade Associations and Competition Law: what the business community needs to know

Page 14 - Why the need for a collaborated effort between Swaziland Competition Commission and Sector Regulators?

FOREWORD BY CEO



Welcome to the Fourth Quarter Edition of the Swaziland Competition Commission's Quarterly Newsletter. In this issue we are excited to share with you various interesting developments and keep you informed on our current progress of the work with which the Commission is engaged.

As a regulatory authority, we have endeavored to continuously meet and exceed our targets as derived from our mandate, and give an account to you the reader, as a key stakeholder to the work that the Commission does. To achieve this, we remain very attentive of both regional and global developments in the area of competition law and fair trade in-order to ensure that the citizenry of the Swazi Nation derives due benefit from a market economy that allows favorable conditions for growth and ensures that consumer welfare is protected. The Commission continues to place serious focus on consumer issues and does its best to service consumer complaints that are brought to the Commission. To date we have amicably resolved over 80% of complaints brought to the Commission. We also continued to sound the call for consumers to approach the Commission with their complaints through advocating on the Voice of the Church radio station.

In ensuring that our mandate is achieved, the Commission is aware of the requirement to invest in adequate human capital that is driven to meet its organizational aims. This is a key focus for our relatively young organization. In this breath, we are pleased to introduce to you new additions to our staff, complement in the office of the Chief Executive Officer, the Investigation & Litigation Department as well as the Advocacy and Communications Department.

We are also pleased to announce a key development in our Trainee Programme, which has been re-engineered to not only include experiential "on the Job" training, but has introduced an actual course unit where trainees engage in technical training which they will practically apply during the next phase of the programme, "on the job" training. We are confident that through this programme we will groom competent additions to our team.

We trust that you will enjoy the edition, as much as we took the pleasure in preparing it for you...

SCC VALUES:**Independence**

We carry out our business and reach decisions without fear, favour or undue influence

Transparency

We ensure clear processes in all operations

Integrity

We are honest and professional in executing our mandate

Teamwork

We work as a team to achieve our mandate

Accountability

We are all responsible for our actions, behaviour and decisions

The Commission's New Faces

Say HELLO to our newbies ...

Meet Siphiwe, Sheila & Londiwe



Meet our cheerful, enthusiastic and inquisitive Executive Administrative Assistant, Siphwe Vilakati. She joined the Commission on 1 March 2018; and hopes to be a valuable asset to the Commission.

Meet our adventurous songbird Ms Sheila Wamala. She joins the Commission as Chief Investigations Officer. On 1 March 2018, the Commission welcomed this down to earth, warm hearted woman who is excited to joining the Commission and looking forward to working with a team of professionals.



Meet our quiet but full of energy Manager Advocacy and Communications, Londiwe Qwabe. She joined the Commission on the 1st of March 2018 and is excited to being part of an institution of such greatness.

Seven graduates join the Commission

The Commission welcomed seven amazingly talented graduates in the fields of Economics, Law and Commerce. The graduates join under the Commission's Trainee Programme.

The programme is aimed at enhancing the graduates' capabilities in a corporate environment. It serves as a tool for attracting new talent whilst enabling the organization to meet short-term capacity needs.

This year's programme is however different from the previous years' in that it is more structured. Upon the evaluation of 2017's Trainee Programme, the Commission appointed a Consultant to refine and enhance the programme, and develop a manual.



In an interview with the Trainees, they expressed their sincere gratitude towards the Commission for granting them such a rare opportunity that will nurture their growth and shape their perspectives in the corporate world.

"The programme is amazing; the Trainees are very clever and proactive..."

Diana Brioso Goncalves, the appointed Consultant said Trainees are being trained on competition law, economics and different types of soft skills such as research and communication skills.

"The programme is amazing; the Trainees are very clever and proactive. The kind of academic and professional skills they have allow me to train them on technical issues of competition law" Diana said, as she expressed her delight in working with the Trainees.

