

A BILL

i n t i t u l e d

An Act to amend the Competition Act 2010.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Competition (Amendment) Act 2026.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 2

2. The Competition Act 2010 [*Act 712*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) by inserting after the definition of “goods” the following definition:

‘ “Government Entity” means—

(a) the Federal Government, or any State Government, local authority or statutory body; or

- (b) any ministry, department, office, agency, authority, commission, committee, board, council or other body, corporate or unincorporate, of the Federal Government or of any State Government, whether established under any written law or otherwise;’;
- (b) in the definition of “Commission officer”, by substituting for the words “Competition Commission Act 2010” the words “Malaysia Competition Commission Act 2010”;
- (c) in the definition of “Chairman”, by substituting for the words “Competition Commission Act 2010” the words “Malaysia Competition Commission Act 2010”;
- (d) in the definition of “agreement”, by substituting for the words “association” the words “association of enterprises”;
- (e) by deleting the definition of “horizontal agreement”;
- (f) by deleting the definition of “vertical agreement”;
- (g) in the definition of “enterprise”—
 - (i) by substituting for the words “any entity” the words “any person”; and
 - (ii) by substituting for the words “commercial activities” the words “any commercial or economic activity”;
- (h) by inserting after the definition of “Minister” the following definition:
 - ‘ “premises” means any premises, stationary or otherwise, established or set up by any person, whether such premises is with or without enclosure, and includes a vehicle, aircraft, ship, train and any other means of transport by which persons or goods are carried;’; and

- (i) by substituting for the definition of “Commission” the following definition:

‘ “Commission” means the Malaysia Competition Commission established under the Malaysia Competition Commission Act 2010;’.

Substitution of section 3

- 3.** The principal Act is amended by substituting for section 3 the following section:

“Application

- 3.** (1) Subject to the First Schedule, this Act applies to any commercial or economic activity.

(2) This Act shall have effect both within and outside Malaysia and in relation to the application of this Act outside Malaysia, this Act applies to any commercial or economic activity transacted outside Malaysia which has an effect on competition in any market in Malaysia.

(3) The Minister may, on the recommendation of the Commission, by order published in the *Gazette*, amend the First Schedule.

(4) For the purposes of this Act, “commercial or economic activity” means any activity of a commercial or economic nature but does not include—

- (a) any activity carried out in the exercise of governmental authority;
- (b) any activity carried out based on the principle of solidarity; and
- (c) any purchase of goods or services not for the purpose of offering goods or services as part of a commercial or economic activity.”.

Amendment of section 4**4.** Section 4 of the principal Act is amended—

- (a) in the shoulder note, by deleting the words “**horizontal and vertical**”;
- (b) in subsection (1), by substituting for the words “A horizontal or vertical agreement” the words “Any agreement”; and
- (c) in subsection (2)—
 - (i) by substituting for the words “a horizontal agreement” the words “an agreement”; and
 - (ii) in the national language text, by deleting the words “atau kesan”.

Amendment of section 5**5.** Section 5 of the principal Act is amended—

- (a) by substituting for the words “based on the following reasons:” the words “if the enterprise proves to the Commission that—”;
- (b) in paragraph (a), by inserting after the words “the agreement” the words “that allows consumers a fair share of the resulting benefits”; and
- (c) in paragraph (d), by substituting for the words “to eliminate” the words “the possibility of eliminating”.

Amendment of section 10**6.** Section 10 of the principal Act is amended—

- (a) in the national language text, in subparagraph (2)(d)(iii), by substituting for the words “hiliran atau huluan” the words “huluan atau hiliran”; and

(b) by inserting after subsection (4) the following subsection:

“(5) Any enterprise which engages in any conduct which is prohibited under this section shall be liable for infringement of the prohibition.”.

New section 11A

7. The principal Act is amended by inserting after section 11 the following section:

“Power to require provision of information etc., in relation to market review

11A. (1) For the purpose of conducting a market review under section 11, if the Commission has reason to believe that any person has any information, particulars or document that is relevant to the conduct of the market review, the Commission may, by notice in writing, direct that person to give or produce to the Commission, in the form and manner and within the period as specified in the notice, such information, particulars or document.

(2) Where the person directed to give or produce the information, particulars or document under subsection (1) has no knowledge of the information, particulars or document or such information, particulars or document is not in his custody, such person shall state, to the best of his knowledge and belief, where the information, particulars or document may be obtained or found and identify to the best of his knowledge and belief, the last person who had custody of the information, particulars or document and where the last-mentioned person may be found.

(3) Any person directed to give or produce any information, particulars or document under subsection (1) shall ensure that the information, particulars or document given or produced are true, accurate and complete and shall provide an express representation to that effect, including a declaration that he is not aware of any other information, particulars or document which would make the information, particulars or document given or produced untrue or misleading.

(4) Any person who fails to comply with the direction of the Commission under subsection (1) commits an offence.

(5) Any person who contravenes subsection (2) or (3) commits an offence.

(6) If the Commission has reason to believe that any Government Entity has any information, particulars or document that is relevant to the conduct of the market review under section 11, the Commission may, by notice in writing, request the Government Entity to give or produce to the Commission such information, particulars or document in the form and manner and within the period as specified in the notice.

(7) The Government Entity requested to give or produce such information, particulars or document under subsection (6) shall comply with the request of the Commission.”.

