

# **CLASSIC FM ANNUAL REPORT**

**APRIL 2011 - March 2012**

**Licence Period: 17 December 2008 - 16 December 2018**

## **1. PREFACE**

The Independent Communications Authority of South Africa (“the Authority”) has a statutory mandate in terms of the Constitution<sup>1</sup>, the ICASA Act<sup>2</sup> and the Electronic Communications Act<sup>3</sup> (“EC Act”) to regulate broadcasting activities in South Africa in the public interest. The Authority is tasked with ensuring compliance by broadcasters with the terms and conditions of their License, the Electronic Communications Act (“EC Act”), the ICASA Act, and any relevant legislation.

The following report provides an overview of Classic FM compliance with its licence terms and conditions for the period under review namely, March 2011 to February 2012. The report focuses on the following key areas: Geographic Coverage, Languages, Format, Training and Skills Development Obligations, Financial Performance, Regulations regarding Standard Terms and Conditions and SA Music Content Regulations.

## **2. BACKGROUND**

Classic FM is an Individual Broadcast Service Licensee broadcasting in and around Johannesburg. The radio station is broadcasting from studios situated at 06<sup>th</sup> Floor Jorissen Place, 66 Jorissen Street, Braamfontein, Johannesburg.

Classic FM provides a sound broadcasting service on 102.7 FM as specified in the frequency spectrum licence<sup>4</sup> granted to it by the Authority.

The radio station’s signal distribution service is conducted and maintained by Sentech (Pty) Ltd.

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<sup>1</sup> The Constitution of the Republic no 108, 1996

<sup>2</sup> ICASA Act no 13 , 2000 as amended

<sup>3</sup> Electronic Communications Act no 36, 2005

<sup>4</sup> Appendix B: Frequency Spectrum Licence

### **3. COMPLIANCE ASSESSMENT**

#### **3.1 Ownership and Control<sup>5</sup>**

Clause 1.1 of Classic FM's schedule to the licence stipulates that the licence is issued to:

*"The name of company/entity: Classic FM 102.7 (Pty) Ltd."*

Clause 1.2 of Classic FM's schedule to the licence provides that the shareholders are as follows:

- (i) Huntrex 144 (Pty) Ltd – 51.91%
- (ii) Golden Pond Trading – 25.15%
- (iii) Ingoma Trust – 15.09%
- (iv) Boitshepo Investments (Pty) Ltd – 7.85%

Clause 1.3 of Classic FM's schedule to the licence stipulates that:

*"Ownership held by people from disadvantaged groups:*

- (i) Huntrex 144 (Pty) Ltd – 51.91%
- (ii) Golden Pond Trading – 25.15%
- (iii) Ingoma Trust – 15.09%
- (iv) Boitshepo Investments (Pty) Ltd – 7.85%".

The Licensee confirms that Classic FM is owned by Classic 102. 7 (Pty) Ltd.

According to the latest HDI and shareholding audit conducted by the Authority on Individual Licensees, the Licensee's shareholding structure and ownership held by people from disadvantaged groups, is as reflected in the licence .

The Licensee complies with clause 1.1, 1.2 and 1.3 of its licence.

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<sup>5</sup> Appendix C: Classic Fm Control Structure & Staff compliment

### **3.2 Geographic coverage area**

Clause 2 of Classic FM's the schedule to the licence stipulates that the coverage area is as follows:

*"Johannesburg, as defined in the coverage map attached to the Licensee's radio frequency spectrum licence".*

The Licensee broadcasts in and around Johannesburg (*See frequency spectrum licence attached as Appendix B*).

### **3.3 Language**

Clause 3 of Classic FM's schedule to the licence stipulates that Classic FM's language of broadcast is as follows:

*"Principal Language: English"*

The Authority's monitoring exercise revealed during the period under review that Classic FM broadcasts its programmes in English.

The Licensee complies with clause 3 of its licence.

### **3.4 Format**

Clause 5.1 of Classic FM's schedule to the licence stipulates that:

*"The Licensee shall provide classical music."*

Classic FM's music content consists of classical music only as confirmed by the Authority's monitoring exercise.

The Licensee complies with the Clause 5.1 of the schedule to the licence.

Clause 5.2 of Classic FM's schedule to the licence stipulates that:

*"The Licensee shall not change more than 15 percent (15%) of its format between 05h00 and 23h00".*

Classic FM's programme format did not change during the period under review.

