MALAYSIA COMPETITION COMMISSION (MyCC)

SALIENT POINTS OF THE PROPOSED AMENDMENTS TO THE COMPETITION ACT 2010 (ACT 712)

25 APRIL 2022

INTRODUCTION

The Malaysia Competition Commission (MyCC) seeks comments and feedback on the proposed amendments to the Competition Act 2010 (Act 712) from interested stakeholders and the public.

We welcome any interested stakeholders or the public to make a written submission in response to the proposed amendments of Act 712 as stated herein.

Those interested in submitting written submissions to the proposed amendments of Act 712 are invited to do so by **27 May 2022** via:

a) Email to the Amendment Team of MyCC at amendment@mycc.gov.my or
b) The Malaysia Productivity Corporation's Unified Public Consultation (UPC) portal

Any written submissions that were made after 27 May 2022 will not be accepted and entertained by the MyCC.

Please note that unless requested otherwise, any written submissions submitted to the MyCC will be made publicly available in the form and manner as determined suitable by the MyCC.

Upon consultation with the Malaysia Productivity Corporation (MPC), the amendments of the Competition Commission Act 2010 (Act 713) **WILL NOT BE SUBJECTED** to the public consultation process as the amendments are administrative in nature and do not have an impact on the public in general

SALIENT POINTS OF THE PROPOSED AMENDMENTS TO THE COMPETITION ACT 2010 (ACT 712)

No	Section	Salient Points of the Proposed Amendment of Act 712
1.	**2** **Interpretation** **(Existing Provision)**	The proposed amendment to Section 2 of Act 712 introduces the definition of "*anticipated merger*" which refers to any form of contract, arrangement or understanding, whether or not legally enforceable, between enterprises, that is in progress or contemplation and that, if consummated, will result in the occurrence of a merger referred to in section 10B; The term "*anticipated merger*" is applied to almost all of Act 712's merger-related provisions. Thus, it is critical that the word "anticipated merger" be defined by the statute in order to provide clarity to any enterprises that are contemplating a merger.
		The current definition of "*Commission*" is proposed to be amended under Section 2 of Act 712. It is proposed that the word "Malaysia" be added to the meaning of the term "*Commission*" to provide clarity and maintain consistency between the Commission's publicly recognised name and the legislative definition of the term "*Commission*" in Act 712.
		The proposed amendment to Section 2 of Act 712 is to include a definition for the term "*computer*". The aim of including a definition of "*computer*" in Act 712 is to define precisely what constitutes a computer for the purpose of an investigation under Act 712.
		The proposed amendment to Section 2 of Act 712 is to include a definition for the term "*computerised data*" that was used in sections 24, 25, 27, 28, 29, 30, 31 and 62 of Act 712. Defining the term "*computerised data*" would avoid ambiguity about what constitutes computerised data; cater to the growth of development in the digital platform market; and facilitate the retrieval of evidence in the form

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		of algorithms and other types of evidence in digital form that may not fall within the definition of computerised data.
		The proposed amendment to Section 2 of Act 712 is by adding the definition of "*conveyance*" into the Act. The power of the Commission to conduct search and seizure with a warrant is provided by section 25 of Act 712; while the power to conduct a search and seizure without a warrant is provided by section 26 of Act 712. Currently, Act 712 is silent on whether the Commission has the power to conduct a search and seizure of a vehicle. To avoid any ambiguity in the exercise of its power to conduct search and seizure under section 25 and section 26 of Act 712, the definition of the term "*conveyance*" is inserted into Act 712 to give the Commission an express power to conduct search and seizure on a vehicle to look for evidence to establish an infringement of the prohibitions under Act 712.
		The proposed amendment of Section 2 of Act 712 seeks to provide the definition of "*date of service*". The inclusion of the definition for the term "*date of service*" into section 2 of Act 712 is to provide for the method of service of notice and the computation of days of the service of the notice.
		The current definition of "*direction*" is proposed to be amended under Section 2 of Act 712. The amendment to the definition of the term "*direction*" is consequential to the inclusion of the merger control regime into Act 712. Part IIIA provides for the investigation and enforcement of mergers or anticipated mergers. Part IVA provides for the merger or anticipated merger decision by the Commission.

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		The current definition of "*enterprise*" is proposed to be amended under Section 2 of Act 712 to ensure clarity and to avoid anti-competitive conduct to escape the scrutiny of the law due to technical loopholes in the current definition of the term "*enterprise*". Following the current definition of enterprise in section 2 of Act 712, only entities that engage in commercial activity relating to goods or services are subjected to the Act. The following amendments are proposed to be made to the definition of "enterprise" in section 2: - a) Replacing the usage of the term "*entity*" with *"person"*. By replacing the term "*entity*" with "*person*", it will be clear that the legal status of the person is not relevant in determining whether the person is subjected to the prohibitions under Act 712 or not; as long as the person is engaged in commercial or economic activities in the market; b) Insertion of the term "*economic activities*" into the definition of enterprise. To achieve Act 712's overall goal of promoting and protecting the process of market competition, the concept of economic activity must be incorporated into the definition of "*enterprise*", as this will ensure that enterprises will escape from being subjected to the prohibitions under Act 712 by claiming that they did not engage in the commercial activities of the offering of goods or services in the market; c) Insertion of the wording "*regardless of its legal status and the way in which it is funded*" into the definition of enterprise. It is proposed for the words "*regardless of its legal status and the way in which it is funded*" to be inserted into the definition of enterprise to make it clear that the legal form of an enterprise that engaged in commercial or economic activity is irrelevant for the purposes of Act 712.

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		As long as a person, whether incorporated or unincorporated, engages in commercial or economic activity in the market in Malaysia, the person is considered to be an enterprise that is subjected to Act 712. Thus, the person will be prohibited from engaging in anti-competitive conduct regardless of its status and the way in which it is funded; d) Removal of the circumstances which render a parent and subsidiary company to be regarded as a single enterprise Since the Commission must invoke the single economic entity doctrine whenever there is a parent and subsidiary relationship, the provision may be misused by enterprises that wanted to escape their liability for engaging in anti-competitive conduct. Although the single economic entity doctrine is removed from the definition of enterprise under section 2 of Act 712, the Commission and the enterprises will still be able to apply the doctrine of the single economic entity on a case-to-case basis depending on the facts and circumstances of the case – an approach that has been adopted so far by the EU, the UK, Singapore and India.
		The proposed amendment of Section 2 of Act 712 seeks to provide the definition of *"government entity*". Act 712 currently does not contain the definition for the term "*government entity*". Thus, the purpose of the inclusion of the definition for the term *"government entity"* is to provide clarity on the meaning of the term "*government entity*" within the scope of Act 712. The proposed definition also aimed to cover most instances where there is a delegation of authority by the government to another entity. This is to provide clarity for the purposes of Act 712, that any person acting under or on behalf of the Federal Government, State Government or local authority will also fall within the definition of "*government entity*" under section 2.

