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REPUBLIC OF KENYA



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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (THIRD SESSION)

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE COMPETITION (AMENDMENT) BILL (N.A.  
BILL NO. 49 OF 2019)

CLERKS CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 13 NOV 2019	DAY: WED
TABLED BY:	HON LIMO, CHAIRPERSON FINANCE COMMITTEE
CLERK-AT THE TABLE:	A. SHIBUKO

NOVEMBER, 2019

## TABLE OF CONTENTS

CHAIRPERSON'S FOREWORD .....	3
CHAPTER ONE .....	5
1 PREFACE .....	5
1.1 Establishment of the Committee .....	5
1.2 Committee Subjects.....	5
1.3 Committee Membership.....	6
1.4 Committee Secretariat .....	7
CHAPTER TWO .....	8
2 OVERVIEW OF THE COMPETITION (AMENDMENT) BILL, 2019 (NATIONAL ASSEMBLY BILLS NO. 49 OF 2019) .....	8
CHAPTER THREE .....	10
3 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION .....	10
3.1 Competition Authority of Kenya.....	10
3.2 Safaricom PLC .....	10
3.3 Bowmans .....	11
CHAPTER FOUR.....	14
4 COMMITTEE'S OBSERVATION.....	14
CHAPTER FIVE .....	15
5 COMMITTEE'S RECOMMENDATION.....	15
CHAPTER SIX.....	16
6 SCHEDULE OF COMMITTEE'S PROPOSED AMENDMENTS .....	16

## CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Competition (Amendment) Bill, 2019, which was read a first time on **Tuesday, 23<sup>rd</sup> July, 2019** pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the print media on Thursday, 26<sup>th</sup> July, 2019 pursuant to Article 118 of the Constitution.

By the time the Committee was considering the Bill, three stakeholders had submitted memorandum for consideration. The Committee took the views submitted by stakeholders with regards to the Competition (Amendment) Bill, 2019. These views formed the basis with which the Committee arrived to its decision.

The principal object of this Bill is to amend the Competition Act to facilitate investigations with a view of mitigating abuse of bargaining or buyer power which adversely affects the economy, and empower the Competition Authority to investigate and take action against such conduct. Small to Medium Enterprises (SMEs) in Kenya have in recent times experienced challenges occasioned by delay or non-payment for their goods and services supplied to buyers (mainly retailers) and including Contractors. This conduct is enabled by the superior bargaining power wielded by buyers and contractors relative to the SMEs position.

In addition to delayed payment, suppliers have faced unilateral termination of their supply contracts by powerful buyers when they demand for payments owed to them for goods supplied. The upshot is that suppliers and especially SMEs have been exposed to a huge debt portfolio due to late and non-payment. In some instances, the combination of delayed payments and termination has led to closure of business.

The current provisions under the Act have not been entirely effective in mitigating the problem of abuse of buyer power. First because of the brevity of the relevant provisions, second owing to the incorporation of the relevant clauses into the overall provisions catering for Abuse of Dominance, itself a distinct infraction from Abuse of Buyer Power and the exclusion of Abuse of Buyer Power from section 31 which empowers the Authority to investigate prohibited practices of its own motion.

The proposed Amendments thus seek to empower the Competition Authority to take action on the basis of its own investigations into abuse of buyer power conduct without having to rely entirely on presented complaints. They further buttress the Abuse of Buyer Power provisions under the Act thereby increasing enforcement in this area in order to tackle the challenges of SMEs.

Section 29(1) of the Competition Act makes it obligatory for professional associations to apply to the Competition Authority for exemption with respect to rules which contain a restriction which is likely to prevent, distort or lessen competition. These rules include those which provide for fixing of fees payable to members of such professional associations. While section 29 of the Act creates an obligation, it does not provide a consequence for failure to comply. Towards solving this problem, **clause 5** of the Bill seeks to add a new section 29A introducing a penalty for failure to submit professional rules that fall

under section 29(1) and an undertaking to abide by the decision of the Authority on the application. The proposed amendment will address challenges of non-compliance that the Authority has previously grappled with. It is expected inclusion of a penalty for breach will enhance adherence.

The Competition Authority is empowered by section 70A (1) and (2) of the Act to initiate investigations, either on its own motion, or upon receipt of a complaint. However, the section as worded contains a contradiction. The relevant statement reads that the Authority may “initiate investigations into a consumer complaint”. The implication is that initiation of investigations will follow a complaint from an aggrieved consumer only, negating the power to initiate investigations on its own motion.

The proposed amendment in **clause 7** of the Bill proposes to amend section 70A (1) and (2) of the Competition Act to remove the anomaly indicated above, by substituting ‘consumer complaint’ with ‘any conduct or proposed conduct which is alleged to constitute an infringement of Part VI of the Act’.

The Bill does not limit any fundamental rights and freedoms and neither does it concern county governments in terms of Article 110(1)(a) of the Constitution. The enactment of the Bill shall not occasion additional expenditure of public funds.

It is my pleasure to report that the Departmental Committee on Finance and National Planning has considered the Competition (Amendment) Bill, 2019 and has the honour to report back to the National Assembly with the recommendation that the Bill is **approved with amendments**.

**Hon. Joseph Limo, M.P.**

**Chairperson**

## CHAPTER ONE

### 1 PREFACE

#### 1.1 Establishment of the Committee

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:
  - i. To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
  - ii. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
  - iii. **To study and review all the legislation referred to it;**
  - iv. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
  - v. To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
  - vi. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);
  - vii. To examine treaties, agreements and conventions;
  - viii. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
  - ix. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
  - x. To examine any questions raised by Members on a matter within its mandate.

