

<b>BOTSWANA</b>			
<b>COMPETITION FRAMEWORK</b>			
Competition Law	The Competition Act no. 17 was enacted on December 24, 2009 (“Competition Act”).		
Competition Authority	The Competition Authority of Botswana started functioning in April 2011. <b>Website:</b> <a href="http://www.competitionauthority.co.bw/">http://www.competitionauthority.co.bw/</a>		
<b>STATUS OF THE COMPETITION AUTHORITY</b>			
<b>Accountability</b>			
Does the Competition Authority have obligations before the executive?	Yes	X	Obligations to report to the executive on on-going investigations upon request.
		X	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.
		√	The Competition Authority has to report on an annual basis to the executive.
		<b>Other obligations/comments:</b> The Competition Authority also has an advisory role to Government on the anticompetitive effects of policies and legislation as well as on international agreements impacting on competition. <i>See</i> Competition Act, section 5(2)(e)(f)(j).	
Does the Competition Authority have obligations before the legislature?	Yes	√	Obligation to publish an annual report on its activities.
		X	Obligation to stand before parliament and to respond to congressmen on an annual basis.
		X	Its activities are monitored by an independent auditor or by oversight committees.
		<b>Other obligations/comments:</b> Parliamentary questions are answered through the minister. While there is no legal requirement to appear before parliament annually, parliament, or any organ thereof, can summon the Competition Authority at any time to explain a matter of concern.	
Does the Competition Authority have obligations before the judiciary?	Yes	√	Decisions of the Competition Authority are subject to judicial review.
<b>Independence</b>			
Are the criteria for appointment and removal of the head/board members clear and transparent?	Yes	<i>See</i> Competition Act, sections 10 and 13.	
Does the executive have powers to decide on specific cases based on public interest?	No		
Does the executive retain decision-making powers over the Competition Authority?	No		
Is the Competition Authority obliged to publish its reasoned decisions to ensure transparency?	Yes	<i>See</i> Competition Act, sections 32(4), 51(1) and 60(4).	
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	Yes	<b>Current fiscal year budget for 2012:</b> US\$ 3 million. <i>See</i> Competition Act, section 21(a).	
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	Yes	<i>See</i> Competition Act, section 78.	
<b>GOVERNANCE OF THE COMPETITION AUTHORITY</b>			
Is the Competition Authority governed by a single chairman or by a collegiate body?	Collegiate body	The chairman is part-time and non-executive. There are other six members. <i>See</i> Competition Act, section 10(1).	
Does a minister appoint the heads?	Yes	<i>See</i> Competition Act, section 10(3).	
Do representatives of more than one government branch appoint the heads?	No		
Is there a fixed period during which removal is prohibited?	No	The minister can remove a member of the Competition Authority for not being efficient. <i>See</i> Competition Act, section 13.	
Is the tenure of the heads renewable?	Yes		
Are the heads required to have certain minimum qualifications (degree in law or economics, age, experience)?	Yes	According to section 10(2) of the Competition Act, expertise in industry, commerce, economics, law, consumer affairs or public administration is required.	
<b>ARCHITECTURE</b>			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a minister?	Stand-alone agency	Fairgrounds, Plot 50664, Paledi Morrison House, (Ground Floor).	
<b>POLICY-MAKING AGENTS -DIVERSIFICATION-</b>			
How many agencies are responsible for competition enforcement?	One agency.		
Do sector regulators have competition policy	No		

enforcement mandate?	Bank of Botswana	<i>See</i> Competition Act, section 73 providing that the Competition Authority has the final authority, but in some cases it is obliged to consult the regulator.	
	Botswana Telecommunications Authority	<i>See</i> Competition Act, section 73 stating that the Competition Authority has the final authority, but in some cases it is obliged to consult the regulator.	
	Non-Bank Financial Institutions Regulatory Authority	<i>See</i> Competition Act, section 73 stating the Competition Authority has the final authority, but in some cases it is obliged to consult the regulator.	
	Civil Aviation Authority of Botswana	<i>See</i> Competition Act, section 73 stating the Competition Authority has the final authority, but in some cases it is obliged to consult the regulator.	
Have the Competition Authority and other agencies signed protocols or memoranda of understanding?	Telecommunications Regulator	No, but arrangements are on-going to sign a memorandum of understanding.	
	Energy Regulator	No, the Energy regulator is not yet established.	
	Transport Regulator	No, but arrangements are on-going to sign a memorandum of understanding with the Civil Aviation Authority of Botswana.	
	Other	There is a memorandum of understanding between the Competition Authority, the Directorate of Corruption & Economic Crime and the Public Procurement & Asset Disposal Board.	
<b>POLICY DUTIES</b>			
Does the Competition Authority have exclusive mandate on competition or multiple mandates?	Exclusive competition mandate	X	Concurrent consumer protection mandate.
		X	Concurrent IP mandate.
		<b>Other mandates:</b> Non.	
<b>PORTFOLIO INSTRUMENTS</b>			
<b>Law Enforcement</b>			
Does the Competition Authority have powers to investigate cartels?	Yes	<i>See</i> Competition Act, section 25.	
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	<i>See</i> Competition Act, section 36.	
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	<i>See</i> Competition Act, section 35.	
Does the Competition Authority have powers to accept leniency applications?	Yes		
Does the Competition Authority have powers to seek criminal punishment?	Yes		
<b>Advocacy</b>			
Can the Competition Authority issue opinions on draft legislation?	Yes	<i>See</i> Competition Act, section 5(2)(e). The opinions are not binding.	
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No		
<b>Rulemaking</b>			
Can the Competition Authority issue guidelines or other type of secondary legislation?	Yes	X	Guidelines on the calculation of fines.
		X	Guidelines on merger control.
		X	Guidelines on the economic analysis of abuse of dominance cases.
<b>Research &amp; Reporting</b>			
Can the Competition Authority carry out market studies?	Yes	<i>See</i> Competition Act, section 5(2)(g).	
Can the Competition Authority report to the legislature on the results of market studies?	Yes	<i>See</i> Competition Act, section 51(2)(b), through the executive branch.	
<b>DECISION-MAKING FUNCTIONS</b>			
<b>Aggregated Functions</b>			
Does the Competition Authority make the decision to investigate and to prosecute cases?	Yes		
Does the Competition Authority make guilty findings?	Yes		
Does the Competition Authority impose punishments?	Yes		
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	No		
Can the Competition Authority's decisions be appealed to a court?	Yes		

Disaggregated Functions—Prosecutorial Model		
Are there different authorities that make the decision to investigate and to prosecute cases?	No	
Are disputes presented for decision to a separate entity/tribunal?	No	