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		The proposed amendment of Section 2 of Act 712 seeks to provide the definition of "*premises*". The definition of the term "*premise*" is incorporated into Act 712 to avoid any ambiguity in the exercise of its power to conduct search and seizure following section 25 and section 26 of Act 712,
		The proposed amendment of section 2 of Act 712 seeks to introduce the definition of "*threshold*". The main purpose of providing a definition for the word "*threshold*" is to give effect to Section 10J and provide clarity to merger parties. Some countries have set a notification threshold in their legislation, while others address notification in their practice standards or guidelines. The Commission believes that in the case of Malaysia, the threshold should be prescribed in accordance with the manner provided by section 10J of Act 712.
2.	**3** **Application** **(Existing Provision)**	The current section 3 of Act 712 is proposed to be amended as the following: - a) The inclusion of the words "*economic activity*" into the section 3. This amendment is consequential to the amendments made to the definition of "*enterprise*" in section 2. b) Further amendment to section 3(3). The amendment to section 3(3) is to cater to the inclusion of the merger control regime into Act 712. The amended section 3(3) is to be read together with the newly inserted section 3(3A) which provides for the power of the Commission to provide its opinion to other regulators on merger transactions that are excluded from the application of the merger provision under Act 712.

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		The amendment to section 3(3) will also require the Minister to act on the recommendation of the Commission in amending the First Schedule of Act 712 which is in line with the function of the Commission as stated in section 16 of Act 713. This provision *inter alia* states that the Commission shall advise the Minister on all matters concerning competition, act as an advocate for competition matters and consider and make recommendations to the Minister on reforms to the competition laws. c) Insertion of the new subsection 3A into section 3 of Act 712. The introduction of a new subsection 3(3A) into Act 712 allows the Commission to provide its opinion to government entities or enterprises on whether mergers that are not subjected to Act 712 have resulted or may be expected to result in a substantial lessening of competition within any market for goods or services in Malaysia. d) Further amendments to section 3(4). (i) Removal of the words "*indirect*" and "*governmental authority*" in section 3(4)(a) The removal of the word "*indirectly*" and "*governmental authority*" was done to avoid the uncertainty and ambiguity of whether or not a particular activity was carried out in the exercise of governmental authority; thus, excluded from the application of the Act. (ii) Only activities carried out directly in the lawful exercise of the function of the Federal Government and the State Government will be exempted from being subjected to Act 712 under section 3(4)(a) In order for a particular anti-competitive activity to be exempted from the application of Act 712 on the basis that it was carried out in the lawful exercise of federal or state government functions, it must be demonstrated that the activity was carried out directly in the lawful exercise of those functions.

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		Section 3 of the Interpretation Act 1948 (Act 388) defines the term "*Federal Government*" as the Government of Malaysia; while the term "*State Government*" as the Government of a State. (iii) Changing the word *"and*" to "*or*" for section 3(4) Using the word "*and*" instead of "*or*" in section 3(4) would mean that the conditions stated in subsections (a), (b) and (c) are to be read cumulatively instead of disjunctively.
3.	**5** **Relief of liability** **(Existing Provision)**	The current section 5 of Act 712 is proposed to be amended by: - a) Renumbering of section 5 to section 5(1). b) Inclusion of the words "*while allowing consumer a fair share of the resulting benefit*" in section 5(1)(a). It is proposed for section 5(1)(a) to be amended to include a condition that an anti-competitive agreement may be exempted under section 5 of Act 712 if the benefits arising from the agreement are also fairly enjoyed by the consumer and not just by the enterprise alone. The proposed inclusion of the wording "*while allowing consumer a fair share of the resulting benefit*" in section 5(1)(a) will provide the Commission with a quantifiable standard to use in determining whether or not to allow the anti-competitive agreement prohibited by section 4 of Act 712 is to be relieved of its liability under section 5. c) The removal of the word "*completely*" and the inclusion of the words "*the possibility*" in section 5(1)(d). The current wording of section 5(1)(d) *inter alia* imposes a condition that for an anti-competitive agreement to be relieved of its liability under section 5, the agreement must not allow the enterprise involved to eliminate competition completely in respect of a substantial part of the goods or services.

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		It is proposed that the word "*completely*" in section 5(1)(d) is to be removed and the section now reads as *"the agreement does not allow the enterprise concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question".* d) Insertion of the new subsection (2) to section 5. This provision is to establish that the burden of proof for claiming relief of liability lies on the enterprise and not on the Commission.
4.	**10** **Abuse of dominant position** **(Existing Provision)**	The current section 10 of Act 712 is proposed to be amended by inserting a new subsection (5) to section 10 to provide that any enterprise that engages in abuse of dominant position conduct shall be liable for any infringement of the prohibition. Section 36, 39 and 40 of Act 712 *inter alia* states that the Commission is empowered to decide on whether the prohibitions under Act 712 have been infringed. Section 4 contains a provision under subsection (3) which states that any enterprise which is a party to an agreement that is prohibited shall be liable for infringement of the prohibition. There is no provision in the existing section 10 which states that any enterprise that abused its dominant position shall be liable for an infringement. Therefore, the proposed amendment to the provision seeks to elucidate that an enterprise that engages in abuse of a dominant position shall be liable for an infringement.
5.	**10A** **Mergers or anticipated mergers that substantially**	The purpose of section 10A is to: - a) Create a new infringement provision in Act 712 by prohibiting mergers or anticipated mergers, if consummated, that may result in a substantial lessening of competition (SLC) in any market for goods or services; and

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	lessen competition are prohibited **(New Provision)**	b) Provides the legal standard that will be relied upon by the Commission in determining whether to prohibit or allow a merger or an anticipated merger from happening. Any merger control regime based on competition law must establish a substantive standard for determining whether a particular merger should be amended or prohibited. As a result, when a government decides to implement a merger control system as part of its competition law framework, it must first select which substantive criterion it will apply to evaluate whether a merger should be allowed or prohibited based on competition law principles. The Commission proposes to adopt the "*substantial lessening of competition*" test (also known as SLC) as the substantive standard for assessing the anti-competitive effects of mergers in Malaysia. In Malaysia, the Malaysian Aviation Commission Act 2015 (Act 771) also contains a prohibition of mergers that results or may be expected to result in a substantial lessening of competition in any aviation market.
6.	**10B** **Merger** **(New Provision)**	Section 10B seeks to provide for the circumstances in which a merger is said to have occurred for the purposes of Act 712and may be subjected to the prohibition under section 10A of Act 712. Under section 10B, there are four circumstances in which a merger is said to have occurred: - a) Two or more previously independent enterprises combine into one single enterprise and cease to exist as separate legal entities; b) The acquisition of direct or indirect control of the whole or part of one or more enterprises; c) The acquisition of assets of one enterprise by another enterprise results in the acquiring enterprise replacing or substantially replacing the enterprise whose assets are being acquired, in the business or

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		the part concerned of the business, in which the acquired enterprise was engaged immediately before the acquisition; or d) The creation of a joint venture to perform, on a lasting basis, all the functions of an autonomous economic entity. An enterprise shall be deemed as having control of another enterprise where such enterprise has conferred the possibility of exercising decisive influence on the other enterprise by reason of rights, contracts or any other means either separately or in combination.
7.	**10C** **Non-application** **(New Provision)**	The purpose of section 10C is to set out four circumstances in which a commercial or economic activity in the market does not amount to a merger for the purposes of Act 712. The four circumstances listed under section 10C are the following: - a) The control is acquired by a person acting in his capacity as receiver or liquidator or an underwriter; b) All of the enterprises involved in the merger are, directly or indirectly, under the control of the same enterprise; c) The control is acquired solely as a result of a testamentary disposition, intestacy or the right of survivorship under a joint tenancy; or d) The control is acquired by an enterprise whose normal activities include the carrying out of transactions and dealings in securities for its own account or for the account of others in the circumstances specified below: - (i) The securities are acquired are on a temporary basis (calculated 12 months from the date on which control of the other enterprise); and

