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## INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 264

26 March 2021



350 Witch-Hazel Avenue, Eco Point Office Park  
Eco Park, Centurion.  
Private Bag X10, Highveld Park 0169

**DISCUSSION DOCUMENT ON THE REVIEW OF THE INDEPENDENT  
BROADCASTING AUTHORITY (ADVERTISING, INFOMERCIALS AND  
PROGRAMME SPONSORSHIP) REGULATIONS, 1999**

**INVITATION FOR WRITTEN REPRESENTATIONS**

In terms of section 4B of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act"), as amended, the Authority hereby wishes to communicate its intention to conduct an Inquiry regarding the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999 ("the Regulations").

Interested persons are hereby invited to submit their written representations on the Discussion Document, which will also be made available on the Authority's website at <http://www.icasa.org.za> and in the Authority's Library at 350 Witch-Hazel Avenue, Eco Point Office Park, Eco Park, Centurion, (Ground Floor at Block B), between 09h00 and 16h00, Monday to Friday.

Written representations on the Discussion Document must be submitted to the Authority by no later than **07 June 2021** by post or electronically (in Microsoft Word or PDF) and marked specifically for attention: Mamedupe Kgatshe. Delivery address: 350 Witch-Hazel Avenue, Eco Point Office Park, Eco Park, Centurion, (Ground Floor at Block B). Where possible, written representations should also be e-mailed to [mkgatshe@icasa.org.za](mailto:mkgatshe@icasa.org.za) and [rarc@icasa.org.za](mailto:rarc@icasa.org.za). Enquiries should

be directed to [mkgatshe@icasa.org.za](mailto:mkgatshe@icasa.org.za) and [gmalefo@icasa.org.za](mailto:gmalefo@icasa.org.za) or 012 568 3259; between 10h00 and 16h00, Monday to Friday.

Written representation(s) received by the Authority pursuant to this notice, will be made available on the Authority's website at <http://www.icasa.org.za> or can be sent via email upon request by any individual or can be collected from the Authority's library by appointment.

At the request for confidentiality by any person who submits written representations pursuant to this notice, the Authority may determine that such representations or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act. The request for confidentiality must be accompanied by a written statement in line with section 4D (4) of the ICASA Act explaining why the specific information should be treated as confidential. Where the request for confidentiality is refused, the person who made the request will be granted an opportunity to withdraw such representations or portion(s) thereof.

Persons submitting written representations are further invited to indicate, as part of their submissions, whether they require an opportunity to make oral presentations to the Authority.



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**DR KEABETSWE MODIMOENG**  
**CHAIRPERSON**  
**DATE: 23/03/2021**

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## **1. INTRODUCTION**

- 1.1 The Independent Communications Authority of South Africa (hereinafter referred to as "ICASA" or "the Authority") in terms of section 4B of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000, as amended) ("ICASA Act") hereby publishes the Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999.
- 1.2 The Discussion Document is arranged as follows: Section 2 outlines the background and legislative mandate. Section 3 presents information on recent trends on advertisement, infomercials and programme sponsorship revenues and section 4 outlines the regulation of Advertising in South Africa. Section 5 discusses an international perspective on the regulation of advertisements, infomercials and programme sponsorship and the concluding remarks are contained in section 6. Sections 7 encompasses questions posed by the Authority to the public and interested stakeholders.

## **2 LEGISLATIVE MANDATE AND BACKGROUND**

- 2.1 The Authority is established pursuant to section 192 of the Constitution of the Republic of South Africa, 1996 which requires that national legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing the South African society.
- 2.2 The Authority is further enjoined by the ICASA Act, the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended ("the ECA") and the Broadcasting Act, 1999 (Act No 4. of 1999), as amended ("the Broadcasting Act") to regulate broadcasting in the public interest.

- 2.3 In 1999, the Independent Broadcasting Authority published a Position Paper<sup>1</sup> and the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999 (**“the Advertising Regulations”**).<sup>2</sup>
- 2.4 In 2009, the Authority started a process to review the Advertising Regulations in accordance with section 4B of the ICASA Act. As part of the public consultation process, the Authority published the Draft Regulations on Advertising, Infomercials and Programme Sponsorship for Broadcasting Service Licensees, 2009 (**“Draft Advertising Regulations, 2009”**)<sup>3</sup>.
- 2.5 Stakeholders responded to the Draft Advertising Regulations, 2009 and highlighted that the Authority did not have a clear regulatory mandate over advertising. Thereafter, the Authority published the Findings Document regarding the draft Regulations on Advertising, Infomercials and Programme Sponsorship for Broadcasting Service Licensees, 2009<sup>4</sup> and concluded that the Authority should seek legal certainty on its mandate to regulate the scheduling of advertisements, infomercials and programme sponsorships. Therefore, the Authority decided not to amend or repeal the Advertising Regulations until the ECA had been amended to enhance clarity and certainty.<sup>5</sup>
- 2.6 The Authority undertook a regulatory review of its broadcasting Regulations in 2013, including the Regulation of Advertising, Infomercials and Programme Sponsorship<sup>6</sup>. The regulatory review revealed that there was a need to strengthen the relationship between the Authority and the

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<sup>1</sup> Position Paper on a definition of Advertising, the regulation of Infomercials and the Regulation of Programme Sponsorship, 31 March 1999, published on the Authority’s website at [www.icasa.org.za](http://www.icasa.org.za)

<sup>2</sup> Published under Government Gazette 19922 of 01 April 1999

<sup>3</sup> Published under General Notice 172 in Government Gazette 31903 of 13 February 2009

<sup>4</sup> Published under General Notice 1659 in Government Gazette 32826 of 18 December 2009

<sup>5</sup> Findings Document regarding the draft regulations on Advertising, Infomercial and Programme Sponsorship for Broadcasting Service Licensees, 2009, Paragraph 10.6.

