**COMPETITION AUTHORITY OF KENYA'S SUBMISSION ON THE COMPETITION AMENDMENT BILL (NATIONAL ASSEMBLY BILL NO. 4 OF 2026)**

Honourable Chairperson and Honourable Members of the Committee, thank you for inviting the Competition Authority of Kenya (the Authority) to make our representations on the Competition (Amendment) Bill, 2026.

## A. Background

1. The Authority is established under the Competition Act, CAP 504 of the Laws of Kenya (the Act). Its mandate is to promote and safeguard competition, and to protect consumers from unfair or misleading market conduct.

2. The object of the Act as set out in Section 3 is to enhance the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct throughout Kenya.

3. The Competition Authority achieves its mandate through investigating complaints into anti-competitive practices; regulating the merger of firms to ensure they do not acquire or maintain a dominant market position; and by promoting consumer protection through enforcing the consumers' rights provided under Article 46 of the Constitution of Kenya, 2010.

4. The National Assembly's Departmental Committee on Finance and National Planning, through its letter dated 8th July, 2026, required the Authority to appear before it and make a submission regarding the proposed amendment Bill 2026.

5. The Authority submits as follows.

## B. Submissions

6. The Authority has experienced several enforcement challenges while executing its mandate under the current Act, including in areas such as digital markets, abuse of superior bargaining position and compliance with its decisions after investigations. Our experience in administering the current Act has identified several operational and legal gaps that affect effective implementation.

7. The proposed Bill addresses these challenges by strengthening the regulatory framework, clarifying statutory powers, improving enforcement mechanisms, and aligning the law with emerging developments and international best practice.

8. Honourable Chairperson and Honourable Members, as the authority responsible for implementing the Act, I will briefly outline the technical rationale for the proposed amendments. In particular, I will highlight the specific gaps and operational constraints identified in the existing legal framework and explain how the proposed Bill addresses these challenges to strengthen the effective implementation of the Act.

9. While the digital economy presents significant opportunities for innovation, financial inclusion, investment, and economic growth, it also gives rise to unique competition challenges. The increasing prominence of large digital platforms has created risks associated with the concentration of market power, unfair trading practices, economic dependence, exclusionary conduct, and barriers to market entry.

10. Unlike traditional businesses, digital platforms derive competitive advantages from strong network effects, the accumulation and control of vast amounts of data, and integrated digital ecosystems. These characteristics can enable firms to rapidly acquire and entrench market power, making it difficult for competitors to enter or expand in digital markets. Moreover, digital markets are inherently cross-border, with platforms operating seamlessly across multiple jurisdictions, often beyond the effective reach of purely domestic regulatory frameworks.

11. Kenya is a State Party to the Common Market for Eastern and Southern Africa (COMESA) and the African Continental Free Trade Area (AfCFTA), both of which have competition regimes that address anti-competitive conduct in digital markets, including practices such as self-preferencing, anti-steering, and the anti-competitive combination or leveraging of data. It is, therefore, necessary for Kenya's competition framework to align with these regional and continental legal frameworks to ensure effective enforcement, regulatory coherence, and a level playing field for businesses operating in the digital economy.

12. The current Act does not expressly provide for the regulation of competition in digital markets and virtual marketplaces, despite these markets having become a

significant and rapidly growing component of Kenya's economy. The Competition (Amendment) Bill, 2026 has therefore been developed to broaden the Authority's mandate to effectively address anti-competitive conduct in the digital economy.

13. Honourable Chairperson and Honourable Members, the current Act does not expressly prohibit or empower the Authority to address the abuse of a superior bargaining position. As a result, the Authority has been unable to intervene in instances where businesses with significantly stronger bargaining power impose unfair terms or practices on weaker trading partners, even though the stronger undertaking may not be dominant in the relevant market.

14. Abuse of superior bargaining position arises where one undertaking exploits its stronger negotiating position in a commercial relationship to impose unfair or unreasonable terms that the weaker party cannot realistically refuse because of economic dependence or the absence of viable alternatives. Unlike abuse of dominance, which is concerned with market power in a defined market, abuse of superior bargaining position focuses on the imbalance of bargaining power between parties in a specific commercial relationship.