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		(ii) The acquiring enterprise must not exercise the voting rights with a view to determining the strategic commercial behaviour of the target enterprise or must exercise these rights only to prepare the total or partial disposal of the enterprise, its assets or securities.
8.	**10D** **Exclusion from the prohibition under section 10A** **(New Provision)**	Section 10D of Act 712 seeks to provide an avenue for enterprises to relieve their liability from the section 10A prohibition; on the basis that the economic efficiencies of the merger or anticipated merger outweigh any adverse effect from the substantial lessening of competition effect caused by the merger or anticipated merger. Any enterprises claiming the benefit following section 10D bear the burden to establish the existence of economic efficiencies.
9.	**10E** **Non-application of sections 4 and 10** **(New Provision)**	Section 10E of Act 712 seeks to provide for the non-application of the prohibitions in section 4 and section 10 of Act 712 to merger-related agreements and conducts. The purpose of having this provision is to provide certainty to the merger parties that any types of agreements or conducts which are necessary for the implementation of the merger as referred to in section 10B will not be captured under sections 4 and 10 prohibitions.
10.	**10F** **Mandatory notification of anticipated merger** **(New Provision)**	Section 10F imposes an obligation for enterprises to notify an anticipated merger to the Commission before the consummation of the anticipated merger. The obligation to notify arises when the anticipated merger exceeds the threshold prescribed by the Commission pursuant to section 10J of Act 712. Any enterprises that fail to notify an anticipated merger that exceeded the threshold prescribed by section 10J shall be liable for a merger violation.

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		Section 10F also imposes an obligation for the Commission to issue its decision on the anticipated merger that was notified to it within 120 working days from the date when the Commission accepts the notification is complete. In the event that the Commission has not made any decision with regards to the anticipated merger that was notified under section 10F upon the expiry of the 120 working days merger review period, the anticipated merger shall be deemed to be approved and the parties to the anticipated merger may proceed to consummate the merger. The 120 working days of merger assessment may be stopped or suspended by the Commission when: - a) The Commission requests further information from the enterprise pursuant to section 34C; b) The enterprise seeks an extension of time to file for their written representation under section 43D; c) The enterprise wants to make an oral representation under section 43E; or d) The enterprises submit a commitment offer under section 43H.
11.	**10G** **Requirement not to consummate the anticipated merger** **(New Provision)**	Section 10G of Act 712 seeks to provide for the requirement for enterprises not to consummate the anticipated merger that was notified pursuant to section 10F before receiving the approval from the Commission. An anticipated merger shall be deemed to have been consummated if the anticipated merger results in the occurrence of a merger referred to in section 10B. As a result, failure to adhere to the requirement under section 10G would result in a merger violation and the anticipated merger that has been consummated shall be rendered void.
12.	**10H**	Section 10H of Act 712 seeks to provide an avenue for enterprises to voluntarily notify their anticipated merger to the Commission when the threshold prescribed by section 10J has not been exceeded.

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	Voluntary notification of anticipated mergers **(New Provision)**	The purpose of voluntary notification of an anticipated merger is to enable the Commission to review and make a decision whether or not, the anticipated merger if consummated, will infringe the prohibition under section 10A of Act 712.
13.	**10I** **Voluntary notification of mergers** **(New Provision)**	Section 10I of Act 712 seeks to provide an avenue for enterprises to voluntarily notify their merger to the Commission when the threshold prescribed by section 10J has not been exceeded. The purpose of a voluntary notification of a merger is to enable the Commission to review and make a decision as to whether or not a merger infringes or does not infringe the prohibition under section 10A of Act 712.
14.	**10J** **Power of the Commission to prescribe threshold** **(New Provision)**	Section 10J of Act 712 seeks to provide for the power of the Commission to prescribe the threshold through an order published in the Gazette. The threshold prescribed under section 10J will determine whether an anticipated merger is mandatory to be notified to the Commission under section 10F. The Commission will also be empowered to review the sufficiency of the threshold and amend the threshold, through an order published in the Gazette.
15.	**11A** **Power to require provision of information or document for market review**	Section 11A seeks to provide for the power of the Commission to request information or documents from any person for the purpose of conducting a market review under section 11 of Act 712. The failure by a person to adhere to the request for information made pursuant to section 11A amounts to an offence.

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	(New Provision)	Section 11A also gives the Commission the power to request assistance from any government entity if the Commission believes that the government entity possesses information or documents that are related to the subject of the market review. Whenever such request for assistance from any government entity is made, the government entity shall, to their best endeavour, furnish such information or document to the Commission. Any information or document relating to a person's commercial or economic activity obtained under this section shall only be used for the purposes of conducting the market review only.
16.	**13** **Exclusion** **(Existing Provision)**	The proposed amendments seek to amend section 13 of Act 712 by: - a) Establishing that the Second Schedule is only applicable to the prohibitions under section 4 and section 10 of Act 712; and b) Establishing that the Minister shall amend the Second Schedule of Act 712 on the recommendation of the Commission by an order published in the Gazette.
17.	**13A** **Application of this Part** **(New Provision)**	Section 13A is a new provision that specifies Part III of Act 712 (Investigation and Enforcement) shall only apply to Chapter 1 and Chapter 2 of Part II of Act 712.
18.	**14** **Investigation by the Commission**	The proposed amendment seeks to amend subsection 14(2) of Act 712 by providing for the power of the Commission to conduct an inquiry before commencing an investigation following the direction of the Minister.

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	(Existing Provision)	
19.	**16** **Close of an investigation** **(Existing Provision)**	The proposed amendments seek to amend section 16 of Act 712. The current subsection 16(1) of Act 712 will be amended to provide that the Commission may make an inquiry before proceeding with an investigation under section 14 or section 15 in order to determine whether an investigation should be initiated. The amendment made to subsection 16(2) of Act 712 is to provide for the obligation for the Commission to inform the Minister or the complainant about the Commission's decision to not investigate the Minister's direction that was given pursuant to subsection 14(2) or a complaint that was received from a complainant under subsection 15(1) of Act 712. The proposed amendment to section 16(3) of Act 712 provides for the power of the Commission to close an investigation that is commenced under both section 14 and section 15 whenever an undertaking under section 43 has been accepted by the Commission; or the investigation is closed on the grounds of administrative priorities.
20.	**16A** **Power to issue warning letter** **(New Provision)**	Section 16A of Act 712 seeks to empower the Commission to issue a warning letter to an enterprise upon the closure of an inquiry or an investigation by the Commission. Despite the issuance of the warning letter, the Commission may recommence or continue its inquiry or investigation on an enterprise where the Commission has reason to suspect that the enterprise has infringed or is infringing any prohibition under Act 712.
21.	**18**	The proposed amendment seeks to amend section 18 of Act 712 by providing clarity on the powers of the Commission to require the provision of information or document by way of a written notice from any person whom the Commission believes to be acquainted with the facts and circumstances of the case that it is investigating.