#### 1.2 Committee Subjects

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters related to public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments;
  - a. The National Treasury and Ministry of Planning
  - b. Ministry of Devolution and ASAL
  - c. The Commission on Revenue Allocation
  - d. Office of the Controller of Budget
  - e. Salaries and Remuneration Commission

### 1.3 Committee Membership

4. The Departmental Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members: -

#### **Chairperson**

Hon. Joseph K. Limo, MP  
MP for Kipkelion East Constituency

#### **Jubilee Party**

#### **Vice-Chairperson**

Hon. Isaac W. Ndirangu  
MP for Roysambu Constituency

#### **Jubilee Party**

#### **Members**

Hon. Jimmy O. Angwenyi, MP  
MP for Kitutu Chache North Constituency

#### **Jubilee Party**

Hon. Christopher Omulele, MP  
MP for Luanda Constituency

#### **ODM Party**

Hon. Dr. Enoch Kibunguchy, MP  
MP for Likuyani Constituency

#### **FORD-K**

Hon. Shakeel Shabbir Ahmed, MP  
MP for Kisumu Town East

#### **Independent Member**

Hon. Abdul Rahim Dawood, MP  
MP for North Imenti Constituency

#### **Jubilee Party**

Hon. Daniel E. Nanok, MP  
MP for Turkana West Constituency

#### **Jubilee Party**

Hon. Andrew A. Okuome, MP  
MP for Karachuonyo Constituency

#### **ODM Party**

Hon. David M. Mboni, MP  
MP for Kitui Rural Constituency

#### **CCU Party**

Hon. Francis K. Kimani, MP

MP for Molo Constituency

#### **Jubilee Party**

Hon. Joseph M. Oyula, MP  
MP for Butula Constituency

#### **ODM Party**

Hon. Joshua C. Kandie, MP  
MP for Baringo Central Constituency

#### **MCC Party**

The Hon. Lydia H. Mizighi, MP  
MP for Taita Taveta County

#### **Jubilee Party**

Hon. Mohamed A. Mohamed, MP  
MP for Nyali Constituency

#### **Independent Member**

Hon. Purity W. Ngirici, MP  
MP for Kirinyaga County

#### **Jubilee Party**

Hon. Samuel Atandi, MP  
MP for Alego Usonga Constituency

#### **ODM Party**

Hon. Stanley M. Muthama, MP  
MP for Lamu West Constituency

#### **MCC Party**

The Hon. Edith Nyenze, MP  
MP for Kitui West Constituency

#### **WDM-K**

#### **1.4 Committee Secretariat**

5. The Committee is facilitated by the following Secretariat: -

Ms. Leah W. Mwaura  
**Senior Clerk Assistant/Head of Secretariat**

Ms. Jennifer Ndeto  
**Principal Legal Counsel 1**

Ms. Laureen Wesonga  
**Clerk Assistant II**

Mr. Josephat Motonu  
**Fiscal Analyst I**

Mr. Chelang'a Maiyo  
**Research Officer II**

## CHAPTER TWO

### 2 OVERVIEW OF THE COMPETITION (AMENDMENT) BILL, 2019 (NATIONAL ASSEMBLY BILLS NO. 49 OF 2019)

6. The Competition (Amendment) Bill, 2019 proposes to amend sections 18, 24, 29, 31 and 70A of the Competition Act, No 12 of 2010. In particular, the proposals for amendment are with respect to:-
- i. Inclusion of *Abuse of Buyer Power* as an area of inquiry under section 18 of the Act which provides for market inquiries;
  - ii. De-linking of *Abuse of Buyer Power* provisions from section 24. To ease interpretation and enforcement;
  - iii. Provision of express powers for investigations into *Abuse of Buyer Power* complaints;
  - iv. Providing for penalties under Section 29A of the Act; and
  - v. Enabling the Competition Authority to effectively initiate investigations on its own motion and investigate consumer complaints.
7. **Clause 2:** of the Bill proposes an amendment to introduce the words ‘abuse of buyer power’ into subsection (4) of section 18 of the Act. In its current state, section 18(4) provides power for the Authority to conduct market inquiries into matters affecting competition or consumer welfare. However, it does not provide for market inquiries focusing on the Buyer Power issues. The Amendments aim at providing for this in order to inform continual development of Buyer Power related policies.
8. **Clause 3:** of the Bill proposes to de-link Abuse of Buyer Power provisions from those on AoD by deleting sections 24(2A), (2B), (2C) and (2D) of the Act. Locating Abuse of Buyer Power and abuse of dominance in the same section has led to a misconception that the two concepts are related thereby affecting efficient enforcement. The proposed de-linking is meant to cure this confusion.
9. **Clause 4** is proposed as a consequence of **Clause 3**. It proposes the creation of an exclusive section 24A to provide for Abuse of Buyer Power. The new section will incorporate the present sections 24(2A) to (2D) of the Act which provide for creation of the offence of Abuse of Buyer Power, assessment of buyer power, granting of power to the Competition Authority to make rules and definition of buyer power.
10. The proposed new section 24A creates a new subsection by which the Authority may monitor the activities of sectors or undertakings that are experiencing or are likely to experience

incidences of Abuse of Buyer Power to ensure compliance. The Competition Authority will be able to impose reporting and prudential requirements.

