

**REPORT TO H.E THE PRESIDENT OF THE REPUBLIC  
OF ZAMBIA MR. MICHAEL CHILUFYA SATA OF THE  
COMMISSION OF INQUIRY INTO THE SALE OF  
ZAMTEL CHAIRED BY HON. SEBASTION ZULU S.C.  
MINISTER OF JUSTICE**

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## Recommendations of the Commission of Inquiry

### **1. Zamtel**

#### **1.1 The immediate termination of all Agreements relating to the sale of Zamtel to LAP GreenN and the immediate return of 100% of Zamtel to the people of Zambia for the following reasons:**

- i. LAP GreenN failed ALL the 3 mandatory prequalification criteria rendering this transaction null and void ab initio;
- ii. The price at which Zamtel was sold clearly shows that the company was grossly undervalued and GRZ paid more than it received;
- iii. In effect, GRZ paid LAP GreenN to receive a gift of 75% of Zamtel;
- iv. The ZDA negotiating team was not independent as required by Law and did not negotiate in the best interests of the Zambian Nation resulting in Zambia receiving the same amount of cash equivalent to the amount paid to a single consultant for its sale of the whole of Zamtel.

#### **1.2 The immediate termination of LAP GreenN appointed and seconded directors and management for the following reasons:**

- i. As a natural consequence of 1.1 above;
- ii. In order to ensure compliance with the UN sanctions on LAP.

#### **1.3 The immediate reconstitution of the board of Zamtel for the following reasons:**

- i. In order to ensure compliance with the UN sanctions on LAP;
- ii. In order to reflect the recommended new shareholding.

#### **1.4 A thorough and comprehensive audit of Zamtel post privatization.**

### **2. ZESCO Optical Fibre**

#### **Immediate termination of the IRU between Zamtel and Zesco and return of control and ownership of the optical fibre to Zesco for the following reasons:**

- i. It was illegal;
- ii. It was signed by Zesco under extreme duress;
- iii. It was not in the interests of Zesco and was solely designed to benefit LAP GreenN at the expense of the Zambian people.

### **3. Zambia Development Agency**

- i. The ZDA senior management must be held fully responsible and culpable for the grossly negligent and cavalier manner in which they conducted and “oversaw” the sale of Zamtel.

- ii. ZDA should immediately account for and render the balance of GRZ proceeds received for the privatization of Zamtel and must immediately transfer the same to GRZ.
- iii. ZDA must forthwith focus on monitoring post privatization as provided in the ZDA Act.

#### **4. RP Capital Group**

- i. That a civil lawsuit be immediately instituted to recover the excess fees paid to RP Capital;
- ii. RP Capital, its affiliates and its employees must be immediately barred from conducting business in Zambia;
- iii. A civil lawsuit be immediately instituted against RP Capital and Simmons and Simmons for professional misconduct / negligence in qualifying LAP GreenN in spite of LAP GreenN failing ALL the 3 mandatory prequalification criteria.

#### **5. Other**

- 5.1. A review of all the legislative changes made to accommodate the Zamtel transaction at the expense of the Zambian tax payer such as:
  - i. Reduction of mobile license fees;
  - ii. International gateway fees;
  - iii. PSTN exclusivity license;
  - iv. Barring of a fourth mobile operator.

**The Zamtel sale was a clear case of economic sabotage which pervaded and compromised key GRZ institutions to the extent that GRZ decisions and policy were being managed by a foreign consultant. The full extent and continuing effect of these actions can only be determined if a full scale and thorough comprehensive forensic audit of the Zamtel privatization process is instituted.**

**Internal RP Capital documents project the value of Zamtel in 2015 being in excess of US\$ Billion, the benefit of which the Zambian people would not have enjoyed.**

## SUMMARY OF TECHNICAL COMMITTEE KEY FINDINGS

### 1. ENGAGEMENT OF RP CAPITAL PARTNERS CAYMAN ISLANDS

- 1.1. The engagement of RP Capital Partners Cayman Islands for the valuation of the assets of Zamtel, by way of a MoU signed and executed by the Ministry of Communications and Transport and the Zambia Development Agency, on the 22nd of December 2008 was totally irregular.
- 1.2. The single-sourcing selection of RP Capital Partners Cayman Islands was single-handedly driven by the Minister of Communications and Transport against the express advice of her ministry officials and that of both the Solicitor General and the Attorney General.
- 1.3. We also note that the ZDA Board, at a Board Meeting held on 26<sup>th</sup> December 2008, expressed great disquiet at the attempt to have the ZDA Board essentially rubber-stamp a MoU that was fundamentally flawed, non-transparent and one that did not follow laid-down procedures. In addition, the Board noted that a due diligence exercise to establish the credentials of, and the persons behind RP Capital Partners had not been undertaken.
- 1.4. We also note, from the Zamtel Audited Accounts for 31<sup>st</sup> March 2009, that Zamtel had, in the past, engaged world-renowned international experts in the field of telecommunications open market assets valuation (i.e. Experts engaged by Commonwealth Telecommunications Organisation in 1997). This is an example of the caliber of consultants that would be expected to undertake the valuation of Zamtel's assets.
- 1.5. We further note, that it was an essential pre-requisite for Cabinet approval of the partial sale of Zamtel, that Cabinet be availed of an accurate, professionally conducted valuation of the Zamtel assets. **A proper valuation of the Zamtel assets did not take place.**

### 2. ENGAGEMENT OF RP CAPITAL AS TRANSACTION ADVISORS

- 2.1. RP Capital Advisors were engaged by the Zambia Development Agency to act as Transaction Advisors for the Zamtel Sale.
- 2.2. The basis for ZDA's decision to single-source RP Capital Advisors as Transaction Advisors was based on ZDA management's satisfaction with the work that had already been completed by RP Capital affiliates in respect of the "valuation" of the Zamtel assets.
- 2.3. We note as per 1.5 above, that a proper valuation of the Zamtel assets did not take place under the MoU. Even under the Agreement appointing RP Capital as

Transaction Advisors, no mention is made of RP Capital Advisors conducting a valuation exercise of the Zamtel fixed assets.

- 2.4. We also note that no due diligence in respect of the suitability of RP Capital Advisors (capacity and capability, previous experience, etc.) was ever conducted by ZDA when they elected to single-source RP Capital Advisors.
- 2.5. This Committee hereby places on record that the engagement of RP Capital Partners by ZDA, was extremely hasty, did not follow normal tender procedures and may have been under duress. Each of the above, renders the engagement illegal.

### 3. VALUATION OF ZAMTEL ASSETS/BUSINESS

- 3.1. As has been stated in 1. above, a detailed, professional valuation of Zamtel assets never took place. The only “valuation” that this Committee was availed, is the one contained in RP Capital Advisors’ final report. This “valuation” is not a professionally conducted assets valuation, but essentially a desktop paper exercise that make numerous assumptions.
- 3.2. The **value of Zamtel’s fixed assets** as contained in the summary report by RP Capital Advisors dated 22<sup>nd</sup> July 2009 and presented to Cabinet **is US\$ 38 million**.
- 3.3. We further note from the Audited Zamtel Accounts dated 31<sup>st</sup> March 2009, that the **book value of Zamtel’s fixed assets only** (property, plant and equipment) was approximately **US\$ 81 million** (K 412,072,000,000). This is however, the book value and **not the market value of Zamtel’s** fixed assets which would be expected to be considerably higher than the book value.
- 3.4. This Committee finds it difficult to understand how RP Capital Advisors could arrive at a value of Zamtel’s fixed assets of US\$ 38 Million in the absence of conducting a thorough, detailed and professional valuation of Zamtel’s fixed assets.

### 4. ZAMTEL SALE

- 4.1. The Cabinet decision to endorse and authorize the partial sale of Zamtel shares took place at the Cabinet Meeting of the 23<sup>rd</sup> July 2009. The Cabinet decision was based on a five page **Project Zamtel: Cabinet Summary** report provided by RP Capital Advisors. This report is a summary of the 316 page final report produced by RP Capital Advisors. Both of these documents are dated the 22<sup>nd</sup> of July 2009.
- 4.2. **This Committee finds it totally inconceivable that the Cabinet and any of its sub-committees, officials and advisors could have read, digested, analyzed**

**and drawn meaningful conclusions from the voluminous report within a period of less than 24 hours.**

4.3. We repeat 3.2 above, and state that in making its decision to proceed with the partial privatization of Zamtel, Cabinet did not have a proper value for Zamtel's fixed assets, as the fixed assets value presented in the RP Capital Advisors summary is only US\$ 38 million.

**4.4. LAP GreenN failed all three of the mandatory prequalification criteria and ought to have been disqualified in the preliminary stage.**

**4.5. The negotiating team appointed by ZDA was not independent.**

**4.6. The negotiating process gave away more than it gained.**

## **5. ZESCO OPTICAL FIBRE NETWORK**

5.1. A Joint Technical Committee comprising Zamtel and Zesco staff was set up under the auspices of the Communications Authority in July 2008 on the understanding that the two parties would seek to rationalize and harmonise their optical fibre network roll-out and expansion plans, based on mutually beneficial and agreed commercial terms.

5.2. Contrary to the above, on the 28<sup>th</sup> October 2009 the Zesco Board were informed by the Board Chairman that the Ministry of Finance, as principal shareholder, was directing Zesco to cede their optical fibre network to Zamtel and to cease all commercial operations on their optical fibre networks.

5.3. Immense pressure was exerted on the Zesco Managing Director to sign an Indefeasible Right of Use Agreement (IRU). Named individuals threatened him with the loss of his job and accused him of dragging his feet and holding up the process.

5.4. Revenue sharing under the IRU is 80% Zamtel and 20% Zesco; provisions of the IRU will apply to all existing and future optical fibre networks to be rolled out by Zesco.

5.5. The Zesco MD whilst on an official trip to Egypt, was forced into signing the single signature page of the IRU Agreement under extreme duress and thereafter faxing it back to Zambia on the 17<sup>th</sup> of December 2009.

5.6. The Zamtel board retrospectively approved the IRU in a board meeting held on the 24<sup>th</sup> of December 2009.

The Zesco Board passed a retrospective board resolution at a Board Meeting held on the 28<sup>th</sup> January 2010 authorizing Zesco to sign the IRU Agreement which had, in fact, already been signed by Zesco on the 17<sup>th</sup> December 2009 and the Zesco MD's contract of employment was terminated.

5.7. This Committee believes that in expropriating the Zesco optical fibre network assets and handing them over to the soon to be privatized Zamtel, GRZ acted in bad faith. GRZ was in effect purloining valuable assets from a 100% government owned company and giving them away – free of charge – to a company that they would soon only own 25% of! We believe that this was done with the express intention of making the soon to be privatized Zamtel, a more attractive proposition to potential buyers, and did not take into account that Zesco had made a considerable investment (approx. US\$ 20 million) into their optical fibre network and were operating it on a very profitable basis.

## 6. FINAL PURCHASE PRICE OF ZAMTEL

6.1. The final purchase price for a 75% shareholding in Zamtel by LAP Green Networks (LGN) was US\$ 257 million and is broken down as follows:

ZAMTEL STAFF PENSIONS LIABILITY:	US\$ 20,000,000
CHINESE BANK LOANS:	US\$ 32,700,000
ZAMTEL WORKERS REDUNDANCIES:	US\$ 97,700,000
LAPGREEN NETWORKS EQUITY INVESTMENT:	US\$ 64,000,000
<b>GRZ PROCEEDS:</b>	<b>US\$ 42,600,000</b>
<b>TOTAL PAID BY LAP GREEN N:</b>	<b>US\$ 257,000,000</b>

From the information provided by ZDA Chief Accountant, the proceeds due to GRZ have, to date, been disbursed as follows;

<b><i>Expenditure Breakdown of Govt Proceeds of</i></b>	<b><i>\$42,600,000</i></b>
RP Capital Advisors	\$12,689,759.03
<b>Net Cash GRZ Proceeds to date (MoFNP)</b>	<b>\$15,000,000.00</b>
Legal Fees	\$702,296.33
Zamtel Staff Incentives	\$85,926.59
ZDA/Zamtel Staff Incentives and Overtime	\$307,462.73
ZDA Negotiating Team	\$65,797.25
Zamtel Staff Training	\$192,907.51
Adverts	\$87,468.98
Grant Thornton Consultants – Financial	\$94,859.14
ZDA (Zamtel sale) Assets	\$46,388.08
Bank Charges	\$8,304.28
Other Zamtel Related Payments	\$19,473.60
<b>Total Disbursed</b>	<b><u><u>\$29,300,643.52</u></u></b>



<b>Balance of Funds due to GRZ</b>	<b>\$13,299,356.48</b>
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- 6.2. Of the total sale price of US\$ 257 million, as per the terms of the sale, GRZ was only entitled to US\$ 42.6 million (16.6% of the sale value).
- 6.3. We note, from the foregoing that **GRZ have, to date, only received** a cash sum of **US\$ 15,000,000**. We further note that **RP Capital Advisors received a cash payment of US\$ 12,689,759.03**, based on 5% of US\$ 257 million.
- 6.4. The majority of the funds due under the sale went into paying Zamtel Workers Pensions Liabilities, Zamtel Workers Redundancy Payments, Chinese Bank Loan and a cash equity injection by LAP Green Networks into Zamtel of US\$ 64 million.

## **7. GRZ PURCHASE OF 25% ZAMTEL SHAREHOLDING**

In accordance with the Share sale and purchase Agreement the following liabilities accrued to the parties:

### **I. Prior to completion, GRZ was required to pay Zamtel :**

US\$ 120,000,000.00	Subscription monies in respect of Tax shares
<u>US\$ 214,440,000.00</u>	Subscription Amount
Total US\$ 334,440,000.00	This figure represents the value paid by GRZ for a 100% of the shareholding in a debt free Zamtel with a US\$64,000,000.00 surplus reserve.

### **II. Post completion, LAP GreenN was required to pay to GRZ :**

US\$ 257,000,000.00	This figure represents the value paid by LAP GreenN for 75% of the shareholding in a debt free Zamtel with a US\$64,000,000.00 surplus reserve.
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**This in effect means that GRZ paid Zamtel US\$ 334,440,000.00 for the retention of 25% shareholding in Zamtel while Lap GreenN paid GRZ US\$ 257,000,000.00 to acquire a 75% stake in Zamtel.**

### **III. Payment of Outstanding Zamtel Telephone Bills by GRZ**

This Committee were informed by the Zamtel MD that the outstanding GRZ telephone bills which stood at approximately US\$7,000,000.00 at the time of privatization, has to date been reduced to US\$100,000.00. This Committee

finds it both sad and disappointing that GRZ who had over the years, consistently failed to support Zamtel by the promptly settling their telephone bills, enthusiastically and regularly did so post privatization.

#### **8. Other LAP GreenN operations in Africa**

In its prequalification application form LAP GreenN stated that they owned 5 operations in Africa. The following is the status as at the date of this report:

i. Uganda

Uganda Telecom

On the 16<sup>th</sup> of October 2009 LAP GreenN stated in its prequalification application form that it owned 69% of Uganda Telecom who had 2,584, 252 subscribers and therefore LAP GreenN attributable subscribers were 1,783,134.

As at the date of this report the status of Uganda Telecom is:

***“Ugandan Government recently took over full management of the company in line with the UN decision to freeze all assets owned by Gaddhafi. In this case, the Ugandan Government is holding the 69% owned by Libyans in trust until the matters in Libya are resolved.”***

ii. Rwanda

Rwandatel

On the 16<sup>th</sup> of October 2009 LAP GreenN stated in its prequalification application form that it owned 80% of Rwandatel who had 487,470 subscribers and therefore LAP GreenN attributable subscribers were 389,976.

As at the date of this report the status of Rwandatel is:

**In April 2011 Rwanda revoked the Rwandatel license which belonged to LAP GreenN due to an inability to invest in accordance with their commitment.**

iii. Niger

Sonitel & Sahelcom

On the 16<sup>th</sup> of October 2009 LAP GreenN stated in its prequalification application form that LAICO Networks (a subsidiary of LAP) owned 51% of Sonitel & Sahelcom who had 823,133 subscribers and therefore LAP GreenN attributable subscribers were 419,798.

As at the date of this report the status of Sonitel & Sahelcom is:

***“The Government of Niger has cancelled a deal to sell majority stake in state owned Telco Sonitel and its mobile arm Sahelcom to LAP Green Network stating that the Libyan Government Investment vehicle had not respected the terms of transaction”***

- iv. Cote D’Ivoire  
Oricel

On the 16<sup>th</sup> of October 2009 LAP GreenN stated in its prequalification application form that it owned 75% of Oricel who had 852,661 subscribers and therefore LAP GreenN attributable subscribers were 639,496.

As at the date of this report the status of Oricel is:

- v. Sierra Leone  
Ambitel

On the 16<sup>th</sup> of October 2009 LAP GreenN owned 85% of the Company which had no subscribers at that date they were still in the process of rolling out the network.

**It is clear from the above, that in its short 3 year history, LAP GreenN has proved to be inept and incompetent at running telecommunications networks.**

#### **9. Official GRZ Statement on the Release of the Zamtel Sale Report**

This Committee notes that the previous Minister of Commerce Trade and Industry Hon. Felix Mutati, in justifying his refusal to release the Zamtel sale official report stated on the 14<sup>th</sup> of June 2010, and we quote *"I don't see how releasing the RP Capital report will help the citizen because they will not even understand it. It is just figures on paper. I would advise people to instead listen to the rational explanation of the government over the Zamtel sale."*

**In view of its findings, this Committee believes that to the contrary, had a full and comprehensive report been released, the Zambian public would have drawn logical conclusions regarding the conduct and execution of the sale.**

# REPORT OF THE TECHNICAL COMMITTEE INQUIRING INTO THE SALE OF 75% OF GRZ SHAREHOLDING IN ZAMTEL

## 1. Introduction

### 1.1 Background

In accordance with a directive from His Excellency the President of the Republic of Zambia, the Hon. Minister of Justice instituted an inquiry into:

- i. The Sale of Zambia Telecommunications Company (ZAMTEL);
- ii. The sale of Finance Bank Zambia Limited;
- iii. The financing by the National Pension Scheme Authority (NAPSA) of the Zambia National Building Society House Project; and
- iv. The purchase of land by NAPSA from Meanwood Property Development Limited.

The Hon. Minister of Justice has constituted a Committee to conduct the inquiry. A Technical Committee to assist the Committee through relevant expertise was set up on the 13<sup>th</sup> of October 2011.

Due to the importance and urgency of the assignment the Technical Committee was divided into four groups to conduct the inquiry.

### 1.2 Terms of Reference

This Technical Committee was tasked with investigating:

The Sale of Zamtel

- i. To determine how the sale of ZAMTEL was conducted; and
- ii. To ascertain whether all the required procedures relating to the sale were complied with.

### 1.3 Composition of the Team

The Technical Committee inquiring into the sale of 75% of GRZ Shareholding in ZAMTEL comprised the following:

- |      |                        |                    |             |
|------|------------------------|--------------------|-------------|
| i.   | Mrs. Dimple Ranchhod   | Lawyer             | - Chair     |
| ii.  | Mr. Misheck N Kaoma    | Procurement        | - Secretary |
| iii. | Mr. Cosmas Mwananshiku | Accountant         | - Member    |
| iv.  | Dr. Mupanga Mwanakatwe | Telecommunications | - Member    |
| v.   | Mr. Emmanuel Mbewe     | Telecommunications | - Member    |
| vi.  | Mr. Don Zyambo         | Valuations         | - Member    |

### 1.4 Documents Perused

At the commencement of the assignment, the Ministry of Justice availed this Technical Committee a number of documents. It is worth noting that these documents were compiled by the Zambia Development Agency in response to a letter from The Hon. Minister of Justice requesting the same.

