

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

Case File No. COMP/12/08/2022/01472

BETWEEN

**THE COMPETITION & CONSUMER
PROTECTION COMMISSION**

COMPLAINANT

AND

**AFRICA SUPERMARKET LIMITED T/A
COMPUTICKET ZAMBIA**

RESPONDENT

BEFORE:

**Commissioner Angela Kafunda
Commissioner Derrick Sikombe
Commissioner Sikambala Musune
Commissioner Stanford Mtamira
Commissioner Emmanuel Mwanakatwe**

**Chairperson
Member
Member
Member
Member**

DECISION

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

Introduction and Relevant Background

It was submitted that:

1. In September 2022, the Commission initiated investigations against Africa Supermarket Limited T/A Computicket Zambia ("the Respondent"). The Commission noted that the Respondent inserted exclusive terms and conditions in their contracts with the Football Association of Zambia (FAZ) for the printing and distribution of tickets for football matches.

2. The Respondent, as a ticketing provider, prints and distributes tickets to patrons on behalf of events providers. The Respondent sells the tickets to end-customers or patrons and passes on the funds collected to the event providers after deducting its commission (fees) for the services provided. This is regulated by contracts between the two parties. The Commission noted that the Respondent prohibited FAZ from engaging any other party to print or distribute tickets to any event for a duration prescribed in the contract without the written consent of Respondent.

The Conduct

It was submitted that:

3. The alleged conduct involves the Respondent having an exclusive contract with FAZ to provide ticket printing and distribution services. It is alleged that the Respondent prohibited FAZ from engaging any other party to print or distribute tickets to any event for a duration prescribed in their contracts without the written consent of the Respondent. The initial period of the agreement was three years, followed by successive periods of one year each. It is alleged that this conduct restricted FAZ from:
 - i. engaging any other ticket printer or ticket distributor for any event for the duration of the contract; and,
 - ii. engaging multiple distributors to distribute tickets to an event while the contract is active.

Legal Contravention

It was submitted that:

4. The alleged conduct by the Respondent appeared to be in contravention of Section 16(1), Section 16(2)(b) as read together with Section 15(a) and Section 59 of the Act.
5. 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”.

6. Section 16(1) of the Act provides 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”.
7. Section 16(2)(b) states that:
“For purposes of this Part, abuse of a dominant position includes limiting or restricting production, market outlets or market access, investment, technical development or technological progress in a manner that affects competition”.
8. Section 59 of the Act states that:
- (1) *“Where the Commission determines, after review, that an enterprise is a party to a restrictive agreement referred to under section eight, nine, ten or twelve or that it is a party to a dominant position within the terms of section sixteen, and that-*
- a) in relation to the restrictive agreement, the agreement has the object or effect of preventing, restricting or distorting competition; or*
 - b) in relation to the dominant position, any conduct of the enterprise-*
 - i. has the object or effect of preventing, restricting or distorting competition; or*
 - ii. in any other way, constitutes exploitation of the monopoly situation, the Commission may give the enterprise such directions as it considers necessary, reasonable and practicable to-*
 - A. remedy, mitigate or prevent the adverse effects on competition that the Commission has identified; or*
 - B. remedy, mitigate or prevent any detrimental effects on users and consumers so far as they have resulted from, or are likely to result from, the adverse effects on, or the absence of, competition.*
- (2) *The Commission shall, in determining, in any particular case, the remedial measures required to be taken, have regard to the extent to which any of the offsetting benefits specified in subsection (2) of section nineteen are present in that case.*
- (3) *Subject to subsections (1) and (2), a direction under this section may include a requirement that the enterprise to which it is given shall-*
- a) terminate or amend an agreement;*
 - b) cease or amend a practice or course of conduct, including conduct in relation to prices;*
 - c) supply goods or services, or grant access to facilities;*

- d) separate or divest itself of any enterprise or assets; or*
 - e) provide the Commission with specified information on a continuing basis.*
- (4) A direction given under this section shall be in writing”.*

Theory of Harm

It was submitted that:

9. Broadly, the theory of harm in competition law explains why a particular type of conduct constitutes a breach of competition law with reference to the relevant legal tests and explains why that conduct causes harm to competition and why it should be prohibited. In the analysis of this case, the possible theories of harm considered by the Commission were that the conduct could result in:
 - i. Substantial lessening of competition – the Commission noted that the conduct was likely to have an effect of substantially lessening competition in the relevant market. The reduction of competition would result from event providers being bound to the Respondent by the contract between the two parties and hence event providers would not be able to engage any other ticket printing and distribution service providers for the duration of the contract.
 - ii. Abuse of a Dominant position of Market Power - the conduct by the Respondent may foreclose the market and in turn lead to the exit of their competitors as they will not be able to deal with event providers who are legally bound to only deal with Respondent for a prescribed duration. Further, the effect of the exclusive agreements to foreclose the market for a certain period will allow the Respondent to avoid competing for its customers with ticketing service providers as their customers will be bound by the exclusive agreement to only deal with them. This may cause the Respondent to be reluctant to invest in advanced technology and innovations that would improve their service quality to better serve their customers and give them a competitive edge against competitors. As such, the conduct may delay improvements in the ticketing sector.

