



PRESS RELEASE

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RECENT DECISIONS BY THE COMPETITION AND FAIR TRADING COMMISSION

The Competition and Fair Trading Commission (CFTC) held its 63rd meeting in Lilongwe on 10th October, 2022, to consider and adjudicate over cases under the Competition and Fair Trading Act (CFTA).

The Commission considered and adjudicated over a total of 73 cases. The cases included 63 on unfair trading practices, one merger, and nine cases on restrictive business practices.

During the sitting, the Commission ordered four companies to pay fines totaling K2.5 million while five companies were ordered to refund over K2 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. CASES ON UNFAIR TRADING PRACTICES

ALLEGED MISLEADING CONDUCT AND UNCONSCIONABLE CONDUCT BY DAAM PROJECT

On 6th May, 2022 CFTC received a complaint against DAAM Project on alleged unconscionable conduct in carrying out trade in goods or services

It was alleged that the Respondent released an advert calling upon willing primary school teachers to be trained on “Inclusive Education”.

In the said advert, the Respondent indicated that they would provide a “tablet computer” as the training was meant to be done online.

All applicants were required to be MK20,000 per month from their salaries as tuition fee.

The Complainant applied and enrolled onto the programme, and tuition fees were deducted from his monthly salary from March 2021 up to April 2022 and have accumulated to MK260,000.00.

However, the Respondent did not give the Complainant the promised tablet to enable him effectively participate in the training. As a result, the Complainant was unable to participate in the training.

Following deliberations, the Commission found the Respondent liable for unconscionable conduct and issued the following orders:

- That the Respondent should refund the Complainant an amount of MK320,000.00 which is all the money that was deducted from his account in form of tuition fees for the programme.
- That the Commission should report the Respondent to the Ministry of Education and the National Council for Higher Education (NCHE) for effective redress.

1.2. ALLEGED UNCONSCIONABLE CONDUCT BY WELLA MEDICAL AID SOCIETY OF MALAWI

In November, 2021, CFTC received a complaint alleging unconscionable conduct against Wella Medical Aid Society (WEMAS).

It was alleged that the complainant’s mother, who was under the medical insurance cover with the Respondent, got sick and died in September 2021 due to COVID-related complications.

The Complainant indicated that they had to make hastened funeral arrangements due to the nature of the death and undertook to pay for all costs relating to the hospitalization but also the funeral for the mother. The Complainant submitted a claim to the Respondent for the said costs. However, the Respondent did not process the claim indicating that they did not believe that all the claims made were genuine. The Commission found that the services accessed by the Complainant were performed and they made payments that the Respondent was supposed to refund under the medical scheme for which receipts had been provided.

Following deliberations, the Commission found the Respondent liable for unconscionable conduct and issued the following orders:

- That the Respondent should refund the Complainant the cost of medical services incurred during the hospitalization of the Complainant's mother, in line with the terms and conditions of the medical insurance scheme. The refund should be in reference to the actual cost of MK403,487.00.
- That the Respondent should refund to the Complainant the amount of MK1,000,000.00 being part amount paid towards funeral expenses for the Complainant's mother.
- That the Respondent should pay a fine of MK500,000.00 for engaging in unconscionable conduct.

1.3. ALLEGED MISLEADING CONDUCT AND UNCONSCIONABLE CONDUCT BY SOUTHERN REGION WATER BOARD

On 25th May, 2022, CFTC commenced investigations against Southern Region Water Board on allegations of misleading conduct and unconscionable conduct.

The Complainant alleged that the house he rents has had a faulty water meter whose readings have been stuck at one spot since July 2017. As such, the Respondent put the house on average billing arrangement for purposes of computing water consumption.

By the time the Complainant moved into the house, water consumption was pegged at 15 kiloliters per month. However, in April 2021, the Respondent revised monthly consumption upwards, without notice, to 20 kiloliters per month, with a corresponding bill of K9,649.78.

The Commission established that the Respondent used estimated water consumption to estimate the Complainant's bill and that in May 2021, the Respondent increased the estimated water bills by double, which was on the higher side. However, upon establishing the actual consumption levels, the Respondent did not undertake to properly bill the customer for the months he had been overbilled or provide him with a refund for the amounts he had been overbilled.

