



COMPETITION AND FAIR TRADING COMMISSION

Just Competition, Fair Trading

CONSUMER PROTECTION IN MALAWI

GUIDELINES

COMPETITION AND FAIR TRADING COMMISSION
OFF MANDALA ROAD
MPIKISANO HOUSE
P/BAG 332
LILONGWE 3

TEL: + 265 1 759 506/7

FAX: + 265 1 759 522

E-mail: competitioncommission@cftc.mw

Website: www.cftc.mw

The information in this document is for general guidance only. It does not constitute legal advice and should not be relied upon as a statement of law relating to the Competition and Fair Trading Act ('the Act'). Obtain legal advice if you are not sure whether a conduct may breach the Act.

1.0 Introduction

One of the core functions of the Competition and Fair Trading Commission (CFTC) is to protect consumers from harmful and unfair trade practices by business enterprises. Unfair trading is highlighted under section 43 of the Act. The Commission achieves this in three main ways:

- Advocacy and civic education to the business community and consumers on their rights and obligations under the Competition and Fair Trading Act and the Consumer Protection Act.
- Investigations and Enforcement work on unfair trading practices: Under Section 8 of the Competition and Fair Trading Act, the CFTC is empowered to initiate on its own initiative or receive complaints of alleged unfair trading practices and to deal with such complaints in accordance with the law.
- Door to door Inspections and market surveillance activities to assess compliance with the law.

The Commission provides a complaint handling mechanism for consumers who believe they have been treated unfairly. All complaints registered with the Commission are entered into the Consumer Complaints Register. After desk analysis and review against provisions of the law, the complaints are thoroughly investigated. At the end of the investigation, an Investigation Report containing provisional findings is issued to the Board of Commissioners for consideration and determination. The parties are presented with the findings for them to agree or dispute the findings before the commissioners. However, after the investigative report has been issued, parties are also free to enter into negotiations with the secretariat, this is done to assist in a speedy resolution of the matter.

Where the investigation has established a breach under the Competition and Fair Trading Act and Consumer Protection Act, our approach to settlement of consumer complaints is in two ways:

- Negotiated settlement - Mediation and alternative dispute resolution
- Issuing cease and desist orders

2.0 What is a Consumer Complaint or a Consumer Dispute?

A Consumer complaint is an allegation that consumer's rights under the Competition and Fair Trading Act and Consumer Protection Act have been infringed, impaired or threatened. A consumer complaint may also be viewed as an allegation about the occurrence of a prohibited conduct under section 43 of the CFTA and CPA.

3.0 Who can lodge a complaint?

It is important to note that under Section 2 of the Competition and Fair Trading Act, a consumer includes any person -

- i) Who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production and manufacture of any other goods or articles for sale;
- ii) To whom a service is rendered.

The person who lodges a complaint is called "*The Complainant*".

On the other hand, a person includes an individual, a company, a partnership, an association and any group of persons acting in concert whether incorporated or not. The person to whom a complaint has been lodged against is called "*The Respondent*".

To be able to lodge a complaint, the Complainant must fall within the scope of a consumer and the supplier of goods or services must be in trade or commerce (i.e they should be carrying out any commercial activity for gain or reward). This includes activities of professional or trade associations or state owned commercial enterprises.

4. Where to Complain?

Any person aggrieved by the conduct of any traders or suppliers of goods and services may lodge a complaint with the CFTC. However, as a first step, it is advisable that the Complainant should lodge the complaint with the enterprise with which they have a dispute (the Respondent). This helps the Commission to screen and be able to assist especially in cases where there is a real dispute. Once that is exhausted and there is no solution, the Complainant may now complain formally to the CFTC.

5. How to Lodge a Complaint?

Filing of complaints with the CFTC shall be done in the following manner:

- A complaint to the CFTC may be written (i.e., letter or email) or oral (i.e., phone-in or walk-in);
- They may also complete a Consumer Complaint Form which is available on the following link: <http://www.cftc.mw/index.php/2013-12-16-13-35-12/forms/25-consumer-complaint-form>
- All written complaints should be addressed to the Executive Director, Competition and Fair Trading Commission, 1st Floor Mpikisano House, Off Mandala Road, Private Bag 332, Lilongwe. Tel: +2651759506/7; Fax: +2651759522; Email: consumer@cftc.mw or competitioncommission@cftc.mw
- Where an oral complaint is made, or where the complainant cannot read or write, the complaint will be put into writing by an officer of the Commission designated to receive complaints. The complainant may also select a person of his/her choice to write down the complaint for him/her;
- Where the complaint is written down by a person other than the complainant, it will be read over and explained to the Complainant in a language that he/she understands, and there will be a declaration to that effect on the complaint; and
- The complainant must indicate that he/she understands what has been read over and explained before appending his/her signature or thumb print to the complaint.

