

**IN THE MATTER BEFORE THE BOARD  
OF THE COMPETITION AND CONSUMER  
PROTECTION COMMISSION**

**CASE NO. CCPC/AOD/038**

**BETWEEN**

**AIRTEL MOBILE COMMERCE ZAMBIA LIMITED T/A  
AIRTEL MONEY**

**RESPONDENT**

**AND**

**COMPETITION AND CONSUMER PROTECTION COMMISSION      COMPLAINANT**

**BEFORE:**

<b>Commissioner Dr. Aubrey M. Chibumba</b>	<b>- Chairperson</b>
<b>Commissioner Dr. Chenga Chisha</b>	<b>- Member</b>
<b>Commissioner Nsangwa Allen Ngwira</b>	<b>- Member</b>
<b>Commissioner Fredrick Imasiku</b>	<b>- Member</b>

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### **DECISION**

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Below is a summary of the facts and findings presented by the Competition and Consumer Protection Commission ("the Commission") to the Board of the Commission following investigations it carried out in the aforementioned case.

## **Introduction**

### ***It was submitted that:***

1. In January 2021, the Commission received a complaint of anticompetitive business practices from Castlebet Zambia Limited (the “Complainant”) against Airtel Mobile Commerce Zambia Limited T/A Airtel Money (the “Respondent”). The Complainant alleged that Airtel Money had been abusing their dominant position by unfairly increasing their mobile money merchant charges by 250% and threatening to terminate all sports betting companies that did not comply with the abrupt increase in charges.
2. The Complainant alleged that the charges for all sports betting companies were increased from 2% to 5% while other mobile money merchants like Zambia Revenue Authority (ZRA), utility companies and DSTV that relied on the same platform were still being charged 2% of all deposits.
3. The Complainant alleged that after Airtel Money increased the charges, they contacted Zynle Technologies Limited (Zynle) (a local payment aggregator) who allegedly submitted that they had a standing contract with Airtel Money and were willing to sign a contract with Castlebet for a combined rate of 3.5%. The Complainant alleged that barely a few hours after engagement between Zynle and Castlebet, Zynle rejected the offer to pay a collective 3.5% because they had allegedly received a telephone call from a representative of Airtel who threatened to terminate their agreement.

## **Investigations Conducted**

### ***It was submitted that:***

4. Investigations were conducted by way of sending a Notice of Investigations to Airtel Mobile Commerce Zambia Limited (Airtel Money) on 17<sup>th</sup> February, 2021. The Commission also conducted desk research and also contacted aggregators, competitors of Airtel Money, betting companies and regulators to get more information on how the sector operates.

## **Legal Provisions and Assessment Tests**

### ***It was submitted that:***

5. The alleged conduct by the Respondents appeared to be a contravention of Sections 15, 16(1) 16(2)(a), 16(2)(c) and 16(2)(f) of the Competition and Consumer Protection Act No. 24 of 2010 (the “Act”).

6. Section 15 of the Act states that: *A dominant position exists in relation to the supply of goods or services in Zambia, if—*
- i. Thirty percent or more of those goods or services are supplied or acquired by one enterprise; or*
  - ii. Sixty percent or more of those goods or services are supplied or acquired by not more than three enterprises.*
7. Sections 16(1) of the Act states that: *“An enterprise shall refrain from any act or conduct if, through abuse or acquisition of a dominant position of market power, the act or conduct limits access to markets or otherwise unduly restrains competition, or has or is likely to have adverse effect on trade or the economy in general”*
8. Sections 16(2) states that: “For purposes of this Part, “abuse of a dominant position” includes:
- “(a) imposing, directly or indirectly, unfair purchase or selling prices or other unfair trading conditions;*
  - (c) applying dissimilar conditions to equivalent transactions with other trading parties;*
  - (f) charging an excessive price to the detriment of consumers”.*

## **Findings**

### **The parties**

#### **The Complainant**

#### ***It was submitted that:***

10. The Complainant was Castlebet Zambia Limited, a company having its registered office at D41, Louieville, Mosi Road, Ibex Hill Lovie Ville/Kabulonga, Lusaka<sup>1</sup>. Castlebet is involved in the provision of online sports betting services.<sup>2</sup>

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<sup>1</sup> Addendum No.1 to the Airtel Money Services Agreement, Dated 24<sup>th</sup> Nov. 2019

<sup>2</sup> <https://vymaps.com/ZM/Castlebet-Zambia-259533421646248/>

## **The Respondent**

### **Airtel Mobile Commerce Zambia Limited (Airtel Money)**

#### ***It was submitted that:***

11. The Respondent is Airtel Money, a limited liability company incorporated in accordance with the Laws of Zambia and having its registered office at Airtel House, Stand No 2375, corner of Addis Ababa and Great East Road. Airtel Money is a payment system operator licenced under the National Payment System Act No. 10 of 2007 and principally regulated by the Bank of Zambia (BoZ).<sup>3</sup>

## **Market Definition**

### ***The Relevant***

#### ***It was submitted by the Technical Committee (TC) of the Board that:***

14. The relevant market identified was found to be the provision of cash collection and bulk disbursement of payments for betting companies using the Airtel Money platform in Zambia.

