



CA's RESPONSE TO BUSINESS DAILY ARTICLE OF 3RD JANUARY 2018

The Authority (CA) would like to correct the misrepresentations contained in the article published by the Business Daily of 3rd January 2018 under the title "Regulator drops plan to split Safaricom Limited".

The author raised several issues in the article many of which the Authority finds as gross misrepresentation of facts.

The CA therefore, wishes to refute a number of glaring inaccuracies in the said article.

Background

The Authority is obligated by law to promote, develop and enforce fair competition and equality of treatment among licensees. Arising from this mandate, the Authority is required to regulate competition in the sector and protect ICT consumers, a responsibility that is carried out through market analysis and targeted interventions in the market. In view of the foregoing, the Authority, in May 2016, contracted M/S Analysys Mason of the UK, to undertake the Telecommunications Competition Market Study with a view to establishing the degree of competition and its effectiveness in the various telecommunications markets in Kenya.

In particular, the study aimed at:

- i. Identifying the relevant markets and sub-markets within the telecommunication sub-sector, the number of players that exist and their respective market shares;
- ii. Establishing the levels and extent of competition in the various telecommunications sub-markets and identify players with significant market power.
- iii. Identifying the market barriers, if any, that prevent entry, competition and the growth of the players in the era of changing technologies;
- iv. Providing proposals on the best way of eliminating barriers to growth
- v. Establishing any anti-competitive behavior and evaluate the extent that this has helped players entrench dominance in sub-sector.
- vi. Recommend the optimal regulatory responses to the competition issues identified within the existing regulatory and legal framework.

To date, the consultant has submitted a number of progress reports on the Study deliverables which the Authority has from time to time shared with the key industry stakeholders, including the Mobile Network Operators (MNOs), Fixed Network Operators (FNOs), Infrastructure providers, Mobile Virtual Network Operators MVNO'S among others.



During data collection, the Authority signed Non Disclosure Agreements (NDAs) with various licensees who provided data for the study. The NDA is a legal document that governs confidential and sensitive commercial information that is shared with the Authority by the licensees. The NDA obligates the Authority not to share confidential information with any other party in accordance with the Agreement. Consequently, some of the content in the report cannot be shared with the public. Therefore, once the study is complete, the Authority will come up with an abridged version that will be availed to the public and the same posted on the Authority's website.

Allegations by the Business Daily

The article in the Business Daily alludes that the Authority has reached conclusion on a number of issues in the Study and given its recommendations. The article also questioned the Authority's neutrality over the issue of dominance, citing repeated delays in conducting stakeholders' workshop and failure to adopt a final report.

Following these allegations, the Authority wishes to clear the air as follows:

- a) That Authority has from time to time engaged key stakeholders during the process of conducting the Competition Study and will continue to do so with a view of having their inputs incorporated into the study.
- b) No final Competition Study report nor recommendations have so far been adopted and the draft reports are considered work in progress.
- c) The delay in having the final report released has been due to need to consider the inputs of all the stakeholders before conducting a comprehensive dissemination workshop.
- d) The stakeholders will further be given an opportunity to give their views during the stakeholders' workshop.

The Authority is aware that there is a lot of anticipation around the outcomes of the Study and we remain open to continuous engagement with all stakeholders on the draft report. To this end, we urge industry stakeholders to use the right channels to air their concerns. This, we believe shall serve to enrich the final report for the benefit of all Kenyans.

As the industry regulator, the Authority is highly willing to engage and is enthusiastic to listen to the views of stakeholders. It is for this reason that, the Authority is organizing a stakeholder dissemination workshop, scheduled for the first quarter of the calendar year.

Such collaborative engagements are not only important to get views from the stakeholders but to also enable them own the outcome of the deliberations.



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We therefore wish to reassure the stakeholders and the public that the Authority remains committed to discharging its duties in accordance to the law and shall continue to engage all stakeholders on matters that require their participation.

Juma K. Kandie
For; Director General