This Committee wishes to place on record that a substantial portion of these documents were irrelevant to the Committee's Terms of Reference and consequently this Committee lost several days perusing them.

This Committee therefore had to spend additional time identifying and sourcing material and relevant information that was essential to the task at hand.

A complete list is available in Appendix II.

This Committee puts on record the following:

1.4.1 ZAMTEL

This Committee requested but has at the date of this report not received:

- A copy of the management contract between LapGreenN and Zamtel referred to by the ZAMTEL management team during their interview with the Committee.

Instead Zamtel only provided the Committee with a letter containing values of the basic pay of senior management and a copy of a secondment contract between LAP GreenN and Zamtel.

- A copy of a detailed LAP GreenN business plan relating to the acquisition of Zamtel shares that in the opinion of this Committee should have been submitted to ZDA for purposes of the bid evaluation and negotiations in order to enable ZDA assess, monitor and evaluate post privatization business performance.

The ZAMTEL CEO declined to provide the same as he considered it to be LAP GreenN proprietary information. He further advised the Committee that the only business plans submitted to ZDA was the one attached as Schedule3 of the Shareholders Agreement.

**It is the Committees opinion that a 4 page sketch cannot be considered a serious business plan for the sale of this magnitude.**

1.4.2 Ministry of Communications and Transport

This Committee requested but has at the date of this report not received:

- the dossier provided by RP Capital Partners;  
**This document either does not exist or has been lost or destroyed.**

- the report prepared by MoCT staff to the Minister recommending RP Capital Partners;

**Likewise, this document either does not exist or has been lost or destroyed.**

- Email correspondence between RP Capital Partners and MoCT officials.

Despite several requests for this information, MoCT has failed and or is unwilling to furnish the Committee with this information.

**The Committee hereby places on record that the practice of MoCT is to delete user accounts from its email server upon an official leaving the Ministry. This is clearly not good practice and the Committee expects that even if a user is deleted from the email server, official records should be retained for future use and reference.**

#### 1.4.3 Zambia Development Agency

This Committee requested but has at the date of this report not received:

- Email correspondence to ZDA from Nkwazi.gov.zm accounts relating to Zamtel and RP Capital;

The Director General of ZDA undertook to provide the same but as he had reservations on the security clearance of the Head of IT at ZDA, he declined to avail the Committee the available information without vetting by a ZDA director.

- Zamtel updated business plan as required by Clause 9.4 (A) of the Shareholders' Agreement dated the 5<sup>th</sup> of June 2010 between The Government of the Republic of Zambia and ZAMTEL and LAP GreenN.

The Director General of ZDA was unable to provide the same and referred the Committee to Ministry of Finance as the same was not the responsibility of ZDA post privatization but that responsibility was with MoF as the holder of GRZ shares.

**The Committee places on record that this statement contradicts the provisions of Section 5 (2) (n) of the ZDA Act which defines one of the functions of the Agency as “*monitor post privatization activities to ensure compliance with any agreement entered into for the privatization of any state owned enterprise*”.**

**It is the opinion of the Committee that this is an extremely important document in the post privatization process as it is the**

**ONLY document on which GRZ can assess the performance of the Zamtel business and ensure that LAP GreenN undertakings and commitments have been satisfied and if not, make an informed decision on exercising termination and/or claw-back options.**

- A complete and accurate account of monies received and their disbursements.

The ZDA chief accountant was unable and/or unwilling to provide the same.

**The Committee places on record that the ZDA chief accountant furnished the Committee with numerous versions of the account of monies. Each version conflicted with the other and no version has balanced and the chief accountant was unable to justify the numbers. The Committee has no confidence in the accounts presented by the ZDA chief accountant.**

- A due diligence on RP Capital  
The privatization manager advised that the same was never done.

### **1.5 Interviews**

In conducting its assignment, the Technical Committee met and interviewed several people and a list is attached as Appendix III.

The Committee places on record that prior to consenting to the initial interview, the CEO of Zamtel advised the chair that he needed clearance from the National Transition Council in Libya. The CEO subsequently advised that he had the clearance from the NTC in Libya and therefore attended the interview.

## **2. Applicable Law**

2.1 The applicable law in this instance is set out in the Zambia Development Agency Act of the Laws of Zambia Section 4 (1) of which provides for the establishment of the Zambia Development Agency as a body corporate.

The Director General of ZDA also advised the Committee that as the Privatization Act had not been repealed as per the provisions of Section 84 (2) of the ZDA Act, the Privatization Act also applies to the Zamtel privatization.

It is the opinion of the Committee that as the Zamtel sale was approved by Cabinet and conducted under the provisions of the ZDA Act, only the ZDA Act is therefore applicable and this is the only Act the Committee considered.

2.2 In addition to the Zambia Development Agency Act, the Zambia Public Procurement Act No. 12, 2008 of the Laws of Zambia applies to the engagement of consultants and prescribes the following methods of procurement:

1) **International Selection**

Participation in open international selection shall be open to all bidders, including citizen, local and foreign bidders.

2) **National Selection**

Participation in open national selection shall be limited to citizen and local bidders.

3) **Limited Selection**

Limited selection may be used where:

- a. the consulting services are only available from a limited number of suppliers; or
- b. there is an urgent need for the consulting services and engaging in open selection would therefore be impractical.

4) **Direct Selection (Direct Sourcing).**

Direct selection is done by directly requesting proposal/s from one firm or individual where only one firm or individual is the qualified and available entity to conduct the consulting services or the consultant is to be engaged with the view of continuing the downstream tasks of similar nature of a previous assignment, in order to reduce the time frames of engagement, or to standardize the quality of services provided, or under emergency situations and that using other selection methods will not yield quick results.

**3. Sourcing and Engagement of Consultants**

**3.1 Engagement of RP Capital Partners Cayman Islands for the Valuation of Zamtel Assets:**

**3.1.1. Background**

Although this transaction was extensively covered in the Dennis Chirwa led tribunal (the Tribunal), whose report and findings were extremely useful to this Committee, we hereby highlight some of the elements.

Ministerial Statement by Hon. Dora Siliya, MP; Minister of Communications and Transport in Response to a Point of Order Raised by Kantanshi MP. Mukanga Yanfwa. On The Engagement of RP Capital Group and What Tender Procedures Were Followed To Value Zamtel Assets

*13<sup>th</sup> February 2009*



We quote from the above-captioned Minister's Speech;

*"After various consultations, it was clear that the immediate task for the Ministry was to undertake a Valuation of the Assets of ZAMTEL to ascertain the true value of the company on the open market."*

*"It must be noted that, Government could not enter into any commercial agreements with the companies that were expressing interest because of inadequate information, which I needed as the responsible Minister to take to Cabinet to seek formal approval to actually partially privatise Zamtel."*

**From the above, it is clear that it was the intention of GRZ to have the Assets of Zamtel properly valued in order to ascertain the true value of the company on the open market.**

We further quote from the above-captioned report;

*"At the meeting, RP Capital introduced itself as an entity that could assist the Government of the Republic of Zambia in addressing the issues regarding the assets valuation of Zamtel and possible sale of Government stake in Zamtel and to provide Transaction Advisor Services at own cost subject to administrative costs and/or professional fees being paid once the transaction had taken place."*

**3.1.2. Process adopted**

- i. RP Capital Partners Cayman Islands were sourced and engaged by the Ministry of Communications and Transport (MoCT) by its Minister Dora Siliya.
- ii. Dora Siliya unilaterally and arbitrarily signed a MoU with RP Capital Partners Cayman Islands. She stated to the Tribunal that this was on the recommendation of her staff who had reviewed a dossier submitted by RP Capital Partners and were satisfied with their review.

The Committee was unable to find any documentary evidence supporting the Minister's claims. To the contrary the Committee has obtained a MoCT internal memo which in fact contradicts the Minister's statement.

**This Committee places on record that this memo was neither mentioned nor availed to the Tribunal.**

**Internal Memo – Ministry of Communications and Transport – Director of Communications**

19<sup>th</sup> November 2008

Ministry of Commerce, Trade & Industry

We refer to, and quote from the above-captioned internal memo, whose subject title is “Valuation and Possible Sale of Government Stake in Zamtel: Signing of The Memorandum of Understanding (MoU) with RP Capital:

*“Page 2: Before the MoU is signed between the Ministry and RP Capital, it is important that the Cabinet Approval be sought through a joint Cabinet Memorandum on the purpose of the valuation and ultimate engagement of RP Capital as Transaction Advisors. Only if this is done can the process be deemed transparent by the stakeholders, failure to which the Ministry may be drawn into protracted speculations as to whether Government is going to get value-for-money in the transaction. The quality and cost as proposed by RP Capital in the attached letter may not be justifiable without a competitive process being undertaken.”*

**This committee notes that contrary to the Minister’s claims that her ministry officials advised that RP Capital Partners were the ideal consultants, her officials had in fact advised her not to sign the MoU, and to follow the normal and proper laid out procedures expected in a transaction of this nature. This is a matter of concern to the Committee as the Minister misled the Tribunal.**

**Tribunal Report on Investigation on Allegations of Breach of Parliamentary and Ministerial Code of Conduct Against Hon. Dora Siliya M.P. Minister of Communications and Transport**

16<sup>th</sup> April 2009

GRZ Tribunal

We quote from the above captioned report;

Page 19: *“In the process, RP Capital Partners submitted a dossier about themselves. Her officials were happy about it and made recommendations. She acted on these recommendations. Everything that the Ministry did as far as RP Capital Partners Limited was concerned was done through the office of the Permanent Secretary”.*

Our extensive enquiries at the MoCT have indicated that the above-mentioned RP Capital Partners Limited dossier does not and did not ever exist. All the senior staff interviewed at the MoCT deny ever having sight of such a dossier, nor is it on any of the MoCT files. This includes the Permanent Secretary. This finding is in total variance with the former Minister’s claims.

Furthermore, our findings indicate that there is no documentary evidence of the experience and caliber of RP Capital Partners, in relation to complex telecommunications transactions of this nature and magnitude.

**It is the opinion of this Committee that in selecting and appointing RP Capital Partners Cayman Islands as the Zamtel Assets Valuation Consultants, Dora Siliya acted unilaterally and against the advice of her professional staff within MoCT.**

**With the foregoing in mind, it is the considered opinion of the committee that GRZ should have, by way of an international open tender, sought to procure the services of an established, internationally reputable and competent consultant to carry out the valuation of the Zamtel assets.**

- iii. Although the MoU is dated the 22<sup>nd</sup> of December 2008, ZDA who was a Party to the MoU only considered the MoU at a Special Board Meeting on the 26<sup>th</sup> of December 2008.

## ZAMBIA DEVELOPMENT AGENCY

### MINUTES OF THE 10th SPECIAL BOARD MEETING OF THE ZAMBIA DEVELOPMENT AGENCY HELD ON THE 26th DECEMBER 2008 IN THE BOARDROOM, PRIVATISATION HOUSE

We quote from the above minutes:

*“8.5 In a lengthy discussion that followed **IT WAS NOTED** inter alia that: ....  
(ii) the manner in which the Consultants were engaged does not appear to be transparent;  
(iii) it was not clear whether proper tender procedures had been followed;  
(iv) The ZDA Board was not consulted in the preparation of the MOU; .....  
(viii) the MOU does not cover in detail the scope of work for the Consultants;  
...  
(x) the ZDA could have been made a party to the MOU as a result of an afterthought;  
(xi) the people involved with the consultant were not known;  
(xii) the Terms of Reference for the consultant are not clear; .....*

*8.6 After further discussion **IT WAS AGREED** that the Memorandum of Understanding can be signed subject however to amendments being made to it to address the concerns of ZDA and to provide for the process to be undertaken in accordance with the provisions of the Zambia Development Agency Act, Act No. 11 of 2006. “*

- iv. The Director General of ZDA also advised the Committee that in fact he was out of the country when the MoU was signed and in his absence, one of his officers a Mr. Matoka was summoned to the MoCT office and then Minister Dora Siliya instructed him to sign the document which he did.
- v. The Committee interviewed then Chairman of the ZDA Board (Mr. Luke C Mbewe). Mr. Mbewe stated that following the ZDA Board Meeting, he made the effort of going to Dora Siliya’s office to discuss the MoU. Dora Siliya sent him out of her office and told him that he was wasting time and delaying the process.
- vi. The ZDA Board approved the signing sometime in January 2009.

### 3.1.3. RP Capital Partners Valuation Report

#### **Project Zamtel: Valuation & Transaction Recommendations**

22<sup>nd</sup> July 2009

RP Capital Partners

The “valuation” of Zamtel Assets that was done by RP Capital Group, is contained in the above-captioned 316 page report.

The “valuation” methodology used by RP Capital Group, in the above report, is based on future discounted cash-flows and incorporates a number of assumptions relating to the company’s Key Performance Indicators (KPI’s). The “valuation” did not take into account, whatsoever, an actual valuation of the Zamtel assets.

This Committee noted that although the future discounted cashflow method is a possible option that can be used in the valuation of a company; it is however, merely an option that should have been used in addition to the actual valuation of the Zamtel assets. This would have permitted a comparison of the results emanating from the two methodologies.

In any event, the future discounted cash flow method that was used by RP Capital should have taken into account the three distinct business activities that Zamtel was engaged in namely Mobile, Fixed and Internet.

**It is the opinion of the Committee that the fact that as the Zamtel assets were never valued as stated above, this may have led to a reduction in the final value that was placed on the enterprise by RP Capital and consequently GRZ.**

**The Committee notes that due to the specialized and complex nature of the Telecommunications industry, the consultants hired to value Zamtel assets should have had proven experience and specialized staff.**

### 3.1.4. Cabinet Approval

- i. In April 2009, the President of Zambia constituted a Cabinet Committee of four Ministers to oversee the privatization of Zamtel. The Minister of MoFNP was the chair of the Committee.
- ii. The first meeting of this Committee was held on the **29<sup>th</sup> of June 2009** and *“the objective of the meeting is to receive a brief from RP Capital on the progress regarding the valuation of the assets of Zamtel.”* (Reference letter

- dated the 26<sup>th</sup> of June from the Permanent Secretary MoFNP to the Permanent Secretary MoCT.
- iii. On the 22<sup>nd</sup> of July 2009, in addition to the 316 page report, RP Capital also prepared a 5 page document labeled Project Zamtel: Cabinet Summary.
  - iv. On the 23<sup>rd</sup> of July 2009 Cabinet considered recommendations by four Ministers and decided that Zamtel be privatized.

**This Committee has highlighted and underlined the above dates because we find it totally inconceivable that a report of this size, complexity and magnitude could be fully digested, analyzed and conclusions drawn from the same by the Committee of four Ministers as well as their relevant technocrats in the course of 1 day.**

**This Committee then safely assumes that the Cabinet approval was based not on a summary report on the recommendations of the Committee of Ministers but actually only considered the 5 page Cabinet Summary prepared by RP Capital.**

- v. The Permanent Secretary at the Ministry of Commerce, Trade and Industry wrote to ZDA the next day.

Ministry of Commerce Trade and Industry  
24<sup>th</sup> July 2009

We quote from the above:

*“(d) directed the Minister to ensure that the privatization of Zamtel is conducted in accordance with ZDA Act No. 11 of 2006.  
In this regard, you are requested to provide an action plan that will expedite implementation of action (d) above as directed by Cabinet.”*

**This Committee notes that we were unable to determine whether the action plan requested above was ever prepared and also notes that such a document would have been critical to this report.**

**This Committee can then safely assume that no action plan was prepared by ZDA but the privatization process was solely based on the 316 pages RP Capital valuation and transaction report.**

### 3.2 Engagement of RP Capital Advisors by the Zambia Development Agency (ZDA) as Transaction Advisors on the privatization of Zamtel.

#### 3.2.1. The Tender Process

- i. On the 18<sup>th</sup> of August, 2009 the Director General of ZDA wrote to the Director General of Zambia Public Procurement Authority (ZPPA) seeking a waiver from Open Selection (International or National Selection) to Direct Selection tendering process.  
In that letter the Director General ZDA reported that the ZDA Board had recommended that RP Capital Group be engaged on the basis that the firm had previously conducted some preparatory work to the satisfaction of ZDA and therefore should be contracted to continue with Transaction Advisory Services. In their application for a waiver to ZPPA the ZDA enclosed a Request for Proposals (RFP) for review.
- ii. On 19<sup>th</sup> of August, 2009 a follow up letter was sent to the ZPPA providing further information and clarifications that, among others, RP Capital were engaged previously for preparatory work on 09<sup>th</sup> December, 2008 at a cost of the higher of US\$2million or 5% of the Transaction proceeds.
- iii. On the 27<sup>th</sup> of August, 2009 the Director General of ZPPA granted ZDA a waiver from Open Selection to Direct Selection to engage RP Capital Group. Consequently a Direct Invitation for Proposals was sent to RP Capital Group.
- iv. Proposals were received and on the 11<sup>th</sup> of September, 2009 the Director General ZPPA asked the Director General ZDA to evaluate the bids.
- v. On the 14<sup>th</sup> of September, 2009 - Since the tender was a Two Envelope System, the ZDA Director General submitted the results of the Technical Evaluation results in which RP Capital had scored 86.2% over and above the prescribed minimum of 75% in the RFP.
- vi. Also on the 14<sup>th</sup> of September, 2009 the ZPPA Director General (DG) approved the Technical Evaluation report administratively.  
**This Committee notes that this approval was done by the ZPPA Director General (DG) administratively instead of an approval by the Central tender Committee (CTC).**
- vii. Also on the 14<sup>th</sup> of September, 2009 the DG ZPPA invited the DG ZDA and RP Capital to the opening of the RP Capital Advisors Financial Proposal which was scheduled to take place at 15.30hrs on the same date. The Financial Proposal was opened at 15.48 hrs and subsequently sent to ZDA for a combined Technical and Financial evaluation.
- viii. The report on the combined Technical and Financial evaluation was submitted back to ZPPA also on the 14<sup>th</sup> of September, 2009 for

consideration of the award of contract to RP Capital and on the same day at a sitting that took place at 21.00 hours the Central Tender Committee (CTC) approval was granted to ZDA.

**This Committee highlights the extraordinary speed and urgency attached to the selection of RP Capital particularly as they were single sourced.**

- ix. On the 15<sup>th</sup> September, 2009 the contract between ZDA and RP Capital Advisors was signed and a copy was sent to ZPPA.

**This Committee again places on record that it is inconceivable that a contract of this magnitude could have been prepared, approved and executed and a copy forwarded from ZDA to ZPPA in the course of one (1) morning. This Committee can safely conclude that this contract was pre-prepared prior to tender approval and award and ZDA merely signed the contract without any negotiations or review whatsoever of the terms contained therein.**

### 3.2.2. Additional relevant information

- i. In the interview with the Director General of ZDA, he informed the Committee that he met with RP Capital Partners and GRZ officials to request for the RP Capital documents prepared under the MoU. He advised the Committee that RP Capital refused to hand over any information unless they were appointed as Transaction Advisors on the sale of Zamtel.

This statement was of grave concern to this Committee. This Committee notes that if true, RP Capital essentially held GRZ to ransom. The emphasis in the preceding sentence is deliberate as there are many inconsistencies in the sequence of events as established by the Committee.

