



DEUKOM ANNUAL COMPLIANCE REPORT

MARCH 2017

2015/2016 ANNUAL COMPLIANCE REPORT

DEUKOM (PTY) LTD BROADCASTING AS DEUKOM

LICENCE PERIOD: 02 JULY 2012 - 06 AUGUST 2023

1. INTRODUCTION

The Independent Communications Authority of South Africa (the 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 ensure compliance by broadcasters with the said pieces of legislation, applicable regulations and specific terms and conditions of their licence.

The purpose of the report to give an account of Deukom (Pty) Ltd's performance for the period 2015-2016 financial year. The report focuses on the following aspects: Geographic Coverage, Languages, Format, Training and Skills Development Obligations, Staff Development Equity Plan, Ownership and Control by Previously Disadvantaged Individuals, Finances, South African Television Content Regulations, Universal Service and Access Fund, Subscription Broadcasting Regulations, Licence Fees Regulations, Code on People with Disabilities, and Regulations on Standard Terms and Conditions.

2. BACKGROUND

On 02 July 2012, the Authority issued a commercial subscription television and sound broadcasting service licence to Deukom (Pty) Ltd. The shareholders as reflected in the licence is:

- Prodomo (Propriety) Limited: 50.5%;
- The Mayer Trust: 9.5%;
- TirolerTuchfabricBaur-Foradori GmbH: 30%; and

¹ The Constitution of the Republic no 108, 1996

² ICASA Act no 13 , 2000 as amended

³ Electronic Communications Act no 36, 2005

⁴ Broadcasting Act no 4 of 1999

- Herald Bopalamo: 30%.

The ownership held by persons from historically disadvantaged groups is as follows:
Herald Bopalamo: 30%.

3. COMPLIANCE ASSESSMENT

3.1 Service Name

Clause 1 of the Schedule states that the name of the service is Deukom.

The Licensee confirms that no changes have been made to the name of the service.

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

3.2 Geographic Coverage Area

Clause 2 of the schedule to the licence stipulates that:

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

The Licensee confirms that it provides its service through satellite and therefore provides national coverage of its broadcasting service.⁵ **Accordingly, the Licensee complies with clause 2 of the schedule of its licence.**

3.3 Encryption, signal and use of licensed electronic communications network service.

Clause 3.1 of the schedule to the licence states that:

"The Licensee must ensure that the output signal of its subscription broadcasting service is encrypted".

Clause 3.2 of the schedule to the licence provides that:

"The Licensee shall use the licensed communications network service of a licence".

⁵ Appendix A: Deukom's subscription Broadcasting Service Licence

The Licensee confirms that the output signal of its subscription broadcasting service is encrypted. The Licensee has also confirmed that its network service provider is Orbicom (Pty) Ltd, which is a licensed communications network service provider.

The Licensee complies with clause 3.1 and clause 3.2 of the schedule of its licence.

3.4 Language(s)

Clause 4 of the licence provides that the Licensee's principal language of broadcast is German.

The Licensee submits that its language of broadcast is German, as such, the **Licensee complies with clause 4 of the schedule of its licence.**

3.5 Format

Clause 5 of the schedule to the licence stipulates that:

"The Licensee is licensed to provide a subscription broadcasting service aimed primarily at German speaking community and persons having an interest in the German language".

The Licensee confirms that its service is aimed at the German speaking community. **The Licensee complies with clause 5 of the schedule of its licence.**

3.6 Target Market

Clause 6 of the schedule to the licence states that:

"The Licensee is licensed to provide a subscription broadcasting service aimed at a niche market. The Licensee's target market is viewers who form part of German speaking community and persons having an interest in the German language resident in South Africa".

The submissions made by the Licensee confirm that the Licensee provides a subscription service as contemplated in clause 6 above.

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

3.7 Ownership by Individuals from Historically Disadvantaged groups

Clause 7 of the schedule to the licence states that:

"The Licensee shall have no less than 30% ownership by persons from historically disadvantaged groups for the duration of its licence".

The Licensee confirms that it complies with this requirement as one of the shareholder's (Herald Bopalamo) equity ownership is at 30%.

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

3.8 Financial Year End

Clause 8.1 of the schedule to the licence stipulates that:

"The financial year end of the Licensee is 31 March".

Clause 8.2. of the schedule to the licence provides that:

"If this date changes, the Licensee shall in writing notify the Authority thereof within seven (7) business dates of the change".

The Licensee has confirmed that its financial year end is end of February each year; this is also reflected in the Licensee's Audited Financial Statements.

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

3.9 Local Content Obligations

Clause 9.1 of the licence provides that:

“The Licensee shall pay an amount equivalent to five (5) 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 licence provides that:

“In the event that no nomination has been made, the amount shall be paid into the Trust account of the Licensee’ legal representative from time to time to be held in trust until such time as a nomination is made”.

Furthermore, clause 9.3 of the licence provides that:

“The said sum shall be paid annually in arrears within forty-five (45) business days after the financial year end of the Licensee. The Licensee shall furnish proof of payment to the Authority seven (7) days business days of payment”.

In terms of clause 9.1, the Licensee has reported that the Authority has not nominated the beneficiary as envisaged in its Licence.

The Licensee has indicated that it has paid the 5% (R57 639.33) stipulated in clause 9.1 into the trust account of the firm in line with clause 9.2.

To date the amount currently held in the account is **R503 138. 85** inclusive of the 5% as indicated in clause 9.4 below.

