



PRESS RELEASE

FOR IMMEDIATE RELEASE 23RD DECEMBER, 2021

RECENT DECISIONS BY THE COMPETITION AND FAIR TRADING COMMISSION

The Competition and Fair Trading Commission (CFTC) held its 60th meeting in Salima on 26th November, 2021 to consider and adjudicate over cases under the Competition and Fair Trading Act (CFTA).

The Commission considered and adjudicated over a total of 58 cases, which included 50 cases of unfair trading practices and 8 cases of anti-competitive business practices.

During the sitting, the Commission ordered companies to pay fines totaling K11 million and refunds of over K2.9 million, for committing different offences.

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. ANTI COMPETITIVE BUSINESS PRACTICES

1.1. ALLEGED ANTICOMPETITIVE CONDUCT BY SMILE LIFE INSURANCE COMPANY LIMITED

On 15th June, 2021 the Commission commenced investigations against Smile Life Insurance Company Limited on alleged anticompetitive conduct following a TV advert broadcast that policy holders of Thandizo Plus Family Funeral Policy provided by the Respondent could access funeral services through Taprama Funeral Services only. However, investigations established that this was not correct and that the Respondent enters into MOUs with other funeral service providers.

The Commission thus ordered that the case should be closed as there was no evidence of anti-competitive conduct.

2.0. UNFAIR TRADING PRACTICES

2.1. ALLEGED MISREPRESENTATION OF PRODUCTS AND MISLEADING CONDUCT BY TRUST FOODS COMPANY

It was alleged that Trust Foods Company engaged in misleading conduct and misrepresentation of products as they were supplying rice branded as Kilombero when the rice in question was not pure kilombero rice. The investigations established that the rice that the Respondents supplied on the market was not pure Kilombero and thus the labelling of the rice was misleading to consumers.

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

2.2. ALLEGED MISREPRESENTATION OF PRODUCTS AND MISLEADING CONDUCT BY NANO INVESTMENTS

It was alleged that Nano Investments was supplying “Nano Cooking Oil” in 2ltr bottles which was advertised as “Preservative Free” and yet it had preservatives. Investigations found that the allegations were true and further that the Malawi Bureau of Standards (MBS) did not authorize the Respondents to use the labels that they were using due to the misleading information.

The Commission thus ordered the Respondent to pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000) for engaging in misrepresentation of products and misleading conduct and a fine of Five Hundred Thousand Malawi Kwacha (MK500,000) for improper labelling of products.

2.3. ALLEGED SUPPLY OF PRODUCTS THAT ARE LIKELY TO CAUSE INJURY OR PHYSICAL HARM TO CONSUMERS BY CITY SUPERMARKET, SANA CASH & CARRY MEGA STORE, SANTA PLAZA AND FOOD LOVERS SUPERMARKET (BLANTYRE)

In July 2021, Tiger Brands Manufacturing Company recalled some of its products due to packaging defects which compromised their safety for human consumption. The Commission issued a public notice in this regard on 29th July, 2021 instructing all traders in Malawi to immediately withdraw the products under the barcodes specified by the manufacturer.

On 29th July, 2021 CFTC carried out market inspections (the Respondents' shops except Food Lovers Supermarket were inspected) and found that the Respondents were offering for sale some of the recalled products.

Consequently, the Respondents were ordered to remove the products in question from shelves and to stop selling them to customers. However, on 8th October, 2021 during a second shop inspection on recalled Tiger Brands (which included Food Lovers Supermarket), the CFTC found that the Respondents were still stocking some of the recalled Tiger Brand products.

Investigations established that the Respondents' conduct contravened Section 43(1)(e) of the CFTA and put the health of consumers at risk by supplying potentially harmful products which had been recalled by the manufacturer.

The Commission thus ordered that the Respondents should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for supply of products which are likely to cause injury to health or physical harm to consumers and a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for failure to comply with a directive or order lawfully given by the Commission, or any requirement lawfully imposed under the CFTA.

2.4. ALLEGED MISLEADING CONDUCT AND SUPPLY OF PRODUCTS LIKELY TO CAUSE INJURY OR HARM TO CONSUMERS BY BOWLER BEVERAGES LIMITED

The Commission commenced investigations against Bowler Beverages Company Limited for supplying water under the brand name Aqua Pure which had expired in 2014 according to the label on the bottle. It was also alleged that the water was supplied in a 20 litres bottle, but the label on the bottle indicated that the volume was 2 litres. Investigations established that the allegations were true and hence the conduct was in violation of sections 43(1)(d) and 43(1)(e) of the CFTA.

The Commission thus ordered the Respondent to pay a fine of Five Hundred Thousand Malawi Kwacha (K500,000.00) for engaging in misleading conduct.

2.5. ALLEGED EXCLUDING LIABILITY FOR DEFECTIVE GOODS, FAILURE TO OFFER WARRANTY OR GUARANTEE AND UNCONSCIONABLE CONDUCT BY HEING LONG TRADING.

