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GENERAL NOTICE NO. 22

MINISTRY OF INDUSTRY AND TRADE

Public Notice

Appointment of Commissioners for the Competition and Fair Trading Commission

Pursuant to section 5 of the Competition and Fair Trading Act, it has pleased the President of the Republic of Malawi, His Excellency PROFESSOR ARTHUR PETER MUTHARIKA, to appoint the following eminent Malawians as Commissioners for the Competition and Fair Trading Commission—

1. MR. NELSON NSIKU
2. MRS. JOYCE MATAYA
3. MRS. DOROTHY CHAPEYAMA
4. MRS. ESMIE TEMBENU
5. DR. PATRICK KAMBEWA
6. MR. EDGAR TEMBO
7. MR. GEORGE NAPHAMBO
8. Secretary to the Treasury (*Ex-officio*)
9. Secretary to Industry and Trade (*Ex-officio*)
10. Director General—Malawi Bureau of Standards

The appointments are with effect from 10th November, 2019.

The Ministry of Industry and Trade would like to congratulate the new Commissioners on their appointment and wish them all the best as they commence their three year tour of duty.

PRINCIPAL SECRETARY

Ministry of Industry Trade and Tourism

GENERAL NOTICE NO. 23

COMPETITION AND FAIR TRADING COMMISSION

Public Notice

Board Decisions on Takeover/Merger Authorisation Applications

During the 54th Board Meeting that was held on 29th October, 2020 at Amayllis Hotel in Blantyre, the Board of Commissioners (the Board) for the Competition and Fair Trading Commission (the Commission) made

orders concerning applications for authorisation of mergers or takeovers pursuant to section 39 (1) of the Competition and Fair Trading Act (the Act).

In accordance with section 39 (3) of the Act, the Commission causes the following orders that the Board made on 29th October, 2020 to be published in the *Government Gazette*.

1. Takeover of Celtel Malawi Limited by Bharti Airtel Limited

The Board authorized the takeover of Celtel Malawi Limited by Bharti Airtel Limited.

The Board considered the Technical Committee's Chairperson's report regarding the takeover of Celtel Malawi Limited by Bharti Airtel Limited.

On 26th February, 2019, Airtel Malawi Limited submitted an application for takeover of Celtel Malawi Limited by Airtel Malawi Limited. This transaction came into effect in the country in the year 2010 in the mobile network sector. Notification to the Commission was delayed due to court proceedings. The transaction was notified to the Commission following a determination by the Supreme Court, which effectively sustained the Commission's order requiring the transaction to be notified. During investigations on the merger, the following were established—

(i) that the transaction did result in adverse changes to competition parameters in the relevant market;

(ii) that post-merger, the market has witnessed increase in network coverage, introduction of 3G and 4G networks, introduction of mobile money markets and improvement of data and connectivity services, and outsourcing of services in management of call centres and infrastructure;

(iii) increase in employment and relatively lower prices to consumers;

(iv) Potential entrants did not enter into the market largely due to lack of capital to finance their investments and operations.

2. Acquisition of Assets of Kulimba Cement Limited by Lafarge Cement (Malawi) Limited

The Board authorized the acquisition of Kulimba Cement assets by Lafarge Cement Malawi Limited.

The Board considered the Technical Committee's Chairperson's report on acquisition of Kulimba Cement assets by Lafarge Cement Malawi Limited ("Lafarge").

On 20th September, 2019, the Commission received an application for the authorization of the transaction from Lafarge. The assets involved in the transaction included the following—

(i) Primary jaw crusher 40tph. feed size<300 mm

(ii) Secondary impact crusher

- (iii) Raw Mill – 10tph
- (iv) Twin vertical shaft kilns – 75tpd each
- (v) Cement Mill – 5tph each
- (vi) Generator – 1100Kva
- (vii) Storage steel silos
- (viii) Two packing machines with one loading spout each
- (ix) Industrial hall with structural steel & cladding to cover the equipment
- (x) Administration Building
- (xi) Mobile equipment – one small loader and 2 tractors
- (xii) Gate house, weighbridge, water tank
- (xiii) Land

Upon assessment, the Commission established that the transaction would marginally change the market share of the acquirer from 27% to 28% hence it would not create a dominant player. It was also established that the transaction would result in a change of the market structure by reducing number of players in the markets but would not substantially lessen competition on the market. Furthermore, it was found that the transaction would create employment and new products. No negative public concerns were envisaged during the merger investigations.

3. Acquisition of Ss Poultry Agrotech Limited by Central Poultry (2000) Limited

The Board authorized, with conditions, the acquisition of SS Poultry Agrotech Limited by Central poultry (2000) Limited.

