



PRESS RELEASE

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RECENT DECISIONS BY THE COMMISSION OF THE COMPETITION AND FAIR TRADING COMMISSION

The Commission of the Competition and Fair Trading Commission (CFTC) held a meeting at Sunbird Nkopola in Mangochi, on 4th June 2021, to consider and adjudicate over cases.

The Commission considered, adjudicated and noted a total of 61 cases, which included 56 cases of unfair trading practices and five cases of anti-competitive business practices.

This statement provides a summary of the Commission's determinations on some of the cases, highlighting facts and orders made.

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APOCHE ITIMU

ACTING EXECUTIVE DIRECTOR

1.0. UNFAIR TRADING PRACTICES

1.1. Alleged Unconscionable Conduct by First Capital Bank

In March 2021, CFTC commenced investigations against First Capital Bank for alleged unconscionable conduct in the supply of banking services.

It was alleged that on 4th April 2019, a customer opened a savings account at the Respondent's bank in favour of a son with an initial deposit of MK100,000.00. It was further alleged that they made several deposits to the account thereafter.

It was also alleged that the account balance was MK1,477,166.90 as of 20th October 2020. Thereafter, allegedly, two more deposits of MK100,000.00 each on separate occasions were made.

However, on 1st March, 2021, the complainant was shocked to learn that the account balance was only MK206,659.00 against an expected balance of about MK1,677,166.90—over MK1.4 million had mysteriously disappeared.

When an inquiry was made about the anomaly, the Respondent alleged that there had been several transactions through Airtel Money to several phone numbers, amounting to MK1,476,990.00. However, the Complainant claimed that they had not conducted these transactions, and were not aware of such transactions.

CFTC investigated the matter under Section 43(1)(g) of the CFTA. The investigation established that the OTP for the account was generated on 24th October, 2020 for mobile application registration to the registered number in the system. Immediately after registration, money transfers were made. The Respondent's position is that this could have only happened if the Complainants shared the OTP generated by the system.

It was also submitted by the Complainant that on 24th October 2020, they received suspicious messages on their phone purporting that they applied for an online registration of a Mobile App.

The Complainant promptly reported to the Branch Manager of Limbe for action. The Branch Manager, allegedly promised to investigate the matter and get back to the

Complainant. This did not happen and the Complainant assumed all was well until 1st March 2021 when they discovered that money had been disappeared the account.

The Respondent withheld some information from CFTC, despite being requested to do so and despite making an undertaking to share the information. This information would have helped the Commission to decide whether features of an “In Trust of Savings Account” were similar to those of a typical “Personal Savings Account”. It would also have helped to determine whether or not the Complainant signed up to the use of the Mobile Applications at the time of opening the account. The conduct by the Respondent, in this regard is a contravention of Section 50 of the Competition and Fair Trading Act (CFTA).

The conduct by the Respondent in handling the subject complaint was thus unconscionable. Despite lodging an official complaint with the Bank in October 2020 and despite the bank making an undertaking to investigate the matter and provide them with feedback, no communication was made.

The Commission resolved as follows:

- The Respondent should refund the Complainants a sum of MK1,476,990.00 which was transferred from their bank account due to the weak and unreliable mobile banking application with interest that would have been earned on the amount had it been in the bank.
- The Respondent should pay a fine of Five Hundred Thousand Kwacha (MK500,000) for violation of the CFTA.
- The Respondent should pay a fine of Five Hundred Thousand Kwacha (MK500,000) for refusing to furnish information requested by the Commission.

1.2. Alleged Unconscionable Conduct by Nedbank Ltd

In June, 2019, CFTC commenced investigations against Nedbank Ltd following allegations of unconscionable conduct.

It was alleged that a customer was deducted MK11,500 from his Nedsave account which he believed did not have monthly charges. When he sought clarification from the

Respondent, he was informed that the bank had changed its policy and introduced a monthly fee charge to all Nedsave accounts with effect from 28th March 2018.