The programme is currently in its first quarter. This quarter is composed off lectures, presentations by subject-matter-experts, preparations of advocacy articles and case study group work.

Following the first quarter, on rotational basis, Trainees will be allocated to different departments. This will ensure that Trainees get exposure and experience in all departments before the end of programme in December.



The walk of awareness – World Competition Day

The Swaziland Competition Commission joined the world in commemorating World Competition Day. The commemoration not only raised awareness of the importance of competition law but also provided a platform to educate and advocate for sound competition policy, and the enforcement of competition law.

On the 5th of December 2017, the Commission working together with the Swaziland Communications Commission, Ka Schiele High School and Mater Dolorosa High School marched through the streets of Mbabane creating awareness of competition law.



The Commission commemorated this iconic day with a renewed commitment to adopt regulatory activities, which take into account the international scope of the digital market economy and its impact on local competition and consumer welfare.

Echoing the theme 'Competition Law and Policy in the Age of Digital Disruption', the Commission emphasized that cooperation with local and international level regulatory authorities is central to the fight against restrictive business practices in the digital economy.



Learning, training and development

Employees trained

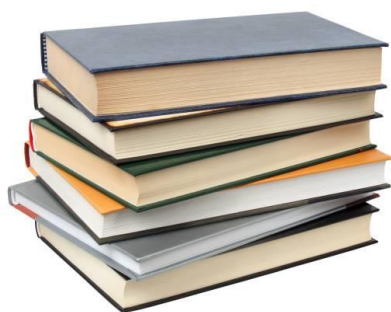
In the last two quarters of the financial year, the Commission trained its staff as a measure of building technical competence in the areas of Competition Economics and Policy, Cartel Investigations and Merger Reviews.

Included in the training were participatory debates on pertinent competition law and policy issues within an economic context. The Commission also made possible an Executive Administration training of employees from the business support function. This the Commission saw as necessary in-order to enhance its capacity to perform processes that enable the effectiveness and efficiency of its core mandate.



Board capacitation

The Board of Commissioners participated in corporate governance training and an International Competition Network ("ICN") Cartel workshop. Some of the Commissioners participated in the 14th Annual ICN Cartel workshop in Canada which focused at combating cartels in public procurement and aimed at convening competition agency authorities, government agency representatives and non-governmental advisers to learn and share matters of practical application on the subject matter. Commissioners were impacted with knowledge about the practical application of combating cartel behavior in public procurement.



International cooperation

In the last two quarters, the Commission attended the African Competition Forum (ACF) and the OECD Global Forum on Competition.

In December 2017, the Commission through Management representation, attended the ACF steering committee meeting and capacity building workshop in France. The Commission also participated in an OECD Global Forum roundtable discussion. The discussion was aimed at addressing various aspects of the judicial judgement of competition law.

The OECD discussion endeavored to elicit the main common challenges that judges face when applying competition law and sought to find ways to address those challenges.

The Commission Live on air

The Commission's Consumer Protection Department was recently invited to the Voice of the Church (VOC) by the Financial Services Regulatory Authority (FSRA) to co-host their radio programme for three days. The purpose of the invitation was to clearly differentiate services provided by the two organizations with regards to consumer cases dealt with by each organization.

The first day of broadcast focused on informing consumers about the mandate of the Commission. Consumers were informed about the Commission's new location at Golf Course Park in Mbabane next to the Golf Course traffic circle. It was also explained to consumers that consumer complaints can be reported to the Commission through coming in-



person to report the case, through calling the Commission at 2404 0111/0421, by post at P. O. Box 1976 Mbabane or by fax at 2404 0342. The Consumer Protection Department further educated consumers and gave examples of the types of consumer complaints reported to the Commission. Furthermore, consumers were educated on how the Commission was established; it was explained to consumers that the Commission was created by statute, the Competition Act of 2007.