- a. On the 25<sup>th</sup> of March 2009, the Permanent Secretary - MoCT wrote to RP Capital suspending the MoU until further notice.
- b. On the 27<sup>th</sup> of March 2009, Dora Siliya instructed the Permanent Secretary – MoCT to urgently withdraw the above letter.
- c. On the 1<sup>st</sup> of April 2009, the Permanent Secretary – MoCT withdrew the letter.
- d. The Committee interviewed Mr. Henry Sakala – ZDA Privatization Manager who is on our record as having advised the Committee that as far as ZDA was considered, the MoU signed between RP Capital was a *“nullity and had died a natural death after the Dennis Chirwa Tribunal.”*



- e. On the 23<sup>rd</sup> of June 2009, the Permanent Secretary – MoCT wrote to RP Capital *“re-affirming the procedure of under-taking the valuation and possible sale of Government stake in ZAMTEL.”*
- f. As stated earlier in this report, the Report from RP Capital and Cabinet summary that was presented to the Committee of 4 Ministers is dated the 22<sup>nd</sup> of July 2009.
- g. Only upon Cabinet approval of Zamtel for privatization on the 23<sup>rd</sup> of July 2009 did ZDA enter the picture. At this point RP Capital had already handed over the documents under the MoU to the Committee of 4 Ministers. This Committee is therefore at pains to understand which documents were withheld from ZDA by RP Capital as claimed by Mr. Chipwende that forced him to single source RP Capital as transaction Advisors.
- h. It is worth pointing out that the ZDA Board Chair did not recall that the ZDA Board ever approved the Direct Selection of RP Capital as claimed in the letter dated 18<sup>th</sup> August 2009 to ZPPA by the ZDA Director General.

### **3.3 Engagement of Simmons and Simmons**

#### **3.3.1. The Tender Process**

- i. On the 26<sup>th</sup> of November, 2009 the ZDA Privatization Manager wrote to ZPPA asking to process a Limited Selection tender for legal firms for advisory services for the process of selling 75% shares in Zamtel. The Request for Proposals (RFP) was sent out to the following legal firms.
  - 1) Baker & McKenzie –UK;
  - 2) Simmons and Simmons – UK;
  - 3) Paul Hastings – USA;
  - 4) Morrison & Forester, - USA; and
  - 5) White & Case - UK.
- ii. The closing date for receipt of proposals was 28<sup>th</sup> December, 2009 and only two proposals were received from:
  - 1) Simmons and Simmons; and
  - 2) Paul Hastings.
- iii. On the 30<sup>th</sup> of December, 2009 ZDA submitted a Technical Evaluation report to ZPPA in which Simmons and Simmons were technically qualified and requested for the opening of the Financial Proposal accordingly. On the same day ZDA submitted to ZPPA a combined Evaluation Report recommending the award of contract to Simmons and Simmons.

- iv. The Central Tender Committee (CTC) of the ZPPA deferred the approval and instead requested ZDA to address some concerns regarding the ability of legal firms to respond to tenders and the legal fees quoted in view of the Legal Practitioners Act.
- v. ZDA sought guidance from the Attorney General's office and that was provided on the 7<sup>th</sup> of January, 2010 and subsequently submitted to ZPPA for further considerations.
- vi. On the 7<sup>th</sup> of January, 2010 the CTC granted authority to ZDA to award the contract to Simmons and Simmons at a cost of US\$660,000.00 exclusive of taxes.
- vii. A contract between Simmons and Simmons and ZDA was signed on the 5<sup>th</sup> of February 2010 although clause 2.2 of this contract provides that *"The Consultants in good faith began carrying out the services under this contract on the 9<sup>th</sup> of January 2010."*

### **3.3.2. Additional Relevant Information**

- i. In their initial interview with Mr. Henry Sakala – ZDA Privatization Manager, this Committee had queried the appointment of a foreign law firm. Mr. Sakala had explained that Zamtel was a highly complex transaction that required lawyers specialized in the telecommunications industry and because no local law firms had the relevant expertise, a foreign firm had been appointed.  
A perusal of the Description of the services appended to the contract for legal services entered into between ZDA and Simmons and Simmons, particularly clause 4, which specifically lists the tasks expected of the consultant, reveal no task that would require specialized telecommunications lawyers.  
To the contrary, it is this Committee's opinion that local lawyers with knowledge of the Zambian laws would have been better suited for the task.
- ii. This Committee interviewed the ZDA Head of Legal Department – Mr Charles Mulenga. Mr. Mulenga informed this Committee that he had strong reservations about the Zamtel sale from the start and therefore delegated all legal work connected to Zamtel to his junior Ms. Yadika Mkandawire.
- iii. This Committee also interviewed Ms. Yadika Mkandawire Lead ZDA Counsel on the Zamtel sale.  
Ms. Mkandawire informed the Committee that whilst she was consulted on a few of the minor agreements and documents, she was not privy to nor was she consulted on any of the Zamtel transaction documents.

Ms. Mkandawire also informed this Committee that she performed the role of a “legal clerk” and not one of lead Counsel. She believes this may have been as a result of the fact that she was previously employed in the Attorney-General’s chambers and was therefore perceived to be from the “Mumba Malila camp and was deliberately left out of the loop. Ms. Mkandawire informed the Committee that once the privatization process commenced, she was in fact removed from the email mailing lists at ZDA and was only provided piecemeal instructions.

She stated that the ZDA legal department was reduced to the role of observers. Ms. Mkandawire gave an example of meetings held in London with RP Capital and ZDA where the Attorney General sent a lawyer from his chambers and ZDA lawyers were left out and only heard of the meetings from third parties.

- iv. Prior to the engagement of Simmons and Simmons, ZDA had engaged the services of Messrs. Mulenga Mundashi. This Committee also interviewed Mr. Mundashi after his professional privilege had been formally waived by ZDA. Mr. Mundashi informed this Committee that he had been appointed by ZDA as external transaction lawyers on the 26<sup>th</sup> of October 2009 with a very broad mandate. His firm was consulted on several documents and rendered advice on the same.

Mr. Mundashi was also consulted on the issue of GRZ waiving outstanding taxes due to ZRA from Zamtel. His advice was that ZRA tax could not be waived without Parliamentary sanction. Mr. Peter Heilner of RP Capital disagreed with his advise and consequently Mr. Mundashi arranged a meeting with the then ZRA Commissioner – Domestic Tax Mr. Wisdom Nhekairo. Mr. Mundashi and Mr. Peter Heilner met Mr. Nhekairo at ZRA and Mr. Nhekairo confirmed Mr. Mundashi’s advice.

Messrs. Mulenga Mundashi were subsequently asked to render a bill for their services and their bill was paid.

- v. It is worth mentioning that **prior to the 26<sup>th</sup> of November 2009** when the tender process for legal services that led to the appointment of Simmons and Simmons commenced Simmons and Simmons were already in contact with RP Capital regarding the privatization of Zamtel..

We refer to email correspondence dated the **19<sup>th</sup> of October 2009** from Peter Heilner of RP Capital to Arthur Stewart and copied to David Shasha – both Partners at Simmons and Simmons as well as Arthur Stewart’s response dated the **20<sup>th</sup> of October 2009**.

***"From: Peter Heilner [mailto:Heilner@rpcapitalgroup.com]***  
***Sent: 19 October 2009 18:53***  
***To: Arthur Stewart***  
***Cc: David Shasha; Peter Nemeth; Jayne McCann***  
***Subject: RE: Zambian counsel***

*Arthur, David,*

*As discussed, the following is a list items that we need to clear before the first week of November for inclusion in the virtual data room:*

- Indefeasible Right of Use Agreement between ZESCO (the national power utility) and Zamtel whereby ZESCO grants Zamtel the exclusive right to all the unused (that ZESCO does not use for internal purposes) optic fibre on its network for a fixed rate for an indefinite period. Commercial terms and a rough agreement have already been put together*
  
  - Amendments to the Articles of Association of Zamtel – Transition from a 100% government owned company to a private company and the inclusion of veto rights associated with 25% shareholding that the government is retaining*
  - Review of contract amendments with equipment suppliers (Huawei and ZTE) and associated government guarantees (some drafted)*
  - Review of covenant waivers from lenders (Chinese State banks)*
  - Review of "conditional" redundancy agreements with Unions (drafted)*
- There are also likely some other more minor items which might crop up from time to time.*

*I would appreciate it if you could prepare a cost estimate as soon as possible on this basis and I will clear with my client and we can get started immediately. From a contractual perspective Simmons would be working with RP for this interim period. Zambian local counsel will be retained by the ZDA separately and will be available to provide input from a drafting perspective throughout this period.*

*Let me know if any of the above is unclear or if there are any further questions.*

*Regards,*

*Peter"*

***"From: Arthur Stewart [mailto:Arthur.Stewart@simmons-simmons.com]***  
***Sent: Tue 10/20/2009 11:55 AM***  
***To: Peter Heilner***  
***Cc: David Shasha; Peter Nemeth; Jayne McCann***  
***Subject: Estimate for Support Period***

*Peter:*

*Many thanks.*

*On the basis that we are providing an estimate of legal fees to provide support on the various items of work set out in your email below for a 2 week period (the "Support Period") our estimated pricing (exclusive of VAT and disbursements) is as follows:*

*We would apply a 10% discount to our standard hourly rates.*

*We estimate that our overall fees for the Support Period should not exceed £40,000 -£50,000 in aggregate. Within this general estimate we estimate that the fees in relation to items 1 and 3 may be as follows:*

*1. IRU (Indefeasible Right of Use Agreement) - the drafting and negotiation (if needed) of the IRU during the Support Period we would estimate our fees at £6,500 -£8,000. To the extent that our actual fees recorded are lower than this amount we will bill the lower amount;*

*3. Amendment to equipment supply contracts - this is a difficult item to price accurately since we do not know the scope of the amendment (i.e. whether it is the minor addition of some products or services or a more major project such as the provision of network to a major geographical area for example). However, we can estimate our fees for drafting and negotiation support during the Support Period at £12,000 - £14,000. This figure is obviously created with a view to covering the possibility of the amendment being at the more major end of the scale. If the amendment is much more minor then the fees would be much less and we would bill what is recorded. The work on the guarantees would also be included in this sum.*

*When you have had a chance to digest this please call us to discuss. We are looking forward to getting started and working closely with you on with this very exciting project.*

*Best regards*

*Arthur and David*

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In addition to the email evidence above, this Committee's findings are that Simmons and Simmons are RP Capital's attorneys of choice having previously acted for them on several assignments as can be seen from their respective websites.

**It is clear from the above emails that the tender award to Simmons and Simmons was a predetermined and foregone conclusion.**

#### **4. Invitation of bidders for Zamtel**

##### **4.1 The pre-qualification process.**

- i. On the 15<sup>th</sup> of September 2009, the ZDA advertisement/ notice for the sale was published in the local and international media.
- ii. Friday the 16<sup>th</sup> of October, 2009 17.00 hours was the closing date for the interested bidders to submit their Expression of Interest (Eoi) and eight (8) international firms submitted namely:
  - LAP GreenN - Libya,
  - Altimo Holdings – Russia,
  - Unitel/Angola Cables –Angola,
  - Bharat Sanchar Nigam Limited (BSNL) – India,
  - Mahanagar Telephone Nigam Limited (MTNL) –India,
  - Portugal Telecom –Portugal
  - Telecel Globe (Part of Orascom Telecom);and
  - Telkom South Africa - RSA.
- iii. The ZDA Board prequalified all the eight (8) interested bidders including LAP GreenN.

##### **4.2 Comments and observations on LAP GreenN.**

- 4.2.1. Following a review of the bid from LAP GreenN this Committee noted serious and critical anomalies in the qualification of LAP GreenN in the preliminary stage which ZDA, their lawyers and their transaction advisors deliberately ignored.

The Public invitation announced on the 15<sup>th</sup> of September 2009 for invitation to prequalify for participation in Zamtel privatization set out three mandatory criteria.

i. **1<sup>st</sup> criteria – Minimum 5 years operation in the telecommunications industry.**

We quote from the Zamtel privatization pre qualification application form sent by ZDA to all prospective bidders:

*“Only Companies with a minimum of 5 years licensed operation in the telecommunications industry, as the primary activity of the Company, will pre-qualify.”*

We further quote from the LAP GreenN’s completed pre-qualification application form as submitted to ZDA wherein LAP GreenN state that they have been in the telecommunications industry for 8 years:

*“16<sup>th</sup> October 2009*

*LAP GreenN Application form”*

*Page 4: “Criterion 1: Number of years in operation in the telecommunications industry – 8 years”*

We also quote from the above mentioned minutes of ZDA Board Meeting of the 31<sup>st</sup> of March 2010:

*Page 2: “Incorporated in 2007, LAP Green Networks shares its mission with its parent, LAP, namely to contribute to the development of African nations.”*

LAP GreenN having been incorporated in 2007 at the time of pre-qualification (16<sup>th</sup> October 2009) had been in existence for less than three years. It is clear from the above, that LAP GreenN did not meet the first of the mandatory pre-qualification bidder selection criteria – namely the requirement to have been a telecommunications operator for not less than five years.

Furthermore, it was a requirement in the 1<sup>st</sup> prequalification criteria, that documentation in support of criteria 1 be submitted and we quote:

*“For Sole Applicant Companies:*

*(i) A copy of at least one (1) license for the Company to operate a national telecommunications network”.*

A diligent search by this Committee reveals that LAP GreenN does not own any licence to operate a national telecommunications network.

**It is the considered opinion of this Committee that LAP GreenN should have been eliminated at the pre-qualification stage as it did not meet both the five year minimum telecommunications operator requirement and the national telecommunications network licence requirement to comply with the 1<sup>st</sup> criteria in the mandatory pre-qualification.**

- ii. **2<sup>nd</sup> Criteria – Minimum 3,000,000 active subscribers in the telecommunications sector.**

**LAP GreenN had no subscribers attributable to itself, its holding company or its parent company.**

In order to attempt to satisfy this 2<sup>nd</sup> criteria, LAP GreenN relied on a percentage of subscribers proportionate to their shareholding in 4 separate companies in which LAP GreenN had equity interests namely Uganda Telecom Ltd of Uganda, Rwandatel of Rwanda, Oricel of Ivory Coast and Sonitel & Sahelcom of Niger.

**It is the considered opinion of this Committee that this is an absurd attempt at subscriber numbers engineering as for example, any shareholder in a public telecommunications company could then lay claim on a number of subscribers proportionate to their shareholding.**

In any event, even the instructions contained in the prequalification application form clearly state on page 3 that a lead member must be “capable of satisfying criteria 1 and 2 on its own”.

**LAP GreenN failed the 2<sup>nd</sup> mandatory prequalification criteria.**

- iii. **3<sup>rd</sup> criteria – Minimum US\$250 Million or more in shareholders’ equity.**

LAP GreenN attempted to satisfy this criterion through its parent company and stated that the capital of the company was US\$500 million.

However, in order to satisfy this criterion, the prequalification form requires that a sole applicant provides, and we quote “a copy of the Company’s most



recent, published accounts no older than for the accounting period including June 2008”.

This Committee highlights and quotes from page 6 of LAP GreenN’s prequalification application form:

*“We have provided our balance sheet as per draft accounts which clearly show that we have capital well above the minimum of US\$ 250 Million. Please note that the audit of our financial statements for the year ended 31 December 2008 has not been completed. We will furnish you with the audited accounts as soon as the audit is completed.”*

**Clearly, LAP GreenN had no audited accounts. LAP GreenN therefore also failed the 3<sup>rd</sup> mandatory prequalification criteria**

**Despite LAP GreenN having failed ALL THREE OF THE MANDATORY PREQUALIFICATION CRITERIA, they were allowed to proceed to the next stage of the Bidding process.**

## **5. Evaluation of bids**

### **5.1 Bidding Round**

- i. After the pre-qualification process the eight (8) bidders were invited on 23<sup>rd</sup> October, 2009 to submit their non-binding bids (offers) for the purchase of 75% percent shares in Zamtel and the closing date for the submission of their proposals was the 23<sup>rd</sup> of December, 2009 at 15.00 hours local time.
- ii. On the closing date four (4) out of the eight (8) bidders submitted their non-binding offers in the tender box at the ZDA office building and these were:
  - Altimo Holdings – Russia;
  - Bharat Sanchar Nigam Limited (BSNL) – India,
  - Lap Green Networks –Libya,
  - Unitel/Angola Cables - Angola.
- iii. On the 11<sup>th</sup> of January, 2010 the ZDA Board approved the acceptance of the four (4) offers after the due process of evaluation and therefore, all four (4) qualified to the next stage of the bidding process.

### **5.2 Comments and observations on the Altimo Holdings bid submission:**

- i. The electronic bid was received by the ZDA five (5) minutes after the closing time and therefore, the bid was late and should not have been accepted. Although

ZDA received an application from the bidder justifying that the late arrival was due to a technical fault of their internet server.

The ZDA Board accepted the appeal one week later and the Altimo Holdings bid was accepted and elevated to the next stage.

**Under normal tendering practice electronic bids are never accepted due to the possibility of technical problems. In fact, the bidders had a mandatory obligation to submit hard copies of the same, in addition to the soft copy, physically by dropping it in the tender box at the ZDA office.**

- ii. In addition to accepting the late bid from Altimo Holdings, the bid was further given an “amnesty” during the evaluation process by the evaluation team after the evaluation team noticed that the bid did not include a Capex figure. A Capex figure of US\$58million was put forward by Altimo Holdings after contact by the Evaluation Committee.

## **6. Short listed bidders/Final bids**

### **6.1 The final binding bids.**

- i. On 2<sup>nd</sup> February, 2010, solicitation documents were sent to the following firms for their final binding offers. The closing date for the submission of their bids was 12<sup>th</sup> March, 2010.
- ii. On that closing date, only three (3) bids were received from the following firms:
  - Altimo Holdings – Russia,
  - Lap Green Networks – Libya,
  - Unitel/Angola – Angola.
- iii. Bharat Sanchar Nigam Limited (BSNL) – India did not submit their bid. They had requested for an extension to the closing date which had been rejected by ZDA.
- iv. After evaluations and recommendations from the ZDA management, the ZDA board the ZDA approved the acceptance of binding bids from both Lap Green Networks and Unitel/Angola on 31<sup>st</sup> March, 2010 and authorized ZDA management to invite the 2 bidders for negotiations.
- v. The bid from Altimo Holdings was disqualified for, among other reasons, their bid being incomplete as it did not include a business plan.

The Board approved that the Altimo bid be placed in reserve, in case the Lap GreenN and Unitel bids failed at the negotiation stage.
- vi. At its approval meeting for the negotiations, the ZDA Board also approved the appointment of the negotiating team.

This Committee notes that the provisions of Section 40 (1) of the ZDA Act, provide that **“The Board shall appoint an independent negotiating team for each sale”**.

This Committee is therefore surprised by the inclusion of the following:

- a. The Attorney General – Mr. Abuydi Shonga;  
As a consequence of his membership of the ZDA Board, the Attorney General cannot be considered an independent member of the negotiating team.
- b. Director General ZDA – Mr. Andrew Chipwende;  
By virtue of his employment as Director General of ZDA, the Director General cannot be considered an independent member of the negotiating team.
- c. Transaction Advisor, RP Capital Advisors – Mr. Peter Heilner  
By virtue of their employment as consultants to ZDA, particularly since their remuneration was a percentage based fee **only** payable if a sale occurs, and therefore in their interest to conclude a sale regardless of whether the terms were favorable to GRZ or not, Mr. Peter Heilner cannot by any stretch of the imagination be considered independent.
- d. Legal Counsel, Simmons & Simmons;  
The purpose of appointing an independent negotiating team is to ensure that the negotiations are conducted in good faith and a transparent manner. Due to the strict rules regarding client confidentiality legal counsel cannot be considered independent as their professional duty lies with their client.
- e. Director of Telecommunications, Ministry of Communication and Transport – Mr. Luwani Soko.  
Prior to his appointment at MoCT, Mr. Soko was Technical Director of Zamtel.  
This Committee quotes from an email dated 21<sup>st</sup> of September 2009 from Peter Heilner to Joseph Jalasi – Special Legal Advisor to the President and copied to Andrew Chipwende – DG ZDA and Dr. Richard Chembe - Special Economic Advisor to the President:

“Luwani Soko’s move from Zamtel to MCT needs to be delayed until 21<sup>st</sup> October so he can participate in labour negotiation process (in interim he should be required to report to licensing and regulation committee)”.