15. Prohibiting such conduct promotes fairness in business-to-business dealings and addresses a regulatory gap that is not covered by the existing provisions on abuse of dominance or abuse of buyer power. It enables the Authority to address unfair commercial practices even where markets remain competitive but one undertaking can exploit its bargaining advantage over suppliers, distributors, retailers, service providers, or other trading partners. Such conduct can suppress innovation, discourage investment, weaken small businesses, and ultimately reduce consumer choice and welfare.

16. The proposed amendment, therefore, broadens the scope of the Act by empowering the Authority to investigate and take action against unfair trading practices arising from the abuse of superior bargaining position across all sectors of the economy. It extends protection beyond the existing buyer power provisions to cover situations where the offending undertaking is an unavoidable trading partner, including digital platforms, or where the affected business is economically dependent on the stronger party.

17. The amendment will ensure that Kenya's competition framework remains responsive to increasingly sophisticated business models and the rapid growth of the digital economy. It will strengthen fair competition, support the growth and participation of micro, small and medium-sized enterprises (MSMEs), promote equitable commercial relationships, and create a more inclusive and competitive marketplace that fosters innovation, investment, and sustainable economic growth.

18. Honourable Chairperson and Honourable Members, Clause 1 of the Bill provides the short title of the Act. Clause 2 proposes the introduction of new terms used in a technical sense in the Act. Clause 3 of the Bill seeks to insert new sections on the parameters for assessing a dominant position of a party in the case of digital activities; and an explanation of the expressions "strategic market position" and "superior bargaining position" in a market.

19. Clauses 4, 5, 6, and 8 of the Bill seek to assign additional functions and powers to the Authority to include the following:

    a) fostering strategic partnerships with national, regional and international bodies;

    b) advise the Cabinet Secretary, other Government agencies and other stakeholders on any matter relating to competition and consumer welfare;

    c) conducting inquiries into any matter affecting abuse of superior bargaining position;

    d) regulation of intermediaries that are considered to be in a dominant position; and

    e) investigating any conduct that constitutes an abuse of superior bargaining position.

20. Clause 7 of the Bill proposes to repeal section 24A on abuse of buyer power due to improper logical placement in the Act. Abuse of buyer power is not a restrictive trade practice but an unfair market conduct and, as such, the current positioning of the section under Part III on Restrictive Trade Practices is considered an anomaly. Accordingly, the provision is re-introduced under clause 9 of the Bill

which seeks to introduce a new Part in the Act on unfair market conduct; and other sections on the abuse of buyer power and abuse of superior bargaining position.

21. Clause 10 seeks to broaden the scope of a merger under the Act to include privatization of Government agencies and State Corporations that engage in trade.

22. Clause 11 of the Bill proposes to introduce additional offences in the Act on the provision of false or misleading representations on goods or services.

23. Clause 12 of the Bill seeks to amend section 70A of the Act to replace the word "complaints" with "consumer welfare issues" in line with International Best Practices to facilitate more effective regulation of consumer welfare in Kenya.

24. Clause 13 of the Bill seeks to clarify the enforcement provision by providing the penalty for failure to comply with a lawful order of the Authority.

25. Lastly, Clause 14 of the Bill seeks to insert a new provision in the Act empowering the Authority to enforce administrative sanctions against any person who violates the provisions of the Act.

## C. Conclusion

26. Honourable Chairperson and Honourable Members, the Authority undertook extensive stakeholder consultations, and many of the recommendations received were incorporated into the Bill. We are confident that the proposed framework is practical, enforceable, and will enhance the achievement of globally efficient markets and enhanced consumer welfare for shared prosperity.

27. We remain available to respond to the Committee's questions and to provide any clarification on the provisions of the Bill.

**David K. Kemei**
**DIRECTOR - GENERAL**
**21st July 2026**