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(Vice Chairperson) vice
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22-10-2015

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THE NATIONAL ASSEMBLY



**DEPARTMENTAL COMMITTEE OF AGRICULTURE, LIVESTOCK AND
COOPERATIVES**

**REPORT ON THE PETITION BY THE STAKEHOLDERS OF THE NEW KENYA
COOPERATIVE CREAMERIES ON THE IMMINENT PRIVATIZATION OF NEW
KCC**

Directorate of Committee Services,
Clerk's Chambers
Parliament Buildings,
NAIROBI

OCTOBER, 2015

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ABBREVIATIONS / ACRONYMS

NKCC	- New Kenya Cooperative Creameries
KCC	- Original Kenya Cooperative Creameries
KCC2000	- Kenya Cooperative Creameries 2000
MOALF	-Ministry of Agriculture Livestock and Fisheries
GOK	-Government of Kenya
Cok2010	-Constitution of Kenya 2010
DFCL	-Dairy Farmers Cooperative Limited
EACC	- Ethics and Anti Corruption Commission

1.0 PREFACE

On behalf of the Departmental Committee on Agriculture ,Livestock and Cooperatives and pursuant to provisions of Standing Order 227 (2) , it is my pleasant privilege and honour to present to this House the Report of the Committee on the petition by the stakeholders of the New Kenya Cooperative Creameries on the imminent privatization of New KCC.

The petition was tabled before the House pursuant to Standing Order No. 225 (2)(a) by the Hon. Joyce Laboso , EGH , MP, on behalf of NKCC stakeholders on 22nd October ,2014.

1.1 Mandate of the Committee

The Committee is established pursuant to the provisions of Standing Order No. 216, with the following terms of reference: -

- a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- c) to study and review all legislation referred to it;
- d) to study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister,
- f) to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
and
- g) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation

The Committee under Standing Order 227 is mandated to deliberate and respond to prayers from the petitioners by way of a report.

1.3 Committee Membership

The Committee comprise the following Members:-

1. The Hon. Adan Mohamed Nooru, MBS, M.P. - **Chairman**
2. The Hon. Japhet M. Kareke Mbiuki, M.P. - **Vice Chairman**
3. The Hon. Kabando Wa Kabando, M.P.
4. The Hon. Raphael Letimalo, M.P.
5. The Hon. Mary Wambui Munene, M.P.
6. The Hon. Francis Munyua Waititu, M.P.
7. The Hon. Peter Njuguna Gitau, M.P.
8. The Hon. Maison Leshoomo, M.P.
9. The Hon. Anthony Kimani Ichung'wah, M.P.
10. The Hon. Alfred Kiptoo Keter, M.P.
11. The Hon. Ayub Savula Angatia, M.P.
12. The Hon. Justice Kemei, M.P.
13. The Hon. Philip L. R. Rotino, M.P.
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19. The Hon. Millie Odhiambo, M.P.
20. The Hon. Fredrick Outa, M.P.
21. The Hon. Maanzo, Daniel Kitonga, M.P.
22. The Hon. James Opiyo Wandayi, M.P.
23. The Hon. Patrick Wangamiti, M.P.
24. The Hon. Ferdinand Kevin Wanyonyi, M.P.
25. The Hon. Paul Simba Arati, M.P.
26. The Hon. Florence Mwikali Mutua, M.P.
27. The Hon. John Kobado, M.P.
28. The Hon. Hezron Bollo Awitti, M.P.
29. The Hon. Zuleikha Hassan Juma, M.P.

1.4 Committal and Consideration of the Petition

Pursuant to Standing Order 227 (1), the petition was referred to the Departmental Committee on 22nd October ,2014 for consideration and preparation of a report within 60 days. The Committee considered the petition pursuant to the provisions of Standing Order 227 (1) and (2).

The Committee proceeded with the consideration of the petition by holding meetings to set up terms of reference and scheduling meetings.

In considering the petition, the Committee invited and held meetings with the Petitioners, Milk Farmers representative , the National Treasury ,the Ministry of Agriculture Livestock and Fisheries, Ministry of Industrialization and Enterprise Development , Privatization Commission, Board and Management of NKCC among other stakeholders. The meetings were aimed at responding to issues raised by the petitioners.

1.5 The Prayers in the Petition

The petitioners had **prayed that the National Assembly through the Committee:-**

- (a) Intervenes to have a special audit on KCC done by the Auditor General in accordance with Article 229(5) to ascertain the circumstances that led to collapse of KCC as well as current ownership structure of the NKCC and report submitted to the National Assembly.
- (b) Urges the Privatization Commission to ensure sustainable transfer of ownership of the NKCC to Kenya Dairy Farmers in accordance with shareholding structure proposed by farmers, rather than through the Nairobi Securities Exchange
- (c) Urges the Cabinet Secretary responsible for Cooperatives in Compliance with Section 29 of the Privatization Act Cap 485c, to limit the eligible investors to Dairy Farmers' Group and individual dairy farmers supplying milk to NKCC and the funds generated from privatization be channeled towards revamping of Kenya Dairy industry

1.6 Committee Observations

Having held meetings and considered the submissions presented on the petition, the Committee observed that:-

- (a) Kenya Cooperative Creameries Limited was incorporated as a Public Limited Liability Company under the Companies Act (Cap486) on 22nd August 1925 and registered under the Cooperative Societies Ordinance in 1932. The objectives was to receive and process raw milk from the members into various products and market them on their behalf.
- (b) The giant farmers Co-operative Society ran into insolvency and thereafter receivership in the 1999 over a Kenya Commercial Bank (KCB) debt of Kshs 400 million hence the original KCC was sold under unclear circumstances at throw-away price to private entrepreneurs who re-named it KCC2000. The NARC Government reclaimed the Company through an Executive Order and rebranded it NKCC on 25th June 2003 after paying Kshs 547 million to KCC2000 entity. The NKCC has been in existence for the last 13 years.
- (c) A Register showing the original Shareholders of KCC is available contrary to the claims by Privatization Commission of Kenya (**Annex 3**).
- (d) The Shareholding structure of KCC prior to receivership (1999) was as follows:

Individual Dairy farmers	-	60.38%
Dairy Cooperative societies	-	35.56%
Government institutions	-	3.70%
Other Institution	-	0.34%
- (e) Privatization Process of the NKCC began in 2010 with the objectives of addressing future governance and sustainability of NKCC operations and improve its competitiveness.
- (f) Privatization Commission through the following consortium of consultants undertook due diligence and options analysis in the privatization of NKCC.
 - (i) Standard Investment Bank Ltd;
 - (ii) Deloitte Consulting Ltd;
 - (iii) Mereka & Co. Advocates Limited (Including Clean Earth Limited);
 - (iv) Mboya & Wangong'u Advocates; and
 - (v) Regent Valuers International (K) Limited.

(g) The Privatization Commission has compiled and completed several reports related to the privatization process as follows :-

- (i) Final Financial and Operational Due Diligence Report (November 2010);
- (ii) Legal Due Diligence Report (November 2010);
- (iii) Environmental and Technical Due Diligence Report Vol I-III (December 2010);
- (iv) Asset Valuation Report by Regent Valuers Int (K) Limited (August 2010);
- (v) Options Analysis Report (February 2011);
- (vi) Restructuring Report (March 2011) ;
- (vii) Updated High Level Due Diligence Report (February 2014); and
- (viii) Updated Options Analysis Report (February 2014)

(g) The Privatization Commission held Stakeholders meeting with the Milk farmers on 15th May 2014 and as a result the Final Updated Options Analysis Report (**Annex 4**) was prepared. This report considered matters raised by the Milk farmers during the Stakeholders meeting.

(h) The Privatization Commission in their Updated Options Analysis Report concluded that:-

- (i) The original Shareholders residual value of KCC at receivership was negative;
- (ii) Privatization process is the only safest way of transferring back the shareholding of Company to the Milk farmers given that the Company had been earlier on receivership;
- (iii) Although statements by GOK officials (Letter by Permanent Secretary Benjamin Sogomo) (**Annex 5**) stated the intention to "restore" the company back to Milk farmers, there was however no technical strategy to back the intention ;
- (iv) It would be technically and financially difficult to identify original shareholders of KCC after the company went on receivership without possibility of creating other major problems,
- (v) The company's ability to continue as a viable business entity should remain a priority; and
- (vi) The intention of the GOK is to ensure that Milk farmers remain key players in the company.

(k) The Privatization Commission Report (**Annex 4**) proposes a new Shareholding structure as follows:

(i) Eligible milk producers	39%
(ii) Strategic Partner	26%
(iii) The Public through Securities Exchange	25%
(iv) Employee Ownership Plan	3%
(v) Government	10%

- (l) Privatization Commission proposes that farmers be given a three year period to allow them adequate time to purchase shares as per agreed Shareholding structure. Milk Farmers to be supported through Cooperative Societies to create a "vehicle" to be used to mobilize resources.
- (m) There is need to avoid any action that appears to lift the receivership as other interested parties could easily launch a claim on the current value of NKCC.
- (n) The GOK in 1999 instituted an Inquiry on the operations of Kenya Co-operative Creameries Limited (KCC) which was chaired by Mr. Stephen Kirugi a former deputy Commissioner Cooperatives. The Team presented the final report (**Annex 6**) to the Former President H.E Daniel Torotich Arap Moi ,EGH, CGH on August 1999. The Team's Terms of Reference for the inquest was the following:-
1. Establish the correct Financial Status of KCC Ltd and make appropriate recommendation to address the problem in order to revitalize the company;
 2. Establish the indebtedness of KCC Ltd to Milk Farmers ,Raw Milk transporters ,Suppliers and Members of its staff ;
 3. Establish the indebtedness of Board of Directors and Staff of KCC Ltd to organization since February 1996 ;
 4. Examine Procurement Procedures for goods and services by KCC Ltd and determine whether they have been followed ;
 5. Do an Inventory of all KCC Ltd assets and make necessary comments and recommendation; and
 6. Investigate any other matter that had led to poor services to the Milk farmers by KCC Ltd.
- (o) The Kirugi Commission of Inquiry Report (**Annex 6**) documents the followings as the key findings among others :

NON-COMPLIANCE TO THE PROCUREMENT PROCEDURES

There was total disregard of Procurement procedures as provided in the Procurement manual developed by the Government Task Force in June 1995 hence procurement of goods and services was done haphazardly and at the prerogative of Former Managing Director and other managers at all levels.

INDEBTEDNESS BY KCC

As at 30th June 1999, KCC was indebted to a tune of Kshs 4.5 billion. KCC was indebted to Dairy farmers for supply of Raw Milk, Milk transporters, Staff in salaries arrears, Insurance premiums ,Government Loans and Interests , Kenya Revenue Authority , World Food Programme etc. **See Report (Annex 6), Pg 18 & 19**

INDEBTEDNESS TO KCC

As at 30th June,1999, KCC was owed over Kshs 391 Million by Former Board of Directors and Staff , Government ministries and departments , Milk farmers,Raw milk transporters and other private firms **See Report (Annex 6), Pg 23 & 28**

LEGAL MATTERS

Between April 1998 and 4th June 1999, Mr. Justry Lumumba Nyaberi was both the Company Secretary and Managing Director. Further, between July 1998 and 30th May 1999 the same person, Mr. Justry Lumumba Nyaberi was doubling up as Legal Officer, Company Secretary and Managing Director as a result , appointment of panel of advocates was done by this officer alone without any reference to other officers in the Company .

There was no formal list of advocates appointed through either tender minutes, appointments letters or other instruments bestowing such authority on advocates however it was noted that panels of advocates below among others were paid huge sums of money in claims in unclear circumstance.

1) Otieno Odek and Company Advocates	Kshs 64,816,016
2) Kipngeno and Abincha Advocates	Kshs 34,935,904
3) Keriako Tobiko Advocates	Kshs 39,564,104
4) R.N Sitati and Company Advocates	Kshs 371,595

MOTOR VEHICLES AND OTHER IMMOVABLE ASSETS

The KCC Motor vehicles and Immovable Assets including Land & Buildings were disposed in an unprocedural manner through verbal instruction from the Former Managing Director Mr. Justry Lumumba Nyaberi. The tender processes were circumvented to assist the former Directors and the Former Managing Director to acquire many of the KCC assets either directly or through proxies like spouses **See Report (Annex 6), Pg 50 & 60**

MILK COLLECTIONS ,PROCESSING AND MARKETING

Although KCC had an installed processing capacity of 1.8 million kgs per day, it started experiencing reduction in Milk collection in 1995. The total milk collection in 1995 was 213 million Kgs however by 1998 KCC could only collect 20 million Kgs per year. The downward trend was mainly contributed to non-payment of dues to Milk farmers who supply Raw milk. The mismanagement of the company by Former Board of Directors and Management also resulted in the inability of the KCC to meet daily financial obligations hence rendering the company inefficient and ineffective **See Report (Annex 6), Pg 79**


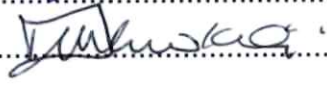
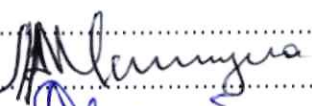

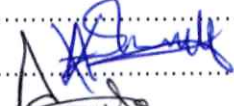

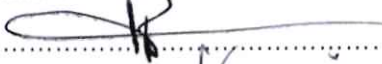
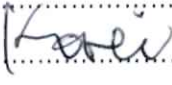




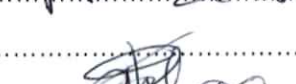
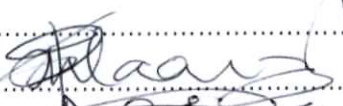
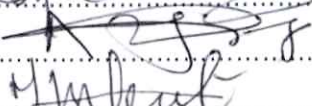
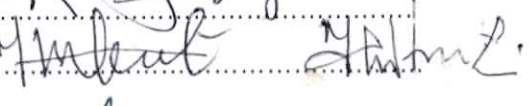
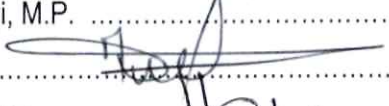
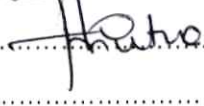
1.6 Response to the Prayers in the Petition

In response to the Petition prayers, the Committee recommends that

1. The Criminal Investigation Department (CID) and Ethics and Anti Corruption Commission(EACC) should investigate all former Board of Directors, Managing Directors and Staff of KCC who were mentioned in the Kirugi Commission Inquiry Report (**Annex 6**) with a view of prosecuting all culpable persons and reposes all KCC Assets that were irregularly acquired by individuals.
2. There exists a register of all original shareholders of the KCC(**Annex 3**).Therefore the National Government must first consider the original shareholders of KCC or their assignees in the process of privatizing the NKCC.
3. The Ethics and Anti Corruption Commission to investigate Ms Regent Valuers Int Ltd , a firm contracted by Privatization Commission to undertake valuation of NKCC with a view of establishing its relationship with KCC2000 and whether conflict of interest exist since the firm carried out valuation of KCC Assets during the period(1999) when KCC was in receivership.
4. Proposed shareholding structure proposed by the Dairy farmers that gives the farmers 65% while strategic investor 25% and Government 10% be considered by National Government while arriving at the final shareholding structure of the privatized NKCC.
5. The National Government through the privatization process of NKCC, grants Dairy farmers two years to enable many Milk farmers buy the shares as per above proposed shareholding structure. Ministry of Industrialization and Enterprise Development to assist Milk farmers to create a 'vehicle' that shall assist them mobilize resources required.

1.7 ADOPTION OF THE REPORT

We the members of the Departmental Committee on Agriculture ,Livestock and Cooperatives have pursuant to Standing Order 199 adopted this Report on the Public Petition by Milk Farmers Representative on the imminent privatization of the NKCC and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, Thursday 15th October ,2015 :-

1. The Hon. Adan Mohamed Nooru, MBS, M.P. -**Chairman**..... 
2. The Hon. Japhet M. Kareke Mbiuki, M.P. **Vice Chairman**..... 
3. The Hon. Kabando Wa Kabando, M.P.
4. The Hon. Raphael Letimalo, M.P.
5. The Hon. Mary Wambui Munene, M.P.
6. The Hon. Francis Munyua Waititu, M.P. 
7. The Hon. Peter Njuguna Gitau, M.P. 
8. The Hon. Maison Leshoomo, M.P.
9. The Hon. Anthony Kimani Ichung'wah, M.P.
10. The Hon. Alfred Kiptoo Keter, M.P. 
11. The Hon. Ayub Savula Angatia, M.P. 
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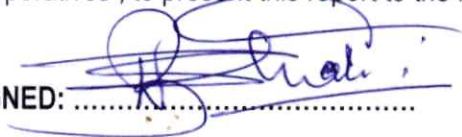
1.8 ACKNOWLEDGMENT

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

I take this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules which enabled us to complete the tasks within the stipulated period.

The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible.

Finally, it is now my pleasant duty, on behalf of the Departmental Committee Agriculture Livestock and Cooperatives , to present this report to the House pursuant to the provisions of Standing Order 227 (2).

SIGNED: 

DATE: 22-10-2015

for

HON. ADAN MOHAMED NOORU, MBS, M.P.

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES

2.0 BACKGROUND INFORMATION

2.1 Article 37 of the Constitution of Kenya 2010 provides that "Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities. In addition Article 119 (1) provides that "Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation".

Standing Order No 219 , 220 and 227 provides the manner in which the petition shall be handled and transacted in the House. These Standing Orders provide that public petitions shall be submitted to the Clerk and reported to the House by the Speaker. Further it provides that public petitions shall be presented to Parliament by a Member of relevant House on behalf of the Petitioner.

Every Petition presented or reported pursuant to the above Standing Orders shall stand committed to the relevant Departmental Committee. The relevant Departmental Committee shall in not more than sixty calendar days from the time of reading of the prayers respond to the petitioner by way of report addressed to the Petitioner(s) and laid at the table of the House.

2.2 The Petition by Milk Farmers Representative was presented to the House by the Hon Joyce Laboso EGH ,MP ,on 22nd October,2015 pursuant to Standing Order No. 225 (2)(a).

2.3 Pursuant to House rules, the petition was referred to the Committee on 22nd October,2015 for consideration and preparation of a report within 60 days. The Committee considered the petition pursuant to the provisions of Standing Order 227. Considering the nature of public interest on the petition the Committee having held meetings with some stakeholders requested for the extension of time pursuant to the Standing Orders

2.4 The petitioners wished to draw the attention of the House to the following, that:-

- (i) Aware that the KCC was established in 1925 to enable milk farmers to market their produce and grow their savings;
- (ii) The majority stake in the original KCC is held by small scale farmers and estimated a net worth of five billion Kenya Shillings;
- (iii) Noting, that a conspiracy of mismanagement allegedly plunged the giant farmers co-operative society into insolvency and thereafter receivership in the late 1990's;
- (iv) Original KCC was sold under unclear circumstances at throw-away price to private

entrepreneurs who re-named it KCC 2000, before the NARC Government reclaimed it and rebranded it NKCC on 25th June 2003;

- (v) The change in ownership of the original KCC to KCC 2000 and later NKCC did not conclusively determine, address and protect the rights and shareholding of farmers in the society;
- (vi) The Government is at an advanced stage of privatizing the NKCC through an Initial Public Offer (IPO) of shares at the Nairobi Stock Exchange in a formula that allocates an insignificant 31% of the Shareholding to the farmers who are the majority stakeholders, and 10% to the Government;
- (vii) That aware if the planned privatization of the NKCC proceeds without safeguarding the rights of the farmers, they risk permanent loss of their hard earned stakes worth billions of Kenya Shillings in the society by ceding 59% shareholding to the private investors;
- (viii) This sale would be tantamount to the Government abdication of its duty to protect farmers' right to property as provided for under Article 40(3) of the Constitution; and
- (ix) The inalienable rights of farmers to retain their majority stake can only be protected through a proposed privatization structure that would give farmers 85% of shareholding, Government 10% and staff of the Company 5% of the shareholding

2.4 Kenya Cooperative Creameries Limited was incorporated as a Public Limited Liability Company under the Companies Act (Cap486) on 22nd August 1925 and registered under the Cooperative Societies Ordinance in 1932. The objectives was to and still is to receive and process raw milk from the members into various products and market them on their behalf.

KCC Ltd was originally a settler's organization and utilized the company's legislation for operational and legal purposes whereas it used the cooperative legislation for tax purposes.

In 1968 the Cooperative Societies Act had lost its usefulness for tax purposes. Subsequently KCC was granted total exemption from the Cooperative Societies Act by the Minister for Cooperative Development under Section 86 of the Cooperative societies Act (Cap 490). Under Legal Notice No 125/1968 KCC was exempted from all the provisions of the Act and therefore purely operated under the Companies Act but retained the dual registration.

By early 1980s all was not well in KCC and the GOK was interested in finding out what was happening. However, this was hindered by the exemptions given in 1968 under the Legal notice No

125/1968. This is why the Minister for Cooperative Development then on 26th March ,1982 removed the exemption of 1968 in order to facilitate institution of an inquiry into the By-Laws, working and financial condition of KCC under the provision of Section 61 of the Cooperative Societies Act Cap 490

Further, to the revocation of the exemption, KCC was de-registered under Companies Act on 25th May ,1989 under Legal Notice No.2681 and therefore became fully a Cooperative organization unfortunately the de-registration of KCC as a Company was not in compliance with the winding up proceedings under the Companies Act. Subsequently ,KCC was re-registered as a company on 23rd May ,1999 under Gazette Notice No. 1997. KCC Therefore reverted to dual registration but without exemptions.

Still KCC could not operate optimally under the dual registration and especially without exemption from the provisions of the Cooperative Societies Act Cap 490. This led to exemptions being granted on 1st February 1996 under Gazette Notice No. 629. When farmers cried out for non-payments of their milk deliveries and alleged massive mismanagement in the organization the exemption granted on 1st February ,1996 were revoked on 17th June 1999 under Gazette Notice No.3288.

KCC was put under receivership in late 1999s by Kenya Commercial Bank (KCB) over a debt of Kshs 400 million and was later bought by private entrepreneurs and renamed KCC2000. The NARC Government reclaimed it and rebranded it New KCC (NKCC) on 25th June 2003. The NKCC has been in existence for the last 13 years.

3.0 SUBMISSIONS AND EVIDENCE

Having been seized of the Petition, the Committee commenced its consideration by inviting the petitioners (Milk farmers representatives) Cabinet Secretary the National Treasury, the Acting Cabinet Secretary Ministry of Agriculture Livestock and Fisheries, Cabinet Secretary Ministry of Industrialization and Enterprise Development, Chief Executive Officer Privatization Commission, Chairman and Chief Executive Officer of NKCC among other stakeholders for meetings on diverse dates.

During the meetings, written and oral evidence was adduced as recorded hereunder:-

3.1 Submission by the Hon. Joyce Laboso EGH, MP and Representative of Milk farmers (Petitioners)

Appearing before the Committee, the Petitioners made the following submissions:

- (a) That, KCC was established in 1925 to enable milk farmers to market their produce and grow their savings and the majority stake in the original KCC is held by small scale farmers and estimated a net worth of Kshs 5 billion.
- (b) That a conspiracy of mismanagement allegedly plunged the giant farmers co-operative society into insolvency and thereafter receivership in the late 1990's hence the original KCC was sold under unclear circumstances at throw-away price to private entrepreneurs who re-named it KCC2000, before the NARC Government reclaimed it and rebranded it NKCC on 25th June 2003.
- (c) The change in ownership of the original KCC to KCC 2000 and later NKCC did not conclusively determine, address and protect the rights and shareholding of Milk farmers in the country.
- (d) Farmers had been advised by the former Government to raise Kshs 400 million to settle the Kenya Commercial Bank debt in order that KCC is not put under receivership. But the farmers under the leadership of Retired Brig General Daudi Tonje could not be able to raise the stated amount of money.
- (e) In 2003 after the NARC government took reins of power the former Minister of Cooperatives Hon. Joseph Nyaga advised farmers to establish a organization "vehicle" that shall be used to transfer the NKCC back to farmers hence the birth of Kenya Dairy Farmers Cooperative Limited (KDFCL)
- (f) That, the transfer of KCC by the then government was done in a shoddy way and that farmers were arm-twisted in the transfer.
- (g) An amount of Ksh.525 million was lost by the farmers who had made milk deliveries to the Company and if the company was not returned to them then they will stand to lose twice
- (h) The Rregister showing the original shareholders of KCC is available contrary to the claims by Privatization Commission.
- (i) That, as Milk farmers representative they do not need a strategic partner since the company (NKCC) is now relatively stable and is marking profits
- (j) That, the National government considers writing off the farmers debts in the company like it had done with other farmers organizations in order to assist the Milk farmers recover economically.

- (k) If the planned Privatization proceeds without safeguarding the rights of the Milk farmers, they risk a permanent loss of their hard earned stakes worth billions of shillings in the society by ceding 59% shareholding to private investors as proposed by Privatization Commission.
- (l) That, there is a risk that the same entities/persons who oversaw the plundering of the original KCC may be the same entities pursuing Privatization of the NKCC in order to reclaim the ownership of the company.
- (m) That, the right of farmers to retain their majority stake can only be protected through a proposed Privatization shareholder structure that would give farmers 85%, the Government 10% and staff of the company 5% shareholding in the company.
- (n) That, Privatization Commission ensures sustainable transfer of ownership of the NKCC to Kenya Dairy Farmers in accordance shareholding structure proposed by the farmers rather than through the Nairobi Securities Exchange.
- (o) The GOK should remain a shareholder in the Privatized KCC in order to assist the company not to be drawn back to the past mistakes.

3.2 Submission by the Privatization Commission

Appearing before the Committee on 16th April ,2015 Chief Executive Officer made the following submissions:

- (a) The Privatization Commission was established in 2008 pursuant to the Privatization Act, 2005 to guide and provide for the privatization of government owned assets including State corporations.
- (b) Privatization Process of the NKCC began in 2010 with the objectives of addressing future governance and sustainability of NKCC operations and improve its competitiveness.
- (c) The Privatization process was temporary halted until 6th January 2015 to allow the rationalization of State Owned Enterprise when the Commission was allowed to complete the preparatory work on a number of transactions.
- (d) Privatization Commission procured services of a consortium of consultants to assist to undertake due diligence and options analysis in the privatization of NKCC. The members of the consortium were:
 - (i) Deloitte Consulting Ltd.
 - (ii) Mereka & Co. Advocates Limited (Including Clean Earth Limited)
 - (iii) Mboya & Wangong'u Advocates; and

- (iv) Regent Valuers International (K) Limited.
 - (v) Standard Investment Bank Ltd.
- (e) The Commission indentified the various key stakeholders of the NKCC as Milk producers ,GOK ,Milk consumers and NKCC staff among other stakeholders.
- (f) The Commission in the Financial year 2010/11 compiled and completed the following reports related to the privatization process:
- (i) Legal Due Diligence Report (November, 2010)
 - (ii) Environmental and Technical Due Diligence Report Vol I-III (December, 2010)
 - (iii) Asset Valuation Report by Regent Valuers Int (K) Limited (August, 2010)
 - (iv) Final Financial and Operational Due Diligence Report (November, 2010) Annex 1
 - (v) Options Analysis Report (February, 2011)
 - (vi) Restructuring Report (March, 2011)
- (i) Due to the non-existence of the Privatization Commission Board for a period of twenty months from March, 2011 to September, 2012 the Commission could not finalize the recommendation for submission to the National Treasury for consideration and approval by the Cabinet.
- (j) The Commission through further consultations including its stakeholders meeting with the milk farmers held on 15th May 2014 compiled a final updated reports as follows
- (i) Updated High Level Due Diligence Report (February , 2014)
 - (ii) Updated Options Analysis Report (February, 2014)
- (k) The Final Updated Options Analysis Report which was submitted to the Committee in March 2015 had taken into account issues raised by the Milk farmers at the Stakeholders workshop held on 15th May, 2014
- (l) The Final Updated Options Analysis Report concluded that:
- 1) The original shareholders residual value at receivership was negative.
 - 2) Privatization is the only way of transferring shares to the Milk farmers given that the Company had been on receivership.
 - 3) Though Statement by GOK officials (Letter by former Permanent Secretary Benjamin Sogomo) stated the intention to "restore" the company back to milk farmers ,this was never backed by any technical strategy.
 - 4) It would be difficult to indentify original shareholders of KCC and would be technically and financially unjustified with possibility of creating other major problems

- 5) The company ability to continue as a viable business entity should remain a priority
 - 6) The intention of the GOK is to ensure that milk farmers remain key players in the company
- (l) The Report further revises the proposed shareholding as follows:
- | | |
|-------------------------------------|-----|
| (i) Eligible milk producers | 39% |
| (ii) Strategic Partner | 26% |
| (iii) Public through Stock Exchange | 25% |
| (iv) Employee Ownership Plan | 3% |
| (v) Government | 10% |
- (o) KCC, Ltd as earlier constituted and given its financial status could not withstand competition after the market was liberalized.
 - (p) The Privatization process shall have provisions that farmers will buy the shares as per above proposed shareholder structure over a period of three years hence was need to create a structure that in addition to mobilizing resources required immediately will also ensure privatization of 51% shareholding to change the company from a state corporation
 - (q) There is need to avoid any action that appears to lift the receivership as other interested parties could easily launch a claim on the current value of NKCC
 - (r) There was need for governance structure that placed significant liability and /or risk on one entity, if the company was mismanaged or collapsed

3.3 Submission by the Acting Cabinet Secretary Ministry of Agriculture, Livestock and Fisheries

Appearing before the Committee on 16th April ,2015, Dr. Adan Mohamed the Acting Cabinet Secretary made the following submissions, that:

- (a) The NKCC is 100% owned by the government
- (b) The government is currently instituting measures to grow the dairy sector through revamping of Animal Genetics Centre and expansions of Bull Centers in the Country, this is to ensure farmers receive efficient and high yielding dairy cattle and make dairy industry a prosperous one
- (c) KCC has had long historical background of operational challenges following the liberalization of the industry in 1991
- (d) Prior 1999 the NKCC was fully owned by the small scale milk farmers in Kenya.