Substitution of section 16

8. The principal Act is amended by substituting for section 16 the following section:

“Close of investigation

16. (1) The Commission may, before conducting any investigation in relation to any infringement of the prohibition under this Part, make inquiries as it may consider necessary or expedient for the purpose of deciding whether the Commission should investigate the infringement of the prohibition.

(2) For the purposes of subsections 14(2) and 15(1), if the Commission, upon the completion of the inquiries under subsection (1), decides not to investigate the infringement of the prohibition, the Commission shall as soon as practicable and in such manner as the Commission thinks fit, inform the Minister or the complainant, as the case may be, of its decision and the reasons for its decision.

(3) Where the Commission decides not to investigate the infringement of the prohibition under subsection (2), the Commission may issue a warning letter to the enterprise which is the subject of the inquiry if the Commission thinks that it is appropriate or necessary to prevent any infringement of the prohibition.

(4) Notwithstanding subsections (1) and (2), the Commission may, at any time after the investigation has commenced under section 14 or 15, decide to close the investigation of the infringement of the prohibition, if the Commission is of the opinion that—

- (a) it would be inappropriate to continue the investigation when the Commission accepts from the enterprise an undertaking under section 43; or
- (b) in all the circumstances, the continuation of the investigation would not constitute the best use of the Commission's resources.

(5) When deciding to close an investigation under subsection (4), the Commission shall publish a statement that the investigation has been closed and set out a brief summary of the Commission's reasons for closing that investigation.

(6) Where the Commission has closed the investigation pursuant to paragraph (4)(a) and the enterprise referred to in that paragraph has failed to comply with the undertaking under section 43, the Commission may recommence the investigation under section 14 or 15 against the enterprise.”.

Substitution of section 18

9. The principal Act is amended by substituting for section 18 the following section:

“Power to require provision of information, etc.

18. (1) Notwithstanding any other written laws, if the Commission has reasonable grounds to believe that any person—

- (a) has any information, particulars or document that is relevant to the performance of the Commission's functions and powers under this Act; or

- (b) is capable of giving any evidence which the Commission has reasonable grounds to believe is relevant to the performance of the Commission's functions and powers under this Act,

the Commission may, by notice in writing, direct that person—

- (A) to give any such information or particulars to a Commission officer in the form and manner and within the period as specified in the notice or such extended period as the Commission may grant;
- (B) to produce any such document, whether in physical form or in electronic media, to a Commission officer in the manner and within the period as specified in the notice or such extended period as the Commission may grant;
- (C) to make copies of any such document and to produce those copies to a Commission officer in the manner and within the period as specified in the notice or such extended period as the Commission may grant; or
- (D) to appear before a Commission officer at a time and place as specified in the notice to give any evidence, either orally or in writing, and produce any document, whether in physical form or in electronic media, in the manner and within the period as specified in the notice or such extended period as the Commission may grant.

(2) Where the Commission directs any person to produce any document under subsection (1) and the document is not in the custody of that person, that person shall—

- (a) state, to the best of his knowledge and belief, where the document may be found; and
- (b) identify, to the best of his knowledge and belief, the last person who had custody of the document and state, to the best of his knowledge and belief, where that last-mentioned person may be found.

(3) Any person directed to give or produce any information, particulars or document or copies of any document under subsection (1) shall ensure that the information, particulars or documents or copies of the document given or produced are true, accurate and complete and such person shall provide an express representation to that effect, including a declaration that he is not aware of any other information, particulars or document which would make the information, particulars or document given or produced untrue or misleading.

(4) Oral evidence given by any person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumbprint, as the case may be—

(a) after it has been read to him in the language in which he made it; and

(b) after he has been given an opportunity to make any correction he may wish.

(5) Any person who fails to comply with the direction of the Commission under subsection (1) commits an offence.

(6) Any person who contravenes subsection (2) or (3) commits an offence.

(7) If the Commission has reasonable grounds to believe that any Government Entity has any information, particulars or document that is relevant to the performance of the functions and powers of the Commission under this Act, the Commission may, by notice in writing, request the Government Entity to give or produce such information, particulars or document in the form and manner and within the period as specified in the notice.

(8) The Government Entity requested to give or produce such information, particulars or document under subsection (7) shall comply with the request of the Commission.”.

Amendment of section 20

10. Subsection 20(1) of the principal Act is amended by substituting for the words “allow the Commission” the words “allow a Commission officer”.

Amendment of section 21

11. Section 21 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) Any person shall at all times maintain the confidentiality of any information with respect to a particular enterprise or the affairs of an individual obtained by him by virtue of any provision of this Act and shall not disclose or make use of such information including the information of the person who furnishes such information to him.”;

(b) in subsection (2), by substituting for the word “information” the words “the information”;

(c) by substituting for subsection (3) the following subsection:

“(3) The information referred to in subsection (1) shall relate to the information on trade, business or industry that belongs to any person, that has commercial or economic value and is not generally available to or known by others.”; and

(d) by inserting after subsection (3) the following subsection:

“(4) Any person who contravenes subsection (1) commits an offence.”.

Amendment of section 22

12. Subsection 22(2) of the principal Act is amended—

- (a) in paragraph (a), by inserting after the word “information” the words “, particulars”; and
- (b) in paragraph (b), by inserting after the word “information” the words “, particulars”.

Amendment of section 24

13. Paragraph 24(a) of the principal Act is amended by inserting after the words “or alters” the words “or attempts to destroy, conceal, mutilate or alter”.