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	Power to require provision of information **(Existing Provision)**	The amendments made to section 18 will give the Commission the power to issue a notice in writing to any person whom the Commission believes to be acquainted with the facts and circumstances of the case to: - a) Attend before one or more Commission officers, on the date and time specified in the notice, for the purpose of being examined orally; b) Produce to the Commission, within the time and in the manner specified in the notice, any book, document, records, accounts or computerized data, or any copy thereof; or c) Provide to the Commission, by writing signed by that person or, in the case of a body corporate, by a competent officer of the body corporate, within the time and in the manner specified in the notice, any such information. Therefore, the failure to adhere to the request made by the Commission under section 18 amounts to an offence.
22.	**20** **Access to records, etc.** **(Existing Provision)**	Amendments are being made to section 20 to elucidate that the power to access records under section 20 is to be exercised by a Commission officer instead of the Commission itself.
23.	**21** **Confidentiality** **(Existing Provision)**	Section 21(2) is amended by inserting a new subsection to provide for the power of the Commission to make a disclosure of confidential information pursuant to an international agreement to which Malaysia is a party. Section 21 is further amended by inserting a new subsection (2A) and (2B to provide for the obligation of a person who is the recipient of the confidential information under section 21(2) to preserve the confidentiality of the information that he has received.

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		Therefore, the failure of a person to preserve the confidentiality of the confidential information that has been disclosed pursuant to section 21(2) amounts to an offence.
24.	**22** **Privileged communications** **(Existing Provision)**	Section 22(2) is amended to provide for the rights of the Commission to make an application to the High Court for the High Court to determine the validity of the claims of privileged communication made by an advocate and solicitor before deciding whether or not the information or document is protected by section 126 of the Evidence Act 1950 and shall not be disclosed pursuant to section 22(1) of Act 712. A new subsection (3) will be inserted into section 22 as a safeguard to protect the privileged communications between an advocate and his client when the communication was made for the purpose of a pending proceeding.
25.	**24** **Destruction, concealment, mutilation or alteration of records, etc.** **(Existing Provision)**	Section 24(a) is amended to provide for the creation of an offence for a person who attempts to destroy, conceal, mutilate or alter any record, book, account, document, computerised data or other things with the intent to defraud the Commission or to prevent, delay or obstruct when carrying out of an investigation under Act 712.
26.	**25** **Search and seizure with warrant** **(Existing Provision)**	Section 25(2) is amended to empower the Commission with the power to make copies of any record, book, account, document, computerised data or other things which contain or are reasonably suspected to contain information as to any infringement or offence under Act 712 while exercising its power to conduct search and seizure with a warrant.

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27.	**29** **List of record, book, account, etc., seized** **(Existing Provision)**	The amendment made to section 29 of Act 712 is a consequential amendment following the amendment made to section 25 of Act 712 to make it clear that the Commission have to issue the list under section 29 whenever it makes copies of any record, book, account, document, computerised data or other things which contains or is reasonably suspected to contain information as to any infringement or offence under Act 712 while exercising its power to conduct search and seizure with warrant
28.	**34** **Threat and reprisal is prohibited** **(Existing Provision)**	Section 34(2) is amended by specifying situations that amount to a "*commercial disadvantage*" for the purposes of section 34(1) of Act 712. Situations that amount to a commercial disadvantage include: - a) Late payment of amounts properly due to the person; b) Unreasonable bringing or conduct of litigation against the person; c) Cancellation of orders with the person; d) Diversion of business from, or refusal to trade with the person; e) Termination of a contract with the person; f) Withholding of payment that is due and payable to the person under a contract; g) Refusal to enter into a subsequent contract with the person; h) Causing injury, loss or damage to the person; i) Intimidation or harassment to the person;

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		j) Interference with the lawful employment or livelihood of the person, including discrimination, discharge, demotion, suspension, disadvantage, termination or adverse treatment in relation to the person's employment, career, profession, trade or businesses or the taking of disciplinary action; or k) Threat to take any of the acts referred to in paragraphs (a) to (j). Amendments will also be made to section 34(3) by: - a) Replacing the word "*and*" in section 34(3) (a) with "*or*" so that persons who lodged a complaint to the Commission and persons who co-operate with the Commission's investigation will also be given the protection under section 34 of Act 712; and b) For the wording "*any investigation by the Commission*" in section 34(3)(b) to be replaced with *"with the performance of the functions and powers of the Commission under this Act*".
29.	**34A** **Application of this Part** **(New Provision)**	Section 34A is a new provision to provide for the application of Part IIIA (Investigation and Enforcement of Mergers or Anticipated Mergers) to Chapter 2A of Part II of Act 712 only.
30.	**34B** **Power of the Commission to review notified mergers**	Section 34B of Act 712 is to provide the Commission with the power to review mergers or anticipated mergers that were notified to the Commission under sections 10F, 10H or 10I of Act 712.

No	Section	Salient Points of the Proposed Amendment of Act 712
	(New Provision)	
31.	**34C** **Power to require additional information or documents pertaining to a notified merger or anticipated merger** **(New Provision)**	Section 34C of Act 712 is to provide the Commission with the power to request additional information or document while reviewing the mergers or anticipated mergers that were notified to the Commission under sections 10F, 10H or 10I of Act 712. Under section 34C, the Commission may, at any time after the receipt of a notification under section 10F, 10H or 10I, by notice in writing request the parties to the merger or anticipated merger, to give to the Commission, within the period specified in the notice, additional information or document relating to the notification. If the additional information or document required by the Commission is not provided by the parties to the merger or anticipated merger within the period specified in the notice or any extended time granted by the Commission, the notification shall be deemed to have been withdrawn; but without affecting the right of the enterprise to submit a fresh notification to the Commission. The 120 working days specified in section 10F shall be suspended from the date when the Commission makes a request for additional information or document until the date the information or document requested is received by the Commission. The Commission may also require any person or government entity to provide information or document relating to any market the subject of the notification. Therefore, failure by a person to adhere to the request for information made pursuant to section 34C amounts to an offence. Whenever such request for assistance from any government entity is made, the government entity shall, to their best endeavor, furnish such information or document to the Commission.
32.	**34D**	Section 34D of Act 712 is to provide for the power of the Commission to investigate mergers or anticipated mergers, whether or not the mergers or anticipated mergers exceed the threshold prescribed by section 10J

No	Section	Salient Points of the Proposed Amendment of Act 712
	Power of the Commission to investigate infringement of the section 10A prohibition **(New Provision)**	of Act 712; if the Commission has reasons to suspect that the merger or anticipated merger has resulted or may be expected to result in a substantial lessening of competition within any market for goods or services. The investigation can also be initiated by the Commission upon the receiving of a complaint from a person or under the direction of the Minister. Before the commencement of an investigation, the Commission will be empowered to conduct an inquiry first to determine the merits of the complaint or the Minister's direction.
33.	**34E** **Power of the Commission to investigate merger violation** **(New Provision)**	Section 34E of Act 712 is to provide for the power of the Commission to investigate merger violations when the Commission has reasons to suspect that a merger violation has occurred. Merger violation for the purposes of Act 712 refers to: - a) The violation of the mandatory obligation to notify anticipated mergers pursuant to section 10F of Act 712; or b) The violation of the requirement not to consummate anticipated mergers pursuant to section 10G of Act 712. The investigation can also be initiated by the Commission upon the receiving of a complaint from a person or in the direction of the Minister. Similar to the new section 34D of Act 712, before the commencement of an investigation of a merger violation, the Commission will be empowered to conduct an inquiry first in determining the merits of the complaint or the Minister's direction.
34.	**34F**	The purpose of section 34F into Act 712 is to extend the application of sections 17 to 34 of Act 712 *mutatis mutandis* to investigations conducted by the Commission pursuant to section 34D and section 34E of Act 712.

