

**ONLINE PUBLIC CONSULTATION:
PROPOSED AMENDMENT OF COMPETITION ACT 2010 [ACT 712]**

A. Competition Act 2010 [Act 712]

1. To substitute the definition of “enterprise” in section 2 with the following definition:
“enterprise” means any person, being an individual, a body corporate, an unincorporated body of persons or other entity, capable of carrying on commercial or economic activities relating to goods or services and for the purpose of this Act, a parent and subsidiary company shall be regarded as a single enterprise if, despite their separate legal entity, they form a single economic unit within which the subsidiaries do not enjoy real autonomy in determining their actions on the market.”
2. To amend section 3 by inserting the word “or economic” wherever appearing after the word “commercial” to ensure consistency of the act.
3. To provide a better provision by requiring the enterprises to prove that the anti-competitive agreement must be benefitting to the consumers. Paragraph 5(a) of the principal Act is amended by inserting after the words “social benefits” with the words “while allowing consumers of the fair share of the resulting benefit”.
4. To empower the Commission to vary or impose additional condition or obligation on the granted block exemption by inserting after section 8(5) with the following new section:

“8A. If the Commission is satisfied that –

- (a) there has been a material change of circumstance since it granted a block exemption; or*
- (b) an obligation has been breached,*

the Commission may, by order published in the Gazette –

- (i) vary or remove any condition or obligation; or*
- (ii) impose additional condition or obligation.”*

5. To introduce provision on the procedure for varying, removing or imposing condition as provided in the new section 8A on the granted block exemption by inserting after section 9, the following section:

“ 9A. The Commission shall, before varying or imposing additional condition or obligation to the granted block exemption :-

- (a) publish details of the variation or additional condition or obligation;*
- (b) give at least thirty days from the date of publication to allow any submission to be made by members of the public in relation to the variation or additional condition or obligation ; and*
- (c) give due consideration to any submission made.*

6. To extend the existing investigation powers of the Commission officer to infringement cases by inserting after the word “offence” with the word “*or infringement*”.

7. To provide better provision regarding power of Commission officer to require information by substituting section 18 the following section:

“18. (1) The Commission officer may make an order under subsection (2) direct any person if he has reasonable grounds to believe that that person-

- (a) has any information or any document that is relevant to the performance of Commission’s functions and powers; or*
- (b) is capable of giving any evidence which the Commission officer has reasonable grounds to believe that the evidence is relevant to the performance of Commission’s functions and powers.*

(2) The direction under subsection (1) may require the person—

- (a) to give the Commission officer any such information;*
- (b) to produce to the Commission officer any such documents, whether in a physical form or in electronic media;*
- (c) to make copies of any such documents and to produce those copies to the Commission officer;*

- (d) *if the person is an individual, to appear, at a private hearing before the Commission officer at a time and place specified in the notice to give any evidence, either orally or in writing, and produce any such documents, whether in a physical form or in electronic media;*
- (e) *if the person is a body corporate or a public body, to cause a competent officer of the body to appear, at a private hearing before the Commission officer at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents, whether in a physical form or in electronic media; or*
- (f) *if the person is a partnership, to cause an individual who is a partner in the partnership or an employee of the partnership to appear, at a private hearing before the Commission officer at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents, whether in a physical form or in electronic media.*

(3) *The person so directed under subsection (1) shall —*

- (a) *provide the required information or documents within such time as specified in the order or such extended time as the Commission officer may grant; and*
- (b) *ensure that the information or documents provided are true, accurate and complete and shall provide a representation to that effect, including a representation that he is not aware of any other information or document which would make the information or document provided untrue or misleading.*

(4) *A person who fails to comply with an order under this section commits an offence.”*