The Licensee complies with Clause 5.2 of Classic FM's schedule to the licence.

### **3.5 Local Content Obligations**

Clause 6.1 of Classic FM's schedule to the licence stipulates that:

*"The Licensee shall continue to develop the "singing schools" project as an outreach project and to contribute towards the Licensee's South African music quota".*

Classic FM has not developed or supported the "singing schools" project during the period under review. The Licensee reported that the project and the sponsorship from Liberty Foundation subsequently came to an end, and the project is no longer on the GED music curriculum. The Licensee referred the Authority to a correspondence dated 17 July 2008, from Rosin Wright Rosingarten, requesting the Authority to delete the "singing schools" project and be replaced by the Johannesburg Philharmonic Orchestra Company. However, no proper amendment application process was followed by the Licensee in this regard.

Accordingly, it is the Authority's view that the Licensee has, for the period under review, not complied with clause 6.1 of its licence.

Clause 6.2 of Classic FM's schedule to the licence provides that:

*"The Licensee shall offer free on-air advertising for concerts, workshops and free on-air interviews to music organisations whose music aligns with its format".*

Classic FM broadcasts a weekday feature called "Classic Grapevine". The programme offers free promotions for local classic music events. Classic FM has submitted a list of events that were covered for the period under review. "*The Black Tie Ensemble Dinner Concert*", "*Johannesburg International Mozart Festival – On Wings of Song 2011*" and "*School Workshop Concert*" are some of the events covered during the period under review. (See Appendix E for further details).

The Licensee has, during the period under review, complied with clause 6.2 of its licence.

Clause 6.3 of Classic FM's schedule to the licence stipulates that:

*"The Licensee shall contribute R50 000 (fifty thousand rand) per annum to help the Johannesburg Philharmonic Orchestra's Symphony Seasons".*

No amount of money was paid to the Johannesburg Philharmonic Orchestra for the period 01 March 2011 to 29 February 2012. Classic FM has not been making any contributions to the Johannesburg Philharmonic Orchestra for the period since 01 March 2010. The Licensee reported to have instead provided the Johannesburg Philharmonic Orchestra free airtime and discounted advertising rates. Further, the Licensee reported that it has commercial relationships with all the orchestras in the Gauteng region. Furthermore, the Licensee maintains that classical music community is a niche market with limited financial resources and would prefer the Authority to consider its contribution to the resources of all the orchestras combined as being a discharge of the obligation.

Classic FM does not comply with clause 6.3 above. This is so because no exemption was applied for or requested by the Licensee and thus none was granted by the Authority in this respect.

Clause 6.4 of Classic FM's schedule to the licence stipulates that:

*"The Licensee shall contribute R195 000 (one hundred and ninety five thousand rand) to help new artists to record and release new local recordings".*

Classic FM reported that it has not been assisting new artists financially. The Licensee submitted that the artists indicated that they would prefer media exposure than a limited contribution towards production of a CD. The local artists were provided promotional opportunities at Classic FM's monthly soirees together with considerable airtime exposure associated with it.

The Licensee did not comply with clause 6.4 of its licence. This is the second year of non-compliance and the Licensee has been engaged regarding non-compliance in this regard. It is the Authority's view that this warrants a formal complaint for further investigation. This process is underway.

### **3.6 General Programming Obligations**

Clause 7.1 of Classic FM's schedule to the licence stipulates that:

*"The Licensee shall broadcast news on a regular basis for a minimum of fifty (50) minutes each day between 05h00 and 23h00".*

Classic FM broadcasts national and international news. News is broadcast every hour on the hour seven (7) days a week from 06h00 to 18h00. News is broadcast for approximately five (5) minutes per bulletin. At least fifty five (55) minutes of news per day was identified. The following are some of the news stories identified:

- *"France says that crisis in Ivory Coast could be resolved in a matter of hours, at least 1500 people have died since the stand-off began";*
- *"The Ekurhuleni Metropolitan Municipality's technicians are working on restoring power supply in Geluksdal and Langerville after successfully restoring the Blackburn area";*
- *"Liquidators have warned that roller empowerment systems to produce sufficient irreversible progress on the Phamodzi Mining deal by the end of May or face cancellation"; and*

- *"Leaders from Brazil, Russia, India, China and South Africa (BRICS) will meet later this month to discuss a coordinated stance on economic issues".*

The Licensee has complied with clause 7.1 of its licence.