Clearly, Mr. Soko, having participated in labour negotiations at ZAMTEL was not an independent member of the negotiating team.

This Committee then finds that the negotiating team appointed by the ZDA board to negotiate the sale of Zamtel was not an independent negotiating as required by Law.

## 7. The Negotiating Process

### 7.1 UNITEL – final binding bid.

**Zambia Development Agency – Memorandum To The Agency Board Paper – Authorization of Final Transaction Structure for Zamtel Privatization**

*2<sup>nd</sup> June 2010*

*Zambia Development Agency Management*

We quote from the above-captioned paper in relation to some of the criteria used by the ZDA Negotiating Team in assessing the two final bidders:

*“It should be noted that UNITEL were asked to reconsider (a) their capital expenditure programme, which the negotiating team considered excessive (at US\$ 426 million) and (b) their redundancy programme (which 67% of the workforce, was materially subordinate to LAP’s proposed 100% redundancy programme).”*

**This Committee noted with concern, that part of the final negotiation criteria that was used to the detriment UNITEL are criteria that should have worked in their favour – i.e. the retention of a larger Zambian workforce and the commitment to a greater Capex investment in the Zamtel network.**

### 7.2 LAP GreenN – Final binding bid

- i. The original LAP GreenN non-binding bid was based on a 70% staff redundancy. This Committee notes that the final binding bid allowed for 100% staff redundancy as a consequence of the negotiation process, perhaps as a result of Mr. Luwani Soko on the negotiating team.
- ii. The negotiating team conceded several incentives that were not part of the original LAP GreenN non-binding bid:
  - The inclusion of the Zesco Optic fibre Network valued at approximately US\$20M;
  - GRZ paying US\$120M (K 557,948,972,876.00) tax liabilities;
  - Operators and Service licences given for free valued at approximately US\$150 M market value;

- Spectrum allocation valued at approximately US\$150 M market value;
- Barring a 4<sup>th</sup> Mobile operator from the Zambian market;
- PSTN exclusivity.

**This effectively means that the negotiating team cost the process in excess of US\$440 M.**

### **7.3 The results of the Negotiations:**

- The negotiations started on the 11<sup>th</sup> of May, 2010 and the ZDA Board approved the selection of LAP GreenN as the successful bidder on the 2<sup>nd</sup> of June, 2010.
- The negotiations resulted in the selection of Lap Green Networks of Libya as the purchaser of 75% shares in Zamtel at a total consideration of US\$257million.
- The transaction documents were signed on 5<sup>th</sup> June, 2010.
- The completion of the transaction took place on the 10<sup>th</sup> July, 2010 with the exchange of all legal documents between parties and the purchaser paid the final balance of the purchase price.

#### **Zambia Development Agency 23<sup>rd</sup> Special Board Meeting**

*2<sup>nd</sup> June 2010*

*Zambia Development Agency Board*

We quote from the above-captioned Board Meeting in relation to some of the observations made by the Board regarding the Zamtel privatization process;

*“(i) Whether or not the Zamtel Board had seen and reviewed the sale document before it was presented to the ZDA Board.”*

*“(ii) If the Zamtel Board had reviewed the document, were the minutes of the same Board meeting available?.”*

*“(iii) Ideally the draft sale agreement should have been availed to the ZDA Board for review before being forwarded to the Attorney General for approval.*

*“(iv) In future privatizations, there ought to be regular briefings on each stage of negotiations so that the Board would be made aware of what was going on.”*

*“(v) Mrs. S. Thole requested that she be recorded as having objected to clause 6.9(i) of the Board Meeting minutes (Sale of 75% equity stake in Zamtel to Lap Green Networks for a total consideration of US\$256.5 million).”*

This Committee notes that even the ZDA Board was not wholly satisfied with the conduct of the Zamtel sale.

## 8. Zesco/Zamtel Indefeasible Right of Use Agreement

8.1 In the process of its review of the sale of Zamtel shares, this Committee came across the Indefeasible Right of Use Agreement between Zesco and Zamtel (the IRU). This Committee noted that as a consequence of the IRU, the Zesco optic fibre network was sold as part of the assets of Zamtel. This Committee interviewed Zesco senior management being Mr. Cyprian Chitundu – Managing Director, Mr. Rogers Chisambi- Director Finance, and Mr. Christopher Mubemba – Project Director Kafue Gorge and Mr. Mangalelwa Sitwala - Telecommunications Manager. Zesco senior management provided this Committee with extensive background information leading to the signing of the IRU. A brief of some of the background information documents is given herein below:

a. **Consultative Meeting between Zesco and Zamtel on the Establishment of National Optic Fibre Network Held at The Communications Authority Board Resolution on Wednesday 2<sup>nd</sup> July 2008 at 14.30hrs**

*2<sup>nd</sup> July 2008*

*Communications Authority of Zambia*

We quote from the above captioned minutes;

Page 2: *“He (CAZ Chairman) also reminded Zamtel and Zesco that their assets were public assets and also it was important that the two parties worked together towards a mutually beneficial arrangement for Zesco and Zamtel as well as for the nation.”*

*“He (CAZ Chairman) explained that a Joint Technical Committee (JTC) comprising Zesco and Zamtel had been set up in march 2008.”*

Page 4: *“The Chairman wanted to know from the two parties when the final report by the JTC would be presented for implementation. Zamtel Managing Director informed the meeting that the JTC would be able to complete the report by end of July 2008 for presentation to the respective managements and boards during August 2008. This was agreed by the Zesco Managing Director”*

This Committee notes that at this moment in time (July 2008) it was the intention of the two parties (Zamtel and Zesco) to investigate and define possible options for mutually beneficial collaboration in respect of their two, individual fibre optic networks.

**b. Minutes of a Special Meeting of The Board of Directors Held on 21<sup>st</sup> October, 2009, at the Head Office Corporate Board Room at Stand 6949 Great East Road, Lusaka, Starting at 09.30hrs**

*21<sup>st</sup> October 2009*

*Zambia Electricity Supply Corporation*

We quote from the above-captioned meeting;

Pages 1 & 2: *“He (Zesco Chairman) informed the members that he had received a letter from the Hon. Minister of Energy and Water Development which requested the Board to pass a resolution to allow the merger of Zesco and Zamtel Fibre Assets to enable the creation of a Special Purpose Vehicle entity to be created on mutually agreed terms”*

Page 3: *“The major sticking point was absolute ownership of the infrastructure. Zesco stated that the OPGW that had the fibre cable was part of the electricity infrastructure and hence it could not be co-owned. On the other hand, Zamtel wanted absolute ownership. Zesco’s position was that the partnership could be arranged in the form of long-term rights for use of the fibre or some mutual business arrangement with Zamtel.”*

Page 4: *“After extensive deliberations, the Board passed the resolution to merge the Fibre Optic assets of Zesco with Zamtel based on mutually agreed terms to be managed and operated by a separate entity.”*

**c. Minutes of a Special Meeting of The Board of Directors Held on 28<sup>th</sup> October, 2009, at the Head Office Corporate Board Room at Stand 6949 Great East Road, Lusaka, Starting at 10.00hrs**

*28<sup>th</sup> October 2009*

*Zambia Electricity Supply Corporation*

We quote from the above-captioned minutes;

Page 3: *"The Chairman informed the members that he had received a letter from the Ministry of Finance and National Planning explaining that there were new developments on the issue of how to manage the Zesco Optic Fibre. The letter was a directive from the principal shareholder and it directed among other things that Zesco should lease the existing Fibre Optic to Zamtel on a lease whose duration would be determined by Government and that Zesco should only use the Optic Fibre for its operations and the Commercial aspect would cease hence forth."*

*"The Board discussed the matter extensively and **AGREED** that this was Government Policy which the Board could not change and therefore it was **DECIDED** that the earlier resolution to merge the assets of Zesco and Zamtel and the creation of a new entity should be varied to conform with the Shareholder's directive."*

**d. Re: Indefeasible Right of Use Agreement**

*11<sup>th</sup> December 2009*

*Minister of Energy and Water Development*

We quote from the above-captioned letter, addressed to the Zesco Managing Director;

*"As agreed at the said meeting, the following aspects of the Indefeasible Rights of Use Agreement (IRU) should be implemented with immediate effect:"*

*"1. The term of the IRU shall be indefinite in line with the directive by the Minister of Finance and National Planning in the letter dated 10<sup>th</sup> November 2009 addressed to your Board of Directors"*

*"2. The revenue sharing shall be in the ratio 80 percent to 20 percent between Zamtel and Zesco, respectively. The 20 percent payable to Zesco shall be inclusive of maintenance costs of the network;"*

*"3. The provisions of the IRU Agreement shall be applicable to the existing network and all future networks to be rolled out by Zesco; and"*

*"4. The partnership between Zesco and Twignet is no longer applicable and shall be terminated with immediate effect in line with the exclusivity granted to Zamtel as per directive by the Minister of Finance and National Planning;"*



*“As agreed in today’s meeting, it is our expectation that these measures are implemented with immediate effect and an appropriate contract should be subsequently signed with Zamtel Limited immediately.”*

**e. Indefeasible Right of Use Agreement Between Zambia Telecommunications Company Limited and Zesco Limited**

*17<sup>th</sup> December 2009*

*Zambia Electricity Supply Corporation*

Some of the salient clauses in the above-captioned Agreement are;

- *Zamtel’s purchase of the Zesco dark fibre, including all future optic fibre network or networks rolled out by Zesco extensions*
- *Zesco shall use its existing and all future network expansions only for the purpose of power generation activities*
- *Zesco shall not “light” any of the Zesco Dark Fibres*
- *Zamtel shall be the sole and exclusive customer of Zesco and the Zesco network in relation to the provision of fibre optic services*
- *Zesco shall not, during the term of the Agreement, grant any other entity whatsoever (in particular to Twignet BV) rights in respect of Zesco Network, any Zesco Extensions.*
- *Zesco further agrees that during the term of the Agreement it shall not allow any other entity whatsoever to build optic fibre and operate/use optic fibre services on the power transmission distribution infrastructure of Zesco.*
- *The IRU Price payable to Zesco shall be a percentage share of the Zamtel Revenue relating to Leased Line Services only in accordance with the calculation and percentage set out in paragraph 32.2*
- *Paragraph 32.2: Subject to the criteria set out in paragraph 1.4 below, the Zamtel Revenue shall be shared between the parties as follows: 80% for Zamtel, and 20% for Zesco.*

8.2 The Zesco Managing Director informed this Committee that throughout the above process Zesco’s intention was to collaborate with Zamtel and not dispose of their optic fibre network. Zesco had already invested in excess of US\$ 20,000,000.00 on the project. He also advised that Zesco had plans to expand their optic fibre network into Tanzania and the region. To this end, Zesco had entered into a MoU with Twiganet BV on the 2<sup>nd</sup> of October 2009. Zesco and

- Twiganet BV had jointly invested in excess of US\$2,000,000.00 into the feasibility study.
- 8.3 In fact, prior to 28<sup>th</sup> October 2009, Zesco was already earning in excess of US\$6,000,000.00 annually from its optic fibre network. Zesco board and management were therefore reluctant to divest their asset to Zamtel at no consideration and the board only capitulated due to the directive issued by the Ministry of Finance and National planning as recorded in the Minutes of a Special Meeting of The Board of Directors Held on 28<sup>th</sup> October, 2009.
- 8.4 However, in accepting the shareholder's directive, the Zesco board instructed the Company secretary to address the law and the Articles of Association and "*directed Management to propose how the lease should be structured*".
- 8.5 The Zesco Managing Director was presented with the draft IRU by ZDA. His management team made amendments to the draft and returned the same to ZDA.
- 8.6 The Zesco Managing Director was summoned to State House where he met with Dr. Richard Chembe - Economic Advisor to the President and Mr. Joseph Jalasi - Legal Advisor to the President. He was subjected to immense pressure by Dr. Chembe who said that he was delaying the process and would not be confirmed in his position.
- 8.7 On the 17<sup>th</sup> of December 2009, while he was in Egypt, The Zesco Managing Director was instructed to sign the signature page of the IRU which was faxed to him and which he signed and faxed back.
- 8.8 On the 28<sup>th</sup> of January 2010, the Zesco board approved the IRU and the Zesco Managing Director's contract was terminated.

**Minutes of a Special Meeting of The Board of Directors Held on 28<sup>th</sup> January, 2010, at the Head Office Corporate Board Room at Stand 6949 Great East Road, Lusaka, Starting at 16.00hrs**

*28<sup>th</sup> January 2010  
Zambia Electricity Supply Corporation*

*Page 2: "Management informed the Board that Zamtel had written Zesco requesting that a specific resolution authorizing Zesco to sign the IRU should be provided as required by clause 2(1) of the IRU Agreement. This resolution was important as it formed part of the conditions precedent to the Agreement. Zamtel argued that the earlier resolution passed by the Board*

*was too general and was passed earlier than the signing of the Agreement and therefore did not conform to clause 2(1) of the Agreement.”*

*“The Board was therefore requested to pass a resolution allowing Zesco to sign the IRU with Zamtel”*

- 8.9 **Having reviewed the background to and the sequence of events that led to the signing of the IRU between Zamtel and Zesco, it is patently clear that Zesco only signed the IRU whilst under the greatest of pressure and duress from GRZ.**

**The IRU document is clearly and ridiculously skewed in favor of Zamtel and is totally detrimental to Zesco. The implementation of the IRU would result in a marked decrease in the competitive nature of the optical fibre market in Zambia, as Zesco the largest possible competitor to Zamtel would be, at a stroke, removed from the market and Zamtel would become the sole and dominant carrier-of-carriers optical fibre network player.**

**The optical fibre network assets of Zesco have, in the IRU Agreement, been expropriated (with no consideration whatsoever) and handed over to a company that was soon to pass into a majority private shareholding. The great benefits of such an expropriation for the recipient are clear.**

**It is important to note that just as none of Zamtel’s assets were not valued, the Zesco optic fibre network was also not valued despite its acquisition by Zamtel resulting in a substantial increase in both its asset value and potential earning value.**

- 8.10 **This Committee is concerned to note that the acquisition by Zamtel of the rights granted under the IRU were acquired after the invitation for expressions of interest were sent out on the 15<sup>th</sup> of September 2009.**

**In fact, the Solicitor General only having approved the draft on the 11<sup>th</sup> of December 2009, and the IRU being signed on the 17<sup>th</sup> of December 2009, the IRU was only signed 5 days prior to the closing date for receipt of non-binding bids which was 23<sup>rd</sup> December 2009.**

**The IRU represents a significant change in the value of Zamtel assets as well as its future potential earnings and therefore the attractiveness of Zamtel to potential bidders.**

This Committee sees no evidence that this alteration in the “fortunes” of Zamtel was ever formally communicated to all the bidders. It is this Committee’s considered opinion that had all the bidders been given this new and important information it would all likelihood resulted in a change in the Capex figures as well as their overall bid price.

- 8.11 This amounted to unfair practice and a blatant lack of transparency on the part of ZDA and their transaction Advisors.
- 8.12 This Committee places on record that in the interview with the Managing Director of Zamtel -Mr. Han Paulsen, actually informed this Committee that he had seen the IRU in the virtual data room and that ability to provide data services using the optical fibre network was a significant component of LAP GreenN’s business plan.
- 8.13 As a post script the Committee places on record that they also interviewed the former Zamtel Managing Director – Mr. Mukela Muyunda. Mr. Muyunda was of the opinion that the IRU would result in greater financial benefits to Zesco as opposed to Zamtel. This would be in spite of the revenue being split 80 – 20 in favor of Zamtel and Zesco being responsible for all future Capex and Opex. This Committee did not find Mr. Muyunda’s statement at all credible.

## **9. Government of the Republic of Zambia ZAMTEL shareholding**

### **Investment Promotion and Protection Agreement – Between GRZ and ZDA and ZAMTEL – Relating to The Zamtel Turnaround Projects**

*10<sup>th</sup> July 2010*

*Zambia Development Agency*

We quote from the above captioned Agreement;

*“Page 23: Subscription Shares – GRZ subscribes for Tax shares amounting to the Zamtel Tax Liability”*

*“GRZ subscribes for additional shares to the value of the Potential Pensions Deficit (US\$ 20 million), Potential Employee Redundancy Liability (US\$97.7 million) and the Chinese Loan Amount (US\$ 32.7 million)”*

**The above quotation is also replicated in the Shareholders Agreement dated the 5<sup>th</sup> of June 2010. The IPPA and the Share holders Agreement both indicate that the**

GRZ Tax Shares will be derived from the Zamtel Tax Liability. The Outstanding Tax Liability as at 30<sup>th</sup> April 2010 according to the information in the ZDA virtual data room was US\$ 120 M (ZMK 545,233,958,959.82.) The amount paid by GRZ in July 2010 to clear all Zamtel tax liabilities was K 557,948,972,876.00. This amount represents the GRZ tax shares.

The total of the Potential Pensions Deficit (US\$ 20 million), Potential Employee Redundancy Liability (US\$97.7 million) and the Chinese Loan Amount (US\$ 32.7 million). The Total of these amounts being US\$150.4 Million represents the value of GRZ additional shares.

The Share sale and Purchase Agreement dated the 5<sup>th</sup> of June 2010 states:

*“Completion is conditional upon*

*(G) the Vendor subscribing for (and the Company duly allotting and issuing):*

*(1) the Tax Shares in consideration for an amount equal to the Tax Amount; and*

*(2) the Investment Shares in consideration for an undertaking by the Vendor to pay or procure to the Company of an amount equal to the Subscription Amount.”*

*Tax Amount is defined as “...an amount equal to the liability of the Company to make a payment of or in respect of Tax...”*

*“Subscription Amount is defined as “... the aggregate of the Actual Redundancy Liability Amount, the Actual Pensions Deficit Liability, the Chinese Loan Amount, the Initial Equity Amount and the Escrow Costs.”*

**The amount paid by GRZ for tax shares was US\$120M (K 557,948,972,876.00).**

**The amount paid by GRZ for investment shares was US\$214.45 M.**

**GRZ effectively paid Zamtel US\$334.45 M to retain 100% of its shareholding in Zamtel immediately prior to privatization.**

## **10. Disbursement of Proceeds**

**Ministerial Statement by Hon. Felix C. Mutati, MP, Minister of Commerce, Trade and Industry, on The Privatization of Zambia Telecommunications Company Limited (Zamtel) to LAP Green Networks**

*July 2010*

*Ministry of Commerce, Trade & Industry*

We quote from the above-captioned Ministerial statement:

Page 25: “V) Payment of US\$ 42.6 Million as proceeds to the Government”

This Committee held extensive interviews with the accounting department staff at the Zambia Development Agency – in particular Mr. Phiri (Chief Accountant). To date, the breakdown of expenditure, in respect of the US\$ 42.6 million is summarized as follows:

<b>Expenditure Breakdown of Govt Proceeds of</b>	<b>\$42,600,000</b>	
RP Capital Partners	\$12,689,759.03	43.31%
Net Cash GRZ Proceeds (MoFNP)	\$15,000,000.00	51.19%
Legal Fees	\$702,296.33	2.40%
Zamtel Staff Incentives	\$85,926.59	0.29%
ZDA/Zamtel Staff Incentives and Overtime	\$307,462.73	1.05%
ZPA Negotiating Team	\$65,797.25	0.22%
Zamtel Staff Training	\$192,907.51	0.66%
Adverts	\$87,468.98	0.30%
Grant Thornton Consultants - Financial	\$94,859.14	0.32%
ZDA Zamtel Assets	\$46,388.08	0.16%
Bank Charges	\$8,304.28	0.03%
Other Zamtel Related Payments	\$19,473.60	0.07%
<b>Total Expenditure</b>	<b>\$29,300,643.52</b>	<b>100.00%</b>

<b>Balance of Funds due to GRZ</b>	<b>\$13,299,356.48</b>
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This Committee noted, with great concern, that from the total amount due to GRZ from the proceeds of the Zamtel sale, **GRZ has to date, only received US\$ 15 million** (51.2%). **RP Capital Advisors, on the other hand, received a similar amount of US\$ 12.7 million** (43.3%)!

