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Competition Study – the broadcasting industry in Kenya

Dissemination Workshop

March 2012

Contents

Project Scope

Objectives of Competition Study

Study Objectives

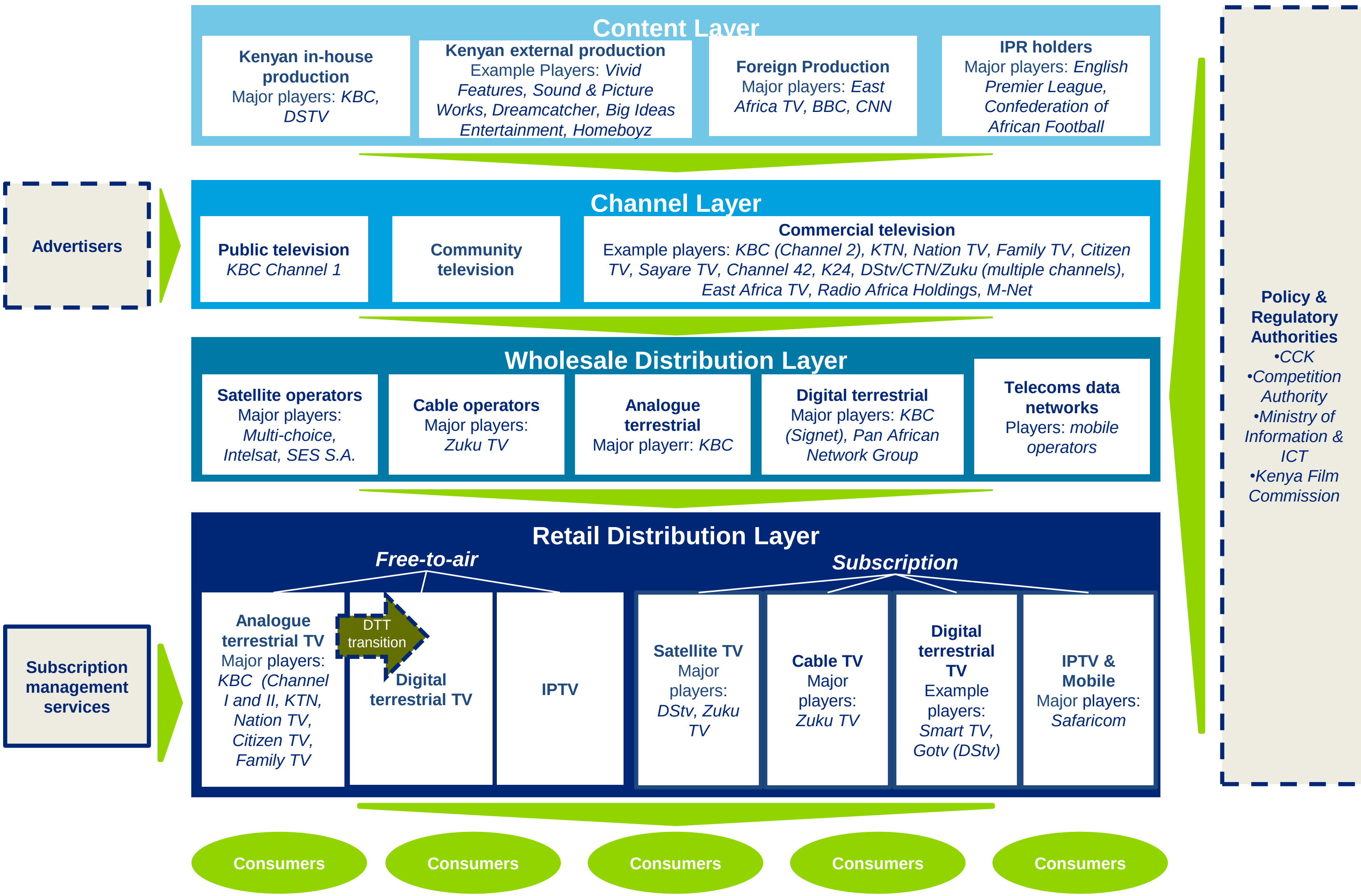
- Identify the various markets within Kenyan broadcasting industry, including the number and demographic of players
- Establish the levels and extent of competition in the various broadcasting markets identified
- Identify the market barriers, if any, that prevent competition and the growth of the players
- Evaluate the effectiveness of the broadcast spectrum allocation to, and use by, broadcasters and suggest appropriate remedial interventions
- Evaluate the extent of dominance and establish potential anticompetitive behaviour in the broadcasting market in general and specific market segments in Kenya
- Review the effectiveness of the existing legal and regulatory framework in supporting a robust competition policy for the broadcasting sector;
- Provide a proposal on the best ways by which the identified barriers and factors hindering growth can be eliminated; and
- Identify possible regulatory areas of concern and recommend how they can be addressed.