Clause 7.2 of Classic FM's schedule to the licence stipulates that:

*"Should the Licensee source news material from a source other than itself, the source(s) thereof shall be disclosed during the news broadcast."*

Classic FM discloses news material that it obtains from other sources other than its journalists during the relevant news bulletin. Other sources include South African Press Association (SAPA), Reuters and British Broadcasting Corporation (BBC).

The Licensee has complied with clause 7.2 of its licence.

Clause 7.3 of Classic FM's schedule to the licence stipulates that:

*"The Licensee shall provide the Classic Business programme on all weekdays".*

Classic FM broadcasts Classic Business programme daily on weekdays between 18h00 and 19h00, except on Public Holidays.

The following were among the topics discussed:

- *"Business confidence rose in March to its highest level since September 2008, thus according to a finding by Saatchi boss ";*
- *"Economist, Mike Schusler, has come up with research which suggests that it costs far more to build a toll road in South Africa than it does to build one elsewhere in the world";*

- *"A Japanese newspaper has reported that economists hold the prediction that the country will slide into recession as a result of the triple disaster of earthquake, tsunami and nuclear crisis";*
- *"BAT is seeking new ways to hook nicotine lovers who find cigarette a drug"; and*
- *"Oil giant, Shell, is facing mounting pressure from protesters resisting its plans from extracting Shell gas from the Karoo in a process called "Fracking".*

The Licensee complies with clause 7.3 of its licence.

### **3.7 Training and Skills Development Obligations**

Clause 8.1 of Classic FM's schedule to the licence stipulates that:

*"The Licensee shall train its staff on an ongoing basis."*

Classic FM submits that it has conducted an ongoing training during the period under review to Ms D De Souza who was at the Institute of Marketing Management (IMM). Ms De Souza left the employ of Classic FM at the end of 2011. The Licensee further submits that has conducted training for Mrs P Koapeng (nee Sehloho) who is doing her third year of her Bachelor of Arts (BA) course at UNISA. Mrs Koapeng's syllabus consists of modules and she has not completed all the third year subjects yet, despite commencing them during 2011 due having a baby which has further delayed her progress at the university.

The Licensee has, during the period under review, complied with clause 8.1 of its licence.

Clause 8.2 of Classic FM's schedule to the licence stipulates that:

*"The Licensee shall train and provide at least short-term employment opportunities to empower two (2) interns per year".*

Classic FM submits that Lee Kern, Jonathan Adams and Ditabogo Diale were trained in the news department continuously during the period 2011/12.

The Licensee complies with clause 8.2 of its licence.

Clause 8.3 of Classic FM's schedule to the licence stipulates that:

*"The Licensee shall conduct presentation training throughout the year".*

Classic FM has declared that regular presentation training was conducted for the period under review.

The Licensee complies with clause 8.3 of its licence.

### **3.8 Community-related obligations**

Clause 9.1 of Classic FM's schedule to the licence stipulates that:

*"Huntrex creates a trust with shareholding equal to that held by the Liberty Foundation with the express aim of ensuring the direction of dividends earned, to the development of South African arts and culture".*

Classic FM submits that the Ingoma Trust remains a shareholder of Classic 102.7 and that the specific objective of the trust meets the aim as envisaged by the licence conditions. The trust deed was recently amended to have a more broad based black economic representation. The Ingoma Trust maintains a shareholding equal to that which the Liberty Foundation previously held.

The Licensee complies with clause 9.1 of its licence.

Clause 9.2 of Classic FM's schedule to the licence stipulates that:

*"The Licensee shall offer presentation training to two (2) individual from community radio stations annually".*

The Licensee submits that there was no presentation training offered to community radio stations during the period under review.

The Licensee did not comply with clause 9.2 of its licence. It is the Authority's view that this matter warrants a formal complaint for further investigation, which process is underway.

Clause 9.3 of Classic FM's schedule to the licence stipulates that:

*"The Licensee shall assist in producing three (3) local content CDs annually".*

Classic FM has reported it has not assisted with the production of local content CDs during the period under review. The Licensee submits that it held a holistic approach towards supporting the local music industry and that interaction with artists revealed that they would prefer the media exposure provided to them, rather than a limited contribution towards the production of a CD. To this end, the Licensee has provided a promotional opportunity for local artists at its monthly soirees together with considerable airtime exposure.

The Licensee has not complied with clause 9.3 of its licence. It is the Authority's view that this matter warrants a formal complaint for further investigation. The process is underway.