11. **Clause 4** sets out a clear list of acts which may qualify as Abuse of Buyer Power. This will avail clarity and efficacy in enforcement. The proposed subsection will further set out minimum requirements for supply contracts. The intention is to protect weaker suppliers who are often taken advantage of in business relationships that are not based on a recorded agreement. In addition, this clause provides for penalties for breach of the buyer power provisions.
12. **Clause 6** proposes to amend section 31 of the Act by introducing a subsection (c) to extend the Authorities investigatory powers with respect to Abuse of Buyer Power. Currently, section 31 of the Act does not expressly include buyer power and is open to interpretation in a manner that precludes the Authority from enforcing its mandate on Abuse of Buyer Power. Such an interpretation would negate the very purpose of the provisions on buyer power hence the need for an express provision.
13. **Clause 7** of the Bill proposes to amend Section 70A of the principal Act by deleting the marginal note and substituting it with “Authority to initiate investigations”, deleting the words “into a consumer complaint” in subsection (1) and “of consumer complaints” in subsection (2) and substituting therefor the words “into any conduct or proposed conduct which is alleged to constitute an infringement of Part IV of the Act”. This is to allow the Competition Authority to initiate an investigation on its own initiative

## CHAPTER THREE

### **3 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION**

14. The Committee received memorandum from three (3) stakeholders following a call for memoranda through the print media on **26<sup>th</sup> July, 2019**. The following stakeholders submitted their memoranda:-

- i. The Competition Authority of Kenya;
- ii. Safaricom; and
- iii. Bowmans

15. The proposals by the stakeholders were deliberated on and considered by the Committee. Below are their views:-

#### **3.1 Competition Authority of Kenya**

The Competition Authority of Kenya appeared before the Committee on Friday, 8<sup>th</sup> November, 2019. The CEO of the Authority, Mr. Wang'ombe Kariuki submitted as follows, THAT –

16. The Bill gives the Authority powers to initiate investigations in cases where they suspect that buyer power has been abused. The amendments proposed in the Bill also separate dominance from buyer power.
17. The Bill also makes it obligatory for professional associations to apply to the Competition Authority for exemption with respect to rules which contain a restriction which is likely to prevent, distort or lessen competition. These rules include those which provide for fixing of fees payable to members of such professional associations. It also provides for penalties for those who seek for exemptions but fail to comply with the conditions.

#### **3.2 Safaricom PLC**

18. In a letter dated 1<sup>st</sup> August, 2019, Safaricom PLC proposed the following amendments, THAT:-

##### **Clause 4**

19. Sub-clause 24A(3) should be amended by removing the provision that reporting and prudential requirements are mandatory because the provision will subject undertakings to onerous reporting obligations given that some undertakings (for instance within the telecommunications sector) are already mandated to submit returns or reports to several other industry regulators.

### **Committee's Recommendation**

20. **The proposal was rejected because the word used is may meaning that the reporting is not mandatory. In addition, there is no harm in preparing a report and submitting to various agencies including Competition Authority. Besides each of these Government agencies look at different regulatory aspects.**
21. Sub-clause 24A(6)(g) should be amended by clearly specifying the criteria to determine that a price reduction is below competitive levels. This is because it is difficult to determine that a price has been reduced below competitive levels.

### **Committee's Recommendation**

22. **The proposal was rejected because CAK will develop a code of practice which will address the concerns alluded to by Safaricom.**
23. The proposed that sub-clause 24(8) should be deleted because defining how parties should contract and the terms they should include in their contracts would constitute interference in the freedom of contract which is protected by law. Such a provision increases the risk of a buyer being accused of abusing buyer power due to unjustified complaints simply because they attempted to negotiate competitive terms with suppliers. Abuse of buyer power should focus on unfair or illegal negotiation practices and not the contractual terms.

### **Committee's Recommendation**

24. **The proposal was rejected because the provision in the Bill is a template that will be used to assess whether a company is abusing buyer power. It will also encourage companies to pay suppliers in time.**

### **3.3 Bowmans**

25. Bowmans proposed the following amendments:-

#### **Clause 4**

26. Deletion of sub-clause 24A(2)(a) because the sub-clause is a duplication of sub-clause 24(6)(f). the definition of buyer power must remain analytically neutral and not be equated with act of abuse of which the proposed sub-clause is an example. Some buyers will possess buyer power without abusing it and it is important to distinguish conceptually between having buyer power on the one hand and abusing such power on the other hand.

### **Committee's Recommendation**

27. **Their proposal was rejected by the Committee because their reservations have been adequately addressed in the Bill.**

28. Amending the clause by either deleting sub-clause 24A(2)(b) or by simplifying the sub-clause as follows:-

For purposes of this section, 'buyer power' means the potential influence that an undertaking or group of undertakings in the position of a purchaser of a product or service could exert in the absence of sufficient competitive constraints.