This Committee noted that the Agreement appointing RP Capital as transaction advisors provided in clause 6.4 (a) that “the price payable in foreign currency is the higher of: (i) USD 2,000,000; and (b) 5% of the Transaction Value”. Transaction Value is defined as “ .. the amount .. which shall be received by either (i) ZAMTEL; or (ii) the Republic of Zambia, ...”.

From the US\$ 257M consideration price, US\$97M was paid in redundancies, US\$20M was paid in Pension deficits and US\$32M was paid to the Chinese banks. GRZ effectively US\$75.3M. RP Capital therefore ought to have received 5% of this amount being US\$3.77M.

This Committee questioned the ZDA Chief Accountant on why a sum of US\$12.7M was paid to RP Capital. He advised this Committee that in fact he had also queried the payment but was instructed to pay the US\$12.7M.

We also highlight some of the additional expenditure that has accrued on the US\$42.6 million, such as payments made to Zamtel staff as Incentive payments.

This Committee was unable to establish, or ascertain with any measure of certainty, from the ZDA accounts staff, whether the remaining balance of US\$13.3 million is fully accounted for and available from the ZDA bank accounts.

**This Committee noted with concern that GRZ have to date, only received the sum of US\$15 million as proceeds for the sale of Zamtel. We further noted that the balance of the proceeds (US\$ 13.3 million) have to date not been remitted to GRZ and may continue to be whittled away at ZDA over the coming months and years.**

#### **11. UN Resolutions and Sanctions on Libya**

11.1 Early in 2011, the United Nations imposed sanctions freezing the assets of listed individuals and entities. The Libyan Investment Authority which is the holding company of LAP GreenN was named as an entity on this list.

11.2 This Committee conducted interviews with the Zamtel Legal Counsel Miss Selina Luwisha, ZDA Director General, Mr. Andrew Chipwende and Mr. Dominic Sichinga in his capacity as Director of ZAMTEL on the UN Resolutions and Sanctions imposed on Libya.

11.3 **Ms. Luwisha declined to provide this Committee with any information post-privatisation.**

11.4 **Mr. Chipwende advised this Committee that in fact the UN sanctions applicable to Zamtel had been lifted** and undertook to send the Committee a letter to confirm the same. To date this letter has not been received by this Committee.

11.5 In a telephone conversation on speaker, Mr. Sichinga advised this Committee that in order to comply with the UN sanctions the following steps were taken:

1. **Mr. Hans Paulsen** resigned as an employee of LAP GreenN and **was employed by ZAMTEL in order to comply with the directive relating to direct or indirect control.**
2. Donald Nyakairu resigned from LAP GreenN and became an employee of Uganda Telecommunications Limited also in order to comply with the directive relating to direct or indirect control.

3. Abdulbasset El-Azzabi has never attended any Board Meetings since the UN Sanctions.
4. Dominic Sichinga is now the Chairman of the Board.

11.6 The Committee notes however, that in his interview with this Committee Mr. Paulsen informed this Committee that he is and has always being an employee of LAP GreenN and not ZAMTEL. He also confirmed this in a letter dated the 22<sup>nd</sup> October 2011 addressed to the Chairperson of this Committee and copied to LAP GreenN Head Office, and we quote:

*"22 October 2011*

*The Chairperson*

*Technical Committee-Investigation on the  
Sale of Zamtel*

*RE: INVESTIGATION ON THE SALE OF ZAMTEL*

*7. SECONDMENT AGREEMENT*

*Pursuant to the secondment agreement signed between LAP GreenN and Zamtel, LAP GreenN is entitled to second up to 8 members of staff. Currently, 6 members of staff have been seconded to Zamtel.*

*The value of the contract is USD 20,000.00 net for senior executive management positions and USD 15,000.00 net for seconded managers including other benefits."*

We also quote the LAP GreenN official website which lists Mr. Hans Paulsen as the LAP GreenN Group Chief Commercial Officer.

11.7 This Committee notes that Mr. Paulsen's statement and the official LAP GreenN website contradict the UN Resolution guidelines regarding direct and indirect control of listed entities that were given to Zambia through the response letter dated 2<sup>nd</sup> August 2011, REF: S/AC.52/2011/OC.03, to H.E. Mr. Lazarous Kapambwe, Permanent Representative of Zambia to the UN, letter dated 2<sup>nd</sup> June 2011 which sought the UN Committee's guidance in connection with the scope and application of the freeze measure.

We quote Paragraph clauses 1 - 3 of the response letter



1. *“That e.g. based on a thorough review of credible and substantial information, the Member State has determined a listed entity can reasonably be expected not to exercise or not be able to exercise control, directly or indirectly, over an entity in question;*
2. *That the Member State imposes strict safeguards to reasonably ensure that any funds, financial assets or economic resources are prevented from being made available by Member States or by individual or entities within their territories, to or for the benefit of the individuals or entities listed in Annex II of the resolution 1970 (2011), or Annex II of resolution 1973 (2011), or designated by the committee; and,*
3. *That, pursuant to paragraph 24 (g) resolution 1970 (2011), the Member State provides the Committee with information about the measures taken, for example with detailed information regarding the circumstances of its case, including the Member State’s determinations associated with the case, the procedures used to reach those determinations and safeguards imposed on the entity consistent with the conditions above.*

*With respect to the situation raised in your letter of 2<sup>nd</sup> June 2011 concerning Zambia Telecommunications Limited (Zamtel), the committee notes Zambia’s determination that these three conditions have been met.*

*Consistent with paragraph 24 (g) of resolution 1970 (2011), the Committee expects Zambia to update the Committee on the steps they are taking to ensure the above conditions continue to be effective in case of any changes.”*

11.8 This Committee further notes that RP Capital through Mr. Peter Heilner on **6<sup>th</sup> May, 2011** over a year after their role as Transaction Advisors had ended, did write an email directly to Mr. Hans Paulsen copied to Mr. Joseph Jalasi, Mr. Andrew Chipwende and Nick Foggin (RP Capital) advising them on what steps to take with regards to the UN Resolutions and we quote the email and its attachment.

*“Email From Peter Heilner.*

*From: **Peter Heilner** <heilner@rpcapitaladvisors.com>*

*Sent: **06 May 2011** 19:50*

*To: 'Hans.Paulsen@zamtel.co.zm'*

Cc: '[jjalasi@zainzm.blackberry.com](mailto:jjalasi@zainzm.blackberry.com)'; **Andrew Chipwende**; Nick Foggin; Peter Nemeth  
Subject: Zamtel - UN Resolutions  
Attachments: 110506\_ZAMTEL STEPS UN RESOLUTIONS.docx

Hans,

**Further to our discussions today and our previous email communication on the affidavit**, please find attached a brief document which describes the course of action that we feel is most appropriate in order to comply fully with the UN sanctions and ensure that the operations and legal agreements governing the direction of the company are not contradicted. Please note that this does not constitute legal advice and the attached should be reviewed by your general counsel.

In summary we believe that following key actions should be taken in the following order:

- 1) You and the members of the management team who were previously on secondment from LAP should sign the affidavit with the terms outlined in the attached
- 2) The LAP directors (Elazabi and Donald) should sign agreements to appoint alternate directors in their place in order to ensure compliance with the sanctions and undertake not to recall such alternaties until the relevant sanctions have been lifted. Agreements to be counter signed by alternates, the names of whom will be provided by GRZ (ideally this coming Monday)
- 3) A board meeting should be held where a resolution is passed confirming the appointment of the alternative directors (as is required under the Companies Act), acknowledging the affidavits signed by the management, re-confirming the appointments of the management team, and acknowledging the other measures put in place by the GRZ in order to comply with UN Resolutions
- 4) An announcement be made to the public by the GRZ (through ministerial statement or otherwise) outlining the new board composition and making clear the steps taken by the government in order to comply with the sanctions and further highlight that there should be no impediment to Zamtel proceeding in the ordinary course of business

We believe these actions should help put the operational issues and the public relations issues behind the company and allow Zamtel to continue to meet its turnaround goals

Please let us know if any of the above or attached is unclear or if there is anything else we can do to be of assistance in this respect.

Best regards,  
Peter

Attachment: \_110506\_ZAMTEL STEPS UN RESOLUTIONS.docx

### **ZAMTEL**

There are three key legal documents governing the composition of the board of directors in Zamtel, namely:

- *The Shareholders' Agreement, entered into at the time of the privatization transaction;*
- *The Articles of Association of Zamtel;*
- *Companies Act of the Republic of Zambia.*

These documents set the legal perimeter within which to accommodate measures in support of the Government's steps to respect UN Security Council Resolutions 1970 and 1973. The steps set out below are Zamtel-specific; in other words, they are actions that Zamtel could take independent of the actions of the Government or any other body. They should allow Zamtel to reconstitute its Board of Directors in a manner that respects Zambian Law as it pertains to the situation, and the legal documents which describe Zamtel's activities.

### **PROCESS OVERVIEW / CONTENTS**

The continued participation of two LAP-appointed Zamtel Board Members is considered to be contrary to complete compliance with the above UN Security Council Resolutions, namely Abdulbasset El-Azzabi and Donald Nyakairu. The most effective and simple solution seems to be as follows:

(i) With the cooperation of Abdulbasset El-Azzabi and Donald Nyakairu, acting under Section 65 of the Articles of Association of Zamtel and Section 213 of the Companies Act, both of the above could appoint an Alternate Director, until such time the sanctions under the UN Resolutions are lifted.

Alternate Director Appointments will have to be delivered to Zamtel and signed by Mr El-Azzabi and Mr Nyakairu respectively, on one side and their Alternate Directors on the other (the latter to be nominated by the GRZ). The Alternate Director Appointments should state the following:

- *Unconditional appointment of the Alternate Director by the relevant director (Mr El-Azzabi/ Mr Nyakairu) in accordance with Section 65 of the Articles of*

*Association and Section 213 of the Companies Act. In line with laws of the Companies Act each has to appoint a different alternate;*

- *Acceptance of the appointment by the relevant Alternate Director;*
- *Appointment made upon request of the Directors with the view of implementation of the UN Resolutions and compliance with the laws;*
- *Appointment valid until such time the sanctions under the UN Resolutions are lifted (as for timing of appointment under subsection (A) of section 213 of the Companies Act;*
- *In line with Subsection (B) of section 213 all the other Directors (including the Directors making the appointment of the Alternate Directors) need to countersign the appointment and give their consent;*
- *Both Mr El-Azzabi and Mr Nyakairu would give their commitment not to recall the appointment until such time the sanctions under the UN Resolutions are lifted; and*
- *Request from both Mr El-Azzabi and Mr Nyakairu to be kept informed of the activities of the board of directors of Zamtel.*

*(ii) Following the delivery of the Alternate Director Appointments, the Board of Directors of Zamtel would convene, and invite the two new Alternate Directors as well as Mr El-Azzabi and Mr Nyakairu, based on their request.*

#### **BOARD RESOLUTION KEY POINTS**

1. **Quorum –**
  - a. *It was noted that the meeting had been duly convened and that a quorum was present;*
  - b. *Further note of the presence of Mr El-Azzabi and Mr Nyakairu*
2. **Background –**
  - a. *UN Security Council Resolutions 1970 and 1973 continue to be enforced internationally and in the Republic of Zambia;*
  - b. *Zambian government has frozen the assets of LAP Green N in Zambia – no sale of shares will be permitted, and no dividend payments will be made;*
  - c. *The Board of Directors of Zamtel believes that it is in the best interests of Zamtel, and its continued turnaround, to voluntarily take additional*

*steps to ensure compliance with the UN Security Council Resolutions for as long as they are in place*

**3. Resolutions –**

- a. *The Board of Directors of Zamtel takes note and appreciates the appointments of Alternate Directors (Mr X and MR Y) by Mr El-Azzabi and Mr Nyakairu respectively;*
- b. *Based on the request of Mr El-Azzabi and Mr Nyakairu resolves to allow them to attend future Board meetings of Zamtel only in the capacity of observers, until such time as the UN Security Council Resolutions are lifted;*
- c. *The board resolves that any and all dividend payments and payments liquidation proceeds to shareholders, in particular LAP Green N will be suspended until such time as the UN Security Council Resolutions 1970 and 1973 are lifted;*
- d. *Payments of any form whatsoever to LAP Green N or its affiliates (excluding Zamtel or its subsidiaries) shall be suspended until such time as the UN Security Council Resolutions 1970 and 1973 are lifted.*
- e. *The Board of Directors acknowledges that an affidavit has been signed by Mr Hans Paulsen, in his capacity as Chief Executive Officer of Zamtel, stating that:*
  - i. *He is an employee of Zamtel, and Zamtel only, with responsibility only to the Zamtel Board of Directors*
  - ii. *Has no contract with LAP Green N*
  - iii. *Receives no remuneration from LAP Green N*
  - iv. *Is in no way linked to, or in receipt of instructions from, the regime in Libya*
  - v. *There are no employees of Zamtel who are conflicted through contracts or relationships with LAP Green N or the Libyan Government or any of the other entities covered by UN Security Council Resolutions 1970 and 1973*
- f. *The Board of Directors also acknowledges that a similar affidavit has been signed by all members of the management team of Zamtel who were previously on secondment from LAP Green N*
- g. *The Board of Directors hereby confirms the appointment, on contract to Zamtel, of all members of the management team of Zamtel, to Zamtel.*

**4. Conclusions –**

- a. *There being no further business, the meeting then concluded and the secretary was instructed to make the appropriate filings in the Company's statutory books.*

*It is important to note that these are measures of voluntary compliance with UN Resolutions offered to the GRZ by Zamtel and its majority shareholder (and their representatives). Provided that any breaches occur, GRZ may proceed in enforcing UN Resolutions by adopting administrative actions."*

- 11.9 This Committee cannot see any justification whatsoever for Mr. Heilner who was a consultant for ZDA to be providing advice to a LAP GreenN employee on a matter concerning sanctions imposed by the UN on the holding company of the same LAP GreenN.
- 11.10 This Committee also notes that contrary to Mr. Sichinga's claims, the Zamtel Managing Director, Mr Hans Paulsen still holds himself out as being a LAP GreenN employee.
- 11.11 **This in effect can be construed to be a contravention of the UN sanctions that Zambia has committed to complying with. Moreover the continued control of the Zamtel board can also be construed to be in direct contravention of the UN sanctions.**

## **12. Conclusion**

The terms of reference for this Committee were:

### **1. To determine how the sale of Zamtel was conducted.**

This Committee categorically and unequivocally states that our investigation clearly found that the manner in which the Zamtel sale was conducted was as follows:

- a. Driven by an unreasonable sense of urgency and haste with no consideration nor regard for normal and expected deliberations, consultations and reviews. It was set to an inflexible time schedule at the cost of a common sense approach following well established procedures.
- b. This Committee has uncovered numerous email correspondence from RP Capital's Peter Heilner issuing directives to high ranking and senior GRZ, ZDA and Zamtel officials, set timetables and tasks, drafted Ministerial and even Presidential speeches and letters and orchestrated the deployment of personnel to strategic positions and departments.

It is clear that from the outset, RP Capital through Peter Heilner single handedly planned, managed, drove, controlled and executed the entire process. The GRZ, ZDA, ZICTA, State House staff, Zamtel and all other such

were reduced to the role of mere spectators with little or no input and control over the process.

Examples of the extent of Peter Heilner's control and manipulation over the process are appended hereto as Appendix IV.

**2. To ascertain whether all the required procedures relating to the sale were complied with.**

This Committee can state with authority that all the procedures relating to the sale were **not** complied with. Of particular note however, are the following:

- a. The arbitrary appointment of RP Capital Partners Cayman Islands by Dora Siliya for the valuation of Zamtel assets with no thought given to their terms of reference.
- b. Whether the direct selection of RP Capital Advisors as Transaction Advisors by ZDA was based on Mr. Chipwende's assertion to ZPPA that they had previously executed a related assignment to the satisfaction of ZDA board (which was at best misleading), or as he stated to this Committee that RP Capital refused to hand over their valuation report unless they were appointed Transaction Advisors, their appointment was at the very least highly irregular. Neither of the above reasons advanced can form the basis for appointment of an unknown and unproven consultant for such an important assignment.
- c. The decision by Cabinet to sell Zamtel was made without an asset valuation report.
- d. LAP GreenN ought to have been disqualified at the pre qualification stage.
- e. The negotiating team was not independent as required by Law.

The sale was fraught with irregularities in the tender processes, coercion in the acquisition of Zesco's assets, bad faith with the selection criteria, negligence in the management of the account of GRZ net proceeds and a failure to monitor post-privatization.

Dated the 2<sup>nd</sup> day of November 2011.

