



PRESS RELEASE

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RECENT DECISIONS BY THE COMPETITION AND FAIR TRADING COMMISSION

The Competition and Fair Trading Commission (CFTC) held its 62nd meeting in Lilongwe on 1st July, 2022, to consider and adjudicate over cases under the Competition and Fair Trading Act (CFTA).

The Commission considered and adjudicated over a total of 74 cases. The cases included 60 cases on unfair trading practices, two cases on mergers, and 12 cases on anti-competitive business practices.

During the sitting, the Commission ordered companies to pay over K20 million in fines and refunds. Specifically, eight companies were ordered to pay fines totaling K6 million while four companies were ordered to pay refunds of over K14 million to consumers, 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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ACTING EXECUTIVE DIRECTOR

1.0. MERGERS

1.1. Acquisition of Stock and Rolling Assets from Lonagro Malawi Limited by Tata Zambia Limited in Malawi's Agriculture and Construction Equipment Industry.

On 13th January 2022, CFTC received an application for authorization of a proposed acquisition of Stock and Rolling Assets from LONAGRO Malawi by TATA Zambia Ltd.

According to the information submitted by the parties, the proposed transaction involves TATA Zambia Limited acquiring control over a John Deere business from LonAgro Malawi Limited, which operates under Lonrho Africa Limited and is actively involved in the supply of agriculture and construction equipment.

Following deliberations, the Commission authorized the merger.

1.2. Acquisition of People's Trading Centre from Press Corporation PLC by Tafika Holdings Limited on Competition in Malawi Retail Industry.

On the 21st March 2022, the Secretariat received an application for authorization of a proposed acquisition of 100% equity shares in Peoples Trading Centre (PTC) Limited, a subsidiary of Press Corporation Plc, by Tafika Holdings Limited.

According to the information submitted by the parties, Tafika Holdings Limited, is a South African based company with business operations in soft commodities trading and distribution. The company supplies products such as macadamia nuts, maize, soya beans, rice, pepper, cotton and tea.

People's Trading Centre is a subsidiary of Press Corporation PLC. Press Corporation PLC is a public company incorporated in Malawi; and is listed on the Malawi Stock Exchange. Being the largest holding company in Malawi,

According to the information submitted by the Parties, the proposed transaction involves Tafika Holdings acquiring 100% equity stake in PTC currently held by Press Corporation (99%) and Press Nominees Limited (1%).

According to the information gathered during the investigations, the transaction will not result in a change of market structure by reducing the number of players on the market. Further, it was established that the transaction will not create a dominant player nor will it create a vigorous player.

It was also established that PTC was not thriving on the market and was at the verge of collapsing hence this transaction was timely to save a failing firm. No negative public concerns were registered during the merger investigations.

Following deliberations, the Commission authorized the proposed acquisition of 100% shares in People's Trading Centre from Press Corporation PLC by Tafika Holdings Limited.

2.0. ANTI-COMPETITIVE BUSINESS PRACTICES

2.1. Proposed Exclusive Dealing Arrangement by Blantyre Water Board

On 26th October, 2020, the Commission commenced investigations against Blantyre Water Board for alleged anticompetitive business practices in carrying out trade in goods, services and works.

The Complainant alleged that, he applied for new water connection at Blantyre Water Board(BWB) and paid a connection fee. He was thereafter provided with two suppliers from which he could source the water connection materials.

The Complainant further alleged that, he was warned that unless he produced a receipt from one of the suppliers, his application for water connection would not be processed.

The Complainant felt that this conduct of providing names of suppliers by BWB was restricting competition and subjecting consumers to high prices and leaving them with no alternative choice hence sought the intervention of the Commission on the matter.

The investigation established that BWB does not engage in Exclusive Dealing Arrangement with suppliers of water connection materials.

The investigation also established that BWB advertises the invitation to prequalification of suppliers in widely circulated newspapers annually in order to allow eligible suppliers or bidders to participate in the prequalification process. Therefore, they do not engage in the alleged anti-competitive business practice.

However, the investigation established that the prequalification of the suppliers helps BWB to improve its efficiencies. The investigation observed that customers could benefit from the system however, consumers should be allowed to select a supplier of their choice as long as the supplier is able to supply materials which meet the technical specifications sought by BWB.

Following deliberations, the Commission resolved among others that the Respondent should allow Consumers to buy the water connection materials from other sources as long as the materials meet the required technical specifications.