- (e) NKCC despite its fairly stable performance, the company is still faced with serious cash-flow problems. In 2014 the NKCC was facilitated with Kshs 800 million bank overdraft while in 2015 a request for an additional overdraft of Kshs 300 million has been forwarded.
- (f) The consultations were still on preliminary stage and that a Government position is yet to be taken regarding proposed shareholding structure.
- (g) The Privatization of NKCC is being carried out with utmost transparency as laid down in the Privatization Act ,2005.
- (h) The strategic investor envisioned in the shareholder structure proposal by the Privatization commission if agreed upon will be the anchor tenant in the new arrangement and shall inject the much needed capital alongside providing the best practices in the dairy industry.
- (i) When a company is on receivership the rights to own shares by the original shareholders ceases.
- (j) There is need to investigate the circumstances that led to changes in shareholding structure when the company was in receivership.
- (k) Investigation should be carried out to ascertain the value of KCC before being but on receivership. The receiver manager should provide information on the valuation of KCC at the time of receivership.
- (l) The National Government shall ensure that, the manner in which the privatization of NKCC will be undertaken shall guarantee that the dairy industry will continue to be strong as it learns from the past mistakes.
- (m) The Ministry of Agriculture ,Livestock and Fisheries has fears that collapse of the NKCC may result to monopoly in the market.

3.4 Submission by the Cabinet Secretary the National Treasury

Appearing before the Committee on 16th April ,2015, Mr. Henry Rotich, the Cabinet Secretary the National Treasury made the following submissions:

- (a) That, in 2005 as result of uncoordinated and haphazard Privatization of State owned assets the Parliament of Kenya passed the Privatization Act , 2005 which in essence is geared at guiding the process of privatization of state owned Corporations. This law is being used in the proposed privatization of NKCC
- (b) The NKCC is 100% owned by the GOK and is held on behalf of the Kenyans. The shareholding of government through the National Treasury is 199 million shares

- (c) The Privatization law was being used to have the government get out of NKCC
- (d) The Privatization Commission is expected to finalize the report on the proposed privatization of NKCC and submit a report to National Treasury. The report shall be discussed in Cabinet before it is submitted to Parliament for approval.
- (e) The liberalization of the dairy industry in 1990s alongside the mismanagement of the Company resulted to the collapse of the company
- (f) That due to historical issues regarding the company's collapse in 1999 and subsequent government takeover in 2003 there is need to have a strategic partner/investor on board to avoid reverting back to the same scenario of 1990s. The strategic investor shall required to provide the strategic direction and thinking in the company.
- (g) There are several proposals on the shareholding structure of NKCC deliberated by the stakeholders and the National Treasury. The Privatization Commission is reviewing the merits of each proposal and shall advice the Cabinet appropriately.
- (h) The original shareholders of the KCC prior 1999, were the Milk farmers of Kenya

3.5 Submission by the Hon. Matu Wamae , Chairman of the Board NKCC

Appearing before the Committee on 16th April ,2015 Chairman of Board of Directors of NKCC made the following submissions, that:

- (a) The NARC Government took over KCC2000 on 25th June 2003 and rebranded it NKCC
- (b) The GOK bought the company by paying shareholders of KCC2000 Kshs 547 Million.
- (c) The NKCC has since posted profits every year except in the first year(2003) and 2013 having accumulated reserves amounting to Kshs 4.5 Billion for which the company has ploughed back and modernize the machinery in the company.
- (d) The NKCC has promptly paid all the farmers for the supply of milk and no farmer is on arrears
- (e) NKCC has a total of 1600 employees for which the company is promptly paying salaries without any delays.
- (f) NKCC in 2014 was granted an overdraft facility of Kshs 800 million by a commercial bank for which is currently servicing.
- (g) The Current Board of Management of NKCC has at no time deliberated and agreed on the Privatization of NKCC and therefore has not made any recommendation on the same.

- (h) That, NKCC is professionally managed and has posted profits annually and therefore does not require a strategic partner
- (i) That the GOK considers writing off the farmers debts in the company like it had done with other farmers organizations in order to assist the milk farmers recover economically.

4.0 COMMITTEE OBSERVATIONS

Having held meetings and considered the submissions presented on the petition, the Committee observed that:-

- (a) Kenya Cooperative Creameries Limited was incorporated as a Public Limited Liability Company under the Companies Act (Cap486) on 22nd August 1925 and registered under the Cooperative Societies Ordinance in 1932. The objectives was to receive and process raw milk from the members into various products and market them on their behalf.
- (b) The giant farmers Co-operative Society ran into insolvency and thereafter receivership in the 1999 over a Kenya Commercial Bank (KCB) debt of Kshs 400 million hence the original KCC was sold under unclear circumstances at throw-away price to private entrepreneurs who re-named it KCC2000. The NARC Government reclaimed the Company through an Executive Order and rebranded it NKCC on 25th June 2003 after paying Kshs 547 million to KCC2000 entity. The NKCC has been in existence for the last 13 years.
- (c) A Register showing the original Shareholders of KCC is available contrary to the claims by Privatization Commission of Kenya (**Annex 3**).
- (d) The Shareholding structure of KCC prior to receivership (1999) was as follows:

Individual Dairy farmers	-	60.38%
Dairy Cooperative societies	-	35.56%
Government institutions	-	3.70%
Other Institution	-	0.34%
- (e) Privatization Process of the NKCC began in 2010 with the objectives of addressing future governance and sustainability of NKCC operations and improve its competitiveness.
- (f) Privatization Commission through the following consortium of consultants undertook due diligence and options analysis in the privatization of NKCC.
 - (i) Standard Investment Bank Ltd;

- (ii) Deloitte Consulting Ltd;
 - (iii) Mereka & Co. Advocates Limited (Including Clean Earth Limited);
 - (iv) Mboya & Wangong'u Advocates; and
 - (v) Regent Valuers International (K) Limited.
- (g) The Privatization Commission has compiled and completed several reports related to the privatization process as follows :-
- (i) Final Financial and Operational Due Diligence Report (November 2010);
 - (ii) Legal Due Diligence Report (November 2010);
 - (iii) Environmental and Technical Due Diligence Report Vol I-III (December 2010);
 - (iv) Asset Valuation Report by Regent Valuers Int (K) Limited (August 2010);
 - (v) Options Analysis Report (February 2011);
 - (vi) Restructuring Report (March 2011) ;
 - (vii) Updated High Level Due Diligence Report (February 2014); and
 - (viii) Updated Options Analysis Report (February 2014)
- (m) The Privatization Commission held Stakeholders meeting with the Milk farmers on 15th May 2014 and as a result the Final Updated Options Analysis Report (**Annex 4**) was prepared. This report considered matters raised by the Milk farmers during the Stakeholders meeting.
- (n) The Privatization Commission in their Updated Options Analysis Report concluded that:-
- (i) The original Shareholders residual value of KCC at receivership was negative;
 - (ii) Privatization process is the only safest way of transferring back the shareholding of Company to the Milk farmers given that the Company had been earlier on receivership;
 - (iii) Although statements by GOK officials (Letter by Permanent Secretary Benjamin Sogomo) (**Annex 5**) stated the intention to "restore" the company back to Milk farmers, there was however no technical strategy to back the intention ;
 - (iv) It would be technically and financially difficult to indentify original shareholders of KCC after the company went on receivership without possibility of creating other major problems;
 - (v) The company's ability to continue as a viable business entity should remain a priority; and
 - (vi) The intention of the GOK is to ensure that Milk farmers remain key players in the company.

(m) The Privatization Commission Report (**Annex 4**) proposes a new Shareholding structure as follows:

Eligible milk producers	39%
Strategic Partner	26%
The Public through Securities Exchange	25%
Employee Ownership Plan	3%
Government	10%

(s) Privatization Commission proposes that farmers be given a three year period to allow them adequate time to purchase shares as per agreed Shareholding structure. Milk Farmers to be supported through Cooperative Societies to create a "vehicle" to be used to mobilize resources.

(t) There is need to avoid any action that appears to lift the receivership as other interested parties could easily launch a claim on the current value of NKCC.

(u) The GOK in 1999 instituted an Inquiry on the operations of Kenya Co-operative Creameries Limited (KCC) which was chaired by Mr. Stephen Kirugi , a former deputy Commissioner Cooperatives. The Team presented the final report (**Annex 6**) to the Former President H.E Daniel Torotich Arap Moi ,EGH, CGH on August 1999. The Team's Terms of Reference for the inquest was the following:-

1. Establish the correct Financial Status of KCC Ltd and make appropriate recommendation to address the problem in order to revitalize the company;
2. Establish the indebtedness of KCC Ltd to Milk Farmers ,Raw Milk transporters ,Suppliers and Members of its staff ;
3. Establish the indebtedness of Board of Directors and Staff of KCC Ltd to organization since February 1996 ;
4. Examine Procurement Procedures for goods and services by KCC Ltd and determine whether they have been followed ;
5. Do an Inventory of all KCC Ltd assets and make necessary comments and recommendation; and
6. Investigate any other matter that had led to poor services to the Milk farmers by KCC Ltd.

(p) The Kirugi Commission of Inquiry Report (**Annex 6**) documents the followings as the key findings among others :

1. NON-COMPLIANCE TO THE PROCUREMENT PROCEDURES

There was total disregard of Procurement procedures as provided in the Procurement manual developed by the Government Task Force in June 1995 hence procurement of goods and services was done haphazardly and at the prerogative of Former Managing Director and other managers at all levels.

2. INDEBTEDNESS BY KCC

As at 30th June 1999, KCC was indebted to a tune of Kshs 4.5 billion. KCC was indebted to Dairy farmers for supply of Raw Milk, Milk transporters, Staff in salaries arrears, Insurance premiums, Government Loans and Interests, Kenya Revenue Authority, World Food Programme etc. **See Report (Annex 6), Pg 18 & 19**

3. INDEBTEDNESS TO KCC

As at 30th June, 1999, KCC was owed over Kshs 391 Million by Former Board of Directors and Staff, Government ministries and departments, Milk farmers, Raw milk transporters and other private firms **See Report (Annex 6), Pg 23 & 28**

4. LEGAL MATTERS

Between April 1998 and 4th June 1999, Mr. Justry Lumumba Nyaberi was both the Company Secretary and Managing Director. Further, between July 1998 and 30th May 1999 the same person, Mr. Justry Lumumba Nyaberi was doubling up as Legal Officer, Company Secretary and Managing Director as a result, appointment of panel of advocates was done by this officer alone without any reference to other officers in the Company.

There was no formal list of advocates appointed through either tender minutes, appointment letters or other instruments bestowing such authority on advocates. However, it was noted that panels of advocates below among others were paid huge sums of money in claims in unclear circumstances.

5) Otieno Odek and Company Advocates	Kshs 64,816,016
6) Kipngeno and Abincha Advocates	Kshs 34,935,904
7) Keriako Tobiko Advocates	Kshs 39,564,104
8) R.N Sitati and Company Advocates	Kshs 371,595

5. MOTOR VEHICLES AND OTHER IMMOVABLE ASSETS

The KCC Motor vehicles and Immovable Assets including Land & Buildings were disposed in an unprocedural manner through verbal instruction from the Former Managing Director Mr. Justy Lumumba Nyaberi. The tender processes were circumvented to assist the former Directors and the Former Managing Director to acquire many of the KCC assets either directly or through proxies like spouses **See Report (Annex 6), Pg 50 & 60**

6. MILK COLLECTIONS ,PROCESSING AND MARKETING

Although KCC had an installed processing capacity of 1.8 million kgs per day, it started experiencing reduction in Milk collection in 1995. The total milk collection in 1995 was 213 million Kgs however by 1998 KCC could only collect 20 million Kgs per year. The downward trend was mainly contributed to non-payment of dues to Milk farmers who supply Raw milk. The mismanagement of the company by Former Board of Directors and Management also resulted in the inability of the KCC to meet daily financial obligations hence rendering the company inefficient and ineffective **See Report (Annex 6), Pg 79**

5.0 COMMITTEE RECOMMENDATIONS

In response to the Petition prayers, the Committee recommends that

1. The Criminal Investigation Department (CID) and Ethics and Anti Corruption Commission(EACC) should investigate all former Board of Directors, Managing Directors and Staff of KCC who were mentioned in the Kirugi Commission Inquiry Report **(Annex 6)** with a view of prosecuting all culpable persons and reposes all KCC Assets that were irregularly acquired by individuals.
2. There exists a register of all original shareholders of the KCC **(Annex 3)**.Therefore the National Government should first consider the original shareholders of KCC or their assignees in the process of privatizing the NKCC.
3. The Ethics and Anti Corruption Commission should investigate Ms Regent Valuers Int Ltd , a firm contracted by Privatization Commission to undertake valuation of NKCC with a view of establishing its relationship with KCC2000 and whether conflict of interest exist since the firm carried out valuation of KCC Assets during the period(1999) when KCC was in receivership.

4. Proposed shareholding structure proposed by the Dairy farmers that gives the farmers 65% while strategic investor 25% and Government 10% be considered by National Government while arriving at the final shareholding structure of the privatized NKCC.
5. The National Government, through the privatization process of NKCC, should grant Dairy farmers two years to enable many Milk farmers buy the shares as per above proposed shareholding structure. The Ministry of Industrialization and Enterprise Development should assist Milk farmers to create a 'vehicle' that shall assist them mobilize the resources required.

- Annex 1 - Copy of the Petition by the Stakeholders of Kenya Cooperative Creamers (KCC) on the imminent Privatization of KCC
- Annex 2 - Minutes of the Committee Sitings
- Annex 3 - Letter from former Permanent Secretary in the Ministry of Cooperatives Mr. Benjamin Sogomo
- Annex 4 - Copy of the Register of the Original Shareholders of KCC
- Annex 5 - Copy of the Final Update Options Analysis
- Annex 6 - Report on the Inquiry on the Kenya Cooperative Creamers (KCC) by Kirugi Presidential Commission

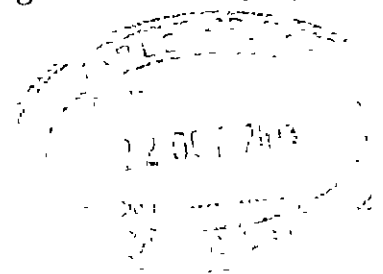
Paper Laid on
Hon. Joyce Labiso, CAH, MT
on 22/10/2014
BY MILK FARMERS REPRESENTATIVES
355
Approved
355 SWA
22/10/14

PUBLIC PETITION
ON
THE IMMINENT PRIVATIZATION OF THE NEW KENYA CO-OPERATIVE CREAMERIES
(KCC)

I, THE UNDERSIGNED, on behalf of milk farmers' representatives from across the country,

DRAW the attention of the House to the following;

- i) THAT, aware that the Kenya Co-operative Creameries (KCC) was established in 1925 to enable milk farmers to market their produce and grow their savings;
- ii) THAT, the majority stake in the original KCC is held by small scale farmers and estimated at a net worth of five billion Kenya Shillings;
- iii) NOTING, that a conspiracy of mismanagement allegedly plunged the giant farmers' co-operative society into insolvency and thereafter receivership in the late 1990's;
- iv) THAT, KCC was to sold under unclear circumstances at throw-away price to private entrepreneurs who re-named it KCC 2000, before the NARC Government reclaimed it and rebranded it New KCC on 25th of June 2003;
- v) THAT, the change in ownership of the original KCC to KCC 2000 and later to New KCC did not conclusively determine, address and protect the rights and shareholding of farmers in the society
- vi) THAT, the Government is at an advanced stage of privatizing the New KCC through an Initial Public Offer of shares at the Nairobi Securities Exchange in a formula that allocates an insignificant 31% of shareholding to farmers who are the majority stakeholders, and 10% to the Government;
- vii) THAT, aware that if the planned privatization of the New KCC proceeds without safeguarding the rights of farmers, they risk permanent loss of their hard earned stakes worth billions of shillings in the society by ceding 59% shareholding to private investors;



PUBLIC PETITION
BY MILK FARMERS REPRESENTATIVES
ON
THE IMMINENT PRIVATIZATION OF THE NEW KENYA CO-OPERATIVE CREAMERIES
(KCC)

viii) **THAT**, that this sale would be tantamount to the Government's abdication of its duty to protect farmers' right to property as provided for under Article 40(3) of the Constitution;

ix) **THAT**, that the inalienable right of farmers to retain their majority stake can only be protected through a proposed privatization structured that would give farmers 85%, the Government 10% and staff of the company 5% shareholding in the company;

THEREFORE your humble petitioner **PRAYS** that the National Assembly, through the Departmental Committee on Agriculture, Livestock and Co-operatives:

- (a) Intervenes to have a special audit on KCC done by the Auditor General in accordance with Article 229(5) to ascertain the circumstances that led to the collapse of KCC as well as the current ownership structure of the New KCC, and a report thereto submitted to the National Assembly for action;
- (b) Urges the Privatization Commission to ensure sustainable transfer of ownership of the New KCC to Kenyan Dairy Farmers in accordance with shareholding structure proposed by the farmers, rather than through the Nairobi Securities Exchange; and
- (c) Urges the Cabinet Secretary responsible for Co-operatives in compliance with Section 29 of the Privatization Act, to limit the eligible investors to Dairy Farmers' Groups and individual dairy farmers supplying milk to New KCC and that funds generated from privatization be channeled towards revamping the Kenyan Dairy industry.

THAT, to the best of our knowledge, there is no pending case before any court of law in respect to this matter.

And your **PETITIONERS** will ever pray.

PRESENTED BY,

HON. (DR.) JOYCE LABOSO, MBS, MP
MEMBER FOR SOTIK CONSTITUENCY

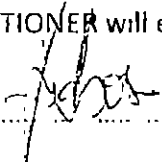
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PETITION BY MILK FARMERS REPRESENTATIVES ON THE PRIVATIZATION OF THE NEW KCC

- Dairy farmers – 85% through their Apex Cooperative Society
- Government – 10%
- Employees of the company – 5%

3. Urges the Cabinet Secretary for the time being responsible for Cooperatives to ensure compliance with the provisions of section 29 of the Privatization Act and subsequently limit eligible investors to Dairy Farmers groups and individual Dairy Farmers supplying milk to the company and ensure that funds from privatization of the New KCC are channeled towards developing the Kenyan dairy industry.

And your PETITIONER will ever pray

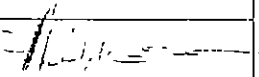
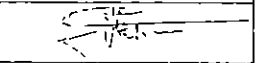
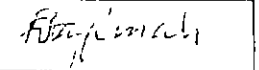
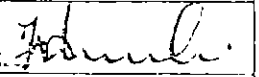
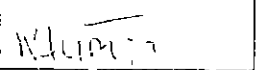
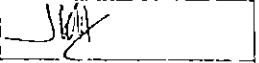
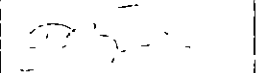
Signature..... 

Date..... 27.11.2014.....

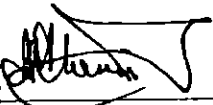

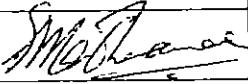
PRESENTED BY

HON. (DR.) JOYCE LABOSOS, MGH, M.P.

DEPUTY SPEAKER AND MEMBER OF PARLIAMENT FOR SOTIK CONSTITUENCY ON BEHALF OF THE FOLLOWING PETITIONERS BEING FARMERS REPRESENTATIVES ON PRIVATIZATION OF NEW KCC

No.	Names	Full Address	National ID	Signature
1.	Philip Kipkorir Bitok	P.O. Box 1615 -30101 - 117000	3312625	
2.	Jonah Tonui	P.O. Box 27-20203 -30101 - 117000	4346757	
3.	Lydia N Kagema	Box 1319, M'keri 11111	1525123	
4.	Muchemi Ndiritu	29 Kariba	095092	
5.	Michael Gitonga Njeru	2 Kariakoo -30101 - 117000	27-320	
6.	Eng Jan Mutai	P.O. Box 1644002 -30101 - 117000	4590554	
7.	Dr. Samson Mutai			

PETITION BY MILK FARMERS REPRESENTATIVES ON THE PRIVATIZATION OF THE NEW KCC

8.	L Gen A. K. Arap Cheruiyot	P.O. BOX 1021 KAPSABET	2310840	
9.	Timothy K. Tororei	P.O. BOX 41 LISAMA DUNIC	0447783	Timothy
10.	Mrs. Alice Chesire	P.O. BOX 13 KIDORET	3651772	
11.	Hon. Matu Wamae	P.O. Box 40495 NAIROBI	0377104	



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OFFICE OF THE DEPUTY SPEAKER NATIONAL ASSEMBLY

26th August 2014

The Director,
Legal Services,
National Assembly
Nairobi

R E C E I V E D	
DIRECTORATE OF LEGAL SERVICES NATIONAL ASSEMBLY	
DATE RECEIVED.....	26.8.2014
NAME.....	
TIME RECEIVED.....	4.12 P.M.
SIGNATURE.....	BK

Dear Sir,

RE: PRIVATIZATION OF THE NEW KCC

This letter is in reference to our earlier conversation concerning KCC. Attached herein please find the list of KCC suppliers, the minutes and the Parliamentary Questions for your necessary action

Yours Sincerely,

HON. DR. JOYCE LABOSO, MGH, M.P,
DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY

Mr. Mwangi to
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26/08

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KCC

**Meeting of Farmers Representatives on Privatization of New KCC held on
28th May 2014 in Kenya Dairy Board's Boardroom at NSSF Building**

1.0 Members present

- | | | |
|---------------------------------|---|-----------------------------|
| 1. Philip Kiplorir Bitok | - | 0720-682878 – Chairing |
| 2. Abraham Rugutt | - | 0721-414775 |
| 3. Jonah Tonui | - | 0721-217218 |
| 4. Hon. Joel Barmasai | - | 0722-788850 |
| 5. Lydia N. Kagema | - | 0721-344479 |
| 6. Muchemi Ndiritu | - | 0724-355035 |
| 7. Michael Gitong Njeru | - | 0720-392716 |
| 8. Kipkorir Arap Menjo | - | 0722-748248 |
| 9. David Kingori Njogu | - | 0723-271862 |
| 10. Eng. Jan Mutai | - | 0722-310094 |
| 11. Dr. Samson Muttai | - | 0722-250363 |
| 12 Lt. Gen. A. K Arap Cheruiyot | - | 0722-717128 |
| 13 Timothy K. Tororei | - | 0722-268046– Taking Minutes |
| 14. Mrs. Alice Chesire | - | 0722-772920 |
| 15. Hon. Matu Wamae | - | 0722-752750 |
| 16 Philip K Cherono | - | 0725-702595 |

2.0 Agenda

- 2.1** Gathering of information on the ownership of New KCC

3.0 Apologies

Machira Gichohi – Managing Director – KDB

4.0 Opening Remarks

4.1 The meeting started at 10.25am with a word of prayers from Mrs. Lydia Kagema. The Chairperson, Mr. Bittok welcomed the members and introduced the subject matter as a follow-up of the issues that arose from the New KCC Privatization meeting at the School of Government on 15th May 2014.

5.0 Gathering of Information on the Ownership of New KCC

- 5.1** - The background on the privatization Programme was presented including the consultative process that took place.
- 5.2** - The issues arising from the School of Government were discussed. The members expressed their dissatisfaction on the consultant's report as it did not represent the farmers' interest as submitted during the consultative stage.
- 5.3** - The consultants should have obtained information on the circumstances that led to the acquisition of KCC by KCC 2000 Holdings/KCC 2000 Limited. It should also be clarified that New KCC was not bought but taken over through executive order by the Government.
- 5.4** - The consultants should recognize the fact that, KCC was developed solely using farmers' resources, and thus it is owned by farmers.
- 5.5** - The list of the suppliers of KCC as of 1999 is the true list of owners as at that time. This information is with New KCC management and PWC who was their Auditor and should be obtained for presentation to the Privatization Commission and the consultants

5.6 - The meeting resolved that, Kenya Dairy Board contacts Price Waterhouse Coopers and any other person/institution that may possess this information.

5.7 - It was noted, that as at its collapse, the share capital of KCC was as follows:

Individual dairy	-	60.38%
Dairy Co-op Societies	-	35.56%
- Govt. Institutions	-	3.7%
Other Institutions	-	0.34%

5.8 - Documents presented indicated that, in 2003 the Government repossessed KCC with the intension of transforming it to a State Corporation in order to give farmers time to organize themselves in readiness to takeover. Further, farmers are willing to refund Government the KShs. 547 Million which was paid to KCC holdings/KCC 2000 Ltd. This spirit is in line with clause 18 Subsection 2 (f), Clause 24 Subsection (e) (f) and Clause 29 Subsection (2) of the Privatization Act, which goes a long way in achieving the aspirations of Vision 2030, Millennium Development Goals and the Jubilee Manifesto.

5.9 - The meeting resolved to assemble the following documents for presentation to Kenya Dairy Board for onward transmission to the Privatization Commission:

5.9.1 Parliamentary Hansard on budget statement by Hon. Mwiraria of 14/6/2003

5.9.2 KCC Dairy Farmers Co-operative Society Ltd. Memorandum to privatization Commission.

5.9.3 Hon Joseph Nyagah's presentation to the Privatization Commission on New KCC

5.9.4 Letter by Mr Sogomo on Handing/taking over of KCC 2000 Holdings/KCC 2000 Limited by New KCC.

5.9.5 List of suppliers as at 1999

5.9.6 List of current suppliers of New KCC

5.9.7 Policy documents – ERS,SRA and DMP - its implication on New KCC

5.9.8 Jubilee manifesto – Farmers opportunities in value chain

5.9.9 Global best practice on dairying and processing - India, New Zealand, South Africa and Australia, Netherlands, Denmark and Canada

5.9.10 H.E Hon Kibaki's statement in Eldoret during 2004 ASK show and during his visit to New KCC factory - Eldoret.

5.9.11 The revitalization of KCC: The politics of Policy Reforms in the Dairy Sector in Kenya

5.9.12 The scramble for New KCC – Organic farmer Newsletter

5.9.13 Copies of Share Certificates issued to Farmers by KCC

5.9.14 Legal Notice establishing New KCC

5.9.15 Privatization Commission Act

5.10 The meeting also resolved that the information should be obtained as soon as possible to avoid a situation where the Government may make a decision without farmers input.

5.11 Farmers expressed their concern and requested the Government to ensure that the Industry does not end-up being monopolized by a few players.

5.12 The meeting reiterated that, the farmers have the capacity to manage the New KCC without a strategic partner and should be handed over to them. In pursuance of these objectives the Kenya Dairy farmers have established the KCC Dairy Farmers Co-operative Ltd as a vehicle to refund the KShs 547,000,000.00 to Government and acquire 85% stake in New KCC. The KCC Dairy Co-operative Ltd. has a broad based membership comprising of, Dairy co-operative

Societies, Self Help Groups, and Community based organizations, Dairy Companies and individual farmers drawn from the entire country.

5.13 In conclusion, the Privatization of New KCC should be informed by the following factors:

5.13.1 Political Factors

5.13.1.1 Political good will as demonstrated by statements made by the H.E Hon. Mwai Kibaki, Hon Joseph Nyagah, Hon. Njeru Ndwiga, Hon. Kipruto Arap Kirwa and the aspirations of the Jubilee Manifesto.

5.13.1.2 There is precedence that, Government has extended substantial support to various farmer sub-sectors as follows:

- a) Coffee Farmers
- b) Maize Farmers
- c) Beef Farmers
- d) Kenya Meat Commission
- e) Sugarcane farmers
- f) Rice Farmers
- g) Pyrethrum Farmers

It is therefore appropriate that, Dairy Farmers be considered in similar light. Noting unlike that all other Dairy Farmers have invested heavily in New KCC through capital development levies, that went into substantial base of New KCC.

5.13.2 Economic Factors

5.13.2.1 The aspirations of Vision 2030, Economic Recovery Strategy for Wealth and employment creation, Strategy for the Revitalization of Agriculture, Agricultural Sector Development Strategy and Millennium Development Goals.

