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OUR REF: C67/015/L/12M  
YOUR REF: TBA  
DATE: August 08, 2013



Secretary General  
Consumers Federation of Kenya  
Meky Place  
Block F, Suite 45  
Ngong Rd/Ring Rd Kilimani Junction  
P.O. Box 2733-00200  
**NAIROBI**

**Attn: Mr. Stephen Mutoro**

Dear Sir,

**RE: DIGITAL TELEVISION MIGRATION DATES FOR KENYA**

We act for the Communications Commission of Kenya ("our Client"), under whose instructions we are writing to you.

It has come to our Client's attention, through various media reports, that the Consumers Federation of Kenya ("COFEK") has threatened to institute court proceedings to challenge the digital migration dates announced by the Principal Secretary for Information, Communications and Technology on 6<sup>th</sup> August 2013. Consequently, we have been instructed to write to you as follows:

- 1) The issue of Kenya's migration from the analogue television signal to the digital television signal has been the subject of court proceedings instituted at COFEK's instance against our Client, the Minister for Information and Communications and the Hon. Attorney General in *Nairobi Petition No. 563 of 2012 ("the Petition")*;

- 2) In the said proceedings, COFEK's complaint was that consumers had not been involved in the decision making process, specifically in the Digital Transition Committee which is spearheading the switch off, which COFEK maintained was unconstitutional;
- 3) Therefore, while the initial deadline for the switch off had been set for 31<sup>st</sup> December 2012, COFEK's institution of the proceedings resulted in a failure to meet the initial deadline due to the interim orders granted on 20<sup>th</sup> December 2012 and conservatory orders on 11<sup>th</sup> January 2013 pending the hearing and determination of *the Petition*;
- 4) Subsequently and in good faith, our Client, together with the Ministry of Information and Communications, engaged COFEK with a view to having the matter settled out of court. It was agreed that COFEK, on behalf of consumers, would be involved in the decision making process, specifically as a member of the Digital Transition Committee which was formed for the specific purpose of deliberating on an managing the digital migration including setting the migration dates for the different regions in Kenya;
- 5) Therefore, COFEK was granted a platform on which it could express any concerns it had for consideration by the multi-stakeholder Digital Transition Committee. It is on record that COFEK did exercise these right and expressed its concerns to the Digital Transition Committee;
- 6) Consequently, by a consent dated 21<sup>st</sup> June 2013 and adopted by the Court on 25<sup>th</sup> June 2013, COFEK agreed to withdraw the Petition;
- 7) In the course of consultations on the switch off date, COFEK and the rest of the stakeholders within the Digital Transition Committee agreed to a switch off date for Nairobi region that was earlier than the date of 13<sup>th</sup> December

2013 that was announced by the Principal Secretary for Information, Communications and Technology on 6<sup>th</sup> August 2013;

- 8) In spite of the above, upon the announcement of the switch off date by the Principal Secretary, COFEK threatened to institute court proceedings to challenge the new date once more;
- 9) The above came as a surprise to our Client in view of the fact that it took note of the issues that COFEK had earlier raised and is actively pursuing means to address them, while in the meantime, being open to dialogue with COFEK on any of its concerns in an effort to reach an amicable solution that will result in the greatest benefit to the consumer;
- 10) Additionally, our Client maintains the view that the migration to the digital platform will greatly benefit the consumer, who is our Client's and COFEK's mutual concern. It is in this regard that our Client is willing to explore all means which will result in a seamless and speedy transition to the platform.

**TAKE NOTICE that;**

- i. If COFEK opts to file proceedings in Court, it is obliged to disclose the substance of the previous proceedings including the fact that those proceedings were compromised between the parties through the consent that was filed in Court (copy enclosed). COFEK is also obliged to disclose its involvement in the Digital Transition Committee and its contributions therein.
- ii. In the event that COFEK intends to move to court on an urgency basis for interim orders, we have instructions to receive summons and other legal process on behalf of CCK. Further, we are available to appear in Court on short notice to argue any applications certified urgent. As such, should COFEK decide to move to Court, it would not be justifiable to do so on an *ex*

*parte* basis. Further, given that the migration is to happen in the Nairobi Areas on 13<sup>th</sup> December 2013 (4 months away), there is no justification for us, as counsel for CCK, not being notified to be present at any urgency hearing.

- iii. In the event that COFEK proceeds to file any proceedings, this letter should be disclosed to the Court. In the event that COFEK chooses not to do so and proceeds to obtain *ex parte* interim orders, we will take such steps as are necessary to set aside those interim orders on the basis, *inter alia*, of material non disclosure.

Be advised accordingly.

Yours faithfully,  
MOHAMMED MUIGAI

  
GEOFFREY IMENDE  
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cc. Clients