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

- That the Respondent should refund the Complainant the amount equivalent to 126m3 in lieu of the overestimated water consumption.
- That the Respondent should pay a fine of Five Hundred Thousand Kwacha (MK500,000.00) for engaging in misleading conduct;
- That the Respondent should pay a fine of Five Hundred Thousand Kwacha (MK500,000) for engaging in unconscionable conduct.

1.4. ALLEGED MISLEADING CONDUCT AND UNCONSCIONABLE CONDUCT BY OLD MUTUAL LIFE ASSURANCE COMPANY (MALAWI) LIMITED

On 14th March 2022, CFTC commenced investigations against Old Mutual Life Assurance Company on allegations of misleading conduct; and unconscionable conduct.

The Complainant submitted that he bought a policy from the Respondent in 2010 which was expected to mature in 2020. He further alleged that as of March 2021, he had invested a total sum of MK9,801,430.00.

The Complainant also submitted that he made three part withdrawals totaling to MK4,968,000.00; and received about MK2,288,000.00 as the final fund value despite his expectation to receive a benefit of about K15,233,180.00 as per agreement, and a further upward adjustment of the fund value as a reflection of the depreciation of the Malawi Kwacha. In total, the Complainant received a sum of MK7,256,000.00 which is far lower than the nominal amount invested/saved (MK9,801,430.00). When the Complainant approached the Respondent for redress, he was not assisted. The Commission found that there were incorrect deductions that had been made and that a refund was only made to the customer following the Commission's interventions and not when the Complainant approached the Respondent on the same.

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

- That the Respondent should pay a fine of K500, 000.00 for engaging in unconscionable conduct.
- That the Respondent should Cease and Desist from engaging in unconscionable conduct.

1.5. ALLEGED SUPPLY OF PRODUCTS LIKELY TO CAUSE INJURY OR HARM TO CONSUMERS AND IMPROPER LABELLING OF PRODUCTS BY CAPITAL FOODS LIMITED

On 22nd May, 2022, CFTC commenced investigations against Capital Foods Limited on allegations of supply of products likely to cause injury or harm to consumers and improper labelling of products.

This followed findings of a market inspection that was conducted by the Commission at Chipiku Stores in Mzuzu on 19th May, 2022 and in Mzimba on 20th May, 2022.

The Commission conducted the market inspections at the said shops and found that the Respondent was supplying a product called 'FlouRich Fortified Wheat Flour', which was improperly and suspiciously labeled.

The Commission found that the products' "expiry date" labels were printed on separate tags (stickers) stapled to the packaging material, and not on the packaging material itself. This was in spite of the fact that the Respondent had previously been ordered not to engage in such conduct.

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

- That the Respondent to pay a fine of MK500,000.00 for failure to comply with a directive or order lawfully given by the Commission under the CFTA.

1.6. ALLEGED MISLEADING CONDUCT AND UNCONSCIONABLE CONDUCT BY PEP STORES

On 12th October, 2021, CFTC received a complaint alleging misleading conduct and unconscionable conduct by PEP Stores.

The Complainant alleged that, on 12th October, 2021, he visited Pep Stores shop located at Mangochi, where he wanted to buy "Men's Thong Sandals". The said product had a price tag of MK2,690.00, however, when he took the sandals to pay at the counter, he was asked to pay the amount of MK3,350.00.

Investigations found that the Respondent sold products at a price that was higher than the price that was displayed for the product.

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

- That the Respondent should refund the Complainant the amount of MK600.00 which was over and above the displayed price;

- That the Respondent should cease and desist from engaging in misleading and unconscionable conduct.

1.7. ALLEGED EXCLUDING LIABILITY FOR DEFECTIVE GOODS, MISLEADING CONDUCT AND UNCONSCIONABLE CONDUCT BY SMB ELECTRONICS

On 13th June, 2022, CFTC commenced investigations against SMB Electronics on allegations of excluding liability for defective goods, misleading conduct and unconscionable conduct.

The Complainant alleged that in September 2019, the Respondent supplied him with a “glass panel” for a “43 Inch Hinse LED TV”, since the Complainant was in Mzuzu, he inquired with the Respondent. The Complainant alleged that the Respondent assured the Complainant that the glass panel would fit onto the TV. The price was MK75,000.00.