5.13.2.2 Capital Market in Kenya is mature and should there be need for capital, Dairy Farmers can easily acquire such capital from our dynamic capital market. Further, Farmer cooperatives in Kenya have diversified into the provision of financial services through Savings & Credit Organizations which may act as source of capital.

5.13.2.3 Bringing in a foreign investor in the name of Strategic Partner, is a risk undertaking. This investor, in pursuit of profit making, may result to importing subsidized and cheap dairy produce including milk powder for reconstitution at the expense of the Kenyan Dairy Farmer.

5.13.2.4 The Dairy Industry in Kenya is mature enough to access finances and any market access required without the assistance of a Strategic Partner.

5.13.3 Social Factors

5.13.3.1 Global best practices demonstrate that, the most developed dairy industries are overwhelmingly owned and controlled by farmers. This is the principal that led to the establishment of the KCC in 1925 and it is the same spirit that the Kenyan farmers are pursuing. Bringing in a strategic investor at this stage without the involvement of farmers is an attempt to discriminate against the Kenyan Dairy Farmer.

5.13.3.2 Research has demonstrated that dairying has the capacity to improve the standards of living and quality of life of most Kenyans. In order to improve livelihood of Kenyan dairying should be encouraged through ensuring that farmers reap maximum benefits through the enterprise. This can only be achieved through ownership of dairy value chain enterprises by the farmers.

5.13.3.3 Dairying is a major source of food and nutrition security for most Kenyans and this should be promoted.

5.13.3.4 Dairying is a source of insurance to Dairy farmers.

5.13.4 **Technological Factors**

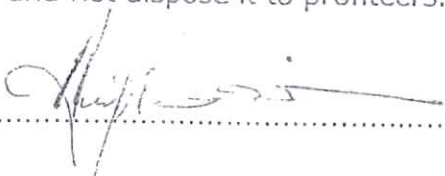
5.13.4.1 Technology adoption is fully mature in Kenyan Dairy Enterprises and any needed technological input can easily be acquired by Kenyan Dairy Farmers or Entrepreneurs. There is therefore no justifiable need for a Strategic Investor as this may not be a value adding action.

5.13.5 **Legal Factors**

5.13.5.1 The proposed privatization of New KCC should take cognizance of provisions of the Privatization Act as stated in clauses 18, 24 and 29

5.13.5.2 KCC was acquired through executive order and not through an auction. The same order should be used to return it to the farmers, the original owners.

5.13.5.3 The Constitution of Kenya 2010 provides for the protection of the peoples' wealth as provided in article 40. The Government of Kenya has the responsibility to ensure that this is done to the Kenyan Dairy Farmer by ensuring that the New KCC is reverted back to farmers and not dispose it to profiteers.

Chairman.......... Date..... 28/05/2014

Secretary.......... Date..... 28/05/2014

1.0 KCC DAIRY FARMERS CO-OPERATIVE SOCIETY LTD.

2.0 MEMORANDUM TO THE PRIVATIZATION COMMISSION ON THE PROPOSED PRIVATIZATION OF NEW KENYA COOPERATIVE CREAMERIES LIMITED

3.0 PREAMBLE

In this preamble to our memorandum, we the dairy farmers who supply milk to New KCC aver that we are the key stakeholders in the dairy industry in Kenya and hereby make expression of interest to bid for purchase of New Kenya Cooperative Creameries Ltd., at this point in time when the company is on way to privatization.

Kenya Cooperative Creameries was incorporated as a limited liability company in 1925, although it had already been in operation for several years. It was then known as Cooperative Creamery Limited. The first creamery was opened in 1926 at Naivasha. In 1931, it matched with Kipkelion Creameries and changed its name in the year 1945 to Kenya Cooperative Creameries Ltd. It was placed under receivership in 1999 by the debenture holders; Commercial Bank.

The company started with one dairy processing plant in Naivasha and as at today we have eleven (11) factories, eleven (11) milk cooling plants, eight (8) sales depots and over sixty (60) satellite coolers country wide.

By 1999 before the company was placed under receivership the Kenya dairy farmers countrywide owned this company by virtue of shares they paid through capital development levy from the milk delivered and up to today they still have the share certificate; even though they were not paid for several month's milk delivered before collapse of KCC in 1999. This is a phenomenon that even escalates their push for ownership through a majority shareholding arrangement of 85% so that they could recoup their past losses.

In the year 1999, Kenya Commercial Bank appointed a Receiver Manager; Price Water-House Coopers who sold KCC to KCC Holding/ KCC 2000 at Kenya Shillings Four Hundred million (Kshs. 400 million) only whereas the value of KCC at that time was over Kshs. 6 billion.

In the year 2003, Government took over and paid off the KCC Holding /KCC 2000 Kshs 400 million and an additional Kshs. 140 million for the stock and profit then, thus totaling Kshs 540 million Thanks to the Naic Government which was in power then and which from then the dairy industry has grown for the benefit of the Kenya Dairy farmers

4.0 STATEMENT(S) OF IMPORTANCE

The KCC Dairy Farmers Cooperative society Ltd, a body corporate to be: acting on behalf of the Dairy farmers.-

- a) Urges the Privatization Commission to ensure sustainable transfer of ownership of the New KCC to Kenya Dairy Farmers and safeguard against what befell Mumias Sugar Company where individual farmers disposed off their shares soon after IPO.
- b) Further urges the Cabinet Secretary for the time being responsible for this matter to exercise due process of law and powers conferred under Chapter 29 of the Privatization Act and to limit eligible investors in NKCC privatization to Dairy farmer groups, and individual dairy farmers supplying milk to the Company (NKCC) and old suppliers can activate their shares through supplying milk anew.
- c) Calls upon the government of Kenya to utilize proceeds from privatization of new KCC for the development of dairy industry (dairy stabilization fund)
- d) Pledges to work with **County Government(s)** to decentralize some functions to counties while maintaining a National structure

Provided:

- ✓ Any other partner coming in at a later date shall have the full acceptance of the Dairy Farmer fraternity supplying milk to the company (NEW KCC)
 - (i) Requests that the dairy Farmers' proposal inset be considered in its entirety and in the event of other emerging issues for harmonization, we be consulted for further and better dialogue
 - (ii) Request the privatization commission to create a shareholding structure to the Company as follows 85% to the Dairy Farmers through their Apex cooperative society, 10% to the Government of Kenya and 5% to the

employees of NKCC, all directly but not through the IPO (Nairobi Stock Exchange). **AT ALL**

(iii) **Request** Privatization Commission to make reference

(a) To the Government Statement (budget speech) by the former Minister for Finance Hon. David Mwiraria on 14.6.2003.

(b) To the Letter of the Permanent Secretary Ministry of Cooperative Development, Mr. Benjamin K. Sogomo O.G.W Ref No. MCD/S/AGR/11/7 of 24th June, 2003.

(c) To refer to recommendation by the Minister of Co-operative Development Hon. Joseph Nyagah EGH, MP presentation to the Privatization Commission on New KCC as per the attached copy.

(e) **Request** that the tenure of office of the current Directors be extended until the privatization exercise is consummated for the following reasons;

- They have abundant knowledge and experiences of the challenges facing NKCC: past and present.
- They supported the course for privatization of New KCC hence their continuity in overseeing it until the final conclusion is of essence.
- Since repossession of KCC holding / KCC 2000 and upon emergence of NKCC in the year 2003 they have been instrumental in making it vibrant.

5.0. NKCC PRIVATIZATION OPTION

Broad Policy Objective

To empower small holder farmers who are the backbone of the Dairy industry in Kenya by ensuring that they purchase the company based on requested shareholding structure of 85%, directly and not through the IPO (Nairobi Stock Exchange) **AT ALL**.

6.0 INTENDED PRIVATIZATION OF NKCC

We are aware of the Government's intention to privatize New Kenya Cooperatives Creameries Limited (NKCC) and the task is now in the hands of the Privatization

Commission of Kenya on behalf of Government, as per the report of the Presidential Task Force on parastatal reforms presented to His Excellency Hon Uhuru Kenyatta, CGH President and Commander in Chief of the Defence Forces of the Republic of Kenya on 12th October, 2013.

In that respect therefore, we the Dairy farmers have this to say in our memorandum:

- 6.0.1. **First and foremost**, we thank the Kenya Government (Narc Government) who by way of executive order repossessed KCC Holding/KCC 2000 on public interest and for the benefit of the dairy farmers, in the year 2003. **The purchase by KCC Holding/ KCC 2000 was otherwise a grievous economic injustice *ab initio*, let alone historical injustice. Therefore the impending sale to the farmer should be highly discounted based on their past contribution in building KCC.**
- 6.0.2. The Dairy farmer and the Kenya Farmers at large conceived Government effort of paying off KCC Holding/KCC 2000 in the year 2003 as a transitional move to revert the property to the Kenyan Dairy Farmer but to their disappointment they witnessed an unexpected crystallization of the company into a state parastatal.
- 6.0.3 We the Dairy Farmers strongly urge the government to critically reflect on the chronology of all the unfair events that culminated into displacement of the actual owners (dairy farmers) from ownership of Kenya co-operate Creameries Ltd and reasonably empower them in the privatization arrangement of the company.
- 6.04 Compensation to the Dairy Farmer through government acceptance of majority shareholding of the company by the farmer would in a big way cushion the farmer against the past agony and social stigma implanted by their suffering a *triple jeopardy* (losing both body and limbs) that is to mean loss of colossal sum of milk dues and losing the company twice in 1999 and 2003 respectively.
- 6.05 The triple loss to date is a fact that seriously negates the well applauded principle of criminal Law, (*double jeopardy*) and the current status is a Minus on the jurisprudence of

proprietary rights and or law. The law does not allow punishment twice for a mistake already punished.

- 6.0.6 The dairy farmer continues inputting into the dairy value chain and by extension subsidizes diverse institutions and by all fairness must be given the first priority in the privatization arrangement. That would be a significant gesture by Government
- 6.0.7 In order to sustain competitiveness in the dairy industry, the Dairy farmer needs to have the controlling shares in the company and this need be considered critically in the privatization arrangement.
- 6.0.8 We the Dairy Farmers urge Government to show utmost goodwill and good faith and ensure the following,
- Goodwill and good faith in empowering the Dairy farmer in the privatization of NKCC
 - Avoid putting conditions that are likely to hinder the dairy farmer from buying shares
 - Ensure putting in place achievable mode of buying shares by the dairy farmer
 - Ensure equity in dealing with purchase of shares by the dairy farmers at large
- 6.0.9 We the Dairy farmers wish to purchase shares as **individual, corporate, cooperative societies, dairy companies, milk community based organizations and self help dairy groups provided they supply milk to the processor – NKCC.**
- 6.10 We the Dairy farmers need to be allowed to build our shares, over time through agreed deduction of Kshs 1 per kg of milk delivered to NKCC. upon government's acceptance of the arrangement.
- 6.11 Our ability to pay NKCC shares is based on the latest delivery of 300,000 kgs of milk per day valued as follows
- $$300,000 \text{ kgs} \times \text{kshs } 1 \times 30 \text{ days} = \text{Kshs } 9\text{m} \times 12 \text{ months} = \text{Kshs } 108\text{m p.a.}$$

Our milk delivery graduates each and every day .hence our competence to pay

6.12 The Dairy Board autonomy as a regulatory agency in the dairy sector is critical in balancing the interest of the farmer, processor and consumer and ensures fairness in the entire dairy value chain.

It regulates and ensures milk quality standard, milk quality testing, premise inspection, regulates imports/exports, licencing of all milk processors, milk bars coolers and key is safety of consumers.

(a) Therefore the Kenya dairy board should be protected, strengthened and excluded from any merger with any other regulatory entity.

(b) Plays role of stabilization of the market and pricing through managing strategic reserve and stabilization fund.

7.0 There shall be no regional fragmentation of the company for purposes of retention of the KCC brand in the market and also for purposes of benefiting from accruing economies of Scale

8.0 CONCLUSION

We the Dairy farmers in the Republic of Kenya having been honoured by the invitation to participate in today's public consultation on the proposed privatization of NKCC.

8.0.1 **Express our thanks to:** - (i) the Privatization Commission for inviting us to participate in this important dialogue touching on the future well being of dairy farmers.

(ii) **Express our thanks** to NKCC for having been a valuable milk processing partner. New KCC should remain focused to implementing its recent strategies on enhancing milk production. The spirit of that strategy should be enhanced so that dairy remains a competitive industry.

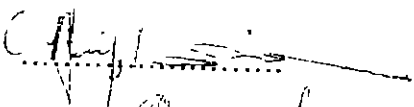
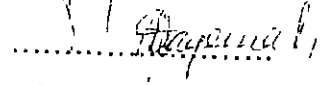
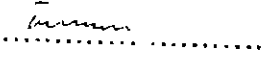
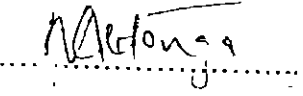
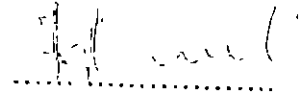
8.0.2 The government should assist the Dairy farmer by utilizing this institution as a strategic reserve for the benefit of our dairy farmers and the country at large

8.0.3 We the Dairy Farmers continue to consider government as a strategic partner in the industry in the context of food security, regulations, stability, policy making, marketing, protection and security in general hence should continue with that responsibility without necessarily owning shares in NKCC

8.0.4 Appreciate the commitment in the Privatization Commission's charter to the stakeholders in public institutions identified for privatization to engage in consultations to ensure inclusiveness in the privatization process and ownership of NKCC

9.0 This memorandum, duly executed by bonafide representatives in the dairy sub-sector, this... day of ... was arrived at through wide consultative forums and plat form of the dairy industry related players; milk producers, agricultural marketing cooperative societies, agricultural marketing unions, dairy producing companies and milk self help groups, large and small scale individual farmers in the Republic of Kenya

We hereby execute by appending our signatures as follows,

Name	Title	Sign
Philip Bittok	Chairman	
Lydia Kagema	Treasurer	
Timothy k. Tororei	Secretary	
<u>Witnesseth by:-</u>		
1. Michael G. Njeru	vice chairman	
2. Muchemi Nderitu	vice secretary	

NB: Appended are the details of officials elected in a National Dairy Forum at Nairobi on 9th January, 2014 to collect and collate Dairy farmers' views regarding intended privatization of NKCC and present the same in form of a memorandum

3

Hon. Joseph W. N. Nyagah, EGH, MP
Presentation to the Privatisation Commission on New KCC

The first co-operative society in Kenya was a dairy one at Kipkelion (Lumbwa), one hundred years ago. This society was the origin of KCC.

The history of KCC dates back to 22nd August 1925 when Kenya Co-operative Creameries Ltd (KCC) was incorporated as a limited liability company. The principal business of KCC Ltd was buying, processing and selling dairy products both in the domestic market and export market. The company started with only one factory in Naivasha but today has Eleven (11) dairy processing factories and Eleven (11) Cooling Plants. The growth was mainly achieved during the period 1966 to 1988. As at the time there was a lot of technical, technological and financial assistance from DANIDA. Besides the factory that was set up at Miritini to serve the coastal region, the rest of KCC factories and cooling plants exist in the medium and high potential parts of Kenya, where over 70% of the population lives and where poverty is prevalent. By 1987/88, KCC was selling 1 million litres per day with purchases from dairy farmers reaching a peak of 1.4 litres per day.

By 1992, the dairy industry was liberalized and other private processors came in. KCC was unable to reengineer/restructure operations or reduce high operating fixed costs. There were serious financial irregularities and procurement abuses due to lax management then. There were serious delays in payments to farmers and suppliers. KCC was now faced with very serious working capital constraints. The company resulted to huge

much political opposition in most milk producing areas. There would be much bigger opposition right from the grassroots to Parliament. It is for this reason that I believe the best way forward is:

“Return” the New KCC to the dairy farmers through cooperative ownership. The farmers are ready and willing to refund the entire KShs.540 million to the Government. They are in a position to set up a Cooperative Union (equivalent to a Holding Company) for this purpose. We did this for the small-scale coffee farmers last year.

But given the strategic nature of the sector, and given the poor history of KCC during the last twenty years or so, the government should retain a portion of the shares initially. The balance of the government shares can then be sold gradually to the dairy cooperative as KCC stabilises.

This approach would be very well received by the dairy farming community. The Government would not lose its initial 2003 capital input, especially since it has even received some dividend payments. It would get full support of the Parliament.

Any other approach would run into serious problems with the public, who already believe that there is an attempt by some wealthy people to buy it as has happened before.

MINUTES OF THE 2nd SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (MEETING WITH HON. JOYCE LABOSO, EGH, MP ON KCC PETITION) HELD ON TUESDAY 3rd FEBRUARY, 2015 AT COUNTY HALL CHAMBERS, PARLIAMENT BUILDINGS AT 11.00 A.M.

Present

1. Hon. Adan M. Nooru, MBS, M.P - Chairman
2. Hon. Kareke Mbiuki, M.P
3. Hon. Benjamin Washiali, M.P
4. Hon. Mary Wambui, M.P
5. Hon. Phillip Rotino, M.P.
6. Hon. Alfred K. Keter, M.P
7. Hon. Patrick Wangamati, M.P
8. Hon. Daniel Maanzo, M.P
9. Hon. James Opiyo Wandayi, M.P
10. Hon. Millie Odhiambo - Mabona, M.P
11. Hon. John Kobado, M.P
12. Hon. Kabando Wa Kabando, M.P.
13. Hon. John B. Serut, M.P
14. Hon. (Dr.) Victor Munyaka, M.P
15. Hon. Paul Simba Arati, M.P
16. Hon. Maison Leshoomo, M.P
17. Hon. Zuleikha Hassan Juma, M.P

Apologies

1. Hon. Kimani Ichung'wah, M.P
2. Hon. Florence Mutua, M.P
3. Hon. Peter N. Gitau, M.P
4. Hon. Silas Tiren, M.P

Absent

1. Hon. Fredrick Outa, M.P
2. Hon. Hezron Awiti Bollo, M.P
3. Hon. Waititu Munyua, M.P

4. Hon. Raphael Letimalo, M.P
5. Hon. Justice Kemei, M.P
6. Hon. Korei Ole Lemein, M.P
7. Hon. Ayub Savula Angatia, M.P.
8. Hon. Ferdinand Wanyonyi, M.P

In Attendance:

Kenya National Assembly Secretariat

- | | |
|--------------------------|-------------------------|
| 1. Mr. Benjamin Magut | - First Clerk Assistant |
| 2. Mr. Ahmad Adan Guliye | - Third Clerk Assistant |
| 3. Ms. Angeline Naserian | - Third Clerk Assistant |
| 4. Mr. David Ngeno | - Legal Counsel |
| 5. Mr. Onesmus Kiragu | - Sergeant at Arms |

Min. 05/2015: Preliminaries:

- I. The meeting was called to order at 11.30 hours and prayer was said by Hon. Benjamin Washiali, M.P
- II. The agenda was adopted with amendments to consider the scheduled of Committee operations before the main agenda.

Min. 06/2015: Pending Matters before the Committee

- a) The Committee resolved to give priority to the following matters that are before it since it was long over due
 - I. Sugar report
 - II. Tea report
 - III. Cooperatives
- b) The members raised their concerns in the manner in which the Secretariat is frequently changed and opined that institutional memory is key for optimal performance.
- c) The Committee was informed that the change of the Secretariat was necessitated for effective service delivery.

Min. 07/2014: Presentation by Hon. Joyce Laboso, EGH, M.P

Hon. Joyce Laboso, EGH, M.P on behalf of the petitioners informed the Committee the following;

- I. Change in ownership of the original KCC to KCC 2000 and later to new KCC didn't conclusively determine , address and protect the rights and shareholding of farmers in the society.

- II. If the planned privatization proceeds without safeguarding the rights of the farmers, they risk permanent loss of their hard earned stakes worth billions of shillings in the society by ceding 59% shareholding to private investors.
- III. The right of farmers to retain their majority stake can only be protected through a proposed privatization structure that would give farmers 85%, the Government 10% and staff of the company 5% shareholding in the company.
- IV. The Petitioners pray the Departmental Committee on Agriculture, Livestock and Cooperatives intervene and urge the Privatization Commission to ensure sustainable transfer of ownership of the new KCC to Kenyan dairy farmers in accordance shareholding structure proposed by the farmers rather Than through the Nairobi Securities Exchange.

Min. 08/2015: Committee Observation

The Committee observed the following:

- I. The Government possessed KCC through an executive order with the intention of salvaging the interest of the farmers hence should return it back to the farmers.
- II. KCC is owned by Farmers and the ownership should be officially formalized.
- III. The Government can take its fair share and the rest should be given back to the farmers.
- IV. The Management of KCC, the Ministry of Industrialization and Enterprise Development and the Treasury will be invited to shed light on the matter.

Min. 09/2014: Adjournment:

The meeting was adjourned at 13.20 hours till 15.00 hours in the afternoon.

Signature

HON ADAN MOHAMEDNOORU, MBS, M.P.

(Chairman)

Date.....

MINUTES OF THE 23rd SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Meeting with Privatization Commission) HELD ON 16TH APRIL, 2015 AT SMALL DINING, PARLIAMENT BUILDINGS AT 10.00 A.M.

Present

1. Hon. Adan M. Nooru, MBS, M.P - Chairperson
2. Hon. Kareke Mbiuki, M.P
3. Hon. Justice Kemei, M.P
4. Hon. Mary Wambui, M.P
5. Hon. Phillip Rotino, M.P.
6. Hon. Daniel Maanzo, M.P
7. Hon. Paul Simba Arati, M.P
8. Hon. James Opiyo Wandayi, M.P
9. Hon. Patrick Wangamati, M.P
10. Hon. Raphael Letimalo, M.P
11. Hon. Kabando Wa Kabando, M.P
12. Hon. Maison Leshoomo, M.P
13. Hon. Silas Tiren, M.P
14. Hon. Korei Ole Lemein, M.P
15. Hon. Waititu Munyua, M.P
16. Hon. John B. Serut, M.P
17. Hon. Fredrick Outa, M.P
18. Hon. Ferdinand Wanyonyi, M.P
19. Hon. John Kobado, M.P
20. Hon. Florence Mutua, M.P
21. Hon. Ayub Savula Angatia, M.P.
22. Hon. Benjamin Washiali, M.P

Absent with Apologies

1. Hon. (Dr.) Victor Munyaka, M.P
2. Hon. Zuleikha Hassan Juma, M.P
3. Hon. Peter N. Gitau, M.P
4. Hon. Hezron Awiti Bollo, M.P
5. Hon. Kimani Ichung'wah, M.P
6. Hon. Millie Odhiambo - Mabona, M.P

Absent without Apologies

1. Hon. Alfred K. Keter, M.P

In Attendance:

Privatization Commission

1. Mr. Solomon Kitungu - Chief Executive Officer
2. Mr. Wycliffe Temesei – Finance & Administration Officer
3. Mr. Job Kihumba – Consultant
4. Mr. Daniel Mirithi -Transaction Officer

Kenya National Assembly Secretariat

1. Mr. Benjamin Magut - First Clerk Assistant
2. Mr. Ahmad Adan Guliye - Third Clerk Assistant
3. Ms. Angeline Naserian - Third Clerk Assistant
4. Mr. David Ngeno - Research Officer
5. Mr. Onesmus Kiragu - Sergeant at Arms

Min. 112/2015: Preliminaries

- I. The meeting was called to order at 10.25 A.M and prayers were said by Hon. Fred Outa, M.P.
- II. The chairperson welcomed the Members and the witnesses to the meeting and was followed by introductions.

Min. 113/2015: Adoption of Agenda

The meeting's agenda was adopted without amendments as stipulated in the notice of meeting.

Min. 114/2015: Submissions by the C.E.O Privatization Commission

The C.E.O informed the Committee of the following:

- I. The Commission procured services of a consortium of consultants to assist to undertake due diligence and options analysis. The members of the consortium were:
 1. Standard Investment Bank Ltd.
 2. Deloitte Consulting Ltd.
 3. Mereka & Co. Advocates Limited (Including Clean Earth Limited)
 4. Mboya & Wangong'u Advocates; and
 5. Regent Valuers International (K) Limited.

- II. The latest report of the Commission is a supplementary report to provide a final recommendation taking into account issues raised by farmers at a stakeholders workshop held on 15th May 2014.
- III. The C.E.O tabled three (3) set of reports as follows.
 - a) Initial reports finalized in 2010/2011 comprising the following:
 - 1. Final Financial and Operational Due Diligence Report (Nov 2010)
 - 2. Legal Due Diligence Report (Nov 2010)
 - 3. Environmental and Technical Due Diligence Report, Volume 1,2 & 3 (December 2010)
 - 4. Assets Valuation Report – by Regent Valuers Intl (K) Ltd (Aug 2010)
 - 5. Options Analysis Report (Feb 2011)
 - 6. Restructuring Report (March 2011)
 - b) Updated reports submitted in February 2014 following appointment of a new Commission Board in September 2012 consisting of the following:
 - 1. Updated High Level Due Diligence Report (February 2014)
 - 2. Updated Options Analysis Report (February 2014)
 - c) A supplementary report to the updated Options Analysis report submitted in March 2015 which took into account issues raised by farmers at the stakeholders' workshop held on 15th May 2015.
- IV. The C.E.O informed the Committee that the supplementary report's conclusion states as follows:
 - a) The original shareholders' residual value at receivership was negative
 - b) Privatization is the only way of transferring shares to the milk farmers.
 - c) The initial statement of Government of Kenya's intention to restore the company back to the milk farmers was never backed up by any technical strategy
 - d) It would be very difficult to identify original shareholders and it would be technically and financially unjustified with possibility of creating other major problems.
- V. The report revises the proposed shareholding to increase farmers shareholding to 10 percent as follows:

a) Eligible milk producers	39%
b) Strategic Partner	26%
c) Public through Stock Exchange	25%
d) 3% to be sold to staff through an Employee Share Ownership Plan	
e) Government	10%

- VI. The C.E.O informed the Committee that there is need to avoid any action that appears to lift the receivership as other interested parties could easily launch a claim on the current value of NKCC.

Min. 115/2015: Committee Observations

- I. The Members questioned the modalities used by Privatization Commission to come up with the percentages of shareholding.
- II. The members wondered about the claim that the Commission was unable to identify original shareholders while there was a register and members had registration numbers.

The Committee resolved to have a consultative retreat with all the stakeholders of the New KCC to discuss issues related to the petition comprehensively.

Min. 116/2015: Adoption of Program of Business for the Month of April/May 2015

TUESDAY 21st, APRIL 2015
10:00AM
Meeting with the Nyeri County Coffee Farmers in the matter of production and marketing of their Coffee and payment of dues owed to them. <i>Venue :2nd Floor Protection House (Open)</i>
4th -5th May, 2015
Field Visit to Samburu County on Livestock off-take Programme
6TH -8TH. MAY ,2015
Retreat to Discuss Draft Policies on National Agriculture policy, National Irrigation Policy and National Tea Industry Policy. <i>Venue: To be communicated.</i>
12TH WEDNESDAY, MAY, 2015
Meeting with the Kenya Cooperatives Coffee Exporters @ 10:00a.m and Coffee Directorate @11:30am on a Petition regarding the matter of production and marketing of their Coffee and payment of dues owed to them. <i>Venue: To be Communicated (Open)</i>

19 TH -22 ND , MAY 2015
Visit to Galana/Kulalu Irrigation Project and Voi on the Disease free zone.
26 TH TUESDAY ,MAY , 2015
10:30AM and 2:00PM Meeting with Kenya Planters Cooperatives Union on the removal of the Commissioner for Co-operatives Development. <i>Venue: To be Communicated (open)</i>
27 TH WEDNESDAY , MAY 2015
10.30 A.M Adoption of the Report on the Petition regarding the Imminent Privatization of the New Kenya Co-operatives Creameries. <i>Venue: To be Communicated</i>

The Committee adopted program of business for the month of April/May as follows:

Min. 117/2015: Adjournment

Since no other business to discuss, the meeting was adjourned 12.18 P.M.

Signature

HON ADAN MOHAMED NOORU, MBS, M.P.

(Chairperson)

Date.....

MINUTES OF THE 26th SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Meeting with Stakeholders of Kenya Cooperative Creameries) HELD ON FRIDAY 8th MAY, 2015 AT COUNTY HALL MINI CHAMBER, PARLIAMENT BUILDINGS AT 10.00 A.M.