Summary of assessment framework

1. Identify markets	**2. Establish level of competition and market barriers**	**3. Evaluate effectiveness of spectrum allocation**	**4. Evaluate potential anti-competitive behaviour**	**5. Review effectiveness of legal and regulatory framework**	**6. Initial assessment of possible measures/ recommendations**

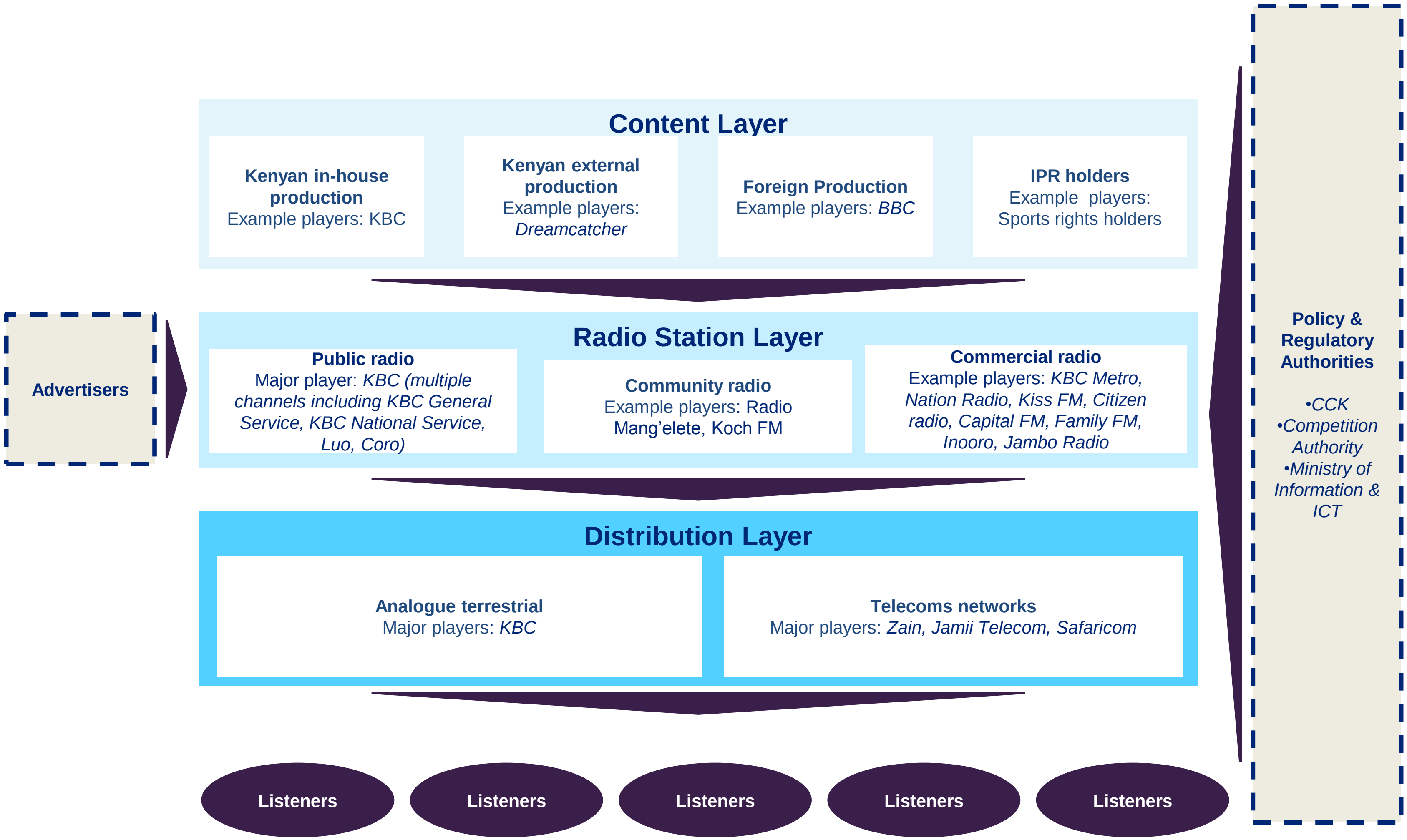
Kenyan TV supply chain

Various players operate across different levels of the supply chain



Kenyan Radio Supply chain

Key broadcasters in Kenya have radio and TV activities



Data Collection

We have interviewed and collected data from the following

Information/ Data Sources

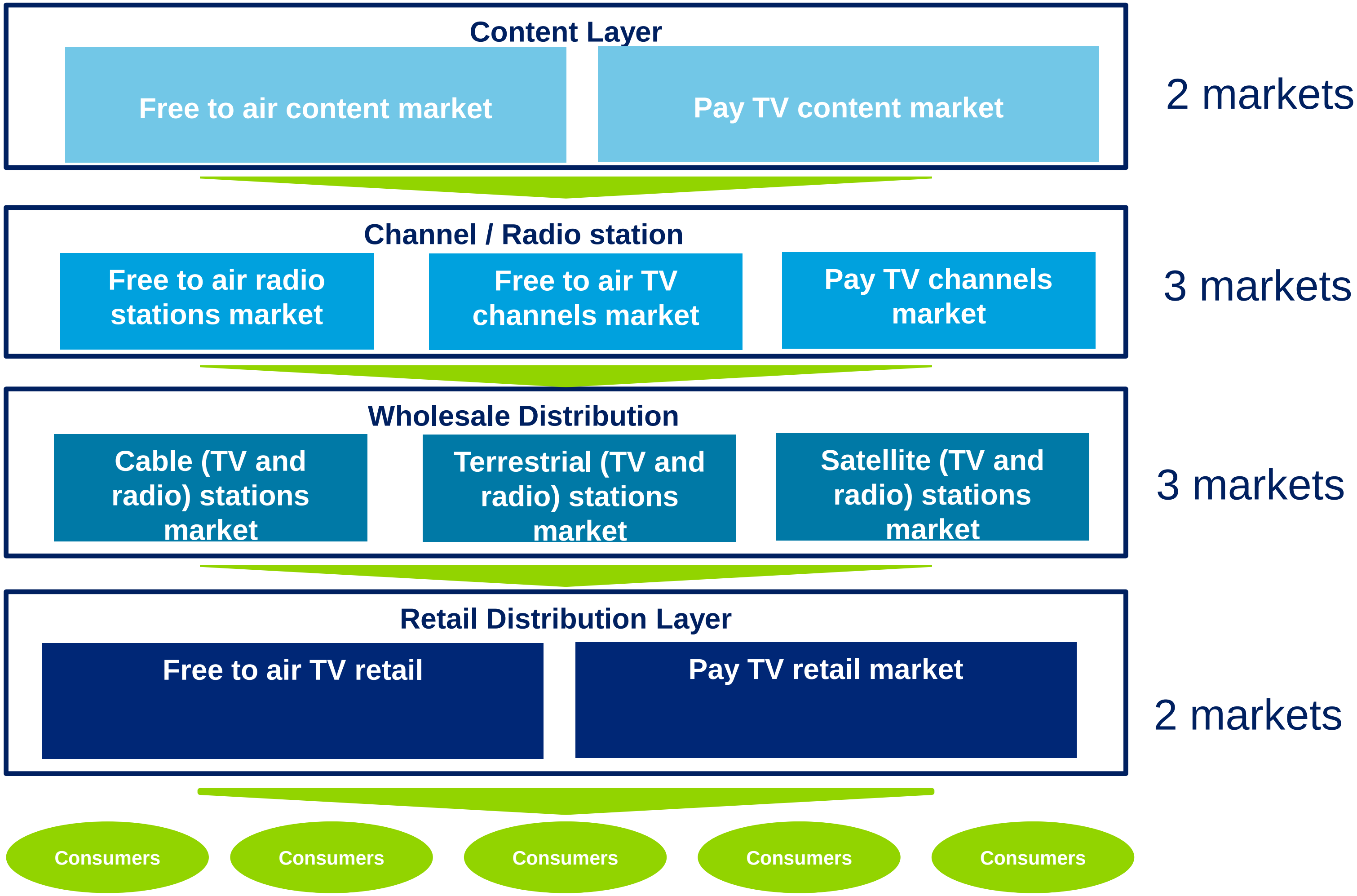
1. Interviews with stakeholders
2. Data questionnaires
3. Desk-based Research
4. Information from the CCK/ other Kenyan regulatory authorities

S. No.	List of stakeholders	Date of Interview
1.	Competition Authority	11 October
2.	Ministry of Information and Communications	12 October
3.	Dream Catcher Productions	26 October
4.	Safaricom	27 October
5.	Digital Mobile TV	27 October
6.	Nation Media Group	28 October
7.	Multichoice Kenya Limited	31 October
8.	Radio Mangelete	1 November
9.	Radio Africa	1 November

S. No.	List of stakeholders	Date of Interview
10.	Kenya Broadcasting Corporation-Signet	2 November
11.	Zuku/Wananchi Group	3 November
12.	Koch FM	3 November
13.	Kenya Television Network	4 November
14.	Royal Media Services	7 November
15.	Scanad	7 November
16.	Smart TV	7 November
17.	Star FM	17 November