**Appendix I**

**Timeline and Sequence of events**

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## **ZAMTEL SALE - TECHNICAL COMMITTEE TIMELINE**

<b>Date</b>	<b>Issue</b>	<b>Type</b>	<b>Activity</b>	<b>Comments</b>
May 2008	RP Capital Partners	Tribunal Report	PS MoCT recalls a tender in respect of RP Capital	The committee unable to find any evidence of this tender
2008	RP Capital Partners	Tribunal Report	GRZ requested MoCT assist in restructuring of Zamtel	
2008	RP Capital Partners	Tribunal Report	MoCT was to assist by way of Management Development Division/Cabinet Office	
	RP Capital Partners	Tribunal Report	MoCT requested Management Development Division to approve the request	
	RP Capital Partners	Tribunal Report	PS was advised by subordinates that MoU was initiated by Ministers office	
	RP Capital Partners	Tribunal Report	PS was of the impression that the Minister wanted someone other than MDD to carry out restructuring	
August 2008	RP Capital Partners	Tribunal Report	RP Capital Partners Ltd. and others made their first visit MoCT to express an interest in purchase of Zamtel	

August 2008	RP Capital Partners	Tribunal Report	Minister wrote to MoFNP and MoComm regarding MoU authorization	No response was received from either ministry. Minister however claims that she received non-written authorization to go ahead
September 2008	RP Capital Partners	Tribunal Report	RP Capital Partners Ltd made their second visit MoCT to express an interest in undertaking the valuation of Zamtel assets	RP Capital Partners are claimed to have submitted a dossier of themselves - the committee are unable to trace this dossier at MoCT
September 2008	RP Capital Partners	Tribunal Report	MoCT officials examined the RP Capital Partners dossier and satisfied themselves and recommended RP Capital Partners Ltd to the Minister	The committee was unable to find any documentary evidence of the findings, and/or recommendations by MoCT officials to the Minister
Wednesday, November 19, 2008	RP Capital Partners	MoCT Internal Memo	The MoCT Director of Communications wrote to the Minister MoCT advising against proceeding with the signing of an MoU with Capital Partners unless a number actions were undertaken	This MoCT DoC's Internal Memo to the Minister is in direct contrast to her claims to the Tribunal that her staff had endorsed the engagement of RP Capital Partners
Friday, November 21, 2008	RP Capital Partners	Tribunal Report	Legal opinion from AG's chambers (Acting Principle Counsel) to PS MoTC requesting changes to draft	MoU could only be executed if all requested changes to MoU were made by MoCT

			MoU	
Monday, December 22, 2008	RP Capital Partners	Tribunal Report	RP Capital/MoCT 1st MoU signed by Minister/ZDA	This 1st MoU was not signed by ZDA, despite having a place for their signature
Monday, December 22, 2008	RP Capital Partners	MoCT	MoCT and RP Capital Partners signed the final version of the MoU	ZDA were also signatories to the final MoU
Tuesday, December 23, 2008	RP Capital Partners	MoCT Letter	Letter by Minister MoCT outlining Terms of Reference for RP Capital Partners	
Tuesday, November 25, 2008	RP Capital Partners	Tribunal Report	Solicitor General sent a follow-up advise to PS regarding necessary changes to MoU	MoU could only be executed if all requested changes to MoU were made
	RP Capital Partners	Tribunal Report	PS wrote an internal memo to Minister highlighting the Attorney Generals concerns on proposed MoU	

Friday, December 26, 2008	RP Capital Partners	Tribunal Report	AG representative on the ZDA Board informed the AG that at the Board Meeting of 26th Dec. 2008, the Board of Directors expressed very serious reservations regarding the MoU which they were being called upon by the MoCT to sign	ZDA Board unanimously rejected the proposed draft MoU
Sunday, December 26, 2010	RP Capital Partners	ZDA Management	Letter by ZDA CEO to PS MoCT advising that MoU can only go ahead if amended to comply with the ZDA Act as well as define the role of ZDA	
	RP Capital Partners	Tribunal Report	Minister wrote to Director Planning instructing him to proceed with preparation of MoU	

Friday, December 26, 2008	RP Capital Partners	ZDA Board Meeting	Urgent Board Meeting (less than 14 days notice) in order to table RP Capital Partners MoU. The MoU was presented in its entirety and discussed at great length by the Board. The following salient observations were made by the Board; - manner in which consultants were engaged did not appear to be transparent; not clear whether tender procedures were followed; ZDA Board was not consulted and only brought in at tail-end of transaction; MoFNP should be responsible for executing the MoU; the draft MoU was legally binding; no detailed scope-of-works; role of ZDA not clear; ZDA could not be a party to MoU as an after-thought; people involved with the consultants were not known; consultants ToR's not clear; MoCT to hand over to ZDA;	The Board AGREED that the MoU could be signed subject to the concerns of ZDA being addressed and for the process to be undertaken in accordance with the ZDA Act No. 11 of 2006
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Monday, January 05, 2009	RP Capital Partners	Tribunal Report	AG wrote a legal opinion to PS MoCT regarding the MoU declaring the MoU a nullity unless the processes as outlined in his letter were followed in full	AG declared the MoU as null and void
	RP Capital Partners	Tribunal Report	PS did not know that the MoU had already been signed at this stage	
	RP Capital Partners	Tribunal Report	PS phoned AG for advise as to whether the parties could proceed with MoU - AG responded that his earlier ruling regarding the nullity of the MoU was still in force	
	RP Capital Partners	Tribunal Report	PS said the MoU did not at any stage come through the Ministry's Procurement Committee	
Friday, January 09, 2009	RP Capital Partners	Tribunal Report	RP Capital/MoCT 2nd MoU signed by Minister/ZPA	Minister claims that this MoU took into full account all the issues/concerns raised by the AG. This was not the case.

Friday, February 13, 2009	RP Capital Partners	Ministerial Statement MoCT Minister	Minister stated the following - SG's issues raised were fully addressed and included in MoU; AG's guidance on the MoU had not been ignored and would be taken into account; the MoU was not legally binding but merely an expression of interest;	The committee found the Ministerial statements made to Parliament both incorrect and grossly misleading
Wednesday, March 25, 2009	RP Capital Partners	MoCT Letter	MoCT Letter by PS to RP Capital Group advising them to suspend MoU related activities in view of the on-going tribunal until further notice	A hand-written note by the Minister instructed the PS to the letter as a matter of urgency and to proceed RP Capital to continue with the assignment as per MoU as GRZ had not cancelled the MoU
Wednesday, April 01, 2009	RP Capital Partners	MoCT Email to RPC	Email from PS MoCT to RP Capital advising them to continue as per MoU	
Thursday, August 27, 2009	RP Capital Advisers	ZPPA Letter	ZPPA wrote to ZDA granting them a waiver from open selection to direct selection and requesting an electronic copy of the Request for Proposal document for review and invitation of consultant	

Friday, September 11, 2009	RP Capital Advisers	ZPPA Letter	Proposals received by ZPPA and sent to ZDA for evaluation of Technical Proposal
Monday, September 14, 2009	RP Capital Advisers	ZDA Letter	ZDA submits technical evaluation report to ZPPA for approval - qualifying RP Capital Advisers
Monday, September 14, 2009	RP Capital Advisers	ZPPA Letter	ZPPA approves the technical evaluation report and invites ZDA and RP Capital to attend opening of financial proposal. Opening took place at 15.30hrs. Thereafter, sent financial proposal to ZDA for a combined technical/financial evaluation
Monday, September 14, 2009	RP Capital Advisers	ZDA Letter	ZDA reports back to ZPPA with a combined technical/financial evaluation report seeking approval for the award of contract



Monday, September 14, 2009	RP Capital Advisers		ZPPA at its sitting at 21.00hrs approved the award of contract to RP Capital Advisers	The committee noted with concern that the contract was awarded without any recourse to negotiations in respect of terms of reference, deliverables, methodology, approach, etc. In addition, it appears that the contract was not reviewed by the AG prior to execution.
Tuesday, September 15, 2009	RP Capital Advisers		Contract signed between RP Capital Partners and ZDA - copy of contract sent to ZPPA on the same day	
Sunday, October 18, 2009	RP Capital Partners	ZPA Letter	ZPA wrote to ZDA seeking authority to engage RP Capital Partners	
Monday, October 19, 2009	RP Capital Advisers	ZDA Letter	ZDA wrote a follow-up letter to ZPPA providing additional information for the waiver	
Tuesday, October 27, 2009	RP Capital Advisers	ZPPA Letter	Waiver granted to ZDA by ZPPA	

Thursday, November 26, 2009	Simmons & Simmons	ZDA Letter	ZDA write to ZPPA asking to process a limited selection tender for the provision of legal advisory services. Five firms were invited to submit proposals	
Monday, December 28, 2009	Simmons & Simmons	ZPPA Letter	Tender closed and only two firms submitted proposals - Simmon & Simmon and Paul Hastings	
Wednesday, December 30, 2009	Simmons & Simmons	ZDA Letter	Technical Evaluation Report submitted to ZPPA by ZDA and a request was made to open the financial proposal	
Wednesday, December 30, 2009	Simmons & Simmons		Combined Technical & Financial Proposals evaluated by ZDA and report submitted to ZPPA seeking approval for the award of contract	

Wednesday, January 06, 2010	Simmons & Simmons	ZPPA Letter	ZPPA Central Tender Committee wrote to ZDA advising that their application had been deferred due to; under Zambia Legal Practitioners cannot participate in tenders; ZDA did not provide a breakdown of legal services to be provided; ZPPA advised ZDA to seek a legal opinion from the AG
Thursday, January 07, 2010	Simmons & Simmons	ZDA Letter	ZDA wrote to ZPPA requesting for an approval to single-source Simmons & Simmons to provide legal services for the sale of Zamtel
Thursday, January 07, 2010	Simmons & Simmons	ZDA Letter	ZPPA Central Tender Committee wrote to ZDA advising that at a meeting held on the 7th Jan. 2010 at 14.30hrs, the ZDA application had been approved and they had been granted authority to award the contract for the provision of legal services to Simmons & Simmons

Thursday, January 07, 2010	Simmons & Simmons		ZPPA grants authority to award the contract to Simmons & Simmons at a cost of US\$ 660,000	The committee noted with concern that the contract was awarded without any recourse to negotiations in respect of terms of reference, deliverables, methodology, approach, etc. In addition, it appears that the contract was not reviewed by the AG prior to execution.
Friday, July 24, 2009	Zamtel Sale	Ministry of Commerce Trade & Industry	PS MoTCI wrote to the DG ZPA informing them that at a Special Cabinet Meeting held on 23rd July 2009, four GRZ Ministers considered a report on the recommendation from the Committee of Ministers regarding the Valuation of Zamtel Assets	

Friday, September 18, 2009	Zamtel Sale	ZDA Management	Adverts run in the local and international printed media and ZDA website for Zamtel Sale - and directed ZDA to undertake the privatization of Zamtel as enumerated in the ZDA Act No. 11 of 2006. ZDA was requested to provide an action plan to expedite the implementation of the Zamtel sale, to the MoCTI.	
Friday, October 16, 2009	Zamtel Sale	ZDA Management	Expression of Interest Bid closed on the 16th Oct. 2009 at 17hrs . Eight (08) international firms submitted EoI bids	
Wednesday, October 21, 2009	Zamtel Sale	ZDA Board Meeting	Pre-qualification of 8 bidders took place and all 8 bidders were passed	The committee noted that LAP Green Networks did not, in their opinion meet the criteria for a minimum of 5 years operating telecoms networks. LAP GreenN was only registered in 2007 and therefore had less than 3 years experience.
Thursday, October 22, 2009	Zamtel Sale	ZDA Management	ZDA Public Press Announcement of the Eight Pre-qualified Bidders	

Friday, October 23, 2009	Zamtel Sale	ZDA Board Meeting	Non-binding bids to be submitted on 23rd Oct. 2009 by 15hrs. Four (04) non-binding bids were received by ZDA	This was Round 1 Bidding
Wednesday, December 30, 2009	Zamtel Sale	ZDA Board Meeting	Urgent Board Meeting (14 days notice waived). ZDA Board met to consider the inclusion of Altime Holdings whose bid had arrived late by 5 minutes. The Board agreed to include Altime Holdings as a 4th bidder	
Monday, January 11, 2010	Zamtel Sale	ZDA Board Meeting	ZDA Board accepted all four non-binding bids after the due process of bid evaluation and thereafter invited all four bidders to a 2nd round of bidding	The committee noted that an electronic bid by Altime Holdings was received 5 minutes late and should have also been disqualified. We further noted that the Altime Holdings bid was given an amnesty and permitted to provide missing information (capex figures) after the bid closure.
Tuesday, February 02, 2010	Zamtel Sale	ZDA Management	The ZDA sent solicitation documents to all four bidders invited to participate in the 2nd round of bidding on the 2nd Feb. 2010.	Second round of bidding

Friday, March 12, 2010	Zamtel Sale	ZDA Management	The 2nd round of bidding came to a close on the 12th March 2010. Three (03) bids were received at bid closure.	Bids were received from Altimo Holdings, LAP Green N and Unitel. Bharat Sanchar Nigam Ltd did not submit a bid and requested for an extension of time. The request was denied.
Sunday, March 28, 2010	Zamtel Sale	ZDA Bank Instruction	ZDA & Zamtel wrote to Barclays Bank requesting a change of signatories and account name on the Zamtel Privatization ZMK & US\$ Escrow Accounts - due to the completion of the Zamtel Privatization process	The request was to have the Zamtel MD removed from the signatories list and change the names of the two accounts from ZDA Zamtel Escrow to ZDA Privatization US\$ and from Zamtel Kwacha Escrow to ZDA Privatization Kwacha
Wednesday, March 31, 2010	Zamtel Sale	ZDA Board Meeting	ZDA Board approved the acceptance of the firm and binding bids from Lap Green Networks and Unitel after the due process of the evaluation and recommendations from the ZDA Management. ZDA Board further approved that the two bidders be invited for negotiations for the purchase of 75% of Zamtel	The bid from Altimo was disqualified on account of not non-inclusion of a business plan and deviation from solicitation document set out methodology. Altimo bid was however put into reserve. The ZDA Board also appointed a negotiating team

Tuesday, May 11, 2010	Zamtel Sale	ZDA Negotiating Team	Negotiations commenced on the 11th May 2010 and were concluded on the 2nd June 2010	The negotiations resulted in the selection of Lap Green Network for a total consideration of US\$ 257 million for a 75% share in Zamtel
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Wednesday, June 02, 2010	Zamtel Sale	ZDA Board Meeting	Urgent Board Meeting (14 days notice waived). ZDA Board met to seek approval for the sale of 75% of equity in Zamtel to LAPGreenNThe Board approved the sale, with the exception of one Board Member (Mrs. S. Thole) who wished to be placed on record as having objected to the sale	The committee noted that the purchase of the 25% equity in Zamtel by GRZ, was to be made by way of GRZ paying ZRA for the ZRA outstanding tax liabilities, and ZRA would then pass on the funds to GRZ Treasury who would use the same funds to purchase the 25% equity stake in Zamtel! A number of observations were made by Board Members; Did Zamtel see and review the sale document before it was presented to the ZDA Board?; If the Zamtel Board had reviewed the document, were the minutes of the same Board Meeting available?; Ideally, the draft Sale Agreement should have been availed to the ZDA Board before being forwarded to the AG for approval; In future privatizations, there ought to regular briefings on each stage of the negotiations so that the ZDA Board would be aware
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Saturday, June 05, 2010	Zamtel Sale	ZDA Management	Zamtel Sale Transaction Document signed on 5th June 2010	
Thursday, June 10, 2010	Zamtel Sale	ZDA Management	Zamtel Sale Transaction completed on 10th July 2010 following the exchange of all legal documents between parties and the purchaser paid the final balance of the purchase price	
Wednesday, July 02, 2008	Zesco Fibre	CAZ Board Meeting	CAZ Board Meeting to discuss mutual collaboration and co-operation between Zamtel/Zesco regards their fibre networks. A Joint Technical Committee comprising Zamtel/Zesco had been set up in March 2008. A final JTC report was expected by July 2008	

Thursday, October 01, 2009	Zesco Fibre	Ministry of Finance Letter	Ministry of Finance and National Development wrote to Zesco requesting all pertinent information regarding the Zesco fibre assets and business.	
Wednesday, October 21, 2009	Zesco Fibre	Zesco Board Resolution	Zesco held a Special Meeting on 21st October 2009 to pass a resolution to merge the assets of Zesco Board passed a resolution Zesco and Zamtel into a single entity - a new separate joint venture entity. The Board Meeting was advised by the Chairman that he had received a letter from the Minister of Energy and Water Development requesting the Board to pass a resolution to merger of Zesco and Zamtel fibre assets by way of a Special Purpose Vehicle entity to be created on mutually agreeable terms	The committee noted that the initial Zesco Board Resolution was with the intent of forming a SPV company with Zamtel, to manage and operate the joint fibre networks, rather than to cede the Zesco fibre network to Zamtel

Wednesday, October 28, 2009	Zesco Fibre	Zesco Board Resolution	Zesco held a Special Meeting on 21st October 2009 to pass a resolution to merge the assets of Zesco and Zamtel into a single entity - a new separate joint venture entity. The Board Resolution of the 28th October 2009 was to effect a resolution that superseded an earlier board resolution (dated 21st October 2009) that had resolved that Zesco should lease the optical fibre network to Zamtel. The Chairman informed the Board that he had received a letter from the MoFNP that the MoFNP as the principal shareholder was directing Zesco should lease the fibre optic to Zamtel on a lease to be determined by GRZ and that Zesco should only use the fibre optic for its operations and that the commercial aspects should cease hence forth	The Zesco Board Resolution of the 28th Oct. 2009, in effect ceded the Zesco fibre network assets to Zamtel
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<p>Wednesday, December 02, 2009</p>	<p>Zesco Fibre</p>	<p>Zesco Letter</p>	<p>Zesco MD wrote to Zantel MD following a review of the IRU Agreement, requesting various amendments and highlighting concerns. A meeting with Zantel was requested to address the issues</p>	
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Friday, December 11, 2009	Zesco Fibre	Ministry of Energy & Water Development Letter	Letter from PS MoEWD to Zesco MD informing him that the following aspects of the Zamtel/Zesco Indefeasible Right of Use (IRU) Agreement be immediately implemented; revenue sharing should be 80% Zamtel and 20% Zesco; provisions of the IRU Agreement should be applicable to all existing and future fibre networks to be rolled out by Zesco; nullifying the partnership between Zesco and Twignet in line with the exclusivity granted to Zamtel as per the MoFNP directive	
Thursday, December 17, 2009	Zesco Fibre	Zamtel/Zesco IRU Agreement	Zamtel MD was sent a single (signing page) of the IRU Agreement whilst in Egypt and told to sign it	The Zesco MD told the committee that he only signed the IRU Agreement signature page under duress whilst in Egypt. He has not had sight of the other pages of the final IRU Agreement, whilst in Egypt

Friday, January 15, 2010	Zesco Fibre	Zamtel Letter	Zamtel wrote to Zesco requesting a signed Board Resolution granting Zesco the authority to enter into the IRU Agreement with Zamtel	
Thursday, January 28, 2010	Zesco Fibre	Zesco Board Resolution	Zesco signed a Board Resolution in respect of the Zamtel/Zesco IRU. The Chairman of the Board advised the Board that Zamtel had written to Zesco requesting that a specific board resolution be passed by the Zesco Board as required by clause 2(1) of the IRU Agreement. The Board therefore passed a resolution allowing Zesco to sign the IRU with Zamtel	The committee noted that the Zesco Board Resolution authorizing Zesco to sign the IRU Agreement was retrospective, as the IRU Agreement was signed on the 17th Dec. 2009.