Assessment Tests

It was submitted that:

10. In the investigation and assessment of potential and/or likely violation of the competition provisions of the Act, the Commission takes a multiple assessment approach, i.e., carries out a number of tests to ascertain whether the alleged violations have or are likely to result in any negative effects on the market, to the consumer, fair trade or the economy in general.
11. For the purpose of Section 16(1), the following elements must be proved:
 - i. Whether there is an enterprise which is in a dominant position;*
 - ii. Whether there was a conduct; and,*
 - iii. Whether the conduct limits access to markets or otherwise unduly restrains competition.*
12. For the purpose of Section 16(2)(b), the following elements must be proved:
 - i. Whether the conduct limited or restricted production, market outlets or market access, investment, technical development or technological progress in a manner that affects competition.*

Investigations Conducted

It was submitted that:

13. In investigating the matter, the Commission conducted market surveillance between July 2022 and September 2022, to understand the how the sector operated in Zambia. The Commission served a Notice of Investigation (“NOI”) on respondent on 26th September 2022. The Commission also received submissions from FAZ and other market players to understand the market dynamics in the ticketing market. In addition, the Commission conducted desktop research related to the conduct.

Findings

The Parties

The Complainant

It was submitted that:

14. The Commission investigated the matter at its own initiative as provided for by Section 55 of the Act. The Commission is a statutory body established under Section 4 of the Act. The Commission as a body enforcing the Act has the mandate to safeguard and promote competition in all sectors of the Zambian economy and to protect consumers against unfair trade practices.

The Respondent

Africa Supermarket Limited

It was submitted that:

15. Africa Supermarket Limited (ASL) is a company incorporated in Zambia in 1995 under registration number 119950033740. ASL submitted that the business activities of Computicket were an operating division of Africa Supermarkets Limited.¹ It was submitted that Computicket was deregistered and its operations were migrated into an operating division of ASL. The registered business address of ASL is Plot 19255, Great East Road, at Manda Hill Shopping Centre. The main business that ASL specializes in is other retail sale not in stores, stalls or markets. Below is an outline of the Directors and Shareholders of ASL.

Table 1: Directors in ASL

Name	Position	Nationality
Christo Frederik Meyer	Director	South African
Anton Andrew Wagenaar	Director	South African
Anton De Bruyn	Director	South African
Andrew Mutangambelo Mwala	Director	Zambian

¹ Letter from ASL dated 14th October 2022

Charles Bota	Director	Zambian
Carel Genis Goosey	Shareholder/Member	South African

Source: PACRA printout dated 17th July 2023

Submissions from the Respondent²

It was submitted that:

16. The Respondent distributed tickets to various events on behalf of event providers whilst acting as their ticketing agent. It was submitted that there were several other ticketing agents active in Zambia including but not limited to Quicket Zambia, Webtickets Zambia Limited, Ukwenda Travel and Tours, Pesapal and many others. It was submitted that typical events included football matches, live musical performances and other motivational and/or religious gatherings. It was submitted that the size of the market in Zambia in which ticketing agents operated was very small. It was submitted that their operations were not profitable in the 2021 financial year and that they barely made a profit in the 2022 financial year.
17. The Respondent did not have access to market data which could indicate whether or not its market share was such that it can be considered to be dominant in terms of the Act. It was submitted that the Respondent did not have market power because in the majority of instances, their customers negotiated the terms and conditions of the commercial relationship, including the fees payable to the Respondent. It was submitted that this was evidenced in many of the contracts which were entered into with customers and which had been provided to the Commission.
18. The Respondent had standard terms and conditions that regulated the relationship between itself (as ticketing agent) and the event organiser. It was submitted that one of the standard clauses in the terms and conditions included exclusivity. It was submitted that the exclusivity clause was in paragraph 2.3 of its terms and conditions which stated that:
"For the duration of this Agreement, Client appoints the Company, which accepts the appointment, to be Client's exclusive ticketing agent for all Events, and Client agrees, for the duration of this Agreement, not to instruct or allow any other party to accept bookings or sell or distribute tickets to any Event without the written consent of the Company".

