

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Global Forum on Competition****INVESTIGATIVE POWERS IN PRACTICE - Breakout session 2: Requests for
Information – Limits and Effectiveness - Contribution from Botswana****- Session IV -****30 November 2018**

This contribution is submitted by Botswana under Session IV of the Global Forum on Competition to be held on 29-30 November 2018.

More documentation related to this discussion can be found at: oe.cd/invpw.

Please contact Ms. Lynn Robertson [E-mail: Lynn.Robertson@oecd.org], if you have any questions regarding this document.

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Investigative Powers in Practice

Breakout session 2: Requests for Information – Limits and Effectiveness

- Contribution from Botswana –

1. Requests for Information (RFI) – Limits and Effectiveness

1. RFI is one of the widely used investigative powers. The Authority may on its own initiative, or upon receipt of information or a complaint from the public start an investigation. In order to get relevant information, the Authority invites the parties concerned to submit information (hard or soft copies) which may assist the determination of the investigation. i.e., prove or disprove conduct. This is stored in a secure strong room.

1.1. The effective use of request for information

2. In most if not all Unilateral conduct cases, though there are legislation challenges for collecting information from third parties, in practice this has not been felt that much as parties comply and cooperate to submit information requested for the investigation. The same cannot be said for merger transactions.

3. E.g., recent case of Resale Price Maintenance, whereby, the Authority was investigating four major wholesalers alleged to dictate retail selling prices to their banner group members (small general dealers). The concerned parties together with majority of banner group members nationwide cooperated, to the extent of securing hundreds of sworn witness statements. Analysis of information requested pointed to the existence of RPM conduct.

4. For cartel cases, information is normally collected through dawn raids after securing a search warrant from the magistrate court.

1.2. Limitations to the request for information

5. The Authority uses the Act to request for information from the parties investigated. However, information from the third parties is voluntary (even with merger transactions). However when the third party is found to be distracting the investigation by refusing to submit relevant information needed, such can be reported to the Botswana Police to deal with. An example is a case where a medical aid company (third party) was requested to provide some information that was relevant to an investigation and it refused to give such information. The Authority approached the Botswana Police, and this led to the third party cooperating and submitting information as requested. This helped the Authority finalise the case thereafter. A lot of merger cases have been assessed and decided on after giving up from receiving information from third parties. They normally cite confidentiality as the reason for not submitting.

6. Data management is also a challenge, some of the information that is received may be voluminous and needs sorting; some would not be reliable or outdated.

7. Sworn witness statements collected are done manual and often witnesses have to be transported to Botswana Police station for taking oath. Time and distance is a challenge.

1.3. Handling large amounts of complex information

8. The large volumes of data is categorised in order of importance as well as dates and processed in the following stages:

- *Validation or Initial Data Analysis:* We satisfy ourselves that data is self-consistent, that the data was collected correctly, and that data represents a true reflection of events.
- *Description:* The objective interpretation of this data.
- *Evaluation:* Given the description, does the data tell us that there is a conduct worth investigating.

1.4. How do we prepare a request for information?

9. In cartel cases, documents requested relate to: Invitation to Tender (ITT) document; Directorship and shareholding; the total number and list of the companies that had submitted bids; the bids for all the tenderers; evaluation report; the company that awarded the bid etc. In view of the nature of tendering, the volume of information and documents is very huge.

10. For other conducts, information requested is related to: ascertaining market definition; shareholding respondents; and any other information that could assist in establishing the existence of the conduct in question.

1.5. How to detect false or misleading or irrelevant information

11. The Authority has in place, Memoranda of Understanding with other regulatory bodies e.g., PPADB, GA, NBFIRA, BoB, BURS, CIPA, CAAB, and DCEC. This assists the Authority to verify information submitted by enterprises after a request. This information could be tax returns; sales; production; company registration detail, shareholding etc. In a number of cases it has been detected that the directors' details that were submitted, did not reflect the ones showing at the regulatory organisation.