



## **COMPLAINTS AND COMPLIANCE COMMITTEE**

**DATE OF HEARING: 11 NOVEMBER 2021**

**CASE NO:399/2020**

**CCA**

**COMPLAINANT**

**V**

**E-SAT (PTY) LTD**

**RESPONDENT**

### **CCC MEMBERS:**

Judge Thokozile Masipa - Chairperson  
Councillor Dimakatso Qocha - member  
Mr Peter Hlapolosa - member  
Mr Thato Mahapa - member  
Mr Paris Mashile - member  
Ms Ngwako Molewa - member

### **FROM THE OFFICE OF THE CCC:**

Lindisa Mabulu - CCC Coordinator  
Meera Lalla - CCC Assessor  
Xola Mantshintshi - CCC Assessor  
Thamsanqa Mtolo - CCC Assessor  
Amukelani Vukeya- CCC Admin

### **LEGAL REPRESENTATION FOR PARTIES**

Complainant - Mr Maphakela

Respondent - Mr Rosengarten

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## **JUDGMENT**

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Judge Thokozile Masipa

## **1. INTRODUCTION**

[1] In July 2009, ICASA granted and issued to E.SAT(Pty) LTD Individual Broadcasting Service Licence No.005/COMM/SUB/TV/JUL/09 FOR THE PROVISION OF A COMMERCIAL SUBSCRIPTION TELEVISION BROADCASTING SERVICE.

[2] In November of the same year, ICASA granted and issued to E-sat (Pty) Ltd Individual Electronic Communications Network Licence No: 04391ECNS/NOVEMBER/09

FOR THE PROVISION OF ELECTRONIC COMMUNICATIONS NETWORK SERVICES

## **THE COMPLAINT**

[3] Twelve years later, E-SAT had still not commenced its operations.

[4] In April 2021 the CCA brought the matter before the CCC for adjudication. In its papers the CCA alleged that E-Sat had failed to commence operations of the Broadcasting Services specified in its licence within 24 months from the date of issue as provided for in regulation 5(1) of the Standard Terms and Conditions for Individual Electronic Communications Services Regulations of 2010. as amended (" the Regulations").

[5] The Complainant sought the following relief: That

5.1 The Respondent be directed to desist from any further contravention of the Regulations; and

5.2 The Respondent be directed to take such remedial or other steps in accordance with the ICASA Act.

[6] E-Sat gave a response which can be summarized hereunder as follows:

*"6.1 The Licensee still intends to commence operations.*

*6.2 The prevailing market conditions are such that it is extremely difficult for new entrants, including the Licensee to commence operations be successful.*

*6.3 It is particularly difficult for new entrants to compete effectively with Multichoice as a dominant player with 98%*

*6.4 Among other things content is costly for new entrants."*

### **PROPOSED SETTLEMENT AGREEMENT**

[7] At the commencement of the proceedings the parties expressed a desire to negotiate a settlement and asked for a postponement of the matter for that purpose. After assessing the facts before it, the CCC was amenable to granting the postponement. It was felt that, among other things, a settlement agreement in this case would be in the public interest.

[8] At this juncture it is necessary to express displeasure on the part of the CCC at what happened next. The CCC did not hear from the parties for more than six months as neither a settlement agreement nor any feedback was forthcoming. This, the CCC found highly unacceptable and conveyed this displeasure to the parties. Once the CCC is seized with the matter it has an obligation to see it through.

[9] In due course, the CCC decided to hear the matter and set it down to be heard on 11 November 2021. At this hearing the parties submitted a proposed settlement agreement. In addition, the parties explained some of the challenges they had experienced in coming to an agreement and apologized for the inconvenience. Reasons for the delay were plausible. It was the lack of communication that irked the CCC and that was unacceptable.

[10] The CCC studied the proposed settlement agreement and requested the parties to revise it by adding more details so that the settlement agreement could be seen in perspective.

[11] In due course, the parties submitted a revised settlement agreement marked Annexure "X" (E-Sat) and signed by both parties. The parties requested that it be made the Order of the CCC to be recommended to the Council of ICASA.

[12] Having perused the proposed settlement agreement, the CCC is satisfied that it has adequately addressed all the relevant issues raised in the complaint that was lodged with the CCC in April 2021.

## **ORDER**

[13] Accordingly, the CCC recommends the following to ICASA:

**13.1 That the settlement agreement between the CCA and eSAT (PTY) LIMITED, marked "X" (eSAT) and dated 15 November 2021, be made an order of the CCC.**



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**Judge Thokozile Masipa**  
**CCC Chairperson**