² Letter from Africa Supermarket Limited dated 14th October 2022

19. It was important to note that the exclusivity provision as it was set out was not absolute. It was submitted that the provision specifically contemplated that a client may approach the Respondent to appoint another ticketing agent if they obtained the Respondent's written consent. It was submitted that to date, no requests had been received from clients to allow multiple ticketing agents for an event and consequently, no refusals had been provided by the Respondent to its clients. It was further submitted that the Respondent had received no complaints from aggrieved clients or competing ticketing agents about the enforcement of exclusivity.
20. The Respondent incurred significant costs in printing tickets, ensuring the tickets had adequate security protection to prevent ticket fraud, and handling money on behalf of event organisers, etc. It was submitted that the exclusivity clause was included in the Respondents' terms and conditions to ensure that other ticketing agents would not be able to freeride on the back of Respondents' investment in the ticketing industry in Zambia and ensure that it could recover its costs in performing its services.
21. Despite the existence of an exclusivity provision in its terms and conditions, the Respondent confirmed that it had never enforced the exclusivity provision against any of its customers and/or competitors. It was submitted that historically, there had been and there continues to be, several events for which the Respondent shares ticketing services with its competitors for the same event despite the existence of the exclusivity provisions in its terms and conditions. The Respondent submitted that for instance, they had flyers for two events which had the details for both the Respondent and those of competing ticketing agents appearing for the same events.
22. The Respondent had never refused to deal with an event organiser in circumstances where it had previously used multiple ticketing agents and it had never refused to do business with an event organiser on condition that it only allows the Respondent to be the sole ticketing agent for a particular event. It was submitted that the Respondent did not believe that its conduct had, in any way, limited access to markets or otherwise unduly restrained competition, nor had its conduct adversely affected competition, trade or the economy in general.
23. Respondent did not believe that the exclusivity provision was a breach of the Act, and that the Respondent had removed from its terms and conditions, Paragraph 2.3 which contains the exclusivity clause and the Respondent would furthermore

undertake to continue to not enforce exclusivity in any of its existing contracts with its clients. It was submitted that this is in line with the Respondent's approach in other jurisdictions in which it operates.

24. The Respondent submitted its financial statements for the year 2021. It was submitted that the amounts were captured in South African Rand. It was submitted that the Respondent was in the process of obtaining its divisional management accounts in local currency (ZMW) and would submit them to the Commission.

Further Submissions from the Respondent³

It was submitted that:

25. The Respondent entered into an agreement with FAZ in March 2018. While Respondent's terms and conditions contained an exclusivity provision, the provisions had never been enforced. It was also submitted that this was evidenced with specific examples of where Computicket Zambia had sold tickets alongside other ticketing agents.
26. The exclusivity provision set out in the Respondent's terms and conditions were not absolute and even if clients were unsure of whether or not it would enforce its exclusivity, the Respondent's terms and conditions allowed clients to engage with it if they wished to appoint additional ticketing agents.
27. The duration of the agreement was short-term and was in force for a period of 3 years. It was submitted that during the existence of the agreement, the Respondent–
- was never approached by FAZ about the possibility of appointing additional ticketing agents;
 - never refused to provide FAZ with written consent to appoint additional ticketing agents;
 - never received any complaints from FAZ or from competing ticketing agents about the enforcement of exclusivity in regard to the sale of tickets on behalf of the Football Association of Zambia;
 - was unaware of any competing ticketing agents who were unable to get access to football tickets from FAZ as a result of the exclusivity provisions contained in its terms and conditions; and,

³ Letter from Africa Supermarkets Limited dated 28th October 2022

- was aware that Webtickets Zambia Limited actively sold tickets for football matches organised by FAZ, despite the existence of the exclusivity provisions in the Respondents terms and conditions.
28. The Respondent did not believe that their conduct had, in any way, limited access to markets or otherwise unduly restrained competition, nor did its conduct have any adverse effect on trade or the economy in general.
29. In October 2022, after the Commission brought this matter to their attention, they removed Paragraph 2.3 which contained the exclusivity clause from its terms and conditions. The Respondent added that the Respondent was continuing to conduct its business in the same way it had before October 2022, by not enforcing exclusivity in any of its contracts with its clients. It was submitted that this was in line with the Respondent's approach in other jurisdictions it operates in.

Third Party Submissions

Submissions from All 1 Zed Limited⁴

It was submitted that:

30. All1Zed Limited started its operations around April 2022, and it provided both ticketing services and online ticket distribution services. It was submitted that the business was mainly online based and operated a website where they posted all events for which they were providing ticketing services and interested customers could purchase tickets on the platform using Airtel Money services to pay. It was submitted that as such, most of the tickets they provided were in soft copy form which customers could print. It was submitted that if an event provider preferred hard copy tickets to sell at the event, All1Zed were able to provide such services and charge the event provider extra for printing. Regarding ticket purchases, it was submitted that when a customer purchased a ticket online, All1 Zed deducted their Commission from the sale and the rest of the proceeds were forwarded to the event provider. It was submitted that all their engagements with clients were governed by contracts.
31. Regarding the distribution of tickets, it was submitted that most companies on the Zambian market were providing offline distribution services. It was submitted

⁴ The Commission had a meeting with All1Zed on 21st December 2022, at the All1Zed offices. The Commission was represented by Mr. Chester Njobvu and Mr. Loti Mweemba.

that All 1 Zed introduced online services to differentiate themselves from their competitors. It was submitted that their main competitors included Quicket Zambia, Webtickets Zambia Limited and Computicket Limited. It was submitted that most of their competitors were subsidiaries of South African companies and consequently had an advantage in the market as most of the event providers were also South African who preferred their South African counterparts to provide ticketing services.

