



# **PRESS RELEASE**

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## **RECENT DECISIONS BY THE COMPETITION AND FAIR TRADING COMMISSION**

The Competition and Fair Trading Commission (CFTC) held a meeting in Lilongwe on 27<sup>th</sup> August, 2021, to consider and adjudicate over cases.

The Commission considered and adjudicated over a total of 29 cases, which included 23 cases of unfair trading practices and 6 cases of anti-competitive business practices. During the sitting, the Commission ordered 8 companies to pay fines totaling K2.1 billion for committing different offences.

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

For more information on this statement, contact Innocent Helema on 0880725075 or email [innocent.helema@cftc.mw](mailto:innocent.helema@cftc.mw)

**APOCHE ITIMU**

**ACTING EXECUTIVE DIRECTOR**

## **1.0. UNFAIR TRADING PRACTICES**

### **1.1. ALLEGED SUPPLY OF PRODUCTS LIKELY TO CAUSE INJURY TO HEALTH AND INSUFFICIENT LABELLING BY UNIVERSAL DAIRY LIMITED**

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

During a shop inspection exercise conducted in February 2021, officers from the Commission found that “Weni-Weni Yogi” (100ml), supplied by the Respondent, did not have an expiry date.

CFTC investigated the matter under Section 43(1)(e) of the Competition and Fair Trading Act (CFTA) and Section 35 of the Consumer Protection Act (CPA). The investigations found that the Respondent engaged in the supply of products with insufficient labelling, contrary to section 35(3) of the CPA. The Respondent confirmed the allegations to be true.

Following deliberations, the Commission ordered the Respondent to pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000) for engaging in the supply of products that are insufficiently labelled.

### **1.2. ALLEGED UNCOSCIONABLE CONDUCT BY MYBUCKS BANKING CORPORATION**

On 6<sup>th</sup> May 2020, CFTC launched investigations against Mybucks Banking Corporation for allegedly engaging in unconscionable conduct following several consumer complaints.

One Complainant alleged that, since the acquisition of Nedbank by the Respondent, he had not been able to perform any ATM transactions allegedly due to the Bank’s system failures. In the absence of the ATM facility, he was being forced to perform “physical” bank transactions, at a fee of MK200.00. Ordinarily, they would have been refunded MK50 which is the difference between the MK200s they paid and the MK150s they would have paid if they had used ATM cards.

CFTC investigated the matter under section 43(1)(g) of the CFTA and established that the Respondent was indeed charging a fee on balance enquiry. By demanding a balance inquiry fee of MK200 for transactions made in banking halls when the Bank's ATM solutions and other online service delivery channels were not operational, the Respondent's conduct was unconscionable; in contravention of Section 43(1)(g) of the CFTA.

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

### **1.3. ALLEGED SUPPLY OF A PRODUCT LIKELY TO CAUSE INJURY OR PHYSICAL HARM TO CONSUMERS BY SHOPRITE TRADING LIMITED**

On 20<sup>th</sup> May 2021, CFTC commenced investigations against Shoprite Trading Limited on allegations of supplying a product likely to cause injury or physical harm to consumers. This followed communication the Commission received from Malawi Bureau of Standards (MBS).

On 25<sup>th</sup> February 2021, MBS registered a complaint that a milk scone purchased from the Respondent had a cockroach embedded inside.

Investigations done by MBS at the Respondent's production unit confirmed the presence of cockroaches in the processing areas as well as in some appliances of the unit. Further, the refuse bin in the processing areas was open contrary to mandatory hygiene standards.

CFTC investigated the matter under section 43(1)(e) of the CFTA and found that the Respondent engaged in the supply of a product likely to cause injury to health or physical harm to a consumer, when properly used, or which does not comply with consumer safety standards.

The Commission deliberated over the matter and noted that the conduct by the Respondent was in contravention of section 43(1)(e) of the CFTA.

Following deliberations, the Commission ordered the Respondent to pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00).

#### **1.4. ALLEGED EXCLUDING LIABILITY FOR DEFECTIVE GOODS BY GRACE OF GOD SHOPPING CENTRE**

On 28<sup>th</sup> August, 2020, CFTC received a complaint from Adonai Peter alleging that Grace of God Shopping Centre was engaging in an unfair trading practice in the supply of imported second hand bales (kaunjika) of clothes.

Allegedly, on 28<sup>th</sup> August, 2020, the complainant bought a bale of polyester dresses from Grace of God Shopping Centre worthy MK190,000.00. However, when the Complainant opened the bale, he discovered that the bale contained cotton dresses and not polyester dresses.

