

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**ACTS, 2016**

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**THE COMPETITION (AMENDMENT) ACT****No. 49 of 2016***Date of Assent: 23rd December, 2016**Date of Commencement: 13th January, 2017***AN ACT of Parliament to amend the Competition Act, 2010****ENACTED** by Parliament of Kenya, as follows—

1. This Act may be cited as the Competition (Amendment) Act, 2016.

Short title.

2. The Competition Act, 2010, in this Act referred to “the principal Act”, is amended in section 2 by—

Amendment of section 2 of No. 12 of 2010.

- (a) deleting the definition of the term “local authority”;
- (b) deleting the definition of the term “undertaking” and substituting therefor the following new definition—

“undertaking” means any business intended to be carried on, or carried on for gain or reward by a person, a partnership or a trust in the production, supply or distribution of goods or provision of any service, and includes a trade association;

- (c) inserting the following new definition in proper alphabetical sequence—

“County government” means the county government established by Article 76(1) of the Constitution.

3. Section 5 of the principal Act is amended in subsection (5) by deleting the expression “local authority” wherever it appears and substituting therefor the expression “county government”.

Amendment of section 5 of No. 12 of 2010.

4. Section 18 of the principal Act is amended by inserting the following subsection immediately after subsection (5)—

Amendment of section 18 of No. 12 of 2010.

“(6) Every person, undertaking, trade association or body shall be under an obligation to provide information requested by the Authority in fulfilment

of its statutory mandate for conducting an inquiry or sectoral study regulated by this section”.

5. Section 24 of the principal Act is amended—

Amendment of  
section 24 of No. 12  
of 2010.

(a) in the marginal note by inserting the words “and buyer power” at the end thereof;

(b) by inserting the following new subsections immediately after subsection (2)—

“(2A) Any conduct that amounts to abuse of buyer power in a market in Kenya, or a substantial part of Kenya, is prohibited.

(2B) In determining buyer power, the Authority shall take into consideration—

(a) the nature and determination of contract terms;

(b) the payment requested for access infrastructure; and

(c) the price paid to suppliers.

(2C) The Authority, in consultation with the Cabinet Secretary and other relevant government agencies and stakeholders, shall develop rules for the better carrying out of the provisions of this section.

(2D) For the purposes of this section, “buyer power” means the influence exerted by an undertaking or group of undertakings in the position of a purchaser of a product or service to obtain from a supplier more favourable terms, or to impose a long term opportunity cost including harm or withheld benefit which, if carried out, would be significantly disproportionate to any resulting long term cost to the undertaking or group of undertakings”.

6. Section 34 of the principal Act is amended in subsection (1) by inserting the following paragraph immediately after paragraph (b)—

Amendment of  
section 34 of No. 12  
of 2010.

“(c) a prohibition or prohibitions under section C of this Part have been infringed”.

7. Section 36 of the principal Act is amended—

Amendment of  
section 36 of No. 12

- (a) in paragraph (a), by deleting the expression “or B” and substituting therefor the expression “B or C”;
- (b) in paragraph (d), by inserting the words “of up to ten percent of the immediately preceding year’s gross annual turnover in Kenya of the undertaking or undertakings in question” immediately after the word “penalty”.

of 2010.

8. Section 37 of the principal Act is amended in subsection (1) by deleting the words “section A of this Part or the prohibitions contained in section B of this Part” and substituting therefor the words “section A, B, or C of this Part”.

Amendment of section 37 of No. 12 of 2010.

9. Section 41 of the principal Act is amended in subsection (3)(a) by inserting the words “or business or assets” immediately after the expression “share capital”.

Amendment of section 41 of No. 12 of 2010.

10. Section 42 of the principal Act is amended—

Amendment of section 42 of No. 12 of 2010.

- (a) by deleting subsection (1) and substituting therefor the following subsection—

“(1) The Authority may, in consultation with the Cabinet Secretary and by notice in the Gazette, set the threshold for any merger excluded from the provisions of this Part”;

- (b) in subsection (6), by deleting the words “In addition to the penalties described in subsection (5)”.

11. Section 47 of the principal Act is amended by inserting the following subsections immediately after subsection (2)—

Amendment of section 47 of No. 12 of 2010.

“(3) Notwithstanding subsections (1) and (2), the Authority may impose a financial penalty of upto ten percent of the preceding year’s annual gross turnover.

(4) Any person who, being a party to a merger—

- (a) gives materially incorrect or misleading information; or
- (b) fails to comply with any condition attached to the approval for the merger,

leading to a revocation of the merger under this section, commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both”.

12. Section 48 of the principal Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of section 48 of No. 12 of 2010.

“(1A) Upon receipt of a written decision from the Authority as contemplated under section 46(6), a party may file an appeal to that decision to the Tribunal”.

13. The principal Act is amended by inserting the following new section immediately after section 70—

Insertion of a new section 70A in No. 12 of 2010.

Authority to initiate investigation into complai

**70A.** (1) Pursuant to the provisions of this Part, the Authority may on its own initiative or upon receipt of information or a complaint from any person, government agency, Ministry, or consumer body, initiate investigations into a consumer complaint.

(2) The provisions of sections 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 of the Act shall apply *mutatis mutandis* to the investigation of consumer complaints under this section.