Amendment of section 25

14. Section 25 of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “the commission of an offence” the words “the commission of any offence”; and
- (b) in subsection (2), by inserting after the words “or other thing” the words “or copies or extraction of any record, book, account, document, computerized data or other thing”.

Amendment of section 34

15. Section 34 of the principal Act is amended—

- (a) in paragraph (1)(b), by inserting after the word “commercial” the words “, economic”;

(b) by substituting for subsection (2) the following subsection:

“(2) For the purposes of and without prejudice to the generality of paragraph (1)(b), the commercial, economic or other disadvantage against a person may include—

- (a) late payment of amounts properly due to the person;
- (b) the unreasonable bringing or conduct of litigation against the person;
- (c) cancellation of orders placed with the person;
- (d) diversion of business from the person or refusal to trade with the person; and
- (e) termination of a contract with the person, withholding of payment due and payable to the person under a contract or refusal to enter into a subsequent contract with the person.”; and

(c) in subsection (3)—

- (i) in paragraph (a), by substituting for the word “and” at the end of the paragraph the word “or”; and
- (ii) in paragraph (b), by inserting after the words “any investigation by the Commission” the words “or the performance of other functions and powers of the Commission under this Act”.

Amendment of section 35

16. Section 35 of the principal Act is amended—

- (a) in subsection (1), by inserting after the words “section 14” the words “or 15”;

(b) in subsection (2)—

(i) in paragraph (a), by substituting for the words “to a particular person or category of persons” the words “to a particular enterprise or person or particular category of enterprises or persons”; and

(ii) by substituting for the words “it may” the words “the Commission may, at any time before the completion of an investigation,”;

(c) in subsection (3), by substituting for the words “any person” the words “any enterprise”;

(d) in subsection (4)—

(i) in paragraph (a), by substituting for the words “person to whom” the words “enterprise to which”; and

(ii) in paragraph (b), by substituting for the words “that person” the words “that enterprise”; and

(e) in paragraph (7)(a), by inserting after the words “section 14” the words “or 15”.

Amendment of section 36

17. Section 36 of the principal Act is amended—

(a) in subsection (1), by substituting for the words “If, after the completion of the investigation,” the words “Subject to subsections (5) and (6), if, after the completion of the investigation,”;

(b) in subsection (2)—

(i) by substituting for the words “The notice” the words “The written notice referred to in subsection (1)”; and

- (ii) by substituting for paragraph (c) the following paragraph:

“(c) inform each enterprise to which the written notice is given that the enterprise may, within such period as may be specified in the written notice or such extended period as the Commission may grant, elect to submit written representations to the Commission.”; and

- (c) by inserting after subsection (2) the following subsections:

“(3) Where the enterprise elects to submit the written representations to the Commission under paragraph (2)(c), the enterprise shall indicate whether it wishes to make an oral representation before the Commission.

(4) Where, upon the expiry of the period specified under paragraph (2)(c), no written representations or indication for oral representation is submitted by the enterprise, the Commission may proceed with its proposed decision in the absence of such representation.

(5) After the written notice of its proposed decision has been given under subsection (1), the Commission may, at any time before notifying the decision made under section 39 or 40, give one or more supplementary written notice of the proposed decision.

(6) The Commission may recommence an investigation after the written notice of the proposed decision or supplementary written notice of the proposed decision has been given under subsection (1) if—

- (a) there is a material change in the circumstances to which the infringement of prohibition relates as described in the written notice of the proposed decision or supplementary written notice of the proposed decision given; or
- (b) new facts or evidence relevant to the investigation by the Commission are discovered and that further investigation is required.

(7) For the purpose of giving supplementary written notice of the proposed decision under subsection (5), subsections (1), (2), (3) and (4) shall apply *mutatis mutandis*.”.

Amendment of section 37

18. Section 37 of the principal Act is amended—

- (a) by renumbering the existing section as subsection (1);
- (b) in subsection (1) as renumbered—
 - (i) in the English language text, by substituting for the word “taking” the word “making”;
 - (ii) in paragraph (a), by substituting for the word “session” the words “closed session”; and
 - (iii) in paragraph (b), by inserting after the words “date, time and place” the words “of the closed session for the oral representation”; and
- (c) by inserting after subsection (1) as renumbered the following subsections:
 - “(2) An enterprise may be represented at the closed session of the oral representation by—
 - (a) any of its authorized officers;
 - (b) any advocate and solicitor; or
 - (c) any other person authorized by the enterprise.
 - (3) The Commission, prior to convening the closed session for the oral representation, shall decide—
 - (a) whether the oral representation is to be heard by the full members of the Commission or by a representative panel consisting of members of the Commission as may be determined by the Commission; and

- (b) whether there shall be a separate closed session or a joint closed session for the oral representation attended by all the enterprises and persons to whom the written notice under paragraph (1)(b) was given.

(4) The oral representation made by the enterprise to the Commission shall be limited only to matters that the enterprise have submitted in its written representations to the Commission under paragraph 36(2)(c), unless prior permission to submit any new matter is obtained from the Commission or the representative panel, as the case may be.

(5) The Commission or representative panel may request the enterprise to provide clarification or further information on matters that the enterprise have submitted in its written and oral representation for the purpose of making a decision by the Commission.

(6) Where the oral representation is heard by a representative panel, the representative panel shall, after the completion of the oral representation, make a recommendation to the Commission to enable the Commission to make a decision as to whether the enterprise has infringed or is infringing any prohibition under Part II.