<sup>6</sup> Final Report on the Review of the Broadcasting Regulatory Framework towards a Digitally Converged Environment in South Africa, Government Gazette No. 36598 of 25 June 2013, pages 24 - 27.

Advertising Standards Authority of South Africa (“ASASA”<sup>7</sup>) and to clarify each entity’s role and deal with perceptions of overlapping jurisdictions. These challenges had already been highlighted by stakeholders as early as 2009.

- 2.7 In 2014, the Electronic Communications Amendment Act, 2014 (Act No. 1 of 2014) (“**EC Amendment Act**”)<sup>8</sup> came into operation.<sup>9</sup> The EC Amendment Act provided for the amendment of section 55 to ensure that the Authority could regulate scheduling of adverts, infomercials and programme sponsorships.<sup>10</sup>
- 2.8 Following the amendment, section 55(1) of the ECA now provides that all broadcasting services licensees must adhere to the Code as from time to time determined and administered by the ASASA and any advertising Regulations prescribed by the Authority in respect of scheduling of adverts, infomercials and programme sponsorship.
- 2.9 Furthermore, section 55(2) of the ECA provides that the Complaints and Compliance Committee (“CCC”) must adjudicate complaints concerning alleged breaches of the Code by broadcasting service licensees who are not members of the ASASA, in accordance with section 17C of the ICASA Act, as well as complaints concerning alleged breaches of the advertising Regulations.
- 2.10 Section 55(3) provides that where a broadcasting licensee, irrespective of whether or not he or she is a member of the said ASASA, is found to have breached the Code or advertising Regulations, such broadcasting licensee must be dealt with in accordance with applicable provisions of sections 17A to 17H of the ICASA Act.

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<sup>7</sup> Section 1 of the ECA states that “Advertising Standards Authority of South Africa” means the entity which regulates the content of advertising, or any entity that replaces it but has the same functions. Currently the administration of the Code of Advertising Practice is done by the Advertising Regulatory Board (“ARB”).

<sup>8</sup> Published under General Notice 266 in Government Gazette 37536 of 7 April 2014.

<sup>9</sup> Published under General Notice 406 in Government Gazette 37670 of 21 May 2014.

<sup>10</sup> Clause 2.27 of the Memorandum on the Objects of the Electronic Communications Amendment Bill, 2012 published under Government Gazette No. 35525 of 18 July 2012.

2.11 Section 4(3)(j) of the ICASA Act empowers the Authority to make regulations on any matter consistent with the objects of the Act and underlying statutes or that are incidental or necessary for the performance of its functions.

### **Purpose of the inquiry**

2.12 The purpose of this inquiry is to determine the effectiveness of the Advertising Regulations and whether there is a need for amendments. Given the rapid evolution of the broadcasting sector, Advertising Regulations are outdated and need to be reviewed as they have been in force for a period of over eighteen (18) years. The Authority is therefore undertaking an inquiry in terms of section 4B of the ICASA Act on the Advertising Regulations.

2.13 In reviewing these Regulations, the Authority also seeks to ensure;

- the protection of viewers from excessive advertising;
- that advertising, infomercial and programme sponsorship is clearly distinguishable from normal programming;
- that broadcasters adhere to the limits on advertising and infomercials; and
- that broadcasters maintain editorial independence and control over programming.

## **3 RECENT TRENDS ON ADVERTISEMENTS, INFOMERCIALS AND PROGRAMME SPONSORSHIP REVENUES**

3.1 The purpose of this section is to identify and understand trends on advertisements, infomercials and programme sponsorships revenue for TV and radio (for commercial, community and public services), to improve the Advertising Regulations where necessary.<sup>11</sup>

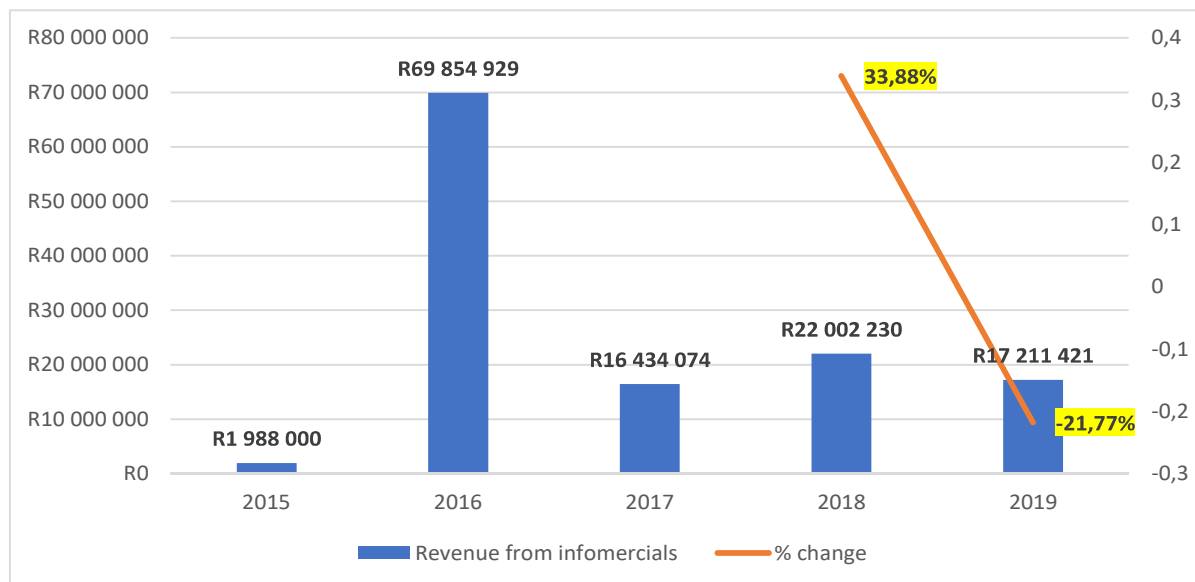
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<sup>11</sup> State of the ICT Sector Report in South Africa-2019  
<https://www.icasa.org.za/uploads/files/State-of-the-ICT-Sector-Report-March-2020.pdf>