32. Regarding how they attracted their customers, it was submitted that All 1 Zed also utilized their social media platforms where they advertised their services and the events for which they were printing and distributing tickets.
33. All 1 Zed's main customers were Bus Operators for whom they sold tickets online. It was submitted that they were also on a trial for six months to provide ticketing services to FAZ.
34. For bus tickets, All 1 Zed charged K6.00 to K10.00 per ticket, while event providers such as FAZ were charged between 6% to 10% of the price of the tickets, depending on negotiations.
35. With regard to the tools they used to provide their services, it was stated that they required printers for printing tickets, servers, computers and a website to post events.
36. The contracts between the event providers and ticket printers, were once-off which were only for one event. It was submitted that the contracts were not exclusive agreements for All 1 Zed to exclusively print or distribute tickets for their clients for a stipulated duration. It was submitted that such conduct would be unfair as it would stop competitors from engaging those clients which were bound by exclusive agreements. It was submitted that there were no sunk costs applicable in the provision of ticketing services and as such there was no need for exclusive agreements.
37. Furthermore, the main differentiating factor with tickets among competitors was the texture of the tickets and the security features of the tickets. It was submitted that in some instances All 1 Zed would have their employees at the events to verify that the tickets were genuine.

Submissions from Webtickets Zambia Limited⁵

It was submitted that:

38. Webtickets Zambia Limited started their operations in Zambia in 2018. The Company was operating as a franchise from South Africa and that they got most of their tools which they used to develop tickets from South Africa. It was submitted that they provided both ticket printing and distribution services. The tools needed for the provision of their services were Scanners, Laptops, Printers and a Website to post upcoming events.
39. With regard to sales, most of the tickets they provided were sold online in soft copy form which customers could print. Webtickets had an event form and a contract form which their clients filled details in to be imprinted on the tickets. The details of the events were also posted on the Webtickets' website and social media platforms and that if an event provider preferred hard copy tickets to sell at the event, Webtickets was able to provide such services and have their staff at the event to sale the tickets.
40. Regarding ticket purchases and how Webtickets charged their clients for the services they provided, Webtickets stated that when a customer purchased a ticket online from Webtickets, Webtickets withheld their commission from the sale and the rest was forwarded to the event provider.
41. Webtickets used social media platforms such as Facebook, Instagram, etc.. to advertise their services. The said platforms to advertise the events that they organized for their clients. It was submitted that their main customers were event providers in the entertainment industry and FAZ.
42. The nature of their contracts was once-off and only for one-off events. Further, it was submitted that the contracts were not exclusive agreements for Webtickets to exclusively print or distribute tickets for their clients for the stipulated event or duration. It was submitted that there were no sunk costs applicable in the provision of ticketing services and as such there was no need for exclusive agreements.

⁵ On 27th December 2022, the Commission had a telephone interview with Webticket. The Commission interviewed Ms. Waza Kalaluka.

43. Furthermore, it was submitted that the main differentiating factors between tickets of competitors were the texture of the tickets and the security features on the tickets. It was submitted that they were also able to offer quick services to their clients as they had the freedom to make quick decisions, free from their parent company in South Africa.

Submissions from the Football Association of Zambia⁶

It was submitted that:

44. FAZ had engaged the Respondent to print tickets for football matches on their behalf. Before their engagement with the Respondent, FAZ used to print their own tickets, which were then distributed to the public by several third-party players on the market. However, FAZ experienced challenges of pilferage and sales of counterfeit tickets resulting in them losing money. FAZ was losing a lot of money due to the said challenges. It was further submitted that the Respondent and themselves discussed ways in which they could improve the distribution of tickets so as to reach more people. The Respondent made a proposal to FAZ that they would provide ticketing services to FAZ which included ticket printing and distribution services. From 2017, the Respondent had been providing ticketing services to FAZ. However, FAZ had since included All1Zed and Webtickets for online ticket sales.
45. The considerations for choosing a ticket printing service provider included the geographical visibility of the service provider and the ability of the service provider to ensure that security features on the ticket were unique to deter the development of counterfeit tickets. It was submitted that while players that did not have the ability to distribute physical tickets could distribute them online, customers were less receptive to purchasing tickets online. In addition, it was submitted that FAZ had a Governance and Review Committee which reviewed their contracts with other parties to ensure that they were lawful.
46. Regarding the view to include other third-party distributors, FAZ submitted that if there was another player included in the value chain it would mean that they would have to increase the price of the tickets to the final consumers. Additionally, it was submitted that if there were third party distributors introduced in the chain, FAZ may not be able to know how much tickets were

⁶ The Commission had a meeting with the FAZ on 5th April 2023, at the FAZ offices. The Commission was represented by Mr. James Chalungumana, Mr. Loti Mweemba, Mr. Chester Njobvu and Ms. Maggie Phiri.

sold by each distributor and as such how much revenue each distributor owed them hence causing a challenge of accountability.

