



Cause for Public Concern on the Telkom Privatization and Safaricom IPO

YOU KNOW

- The Government of Kenya is in the concluding stages of privatizing Telkom Kenya. The winning bidders France Telecom will take Board control by December 21, 2007.
- The government is also planning to offload shares of Safaricom through an Initial Public Offer (IPO) before the end of this year.

BUT DO YOU KNOW

About Telkom Kenya:

- The conclusive stages of Telkom Kenya's privatization have been conducted with undue haste. The process has unfolded barely **a month** to the General Election and is set to close just **six days** to voting. **Why could it not be delayed for a short period, two months perhaps, to allow for the electoral season?**
- The privatization of Telkom Kenya has taken place outside the legal framework of the *Privatization Act*. The Act, was passed by Parliament and **signed into law by the President in 2005** but has been kept in abeyance by the Minister of Finance for two years. The Minister is simply required to gazette it and to embark on the establishment of a Privatization Commission. The failure by the Minister of Finance to gazette the Privatization Act amounts to the misuse of power. Simply put, **the Minister has used his executive power to thwart the coming into force of a law.**
- The refusal by the Minister of Finance to activate the Privatization Act flies against the constitutional check and balance mechanism that guides law making in Kenya. **This is because the constitution deems a law to be in effect after it has undergone parliamentary passage and presidential assent;** any other requirement, such as ministerial action to operationalise the law is merely intended as practical, regulatory or administrative considerations that cannot constitute grounds for delay or thwarting of the law.

About Safaricom:

- Safaricom Limited was established in 1997 as a fully-owned department of the Kenya Post & Telecommunication Corporation (KP&TC). The department was inherited by Telkom in 1999, when KP&TC was broken up into Posta, the Communication Commission of Kenya (CCK) and Telkom Kenya. But somewhere along the way, 40 % of Safaricom shares were transferred to Vodafone Kenya Limited, which in turn sold 25% of its own shareholding – and therefore 10% of Safaricom's shares – to Mobitelea Ventures Limited, a company resident in Guernsey. On January 29, 2007, Gavin Darby, CEO of Vodafone Americas, Africa, China, India wrote to the Clerk of Parliament that Mobitelea had offered "valued advice" on "local business practices and protocol" and had in return been "offered the opportunity to acquire 25% of VKL".
- The transfer of Safaricom shares from Telkom to Vodafone and Mobitelea was neither aboveboard nor even regular. **The privatization of Telkom Kenya can not, therefore, be deemed regular until the true picture of its ceding of Safaricom shares to Vodafone Kenya is unraveled and rectified.** As it is, the ownership of a significant 5% of the Safaricom remains engulfed in a cloud of controversy that has a strong whiff of underhand wheeler-dealing.
- Vodafone Kenya and Telkom Kenya have **gone to great lengths to hide the details** of Safaricom's relationship with Mobitelea Ventures. That this should be the case is fair grounds to suspect foul play in the sale of Safaricom shares.
- These transactions are being investigated by the Serious Fraud Office of the United Kingdom.

THE PARLIAMENTARY INVESTMENT COMMITTEE'S RECOMMENDATIONS:

- The transfer of Safaricom's shareholding from Telkom Kenya was convoluted and possibly **illegal and corrupt**. An investigation by the parliamentary **Public Investment Committee** graphically illustrates the point. The committee, moreover, made several specific recommendations that are yet to be effected. Among the PIC findings and recommendations are that:
 1. 10% shareholding of Telkom Kenya Limited was **irregularly transferred to Mobitelea Ventures Limited** without the consent of Treasury and that of the parent ministry;
 2. The Director of the Kenya Anti-Corruption Commission (KACC) should immediately institute investigations into the circumstances and manner in which Telkom's shares were transferred to Mobitelea and take action against anyone found culpable;
 3. The Director of KACC should include a progress report on the Telkom-Mobitelea investigations in the Commission's quarterly report to parliament;
 4. The PIC, on behalf of Parliament, invites the Organization of Economic Cooperation and Development (OECD), the United Nations (UN), Transparency International (TI), and the Serious Fraud Office of London to also undertake investigations on the apparent grand corruption conceived and orchestrated by Vodafone PLC in Kenya.
 5. The **Chief Executive of the Communications Commission of Kenya (CCK), Eng. John Waweru**, should be asked to step aside until the investigations are completed 'due to his role on the Board of the defunct KP&TC and Telkom Kenya at the time of changes in Safaricom shareholding...';
 6. The **Board members** who discussed the Telkom Kenya Board Paper No. 56/99 and seem to have abetted the irregular transfer of public shares of Safaricom should be barred from holding public office.
 7. **The value of the 10% shares of Safaricom ceded to Mobitelea Ventures should be determined and Mobitelea and or Vodafone PLC be made to redeem the determined value by June 2008;**
 8. The awaited **Initial Public Offer (IPO) of Safaricom Limited should be suspended** until such time when the investigations into the transfer of Safaricom's shares to Vodafone PLC and Mobitelea are completed;
 9. The 10% of Safaricom shares that was irregularly transferred to Vodafone PLC should immediately revert to Telkom Kenya to hold in trust for the Kenyan public.

The privatization of Telkom therefore remains suspect until and unless the PIC recommendations have been implemented or new information tabled before the Committee to persuade it otherwise.

The government should respect the recommendations of the PIC which directed that " **the awaited Initial Public Offer (IPO) of Safaricom Limited should be suspended until such time when the investigations into the transfer of Safaricom's shares to Vodafone PLC and Mobitelea are completed**". Why the rush? Both the CEO of Safaricom and the Association of Stockbrokers and Investment Banks recommend delaying the Safaricom IPO until after the electoral season. This time can be used to complete the investigations into the transfer of Telkom shares in Safaricom and to ensure that the interests of Kenyan citizens are safeguarded.

Signed:

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