



**Independent Communications Authority of South Africa**

350 Witch-Hazel Avenue,  
Eco-Point Office Park  
Centurion

**COUNCIL DECISIONS– 16 MARCH 2021**

<b>ITEM NO.</b>	<b>AGENDA ITEM</b>	<b>DECISION</b>
1.	<p><b>Reasons for Decision for The Amendment Application for The Public Sound Broadcasting Service by South African Broadcasting Corporation (SABC) With Regards to SA FM</b></p> <p>The purpose of the submission was to recommend that Council approves the vetted Reasons for Decision on the application for the amendment of a Public Sound Broadcasting Service (PSBS) licence lodged by the SABC (SA FM), for publication in the Government Gazette.</p> <p>1.1. On 30 June 2017, the Authority received an application for the amendment of SA FM’s PSBS licence. The Applicant sought approval for the amendment of its PSBS licence, by deleting clause 6.3 of the licence in its entirety. The Clause prescribes “Programming targeted at Children”, which required the broadcaster to broadcast at least one hour of programming targeted at children as contemplated by the Act.</p> <p>1.2. On 29 August 2017, the Authority published the Applicants amendment application in General Notice 626 under Government Gazette 41074, for written representations and responses for a</p>	<p><b>The recommendation was approved by Council.</b></p>

	<p>period of twenty-one (21) working days. No written representations were received by the closing date of 27 September 2017.</p> <p><b>Council resolved to approve the Reasons for Decision Document and a notice to be published in the government gazette.</b></p>	
<p>2.</p>	<p><b>Submission of Broadcasting Annual Compliance Reports for Individual Sound Broadcasting Services</b></p> <p>The purpose of the submission was to request Council to note and approve the eleven (11) Annual Compliance Reports (ACRs) for individual sound broadcasting service Licensees (I-SBS), compiled for the period under review as part of the sixty (60) ACRs required in terms of the Compliance Operational Performance Plan (OPP), for the 2020/2021 Financial Year.</p> <p>2.1. Section 4(3)(b) and (d) of the Independent Communications Act of South Africa, Act No. 13 of 2000 (the ICASA Act), imposes an obligation on the Authority to monitor and enforce compliance with licence conditions and Regulations consistent with the objects of the ICASA Act and the underlying statutes.</p> <p>2.2. Currently, there are 268 broadcasting service Licensees in the broadcasting market, broken down as follows: 207 Community Sound Licensees; 5 Community TV Licensees; 9 Subscription TV Licensees; 5 Free to Air TV Licensees (e.tv, SABC1, SABC2, SABC3 and Kwese TV); 27 Commercial Sound Licensees; and 15 Public Sound Licensees.</p>	<p><b>The recommendation was approved by Council.</b></p>

2.3. There are 248 operational Licensees whilst the remainder (20), are non-operational. Compliance has established that the reasons for the non-operational status are due to several factors which include, funding; lack of equipment; and governance challenges.

2.4. Compliance reports in respect of broadcasting services provided by all individual commercial broadcasters are compiled annually. With respect to the stations – both commercial and public – that are licensed to the SABC, the Authority prepares compliance reports for all its (SABC) broadcasting sound services. However, in terms of the television broadcasting services provided by the SABC (SABC 1, SABC 2 and SABC3) the Authority does not compile annual reports.

2.5. Of the four (4) commercial radio stations that form part of the submission, one (1) did not fully comply with its licence terms and conditions namely Smile FM.

2.6. Smile FM did not comply with the obligation to broadcast a minimum of seven (7) songs in an hour and they failed to sustain the fifty percent (50%) local content quarter South African music during its daily programming. The Licensee would be referred to the CCC for non-compliance.

