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GAZETTE NOTICE NO. 3646

THE UNIVERSITIES ACT

(No. 42 of 2012)

APPOINTMENT

IN EXERCISE of the powers conferred by section 36 (1) (a) of the Universities Act, 2012, the Cabinet Secretary for Education appoints—

Solomon John Muchina (Dr.) — *Chairperson*

Members:

Felix Odimmasi

Oliver Erupe Lowoton

Mercy Wanjiku Kareithi

as the Chairperson and members of the Council of Turkana University College, for a period of three (3) years, with effect from the 30th April, 2020.

Dated the 30th April, 2020.

GEORGE MAGOHA,
Cabinet Secretary for Education.

GAZETTE NOTICE NO. 3647

THE UNIVERSITIES ACT

(No. 42 of 2012)

RE-APPOINTMENT

IN EXERCISE of the powers conferred by section 36 (1) (d) of the Universities Act, 2012, the Cabinet Secretary for Education re-appoints—

JUSTUS WAMBUTURA (ENG.)

as a member of the Council of Turkana University College, for a period of three (3) years, with effect from the 30th April, 2020.

Dated the 30th April, 2020.

GEORGE MAGOHA,
Cabinet Secretary for Education.

GAZETTE NOTICE NO. 3648

THE COMPETITION ACT

(No. 12 of 2010)

THE COMPETITION TRIBUNAL (PROCEDURE) RULES, 2017

(L.N. 108/2017)

MERGER REVIEW ORDERS

PURSUANT to section 48 (4) of the Competition Act, 2010 and Rule 13(1) of the Competition Tribunal (Procedure) Rules, 2017 in an Application for Review Case No. CT/005/2020 – Telkom Kenya Limited and Airtel Networks Kenya Limited Vs Competition Authority of Kenya filed on 10th January, 2020 by Telkom Kenya Limited and Airtel Networks Kenya Limited against the Competition Authority of Kenya for ORDERS that: -

1. Condition 1 in relation to the sale or transfer of operating and frequency licences imposed by the Competition Authority of Kenya in its Notice of Determination of the Appellants' proposed transaction *gazetted* on 13th December, 2019 be reviewed and set aside in its entirety.

2. Condition 2 in relation to reversion of Telkom Kenya's Spectrum in 900 MHZ and 1800MHZ to the Government of Kenya at the expiry of the term imposed by the Competition Authority of Kenya imposed in its Notice of Determination of the Appellants' proposed transaction *gazetted* on 13th December, 2019 be reviewed and set aside in its entirety.

3. Condition 3 in relation to banning the entry into any form of Sale Agreement within five (5) years imposed by the Competition Authority of Kenya in its Notice of Determination of the Appellants' proposed transaction *gazetted* on 13th December, 2019 be reviewed and set aside in its entirety.

4. Condition 5 and 6 preventing commercial negotiations with Government in relation to access of fibre managed by the 1st Appellant imposed by the Competition Authority of Kenya in its Notice of Determination of the Appellants' proposed transaction *gazetted* on 13th December, 2019 be reviewed and set aside in their entirety.

5. Condition 7 imposed by the Competition Authority of Kenya in its Notice of Determination of the Appellants' proposed transaction *gazetted* on 13th December, 2019 in relation to the retention period of employees of the target be reviewed and amended from two (2) years to twelve (12) months

6. Condition 8 imposed by the Competition Authority of Kenya in its notice of merger determination dated 31st October, 2019 be reviewed and amended to limit the time period for provision of annual reports to two (2) years from the date of approval; and costs of this application be provided in any event.

UPON Hearing Counsels for both Parties on 22nd April, 2020

IT IS HEREBY ORDERED, THAT:

1. Condition 1 is hereby reviewed and varied to the effect that: the merged entity shall hold the following Operating and Frequency Spectrum Licences in accordance with the terms and conditions imposed by the Regulator (Communications Commission of Kenya) at the time of issuing the licence including the pre-emptive right of renewal;

Operating Licences

- (i) Network Facility Provider – Tier 1 – Licence No. TL/NFP/T1/00001
- (ii) Applications Service Provider – Licence No. TL/ASP/00001
- (iii) Content Service Provider – Licence No. TL/CSP/00001
- (iv) International Systems and Service Provider – Licence No. TL/ULF/IGS/00001
- (v) Submarine Cable Landing – Licence No. TL/SCR/00003

Frequency Spectrum Licences

- (i) 800MHZ – Licence No. FL/0008
- (ii) 900MHZ – Licence No. FL/0009
- (iii) 1800MHZ – Licence No. FL/0009
- (iv) 2100MHZ – Licence No. FL/001/002

2. Condition 2 is hereby reviewed and varied to the effect that the merged entities' operating and spectrum licence, the spectrum in the 900MHZ and 1800MHZ acquired from Telkom shall be held by the merged entity in accordance with the terms and conditions imposed by the regulator (Communications Authority of Kenya) including the pre-emptive right of renewal;

3. Condition 3 is reviewed and varied to the effect that the merged entity shall not sell the merged business/enterprise for a period of five (5) years but can enter into agreements (including sale agreements and sale of shares) in the ordinary course of business provided that where shares of the merged entity are sold, the same shall be limited to not more than forty per centum (40%), further, the merged entity shall not sell a substantial portion of its share to a market competitor holding more than forty per centum (40%) of the market share;

4. Condition 5 and 6 on access of the 4,204 kilometres of the fibre managed by the 1st Appellant on behalf of the Government are hereby affirmed save to state the condition does not curtail the concept of freedom of contract between the merged entity and the Government of Kenya, therefore, the merged entity is at liberty to negotiate with the Government of Kenya on use of the fibre;

6. Condition 7 is affirmed as follows; the merged entity shall ensure that at least three hundred and forty-nine (349) of the six hundred and seventy-four (674) employees of the target are retained as follows;—

- (i) 120 employees by the merged entity for a period of two (2) years from the date of the implementation of the merger;
- (ii) 114 employees by Telkom Kenya Limited for a period of two years from the date of the implementation of the merger; and
- (iii) 115 employees to be absorbed by the network partners of the merged entity;

7. Condition 8 is hereby reviewed and varied to the extent that the merged entity shall for the first two years of effecting the merger, annually furnish the Competition Authority of Kenya with a detailed report on the compliance of the conditions as varied, modified or affirmed.

8. Each party to bear its own costs.

MR/0747906

JOHN N. MWANGI,
Secretary, Competition Tribunal.