The Board considered the Technical Committee's Chairperson's Report on acquisition of SS Poultry Agrotech Limited ("SS Poultry") by Central Poultry (2000) Limited ("Central Poultry").

In March 2019, the Commission received an application for authorization of the proposed transaction. During the merger investigations, the Commission found the following—

- (i) that the proposed merger would result in change in market concentration of the poultry industry considering that the acquirer holds a large market share;
- (ii) that there are high barriers to entry in the market which affect the entry and expansion of new players in the industry. Further, there is no import competition. These findings weaken the competitive constraints for the merged entity.
- (iii) that the proposed transaction would increase the market share of Central Poultry (to 38% in Day old chicks market) hence enhancing its market power thereby increasing the likelihood for misuse of market power;
- (iv) that the acquisition would bring efficiency gains in terms of production capacity which among others will reduce waiting period for supply of day old chicks and lower prices for farmers;
- (v) that the target party was on the verge of collapse due to financial constraints. As such, the proposed transaction would help save the company and some jobs.

Owing to the negative competition concerns the transaction would raise, the Board authorized the merger subject to the following conditions—

- (i) That Central Poultry will not monopolize the supply of day old chicks by supplying half of the additional supply to its customers;
- (ii) That Central Poultry will uphold their commitment to enter into contracts with small scale producers for technical and training assistance in the production of broilers
- (iii) that Central Poultry will maintain the current employment levels at SS Poultry and Central Poultry businesses. Where it may be absolutely necessary to retrench employees, due process shall be followed and payments shall be made according to the country's labour laws.
- (iv) that Central Poultry will comply with regulations put forward by the Ministry of Industry, Trade and Tourism from time to time
- (v) that the parties will be under the surveillance of the Commission, as such a Memorandum of Understanding will be signed to ensure compliance.

4. Acquisition of Dairibord Limited by Lilongwe Dairy (2001) Limited

The Board authorized the acquisition of 100% shareholding in Dairibord Malawi Limited by Lilongwe Dairy (2001) Limited

The Board considered the Technical Committee's Chairperson's report regarding the proposed acquisition of 100% shareholding in Dairibord Malawi Limited ("Dairibord") by Lilongwe Dairy (2001) Limited ("Lilongwe Dairy").

On 26th April, 2019, the Commission received an application from Lilongwe Dairy for authorization of the transaction.

The acquiring firm, Lilongwe Dairy, is a company registered in Malawi, whose main line of business is processing of dairy products and fruit juices. Prominent products supplied by the company on the market include First Choice Fresh Milk, UHT Flavoured Milk, Flavoured Yoghurt, and Long Life Yoghurt drink, Flavoured Drinking Yoghurt, ghee, fruit flavoured drinks and sour milk drink commonly known as Chambiko. The company also supplies Enjoy fruit dairy blend juice and Sunpride 100% juice. The target firm, Dairibord, is a subsidiary of Dairibord Holdings Limited, a company that manufactures and markets quality food and beverage products. Dairibord supplies a range of dairy products such as fresh milk, UHT long life milk, Chambiko, ghee, yoghurts, fresh creams, ice creams, cheese, butter, different brands of fruit juices as well as mineral water. Dairibord already exited the Malawi market.

The Commission established that the merger would create a dominant player. However, the merger would save a failing firm and some jobs. It also established that the transaction would likely result in efficiencies that would benefit consumers. Furthermore, it was envisaged that the transaction would help to prevent negative financial, economic and social developments that could potentially arise if the target company would be closed.

5. Acquisition of Exploits University by Madison Holdings Limited

The Board authorised the acquisition of Exploits University Limited by Madison Holdings Limited

The Board considered Technical Committee's Chairperson's report on the acquisition of Exploits University Limited ("Exploits University") by Madison Holdings Limited ("Madison Holdings").

On 10th April 2019, the Commission received an application from Madison Holdings for authorization of the transaction. The acquiring firm, Madison Holdings, is a holding company for its wholly-owned Malawian subsidiaries. The subsidiaries include Madison Business Advisory (MBA), Madison Recruitment Services, Aspen Limited and Riverton University. The target firm, Exploits University is a private company incorporated with limited liability under the Companies Act (1984). Exploits University offers undergraduate programs and post graduate programs in Accounting, Health Science Systems, Logistic Supply Chain Management and Marketing. The university offers these programs at its two campuses in Lilongwe and Blantyre. Both universities had few students and the parties wanted to merge to increase their competitive advantage on the market.