The Complainant alleged that he was neither informed of the changes nor given a choice to maintain the accounts under these new conditions.

Investigations found that the Complainant's account was reclassified by the Respondent without his knowledge or consent.

The Respondent's conduct was thus unreasonable, unfair, without conscience and a violation of Section 43(1) (g) of the CFTA.

The Commission deliberated over the case and resolved that the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000) and also pay the service fees to the account of the Complainant and other customers with interest calculated up to 31st May 2021.

1.3. Unconscionable Conduct and Offering Gifts or Prizes with No Intentions of Supplying Them by Castel Malawi

On 1st March 2021, CFTC commenced investigations against Castel Group (Malawi) Limited on allegations of unconscionable conduct and offering of gifts or prizes with no intention of supplying them.

Castel was running a promotion where lucky winners who, after buying "Carlsberg Special" and "Castel" beers and found a symbol of a bottle of beer inside the bottle top, automatically won a prize of one free bottle of that type of beer.

Castel indicated that they intended to run the promotion, however, the promotion was cancelled. The cancellation of the promotion was not effectively communicated to customers.

Furthermore, the beer that was being supplied on the market was still bearing the promised (beer) prizes inside the bottle tops.

The investigations established that by the time the Respondent supplied the beer, the promotion had already been cancelled. The Respondent knew that the prizes inside the bottle tops would not be given out, but proceeded to supply the promotional products onto the market regardless.

The Respondent, therefore, engaged in the conduct of offering gifts or prizes with no intention of supplying them, which is in contravention of section 43(1)(j) of the CFTA and misleading advertising, which is in contravention of section 43(1)(j) of the CFTA.

The Commission resolved that Castel should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for engaging in unconscionable conduct and offering prizes with no intention of supplying them.

1.4. Alleged Exclusion of Liability and Unconscionable Conduct by Speedy's Food Industries Ltd

In February 2021, CFTC commenced investigations against Speedy's Food Industries Ltd for alleged exclusion of liability for defective goods and unconscionable conduct in the trade of goods and services.

The Respondent did not display their products (eggs) on the shelf in one of their shops thereby denying customers an opportunity to inspect the eggs first before they make a decision whether to buy or not.

When consumers want to buy eggs, the Respondent demands payment first and the consumer is issued with a receipt which is given to the shop assistants to collect eggs from the back-store and hand them over to the consumers.

Often times, the consumers found that some of the eggs handed over to them were damaged. When they complained about the damaged eggs, the Respondent refused to exchange them, citing a no-exchange disclaimer posted in the shop.

The investigation established that the Respondent's shop had a clear disclaimer on liability for damages which is an infringement of Section 43(1)(b) of the CFTA.

The Respondent's conduct also amounted to unconscionable conduct in carrying out trade in goods and services contrary to Section 43(1)(g) of the CFTA.

The Commission therefore ordered that the Respondent should pay a fine of five hundred thousand Malawi Kwacha (MK500,000.00) for engaging in exclusion of liability for defective goods and unconscionable conduct in carrying out trade in goods and services.

1.5. Alleged Supply of Products Likely to Cause Injury to Health and Insufficient Labelling by Blantyre Dairy Limited

On 8th March 2021, CFTC commenced investigations against Blantyre Dairy Limited on allegations of supplying products likely to cause injury to health and insufficient labelling.

The investigations established that the Respondent engaged in the supply of a products with insufficient labelling, contrary to Section 35(3) of the Consumer Protection Act;

Further, the expiry date was not legible, hence impacting on consumers' ability to make informed decision when purchasing. The product packaging material also lacked information on the manufacturer's address and other contact details.

The Commission resolved that the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000) for supplying products with insufficient labelling;

1.6. Alleged Supply of Products Likely to Cause Injury or harm to Consumers and Improper Labelling by Capital Foods Limited

On 18th October 2018, CFTC commenced investigations against Capital Foods Limited, on allegations of supplying products likely to cause injury or harm to consumers and insufficient labeling of products.