No	Section	Salient Points of the Proposed Amendment of Act 712
	Section 17 to 34 applies mutatis mutandis to investigations conducted under section 34D and section 34E **(New Provision)**	
35.	**34G** **Application of this Part** **(New Provision)**	Section 34G is a new provision to provide for the application of Part IV of Act 712 (Decision by the Commission) to Chapter 1 and Chapter 2 of Part II of Act 712 only. Section 34G also provides for application of section 41A *mutatis mutandis* to Chapter 2A of Part II of Act 712.
36.	**35** **Interim measures** **(Existing Provision)**	Section 35(1) of Act 712 is amended to give the Commission the power to impose interim measures for any investigation that was initiated pursuant to section 14 or section 15 of Act 712.
37.	**36** **Proposed decision by the Commission** **(Existing Provision)**	Section 36 of Act 712 is amended to provide clarity and strengthen the procedures that must be complied with by the Commission whenever the Commission proposes to make a decision to the effect that the section 4 or section 10 prohibition has been or is being infringed. The amendments made to section 36 are as follows: -

No	Section	Salient Points of the Proposed Amendment of Act 712
		a) Section 36(2) is amended to provide for the obligation of the Commission to specify the period within which enterprises that received the written notice of the proposed decision under subsection 36(1) can make their written representation and oral representation to the Commission; b) A new section 36(3) is inserted to make it clear that any period specified by the Commission under section 36(2) shall be for a reasonable period and may be extended upon the application being made by the enterprise; c) A new section 36(4) and (5) is inserted to clarify the outcome when enterprises decided not to make their written representation and oral representation to the Commission; and d) A new section 36(6) is inserted to provide for the power of the Commission to issue a supplementary proposed decision after the issuance of the written notice of the proposed decision under subsection 36(1) when there is a material change in the nature of the infringement described in the written notice of the proposed decision under subsection 36(1), when new facts or evidence are discovered or when further investigations are required.
38.	**37** **Oral representation** **(Existing Provision)**	Section 37 of Act 712 is amended to provide clarity and strengthen the procedures that must be complied with by the Commission whenever an oral representation session is conducted. The amendments made to section 37 are as follows: - a) Renumbering of section 37 to section 37 (1); b) Section 37(1) is amended to make it clear that an oral representation shall be conducted by the Commission when an enterprise has requested to make an oral representation and submitted the written representation within the period specified by the Commission under section 36(2) of Act 712; c) A new section 37(2) is inserted to provide for the obligation of the Commission to decide: -

No	Section	Salient Points of the Proposed Amendment of Act 712
		(i) Whether the oral representation is to be heard by the full Commission or by a representative panel comprising a minimum of five members; (ii) The number and identities of the members of the Commission that shall form the representative panel when the oral representation will be heard by a representative panel; (iii) Whether to hold individual oral representation sessions with each of the enterprises separately or to hold a single session attended by all enterprises involved; or (iv) Whether, upon an application to the Commission and where the Commission considers in its discretion that such attendance at the oral representation is necessary, to allow any other person including, but not limited to an association, government entity or professional body, to attend the oral representation. d) A new section 37(3) is inserted to provide for the obligation for the representative panel to provide their recommendations to Commission upon the conclusion of the oral representation session; e) A new section 37(4) is inserted to provide for the procedure pertaining to the conduct of the oral representation when any Members of the Commission are unable to continue to hear the oral representation; f) A new section 37(5) is inserted to provide for the persons who can represent an enterprise during the oral representation; g) A new section 37(6) is inserted to provide that the oral representation made by the enterprise to the Commission shall be limited only to matters that the enterprise has already submitted in its written representation to the Commission, unless prior permission is sought and obtained from the Commission or the representative panel.

No	Section	Salient Points of the Proposed Amendment of Act 712
		h) A new section 37(7) is inserted to provide the full Commission or representative panel with the power to request the enterprises to provide clarification or further information on matters that the enterprise has already submitted in its written and oral representation for the purposes of making of a decision by the Commission i) A new section 37(8) is inserted to provide for the definition of the term "full Commission".
39.	**38** **Conduct of hearing** **(Existing Provision)**	The deletion of section 38 of Act 712 is due to its redundancy with section 37 of Act 712 which has provided for the right to be heard for the enterprises which received the written notice of the Commission's proposed decision under section 36 of Act 712.
40.	**39** **Finding of non-infringement** **(Existing Provision)**	Section 39 of Act 712 is amended to make it clear that section 39 will only apply to the investigation of the infringement of the prohibition under section 4 or 10 of Act 712.
41.	**40** **Finding of an infringement** **(Existing Provision)**	Section 40 of Act 712 is amended to provide clarity and strengthen the power of the Commission in relation to the issuance of a finding of infringement of the section 4 or the section 10 prohibition. The amendments made to section 40 are as follows: - a) Section 40(1) is amended to make it clear that section 40 shall only apply to the investigation of the infringement of the prohibition under section 4 or 10 of Act 712;

No	Section	Salient Points of the Proposed Amendment of Act 712
		b) A new section 40(5) is inserted to provide for the obligation of the enterprises to pay the financial penalty within the period determined by the Commission; and c) A new section 40(6) is inserted to provide for the power of the Commission to impose interest for the late payment of the financial penalty following the issuance of a finding of infringement under section 40 of Act 712.
42.	**40A** **Settlement Procedure** **(New Provision)**	Section 40A of Act 712 is to provide for the power of the Commission to adopt a settlement procedure when an enterprise admits liability for an infringement of section 4 or section 10 prohibition. Enterprises that opted for the settlement procedure and admit liability for infringing the section 4 or section 10 prohibition will be entitled to a reduction of the financial penalty of up to twenty per cent. The reduction of financial penalty given to enterprises that agrees to the settlement procedure shall be in addition to any reduction of financial penalty that the enterprise may be entitled under the leniency regime provided by section 41. The settlement procedures include the following: - a) The signing of an agreed statement of facts by the enterprise and the Commission in relation to the investigation that the enterprise is subjected to; b) The issuance of a written notice of the Commission's proposed decision under section 36; c) The making of a written representation that acknowledges in clear and unequivocal terms the enterprise's admission of its participation in the infringement as stated in the Commission's proposed decision; d) The enterprise accepts the remedial action as stated in the Commission's proposed decision; and

No	Section	Salient Points of the Proposed Amendment of Act 712
		e) The enterprise agrees to waive its right to request an oral representation under section 37. The Commission may rely on the agreed statement of facts provided by enterprises that agree to the settlement procedure against other enterprises that are subjected to the same infringement.
43.	**41** **Leniency Regime** **(Existing Provision)**	Section 41 of Act 712 is amended to provide clarity and strengthen the leniency regime by giving the Commission the power to grant differing percentages of reduction of financial penalty to enterprises depending on the time when the enterprise made the leniency application and other factors The amendments made to section 41 are as follows: - a) Section 41(1)(a) provides for the reduction of up to one hundred per cent of the financial penalties for: (i) The first enterprise that admits to the Commission of its involvement in an infringement before the Commission commences an investigation in respect of such infringement; (ii) Do not coerce another enterprise to participate in the infringement; (iii) Provides information available or other forms of co-operation to the Commission which significantly assist in the inquiry or investigation into the infringement; and (iv) Satisfies any other requirements which the Commission considers appropriate to have regard to; b) Section 41(1)(b) provides for a reduction in the financial penalties, which would have otherwise been imposed, where the enterprise: -

