



## COMPETITION AND FAIR TRADING COMMISSION

## HOW TO COMPLY WITH THE COMPETITION AND FAIR TRADING ACT

### A GUIDE FOR BUSINESSES

The Competition and Fair Trading Act (CFTA) contains a set of rights and obligations for business persons operating in Malawi. The rights relate to enjoyment of freedom of doing business in an environment free of anti-competitive business practices. The obligations relate to respecting the rights of other businesses to enjoy the freedom of doing business; and the rights of consumers to buy services or products that satisfy their needs.

#### Why your business needs to comply with the CFTA

The consequences of failing to comply with competition and consumer law are serious. Breach of the Act may result in:

- Substantial fines (a minimum of **MK 500,000**) and ;
- Imprisonment for up to **five years**
- Orders to modify agreements or business practices;
- Civil actions by third parties such as competitors, suppliers or customers;
- Reputation damage

#### How to Comply

Section 8 (2) (g) mandates the Commission to cooperate with and assist any person to develop and promote the observance of standards of conduct for the purpose of ensuring compliance with the Act. All businesses should ensure that they train their staff and have adequate compliance procedures in place. Among other things, business entities can adopt a compliance program.

#### What is a Compliance Programme?

A compliance programme is a set of measures or procedures to help manage a company's trade practices.

A Compliance programme is one of mitigating factors that the Commission may consider in case of infringement of the Act. It also ensures that investigations and interactions between the Commission and your business runs smoothly.

The objective of the compliance programme is to raise awareness of competition and consumer law issues throughout your business in order to reduce the risk of infringing the competition and consumer law and to enable you to handle investigations by the Commission.

#### Elements of a Compliance Programme

##### 1. Audit of Arrangements, Practices

The enterprise/company should carry out an audit of existing arrangements and practices of its business to identify any potential infringements of the prohibited conducts.

The audit should focus on identifying markets where its business may be dominant; reviewing the nature of regular contacts with competitors, or trade associations, key contracts with suppliers, customers and business partners. This enables businesses to understand the real competition law risks you can face.

## 2. Awareness Training

Staff at all levels in the business need to be aware of the basics of competition and consumer protection law. This creates a culture of compliance and demonstrates commitment to comply.

These include those in management; sales; marketing; strategic planning; technology licensing; representatives of trade association; security staff and receptionists.

## 3. Handling Investigations

Firms should put in place procedures for handling communication from the CFTC and how to handle interaction with investigators from the CFTC including reception of investigators at premises.

## 4. Document retention

Staff should be warned not to destroy documents selectively because they believe they may be incriminating, particularly once an investigation has started.

Selective destruction of documents is rarely successful in concealing illegal activities and can result in useful mitigating material being destroyed in error and in haste. Promote a culture of doing the right thing.

## 5. Ongoing Training and Monitoring

There is need to evaluate the effectiveness of a compliance programme and carrying out regular audits to ensure that it is

delivering its objectives. Renew your commitment and improve policies if the operating environment is changing.

Points to consider include:

- Repeated training and reviewing training materials;
- Making breach of the competition rules a disciplinary offence;
- Carrying out periodic reviews with individual departments including limited file audits;
- Having a mock on-site investigation to ensure that staff are aware of your procedures and that they work.

## Issues to be addressed in a Compliance Programme

- How your business relates with competitors
- How your business relates with customers or suppliers
- Rules that prevent abuse of dominance
- Relationship with consumers i.e. pricing policies, advertising, handling consumer complaints, communication with consumers, product recalls
- Complaints handling systems
- Rules on mergers and acquisitions
- Relationship with affiliated companies
- Return Policy



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