Members present

1. Hon. Adan Mohamed Nooru ,MBS, M.P –Chairman
2. Hon. Kareke Mbiuki, M.P
3. Hon. Silas Tiren, M.P
4. Hon. Millie Odhiambo Mabona, M.P
5. Hon. Zuleikha Hassan, M.P
6. Hon. Benjamin Washiali, M.P
7. Hon. Kabando Wa Kabando, M.P
8. Hon. Simba Arati, M.P
9. Hon. Francis Munyua Waititu, M.P
10. Hon. Philip Rotino ,M.P
11. Hon. John Serut ,M.P
12. Hon. Korei Ole Lemein, M.P
13. Hon. Ayub Savula Angatia, M.P

Absent with Apologies

1. Hon. Patrick Wangamati, M.P
2. Hon. Maison Leshoomo, M.P
3. Hon. Mary Wambui, M.P
4. Hon. Raphael Letimalo, M.P
5. Hon. (Dr.) Victor Munyaka, M.P
6. Hon. Paul Simba Arati, M.P
7. Hon. Justice Kemei, M.P
8. Hon. James Opiyo Wandayi, M.P
9. Hon. Alfred K. Keter, M.P
10. Hon. Florence Mutua, M.P
11. Hon. Peter N. Gitau, M.P
12. Hon. Hezron Awiti Bollo, M.P
13. Hon. Kimani Ichung'wah, M.P
14. Hon. Fredrick Outa, M.P
15. Hon. Ferdinand Wanyonyi, M.P
16. Hon. John Kobado, M.P

In attendance

Ministry Officials

1. Mr. Henry Rotich - Cabinet Secretary ,The National Treasury
2. Mr. Aden Mohamed - Cabinet Secretary, Industrialization and Ag. CS
Ministry of Agriculture, Livestock and Fisheries
3. Prof. Fred Segor - Principal secretary, State Department of Livestock
4. Dr. Wilson Songa - Principal Secretary, state Department of
Cooperatives
5. Mr. Stephen Odua - Assist. Director-MOIED
6. Mr. Edward M Irungu - SDS, MOIED
7. Dr. Julius Kiptarus - Director Livestock Production, Alternate Director
NKCC

Privatization Commission Officials

1. Mr. Solomon Kitungu -C.E.O, Privatization Commission
2. Ms. Bessie Valerie Atieno -Privatization Commission
3. Mr. Daniel Muriithi -Privatization Commission
4. Ms. Monicah Murache -Privatization Commission

NKCC Officials

1. Hon. Eliud Matu Wamae -Chairman NKCC
2. Mr. Nixon Sigei -Managing Director-NKCC
3. Mr. Peter Ombati -Company Secretary-NKCC
4. Dr. Samson Mutai -Director NKCC

KCC-DCL Members

8. Mr. Philip Kipkorir Bitok -KCC- DCL
9. Mr. Michael Gitonga Njeru -KCC- DCL
10. Ms. Lydia Kagema -KCC- DCL
11. Lt. Gen A.K.Arap Cheruiyot -KCC- DCL
12. Mr. Kipkorir Arap Menjo -KCC- DCL
13. Mr. Jan Mutai -KCC- DCL
14. Mr. Muchemi Nderitu -KCC- DCL
15. Mr. Joseph Twala Ole Menti -KCC- DCL
16. Mr. Jonah Tonui -KCC- DCL
17. Hon. Joel Barmasai -KCC- DCL
18. Mr. Timothy Kipkoech Tororei -KCC- DCL
19. Mr. King'ori Njogu -KCC- DCL

Kenya National Assembly Secretariat

1. Mr. Benjamin Magut -First Clerk assistant
2. Mr. David K Ng'eno -Research Officer
3. Ms. Rose Ometere -Audio officer
4. Ms. Eva Karee -Sergeant at Arms

Min .125/2015: Preliminaries

- I. The meeting was called to order at 10.10 a.m and prayers were said by Hon. Benjamin Washiali, M.P
- II. The Chairman welcomed the members and the witnesses to the meeting and thereafter introductions were made.
- III. The Chairman informed the members on the day's agenda and requested the presenters to be brief in their presentations.

Min. 126/2015: Presentations

a) New Kenya Cooperative creameries(NKCC)

The representatives of the New KCC informed the Committee that;

- i. Government took over KCC in 2003
- ii. The company is doing well and has made profits
- iii. The company is paying farmers and employees
- iv. The company is viable
- v. The management of NKCC has never recommended privatization as alleged by privatization commission

b) KCC-Dairy Cooperative limited(KCC-DCL)

The representatives of KCC- Dairy Cooperative limited thanked the Committee and the government form the support they are extending to KCC and informed the Committee that:-

- i. They hope the company would be returned to the farmers once it is stabilised
- ii. Ksh. 525 million was lost by the farmers and they fear that if the company is not returned to the farmers, they stand to lose more.
- iii. The farmers are in support of privatization.
- iv. They propose that the company be privatised in the following structure:
 - Government - 10%
 - Employees - 5%
 - Farmers - 85%
- v. They Propose that the membership of the company be as follows:

- Former suppliers of milk(Automatic)
 - Current suppliers of milk
 - Potential suppliers of milk
- vi. They are in possession of the register of the former members
 - vii. That KCC-Dairy Cooperative limited(KCC-DCL) is a big cooperative with membership from all over Kenya - Nyanza, Western, Rift Valley, Central,Eastern and Coast regions.
 - viii. They do not need a strategic partner
 - ix. The executive order to transfer KCC ownership by the then government was issued under unclear circumstances.
 - x. They request the government to write off KCC debts like it had done to other institutions
 - xi. Small investors require the support of the government to nurture their investments.
 - xii. Government needs to come up with a good mode of privatization so that past mistakes are not repeated

c) Privatization commission

The C.E.O of the Privatization Commission informed the Committee of the following:-

- i. That NKCC had historical problems and urgently needs capital. It cannot be run on bank overdrafts.
- ii. An inquiry conducted in 1999 found KCC Company to be insolvent with huge debts and liabilities.
- iii. KCC was sold to KCC 2000 for Ksh. 4.6 million on 12th April 2001.
- iv. On 16th November 2004, the government bought KCC with ksh. 547 million hence making it a 100% government owned entity.
- v. That Strategic investor would add value in terms of capital and expertise in market growth.
- vi. The strategic investor will be sourced through an open and competitive manner.
- vii. That Shareholders of KCC before 1999 could not be established.
- viii. The Commission proposes the shareholding to be as follows;
 - a) Eligible Milk Producers – 39 %
 - b) Government of Kenya – 10 %
 - c) Strategic Investor – 26 %
 - d) The Public through the stock market – 25 %
- vi. The idea of the public and the strategic investor owning a total shareholding of 51 % is informed by the view that the company should cease being a state corporation.

d) Presentation by Cabinet Secretary, Ministry of Industrialisation and Enterprise Development

- i. NKCC is 100% owned by government
- ii. Privatization is done transparently
- iii. NKCC has financial problems
- iv. Intention of government is to make dairy industry a prosperous one and that a strategic investor is the anchor tenant in that arrangement
- v. There is need to identify the best way of having long term successful process
- vi. Acknowledged historical background bedevilling KCC and said that resolution to it would be done with due diligence
- vii.

e) Presentation by Cabinet Secretary, National Treasury

- i. Privatization law is to be used to have government out of KCC
- ii. There is a process to be used to take the company to the farmers
- iii. There is need for a strategic person who would be providing strategic thinking to avoid legacy problems experienced before
- iv. The ownership is still with the people and it would be given to them through a process.
- v. The percentages of share distribution proposed by the Privatisation Commission are yet to be agreed upon
- vi. Will take information available with due diligence with regard to legal position as at the time when KCC went into receivership
- vii. Will provide cabinet position with clear solutions making use of wisdom from the past

f) Committee Observations

- i. The ownership of KCC is critical. The list of farmers who owned need to be found
- ii. Identity of KCC 2000 together with directors and linkage with government needs to be established. The identity of a body or person(s) paid half a billion shillings should be known also.
- iii. Government took over KCC with intention of correcting the mess then returning it to the farmers vide a letter written by the permanent secretary but this was not the case.
- iv. The value of assets bought by the government of six billion was far too below
- v. The government to provide specific answers to issues raised in the petition
- vi. Technical team in the privatization commission should declare their interest in NKCC

- vii. The Committee supported privatization and government should sacrifice and give it to the farmers.
- viii. The Committee will give their recommendations once Cabinet takes a position on the matter.

Min. 127/2015: Adjournment

There being no other business to discuss the meeting adjourned at 1.30pm

Signature

HON ADAN MOHAMEDNOORU, MBS, M.P.

(Chairperson)

Date.....

MINUTES OF THE 58TH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (ADOPTION OF THE PUBLIC PETITION ON IMMINENT PRIVATISATION OF NEW KCC) HELD ON THURSDAY 15TH OCTOBER, 2ND FLOOR PROTECTION HOUSE PARLIAMENT BUILDINGS AT 10:30AM.

Present

1. Hon. Adan M. Nooru, MBS, M.P - Chairman
2. Hon. Kareke Mbiuki, M.P -Vice Chairperson
3. Hon. (Dr.) Victor Munyaka, M.P
4. Hon. Paul Simba Arati, M.P
5. Hon. John B. Serut, M.P
6. Hon. Florence Mutua, M.P
7. Hon. Maison Leshoomo, M.P
8. Hon. Patrick Wangamati M.P
9. Hon. Fredrick Outa, M.P
10. Hon. James Opiyo Wandayi, M.P
11. Hon. Silas Tiren, M.P
12. Hon. John Kobado, M.P
13. Hon. Ferdinand Wanyonyi, M.P
14. Hon. Peter N. Gitau, M.P
15. Hon. Phillip Rotino, M.P.
16. Hon. Alfred K. Keter, M.P
17. Hon. Waititu Munyua, M.P
18. Hon. Millie Odhiambo - Mabona, M.P
19. Hon. Raphael Letimalo, M.P
20. Hon. Justice Kemei, M.P
21. Hon. Hezron Awiti Bollo, M.P

Apologies

1. Hon. Kimani Ichung'wah, M.P
2. Hon. Ayub Savula Angatia, M.P
3. Hon. Daniel Maanzo, M.P
4. Hon. Mary Wambui, M.P
5. Hon. Korei Ole Lemein, M.P
6. Hon. Benjamin Washiali, M.P
7. Hon. Zuleikha Hassan Juma, M.P
8. Hon. Kabando Wa Kabando, M.P

In Attendance:

Kenya National Assembly Secretariat

- | | |
|--------------------------|-------------------------|
| 1. Mr. Benjamin Magut | - First Clerk assistant |
| 2. Ms. Angeline Naserian | - Third Clerk Assistant |
| 3. Mr. Ahmed Guliye | -Third Clerk Assistant |
| 4. Mr. David Ngeno | - Research Officer |
| 5. Ms. Clara Kimeli | - Legal Counsel |

Min. 253/2015: Preliminaries

- I. The meeting was called to order at 10.43am and prayer was said by Hon. John B. Serut M.P.
- II. The Chairman informed the Committee of the day's agenda and it was adopted as stipulated in the notice of meeting

MIN. 254/2015: Confirmation of Minutes.

The Minutes of 56th sitting were confirmed as true records of the Committee proceedings after it was proposed by Hon. John Serut M.P and Seconded by Hon.Maison Leshoomo, M.P.

Min.255/2015: Matters arising

Under Min 251/2015

- I. Members were concerns that the Acting Cabinet Secretary Ministry of Agriculture Livestock and Fisheries had not submitted the comprehensive report on Sugar stocks and Production trends in the county for last 10 years despite the reminder letter written to him.
- II. It was agreed that the last reminder letter be written to the Cabinet Secretary Minister to submit the required report.
- III. On the delay in submission of the KPMG report by Mumias Sugar Company Ltd, The Committee requested the Chair and Secretariat to ensure the report is submitted but in case there is a further delay the Board of MSC Ltd be summoned to explain reasons why the report cannot be availed to National Assembly.

Min.255/2015: Business Pending before the Committee

The meeting was informed that the following reports are ready but awaiting adoption:

- a) Report on Public Petition by Nyeri County Coffee Farmers in the Matter of Production and Marketing of their Coffee and Payment of Dues owed to them
- b) Report on Public Petition by Stakeholders of KCC in the Matter of Imminent Privatization of NKCC
- c) Report on Public Petition by Stakeholders of KPCU KCC in the Matter of removal of the Commissioner Cooperatives
- d) Report on Public Petition by Mr. Joseph Gachagua in the Matter of Election of the Chairman of ASK
- e) Report on the Impounded Substandard Fertilizer at the Ports of Mombasa
- f) Reports on the following Foreign trips.
 - Denver USA
 - Mauritius
 - Germany
 - France
 - Brazil

It was suggested that due to delays in the discussion of the report on Sugar Crisis on the floor of the house, the Committee should consider discussing the report without the final KMPG report in case there was further delay in the submission of the KPMG report by MSC Ltd.

Min.256/2015 Consideration and adoption of the Public Petition Stakeholders of KCC on Imminent Privatization of KCC.

In response to the above prayers, the Committee recommends that

1. The Criminal Investigation Department (CID) and Ethics and Anti Corruption Commission(EACC) to investigate all former Board of Directors, Managing Directors and Staff of KCC who were mentioned in the Kirugi Commission Inquiry Report (Annex 6) with a view of prosecuting all culpable persons and reposes all KCC Assets that were irregularly acquired by individuals.
2. There exists a register of all original shareholders of the KCC(Annex 3).Therefore the National Government must first consider the original shareholders of KCC or their assignees in the process of privatizing the NKCC.
3. The Ethics and Anti Corruption Commission to investigate Ms Regent Valuers Int Ltd a firm contracted by Privatization Commission to undertake valuation of NKCC with

a view of establishing its relationship with KCC2000 and whether conflict of interest exist since they happen to have been Valuers during receivership of KCC in 1999.

4. Proposed shareholding structure proposed by the Dairy farmers that gives the farmers 65% while strategic investor 25% and Government 10% be considered by National Government while arriving at the final shareholding structure of the privatized NKCC.
5. The National Government through the privatization process of NKCC, grants Dairy farmers two years to enable many Milk farmers buy the shares as per above proposed shareholding structure. Ministry of Industrialization and Enterprise Development to assist Milk farmers to create a 'vehicle' that shall assist them mobilize resources required.

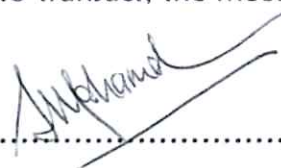
Min. 257/2015 Adoption of the Committee Schedule for the Month of October and November ,2015

The Committee adopted the Schedule for the month of October and November as presented after being proposed by Hon. Florence Mutua, M.P and seconded by Hon, Francis Waititu Munyua, M.P.

Min. 258/2015: Adjournment

There being no other business to transact, the meeting was adjourned at 1:03pm.

Signature



HON ADAN MOHAMEDNOORU, MBS, M.P.

(Chairman)

Date.....

16/10/2015

ANNEX 3

5. 4

MINISTRY OF CO-OPERATIVE DEVELOPMENT
Office of the Permanent Secretary

Telegrams: "CO-OPS" NAIROBI
Telephone: Nairobi 339650/9
When replying please quote



RE-INSURANCE PLAZA,
TAIFA ROAD,
P.O. BOX 30547 - 00100
NAIROBI
24th June, 2003

Ref No. MCD/S/AGR/11/7

Mr. Paul Odhiambo,
General Manager,
KCC 2000 Ltd,
P.O BOX 8953,
NAIROBI.

Dear Mr Odhiambo,

**RE: HANDING/TAKING OVER OF KCC 2000 LTD.
BY NEW KCC LTD. ON 25TH JUNE, 2003**

The Government has decided to buy back the KCC 2000 Ltd and restore it to the farmers. Consequently the Ministry of Co-operative Development has registered the "New Kenya Co-operative Creameries Ltd" (New KCC Ltd) under the Co-operative Societies Act No.12 of 1997.

It has been decided that the New KCC Ltd takes over the Assets and liabilities of the KCC Holdings Ltd and KCC 2000 Ltd with effect from 25th June, 2003. You are, therefore, asked to hand over to Mr. Prudenziio Nicholas Gaitara who has been appointed as the interim General Manager of the New KCC Ltd.

Yours Sincerely


BENJAMIN K. SOGOMO O.G.W.
PERMANENT SECRETARY

CC Mr. Prudenzio Nicholas Gaitara,
P.O Box 67052,
NAIROBI.

B

2-11-84 1034

Highly Confidential

Updated High Level Due Diligence Report- Preparation Phase



with respect to
**PRIVATIZATION OF
NEW KENYA
CO-OPERATIVE
CREAMERIES LTD**

for the
**PRIVATIZATION
COMMISSION – KENYA**

prepared by
Consultant (SIB Consortium)



Led by

simply, we are the standard

revised report number:
NKCC/PRIV/DRAFT/UHLDD/JAN2014

20 February, 2014

'The Consultant' - SIB CONSORTIUM
Led by Standard Investment Bank Ltd
and incorporating
Deloitte Consulting Limited, Mboya and
Wangongu Advocates, Mereka& Co
Advocates, Clean Earth Ltd, Regent Valuers
International (K) Ltd

c/o Standard Investment Bank Ltd
16th Floor, ICEA Building, Kenyatta
Avenue, PO Box 13714 -00800,
Tel: 2228963, Fax: 2240297
Nairobi, Kenya

20 February 2014

Mr Solomon Kitungu
Executive Director/CEO
Privatization Commission
11th Floor, Extelcoms House
Haile Selassie Avenue
PO Box 34542-00100
Nairobi

Dear Mr.Kitungu,

UPDATED HIGH LEVEL DUE DILIGENCE REPORT - PRIVATIZATION OF NEW KENYA CO-OPERATIVE CREAMERIES LIMITED

We, the undersigned, are pleased to release our Updated High Level Due Diligence Report for the Preparation Phase dated 20 February 2014, with respect to the Privatization of New Kenya Co-operative Creameries Ltd that the SIB Consortium is acting as Consultant/Advisor. This report is in accordance with our Contract as the Consultant. This report supersedes any other versions that may have been circulated early and should be read together with the Privatization Options Report of the same date.

Detailed due diligence reports produced in 2010 and 2011, except for Legal, Financial and Commercial, have not been reviewed as per the terms of reference but have been mentioned in this Updated High Level Due Diligence Report.

We remain

Yours Sincerely



Authorized Signature

James Wangunyu

for: SIB Consortium, Mobile: 0721374140; Office Landline: 342286;
jwangunyu@sib.co.ke.

Project Team Leader: Job Kihumba: Mobile No: 0722-517090; Direct Landline: 2246729; jkkihumba@sib.co.ke.

DEFINITIONS & ABBREVIATIONS

Consultant	See SIB Consortium below;
GOK	The Government of the Republic of Kenya
GDP	Gross Domestic Product
Kshs	Kenya Shilling
NKCC, Company	New Kenya Co-operative Creameries Limited
NKCC Milk Producer	Dairy Farmers, and 'milk brokers' selling milk to NKCC;
PrivComm	Privatization Commission of Kenya;
SIB	Standard Investment Bank Limited;
SIB Consortium (SIBC) or Consultant	Standard Investment Bank Ltd, Deloitte Consulting Limited, Mboya and Wangongu Advocates, Mereka & Co Advocates, Clean Earth Ltd, and Regent Valuers International (K) Ltd

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RELIANCES & LIMITATIONS

This report is for the private and confidential use of PrivComm for whom the report is written. This report has been prepared by SIB Consortium on behalf of PrivComm in connection with the Privatization of New Kenya Co-operatives Creameries Ltd and takes into account their particular instructions and requirements i.e. a step towards the Privatization Options Report.

SIB Consortium accepts no duty or responsibility (including in negligence) to any party other than the PrivComm and disclaims all liability of any nature whatsoever to any such party in respect of this report.

In preparing this report, we have relied extensively on a substantial body of information and data supplied by the relevant management of NKCC (in year 2010) and other stakeholders and may not be considered full/complete. There were gaps in the information provided or not made available either due to unavailability or lack of efficient documentation management systems or lack of time.

The Consultant contract in year 2013 provided for very limited work. This limited work was largely carried out in November and December 2013 by SIB and the legal team for the purpose of the update.

The above has included information both published and unpublished, together with information received orally that is specific for this report only. As part of our study, we have undertaken interviews with various stakeholders. Full and independent verification of all the information provided has clearly not been possible. We have, however, reviewed most of the items of the data submitted for reasonableness. The audited financial information from NKCC has had various reservations for many years and therefore cannot be considered unqualified for the purpose of privatization.

SIB Consortium, individual consortium member firms or any individual representatives of the consortium member firms are not responsible whatsoever for any judgments or conclusions that may be drawn by third parties from this report. SIB Consortium reserves the right to make changes to the report at any time without notice based on new information.

We are aware that after receiving the approved privatization policy, PrivComm will craft an appropriate Implementation Phase of the Privatization of NKCC that may include more comprehensive due diligence and/or restructuring of NKCC to more appropriately prepare NKCC for privatization transactions.

ACKNOWLEDGEMENTS

We acknowledge the contributions of the Management and Staff of NKCC, other stakeholders and other information sources in the preparation of this report.

CHAPTER 1 REPORT MILESTONES

The milestones leading up to the preparation of this report are as follows:

1.1 To assist the Privatization Commission in the privatization of NKCC, it engaged the services of a consultant, a transaction/privatization advisor, i.e. SIB Consortium led by Standard Investment Bank Ltd. PrivComm and the SIB Consortium subsequently entered into a contract on the 31st March 2010.

1.2 The following are the report milestones:

Table 1 - Report Milestones

No	Milestone	Date
1	Contract sign-off	31 March 2010
2	Kick-off meeting at NKCC	April 2010
3	Data room access commences	April 2010
4	Stakeholder consultations commences	April 2010
5	Asset registration & valuation commences	April 2010
6	Environmental due diligence commences	April 2010
7	Other due diligence commences	April 2010
8	Inception report	May 2010
9	First due diligence reports	July – November 2010
10	Asset valuation report	October 2010
11	Market research included in the financial and commercial due diligence report above, discussion paper below (no 12) and in Chapters 1 and 2 below in this report	November / December 2010
12	Privatization options discussion paper	November 2010
13	Restructuring report	December 2010
14	Legal, financial update reports and environment due diligence additional reports	December 2010
15	PowerPoint presentation on 'restructuring overview' including 'market read' and 'privatization options' to privatization committee	14 December 2010
16	PowerPoint presentation on 'market read overview', 'restructuring overview' and 'privatization options and recommendation' to the board members of PrivComm	16 December 2010
17	NKCC audited report full year to 30 June 2010	January 2011
18	Revised restructuring report	16 February 2011

19	Project reboot by PrivComm and Variation agreement to the contract sign-off	6 August 2013
20	Kick-off meeting between Consultant, PrivComm and NKCC	3 September 2013
21	Presentation of Inception Report	24 September 2013
22	Adoption of Inception Report by the Privatization Steering Committee	7 October 2013
23	Data room access commences	October 2013
24	Stakeholder consultations with Chairman, NKCC	14 November 2013
25	Stakeholder consultations with MD NKCC	9 December 2013
26	Stakeholder consultations with Principal Secretary, Ministry of Agriculture, Livestock, Fisheries	17 December 2013
27	Stakeholder consultations with a group of representatives of NKCC Milk Producers	9 January 2014
28	Stakeholder consultations with Deputy Principal Secretary, Ministry of Industrialization & Enterprise Development	20 January 2014
29	Final stages of preparation of Updated High Level Due Diligence Report	From 21 January 2014

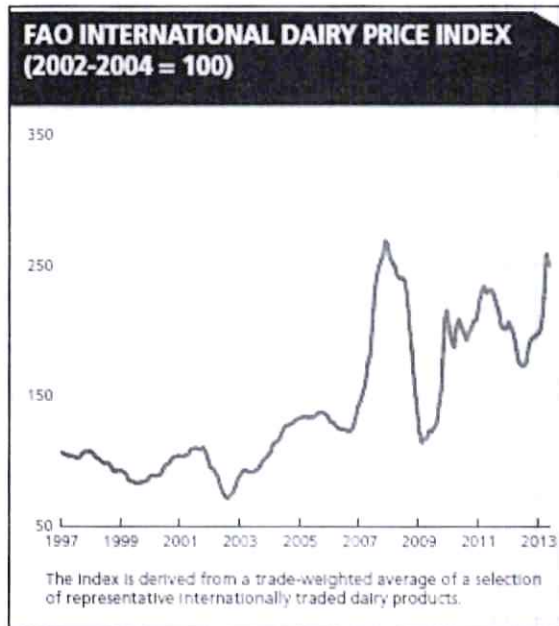
This report is to be read in conjunction with the Privatization Options Report.

CHAPTER 2

KENYA DAIRY INDUSTRY POTENTIAL

The following sets out the potential of the Kenya dairy industry which if it undergoes continuous transformation, it can contribute to enhanced job creation and more significantly to GDP growth.

2.1 International Background



International dairy products prices registered strong growth during the first four months of 2013, particularly in March and April. Although prices fell back in May, they remained at elevated levels, substantially above a year earlier. The main cause of the leap in prices was a steep fall-off in New Zealand's milk production. The Food Agricultural Organisation (FAO) Dairy Price Index reached 259 points in April, close to its historic peak in late 2007, before dropping to 250 points in May. The absence of substantial growth in milk output in the principal exporting countries implies that supplies to the international market will be finely balanced until at least the latter part of 2013, indicating that the current elevated prices are likely to remain for some months.

Figure 1 – FAO Index (source FAO)

World milk production in 2013 is forecast to grow by 2.2 percent to 784 million tonnes – a similar rate to recent years. Asia and Latin America and the Caribbean are expected to account for most of the increase, with only limited growth elsewhere.

World trade in dairy products is expected to expand in 2013; however, supply limitations are anticipated to stem growth. Consequently, trade is forecast to increase by 1.9 percent, compared with an average of 7 percent in recent years, to reach 54.7 million tonnes of milk equivalent. Asia will remain the main market for dairy products, accounting for some 54 percent of world imports, followed by Africa, with 16 percent.

The forecast per capita consumption in developed countries was 238 kg/yr while developing countries was 75.9 kg/yr.

Source: FAO Report-Food Outlook-June 2013

2.2 Role of Dairy

Dairy's main role in Kenya's economy is its contribution to the livelihoods of the many people engaged throughout the value chain and to the nutritional well-being of many rural communities. Dairy has the potential to contribute more to national development goals.

2.3 Industry Players

Source: FAO. 2011. *Dairy development in Kenya*, by H.G. Muriuki. Rome.

- a) There are many players in the dairy sector: those offering services and inputs; industry facilitators and development partners; and the users of services/inputs.
- b) There are more than 1 million smallholder dairy farmers, according to surveys done by the Smallholder Dairy (Research and Development) Project (SDP), contributing more than 70 percent of gross marketed production from farms. In general, smallholders each have 3 to 5 acres of land – although some have slightly more than 20 acres and others less than 0.5 acre – and about two to five head of cattle yielding about 5 kg of milk per cow per day. Milk sales less than 10 kg per day.
- c) There are about 30 licensed milk processors, two of which process more than 50 percent of the total processed milk.
- d) Other licensed milk traders include producers, mini dairies, cottage industries and cooling plants, whose number has been increasing and is now over 1,500.
- e) Processors handle more than 80 percent of the total milk and dairy products marketed through the licensed (formal) market channel.
- f) Other actors in dairy marketing include farmers' organizations such as cooperative societies and farmers' groups. Cooperatives and farmers' groups handle only about 40 percent of marketed milk production and about 20 percent of total milk.
- g) Other players in milk marketing include informal traders, distributors and retailers. The existence of informal trade results from a combination of the formal system's failure or inefficiency, consumer habits/preferences, and price differences between raw and processed milk.
- h) Input and service providers include agro-vet and other shops, breeding service providers, suppliers of breeding stock, dairy recording and stud book service providers, veterinary service providers, and extension and advisory service providers.
- i) Consumers are major players and have an important influence on how other players perform. Despite a strong regulatory regime that discourages the raw milk trade, consumer demand results in only about 20 percent of marketed milk being processed.

