



PRESS RELEASE

FOR IMMEDIATE RELEASE 27th APRIL, 2022

RECENT DECISIONS BY THE COMPETITION AND FAIR TRADING COMMISSION

The Competition and Fair Trading Commission (CFTC) held its 61st meeting on 28th March, 2022, to consider and adjudicate over cases of anti-competitive business practices and unfair trading conduct.

The Commission adjudicated over a total of 69 cases, which included 55 cases of unfair trading practices and 14 cases on anti-competitive business practices.

During the sitting, the Commission ordered companies to pay fines and refunds totaling K11.89 million, for committing different offences under the Competition and Fair Trading Act (CFTA).

This statement provides a summary of the Commission's determinations on some of the cases on unfair trading practices.

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APOCHE ITIMU

ACTING EXECUTIVE DIRECTOR

CASES ON UNFAIR TRADING PRACTICES

1.1. Alleged Unconscionable Conduct by Old Mutual Pension Services Company Limited

CFTC received a complaint against Old Mutual Pension Services Company Limited on unconscionable conduct in carrying out trade in services.

The Complainant alleged that terms and conditions of the Protektor account included that after two years, he would be allowed to withdraw 50% of the account's total amount upon maturity in September, 2021. However, the Respondent informed the Complainant that he could no longer withdraw the 50% as to do so would violate the Pensions Act 2011.

Following deliberation, the Commission found that the Respondent's assertion was correct but that the Respondent erred in not having provided the complainant with that information in 2011 when the Pensions Act was enacted. The Commission thus ordered the Respondent to pay a fine of MK500,000.00 for engaging in unconscionable conduct.

1.2. Alleged Supply of Products Likely to Cause Injury or Harm to Consumers by Peoples Trading Centre

CFTC commenced investigations against Peoples Trading Centre on allegations of supply of products likely to cause injury or harm to consumers following findings of a market inspection. The Commission found that the Respondent was stocking recalled Tiger Brands canned vegetable products; specifically, KOO, Hugo's and Helderberg canned vegetable products at one of its supermarkets at Lilongwe Shopping Mall in spite of the manufacturer's product recall which was also communicated to the public by CFTC.

Following deliberation, the Commission found the Respondent liable and issued the following orders against them:

- i. That the Respondent should pay a fine of MK500,000.00 for supply of products which are likely to cause injury to health or physical harm to consumers.
- ii. That the Respondent to pay a fine of MK500,000.00 for failure to comply with a directive or order lawfully given, or any requirement lawfully imposed under the CFTA.

1.3. Alleged Misleading Conduct and Unconscionable Conduct by King Steel Limited

CFTC received a complaint alleging unconscionable conduct by King Steel Limited. The Commission found that on 10th May 2020, a complainant purchased 28 iron sheets from the Respondent's shop in Lilongwe at MK885,000.00. The Complainant did not want to collect the iron sheets immediately, and hence agreed with the Respondent to keep the iron sheets at their premises.

When the Complainant later went to collect his iron sheets, the Respondent refused to give him the iron sheets citing that it had taken too long for him to collect the iron sheets and yet no time frame was ever agreed between the Parties.

Following deliberation, the Commission found the Respondent liable and issued the following orders against the Respondent:

- i. That the Respondent should give the Complainant all the 28 iron sheets that he purchased and duly paid for.
- ii. That the Respondent should pay a Fine of MK500,000.00 for engaging in unconscionable conduct in the trade of goods and services.
- iii. That the Respondent should pay a fine of MK500,000.00 for failing to cooperate with the Commission during its investigations.

1.4. Alleged Unconscionable Conduct and Misuse of Market Power by Central Poultry (2000) Limited

CFTC launched investigations against Central Poultry (2000) Limited for alleged unconscionable conduct and misuse of market power in the supply of day old chicks.

There were two complainants in the matter. The Commission found that one complainant ordered 160 day old chicks from Central Poultry at a total cost of MK104,000.00 and paid a deposit amount of MK90,000.00.

