



Africa Centre for Open Governance

# Continuing Public Concern around the Safaricom IPO

## MOBITELEA SHARES SHOULD BE FROZEN!

### YOU KNOW THAT

Beginning March 28, 2008, the Government will sell off 25% of its stake in Safaricom through an Initial Public Offer (IPO).

### BUT DO YOU KNOW ...?

Big questions hang over the transparency and accountability of dealings involving the Vodafone Group PLC, its local subsidiary Vodafone Kenya Ltd, the then Board of Telkom Kenya and a shadowy company called Mobitelea. The Government has ignored recommendations of the parliamentary Public Investments Committee, which only last year spoke of "apparent grand corruption" orchestrated by Vodafone Kenya Ltd in giving away 10 per cent of Safaricom's shareholding to Mobitelea.

### BACKGROUND:

- Safaricom Limited was established in 1997 as a department of the Kenya Posts & Telecommunications Corporation (KP&TC), which was fully owned by the public. When the corporation was split into the Communications Commission of Kenya, Postal Corporation of Kenya and Telkom Kenya in 1999, Safaricom was left with Telkom Kenya.
- The KP&TC entered into a strategic partnership with the UK-based Vodafone Group PLC to run Safaricom. The shareholder agreement, signed on January 25, 1999, enabled Vodafone Group PLC, through its subsidiary, Vodafone Kenya Ltd, to acquire 30% shareholding in Safaricom from Telkom. At the time, Government policy on investments required that the share of Kenya ownership be not less than 70%. The shareholding was only paid for in 2000 – and then only after Vodafone Kenya Ltd. requested and received an additional 10% of Safaricom. The policy was changed to accommodate this.
- Vodafone Kenya Ltd was not established in Kenya as a direct subsidiary of Vodafone Group PLC. Rather, it took over an existing local company, Shomoro Limited, which had been established in 1998, and changed its name to Vodafone Kenya Ltd. The records for Shomoro Limited and Vodafone Kenya Ltd are not in the Companies Registry.

### SO WHAT??

- Granting 40% shareholding to a foreign entity, Vodafone PLC UK, went against the investment policy that required 70% local ownership. Also, 10% shareholding in a public utility, Safaricom, changed hands on the strength of a 'verbal request pending official written request'. In fact, as it turned out, the Telkom Board (**John Waweru, W.N Ayah, A.K Cheserem, M.P Manji, K.K Cherogony, D.A Oyatsi and G Mitine**) did not even receive the so-called 'verbal request' -- it merely 'was informed of it'.
- Vodafone Group PLC 'offered Mobitelea an opportunity to acquire' 25% of its shareholding in Safaricom. In effect, it brought a third party to the shareholding agreement without consulting its other partner or offering it the chance to buy that stake. That effectively gave Mobitelea Ventures Ltd 10% ownership of Safaricom.
- Going by Vodafone's figures, Mobitelea received in a barter arrangement \$10 million for a 25% stake in Vodafone Kenya Ltd -- that being 25% of the \$20 million that Vodafone paid for its share of Safaricom, plus the \$22 million Vodafone supposedly paid as part of its contribution to Safaricom's licence fee. **This is the basis for the oft-made assertion by Safaricom Kenya that it has only two owners, namely the Kenya Government and Vodafone Kenya Limited.** However, Vodafone Group PLC has itself confirmed that Mobitelea is a shareholder in Safaricom.
- On January 29 2007, Gavin Darby, the CEO of Vodafone Americas, Africa, China, India wrote to the Clerk of the Kenyan Parliament that the 25% offer was made to Mobitelea 'in return for its valued advice'. His explanation was that whenever Vodafone Group PLC invests in 'new territories', it is not uncommon for the company to work alongside 'a partner who typically gives advice on local business practices and protocols and the various challenges associated in investing in a new market'. However Mobitelea is not based nor does it operate in Kenya for it to understand the "local investment challenges". It is not clear what was being paid for. What does Darby's bland language mask?
- Mobitelea Ventures Ltd is registered in Guernsey, an offshore tax haven in the English Channel. Its owners are not known. Why would Vodafone, after **paying for services rendered, transfer its shares to a firm to ease entry into a new market that it was already in?**
- Vodafone transferred some of its shares in Safaricom to Mobitelea Ventures Ltd in 2002, when there was a General Election pending. That places the deal two years after Vodafone acquired its share of Safaricom – but three years after the shareholding agreement. The timing is suspicious: after at least two years, Vodafone had already established itself in the new market and had certainly consumed and presumably already paid for the advice it required from Mobitelea. **It is unclear why Mobitelea, itself a company presumably chasing profits, would give a client, Vodafone, advice for at least two years without pay.**
- Only one year after Vodafone Group PLC offered the 10 per cent Safaricom stake to Mobitelea, it bought back half of them in unclear circumstances. No one can ascertain the 'competitive process' through which Vodafone PLC supposedly bought back 5% of Safaricom shares from Mobitelea ventures as alluded to by Vodafone's Executive Garvin Darby in his letter to the PIC, nor the price.
- Going by the government projections that 25% of Safaricom shares will bring in Ksh50 billion, the value of 5% that Mobitelea still holds in the company is now worth Ksh10 billion.** The Kenya Government appears unwilling to tell the public who owns Mobitelea Ventures Ltd, and what payment (if any) was made or received for the stake in Safaricom. Even Mr Michael Joseph, the Safaricom chief executive officer, stated to the PIC that he is unable to tell who the direct and indirect owners of the company he heads are.
- The transfer of Safaricom shares from Telkom to Vodafone and Mobitelea was neither above suspicion nor even regular. For instance, **Mr Joseph Kinyua, Treasury Permanent Secretary, informed PIC that Vodafone first acquired 30%, rather than 40%, of Safaricom in January 1999 and not in 2000. He thus contradicted what Vodafone had indicated. Therefore the true picture of when and how all these transfers occurred needs to be revealed and the wrongs committed righted.** As it is, the ownership of a significant 5% of the Safaricom stake by Mobitelea remains engulfed in a cloud of controversy that has a strong whiff of underhand wheeler-dealing.