Madison Holdings Limited intended to save two failing firms (Exploits and Riverton University) which would otherwise end up closing down due to low number of student enrolled to study. The Commission established that the transaction would result in change of market structure by reducing number of players in the provision of tertiary education by private universities. However, the change in the market structure would not likely have negative effects on the competition in the market. Furthermore, it was envisaged that the transaction would create a player that could favourably compete on the market with its competitors. Thus, the analysis showed that the transaction would result in pro-competitive and economic outcomes despite removing a player from the market.

JAMES KAPHALE
Executive Director

REVISION OF GOVERNMENT GAZETTE, PATENTS, AND TRADE MARKS JOURNAL PRICES AND SUBSCRIPTION RATES

Due to high production costs of material used in printing, government Press has found it necessary to revise the prices and subscription rates upwards of their products such as the Malawi Government Gazette, Government Notices, Bills and Acts, Patents and Trade Marks Journal and also postage charges for both domestic and abroad with effect from **1st January, 2018**

GOVERNMENT GAZETTE

Subscription rates—

Subscription per annum	..	K 135,000.00 (Malawi)
Subscription per annum	..	US\$1900 (Abroad)

Advertisement Rates and Notices—

Full page	..	..	K54,000.00
Full column	..	..	K36,450.00
Three-quarters column	..	..	K27,000.00
Half column	..	..	K20,250.00
One-third column	..	..	K 10,800.00
Quarter column	..	..	K 6,700.00

(a) General Notices Prices—

Page	Amount	Page	Amount
2	K500.00	40	K2,278.00
4	K600.00	44	K2,506.00
8	K700.00	48	K2,734.00
12	K800.00	52	K2,963.00
16	K900.00	56	K3,190.00
20	K1,000.00	60	K3,417.00
24	K1,100.00	64	K3,645.00
28	K1,200.00	68	K3,873.00
32	K1,800.00	72	K4,100.00
36	K2,050.00	76	K4,350.00

(b) Government Notices, Bills and Acts Prices—

Page	Amount	Page	Amount
2	K500.00	40	K2,278.00
4	K600.00	44	K2,506.00
8	K700.00	48	K2,734.00
12	K800.00	52	K2,963.00
16	K900.00	56	K3,190.00
20	K1,000.00	60	K3,417.00
24	K1,100.00	64	K3,645.00
28	K1,200.00	68	K3,873.00
32	K1,800.00	72	K4,329.00
36	K2,050.00	76	K2,200.00

Change of Name K6,750.00 per name

Deceased Estates K 500.00 per name

L. K. SIKWESE
Comptroller of Publications and
Printing Services

PATENTS AND TRADE MARKS JOURNAL

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Zomba
C. O. Banda
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THE OFFICIAL JOURNALS OF PATENTS, TRADE MARKS

AND DESIGNS

for

MALAWI

CLOSING HOUR FOR ACCEPTANCE OF COPY

Advertisers should note that the closing day for the acceptance of 'copy' is the last Wednesday of each month.

Any copy received after this day will be held over for the following month.

ADVERTISEMENT RATES

With effect from 1st July, 2016, rates for advertising are as follows—

Full column	..	..	..	K36,000
Three-quarters column	..	..	..	K30,000
Half column	..	..	..	K20,000
One-third column	..	..	..	K15,000
Quarter column or less	..	..	..	K 9,000

No Patent or Trade Mark advertisement will be accepted for publication in the Journals unless it is in the approved form and accompanied by proof of the authority of the Registrar of Patents or of Trade Marks, as the case may be, for publication.

No responsibility can be accepted for losses arising from omissions or typographical errors.

Manuscript of Advertisements should be written on one side of the paper only and not as a part of the covering letter. All proper names must be plainly incrimbed; in the event of any name being incorrectly printed as a result of indistinct writing, the advertisement can be republished only on payment of the cost of another insertion.

All cheques, bank drafts, postal orders or money orders must be crossed and made payable to the Government Printer, P.O. Box 37, Zomba.

SUBSCRIPTION RATES

The subscription rates for the combined Journals are as follows—

K51,000 within Malawi for 12 months.

US\$1,900 outside Malawi for 12 months.

The subscription year starts on 1 January and ends on 31 December each year.

Price per single copy K2,500.

Subscriptions are payable in advance through the Government Printer, P.O. Box 37, Zomba, Malawi.

Address correspondence to—

(1) Either the Registrar of Patents or the Registrar of Trade Marks (as the case may be), P.O. Box 100, Blantyre, Malawi, in connexion with all matters pertaining to Patents and Trade Marks.

(2) The Government Printer, P.O. Box 37, Zomba, Malawi, in connexion with subscriptions and publication of Patents and Trade Marks advertisements. Blantyre, Malawi, in connexion with all matters pertaining to Patents and Trade Marks.