2.2. Alleged Anticompetitive Business Practice by Stansfield Motor Services Ltd.

On 23rd November 2021, the Commission received a complaint from Paramount Holdings Limited against Stansfield Motor Services Limited, on allegations of restrictive business conduct in the supply of Yamaha products in Malawi.

Stansfield Motor Services Limited, is a newly established company that came into operation around 2019 when the Stansfield Motors Limited exited the market.

The Complainant further alleged that prior to the exit, Stansfield Motors Limited held an exclusive dealership agreement with Yamaha Motor Co. of Japan for supply of Yamaha products in Malawi, which according to their understanding, automatically ended at the time the company went insolvent and exited the market in 2019. However, the Respondent adopted it and started enforcing it illegally to prohibit other firms from supplying Yamaha products in the country.

The Complainant submitted that the Respondent, in disguise of the alleged exclusive dealership agreement issued letters threatening to take legal actions against any firm found supplying Yamaha products in the country.

The investigation found that the alleged conduct by the Respondent puts other suppliers at a disadvantage, as it restricts them access to Yamaha market and thereby causing distortion in competition.

Following deliberations, the Commission found that the Respondent's conduct amounted to a violation of Section 32 (1), of the CFTA, which prohibits anticompetitive behavior and ordered the Respondent to pay a fine of Five Hundred Thousand Kwacha (MK500,000) for engaging in anti-competitive conduct.

2.3. Proposed Exclusive Dealing Arrangements by Airtel Malawi PLC

On 15th November, 2021, the Commission received an application from Airtel Malawi Plc for an exclusive dealing arrangement in the wholesaling of its recharge vouchers in Malawi.

Following deliberation, the Commission resolved to authorise the proposed exclusive dealing arrangements between Airtel Malawi Plc and its dealers and agents that offer mobile network services through Airtel Money branches and Kiosks subject to fulfilment of the following conditions:

- Airtel Malawi Plc will not enforce the restrictions in the exclusive dealing agreement to agents and dealers that will not enter into exclusive dealership arrangements with them.
- Airtel Malawi Plc will not abuse its dominant position when executing its agreements with its agents opting to fall under this exclusive dealing arrangement.

- Airtel Malawi Plc will have a robust system to address concerns of its agents and dealers including salient issues of Technical backstopping, start-up capital support and periodic review of commissions.

2.4. Proposed Exclusive Dealing Arrangements by Airtel Mobile Commerce Limited

The Commission received an application from Airtel Mobile Commerce Limited (AMCL) for an exclusive dealing arrangement of its mobile money services.

The application followed complaints brought to the Commission by Airtel Money agents, which suggested that AMCL was implementing agreements that prohibited them from selling competitor's products within Airtel branded shops and kiosks.

The Commission, suspecting that the alleged conducts might have the purpose or the likely effect of substantially lessening competition in the mobile money services market to the detriment of consumers but also Small and Medium Enterprises, requested AMCL to submit its application for exclusive dealing arrangements for assessment and subsequent authorization by the Commission.

Following investigations and deliberations the Commission resolved to authorise the proposed exclusive dealing arrangements between AMCL and its agents that operate Airtel Money branches and Kiosks subject to fulfilment of the following conditions:

- Airtel Mobile Commerce Limited will not enforce the restrictions in the exclusive dealing agreement to agents and dealers that will not enter into exclusive dealership arrangements with them;
- Airtel Mobile Commerce Limited will not abuse its dominant position when executing its agreements with its agents; and
- Airtel Mobile Commerce Limited will have a robust system to address concerns of its agents including start-up support and commissions from time to time.

3.0. UNFAIR TRADING PRACTICES

3.1. Alleged Supply of Products which are Likely to Cause Injury to Health or Physical Harm to Consumers by Warpack Private Limited

On 19th November, 2021, CFTC commenced investigations against Warpack Private Limited for alleged supply of products likely to cause injury or harm to consumers.

During inspections, the Commission found recalled “KOO, Hugo’s and Helderberg canned vegetable products” at Food Lovers Supermarket in Blantyre, Santa Plaza Supermarket, City Supermarket and Sana Mega Store in Lilongwe. During the investigations on these cases all the parties submitted that the said products were supplied to them by the Respondent.