### **Justification**

29. The first suggestion as indicated above, the definition of buyer power must remain analytically neutral and not be equated to the abuse of buyer power of which the proposed sub-clause is an example. The second suggestion is because the complexity of the provision may pose challenges in interpretation and/or in proving the existence of some of the elements of this provision e.g. opportunity cost in this context, disproportionality as well as long term cost especially where a hypothetical cause is involved. The proposed wording aims to ensure that the phrase 'buyer power' remains neutral.
30. Amending sub-clause 24A(5) by replacing the word '*circumstances*' with the word '*factors*'. This is because the word 'factors' constitutes a better description of what the list refers to though it is not a critical recommendation.
31. Amending sub-clause 24A(5)(b) as follows, '*the payment requested by the supplier for access to its infrastructure; and*'. This is because the envisaged abusive scenario is not entirely clear as the sub-clause currently reads.
32. Amending sub-clause 24A(6)(a) by inserting the word '*objectively*' immediately after the word '*without*'. The proposal is to prevent a dominant buyer escaping liability on the basis of subjective grounds.
33. Amending sub-clause 24A(6)(b) by deleting the word '*and*' appearing before the word '*without*' and replacing it with the word '*or*'. This is because the use of the word 'or' in this context is proposed because it is unlikely that the intention of the provision is for the test to be cumulative. Using 'or' instead of 'and' will ease the burden of proof on CAK or complainant because if either the former (termination on short notice) or the latter (termination without objective justification) could be shown instead of both events, the case can succeed.
34. Amending sub-clause 24A(6)(b) by inserting the words '*an objectively*' immediately after the word '*without*'. This is to prevent a dominant buyer from escaping liability on the basis of subjective grounds.
35. Amending sub-clause 24A(6)(g) by deleting the words '*small but*' and replacing them with the word '*competitively*'. This is because a dominant buyer that has imposed a large price cut will escape liability. The word competitively will also allow the supplier to argue a case based on the competitive dynamics in its own market as opposed to the buyer's market.
36. Amending sub-clause 24A(6) by inserting a new paragraph 24A(6)(i) as follows, '*any other conduct by a buyer in relation to a supplier that is blatantly unfair in the circumstances*'. This is because the jurisprudence on buyer power abuse is in its infancy and that other manifestations of abusive buyer conduct may be found to be prohibitive.

37. Amending the clause by moving sub-clause 24A(7) to sub-clause 24A(5)(d). This is because the two sub-clauses deal with similar provisions i.e. the factors to be considered when dealing with a buyer power abuse complaint.
38. Inserting new sub-clause 24A(7) as follows, '*the existence of the factors listed under sub-clause (6) will constitute reasonable grounds for purposes of section 37(1) of the Act*'. This will allow for swift relief for suppliers experiencing buyer power abuse minimizing the risk of especially small suppliers failing due to the duration of the competition case.
39. Amending sub-clause 24A(8) by inserting the following words immediately after the word 'shall', '*be entered into and shall*'. This is to ensure that buyers enter into agreements with suppliers in the first instance.
40. Amending sub-clause 24A(9) as follows, '*The Authority shall publish in the Gazette and on its website the reporting and prudential requirements referred to in sub-clause (3) and the code of practice referred to in sub-clause (4) which shall be developed in consultation with the relevant stakeholders, Government agencies and the Attorney General where required*'. The proposed amendment stipulates where the directions of codes should be published. It also provides for the developing of the reporting and prudential obligations in consultation with the relevant stakeholders.
41. Amending sub-clause 24A(10) by inserting the following words immediately after the word 'section', '*the prudential obligations referred to in sub-clause (3) or the code of practice referred to in sub-clause (4)*'. This is to ensure that sanctions exist in relation to the non-adherence to the Authority's directions or codes of practice.
42. Inserting the following new sub-clause 24A(11), '*All buyers to which the prudential obligations and codes of practice apply shall have a copy of such documents available at a visible place on its website*'. This is to promote self-regulation.

#### **Clause 5**

43. Amending sub-clause 29A(b) by inserting the following words immediately after the word 'thereof', '*that caused the association to engage in the restriction, or knowingly acquiesced in the association engaging in the restriction*'. The proposed amendment aims to ensure that sufficient proximity exists between the person engaging in the prohibited conduct and liability for the conduct.

#### **Committee's Recommendation**

44. **The proposal was rejected by the Committee because the wording in the Bill covers both the corporate and individual person hence their proposed amendment is not necessary.**

## **CHAPTER FOUR**

### **4 COMMITTEE'S OBSERVATION**

45. The Committee observed that the Bill is very crucial in ensuring that suppliers are paid for the supplies that they deliver to companies/ retail outlets. This will encourage growth of SMEs and subsequently cause growth of the economy and increase employment opportunities.

## CHAPTER FIVE

### **5 COMMITTEE'S RECOMMENDATION**

46. The Committee having considered the representations from all the stakeholders recommends that the Competition (Amendment) Bill, 2019 be passed by the House with amendments as proposed by the schedule of the report.

## CHAPTER SIX

### 6 SCHEDULE OF COMMITTEE'S PROPOSED AMENDMENTS

The Committee proposed the following amendments to be considered in the Committee of the Whole House:-

#### NEW CLAUSE

47. **THAT**, the Bill be amended by inserting the following new clause immediately after clause 1—

1A. Section 2 of the principal Act is amended by inserting the following new definition in the proper alphabetical sequence—

“buyer power” means the influence exerted by an undertaking or group of undertakings in the position of purchaser of a product or service to—

(a) obtain from a supplier more favourable terms; or

(b) 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.

#### Justification

The definition has been moved from clause 24A to section 2 of the Act.

#### CLAUSE 4

48. **THAT**, the Bill be amended in clause 7 in the proposed section 24A by —

(a) deleting subsection (2);

(b) deleting the words “this section” and substituting therefor the words “subsection (1)”.

#### Justification

(a) The clause has been deleted because it has been moved to clause 1A.

(b) The amendment clarifies that the offense is not contravening the whole clause 24A but only if one contravenes sub-clause 24A(1).