- 3.2 Advertisement revenue decreased by 8.17% in 2018 and decreased by 11.39% in 2019. However, for a period of five (5) years (which is from 2015 to 2019), advertising revenue increased by 4.93% overall.<sup>12</sup>
- 3.3 Programme sponsorship revenue as a proportion of total broadcasting revenue was 2% or below over the four (4) year period ending in 2018.<sup>13</sup>
- 3.4 Revenue from infomercials increased by 33.88% in 2018 and decreased by 21.77% in 2019.<sup>14</sup>

**Figure 1: Revenue from infomercials**



Source: ICASA Broadcasting Questionnaires 2015-2019

- 3.5 For a period of 5 years revenue from infomercials increased by 71.53%.<sup>15</sup>
- 3.6 Figure 2 below presents the revenue trends from advertisements, infomercials and programme sponsorships as a proportion of total broadcasting revenue in the past 4 years from 2015 to 2018.<sup>16</sup>

<sup>12</sup> State of the ICT Sector Report in South Africa-2019

<sup>13</sup> State of the ICT Sector Report in South Africa-2019

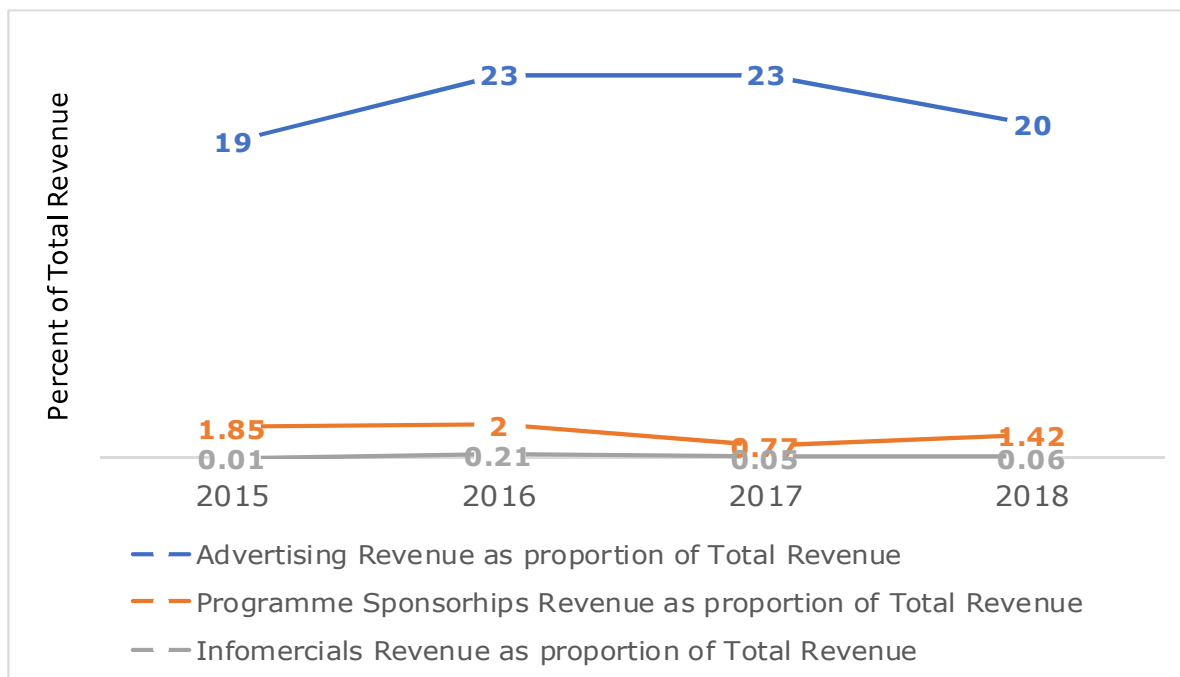
<sup>14</sup> State of the ICT Sector Report in South Africa-2019

<sup>15</sup> State of the ICT Sector Report in South Africa-2019

<sup>16</sup> State of the ICT Sector Report in South Africa -2019

<https://www.icasa.org.za/uploads/files/State-of-the-ICT-Sector-Report-March-2020.pdf>

**Figure 2: Proportion of Broadcasting Revenue from Advertisements, Infomercials and Programme Sponsorships**



Source: ICASA Broadcasting Questionnaire 2015-2019

#### 4. REGULATION OF ADVERTISING IN SOUTH AFRICA

4.1 Advertising is often considered essential to the success of broadcasters. The ICT industry is highly competitive, thus various companies utilize both audio and/or audio-visual broadcasting to reach customers through advertising, thus increasing their revenue through advertising. Although Advertising is intended to be interruptive, that is, it must capture the viewers' attention, too many advertisements can be a nuisance too. Therefore, regulating Advertising is very important to protect consumers.

