

Our Ref: AAPC/AAA/AAA/2013/009

20<sup>th</sup> June, 2013

KPMG  
13 Yiyiwa Drive,  
Abelenkpe, Accra.

**Attn: Mr. R. B. Perbi**

Dear Sir,

### COMMENTS ON KPMG DRAFT REPORT

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We act for the Petitioners in the presidential election petition, Writ No. J6/1/2013.

We have examined your draft report addressed to the Judicial Service of Ghana and dated June, 2013 together with the four (4) volumes of annexures thereto and submit the following observations thereon:

#### 1. General Observations

We filed the affidavit pursuant to the Court order dated 2<sup>nd</sup> April 2013 together with exhibits contained in hundreds of boxes and envelopes at the Court Registry. These exhibits covered 24 separate categories of violations and irregularities. The sheer volume of the material to be served on the different parties and the judges was such that the potential for mix-ups and mistakes was high. Indeed your draft report shows that some mix-up occurred in the course of the service of the exhibits. In particular:

- There are pink sheets in the Registrar's set that were not found in the set of the President of the panel (**See Appendix C.2. of KPMG report**).
- There are pink sheets in the President's set that were not found in the Registrar's set (**see Appendix C.3 of KPMG report**)
- Out of the pink sheets used by the Respondents for the cross-examination of 2<sup>nd</sup> Petitioner, Dr. Mahamudu Bawumia, there are **1097 pink sheets** not found in the

Registrar's set and **648 pink sheets** not found in either set. We attach a list of these pink sheets as **Annexures 1 and 2**.

- There is a box of pink sheets of the President's set that has not been counted. This renders the count of the president's set incomplete. There are pink sheets found in the President's set but which are not in the Registrar's set and vice versa. The use of the president's set as the "control measure" will therefore not achieve the intended purpose. This is particularly so, when the exhibits were not filed with the president of the Court nor was the president responsible for service of same.
- The P-Series in their required copies was fully supplied to the registry in lots and ranges covering the 10 regions of Ghana. However, the draft report presents the P- series in 18 lots with overlaps as presented in the Table on pages 9 and 10 where **Nos. 17 and 18, 19 and 20, 21 and 22, 23 and 24, 25 and 26, 27 and 28, 28 and 29, and 30 and 31 contain overlaps**. It is therefore apparent from the breakdown of the P-Series presented at pages 9 and 10 of the report that some mix-up of the pink sheets of this series occurred.
- There are also a large number of exhibits in the "Strong Room" of the Registry which have not been counted but ought to have been counted in accordance with the Court order dated 9<sup>th</sup> May 2013 directing the referee ***"to make a faithful and truthful count of all the exhibits of pink sheets delivered by the Petitioners to the Registrar of the Supreme Court. ...."***.

In the face of the obvious mix-up in the course of service of the exhibits, the Respondents should have obtained from the registrar any shortfall in exhibits as the 1<sup>st</sup> Respondent did for the MB-C series.

## **2. Unclear/Blank Polling Station Codes**

Of the Registrar's set of pink sheets, there were **244** with unclear or invalid polling station codes and **465** with blank polling station codes, making a total of **709 polling stations**. Out of the 709 pink sheets we used a combination of exhibit number, polling station name and the serial number (where we were able to take the serial numbers from the count) on the pink sheets to identify **655** polling stations. We attach a list of these **655** pink sheets as **Annexure 3**.

Of the **709** pink sheets, there are **54** that cannot be identified by polling station codes. Considering that we used the serial numbers on the pink sheets provided by our representatives to help identify **655** polling station codes, we are requesting that you provide

the serial numbers of the pink sheets that still have a blank or unclear polling station code to make for easy identification..

Alternatively, the Petitioners can make available to the referee a CD-ROM containing all the **11,842** pink sheets from the further and better particulars to assist the referee identify the unclear or blank polling station codes.

### **3. Entry Errors for Polling Station Codes**

In reviewing the draft report we noticed **171** entry errors for polling station codes in the data set provided by you. We attach a list of these pink sheets with the correct polling station codes as **Annexure 4**.

### **4. Exhibits Numbers and Categorisation**

It is not in doubt that there was the challenge of labelling and categorisation of exhibits. This is explained by the sheer magnitude of the exercise of first assembling the material upon which the petition is founded, to wit, the pink sheets from across the whole country, and analysing and categorising them for the purpose of grounding the petition. All this had to be done within the twenty-one (21) day constitutional deadline.