2.4 Milk Production System

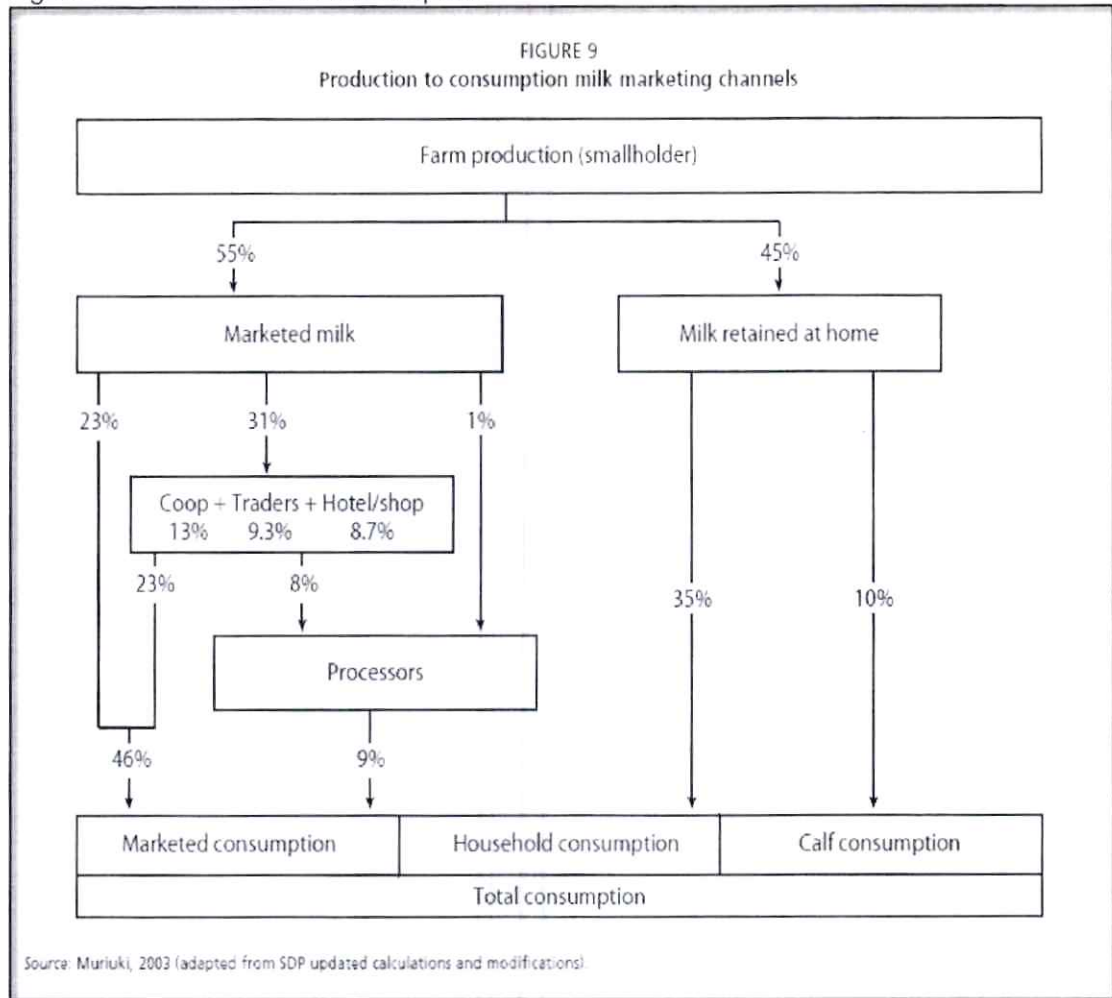
Source: FAO. 2011. *Dairy development in Kenya*, by H.G. Muriuki. Rome.

- a) Dairy cattle contribute over 60 percent of total milk production and almost all marketed production, but it is believed that the dairy herd has grown by single digits rather than high double.
- b) The average national dairy cattle herd is composed of 50 percent cows, 10 percent heifers of over one year, 11 percent heifers of less than one year, 17 percent bulls and bull calves, and 12 percent steers. *This composition needs to improve.*
- c) Kenyan milk production systems are large-scale and small-scale. The small-scale or smallholder dairy production system dominates. The differences between the two dairy systems are in their sizes of operation, level of management and use of inputs. Dairy cattle in smallholdings feed mainly from forage and very small quantities of concentrate, but some smallholder dairy farmers are highly commercial and well versed in dairy production, with high-quality management. *The shift to large-scale needs to improve.*
- d) Losses at farm level need to be reduced as it is estimated to be as high as 6%.

2.5 Formal Marketing

The following figures are illustrative as they may not be current. The Kenya Dairy Board is playing an important role to ensure more milk is processed and marketed through formal channels. The industry would change materially if more milk passed through processors rather than be sold as raw milk.

Figure 2 – Production to Consumption



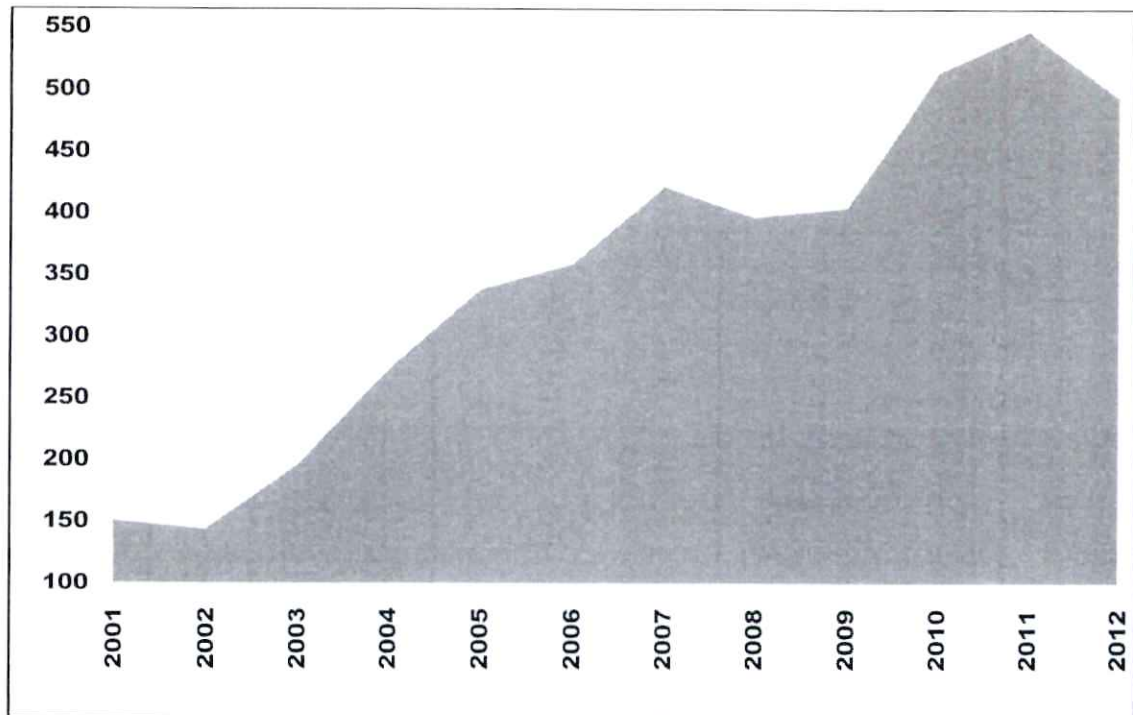
Source: FAO. 2011. Dairy development in Kenya, by H.G. Muriuki. Rome.

2.6 Milk Intake

The table below shows the milk intake in litres from year 2001 – 2012 i.e. from 152 million litres to 548 million litres (in 2011). This is 13.68% compounded annual growth rate. The intake for January – April 2013 is already 26% higher than the equivalent period in 2012. *Overall, there is potential for higher annual growth.*

See below.

Figure 3 – Milk Intake – 2001 to 2012



Source: Kenya Dairy Board

2.7 Employment

Historic studies (2008) have shown that at the farm level, for every 1000 litres of milk produced daily, a total of 77 direct farm jobs can be created. This translates into over 840,000 full-time jobs. However, this figure will depend upon the number of dairy farm households and dairy herd. *Overall, there is potential for higher employment growth in the dairy industry.* Source: FAO. 2011. *Dairy development in Kenya*, by H.G. Muriuki. Rome.

2.8 Dairy Task Force

A task force was launched in February 2013 to gather information on milk production and demand, evaluate information and co-ordinate measures to address any projected deficit. *This will assist in the development of the industry.*

2.9 GOK Structure

There is debate as to the lack of specific accountability for the development of the dairy industry within the GOK governance structure. Some countries for example, have created a Ministry of Dairy Development such as India, to provide leadership and co-ordinate the work of the various other Ministries. Pakistan has the Ministry of Livestock and Dairy Development.

2.10 Regulatory Reform

There is wide consensus that legal and regulatory clean-up and reform should continue for the industry. There have been sessional papers and strategic plans drawn up for the industry by various Ministries. Continued co-ordinated implementation and monitoring is required.

It would be beneficial to the reforms if GOK was to withdraw from direct service control and GOK role was to focus more on the creation and maintenance of a conducive environment (policy) for private sector investment.

2.11 GDP Contribution

Studies show that the GDP contribution of Kenya Dairy Industry is up to 8%. ***This GDP contribution is now significant by Kenyan standards and therefore this industry needs to be given more attention.***

2.12 Privatization

The dairy industry has had good development over the last few years but there is still significant potential. The sector can contribute much higher to GDP and needs to be supported by GOK with continuous structural, legal and regulatory reform.

CHAPTER 3
LEGAL HIGHLIGHTS

This following is an extract from the full legal due diligence report (over 220 pages) dated 23 November 2010 and is subject to further due diligence/restructuring/clean-up.

3.1 History

Kenya Co-operative Creameries Ltd (KCC) was established in 1925. In the 1990s, KCC suffered financial hardship and a consequence was unable to settle its debts. The Kenya Commercial Bank, as debenture holders, placed KCC in receivership and appointed Mr. GJG Silcock and Dr. GK Misoï as receiver managers to run KCC (footnote 1 below).

On 12th April 2001, Kenya Commercial Bank Limited, in exercise of its rights as debenture holders over Kenya Co-operative Creameries Limited (KCC, then in receivership), sold all the properties of KCC to Kenya Co-operative Creameries (2000) Limited (KCC 2000) for a total sum of Kenya Shillings Four Hundred Million, Six Hundred Thousand (Kshs 400,600,000). This is evidenced by an agreement between KCC, KCB and KCC (2000) dated 12th April 2001.

The specific transfers for the properties were not registered against the titles (footnote 2 below). However, since the receiver had the power of sale to recover the debt, and to act in place of the board of KCC in entering into the agreement, there was deemed to have passed a beneficial interest in all the property referred to in the agreement on payment of the consideration. The consideration was Kenya Shillings Four Hundred Million, Six Hundred Thousand (Kshs 400,600,000). This amount, whether or not it reflected the value of the assets, is sufficient for purposes of consideration in the agreement.

Subsequently, the Government of Kenya acquired all these assets from KCC (2000) and entered into an agreement with KCC 2000 and Kenya Co-operative Creameries Holdings Limited (KCC Holdings) on 16th November 2004. This Agreement noted the existence of three suits challenging the acquisition of the business from these two companies and states the consideration for the acquisition as Kenya Shillings Four Hundred Million, Six Hundred Thousand (Kshs 400,600,000). The Agreement also made provision for specific farmers all over the country to be paid a sum of Kenya Shillings Fifty Seven Million, Eight Hundred and Seventy Thousand (Kshs 57,870,000) being the sum collected from them. This sum payable to the farmers is for milk collected and not as shareholders of KCC. Pages 2 and 4 of this Agreement are missing and we therefore cannot accurately comment on the provisions of the Agreement comprehensively.

In upholding the arrangement entered into above, the court in Misc. Civil Application No. 846 of 2005 issued a vesting order dated 15th November 2005 which states that by consent of the parties all the moveable and immovable properties and assets which were owned by KCC and later acquired by KCC (2000) and KCC Holdings be deemed to have been transferred and vested in the Company. No appeal was brought against this vesting order.

We have not established the subsistence of KCC since we have been unable to obtain the some relevant files from the Registrar of Companies. The company was however noted to be in liquidation in the sale agreement between KCC (2000) and the Government. The shareholders of KCC, whom we have not been able to establish, through KCC, would only have recourse if they can prove breach of contract or duty on the part of the receiver and such recourse would be against the receiver and not a third party acquiring an interest in the property (footnote 3 below).

KCC (2000), KCC Holdings and KCB would not have recourse against the Government or the Company since this has already been submitted to court and through the aforementioned court order, the matter, including any claim which should properly have been the subject matter of such suit, has been determined by court.

KCC (2000) Limited was incorporated on 13th October 2000 under Certificate of Registration Number 91698. The shareholders of KCC (2000) Limited at the time of acquisition of the assets from the Receivers were Kenneth Kiplagat and Anthony Munge. The primary object of this entity was to prepare and make a bid for the purchase from Kenya Commercial bank, being the debenture holders and through the receiver manager, the assets of KCC Limited. The Company filed with the Registrar of Companies a special resolution unequivocally accepting the GOK offer to purchase all the assets of the Company at a total consideration of Kenya Shillings Five Hundred and Forty Seven Million Twenty Eight Thousand Eight Hundred and Seventy (KShs. 547,028,870)(footnote 4 below).

On a perusal of the KCC (2000) Limited file at the Companies Registry, the Directors of the Company, Kenneth Kiplagat and Anthony Munge filed a Declaration of Solvency Embodying a Statement of Assets and Liabilities on Members, being a declaration for voluntary winding on the 22nd October 2004. We have not seen evidence of conclusion of the winding up process with the Registrar of Companies.

As regards the status of the original Kenya Cooperative Creameries Limited (incorporated in 1925), the file at the Companies Registry is missing though efforts to locate it were on-going. We could therefore not establish the subsistence of the Company. We cannot comment as to its existence, shareholding or of its the share capital. The only record pertaining to it is its registration number, which is No. 1/25, being that of a public Company. We have, however, seen a copy of a Gazette Notice No. 1756 noting a winding up order. It is stated in the Gazette Notice that the petition for winding up was presented on 12th February 2002 and the order was issued on 4th March 2003. The effect of a winding up order by the court is that no action or proceeding can be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose (footnote 5 below).

When the affairs of a company have been completely wound up, the court makes an order that the company be dissolved from the date of the order and the company is dissolved accordingly and it is at this point that the Company is struck off from the register of companies. We have not seen any Gazette Notice to this effect and cannot comment as to whether the Company has been struck off from the Register or not.

Footnotes:

- 1 This is obtained from the agreement between KCC, KCB and KCC 2000 dated 12th April 2001.
- 2 None of the titles we have inspected have any such transfer registered against the property. The vesting order we have seen does not make mention of any such registration either.
- 3 However Section 4 of the Limitation of Actions Act, provides that an action founded on contract may only be brought before the expiration of six years from the date on which the cause of action accrued while an action founded on tort may only be brought before the expiration of three years.
- 4 This explains the nominal share capital of New KCC at incorporation.
- 5 Section 228 and 229 of the Companies Act, Cap 486 of the Laws of Kenya.

3.2 Corporate Status(footnote 6 below).

The Company was incorporated as a private company limited by shares under the Companies Act (Cap 486, Laws of Kenya) on December 19, 2004 under the name New Kenya Cooperative Creameries Limited. We have seen the Certificate of Incorporation bearing Company No. C. 113538.

The Company is registered with the Kenya Revenue Authority for purposes of paying tax and was issued with a Personal Identification Number P051152671V on 27th September 2007, a copy of which we have seen. We have also seen a copy of the Company's VAT Registration Certificate Number 0130393G.

The Company Secretary is to be appointed by the Board at their discretion. Currently, the Corporation Secretary is Peter Kennedy Ombati. The registered office of the Company is LR No. 209/6849, Dakar Road off Enterprise Road, Industrial Area, Nairobi.

The Company was established to carry out the business of buying, selling, processing, importing, exporting, packing and distributing milk. Its primary objects extend to providing extension services for and assisting dairy farmers in procuring credit.

The Company is a private company and has limited its membership to fifty (50). There are restrictions on transferability of shares (pre-emption rights) and offer of shares to the public (footnote 7 below).

The share capital of the Company is KShs. 2,000,000,000 divided into 200,000,000 shares of KShs.10 each. The issued share capital of the Company is Kshs. 547,028,870. The Company is wholly owned by GOK and is therefore a state corporation as defined by the State Corporations Act. The shareholding also indicates that the Company is within the control of the Ministry of Finance.

Corporate Status of Related Entities

Concurrent with the registration of the Company was the registration of a co-operative society by the name New Kenya Cooperative Creameries Society Limited (footnote 8 below). The co-operative society was registered under the Co-operative Societies Act on June 24, 2003. We have seen the Certificate of Registration bearing the Registration No. CS/NO. 10,147. The Records at the Cooperative Registry did not reveal the members of this Society (footnote 6 below).

Footnotes:

6. The corporate status of the Company is covered under Part 4 of this Report titled Corporate Structure.
7. While Article 12 provides that new shares in the Company are at the disposal of the directors, Article 13 specifies the various categories of persons that the Board can allot shares or grant rights over shares to. These are the GoK, individual large scale dairy farmers identified by the Board, registered dairy co-operative societies and registered dairy self help groups.
8. This is captured in the related entities of New KCC under the Corporate Structure part.
9. The Co-operative Societies Act provides that any society must have at least ten members and these would have had to be identified before incorporation.

3.3 Selected Key Object

From the Memorandum and Articles of Association:

3. (1) To carry on the business of buying milk, dairy products, from individual co-operatives and to process and market milk products and to run and manage milk processing plants and factories, processing milk into various milk products including processed milk, ice-cream, milk shakes, creams of all kinds and descriptions, cheese, butter, ghee and other value added products importers and exporters of the same products locally and internationally, packers, distributors, wholesalers and retailers and to deal in foodstuffs, tinned food and juices, and to act as agents to milk producing and processing companies and generally to deal in all milk foods for infants and adults desirable for healthy growth and nourishment and to run milk depots.

On 27th June 2007, the Company altered its memorandum by inserting the following object: "to acquire the business of New KCC Limited (the Co-operative society) and to take over all its assets and liabilities the business, control and management and all engagements as acquired between 24th June 2003 and 18th November 2004"

3.4 Selected Key Articles

From the Memorandum and Articles of Association:

3. The Company is a private company and accordingly: -
- (a) The number of members of the Company (exclusive of persons who are in the employment of the Company and of persons who, having been formerly in employment of the Company while in such employment and have continued after determination of such employment to be members of the Company) is limited to fifty (50); provided that where two (2) or more persons hold one (1) or more shares in the Company jointly, they shall, for the purpose of this Article, be treated as a single member;
 - (b) Any invitations to the public to subscribe for any shares or debentures of the Company is prohibited;
 - (c) The Company shall not have power to issue share warrants to bearer;
 - (d) The right to transfer shares is restricted in the manner hereinafter provided.
12. Subject to any direction given by a resolution of the company in a General Meeting and the provisions of these Articles, the shares shall be at the disposal of the Board, and it may allot, grant options over or otherwise deal with or dispose of them to such persons as shall qualify as prescribed hereinafter, at such times and generally on such terms and conditions as it thinks proper, but so that no shares be issued to a discount, except in accordance with Section 59 of the Company's Act.
13. Subject to clause 12, the Board may allot, grant options over or otherwise deal with or dispose shares to the following qualifying persons subject to the terms and conditions as shall be prescribed by the a resolution of the company in a General meeting.
- a) The Government of Kenya
 - b) Individual large scale dairy farmers as shall be determined by the Board from time to time.
 - c) Registered dairy Co-operative Societies
 - d) Registered dairy self help groups

3.5 Governance, Directors

Article 123 in the Memorandum and Articles of Association shall develop Charters and Codes of Conduct and adopt relevant principles to ensure Good Corporate Governance.

The Articles provide that the Board of Directors is to be made up of a minimum of two (2) and a maximum of ten (10) Directors who are to be elected every two years at an Annual General Meeting to serve for a two year term. There is no shareholding requirement for the directors.

Majority of the directors are independent.

3.6 Immoveable Property

Below is subject to more due diligence as and when required as updates is continuous:

The immoveable properties of the Company were vested in the Company by virtue of a Vesting order issued in Misc. Civil Application No. 846 of 2005. We have seen the vesting order dated 15th November 2005 which states that by consent of the parties all the moveable and immoveable properties and assets which were owned by Kenya Co-operative Creameries Limited be deemed to have been transferred and vested in the New Kenya Co-operative Creameries Limited. It also states that all references to the Kenya Co-operative Creameries Limited in any agreement or instrument, title, chose in action, rights, property or assets be deemed to be vested and refer to the New Kenya Co-operative Creameries limited without further conveyance, transfer or assignment.

After the issue of the Vesting Order, the process of registering the interests in favour of the Company began. This process has been completed for most of the properties and the interests are now registered in the name of the Company. The process is however pending for some of the properties.

We have been informed that there are various firms that are handling the title issuance process for the properties for which title has not issued in the Company's name. We have requested and not yet received status reports on these properties and cannot therefore comment on the conclusiveness of the process thereof.

The vesting order lists a total of 108 immoveable properties while the list from the Company lists 85 properties.

Under the Vesting Order, all references to the Kenya Cooperative Creameries Limited in any agreement or instrument, title, chose in action, rights, properties and or assets in the Schedule A and B to the Vesting Order were deemed to be vested and refer to the New KCC Limited.

Having reviewed Schedule A and B of the Vesting Order, the total number of Properties stated therein is 108. However, several properties appear to be repeated. We note from the Report by Controller and Auditor General on the Financial Statements of New KCC for the year ended 2009 that the net book value of the Buildings is Kshs.1,643,873,709/= while that of the Freehold Land is Kshs. 44,300,000/=. The Directors are of the opinion that the Company holds good title to the assets and, therefore, no provision has been made in the financial statements to cater for any loss that might arise.

On reconciliation of the Vesting Order and the current schedule of immovable properties, we noted earlier above that some properties appeared more than once while there are properties appearing in the Vesting Order and not in the current schedule of properties supplied to us by the Company.

Our initial view was that there were 26 properties that did not have clear title documentation. Of these 26 properties, several properties had missing titles while 7 had letters of allotment some of which dates as far back as 1987. The only indication of ownership of some properties are rates and rents payment receipts while others have sale agreements. We have, however, not been supplied with any sale agreement of this nature and cannot comment on the terms or whether these agreements are still valid or whether the sale process has been complete and only awaits issuance of title in the name of New KCC. In the case where no documents are available, we cannot comment on the status of title.

Property Restructuring Plan is required as part of the privatization implementation.

3.7 Vehicles

The Company owned 205 vehicle of which log books for 41 were held by a law firm as there was some dispute between the Company and the law firm.

3.8 Intellectual Property

The Company had 19 trademarks registered in its name. Most of these trademarks were registered under the name of the New KCC. We had, however, seen a Certificate of Change of Name in respect of Trademark No. KE/T/1962/011092 registered in Class 32 Schedule III. This trademark was originally registered under the name of KCC Limited. Legally, there was no change of name that took place and New KCC is a separate legal entity from KCC Limited. The Certificate of Change of name is therefore incorrect and did not confer title to New KCC. The proper process would have been for KCC (whether directly or through the receiver) to enter into an assignment of the trademark to New KCC.

3.9 Insurance Policies

We had seen various insurance policies for the Company. These insurance policies were expired or about to expire. We had also noted that public liability insurance is set at Kshs 10,000,000 for any single event and Kshs 20,000,000 for all events in any one insurance period. Given the nature of the product being processed by the Company, there was great risk of public liability risks from spoilt or contaminated products. Indeed, we had seen litigation to this effect in some instances. Consideration should be given to increasing the limit under this insurance cover pursuant to adequate industry research on acceptable limits.

3.10 Compliance and Licensing

The Dairy Industry Act under Section 32 requires any person carrying out business of a primary producer to be registered. The Act makes it an offence under Section 33 for any person who carries on the business of a primary producer without being registered. Regulation 3 of the Dairy Industry (Sale by Producers) Regulations makes provision for application of the following licences:

- a. Primary Producer's licence
- b. Processor licence;
- c. Mini dairy licence;
- d. Cottage industry licence;
- e. Milk bar licence; and
- f. Cooling plant licence.

Central management of compliance issues will be critical to ensuring timely and comprehensive adherence to licensing requirements.

We noted that the nature of the business of the Company also requires Occupation Safety and Health Certificates, Foods and Chemical Substances Certificates as well as Effluent Discharge Licences.

We cannot, therefore, comment on the provisions of these licences especially as regards transferability or assignability should the chosen privatization model be that of sale of business. If these licences are not assignable, then should a sale of business be proposed, then fresh application for the said licences must be obtained.

3.11 Borrowings

We sighted a number of loan offer letters and noted the legal charges and debentures, of which some need documentation clean-up.

3.12 Material Contracts

We noted a few material contracts but were not provided with all as the Company needed to maintain a more efficient document management system.

3.13 Material Litigation

The Company needed a more efficient document management system to ensure that the latest information is available at short notice. We had received status reports from various law firms representing the Company in court. We had also received status reports on various disputed properties. The review of the status reports has not revealed any litigation of concern with regard to matters that would have a material adverse effect on any model of privatization or the business of the Company. However, there could be adverse effect on ownership of some assets of the Company depending on the outcome of the cases. The external advocates should also ensure that the Company is updated at all times on all matters being handled on its behalf.

3.14 Employees

We noted that the contracts were substantially in compliance with Employment Law in Kenya however this is subject to ongoing review in line with law changes. We were not provided with a Sexual Harassment Policy. There was no mention of maternity and paternity leave in the contracts.

3.15 Legislation

The following is a list of the legislations in which New KCC Limited operates on:

- The Dairy Industry Act (Cap 336 Laws of Kenya);
- Public Health Act Cap 242 (section 126A), The Public Health (Milk and Dairies) Rules;
- Local Government Act Cap265;
- Agriculture Act Cap 318;
- Standards Act Cap 496;
- Agricultural Produce (Export) Act, (section 6) Cap 319;
- Crop Production and Livestock Act Cap 321;
- Food, Drugs And Chemical Substances Act, Cap 254;
- Animal Diseases Act, Cap 364;
- Factories Act Cap 514 (New KCC plants);
- Employment Act 2007;
- Work Injury Benefit Act 2007;
- Occupational Safety and Health Act, 2007;
- Labour Relations Act, 2007;
- Cooperative Societies Act, 1998.

Subject to updates, we found duplication in: (1) licensing, registration, regulating, supervising, inspecting of licensees in the dairy sector; (2) carriage of milk; and (3) health and safety standards.

	Act	Comments
1	The Dairy Industry Act (Cap 336 Laws of Kenya)	Dairy Industry (Sales by Producers) Regulations provide for licensing of primary producers, cooling plants, milk bars, processors, dairies and mini dairies and cottage industries. Dairy Industry (Carriage of Milk) Regulations requires that persons be licensed to carry milk in any prescribed area.
2	Public Health Act Cap 242	Rule 4 of the Public Health (Milk and Dairies) Rules provides that no person may use any premise as a dairy unless such premises have been first registered as a dairy by such local authorities as a registered dairy.

		<p>Rule 18 of these Rules provides that no person may carry on or be engaged in the business of a purveyor of milk without first being licensed as such. A purveyor is defined as "any person, other than the government, in possession of a dairy or who sells milk or conveys milk for purposes of sale...".</p> <p>Section 135A of this Act gives the Local Authorities power to make by-laws for the following purposes:</p> <ul style="list-style-type: none"> • Regulating, supervising and licensing purveyors of milk; • Regulating, inspecting, supervising and licensing dairies; • Certifying the quality of milk.
3	Local Government Act Cap 265	Originally, Section 201 of the Local Authorities Act gave local authorities powers to make by-laws in respect of all such matters as are necessary or desirable for the maintenance of the health, safety and well-being of the inhabitants of its area: Such by-laws include the power to register purveyors, dairies etc. We expect this to continue under the new devolved structure.
4	Occupational Safety and Health Act, 2007	<p>Section 44 of this Act provides that before any person occupies or uses any premises as a workplace, he must apply for the registration of the premises. This application is made to the Director of Occupational Safety and Health Services. A certificate of registration is then issued. A person who occupies a work premises without having first registered, commits an offence.</p> <p>Such premises will include a dairy, a processor plant, cooling plant etc.</p>
5	Standards Act Cap 496	Section 9(2) provides that where a Kenya Standard has been declared, the Minister shall prescribe a date after which no person shall manufacture or sell any commodity, method or procedure to which the relevant specification or code of practice relates unless it complies with that specification or code of practice.
6	Food, Drugs And Chemical Substances Act, Cap 254	Section 27 establishes the Public Health (Standards) Board, which has the power to make regulations respecting the carriage of goods including the licensing of vehicles used in such carriage.

There are references to 'Kenya Co-operative Creameries Ltd' in legislation which for administration purposes can be replaced with 'New Kenya Co-operative Creameries Ltd'.