Market definition: summary

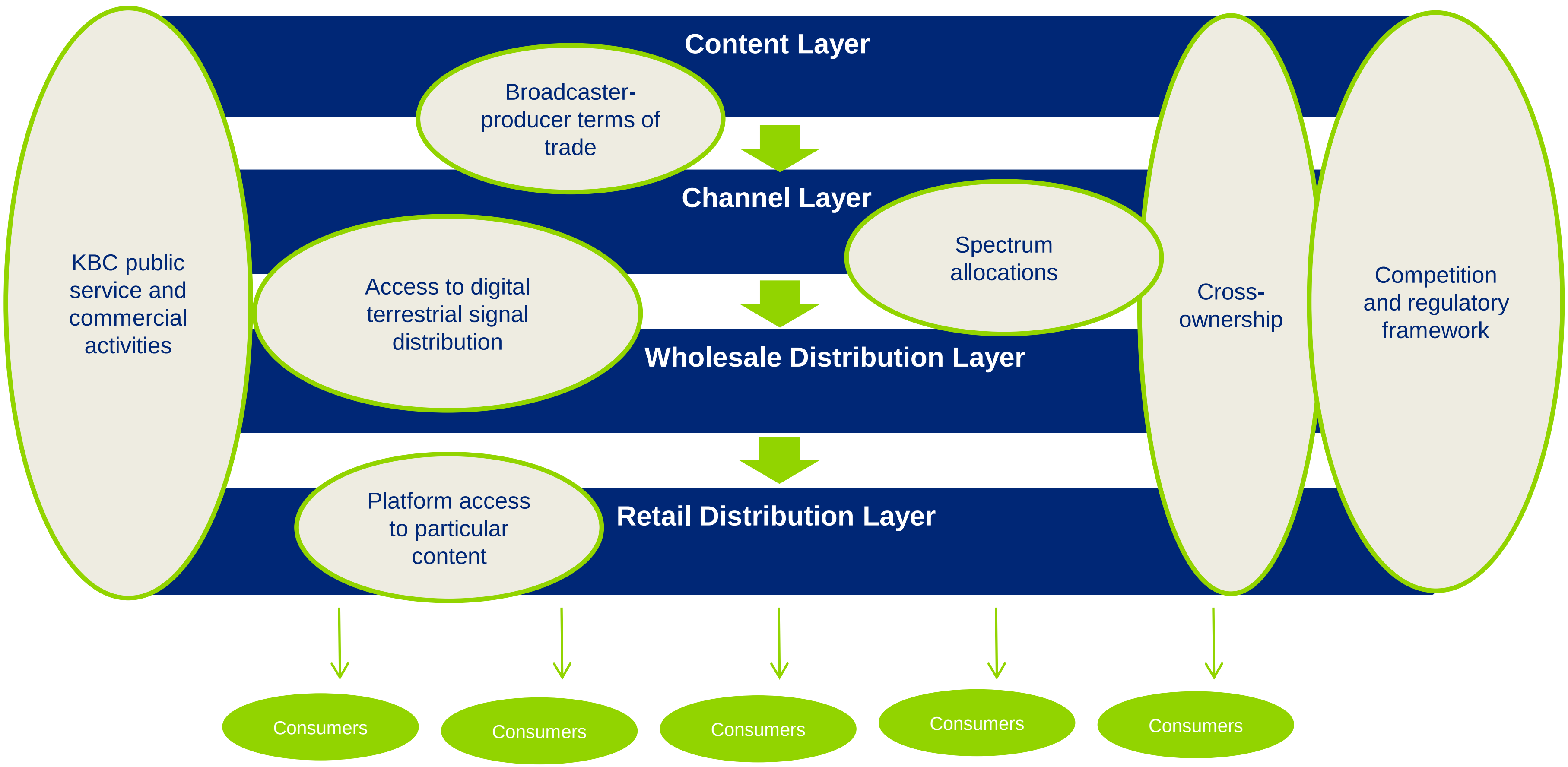
Ten markets are identified along the broadcast supply chain



In line with standard methodologies in competition analysis, markets have been identified by considering demand and supply-side substitution between services, as well as homogeneity of competitive conditions as appropriate

Key issues investigated

Focus issues of competition study



Framework for deciding on prioritisation of regulatory measures

The framework is consistent with international precedent

1 Potential competition issue identified

- Market with ineffective competition?
- Single or collective market dominance?
- Abuse of dominance?
- Anti-competitive agreement?
- Legal barriers?

2 Barriers to entry

- High and non-transitory barriers to entry?
- Efficiencies which offset competition distortion?

3 Tendency towards effective competition

- Prospectively competitive market?