## **4. REGULATIONS**

### **4.1 South African Music Content Regulations**

Regulation 3.2 of the Regulations on South African Music Content as published on 31 January 2006 stipulates that:

*"Every holder of a commercial sound broadcasting licence to which these regulations apply must ensure that a minimum of 25% of the musical works broadcast in the performance period consist of South African music and that*

*such South African music is spread reasonably evenly throughout the said period”.*

Classic FM plays a significant amount of South African music on a daily basis. “Classic SA” is a programme presented by Kutlwano Masote from 10h00 until 14h00 on Sundays. The programme plays South African classic music. More of South African music was identified during the “Classic Voices”, a choral music programme broadcast on Sundays between 07h00 and 10h00 presented by Michael Dinga. The following were some of the songs and artists identified: Caro Mio Ben by Bala Brothers, Havana Slide by Annake De Villiers, Ethiopia Rag by Piet Koornhof, etc.

From the recordings monitored, it was established that Classic FM’s plays a minimum 25% and a maximum 27% South African music content.

The Licensee complies with regulation 3.2 of the Regulations on South African Music Content.

#### **4.2. Regulations regarding Standard Terms and Conditions for individual broadcasting licences**

During the period under review, the Authority did not identify any non-compliance by Classic FM with the standard terms and conditions for individual licences.

#### **4.3. Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund**

Clause 3 of the USAF Regulations stipulates that:

- (1) *“Every holder of a licence granted in terms of Chapters 3, 4 and/or 9 or converted in terms of Chapter 15 of the Act, must pay an annual contribution of 0.2% of its Annual Turnover to the Fund.*

- (2) *A BS licensee who has paid an annual contribution to the 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”.*

Classic FM made the requisite payment of thirty seven thousand five hundred and thirty eight rand (R37, 538.00) on 14 November 2011 to the Media Development and Diversity Agency (“MDDA”), which is in line with regulation 3 (1) and (2) of the USAF Regulation.

#### **4.4. General Licence Fees Regulations**

The General License Fees Regulations came into operation on the date of publication, being 1 April 2009.

Section 3 (1) of the regulations stipulates that:

*“The annual Licence fees prescribed in these regulations and as set out in Schedule 2 apply to holders of Individual and Class ECS licences, Individual Licences, Individual and Class ECNS licences and Individual Commercial BS licences”.*

Schedule 3 of the regulations stipulates that:

- (1) *“Where a legal entity holds any combination of a BS Licence, ECS Licence and or/or ECNS Licence, such entity may calculate the licence fee based on the firm’s gross profit based on the audited annual financial statements of that firm.*
- (2) *Unless expressly authorized by the Authority, all payments in respect of licence fees are due annually.*
- (3) *Payments may be effected quarterly where the licensee has applied to the Authority and such authorization has been granted in writing”.*

Schedule 3 (4) (b) (c) stipulates that:

*(b) "in respect of payment, such are due and payable within 6 months from the end of the licensee's financial year;*

*(c) may only be paid by way of an electronic transfer or via direct deposit into the Authority's bank account".*

Classic FM made a payment of sixty four thousand nine hundred and fifty five rand (R64, 955.00) on 14 November 2011 and duly submitted proof of payment of its licence fees to the Authority.

The Licensee complies with the above requirements.

## **5. CONCLUSION**

During the period under review, Classic FM did not comply with some of its licence terms and conditions for example, clauses 6.4, 9.2 and 9.3 of its licence; however, the Licensee complied with all applicable regulations and the Electronic Communications Act.

The Licensee was made aware of and engaged regarding its non-compliance with the above licence obligations as per the Authority's findings in the previous fiscal year. The Licensee conceded to the non-compliance and made an undertaking to make a formal application for an amendment of its licence that would take into account the variations adopted. At the time of writing this report, no formal submissions were made. It is against this background that this matter will now be forwarded to Complaints for further investigation.

## **6. APPENDICES**

Appendix A: Classic FM's broadcasting service licence

Appendix B: Classic FM's frequency spectrum licence

Appendix C: Classic FM's Quarterly Compliance Reports

Appendix D: Programme Logsheets

Appendix E: List of free on-air advertising for concerts, workshops and free on-air interviews to music organisations aligned with Classic FM's format.

Appendix F: Letter on Compliance information

Appendix G: Letter on proposed changes

Appendix H: Audited Financial Statement

Appendix I: Proof of payment of Licence Fees and USAF