



DEUKOM (PTY) LTD

ANNUAL

COMPLIANCE REPORT

MARCH 2022

2020/2021 ANNUAL COMPLIANCE REPORT

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Licence Period: 02 July 2012 – 01 July 2027

1. PREFACE

The Independent Communications Authority of South Africa ("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 monitor compliance by broadcasters with the terms and conditions of their licences, the Acts mentioned above and any other relevant legislation and Regulations.

The purpose of the report is to give an account of the compliance status of Deukom (Proprietary) Limited ("the Licensee"), for the 2020/2021 financial year. Aspects of compliance that are measured comprise of the geographic coverage, encryption of signal and use of licensed Electronic Communications Network Service (ECNS) provider, language(s) of broadcast, broadcast content 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 Broadcasting Services, Must Carry Regulations, General Licence Fees Regulations, Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund and South African Television Content Regulations.

2. BACKGROUND

On 02 July 2012, the Authority issued an Individual Commercial Subscription Television Service ("I-CSTS") licence to Deukom (Proprietary) Limited. The shareholders as reflected on the service licence are as follows:⁵

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

² ICASA Act, 2000 (Act No. 13 of 2000) as amended.

³ Electronic Communications Act, 2005 (Act No. 36 of 2005).

⁴ Broadcasting Act, 1999 (Act No. 4 of 1999).

⁵ Appendix A: I-CSTS Licence of Deukom (Pty) Ltd.

(a) Prodomo (Proprietary) Limited:	50.5%
(b) The Mayer Trust:	9.5%
(c) TirolerTuchfabricBaur-Foradori GmbH:	10%
(d) Harald Bopalamo:	30%.

The Licensee's shareholding structure has not changed. The ownership held by persons from historically disadvantaged groups is 30% represented by one, Harald Bopalamo.

The Licensee complies with its shareholding structure in terms of its service licence.

3. COMPLIANCE ASSESSMENT

3.1 Service Name

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

"Deukom".

The Licensee confirms that the service name has not changed. The Licensee's service name remains Deukom⁶.

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

3.2 Geographic Coverage Area

Clause 2 of the schedule to the service licence stipulates that:

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

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

The Licensee complies with clause 2 of the schedule to its service licence.

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

⁶ Appendix B: Deukom Compliance Status Report 02-12-2021.

⁷ Appendix B: Deukom Compliance Status Report 02-12-2022.

Clause 3.1 of the schedule to the service 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.

The Licensee complies with clause 3.1 of the schedule to its service licence.

Clause 3.2 of the schedule to the service licence stipulates that:

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

The Licensee confirms that its network service provider is Deutscher Televisionsklub Betriebs GmbH (DTK) in co-operation with Sentech SOC Limited (*a licensed electronic communications network service provider*).

The Licensee complies with clause 3.2 of the schedule to its service licence.

3.4 Language(s)

Clause 4 of the schedule to the service licence provides for:

"Principal language: German"

The Licensee maintains that its language of broadcast is German. The Authority confirms that the Licensee broadcasts mainly in German.

The Licensee complies with clause 4 of the schedule to its service licence.

3.5 Format

Clause 5 of the schedule to the service 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 the schedule to its service licence.

3.6 Target market

Clause 6 of the schedule to the service licence states that:

"The Licensee is licensed to provide a subscription broadcasting service aimed at a niche market. The Licensee's 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 broadcasting service to its target market as is stipulated in clause 6 above.

The Licensee complies with clause 6 of the schedule to its service licence.

3.7 Ownership by Individuals from Historically Disadvantaged Groups

Clause 7 of the schedule to the service licence provides that:

"The Licensee shall have no less than thirty (30) 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 because one of its shareholders, Harold Bopalamo, he is an individual from a historically disadvantaged group and therefore, holds thirty percent (30%) of the equity in the Licensee.⁸

The Licensee complies with clause 7 of the schedule to its service licence.

3.8 Financial Year

⁸ Appendix B: Deukom Compliance Status Report 02-12-2021.

Clause 8.1 of the schedule to the service licence provides that:

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

Further, clause 8.2 of the schedule to the service 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 confirms its financial year end has not changed; it remains the last day of February.

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

3.9 Local Content Obligations

Clause 9.1 of the schedule to the service 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 beneficiary/ies to be nominated by the Authority from time to time".

Further, clause 9.2 of the schedule to the service 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 is made".

Furthermore, clause 9.3 of the schedule to the service 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 entered into an agreement with the National Film and Video Foundation ("NFVF") on 14 November 2017 and submitted the agreement to the Authority on 27 November 2017.

On 19 November 2021, the Authority authorised the payment of the funds held in the trust account of Licensee's legal representatives to the NFVF. An amount of seven hundred and seventy-seven thousand nine hundred and thirty-six rand and sixty-nine cents (R777 936.69) was paid to the NFVF in respect to local content development on 30 November 2021⁹. The Licensee has provided proof of payment to the Authority.

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

Clause 9.4 of the schedule to the service 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 of the schedule to the service licence 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"; and

Clause 9.6 of the schedule to the service licence 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 of the clause".

The auditor's certificates (2020 and 2021) reflect a ten (10%) percent provision for local content fees based on South African subscribers and in compliance with clauses 9.1 and 9.4 above which has been paid to the NFVF and proof of payment has been provided to the Authority.