2.7. Three (3) commercial radio stations that complied in full, with their

	<p>licence terms and conditions and regulatory requirements, were, Heart FM, iGagasi FM and OFM</p> <p><b>Council approved the Broadcasting Annual Compliance Reports for Individual Sound Broadcasting Services.</b></p>	
<p>3.</p>	<p><b>Discussion Document on the Review of 1999 IBA (Advertising, Infomercials and Programme Sponsorship) Regulations for approval and publication</b></p> <p>The purpose of the submission was to request that Council approves the draft Discussion Document on the review of the Independent Broadcasting Authority (IBA) (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, for publication in the government gazette.</p> <p>3.1. The Review of the Advertising Infomercials and Programme Sponsorship Regulations Committee was in the process of reviewing the IBA (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, published in Government Gazette No 6487 of 01 April 1999.</p> <p>3.2. The Committee indicated that broadcasting was a commercial venture and advertising was the business of broadcasting. Advertising was regarded as the key that led to the profits of a Licensee.</p> <p>3.3. The Committee further stated that the definitions need to be clear as to what advertisements, infomercial and what sponsorship are, so as to avoid the confusions amongst viewers.</p>	<p><b>The recommendation was approved by Council.</b></p>

	<p>3.4. Further that the committee aimed to limit the time on broadcasting slots so as to not bombard programmes with advertisements.</p> <p>3.5. The Committee indicated that it wanted to ensure that there was editorial independence and that the advertisers do not end up with all the editorial powers.</p> <p>3.6. The Committee finalised a draft Discussion Document and requested Council to approve the draft Discussion Document for publication in the government gazette.</p> <p>3.7. The draft Discussion Document seeks to solicit inputs from stakeholders on the regulation of Advertising, Infomercials and Programme Sponsorship. The inputs would assist the Authority in assessing the extent of the amendments to the Regulations, where necessary.</p> <p><b>Council approved the draft Discussion Document on the review of the IBA Regulations for publication in the government gazette.</b></p>	
<p>4.</p>	<p><b>Approval of the Findings Document and Draft Regulations for publication as well as the letter to the Minister on the Mobile Broadband Services.</b></p> <p>The purpose of the submission was to request that Council approves the vetted Findings Document for publication in the Gazette, the vetted Draft Regulations for publication in Gazette, and the letter to the Minister in terms of section 4(5) of the Electronic Communications Act.</p> <p>4.1. On 16 November 2018, the Authority published a notice of intention to</p>	<p><b>The recommendation was approved by Council.</b></p>

conduct an inquiry into Mobile Broadband Services in terms of section 4B of the ICASA Act of 2000, read with section 67(4) of the Electronic Communications Act No.36 of 2005.

4.2. The Inquiry was conducted in six Phases (i.e. Phase 1 – commencement of the market inquiry, Phase 2 - Discussion Document, Phase 3 – Public Hearings on the Discussion Document, Phase 4 – Findings Document and Draft Regulations (if necessary), Phase 5 – Public Hearings on draft regulations and Phase 6 – Final Regulations and Reasons Document).

4.3. As part of Phase 1, the Authority published a questionnaire or request for information and opinions from stakeholders. On 06 March 2019, the Authority received a request for an extension to submit responses to the questionnaire of Phase 1 from MTN. The Authority granted an extension in the Government Gazette to submit their responses to 29 March 2021.

4.4. On 29 November 2019, following receipt of information and data in line with the questionnaire or request for information under Phase 1, the Authority published a Discussion Document (Phase 2) on its website for public comment for a period of 45 working days.

4.5. Following the publication of the discussion document, the Authority received requests for an extension to submit written representation on

the discussion document from Vodacom, MTN and Telkom.

4.6. Thereafter, the Authority conducted a second series of one-on-one meetings. The purpose of the one-on-one meetings were for the Authority to ask questions of clarity on the information submitted and to discuss some of the questions or comments made by stakeholders in their written submissions on the discussion document.

4.7. The Authority made findings to the extent that competition was ineffective in the following markets:

4.7.1 Retail market;

4.7.2 Upstream market 1 (wholesale site infrastructure access in local and metropolitan municipalities);

4.7.3 Upstream market 2 (wholesale national roaming services for coverage purposes; and

4.7.4 Upstream market 3 (APN only).

4.8. The Authority also found that Vodacom and MTN are dominant in the above three markets namely retail market, upstream market 1 and upstream market 2. The Authority has identified pro-competitive terms and conditions that should be imposed on licensees in order to address market failure in the relevant markets.

