

## **Peer Review Report for Malawi**

---

### **Questions for the Competition and Fair Trading Commission of Malawi**

#### **IGE Peer Review Session**

**8 July 2021**

**15:00-17:00 CEST**

**Commissioner Tembinkosi Bonakele**

**Competition Commission of South Africa**

#### 2.1. Resources

The European Union is graciously supporting the competition policy reform in Malawi, while UNCTAD is assisting CFTC to undertake this Peer Review. How has government resourced the CFTC? Is this sustainable, if not, what needs to change?

***Although government provides resources to the Commission, the resources so provided are not adequate to fully support the Commission's work.***

***It was only during its first year of operation that government provided adequate resources to the Commission that matched the demand. Since then, the gap between the resources provided and demand for the same keeps growing wider every year averaging 27% of the resource requirements as at the end of 2019/20 financial year.***

***This trend is in part due to increased advocacy and awareness work that the Commission is doing which requires substantial funds. In the early years of the Commission's establishment, the Commission's focus was on raising awareness about the Competition and Fair***

**Trading Act. As a result of increased awareness, the number of cases of alleged infringement of the law increased such that the Commission case load progressively increased.**

**The other reason for the financial shortfalls is the growing number of employees. The Commission started with seven employees, two of which were on secondment from government (Ministry of Trade). Currently the Commission has 25 people in its employ.**

**The Commission largely supplements government funding with merger notification fees, but also administrative fines. However, these alternative resource avenues have proven unpredictable and unreliable as, for example, only few mergers take place in the country.**

**In order to improve its financial constraints, the Commission has identified several potential areas of possible revenue streams, e.g collection of a levy, legislative amendment pertaining to the fines that are charged for violation of the CFTA (currently the maximum fine is pegged at approximately US\$600) and investing in our own office building to avoid rentals.**

## 2.2. Participation in the African Fora

The African economic integration has been greatly boasted by the implementation of the African Intercontinental Continental Free Trade Area Agreement. Competition authorities, on the other hand, have established the African Competition Forum (ACF) in part to support the economic integration. Are you satisfied with the CFTC participation in continental bodies in general and ACF in particular?

**The Commission has participated in a few events and projects organized by the African Competition Forum since around 2015. For instance, the Commission participated in**

***capacity building workshops organised by the ACF in Tanzania, South Africa and Malawi respectively.***

***Further, the Commission also participated in the joint market studies that were coordinated by the ACF in 2017. Under this project, the Commission successfully conducted market studies in the construction industry and fertilizer sectors in Malawi. These studies were very beneficial to Malawi as they identified some of the key structural and regulatory bottlenecks to competitiveness in the two markets.***

***However, the Commission believes that its participation has not been satisfactory and that there is more that can be done to enhance its participation in ACF. For instance, the Commission could benefit more from bilateral cooperation through other Competition Authorities within the ACF through information sharing and exchange visits.***

***Further, the Commission could continue engagements with ACF particularly in capacity building; technical expertise and joint market research programmes.***

**Mr. Chilufya Sampa, Chief Executive Officer**

**Zambia Competition and Consumer Protection Commission**

1. The peer review report suggests that the Malawi Growth and Development Strategy (MGDS) from the first to the third have not been as successful as should have in part because of policy inconsistency. What role does the competition and consumer policy play in framing the development strategies of the country?
  - ***The Commission is consulted by various Government ministries/agencies/institutions when formulating development strategies. During the consultations, the Commission advocates for pluralism in carrying out of trade in all sectors. To some extent, the Commission's***

***interventions have resulted in competitiveness and the entry of new players including multinationals in various markets. The Commission also disseminates information about the Competition and Fair Trading Act during the consultations.***

2. How equipped was the Competition and Fair Trading Commission (in terms of adequate legal provisions and other resources) to deal with the rise of anticompetitive trade practices (such as cartels and abuse of dominance) and unfair trade practices (such as consumer cases in e-commerce) caused by the Covid-19 pandemic that affected the global economy? Could you please share your successes and challenges with us.

- ***During the pandemic, the Commission saw a rise of excessive pricing of various items used in the prevention of Covid-19 such as: masks, sanitisers, gloves, vitamin supplements etc by suppliers in the pharmaceutical industry. The Commission effectively dealt with the offenders by issuing cease and desist orders, as well as fines.***
- ***The Commission had adequate financial and technical resources to address this challenge as it was one of the beneficiaries of funds from the Government that were meant to address the Covid-19 pandemic. The Commission used the funds to conduct monitoring of markets for anticompetitive and unfair trading practices as well as investigations.***
- ***However, the Commission experienced challenges in carrying out investigations due to the pandemic and the consequential restrictions. As a way of overcoming this challenge, the Commission used electronic communication, through access to online platforms such as its website, Whatsapp, and Facebook to reach out to the public.***

- ***However, the Commission did not have adequate expertise in dealing with e-commerce issues particularly in monitoring e-spaces and e-commerce activities as it did with the physical markets. As such, the Commission only undertook ex-post interventions in dealing with anticompetitive and unfair trading practices in e-commerce.***

**Prof. Eleanor Fox, NYU School of Law**

3. As you consider the possibility of amendments to your law, might you consider the composition of the Commission? In particular, is it a problem that the Commission is comprised of only one lawyer and only one economist? Might objective market and legal assessments be drowned out by business, commerce and trade interests? Would you propose to do anything about this?

***To date, the Commission has not experienced the drowning out of interests of any sector as a result of the composition of the Commission. All matters are discussed extensively and determinations/resolutions are based on substantive and factual evidence brought before the Commission.***

***In addition, the meetings of the Commission are also attended by the Ministry of Trade officials who have knowledge in economics. A lawyer employed by the Commission also sits in the meetings and where necessary, the Commission invites the Secretary for Justice for objective legal opinions.***

***In view of the foregoing, the law review process that is currently underway has not included proposals of change in composition of the Commission.***

4. Malawi is a small, narrow, landlocked country with a large border with Zambia, Mozambique and Tanzania. One would predict that cross-border mergers and cartels require similar evidence for assessment and have almost identical effects in each of the neighboring countries affected. One would also predict hidden and not-so-hidden border restraints procured by vested interests. To what extent and how deeply are you coordinating with your neighbors on these problems and do you have thoughts about how to save resources and increase agency effectiveness in enforcement and advocacy by collaborations?

***The Commission believes in collaborative efforts in dealing with concurrent competition and consumer protection issues both locally and across the country's borders. As such, the Commission has established, and continues to establish, relationships with sector regulators and agencies in the country and beyond through memoranda of understanding.***

***At the multilateral level, the Commission has a memorandum of understanding with COMESA Competition Commission (CCC).***

***Malawi is also a member of the SADC Standing Committee on Competition and Consumer Protection Law and Policy, and the African Competition Forum.***

***At the bilateral level, the Commission has cooperation agreements with Competition and Consumer Protection Commission of Zambia and the Fair Competition Commission of Tanzania. Malawi is however yet to enter into an agreement with Mozambique, with regard to competition and consumer protection regulation.***

***These regional cooperation platforms have proven to be cost-effective in the Commission's regulatory role over cross-border competition and consumer protection matters.***