The products were bags of baking powder with a brand named "FlouRich Fortified Wheat Flour". The products' expiry date labels were on separate tags (stickers) stapled to the packaging material, and not on the packaging material itself.

According to relevant consumer protection standards, labels for expiry dates should be put in such a way that they are legible, prominent and indelible.

The investigations established that the Respondent engaged in the supply of a products with improper labelling, contrary to Section 35(3) of the Consumer Protection Act.

The Commission resolved that the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for engaging in improper labeling of products.

1.7. Alleged Offer of Gifts and Prizes with No Intention of Supplying Them; Misleading and Deceptive Advertising; and Unconscionable Conduct by SupaPesa

It was alleged that SupaPesa was offering gifts and prizes with no intention of supplying them therefore engaging in misleading and deceptive advertising and unconscionable conduct.

SupaPesa has been running a betting competition called BetYanga; which requires participants to correctly predict the outcomes of 13 games. For one to win a prize, they have to predict 6, 7, 11, 12 or 13 number of games correctly.

On 11th March 2021, a player participated in the competition and predicted 6 games correctly. However, the Respondent refused to give out the prize, claiming that the correct predictions had to be consecutive games. The Complainant alleged that this was contrary to the initial information or advert by the Respondent.

Investigations established that the Respondent published two messages, one in English, and another in Chichewa on the criteria for one to win a prize.

The Chichewa message, however, did not specify that the games have to be the first 6 or 7 consecutive games. As such, the Complainant had won a prize under the Chichewa version since he managed to predict 6 games correctly.

By failing to give out the prize money to the Complainant when the Chichewa terms and conditions were very clear, the Respondent engaged in the conduct of offering prizes with no intention of supplying them. This was an infringement of Section 43(1)(j) of the CFTA.

The Complainant admitted the offence and advised the Commission that they would settle the same with the Complainant.

The Commission resolved that the Respondent should pay the Complainant the prize money that was prescribed for participants who got 6 correct predictions and that the Respondent should pay the prize money to all other participants who correctly predicted 6 or 7 matches regardless of whether or not they did so consecutively;

1.8. Alleged Supply of a Product Likely to Cause Injury or Physical Harm to Consumers; and Improper Labelling by WAKBRO Superette

On 18th October 2018, CFTC commenced investigations against WAKBRO Superette of Mzuzu, on allegations of supplying a product likely to cause injury or physical harm to consumers and insufficient labeling of products.

The Respondent engaged in repackaging of powdered milk brand-named “BINCO Instant Fat Filled Milk Powder” from 25kg packs into smaller packages. However, these smaller packages were being offered for sale without relevant information such as: name of the product; name of manufacturer/assembler/parker; postal/physical address of the manufacturer/assembler/parker; ingredients and expiry dates.

The repackaging process was also done without MBS certification.

The Commission resolved that the Respondent should pay a fine of Five Hundred Thousand Kwacha (MK500,000) for engaging in misleading conduct and deceptive advertising.

1.9. Alleged Misleading Conduct by Agora Limited

On 16th October 2018, CFTC commenced investigations against Agora Limited on allegations of misleading and deceptive conduct in the supply of agricultural inputs and edible salts.

During CFTC’s routine shop inspections, it was discovered that an Agora Limited Shop at Thondwe was supplying underweight packs of Demeter maize seed and bean seeds.

The conduct by the Respondent was in contravention of Section 43(1)(d) of the CFTA

The Commission resolved that the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for engaging in misleading conduct.

1.10. Alleged Misrepresentation Misleading and Deceptive Conduct by Demeter Seed (Demeter Agriculture Limited)

On 16th October 2018, CFTC commenced investigations against Demeter Seed or alleged misleading and deceptive conduct in the supply of agricultural inputs.

Between 9th October 2018 and 16th October 2018, CFTC conducted routine shop inspections, during which, it discovered that Farmers World shops located at Lumbadzi Trading Centre, Nkhotakota and Karonga were selling underweight Demeter maize and bean seeds.