4 Sufficiency of competition law

- Risk of market tilting?
- Difficulty to address non-competitive behaviour

5 How to intervene?

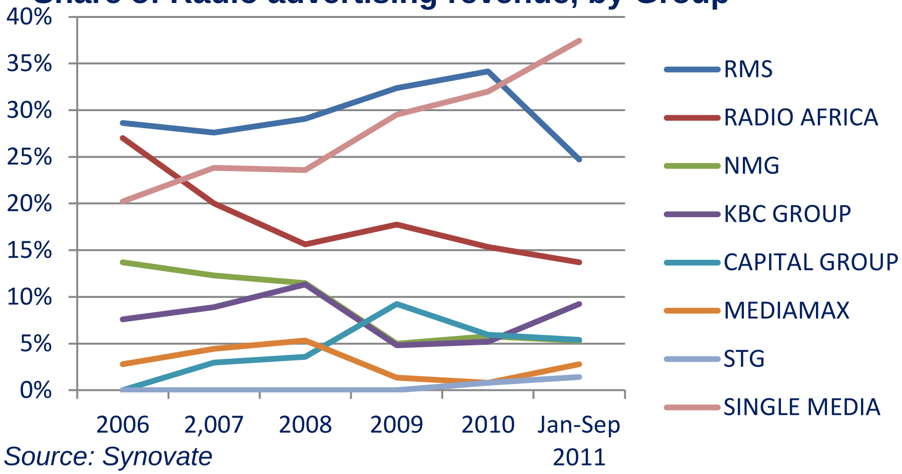
- At which level of the supply chain?
- What type of remedy? (behavioural, structural, amendments to legislation/policy)

A set of regulatory measures that may be appropriate to address distortions in particular markets, subject to further investigation

Free to air radio market

There are over one hundred radio stations in Kenya

Share of Radio advertising revenue, by Group



Source: Synovate

Radio stations by region

	Nairobi	Central	Lake	Western	Rift	Coast
No stations with active listening	12	8	10	9	12	12
No national stations	5	3	5	5	5	5
No regional stations	7	5	5	4	7	7

	Lower Eastern	Upper Eastern	South Nyanza	South Rift	North Western	North Eastern
No stations with active listening	12	13	8	10	9	8
No national stations	4	5	5	5	5	2
No regional stations	8	8	3	5	4	6

Source: Synovate

- There is moderate concentration in the radio sector at the Group level
- There are five main radio groups, with no player having a market share above 35-40%
- There is also a long tail of independent radio stations with shares below 5%
- At the regional level, approximately 8-12 radio stations are listened at; 3-5 national stations are typically available by region, together with a number of regional stations
- Four national stations broadcast in Kiswahili (R Citizen, KBC Kiswahili, Milele, Q FM) while some of the regional stations broadcast in vernacular languages. Listeners have a choice of at least a number of radio stations
- Each radio Group negotiates a significant share of its revenue via between one and three advertising agencies, indicating that the radio Groups face countervailing power
- Our interviews indicated that the radio advertising market is fiercely competitive

Spectrum allocation: radio

There is currently some allocated radio spectrum which is not on air

Frequency allocation to radio broadcasters

Frequency Operator	% Spectrum Allocated	% Spectrum used	% Average Share of Listening	Ratio of share of listening to share of frequencies used for own service
Royal Media Services	15%	21%	34%	1.67
Radio Africa	6%	13%	6%	0.47
Kenya Broadcasting Corporation	20%	10%	18%	1.71
Nation Media Group	2%	5%	6%	1.34
Digitopia	4%	4%	2%	0.49
Kalee Ltd	1%	2%	3%	1.31
Others	52%	45%		
Total	**100%**	**100%**		

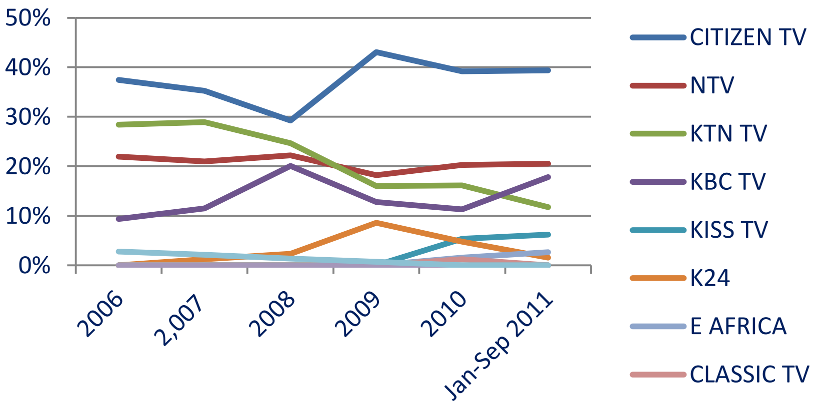
Source: CCK, Synovate, Deloitte analysis