4.2 The Authority has developed the mechanisms explored below, in its endeavour to regulate advertising, infomercials and programme sponsorship in the public interest.

4.3 The Authority would like to solicit input on the mechanisms listed below from the public and interested stakeholders.

## Advertising

4.4 The Authority's regulation of Advertisement seeks to provide consumers with certainty on what should be easily identifiable as an advertisement. The Regulation also intends to assist broadcasters with classifying advertisement from other programming. The Authority proposes a uniform definition of Advertising that is to be applied by broadcasters. The definition of advertising should be:

- Unambiguous;
- Easily implementable and enforceable;
- Measurable;
- Fair to stakeholders; and
- Be applied uniformly.<sup>17</sup>

4.5 Advertising is defined in the Advertising Regulations to mean any material broadcast, in visual and/or audio form for which the broadcaster receives a consideration, in cash or otherwise, and which promotes the interest of any person, product or service, provided that:

- (a) spot commercial, which is a public service announcement for which the broadcaster receives a consideration, any material that would constitute infomercial but for the fact that is of two minutes' duration or less, that part of sponsorship package which is constituted by spot commercials, and commercial features shall be regarded as being advertisement; but
- (b) public services announcement in respect of which the broadcaster does not receive any consideration, supply agreements, infomercials exceeding two minutes in duration, branded filler material which is of the public services nature, sponsorship elements which form part of in-programme material presenters' credit and (in relation to competition and self-promotions), programme competition, branded promotional

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<sup>17</sup> Position Paper on a definition of Advertising, the regulation of Infomercials and the Regulation of Programme Sponsorship, published 31 March 1999, page 8

spots and self-promotion promos shall not be regarded as advertisements.<sup>18</sup>

4.6 The Authority does not regulate advertising content but has a regulatory mandate to prescribe the duration and frequency of advertisements, infomercials and programme sponsorships. This mandate also covers issues of:

- (a) ensuring compliance by broadcasters;
- (b) regulating the amount of advertising that may be transmitted; and
- (c) distinguishing material which is considered advertisement from that which is not, to provide clarity to broadcasting service licensees such as distinction made in terms of regulation 3(3) of the Regulations.

4.7 To be specific, regulation 3(3) of the Advertising Regulations states that any broadcaster who transmits a programme competition, a branded promotional spot, branded filler material, a self-promotion promo or a sponsorship element in the form of the air depiction of, or referral to any brand, product or name, shall ensure that the primary purpose of the broadcast of such material is to promote the broadcaster or the programme concerned, rather than the commercial interest of the person, product or service referred to in the course of such transmission. Regulation 3(4) of the Advertising Regulations further states that transmission elements such as continuity announcement and station identification, in the form of on-screen logos, signature tunes and the like do not constitute an advertisement.<sup>19</sup>

4.8 Furthermore, the Position Paper proposes that the definition of advertising should not be static because broadcasting is a changing and dynamic industry and broadcasters are further encouraged to conduct research on the amount

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<sup>18</sup> The Regulation relating to the definition of Advertising and the Regulation of Infomercials and Programme Sponsorship in respect of broadcasting services, Government Gazette 19922 of 01 April 1999.

<sup>19</sup> The Regulation relating to the definition of Advertising and the Regulation of Infomercials and Programme Sponsorship in respect of broadcasting services, government gazette 19922 of 01 April 1999, page 6.

of advertising tolerance and perception, and are requested to update the Authority on such research.<sup>20</sup>

## **Infomercials**

4.9 In drafting the 1999 Advertising Regulations, the Authority was concerned that some broadcasters can misconstrue the scheduling of infomercials in programming<sup>21</sup>. The Authority is still concerned that infomercials and programming are often confused and therefore it is important to make sure that infomercials are clearly identified and do not form part of programming.

4.10 Regulation 1.10 of the Advertising Regulations define infomercial as *“material of more than two minutes’ duration, broadcast in visual and/or audio form, for which a broadcaster receives a consideration, in cash or otherwise, which is usually (but not necessarily) presented in a programme format, which promotes the interest of any person, product or service, which entails a direct offer of a product or service to a member or members of the public in return for payment, and which usually (but not necessarily) contains a demonstration of the use of the product or service concerned, and includes material known as tele-shopping, home shopping, direct marketing and direct sales”*<sup>22</sup>.