Following the direction of the Court on the mode of trial and the specific order for the Petitioners to file their affidavit evidence within five (5) days, a new challenge of putting together hundreds of thousands of pink sheets and labelling same with exhibit numbers arose. In such a huge enterprise, which was, in addition, strictly time-bound, some margin of error in categorisation and labelling of exhibits was simply unavoidable, even if regrettable.

It is therefore not surprising that the draft report identifies pink sheets of same polling station, same categories, but different exhibit numbers. A substantial number of such errors was the result of the shift from manual labelling of pink sheets, which proved quite laborious and pregnant with error, to electronically-generated labelling, in order to meet the Court's five-day deadline. Again, the report identifies pink sheets of different polling stations but with same category and same exhibit numbers. This was largely, though not wholly, due to human errors in manual categorisation and labelling.

These challenges notwithstanding, the unique pink sheets can be identified by their polling station names, codes and serial numbers, and are clearly set out in our answer to the application by Respondents for further and better particulars. We are of the respectful view that to resolve the challenges posed, the Referee should compile a list of unique pink sheets

with their specific exhibit numbers which the Court can adopt as the official copy, and which all the parties can then use as their reference.

## 5. Pink Sheet Count

The draft report does not provide a finding of unique polling station/pink sheet count from the Registrar's and President's sets. The information that enables us to get this is however available in the report.

From the count of the Registrar's copy we know that there was a total count of **13,926** (see **Appendix A.1 of KPMG report**), with duplicates of **3593** (see **Appendix A.4 of KPMG report**), leaving a unique count of **10,333** pink sheets.

The count of the President's set of pink sheets on the other hand indicated a total of **9,860**. This however excludes the box of pink sheets in the P-series that has not been counted. Unfortunately, due to time constraints, we have not been able to undertake a detailed analysis of the report on the examination of the President's set. We observe however that there are 871 pink sheets in the President's set that are not part of the Registrar's set. We attach a list of these pink sheets as **Annexure 5**.

It is important to note that during the process of cross-examination of the 2<sup>nd</sup> Petitioner, the Respondents presented **1097** pink sheets which are not part of the Registrar's copy. We attach a list of these pink sheets along with the full set of exhibits presented by the Respondents in cross-examination as **Annexure 6 (a) and 6(b)**. Incidentally, **1015** of these **1097** pink sheets are in the P-Series where there is an apparent short supply in the Registrar's set. Furthermore, **648** of these pink sheets were not part of the Registrar's or President's sets. We attach a list of these pink sheets as **Annexure 7**. These outcomes further point to a mix-up in the service of the exhibits.

An assessment of the unique pink sheets from the Registrar's set shows that a total of **10,333** unique pink sheets (including **709** pink sheets with unclear or blank polling station codes) are contained in the Registrar's set. Adding the **871** pink sheets from the President's set not contained in the Registrar's set clearly indicates that the Petitioners submitted a minimum of **11,204** unique pink sheets to the registry. Additionally, there are **648** pink sheets used by the Respondents in cross-examination of the 2<sup>nd</sup> Petitioner but not contained in either the Registrar's or President's set. This would bring the number to **11,852** unique pink sheets. The draft report notes that tests were not conducted for duplicates of pink sheets with unclear and blank polling station codes. We note that of the **655** polling stations with unclear or blank polling station codes, **343** are unique (i.e. no duplicates)., Adjusting for this would mean a minimum of **11,540** unique pink sheets was delivered to the registry by the Petitioners from the available

evidence. An examination of the undelivered boxes in the court's Exhibit room will increase this number. The evidence available from the draft report and the cross-examination of Dr. Bawumia by the Respondents therefore strongly supports the Petitioners' claim that they filed **11,842** pink sheets out of which the Petitioners are relying on **11,138** pink sheets.

## **6. Conclusion**

**In light of the above any shortfalls in the pink sheets served on the Respondents should be obtained from the Registry.**

We are available for any further clarification you may require.

Yours faithfully,

Akoto Ampaw  
Akufo-Addo, Prempeh & Co.

cc:     1. Tony Lithur Esq., LithurBrew & Company, Accra.  
       2. Samuel Codjoe Esq., Law Trust Company, Accra.  
       3. James Quashie-Idun Esq., Lynes, Quashie-Idun & Co., Accra.  
       4. The Registrar, Supreme Court, Accra