

**PRESS STATEMENT BY MR. FRANCIS WANGUSI, DIRECTOR GENERAL, COMMUNICATIONS AUTHORITY OF KENYA (CA), ON THE ADVERTISEMENT BY NATION MEDIA GROUP, STANDARD GROUP AND ROYAL MEDIA SERVICES, RELATING TO MEDIA TRANSMISSION SERVICES**

**21<sup>ST</sup> JANUARY 2015**

It has come to the attention of the Authority that three media houses, namely Nation Media Group Limited, Standard Group Limited and Royal Media Group Limited have jointly been running a misleading advertisement on Television and Radio since Friday 16<sup>th</sup> January 2015. The said advertisement purports that Startimes and GOtv are illegally carrying their content thereby infringing on copyright and neighbouring rights. The advertisement goes farther to instruct consumers not to purchase Startimes and GOtv pay-tv set-top boxes to watch CITIZEN Television, NTV, KTN and QTV. In addition, the advertisement allege that the three media houses are the exclusive vendors of Free-To-Air set-top-boxes that can enable the public to view their channels

The Authority is gravely concerned by the misleading content in the advertisement and wishes to advise the industry and the general public as follows:

1. The advertisement by the three media houses is misleading to the public, is offensive to the market. It is equally in gross violation of the legal and regulatory framework governing the sector;
2. The tone of the advertisement, its content and timing is intended to cause confusion and disrupt the digital migration programme;
3. The digital migration framework allows for the distribution of the 'Free-to-Air' signals on the digital platform under the "must-carry principle". This was supported by the ruling of the Supreme Court of Kenya in September 2014 . It allowed for the availability of Free-to-Air channels to the public through all set-top-boxes (FTA and Pay TV). The advertisement dissuading consumers from purchasing set-top-boxes from other suppliers approved by the Authority is therefore misleading to the public and portrays anti-competitive conduct by the three media houses. Consumers need not be constrained to purchase a specific set top box to view the content of the three broadcasters whose content is Free-to Air;
4. The Authority has type-approved more than 65 set top boxes which are available in the market today. GOTV and Startimes set top boxes are duly type-approved by the Authority and are therefore authentic decoders in

the local market authorized to carry the Free-to-Air Channels of the three media houses under the auspices of the “Must Carry Principle;

5. The sale of set top boxes in Kenya is a free market. Consumers can purchase type approved set top boxes from any vendor registered by the Authority. The full list of approved set top boxes and registered vendors can be freely accessed on the Authority’s website;
6. The Authority has neither received any application nor granted any type-approval of any set top box model from the three broadcasters, individually or collectively, for sale in Kenya. It is therefore illegal to purport to advertise set-top-boxes that have not been type-approved by the Authority;
7. The Authority has also received a formal complaint from Gotv and Startimes that the three media houses have refused to Air their digital-migration related advertisements which is potentially an anti-competitive conduct prohibited by law. While this complaint has not been investigated, the Authority notes with concern that it has itself been a victim of such refusal to carry advertisements both in the electronic and print media owned by the three media houses, yet the advertisements are aimed at educating the public on digital migration.

In view of these gross violations by the three media houses as enumerated above, the Authority has decided to take the following administrative actions:

1. Withdraw the temporary authorization granted to the consortium by the three media houses (under the consortium identified as Africa Digital Network) to roll out their own digital signal distribution platform (self-provisioning signal distribution infrastructure). Subsequently the Authority shall repossess the frequency spectrum resources allocated for the said digital platform with immediate effect;
2. Decline to continue with the process of issuance of a Network Facilities Provider Tier 2 License for self-provisioning to the three media houses, pursuant to Gazette Notice Number 9088 dated 19<sup>th</sup> December 2014. This is on account of the above violations of the legal and regulatory framework. The process shall therefore await the ruling and determination of the Competition Authority of Kenya and the Board of the Communications Authority of Kenya on the violations by the three media houses;

3. Liaise with the Kenya Revenue Authority (KRA) and Kenya Bureau of Standards (KeBS) to bar the importation of set top boxes by the three media houses considering the purported set top boxes are not type-approved by the Authority; and
4. Invite the Competition Authority of Kenya to investigate the cartel-like behavior and anti-competitive conduct and take appropriate regulatory remedies.

We further wish to inform the public that registered vendors have in stock different models of approved Free-to-air and Pay-TV set top boxes that are readily available locally for purchase. More than 1.2 million set top boxes have been purchased since migration in Kenya began. At the moment, the market has more than 1.5 million set top boxes in stock. As we progress into the second phase of the analogue switch-off in the country, consumers are encouraged to purchase set top boxes of their choice ahead of switch-off in order to enjoy digital television.

The withdrawal of the temporary self-provisioning authorization granted to the consortium and the repossession of the the allocated resources does not in any way prejudice the availability of the services of the three broadcasters. The broadcasters are at liberty to avail their content on the digital platform through the existing licensed Broadcast Signal Distributors.

Let me reiterate that the Authority does not condone contraventions of the Act by any of its licencees. The Authority will continue to execute its regulatory mandate with a view to ensure successful migration of Kenyans from the analogue to the digital platforms and ultimately for the growth of the ICT sector in Kenya.

**Issued on 21<sup>st</sup> January 2015**