Since August 2020, the Commission had been receiving complaints from different Kaunjika retail traders against the Respondent totaling 12.

The complainants alleged that the Respondent had been supplying bales, whose contents were different from what was labelled on the packaging material. Further, the complainants alleged that the Respondent was selling dirty and tattered clothes to customers which could not sell on the market.

The Secretariat investigated the matter under Section 43(1)(b) and 43(1)(g) of the CFTA. The investigation found that the Respondent's conduct was tantamount to excluding liability for defective goods; misleading conduct; but also unconscionable conduct.

Following deliberation, the Commission ordered the following:

- That the Respondent should refund the money used to purchase the defective bales of Kaunjika to all the complainants.
- 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; misleading conduct; but also unconscionable conduct.

- That the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha MK500,000.00 for being uncooperative with the Commission during the investigations.

#### **1.5. ALLEGED SUPPLY OF PRODUCTS LIKELY TO CAUSE INJURY OR PHYSICAL HARM TO CONSUMERS BY FOODS AND FEEDS WHOLESALERS LIMITED (KAPANI QUALITY MEAT PRODUCTS)**

On 21<sup>st</sup> July 2021, CFTC commenced investigations against Foods & Feeds Wholesalers Ltd trading as Kapani Quality Meat Products on allegations of supply of goods likely to cause injury or physical harm to consumers.

This followed findings of an inspection conducted by the Commission on 19<sup>th</sup> July 2021, which found that the Respondent was supplying expired products. The inspection was conducted after the Commission had received tip-offs from several consumers.

During the inspections the Commission found that the Respondent was stocking various expired products up to 75 items with some having expired as far as December 2020. The Commission found that the Respondent's shop was also stocking Wellington's Steakhouse Sauce, which had no expiry date at all.

CFTC investigated the matter under Section 43(1)(e) of the CFTA and established that the conduct by the Respondent amounted to supply of goods likely to cause injury or physical harm to consumers.

Following deliberations, the Commission noted that the Respondent's conduct demonstrated gross negligence and contravened section 43(1)(e) of the CFTA.

The Commission ordered that the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for supply of products that are likely to cause injury or physical harm to consumers.

#### **1.6. ALLEGED SUPPLY OF PRODUCTS WITH INSUFFICIENT LABELLING BY CFAZ FOODS**

On 2<sup>nd</sup> July 2021, CFTC commenced investigations against CFAZ Foods for alleged supply of products likely to cause injury or physical harm to consumers; and insufficient labelling of products. This followed inspections conducted on 11<sup>th</sup> February, 2021, the Commission came across “350mls Lemon White Vinegar” and “500mls Chilli Tomato Sauce” whose labelling of the expiry date was not clear.

CFTC investigated the matter under Section 43(1)(e) of the CFTA and Section 35 of CFTA. The investigation established that the Respondent’s products fell short of meeting the minimum prescribed labelling standards.

The Commission deliberated over the matter and noted that the conduct by the Respondent did not only amount to supplying of products likely to cause injury or harm to consumers, but also insufficient labelling of products. However, the Respondent accepted the allegations and committed to take necessary remedial steps.

The Commission ordered the Respondent to pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for supplying products with insufficient labeling.

#### **1.7. ALLEGED SUPPLY OF GOODS WITH IMPROPER LABELLING BY MUNYANE INVESTMENTS**

On 2<sup>nd</sup> July 2021, the Secretariat commenced investigations against Munyane Investments for alleged supply of products likely to cause injury or physical harm to consumers; and insufficient labelling of products. The investigation was instituted following findings of the Commission’s inspections.

During the market inspections conducted on 11<sup>th</sup> February, 2021, the Secretariat came across “Shamwari Malambe Juice” whose labelling on the packaging material had expiry dates printed on the stickers attached to the container of the juice. The expiry dates were not printed on the labelling of the product itself, but rather a separate sticker that was just attached to the packaging material.

The Secretariat investigated the matter under Section 43(1)(e) of CFTA and Section 35 of the CPA. The investigations found that the products supplied by the Respondent had expiry dates on separate stickers.

The Commission deliberated over the report and ordered the Respondent to pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for supply of products likely to cause injury to health or physical harm to consumers, but also insufficient labelling of products.

### **1.8. ALLEGED UNCONSCIONABLE CONDUCT BY FIRST CAPITAL BANK**

On 28<sup>th</sup> July 2021, CFTC received a complaint on alleged unconscionable conduct by First Capital Bank.

