



DEUKOM ANNUAL COMPLIANCE REPORT

MARCH 2018

2016/2017 ANNUAL COMPLIANCE REPORT

DEUKOM (PROPRIETARY) LIMITED

Licence Period: 02 July 2012 – 01 July 2027

1. PREFACE

The Independent Communications Authority of South Africa (the Authority) has a statutory mandate in terms of the Constitution¹, the ICASA Act², the Electronic Communications Act³ (ECA) and the Broadcasting Act⁴ to regulate broadcasting activities in South Africa in the public interest. One of the main tasks of the Authority, is to ensure compliance by broadcasters with the terms and conditions of their licence, the three Acts mentioned already and any relevant legislation and regulations.

The purpose of the report is to give an account of Deukom (Pty) Ltd's performance for the 2016/2017 financial year. Aspects of compliance that are measured comprise of Geographic Coverage, Encryption of signal and use of a licensed Electronic Communications Network Service (ECNS) provider, Languages, Format, Target Market, Ownership by individuals from historical disadvantaged groups, Financial Year End, Local Content Obligations, Regulations regarding Standard Terms and Conditions For Individual Licensees, Must Carry Regulations, General Licence Fees Regulations, Regulations In Respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund, Commissioning Protocols Regulations and South African Television Content Regulations.

2. BACKGROUND

On 02 July 2012, the Authority issued an Individual Commercial Subscription Television and Sound Broadcasting Service licence to Deukom (Propriety) Limited. The shareholders as reflected in the licence are as follows:⁵

Prodomo (Proprietary) Limited: 50.5%;

The Mayer Trust: 9.5%;

TirolerTuchfabricBaur-Foradori GmbH: 30%; and

Herald Bopalamo: 30%.

¹ The Constitution of the Republic of South Africa Act No 108, 1996.

² ICASA Act No 13, 2000 as amended.

³ Electronic Communications Act No 36, 2005.

⁴ Act No. 4 of 1999.

⁵ Appendix B: Deukom (Pty) Ltd's Report.

The Licensee's shareholding has not changed. The ownership held by people from historically disadvantaged groups is 30% through Herald Bopalamo.

3. COMPLIANCE ASSESSMENT

3.1 Service Name

Clause 1 of the schedule to the licence provides that the service name is:

"Deukom".

The Licensee confirms that the service name has not change. The name of the service is Deukom.⁶

The Licensee complies with clause 1 of the schedule to its licence.

3.2 Geographic Coverage Area

Clause 2 of the schedule to the licence provides that:

"The Licensee shall provide a national coverage of its broadcasting services".

The Licensee confirms that it provides its service via satellite and therefore provides national coverage of its broadcasting service.⁷

The Licensee was found to be compliant with clause 2 of the schedule to its licence.

3.3 Encryption, Signal and Use of Licensed Electronic Communications Network Service.

Clause 3.1 of the schedule to the licence provides that:

"The Licensee must ensure that the output signal of its subscription broadcasting service is encrypted".

The Licensee confirms that the output signal of its subscription broadcasting service is encrypted.

⁶ Appendix B: Deukom (Pty) Ltd's Report.

⁷ Ibid

The Licensee was found to be compliant with clause 3.1 of its licence.

Clause 3.2 of the schedule to the licence provides that:

"The Licensee shall use the licensed electronic communications network service".

The Licensee confirms that its signal is carried by Deutscher Televisionsklub Betriebs GmbH (DTK) in co-operation with Sentech SOC Limited⁸.

The Licensee was found to be compliant with clause 3.2 of the schedule to its licence.

3.4 Language

Clause 4 of the schedule to the licence provides for Deukom to use German as its principal language.

The Licensee maintains that its programmes are broadcast in German. The Authority confirms that the Licensee broadcasts mainly in German.

The Licensee was found to be compliant with clause 4 of the schedule to its licence.

3.5 Format

Clause 5 of the schedule to the licence provides that:

"The Licensee is licensed to provide a subscription broadcasting service aimed primarily at the German speaking community and persons having an interest in the German language".

The Licensee confirms that its service is aimed primarily at the German speaking community and persons having an interest in the German Language.

The Licensee was found to be compliant with clause 5 of its licence.