#### CLAUSE 5

49. **THAT**, the Bill be amended by deleting clause 5 and substituting therefore the following new clause—

5. The principal Act is amended in section 29 by inserting the following new subsection immediately after subsection (7)—

(8) Any professional association—

(a) whose rules contain a restriction that has the effect of preventing, distorting or lessening competition in a market in Kenya and which fails to apply for an exemption as required by section 29 (1) and (2); or

(b) which having applied for exemption under section 29 (1) fails to comply with the Authority's decision rejecting its application,

commits an offence, and any official thereof or any person who issues guidelines or rules in contravention of that provision shall be liable, upon conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings, or both.

**Justification**

The proposed clause 29A was proposing a penal provision for section 29 of the Act. The amendment is a clean-up so that the penal provision is in the same section with the prohibition.

**CLAUSE 7**

50. THAT, the Bill be amended by deleting clause 7.

**Justification**

The clause is subject to abuse by the Authority.

SIGNED.......... DATE.....13/11/19.....

**THE HON. JOSEPH LIMO, MP**

**CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**

## **ANNEXTURES**

- 1.MINUTES OF THE 61<sup>ST</sup> SITTING
- 2.MINUTES OF THE 4<sup>TH</sup> SITTING
- 3.MINUTES OF THE 2<sup>ND</sup> SITTING
- 4.ADOPTION SCHEDULE

**MINUTES OF THE 61<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON TUESDAY, 12<sup>TH</sup> NOVEMBER, 2019 IN 4<sup>TH</sup> FLOOR PROTECTION HOUSE AT 10.00 AM**

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**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. David M. Mboni, MP
9. Hon. Francis K. Kimani, MP
10. Hon. Joseph M. Oyula, MP
11. Hon. Joshua C. Kandie, MP
12. Hon. Mohamed A. Mohamed, MP
13. Hon. Purity Ngirici, MP
14. Hon. Samuel Atandi, MP

**ABSENT WITH APOLOGY**

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Lydiah Mizighi, MP

**ABSENT**

1. Hon. Shakeel Shabbir Ahmed, CBS, MP
2. Hon. Stanley M. Muthama, MP
3. Hon. Edith Nyenze, MP

**INATTENDANCE**

**SECRETARIAT**

1. Ms. Leah Mwaura - Senior Clerk Assistant / Lead Clerk
2. Ms. Jennifer Ndeto - Principal Legal Counsel
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Ms. Christine Maeri - Audio Officer
5. Mr. John Njoro - Serjeant-At-Arms
6. Mr. Faustine Rotich - Intern

**MEMBER OF PARLIAMENT**

- Hon. Dr. Robert Pukose - MP for Endebess Constituency

**AGENDA**

1. Prayers
2. Preliminaries/Introductions/Communication from the Chairperson
3. Confirmation of Minutes

4. Matters Arising

5. Meeting:-

- i. with Hon. Dr. Robert Pukose, MP to consider the Statement regarding interference in the procurement process on leasing of National Police Service vehicles; and
- ii. to adopt the reports on the consideration of the Competition (Amendment) Bill, 2019 and the Insurance (Amendment) Bill, 2019.

6. Adjournment/ Date of the next meeting

**MIN.NO.NA/F&NP/2019/333: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The Chairperson called the meeting to order at 10.25 am and a prayer was said. The agenda was then adopted with amendments having been proposed by Hon. Daniel Nanok, MP and Hon. Abdul Rahim Dawood, MP respectively.

The Chairperson informed the meeting that since Hon. Dr. Pukose was yet to arrive, the Committee would consider the other two agendas and proceed with Hon. Pukose's agenda once he arrived.

**MIN.NO.NA/F&NP/2019/334: CONFIRMATION OF MINUTES**

Minutes of the following sittings were adopted:-

1. 43<sup>rd</sup> sitting having been proposed and seconded by Hon. Jimmy Angwenyi, MP and Hon. David Mboni, MP respectively;
2. 44<sup>th</sup> sitting having been proposed and seconded by Abdul Rahim Dawood, MP and Hon. Daniel Nanok, MP respectively;
3. 45<sup>th</sup> sitting having been proposed and seconded by Hon. Joshua Kandie, MP and Hon. Joseph Oyula, MP respectively;
4. 46<sup>th</sup> sitting having been proposed and seconded by Hon. Kuria Kimani, MP and Hon. David Mboni, MP respectively;
5. 47<sup>th</sup> sitting having been proposed and seconded by Hon. Jimmy Angwenyi, MP and Hon. Samuel Atandi, MP respectively;
6. 48<sup>th</sup> sitting having been proposed and seconded by Hon. Joseph Oyula, MP and Hon. David Mboni, MP respectively;
7. 49<sup>th</sup> sitting having been proposed and seconded by Hon. Joshua Kandie, MP and Hon. Abdul Rahim Dawood, MP respectively;
8. 50<sup>th</sup> sitting having been proposed and seconded by Hon. Daniel Nanok, MP and Hon. Jimmy Angwenyi, MP respectively;
9. 51<sup>st</sup> sitting having been proposed and seconded by Hon. Joshua Kandie, MP and Hon. Daniel Nanok, MP respectively;
10. 52<sup>nd</sup> sitting having been proposed and seconded by Hon. Mohamed Ali, MP and Hon. Jimmy Angwenyi, MP respectively;
11. 53<sup>rd</sup> sitting having been proposed and seconded by Hon. Samuel Atandi, MP and Hon. David Mboni, MP respectively;