(7) If, in the course of an oral representation, any of the members of the Commission hearing the oral representation is unable to continue to hear the oral representation—

- (a) due to an illness;
- (b) due to his resignation;
- (c) due to the vacation of his office under section 12 of the Malaysia Competition Commission Act 2010; or

(d) due to any other cause,

the oral representation shall continue before the remaining members of the representative panel which heard the oral representation or the full members of the Commission, as the case may be.

(8) The oral representation under this section shall be governed and conducted in accordance with the guidelines issued by the Commission.”.

Deletion of section 38

19. The principal Act is amended by deleting section 38.

New section 38A

20. The principal Act is amended by inserting after section 38 as deleted the following section:

“Offer of settlement

38A. (1) The Commission may—

(a) after the issuance of a written notice of the proposed decision under section 36; and

(b) subject to any condition as the Commission may impose,

offer a settlement to an enterprise that is under investigation for an infringement of prohibition under section 4 or 10 under this Act.

(2) The enterprise shall admit liability for the infringement of the prohibition that is being investigated by the Commission when accepting the offer for settlement under subsection (1).

(3) After the acceptance of the offer for settlement, the Commission shall—

- (a) make a decision on the infringement of prohibition by the enterprise under section 4 or 10; and
- (b) impose a financial penalty with a reduction of up to forty per cent on the enterprise.

(4) The reduction of financial penalty under paragraph (3)(b) shall be in addition to any reduction of financial penalty that the enterprise may be entitled to under section 41.”.

Amendment of section 39

21. Section 39 of the principal Act is amended—

- (a) by substituting for the shoulder note the following shoulder note:

“Decision on non-infringement of prohibition”;

- (b) by renumbering the existing section as subsection (1);

- (c) in subsection (1) as renumbered—

- (i) by substituting for the words “Where the Commission” the words “If, after the completion of an investigation, the Commission”; and

- (ii) by substituting for the words “notice of the decision to any person who” the words “written notice of the decision to the enterprise which”; and

- (d) by inserting after subsection (1) as renumbered the following subsection:

“(2) If—

- (a) after a written notice of proposed decision under section 36 has been given by the Commission to the enterprise; and

- (b) after considering the written representations under section 36 or oral representations under section 37 made by the enterprise, if any,

the Commission has made a decision that there is no infringement of a prohibition under Part II, the Commission shall, without delay, give written notice of the decision to the enterprise which is affected by the decision by stating the facts on which the Commission bases the decision and the Commission's reason for making the decision.”.

Amendment of section 40

22. Section 40 of the principal Act is amended—

- (a) by substituting for the shoulder note the following shoulder note:

“Decision on infringement of prohibition”;

- (b) by renumbering the existing subsections (1), (2), (3) and (4) as subsections (2), (3), (4) and (5) respectively;
- (c) by inserting before subsection (2) as renumbered the following subsection:

“(1) This section applies if a written notice of the proposed decision under section 36 has been given by the Commission to the enterprise and the Commission has considered the written representations under section 36 or oral representations under section 37 made by the enterprise, if any.”;

- (d) in subsection (2) as renumbered—

- (i) by substituting for the words “If the Commission determines that there is an infringement of a prohibition under Part II, it—” the words “Where the Commission has made a decision that there is an infringement of a prohibition under Part II, the Commission—”; and

- (ii) in paragraph (b), by substituting for the words “which are required to be taken by the infringing enterprise” the words “which are required to be taken by the enterprise which is affected by the decision”;

(e) in subsection (3) as renumbered—

- (i) by substituting for the words “this Part” the words “this section”; and
- (ii) by substituting for the words “notify any person” the words “give written notice to any enterprise”;

(f) by substituting for subsection (5) as renumbered the following subsection:

“(5) The financial penalty imposed by the Commission under paragraph (1)(c) shall be paid by the enterprise which is affected by the decision within the period as may be determined by the Commission and shall not exceed ten per cent of the worldwide turnover of the enterprise over the period during which the infringement of the prohibition occurred.”; and

(g) by inserting after subsection (5) as renumbered the following subsection:

“(6) If the enterprise on which the financial penalty has been imposed fails to pay the financial penalty or any part of it within the period determined by the Commission, the enterprise shall also be liable to pay late payment charges at a rate determined by the Commission.”.

Amendment of section 41

23. Section 41 of the principal Act is amended—

(a) in subsection (1)—

- (i) in the national language text, by substituting for the word “penurunan” the word “pengurangan”;

(ii) in paragraph (a), by substituting for the words “infringement of any prohibition” the word “agreement”; and

(iii) in paragraph (b), by substituting for the words “identification or investigation of any finding of” the words “identification, inquiry or investigation of”; and

(b) in subsection (2)—

(i) in subparagraph (b)(ii), by deleting the word “or” at the end of the subparagraph; and

(ii) by inserting after paragraph (b) the following paragraph:

“(ba) whether the enterprise has coerced another enterprise to be involved in an agreement under subsection 4(2); or”.

Amendment of section 42

24. Section 42 of the principal Act is amended—

(a) in the shoulder note, by substituting for the words “**or decision**” the words “**, etc.**”;

(b) by substituting for subsection (1) the following subsection:

“(1) The Commission may bring proceedings before the High Court against any enterprise which fails to comply with—

(a) any direction given by the Commission under section 35;

(b) any decision made by the Commission under section 40; or

(c) any undertaking accepted by the Commission under section 43.”;

(c) in subsection (2)—

- (i) by substituting for the word “person” wherever appearing the word “enterprise”; and
- (ii) by substituting for the words “direction or decision” wherever appearing the words “direction, decision or undertaking”; and

(d) by substituting for subsection (3) the following subsection:

“(3) For the purposes of subsection (2), in relation to a decision, where the High Court finds that the failure to comply with the decision includes the failure to pay a penalty within the specified period and the late payment charges imposed, the High Court shall, in addition to the order requiring that enterprise to pay the penalty and late payment charges, order the enterprise to pay interest at the normal judgment rate running from the day following that on which the payment was due.”.

