



# MEDIA STATEMENT

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## LATEST DECISIONS BY THE COMPETITION AND FAIR TRADING COMMISSION

The Competition and Fair Trading Commission held its 54<sup>th</sup> Meeting in Blantyre recently 29<sup>th</sup> January 2020 to consider and adjudicate over competition and consumer protection cases. These cases were brought before the Commission in accordance with Section 8 of the Competition and Fair Trading Act.

In total, the Commission adjudicated over **seventy-two (72)** cases of which twenty-four **(24)** were on alleged unfair trading practices; **19** on Restrictive Business Practices, twenty-three **(23)** were on COMESA Mergers while six **(6)** were on local mergers.

Members of the Commission are as follows:

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|--|---|
| 1. Commissioner Nelson Nsiku                   | Chairperson                               |
| 2. Commissioner Joyce Mataya                   | Member                                    |
| 3. Commissioner Esmie Tembenu                  | Member                                    |
| 4. Commissioner Dorothy Chapeyama              | Member                                    |
| 5. Commissioner Dr Patrick Kambewa             | Member                                    |
| 6. Commissioner Edgar Tembo                    | Member                                    |
| 7. Commissioner George Naphambo                | Member                                    |
| 8. Commissioner Charity Musonzo<br>and Tourism | Ex-Officio, Secretary for Industry, Trade |
| 9. Commissioner Symon Mandala                  | Ex-Officio, Malawi Bureau of Standards    |
| 10. Commissioner Roselyn Makhumula             | Ex-Officio, Secretary to Treasury         |

I am pleased to present some of the latest decisions made by the Commission.

**JAMES KAPHALE**

**EXECUTIVE DIRECTOR**

## **COMPETITION CASES**

### **I. Restrictive Business Practices by Mount Sinai International School in the supply of school uniforms**

The Commission has ordered Mount Sinai International School (MSIS) to cease and desist from engaging in restrictive business practices in the supply of school uniforms. MSIS was an international school operating in Lilongwe from nursery, primary and secondary school.

The Commission found that, in the provision of educational services, MSIS engaged in tying of goods and services, by making the provision education services to students' conditional to purchase of uniforms from the school itself. Students were denied the opportunity to buy school uniforms from other suppliers, offering competitive prices. Apart from limiting students' right to procure uniforms from suppliers of their choice, the Commission determined that the conduct was anti-competitive as it impeded competition in contravention of Section 32(2)(d) of the Competition and Fair Trading Act.

Accordingly, the Commission ordered MSIS to cease and desist from engaging in anti-competitive behaviour in the supply of school uniforms. Further, the Commission ordered MSIS to enhance competitiveness in the supply of uniforms through an open and transparent system of identifying potential suppliers.

### **Alleged Exclusive Dealing Arrangement and Resale Price Maintenance by Seedco Malawi Limited**

The Commission ordered Seedco (Malawi) Limited to apply for authorization of their exclusive distributorship and resale price maintenance schemes at wholesale level. Under the exclusive dealing arrangement, the company makes the supply of seeds dependent upon the acceptance of restrictions on the distribution of competing or other goods. This effectively limits access to markets for competitors or creates monopolies in the supply chain, thereby restraining competition and dampening prospects for consumer welfare enhancement innovations. This was a violation of Section 32 of the Competition and Fair Trading Act.

Under the resale price maintenance, the company was enforcing minimum prices in the distribution chain. Neither the exclusive dealing arrangement, nor the resale price maintenance were authorized by the Commission. As such, apart from ordering Seedco to seek authorization, the Commission ordered the company to identify distributors through a transparent and competitive process. The company was further ordered to

notify distribution agreements and submit periodical compliance reports to the Commission.

### **Acquisition of Kulimba Cement Limited by Lafarge Cement (Malawi) Limited**

The Commission authorised the acquisition of Kulimba Cement Limited by Lafarge Cement (Malawi) Limited. The assessment of the proposed merger established that the transaction would marginally change the market share of the acquirer from 27% to 28%.

It was also established that, while the transaction would result in a change of the market structure by reducing number of players in the market, it would not substantially lessen competition in the relevant market. The investigation further revealed that the transaction would safeguard jobs the target firm, which was in financial distress. The investigation did not find any substantive negative public concerns post-merger.