3.6 Target Market

Clause 6 of the schedule to the licence provides that:

⁸ Appendix B: Deukom (Pty) Ltd's Report

"The Licensee is licensed to provide a subscription broadcasting service aimed at niche market. The Licensee primary target market is viewers who form part of the German-Speaking community and persons having an interest in the German language resident in South Africa".

The Licensee confirms that it provides a subscription service as contemplated in clause 6 above.

The Licensee was found to be compliant with clause 6 of the schedule to its licence.

3.7 Ownership By Individuals From Historically Disadvantaged Groups

Clause 7 of the schedule to the licence provides that:

"The Licensee shall have no less than thirty percent ownership by one or more persons from historically disadvantaged groups for the duration of the licence".

The Licensee states that one of its shareholders, Harold Bopalamo is a person from historically disadvantaged group and owns 30% of equity in the Licensee.

The Licensee was found to be compliant with clause 7 of the schedule to its licence.

3.8 Financial Year

Clause 8.1 of the schedule to the licence provides that:

"The financial year end of the Licensee is the last day of February".

Clause 8.2 of the schedule to the licence provides that:

"If this date changes, the licensee shall in writing notify the Authority thereof within seven (7) business days of the change".

The Licensee confirms that its financial year end has not changed; it is still end of February each year.

The Licensee was found to be compliant with clauses 8.1 and 8.2 of the schedule to its licence.

3.9 Local Content Obligation

Clause 9.1 of the schedule to the licence provides that:

"The Licensee shall pay an amount equivalent to 5 (five) percent of the Licensee's channel acquisition budget in respect of South African Subscribers to one or more appropriate beneficiaries to be nominated by the Authority from time to time".

Clause 9.2 of the schedule to the licence provides that:

"In the event that no nomination has been made, the amount shall be paid into the trust account of the Licensee's legal representatives from time to time, to be held in trust until such time as a nomination has been made".

Furthermore, clause 9.3 of the schedule to the licence provides that:

"The said sum shall be paid annually in arrears, within 45 (forty five) business days after the financial year end of the Licensee. The Licensee shall furnish proof of payment to the Authority within 7 (seven) business days of payment".

The Licensee states that during the period under review a beneficiary as envisaged in sub-clause 9.1 had not been nominated. The Licensee states that the applicable amount was paid into the trust account of Kulenkampff & Associates, the Licensee's legal representative. Further, the Licensee states that the Authority was furnished with proof of payment thereof as well as the auditor's certificate in respect thereof on 10 April 2017.

Clause 9.4 of the schedule to the licence states that:

"The Licensee shall ensure that in addition to an amount referred to in sub-clause 9.1 above, a further amount equivalent to 5 (five) percent of the Licensee's channel acquisition budget in respect of South African subscribers shall be used by the Licensee to train and/or sponsor one or more black South African citizens resident in South Africa nominated by the Licensee from time to time, in the field of television production and/or the production of content for television, for the duration of the licence period".

Further, clause 9.5 provides that:

"Within six months of its financial year end the Licensee shall furnish the Authority with a written report of the South African citizens trained and/or sponsored and proof of amount used by the Licensee demonstrating compliance with this clause".

Furthermore, clause 9.6 states that:

"In the event that the full amount envisaged in sub-clause 9.4 has not been spent as envisaged therein the Licensee shall apply the amount not spent as envisaged in sub-clauses 9.1 – 9.3 of the clause".

The Licensee states that the amount referred to in sub-clauses 9.4 – 9.6 was also paid into the trust account of the Licensee's legal representatives, Kulenkampff & Associates. The Licensee states that proof of payment was submitted to the Authority as well as an auditor's certificate on 10 April 2017.

The amount currently held in the trust account is R818 598.93 inclusive of the 5% as indicated in clause 9.4.

The Licensee submitted to the Authority proof of payment made to the trust.

The Licensee was found to be compliant with clauses 9.1 to 9.6 of the schedule to its licence.

4. REGULATIONS

3.1 Complaints Received

The Licensee is required, in terms of the Compliance Procedure Manual Regulations, to submit a Form 12A⁹ which reports on all complaints received during the financial year under review. The Licensee submitted its report indicating that there were no complaints received by Deukom.

