# PRESS RELEASE

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## RECENT DECISIONS BY THE COMPETITION AND FAIR TRADING COMMISSION

The Competition and Fair Trading Commission (CFTC) held its 68th meeting on 5th April, 2024, to consider and adjudicate over cases on unfair trading conducts and anti-competitive business practices.

The Commission adjudicated over a total of 107 cases, which included 87 cases on unfair trading practices, out of which two have been referred to the Office of the Director of Public Prosecutions (DPP) to commence criminal proceedings. Out of the 107 cases, 86 were closed at preliminary stage for among others lack of merit and early resolution of the issues at hand.

Among the cases adjudicated upon, 20 cases were on anti-competitive business practices out of which two were on local mergers and 11 were on regional mergers to be determined upon by the COMESA Competition Commission.

This statement provides a summary of the Commission's determinations on the major cases on unfair trading conducts and anti-competitive business practices.

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LLOYDS VINCENT NKHOMA

**EXECUTIVE DIRECTOR**

## A. CASES ON UNFAIR BUSINESS CONDUCTS

### 1. ALLEGED MISREPRESENTATION OF PRODUCTS, MISLEADING CONDUCT, SUPPLY OF GOODS LIKELY TO CAUSE INJURY OR HARM TO CONSUMERS AND UNCONSCIONABLE CONDUCT BY BIRTHDAY SHOP

On 21st October, 2022, CFTC commenced investigations against Birthday Shop on alleged misrepresentation of products, misleading conduct, supply of products likely to cause injury to health or physical harm to consumers and unconscionable conduct.

The investigations found the following:

- That Birthday Shop were stocking counterfeit spirituous alcoholic products, technically misrepresented to be Castel Malawi products. The conduct by the Respondents amounted to misrepresentation of products, and hence in contravention of Section 43(1)(c) and (d) of the CFTA.

- That Birthday Shop supplied uncertified products that are likely to pose serious health risks to consumers and contravened Section 43(1)(e) of the CFTA.

- Some of the products were expired hence in contravention of section 43(1)(g) of the CFTA.

Upon deliberations, the Commission made the following orders:

- The Respondents should be referred for criminal prosecution to the Office of the Director of Public Prosecution (DPP) for misrepresenting products; engaging in misleading conduct; suppling products likely to cause injury or harm to consumers; and for engaging in unconscionable conduct in the trade of goods.

- The Respondents should be ordered to cease and desist from misrepresenting products; engaging in misleading conduct; suppling products likely to cause injury or harm to consumers; and for engaging in unconscionable conduct in the trade of goods.

### 2. ALLEGED WITHHOLDING OF GOODS AND UNCONSCIONABLE CONDUCT BY CHIPIKU STORES

On 5th February, 2024 CFTC officially commenced investigations against Chipiku Stores on allegations of engaging in withholding of goods and unconscionable conduct in the supply of sugar.

The investigations found that Chipiku engaged in withholding of goods by refusing to supply a complainant sugar when it was available. Submissions by Chipiku failed to justify their action, and was found that the conduct by the Respondents was unfair, unjustifiable and irrational and was therefore in contravention of Section 43(1)(a) and (g) of the CFTA.

Upon deliberations, the Commission made the following orders:

- The Respondents should be referred for criminal prosecution to the Office of the Director of Public Prosecution (DPP) for withholding products and engaging in unconscionable conduct in the trade of goods.

- The Respondents should cease and desist from withholding products and engaging in unconscionable conduct in the trade of goods.

## 3. ALLEGED MISLEADING CONDUCT AND UNCONSCIONABLE CONDUCT BY LILONGWE TECHNICAL COLLEGE

On 29th November, 2023, CFTC received a complaint alleged misleading conduct and unconscionable conduct by Lilongwe Technical College.

Investigations revealed that the Complainant paid the examination fees for his ward within the timeframe which was stipulated by the Respondents. However, the Respondents' submission showed that they delayed in submitting their forex application forms at a bank, which was done on 25th October, 2023.

Investigations established that the Respondents demanded additional payments from students to cover for shortfalls that arose because of the delay in submitting forex applications after currency realignment.

The investigations established that the conduct by the Respondents of demanding additional payments from students to cover for shortfalls that arose was unjustified. The forex value misalignment occurred due to the Respondents' internal inefficiencies in handling examinations fees, and not necessarily dues to the students' negligence.

Upon deliberations, the Commission made the following orders:

- The Respondents should rescind their decision demanding for additional payments from the students.
- The Respondent should refund all students who made additional payments requested by the Respondents.
- The Respondents should cease and desist from engaging in unconscionable conduct in the trade of services.

## 4. ALLEGED MISLEADING CONDUCT AND UNCONSCIONABLE CONDUCT BY GREENWING HEALTH INSURANCE

On 12th December, 2023, CFTC commenced investigations against Greenwing Capital Financial Services for alleged misleading and unconscionable conduct.

Investigations conducted established that Greenwing through their agent, misled the Complainant into subscribing a wrong beneficiary on the health insurance scheme. The Complainant was misled to add a brother on the scheme and was duly paying the monthly contributions for him, thus entitling his brother to the applicable death benefit, which was inconsistent with the terms and conditions of the scheme. In this regard, the Respondents conduct was misleading and contravened Section 43(1)(d) of the CFTA.