## **Appendix II**

### **List of Documents perused by the Technical Committee**

- 1) Letter dated the 5<sup>th</sup> of October 2011 from the Director General of the Zambia Development Agency, Mr. Andrew Chipwende to The Hon. Minister of Justice providing background information.
- 2) Zamtel Draft Management Report for the year ended 31<sup>st</sup> March 2009
- 3) Zamtel Report and Financial statements for the year ended 31<sup>st</sup> March 2007
- 4) Zamtel2005/2006 Annual Report
- 5) Zamtel 2004/2005 Annual Report
- 6) Zamtel 2003/2004 Annual Report
- 7) Zamtel 2002/2003 Annual Report
- 8) Zamtel 2001/2002 Annual Report
- 9) Zamtel Draft Management Report for the year ended 31<sup>st</sup> March 2008
- 10) The Companies Act Chapter 388 of the Laws of Zambia
- 11) Customs and Excise Act Chapter 322 of the Laws of Zambia
- 12) List of Agreements for Services
- 13) Commercial Properties on rented land as at 29<sup>th</sup> October 2009
- 14) Asset sharing agreement – Zamtel and Zambia Postal Services Corporation
- 15) Share sale and Purchase Agreement
- 16) Shareholders Agreement
- 17) Escrow Agreement
- 18) Disclosure Letter and Schedule
- 19) Investment Promotion and protection Agreement
- 20) Purchaser Shareholder Resolution approving the purchase of the Sale Shares
- 21) Libyan Investment Authority (LIA) Resolution for LAP GreenN Board of Directors
- 22) LIA Resolution for LAP GreenN Board of Directors (English translation)
- 23) List of LAP GreenN Directors and Shareholders
- 24) Zambia Competition Commission (ZCC) approval
- 25) Zambia Information Communications and Technology Authority (ZICTA) consent for change of control
- 26) Purchaser confirmation that no approvals outside Zambia required
- 27) Vendor subscription for Tax Shares and investment Shares
- 28) ZRA tax waiver
- 29) ZAMTEL 2010 Audited Accounts
- 30) ZICTA Mobile Network License Letter
- 31) ZICTA Spectrum Assignments
- 32) China CITC bank waiver letter
- 33) EXIM indemnity
- 34) ICBC indemnity
- 35) ZTE waiver
- 36) ZTE guarantee
- 37) ZTE draw down letter
- 38) Huawei drawn down letter

- 39) Huawei financing letter
- 40) Employee indemnity
- 41) Share certificate indemnity
- 42) Pensions indemnity
- 43) ZAMTEL Information Memorandum
- 44) ZAMTEL board minutes 26 May 2010
- 45) Share transfer document (Form 27)
- 46) Mauritian counsel legal opinion
- 47) ZAMTEL board minutes 18 June 2010
- 48) ZAMTEL board resolution 18 June 2010
- 49) ZAMTEL board minutes 9 July 2010
- 50) Letters of resignation of Zamtel board
- 51) ZAMTEL share certificate
- 52) GRZ waiver of fees
- 53) Bank of Zambia letter
- 54) Escrow notice - Amendment
- 55) Escrow notice – Additional signatories
- 56) Financial
- 57) Legal
- 58) Technical
- 59) Operational
- 60) Business Plan
- 61) Q & A and Responses
- 62) Information Memorandum
- 63) Site Visits by Bidders
- 64) ZAMTEL transaction brief
- 65) Annual Reports
- 66) Management Accounts
- 67) Budgets
- 68) Fixed Assets
- 69) Property
- 70) Bank Balances
- 71) Investments
- 72) Inventory
- 73) Long Term Liabilities
- 74) Payables
- 75) Deferred Liability
- 76) Revenues
- 77) OPEX Breakdown: FY March 2003 – FY March 2009
- 78) Labour
- 79) Tax
- 80) Pension Fund
- 81) Investments
- 82) JULY 2009 OUTSTANDING AMOUNTS 11

- 83) Insurance
- 84) Fibre
- 85) Incorporation
- 86) Taxation and VAT
- 87) Licenses
- 88) Interconnection Agreements
- 89) Roaming Agreements
- 90) Employment Agreements
- 91) Supplier Agreements
- 92) Loan/ Creditors
- 93) Claims
- 94) Acts
- 95) Other Agreements
- 96) Indefeasible Right of Use Agreement
- 97) Board Resolutions
- 98) Transaction Documents
- 99) Judgements
- 100) Disclosure Letter Documents
- 101) Technical Overview
- 102) Co Location Agreement
- 103) PSTN
- 104) Mobile
- 105) Fibre
- 106) CDMA & WIMAX
- 107) Microwave Systems
- 108) Traffic Patterns
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- 115) ZAMTEL Business Plan 280
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- 124) Supporting Answer Documents
- 125) Q & A Response (11.02.09) 24
- 126) Q & A Response (18.12.09) 24

- 127) Q & A Response (18.02.2010) 22
- 128) Q & A Response (21.02.2010)
- 129) Q & A Response (01.03.2010) 21
- 130) Q & A Response (04.03.2010) 21
- 131) Q & A Response (09.03.2010) 23
- 132) Q & A Response (20.05.2010) 22
- 133) ZICTA Presentation – ZAMTEL Privatization – Final 215
- 134) Ministry of Communications and Transport 233
- 135) AMI Presentation UPDATED 29
- 136) Cell Z Cite Presentation Final v2 231109221
- 137) Lamya House Presentation\_ver251109219

In addition to the above documents the Technical Committee obtained and perused the following documents:

- 1) Selected accounts reports from ZDA relating to the sale of ZAMTEL shares
- 2) Selected bank statements from ZDA relating to the sale of ZAMTEL shares
- 3) Selected tender process documents from ZPPA
- 4) Selected email correspondence from ZDA relating to the sale of ZAMTEL shares
- 5) Selected documents from Zesco relating to the optic fibre network

### **Appendix III**

#### **List of Persons Interviewed by the Technical Committee**

- 1) Mr. Hans Paulsen - CEO Zamtel;
- 2) Ms. Selina P. Luwisha - Legal Counsel, Zamtel;
- 3) Mr. Sydney Chisenga - Zamtel External Legal Counsel;
- 4) Mr. Adnan Hayee - Chief Financial Officer, Zamtel;
- 5) Mr. Mukela Muyunda - former Zamtel;
- 6) Mr. Justine Matimuna - ZPPA;
- 7) Mrs. Betty Sombe - ZPPA;
- 8) Ms. Yadika Mkandawire - Former ZDA now at ZAWA;
- 9) Mr. Charles Mulenga - ZDA;
- 10) Mr. Mbeluko Phiri - ZDA;
- 11) Mr. Henry Sakala - ZDA;
- 12) Mr. Naphtali Nguni - ZDA;
- 13) Mr. Christopher Mvula - ZDA;
- 14) Mr. Kangwa Chakulya - ZDA;
- 15) Mr. Moola Nalumino - Former ZDA now @ Examinations Council  
of Zambia.
- 16) Mr. Cyprian Chitundu - ZESCO;
- 17) Mr. Rogers Chisambi - ZESCO;
- 18) Mr. Christopher Mubemba - ZESCO;
- 19) Mr. Mangalelwa Sitwala - ZESCO;
- 20) Mr. Kangwa Chakulya - ZDA;
- 21) Mr. Dominic Sichinga - PS MoCT.
- 22) Mr. Andrew Chipwende - ZDA

**Appendix IV**

**Examples of correspondence, press releases and speeches prepared by Mr. Peter Heilner for GRZ.**

**DRAFT LETTER FROM PRESIDENT RUPIAH BANDA TO H.E. HU JINTAO**

9 November 2009

His Excellency Hu Jintao  
President  
People's Republic of China

[Insert Address]

Beijing

PEOPLES REPUBLIC OF CHINA

Your Excellency,

RE: APPLICATION FOR CHINA EXPORT AND IMPORT BANKS CONCESSIONAL LOAN FACILITY FOR FINANCING PRIORITY PROJECTS IN ZAMBIA

I write to you to request your assistance in a matter of that is of national importance to the Republic of Zambia. As you may be aware, the Government of the Republic of Zambia is currently in the process of privatizing Zambia Telecommunications Limited ("Zamtel") which has severely underperformed in recent history. This privatization will revitalise the telecommunications sector in Zambia through increasing investment and will contribute substantially to the development of Zambia as whole.

In this respect the Government of Republic of Zambia through the Ministry of Finance and National Planning has requested concessional financing from China Export and Import Bank, under their US\$ 10 billion program for infrastructure in developing countries, to cover the amounts owed to Zamtel's Chinese equipment suppliers, Huawei and ZTE, for vital projects that the two companies are in the process of completing. These projects are important as they will result in lowering the costs of communication in the country and will strengthen significantly the position of Zamtel in the telecommunications market.

The amount requested by the Minister of Finance is US\$75,424,323. As this is a matter of considerable urgency in order to ensure the success of Zamtel and the ongoing development of Zambia, I would like to request your support in obtaining approval from the China Export and Import Bank in respect of Zambia's application.

31 October 2011

*Strictly Confidential*

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A delegation led by the Minister of Communications and Transport, Hon. Geoffrey Lungwangwa, accompanied by officials from the Ministry of Justice and the Ministry of Finance, is travelling to China on the 12th of November, 2009 to discuss this matter with officials from the China Export and Import Bank.

I shall be grateful for your support in this matter.

Yours sincerely,  
Hon. Rupiah Banda,  
PRESIDENT OF THE REPUBLIC OF ZAMBIA



## REPUBLIC OF ZAMBIA

### Press Release on the ICT Sector in Zambia

**Friday 9<sup>th</sup> October, LUSAKA:** The ICT sector is one of the fastest growing sectors of all time. From a standing start less than three decades ago, there are now over 4 billion mobile phone subscriptions and a billion Internet users worldwide. Whilst historically, growth in the ICT sector has been driven by countries in the developed world, African countries are now experiencing a surge in ICT development, and Zambia sits at the forefront of that trend. Ensuring that the benefits of ICT products and services are enjoyed by the greatest proportion of the Zambian population is now a key priority.

The government, and the Communications Authority of Zambia (CAZ), the regulator of the ICT sector, have set out two ways by which they intend to encourage the deployment and usage of ICT products and services in Zambia.

The first is through careful management of the licensing regime. CAZ intends to issue no additional fixed or mobile licences for the foreseeable future. Investment in network infrastructure in both fixed and mobile markets is critical if services – particularly those relating to broadband Internet access – are to be made available nationwide. It is therefore important that existing licence holders be given the opportunity to invest – and the opportunity to earn returns on their investments. CAZ has therefore stated its intention to issue 3G licences and spectrum to all existing GSM mobile operators – a move which is expected to result in the rapid deployment and commercialisation of mobile broadband services.

The second is through pricing. CAZ has indicated that it intends to use its powers, as set out in the new ICT Act, which passed into law last month, to intervene in the wholesale market that exists between telecommunications operators. The intervention is to target the interconnect rates charged between fixed and mobile operators. A cut of up to 50% is envisaged. Such a cut in wholesale rates is expected to allow retail prices to fall as a direct result. The net effect should be that the total cost of ownership of fixed, mobile and other forms of telecommunication service should decline. That decline should bring ICT services within the reach of a greater proportion of the population.

The policy underlying these actions has been in place for some time, but the court case between Vodacom Zambia and CAZ made it inappropriate for any public statement to be made. With that case now closed, and CAZ's name and reputation unequivocally upheld, Zambia's ICT sector can now move forward in a systematic, coordinated and logical manner that best reflects the needs of Zambian consumers and businesses, whilst simultaneously encouraging the greatest possible level of investment in ICT infrastructure. This announcement signals the beginning of a new and exciting chapter for the ICT sector in Zambia.

I am confident that as a direct result of these actions, the Zambian ICT sector will flourish and become one of the key investment destinations in the Sub-Saharan African region.

Prof. Geoffrey Lungwangwa (PhD), MP  
**Minister of Communications and Transport**



## Ministry of Communications and Transport - ITU Conference ICT Policy – Sample Quotations

### **[1] On the Vodacom CAZ case**

“The fact that the case is now closed is excellent news for the sector, because it means that CAZ can get back to the business of being the regulator. The fact that the case found in favour of CAZ is of course extremely positive, because it means that the regulator can pursue its aims and objectives, without any further question as to its legitimacy, credibility or professionalism. That is a positive for the whole sector, and for Zambian consumers.”

### **[2] On the issuance of new licences (general)**

“The notion of carefully managing the number of licences in any given part of the ICT sector is just good practice. At the end of the day our objective in licensing operations in the sector is to ensure that scarce resources, such as spectrum, are apportioned fairly and sensibly, and that investment in infrastructure is maximised, to the benefit of consumers. I think it’s entirely clear that our approach – putting new licences on hold for the time being – is absolutely the right approach.”

### **[3] On no more mobile licences**

“Look at the change in the mobile sector this year alone. Zain and MTN are now going unequivocally head-to-head on price, and coverage is steadily equalising. With a privatised Zamtel, Cell Z is expected to emerge as a powerful and credible third competitor. While those three competitors show no sign of easing off on competition, and every sign of continuing to invest in networks and coverage, there should be no need for an additional competitor.”

### **[4] On Zamtel’s fixed monopoly**

“The decision not to issue further fixed licences is based on simple common sense. Fixed technology has already been almost entirely displaced by mobile, especially in the voice market. The same is likely to happen in the data and Internet access markets. The only fixed technology that is likely to have a serious long term role is fibre – and investments in fibre need to be completed, not challenged. And since any given fibre network has – to all intents and purposes – limitless capacity, it makes more sense to encourage investment in other technologies that deliver the capacity that fibre offers to consumers, rather than duplicating investment in fibre.”

### **[5] On the international gateway**

“As the regulator mentioned last week, the international voice wholesale market is about to become a completely regulated market. What that means in practical terms is that nobody will be able to levy unreasonable margins. Prices should fall at a wholesale level, and correspondingly, at a retail level. And once fibre connectivity is in place, the gateway can transition from satellite technology, which is relatively expensive, and offers limited capacity. At that point, the

gateway issue goes away. Tough regulatory scrutiny minimises its impact in the meantime.”

**[6] On the Privatization of Zamtel**

“The privatization is being conducted in accordance with the laws of Zambia in a transparent and professional manner. This transaction will transform the ICT landscape in Zambia. Zamtel is an asset with tremendous potential and we are confident that this potential will be realized through this transaction.”

**[7] Holding Statement – In the event of a question relating to the Zamtel process that we are uncomfortable to answer:**

“I cannot comment on that matter at this time, doing so could potentially prejudice the ongoing privatization process.”

**[8] Referral Statement – In the event of question that relates to Zamtel, but which justifies a response**

“Please refer your inquiry to the Zambia Development Agency, who are under Zambian law responsible for the implementation of the transaction, who will be able to provide comment on this matter.”

**Ministry of Communications and Transport**

**Vodacom CAZ Case: Response**

- The closure of the case – in and of itself – is a positive for the sector
- It allows the regulator to return to its normal duties, and pursue the business of being a regulator unhindered by legal due process (and its unavoidable impact on management time), or by the injunction awarded to Vodacom (which restricted the issuance of licences)
- Now that the case is closed, the staff at CAZ can return to their duties, and focus on ensuring that telecommunications sector evolves dynamically and serves consumers effectively
- The fact that the case found in favour of CAZ is, of course, extremely positive for the Zambian ICT sector
- Anything that could undermine the credibility or professionalism of the regulator is potentially harmful to the sector as a whole
- However, the regulator has been cleared of any wrongdoing – and is therefore able to resume its position at the heart of the industry, untainted
- The close of the case therefore brings to an end an unfortunate but necessary period in the sector’s history – even under the scrutiny of the Supreme Court, the regulator has been shown to be credible and professional
- The regulator is now keen to define the beginning of a new chapter – with the case behind it, CAZ is now in a position to speak about its strategy going forward, and with the new ICT Act in place, CAZ is afforded new powers to support and encourage the development of the sector

- Government has also refined its ICT policy in light of the changes happening in the broader sector, such as the deployment of fibre connections to subsea networks, and the envisaged rapid evolution of mobile broadband as a key medium
- That policy is totally aligned with the strategy being executed by CAZ, and between us, we hope to create an environment in which the ICT sector can flourish
- These plans have been in place for some time – and the closure of the case allows all concerned to get back to work, and focus on the real task at hand – which is to ensure that Zambia becomes an ICT hub, offering local, regional and international connectivity – to the highest possible standards
- We believe that in achieving this objective, Zambia will become a key investment destination in the sub-Saharan African region

# PARLIAMENTARY QUESTIONS: ORDER No. 760 – MINISTRY OF COMMUNICATIONS AND TRANSPORT

1<sup>st</sup> July 2010

In reference to a letter dated 30<sup>th</sup> June 2010 from the Ministry of Communications and Transport wherein Zambia Telecommunications Company Limited (Zamtel) and Zambia Development Agency (ZDA) were requested to provide answers to Parliamentary questions. Below are the questions and their respective answers.

Question

**1.0 Question:** *How much money did Government Ministries and Departments owe Zamtel immediately prior to the acquisition, by LAP Green Network of Libya, of 75% of the equity in Zamtel?*

**Answer:** The Government of the Republic of Zambia and LAP Green Networks signed the Sale and Purchase Agreement and other transaction documents on Saturday 5<sup>th</sup> June 2010. As at that date, Government Ministries and Departments owed Zamtel a total of K35.99 billion. A precise breakdown of that amount, on a Ministry-by-Ministry basis, is provided in Appendix I below.

**2.0 Question:** *How does LAP Green Network intend to recover this debt?*

**Answer:** This is primarily a question for LAP Green Network and individual Government Departments and Ministries.

**3.0 Question:** *What was the total value of Zamtel assets at the time of privatization?*

**Answer:** Zamtel's audited financial accounts, prepared by Ernst & Young, provide the most recent assessment of the value of Zamtel's assets. As of 31<sup>st</sup> March 2010, Zamtel's assets totaled K542.154 billion, broken down as follows:

- Fixed assets were valued at K385.71 billion (this figure includes all of Zamtel's network assets, chattels, buildings, land and other infrastructure);
- Other non-current assets, including long-term receivables and investments totaled K23.92 billion;
- Current assets (inventories, cash and cash equivalents, trade and other receivables) totaled K132.51 billion.

Thus, total assets were K542.154 million as at 31<sup>st</sup> March 2010.

**NOTE:** It is important to note that, according to the audited accounts, Zamtel's total liabilities as of 31<sup>st</sup> March 2010 totaled K903.24 billion. Zamtel therefore had, as of that date, a negative equity position equivalent to negative K36.,09 million.

**Appendix I:  
Amounts Owed by Ministries and Government Departments to Zamtel as  
at 5<sup>th</sup> June 2010 (Date When LAP Green and GRZ signed Transaction  
Documents)**

ZAMBIA TELECOMMUNICATIONS COMPANY LIMITED						
ACCOUNTS RECEIVABLES FOR GOVERNMENT MINISTRIES AND DEPARTMENTS						
Serial no.	Ministry/Department	5-Jun-10				
		Service				
		PSTN	Leased	Internet	Cell Z	Total
1	Cabinet Office	808,887,422.20	213,628,690.20	67,107,053.26	-	1,089,623,165.66
2	Central Police	404,929,521.84		5,151,692.00	-	410,081,213.84
3	Judiciary	1,048,956,007.88			-	1,048,956,007.88
4	Lusaka Province	168,448,817.74		6,287,388.28	-	174,736,206.02
5	Ministry of Agriculture	1,004,939,770.50			-	1,004,939,770.50
6	Ministry of Commerce	272,210,649.99	1,539,086.38		14,378,120.80	288,127,857.17
7	Ministry of Communication	823,944,529.40		50,167,200.89	-	874,111,730.29
8	Ministry of Community Dev	277,010,504.70			-	277,010,504.70
9	Ministry of Defence	8,926,780,832.03	1,856,320,569.53	5,428,577.32	-	10,788,529,978.88
10	Ministry of Education	622,710,379.80	323,769,007.58	309,253,756.86	-	1,255,733,144.24
11	Ministry of Energy and Water	742,888,423.14			-	742,888,423.14
12	Ministry of Environment	66,832,024.24			-	66,832,024.24
13	Ministry of Finance	514,749,241.70	222,213,120.00	17,928,981.60	-	754,891,343.30
14	Ministry of Foreign Affairs	679,575,307.93		17,633,368.77	11,118,068.74	708,326,745.44
15	Ministry of Gender in Dev	124,446,534.25		273,980,700.69	-	398,427,234.94
16	Ministry of Health	409,771,128.21	263,884,142.32	54,996,684.38	-	728,651,954.91
17	Ministry of Home Affairs	2,152,935,494.44	657,727,561.15	110,633,800.26	-	2,921,296,855.85
18	Ministry of Information	507,149,822.98			-	507,149,822.98
19	Ministry of Justice	95,861,594.23			-	95,861,594.23
20	Ministry of Labour	288,824,532.96			-	288,824,532.96
21	Ministry of Lands	67,221,365.09	300,286,168.73		-	367,507,533.82
22	Ministry of Local Govt	92,027,192.09		28,865,870.00	28,606,553.33	149,499,615.42
23	Ministry of Mines	129,055,388.46			14,226,638.31	143,282,026.77
24	Ministry of Science and Tech	117,652,044.36			1,481,712.88	119,133,757.24
25	Ministry of Youth and Sport	194,721,367.21			-	194,721,367.21
26	Ministry of Tourism	152,885,028.09			-	152,885,028.09
27	Ministry of Works and Supply	707,589,781.85		662,694,134.53	-	1,370,283,916.38
28	National Assembly	(8,019,518.07)			-	(8,019,518.07)
29	Auditor General	(29,249,378.56)			-	(29,249,378.56)
30	Office of the President	1,309,906,118.63			-	1,309,906,118.63
31	Office of the Vice President	391,847,528.27	63,457,237.26	35,248,626.03	-	490,553,391.56
32	Permanent Secretary	820,132,230.12			-	820,132,230.12
33	State House	2,082,328,471.52	155,991,071.35	93,640,937.95	4,082,049.57	2,336,042,530.39
34	Zambia Police	4,009,680,566.49			-	4,009,680,566.49
35	Road Development Agency	-		5,776,424.76	-	5,776,424.76
36	Zambia National Service	-			-	-
37	Zambia Revenue Authority	-		135,470,563.50	-	135,470,563.50
	<b>TOTALS</b>	<b>29,979,630,725.71</b>	<b>4,058,816,654.50</b>	<b>1,880,265,761.08</b>	<b>73,893,143.63</b>	<b>35,992,606,284.92</b>

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## **Appendix V**

### **List of oral submissions made to the Commission of Inquiry**

1. Clement Kasonde
2. Justine Chisembe Gwasupika
3. Kabaso Kapambwe
4. Mwape Chilyokwe
5. Chilumba Francis Ngosa
6. Sakwiba Sikota (on behalf of Hon. Dora Siliya)
7. Enock P. Kavindele
8. Christopher Mubemba and Mbile Wina
9. Victor Mulenga
10. Wood Simbeye
11. Joseph D. Banda

## **Appendix VI**

### **Summary transcripts of oral submissions made to the Commission of Inquiry**

#### **A PRESENTATION ON THE SALE OF ZAMTEL BY MR VICTOR MULENGA**

Mr. Victor Mulenga, a former ZAMTEL Technician strongly recommended the repossession and nationalization of ZAMTEL. He stated that after 75% of ZAMTEL shares were sold to Lap Green the new owner laid off 70% of the total workforce and 30% of the remaining workforce were put on a 3 month contract which was against Government promise to advocate for non casualization of workers. He also pointed out that faults on the landline PST network have multiplied compared to ZAMTEL mobile.