However, the technician installing the panel found that the glass panel did not match with his TV, but also that the glass panel was not compatible with the model TV. The Complainant returned the product and demanded an effective redress of the matter. The Respondent committed to make a full refund of the money, however, the Respondent never effected the refund for 2 years.

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

- That the Respondent should refund the Complainant the sum of MK75,000.00 which he paid for the glass panel.
- That the Respondent should cease and desist from engaging in excluding liability for defective goods, misleading conduct and unconscionable conduct.

1.8. ALLEGED EXCLUDING LIABILITY FOR DEFECTIVE GOODS, MISLEADING CONDUCT AND UNCONSCIONABLE CONDUCT BY YELLOWMAN MACHINES

On 13th June, 2022, CFTC commenced investigations against Yellowman Machines on allegations of excluding liability for defective goods, misleading conduct and unconscionable conduct.

The Complainant alleged that, on 1st April 2021, she purchased a “Soya Threshing Machine” from the Respondent; at K600,000.00.

The Complainant discovered that it could not function properly. As a remedy, the Respondent exchanged the defective “Soya Threshing Machine” with a “Soya Grading Machine”; whose cost was K300,000. However, the Soya Grading Machine, as well, did

not function properly, as it was equally defective. The Respondent gave a partial refund of K300,000.00. The Respondent did not fully refund the Complainant.

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

- That the Respondent should refund the Complainant the sum of MK300,000.00 which is the outstanding payment for the soya threshing machine. The said amount should be made to the Respondent within 30 days from the date this order will be made.

2.0. ANTI COMPETITIVE BUSINESS CONDUCTS

2.1. ALLEGED ANTICOMPETITIVE CONDUCT BY KELFOODS

On 1st December, 2021, CFTC commenced investigations against Kelfoods on alleged anticompetitive conduct. The investigation was instituted following findings of a market study into the poultry sector in Malawi.

Specifically, the market study established that the supply of day-old chicks to small poultry producers is tied to the purchase of feed from Kelfoods. Further, according to the information in the report, the small poultry producers alleged that Kelfoods refuses to supply them day-old chicks especially during the months leading to the festive season.

In view of the information, the Commission perceived that the alleged conduct by Kelfoods was restricting competition in the supply of day-old chicks and was unfair to consumers.

However, CFTC's analysis of the findings of the investigation revealed that Kelfoods did not prevent competition through tying and bundling by making the supply of day-old chicks to small poultry producers dependent on the purchase of feed from their company.

Having found no evidence against the allegations levelled against the Respondent in this matter, the Commission resolved to close the matter against the Respondent.

2.2. PROPOSED ACQUISITION OF KAPANI'S PRIME POULTRY AND ABATTOIR BY GO FRESH LIMITED

On 7th March, 2022, CFTC received an application for authorization of acquisition of a poultry production and processing business of Food and Feed Wholesalers Limited, t/a Kapani Enterprises by Go Fresh Limited.

Go Fresh Limited, is a new-start-up company registered under the laws of Malawi in 2019. The company is actively involved in the supply of meat and meat products including chicken on retail. The company also supplies Fast Moving Consumer Goods (FMCG) and runs a supermarket/butchery at old Cold Storage premises along Likuni road.

The target undertaking, on the other hand is Food and Feed Wholesalers Ltd, trading as Kapani Supermarkets. The company was established in 1998, and is one of the largest meat processing plants in Malawi, operating an abattoir, meat-processing factory for the processing of beef and sheep, etc. The company is also actively involved in broiler production and processing and supplies to the markets both dressed chickens and live grown chickens.

Among others, the following were the findings of the Commission's investigations:

- Currently the chicken market in Malawi is controlled by Central Poultry with around 49% of market share.
- The combined market shares for the merged entity: Go Fresh Limited + Kapani, would be 9%. This implies that the transaction on its own will not change the structure of the market nor create a dominant player.
- Go Fresh is affiliated to Central Poultry. The proposed transaction would lead to accumulation of 58% market shares by Central Poultry. However, it was established that Kapani poultry business was failing and so the acquisition would save a failing firm.

Following deliberations, the Commission resolved to authorise the proposed acquisition of Kapani's Prime Poultry and Mchezi Abattoir businesses by Go Fresh Limited.