Investigations showed that the Respondent engaged in the supply of products likely to cause injury to health or physical harm to consumers and did not effectively and thoroughly effect the product recall of the products. The conduct by the Respondent was in contravention of section 43(1)(e) of the CFTA. The Respondent was also found liable under Section 50(a) of the CFTA because of they failed to supply information to the Commission when requested to do so.

The Respondent was largely uncooperative during the investigation instituted by the Commission.

After deliberations the Commission made the following Orders against the Respondent:

- That the Respondent should pay a fine of Five Thousand Malawi Kwacha (MK500,000.00) for engaging in supply of products likely to cause injury or harm to consumers.
- That the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for failing to comply with a directive from the Commission given in the Public Notice.
- That the Respondent should pay a fine of Five Hundred Thousand Kwacha (MK500,000) for failing to supply information to the Commission during investigations.

3.2. Alleged Misleading Conduct, and unconscionable conduct by Malawi Airlines.

On 24th January 2022, CFTC commenced investigations against Malawi Airlines on allegations of misleading conduct, and unconscionable conduct.

The Complainant alleged that his son, was travelling from Malawi to Gaborone, Botswana through Malawi Airlines. The passenger was travelling abroad for the first time and unaccompanied.

In this regard, the Complainant procured an “accompaniment service” for the passenger from the Respondent, at US\$50.

However, the Complainant felt the service was inadequate due to the following:

- The company just dropped the passenger at the information or check-in desk for the flights to Botswana, without providing the necessary guidance and assistance to him;
- As a result of the insufficient logistical assistance, the passport for the passenger was lost along the way;
- The passenger was forced to return to Malawi; and later embark on a fresh journey; which resulted in the Complainant incurring unplanned costs.

These costs included: one-way ticket from RSA to Malawi (MK638,000.00); Express Passport Fee (MK160,000.00); and PCR Covid-19 Test fee (K37,500.00).

Following deliberations, the Commission found that the Respondent engaged in misleading conduct and therefore contravened Section 43(1)(d) of the CFTA; and resolved as follows:

- That the Respondent should reimburse the Complainant of all the additional expenses that he incurred. These are the costs of one-way ticket from South Africa to Malawi at MK638,000.00; Express Passport Fee at MK160,000.00; and PCR Covid-19 Test fee at K37,500.00;
- That the Respondent should pay a fine of Five Hundred Thousand Kwacha (MK500,000.00) for engaging in a misleading and unconscionable conduct;

3.3. Alleged Misleading Conduct, Offer of Prizes with no Intention of Supplying them; and Unconscionable Conduct by Build Africa Ltd

On 27th April, 2022, CFTC commenced investigations against Build Africa Ltd on allegations of misleading conduct, offer of prizes with no intention of supplying them and unconscionable conduct.

The Complainant alleged that, in December 2021, he purchased a “40 inch LED Television screen (TV)” from the Respondent, which was on promotional sale at a price of MK275,000.00.

However, when the Complainant went to collect the TV, it was found that the product was not in stock but the Respondent committed to supply the TV when back in stock. However, the TV did not come back in stock.

Later in March 2022, the Respondent offered to refund the Complainant; but the Complainant refused; and demanded to be supplied the TV.

The Commission found that the Respondent engaged in unconscionable conduct in selling a TV to the complainant that was not in stock, however, the Commission found that the offer of a refund was a sufficient remedy for the Complainant. The Commission

thus ordered that the Respondent should refund the amount of money they were ready to pay the Complainant in March 2022.

3.4. Alleged Supply of Products Likely to Cause Injury or Harm to Consumers; Misleading Conduct and Improper Labeling of Products by Lilongwe Beverages Limited

On 24th January 2022, CFTC commenced investigations against Lilongwe Beverages Limited, on allegations of supply of products likely to cause injury or harm to consumers; misleading conduct and improper labeling of products.

The Complainant alleged that he purchased “SPA High Quality Drinking Water”. However, the taste was different from what he was used to. The water had 2 sets of information on manufacturing date and expiry date. Additionally, the manufacturing date was manually manipulated, by physically altering the “1” at the end and changing it to a “2” with a pen.

Investigations conducted established that the Respondent supplied products which were insufficiently and improperly labelled.

After deliberations, the Commission ordered the Respondent to pay a fine of five hundred thousand kwacha (MK500,000) for engaging in the supply of products that were insufficiently and improperly labelled.

3.5. Alleged Insufficient Labelling of Products by Takondwa Commodities

On 29th November, 2021, CFTC commenced investigations against Takondwa Commodities, on allegations of insufficient labelling of products. The Commission found 50kg bags of “Omnia Fertilizer” which did not have any expiry dates indicated on them.