4.11 The Regulations provide that no broadcaster may transmit an infomercial during prime time or during the transmission of, or breaks during the transmission of, any children’s programming. The Regulations further state that every broadcaster should ensure that all infomercials transmitted by it are presented and labelled in a manner that will be clear to the audience that such infomercials do not constitute programme material. Broadcasters are not allowed to transmit infomercials for more than two hours during the performance period<sup>23</sup> in any one day. Moreover, the Regulations do not apply

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<sup>20</sup> Position Paper on a definition of Advertising, the regulation of Infomercials and the Regulation of Programme Sponsorship, published 31 March 1999, page 11, published on the Authority’s website at [www.icasa.org.za](http://www.icasa.org.za)

<sup>21</sup> The 1999 Independent Broadcasting Authority Position Paper, published 31 March 1999, page 12

<sup>22</sup> The Regulation relating to the definition of Advertising and the Regulation of Infomercials and Programme Sponsorship in respect of broadcasting services, government gazette 19922 of 01 April 1999

<sup>23</sup> The Regulation relating to the definition of Advertising and the Regulation of Infomercials and Programme Sponsorship in respect of broadcasting services, government gazette 19922 of 01 April 1999, page 7.

to any dedicated infomercial channels which may obtain a broadcasting license from the Authority<sup>24</sup>.

4.12 The Authority encourages broadcasters to conduct research on the amount and scheduling of infomercials.<sup>25</sup> Therefore, the information from broadcasters will assist this inquiry, if available.

### **Programme Sponsorship**

4.13 The Authority, during the 1999 Advertising Regulation making process, noted that the over-riding concern with programme sponsorship is to preserve the editorial integrity of sponsored programme.<sup>26</sup>

4.14 With regards to sponsorship of children's programming the Authority alluded to the vulnerability of children in distinguishing between programme content and sponsorship. Broadcasters should ensure that sponsorship during children's programming is suitable for children.<sup>27</sup>

4.15 The Advertising Regulations define programme sponsorship as direct or indirect financing, whether partial or fully, of the production or transmission of broadcast programme material by an advertiser or person with a view of promoting its own or another person's name, trade mark, image, activities or product. Sponsorship element is defined as marketing material that forms part of, or is superimposed on, broadcast programme material and includes but is not necessarily limited to on-screen corner logos, opening and closing billboards, stings, squeezebacks, the on-air depiction of or referral to, any brand or name, ribbons crawls, naming rights and product placements.<sup>28</sup>

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Performance period means the period of 126 hours in one week measured between the hours of 05h00 and 23h00 each day

<sup>24</sup> Ibid, page 7.

<sup>25</sup> Position Paper on a definition of Advertising, the regulation of Infomercials and the Regulation of Programme Sponsorship, published 31 March 1999, page 13, published on the Authority's website at [www.icasa.org.za](http://www.icasa.org.za)

<sup>26</sup> Ibid, page 14

<sup>27</sup> Ibid, page 15

<sup>28</sup> The Regulation relating to the definition of Advertising and the Regulation of Infomercials and Programme Sponsorship in respect of broadcasting services, government gazette 19922 of 01 April 1999, page 4.

- 4.16 Regulation 5.1 of the Advertising Regulations states that every broadcaster who derives benefits from programme sponsorship shall ensure that in relation to the relevant sponsored programme, editorial control remains with the broadcaster. The Regulations provide that for every programme sponsorship obtained or accepted by a broadcaster, the broadcaster must enter into a written sponsorship contract with the sponsor which should provide that the sponsor shall not be entitled in any way to influence the content or scheduling of the sponsored programme. Broadcasters are required to submit to the Authority copies of sponsorship contracts concluded.<sup>29</sup>
- 4.17 Regulation 5.3 of the Advertising Regulations requires that broadcasters who provide television broadcasting services shall not obtain or accept any programme sponsorships from any person in respect to any news or current affairs programme. However, Regulation 5.4 of the Advertising Regulations provides that broadcasters are allowed to obtain or accept programme sponsorship in respect of weather forecast or sports results bulletin that constitutes part of a news programme broadcast by that broadcaster. The Regulations are silent on obtaining programme sponsorship for sound broadcasting service licensees on news.<sup>30</sup>
- 4.18 The 1999 Position Paper<sup>31</sup> noted that sponsorship of radio news is an established tradition in South Africa and radio broadcasters receive significant revenue from such. However, the Authority encouraged radio broadcasters to phase out such sponsorship.
- 4.19 Regulation 5.9 provides that a broadcaster should, before and after the transmission of a sponsored programme, state clearly the nature of sponsor's association with the relevant sponsored programme. Preference should be given to descriptions such as "*sponsored by*" or "*in association*

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<sup>29</sup> Ibid, page 7.

<sup>30</sup> Ibid, page 8.

<sup>31</sup> Position Paper on a Definition of Advertising, the Regulation of Infomercials and the Regulation of Programme Sponsorship in respect of Broadcasting services, published 31 March 1999, pages 13-14, published on the Authority's website at [www.icasa.org.za](http://www.icasa.org.za)

*with*", as opposed to descriptions such as *"brought to you by"* or *"with compliments of"*.<sup>32</sup>

4.20 Regarding product placement, the Authority decided that whilst it does not approve of product placement, complete prohibition may have unduly negative effect on the broadcasters' revenue and potentially on local content production. Broadcasters should consider phasing out product placement especially in children's' programming.<sup>33</sup> The Authority in this process is reviewing whether product placement should be allowed, and if allowed, the extent to which it should be allowed.

4.21 Regulation 1.15 of the Advertising Regulations defines Product Placement as the *"depiction of, or a reference to, a product or service in material (other than an advertisement) broadcast in visual and/or audio form, in respect of which the broadcaster and/or the producer of the material concerned receives payment or other valuable consideration, and which promotes the interests of any person, product or service"*. Product Placement is not allowed during news and current affairs programmes.<sup>34</sup>

## **5. INTERNATIONAL PERSPECTIVE**

5.1 In other countries, advertising is regulated by legislation, and in some cases by self-regulatory organizations within the advertising industry. The Authority has looked at the different approaches from other countries in the regulation of advertising to assess the possible areas of improvement for South Africa in terms of scheduling and duration of advertisements, infomercials and programme sponsorship.

