

**PRESS STATEMENT BY MR. NGENE GITUKU, CHAIRMAN OF THE CA BOARD OF DIRECTORS, ON ALLEGATIONS OF IMPROPRIETY AND UNETHICAL CONDUCT REGARDING THE SALE OF ESSAR TELECOM KENYA LTD (YU)**

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The attention of the Authority has been drawn to reports appearing in some sections of the local media attributed to some former CA Board members that appear to suggest and impute unethical conduct and corruption on the part of the Authority regarding the sale of Essar Telecom Kenya Limited. I wish to refute the misleading reports by bringing to the attention of the public the reasons and circumstances under which the Authority approved the sale of Essar Telecom Kenya Ltd. It appears that the authors of the malicious reports are hell-bent on soiling the reputation of the Authority, and thereby ultimately discouraging investment in Kenya's vibrant ICT sector. The Authority, therefore, wishes to make the following clarifications:

In February 2014, Essar Telecom wrote to inform the Authority that they were unable to sustain their operations and were planning to exit the Kenyan market. Essar further informed the Authority that they had been sourcing for a single buyer of their business from the local and international markets without success. Essar Telecom indicated that only Safaricom and Airtel Networks had jointly agreed to buy the Essar infrastructure Tier One licence, with its frequencies, and absorb their employees together with their subscribers.

Subsequently, Essar Telecom, Safaricom and Airtel submitted a joint transaction proposal to the Authority relating to the transfer of Essar Telecom's mobile network infrastructure Tier One rights to Airtel and its associated frequency spectrum resources to Safaricom.

In their application letters, Safaricom requested to be allowed to acquire the Essar Telecom's spectrum, while Airtel sought authorization to acquire the operating licence with its accompanying resources on condition that they are allowed to transfer their frequencies to Essar Telecom's acquired rights. The parties to the said transaction, aware of the regulatory implications of the proposed transaction, jointly requested the CA and the Competition Authority of Kenya (CAK) for approval of the transaction.

Upon receipt of the application, the Authority's Management brought to the attention of the Board the implications of approving or not approving the transaction. The most notable implications were that the liquidation of Essar Telecom Kenya Ltd would have adverse impacts on creditors, suppliers, 150 employees and their families, as well as recovery of the Authority's debt amounting to Kshs800 million.

Upon careful consideration of the pros and cons of the liquidation of Essar Telecom, the CA Board, in its sitting of 27<sup>th</sup> March 2014, resolved to authorize the proposed sale of Essar Telecom to Safaricom and Airtel, subject to meeting a number of conditions. The said conditions included upfront payment by Airtel and Safaricom of USD 5.4million each to synchronize the acquired Essar Licence rights of eight (8) years to their renewal period of 10 years; commitment by Airtel to maintain numbers and related contracts for the existing Essar Telecom subscribers, for a transition period of six (6) months from the date of approval of the acquisition; submission by Airtel to the Authority for approval of Service level Agreements (SLAs) for the subscribers acquired from Essar Telecom within six (6) months transition period; commitments from Airtel and Safaricom to share out Essar Telecom's employees;

and a commitment from Airtel that the acquired subscribers meet the requirements of SIM card registration in accordance with the Act.

The Authority's management, on 28th March 2014, communicated the Board's decision and related conditions to the transaction parties, and in the interest of public disclosure, issued a press statement on the same.

Following the alignment of the ICT sector law with the Constitution of Kenya 2010 in January 2013, new CA Board members were appointed in May 2014. This is the period when Management of the Authority was awaiting the fulfillment of the conditions set by the Board for the approval of acquisition of Essar Telecom's Tier one Licence rights by Safaricom and Airtel. The new Board was apprised of this activity in the industry and management kept on giving status updates on the transaction to the Board. After fulfillment of the pre-set conditions, the Authority sought a no-objection from the Competition Authority and proceeded to gazette its intention to transfer the Essar licence rights for purposes of ensuring public participation. All along the Board was kept in the picture of what was happening.

After receiving a no objection from the Competition Authority and the public at the close of the 30 days period of the gazette notice, the Authority went ahead to authorize the transaction. Safaricom acquired its portion of the assets, and Airtel had to wait for negotiation of its new licence conditions with Management. It is after Airtel and the Authority had finalized discussions on the new licence conditions, that Management brought the same matter to the Board for approval.

However, some Board members sought to overturn the decision of Board meeting of 27<sup>th</sup> March 2014, claiming Airtel must pay for the renewal of its licence amounting to USD 27 million. The Board, therefore, in its sitting of 26<sup>th</sup> May 2015 through a majority vote, decided that and I quote: “The Authority immediately charges M/S. Airtel the sum of USD. 27million for licence renewal and spectrum assignment, noting that there were reconciliations to be made based on payments already made by the company.”

The Board despite Management’s advice on the implication of their decision stood its ground and asked Management to write to Airtel demanding these payments. Management complied and Airtel responded by indicating that they would contest the Board’s decision in Court. As we speak the matter is still pending. Just about the same time, CA received a letter addressed to the Director General complaining that one of the CA Board directors had solicited bribes from the mobile network operator in exchange of facilitating a review of licence fees payable to the Authority. That letter is in our records and the matter is under investigation. We deeply regret that the ex-Board member is now blaming corruption at CA in respect to Airtel’s licence fee for his woes with the authorities.

Turning to the issue of the government’s withdrawal of the appeal case, we wish to clarify as follows: The Attorney General advised the appointing authority (Ministry of ICT) to withdraw the appeal arguing the chances of succeeding were limited and due to the high costs associated with the suit. In response the affected board members filed a case in the Employment and Labour Relations Court.

In his ruling, the Judge held that the Court could not entertain a multiplicity of cases filed by the Board members in different Courts over the same subject matter. In his own words, the matter was before a competent jurisdiction (constitutional court), and therefore discharged himself of the matter. We were surprised that some ex-board directors stormed into CA premises with suspicious court order insisting that they had been reinstated. We have requested the Registrar of the High Court to ascertain the authenticity of this order.

May I on this note assure the ICT industry and Kenyans in general that the ICT sector under CA is safe and will always be guided towards growth and prosperity through fair regulation and should not fall prey to Whistle Blowers who are actually blowing the whistles on themselves. I urge any ex-board member or any member of the public who has any information on corruption at CA to report the same to the Ethic and Anticorruption Commission and not to rush to the media for public sympathy.

Thank you for your attention.