



Communications  
Commission  
of Kenya

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Dear *Stephen,*

**RE: COUNTERFEIT PHONE SWITCH-OFF THREAT**

We acknowledge with thanks receipt of your letter dated 26<sup>th</sup> July 2012 on the above matter.

The Communications Commission of Kenya is established by the Kenya Information and Communications Act, Cap 411A to license and regulate information and communications services. Section 25 of the said Act mandates the Commission to license the operation and provision of telecommunications systems and services respectively, subject to requisite conditions. One of the license requirements is to type approve communications equipment to ascertain their compatibility with the public communications networks. It is in this context that Regulation 3 of the Kenya Information and Communications (Importation, Type Approval and Distribution of Communications Equipment) Regulations, 2010 requires that all mobile phone handsets are type approved by the Commission before connection to public networks.

The essence of the type approval process is primarily to safeguard the public against the undesirable effects brought about by substandard and/or counterfeit mobile phone devices which include technical, economic, health, and security concerns. *Please refer to the attached brief for additional information on the challenges associated with counterfeit handset in the ICT industry.* A mobile handset that has no proper International Mobile Equipment Identity (IMEI) cannot be type approved.

It is for the above reasons that the usage of counterfeit mobile phone devices must of necessity be phased out. This is, however, being done with due consideration to the interests of all the stakeholders, hence the phased activities leading to the switch off date of 30<sup>th</sup> September 2012.

With a view to ensuring that the interest and concerns of the stakeholders are taken on board, the Commission has since October 2011 hosted a series of open consultations between the ICT industry players, various government agencies and other stakeholders on the issue of counterfeit mobile handsets with to the aim of addressing the challenges they bring about in the industry and the economy at large. Through these consultations specific actions points were agreed on in relation to the subject matter.

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## **ANNEX: PHASING OUT OF COUNTERFEIT MOBILE PHONE HANDSETS IN ICT SECTOR**

### **1) Background**

#### **a) Implementation of Equipment Identification Register (EIR) System**

Mobile use in Kenya is today a necessity as opposed to a luxury. This is seen in the increasing subscribers in the country currently placed at about 29.2million. However one challenges associated with the introduction of mobile communications services is mobile phone theft as well as the increasing rate of crimes committed with the help of mobile phones which pose a great security risk.

In the wake of these threats the Commission in 2001 embarked on series of consultations with the existing licensed mobile operators with a view to finding a lasting solution to the problem. Meanwhile the East African Communications Organization (EACO) has adopted a resolution which inter alia required regulators and operators in the region to consult on the best way to check the theft of mobile handsets within the region.

During these consultations it was noted that an inherent feature in the mobile networks dubbed the Electronic Identification Register (EIR) provides a mechanism to address the issue of mobile phone theft. The EIR is able to match every International Mobile Equipment Identifier (IMSI) used on a phone to the unique International Mobile Equipment Identity (IMEI) of that phone and keep records of the same. Such information would then be availed to the extent possible where the authorities require it.

To this end a Memorandum of Understanding (MoU) has been entered into among all the mobile operators on the implementation of the EIR system that will also paved the way for the implementation of the system at the regional level. It was also noted that the existence of counterfeit mobile handsets, which in most cases either have duplicated and/or fake IMEIs, would lead to a situation where when one such illegally acquired handset is tracked and deactivated using the EIR system several other handsets with similar IMEI are likely to also get deactivated.

Here therefore emerged the reason to address the presence of counterfeit handsets in the market prior to full implementation of the EIR system as its success shall depend on the eradication of counterfeit handsets as advocated internationally.

#### **b) Implementation of the Legal/Regulatory Framework with Regard to Mobile Handsets**

##### **i. Legal/Regulatory Framework**

From the communications industry perspective the relevant legal/regulatory framework governing handsets is provided for under Section 25 of the Kenya Information and Communications Act, Cap 411A. The licenses granted under this Act have a condition which requires licensees to only offer services using a type approved apparatus.

In addition the Kenya Information and Communications (import, Type Approval and Distribution of Communications Equipment) Regulations, 2010 explicitly requires all handsets to be type approved. It is important to note that in accordance with the Commission's type approval requirements, a GSM handset that has no proper or tampered IMEI cannot be type approved. Consequently all handsets without proper IMEI or with cloned IMEI are in essence illegal and their use would therefore be in contravention of the above mentioned Act.

ii. **Recent Directive by Commission and the Operators' Response**

In May 2011, the Commission gave a notice to all mobile network operators to phase out counterfeit handsets on their networks by 30<sup>th</sup> September 2011. This directive was consonant to the spirit and letter of the statutes governing the communications sector.

2) **Industry Consultations**

Upon receipt of the directive, the mobile industry players reverted with requests to review the directive citing a large number of subscribers using phones with the same or faulty IMEI. In addition, the operators feared that the disconnection of an estimate of over two million counterfeit handsets in use would have adverse implications on their revenue.

To ensure the implementation of the directive with minimal service interruptions, the Commission set up an open committee, made up primarily of representatives of mobile operators, relevant government ministries and agencies, equipment manufacturers, vendors and civil society. The Committee has been meeting since October 2011.

The series of consultations between the ICT industry players and various government agencies is also aimed at addressing the challenges brought about by counterfeit mobile handsets in the industry and the economy at large. GSM Association (GSMA) noted that Kenya is one of the countries with a rather large market for phones that have been stolen in Europe or outright counterfeit. Drawing from their experience in handling the matter at an international level, GSMA has equally made significant advisory contributions to support the process in Kenya through various technical interventions. The consultations have so far resolved to take specific actions in support of the initiative.

Key among these include the running of a public awareness campaign by the Commission to ensure that subscribers are aware of the negative effects of counterfeit devices, mobile handset manufacturers commitment to the establishment of a system that will be used by the public to determine whether their handsets are genuine or not, the network operators establish systems for blocking counterfeit handsets in their networks and to provide subscriber related support services, and government agencies to step up surveillance and crackdown on counterfeit handsets.

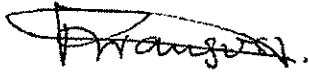
Establishment of a handset verification system with access to the GSMA database to enable subscribers verify the validity of their phones through submitted IMEI was developed to go hand in hand with the consumer awareness campaign.

Among the actions agreed on is the running of a public awareness campaign by the Commission to ensure that subscribers are made aware of the negative effects of counterfeit devices; the establishment of a system that will be used by the public to determine whether the handsets they have are genuine; the establishment of systems for blocking counterfeit handsets within the mobile networks; and the provision of customer related support services.

Another significant action is the stepping up of surveillance and crackdown on counterfeit mobile phone handsets by all relevant government agencies. We believe that the relevant agencies have put in place the necessary structures to this end.

We trust that we have sufficiently addressed the issues you raised. Please do not hesitate to revert for further clarifications if necessary.

Yours *Sincerely*



Francis Wangusi  
AG. DIRECTOR GENERAL