Further, it was reported that instead of giving the Complainant the deserved benefits under the scheme upon the death of the brother, the Respondents refused to do so. They merely offered him a compensation of MK25,000, which was also not paid out to the complainant. In this regard, the Respondents acted unreasonably and without conscious in contravention of Section 43(1)(g) of the CFTA.

Upon deliberation, the Commission made the following orders:

- The Respondents should provide the Complainant, Mr. Gift Friday, with the applicable monetary equivalent for death compensation under the Bwenzi Health Plan Scheme; and
- The Respondents should cease and desist from engaging in misleading conduct and unconscionable conduct in the trade of services.

## 5. ALLEGED MISLEADING AND UNCONSCIONABLE CONDUCT BY MALAWI SCHOOL OF GOVERNMENT

On 20th December, 2023, CFTC commenced investigations against the Malawi School of Government, Kanengo Campus on allegations of misleading conduct and unconscionable conduct.

The investigations established that the Malawi School of Government had advertised invitation for application for cohort 12 for the second time and required applicants who applied upon the first advert to also pay a non-refundable fee of MK10,000 yet the re-advertisement was due to its internal processes.

The investigations established that the first advertisement run before the Respondents' council had been constituted, and when the council met on 18th April, 2023, they resolved to disregard the first advertisement as it did not capture all enrolment criteria.

The Commission observed that the conduct of the Respondents was unconscionable, and thus in contravention of Section 43(1)(g) of the CFTA. However, there was no conclusive evidence to show that the Respondents engaged in misleading.

Upon deliberation, the Commission made the following orders:

- The Respondents should refund the Complainant and the other 80 affected applicants who made additional application fees of MK10,000,00 each in response to the Respondents' re-advertisement. Further, the Respondents should provide a detailed report to the CFTC on the refunds made.
- The Respondents should cease and desist from engaging in unconscionable conduct.

## B. CASES ON ANTI-COMPETITIVE BUSINESS PRACTICES

### 1. REPORT ON THE ASSESSMENT OF THE IMPACT OF THE PROPOSED EXCLUSIVE DEALING ARRANGEMENT AND RESALE PRICE MAINTENANCE BY CASTEL MALAWI

On 28th June, 2023, CFTC received an application from Castel Malawi Limited for an Exclusive Dealing Arrangement (EDA) and Resale Price Maintenance (RPM) with its distributors of clear beer and spirits.

The assessment of the transaction revealed the following as regards EDA:

- That it will not substantially affect competition in the relevant market.
- That it will improve product/service availability/delivery across the country.
- That it will enable Castel to transfer knowledge and skills to its distributors through the continuous specialized training support.
- That it will not affect the distribution and availability of rival products since there are several distribution channels including own distributor networks that traders use to reach out to their respective customers.
- That there are some distributors that are non-exclusive, and would be offering the competitors' products.

The assessment also established the following as regards RPM

- That the fixed resale price maintenance is tantamount to price fixing and, therefore, anticompetitive as distributors are not allowed to compete on price.

Upon deliberation, the Commission authorized the proposed Exclusive Dealing Arrangement (EDA) and Resale Price Maintenance (RPM) between Castel and its distributors with condition that Castel should be recommending a maximum resale price maintenance to allow distributors compete below the set price.

**2. REPORT ON THE ASSESSMENT OF THE IMPACT OF THE PROPOSED ACQUISITION OF 100% EQUITY OF GAS COMPANY LIMITED BY C-QUEST CAPITAL LIMITED**

On 11th September, 2023, CFTC received an application for authorization of a proposed acquisition of 100% share capital of Gas Company Limited by C-Quest Capital Limited.

The assessment of the transaction established that the transaction would not raise any competition concerns as it will not result in a change of the market structure in the short-to-medium term; and would not create a dominant player. Further, the investigations did not reveal any negative public interest concerns.

Upon deliberations, the Commission authorised the proposed acquisition of 100% of the share capital (equity) of Gas Company Limited by C-Quest Capital Limited without conditions.

**3. REPORT ON THE ASSESSMENT OF THE IMPACT OF THE PROPOSED ACQUISITION OF 25% OF EQUITY SHARES IN LILONGWE DAIRY (2001) LIMITED BY NORFUND ON COMPETITION IN MALAWI'S DAIRY INDUSTRY**

On the 29th August, 2023, CFTC received an application for authorization of a proposed transfer of 25% of equity shares in Lilongwe Dairy (2001) Limited by Norfund.

The assessment established that the transaction would not result in a change of the market structure; would not substantially lessen competition on the market; and would not create a dominant player. It was also established that the transaction may create a vigorous player and that there were no negative public interest concerns.

It was further established that Lilongwe Dairy invested a soy milk plant and that they were striving to become an export-oriented company, and that soy milk has export potential.

Upon deliberations, the Commission authorised the proposed transfer of 25% of equity shares in Lilongwe Dairy (2001) Limited by Norfund without conditions.