The investigations conducted established that the Respondent engaged in conduct of supply of fertilizers which did not have expiry dates. Further, the Respondent was uncooperative during investigations.

The Commission resolved as follows:

- That the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000) for supplying products with no expiry dates; but also products that do not comply with consumer safety standards prescribed under any written law.
- That the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for their uncooperative conduct during the investigation.

3.6. Alleged Misleading Conduct, Quoting Prices (Fees) In Foreign Currency and Unconscionable Conduct by UNICAF University

On 1st February 2022, the Commission commenced investigations against UNICAF University on allegations of misleading conduct, unconscionable conduct and quoting prices (fees) in foreign currency.

The Complainant alleged that the institution charges school fees in foreign currency (USD) and not Malawi Kwacha. The Complainant felt that this arrangement was a challenge since there is no certainty on the exact fees the students have to pay.

The Complainant alleged that the Respondent charges extra fees, in form of technology fees. However, the Respondent does not provide an explanation and justification for payment of the same.

After deliberations the Commission resolved as follows:

- That the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for engaging in unconscionable conduct.
- That the matter should be reported to Ministry of Finance for further action regarding their conduct of pricing their services in foreign currency without authorization from a competent authority.

3.7. Alleged Misleading Conduct and Unconscionable Conduct by Autocom Japan - Lilongwe Office

On 16th March, 2022, CFTC commenced investigations against Autocom Japan-Lilongwe Office, on allegations of misleading conduct and unconscionable conduct. The Complainant alleged that he purchased a vehicle (Nissan Latio) through Autocom JP - Lilongwe office for which he paid US\$2,700 (MK2,216,700.00). The Complainant also paid MRA duty amounting to MK1,174,702.00. The Complainant further paid delivery fees amounting to MK585,000.00. However, the vehicle was never delivered.

Following deliberations, in the first case, the Commission made the following resolutions:

- That the Respondent should reimburse the Complainant the amount of US\$2799 or the current Malawi Kwacha equivalent, which is the cost of the motor vehicle;
- That the Respondent should reimburse the Complainant the amount of MK585,000 which is the cost of clearance and delivery fees;
- That the Respondent should reimburse the Complainant the amount of MK1,174,702 which is the amount paid to MRA for import duty of the motor vehicle;

- That the Respondent should pay a fine of Five Hundred Thousand Kwacha (MK500,000) for engaging in unconscionable conduct.

3.8. Alleged Bait Selling and Unconscionable Conduct by Autocom Japan – Lilongwe Office

On 16th March, 2022, CFTC commenced investigations against Autocom Japan-Lilongwe Office on allegations of bait selling and unconscionable conduct. The Complainant alleged that in July 2021, she purchased a Toyota Passo at \$2400. However, the vehicle was never delivered.

The Commission made the following resolutions:

- That the Respondent should reimburse the Complainant the amount of US\$7050 or the current Kwacha equivalent, which is the cost of the 3 motor vehicles;
- That the Respondent should reimburse the Complainant the amount of MK1,021,394 which is the amount paid to MRA as VAT for two vehicles;
- That the Respondent should pay a fine of Five Hundred Thousand Kwacha (MK500,000) for engaging in unconscionable conduct and bait selling;

3.9. Alleged Misleading Conduct and Unconscionable Conduct by Speed Courier and Logistics

On 7th January, 2022 the Commission received a complaint against Speed Courier & Logistics Ltd for allegedly engaging in misleading conduct and unconscionable conduct.

The Complainant alleged that on 19th October 2021, he contracted the Respondent to transport a parcel that contained tender documents from Blantyre to Northern Region Water Board in Mzuzu.

Considering the urgency of the tender documents, the Complainant expressly indicated that the parcel should be delivered on 20th October 2021 by 12 noon.

However, the Respondent did not deliver on time, as they had committed. This resulted in the Complainant missing out on the deadline of the submission of the tender.

Following deliberations, the Commission found that the Respondent engaged in misleading and unconscionable conduct. The Commission thus resolved as follows:

- That the Respondent should pay a fine of Five Hundred Thousand Malawi Kwacha (MK500,000.00) for engaging in misleading conduct and unconscionable conduct;
- That the Respondent should refund the Complainant the sum of MK2,000 paid as service fees.