

Ref. No. MJCA/AG/014

30th January, 2023

FROM : THE ATTORNEY GENERAL, PRIVATE BAG 333,
LILONGWE 3

TO : THE DIRECTOR OF PUBLIC PROCUREMENT AND
DISPOSAL OF ASSETS AND AUTHORITY,
PRIVATE BAG 383, LILONGWE 3

: THE COMPTROLLER OF STATUTORY CORPORATIONS,
P.O.BOX 30061, LILONGWE 3

: ALL PROCURING ENTITIES

: THE DIRECTOR, DIRECTORATE OF ROAD TRAFFIC
AND SAFETY SERVICES, PRIVATE 257, LILONGWE

: THE EXECUTIVE DIRECTOR, COMPETITION AND FAIR,
TRADING COMMISSION PRIVATE BAG 332,
LILONGWE.

**RE: COMPLAINT AGAINST MONOPOLY AND UNETHICAL BUSINESS
PRACTICES PERPETRATED BY NON-INDIGENOUS BUSINESS
ACTORS IN MALAWI**

I have received the attached complaint from the Black Business Indigenous Network regarding domination of business by non-black business persons in various procuring entities. These include but not limited to Central Medical Stores Trust (CMST), Lilongwe Water Board (LWB), Blantyre Water Board (BWB), Northern Region Water Board (NRWB) and Electricity Supply Corporation of Malawi (ESCOM).

The Black Business Indigenous Network alleges that there is a cartel perpetrated by businesses owned by foreigners, particularly, those of Asian origin and manufacturers that serve to exclude black Malawian business persons from obtaining manufacturers authorization, a key document that enables businesses to succeed in tendering for business of supplying manufactured goods.

The Black Business Indigenous Network further alleges that the Consultant managing the Malawi Traffic Information System (MALTIS) deliberately designed or interfered with the MALTIS system so as to block any black Malawian business person from supplying any cards to the Directorate of Road Traffic and Safety Services.

With regard to the complaints highlighted above, I would like to draw to your attention to section 44(10) of the Public Procurement and Disposal of Assets Act (Cap. 37:03 of the Laws of Malawi) which is in the following terms:

*'A procuring entity shall ensure prioritization of all bids submitted to give preference **to 60 per cent indigenous black Malawians** and 40 per cent others for national competitive bidding.'* [Emphasis supplied by me].

The effect of section 44(10) cited above is that procuring entities must at all times allocate a 60% quota in favour of indigenous black Malawians in respect of procurement of goods and services. It appears that the procuring systems by various procuring entities have been deliberately designed to favour businesses owned by non-black Malawians and to evade section 44(10) of the Public Procurement and Disposal of Assets Act. I have also come across trends in which procuring entities not only provide advance payments to entities owned by businesses owned by non-black Malawians but also provide guarantees for commercial loans that these businesses obtain.

As a result, section 44(10) above is being honoured more in breach than in observance. If we are to uphold section 44(10) above and consequently the rule of law and distribution of wealth, procuring entities must ensure that policies and bid documents are reviewed to enable indigenous black Malawians meaningfully participate in public procurement.

I, thus, advise that procuring entities should devise systems that should enable compliance with section 44(10) of the Public Procurement and Disposal of Assets Act which will invariably promote and strengthen the rule of law. I further advise that the Public Procurement and Disposal of Assets Authority which regulates public procurements must ensure that section 44(10) of the Public Procurement and Disposal of Assets Act is complied with when processing

requests for approvals to award contracts commonly known as requests for ‘no-objections’.

The issues highlighted in the complaint by the Black Business Indigenous Network raise elements of unfair competition and monopoly. As such, I would also like to request the Public Procurement and Disposal of Assets Authority as well as the Competition and Fair Trading Commission to investigate the allegations raised by the Black Business Indigenous Network. Appropriate sanctions must be imposed on the businesses involved in such malpractices.

Further, the Department of Road Traffic and Safety Services is advised to address the issues raised by the Black Business Indigenous Network in their letter to me.

Should you require clarification on the issues raised above, please do not hesitate to contact me.



Thabo Chakaka-Nyirenda
ATTORNEY GENERAL