When she went to collect the chicks, Central Poultry requested her to pay a top-up amount of MK8,000.00 on the premise that the Respondent had increased prices.

Another complainant ordered 110 broiler chicks from Central Poultry and paid a total sum of MK66,000.00. However, prior to the agreed date of collection, Central Poultry requested her to make an additional payment of MK11,000.00, also on the premise that the price had increased.

Following deliberation, the Commission not liable for unconscionable conduct but found the Respondent liable for misuse of market power and issued the following orders against the Respondent:

- i. That the Respondent should refund the first complainant a total sum of MK8,000.00.**
- ii. That the Respondent should refund the second complainant a total sum of MK11,000.**
- iii. That the Respondent should pay a fine of MK500,000.00 for engaging in abuse of market power or market dominance.**

1.5. Alleged Misleading Conduct; Insufficient Labelling; And Supply of Products Likely to Cause Injury to Health or Physical Harm to Consumers by Chipiku Plus

CFTC commenced investigations against Chipiku Plus, on allegations of misleading conduct; insufficient labelling; and supply of products likely to cause injury to health or physical harm to consumers.

The Commission found that the Respondent was stocking ORI Vienna Cocktails which were potentially harmful products which did not comply with consumer safety standards and product labelling standards as they had two different labels with different packaging dates on them.

Following deliberation, the Commission found the Respondent liable and issued the following orders against the Respondent:

- i. That the Respondent should pay a fine of MK500,000.00 for engaging in misleading conduct.**
- ii. That the Respondent should pay a fine of MK500,000.00 for supplying products that are likely to cause injury or physical harm to consumers.**

1.6. Alleged Misleading Conduct by Central Poultry (2000) Limited

CFTC commenced investigations against Central Poultry (2000) Limited for alleged misleading conduct, following findings of an inspection conducted by the Commission at CP Feeds shop in Lilongwe. The Commission found that the Respondent was selling bags of poultry feed which were grossly underweight.

Following deliberation, the Commission found the Respondent liable and issued the following ordered the Respondent to pay a fine of K500,000.00 for engaging in misleading conduct.

1.7. Alleged Supply of Product Which Is Likely to Cause Injury to Health or Physical Harm to Consumers by Suncrest Creameries Limited

CFTC commenced investigations against Suncrest Creameries Ltd. on allegations of supplying a product likely to cause injury or physical harm to consumers.

The Commission found that, on 2nd December 2020, the complainant in the matter purchased packets of 250mls “Long Life Full Cream UHT Milk” in Lunzu which was bitter and sour to taste, with black insects inside. The alleged product was manufactured by the Respondent.

The conformance tests conducted on the product by the MBS revealed that the milk product had a microbial contamination, which made it unsafe for human consumption.

The Commission also found that the Respondent silently recalled the product from the market which was tacit acknowledgement that indeed the product was defective and unsafe for human consumption.

Following deliberations, the Commission found the Respondent liable and issued the following orders against them:

- i. That the Respondent should pay a fine of MK500,000.00 for supplying products which are likely to cause injury to health or physical harm to consumers, and products that do not meet consumer safety standards.**
- ii. That the Respondent should pay a fine of MK500,000.00 for being uncooperative with the Commission's investigations.**

1.8. Alleged Unconscionable Conduct by Vanguard Life Assurance Company Limited

CFTC received a complaint alleging unconscionable conduct by Vanguard Life Assurance Company.

The Commission found that the Complainant had a "Cash Builder Policy" with the Respondent, covering a period between 1st November, 2008 to 1st November, 2018. Upon the maturity of the Policy, the Complainant wanted to cash out.

The Respondent however declined to process the Complainant's payment on the grounds that the maturity date on the policy was an error and was instead supposed to mature in year 2030 in compliance with the Pensions Act (2011) Amendment.