Amendment of section 43

25. Section 43 of the principal Act is amended—

(a) by substituting for subsection (1) the following subsection:

“(1) The Commission may—

- (a) before the issuance of a written notice of the proposed decision under section 36 in relation to an investigation of the infringement of prohibition under section 4 or 10; and
- (b) subject to the conditions that the Commission may impose, which includes a condition for the payment of a fine at a rate to be determined by the Commission,

accept an undertaking from an enterprise to do or to refrain from doing anything as the Commission considers appropriate.”;

(b) in subsection (2), by substituting for the words “finding of infringement and shall not impose a penalty on the enterprise” the words “decision on the infringement”;

(c) by inserting after subsection (2) the following subsection:

“(2A) Notwithstanding subsection (2), the Commission may not close the investigation if the Commission is satisfied that—

(a) the enterprise has failed to comply with any undertaking accepted by the Commission under subsection (1); or

(b) any information, particulars or document provided by the enterprise on the basis of which the Commission has accepted the undertaking is false or misleading in a material particular.”; and

(d) by deleting subsection (4).

Amendment of section 51

26. Subsection 51(2) of the principal Act is amended by substituting for the words “from the date of the decision of the Commission” the words “from the date the decision of the Commission is served on the appellant”.

Amendment of section 54

27. Section 54 of the principal Act is amended—

(a) by renumbering the existing section as subsection (1); and

(b) by inserting after subsection (1) as renumbered the following subsections:

“(2) If, in the course of any proceedings of the Competition Appeal Tribunal, any member of the Competition Appeal Tribunal hearing the proceedings is unable to continue to hear the proceedings—

(a) due to an illness;

(b) due to his resignation under subsection 47(1);

(c) due to the vacation of his office under section 48;
or

(d) due to any other cause,

the proceedings shall continue before the remaining members of the Competition Appeal Tribunal hearing the proceedings not being less than three members.

(3) In the event where the remaining members referred to in subsection (2) is less than three persons, the President shall appoint any other members of the Competition Appeal Tribunal to replace the member who is unable to attend the proceedings and to continue hearing the proceedings.”.

Amendment of section 58

28. Section 58 of the principal Act is amended by deleting subsection (3).

New section 58A

29. The principal Act is amended by inserting after section 58 the following section:

“Appeal to the High Court

58A. (1) Any person, including the Commission, who is aggrieved by the decision of the Competition Appeal Tribunal may, within a period of ninety days from the date the decision of the Competition Appeal Tribunal is served on him, appeal to the High Court.

(2) An appeal to the High Court under this section shall be confined to only—

(a) questions of law which have arisen in the course of the appeal; or

(b) questions as to the amount of the financial penalty.

(3) The High Court shall hear and determine any such appeal so referred and may—

(a) confirm, reverse or vary the decision of the Competition Appeal Tribunal; and

(b) make any such other order as the High Court thinks fit.

(4) The provisions of any written law for the time being in force relating to appeal in civil matters from the Sessions Court to the High Court shall apply for the purposes of appeal under this section.”.

New sections 64A and 64B

30. The principal Act is amended by inserting after section 64 the following sections:

“Protection to informer

64A. (1) Except as provided in this section, no witness in any proceedings before the Commission, the Competition Appeal Tribunal or in any civil or criminal proceedings pursuant to this Act shall be obliged or permitted to disclose the name, address or any other information of an informer, or the substance of the information received from him or to state any matter which might lead to the discovery of the informer.

(2) If any record, book, account, document or computerized data which is produced in evidence or liable to inspection in any proceedings before the Commission, the Competition Appeal Tribunal or in any civil or criminal proceedings contains any entry in which any informer is named or described or which might lead to his discovery, the Commission or the Competition Appeal Tribunal or the court shall cause all the entries to be concealed from view or to be obliterated so far as may be necessary to protect the informer from discovery.

(3) If in the proceedings before the Commission or the Competition Appeal Tribunal or in a trial for any offence under this Act, the court, after full inquiry into the case, believes that the informer wilfully made in his complaint a material statement which he knew to be false or did not believe to be true or if in any other proceedings, the Commission or the Competition Appeal Tribunal or the court is of the opinion that justice cannot be fully done between the parties in those proceedings without the discovery of the informer, it shall be lawful for the Commission or the Competition Appeal Tribunal or the court to require the production of the original complaint, if made in writing, and permit inquiry and require full disclosure concerning the informer.

Reward to informers

64B. The Commission may give rewards in such form as may be determined by the Commission to an informer for the information, statement or assistance given to the Commission which leads to the discovery of any infringement of the prohibition or which leads to any conviction for an offence, under this Act.”.

Amendment of section 65

31. Subsection 65(1) of the principal Act is amended by inserting after the words “The Minister may” the words “, on the recommendation of the Commission,”.