The Commission resolved that the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for deceiving consumers.

1.11. Alleged Misleading Conduct by Kulima Gold Limited

On 11th September 2019, CFTC commenced investigations against Kulima Gold Limited for alleged misleading and deceptive conduct in the supply of agricultural inputs.

On 11th September, 2019, the Commission together with the then Ministry of Industry, Trade and Tourism (MoITT) conducted routine joint inspections of business premises. During the inspections, officers from the Commission and MoITT discovered that the Kulima Gold Limited Shop in Kanengo was supplying underweight bags of fertilizer.

The Commission resolved that the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for engaging in misleading conduct;

1.12. Alleged Insufficient Product Labelling by Natpack Industries

On 15th April, 2019, CFTC commenced investigations against Natpack Industries for alleged insufficient labelling of products.

During a routine market surveillance exercise that was conducted in April 2019, the Commission found that “Super Soya Pieces” supplied by the Respondent in Mulanje and Zomba did not have appropriate labels to indicate the manufacturer’s physical address, product’s batch number and expiry dates.

Investigations showed that the Respondent's labeling of their instant soya pieces was not sufficient according to the law. The products that the Commission came across did not have appropriate labels to indicate the manufacturer's physical address, product's batch number and expiry dates, a conduct in violation of S43(1)(e) of the CFTA and S35(3) of the CPA.

The Commission resolved that the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00).

1.13. Alleged Exclusion of Liability for Defective Goods and Unconscionable Conduct by Be Forward Japan Company Limited

On 4th December 2020, CFTC commenced investigations against Be Forward (Japan) Company Limited, for alleged exclusion of liability for defective goods and unconscionable conduct in carrying out trade in goods and services.

On 14th March, 2019, the Complainant purchased a Nissan March vehicle at MK1,102,934.04 (USD1,524). Upon delivery at Dar es Salaam, when the Complainant tried to drive the vehicle, he discovered that the vehicle could not respond when put in gear. A mechanic who was consulted to examine the vehicle advised that the vehicle transmission had some problems.

When the Complainant reported this to the Respondent, the Respondent was cooperative and advised the Complainant to source a replacement for the transmission assembly. However, later, the Respondent refused to provide replacement for the defective spare part, claiming that the Complainant had submitted the Complaint after the expiry of the warranty offered on the vehicle.

The Respondent instead offered the Complainant a discount of USD300 on the purchase of another vehicle; which the Complainant accepted.

In February 2020, the Complainant purchased another vehicle from the Respondent at a price of MK1,450,000 (USD2,000). The Complainant only paid MK1,162,900 (USD1,604) on the understanding that the USD300 discount will offset the balance.

The Respondent refused to deliver the Vehicle to the Complainant, and required the Complainant to pay the full price of the vehicle. The Respondent also charged the Complainant MK31,175 (USD43) for insufficient payment.

The Secretariat investigated the matter under Sections 43(1)(b) and 43(1)(g) of CFTA. The investigation established that the vehicle that the Respondent supplied to the Complainant had faulty transmission assembly. Initially the Respondent was willing to assist the Complainant by replacing the transmission assembly, but later retracted claiming that the warranty period had passed.

The Complainant submitted the Complaint in May 2019, and not in June 2019 which was still within the validity of the warranty (30 days).

The Respondent, therefore engaged in exclusion of liability for defective goods, which is in contravention of section 43(1)(b) of the CFTA.

The Respondent also failed to deliver the alternative remedy of the offered discount on the next purchase. Further, the penalty charge was unjustifiable towards the Complainant.

The conduct by the Respondent was thus unconscionable, which is in contravention of section 43(1)(g) of the CFTA.

The Commission resolved as follows:

- The Respondent should pay to the Complainant the equivalent amount of USD300 at the prevailing bank exchange rate, being the discount which was awarded on his next vehicle purchase but was not given.
- The Respondent should refund the Complainant the equivalent amount of USD43 at the prevailing bank exchange rate, being the penalty effected for the alleged failure to remit full amount of money on the purchase of the second vehicle;
- The Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000) for engaging in exclusion of liability for defective goods and unconscionable conduct in the supply of goods and services.