- Vodafone Kenya, Telkom Kenya and, to some extent, Safaricom, have **gone to great lengths to hide the details** of Safaricom's inception and relationship with Mobitelea Ventures. For example, a representative of the Registrar of Companies informed PIC that until **2006, neither Vodafone Kenya Ltd nor Safaricom were submitting their annual reports. The physical file and records of Vodafone Kenya Ltd have long disappeared from the Registrar's records under unexplained circumstances.**
- The UK Serious Fraud Office has reportedly been investigating these transactions. **Kenyans are interested in the status of the investigations and their findings.**

We raised these questions in December 2007 but no answers have been given.

Some of these questions and concerns were also raised in 2007 by **Parliament's Public Investments Committee (PIC)**. After investigating the transfer of Safaricom's shareholding from Telkom Kenya made several specific recommendations that are yet to be effected. Among the PIC recommendations and findings are that:

- "10% shareholding of Telkom Kenya Limited was **irregularly transferred to Mobitelea Ventures Limited** without the consent of Treasury and that of the parent ministry;
- The Director of the Kenya Anti-Corruption Commission (KACC) should immediately institute investigations into the circumstances and manner in which the Telkom's shares were transferred to Mobitelea and take action against anyone found culpable;
- The Director of KACC should include a progress report on the Telkom-Mobitelea investigations in the Commission's quarterly report to Parliament;
- The **Chief Executive of the Communications Commission of Kenya (CCK), Eng. John Waweru**, should be asked to step aside until these 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 ...';
- The Telkom **Board members, W.N Ayah, A.K Cheserem, M.P Manji, K.K Cherogony, D.A Oyatsi and G Mitine**, who approved the change in shareholding of Safaricom to 60% (TKL) and 40% (VKL) 'pending an official (written) request from the management of Vodafone [the Telkom Kenya Board Paper No. 56/99] and consequently abetted the outright theft of public shares of Safaricom should be barred from holding public office.
- The **value of the 10% shares of Safaricom irregularly ceded to Mobitelea Ventures should be determined and Mobitelea or Vodafone PLC be made to redeem the determined value by June 2008;**
- 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;
- 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 PIC's recommendations have been ignored.** The sale of Safaricom shares is proceeding without any attempt to address questions of critical importance to any custodian of the public interest.

**Why the patent lack of interest in investigating the truth about Mobitelea?**

Unanswered questions include:

- Is the rush around the Safaricom IPO meant to enable the shadowy owners of Mobitelea to offload their shares? Who are the mysterious owners of Mobitelea Ventures Ltd? What payment did they make for their stake in Safaricom and what profit have they earned?
- Why is there so much pressure to proceed with the Safaricom IPO during the deepest crisis Kenya has ever experienced? Is it perhaps the case that the pressure for the listing to go ahead unconditionally may be intended to **facilitate the laundering of the proceeds of corruption and render their origins untraceable?**
- Should government not be concerned to do everything to prevent the loss of public funds in the face of the massive needs for reconstruction and rehabilitation of infrastructure?

**The Attorney General and the Minister of Finance, as the main custodians of the public interest in these cases, owe the Kenya public clear and comprehensive answers.**

Given the concerns outlined above, it is not legitimate for the Government of Kenya to ride roughshod over public concerns and ignore the recommendations of Parliament. These concerns are underlined by the present situation on the capital markets, where key players are being placed under statutory management and ordinary investors fear for the fate of their hard-earned funds.

**IT IS IMPERATIVE THAT MOBITELEA SHARES IN SAFARICOM BE FROZEN UNTIL ALL THE ISSUES RAISED AROUND THE ACQUISITION AND OFFLOADING OF THESE SHARES ARE CONCLUSIVELY AND SATISFACTORILY EXPLAINED AND ANY MALFEASANCE PUNISHED.**

Signed:

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For THE CIVIL SOCIETY TASK FORCE ON GRAND CORRUPTION