Based on these findings, the Commission authorised the proposed takeover; without any conditions.

### **Acquisition of SS Poultry Agrotech Limited by Central Poultry (2000) Limited**

The Commission authorised the acquisition of SS Poultry Agrotech Limited by Central Poultry (2000) Limited. The two companies were involved in the supply of Day Old Chicks.

The Commission's assessment of the transaction established that the merger would result in a change in the market concentration of the poultry industry. Post-merger, the market share of Central Poultry would increase to 38% thereby raising concerns on the potential for misuse of power. The analysis further established that the poultry industry is characterised by high barriers to entry and absence of import competition. However, on the positive front, the analysis showed that the transaction would bring efficiency gains in terms of production capacity which would effectively reduce the waiting period for day old chicks. It was also established that the transaction would save the target firm from collapse. The Commission determined that these findings weakened the competitive constraints for the merged entity.

Based on these findings, the Commission authorized the proposed merger subject to the following conditions:

- (i) That Central Poultry would not monopolize the supply of Day old chicks by supplying half of the additional supply to its customers;

- (ii) That Central Poultry would uphold their commitment to enter into contracts with small scale producers for technical and training assistance in the production of broilers
- (iii) That Central Poultry would maintain current employment levels at the merged entity. Where it would be absolutely necessary to retrench, due process would be followed and payments shall be made according to the country's labour laws.
- (iv) That the parties would be under the surveillance of the Commission, as such a Memorandum of Understanding will be signed to ensure compliance.

### **Acquisition of Dairibord Limited by Lilongwe Dairy (2001) Limited**

The Commission authorised the acquisition of Dairibord Limited by Lilongwe Dairy (2001) Limited.

The acquiring firm, Lilongwe Dairy was a company registered in Malawi, whose main line of business was manufacturing dairy products and fruit juices such as First Choice Fresh Milk, UHT Flavoured Milk, Flavoured Yoghurt, and Long Life Yoghurt drink, Flavoured Drinking Yoghurt, ghee, Enjoy, Sunpride, fruit flavoured drinks and sour milk drink commonly known as Chambiko.

The target firm, Dairibord, was a subsidiary of Dairibord Holdings Limited, a company that manufactures and markets a range of dairy products such as fresh milk, UHT long life milk, Chambiko, ghee, yoghurts, fresh creams, ice creams, cheese, butter, different brands of fruit juices as well as mineral water.

The assessment established that the merger would create a dominant player. However, the merger would also save a failing firm and some jobs. The investigation further established that Dairibord already exited the Malawi market due to financial challenges. The investigations established that the transaction would likely result in efficiencies that would benefit consumers. Furthermore, it was established that the transaction would help prevent negative financial, economic and social developments that could potentially arise if the company failed.

Based on these findings, the Commission authorized the merger unconditionally.

### **Acquisition of Exploits University by Madison Holdings Limited**

The Commission authorised the proposed acquisition of Exploits University by Madison Holdings Limited.

The acquiring firm, Madison Holdings, was a holding company for its wholly-owned Malawian subsidiaries namely Riverton University, Madison Business Advisory (MBA), Madison Recruitment Services and Aspen Limited.

The target firm, Exploits University was a private company incorporated with limited liability under the Companies Act (1984) with centres in Lilongwe and Blantyre. Exploits University offered undergraduate and post graduate programs in Accounting, Health Science Systems, Logistic Supply Chain Management and Marketing. Both universities had few students and the parties wanted to merge to increase their competitive advantage on the market.

The Commission's assessment established that Madison Holdings Limited intended to save two failing firms (Exploits and Riverton University) which would otherwise end up closing down due to low enrolment. The assessment also found that the transaction would result in change of market structure by reducing number of players in the provision of tertiary education by private universities. However, the change in the market structure would not likely have negative effects on the competition in the market. Furthermore, it was envisaged that the transaction would create a player that could favourably compete on the market with its competitors. Thus, the analysis showed that the transaction would result in pro-competitive and economic outcomes.

Based on these findings, the Commission authorized the proposed merger without any conditions.