47. The distribution of tickets to far-flung areas would not be very profitable as most people did not travel long distances to purchase tickets. It was submitted that it was also important to note the buying behaviour or patterns of soccer fans. It was submitted that about 90% of the tickets were usually purchased two days before matches and that most customers were along the line of rail, it was submitted that these factors made it less likely that people from far-flung areas would be able to attend football matches even if tickets were made available in their area.

The Market Definition

The Relevant Market

It was submitted that:

48. As explained above, the relevant market includes the relevant product market and relevant geographical market. Considering the foregoing, the Commission therefore defined the relevant markets as:
- i. The provision of ticket printing services to FAZ in Zambia; and,***
 - ii. The provision of ticket distribution services to FAZ in Zambia.***

Relevant Findings

It was submitted that:

49. It was established that most of the engagements between ticketing service providers and the clients were contract based. It was found that the contracts were either, once off or recurring with the periods ranging from 1 year to 3 years.
50. It was established that the Respondent had exclusive terms and conditions in their contracts with all its clients who were event organisers. It was found that the exclusivity terms and conditions were available on <http://www.computicket.com/computicket/links/promoterterms.html>, a website link, in the terms and conditions of the contracts. It was found that the terms stated that:

“For the duration of this Agreement, Client appoints Company, which accepts the appointment, to be Client's exclusive ticketing agent for all Events, and Client agrees, for the duration of this Agreement, not to instruct or allow any other party to accept bookings or sell or distribute tickets to any Event without the written consent of Company.”

51. It was established that the Respondent had a contract with FAZ to provide ticketing services which included ticket printing and distribution. It was found that first contract in 2018 was for a duration of 3 years and the subsequent after the first one contracts would be for the duration of 1 year⁷.
52. It was established that in the course of their engagements with FAZ, the Respondent did not restrict FAZ from approaching other players to distribute or print tickets nor did FAZ request for consent to engage other service providers.
53. It was established that the Respondent distributed and sold its tickets on behalf of its clients to patrons through Shoprite stores countrywide. It was established the Respondent printed tickets and distributed them to patrons on behalf of FAZ. It was established that the sales revenue generated was remitted to FAZ after deducting a commission (fee) which was at 7% of the ticket price charged to consumers.⁸
54. The Commission established that before contracting the Respondent, FAZ was printing their tickets to their events inhouse. It was found that FAZ would then allow different stores to purchase the tickets for sale to patrons⁹.
55. The Commission established that there were two other providers of ticket printing and distribution services to FAZ namely Webtickets Zambia Limited and All1 Zed Zambia indicating that the relevant market was not foreclosed.¹⁰
56. The Commission established that ticketing providers did not incur any sunk costs as they provided ticketing services to clients¹¹.

⁷ First Contract between FAZ and the Respondent between 2018 and 2021.

⁸ Terms and conditions of the contract between FAZ and the Respondent.

⁹ Submissions from FAZ during meeting on 5th April 2023.

¹⁰ Submissions from FAZ, Webticket and All1 Zed to the Commission.

¹¹ It was found that the main costs which were incurred were printing costs and distributions costs for distributing tickets to clients. It was found that the main requirements to set up a ticket printing business were a printer for printing the tickets, a computer, a website to post events (or social media account) and a payment system for those that sold e-tickets.

Competition Analysis

Considerations under Section 15(a) of the Act

Whether the Respondent holds a dominant position of market power through or by having thirty percent or more of those goods or services are supplied

It was submitted that:

57. The Dominance test is used to determine whether a firm occupies a dominant position or not in a relevant market and assessing the degree of dominance exercised by the firm(s) within the market. Where a firm acts, to a large and or sustainable extent, as though it had no competitors, such a firm would be rightly referred to as a “dominant” enterprise, regardless of its market share. The Act goes on to define a dominant position as, “*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*”. Further, Section 15(a) of the Act gives a share threshold of how a dominant firm is captured and states that, “*a dominant position exists in relation to the supply of goods or services in Zambia, if thirty per cent or more of those goods or services are supplied or acquired by one enterprise*”.
58. According to investigations conducted by the Commission, apart from the Respondent, there were two other providers of ticket printing and distribution services to FAZ namely Webtickets Zambia Limited and All1 Zed Zambia. The provision of these services to FAZ was different to other clients as unlike most entertainment providers, the events held by FAZ were not once-off and there was certainty of the events recurring given that the events organised by FAZ such as football matches are certain to take place periodically and events such as football matches have a lot of stakeholders and are played regularly. In the case of clients whose events cannot be predicted with certainty, the restriction of competition is to a minimal effect as their events are few and are not certain to recur. Further, the provision of printing and distribution services to FAZ is peculiar and unique in the sense that there is no existing rival to FAZ who organises football competitions in the Country.
59. To calculate the market shares of the players, the Commission requested for financial statements of all three players. However, All1 Zed submitted that they were new in the market and as such had never prepared any financial statements