12. 54<sup>th</sup> sitting having been proposed and seconded by Hon. Christopher Omulele, MP and Hon. Joseph Oyula, MP respectively;
13. 55<sup>th</sup> sitting having been proposed and seconded by Hon. Daniel Nanok, MP and Hon. Jimmy Angwenyi, MP respectively;
14. 56<sup>th</sup> sitting having been proposed and seconded by Hon. David Mboni, MP and Hon. Abdul Rahim Dawood, MP respectively;
15. 57<sup>th</sup> sitting having been proposed and seconded by Hon. Kuria Kimani, MP and Hon. Andrew Okuome, MP respectively;
16. 58<sup>th</sup> sitting having been proposed and seconded by Hon. Andrew Okuome, MP and Hon. Mohamed Ali, MP respectively;
17. 59<sup>th</sup> sitting having been proposed and seconded by Hon. Jimmy Angwenyi, MP and Hon. David Mboni, MP respectively; and
18. 60<sup>th</sup> sitting having been proposed and seconded by Hon. Mohamed Ali, MP and Hon. Kuria Kimani, MP respectively.

**MIN.NO.NA/F&NP/2019/335: CONFIRMATION OF MINUTES**

No matters arose from the confirmed minutes.

**MIN.NO.NA/F&NP/2019/336: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE COMPETITION (AMENDMENT) BILL, 2019**

The Committee adopted the report on the consideration of the said Bill having been proposed and seconded by Hon. Daniel Nanok, MP and Hon. Jimmy Angwenyi, MP respectively. The Committee proposed the following amendments to be considered in the Committee of the Whole House:-

**NEW CLAUSE**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 1—

**1A.** Section 2 of the principal Act is amended by inserting the following new definition in the proper alphabetical sequence—

“buyer power” means the influence exerted by an undertaking or group of undertakings in the position of purchaser of a product or service to—

(a) obtain from a supplier more favourable terms; or

(b) 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.

**CLAUSE 4**

**THAT**, the Bill be amended in clause 7 in the proposed section 24A by —

(a) deleting subsection (2);

(b) deleting the words “this section” and substituting therefor the words “subsection (1)”.

## **CLAUSE 5**

**THAT**, the Bill be amended by deleting clause 5 and substituting therefore the following new clause—

**5.** The principal Act is amended in section 29 by inserting the following new subsection immediately after subsection (7)—

(8) Any professional association—

(a) whose rules contain a restriction that has the effect of preventing, distorting or lessening competition in a market in Kenya and which fails to apply for an exemption as required by section 29 (1) and (2); or

(b) which having applied for exemption under section 29 (1) fails to comply with the Authority's decision rejecting its application,

commits an offence, and any official thereof or any person who issues guidelines or rules in contravention of that provision shall be liable, upon conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings, or both.

## **CLAUSE 7**

**THAT**, the Bill be amended by deleting clause 7.

### **MIN.NO.NA/F&NP/2019/337: MEETING WITH HON. (DR.) ROBERT PUKOSE TO CONSIDER THE STATEMENT REGARDING INTERFERENCE IN THE PROCUREMENT PROCESS ON LEASING OF NATIONAL POLICE SERVICE VEHICLES**

Hon. (Dr.) Pukose briefed the Committee on the contents of his Statement. He stated that he had submitted the Statement after noting anomalies in the procurement process including the speedy execution of the procurement process. He requested the Committee to expedite the inquiry and prepare the report to the House in the shortest time possible.

### **MEMBERS' DELIBERATIONS**

1. The meeting noted that the matters raised in the Statement are very weighty and thanked Hon. (Dr.) Pukose for coming up with the Statement.
2. Noting that it might be difficult to access documentation and parties involved in the procurement process of the National Police Service vehicles, Hon. (Dr.) Pukose was requested to present any documentation that he may be having on the said matter and submit names of the procuring entity, tendering companies and any other parties in the matter. Hon. (Dr.) Pukose undertook to submit the required information and documentation to the Committee Secretariat before the end of the day.
3. The Committee Secretariat was tasked to prepare a summary and terms of reference for the inquiry once they receive the documents from Hon. Pukose.

**MIN.NO.NA/F&NP/2019/338: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE INSURANCE (AMENDMENT) BILL, 2019**

The Committee adopted the report having been proposed and seconded by Hon. Rahim Dawood, MP and Hon. Andrew Okuome, MP respectively. The Committee proposed the following amendment to be considered in the Committee of the Whole House:-

**CLAUSE 7**

THAT, clause 7 of the Bill be amended in the new subsection (4A) by deleting the word “shall” and substituting therefor the word “may”.

**Justification**

This is to allow other professions besides those provided in the Bill to serve in the Board.

**MIN.NO.NA/F&NP/2019/339: ANY OTHER BUSINESS**

1. Members noted that Hon. Major (Rtd.) Bashir Abdullahi, MP had requested for a Statement from the Chairperson regarding the *Kenya Population and Housing Census 2019* results. The Committee further noted that the Chairperson was expected to respond to the Statement during the Afternoon sitting of the House that day. The Secretariat was directed to ensure that the Kenya National Bureau of Statistics (KNBS) submits a response to the Statement before 2.30 pm that day.
2. The Secretariat was tasked to provide to the Committee the Speaker’s Communication barring Members of Committees from seeking Statements or asking questions from their own Committees to which they were Members of.