### **Alleged Misleading Conduct and Deceptive Advertising by Garani Mw 1**

The Commission ordered Garani Mw 1 to cease and desist from engaging in misleading advertising. This followed investigations which the Commission conducted which showed that the company's promotional materials claimed that herbal product named Garani Mw1 was a cure for HIV/AIDS and other diseases like Diabetes, Cancer, Asthma, Chronic Colds, Chronic Wounds and High Blood Pressure and others. This was grossly misleading, deceptive and a blatant infringement of the Competition and Fair Trading Act.

### **Alleged Unconscionable Conduct in the Trade of Goods and Services by Standard Bank Malawi Limited**

The Commission ordered Standard Bank Malawi Limited to pay a fine of MK500,000.00 for engaging in unconscionable conduct in the trade of goods and services.

This followed an investigation which the Commission conducted which showed that the Bank opened interest earning Contract Save Accounts for a number of customers.

However, upon maturity of the contracts, the bank did not pay any interest thereby causing distress to consumers. This was despite several complaints raised by concerned consumers. The investigation further established that the bank engaged in deceptive / misleading advertising when it stated that the interest rate for the contract save account would be 8% when in fact they meant **8% per annum**.

Accordingly, the Commission ordered the bank to clearly indicate the interest rate regime on their information materials. The Bank was also advised to conduct more sensitization of its customers on financial literacy.

### **Alleged Misleading Advertising, Improper Labelling and Supply of Uncertified Product by Wills and Alpha Limited**

The Commission ordered Wills and Alpha Limited to pay a fine of MK500,000.00 for engaging in deceptive / misleading advertising and insufficient labelling of products. This followed an investigation which showed that the company broadcast/ published an advertisement claiming that "*Williams Tea*" cures diseases such as Type 2 Diabetes, Low Blood Pressure, Headaches, Diarrhoea, and Stomach Disorders".

The Commission did not find any evidence to show that Williams Tea had been certified by a competent authority as a "medicine" or "possessing medicinal attributes". The investigation further established that the packaging material for Williams Tea had material information deficiencies, including no certification marks and physical address.

### **Alleged Unconscionable Conduct by National Bank of Malawi**

The Commission ordered National Bank of Malawi to pay a fine of MK500,000.00 for engaging in unconscionable conduct in the trade of goods and services. This followed an investigation conducted by the Commission which established that National Bank of Malawi speciously and deceptively charged debit interest to customer accounts and failed to provide timely remedy despite repeated pleas from the affected consumers. This was an infringement of section 43 of the Competition and Fair Trading Act.

Further, the Commission issued the following orders against National Bank:

1. Order to reverse the interest debits and pay accrued interests on the sums illegally held by the bank in favour of the Complainants - Pitronic Limited and James Lindani.
2. Order for the Bank to issue an official apology to the Complainants.

3. Order for the Bank to provide details of other customers who suffered similar charges due to the malfunctioning of the Core Banking System; and provide proof that the erroneous charges have been reversed.
4. Order that the Bank should timely rectify and remedy its core banking system to guarantee consumer protection.
5. Order that the Bank should undertake a review of its complaints handling processes and systems to guarantee adequate consumer protection and avoid a recurrence.

### **Alleged excluding liability on defective products and unconscionable conduct by Be Forward Company (Malawi) Limited**

The Commission determined to close two cases against Be Forward Company (Malawi) Ltd on allegations of excluding liability on defective products. The decision followed the company's undertaking to replace two defective vehicles valued at US\$6,000 and US\$3,133 which were supplied to consumers Mrs Meya Chinula Muronya of Lilongwe and Mr John Pittman of Ntcheu respectively. The investigation established that the delivered vehicles had had material defects that were not disclosed at the time of sale.

The Consumers had since been refunded the sum of US\$6,000 and US\$3,133 due to the intervention of the Commission.

### **Alleged Supply of Products Likely to Cause Injury to Health or Physical Harm to Consumers and Does Not Meet Consumer Safety Standards by Best Foods Limited**

The Commission ordered Best Foods Limited to pay a fine of MK500, 000.00 for supplying products that do not meet labelling standards. An investigation conducted by the Commission showed that Best Foods Ltd were supplying "*Orange Juice*" which did not have sufficient product information as required under Section 43 of the Competition and Fair Trading Act and Section 35 of the Consumer Protection Act.