The second day of broadcast was focused on consumer rights awareness and the procedure taken when a consumer reports a complaint. It was explained that when a consumer reports



a complaint, he/she has to provide proof-of-payment (receipts, slips, etc) to justify claims. The Commission then mediates between the consumer and the retailer/service provider involved over the complaint brought forth. If the retailer/service provider acknowledges the

consumer's claim, the retailer either refunds the consumer or repairs the product in question. Should there be any disagreements, the Commission will refer the matter to the Board of the Commissioners for a decision. The Board is part of the Commission and plays the policy governance as well as the adjudicative function. If the consumer or retailer are not satisfied with the Board's decision, the matter can further be appealed to the High Court.

The last day 'on air', consumers were given a summary of information discussed on the previous two days, after which the telephone line was opened for consumers to call in and ask questions to which they were given answers.



Over 80% consumer complaints cases resolved

The Swaziland Competition Commission amongst other functions, is dedicated to protecting and promoting consumer welfare. This protection is based on consumer rights as provided by the Competition Act of 2007 and the Fair Trading Act of 2001.



In the current financial year, the Commission has resolved 34 consumer complaints out of 39 reported to the Commission. The Commission sees it important for consumers to know their rights and to know that they are protected by

consumer laws. Over 80% of consumer cases reported to the Commission have been resolved amicably.

The Commission at all times encourages consumers to report cases where their rights have been violated. The Commission accepts consumer complaints in-line with the provisions of the Competition Act, 2007 and the Fair Trading Act, 2001.

Amongst consumer complaints cases reported and solved, was a case of a consumer, **Sihle*, who returned a faulty mini-oven stove to a retailer 2 days before the warranty expired. The retailer refused to refund or give **Sihle* a new stove. Knowing his rights as a consumer, **Sihle* reported the matter to the Commission. The Commission mediated the matter between **Sihle* and the retailer. The mediation led to the matter being resolved and **Sihle* was refunded the amount he used to purchase the mini-oven stove.



Another complaint which was successfully mediated by the Commission is that of **Linda* who rented out a car from a car rental company. Within the terms and conditions of the lease agreement, it is required that a consumer pays E2 000.00 as deposit. This deposit is refundable provided the car is brought back in the same conditions it was taken. Unfortunately, **Linda* was involved in an accident the very same day he leased the car; he immediately reported the accident to the car rental company, as per the terms and conditions in the lease agreement. **Linda* however did not submit all documents pertaining the accident within 7 days of the accident, as stated in the terms and conditions of the lease agreement.



The car rental company told **Linda* that because he did not submit all documents on time, **Linda* should pay the book value of the car. This however was not part of the terms and conditions stated in the lease agreement. **Linda* reported the matter to the Commission and the Commission's mediation resulted in **Linda* only paying the excess fee as stated in the lease agreement.

**Not real names*

Approved merger Transactions



**Transaction
Approved**

Five proposed merger transactions have been submitted by business entities and granted authorization by the Commission.

During the last two quarters, five merger transactions were approved by the Commission. It can be reported that amongst the approved is the 50% share acquisition of the Gables (Pty) Ltd by the Public Service Pension Fund.

The second merger involved the acquisition of Crabtree Electrical Powertech Industries by K2017136283 (South Africa) (Pty) Ltd. Both companies are incorporated in the Republic of South Africa. The transaction was approved with no conditions. K2017136283 (Pty) Ltd will own hundred percent (100%) shares in Crabtree post-merger. The transaction was approved without conditions.

Third to be approved was an acquisition of the entire shareholding of a Swazi registered company - Tech Tool (Pty) Ltd by Stance Incorporated (Pty) Ltd a newly registered company in Swaziland. The Commission considered the products of the firms and concluded on the relevant market involved to be the supply and repair of hardware tools and heavy plant equipment in Swaziland. The Commission approved that Stance Incorporated (Pty) Ltd will own 100 percent (100%) shares in the Tech – Tool (Pty) Ltd business post-merger.