5.2 In conducting the benchmarking exercise, the Authority studied Kenya, Tanzania and Namibia as these countries were found by the Authority to

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<sup>32</sup> The Regulation relating to the definition of Advertising and the Regulation of Infomercials and Programme Sponsorship in respect of broadcasting services, government gazette 19922 of 01 April 1999, page 9.

<sup>33</sup> Position Paper on a definition of Advertising, the regulation of Infomercials and the Regulation of Programme Sponsorship, published 31 March 1999, page 16, published on the Authority's website at [www.icasa.org.za](http://www.icasa.org.za)

<sup>34</sup> The Regulation relating to the definition of Advertising and the Regulation of Infomercials and Programme Sponsorship in respect of broadcasting services, government gazette 19922 of 01 April 1999, page 8



have more information on advertising, infomercials and programme sponsorship regulation.

5.3 In addition, three developed countries were also assessed, namely the United Kingdom, Australia and Canada. The rationale behind benchmarking with these countries is that they have advertising, infomercials and programme sponsorship regulations which provide more details on the scheduling of advertisements, infomercials and programme sponsorship.

5.4 The following paragraphs discuss each of these countries in relation to legislation and the regulations.

#### 5.5 **Kenya**

5.5.1 In Kenya, advertising, infomercials and programme sponsorship is regulated by two bodies namely Communications Authority of Kenya (CAK) and the Advertising Standards Body for Kenya (ASBK). The CAK regulates Telecommunications, Radio Communication and Postal Services, and focus on the scheduling of advertisements, infomercials and programme sponsorship.<sup>35</sup> The ASBK is responsible for the content of advertisements. This is an industry body established to facilitate a process which culminates in the adoption of the Advertising Code of Practice and Marketing (Code).<sup>36</sup>

5.5.2 It is worth noting that there is no law that establishes the Code, but the Regulator adopts the Code in terms of section (13)(1) of the KICA<sup>37</sup>, which is administered by ASBK.<sup>38</sup>

5.5.3 The scheduling of Advertisements is regulated through the Kenya Information and Communications (Broadcasting) Regulations of 2009 ("Kenya Regulations").

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<sup>35</sup> <https://ca.go.ke/>

<sup>36</sup> Advertising Standard Body of Kenya (The Code of Advertising Practice and Direct marketing, April 2003)

<sup>37</sup> Kenya Information and Communications Act, 1998, page 169

<sup>38</sup> The Code of Advertising Practice and Direct Marketing, April 2003. The Advertising Standards Body is an independent body established by the marketing and advertising industry to ensure self-regulation.

## **Advertising**

5.5.4 The Kenya Regulations define advertising as the broadcast of any item in return for payment or other valuable consideration to a broadcaster. The Kenya Regulations further state that a licensee should ensure the following:

- (a) any advertising breaks are clearly distinguishable from broadcast programmes; and
- (b) its presenters, when reading advertisements, make a clear distinction between the programming material and the advertisements they deliver.

## **Infomercials**

5.5.5 According to regulation 31 of Kenya Regulations, an infomercial refers to any advertising broadcast in visual or audio form, lasting for more than two minutes which may contain demonstrations of the use of the product or service advertised, and includes direct offers to the public in return for payment, and results in the broadcaster receiving payment in monetary terms or otherwise<sup>39</sup>.

5.5.6 Regulation 31 further states that a licensee should not broadcast infomercials:

- (a) for a period exceeding three and a half hours of the performance period in any day;
- (b) during prime time; or
- (c) during any break in the transmission of a children's programme<sup>40</sup>.

5.5.7 The Kenya Regulations further provide that licensees should ensure, through visual or audio form, that the broadcast of any infomercial is distinguishable from any broadcast programme material.

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<sup>39</sup> Kenya Information and Communications (Broadcasting) Regulations, 2009.

<sup>40</sup> Kenya Information and Communications (Broadcasting) Regulations, 2009, page 149.

## 5.6 Tanzania

5.6.1 Advertising in Tanzania is regulated by the Tanzania Communications Regulatory Authority ("TCRA"). The TCRA is established in terms of the Tanzania Communications Regulatory Authority Act, 2003 (Act No. 12 of 2003). Section 109 of the Electronic and Postal Communications Act of 2010 provides the mandate to regulate Advertising and Sponsorship. The Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, 2018 ("Tanzania Regulations")<sup>41</sup> apply in relation to broadcasting content services on any platform in Mainland Tanzania.

### Advertising

5.6.2 The Tanzania Regulations define advertising similarly to Kenya as the broadcasting of any material in return for payment or other valuable consideration to a broadcaster. The purpose of advertisements should be to:

- (a) sell to audiences any product or service;
- (b) convince audiences of a belief or course of action; or
- (c) promote a product, service, belief, course of action, person or organization<sup>42</sup>

5.6.3 Regulation 20(2) of the Tanzania Regulations specifies that a licensee should observe the following, *inter alia*<sup>43</sup>:

- (a) ensure that any advertising breaks are clearly distinguishable from broadcast programmes;

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<sup>41</sup> Tanzania Communications Regulatory Authority Act of 2003 and the Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, gazette 134 of 2018.

<sup>42</sup> The Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, 2018, page 3.