## **Competition Analysis and Relevant Observations**

### **Analysis regarding Section 16 of the Act**

#### **Consideration of Abuse of dominance**

#### ***It was submitted by the TC that:***

15. Section 16(1) of the Act defines abuse of dominance as engaging in, “*any act or conduct if, through abuse or acquisition of a dominant position of market power, the act or conduct limits access to markets or otherwise unduly restrains competition, or has or is likely to have adverse effect on trade or the economy in general.*”
16. Therefore, in the analysis of the conduct, the following assessment tests were used:

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<sup>3</sup> Submission by Airtel Mobile Commerce Zambia dated 9<sup>th</sup> March 2021

***Whether Airtel Money was found to be an enterprise;***

***It was submitted by the TC that:***

17. Section 2 of the Act defines an enterprise. Specifically, the Act states that unless the context otherwise requires, an “enterprise” means a firm, partnership, joint-venture, corporation, company, association and other juridical persons, which engage in commercial activities, and includes their branches, subsidiaries, affiliates or other entities, directly or indirectly, controlled by them”.
18. Airtel Money was found to be a Zambian registered company with the Patents and Company Registration Agency (PACRA). The registered office of Airtel Money was found to be Zain house, plot no. 2375, corner of Addis Ababa Drive and Great East Road, Show Grounds Lusaka, Zambia. Airtel Money was found to be a payment system operator licensed under the National Payment System Act No.10 of 2007 and is principally regulated by the Bank of Zambia (BoZ). Airtel Money was found to be a subsidiary of Airtel Zambia<sup>4</sup>. Therefore, Airtel Money was found to be an enterprise as envisaged by the Act.

***Whether Airtel Money was found to be an enterprise which is in a dominant position;***

***It was submitted by the TC that:***

19. Section 15 of the Act states that, “a dominant position exists in relation to the supply of goods or services in Zambia, if thirty percent or more of those goods or services are supplied or acquired by one enterprise; or sixty percent or more of those goods or services are supplied or acquired by not more than three enterprises.” Section 2 of the Act defines “dominant position” as meaning, “a situation where an enterprise or a group of enterprises possesses such economic strength in a market as to make it possible for it to operate in that market, and to adjust prices or output, without effective constraint from competitors or potential competitors;”
20. Further, a legal definition of a dominant position in EU law was given by the European Court of Justice (ECJ) in **United Brands and Hoffmann-La Roche**<sup>5</sup> which stated that, “a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an

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<sup>4</sup>[https://www.airtel.co.zm/home\\_investor\\_zm](https://www.airtel.co.zm/home_investor_zm), accessed on 9<sup>th</sup> August 2021.

<sup>5</sup> Case 85/76 Hoffmann-La Roche & Co AG v Commission, [1979] ECR 461, para. 38, Case 2/76 United Brands v. EC Commission [1978] ECR 207, para. 65.

appreciable extent independently of its competitors, its customers and ultimately of its consumers".

21. In the relevant market which was found to be that of *provision of collection and bulk disbursement of payments for betting companies using the Airtel Money platform in Zambia*, Airtel Money had a market share of 100%, and therefore was found to be dominant.

***Whether Airtel Money has market power;***

***It was submitted by the TC that:***

22. Airtel Money possessed significant market power and had the ability to set market conditions without effective restraint from its competitors in the defined relevant market. The market was found to be characterized by high barriers to entry, no product substitutability (as there is only product complementarity) and no internal rivalry.

***Whether there is a conduct;***

***It was submitted by the TC that:***

23. The alleged conduct was that Airtel Money had been abusing their dominant position by unfairly increasing their mobile money merchant charges by 250% and threatening to terminate all sports betting companies that did not comply with the abrupt increase in charges. Further allegations were that the charges of all sports betting companies were increased from 2% to 5% while other mobile money merchants' charges were not revised.
24. It was found that there was a conduct by Airtel Money which bordered on *limiting access to markets or otherwise unduly restraining competition, or having or likely to have adverse effect on trade or the economy in general*". Furthermore the conduct bordered on *imposing, directly or indirectly, unfair purchase or selling prices or other unfair trading conditions; applying dissimilar conditions to equivalent transactions with other trading parties; as well as charging an excessive price to the detriment of consumers*".