No	Section	Salient Points of the Proposed Amendment of Act 712
		(i) Is the second or subsequent enterprise that admits to the Commission of its involvement in an infringement before the Commission commences an investigation in respect of such infringement; (ii) Provides information or other forms of co-operation to the Commission which significantly assists in the inquiry or investigation of the infringement; and (iii) Satisfies any other requirements which the Commission considers appropriate to have regard to; c) Section 41(1)(c) provides for a reduction in the financial penalties, which would have otherwise been imposed, where the enterprise: - (i) Admits its involvement in the infringement after the Commission commences an investigation in respect of such infringement; (ii) Provides information or other forms of co-operation to the Commission which significantly assists in the inquiry or investigation of the infringement; and (iii) Satisfies any other requirements which the Commission considers appropriate to have regard to; d) Section 41(1)(d) provides for up to fifty per cent reduction in the financial penalties, which would have otherwise been imposed, where the enterprise: - (i) Coerced another enterprise to participate in the infringement; (ii) Is the first enterprise to admit to the Commission its involvement in an infringement before the Commission commences an investigation in respect of such infringement;

No	Section	Salient Points of the Proposed Amendment of Act 712
		(iii) Provides information or other forms of co-operation to the Commission which significantly assists in the inquiry or investigation of the infringement; and (iv) Satisfies any other requirements which the Commission considers appropriate to have regard to; e) Section 41(2) limits the application of the leniency regime to infringement of any prohibition under section 4 in relation to any horizontal agreement specified in section 4(2) only; f) Section 41(3) provides for the discretion of the Commission to extend the application of the leniency regime to an infringement under section 4 other than the infringement referred to in section 4(2) g) Section 41(4) provides for the circumstances in which the Commission is considered to have commenced its investigation. The circumstances are: - (i) The issuance of a notice under section 18 to the enterprise; (ii) The conduct of a search and seizure with warrant under section 25 on the premise of the enterprise; or (iii) The conduct of a search and seizure without a warrant under section 26 on the premise of the enterprise.
44.	**41A** **Whistleblower Regime** **(New Provision)**	Section 41A provides for the power of the Commission to administer a whistleblower regime to encourage the sharing of relevant information or assistance in relation to the investigation carried out by the Commission. The whistleblower regime may include the payment of a reward to a whistleblower and shall be administered by the Commission through the issuance of a guideline.

No	Section	Salient Points of the Proposed Amendment of Act 712
45.	**43** **Power to accept undertaking** **(Existing Provision)**	Section 43 of Act 712 is amended to strengthen the Commission's power to accept an undertaking from enterprises. The amendments made to section 43 are as follows: - a) Section 43(1) is amended to clarify that an undertaking can only be accepted for the infringement of section 4 or section 10 prohibition and that the undertaking can only be accepted by the Commission before the issuance of the proposed decision under section 36 of Act 712; b) Section 43(2A) is to make it clear that the Commission is not prevented from taking any action in relation to any competition concern that is not addressed by the undertaking; c) Section 43(5) provides for the power of the Commission to declare an undertaking to be void when the Commission is satisfied that: - (i) There has been a material change of circumstances since the undertaking was accepted; (ii) The enterprise has failed to adhere to the undertaking or any of the conditions of the undertaking; or (iii) The information which led the Commission to accept the undertaking was incomplete, false or misleading. d) Section 43(6) provides for the obligation of the Commission to serve a written notice to the enterprise concerned before declaring that an undertaking to be void; and e) Section 43(7) provides for the power of the Commission to commence or recommence an investigation against the enterprise when an undertaking has been declared to be void.

No	Section	Salient Points of the Proposed Amendment of Act 712
46.	**43A** **Application of this Part** **(New Provision)**	Section 43A is a new provision to provide for the application of Part IVA (Mergers or Anticipated Mergers Decision by the Commission) to Chapter 2A of Part II of Act 712 only.
47.	**43B** **Power of the Commission to issue direction pending decision or completion of investigation** **(New Provision)**	Section 43B provides for the power of the Commission to issue directions in relation to: - a) The issuance of a decision pertaining to a merger or anticipated merger that was notified under sections 10F, 10H or 10I of Act 712; or b) Pending the completion of the investigation under section 34D of Act 712. Such direction can be issued by the Commission as a matter of urgency for the purpose of preventing serious and irreparable damage or economic harm or to protect the public interest from anti-competitive concerns resulting from a merger or an anticipated merger. Before the Commission issues such direction, the Commission shall serve a written notice to the enterprise concerned.
48.	**43C** **Power of the Commission to make decisions on mergers or anticipated mergers**	Section 43C provides for the types of decisions that can be issued by the Commission following the review of a merger or an anticipated merger that was notified under sections 10F, 10H or 10I of Act 712 or following the completion of the investigation under section 34D of Act 712. The decision that can be issued by the Commission are: - a) A decision that the prohibition under section 10A will be infringed by the merger or anticipated merger, if consummated; or

No	Section	Salient Points of the Proposed Amendment of Act 712
	(New Provision)	b) A decision that the prohibition under section 10A has not been infringed; due to: - (i) The effect of an exclusion under section 10D; (ii) The acceptance of a commitment pursuant to section 43G; or (iii) The merger does not result, or the anticipated merger, if consummated, may not be expected to result in a substantial lessening of competition within any market for goods or services.
49.	**43D** **Provisional decision by the Commission** **(New Provision)**	Section 43C provides for the power of the Commission to give notice of a provisional decision whenever it proposes to make a decision that a merger or an anticipated merger if consummated, will infringe the prohibition provided by section 10A of Act 712. Section 43D of Act 712 that was drafted in a similar manner to section 36 will also provide for the procedures that must be adhered to by the Commission whenever the Commission issues the provisional decision, which includes the obligation for the Commission to specify in specific details in its provisional decision the reasons for its provisional finding and any remedial action that the Commission proposes to apply as well as the period which the enterprise may make written representation on matters in the provisional decision issued.
50.	**43E** **Oral representation** **(New Provision)**	Section 43E provides for the procedures that must be complied with by the Commission whenever an oral representation session is conducted following the issuance of the provisional decision. Section 43E that was drafted in a similar manner to section 37 will also provide for the power of the Commission to: - a) Suspend the 120 working days merger review period prescribed by section 10F until the date when the oral representation has been completed; and

No	Section	Salient Points of the Proposed Amendment of Act 712
		b) To further suspend the 120 working days merger review period prescribed by section 10F for up to 30 working days from the date when the oral representation is completed.
51.	**43F** **Clearance decision** **(New Provision)**	Section 43F provides for the power of the Commission to issue a clearance decision if the Commission, upon reviewing a merger or anticipated merger that was notified under sections 10F, 10H or 10I of Act 712 or upon the completion of the investigation under section 34D has decided that the merger or anticipated merger, if consummated, does not infringe the prohibition provided by section 10A of Act 712. Section 43F was drafted in a similar manner to section 39 of Act 712. The Commission can if it thinks fits, makes the clearance decision for an anticipated merger to be valid for a certain period of time as determined by the Commission. The validity period of a clearance decision may be extended upon the making of an application by the enterprise that received the clearance decision. Enterprises may consummate an anticipated merger only within the validity period of the clearance decision.
52.	**43G** **Prohibition decision** **(New Provision)**	Section 43G of Act 712 provides for the power of the Commission to issue a prohibition decision if the Commission, upon reviewing a merger or anticipated merger that was notified under sections 10F, 10H or 10I of Act 712 or upon the completion of the investigation under section 34D has made a decision that the merger or anticipated merger if consummated, infringes the prohibition provided by section 10A of Act 712. Section 43G was drafted in a similar manner to section 40 of Act 712. Upon the issuance of a prohibition decision, the Commission will also be empowered to require the infringement to be ceased immediately, specify steps that must be taken by the enterprise in order to bring the infringement to an end, impose a financial penalty not exceed ten per cent of the worldwide turnover of an