- A total of 436 frequencies are allocated
- 129 frequencies, or 30% of the total spectrum allocation in Kenya, are not currently on-air
- The current use of the spectrum may not be fully efficient, as there is demand for spectrum from other broadcasters
- Although different factors drive listening share, importantly content, it appears that those radio broadcasting groups with higher listening shares also have access to a higher share of frequencies

Conclusion: the free to air radio market is effectively competitive at present, although spectrum use should be considered

Free to air TV market
The market is competitive

TV broadcasters, shares of advertising revenue



Source: Synovate

Share of broadcaster advertising revenue negotiated through particular agency

Agency	Citizen TV	KTN TV	NTV	KBC TV	Kiss TV	K24	ETV
Scan	69%	76%	78%	77%	58%	72%	60%
Ogilvy	11%	11%	7%	12%	1%	27%	11%
Young	11%	4%	8%	8%	0%	1%	11%
Other	9%	9%	7%	4%	40%	0%	18%
Total	100%	100%	100%	100%	100%	100%	100%

Source: Synovate

- The period between 1997 and 2005 saw an influx in the number of television stations licensed and launched in Kenya
- There are fifteen FTA TV channels on-air in Kenya. The largest broadcasters by viewing and revenue share are: Citizen TV, NTV, KTN and KBC
- The free to air TV market is concentrated, most notably in terms of viewing share
- TV broadcasters in Kenya face countervailing power from the advertising agencies, which is expected to put pressure on their ability to attempt to raise advertising rates above competitive levels
- With the roll-out of the DTT platform there will be increased capacity available reducing barriers to entry to launch new channels

Spectrum allocation: TV

While there are some allocated TV frequencies not on air, promotion of competition should focus on DTT

Frequency allocation to TV broadcasters

Frequency Operator	Television station	% Spectrum Allocated	% Spectrum for own use	Average Share of Viewing	Ratio viewing share to spectrum used
KBC	KBC Channel 1	44%	25%	13%	0.52
Royal Media Services	Citizen TV	10%	13%	47%	3.42
KTN Baraza Ltd	KTN	8%	11%	12%	1.09
Nation Media Group	NTV	6%	10%	14%	1.40
Stellavision	K24	5%	8%	1%	0.13
Others		27%	33%	13%	
Total		**100%**	**100%**	**100%**	

Source: CCK, Synovate, Deloitte analysis

- The level of concentration of analogue TV spectrum holdings is high
- ‘Partnerships’ and ‘joint ventures’ have led to less concentration in share of spectrum used than in spectrum allocation
- 25 frequencies, or 23% of the total spectrum allocation in Kenya, are not currently on-air; accordingly the current use of the spectrum may not be fully efficient
- Higher TV viewing shares are not necessarily being driven by higher number of frequencies
- The move to DTT, and Kenya’s spectrum efficiency in DTT, brings substantial opportunities for increased competition between channels and between retail platforms

Conclusion: the free to air TV market is effectively competitive at present, although spectrum use should be considered

Spectrum allocation: recommendations

Radio	Television
• CCK to review status of the spectrum that is not in use. • CCK to consult with licence holders concerning the plans for utilising spectrum holdings. • Licence holders who do not intend to utilise spectrum should be required to return spectrum following due legal process. • Operators to be allowed to apply for any frequencies which become available through this process. Such allocation to be done through a transparent process to be made public before operators are required to express interest. • Existing holders of radio spectrum frequencies may obtain these frequencies only up to a 25% share of radio spectrum holdings in total (including existing and new frequencies). • At the next licence renewal stage, radio stations to be requested to explain their proposed use of the frequency, by reference to business plans. • Operators could be allowed to trade allocated frequencies during their licence period.	• CCK to review status of the spectrum that is not in use. • CCK to consult with licence holders concerning the plans for utilising spectrum holdings. • Licence holders who do not intend to utilise spectrum should be required to return spectrum following due legal process. • The CCK should also clarify to the industry through a published document the total number of multiplexes that can be accommodated in the DTT spectrum available, and the number of frequencies to be used by each multiplex/licensee.

Digital Terrestrial Signal Distribution

One signal distribution operator currently available, a second licensed

Market definition	• Digital terrestrial, cable, satellite are complements rather than substitutes for broadcasters • Digital Terrestrial Signal Distribution a market of its own
Market shares	• Signet currently only Digital Terrestrial Signal Distribution operator • A second signal distributor (Pan-African) licensed in October 2011, network under deployment
Barriers to entry	• Significant investments are required to roll-out a transmission network. There are 59 designated sites for nation-wide transmission
Vertical Integration	• KBC operates KBC channels / radio stations and Signet network • Pan-African Star Times Group currently broadcasts channels through Signet
Countervailing Buyer Power	• Countervailing power may be limited as platforms are complementary for channels • Expected to further decrease as Digital Terrestrial take-up increases
Potential issues	• Lack of transparency on how to obtain access • Alleged preferential treatment

