



DEUKOM ANNUAL COMPLIANCE REPORT

MARCH 2019

2017/2018 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 and 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 monitor 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 2017/2018 financial year. Aspects of compliance that are measured comprise of Geographic Coverage, Encryption of signal and use of licensed Electronic Communications Network Service (ECNS) provider, Language(s), Format, Target Market, Ownership by individuals from historical disadvantaged groups, Financial Year, Local Content Obligations, Compliance Procedure Manual Regulations, Subscription Broadcasting Service Regulations, 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

Promodo (Proprietary) Limited: 50.5%

The Mayer Trust: 9.5%

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.

TriolerTuchfabricBaur-Foradori GmbH: 30%, and
Herald Bopalamo: 30%.

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 states that the service name is:

"Deukom".

The Licensee confirms that the service name has not change. The Licensee's service name is Deukom (Pty) Ltd.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 stipulates 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 complies 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".

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

⁷ Appendix B: Deukom (Pty) Ltd's Report.

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

The Licensee complies with clause 3.1 of its licence.

Clause 3.2 of the schedule to the licence stipulates that:

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

The Licensee confirms that its signal is carried by Deutscher Televisionklub Betriebs GmbH (DTK) in co-operation with Sentech SOC Limited^a.

The Licensee complies 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 language. The Authority confirms that the Licensee broadcasts mainly in German.

The Licensee complies 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 complies with clause 5 of its licence.

3.6 Target market

Clause 6 of the schedule to the licence states that:

^a 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 complies with clause 6 of 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 confirms that it remains in compliance with clause 7 above by virtue of the fact that one of its shareholders, Harold Bopalamo, is an individual from a historically disadvantaged group and owns 30 percent of the equity in the Licensee.⁹

The Licensee complies 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's financial year end has not changed; it is still end of February each year.

The Licensee complies with clauses 8.1 and 8.2 of the schedule to its licence.

⁹ Appendix B: Deukom (Pty) Ltd's Report.

3.9 Local Content Obligations

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".

Further, 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 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 it entered into an agreement with the National Film and Video Foundation (hereinafter referred to as NFVF) on 14 November 2017. The Licensee states that the aforementioned agreement was submitted to the Authority on 27 November 2017. Further, the funds in the amount of R818 598.93 that were held in the Licensee's trust by Deukom's legal representative were released to NFVF. The Licensee submitted proof of payment to the Authority.

The Licensee complies with clauses 9.1 to 9.3 of the schedule to the licence.

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".

Furthermore, clause 9.5 stipulates 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".

Clause 9.6 provides that:

"In the event that 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."

The Licensee states that the amount referred to in sub-clauses 9.4 – 9.6 was also paid to the NFVF in compliance with clause 9.6 and the Authority was provided with proof.

The Licensee complies with clauses 9.4 – 9.6 of the schedule to the licence.

4. REGULATIONS

4.1 Compliance Procedure Manual Regulations

The Licensee is required, in terms of the Compliance Procedure Manual Regulations, to submit a Form 12A¹⁰ which reports on all complaints received during the financial year under review. Deukom submitted its complaints report in accordance Compliance Procedure Manual Regulations. The complaints report submitted indicates that Deukom did not receive complaints during the period under review.

During the year under review, the Licensee complies with the Compliance Procedure Manual Regulations.

4.2 Subscription Broadcasting Service Regulations

Regulation 5 of the Subscription Broadcasting Regulations requires the Licensee to submit its annual audited financial statements.

The Licensee submitted its annual audited financial statements in line with Regulation 5. The purpose of Regulation 5 is to verify compliance by the Licensee with section 60(4) of the Electronic Communications Act.

Section 64(4) provides that:

¹⁰ SABC Form 12A

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

The Authority confirmed that Deukom's revenue derived from subscriptions exceeds revenue derived from advertising, since it did not derive any income from advertising.

The Licensee complies with Regulation 5 of Subscription Broadcasting Service Regulations and section 60(4) of the Electronic Communications Act.

4.3 Standard Terms and Conditions for individual broadcasting licensees Regulations

During the year under review, the Licensee complied with the standard terms and conditions for individual Licensees.

4.4 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 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 Financial Statements"*

The Licensee's financial year end is February each year. The Licensee submitted its Audited Financial Statements and paid its licence fees based on the audited financial statements. An amount of R37 467.69 which is equivalent of 1.5% of its annual turn-over was paid.