No	Section	Salient Points of the Proposed Amendment of Act 712
		enterprise over the period during which the infringement occurred and give any other direction as it deems appropriate.
53.	**43H** **Commitment** **(New Provision)**	Section 43H of Act 712 provides for a framework in which the merging enterprise can offer commitments to the Commission for the Commission to give a clearance decision under section 43F to the merger or anticipated merger. A commitment for the purposes of Act 712 refers to a commitment that was given by the enterprise to the Commission to remedy, mitigate or prevent the substantial lessening of competition caused by the merger or anticipated merger. The commitment offered by the merging parties can be accepted by the Commission at any time before making a decision pertaining to a merger or anticipated merger that was notified under sections 10F, 10H or 10I of Act 712 or before the completion of the investigation under section 34D. Whenever a commitment offer is made, the 120 working days specified in section 10F shall be suspended for up to sixty working days in order for the Commission to review the commitment offer. Before accepting a commitment, the Commission shall, except in exceptional circumstances, consult with such person as it thinks appropriate.
54.	**43I** **Effect of commitments** **(New Provision)**	Section 43I of Act 712 provides for the effects when a commitment has been accepted by the Commission. Whenever a commitment has been accepted by the Commission, the Commission shall issue a decision under section 43F and make a finding that the section 10A prohibition has not infringed by the merger or anticipated merger.

No	Section	Salient Points of the Proposed Amendment of Act 712
		Section 43I also provides for the power of the Commission to: - a) Revoke its decision made under section 43F; b) Commence or continue any investigation under section 34D; c) Make a decision under section 43G; or d) Give any other direction as it deems appropriate, where it has reasonable grounds to suspect that – (i) any information on the basis of which the Commission has accepted a commitment under section 43H is incomplete, false, or misleading; or (ii) a party who provides a commitment fails to implement or comply with one or more of the terms of the commitment. Whenever the Commission proposes to revoke its clearance decision following the acceptance of a commitment, the Commission shall: - a) Serve a written notice indicating the reason for its revocation to the enterprise to whom the decision was addressed to; and b) Allow the enterprise an opportunity to make written representation within a period of at least seven days from the date of the written notice. The Commission is also empowered by section 43I to conduct a review on the effectiveness of the commitment that it has accepted in such circumstances as the Commission considers to be appropriate.

No	Section	Salient Points of the Proposed Amendment of Act 712
55.	**43J** **Variation of commitments** **(New Provision)**	Section 43J provides for the power of the Commission to: - a) Accept a variation of the commitment that the Commission has earlier accepted under section 43H: or b) Accept another commitment in substitution of the commitment that the Commission has earlier received for the purpose of to remedy, mitigate or prevent the substantial lessening of competition caused by the merger or anticipated merger The Commission can only vary or accept another commitment in substitution of the commitment that the Commission has earlier accepted if there is a request to vary or substitute the commitment from the merging enterprise. Before varying or substituting a commitment, the Commission shall, except in exceptional circumstances, consult with such person as it thinks appropriate.
56.	**43K** **Obligation to give notice for merger violation** **(New Provision)**	Section 43K provides for the procedural framework and obligation that must be adhered to by the Commission after the completion of its investigation under section 34E of Act 712, the Commission proposes to make a decision that a merger violation has occurred. The procedure that must be adhered to by the Commission are the following: - a) Give written notice of its proposed merger violation decision to each enterprise that is subjected to the investigation; b) Give the enterprise the opportunity to make written representation within a period of at least fourteen days from the date of the written notice; and c) Give the enterprise the opportunity to make oral representation on matters referred to in its written representation.

No	Section	Salient Points of the Proposed Amendment of Act 712
		The written notice shall also specify the reasons for the Commission's proposed finding of merger violation, any remedial action that the Commission proposes to apply and the opportunity for enterprises to make written and oral representation against the Commission's proposed finding of merger violation within a reasonable period specified by the Commission. After the issuance of the notice, the Commission will be empowered to require the merger violation to be ceased immediately, specify steps that are required to be taken by the enterprise that engages in the merger violation to bring the violation to an end, impose a financial penalty or give any other direction as it deems appropriate. Where the Commission has made a decision that a merger violation does not occur, the Commission shall, without delay, give notice of the decision to any enterprise that is affected by this decision and the Commission's reason for making the decision.
57.	**43L** **Penalty for merger violation** **(New Provision)**	Section 43L of Act 712 provides for the power of the Commission to impose a financial penalty of up to ten per cent of the value of the merger transaction or anticipated merger transaction on enterprises that has committed a merger violation. The Commission is also empowered by section 43L to prescribe the manner of calculating the value of a merger transaction or anticipated merger transaction for the purposes of imposing the financial penalty by an order published in the Gazette.
58.	**43M** **Enforcement of direction, decision or commitment** **(New Provision)**	Section 43M of Act 712 provides for the power of the Commission to bring proceedings before the High Court against a) Any enterprise that fails to comply with the directions or decision given by the Commission under sections 43B, 43G or 43K of Act 712; or

No	Section	Salient Points of the Proposed Amendment of Act 712
		b) The enterprise fails to comply with the commitment accepted by the Commission under section 43H of Act 712. Section 43M was drafted similar to section 42 of Act 712, which provides for the power of the Commission to initiate enforcement proceedings for its decision at the High Court.
59.	**44** **Establishment of the Competition Appeal Tribunal** **(Existing Provision)**	This amendment to section 44 of Act 712 is a consequential amendment to the insertions of the new sections 43B, 43F, 43G, 43I, 43K into Act 712. This amendment was made to provide for the exclusive jurisdiction of the Competition Appeal Tribunal (CAT) to review decisions the merger-related decisions issued by the Commission.
60.	**45** **Constitution of the Competition Appeal Tribunal** **(Existing Provision)**	Section 45(2) of Act 712 is amended to empower the Prime Minister to consider not only appointing a judge of the High Court but also appointing a judge of the Court of Appeal or the Federal Court as the President of the Competition Appeal Tribunal upon the recommendation of the Minister.
61.	**51** **Appeal to the Competition Appeal Tribunal** **(Existing Provision)**	Section 51 of Act 712 is amended: - a) As a consequential amendment to the insertions of the new sections 43B, 43F, 43G, 43I, 43K into Act 712, it provides for the exclusive jurisdiction of the Competition Appeal Tribunal (CAT) to hear appeals relating to the merger-related decisions issued by the Commission;