During the year under review, the Licensee was found to be compliant with the Compliance Procedure Manual Regulations.

⁹ Deukom (Pty) Ltd's Form 12A.

3.2 Standard Terms and Conditions for Individual Broadcasting Licensees Regulations

During the year under review, the Authority did not identify any non-compliance by the Licensee with the standard terms and conditions for individual Licensees.

4.3 General Licence Fees Regulations

Schedule 2 of the General Licence Fees Regulations as published in the Government Gazette, no 36323, 28 March 2013, provides for Individual Commercial Broadcasting Service Licensee's to pay annually to the Authority a licence fee of 1.5% of its gross profit.

Schedule 3 (6) of the General Licence Fees Regulations provides that:

"All payments in respect of Annual Licence Fees are due annually".

Schedule 3 (5) of the General Licence Fees Regulations provides that:

"Where a legal entity holds any combination of a BS Licence, ECS Licence and/or ECNS Licence, such entity must calculate the licence fee based on information contained:

- (a) On the audited Annual Financial Statements of that Licensed Entity; or*
- (b) Annual Financial statements signed to by the accounting officer of the licensee where the licensee is not legally obliged to provide audited Annual Financial Statements".*

The Licensee's financial year end is February each year. The Licensee submitted its Audited Financial Statements. Further, the Licensee has paid its licence fees based on the audited financial statements. An amount of R37 698.43 which is an equivalent of 1.5% of its annual turn-over was paid.

The Licensee was found to be compliant with Schedule 3 (5) of the General Licence Fees Regulations.

4.4 Universal Service and Access Fund Regulations

Regulation 3 (1) of the Regulations in respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund (USAF) as published in the Government Gazette No. 31499 of April 2009, provides that:

"Every holder of the licence granted in terms of Chapter 3 or converted in terms of Chapter 15 of the Act, must pay an annual contribution of 0.2 % of the annual turnover, derived from the licensee's licence activity, to the Fund (the Fund)".

Further, Regulation 3 (3) provides that:

"A broadcasting service Licensee who has paid an annual contribution to the Media Development and Diversity Agency (MDDA) must set off that contribution against its prescribed annual contribution to the Fund" (See USAF Regulations attached as Appendix D)

The Licensee's financial Year end is February each year. The Licensee paid its USAF's contribution of R50 264.58 as required by Regulations 3(1) and 3(3) of the Universal Service and Access Fund Regulations. The Licensee's proof of payment was duly submitted to the Authority.

The Licensee was found to be compliant with Regulations 3 (1) and 3(3) of the Regulations in respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund.

4.5 Subscription Broadcasting Services Regulations

Regulation 5 of the Subscription Broadcasting Services Regulations as published in the Government Gazette, no. 28452 on 31 January 2006 states that:

"A subscription broadcasting service shall, within 120 days after the end of its financial year of operation, submit to the Authority audited financial statements stating that, in the opinion of the auditor, the accompanying statements give a true and faire view of the licensee's subscription, advertising and sponsorship revenue derived from the provision of the subscription broadcasting service".

Deukom (Pty) Ltd submitted its Audited Financial Statements to the Authority for the period ending 28 February 2017.

The Licensee was found to be compliant with Regulation 5 of the Subscription Broadcasting Services Regulations.

Further, section 60(4) of the ECA states that:

"Subscription broadcasting services may draw their revenues from subscriptions, advertising and sponsorships, however, in no event may advertising or sponsorships or a combination thereof, be the largest source of revenue".

The Licensee states that it complies with section 60(4) of the Electronic Communications Act of 2005 as its revenue derived from subscriptions exceeds revenue derived from advertising.

The Audited Financial Statements indicate that the Licensee complies with section 60(4) of the ECA in that the revenue derived from subscription far exceeds revenue derived from advertising.

The Licensee was found to be compliant with section 60(4) of the ECA.

5. CONCLUSION

For the 2015/2016 financial year, the Licensee has complied with all licence terms and conditions as well as the applicable regulations.

6. TERMS OF REFERENCE

Appendix A: Deukom (Pty) Ltd licence conditions;

Appendix B: Deukom (Pty) Ltd Report;

Appendix C: Proof of Payment of USAF; and

Appendix D: Proof of Payment of Licence Fees.