Conclusion: market not effectively competitive at present

Digital Terrestrial Signal Distribution: recommendations

A number of measures may be introduced

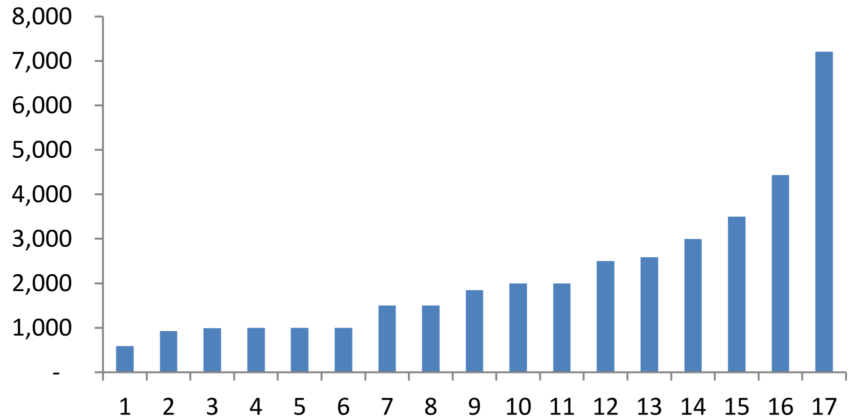
Obligations	Implementation

• Obligation to **provide access to capacity and specific network facilities as required**; this is consistent with the obligations permissible under the KICR *(Fair Competition and Equality of Treatment) 2010, first paragraph*; and
• Obligation of **transparency**; this is consistent with the obligations permissible under the KICR *(Fair Competition and Equality of Treatment) 2010, third, fourth and fifth paragraphs*.
• Obligation of **non-discrimination** could be imposed. This is consistent with the obligations permissible under the KICR *(Fair Competition and Equality of Treatment) 2010, second paragraph.* This involves in practice that
  • similar conditions are applied in similar circumstances, and that
  • broadcasters are provided with facilities and information under the same conditions and of the same quality as it provides for its own services or those of its affiliates or subsidiaries.
	• Requirement to publish **a Reference Offer,** excluding pricing terms, and including such information as total capacity available; number and location of sites; other network specifications.
	• A **template for submission of an application for capacity** should be prepared by the signal distributor and **approved by the CCK**. This template should be used by all broadcasters seeking to obtain capacity on the signal distributor network.
	• A **formal procedure for the signal distributor to respond to the Applicant** should be put in place. This should include such issues as
	  • timeframe for assessment of the application and response;
	  • a template with the information to be provided by signal distributor to justify the decision to grant capacity under particular terms
	The signal distributor should also notify the CCK of any requests for access, with copy to the applicant, and of its decision and reasoning.
	• Further licences granted to **differentiate between transmission and multiplexing**.
	• CCK to conduct a **market review** once the second network has been fully rolled out

Pay TV

There is increasing competition but the market is still concentrated

Pay TV packages and monthly subscription costs (KSH)



1. GoTV
2. DStv Access
3. Smart TV
4. Zuku Classic (Satellite)
5. Zuku Lite (Cable)
6. Zuku Asia Lite (Cable)
7. Zuku Asia Classic (Satellite)
8. Zuku Plus (Cable)
9. DStv Family
10. Zuku Premium (Satellite)
11. Zuku Asia Plus (Cable)
12. Zuku Premium (Cable)
13. DStv Compact
14. Zuku Asia Premium (Satellite)
15. Zuku Jumbo (Cable)
16. DStv Compact Plus
17. DStv Premium

- Multichoice has been the main player in the Pay TV market for a number of years.
- Competition in the Kenyan Pay TV market is increasing; Wananchi has successfully entered the market; Other recent new entrants, Star TV and My TV, may introduce further competition.
- Competition is developing currently at the lower end and middle of the Pay TV market making Pay TV more affordable for Kenyans, and suggesting that there is untapped demand at that end of the market.
- There appears to be significant scope for the size of the Pay TV market to grow, and accordingly for new entrants to expand their market share.
- If some subscribers choose Pay TV provider on the basis of availability of particular sports content, those customers would be harder for competitors to tap into as some sports content is sold on an exclusive basis. This group may be a proportion of customers on the DSTV Premium package, but the proportion is unknown as this package also contains other content.