**MIN.NO.NA/F&NP/2019/340: ADJOURNMENT/DATE OF NEXT MEETING**

There being no other business to deliberate on, the meeting was adjourned at 12.24 p.m. The next meeting will be held on Wednesday, 13<sup>th</sup> November, 2019 at 10.30 a.m.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED .....  ..... DATE 13/11/19 .....

**MINUTES OF THE 4<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON SATURDAY, 9<sup>TH</sup> NOVEMBER, 2019 IN LOITA CONFERENCE ROOM, OLE-SERENI HOTEL AT 1.30 PM**

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**PRESENT**

- |                                 |   |                         |
|---------------------------------|---|-------------------------|
| 1. Hon. Joseph K. Limo, MP      | - | <b>Chairperson</b>      |
| 2. Hon. Isaac W. Ndirangu, MP   | - | <b>Vice Chairperson</b> |
| 3. Hon. Christopher Omulele, MP |   |                         |
| 4. Hon. Daniel E. Nanok, MP     |   |                         |
| 5. Hon. Andrew A. Okuome, MP    |   |                         |
| 6. Hon. Samuel Atandi, MP       |   |                         |
| 7. Hon. Stanley M. Muthama, MP  |   |                         |
| 8. Hon. Edith Nyenze, MP        |   |                         |

**ABSENT WITH APOLOGY**

1. Hon. Jimmy O. Angwenyi, MGH, MP
2. Hon. Abdul Rahim Dawood, MP
3. Hon. David M. Mboni, MP
4. Hon. Joseph M. Oyula, MP
5. Hon. Joshua C. Kandie, MP
6. Hon. Mohamed A. Mohamed, MP

**ABSENT**

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Shakeel Shabbir Ahmed, CBS, MP
3. Hon. Francis K. Kimani, MP
4. Hon. Purity Ngirici, MP
5. Hon. Lydiah Mizighi, MP

**INATTENDANCE**

**SECRETARIAT**

- |                        |   |                                   |
|------------------------|---|-----------------------------------|
| 1. Ms. Leah Mwaura     | - | Senior Clerk Assistant/Lead Clerk |
| 2. Ms. Laureen Wesonga | - | Clerk Assistant II                |
| 3. Mr. Josephat Motonu | - | Fiscal Analyst I                  |
| 4. Ms. Christine Maeri | - | Audio Officer                     |
| 5. Mr. Vitalis Augo    | - | Office Assistant                  |
| 6. Mr. Faustine Rotich | - | Intern                            |

**AGENDA**

1. Prayers
2. Preliminaries/Introductions/Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Meeting to decide on each clause of the Competition (Amendment) Bill, 2019**
6. Adjournment/ Date of the next meeting

**MIN.NO.NA/F&NP/2019/016: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The Chairperson called the meeting to order at 1.40 pm and a prayer was said. The Chairperson then welcomed the meeting to deliberate on the day's agenda.

**MIN.NO.NA/F&NP/2019/017: CONFIRMATION OF MINUTES**

Agenda deferred.

**MIN.NO.NA/F&NP/2019/018: DECISION ON EACH CLAUSE OF THE COMPETITION (AMENDMENT) BILL, 2019**

The meeting deliberated and agreed as follows:-

**Clause 2:** Agreed to

**Clause 3:** Agreed to

**Clause 4:** Amend the marginal note from "*abuse of buyer power*" to "*buyer power*"

Bowman's proposal to sub-clause 24A(2)(a) was rejected by the Committee because their reservations have been adequately addressed in the Bill.

**Safaricom PLC**

- i. Reservation to sub-clause 24A(3) was rejected because the word used is may meaning that the monitoring is not mandatory. In addition, there is no harm in producing a report and submitting to various agencies.
- ii. Reservation to sub-clause 24(6)(g) was rejected because CAK will develop a code of conduct which will address Safaricom's fears.
- iii. Reservation to sub-clause 24(8) was rejected because the provision in the Bill is a template that will be used to assess whether a company is genuine to the suppliers. It will also encourage companies to pay suppliers in time.

**Clause 5:** Agreed to

Bowman's proposal was rejected by the Committee because the wording in the Bill covers both the corporate and individual person hence their proposed amendment is not necessary.

**Clause 6:** Agreed to

**Clause 7:** Delete

**Justification**



The clause is subject to abuse by the Authority.

**MIN.NO.NA/F&NP/2019/019: ADJOURNMENT/DATE OF NEXT MEETING**

There being no other business to deliberate on, the meeting was adjourned at 3.50 p.m. The next meeting will be held on Tuesday, 12<sup>th</sup> November, 2019 at 10.00 a.m.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED ..........DATE..........

**MINUTES OF THE 2<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE AND NATIONAL PLANNING HELD ON FRIDAY, 8<sup>TH</sup> NOVEMBER, 2019  
IN LOITA CONFERENCE ROOM, OLE-SERENI HOTEL AT 02.45 PM**

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**PRESENT**

- |                                 |   |                         |
|---------------------------------|---|-------------------------|
| 1. Hon. Joseph K. Limo, MP      | - | <b>Chairperson</b>      |
| 2. Hon. Isaac W. Ndirangu, MP   | - | <b>Vice Chairperson</b> |
| 3. Hon. Christopher Omulele, MP |   |                         |
| 4. Hon. Daniel E. Nanok, MP     |   |                         |
| 5. Hon. Andrew A. Okuome, MP    |   |                         |
| 6. Hon. David M. Mboni, MP      |   |                         |
| 7. Hon. Samuel Atandi, MP       |   |                         |
| 8. Hon. Stanley M. Muthama, MP  |   |                         |
| 9. Hon. Edith Nyenze, MP        |   |                         |