Fourth approved acquisition is of a sixty percent (60%) shares of Swazi Mahewu (Pty) Ltd by Premier Swazi (Pty) Ltd. Swazi Mahewu is a private company that is wholly owned by Tri-Corp (Pty) Ltd whilst Premier Swazi is a wholly owned subsidiary of the Premier Group (Pty) Ltd. The Commission considered the products of the firms and concluded that there are two relevant markets in this transaction; which are the production and supply of maize meal in Swaziland, and the production and supply of Mahewu products in Swaziland. The analysis reflect that a

vertical relationship exists between the parties, as maize meal was identified as an integral input in the production of Mahewu products.

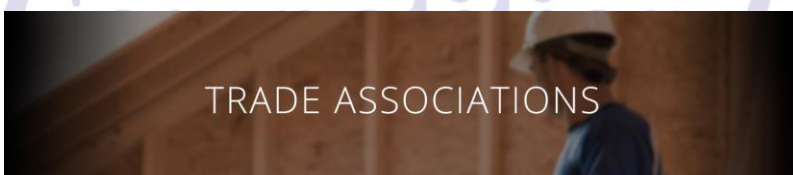
The last approved transaction was that of one hundred percent issued share capital in Lowveld Packaging (Pty) Ltd by Axis Pac (Pty) Ltd. Lowveld Packaging, the target firm, is a private company registered and incorporated in accordance with the company laws of South Africa and has limited commercial activity in Swaziland through export sales. Pac Axis on the other hand is a private company incorporated and registered according to the laws of South Africa.

The five proposed acquisitions were approved by the Commission following an in-depth analysis of each transaction in terms of the Competition Act of 2007.

The Swaziland Competition Commission at all times advises business entities to first notify the institution before engaging in merger transactions. Aspiring merging parties can also have a pre-notification meeting with the Commission for guidance in the filing of an acquisition notification.

Furthermore, if businesses are not certain of whether their transactions amount to a merger in terms of the Act, they can approach the Commission for an advisory opinion.

Trade Associations and Competition Law: what the business community needs to know



A number of industries in different countries including Swaziland, affiliate themselves to some relevant trade association. For some industries, participating in an association is key to a firm's ability to compete in that specific industry. It is for this reason that in as much as competition law applies to the behavior of individual firms, it also applies to the behavior or conduct of trade associations.

In Swaziland, Section 32 of the Competition Act of 2007 specifically prohibits trade associations from unjustifiably excluding any person who intends “to carry on, in good faith, trade in relation to which the association is / was formed”. The Act further prohibits associations and their members from engaging in practices such as making pricing recommendations of products and recommendations on the terms and conditions of sale of relevant products.

Notwithstanding that these are the main provisions in the Act that directly relate to trade associations, the Commission notes that, as a result of the “family feeling” that comes with being a member of a specific trade association, trade association members could further contravene other provisions of the Act. This in particular would include cases where members reach anti-competitive agreements. This would make them an effective cartel which tends to have negative results such as unnecessary price increases in their products, much to the detriment of consumers.



Specifically, with trade associations over and above unjustifiable restrictions of entry of new members and making price related recommendations, anti-competitive conduct can also be by way of –

- (i) introduction of codes of ethics or policies that can result in the lessening of competition;
- (ii) formal or informal exchanges of sensitive business information by association members;

Competition authorities recognize that members of associations can be close such that they begin to share and discuss strategies together in such a way that may lead them to forming a cartel. Even though there are other cases, one example of a case in Africa where an association was penalized for engaging in or facilitating anti-competitive conduct is that of the *Competition Commission Vs South African Bitumen Association* (Case No.: 06/CR/Mar10). The Association was fined R500 000.00 in 2011 for price fixing.