The Licensee complies with both Schedules 3 (6) and 3 (5) of the General Licence Fees Regulations.

4.5 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 has paid its USAF's contribution as required by Regulations 3(1) and 3(3) of Universal Service and Access Fund Regulations.

The Licensee complies 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.

4.6 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 fair view of the

licensee's subscription, advertising and sponsorship revenue derived from the provision of the subscription broadcasting service".

Deukom submitted its Audited Financial Statements to the Authority for the period ending 28 February 2018.

The Licensee complies with Regulation 5 of the Subscription Broadcasting Services Regulations

4.7 Must Carry Regulations

Regulation 4 of the Must Carry Regulations as published in the Government Gazette No 31500 on 10 October 2008 provides that:

"All Subscription broadcasting service licensees must carry the channels of the Public Broadcasting Service licensee, designated as must carry channels as part of the service offering, subject to Regulation 5".

The Licensee complies with this obligation as it carries all three channels of the South African Broadcasting Service Corporation (SABC).

The Licensee complies with Regulation 4 of the Must Carry Regulations.

Regulation 8 provides that:

"The subscription broadcasting service Licensee must submit a copy of the agreement within thirty (30) of such agreement being concluded and signed".

The Licensee never submitted a copy of the agreement with the SABC.

The Licensee does not comply with Regulation 8 of the Must Carry Regulations.

4.8 Commissioning Protocols Regulations

Regulation 3 (a) (i) of the Regulations on Commissioning Protocols published in the Government Gazette no 32767 on 01 December 2009 provides that:

"A Licensee must compile and maintain a Commissioning Protocol for Independently Produced South African Programming" (referred to as "the Protocol").

Regulation 3 (a) (iii) of the Commissioning Protocol Regulations provides that:

"A Licensee must ensure that copies of the Protocol are always available on their websites and to independent producers or their agents, a reasonable fee for the printing and/or copying thereof".

The Licensee does not have commissioning protocols for independently produced South African Programming.

The Licensee does not comply with Commissioning Protocols Regulations.

4.9 South African Television Content Regulations

Regulation 5.4 of the South African Television Content Regulations published in the *Government Gazette* No 28454, dated 31 January 2006 provides that:

"A subscription broadcasting licensee must spend a minimum of 10% of its content acquisition budget on acquisition of channels with local content which are compiled and uplinked from South Africa".

Deukom is required by clause 9.1 of the schedule to the licence to 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

Further, clause 9.4 of the schedule to the licence requires the Licensee to "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".

The Licensee complies with Regulation 5.4 of the South African Television Content Regulations.

4.10 Sports Rights Regulations

Regulation 9 (2) of the Sports Broadcasting Rights Regulation as published in the *Government Gazette*, no 33079, 7 April 2010 requires that:

"A broadcaster, who is involved in broadcasting national sporting events, shall file the records of its broadcasts one hundred and twenty (120) days from the date of the publication of these regulations and after every year from the date of the first filing".¹¹

The Licensee does not broadcast any sporting events of national interest.

The Licensee complies with Sports Rights Regulations.

4.11 Code on People with Disabilities

Regulation 3.1(c) of Regulations on the Code on People with Disabilities states that:

"Broadcasting service licensees must monitor the effectiveness of their service through surveys as well as contact with organisations of and for people with disability and stakeholders".

The Licensee states that it does not produce its own programmes, therefore, does not engage with people with disabilities.

The Licensee does not comply with Regulation 3.1(c) of Regulations on the Code on People with Disabilities.

5. CONCLUSION

For the 2017/2018 financial year, the Licensee did not fully comply with licence terms and conditions and relevant regulations. CCA will request the outstanding information from the Licensee, in particular the Must Carry Agreement between themselves and SABC and information pertaining to people with disabilities. Regarding the commissioning of South African programmes, the Licensee will be advised to request exemption from Compliance with the Regulation because its target audience is not predominantly from South Africa.

6. TERMS OF REFERENCE

Appendix A: Deukom (Pty) Ltd licence conditions;

Appendix B: Deukom's Report;

Appendix C: Proof of Payment of USAF; and

Appendix D: Proof of Payment of Licence Fees.