5. What type of Information is required?

A complaint lodged with the Commission must contain the following details:

- The full name, contact address of the Complainant;
- The name of the trader, supplier or person against whom the complaint is made;
- The nature of injustice or harm that the Complainant has suffered as a result of the action, inaction or omission of the person or undertaking against whom the complaint is made;
- Copies of any document in support of the complaint. This includes receipts or contract terms.
- The relief sought by the Complainant;
- Any other matter relevant to the complaint; and
- Where the person who lodges a complaint is acting on behalf of another person, company or organization, he/she must state in writing the capacity in which he/she is acting, and the reason for doing so.

7. What type of Information is required?

- Upon receipt, the Commission shall register the complaint in the Consumer Complaints Register.
- The Registration Officer shall pass on the complaint to the Director for Consumer Welfare and Education (DCWE) for preliminary assessment and review against provisions of the law.
- If there is no merit, the Director will forward recommendations for closure of the case with supporting reasons to the Executive Director for approval. Such recommendation shall be done within 5 days. Upon approval, a letter will be issued to the Complainant communicating the decision. Where applicable, the Complainant will be advised if there are other possible legal remedies to obtain for their situation.
- Generally, a complaint may not be pursued on the following grounds:
 - (i) Lack of sufficient interest - the Complainant does not satisfy the definition of a Consumer as provided for in the CFTA
 - (ii) The Respondent does not satisfy the definition of a Respondent as provided for in the CFTA
 - (iii) Being trivia (little significance), frivolous (not worth serious notice) and vexatious (abuse of process)
 - (iv) the complaint is not made in good faith (honesty, fairness, lawfulness and purpose)
- If there is merit, the Director will recommend to the Executive Director, the appointment of a Case Investigation Officer (CIO) to launch mediation or a fully blown investigation.
- Upon appointment, the CIO will draft a Notice of Investigations within 48 hrs of his/her appointment and submit to the DoC for review. The reviewed copy will be submitted to ED for approval within 24hrs.
- The Respondent will be given 14 days to respond to the Notice of Investigations. During investigations, the CIO may request the parties to provide further information where necessary.
- **Often it is helpful for the Respondent to undertake their own internal investigation on the allegation before responding to the Notice of**

investigation. This will help them to respond to the investigation with knowledge of true facts as to what transpired.

- **Respondents are also encouraged to be truthful, honest, co-operative and transparent, as this will demonstrate their intention for the matter to be resolved.**
- The Secretariat shall hold meetings with the parties to discuss the complaint and gather more information in form of oral and written submissions. The Secretariat will, wherever possible, recommend amicable settlement between the parties.
- Provisional findings of the investigations will be published within 90 days and shared with the parties concerned. Parties will be required to sign a confidentiality undertaking before they access the Report of which contains provisional findings of the investigation. Sometimes cases may take longer as the Commission may adjourn investigations from time to time in line with section 10 (1) e of the Act, based on delay in submission of crucial information or evidence.
- Upon publication of the provisional findings, the Respondent is at liberty to request a negotiated settlement. Alternatively, the Respondent may request a public hearing before the Technical Committee of the Commission. The current standard is to hold Public Hearings for all cases, especially where there is a factual dispute.
- Where the enterprise has requested a public hearing, they are allowed to present their case on their own or through a legal counsel.
- After the public hearing, a report shall be produced providing a record of the proceedings.

8. What action will the Commission take?

After receiving the report, the Commission will consider the matter based on the Investigation report and submissions made by the parties during the public hearing.

If the Commission holds a hearing, a notice will be served on the Complainant and the Respondent requesting them to be present at the public hearing in person or through a representative.

This notice will also give the time and place where the hearing of a complaint will be held. After the hearing, the Commission will make a ruling based on the facts of the complaint and submissions of the hearing within 30 days.

9. How is the ruling enforced?

Once the Commission makes a ruling, an Order is served on Respondent which takes effect and becomes operative within a specified period after service dependent on the nature of the complaint. The Commission reserves the right to extend the time set in the Order if it is deemed insufficient for the person or undertaking complained of to comply with.

After the Order becomes effective, the Respondent must submit a report to the Commission which explains how compliance with the Order has been satisfied. The Secretariat will carry out regular inspection to ensure that the orders have been complied with in full.

If there is no compliance, the Commission will issue an Enforcement Notice which will specify what has not been complied with and a further time frame within which compliance must be carried out.

If after an Enforcement Notice has been issued and still no report is submitted showing compliance, the Commission shall engage regulatory powers under the CFTA and CPA to prosecute non-complying entities.

10. How will Consumer Interests be safeguarded?

- By encouraging consumers to first approach the undertakings or service providers
- A commitment to receive all complaints however lodged
- A commitment to investigate and follow through each complaint
- Informing the complainant of the status of their complaint
- Ensuring undertakings have procedures for dealing with consumer complaints
- Ensuring existence of a Consumer Charter; and
- Carrying out consumer outreach programmes
- Undertaking a compliance programme and trainings for front line staff .

A full text of the Act is available on our webpage <http://www.cftc.mw>

For more information, contact

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