Amendment of section 66

32. Subsection 66(2) of the principal Act is amended—

(a) by inserting after the words “may issue” the words “guidelines on”;

(b) in paragraph (a)—

(i) by deleting the words “guidelines on”; and

(ii) by deleting the word “and” at the end of the paragraph;

(c) in paragraph (b)—

(i) by deleting the words “guidelines on”; and

(ii) by substituting for the full stop at the end of the paragraph the words “; and”; and

(d) by inserting after paragraph (b) the following paragraph:

“(c) procedures to be used in administering any provision under this Act.”.

Substitution of First Schedule

33. The principal Act is amended by substituting for the First Schedule the following schedule:

“FIRST SCHEDULE

[Section 3]

This Act shall not apply to any commercial or economic activity regulated under the following written laws:

(a) Communications and Multimedia Act 1998 [*Act 588*];

(b) Energy Commission Act 2001 [*Act 610*];

(c) Petroleum Development Act 1974 [*Act 144*] and the Petroleum Regulations 1974 [*P.U. (A) 432/1974*] in so far as the commercial or economic activities regulated under these written laws are directly in connection with upstream operations comprising the activities of exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia;

(d) Civil Aviation Authority of Malaysia Act 2017 [*Act 788*];

(e) Gas Supply Act 1993 [*Act 501*]; and

(f) Postal Services Act 2012 [*Act 741*].”.

Amendment of Second Schedule

34. The Second Schedule to the principal Act is amended in paragraph (a) by substituting for the words “in an order to” the words “in order to”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Competition Act 2010 (“Act 712”) with the aim to strengthen various aspects of Act 712 including provisions relating to the investigation and enforcement powers of the Malaysia Competition Commission (“Commission”), decision-making procedures by the Commission and provisions governing the Competition Appeal Tribunal.

2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.

3. *Clause 2* seeks to amend section 2 of Act 712 to introduce new definitions and to amend existing definitions of certain terms used in Act 712.

4. *Clause 3* seeks to substitute section 3 of Act 712 to expand the scope of application of Act 712 to any economic activity and not just to any commercial activity. This expansion is necessary to cover a wider range of activities that could impact competition within the Malaysian market.

5. *Clause 4* seeks to amend section 4 of Act 712 on prohibited anti-competitive agreements by substituting the term “horizontal and vertical agreement” wherever appearing in that section with the term “agreement”. This amendment provides a broader perspective by indicating that the prohibition of anti-competitive agreements applies to all types of agreements, not just those classified as horizontal or vertical agreements.

6. *Clause 5* seeks to amend section 5 of Act 712 on relief of liability from the infringement of the prohibition under section 4 of Act 712 which is regarding prohibited anti-competitive agreement. This amendment seeks to clarify that an enterprise which is a party to a prohibited agreement and wishes to relieve its liability from the infringement under section 4 of Act 712 has the burden of proving the matters specified in paragraphs (5)(a) to (d) of Act 712 for the purposes of the relief.

7. *Clause 6* seeks to amend section 10 of Act 712 to introduce a new subsection 10(5) into Act 712 by providing that any enterprise engaging in an abusive conduct of a dominant position shall be liable for infringement of the prohibition under Act 712. This provision is in line with the existing subsection 4(3) of Act 712 which expressly provides for infringement of prohibition. Under this *clause*, an amendment is also made to subparagraph 10(2)(d)(iii) of Act 712 to ensure clarity and consistency between the national language text and English language text of Act 712.

8. *Clause 7* seeks to introduce a new section 11A into Act 712 to provide for the power of the Commission to obtain, by notice in writing, any information, particulars or document for the purpose of conducting a market review under Act 712 from any person whom the Commission has reasons to believe has the relevant information, particulars or document necessary for the market review. This new section also allows the Commission to request, by notice in

writing, for any information, particulars or document from any Government Entity for the purpose of conducting the market review. The Government Entity requested by the Commission to give or produce such information, particulars or document shall comply with the request.

9. *Clause 8* seeks to substitute section 16 of Act 712 to enhance the procedures for the closing of an investigation by the Commission in relation to any infringement of the prohibition under Act 712. Currently, section 16 of Act 712 only provides for the closing of investigation relating to complaints on infringement of prohibition made under section 15 of Act 712. With this amendment, the Commission may conduct an inquiry and close the investigation in respect of section 14 of Act 712 where the Commission has reason to suspect that any enterprise has infringed or is infringing any prohibition under Act 712 or where the investigation is directed by the Minister. This amendment also seeks to empower the Commission to issue a warning letter if the Commission thinks that it is appropriate or necessary to prevent any infringement of the prohibition.

10. *Clause 9* seeks to substitute section 18 of Act 712 to enhance the power of the Commission to require for information, particulars or document from any person that the Commission has reasonable grounds to believe has any information, particulars or document that is relevant to the performance of the Commission's functions and powers under Act 712 or is capable of giving any evidence that is relevant to the performance of the Commission's functions and powers under Act 712. This amendment also allows the Commission to request, by notice in writing, for any information, particulars or document from any Government Entity that the Commission has reasonable grounds to believe has any information, particulars or documents that is relevant to the performance of the Commission's functions and powers under Act 712. The Government Entity requested by the Commission to give or produce such information, particulars or document shall comply with the request.

11. *Clause 10* seeks to amend section 20 of Act 712 to clarify that the power to access records, books, accounts or other things for the purpose of carrying out any of the Commission's functions and powers under Act 712 shall be exercised by a Commission officer.

12. *Clause 11* seeks to amend section 21 of Act 712 on confidentiality of information.