The Licensee duly submitted proof in this regard to the Authority on 12 April 2016.

The Authority can confirm that it has identified potential beneficiaries in respect of clause 9.1. at the time of writing this report, correspondences were sent to the aforesaid to engage further in this regard.

Regarding clause 9.3 of the schedule to its licence, although the licensee has indicated that the amount was paid into the trust account, the licensee did not submit

proof of payment of the said amount to the Authority within seven (7) days business days of payment.

On the basis of the information submitted by the Licensee, the Licensee has complied with clauses 9.1 and 9.2 of the schedule to its licence but has failed to comply with clause 9.3 of the schedule to its licence.

Clause 9.4 of the schedule to the licence provides that:

"The Licensee shall ensure that in addition to an amount referred to in sub clause 9.1 above, a further amount equivalent to five (5) 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".

The Licensee has submitted that the further amount of 5% (R57 639.33) has been paid into its trust account and available to be spent as required. Proof of payment was submitted to the Authority on 12 April 2016.

According to the Licensee, initially the amount invested in terms of clause 9.4 was insufficient for a bursary for a full period of study. The Licensee reports that in 2015, it was in discussion with the Centre for Film and Media Study linked to the University of Cape Town to identify a deserving recipient in line with the Licensee's licence. The Licensee has nevertheless stated, in its correspondence to the Authority that it has been desirous of exercising caution in that, if the Centre for Film and Media does not promote the objectives identified in sub-clause 9.4, they will be found to be in contravention of their licence. Against this backdrop, the Licensee requests yet again to have a meeting with the Authority to discuss and agree on the appropriate nomination/institution moreso because it has added channels to its bouquet. As a result of this, its channel acquisition budget has increased.

The Licensee is showing commitment to comply with this clause. It will be prudent for the Authority and the Licensee to meet and pave a way forward in this regard.

Due to this express commitment, a conclusion can be drawn that **the Licensee has complied with the above clause.**

Clause 9.5 of the schedule to the licence provides that:

"Within six (6) months of its financial year end, the Licensee shall furnish the Authority with a written report of the South African citizen trained and or sponsored and proof of amount used by the Licensee demonstrating compliance with this clause".

The Licensee has not submitted a report as envisaged above as the Licensee has not made the nomination.

Clause 9.6 of the licence provides that:

"In the event that the 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 to 9.3 of the clause".

The amount is, as reported by the Licensee, kept in the trust account of the Licensee.

4. REGULATIONS

4.1 Subscription Broadcasting Services Regulations

Regulation 5 of the Subscription Broadcasting Regulations as published in the Government Gazette, no 28452, 31 January 2006 provides that⁶:

"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 fair view of the licensee's subscription, advertising and sponsorship revenue derived from the provision of the subscription broadcasting service".

The Licensee has submitted its Audited Financial Statements to the Authority for the period ending 28 February 2016.

⁶ Appendix E: Subscription Broadcasting Services Regulations

The Licensee complies with Regulation 5 above.

Section 60(4) of the ECA states that:

"Subscription broadcasting services may draw their revenues from subscriptions, advertising and sponsorships, however, in no event may advertising or sponsorships or a combination thereof, be the largest source annual revenue".

The Audited Financial Statements show that the Licensee complies with section 60(4) of the ECA in that, the revenue derived from subscription far exceeds revenue derived from advertising. The figures cannot be revealed due to the fact that the Licensee applied for confidentiality to its financial information which was granted by the Authority.

The Licensee complies with Section 60(4) of the ECA.

4.2 Licence Fees Regulations

General Licence Fees Regulations as published in the Government Gazette, no 32084, 01 April 2009, provides that:

"Individual Commercial Broadcasting Service Licensee's must pay annually to the Authority a licence fee of 1.5% of its gross profit".⁷

Schedule 3 (4) (b) of the General Licence Fees Regulations provides that:

"Annual payments are due and payable within 6 months from the end of the licensee's financial year".

The Licensee paid its annual licence fee of R47 254.87 to the Authority. Accordingly, **the Licensee was found to be in compliance with the Licence Fees Regulations.**

⁷ Appendix F: General License Fees Regulations

4.3 Universal Service and Access Fund Regulations

Regulation 3 (1) of the Regulations in respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund (USAF) as published in the Government Gazette, no 31499 of April 2009 requires that:

"Every holder of the licence granted in terms of Chapter 3 or converted in terms of Chapter 15 of the Act, must pay an annual contribution of 0.2 % of the annual turnover, derived from the licensee's licence activity, to the Fund (the Fund)".

Further, Regulation 3 (3) requires that:

"A broadcasting service licensee who has paid an annual contribution to the Media Development and Diversity Agency (MDDA) must set off that contribution against its prescribed annual contribution to the Fund".⁸

The Licensee paid its annual USAF contribution of R 63 006.49 contribution to the MDDA and submitted proof thereof to the Authority.

The Licensee was found to be compliance with the regulations in respect of Universal Service and Access Fund.

5. CONCLUSION

During the period under review, the Licensee has complied with most of its licence terms and conditions as well as the applicable regulations.

6. TERMS OF REFERENCE

- 6.1 Appendix A: Deukom (Pty) Ltd licence
- 6.2 Appendix B: Proof of Payment of USAF
- 6.3 Appendix C: Proof of payment of Licence Fees.

⁸ Appendix G: USAF Regulations