Allegedly, on 7<sup>th</sup> July, 2021, the complainant received a phone call from a person who alleged that he works with the Respondent. The person invited the Complainant to join Mobile App service offered by the Respondent; which would enable her to remotely transact on her bank account. This process was done and accordingly, she received a message that her phone number was now connected to her bank account.

The Complainant was also sent a passcode for transacting on her account using the Mobile App, which she was told to keep secret. On 9<sup>th</sup> July 2021, at around 10:50 am, the Complainant received two notifications which indicated that her account had been debited K500,000.00; and then K11,000.00. During this period, she had not conducted any transaction through her account.

The Complainant engaged the Respondent, through the Lilongwe – Gateway Mall branch, where she was advised to fill in the complaint form; which she duly did. The Respondent assured the Complainant that the matter would be addressed at the soonest possible. However, despite her continued pursuit of the matter, the Complainant did not receive any substantive feedback or effective remedy from the Respondent.

CFTC investigated the matter under Section 43(1)(g) of the CFTA and found that the Respondent was negligent in implementing some of its security and control measures. The Respondent has introduced a new feature of delaying the activation of the customers' credentials on the Mobile App by 48 hours in order to verify the authenticity of its customers' transactions.

In the case of the Complainant, this test failed, but the Respondent went on to activate the Complainant's credentials without proper confirmation. Failure to adequately implement the safety and control measures makes the Respondent liable in this regard.

Furthermore, the manner in which the Respondent handled the Complainant's case was negligent; including the fact that the Complainant was not given substantive update on the progress of her complaint.

Following deliberations, the Commission noted that the conduct by the Respondent was unconscionable, and hence in contravention of section 43(1)(g) of the CFTA. Further that there are lapses in security control measures by the Respondent's bank, which results in their systems being frequently breached; and that there are several cases reported against the Respondent's Mobile App.

The Commission resolved and ordered as follows:

- The Respondent should refund the Complainant a sum of MK511,000.00;
- The Respondent should review its customer handling processes and ensure that customers are provided timely and sufficient information on their requests;
- The Respondent to promptly review and strengthen the security and control measures in the usage of the Mobile App;
- The Respondent should undergo a Compliance Programme with the Commission.
- The Secretariat should report the Respondent to the Registrar of financial services.

**1.9. ALLEGED UNCONSCIONABLE CONDUCT BY MOUNT MERU MILLERS (MALAWI); SUNSEED OIL LTD; MOTI OILS MALAWI LIMITED; AND AGRI – VALUE CHAIN (AVC) LIMITED.**

In April 2021, CFTC commenced investigations against six cooking oil manufacturing companies in Malawi on allegations of unconscionable conduct following complaints from the general public that the cooking oil manufacturing companies had been increasing prices of cooking oil without justification.

CFTC, during market surveillances also found that prices for all cooking oil products had indeed exponentially increased. The Commission commenced a two-pronged investigation on the matter: (i) unconscionable conduct through excessive pricing; (ii) collusive conduct. The determination made is pertaining to the allegations of unconscionable conduct. The Commission is yet to make a determination on allegations of collusive conduct.

The Commission investigated the matter under Section 43(1)(g) of the CFTA. The investigation found that the prices of the Respondent's products had indeed increased. However, there were justifiable economic factors that contributed to the price increase. Prices for crude palm oil on the international market had increased by 66.7% during the period under assessment. Prices for soya bean oil (extracted from soya beans) had also increased, as compared to prices of the soya bean oil between 2019-2020.

The investigations established that the following economic factors have also contributed to the price increase: exchange rate (increased by 7%); freight (shipping) costs had increased; fuel and electricity (increased by around 8%, and 10%); minimum wage (increased by 43%); re-introduction 16.5% VAT on imported crude oil; Prices of imported cooking oil products (e.g. Sunfoil and Delite) also increased exponentially; some of which increased by at least 100%.

The prices for the products by the four Respondents' increased by between 30% – 42%. There are some key factors of production whose prices increased more than the increase in cooking oil prices. There are also factors whose cumulative or collective impact would justify the prices increases.

The differences in price increments between the companies can partly be attributed to the differences in cost structures.

The Commission found no conclusive evidence that the four Respondents' conduct amounted to unconscionable conduct, through excessive pricing, hence the price increases were not in contravention of Section 43(1)(g) of the CFTA.