Subclause 11(a) seeks to substitute subsection 21(1) of Act 712 to impose the obligation on any person to maintain at all times the confidentiality of any information with respect to a particular enterprise or the affairs of an individual obtained by him by virtue of any provision of Act 712 and that the person shall not disclose or make use of any such information including the information of the person who furnishes such information to him.

Subclause 11(b) seeks to amend subsection 21(2) of Act 712 to clarify that the information referred to in that subsection refers to the same information as referred to in subsection 21(1) of Act 712.

Subclause 11(c) seeks to substitute subsection 21(3) of Act 712 to clarify that the information referred to in subsection 21(1) of Act 712 refers to trade, business or industry information that has commercial or economic value that belongs to any person and is not generally available to or known by others. This is to ensure that a comprehensive protection of sensitive information is provided under Act 712.

Subclause 11(d) seeks to introduce a new subsection 21(4) into Act 712 to make it an offence for any person who contravenes the confidentiality obligation under Act 712.

13. *Clause 12* seeks to amend section 22 of Act 712 consequential to the substitution of section 18 of Act 712 under *clause 9*.

14. *Clause 13* seeks to amend paragraph 24(a) of Act 712 to make it an offence for a person who attempts to destroy, conceal, mutilate or alter any record, book, account, document, computerized data or other thing with intent to defraud the Commission or to prevent, delay or obstruct the carrying out of any investigation or exercise of any power by the Commission.

15. *Clause 14* seeks to amend section 25 of Act 712 to widen the power of the Commission officer to search premises and seize any record, book, account, document, computerized data or other thing while carrying out its enforcement powers under Act 712.

16. *Clause 15* seeks to amend section 34 of Act 712.

Subclause 15(a) seeks to amend paragraph 34(1)(b) of Act 712 to provide that the act of subjecting a person to any economic disadvantage apart from commercial disadvantage or other disadvantages is also a form of reprisal under Act 712 and is therefore prohibited under Act 712.

Subclause 15(b) seeks to substitute subsection 34(2) of Act 712 to expand the scope of the disadvantages against any person specified in that subsection to include termination of contract with the person, withholding of payment that is due and payable to the person under a contract or refusal to enter into a subsequent contract with the person.

Subclause 15(c) seeks to amend subsection 34(3) of Act 712 to ensure that protection against threat and reprisal is made available not just to a person who made a complaint to the Commission under section 15 of Act 712 or a person who is co-operating with or offering or agreeing to co-operate with the Commission in connection with any investigation by the Commission, but also to a person who is co-operating with or offering or agreeing to co-operate with the Commission in the performance of the functions and exercise of the powers of the Commission.

17. *Clause 16* seeks to amend section 35 of Act 712 on interim measures. This amendment will empower the Commission to give certain directions to an enterprise as it considers appropriate and proportionate, where the Commission has commenced but not completed an investigation under section 15 of Act 712 apart from section 14 of Act 712 and if the Commission has reasonable grounds

to believe that any prohibition under Act 712 has been infringed or is likely to be infringed and that the Commission considers necessary for it to act as a matter of urgency for the purpose of preventing serious and irreparable damage to a particular enterprise or person, or to a particular category of enterprises or persons.

18. *Clause 17* seeks to amend subsection 36(1) of Act 712 to clarify the circumstances when a proposed decision following the completion of any investigation will be issued by the Commission.

Subclause 17(b) seeks to amend subsection 36(2) of Act 712 to provide that the written notice of the proposed decision of the Commission given under subsection 36(1) of Act 712 shall inform the enterprise affected by the decision that the enterprise may elect to submit written representations to the Commission.

Subclause 17(c) seeks to introduce new subsections 36(3), (4), (5), (6) and (7) into Act 712 to provide for further comprehensive provisions relating to proposed decisions by the Commission. This includes the provision allowing the Commission to recommence an investigation under Act 712 after the written notice of the proposed decision or supplementary proposed decision has been given.

19. *Clause 18* seeks to amend section 37 of Act 712 to consolidate the procedures on oral representation and conduct of hearings into a single provision consequential to the deletion of section 38 of Act 712 in *clause 19*. This amendment seeks to provide that the Commission shall, before making its decision in respect of an infringement of prohibition under Act 712 and if the enterprise concerned informs the Commission that it wishes to make an oral representation, convene a closed session for the oral representation. This amendment further provides that the Commission shall decide whether the oral representation is to be heard by the full members of the Commission or by a representative panel consisting of members of the Commission and whether there shall be a separate closed session or joint closed session for the oral representation.

20. *Clause 19* seeks to delete section 38 of Act 712 on conduct of hearing as the provision on conduct of hearing for the purpose of determining whether an enterprise has infringed or is infringing any prohibition under Part II of Act 712 is proposed to be provided under section 37 of Act 712 to enhance the Commission's procedural efficiency.

21. *Clause 20* seeks to introduce a new section 38A into Act 712 to provide for a settlement mechanism which may be accepted by enterprises under investigation for infringement of the prohibition under section 4 or 10 of Act 712. Under this mechanism, the Commission may, after the issuance of a written notice of the proposed decision under section 36 of Act 712 and before making a decision under section 40 of Act 712, offer a settlement to the enterprise, subject to conditions as the Commission may impose. To accept the offer for settlement, the enterprise shall admit the liability for the infringement. If the offer for the settlement is accepted, the Commission will make a decision on the infringement and impose a financial penalty on the enterprise which may be reduced by up to forty per cent.