Pay TV

There is increasing competition but the market is still concentrated

Market shares	• Concentration in the Kenyan Pay TV market remains high but decreasing
Barriers to entry, switching costs	• There are barriers to entry into the Pay TV market, such as the need to invest to obtain a sufficiently attractive range of content and subsidise STBs. • Switching costs for customers include STB equipment and installation costs, but cancellation is easier than in other international Pay TV markets
Vertical Integration	• Multichoice/Wananchi are vertically integrated across content aggregation and Pay TV retail platform. Multichoice holds some content in exclusivity, which together with other content, may allow it to reach certain premium customers that may not be available to alternative Pay TV operators.
Countervailing Buyer Power	• The countervailing power of individual channels is generally low but it is expected to increase as new Pay TV services develop.
Prices	• Prices of Pay TV appear higher than in some other selected developing countries.

Conclusion: Competition in Pay TV is increasing, but the Pay TV market is not effectively competitive at the present time

Pay TV: recommendations

Development of competition to be observed before possible measures

During the next 2 years

- **CCK to monitor the development of competition in retail Pay TV**
- **CCK to set out how it proposes to regulate if effective competition in Pay TV fails to develop during that time**

If competition fails to develop in the timeframe

- **Option 3 may be introduced, provided that third parties present robust consumer evidence that a substantial number of households choose Pay TV provider based on availability of EPL**

	Advantages	Disadvantages
Option 1 – Prevent sale of EPL on exclusive basis at wholesale level	• Increased access	• No exclusivity may discourage investment • Less stringent remedy available
Option 2 – Rights to be sold separately for Kenya (unbundling)	• Lower barriers for new operator to bid	• Increased competition for rights, may increase price • Does not guarantee platform-neutral access • Nigeria example failed
Option 3 – Winner of EPL rights to make channels containing EPL available through 3rd party platforms	• **Focus on increasing access by consumers** • **Consumer benefit from rights buyer's CBP** • **Winner of EPL rights can earn wholesale revenues** • **Precedent in UK, France, Italy**	

Competition and regulatory framework: recommendations

Issues identified	Recommendations

• **Concurrent powers between CCK and Competition Authority:** Absence of a procedure for defining which body will investigate a behaviour or incident	• Issuance of a Memorandum of Understanding by the CCK and the Competition Authority that addresses:
	  • Case allocation between the authorities, principles and procedures
	  • Primacy of competition or regulatory rules
	  • That coordination between the regulatory bodies will ensure that the risk of double jeopardy will be eliminated.

• **Differing thresholds for dominance and definition of the offence of 'abuse of dominance'.** Risk that differing conclusions could be reached by the different authorities.	• In the long-term, the statutory instruments should be amended and aligned to eliminate such differences. • In the short- to medium-term, the CCK should provide as high a level of transparency on the application of the criteria that could enable operators with 25%-50% market shares to be found not to be dominant. Such guidance would expand on the criteria set out in the Act.

Competition and regulatory framework: recommendations

Issues identified	Recommendations
• **Ex ante vs ex post:** Need for guidance regarding when the CCK intends to apply ex ante vs ex post intervention	• For cases that fall to the CCK to be examined, the CCK should seek to provide transparency to stakeholders about the principles that it will apply when determining whether to apply its (ex ante) regulatory powers or its (ex post) competition powers, as well as providing clarity over which set of rules take precedence. • The CCK should provide clarity to the marketplace that ex ante regulation would be applied when ex post competition law provisions would not adequately resolve the concerns in an effective and timely manner.
• **Consumer protection:** KICA does not have an explicit link between the purpose of competition and consumer protection	• The CCK should be explicit in its decisions and guidance documents on the criteria that it is applying in making that trade-off between innovation/investment and competition

Terms of Trade: recommendations

Observations on market

- Kenyan broadcasters have a range of sources from where they can acquire content. Kenyan broadcasters currently broadcast content purchased nationally and internationally.
- There are at least 10 main Kenyan producers, but also individual free-lance producers.
- The key Kenyan broadcasters – RMG, KTN, NTV, KBC – also produce content in-house.
- Broadcasters have a degree of buyer power vis a vis local producers as broadcasters have more options open to them.
- Interviews suggested that producers hold no clear rights to the content they produce.

Terms of Trade between broadcasters and producers

- Broadcasters could be requested to draw up terms of trade so as to give clarity to the independent sector as to how they propose to enter into commercial relations.
- The terms of trade should cover such issues as:
    - The maximum length during which the broadcaster will hold rights to the content, and conditions for re-negotiation.
    - Number of broadcasts included within the initial fee paid by the broadcaster for content;
    - The channels on which the broadcaster is able to use the programme;
    - Ownership of international rights and ancillary (DVD, books, etc) rights.

KBC : recommendations

KBC, separation of public and commercial

- KBC public-service and commercial activities are separated financially, in line with international best practice
- Implementation of a transparent system of accounts that separate public service and commercial activities, allowing review of the separate revenues and costs, including allocation of common costs
- A requirement that transactions between public-service and commercial arms should be carried out at market prices

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