1.14. Update on Alleged misleading conduct by Malawi Fertilizer Company

CFTC carried investigations into alleged misleading conduct by Malawi Fertilizer Company Ltd on its own volition after it carried out market inspections in October 2018 in Lilongwe, Nkhhotakota and Karonga.

During the inspection, CFTC noted that shops belonging to Farmers World were selling underweight Superfert fertilizer, which is a product of the Respondent.

The investigations showed that indeed Superfert fertilizer that was being sold was underweight.

The Commission resolved as follows:

- That the Respondent should pay a fine of One Million Five Hundred and Forty Thousand Malawi Kwacha (MK1,540,000.00) being the financial gain generated by the offence of engaging in misleading and deceptive conduct contrary to Section 43(1)(d) of the CFTA.
- The Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha for their failure to submit information as requested by the Commission.

1.15. Alleged misleading conduct by Farmers World Ltd

CFTC commenced investigations against Farmers World Ltd, for alleged misleading conduct and unconscionable conduct.

During shop inspections conducted on 11th February 2020, the Commission came across “Dolomitic Lime” in Farmers World Shop, Rumphi Branch which was improperly labeled. The Product, which is manufactured by Lime Co Ltd, had weight label indicated as “APPROX 50 KG.” Technically, this implied that the exact weight of the product was not clearly indicated. Upon weighing the bag that was on display, the Commission discovered that the bag weighed 44kgs, which was far lower than the indicated 50kg.

CFTC investigated the matter under Section 43(1)(d) & 43(1)(g) of the CFTA and Section 6(1)(b) of CPA.

The Commission resolved that the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500, 000.00).

1.16. Alleged misleading and unconscionable conduct by Lime Co

CFTC commenced investigations against Farmers World Ltd, for alleged misleading conduct and unconscionable conduct.

During shop inspections conducted on 11th February 2020, the Commission came across “Dolomitic Lime” in Farmers World Shop, Rumphi Branch which was improperly labeled. The Product, which is manufactured by Lime Co Ltd, had weight label indicated as “APPROX 50 KG.” Technically, this implied that the exact weight of the product was not clearly indicated. Upon weighing the bag that was on display, the Commission discovered that the bag weighed 44kgs, which was far lower than the indicated 50kg.

CFTC investigated the matter under Section 43(1)(d) & 43(1)(g) of the CFTA and Section 6(1)(b) of CPA.

The Commission resolved that the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500, 000.00).

1.17. Alleged unconscionable conduct by Maula Pharmacy

CFTC commenced investigations against Maula Pharmacy for allegedly engaging in unconscionable conduct. During the inspection conducted on 3rd February, 2021 in Lilongwe, the Commission found that Ace Pharmacy was selling Ivermectin drug, at K72,000 per box of 20 tablets (thus K3,600/tablet).

The product’s market benchmark retail price was K500-K1,000 per tablet. Ace Pharmacy submitted that Maula Pharmacy supplied them the product at K68,750.00 per box of 20 tablets, (thus K3,437.50 per tablet). The Commission considered the alleged price of K3,437.50 per tablet to be way above the product’s benchmark retail price.

CFTC investigated the matter under Section 43(1)(g) of CFTA. Central Medical Stores Trust submitted that a box of Ivermectin containing 100 Tablets was being sold at K10,175.09 (MK101.75/tablet). The benchmark price on the market was around K500-K1,000. The evidence showed that the product’s selling price by the Respondent was MK3,437.50/tablet. The burden of showing that this was not excessive lay on the Respondent. The Respondent did not provide documented evidence or receipts to show

that their pricing was not unreasonable and excessive. The Respondent has been penalized before for excessive pricing of Covid-19 materials and medicine.

The Commission resolved that the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for engaging in unconscionable conduct through excessive pricing of medical supplies.