<sup>43</sup> The Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, 2018, page 18.

- (b) ensure that its presenters, when reading advertisements, make a clear distinction between programming material and the advertisements they deliver;
- (c) ensure that there is a clear separation of advertising content and programme, and shall –
  - (i) broadcast a maximum of five minutes of advertising material in any thirty minutes of broadcast;
  - (ii) insert a maximum of two advertising breaks in a thirty minutes programme;
  - (iii) ensure that an advertisement does not exceed a duration of sixty seconds; and
  - (iv) abide by the provisions of the Code of Ethics for Advertising and Sponsorship for the Broadcast Media issued by the TCRA.

5.6.4 Commercial service broadcasting licensees in Tanzania are funded largely by advertising which is also a source of profit.

### **Infomercials**

5.6.5 Similar to Kenya, Tanzania defines infomercials as any advertising broadcast in visual or audio form, lasting for more than two minutes, which may contain demonstrations of the use of the product or service advertised, entailing direct offers to the public in return for payment, and which results in the broadcaster receiving payment in monetary terms or otherwise<sup>44</sup>.

5.6.6 Regulation 21(1) of the Tanzania Regulations specifies that an infomercial should not be broadcast:

- (a) for a period exceeding three and half hours of the performance period in any day; and

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<sup>44</sup>The Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations 2018 gazette 134, page 5.

(b) during prime-time or during any break in the transmission of a children's programme<sup>45</sup>.

5.6.7 Regulation 21(1) further states that the licensee should ensure that the broadcast of any infomercial is distinguishable from any programme material broadcast.

5.6.8 It is worth noting that the aforementioned obligations do not apply to broadcasting stations that exclusively broadcast infomercials<sup>46</sup>.

### **Sponsorship**

5.6.9 Tanzania defines a sponsored programme as a programme that has all or part of its cost paid by a sponsor<sup>47</sup>.

5.6.10 The Tanzania Regulations further provide that sponsorship of an information programme must not compromise the accuracy and impartiality of the programme content.<sup>48</sup>

## **5.7 Namibia**

5.7.1 The Communications Regulatory Authority of Namibia (CRAN) is an independent body that was established in terms of the Communications Act No. 8 of 2009. The CRAN was found in 2011 as a replacement to the Namibia Communications Commission. The CRAN regulates the telecommunications services and networks that entail broadcasting, postal and radio spectrum.

5.7.2 In Namibia advertising is regulated by the CRAN in terms of the Communications Act No.8 of 2009.

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<sup>45</sup> The Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, 2018, gazette 134, page 17.

<sup>46</sup> The Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, 2018, gazette 134, page 17.

<sup>47</sup> The Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, 2018, gazette 134, page 7.

<sup>48</sup> Regulation 15(2)(g).

## Advertising

5.7.3 CRAN prescribes the amount and nature of advertisements that may be broadcast and prohibits the broadcast of advertisements that are degrading or offensive<sup>49</sup>. CRAN defines an advertisement as *“any visual or audio communication, representation, reference or notification of any kind, which is intended to promote the sale, leasing or use of any brand, product, belief, goods or services, or which appeals for or promotes the support of any cause and includes promotional content of display material, menus, labels, and packaging but excludes editorial material unless it is editorial material for which consideration has been given or received”*<sup>50</sup>.

5.7.4 Regulation 16 (1) of the CRAN Broadcasting Code provides that an advertisement broadcast by a broadcasting licensee must be presented in such a manner that a reasonable audience will be able to identify such advertisement at the time of the broadcast, as advertising material<sup>51</sup>.

## 5.8 United Kingdom

5.8.1 The United Kingdom’s Office of Communications (“OFCOM”) regulates advertising in terms of section 9 of the OFCOM Broadcasting Code of 2011 (“the OFCOM Code”). The rules in this section were drafted to ensure that editorial content remains distinct from advertising. They require broadcasters to retain editorial control over the programmes they transmit.

5.8.2 The rules serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising by:

- (a) limiting the extent to which references to products, services and trademarks can feature in programming;

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<sup>49</sup> Communications Act, 2009, Section 89(2)(i).

<sup>50</sup> CRAN Advertising Code of Broadcasting for Broadcasting Licensees, gazette 6750 ,2018s, page 3.

<sup>51</sup> CRAN Advertising Code.

- (b) requiring that viewers are made aware of a reference to a product, service or trademark feature in programming as a result of a commercial arrangement between the broadcaster or producer and a third-party funder; and
- (c) helping to ensure that broadcasters do not exceed the limits placed on the amount of advertising they can transmit<sup>52</sup>.

5.8.3 The purpose of advertising rules as set out in section 9 of the OFCOM Code is to:

- (a) *“ensure that broadcasters maintain editorial independence and control over programming (editorial independence);*
- (b) *ensure that there is distinction between editorial content and advertising (distinction);*
- (c) *protect audiences from surreptitious advertising (transparency);*
- (d) *ensure that audiences are protected from the risk of financial harm (consumer protection); and*
- (e) *ensure that unsuitable sponsorship is prevented (unsuitable sponsorship)”<sup>53</sup>.*

5.8.4 Surreptitious advertising is defined as *“an advertising that involves a reference to a product, service or trade mark within a programme, where such a reference is intended by the broadcaster to serve as advertising and this is not made clear to the audience. Such advertising is likely to be considered intentional if it occurs in return for payment or other valuable consideration to the broadcaster or producer”<sup>54</sup>.*

5.8.5 Section 9.4 provides that products, services and trademarks must not be promoted in programming.<sup>55</sup>

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<sup>52</sup> OFCOM Broadcasting Code of 2011.