**ABSENT WITH APOLOGY**

1. Hon. Jimmy O. Angwenyi, MGH, MP
2. Hon. Abdul Rahim Dawood, MP
3. Hon. Joseph M. Oyula, MP
4. Hon. Joshua C. Kandie, MP
5. Hon. Mohamed A. Mohamed, MP

**ABSENT**

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Shakeel Shabbir Ahmed, CBS, MP
3. Hon. Francis K. Kimani, MP
4. Hon. Purity Ngirici, MP
5. Hon. Lydiah Mizighi, MP

**INATTENDANCE**

**SECRETARIAT**

- |                        |   |                                   |
|------------------------|---|-----------------------------------|
| 1. Ms. Leah Mwaura     | - | Senior Clerk Assistant/Lead Clerk |
| 2. Ms. Laureen Wesonga | - | Clerk Assistant II                |
| 3. Mr. Josephat Motonu | - | Fiscal Analyst I                  |
| 4. Ms. Christine Maeri | - | Audio Officer                     |
| 5. Mr. John Njoro      | - | Serjeant-At-Arms                  |
| 6. Mr. Vitalis Augo    | - | Office Assistant                  |
| 7. Mr. Faustine Rotich | - | Intern                            |

**COMPETITION AUTHORITY OF KENYA**

1. Mr. Wang'ombe Kariuki
2. Mr. Boniface Makango
3. Ms. Priscilla Njako
4. Mr. Adano Wario
5. Mr. Boniface Kamit

6. Ms. Alexia Waweru
7. Ms. Emily Makena
8. Ms. Winnie Molonko - National Treasury

#### **INSURANCE REGULATORY AUTHORITY**

1. Mr. Godfrey Kiptum
2. Mr. Kalai Musee
3. Mr. James Ndwiga
4. Mr. Mathews Odero

#### **AGENDA**

1. Prayers
2. Preliminaries/Introductions/Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Meeting to be briefed on the:-**
  - i. **Competition (Amendment) Bill, 2019 by the Competition Authority of Kenya; and**
  - ii. **Insurance (Amendment) Bill, 2019 by the Insurance Regulatory Authority.**
6. Adjournment/ Date of the next meeting

#### **MIN.NO.NA/F&NP/2019/007: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The Chairperson called the meeting to order at 03.12 pm and a prayer was said. The Chairperson then called for introduction of those present before welcoming the Competition Authority of Kenya (CAK) to brief the Committee on the Competition (Amendment) Bill, 2019.

#### **MIN.NO.NA/F&NP/2019/008: CONFIRMATION OF MINUTES**

Agenda deferred.

#### **MIN.NO.NA/F&NP/2019/009: BRIEFING ON THE COMPETITION (AMENDMENT) BILL, 2019 BY THE COMPETITION AUTHORITY OF KENYA**

The Director General, CAK Mr. Wang'ombe Kariuki submitted that:-

1. The Bill gives the Authority powers to initiate investigations in cases where they suspect that buyer power has been abused.
2. The amendments also separate dominance from buyer power.
3. The Bill also makes it obligatory for professional associations to apply to the Competition Authority for exemption with respect to rules which contain a restriction which is likely to prevent, distort or lessen competition. These rules include those which provide for fixing of fees payable to members of such professional associations. It also provides for penalties for those who seek for exemptions but fail to comply with the conditions.

**Members' Deliberations**

1. On whether the Bill will also protect those who supply to the Government given the many pending bills owed to suppliers by the Government, the meeting was informed that this will be addressed by the Public Procurement and Disposable Regulations that had been submitted to the National Assembly for consideration.
2. Regarding the setting of the length of time within which a company should pay a supplier, the meeting was informed that it is not possible to set the time in the Bill since time varies depending on the kind of supplies. This will be taken care of in the code of conduct that will set the terms of payment, period of payment and when interest will begin to be charged.
3. On the matter of "small print" in contracts, the meeting was informed that CAK had received and resolved several complaints on this especially in the financial sector. They have been carrying out awareness to financial institutions on the consequences of failing to comply to the Act and a lot of improvement has been noted.

**MIN.NO.NA/F&NP/2019/010: BRIEFING ON THE INSURANCE (AMENDMENT) BILL, 2019 BY THE INSURANCE REGULATORY AUTHORITY**

The Chairperson called for introduction of those present before welcoming the CEO of IRA, Mr. Godfrey Kiptum to make his submission. He submitted that:-


1. The Bill introduces changes meant to protect policy holders by proposing changes to the Policyholders Compensation Fund and to the Policyholders Compensation Fund Board.
2. If an insurance company goes under, policyholders can be compensated once the Commissioner appoints a receivership company.

**MIN.NO.NA/F&NP/2019/011: ADJOURNMENT/DATE OF NEXT MEETING**

There being no other business to deliberate on, the meeting was adjourned at 6.25 p.m. The next meeting will be held on Saturday, 9<sup>th</sup> November, 2019 at 10.00 a.m.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED .....  ..... DATE... 13/11/19 .....

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING  
ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE  
COMPETITION (AMENDMENT) BILL, 2019

DATE: 12<sup>TH</sup> NOVEMBER, 2019

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, MP	
5. HON. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	
19. HON. EDITH NYENZE, MP	