and that they were still in their trial phase in their engagement with FAZ. It was established that from around 2018, Webtickets had been providing ticket printing and distribution services to FAZ for relatively less popular games such as COSAFA games. However, more popular games such as World Cup qualifiers and Africa Cup of Nations (AFCON) qualifiers had their tickets printed and distributed by FAZ.

60. The Commission therefore considered the sales revenue of the Respondent and Webtickets to analyse the market shares of the two players in the relevant market. Webtickets submitted their financial statements for the year 2021 which showed total revenue of K321,721.75 while the Computicket's statements showed total revenue generated in Zambia of ZAR2,263,473.00¹² which were translated to K3,055,688.00.¹³ The Commission projected that the revenue generated from the provision of ticket printing and distribution services to FAZ were in proportion with the overall revenue generated from total sales. This was in line with the submissions by FAZ that the Respondent was their preferred service provider as patrons were more willing to purchase tickets physically. This made the Respondent the preferred service provider by FAZ as they had more physical presence around the Country.
61. Based on the sales revenue submitted by the two players, FAZ and Webtickets, the Commission established that the Respondent had 90.5% market share in the relevant market. It is against this background that it was concluded that the Respondent was dominant in the provision of both ticket printing and distribution services to FAZ in Zambia.

Whether there was conduct

It was submitted that:

62. Abuse exists through conduct; unilateral or collective. Black's law dictionary defines "conduct" as, "personal behaviour, whether by action or inaction; the manner in which a person behaves". The alleged conduct against the Respondent was that they limited market access by prohibiting their clients who were event providers, from engaging any other party to print or distribute tickets to any event for a duration prescribed in their contracts without the written consent of the Respondent.

¹² The Financial Statements were provided in South African Rands.

¹³ This translated at the ZMW/ZAR of 1.35, the average of 2021.

63. The Commission found that the Respondent had terms and conditions in their contracts with all their clients who were event organisers. The terms and conditions were available on <http://www.computicket.com/computicket/links/promoterterms.html> a website link provided in the contract. The terms stated that: *“for the duration of this Agreement, Client appoints Company, which accepts the appointment, to be Client's exclusive ticketing agent for all Events, and Client agrees, for the duration of this Agreement, not to instruct or allow any other party to accept bookings or sell or distribute tickets to any Event without the written consent of Company”*. This meant that for any event organized by the client within the duration of the contract, the client was obliged to acquire ticket printing and distribution services from the Respondent or seek consent from the Respondent before hiring any other service provider.
64. However, from the surveillance conducted by the Commission it was found that FAZ was able to engage competitors of the Respondent to provide ticket printing and distribution services. The Commission found that FAZ had a running trial with All1 Zed Zambia¹⁴ in 2022 regarding the sale of tickets online and had also engaged Webtickets Zambia Limited¹⁵ for the provision of ticket printing and distribution services¹⁶. A review of the social media pages of All1Zed¹⁷ and Webtickets¹⁸ reviewed that they sold tickets to football matches organised by FAZ.
65. Further, in clause 5.1 of the contract between the Respondent and FAZ, the Commission found that the Respondent allowed clients to distribute tickets by themselves. Clause 5.1 stated that, *“where client requests and Company agrees to issue tickets to the Client at full face value for distribution by Client, Company is entitled to the fee per ticket”*. As such, there was no restriction by the Respondent regarding the distribution of tickets to patrons.
66. Additionally, that the exclusivity provision set out in the Respondent's terms and conditions was not absolute. It was submitted that during the existence of their agreement with FAZ, FAZ never approached the Respondent to request for consent to appoint additional ticketing service providers; the Respondent never

¹⁴ Submission by Mr. Malama Mungulube the Managing Director of All1 Zed Zambia on 21st December 2022. The Commission was represented by Mr. Loti Mweemba and Mr. Chester Njobvu.

¹⁵ Submissions by Ms. Waza Kalaluka, the Managing Director of Webtickets Zambia Limited on 27th December 2022.

¹⁶ The submissions were further confirmed by FAZ in a meeting with the Commission on 5th April 2023.

¹⁷ All1 Zed sold e-tickets to FAZ online.

¹⁸ Webtickets sold tickets to football matches in Pick and Pay stores in designated Malls.

refused to provide FAZ with written consent to appoint additional ticketing providers; and, the Respondent never received any complaints from FAZ or from competing ticketing service providers about the enforcement of exclusivity in with regards to the printing and distribution of tickets on behalf of FAZ.