The Commission deliberated over the matter and resolved as follows:

- The case against the four Respondents should be closed as the price increase in the cooking oil is justifiable.
- The Commission should recommend to Ministry of Trade to take executive action to address the price increases.

#### **1.10. ALLEGED UNCONSCIONABLE CONDUCT BY AIRTEL MALAWI (KHETHEKHETHE BONUS)**

On 16<sup>th</sup> September, 2020, CFTC launched investigations against Airtel Malawi following several complaints from consumers against the Respondent.

The Complainants alleged that the Respondent's customers are entitled to a monthly bonus (Khethekhethethe Bonus) based on the consumption of a certain threshold of value for voice calls. Allegedly, for some time, the Respondent had been crediting customer accounts automatically with monthly bonuses earned during a particular month. This was easily accessible and beneficial to all eligible customers regardless of network availability.

However, it was alleged that the Respondent stopped automatically crediting customer accounts with monthly bonuses. Instead, it was alleged that customers were required to apply for the redemption of their bonuses on the 14<sup>th</sup> of every month. Consequently, customers who for one reason or another did not redeem their bonuses, had them forfeited.

It was further alleged that the unredeemed bonuses were appropriated and sold to other customers after the 15<sup>th</sup>. The Complainants contended that the decision to require customers to apply for earned bonuses was unfair, abusive and without conscience.

The Commission sent a Notice of Investigation and conducted investigations against Airtel for alleged unconscionable conduct under the Competition Fair Trading Act (CFTA). Section 43(1)(g) of the CFTA provides as follows: "A person shall not, in relation to a consumer, engage in unconscionable conduct in the trade of goods and services".

Airtel responded to Notice of Investigation on 5<sup>th</sup> October, 2020. Further, on 26<sup>th</sup> March 2021, the Respondent appeared before the Commission and informed the Commission that they believed that the basis of the case against the Respondent was a lack of network

on the 14<sup>th</sup> of the month resulting in failure to redeem the bonus by their customers. They, however, advised that customers could redeem bonuses from 10<sup>th</sup> to end of the month to be used from 14<sup>th</sup> to the end of the month. Therefore, it was their belief that a lack of network on the 14<sup>th</sup> did not prevent customers from redeeming their bonuses.

Airtel also informed the Commission that they communicated to the customers through various means like radio, website and print about the date when the bonus became payable and when it could be used, however, customers started sharing information amongst themselves that the bonus was redeemable on the 14<sup>th</sup> which was not correct.

The Respondent admitted that the bonus was earned and not given as a gift as the more telephone credit a customer used the more bonus they would get. The Respondent also said that the bonus was also a way of appreciating its customers for using their network.

The Commission however noted that the Respondent did not provide a satisfactory justification why the Respondent migrated from the previous regime where the Khethekethe Bonus was credited automatically to all qualifying customer accounts when it was due. By subjecting the said bonus to a further redemption process on a particular day, the Respondent disadvantaged consumers who on that material day could not redeem the bonus or access the network.

Based on the evidence before it, the Commission found that by changing the terms of accessing the bonus in a manner that disadvantaged consumers who had no mobile network coverage on the 14<sup>th</sup> of every month, the Respondent engaged in an unfair and unreasonable conduct. If the bonus was being granted in good faith, the Respondent should have been automatically crediting the qualifying customers' accounts, as had been the trend in the past.

By failing to promptly pay Khethekethe Bonus to all deserving consumers who reached the minimum threshold of K1,000 per month; and consequently forfeiting the same to the company's advantage, the Respondent acted unreasonably and without conscience.

In view of the foregoing, the Commission determined that the Respondent contravened Section 43(1)(g) of the CFTA.

The Commission therefore ordered Airtel to pay a fine of Two Billion One Hundred and Thirteen Million Ninety-Nine Thousand Six Hundred and Sixty Kwacha (MK2,113,099,660.00) for engaging in unconscionable conduct in the trade of goods and services. This represented the financial gain generated from the offence.

## **2.0. ANTI COMPETITIVE BUSINESS PRACTICES**

### **2.1. It was also reported that the Competition Directorate had dismissed or closed or referred to another institution the following 5 cases:**

- Alleged anti-competitive business practice by National Bank of Malawi PLC;
- Alleged anti-competitive business practice by National Registration Bureau;
- Alleged anti-competitive business practice by MR. John Mphedwa;
- Notification of Transfer of Nyasa Express Limited Shares from Rob McConaghy to 34 Dees East Limited; and
- Application of authorization of a merger involving Raiply Malawi Limited and Raiply (EPZ) Limited.