***Whether the conduct is likely to limit access to markets or unduly restrains competition or have or is likely to have adverse effect on trade or the economy in general;***

***It was submitted by the TC that:***

25. The conduct of unfairly increasing cash collection and cash disbursement fees by Airtel Money as well as applying dissimilar conditions to different betting companies by Airtel Money had the effect of unduly restraining competition in the relevant market. The adverse effect on trade was that due to application of unfair fees and dissimilar conditions by Airtel Money some betting companies were favoured (e.g. Betway) while other betting companies such as Zbet and Castlebet were disadvantaged. As such, it was very difficult for Castlebet and Zbet to compete effectively with Betway given the differences in trading conditions given by Airtel Money.
26. Airtel Money was found to have 100% shares in the identified relevant market, meaning any anticompetitive conduct by Airtel Money in the relevant market would have a huge impact on competition among betting companies. It was established that the conduct by Airtel could lead to failure by Castlebet and Zbet to effectively compete with other betting/gaming companies that were on-boarded on Airtel Money platform (and all other available payment platforms such as MTN Money (MoMo)). It was established that the conduct could subsequently lead Castlebet and Zbet into exiting the betting/gaming market in Zambia. The failure by betting companies that competed with Betway meant that for those Airtel subscribers that used Airtel Money for their betting/gaming activities, they would be deprived of using an alternative service provider such as Castlebet and Zbet. This was regardless of whether Castlebet offered competitive prices or not to customers on Airtel Money. Hence the conduct of Airtel Money had the likelihood of having adverse effects on trade and violating section 16(1) of the Act.

**Analysis with regard to Section 16(2)(a)**

***Is the enterprise imposing, directly or indirectly, unfair purchase or selling prices or other unfair trading conditions?***

***It was submitted by the TC that:***

27. The increase in cash collection fees for the Complainant from two percent (2%) to five percent (5%) by Airtel Money translated into a one hundred and fifty percent (150%) increase in cash collection fees. It was found that the increment of cash collection fees and disbursement fees by Airtel Money was

imposed unfairly because the increments favoured some betting companies while disadvantaging other betting companies. This trading condition was found to be unfair and hence violated section 16(2)(a) of the Act.

**Analysis with regard to Section 16 (2)(c)**

***Whether the parties applied dissimilar conditions to equivalent transactions with other trading parties;***

***It was submitted that***

***It was submitted by the TC that:***

28. There were no dissimilar conditions applied by Airtel Money when they increased cash collection fees and disbursement fees for betting companies while leaving the cash collection fees for utility companies unchanged. This was because utility companies and betting companies were in different relevant markets and provide different services to members of the public. However, the Commission noted that Airtel Money applied dissimilar conditions to different betting companies in the relevant market for provision of cash collection and cash disbursement services for betting companies.

**Analysis with regards to Section 16 (2)(f)**

***Whether the conduct by the parties led to charging an excessive price to the detriment of consumers;***

***It was submitted by the TC that:***

29. After looking at the costs incurred by Airtel money it was established that overall operational costs for Airtel Money were increasing as such it was normal for Airtel Money to increase the fees of the services they were providing. However, in the absence of actual costs that relate to provision of cash collection and disbursement services, it made it difficult to fully ascertain that the increase in fees was mainly due to costs. Further, after assessing the cash collection fees offered by competitors of Airtel Money, it was observed that the 4% maximum cash collection offered by MTN Money to betting companies was not very different from the 5% offered by Airtel Money. A further analysis of financial statements of Airtel Money from 2018, 2019 and 2020 showed clearly that the company was making normal profits below 30%. In view of the above, it was established that the assessment of excessive pricing was inconclusive due to lack of sufficient information on actual costs faced by Airtel Money in the provision of cash collection and cash disbursement services.



### **Board Deliberations**

30. The Board deliberated that it was established that the relevant market was the provision of cash collection and bulk disbursement of payments for betting companies using the Airtel Money platform in Zambia.
31. The Board deliberated it was established that Airtel Money as an enterprise was dominant in the market for the *cash collection and bulk disbursement of payments for betting companies using the Airtel Money platform in Zambia*.
32. The Board deliberated that it was established that the conduct engaged in by Airtel Money violated Section 16(1), 16(2)(a) as well as Section 16 (2)(c) of the Act. With regards to Section 16 (f), it was established that the assessment was inconclusive to determine excessive pricing due to insufficient data.

### **Board Directives**

12. The Board hereby directs that the following actions be taken:-
  - (i) Airtel Money is fined 3% of their 2019 annual turnover for violating section (16)(1), 16(2)(a) and 16 (2) (c) of the Act pursuant to Section 16 (3).
  - (ii) Airtel Money should notify their agreements with betting companies, aggregators and utility companies in accordance with Section 14 of the Act.

***Note: Any party aggrieved with this order or directive may, within thirty (30) days of receiving the order to direction, appeal to the Competition and Consumer Protection Tribunal.***

Dated this 5<sup>th</sup> December, 2022

  
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**Chairperson**  
**Competition and Consumer Protection Commission**