Mr. Mulenga indicated that in 2010 the asset value of ZAMTEL had increased. ZAMTEL had almost completed laying down the optic fibre. Therefore the true asset value of ZAMTEL had been concealed. He alleged that the proceeds from the sale of ZAMTEL was not deposited in the Public coffers but in the account to which the buyer was also a signatory. The conditions attached for the sale of ZAMTEL were not favourable to Government stating that Government had to pay retrenched workers to the tune of K415 billion from the money received from the buyer; Government had to settle ZAMTEL's liability and had to meet the cost of repair of ZAMTEL infrastructure at K22 billion from the same sales money. In conclusion, Mr Mulenga indicated to the Committee that the sale of ZAMTEL was not in the interest of the Zambians but in the few individuals, therefore he appealed for the repossession and nationalization of ZAMTEL.



## A PRESENTATION ON THE SALE OF ZAMTEL BY MR JOSEPH D. BANDA

Mr. Joseph D. Banda, aged 49 of House No. 349/05, Chipata Compound Lusaka, a former ZAMTEL Artisan indicated that when ZAMTEL stated facing liquidity problems in 2007, a number of ZAMTEL installations were visited to ascertain whether the parastatal could be sold. After the assessment of ZAMTEL assets the then Republican President Mr. Levy Patrick Mwanawasa SC. directed that ZAMTEL should not be sold. However, upon the demise of Mr. Mwanawasa the directives were reversed and ZAMTEL was sold with a lot of irregularities.

Mr. Banda indicated that RP Capital was paid US \$ 2.5 million to value ZAMTEL assets and set aside a reserve price. However, RP Capital never visited all installations and a report on the value assessment has not been made public. He indicated that the Asset Register was last updated 10 years ago. He alleged that the purchase price was decided by the buyer thus rendering the valuation useless.

## A PRESENTATION ON THE SALE OF ZAMTEL BY MR. WOOD SIMBEYE

Mr Wood Simbeye of 777 Lukasu drive, Kitwe, an Electronic engineer and former PTC employee, informed the Committee that he joined Postal Telecommunications Company (PTC) in October, 1983.

Mr. Wood Simbeye indicated that the reason advance by the previous Government that ZAMTEL has been making losses for many years, and therefore should be sold, were unjustifiable. He reported that during the twenty (22) that he worked for ZAMTEL, the Company never made losses. He stated that ZAMTEL was supposed to be subsidised to keep it viable. He stated that in the last two years, prior to the sale, the previous Government never used to settle ZAMTEL debt and therefore contributed to its losses. The parastatal instead made significant profits for instance in 2005 ZAMTEL recorded K14.6 billion profits and in 2006, the Company still hosted a profit of K60 million. ZAMTEL was always owed huge sums of money by Government for the services rendered. ZAMTEL was the one that was subsidizing government because of its failure to pay its debts.

## A PRESENTATION ON THE SALE OF ZAMTEL BY MR. CHRISTOPHER MUBEMBA AND MRS MBILE WINA

Mr. Christopher Mubemba aged 48 of 218 Long Ridge, Chilanga, and a Director for the development of Kafue Gorge Lower Hydro Project indicated that ZESCO being a biggest telecommunication service provider invested in the installation of modern fibre telecommunication system. The first phase of optic fibre transmissions installations which was launched in 2007 were undertaken from Sesheke through to Livingstone, Kafue, Lusaka, Kapiri-Mposhi, Kitwe, Solwezi to Lumwana.

Mr Mubemba indicated that prior to 2008, ZESCO as a way of building on its customer base commenced discussion with ZAMTEL to the effect that ZAMTEL should be one of ZESCO customers for its optic fibre. In 2008, ZICTA suggested that the two parastatals could combine their resources to develop optic fibre networks but ZESCO objected. He alleged that RP Capital got information on the discussion started to lobby Government. On 17<sup>th</sup> December, 2009 ZESCO was forcefully made to sign an indivisible right of use agreement with ZAMTEL which gave ZAMTEL the rights to use ZESCO's optic fibre networks as ZAMTEL's system was non functional thereby making the sale of ZAMTEL more attractive to potential buyers. Mr. Mubemba contended that signing of such an agreement at the extreme coercion of the previous government stifled competition and the expansion of ZESCO networks to rural areas. He stated that the agreement gave ZAMTEL more advantages. The Utilization of ZESCO optic fibre network by ZAMTEL was at no cash considerations. ZESCO handed over about 20 customers to

ZAMTEL. 80% of total earnings from the optic fibre network went to ZAMTEL and ZESCO received 20%.

Mr. Mubemba also stated that ZAMTEL capitalized on ZESCO assets, thereby increase its value whereas ZESCO with 20% earnings was unable to undertake phase two (2) expansion programme.

Asked whether ZESCO sought to re-negotiate the Agreement after the sale on the account that the private company could not continue to enjoy the same benefits the parastatal enjoyed before the sale, Mr. Mubemba indicated that ZESCO did not see it as an option considering that the previous government had a hand in it and had previously exerted pressure in the signing of the Agreement that gave ZAMTEL more advantages.

Mrs Mbile Wina V. stated that the agreement signed between ZESCO and ZAMTEL was not based on mutual benefits and was in perpetuity. She indicated to the Committee that ZESCO executed the contract under extreme duress. The contract was drafted by RP Capital and that no negotiations between the parties were allowed. She advocated that since ZESCO got a raw deal from the agreement ZESCO would like to terminate the contract agreement through the Dispute Resolution Board.

## A PRESENTATION ON THE SALE OF ZAMTEL BY MR ENOCK P. KAVINDELE

Hon. Enock P. Kavindele, aged 60, 2257/M Leopards Hill Road Lusaka, a Business man stated that as soon as the sale of ZAMTEL was made, the previous government issued Statutory Instrument No. 111 of 2009 which stipulated that from 11<sup>th</sup> December 2009 to 12<sup>th</sup> December, 2014 no new telecommunication providers would be allowed to operate in the country. The Statutory Instrument disregarded the provisions of Zambia Development Act, Citizen Economic Empowerment Act, Information and Communication Technology Act, and Competition and Fair Trade Act. He stated that the Instrument was issued to protect the buyers and that it overruled the Acts of Parliament. The Statutory instrument was signed by Ministry of Commerce, Trade and Industry on behalf of Ministry of Communications and Transport.

Hon. Kavindele also stated that before the sale VODACOM Zambia answered to the advertisement on the ZAMTEL and it was allowed to operate but it had no radio frequency. This prompted VODACOM to take the matter to the courts of law. The Courts ruled that VODACOM be issued with a licence. However, at the same time the previous Government had commenced negotiations with Lap Green of Libya. The then Minister of Communication and Transport stated that VODACOM could not be issued with a licence because Government would not be able to sell ZAMTEL.

Hon. Kavidele also stated that ZAMTEL was sold at a giveaway price of US\$ 257 million when the estimated market value for ZAMTEL was over US\$3 billion.

**A PRESENTATION ON THE SALE OF ZAMTEL BY MR SAKWIBA SIKOTA,  
COUNSEL ON BEHALF OF HON. DORA SILIYA, MP.**

Hon. Dora Siliya aged 41 of 411 Independence Avenue was represented by Mr Sakwiba Sikota of Central Chambers. He stated that the allegations leveled against Hon. Siliya regarding the sale of ZAMTEL to Libyan Company Lap Green presented before the Commission by Transparency International Zambia were not new.

He stated that his client appeared before the Denis Chirwa tribunal, and the same allegations were tested. The exact allegations were subject of the High Court proceedings in a matter involving Mr Andrew Kashita, the Zambia Development Agency (ZDA), RP Capital and the Attorney General. He further stated that, recently, there was an appeal before the Supreme Court of Zambia which addressed the allegations and judgment was delivered. He stated that both the High Court and the Supreme Court cleared Hon. Siliya of any irregularity in her conduct in the sale of ZAMTEL. Mr. Sakwiba indicated that everything his client would have said was already on record and there was nothing more to add. He referred the commission to the court proceedings.

Notwithstanding the above, Mr. Sikota indicated that he saw no reason why Hon. Siliya should answer questions from the commissioners as she was not a Minister of Communication and Transport Ministry at the time ZAMTEL was sold. He stated that the letter from the commission summoning Hon. Siliya to appear before the Commission implied that she was in charge of the Ministry of Communication and Transport portfolio. Mr. Sikota also stated that Zambians' excited on the matter and reports from the media gave the impression that Hon. Siliya would be tried and judgment would be passed by the Commission.

Hon. Zulu, Commission's chairperson, clarified that the Commission decided to summon Hon. Siliya so that she could present her side of the story on the allegations leveled against her regarding the sale of ZAMTEL to Lap Green. He

further clarified that the Commission was not established to act as a court but to receive submissions from people on the sale of ZAMTEL from inception. He expressed surprise that Hon. Siliya decided not to speak but added that it was her constitutional right not to say anything. He assured Hon. Siliya that the commission would collect all the pertinent materials regarding the sale of Zamtel before coming up with a final report.

Mr. Sikota sought to make a submission on the sale of Finance Bank Zambia before the Commission arguing that there are issues regarding the rights of the depositors which do not touch on matters before the courts of law which should be heard.

Hon. Zulu, Commission's chairperson, clarified that the Commission's terms of reference was too narrow in the sense that it was only investigating the irregularities in the sale of Finance Bank Zambia which unfortunately could not be done as the issues were before the courts of law. He said that issues regarding the rights of the Finance Bank Zambia depositors were outside the mandate of the Commission. He however, appealed to Mr. Sikota to present the issues to other for a and Mr. Sikota obliged.

A PRESENTATION ON THE SALE OF ZAMTEL BY MR. CHILUMBA FRANCIS NGOSA

Mr. Chilumba Francis Ngosa aged 44 of 1427A Mubuluwe Road Northmead, a businessman mentioned that when he was in the United Kingdom, he learnt through the on-line tabloid that RP Capital would evaluate the ZAMTEL assets. His Research on RP Capital revealed that the firm was more into finance business than valuation of assets. He stated that RP Capital had no qualifications or skills to handle telecommunication evaluation. He further stated that he wrote to Ministry of Finance and National Planning and Zambia Development Agency to introduce his company, Intercai Mondiale which would partner with a local firm, as an alternative to RP Capital. He stated that Intercai Mondiale has been in business for a long time and would have, in addition to undertaking a realistic evaluation of ZAMTEL assets; analysed the market; offered solutions for the parastatal to tap out of the Zambian market; and looked for a credible investor to turn round the operation of the firm. He stated that Intercai Mondiale never received a response from the Ministry of Finance and National Planning and Zambia Development Agency on its proposal but learnt that RP Capital had instead been engaged to undertake the assignment.

Mr. Ngosa indicated that the background of RP Capital was not published and claimed that ZAMTEL was grossly under evaluation. He stated that the parastatal was supposed to be sold at over US\$1 billion and not at US\$257 million. He urged the Commission to obtain a copy of RP Capital evaluation report and study it before coming up with a final report. Mr. Ngosa stated that Hon. Siliya could not deny responsibility in the sale of ZAMTEL as she left after signing the MoU thereby committing Government.



## A PRESENTATION ON THE SALE OF ZAMTEL BY MR. KABASO KAPAMBWE

Mr. Kabaso Kapambwe aged 37 of plot No. 9608 Mitengo, Ndola, and a former ZAMTEL employee stated that the losses incurred by ZAMTEL in 2007 and 2008 were not huge. He attributed the losses to Government interference in the parastatal's operation and cited the replacement of hard working top management with politically inclined ones. He stated that the company's bloated workforce was as a result of top management employing their relatives. He observed that the large workforce could have been gradually reduced as opposed to lay off many workers at once. He added that the retrenchment package did not take into account all the conditions of service of former ZAMTEL employees. As a result the matter has been presented before the Courts of Law. He stated that the projects dictated by Government were not viable as they were politically inclined and that ZAMTEL's debt was only liquidated at the time of ZAMTEL sale. He added that the problems the parastatal faced could have been rectified and cash flow would have improved. Government could have tried to waiver some of the taxes that were very heavy on importation of ZAMTEL expensive equipment.

Mr. Kapabwe stated that the new owners have continued to use the same ZAMTEL infrastructure they found without bringing in new ones and that telecommunication services have not improved after the sale.

## A PRESENTATION ON THE SALE OF ZAMTEL BY MR. MWAPE CHILYOKWE

Mr. Mwape Chilyokwe, aged 35 of Flat 12, Tazama, Ndola former ZAMTEL employee indicated that ZAMTEL employees would have lost their contributions had the decision by ZAMTEL management to de-register ZAMTEL Pension Scheme not rescinded. He indicated that at the time of the sale, the Scheme had an actuarial deficit of K143 billion and that ZAMTEL had not remitted K22 billion to the Scheme. He mentioned that the reversal on the de-registration of the Scheme was only done after litigation and only K68 billion has been paid out. Over 1,000 former and current ZAMTEL employees on contract have not been paid their dues.

**A PRESENTATION ON THE SALE OF ZAMTEL BY MR. JUSTINE CHISEMBE  
GWASUPIKA**

Mr. Justine Chisembe Gwasupika aged 45 of 5664/8 Garden House, Lusaka a former ZAMTEL employee alleged that the Dennis Chirwa Tribunal was set to probe the activities of the Minister towards the selection of the evaluator which went on to find the Minister concerned guilty of floating the advise by the Attorney General who is a legal advisor to Government. He stated that Hon. Siliya single sourced RP Capital, the firm which was introduced to her by former President Banda's son Henry, to evaluate ZAMTEL assets without following tender procedures. He further stated that RP Capital did a shoddy evaluation of ZAMTEL assets alleging that the firm collected much information through telephone without visiting many installations. He also stated that the recently acquired Digital Telecommunication equipment was not taken into account in the evaluation report adding that if proper evaluation was done it would have established that ZAMTEL assets were over US\$3 billion. Mr Gwasupika also mentioned that the sale of Zamtel which was a parastatal Company in Zambia to LAP Green network, another parastatal Company in Libya was fraudulent. All what Zambia needed was to seek advice on how to diversify the Company than to sell it as both countries are members of the African Union. He further alleged that the former Republican President, Mr Rupiah Banda on his way to France passed through Libya whilst the Government was waiting for a preferred bidder. This displayed a corrupt tendency by a Republican President as it clearly showed that his meeting with Col Gaddafi could have influenced the choice of LAP GreenN as a preferred bidder.

## A PRESENTATION ON THE SALE OF ZAMTEL BY MR. CLEMENT KASONDE

Mr. Clement Kasonde, aged 43 of 28 Juda Chande Northrise Ndola, a former ZAMTEL Engineer and General Secretary for National Union of Communication Workers stated that the Union was not accorded an opportunity to sit on committee that considered the sale of ZAMTEL contrary to Zambia Development Agency Act No. 11 of 2008 except the ones appointed by State House despite sending representation. No reasons were advanced. He stated that the decision to sell ZAMTEL was imposed on the Union.

Mr. Kasonde indicated that at a meeting attended by RP Capital and the Union, Hon. Siliya stated that Government was in a hurry to find a strategic partner and no one should frustrate the process. When Hon. Siliya went to Ndola to address the workers she further stated that ZAMTEL was a loss making company and the only way to salvage it was to go the ZANACO way.

Mr. Kasonde also indicated that when he wrote to the Head of State with regard to the employees' low morale following the announcement that ZAMTEL would be sold, the response was that ZAMTEL was putting pressure on the economy of Zambia and the Union should support Government in finding a strategic equity partner.

Asked if the Union pointed out that Government contributed to the collapse of ZAMTEL as it did not settle the debt, Mr. Kasonde responded that the Unions wrote to Ministry of Finance when Mr. Levy Mwanawasa was Republican President and Ministry of Finance started to liquidate the debt but could not continue after his demise.

Mr Kasonde further stated that Ministry of Communications and Transport and the Managing Director of ZAMTEL started creating impressions in the mind of workers that the Company was insolvent and that they intended to retrench more than Eight Hundred (800) workers.

He indicated that the Union agreed to the retrenchment package out of duress as it was pointed to them by the Secretary to the Cabinet that State House would make a decision on the matter. He stated that the valuation report was not availed to the Union to make informed decision, when they requested for it. He added that collective bargaining in good faith requires that the information required by the other party should be availed. He informed the Commission that the issue of Long Service Gratuity was not part of the retrenchment package and therefore no payment has been made. The matter is before the Courts of Law.

Mr. Kasonde stated that investigations in the operation of Lap Green in Uganda revealed that the firm runs the business on the mafia arrangement. It has a tendency of removing unionism in the company. He stated that a status report on the operation of Lap Green in Uganda was prepared and submitted to the Head of State for consideration.

In conclusion, he stated that the conduct of Hon. Dora Siliya was variant at law because looking at the findings of the Dennis Chirwa Tribunal found her with a case under the Republican Constitution because she acted irresponsibly. The Constitution is the Supreme law of the Republic. However, he emphasized the only best thing to do was to reverse the sale of ZAMTEL.

The Commission Chairperson requested Mr. Kasonde to avail the Commission copies of the letters and report he alluded to.

## **Appendix VII**

### **List of written submissions to the Commission of Inquiry**

1. Kabaso Kapambwe
2. Transparency International Zambia (TIZ)
3. Chilyobwe Mwape/ Henry Nsama
4. Clement Kasonde
5. Justine Chisembe Gwasupika
6. Dante Saunders
7. Civil Society Organisations
  - i. Transparency International Zambia (TIZ)
  - ii. Civil Society for Trade Network
  - iii. Southern Centre for Constructive resolution of disputes
  - iv. Jesuit Centre for Theological Reflection
  - v. Citizens Forum
  - vi. Civil Society for Poverty Reduction
  - vii. Foundation for Democratic Process
  - viii. Zambian Youths Association in the fight Against Corruption
  - ix. Women for change
  - x. Caritas Zambia
  - xi. William Harrington
8. Charles Mpundu
9. Maddox Chinula
10. Saul Kiwempindi
11. Felix Kabwe
12. Messrs Centrel Chambers
13. Kabaso Kapambwe
14. Chilumba Francis Ngosa

**Appendix VIII**

**Written submissions made to the Commission of Inquiry**

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