The information deficiency included: non-declaration of the product's ingredients; non-display of telephone and physical address of the manufacturer, and absence of MBS certification mark to show that the product had been certified or pre-certified by the Malawi Bureau of Standards.

### **Alleged Supply of Expired Products and Misleading Conduct by Shoprite Trading Limited**

The Commission ordered Shoprite Trading Limited to pay a fine of MK500, 000 for supplying expired products and improperly labelled products. A surprise inspection

conducted by the Commission showed that Shoprite, through their shop at Chichiri Shopping Mall in Blantyre, were supplying a range of processed meat products which were either expired or had their expiry date labels tampered with. The Commission found the following:

- (i) 15 Citerio Paglio fresco bacon packets which were expired;
- (ii) 111 Kapani bacon packets with damaged expiry dates; and
- (iii) 68 samosa produced by Angels Foods Ltd which were expired.

The investigation also established that the labelling on some of the products was unclear. This includes: improper and insufficient labelling of expiry dates; and expiry dates which had been bruised, hence not verifiable. This was a breach of Section 35 of the CPA.

### **Alleged Supply of Products Likely to Cause Injury to Health or Physical Harm to Consumers and Does Not Meet Consumer Safety Standards by Suncrest Creameries Ltd**

The Commission ordered Suncrest Creameries Limited to pay a fine of MK500, 000.00 for supplying products that do not meet product labelling standards. A surprise inspection conducted by the Commission showed that the company supplied two products - "*Zuza Cordial*", and "*250ml Fresh Milk*" – which did not have sufficient production information such as expiry dates, certification marks from the Malawi Bureau of Standards and the manufacturer's physical address. Further, the labelling on the fresh milk was not legible. This was an infringement of Section 43 of the CFTA and Section 35(3) of the CPA.

### **Alleged Misleading Conduct by Thirsty Juice Company**

The Commission ordered Thirsty Juice Company to pay a fine of MK500,000.00 for engaging in misleading and deceptive conduct. An investigation conducted by the Commission showed that Thirsty Juice Company were supplying "*Hayat Bottled Water*" which contained misleading information on the volume.

According to the findings, a sticker on the bottle showed that the volume of the water was 20 litres while the embossed volume on the bottle was 18.9 litres. The investigation did not find any conclusive evidence supporting the claim that the 18.9 litres bottle had capacity to hold 20 litres of water. If the bottles contained 18.9 litres of water, the company had an obligation, under the CFTA and the CPA, to provide consumers with accurate product information.

### **Alleged Supply of Products Which are Likely to Cause Injury To Health or Physical Harm to Consumers and Which do not Comply with Labelling Standards by Indian Spice World**

The Commission ordered Indian Spice World to pay a fine of K500,000 for supplying products which were likely to cause injury to health or physical harm to consumers. An inspection conducted by the Commission showed that the company was supplying products which were either expired or had expiry dates on separate stickers or had no expiry dates. The expired products found on the shelves were as follows: 42 packets of Lays; 4 packets of Bhakharwadi, 2 packets Chana Nuts; Lemon biscuits, Chana Chor, Phalhari and Chiwda. The company also stocked 76 packets of Lays which had expiry dates tagged on removable stickers. This was a contravention of Section 43(1) of the Competition and Fair Trading Act and Section 35(2) of the Consumer Protection Act.

### **Alleged Pyramid Selling by Alliance in Motion Global (AIM Global)**

The Commission determined to refer the case of alleged pyramid selling by Alliance in Motion Global (AIM Global) to the COMESA Competition Commission. This followed an investigation which showed that AIM Global enterprises were taking place in more than one COMESA member state.

The investigation established that “AIM Global” were involved in the marketing of some alleged health products. However, there was no evidence to show that the enterprise was generating money through product sales. Instead, individuals were investing in the scheme and benefitting through the recruitment of paid up members. For every recruitment completed, members were receiving a commission which they were sharing with across the recruitment ladder from the bottom to the top.