⁹ Appendix C: Annexures A - H

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

4. REGULATIONS

4.1 ICASA Compliance Procedure Manual Regulations, 2011

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. The Licensee submitted its complaints report in accordance with the Compliance Procedure Manual Regulations and did not receive complaints during the period under review.

The Licensee complies with the ICASA Compliance Procedure Manual Regulations.

4.2 Subscription Broadcasting Services Regulations, 2006

Regulation 5 of the Subscription Broadcasting Services Regulations, 2006 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".

ICASA Finance division is yet to confirm Licensee has submitted its Audited Financial Statements to the Authority for the period 01 March 2020 to 28 February 2021. According to the Licensee's submission, it submitted its audited financial statements for the period ending February 2020.

Compliance with Regulation 5 of the Subscription Broadcasting Services Regulations still yet to be finalised/determined.

¹⁰ ICASA Compliance Procedure Manual Regulations, 2011 as published in Government Gazette No. 34863 dated, 15 December 2011.

4.3 Regulations on Standard Terms and Conditions for Individual Broadcasting Services, 2010¹¹

During the year under review, the Licensee is compliant with the Regulations on Standard Terms and Conditions for Individual Broadcasting Services.

4.4 ICASA General Licence Fees Regulations, 2012

Schedule 2 of the General Licence Fees Regulations, as published in the *Government Gazette*, no 36323 on 28 March 2013, provides for Individual Commercial Broadcasting Service Licensees to pay annually to the Authority, a licence fee of between 0.15% to 0.35% of its licensed revenue (revenue from its licensed services).

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 the last day of February. The Licensee submitted proof it has paid its general licence fees on 30 August 2021, an amount of R32 989.19. ICASA Finance division is yet to confirm receipt of the payment for general licence fees.

Compliance with Schedules 2, 3(5) and 3(6) of the ICASA General Licence Fees Regulations still to be finalised.

¹¹ Standard Terms and Conditions for Individual Broadcasting Services, 2010 as published in *Government Gazette* No. 33294 dated, 14 June 2010, as amended.

4.5 Universal Service and Access Fund Regulations, 2011

Regulation 3(1) of the Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund ("USAF") as published in the *Government Gazette* No. 34010 on 10 February 2011, provides that:

"Every holder of the licence granted in terms of Chapter 3, 4 and/or 9 or converted in terms of Chapter 15 of the Act, must pay an annual contribution of 0.2 % of the Annual Turnover to the Fund".

Further, Regulation 3(2) provides that:

"A BS Licensee who has paid an annual contribution to the Media Development and Diversity Agency (MDDA) must set off that contribution against its USAF Contribution, provided that the MDDA contribution and the USAF contribution against which it is set off are for the same financial year".

The Licensee's financial year end is the last day of February. The Licensee has submitted proof it has paid its USAF's contribution fees of R43 985.59 on 30 August 2021 to the Authority. Department of Finance has yet to confirm receipt of the USAF contribution fees.

Compliance with Regulations 3(1) and 3(2) of the Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund still to be finalised.

4.6 ICASA Must Carry Regulations, 2008

Regulation 5(1) of the ICASA Must Carry Regulations, 2008 as published in the *Government Gazette* No 31500 on 10 October 2008 provides that:

"Subject to regulation 5(3), an SBS Licensee whose offering has twenty-nine (29) channels or less is exempt from the obligation to carry the television programmes of the PBS Licensee".

According to the Licensee's submission, it offers twenty-three (23) channels on its broadcasting service which exempts it from carrying Public Broadcasting Service television programming.

The Licensee complies with Regulation 5(1) of the ICASA Must Carry Regulations.

5. CONCLUSION

For the 2020/2021 financial year, compliance with the I-CSTS licence terms and conditions and relevant Regulations still yet to be finalised. However, in general, the Licensee did comply with its regulatory obligations and in the event it may transpire there may be certain non-compliance, the necessary steps will be invoked to attend to that.

6. TERMS OF REFERENCE

- 6.1** Appendix A: Deukom (Pty) Ltd I-CSTS licence.
- 6.2** Appendix B: Deukom Compliance Status Report 02-12-2021.
- 6.3** Appendix C: Annexure A – H.
- 6.4** Appendix D: Proof of Payment of Licence Fees.
- 6.5** Appendix E: ICASA Compliance Procedure Manual Regulations, 2011 as published in *Government Gazette* No. 34863 dated, 15 December 2011.
- 6.6** Appendix F: Subscription Broadcasting Services Regulations, 2006 as published in *Government Gazette* No. 28452 dated, 31 January 2006.
- 6.7** Appendix G: Standard Terms and Conditions for Individual Broadcasting Services, 2010 as published in *Government Gazette* No. 33294 dated, 14 June 2010, as amended.
- 6.8** Appendix H: General Licence Fees Regulations, 2012 as published in *Government Gazette* No. 36323 dated, 28 March 2013, as amended.
- 6.9** Appendix I: USAF Regulations, 2011 as published in *Government Gazette* No.34010 dated, 10 February 2011.
- 6.10** Appendix J: ICASA Must Carry Regulations, 2008 as published in the *Government Gazette* No 31500 on 10 October 2008.