The Commission commenced investigations against Heing Long Trading on allegations that they excluded liability for defective goods. The investigations established that the Complainant purchased four solar panels from the Respondents' shop located at Bwalo Lanjobvu in Lilongwe, at a total cost of MK196,000.00 which did not work but when the complainant tried to get redress from the Respondent he was not assisted. It was thus established that the Respondents' conduct contravened Section 43(1)(b) and 43(1)(g) of the CFTA.

The Commission thus ordered the Respondent to pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for excluding liability for defective goods.

2.6. ALLEGED EXCLUDING LIABILITY FOR DEFECTIVE GOODS AND FAILURE TO GIVE WARRANTY OR GUARANTEE ON GOODS FOR LONG USE BY LEEN INVESTMENTS.

The Commission commenced investigations against Leen Investments following allegations that the Respondent excluded liability for defective goods. The investigations established that the complainant purchased a 32 inch plasma Television screen from the Respondent's shop located in Limbe, Blantyre at K184,000.00 which developed a fault within one week of the purchase. The Respondent exchanged this for another TV which also developed a fault. When the Complainant tried to get a refund, the Respondent refused.

It was established that the conduct of the Respondent contravened Section 43(1)(b) of CFTA hence the Commission ordered that the Respondent should refund the Complainant the sum of Two Hundred and Four Thousand Kwacha (MK204,000.00) used to purchase the TV and pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000) for engaging in excluding liability for defective goods.

2.7. ALLEGED EXCLUDING LIABILITY FOR DEFECTIVE PRODUCT BY MAPETO TYRES

The Commission commenced investigations against Mapeto Tyres on allegations of excluding liability for a defective product. The investigations established that the complainant purchased two Pirelli tyres from Mapeto Tyres which got damaged within weeks of using them. When the Complainant engaged the Respondent for a possible

remedy, the respondent refused to provide any assistance. It was also established that the tyre was manufactured in 2013, and that the tyre had an effective useful span of seven years and was therefore expired.

The Commission found that the Respondent's conduct was a violation of Section 43(1)(b) of the CFTA. Following the Commission's intervention, the Respondent refunded the Complainant the sum of K160,000 which was the full payment for the subject tyres.

The Commission ordered the Respondent to pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for engaging in excluding liability for defective goods;

2.8. ALLEGED UNCONSCIONABLE CONDUCT BY FIRST CAPITAL BANK

The Commission instituted investigations against First Capital Bank for alleged unconscionable conduct. The investigations established that in 2015 the Complainant opened an account with the Respondent's bank. However, due to high bank charges the Complainant stopped using the account after only using it for a month.

In 2021 the Complainant was awarded a contract under which he was required to mobilise MK48,000,000,00 FDH Bank failed to give him the loan because his account with the Respondent had arrears in bank charges amounting to MK1,002,721.47.

The Commission found that there was inconclusive evidence to determine whether or not the Complainant had indeed submitted a request to close the account as alleged, as such they could not fault the Respondent in this regard. However, the Commission found that the Respondent should have engaged the Complainant pertaining the accumulated bank charges on his dormant account that kept accumulating for years as well as the need to clear them and the consequences for failure to do so. They should also have given him a chance to clear them before referring the debt to Credit Reference Bureau.

The Commission found that the Respondent's conduct amounted to unconscionable conduct in contravention of section 43(1)(g) of the CFTA and ordered that the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for engaging in unconscionable conduct.

2.9. ALLEGED UNCONSCIONABLE CONDUCT BY FIRST CAPITAL BANK

The Commission commenced investigations against First Capital Bank on allegations of unconscionable conduct. The investigations established that the Complainant received a call from a certain person, who claimed to be one of the Respondent's employees and had his private personal information that was held by the bank. This person invited him to register his bank account, on the Respondent's Mobile App transactions.

Thereafter, the Complainant received several messages on his phone indicating that there were some transactions being conducted on his account and yet he had not made any such transactions, as a result the complainant lost MK809,980.00 from his account to three mobile phone numbers.

The Commission found that the Respondent was negligent in implementing some of its security and control measures as the anonymous caller had the Complainant's private information that was held with the Respondent which resulted in the Respondent suffering loss.

The Respondent's mobile App did not have adequate security features which would prevent penetration of the system by fraudsters. Customer bank account transactions are supposed to be private and secure, and the general expectation is that they should not be accessed by a third party not in the bank's employ.

The Commission thus ordered the Respondent to refund the Complainant the sum of MK809,980.00 which was transferred from his bank account and to address the security concerns pertaining to their Mobile App as the Commission had received several similar complaints.

2.10. ALLEGED UNCONSCIONABLE CONDUCT BY INNOBUILD PRIVATE LIMITED

The Commission commenced investigations against Innobuild Private Limited on allegations of unconscionable conduct. Investigations established that Innobuild sold the same piece of land to two different people, one of which was the complainant. When the complainant tried to obtain a refund, the Respondent failed to refund the money to the Complainant.