4.9. The pro-competitive remedies relate to data reporting requirements which minimise information asymmetry and also would empower the

	<p>Authority to actively monitor the relevant markets and introduce additional targeted regulatory measures, if necessary</p> <p><b>Council resolved to approve the publication of the Findings Document and Draft Mobile Broadband Services Regulations in the government gazette.</b></p>	
<p>5.</p>	<p><b>Amendments to the Price Cap Regulations for Reserved Postal Services, 2013 and accompanying explanatory note.</b></p> <p>The purpose of the submission was to recommend that Council approves the publication of amendments to the Price Cap Regulations for Reserved Postal Service, 2013 and accompanying Explanatory Note in the Government Gazette and on the Authority's website.</p> <p>5.1. The Authority was conducting a review of Price Cap Regulations for Reserved Postal Services, 2013 (the Price Cap Regulations) in terms of sections 2 (a), 8(a) and 30 of the Postal Services Act 124 of the 1998 (PSA" and regulation 10 of the Price Cap Regulations.</p> <p>5.2. The purpose of the review was to impose effective price controls in the reserved postal services and ensure that regulation of the reserved services space remains appropriate and enough to secure the efficient and financially sustainable provision of the reserved postal services.</p> <p>5.3. On 23 August 2019, the Authority published a notice of its intention to review the Price Cap Regulations in the Government Gazette. The Gazetted Intention to Review Notice (GG 42657) was also published on ICASA's website alongside a Questionnaire requesting</p>	<p><b>The recommendation was approved by Council.</b></p>



	<p>information and opinions from market participants and general stakeholders.</p> <p>5.4. Additionally, a media statement was issued on social media platforms to ensure maximum coverage. Stakeholders were invited to submit written responses to the Questionnaire within thirty (30) working days from the date of publication of the Notice. Closing date for submissions was Monday 07 October 2019.</p> <p>5.5. As per the Intention to Review Notice, the Authority was now at Phase 3 of the review process which entails the compilation, drafting and eventual publication of the draft Regulations.</p> <p>5.6. The draft Regulations are meant to stimulate further input from stakeholders, informed by the submissions of stakeholders responding to the Questionnaire and research exercises conducted by the Authority that led to the compilation of the draft Regulations and accompanying Explanatory Not.</p> <p><b>The submission was approved by Council.</b></p>	
6.	<p><b>Amendment Regulations and Reasons Documents on the licensing Processes and Procedures Regulations (PPR) For Class Licences, 2010 And 2016, as amended.</b></p> <p>The purpose of the submission was to request Council to approve the vetted Amendment Regulations and the Reasons Document on the Licensing Processes and Procedures Regulations for Class Licences, 2010 and 2016 for publication in the government gazette.</p>	<p><b>The recommendation was approved by Council.</b></p>

6.1. The rationale for the amendment of the Regulations was two pronged. Firstly, to provide clarity on the Authority's process with respect to the licensing of Broadcasting, Electronic Communications and Electronic Communications Network Services for Class Licences.

6.2. Secondly, to enhance compliance with the Regulations and streamline the submission of documents to the Authority and as such provide effective service to licensees and applicants alike. This will in turn minimise the regulatory burden on both the Authority and stakeholders (licensees).

6.3. On 09 March 2020, the Authority published the draft Amendment PPR for class licences in Government Gazette No. 43062 for public comment from interested parties. The closing date for submission of comments was 17 April 2020.

6.4. By closing date, the Authority received written representations on the draft amendment regulations from the following stakeholders: Internet Service Providers Association (ISPA); Wireless Access Providers Association (WAPA); and South African Communications Forum (SACF).

**Council resolved to approve the vetted Amendment Regulations and Reasons Document for publication in the government gazette.**