



COMPETITION AND FAIR TRADING COMMISSION

Just Competition, Fair Trading

GUIDELINES ON HANDLING COMPLAINTS, INVESTIGATIONS AND HEARINGS

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1.0 **INTRODUCTION**

- 1.1 The Competition and Fair Trading Act, Cap. 48:09 of the Laws of Malawi (hereinafter “the Act”) which was enacted in 1998, establishes a body corporate known as ‘Competition and Fair Trading Commission’ (hereinafter “the Commission”). The Commission was established in 2005 charged with the responsibility of regulating competition and fair trading in Malawi.
- 1.2 The Commission has administrative, investigative, prosecutorial and adjudicative functions. Findings and orders by the Commission subjects the offending parties to penalties and imprisonment under *section 51* of the Act and actions for damages under *section 52* of the Act. To that end, the Commission has administrative and quasi-judicial powers which it exercises as a regulator.
- 1.3 This document serves as a general guide to the Commission and any concerned parties on cases before the Commission. In line with the Act, each case is investigated and proved on its own merits.
- 1.4 The Commission comprises of the Secretariat which conducts investigations and prepares reports on the cases. It also comprises of the Board of Commissioners which conducts hearings on the issues brought before it based on the facts as captured in the report submitted by the Secretariat and any other submissions made by the parties and makes decisions once it deliberates on facts or the law brought before it.

2.0 THE SCOPE OF THE DUE PROCESS GUIDELINES

2.1 Due process in handling cases applies universally acceptable jurisprudence as follows:

(i) the right to confront the evidence and arguments;

(ii) a hearing before the actual decision-maker;

(iii) a neutral decision-maker;

(iv) a decision rendered without inordinate delay;

and (v), in the case of an adverse decision, review by an independent tribunal.

2.2 These standards are set in the Act as well as the Constitution of the Republic of Malawi. Section 11 of the Act mandates the Commission to conduct hearings in public. The Commission is also mandated to regulate its procedure under Section 13 (1) and to that end, it has Regulations and these Guidelines as one way of regulating and managing the hearings procedure.

2.3 The Guidelines gives light on grey areas such whether or not there are possible conflict or challenge on the separation of tasks between the Secretariat and the Board of Commissioners in the case handling procedure. Experience over the years has also shown that the recommendations by the Secretariat in the reports are often misunderstood to be the decision of the Board or that the Board is mandated adopt it.

2.4 The Commission uses inquisitorial system unlike the adversarial used in the main stream Courts. Sometimes there can be an imbalance between the parties involved in consumer related cases where a mere individual would face a big company hence the need to have strict guidelines to be followed with possible fines should there be penalties for non-compliance with the guidelines.

2.5 Mirroring the adversarial process, it is not fair to allow parties to submit new facts/documents at the hearing as evidence. But the nature of inquisitorial being what it is, there is likelihood that as the panel seeks more evidence from a party at the hearing, new evidence may be unearthed very useful to the proceedings. The Guidelines also tackles that issue accordingly.

2.6 The Guidelines also look at who has the burden of proof between the secretariat/complainant and the Respondent. If at any point the burden shifts, what will be the factors for such shift. It also looks at the standard of proof, whether it is higher or lower than the one used in civil matters. Again, considering that other provisions in the Act have Criminal sanctions, the Guidelines prescribe the proper standard of proof for those infringements.

2.7 Another thorny issue that keeps bothering the parties is legal representation, whether it is necessary or not. In some scenarios, a party who has a legal representative makes its submission while the legal counsel gives guidance where necessary. In other cases, the legal representative takes over and makes submission, just as it is done in court. The Guidelines gives the best procedure on how that should be done.

2.8 To have order and proper direction, the Guidelines also tackle the issue of notice. The period that the Commission notifies the parties about a hearing and the period to be given by a party seeking to adjourn a matter. They also provide what penalties if any should be meted out to a party that chooses not to attend

a hearing without giving any reasons and if there should be any expenses incurred for hearings and the ideal venue for public hearing.

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