The Commission found that the Respondent's conduct was in violation of Section 43(1)(g) of the CFTA and ordered the Respondent to pay to the Complainant the balance of MK1,100,650.00 and the interest thereon as per the agreement between the parties. Further, to pay a Fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for engaging in unconscionable in the trade of goods and services.

2.11. ALLEGED EXCLUDING LIABILITY FOR DEFECTIVE GOODS BY MYSTERY WELDING AND FABRICATION ENGINEERING COMPANY

The Commission commenced investigations against Mystery Welding and Fabrication Engineering Company following allegations that they excluded liability for defective goods. The investigations established that the Complainants paid the Respondent MK823,000 (out of the agreed K1,000,000.00) for a groundnut shelling mill that the Respondent agreed to manufacture according to certain specifications. However, the

shelling mill was not manufactured according to those specifications, furthermore it did not function properly, however the Respondent failed to refund the Complainants for the same.

The Commission found that the Respondent's conduct violated Section 43(1)(b) of the CFTA and ordered that the Respondent should refund the Complainants a sum of K823,000.00 which was part payment for the mill and should pay a fine of Five Hundred Thousand Malawi Kwacha (K500,000.00) for engaging in exclusion of liability for defective goods. Further, because the Respondent had not cooperated with the Commission during investigations, the Respondent was ordered to also pay a fine of Five Hundred Thousand Malawi Kwacha (K500,000.00) for being uncooperative with the Commission.

2.12. ALLEGED UNCONSCIONABLE CONDUCT BY KALARIA HARDWARE CENTRE

The Commission commenced investigations against Kalaria Hardware Centre on allegations of unconscionable conduct. The investigations established that the Complainant entered into a lay-by purchase agreement to purchase iron sheets from the Respondent. However, when she tried to later collect the sheets she had paid for, the Respondent demanded that the Complainant should pay extra money as the price had increased.

The Commission found that the Respondent's conduct was unconscionable and therefore in violation of Section 43(1)(g) of the CFTA as the Parties never agreed that the price would change at any given time before collection of the products paid for.

The Commission thus ordered the Respondent to pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for engaging in unconscionable conduct in carrying out trade in goods or services.

2.13. ALLEGED MISLEADING CONDUCT, UNCONSCIONABLE CONDUCT AND SUPPLY OF PRODUCTS THAT ARE LIKELY TO CAUSE INJURY OR PHYSICAL HARM TO CONSUMERS BY NOORTEX LIMITED

The Commission commenced investigations against Noortex Limited on allegations of engaging in misleading conduct, unconscionable conduct and supply of products likely to cause injury or physical harm to consumers. The investigations established that the complainant bought a bale of underwear from the Respondent's shop in Bwalo Lanjobvu, Lilongwe at MK 80,000.00. Upon opening the bale, the Complainant found vests, trousers and t-shirts. When the Complainant complained to the Respondent, she was offered to buy the bale at MK70,000 instead. The Complainant, however, refused the offer and

asked for a full refund, since the bale supplied was inconsistent with what she had requested.

The Commission noted with concern, that the Respondent was supplying second hand underwear, which was banned by the Government through the Ministry of Trade.

The Commission also found that the Respondent's conduct amounted to misleading conduct which is in contravention of section 43(1)(d) of the CFTA. The Commission thus ordered the Respondent to pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for engaging in misleading conduct, unconscionable conduct and supply of products that do not comply with a consumer safety standard as prescribed by law.

2.14. ALLEGED MISLEADING CONDUCT AND OFFER OF PRIZES WITH NO INTENTION OF GIVING BY MEDICAL AID SOCIETY OF MALAWI (MASM)

The Commission commenced investigations against Medical Aid Society of Malawi in the administration of a pensioner's scheme/account. The investigations established that the Complainant joined the Respondent's medical scheme on 1st January 2005 on VIP scheme, then later changed to Executive scheme up to 2018 when he further changed to EconoPlan scheme.

It was also established that the Respondent introduced an offer of 50% reduction in monthly fees as pension benefit to the Respondent's members who have been MASM members for 15 years continuously; and attained the age of 65 years. When the complainant reached the age of 65 and applied to enjoy the discount in 2019 he did not receive a response.

According to the Respondent, a member's fee would be reduced only on the scheme that the member had been on for the last 3 years, whereas the complainant had changed his scheme. However, this important qualification was not highlighted on the Respondent's flyer or their website nor was it mentioned in the Respondent's 20-minute media program with Mibawa TV.

The Commission found that the Respondent did not provide adequate information pertaining to the 50% discount to allow consumers to make informed decisions about the offer, as was the case with the complainant who remained with MASM in the hope that he would enjoy the discount at age of 65. The Commission deemed the Respondent's conduct as unfair to the consumer and a violation of Section 43(1)(d) of the CFTA.

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