The Commission found that cashing out the policy would be in violation of the Pensions Act but that the Respondent should have communicated to the Complainant the implications of the Pensions Act in 2011.

Following deliberation, the Commission found the Respondent liable for unconscionable conduct and ordered the Respondent to pay a fine of MK500,000.00 for engaging in unconscionable conduct.

1.9. Alleged Misleading Conduct and Unconscionable Conduct by Platinum Finance Limited

CFTC commenced investigations against Platinum Finance Limited on allegations of misleading and unconscionable conduct.

The Commission found that the complainant purchased a King Corolla motor vehicle from the Respondent at MK2,800,000.00. However, after two weeks the Complainant was informed that the car he had purchased belonged to another client and hence he was supposed to return it.

The Complainant chose that he be refunded of his money. However, instead of making a full refund to the Complainant, the Respondent indicated that they would be refunding him MK500,000.00 every month up until the whole amount was paid back. The Complainant refused this arrangement, and demanded an immediate full refund.

Following deliberation, the Commission found the Respondent liable and ordered the Respondent to pay a fine of MK500,000.00 for engaging in misleading conduct and unconscionable conduct.

1.10. Alleged unconscionable Conduct Against 15 schools: (1) Chisapi Private School; (2) King's Foundation Private Schools; (3) Lilongwe Pentecostal Church Christian School; (4) Stance Independent Primary School; (5) Michaels Private Primary School; (6) Kirk Range Private School; (7) Maranatha Boys Academy; (8) Kawale SDA Primary School; (9) Haven Modern Academy School; (10) Nkhotakota Private Secondary School (T/A Musa Private School) ; (11) Athens Private School; (12) Nzeru Private

School; (13) Hope Christian School; (14) St Paul's Minor Seminary; and (15) Nazarene Christian Schools

Between August and September 2021, the CFTC received several complaints against the schools outlined above. The complainants were premised on 2 issues:

- i. Demand for payment of full school fees for third term even though students would be staying at the school for a very short period; and
- ii. Withholding of MANEB examination IDs for students whose parents and guardians did not complete payment of school fees.

Following investigations, the Commission found that:

- i. there is justification for demanding full school fees regardless of the amount of time the candidates were to attend classes. This is based on the consideration that the school operations costs are dominated by fixed costs that remain payable regardless of the length of the term or the number of students at school. There was thus no conclusive evidence that the conduct of demanding full school fees amounted to unconscionable conduct.
- ii. the conduct of withholding MANEB IDs was not reasonable and neither was it justifiable by law as such the conduct was unfair towards the students; and an infringement of their rights as consumers and was therefore in contravention of Section 43(1)(g) of the CFTA.

Out of the 15 schools investigated, the Commission found that all the schools (except two) engaged in the conduct of demanding full school fees for the third term. On 11 of the schools, the Commission did not find exclusive evidence that they engaged in the conduct of withholding MANEB examination IDs for students that had not completed paying school fees. These schools were: (1) Chisapi Private School; (2) King's Foundation Private Schools; (3) Lilongwe Pentecostal Church Christian School; (4) Stance Independent Primary School; (5) Michaels Private Primary School; (6) Kirk Range Private School; (7) Maranatha Boys Academy; (8) Kawale SDA Primary School;

(9) Haven Modern Academy School; (10) Nkhotakota Private Secondary School (T/A Musa Private School) and (11) Nzeru Private School. The schools were found not liable of unconscionable conduct.

In view of the findings, the Commission resolved to close the cases against the schools.

The Commission, however, found that 2 out of the 15 schools that were investigated engaged in the conduct of withholding MANEB IDs from students that had not completed paying school fees in full. These were as follows: (1) Athens Private School; and (2) Hope Christian School. The schools were thus found liable of unconscionable conduct, contrary to section 43(1)(g) of the CFTC.

In view of the findings, the Commission issued Orders for the said schools to Cease and Desist from engaging in such conduct.