

KULENKAMPFF & ASSOCIATES

A T T O R N E Y S

Our Ref: DRK/D0257/ak

Date: 5 October 2017

Your Ref:

Independent Communications Authority of South Africa
Block A
Pinmill Farm
164 Katherine Street
Sandton

Per Courier and

Per email: subscriptioninquiry@icasa.org.za

Attention: Refilwe Ramatlo

Dear Sir/Madam

re: OUR CLIENT : DEUKOM (PTY) LTD – INVITATION FOR WRITTEN REPRESENTATIONS – ENQUIRY INTO SUBSCRIPTION TELEVISION BROADCASTING SERVICES

We attach hereto the written representations of our client, Deukom (Pty) Ltd, with regard to the discussion document regarding the Enquiry into Subscription Television Broadcasting Services published on or about 24 August 2017. We will attach an unsigned electronic copy of the document (in Word format) to our email.

Our client would like access to any written representations received by you. Please advise whether it would be possible for us to obtain electronic access thereto.

Kindly acknowledge receipt hereof. We look forward to hearing from you.

Yours sincerely

KULENKAMPFF & ASSOCIATES

A handwritten signature in black ink, consisting of several fluid, connected strokes. The signature is positioned above the printed name.

DIETER KULENKAMPFF

Written Submissions of Deukom (Pty) Ltd

re:

The Discussion Document Entitled:

“Enquiry Into Subscription Television Broadcasting Services”

(Advertised on 25 August 2017)

1. INTRODUCTION

- 1.1. Deukom (Pty) Ltd (hereinafter referred to as “Deukom”) welcomes the invitation of the Independent Communications Authority of South Africa (“the Authority”) to respond to the Authority’s discussion document published on 25 August 2017 (“the Discussion Paper”).
- 1.2. The primary thrust of the Discussion Paper appears to be aimed at the imposition of pro-competitive conditions on relevant licensees. Deukom’s concerns are that:
 - 1.2.1. the current regulatory impediments faced by new broadcasters, small broadcasters and broadcasters offering niche channels/narrowcasting services (hereinafter to as “Small Broadcasters”) limit the fulfilment of the regulatory objectives set out in section 2 of the ECA including those articulated in subparagraph 3.2.6 of the Discussion Paper. The said challenge will not be resolved merely by the imposition of pro-competitive license conditions; and
 - 1.2.2. the Authority must be cautious that in the development of regulations relating to the imposition of pro-competitive license conditions, it does not inadvertently trample upon the business activities of Small Broadcasters.
- 1.3. These submissions will be limited to the aforesaid issues.
- 1.4. Deukom requests an opportunity to make oral representations at the public hearing in due course. It may revisit its request in this regard once it has had access to the submissions of other role players.

2. DESCRIPTION OF DEUKOM

- 2.1. Deukom administers the provision of broadcasting services/channels via satellite to subscribers in South Africa. At present all of these channels, save for one, originate in Germany. The channels are a mixture of public and private, free-to-air and subscription, and between them they offer general entertainment, sport, news and information. The channels are the following:

Name	Country of Origin	Type of Broadcaster	Genre of Channel	Duration	Free to Air
Sound					
Bayern 1 Radio	Germany	Public	General entertainment	Permanent	No
Bayern 3 Radio	Germany	Public	General entertainment	Permanent	No
Klassik Radio	Germany	Private	News, Information & Classical Music	Permanent	No
Antenne Bayern	Germany	Private	Music/news/weather	Permanent	No
Rock Antenne	Germany	Private	Music/news/weather	Permanent	No
Radio Paloma	Germany	Private	General entertainment	Permanent	No
Radio ffn	Germany	Private	General entertainment	Permanent	No
harmony fm	Germany	Private	General entertainment	Permanent	No
Sunshine Live	Germany	Private	General entertainment	Permanent	No
Television					
Deutsche Welle TV	Germany	Public	News and information	Permanent	No
RTL	Germany	Private	General entertainment	Permanent	No
SAT1	Germany	Private	General entertainment	Permanent	No
ZDF	Germany	Public	General entertainment	Permanent	No
ARD	Germany	Public	General entertainment	Permanent	No
3SAT	Germany	Public	General entertainment/ news	Permanent	No
PROSieben	Germany	Private	General entertainment	Permanent	No
n-tv	Germany	Private	News/weather	Permanent	No
VOX	Germany	Private	General entertainment/news	Permanent	No
RTL2	Germany	Private	General entertainment	Permanent	No
ARTE	Germany	Private	General entertainment	Permanent	No
Kabeleins	Germany	Private	General entertainment	Permanent	No
Puls 4 Austria	Austria	Private	General entertainment	Permanent	No
ProSiebenMAXX	Germany	Private	General entertainment	Permanent	No
Sixx	Germany	Private	General entertainment	Permanent	No
Super RTL	Germany	Private	General entertainment	Permanent	No
Jukebox	Germany	Private	Music	Permanent	No
RTL NITRO	Germany	Private	General entertainment	Permanent	No
Auto Motor und Sports Channel	Germany	Private	Documentaries/sports/infotainment	Permanent	No
Fix und Foxi TV	Germany	Private	Childrens' entertainment	Permanent	No
N24	Germany	Private	News	Permanent	No
Heimat Kanal	Germany	Private	General entertainment	Permanent	No
Romance TV	Germany	Private	General entertainment	Permanent	No