67. The Respondent further submitted that they had removed the exclusivity clause from their contracts with event providers¹⁹.
68. The Commission found that the conduct by the Respondent did not limit access to markets or otherwise unduly restrain competition as FAZ could still engage competitors of the Respondent for the provision of ticket printing and distribution services.

Whether the conduct limited access or restricted production, market outlets or market access, investment, technical development or technological progress in a manner that affects competition

It was submitted that:

69. The Respondent did not limit access or restrict production, market outlets or market access, investment, technical development or technological progress in a manner that affects competition. The Commission found that FAZ was able to engage competitors of the Respondent for provision of ticket printing and distribution services.

Analysis of Section 59 of the Act

It was submitted that:

70. In analysing Section 59 of the Act, the Commission considered the factors provided in Section 19(2)²⁰ of the Act which are used determine an application for exemption.
71. Section 19 (2) of the Act states that:

“The Commission shall grant an exemption to an agreement that contributes to, or is likely to contribute to, or result in-

¹⁹ Submissions from the Respondent on 14th October 2023.

²⁰ Section 59 (2) of the Act refers to Section 19 (2) of the Act.

- a) *maintaining or promoting exports from Zambia;*
- b) *promoting or maintaining the efficient production, distribution or provision of goods and services;*
- c) *promoting technical or economic progress in the production, distribution or provision of goods and services;*
- d) *maintaining lower prices, higher quality or greater choice of goods and services for consumers;*
- e) *promoting the competitiveness of micro and small business enterprises in Zambia; or*
- f) *obtaining a benefit for the public which outweighs or would outweigh the lessening in competition that would result, or is likely to result, from the agreement.”*

72. The Commission considered whether the factors under Section 19(2) of the Act were obtainable from the conduct of the Respondent.

Whether the conduct maintains or promotes exports from Zambia

It was submitted that:

73. Regarding whether the conduct would maintain or promote the export of ticket printing and distribution services from Zambia, the Commission found that the conduct is likely to foreclose the market to new entrants and lead to the exit of existing firms from the market. This would reduce the number of firms in the market thereby reducing the competition in the relevant market. Consequently, a reduction in competition would make market players less innovative thereby reducing their capability and resilience to compete on international markets.

Whether the conduct promotes or maintains the efficient production and distribution tickets

It was submitted that:

74. Regarding whether the conduct by the Respondent to restrict FAZ from accessing ticket distribution and printing services from other players on the market the

Commission found that there were no efficiencies that could be achieved from the conduct. However, FAZ submitted that if the Respondent allowed other distributors in the distribution value chain, this would likely cause an increase in the prices of tickets because the commission charged for printing and distribution services by the Respondent was a percentage of the final price charged to consumers. Therefore, the Respondent could not reduce its selling price as this would imply a reduction in the collectable commission, unless a higher commission percentage was set with FAZ. FAZ further submitted that having more than one distributor for one event would reduce security against fake tickets and pilferage. It was submitted that having one ticket printer and distributor allowed for accountability and prevented pilferage and sell of fake tickets²¹.

75. Furthermore, it was submitted that having one distributor allows event providers to adequately plan for the event as they are able to keep track of the likely number of attendants from the tickets sold by the distributor.
76. However, the Commission observed that the issues cited above should not have necessitated the conduct of the Respondent. Firstly, the Commission is of the view that the parties can still agree on ways to allow distributors of tickets without increasing the price to the final consumer by adjusting the commission percentage.
77. With regards to the threat of pilferage and sell of fake tickets highlighted by FAZ, the Commission is of the view that an introduction of other distributors in the market would not increase the risk of pilferage more than the risk existing in the current setup. The Commission has noted that even in the current setup, certain individuals buy tickets in bulk from the Respondent's stores and sell them at higher prices, usually on the day of the events and this has not increased risks of fake tickets being sold. Similarly, FAZ can implement other measures to avoid pilferage of tickets.
78. Lastly, regarding the planning of events, the Commission is of the view that FAZ can ensure that there are in constant contact with their authorised distributors to ensure that they are aware of how many tickets to the event are sold.
79. Further, following the Commission's assessment that there are no efficiencies that can be achieved from the conduct of the Respondent, the Commission

²¹Submission by FAZ in a meeting with the Commission on 5th April 2023 at the FAZ offices.

identified the following directives, as empowered by Section 59(3) of the Act, to prevent any detrimental effects on competition:

- i. FAZ and the Respondent allow other ticket distributors to distribute tickets to national team football games organised by FAZ;
- ii. The Respondent removes all provisions of exclusivity and clearly states in its contracts that the contract is not exclusive; and,
- iii. The Commission reviews the agreements between the parties after (i) and (ii) above.