2.0. ANTI COMPETITIVE BUSINESS PRACTICES

2.1. Alleged Predatory Conduct by D&T Fabrics and Accessories

On 14th July, 2020, CFTC received a complaint, through the Ministry of Trade, from Limbe Fabrics Group alleging that D&T Fabrics and Accessories, a fabrics wholesaler of Old Limbe Bus Depot, Limbe, Blantyre, was engaging in predatory conduct by trading as an unlicensed retailer in Limbe and commissioning small scale traders to sell their fabrics to end consumers at wholesale prices in rural areas of Blantyre, Chiradzulu and Zomba.

The alleged conduct appeared to contravene Section 32(1) and 32(2)(a) of the CFTA.

The investigations established that the Respondent is a licensed wholesaler, and has no licence to trade as a retailer.

It was also reported that information sourced from a Zomba-based customer, who was found in the Respondent's shop in Limbe on the day of the visit, informed the investigators that she was a regular customer for the Respondent, and confirmed that she purchased fabrics from the Respondent at wholesale (50m or more), and not retail.

The Committee noted that supplying fabrics to end consumers at wholesale prices, and without a retailer's licence, implies that the Respondent is unfairly competing with other fabric retailers at the trading centers. This conduct has potential to prevent, restrict or distort competition since final consumers will prefer to buy at the wholesale price from the Respondent and not the competitors. Eventually, the competitors will exit the market. If indeed the trend continues in other rural areas of Blantyre, Chiradzulu, Mwanza and Zomba as alleged, the alleged conduct will have substantial negative impact on supply of fabrics in the southern region of Malawi in the long run.

The Commission deliberated over the case and resolved as follows:

- The Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for engaging in predatory conduct;
- The Respondent should apply for exclusive dealing arrangement with the Commission if they wish to have distributors in the rural trading centers.

2.2. Acquisition of Dimakis Chickens Limited and part of Charles Stewart's business assets by Central Poultry (2000) Ltd:

CFTC received an application for the acquisition of Dimakis Chickens Limited and part of Charles Stewart's business assets by Central Poultry (2000) Ltd on 19th March, 2021. This followed investigations which revealed that Central Poultry had acquired Dimakis Chickens in 2013 and part of Charles Stewart's business assets in 2016 without prior authorization from the Commission which is a contravention of Section 35 of the Competition and Fair Trading Act (CFTA).

The investigations concluded that the transactions did not result in creation of a dominant player and that Charles Stewart did not exit the market as it is still operating its poultry business. Further, the transactions did not substantially lessen competition in the relevant markets.

As a result, the proposed acquisition of Dimakis Chickens and part of Charles Stewart's business assets was authorised by the Commission with the following conditions:

- That Central Poultry should fully operate the acquired business units at Dimakis and Charles Stewart to offer the poultry services and employment to the community;
- That Central Poultry should not engage in any anti-competitive trade practices in the poultry sector;
- That Central Poultry should devise deliberate pro-competitive policies to ensure empowerment and growth of small and medium enterprises along its value chains.

2.3. Acquisition of Zoon Transactions Limited by Remitix Limited and Mukuru Money Transfer

The Commission has approved the acquisition of Zoon Transactions Malawi Limited by Remitix and Mukuru Money Transfer.

On 3rd November 2020, the Commission received an application from Remitix Limited and its subsidiary Mukuru Money Transfer Limited for authorization of a proposed acquisition of Zoon International Transactions Limited and its subsidiary Zoon Transactions Limited.

The Commission instituted investigations to establish its impact on competition and the economy of Malawi. Information gathered by the Commission shows that there are a considerable number of international money transfer operators (MTOs) that are operating on the Malawi market.

According to the assessment made, the transaction would not result in any change of the market structure neither did any competition factors change as such it was very unlikely that it would affect competition on the market.

In light of the findings, the Commission approved the proposed acquisition of Zoon Malawi by Mukuru Money Transfer.