-
- 2.2. Deukom has no control over and is unable to alter the content of these channels;
 - 2.3. Deukom serves the German speaking community in South Africa. In addition, Deukom provides a valuable service to representatives of German speaking corporations that have invested in South Africa and to German speaking tourists to South Africa. The service therefore contributes to South Africa being attractive, both as an investment and tourist destination;
 - 2.4. Deukom presently has approximatively 4 000 subscribers in South Africa (including hotels and guest houses). These subscribers consist primarily of –
 - 2.4.1. German-speaking persons resident in South Africa; and
 - 2.4.2. hotel and other establishments rendering services to German speaking tourists in South Africa.
 - 2.5. Given the costs and risks involved in establishing the service referred to, Deukom initially had to rely heavily on capital provided by its (initial) foreign shareholders. By reason of the regulatory framework at the time (1996) the above was possible. If the entrepreneurs that drove the establishment of Deukom were faced with the challenges of the current regulatory environment, the service offered by Deukom would never have become a reality.
 - 2.6. Deukom has at all relevant times had its own call centre and subscriber enablement services. It however:
 - 2.6.1. initially contracted MultiChoice (Pty) Ltd and Orbicom (Pty) Ltd, in terms of which contracts these companies provided uplink services, encryption services, subscriber management systems and certain ancillary services;
 - 2.6.2. during 2016 Deukom migrated to the Panaccess Conditional Access System via the Astra-4A (4.8E) satellite.
 - 2.7. Deukom's primary source of income is from subscription fees paid by subscribers.
 - 2.8. Deukom commenced its DTH satellite service during February 1996 and not during 2012 as suggested in sub-paragraphs 1.3.1 and 4.8.3 of the Discussion Paper.
 - 2.9. In this regard Deukom records the following:
 - 2.9.1. prior to its repeal, the Broadcasting Act No. 4 of 1999 provided that any person, who immediately before the commencement of the said Act provided a
-

broadcasting service, was deemed to have permission to continue to provide such service, provided that application was made for the necessary license within the time period fixed in terms of the said Act. On 7 October 2003 the Authority notified Deukom that it was deemed to have the necessary permission until a license was granted or refused;

2.9.2. the Authority invited applications for commercial satellite and cable subscription broadcasting services on 31 January 2006. Permission to broadcast by broadcasters such as Deukom would have lapsed if they did not apply. On 19 July 2006 the Electronic Communications Act No. 36 of 2005 (the "ECA") came into operation. The Broadcasting Act was in part repealed by the ECA. The Authority extended the date for submission of applications until 31 August 2006 pursuant to the coming into operation of the ECA;

2.9.3. Deukom's application for a commercial satellite subscription broadcasting license was filed on 30 August 2006. The Authority declined Deukom's application. This was announced on 12 September 2007;

2.9.4. as a result, Deukom brought an application to review and set aside the decision of the Authority in the South Gauteng High Court under case number 08/00955 on 15 August 2008. Judgment was handed down on 20 October 2011. The court reviewed and set aside the decision of the Authority to refuse Deukom's application and remitted the matter to it for reconsideration. Pursuant thereto and during 2012, Deukom was issued a broadcasting license.

3. SMALL BROADCASTERS OR BROADCASTERS OFFERING NICHE CHANNELS/NARROWCASTING SERVICES

3.1. Deukom annexes hereto its representations concerning the enquiry into subscription broadcasting in response to the Authority's discussion paper dated 23 April 2004. In particular the Authority is again referred to paragraphs 12-26 thereof.

3.2. Regrettably the subsequent changes to the regulatory environment appear (predominantly) to have ignored the challenges faced by Small Broadcasters.

3.3. There is an urgent need to address the regulatory challenges faced by Small Broadcasters in that the same constitute impediments to:

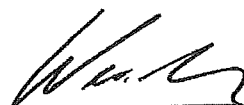
3.3.1. they entry of new Small Broadcasters;

3.3.2. the financial viability of a Small Broadcaster such as Deukom

-
- 3.4. In the context of Small Broadcasters the regulations complained of by Deukom appear to be unnecessary to achieve the various statutory objectives articulated in the Discussion Paper. On the contrary, various of the objectives are in fact compromised by the failure to exclude Small Broadcasters. This is demonstrated by the fact that there are currently only 3 broadcasters in the subscription TV retail market.
- 3.5. The risks and challenges faced by Small Broadcasters have, in the recent past, increased substantially by the advent of streaming. This underlines the urgent need for the Authority to take steps to eliminate the regulatory costs faced by Small Broadcasters.

4. INADVERTENT IMPACT

- 4.1. Deukom is concerned that any regulations which may be developed relating to the imposition of pro-competitive license conditions will inadvertently further trample the business activities of Small Broadcasters.
- 4.2. It is literally impossible, at this stage, to consider all possible permutations. In the circumstances the Authority is urged to consider representations on this score once it has decided to develop such regulations and prepared draft regulations for comment.



J Weida (Director)
DEUKOM (PTY) LTD