80. The Commission found that the conduct of the Respondent did not meet any of the factors provided for under Section 19(2)(c)(d)(e) and (f) of the Act.

Submissions to the Preliminary Report on the Commission's Findings

It was submitted that:

81. On 23rd August 2023, the Commission served the Respondent and FAZ with the Preliminary Report of its findings on the matter. The Commission requested the parties to respond to its findings within 14 days of receipt of the Report²². However, the Commission did not receive any response from both parties.

Board Deliberations

Consideration of whether there was conduct

82. The Board deliberated that the alleged conduct against the Respondent was that they limited market access by prohibiting their clients who were event providers, from engaging any other party to print or distribute tickets to any event for a duration prescribed in their contracts without the written consent of the Respondent.

Whether the conduct limited access or restricted production, market outlets or market access, investment, technical development or technological progress in a manner that affects competition

²² The Request was made in Letters to the Parties dated 23rd August 2023.

Commission found that there were no efficiencies that could be achieved from the conduct. However, FAZ submitted that if the Respondent allowed other distributors in the distribution value chain, this would likely cause an increase in the prices of tickets because the commission charged for printing and distribution services by the Respondent was a percentage of the final price charged to consumers. Therefore, the Respondent could not reduce its selling price as this would imply a reduction in the collectable commission, unless a higher commission percentage was set with FAZ. FAZ further submitted that having more than one distributor for one event would reduce security against fake tickets and pilferage. It was submitted that having one ticket printer and distributor allowed for accountability and prevented pilferage and sell of fake tickets²¹.

75. Furthermore, it was submitted that having one distributor allows event providers to adequately plan for the event as they are able to keep track of the likely number of attendants from the tickets sold by the distributor.
76. However, the Commission observed that the issues cited above should not have necessitated the conduct of the Respondent. Firstly, the Commission is of the view that the parties can still agree on ways to allow distributors of tickets without increasing the price to the final consumer by adjusting the commission percentage.
77. With regards to the threat of pilferage and sell of fake tickets highlighted by FAZ, the Commission is of the view that an introduction of other distributors in the market would not increase the risk of pilferage more than the risk existing in the current setup. The Commission has noted that even in the current setup, certain individuals buy tickets in bulk from the Respondent's stores and sell them at higher prices, usually on the day of the events and this has not increased risks of fake tickets being sold. Similarly, FAZ can implement other measures to avoid pilferage of tickets.
78. Lastly, regarding the planning of events, the Commission is of the view that FAZ can ensure that there are in constant contact with their authorised distributors to ensure that they are aware of how many tickets to the event are sold.
79. Further, following the Commission's assessment that there are no efficiencies that can be achieved from the conduct of the Respondent, the Commission

²¹Submission by FAZ in a meeting with the Commission on 5th April 2023 at the FAZ offices.

83. The Board deliberated that FAZ was able to engage competitors of the Respondent to provide ticket printing and distribution services. The Board deliberated that there was a running trial between FAZ and All1 Zed Zambia²³ in 2022 for the sale of e-tickets online and that FAZ had also engaged Webtickets Zambia Limited²⁴ for the provision of ticket printing and distribution services²⁵. Further, the Board deliberated that in clause 5.1 of the contract between the Respondent and FAZ, the Respondent allowed clients to distribute tickets by themselves. As such, the Board deliberated there was no restriction by the Respondent regarding the distribution of tickets to patrons.

Consideration of Section 59(1)(b) and 59(2) of the Act

84. The Board deliberated that none of the factors provided for in Section 19(2)²⁶ were obtaining in the conduct of the Respondent.

Board Determination

85. Following the Board's deliberations, the Board determined that the conduct by the Respondent did not limit access to markets or otherwise unduly restrain competition as FAZ could still engage competitors of the Respondent for the Provision of ticket printing and distribution services.

Board Directives

86. In view of the above deliberations, the Board of Commissioners directed that:
- i. FAZ and the Respondent allow other ticket distributors to distribute tickets to football games organised by FAZ;
 - ii. Pursuant to Section 59(3) of the Act, the Respondent removes the provisions of exclusivity and clearly states in its respective contracts that the contracts are not exclusive;
 - iii. The Commission reviews the general contracts offered by the identified ticket printing service providers for any anti-competitive clauses; and,

²³ Submission by Mr. Malama Mungulube the Managing Director of All1 Zed Zambia on 21st December 2022. The Commission was represented by Mr. Loti Mweemba and Mr. Chester Njobvu.

²⁴ Submissions by Ms. Waza Kalaluka, the Managing Director of Webtickets Zambia Limited on 27th December 2022.

²⁵ The submissions were further confirmed by FAZ in a meeting with the Commission on 5th April 2023.

²⁶ Section 59(2) of the Act refers to Section 19(2) of the Act.

iv. The matter be closed.

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

Dated this 19th Day of October 2023

Ausinda
.....

**Chairperson
Competition and Consumer Protection Commission**