Having said the above, the Commission has the following recommendations for trade associations and their members –

- (i) trade associations should **familiarize themselves with competition law and seek guidance from the Swaziland Competition Commission** whenever a need to do so arises. This is especially important when drafting codes of ethics.
- (ii) trade associations and their members should **desist from sharing sensitive information and making pricing suggestions** such as indirectly mentioning a possible price increase in the media. This is because this can have the effect of creating tacit collusion.
- (iii) members of associations should **avoid and distance themselves from anti-competitive practices and / or agreements by their members**. This can include avoiding and reporting any discussions which can be seen as being inappropriate in terms of the country's competition laws. This is because, even being present in a room where anti-competitive agreements are made cannot save a member from being prosecuted. For example, in 2016, in the Republic of South Africa in *Omnico (Pty) Ltd; Cool Heat Agencies (Pty) Ltd vs The Competition Commission & others* (Case No.: 142/CAC/June16 & 143/CAC/June16) two members of an association lost a case where they were challenging the Competition Tribunal's finding that their participation at an industry association meeting amounted to cartel conduct, despite claiming that they did not actively participate in any anti-competitive discussions.



Why the need for a collaborated effort between Swaziland Competition Commission and Sector Regulators?

The model law on competition provides a broad definition of regulation that covers various instruments by which governments impose requirements on enterprises and citizens. These are laws which include formal and informal orders, administrative guidance and subordinate rules issued by all levels of government, coupled with rules issued by non-governmental or

professional self-regulatory bodies to which governments have delegated regulatory powers. Most regulatory requirements are not designed to deal with issues of competition hence the need for Swaziland Competition Commission to collaborate with sector regulators in the country. It is the view of the Commission that without establishing a strong relationship with regulatory authorities its stride to promote competition, ensure fair trade and to protect consumers may remain constrained going forward.

Rationale for collaboration and existing Memorandum of Understanding signed

The powers of the competition authorities are secured in their Enabling Legislation. The Enabling Legislation affords competition authorities the ability to set out where the lines could be drawn in areas of concurrent jurisdiction. A memorandum of understanding (MoU) is an effective way to do this. Many countries use MoUs for the following purposes: to establish procedures for management of areas of concurrent jurisdiction; promote co-operation between the regulatory authorities and Competition Authorities and enhance exchange of information. Swaziland Competition Commission has also signed the following MoUs –

Swaziland Competition Commission and Common Market for Eastern and Southern Africa: In 2016 the Commission and Common Market for Eastern and Southern Africa (COMESA) Competition Commission (CCC) signed MoUs meant to facilitate and promote harmonization and implementation of competition laws in order to foster their effective enforcement. The salient issues that the MoUs cover include -

- (i) to cooperate when investigating related matters and share relevant information to ensure effective enforcement of respective competition laws. This is achieved through the appointment of Desk Officers in the respective institutions and through periodic meetings among officials to exchange information on investigation and enforcement priorities.
- (ii) to consult on matters of competition enforcement and policy, and keep each other informed about significant competition policy and enforcement developments.
- (iii) to cooperate in advancing technical assistance and capacity building programs through integrated strategies.

Swaziland Competition Commission and Southern African Development Community: In 2016, Swaziland Competition Commission (SCC) and Southern African Development Community (SADC) Competition Authorities signed a MOU on Inter-Agency cooperation in competition policy, law and enforcement. This MoU provides a framework that ensures cooperation between SADC competition authorities and strengthens the effective enforcement of competition law in each of the member state.

Swaziland Competition Commission and Swaziland Energy Regulatory Authority: In 2017, Swaziland Competition Commission (SCC) and the Swaziland Energy Regulatory Authority (SERA) signed an MoU with the objectives to promote and maintain competition, and eliminate the duplication of responsibilities between SCC and SERA.

In-line with the above, the Commission recognizes the role of competition in the effective development of the economy, and the role of sound and effective enforcement of competition law and policy. Therefore, it is of paramount importance that sector regulators should consider establishing a relationship with Swaziland Competition Commission in-order to curb issues that may not fall within their jurisdiction.



Swaziland Competition Commission

For more information, visit the Commission's offices in Mbabane at Golf Course Park, Lot No.105, Mantsholo Road or **contact us at:**



2404 0111/0421



P. O. Box 1976
Mbabane
H 100 Swaziland



Email: info@compco.co.sz



fax: +268 2404 0342

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