22. *Clause 21* seeks to amend section 39 of Act 712 to clarify the circumstances upon which a decision on non-infringement will be made by the Commission after the completion of the Commission's investigation into the infringement of prohibitions under Part II of Act 712. This amendment also provides for an obligation for the Commission to give a written notice on the non-infringement decision to the enterprise that is affected by such decision.

23. *Clause 22* seeks to amend section 40 of Act 712 to clarify the circumstances upon which a decision on infringement will be made by the Commission after the completion of the Commission's investigation into the infringement of prohibitions under Part II of Act 712 which includes the imposition of financial penalty. If the enterprise on which the financial penalty has been imposed fails to pay the financial penalty or any part of it within the period determined by the Commission, the enterprise shall also be liable to pay late payment charges at a rate determined by the Commission.

24. *Clause 23* seeks to amend section 41 of Act 712 on leniency regime.

Subclause 23(a) seeks to amend subsection 41(1) of Act 712 to clarify that the leniency regime which offers a reduction of up to a maximum of one hundred per cent for any penalty may be available in the case of any enterprise which has admitted its involvement in an agreement under subsection 4(2) of Act 712 and has provided information or other form of co-operation to the Commission which significantly assisted or is likely to significantly assist the identification, inquiry or investigation of an infringement of any prohibition by any other enterprises.

Subclause 23(b) seeks to introduce a new paragraph 41(2)(ba) into Act 712 to provide that a leniency regime may permit different percentages of reductions to be available to an enterprise depending on whether the enterprise has coerced another enterprise to be involved in an agreement under subsection 4(2) of Act 712.

25. *Clause 24* seeks to amend section 42 of Act 712 to provide that the Commission may bring proceedings before the High Court against any enterprise who fails to comply any directions given by the Commission under section 35 of Act 712, any decision made by the Commission under section 40 of Act 712 or any undertaking accepted by the Commission under section 43 of Act 712.

26. *Clause 25* seeks to amend section 43 of Act 712 relating to undertaking. This amendment seeks to clarify that an undertaking shall only be accepted by the Commission before making a proposed decision under section 36 of Act 712 in relation to an investigation of the infringement of the prohibition under section 4 or 10 of Act 712. If the Commission accepts an undertaking under this section, the Commission shall close the investigation in relation to an infringement without making any decision on the infringement while allowing the Commission to also impose pecuniary penalty. This amendment also seeks to introduce a new subsection 43(2A) into Act 712 to provide that the Commission may not close the investigation if the Commission is satisfied

that the enterprise has failed to comply with any undertaking accepted by the Commission or any information, particulars or document provided by the enterprise on the basis of which the Commission has accepted the undertaking is false or misleading in a material particular.

27. *Clause 26* seeks to amend section 51 of Act 712 on the filing of notice of appeal to the Competition Appeal Tribunal by the person aggrieved or whose interest is affected by a decision of the Commission under sections 35, 39 or 40 of Act 712.

28. *Clause 27* seeks to amend section 54 of Act 712 by introducing new subsections 54(2) and (3) into Act 712. The new subsection 54(2) of Act 712 seeks to ensure the continuity of proceedings before the Competition Appeal Tribunal in cases where any member of the Competition Appeal Tribunal is unable to continue to hear the proceedings of the Competition Appeal Tribunal due to illness, his resignation or vacation of office or any other reason. This amendment further provides that the proceedings before the Competition Appeal Tribunal will proceed before the remaining members of the Competition Appeal Tribunal. The new subsection 54(3) of Act 712 on the other hand provides that where the remaining members of the Competition Appeal Tribunal is less than three persons, the President of the Competition Appeal Tribunal shall appoint any other members to replace the member who is unable to attend.

29. *Clause 28* seeks to delete subsection 58(3) of Act 712 which provides that a decision of the Competition Appeal Tribunal is final.

30. *Clause 29* seeks to introduce a new section 58A into Act 712 to provide that any person, including the Commission, who is aggrieved by the decision of the Competition Appeal Tribunal, may initiate appeal proceedings at the High Court against the decision of the Competition Appeal Tribunal. This new section further provides that the appeal shall be confined to only questions of law which have arisen in the course of the appeal and the amount of financial penalty imposed.

31. *Clause 30* seeks to introduce new sections 64A and 64B into Act 712.

The proposed new section 64A seeks to provide for the prohibition of the disclosure of an informer's identity or any other information that might reveal the identity of the informer by a witness in any proceedings before the Commission, the Competition Appeal Tribunal or in any civil or criminal proceedings under Act 712.

The proposed new section 64B seeks to provide that the Commission may give a reward to an informer for the information, statement or assistance given to the Commission which leads to the discovery of any infringement of the prohibition under Act 712, or which leads to any conviction for an offence under Act 712.

32. *Clause 31* seeks to amend subsection 65(1) of Act 712 to provide that the Minister, in exercising his power to make regulations under Act 712 is subject to the recommendation of the Commission.

33. *Clause 32* seeks to amend section 66 of Act 712 to provide for the power of the Commission to issue guidelines on the procedures to be used in administering any provision under Act 712.

34. *Clause 33* seeks to amend the First Schedule to Act 712 to update the list of legislation specified in the schedule for the purposes of subsection 3(1) of Act 712 on the application of Act 712.

35. *Clause 34* seeks to amend the Second Schedule to Act 712 to rectify a typographical error.

36. Other amendments not specifically dealt with in this Explanatory Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U2)3312]