1	Under Regulation 3 of the Dairy Industry (Carriage of Milk) Regulations, no person may carry or permit any milk to be carried in a prescribed area except under the authority of, and in accordance with a permit issued by the Kenya Dairy Board or by some person authorised in writing by the Board in that behalf. Under Order 3 of the Orders to the Regulations 3 above, no permit is required for the carriage of milk- (a) by Kenya Co-operative Creameries Limited , in its own vehicles or in vehicles under its control.
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2	Under the Dairy Industry (Prices of Dairy Produce) Regulations, a retailer is defined as "...a person who purchases dairy produce for re-sale to consumers from either Kenya Cooperative Creameries Limited or direct from a producer licensed....."
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3.16 Section Conclusions

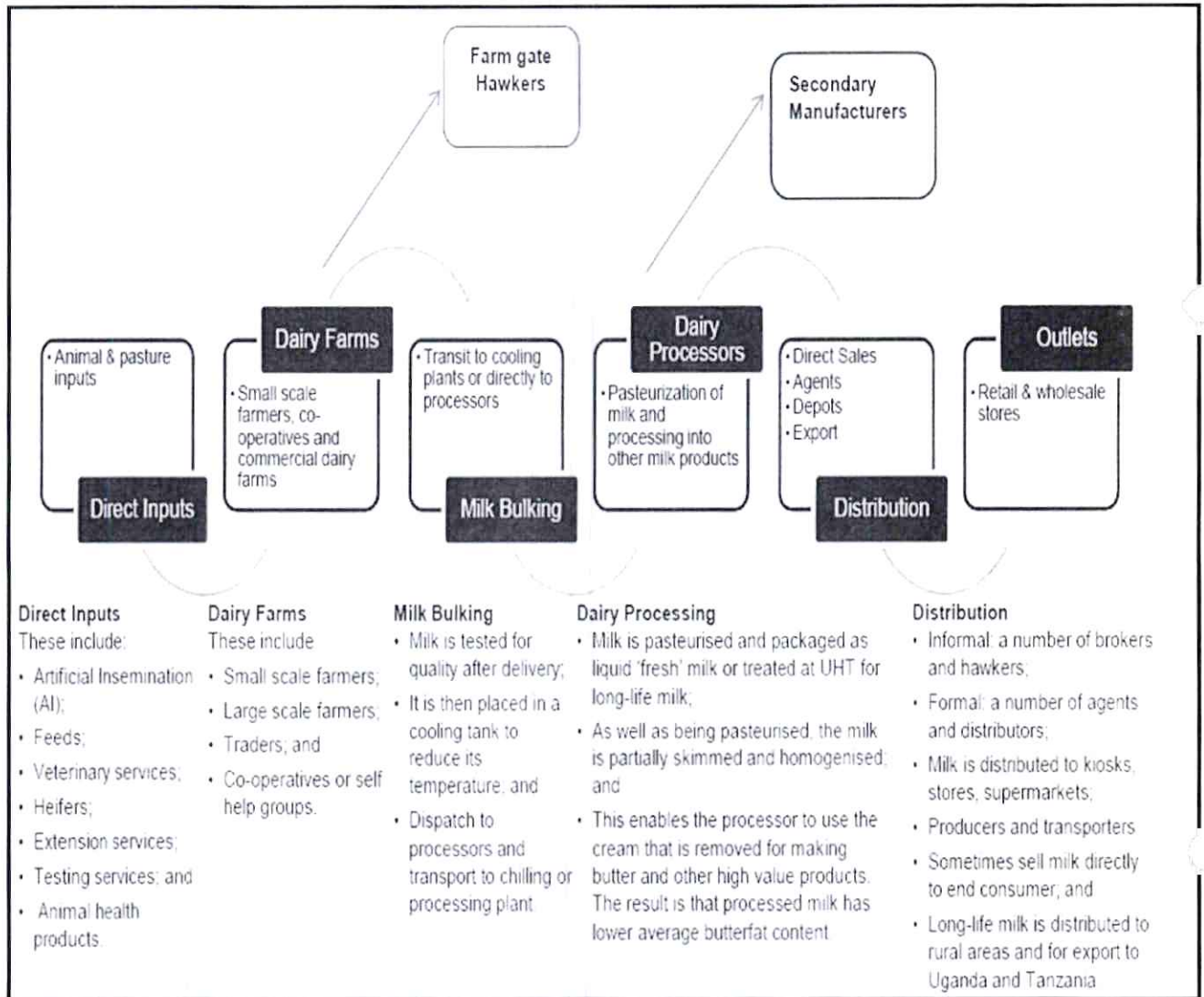
- A NKCC need to continuously improve their corporate documentation availability: *completeness and speed of access.*
- B Further updates on legal, company secretarial due diligence/clean-up/restructuring will be required at the appropriate time and adequate time and cost should be allowed and budgeted for by PrivComm. *The quality of any opinions provided in future will depend on the depth of the work.*
- C NKCC is a limited liability company and a state corporation.
- D Legally, GOK directly owns 100% of the ordinary issued share capital of NKCC.
- E The existence of pre-1999 shareholders of the Original KCC has been noted.
- F The Articles have restrictive clauses and therefore requires modernisation/overhaul in line with current practise and the methods of privatization.
- G There are various matters that will impact the financial position of NKCC such as lack of proper asset titles and litigations. If restructuring is implemented before the privatization this would help the valuation of NKCC.

CHAPTER 4
COMMERCIAL & FINANCIAL HIGHLIGHTS

This following is an extract from the commercial and financial due diligence report dated 26 November 2010 (182 pages), recent updates and is subject to further updates.

4.1 Kenya Dairy Industry Value Chain

Diagram 1



4.2 Products

NKCC's product mix include: KCC Fresh milk; KCC Gold Crown; KCC UHT Long Life milk; KCC Butter; KCC Mala –fermented milk; KCC Delight – yoghurts; KCC Ghee; KCC Cheese; KCC Shakes –long life flavoured milk; and Safariland Milk Powder– (whole & skimmed). These products are sold in packaged sizes and priced differently depending on the size and the market segment. The pricing is also dependent on the cost of production especially the cost of purchasing inputs.

NKCC's overall product/market strategy is to shift to value added products and niche markets while taking the leadership in the mass market of the lower processed fresh milk market. The Budget Proposal borrows from NKCC's Updated Strategic and Business Plan (2009-2014), which identified diversification of its product mix into non-milk products as a key priority, together with reducing dependence on the fresh milk market which is very competitive within both the formal and informal market. The diversification is aimed at increasing profitability through production of value added products with better margins thus ensuring overall improved profitability of the entire portfolio. Exploiting NKCC's recognised brand by venturing into new product areas is also a priority.

4.3 Role in the value chain

NKCC's role in the industry is focused on the milk bulking, processing and distribution stages:

- Milk bulking-NKCC operates cooling plants where farmers deliver raw milk for bulking prior to transportation to factories for processing;
- Processor-In its various factories, NKCC processes milk into the various products highlighted above; and
- Distribution-NKCC employs a depot/agent distribution model through which agents collect products from various sales depots nationwide.

4.4 Milk Collection

Name/Location	Province
Kapsabet	Rift Valley
Lessos	Rift Valley
Ainabkoi	Rift Valley
Iten	Rift Valley
Eldama-ravine	Rift Valley
Mblo	Rift Valley
Naivasha	Rift Valley
Kilgoris	Rift Valley
Kangema	Central
Githumu	Central
Runyenjes	Eastern
Nanyuki	Central
Nakuru	Rift Valley

Source: NKCC - Production Department

NKCC facilitates its milk collection activities via a network of cooling plants that are distributed in milk catchment areas in the country.

The cooling plants receive, cool and bulk up farmers' milk that has passed quality tests as defined by NKCC.

The bulked up milk is then transported to various processing factories using road tankers. The table summarises NKCC's cooling plant network:

Diagram 2

4.5 Processing

NKCC has processing factories that process milk in the irrespective catchments areas and countrywide into final products.

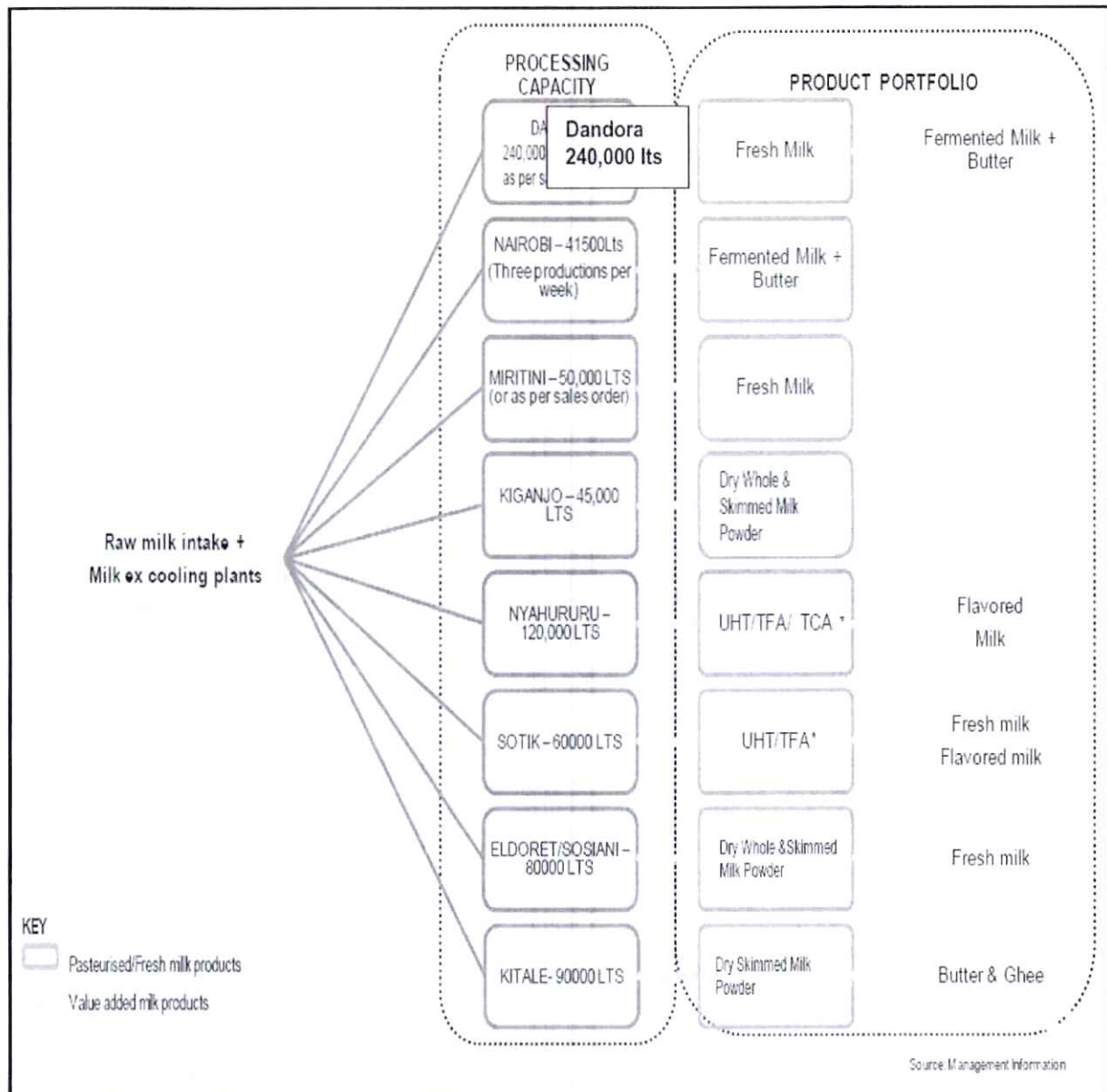


Diagram 3

4.6 Storage Capacity

- Total installed storage capacity in the eight factories amounts to over 3 million litres, inclusive of over 0.9 million litres installed storage capacity in bulking centres.
- Out of the total installed storage capacity of 3.1 million litres, over 75% is effectively utilised. This is due to periodic unavailability of milk, breakdown in some storage facilities, as well as the non-operational status of some machinery.

4.7 Processing Capacity

- NKCC has a cumulative installed processing capacity of over 110,000 litres per hour. However, over 70% of the installed processing capacity is available for use. The suboptimal processing capacity is as a result of constraints such as aged, faulty and non-operational machinery.
- Dandora, Nyahururu and Sotik account for the bulk of processing capacity.
- It is understood that, with sufficient supply of milk, all the factories can operate at 100% of available processing capacity.

4.8 Packaging Capacity

NKCC's total installed packaging capacity stands at over 140,000 litres per hour for all milk products, of this over 80% of installed capacity is available for use. Effective utilised capacity is dependent on demand and therefore varies over time.

4.9 NKCC Producer

- a) NKCC's most valued supplier is the NKCC Producer. NKCC Producers provide the raw milk that is the key ingredient in the products.
- b) NKCC has been known to be the buyer of last resort of the farmers' milk and as such, was unofficially obligated to take all the milk supplied to it as long as it meets the minimum standards for acceptance.
- c) NKCC assists farmers by offering them animal feeds on a credit basis, which are deducted from the payments to the farmers.
- d) NKCC has also recently partnered with the Co-operative Bank of Kenya and Equity Bank in arranging loans to the farmers which are repaid through payments for the milk received from them. In addition to this, farmers who purchase NKCC products from NKCC depots are afforded special discounted prices similar to those offered to NKCC staff.
- e) NKCC also participates and co-sponsors farmers' field days along with other entities such as feed and veterinary suppliers. During these field days, farmers are educated on the right feeds and veterinary services to be provided to their livestock along with other relevant advice. NKCC listens to farmers with regard to any assistance that may be required. This has helped to rebuild the relationships with the dairy farmers that were strained with the collapse of KCC Limited.

4.10 Packaging Suppliers

An important supplier is Tetra Pak who provides machinery and packaging material. With the introduction of the polythene pouch packaging, NKCC has reduced its reliance on Tetra Pak for packaging material. There are other key packaging suppliers.

4.11 Customer Analysis

The Kenyan market is defined by low, middle and upper bracket customers:

- a) The NKCC Updated Strategic & Business Plan (2009 –2014) categorised NKCC's products shoppers, into the following categories A, B, C, D and E where each category was ranked from lowest (E) to highest (A) by the Kshs value of their typical shopping basket contents.
- b) In Kenya there are very few A category customers. The pyramid consists mostly of E category customers but the combined purchasing power of B and C far outweighs A, D and E.
- c) Category D & E make the bulk of NKCC's sales volume.
- d) C though a smaller percentage of NKCC's sales comprises of some professionals and who may spend more but are still price sensitive e.g. civil servants, blue collar workers, clerks, etc.
- e) The NKCC's customer base is concentrated in the urban regions.

4.12 Financial Analysis

Audits have been conducted by the Kenya National Audit Office. **Years ending 30 June 2013 - 2006 have all had 'matters of emphasis/reservations' for: non-current assets and/or trade receivables and/or prepayments and/or inventories. This is of concern and needs to be addressed (there are indications that NKCC itself may address this).**

Tax: There was a tax assessment in June 2010 by KRA of Kshs 120 million. *Following are seven graphs that summarise the key financial highlights of NKCC from 2007 – 2013. Source is audited and unaudited financial statements of NKCC.*

Figure 4– NKCC Sales

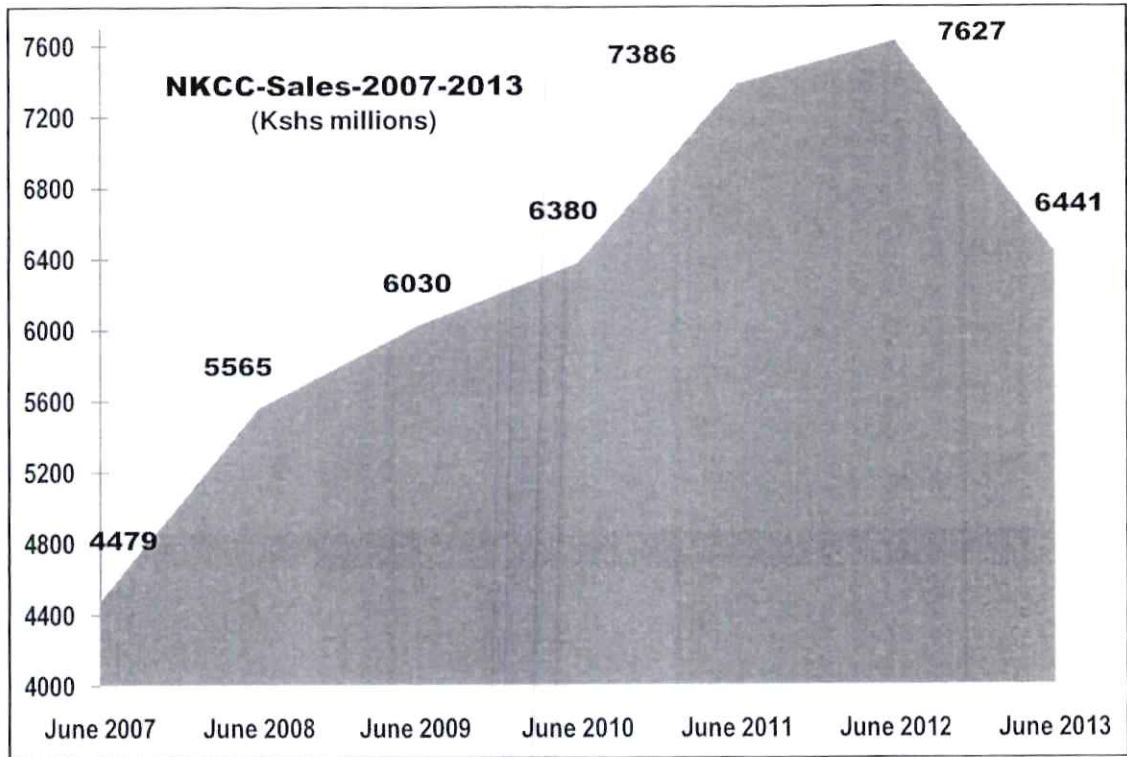


Figure 5 – NKCC Operating Profit

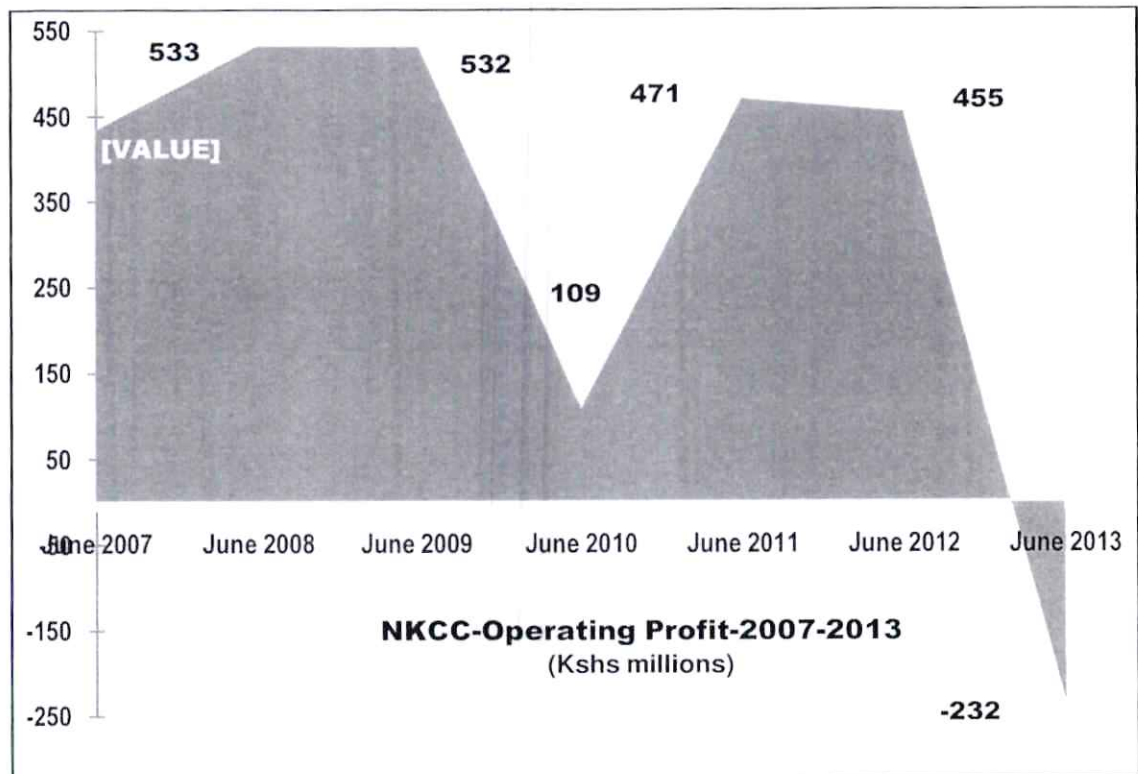


Figure 6 – NKCC Financing Costs

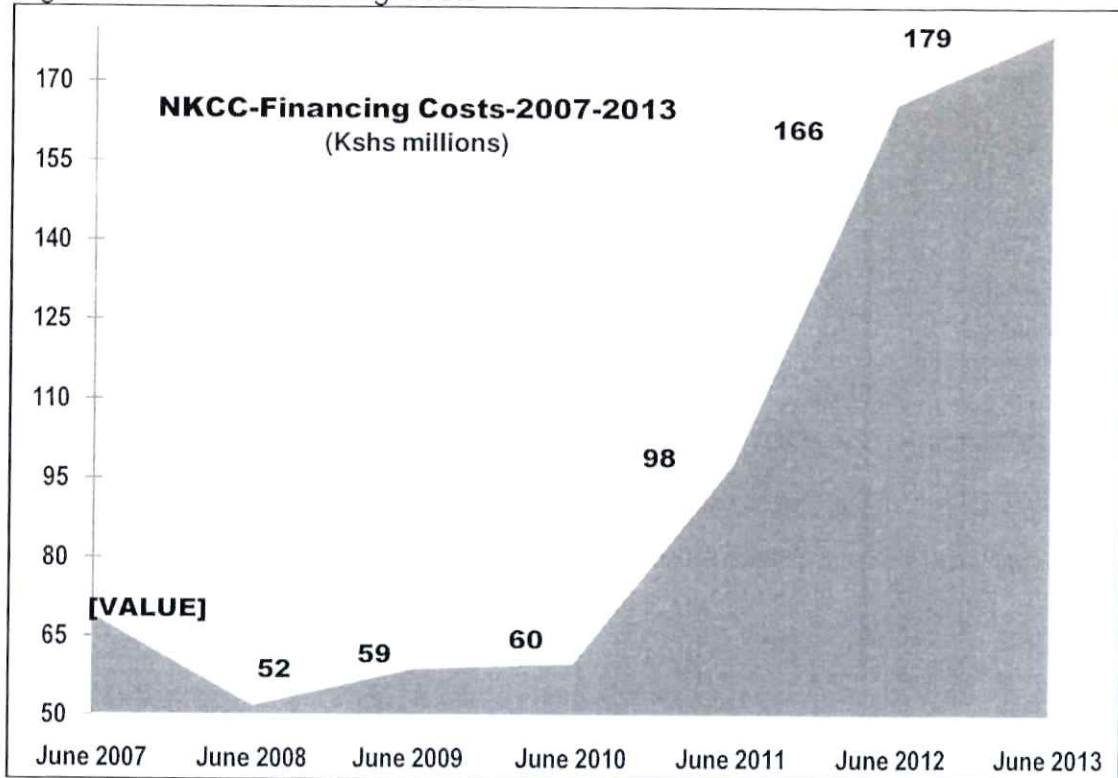


Figure 7 – NKCC Profit After Tax

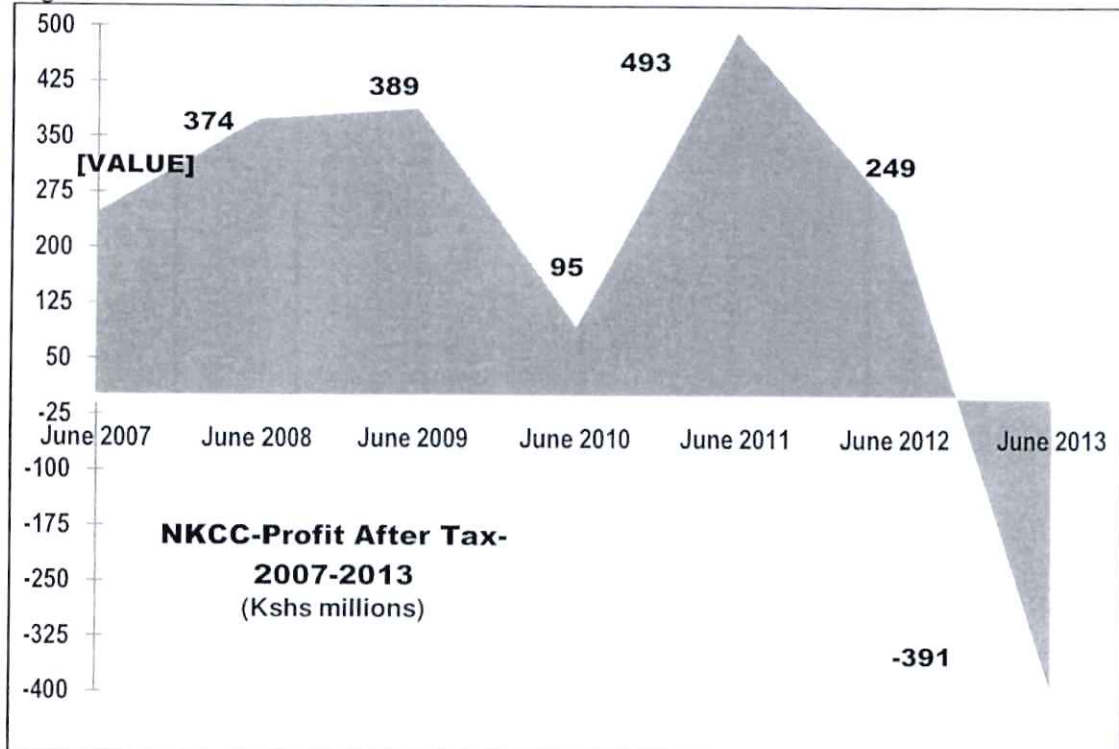


Figure 8 – NKCC Total Assets

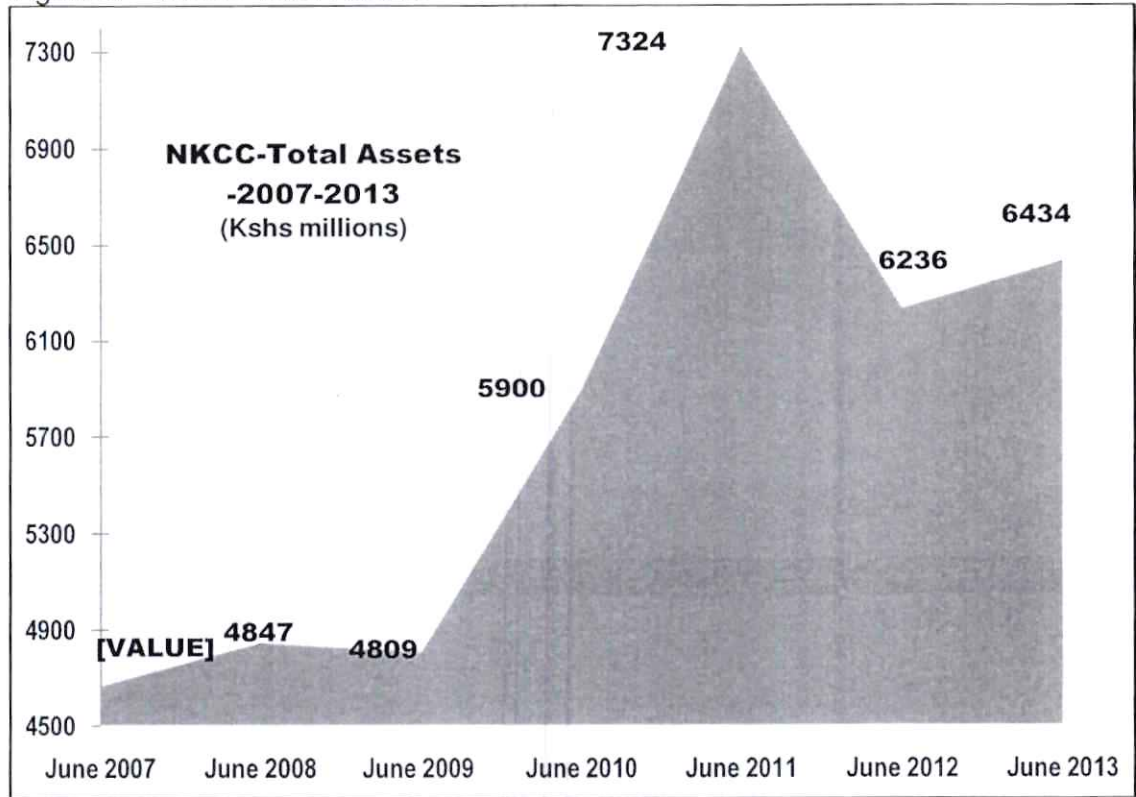


Figure 9 – NKCC Net Debt

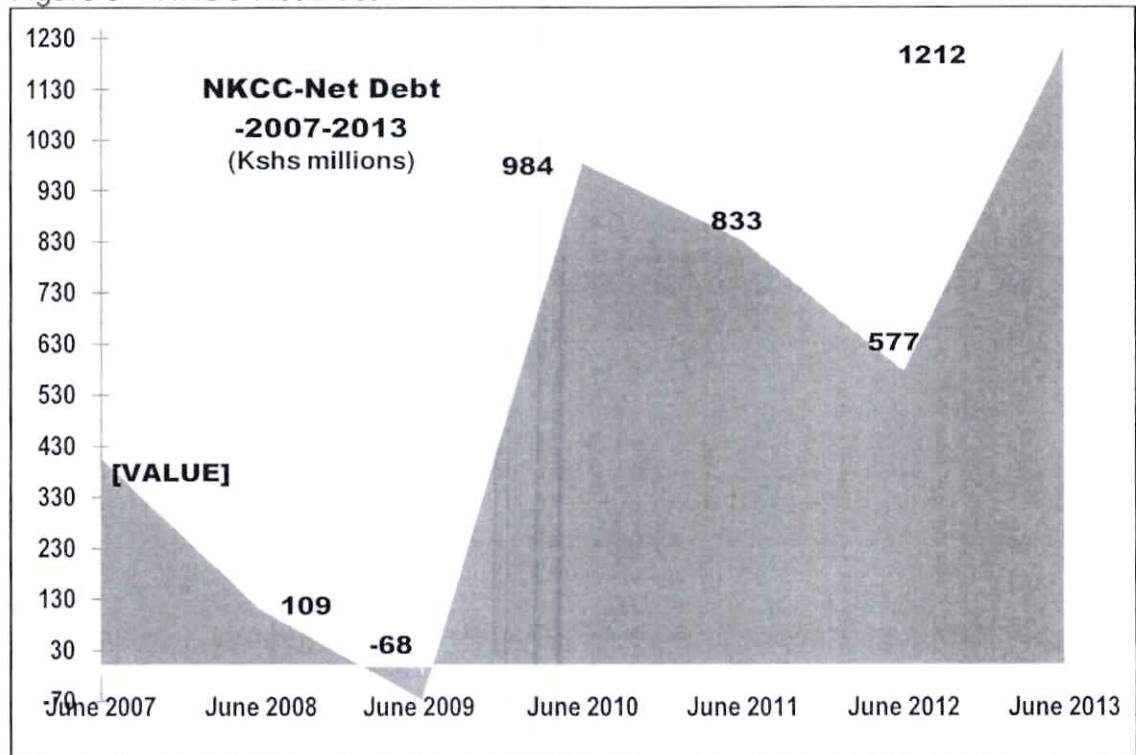
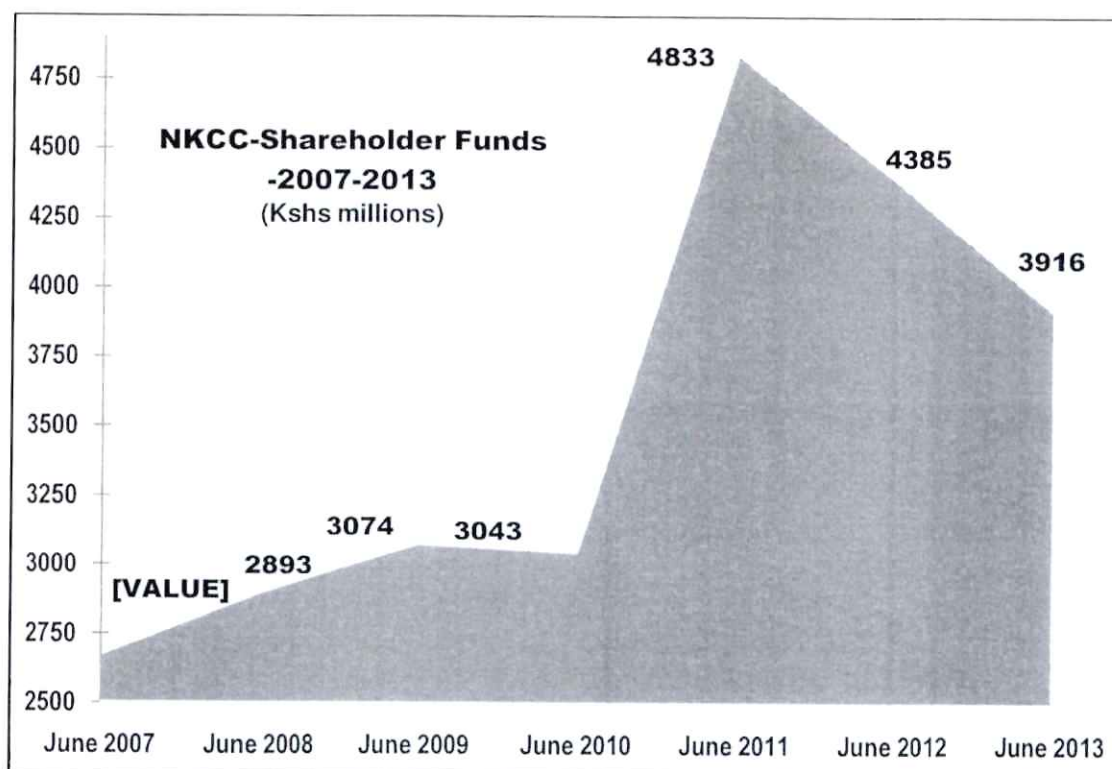