No	Section	Salient Points of the Proposed Amendment of Act 712
		b) To introduce a new section 51(1A) to establish that a government entity is not considered as a person that can file for an appeal at the CAT against the decision of the Commission; and c) Section 51(3) is amended to ensure consistency in the usage of the word “advocate and solicitor” throughout Act 712.
62.	**54A** **Continuation of proceedings notwithstanding absence of member** **(New Provision)**	Section 54A of Act 712 seeks to introduce a new provision to provide for the continuation of proceedings at the Competition Appeal Tribunal (CAT) notwithstanding the absence of any member of the CAT. Under section 54A(1), when a CAT member is ill or absent during the proceeding at any time before the delivery of a judgment, the hearing shall continue and be heard by the remaining members as long as the number is not less than two members. The inclusion of section 54(2) is to make it clear that during such continuation of proceedings, the proceedings shall thereafter be decided by the majority of remaining members. In the event that a majority cannot be obtained from the remaining CAT members present, the matter shall then be re-heard.
63.	**57A** **Power to prescribe fees** **(New Provision)**	Section 57A of Act 712 seek to provide for the power of the Minister on the recommendation of the Competition Appeal Tribunal, to prescribe fees for the purposes of carrying out the functions of the Competition Appeal Tribunal as prescribed by section 44 of Act 712.
64.	**58A** **Appeal to the High Court**	Section 58A of Act 712 is an enabling provision that provides for the right of appeal against the decision of the Competition Appeal Tribunal at the High Court: - a) On a point of law arising from a decision of the Competition Appeal Tribunal; or

No	Section	Salient Points of the Proposed Amendment of Act 712
	(New Provision)	b) From any decision of the Competition Appeal Tribunal as to the amount of a financial penalty. Section 58A was introduced following the decision of the Court of Appeal in the *Malaysian Airlines System Berhad v Competition Commission & Another Appeal* [2022] 1 CLJ 856. An appeal under section 58A can only be made at the instance of a person who was a party to the proceeding in which the decision of the Competition Appeal Tribunal was made. The High Court, upon hearing the appeal may: - a) Confirm, modify or reverse the decision of the Competition Appeal Tribunal; and b) Make such other order as the Court thinks fit.
65.	**65** **Power to make regulations** **(Existing Provision)**	Section 65(1) is amended to empower the Minister, on the recommendation of the Commission, to issue regulations pertaining to fees in relation to anything done in the performance of the functions of the Commission or charges for services rendered by the Commission.
66.	**66A** **Power of Commission to issue and publish practice standard** **(New Provision)**	Section 66A of Act 712 seeks to introduce a new provision to empower the Commission to issue and publish practice standards for carrying out its function under Chapter 2A of Act 712. Any merger notification that does not comply with the practice standard is deemed to have failed to fulfil the requirements as required by the Commission; and such failure shall render the notification as not been made.

<table>
<tr><th>No</th><th>Section</th><th>Salient Points of the Proposed Amendment of Act 712</th></tr>
<tr><td>67.</td><td>First Schedule

(Existing Provision)</td><td>
The amendment to the First Schedule of Act 712 seeks to divide the schedule into two parts; Part A and Part B which provides for the matters that will not be subjected to Act 712.

Part A of the First Schedule specifies the list of legislation in which any commercial or economic activity regulated under those legislations is excluded from the application of Chapter 1 and Chapter 2 of Part II of Act 712, which now also includes the Gas Supply Act 1993 [Act 501] and Postal Services Act 2012 [Act 741].

Part B of the First Schedule specifies the types of merger transactions that are excluded from the application of the merger provisions under Chapter 2A of Part II of Act 712.

The list of merger transactions that are excluded from the application of Chapter 2A of Part II of Act 712 are as follows: -

a) Mergers between enterprises that are: -
<table>
<tr><th>No</th><th>Enterprise</th><th>List of Legislation</th></tr>
<tr><td>(i)</td><td>Licensed or approved or registered, as the case may be, by the Finance Minister or the Central Bank of Malaysia, as the case may be, under the following legislations</td><td>Financial Services Act 2013 [Act 758];

Islamic Financial Services Act 2013 [Act 759]; or

Money Services Business Act 2011 [Act 731]</td></tr>
<tr><td>(ii)</td><td>Licensed or approved or registered, as the case may be, by the Finance Minister or the Securities Commission, as the case may be, under the following legislations</td><td>Capital Market and Services Act 2007 [Act 671]; or

Securities Industries (Central Depository) Act 1991 [Act 453]</td></tr>
<tr><td>(iii)</td><td>Prescribed by the Finance Minister as a development financial institution under the</td><td>Development Financial Institution Act 2002 [Act 618]</td></tr>
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<table>
<tr><th>No</th><th>Section</th><th>Salient Points of the Proposed Amendment of Act 712</th></tr>
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<tr><td></td><td>Development Financial Institution Act 2002 [Act 618]</td><td></td></tr>
<tr><td>(iv)</td><td>Licensed or approved or registered, as the case may be, by the Labuan Financial Services Authority under the following legislations</td><td>Labuan Financial Services and Securities Act 2010 [Act 704]; or

Labuan Islamic Financial Services and Securities Act 2010 [Act 705]</td></tr>
<tr><td>(v)</td><td>Licensed by the Suruhanjaya Perkhidmatan Air Negara under the Water Services Industry Act 2006 [Act 655].</td><td>Water Services Industry Act 2006 [Act 655]</td></tr>
</table>
b) Any commercial or economic activity regulated under Part A of the First Schedule;

c) A merger to the extent to which it is engaged in order to comply with a legislative requirement;

d) Merger carried out by an enterprise entrusted by the Federal Government or State Government, as the case may be, with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition under section 10A would obstruct the performance, in law or in fact, of that particular task assigned to the enterprise.
</td></tr>
<tr><td>68.</td><td>Second Schedule

(Existing Provision)</td><td>Item (c) of the Second Schedule is amended to provide clarity for enterprises that are entrusted to carry out the operation of services of general economic interest by the Federal Government or the State Government will not be subjected to Act 712.</td></tr>
</table>

SALIENT POINTS OF THE PROPOSED AMENDMENTS TO THE MALAY TEXT OF THE COMPETITION ACT 2010 (ACT 712)

No	Section	Salient Points of the Proposed Amendments
1.	**4** **Perjanjian mendatar dan menegak yang dilarang** **(Existing Provision)**	By virtue of P.U.(B) 675/2021, the Prime Minister prescribed that the authoritative text of the Competition Act 2010 shall be in the English language. Thus, the authoritative text in English shall prevail. In the Malay text of section 4(2), the word "*atau kesan*" was included although the English version of section 4(2) does not contain the word "*or effect*" in the provision. Therefore, it is proposed for the amendment to be made to the Malay text of section 4 of Act 712 so that it is in line with the English text.
2.	**10** **Penyalahgunaan kedudukan dominan adalah dilarang** **(Existing Provision)**	There is an error in the use of the word "*huluan*" and "*hiliran*" in the Malay text of section 10(2)(d)(ii) of Act 712 Therefore, the Malay text of section10(2)(d)(ii) needs to be amended so that it will correctly reflect the English text of section 10(2)(d)(ii) of Act 712.
3.	**Seksyen 16** **Penutupan suatu penyiasatan** **(Existing Provision)**	It is proposed for the term "*siasatan*" that is being used in the Malay version of section 16 to be amended due to the misconception on the usage of the term *siasatan* and *menyiasat*. Within the context of a competition investigation under Act 712, an inquiry (*siasatan)* is when the Commission makes a preliminary assessment to determine whether a full investigation (*penyiasatan*) into an anti-competitive conduct should be made. Therefore, the avoid confusion on the stage of the Commission's investigation and enforcement action, it is proposed for the term "*siasatan*" in the Malay version of section 16(1) and (2) to be changed to "*inkuiri*".