Figure 10 – NKCC Shareholder Funds



4.13 Section Conclusions

- A Audits have been conducted by the Kenya National Audit Office. Years ending 30 June 2006-2013 have all had 'matters of emphasis/reservations' for: non-current assets and/or trade receivables and/or prepayments and/or inventories. *This is of concern and needs to be addressed (there are indications that NKCC itself may address this for full IFRS compliance).* This is critical for the Implementation Phase of the Privatization.

Very low profit in 2010 and material loss for 2013 are noteworthy. The total assets has dropped in 2013 but is in excess of Kshs 6.4 billion. The net debt level has risen an alarming 1211 times from June 2009 to June 2013 (i.e. from positive net cash to negative Kshs 1.2 billion) while sales decreased 15.8% for the year ending June 2013. The shareholder funds as of end June 2013 was Kshs 3.9 billion.

- B The 2009-2014 Strategy by NKCC had very high sales and profitability projections. The actuals were materially lower.

The ability of NKCC to effectively grow its sales depends on its strategy. All of the strategy or parts of it can be implemented with or without privatization. However, privatization will boost its ability to implement all of the initiatives under the strategy.

NKCC needs to continue to focus on growing its internal EBITDA and profit margins.

- C NKCC requires a continuously updated risk management plan.

D NKCC does require new equity capital or cash from sale of non-core assets.

CHAPTER 5
YEAR 2010 –COMMERCIAL FINDINGS

The following is an extract of the New Kenya Co-operative Creameries Ltd Final Commercial and Financial - Due Diligence Report - dated 26 November 2010.

- 5.1 NKCC has had a good record of profitability over the period FY07 – 09, however the FY10 performance was impacted by the milk glut resulting in a decline in profitability
- 5.2 Total installed storage capacity in the eight factories amounts to 2.2 million litres. This is exclusive of 0.9 million litres installed storage capacity in bulking centres. (Total of 3.1 million litres)
- 5.3 NKCC has a cumulative installed processing capacity of 111,100 litres per hour. However, only 80,500 litres per hour (72%) of the installed processing capacity is available for use.
- 5.4 NKCC's total installed packaging capacity stands at 141,766 litres per hour for all milk products, of this only 115,700 litres per hour (82%) of installed capacity is available for use.
- 5.5 Available processing capacity is the limiting factor in NKCC's operations, caused by aged and non-operational machinery.
Storage capacity is utilised at 77%, due to periodic unavailability of milk, breakdowns, and the non operational status of some machinery.
- Effective utilised capacity is dependent on milk demand and therefore varies over time.
- 5.6 NKCC has the largest cooling plant infrastructure in Kenya. The dispersion of its processing plants enables NKCC reach out more parts of the country.
- 5.7 NKCC has out of date processing equipment in comparison to other processors which undermines its efficiency. Additionally, NKCC's processing equipment is not self regulating thereby requiring manual interventions for quality and volume control.
- 5.8 Speedy decision making is hampered by the elaborate bureaucracy
- 5.9 NKCC has achieved some milestones with regards to its Strategic plan. However, much needs to be done if the Company is to achieve its Vision. Key Strategic Plan milestones achieved to date include:
- Business processes automation – Implementation of SAP;
 - Develop and nurture relationships with farmers, Co-operatives and other intermediaries Farmer education in collaboration with interest based bodies, farmer exchange programs, field days and access to financing via scheme with Equity Bank and Co-operative Bank.
 - Benchmark and identify alternative packaging sources –
 - Introduction of FilPak packaging (polythene sachets).

NKCC has not made significant headway with regard to product rationalisation and diversification into "cow" and "non cow" products which is a key component of the Company's product market strategy.

An example is, the planned bottled water product which is yet to be implemented, however, management indicated that the same has been factored in the FY11 budget.

NKCC has however since launched its cupped yoghurt product.

5.10 Internal Controls

- NKCC's updated Strategic & Business plan (2009-2014) confirms that the Company has weak internal controls particularly in sales and distribution.
- The strategic plan and its contents were adopted by NKCC.
- Incidents of loss are high. As an example, during the fieldwork, there was a loss of milk powder in transit. Additionally, some senior staff members of NKCC are currently on suspension (refer to HR analysis).
- Management commented that the fraud risk is high as a result of questionable integrity of some staff.

5.11 9 months for FY10 performance affected by the glut

- NKCC reported a loss of Kshs 26 million for the 9 months to 31 March 2010. However full year FY10 financial results report a net profit of Kshs 95 million.
- Gross profit margin (GP margin) reduced as a result of lower prices, and higher average cost of goods sold per unit of fresh milk arising from the promotion where each purchase of fresh milk was coupled with a free product.
- NKCC is deemed as the buyer of last resort.

5.12 NKCC's revenue driven by low GP margin products

- Revenue growth has been driven by fresh milk sales.
- The top 2 revenue contributors: fresh milk and milk powder have lower GP margins of 27% and 15% respectively.
- UHT (Ultra Heat Treatment), shakes, butter and yoghurt have higher GP margins at 35%, 35%, 35% and 40% respectively.

5.13 NKCC's customer base is diversified with the top 4 customers (with revenues of greater than 1%) accounting for only 15% of the revenue for the 9 months to 31 March 2010.

5.14 Rent

- NKCC does not accrue rental income. The Company only accounts for rental income when cash is received from tenants. This accounting basis is inconsistent with the accrual concept and does not adequately reflect the revenue related to rental property.
- However, the impact on the accounts is minimal as rental income accounts for 0.4% of revenues.

5.15 Year end adjustments include:

- Inventory adjustments;
- Price/stock valuation variance reconciliations;
- Leave pay (refer to page 19);
- Bad debt provisions; and
- Un-reconciled amounts in accruals.

5.16 Inventory

- NKCC's inventory increased by Kshs 898 million between 30 June 2009 and 31 March 2010. The excess inventory was accumulated during the glut.
- Inventory of Kshs 1.4 billion represents more than 3 months of sales, which is high for a fresh food production company.

5.17 Inventory variances / Provisions for price/valuation variances have not been updated. It is unclear if reconciliation is done regularly to ensure that variances relating to stocks on hand are transferred to the income statement as inventory is sold.

- 5.18 NKCC's non current asset balance as at 31 March 2010 is not conclusive, additionally ownership in respect of some noncurrent assets could not be confirmed
- NKCC has a total of 85 parcels of land. Of these parcels of land, only 34 had title deeds in the name of NKCC.
 - The land value excludes 11 parcels of land which had not been valued and are under court dispute as they are registered in the name of third parties.
 - Titles for 11 parcels of land valued at Kshs 100.2 million are held by a law firm awaiting transfer to NKCC from KCC 2000.
 - Log books for 41 vehicles belonging to NKCC are held by a law firm pending a legal dispute over unpaid professional fees.
 - The detailed legal due diligence and asset valuation provide more details on the status of NKCC's assets.

- 5.19 NKCC has a pension related contingent liability arising from misappropriation of employee contributions paid to the then pension trustee and administrator, KCC Ltd.

Some former employees have filed a suit in the commercial court seeking compensation of Kshs14 million. The extent of misappropriated contributions is unknown, and the extent of the contingent liability is inconclusive.

- 5.20 Increased inventory positions caused increased working capital facility requirements (increased overdraft)
- In 9 months to 31 March 2010 NKCC's cash position deteriorated from positive Kshs 587 million to negative Kshs 87 million owing to heavy investment in unplanned inventory during the glut.
 - The negative cash flow position impacted on NKCC's debt servicing ability with the interest cover dropping to 0.3 times.

- 5.21 67% of all receivables relate to amounts owing for more than 120 days

- NKCC's accounting software is not able to undertake ageing beyond 120 days.
- 67% % of all receivables relate to amounts owing for more than 120 days. According to management, the amounts are recoverable. The Company is using debt collection agencies to collect the receivables.
- The receivables schedule has unallocated receipts totalling Kshs 30 million.

- 5.22 Increased number of trade creditor days

- Average age of trade creditors between FY07 and 31 March 2010 increased from 37 to 99 days. The normal credit term is 60 days.
- According to management, the negative cash position was created following the glut affected payment to trade creditors.

- 5.23 NKCC has projected a GP margin of 34% in FY2010 with a targeted increase to 50% by FY2014. The proposed FY10 – 11 targets a GP margin of 36%.

- 5.24 Senior staff members on suspension

NKCC has 19 outstanding lawsuits related to former employees and 18 disciplinary cases where staff are currently on suspension.

Four of the employees on suspension are senior management staff reporting to the Managing Director.

- 5.25 NKCC has seven positions in senior management where persons are in an acting capacity. Which include the Managing Director, Company Secretary Corporate Affairs Manager and other four senior management positions following the suspension of staff.
- 5.26 The current organisation structure has a wide span of control for the Managing Director with some reporting relationships not being strategic but operational in nature. A new organisation structure was proposed and accepted by the Board following a HR Consultancy Assignment in 2009.
- 5.27 Leave
Outstanding leave liability for 233 management staff between grades KCC1 to KCC8 as at 31 March 2010 is Kshs. 33 million. The number of staff used for the analysis represent approximately 24% of the total workforce of NKCC.
- 5.28 NKCC has in place a HR Policies and Procedures Manual with appropriate HR policies. However, the manual is silent or not clear on benefits and allowances, loans, medical scheme, types of leave, discipline, code of conduct and other general information.
- 5.29 Commendable transformation over a three year period
The Information and Communications Technology (ICT) infrastructure is three years old. KCC did not have much before then (in terms of staff and infrastructure) and most systems were manual. There has been a marked improvement in a short time. The ICT team of 9 staff has implemented three of the four ICT initiatives set out in the corporate strategy for 2013.
- 5.30 ICT strategy, policies and governance need to be refreshed and given strategic audience
The ICT department has been able to exceed the targets set for it in the corporate strategy. A number of IT policies have been developed and enforced since May 2008. The ICT function is represented on the Board by the Finance and General Purpose committee; there is no forum that exclusively deals with ICT at a strategic level.
- 5.31 There was a fresh roll out of the SAP - Enterprise Resource Planning (ERP) system that has run parallel operations since March 2010 and went live with a full changeover in July 2010. All remote locations are connected over an Multiprotocol Label Switching (MPLS) network to the Head Office with adequate capacity and speeds. There is support for mobile workers and stations through the use of 3G wireless connectivity over a secure virtual private network (VPN).
- 5.32 NKCC currently had no disaster recovery site. There are manual backup processes for onsite backup and a weekly schedule for offsite backup. The strategy for risk mitigation has not been fully implemented due to cost considerations and the disaster recovery plan is not exercised regularly. There are some gaps in redundancies of connectivity and for systems in remote branch locations.
- 5.33 Staff. There were nine member of staff and a vacancy for a Service Delivery Manager in the organisation structure.

NKCC has a staff complement of 1,000 (as at 31 March 2010). The staff are categorised as either Permanent, Temporary or Casual. Permanent staff are employed on a long term basis till attainment of the retirement age. Temporary staff are employed on one year contracts who are entitled to limited benefits, primarily medical and pension. Casual staff are employed for a period not exceeding three months.

From a review of the manpower qualifications, the education levels of staff are above average. Out of a list of 1,018, 112 employees are graduates, 217 hold diplomas and

professional qualifications in various fields and 652 hold either A level, O Level and other qualifications. Educational information on 37 employees was not provided.

An analysis of the age profile of NKCC indicates that 18% of the employees are 30 years and below, 30% are between the ages of 31 and 40 years while 46% of the employees are above 41 years.

NKCC has in place a pension scheme. Once an employee is confirmed to their position, they are eligible to join the company pension scheme. The NKCC contributions for management staff are: Employees contribute 7.5% of their basic salary; and the employer contributes ten percent (10%) of the basic salary.

The NKCC contributions for union staff are: Employees contribute a fixed rate of five percent (5%) of their basic salary; and The employer contributes five percent (5%) of the basic salary.

A consultancy firm has carried out a Training Needs Analysis exercise that focused on the individual staff training gaps and needs.

NKCC offers opportunities for career advancement depending on employee qualifications, attrition and performance. In addition, NKCC offers assistance to employees through staff training that enables them enhance their skills and performance on the job.

There were 18 disciplinary issues with employees. Majority of these employees have been suspended for fraud and funds mismanagement. Four (4) of the eighteen (18) disciplinary cases are senior management staff reporting to the Managing Director. NKCC indicated that there were nineteen (19) outstanding lawsuits related to former employees as at June 2010. Most of the former employees have sued NKCC in relation to wrongful dismissal.

NKCC does not have a performance and results oriented culture which directly impacts on staff productivity and performance. This was observed by the consultants during the due diligence exercise. In addition, the same was noted during the HR Consultancy assignment completed in November 2009.

NKCC however uses the Government Performance Contract that are cascaded from the Parent Ministry to the Managing Director who also cascades the same to senior managers. From the senior management files sampled, the cascading of the government performance contract has been recorded.

For management staff, increments are determined by based on cost of living index and organisational performance. For union staff, increments are based on the Collective Bargaining Agreement.

Outstanding leave obligation for 233 management staff between grades KCC1 to KCC8 as at 30 March 2010 is Kshs. 33,269,678.50. The number of staff used for the analysis represent approximately 24% of the total workforce of NKCC.

- NKCC's Board has adopted the recommendations of a Human Resource (HR) policy and salary review report that will see salaries increase
- NKCC engaged Deloitte Consulting in 2009 to review its HR and remuneration policy.
- The report recommended a change of remuneration to market salary rates.
- The report's recommendations were approved by the Board and are to be implemented.

CHAPTER 6

YEAR 2010 – BUSINESS OVERVIEW

The following is an extract of the New Kenya Co-operative Creameries Ltd Final Commercial and Financial - Due Diligence Report - dated 26 November 2010.

6.1 Products

NKCC's product mix include:

- KCC Fresh milk;
- KCC Gold Crown;
- KCC UHT Long Life milk;
- KCC Butter;
- KCC Mala – fermented milk;
- KCC Delight – yoghurts;
- KCC Ghee;
- KCC Cheese;
- KCC Shakes – long life flavoured milk; and
- Safariland Milk Powder – (whole & skimmed).

- These products are sold in packaged sizes and priced differently depending on the size and the market segment. The pricing is also dependent on the cost of production especially the cost of purchasing inputs.

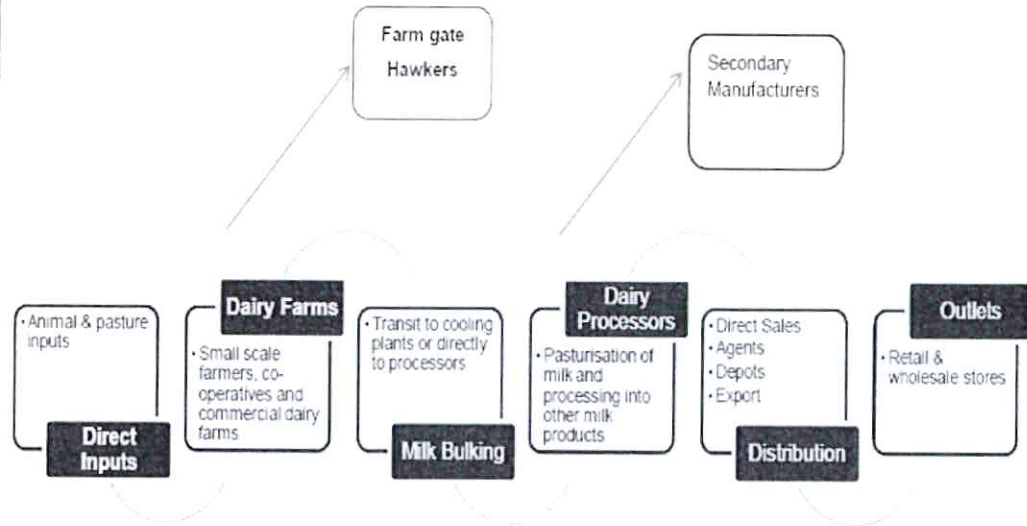
Product & Market Strategy

- According to NKCC's July 2010 to June 2011 Budget Proposal, the Company's overall product/market strategy is to shift to value added products and niche markets while taking the leadership in the mass market of the lower processed fresh milk market.
- The Budget Proposal borrows from the Company's Updated Strategic and Business Plan (2009-2014), which identified diversification of its product mix into non-milk products as a key priority, together with reducing dependence on the fresh milk market which is very competitive within both the formal and informal market.
- The diversification is aimed at increasing profitability through production of value added products with better margins thus ensuring overall improved profitability of the entire portfolio.
- Exploiting NKCC's recognised brand by venturing into new product areas.

NKCC's role in the industry is focused on the milk bulking, processing and distribution stages:

- Milk bulking- NKCC operates cooling plants where farmers deliver raw milk for bulking prior to transportation to factories for processing;
- Processor- In its various factories, NKCC processes milk into the various products highlighted above; and
- Distribution- NKCC employs a depot/agent distribution model through which agents collect products from various sales depots nationwide.

CONSUMER



Raw Milk Collection

In strategic milk production areas milk is collected from the farmer. Otherwise is delivered by farmers to the nearest cooling plant or milk zone.

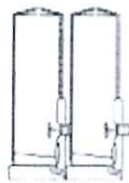
Farmers also have the option of delivering milk to the factories.



Farm Level

NKCC is involved at the farm level through:

1. Farmer education on feeding, AI and veterinary services
2. Facilitation of farmers to get feeds
3. Facilitation of loans from Co-operative Bank and Equity Bank



Milk Bulking Milk is tested for quality and stored in the cooling plants

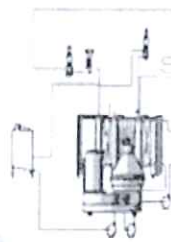
Chilled milk transportation

Chilled milk is transported via hired tankers or NKCC tankers
Delivery centrally coordinated
Raw milk transported as far as Miritini in Mombasa



Milk Processing

This is done at the various processing plants in Dandoora, Nyahururu, Sotik, Elooret, Kiganjo, Miritini and Nairobi cheese factory.



Distribution

Distribution through company transport to country wide depots
Direct sales to key customers
Transport rebate is provided for distributors in Northern Kenya and Lodwar.
Advertising and consumer education also undertaken.



End Products Currently focused on primarily on milk products, with emphasis on fresh milk.

6.2 The Farmer (NKCC Milk Producer)

- NKCC's most valued supplier is the farmer. Farmers provide the raw milk that is the key ingredient in the products. Farmers supply milk to NKCC both directly and through dairy co-operatives.
- NKCC has been known to be the buyer of last resort of the farmers' milk and as such was unofficially obligated to take all the milk supplied to it as long as it meets the minimum standards for acceptance.
- NKCC assists farmers by offering them animal feed on a credit basis, which are deducted from the payments to the farmers.
- NKCC partnered with the Co-operative Bank of Kenya and Equity Bank in arranging loans to the farmers which are repaid through payments for the milk received from them. In addition to this, farmers who purchase NKCC products from NKCC depots are afforded special discounted prices similar to those offered to NKCC staff.
- NKCC also participates and co-sponsors farmers' field days along with other entities such as feed and veterinary suppliers. During these field days, farmers are educated on the right feeds and veterinary services to be provided to their livestock along with other relevant advice. NKCC listens to farmers with regard to any assistance that may be required. This has helped to build the relationships with the dairy farmer that were broken with the collapse of KCCL Limited.

6.3 Packaging Suppliers

- Another important supplier is Tetra Pak who provide machinery and packaging material.
- With the introduction of the polythene pouch packaging, NKCC has reduced its reliance on Tetra Pak for packaging material. Silpack Industries Ltd and Packaging Industries Ltd are other key packaging suppliers.

6.4 Customer Analysis

The Kenyan market is defined by low, middle and upper bracket customers.

The NKCC Updated Strategic & Business Plan (2009 – 2014) categorised NKCC's products shoppers, into the following categories A, B, C, D and E where each category was ranked from lowest (E) to highest (A) by the Kshs value of their typical shopping basket contents.

In Kenya there are very few A category customers. The pyramid consists mostly of E category customers but the combined purchasing power of B and C far outweighs A, D and E.

Category D & E make the bulk of NKCC's sales volume.

6.5 SWOT

Strengths

- Strong brand – political/public goodwill/rich experience and heritage.
- Good network – NKCC has facilities in all milk catchment areas.
- Ability to process powder – NKCC is the only powder processor in Kenya (though new competitor is processing in Uganda).
- Good partnership – powdered milk produced is used as a raw material by various manufacturing companies.
- Acquisition of SAP Enterprise Resource Planning system.

Weaknesses

- Culture – Employees attitude to work is an impediment to the company's ability to meet its objectives. The current attitude is one where employees do not understand the importance of working to achieve results.
- Issues of integrity of staff.
- Inadequate financing/funding.
- Inefficient and inadequate storage facilities. Currently it is expensive to maintain the storage facilities and most storage facilities need repairs.
- NKCC needs to have smaller, dedicated cold rooms - more efficient.
- The machinery used in NKCC is old and some equipment is outdated.
- This results in frequent breakdowns, compromising on efficiency and resulting in high costs of production.
- Shortfall in working capital.
- Inefficiency in transportation/ high cost of transportation.

Opportunities

- NKCC is the only milk processor in Kenya with the ability to convert milk to powder. NKCC needs to leverage on this to compete with imported powder.
- Largely untapped EAC and export market.
- Product diversification – creation of products that use milk/milk powder as an ingredient.
- Cheaper packaging options to cater for low income earners.
- Embracing of quality codes to improve on quality and increase accessibility to the export market.
- Consumer education to build on a milk consumption culture.
- Milk production is one of the fastest growing segments in the agriculture sector.
- Farmers who are aware of this are excited as they get good margins enabling them to sustain their families.
- Use of agents to sell products rather than many distributors which will result in decrease in transport costs.
- Partnership with co-operatives societies in supply and sale of milk and other NKCC products.
- Niche markets e.g. the young generation, products for schools, health conscious products.

Threats

- High production costs and rising cost of equipment.
- EAC market protocol may expose the Kenyan dairy sector to increased competition.
- Competition from other dairy companies and beverage companies locally and worldwide.
- The fragmented thus inefficient value chain structure of the industry as a whole.
- Low overall processing capacity in the industry.
- Cheap dairy imports for some product categories.
- Quality may hinder growth of dairy export market.
- Effects of climate changing given the dairy industry's dependence of rain fed systems.
- Irregular milk production, this will serve as a hindrance in NKCC's ability to expand.
- Diversion of products. Products targeted for export market are sold locally at low prices.
- Competition from the informal milk market.
- Political interference e.g. with surplus milk production in the market, NKCC was forced to shoulder the burden of increased numbers of farmers turned away by private processors.

- New systems if not properly implemented.

6.6 NKCC vis a vis Brookside

Source: A Kenya Dairy Board Officer

Given the dominance of Brookside in the processing segment, the competitor analysis has been focused on Brookside. The following are strengths and weaknesses of NKCC are based on observations and analysis by Kenya Dairy Board:

Strengths

- NKCC has the largest cooling plant infrastructure which gives is a competitive advantage with regards to milk collections and consequently quantity processed.
- NKCC is considered to have the largest fleet of modernised bulk milk transportation vehicles.
- The dispersion of its processing plants results in NKCC being able to have a wide milk processing outreach. This gives NKCC a competitive advantage as milk in outlier areas reaches the processing plants faster than other processors.
- NKCC has the widest variety of milk products and has exclusive production of cheese, butter and milk powder.
- As per KDB's personnel surveys, NKCC has the most skilled production personnel in both experience and education.
- NKCC has the least farmer complaints with regard to payments for milk delivered.

Weaknesses

- Business drive – NKCC is still not aggressive in the market especially in marketing and distribution of its products. This stems from the company's work culture and employee attitudes and motivation.
- Based on KDB's processing inspections, the single greatest challenge facing NKCC is the use of outdated processing equipment. Even though the quality of milk meets the quality standards as set by KDB and KeBS, the use of old processing machinery increases the cost of production across the value chain for NKCC. Specifically, this arises because NKCC's processing equipment is not self regulating/controlling with regard to quality parameters like temperature, ingredients, quantity etc. Brookside is considered to have the best processing equipment.
- In comparison to Brookside, NKCC does not have high standards of hygiene.
- Brookside processing plants are clean with employees having protective apparel and sanitizers.
- From KDB inspections, NKCC does not keep detailed documentation of its processing especially with regards to quality and quantity. Brookside is known to have the best documentation in line with its ISO certification.

6.7 Going Forward

Based on the SWOT and competitor analysis below are proposed key areas of attention going forward.

- NKCC should prioritise on modernising its processing plants and equipment. This will result in efficiency and reliability in its operations.
- Streamlining of its operations especially in decision making. Speedy decision making is hampered by the elaborate bureaucracy. As a Government institution NKCC is bound by additional legal requirements like the procurement act which lengthens the lead time of some of its operation and decisions vis a vis its competitors.

- Review of its marketing team. NKCC is still far below its potential in penetration of its products especially in the export market, outlier areas and small shops.
- ISO certification. NKCC should endeavour to get ISO certification as this will appeal to customers especially from export markets with regard to operations and quality. The ISO certification will also assist in streamlining its procedures and processes as well as provide documentation of procedures which is useful in succession planning.

6.8 Strategy Communication

NKCC updated its strategic plan in May 2009, which is yet to be fully cascaded to the various departments.

- NKCC developed a strategic and business plan for the period 2009 - 2014 with the assistance of Deloitte Consulting Limited. This plan aims to guide the Company's strategic direction over the highlighted period.
- The strategic plan was modeled using the Balance Scorecard Approach through which the Company redefined its core strategic objectives highlighted below:
Vision - To be the preferred Food and Beverage Company of International Standing; Mission - We care for the communities around us through provision of high quality dairy and other processed products; and Core values - Integrity, Exceeding Customer (stakeholders) expectations, Respect and Diversity.
- The Company is yet to fully cascade the corporate strategy to the various departments.

6.9 The Strategy 2009-2014

NKCC strategic focus is geared at product expansion/diversification and building efficiency mechanisms

Vision - To be the preferred Food and Beverage Company of International Standing

Customers

- Segment the market and determine product requirements and develop new products: cow, goat or camel milk and other non-milk products (water, juices);
- Redesign the distribution model (and enhance milk collection model);
- Enhance the development and management of customer relationships;
- Forge closer collaboration with the Dairy Board, Kenya Agricultural Research Institute (KARI), Constituency Development Fund (CDF), Learning Institutions, Ministry of Livestock and Kenya Revenue Authority (KRA);
- Identify and develop milk zones through partnerships with service providers;
- Develop and nurture relationships with farmers, Co-operatives and other intermediaries; and
- Enhance the image and brand of NKCC.

Financial

- Enhance strategic and performance management processes;
- Enhance the budgeting and planning process;
- Prepare for a share offer to farmers, employees and an IPO; and
- Identify, implement and expand potential sources of funding.

Internal Processes

- Research and implement energy and water conservation initiatives;
- Implement lean manufacturing;

- Benchmark and identify alternative packaging sources;
- Redesign the management of procurement and supplier process;
- Redesign and automate business processes; and
- Determine opportunities to outsource non-core business process.

Learning & Growth

- Review and develop an optimal organisation structure and rebuild it to implement business strategy;
- Develop and implement a competency development framework;
- Enhance performance management;
- Develop and implement an innovation framework; and
- Develop and implement an asset management policy.

6.10 Detailed Plans

The following section highlights NKCC's progress in implementing the strategies within its Updated Strategic Plan (2009 – 2014).

- Redesigning and automating of business processes
- Redesigning the distribution model
- Enhancing the development and management of customer relationships
- To identify and develop milk zones through partnerships with service providers
- Develop and nurture relationships with farmers, Co- operatives and other intermediaries
- Enhancing the milk collection model
- Enhance the image and brand of NKCC.
- Product rationalisation
- Repositioning of redefined products in distinct market segments; and
- Considering new product – health conscious products.
- Develop and manage new products: cow, goat or camelmilk and other non-milk products (water, juices).
- Research and implementation of energy and water conservation initiatives
- Benchmark and identify alternative packaging sources
- Enhance internal controls
- Determining opportunities to outsource non-core business processes.
- Implementation of lean manufacturing.
- The need for a cost benefit analysis of running factories to ensure operations streamlining;
- Address slow reaction times.
- NKCC's organisation structure is top heavy, with suggestions to review and come up with an optimal organisation structure.
- Enhance performance management.
- Identify, implement and expand potential sources of debt funding.

6.11 Internal Controls

- NKCC's updated Strategic & Business Plan (2009-2014) notes that the Company has weak internal controls resulting in fraud particularly in the sales and distribution.
- During the Consortiums fieldwork, for instance, the Dandora factory was dealing with a case of loss of milk powder in transit which resulted in the sacking of staff.

Pricing Policy

- NKCC operates a three tier pricing model, i.e. consumer price, distributor/wholesale price and trade price. Trade prices (lowest price levels) are used for budgeting purposes.
- Processed milk is a commodity item whose price has to be set to be competitive. If prices increase to high levels, consumers will buy substitute products.
- NKCC's strategy is to ensure a market parity considering the market prices and with a view to drive price stability by holding constant prices while considering upward adjustments when opportunity arises.

Product/Brand Enhancements

- In order to drive value and increase profitability, NKCC aims at focusing on, NKCC aims at focusing on value added products with better margins.
- To optimise the company's production capacity, NKCC is initiating a diversification strategy which will involve the sale of non cow milk and non milk products.
- To further exploit its advantage of being the only Company with milk powder production facilities, NKCC will invest in instantising equipment that will facilitate the production of instant powder.
- The investment will enable NKCC to compete with international brands like NIDO and facilitate the penetration of the export market and the growth of milk powder consumption in the domestic market.

Financial Reporting Structure

- NKCC's financial reporting is performed at head office level. Financial data is collected from the various cooling plants, factories and depots and consolidated by the finance team at the headquarters.
- Timely reporting of management information is an attention area for the company. The financial data collection process was slow and inefficient. However, this might improve with the impending full implementation of SAP.

CHAPTER 7
SELECTED FINANCIAL OVERVIEW

The following is an extract of the New Kenya Co-operative Creameries Ltd Final Commercial and Financial - Due Diligence Report - dated 26 November 2010.

7.1 Profitability

The table below shows NKCC's full year income statement results between FY07-10.

KShs 000	FY07	FY08	FY09	FY10	FY07-10 %CAGR
Sales	4,479,320	5,585,975	6,030,118	6,380,176	12.5%
Cost of sales	(3,164,903)	(4,002,260)	(4,453,052)	(4,987,433)	16.4%
Gross Profit	1,314,417	1,583,715	1,577,066	1,392,743	1.9%
SGA Expense	(423,252)	(507,971)	(546,297)	(808,801)	12.9%
Administrative expenses	(456,156)	(522,738)	(498,515)	(674,732)	13.5%
Operating profit	435,010	533,006	532,254	109,210	(36.9)%
Other income	17,859	19,467	25,905	28,167	16.4%
Financing costs	(68,748)	(52,154)	(59,348)	(59,937)	(4.5)%
Profit/loss before tax	384,121	500,319	498,811	77,441	(41.4)%
Taxation	(136,345)	(125,713)	(109,717)	17,655	(150.6)%
Profit After Tax	<u>247,776</u>	<u>374,606</u>	<u>389,095</u>	<u>95,106</u>	(27.3)%
<hr/>					
% Gross profit margin	29.3%	28.1%	26.2%	21.8%	
% Operating margin	9.7%	9.6%	8.9%	1.7%	
% Sales growth	n/a	24.3%	8.3%	5.8%	
% Opex growth	n/a	17.2%	11.3%	12.0%	
n/a - Tax					
Source: Audited S & M Management Accounts					

7.2 Profit Contribution

Fresh milk sales continued to dominate sales.

KShs 000's	9 months to March 2010	FY10	FY10 "Quarter 4"
Fresh Milk/TCA/TFA	3,538,710	4,719,933	1,181,224
Ultra heat treated (UHT) Milk	513,325	642,850	129,525
Pow der Milk	227,321	317,204	89,883
Mala Milk	237,891	323,055	85,164
Other dairy products	308,153	400,095	91,942
Less: Transport rebates/discounts allowed	(13,888)	(22,961)	(9,073)
Total	4,811,511	6,380,176	1,568,665

7.3 Selling Expenses

Kshs 000's	9 months to March 2010	FY10	FY10 "Quarter 4"
Advertising and promotion	93,571	105,756	12,185
Distribution and Transport	243,516	346,312	102,796
Provision for bad debts	18,198	4,624	(13,574)
Travelling	31,904	44,815	12,910
Motor Vehicle Running	71,515	97,511	25,996
Damages/Wastage write offs	-	76,168	76,168
Total	458,705	675,186	216,482

7.4 Staff and Administration Expenses

Kshs 000's	9 months to March 2010	FY10	Quarter 4
Staff Costs	246,943	313,361	66,418
Directors Expenses	10,337	13,989	3,652
Administrative costs			
Auditors remuneration	400	400	-
Legal and professional fees	9,581	11,282	1,701
Repairs and Maintenance	3,928	12,047	8,120
Insurance	19,832	25,802	5,970
Stationery and Printing	15,224	26,389	11,165
Laboratory chemicals	929	1,252	323
Communication	12,103	16,400	4,297
Security	10,908	16,005	5,097
Electricity	7,021	7,733	712
Water and sewerage	756	899	143
Depreciation and leasehold amortization	89,322	119,993	30,671
Other office expenses	26,353	42,874	16,521
	196,356	281,076	84,719
Total	453,636	608,426	154,789

7.5 Balance Sheet

See below. Total assets of Kshs 5.9 billion before adjustments.

Kshs 000's	FY07	FY08	FY09	FY10	
Non-current assets					
Property Plant & equipment	2,712,681	2,625,467	2,595,810	3,065,885	4.2%
Prepaid leases on land	324,698	316,947	309,195	302,781	(2.3)%
	<u>3,037,380</u>	<u>2,942,414</u>	<u>2,905,004</u>	<u>3,368,665</u>	3.5%
Current assets					
Inventories	951,235	689,765	501,745	1,624,584	19.5%
Trade receivables & prepayments	596,335	626,940	815,221	840,777	12.1%
Cash & cash equivalents	83,293	587,614	587,395	65,553	(7.7)%
	<u>1,630,862</u>	<u>1,904,319</u>	<u>1,904,361</u>	<u>2,530,915</u>	15.8%
Total assets	<u>4,668,242</u>	<u>4,846,733</u>	<u>4,809,366</u>	<u>5,899,580</u>	8.1%
Current Liabilities					
Bank Overdraft	-	-	-	280,126	n/a
Current portion of term loan	118,709	179,763	198,389	231,000	24.8%
Credit & accruals	768,121	580,528	595,385	1,141,526	14.1%
Related party balances	8,580	2,996	2,996	203,968	187.5%
Gratuity senior staff	7,732	15,142	19,670	19,071	35.1%
Tax payable	114,661	56,514	33,320	(104,197)	(196.9)%
Dividends	-	30,000	50,000	50,000	n/a
	<u>1,017,803</u>	<u>864,943</u>	<u>899,759</u>	<u>1,821,493</u>	21.4%
Non - Current Liabilities					
Term Loan	372,086	517,286	321,325	538,145	13.1%
Deferred Tax	607,110	571,796	514,825	497,160	(6.4)%
	<u>979,196</u>	<u>1,089,082</u>	<u>836,150</u>	<u>1,035,305</u>	1.9%
Capital & reserves					
Share Capital	547,029	547,029	547,029	547,029	0.0%
Revenue reserves	496,332	840,938	1,144,828	1,239,933	35.7%
Revaluation reserves	<u>-1,627,882</u>	<u>-1,504,741</u>	<u>-1,381,600</u>	<u>-1,255,820</u>	(8.3)%
Equity / Assets	<u>2,671,243</u>	<u>2,892,708</u>	<u>3,073,457</u>	<u>3,042,782</u>	4.4%
Total equity & liabilities	<u>4,668,242</u>	<u>4,846,733</u>	<u>4,809,366</u>	<u>5,899,580</u>	8.1%

Source: Audited & Management Accounts

7.6 Miscellaneous

- 67% of total receivables was over 120 days;
- 22.5% of the trade debtors were older than 120 days. NKCC did not age receivables beyond 120 days;
- The top four customers; Nakumatt, Tusky's, Uchumi and Department of Defence are given preferential prices which are usually lower than normal customers. These customers constitute over 45% of the total trade receivables.
- 8.3% of all trade receivables are dormant. These are over 120 days old. Debtors are classified as dormant when their accounts become inactive for a period exceeding 6 months.
- The price/stock valuation variances have been increasing over the years.
- NKCC declared dividends for FY08 which was paid out in FY09. In FY09, the Company increased its dividend to Kshs 50 million, which to date, is unpaid. The FY10 balance sheet shows the an accrued liability relating to the unpaid dividend. NKCC does not have an defined dividend policy.

- According to management, the only contingent liability relates to an assessment undertaken by KRA which resulted in tax, penalties and interest liability of Kshs 120 million.
- Leave days liability could be higher;
- Investment deduction claims requires policy update;
- Employees benefits requires policy update as regards treatment;
- Withholding tax on services requires different treatment;

7.7 Projections

NKCC's financial projections for the period 2010 – 2014 have been adopted from the Company's 2009 – 2014 Strategic Plan.

The projections target an overall increase in profitability over the period to profit before tax of Kshs 6.5 billion by FY14 (CAGR 77.1%).

Kshs'000's	FY10	FY11	FY12	FY13	FY14	FY10-14 %CAGR
Revenue						
Milkproductsales	7,059,402	8,011,493	8,998,416	9,978,082	10,885,180	11.4%
Non- cowmilk&Non- milkproducts	371547	1,277,194	2,612,443	4,535,492	7,256,787	110.2%
Costofgoodssold	(4,876,163)	(5,898,316)	(6,850,407)	(7,909,898)	(9,070,984)	16.8%
Grossprofit	2,554,786	3,390,371	4,760,452	6,603,676	9,070,983	37.3%
Operatingexpenses	(1,143,155)	(757,052)	(944,867)	(1,274,157)	(1,552,280)	7.9%
EBITDA	1,411,631	2,633,319	3,815,585	5,329,519	7,518,703	51.9%
Depreciation	(620,710)	(721,966)	(862,111)	(901,566)	(1,025,982)	13.4%
EBIT	790,921	1,911,353	2,953,474	4,427,953	6,492,721	69.3%
Netfinancecosts	(147,750)	(161,518)	(116,466)	(70,184)	(31,787)	(31.9)%
Otherincome/(expense)	15,088	15,842	16,634	17,466	18,340	5.0%
Profitbeforetax	658,259	1,765,677	2,853,642	4,375,235	6,479,274	77.1%
%Grossprofitmargin	36.2%	42.3%	52.9%	66.2%	83.3%	
%EBITDAmargin	20.0%	32.9%	42.4%	53.4%	69.1%	
%Salesgrowth	n/a	13.5%	12.3%	10.9%	9.1%	
%Opexgrowth	n/a	(33.8)%	24.8%	34.9%	21.8%	

Budgeting Procedures

According to NKCC's FY10/11 budget document, NKCC as a state corporation, prepares annual budgets and submits them to the Ministry of Finance/Treasury for approval.

Budgets are drafted at factory and cooling plant level and submitted to head office for harmonisation and approval.

The FY10/11 budgets were drafted with reference to the Company's 2009-2014 strategic plan.

7.8 Capital Expenditure

Management's Capex plan for the five years 2010 to 2013 were as follows:

Kshs millions	2010	2011	2012	2013
Total Capex	1,120	1,439	1,042	1,330

- Kshs 605 million has been invested in capex in the 9 months to 31 March 2010. This has been utilised in purchasing a milk instantiser in Kiganjo, milk pasteurizers and refrigerated tankers among others.
- Going forward NKCC's key capital expenditure includes:
 - Purchase of milk tankers;
 - Purchase of cooling tanks;
 - Plant machinery;
 - Two additional processing plants each at Kshs 70 million; and
 - The rehabilitation of the Nakuru factory.
- NKCC's capex budget for FY2010 – 2011 is Kshs 820 million, the budget had been submitted to the government for approval.
- The FY2010 – 2011 capex budget is planned to be utilised as follows:
 - Kshs 768 million (94%) has been earmarked for rehabilitation of the company facilities, replacement of old vehicles and the acquisition of additional fleet and machinery;
 - Kshs 16.5 million has been factored in for the replacement of crates & containers which are currently aged, as well as the additions to support the expected sales growth;
 - Office furniture & fitting – NKCC plans a major facelift of the company's offices at a cost of Kshs 15 million;

Other capex is planned for the ongoing implementation of the ERP-SAP system which will necessitate additional computer hardware equipment as well as a feasibility study for suitable investment for capacity enhancement to process excess milk supplies during glut seasons. Kshs 15 million has been provided for the consultancy services. However, supplementary budgets/financing plans to actualise the project will be submitted on completion of the feasibility study.

As per the FY2010 – 2011 budget, NKCC proposed to meet its capex needs through internally generated funds. NKCC had indicated that it will also access debt funding to the tune of Kshs 526 million as part of capex funding proposal.

Capacity Assessment

- According to management, an assessment of all plant and equipment was carried out by Tetra Pak to gauge the Company's real capacity and guide its future investments in machinery. At the time of preparing this report, NKCC had not confirmed if the Tetra Pak capacity report had not been submitted.
- The report is aimed at assisting NKCC in optimisation of processing capacity in line with the company's plan of having modern and efficient milk processing lines. The results of this report are likely to change management's projections of Capex.

CHAPTER 8
YEAR 2010 – ASSETS VALUATION

The following is an extract of the properties valuation report of August 2010 by Regent Valuers International (K) Ltd (part of the SIB Consortium):

Name of Property / Factory / Plant	Land Reference No. / Title No.	Land	Buildings
Nyahururu Old Factory	L.R No 6585/13/1 & 7176	20,000,000.00	11,700,000.00
Nyahururu New Factory	Two Unsurveyed Plots A & B (Nyahururu)	20,000,000	69,000,000.00
Nakuru Plot	Nakuru Municipality Block 13/215	2,500,000.00	-
Molo Factory	L.R.No. 533/309	3,000,000.00	5,000,000.00
Kipkelion Vacant Plot	L.R No. 598/195	2,000,000.00	-
Nakuru, Timber Mills Road Factory	Title No. Nakuru Municipality Block 6/68	21,000,000.00	21,000,000.00
Timber Mills Rd Collection Centre	Title No. Nakuru Municipality Block 6/25	10,500,000.00	3,200,000.00
Bungalow on Elgeyo Avenue	Nakuru Municipality Block 12/122	8,500,000.00	2,000,000.00
Senior Staff Flats	Nakuru Municipality Block 4/152	5,000,000.00	5,500,000.00
Bungalow on Elgeyo Avenue	Nakuru Municipality Block 12/121	6,800,000.00	1,800,000.00
Bungalow on Elgeyo Avenue	Nakuru Municipality Block 12/120	5,200,000.00	1,800,000.00
Bungalow on Tugen Close	Nakuru Municipality Block 12/112	9,000,000.00	1,700,000.00
Bungalow on Kipsigis Rise	Nakuru Municipality Block 11/32	5,500,000.00	2,000,000.00
Bungalow on Kipsigis Rise	Nakuru Municipality Block 11/45	5,500,000.00	2,000,000.00
Bungalow on Maragoli Avenue	Nakuru Municipality Block 11/38	5,200,000.00	2,100,000.00
Molo Senior Staff Quarters 2	L.R No 533/35/II	800,000.00	2,500,000.00
Molo Borehole & pump house	L.R No 533/113/II	1,500,000.00	100,000.00
Molo Junior Staff Quarters	L.R No 533/302	300,000.00	1,000,000.00
Junior Staff Quarters	Nakuru Municipality Block 13/216	3,200,000.00	1,500,000.00
Molo Senior Staff Quarters	L.R No 533/13/II	3,600,000.00	3,400,000.00
Eldama Ravine Milk Collection Centre	Unregistered L.R No. 498/453	3,000,000.00	3,800,000.00
Kiganjo Factory	L.R. No. 9395	2,500,000.00	77,500,000.00
Kiganjo Residential Plot	L.R. No. 12038	11,850,000.00	25,650,000.00
Nanyuki Milk Collection Centre	L.R. No. 2787/XVII/2	450,000.00	24,750,000.00
Nanyuki Staff Houses	L.R. No. 2787/10/XV	3,000,000.00	4,700,000.00
Nanyuki Vacant	L.R. No. 2787/4/VI	1,300,000.00	-
Githumu Milk Collection Centre	Title No: Loc.3/Gichagiini/311	2,100,000.00	11,600,000.00
Githumu, Murang'a Residential Plot	Title No: Loc.3/Gichagiini/T.69	1,300,000.00	8,700,000.00
Kangema Milk Collection	Allotment Ref.No. 85395/8/B, Kangema Township	4,200,000.00	19,400,000.00
Runyenjes Milk Collection Centre	Title No. Kagaari/ Kigaa/ 281	2,850,000.00	22,850,000.00
Ndunyu Njeru Township Plot	Allotment No. 72313/T/G/II Unsurveyed plot	1,000,000.00	-
Naivasha Factory Complex	L.R.Nos: 5607, 426/2, 8547, 7562/1&7562/2 Naivasha	29,000,000.00	55,000,000.00
Machakos Godown	L.R.Nos: 5607, 426/2, 8547, 7562/1&7562/2 Naivasha	800,000.00	5,900,000.00

Name of Property / Factory / Plant	Land Reference No./ Title No.	Land	Buildings
Kitui Vacant Plot-	Plot No. B.Allot. Ref.TP39/VIII/153	600,000.00	-
Head Office- Creamery House	L.R. No. 209/6849	135,000,000.00	115,000,000.00
Cheese Factory & Central Workshop	L.R. No. 209/6987	105,000,000.00	95,000,000.00
Dandora Factory	L.R. No. 209/9488	400,000,000.00	225,000,000.00
Jamhuri Showground	Stand No. QI. 4 Jamhuri Show ground	15,000,000.00	-
Nairobi West Residential Plots (3No.)	L. R. Nos. 37/544, 37/545, 37/546, 37/547	21,000,000.00	-
Kindaruma Road Residential Flats	L.R.No.209/392/7	65,000,000.00	10,000,000.00
Ralph Bunche Road Residential	L. R. No. 209/289/1/5, Units D3 and D4.	16,000,000.00	-
Motor Vehicles	Various Registration Nos. as per schedule	-	-
Dagoretti Gardens Plot	L. R. No. 330/449	105,000,000.00	5,000,000.00
Kericho Plot	L. R. No. 631/375	3,000,000.00	5,500,000.00
Kericho Plot	L. R. No. 631/376	1,700,000.00	-
Sotik Factory	L.R. No. 9895	8,000,000.00	21,300,000.00
Kericho Commercial Plot	L. R. No. 631/5/V	4,500,000.00	3,500,000.00
Kilgoris Milk Collection Centre	Unregistered Parcel	800,000.00	800,000.00
Kisumu Depot	Title No. Kisumu Municipality /Block 9/117	50,000,000.00	8,500,000.00
Eldoret Factory	Eldoret/Municipality Block 9/21	16,500,000.00	140,000,000.00
Sosiani Factory	Eldoret/Municipality Block 9/24	50,000,000.00	108,500,000.00
Iten Milk Cooling Plant	Parcel No.900	2,000,000.00	6,500,000.00
Ainabkoi Milk Cooling Plant	Uasin Gishu/Ainabkoi West/165	2,300,000.00	13,200,000.00
Kitale Vacant Plot	Kitale.Mun./Block 11/209	750,000.00	-
Kitale Vacant Plot	Kitale.Mun./Block XI/210	750,000.00	-
Kitale Vacant Plot	Kitale.Mun./Block 10/211	750,000.00	-
Kapsabet Kiminda Factory	Nandi/Kiminda/972	5,500,000.00	22,500,000.00
Kapsabet Lessos Milk Collection	Nandi/Olessos/30	5,000,000.00	17,600,000.00
Kitale Factory	L.R.No. 2116/569	5,000,000.00	131,400,000.00
Kitale Residential Plot	L.R. No.2116/246	7,500,000.00	7,000,000.00
Kitale Borehole	Plot No. 20089/XXXIV	650,000.00	550,000.00
Miritini Factory	MN/VI/2860	150,000,000.00	280,000,000.00
Mombasa Depot	MN/XIX/217	13,000,000.00	28,000,000.00
Mbuya Hills (Kampala) Residential	Plot No. 127-Kyadondo, Mbya Hills-Kampala	13,000,000.00	10,000,000.00

Total value of assets was put at Kshs 4.8 billion.

- Land(74 Properties): Kshs. 1.4 billion
- Buildings: Kshs. 1.64 billion
- Plant & Machinery (22 Factories & Cooling Plants) : Kshs.1.494 billion
- Motor Vehicles: Kshs. 254.5 million
- Furniture & Off Equipment: Kshs. 14.7 million.

An updated report may be required during the Implementation Phase of the Privatization.

5.0 LIST OF DISPUTED PROPERTIES (NOT VALUED)

	PROPERTY L.R. No/ TITLE No.	LOCATION	REMARKS
1	Plot No. A. Allotment Ref TP39/VIII/152	Majengo area, Kitui Municipality	Re-allocated to the Ministry of Housing Developed with three (3) buildings.
2	L.R. No.1870/VII/87	Spring Valley, Gerathum Gardens	Denied access. Ownership records missing.
3	L.R. No. 37/22(New No- L.R. No. 37/769)	Upperhill, Kiambere Road	Developed with residential flats and sold to other parties
4	L.R. No. 37/371	Upperhill, Kiambere Road	Denied access. Being developed by a third party.
5	L.R. No. 37/544	Nairobi West	Denied access. Ownership records missing
6	L.R. No. 37/457	Nairobi West	Denied access. Ownership records missing.
7	L.R. No. 37/458	Nairobi West	Denied access. Ownership records missing.
8	L.R. No. 37/460	Nairobi West	Denied access. Ownership records missing.
9	L.R. No.3734/87	Convent Drive	Registered in the name of Kenevasta Limited. Being developed.
10	Plot No. 254/XVI/177	Olkalau Town	Developed by a third party.
11	Kutus Unsurveyed Plot	Kutus Township	Parcel sub-divided and allocated to third parties.
12	Thika Unsurveyed plot	Thika Town	Does not appear on map. Plot could not be located.

CHAPTER 9
YEAR 2010 – ENVIRONMENTAL REVIEW

The following is an extract of the environmental reports of Year 2010 by Clean Earth (part of the SIB Consortium):

- a) Fire equipment – Insufficient equipment, lack of training and drills. NKCC was procuring biannual service contract.
- b) First aid kits - Provision and adequacy. NKCC had replenished all locations with first aid kits.
- c) Heavy Machinery - Safety instructions and competency. NKCC had circulated a work safety for workers operating special machinery and are taken through training and competency certificates are issued.
- d) Housekeeping - Generally not good and efforts compounded by nicks and crevices. Repair and painting of the walls will also improve the general esthetics of the factories. NKCC was closely monitoring repairs especially at Miritini, Kitale, and Dandora.
- e) Cleaning chemicals - Provided but not held securely and access was not controlled. NKCC has taken the necessary measures to secure the chemicals.
- f) Personal Protection Equipment - Issuance not appropriateness to tasks. Furthermore, some PPE was in dire need of replacement/not cleaned to acceptable level. NKCC was now procuring appropriate PPE.
- g) General compound cleanliness - Lawns need manicuring, hedges needed pruning and water puddles around the yards (Miritini&Dandora Milk factory) needed draining. Buffer zones lacking.
- h) Cold stores - General lack of orderliness.
- i) Junk yards - Dilapidated, overflowing and generally unkempt.
- j) Waste management - Although incinerators were provided (Miritini and Dandora milk factory) there was no evidence that they were used at all.
- k) Drains - Most factory drains were in dire need of repair. We observed cases of open drains (Miritini and the Dandora milk factory) and broken drain covers. In addition, rubbish was seen to block these drains causing accumulation of effluents.
- l) The environmental liabilities costs was estimated at Kshs. 50,000,000. *This was an interim estimate.*

Technical due diligence (TDD) with regard to NKCC involved the microbiological investigations and audit of production process involving all NKCC products and the conditions of the production equipment and their effect, if any, on the production process and the products. It was limited to factories and plants where the above was conducted and includes;-Basic knowledge of product handling at plant and factory level, transport, storage, facilities and equipment in the whole process. Ethical behavior. Application of controls: HACCP, ISO 9001/22000:2000, GMP, HALAL. Results:

- i. Water – 50% of the sites acquire water from third parties and no evidence of microbiological testing was seen in most sites.

- ii. Product testing results- Products meet KEBS standards but regular testing should be done to maintain compliance.
- iii. Equipment - Records of calibration, repair, maintenance and traceability to national/ international metrology standards were lacking.
- iv. Illness - No system was in place to manage staff return to work, neither were records of gastrointestinal infections of staff kept.
- v. Hand washing - Most hand washing facilities were inadequate and did not completely address the required hygiene standards.
- vi. Foot baths - Not provided in some of the factories.
- vii. Pest control – Evidence of pest control activities at some sites although records of such activities was lacking.
- viii. HAACP- Were implemented at some of the sites and compliance was ascertained, QMS not evident at any of the sites.
- ix. Accreditation/GLP- Not implemented in any of the laboratories. Most of the labs/equipment needed upgrading.
- x. Effluent management - Records of testing effluents for E.coli, BOD, COD, TSS, elemental Phosphorous, Ammonia (as N), flow, surfactants and colour before discharge were not availed.

An updated report may be required during the Implementation Phase of the Privatization.

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