<sup>53</sup> The OFCOM Broadcasting Code (2011), p 46.

<sup>54</sup> Section 9.3 of the OFCOM Broadcasting Code (2011).

<sup>55</sup> Ibid

5.8.6 In terms of section 9.5 of the OFCOM Code, no undue prominence may be given in programming to a product, service or trademark. The section further states that undue prominence may result from:

- (a) *“the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or*
- (b) *the manner in which a product, service or trade mark appears or is referred to in programming”<sup>56</sup>.*

### **Advertisements and Infomercials**

5.8.7 OFCOM defines advertising as *“any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession to promote the supply of goods or services, including immovable property rights and obligations, in return for payment”<sup>57</sup>.*

5.8.8 The Code on the Scheduling of Television Advertising (April 2016) (“Scheduling Code”) defines teleshopping or infomercial *“as direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment, with a minimum uninterrupted duration of 15 minutes”<sup>58</sup>.*

5.8.9 Time slots dedicated to television advertising and teleshopping on a non-public service channel must not exceed 12 minutes per hour, per day, of which no more than 9 minutes may be television advertising. On public service channels, time slots dedicated to television advertising and teleshopping must not exceed an average of 7 minutes per hour, in a day or 8 minutes per hour between 18:00 and 23:00<sup>59</sup>.

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<sup>56</sup> Section 9.5 of the OFCOM Broadcasting Code (2011).

<sup>57</sup> For the purpose of this Code, this includes S4C, which is authorized by the Broadcasting Act 1990, Page 1

<sup>58</sup> Code on the Scheduling of Television Advertising (1 April 2016)

<sup>59</sup> Ibid



5.8.10 In the event that a broadcaster transmits less advertising than it scheduled, OFCOM may grant the broadcaster a limited exemption<sup>60</sup>.

5.8.11 Section 5 of the Scheduling Code provides that the advertising breaks during programmes on public service channels may not exceed 3 minutes and 50 seconds, of which advertising and teleshopping slots may not exceed 3 minutes and 30 seconds. This excludes advertising breaks in Film.<sup>61</sup>

5.8.12 In the event a television advertisement or teleshopping is inserted during programmes, television broadcasters must ensure that the integrity of the programme is not prejudiced. It is worth noting that breaks are not permitted within schools' programmes.<sup>62</sup>

5.8.13 Children's programmes with a scheduled duration of less than 30 minutes may not be interrupted by advertising. However, the transmission of children's programmes with a scheduled duration of longer than 30 minutes may be interrupted by advertising or teleshopping, once for each scheduled period of at least 30 minutes.

5.8.14 The following programmes may not include advertising or teleshopping breaks during the service:

- (a) religious service;
- (b) a news or current affairs programme of less than half an hour scheduled duration;
- (c) a documentary of less than half an hour scheduled duration;
- (d) a programme designed and broadcast for reception in schools; and
- (e) broadcasts of a formal Royal ceremony.

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<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup> Ibid

## Product placement

5.8.15 The Communications Act<sup>63</sup> provides for definitions of product placement and prop placement. Product placement means “the inclusion in a programme of, or of a reference to a product, service or trade mark where the inclusion is for a commercial purpose and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider and is not prop placement”<sup>64</sup>.

5.8.16 The OFCOM Code defines prop placement as “the inclusion in a programme of, or of a reference to a product, service or trade mark where the provision of the product, service or trade mark has no significant value, and no relevant provider, or person connected with a relevant provider has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in the programme, disregarding the costs saved by including the product, service or trade mark, or a reference to it in the programme”<sup>65</sup>.

5.8.17 Section 9.6 of the OFCOM Code states that product placement is prohibited except in programme genres such as films, series made for television (or other audio-visual media services), sports programmes and light entertainment programmes<sup>66</sup>.

5.8.18 In terms of section 9.7 of the OFCOM Code, news programmes or children’s programmes must not contain product placements<sup>67</sup>. Section 9.8 states that product placement must not influence the content and scheduling of a programme in a way that affects the responsibility and editorial independence of the broadcaster<sup>68</sup>.

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<sup>63</sup> The Communications Act 2003, as amended.

<sup>64</sup> Schedule 11A (1)(1) of the Communications Act 2003, as amended and section 9.5 of the OFCOM Broadcasting Code (2011).

<sup>65</sup> Schedule 11A (1)(2) of the Communications Act 2003, as amended and section 9.5 of the OFCOM Broadcasting Code (2011).

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

5.8.19 References to placed products, services and trademarks must not be promotional or unduly prominent<sup>69</sup>. Product placement is not permitted in the religious programmes, consumer advice programmes and current affairs programmes<sup>70</sup>.

5.8.20 Sections 9.11 and 9.13 prohibit the product placement of cigarettes or other tobacco products, placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products and placement of prescription-only medicines<sup>71</sup>.

5.8.21 In addition, the OFCOM Code prohibits product placement of alcoholic drinks, foods or drinks high in fat, salt or sugar, gambling, infant formula (baby milk), including follow-on formula, all medicinal products, electronic or smokeless cigarettes, cigarette lighters, cigarette papers, or pipes intended for smoking, or any product, service or trade mark that is not allowed to be advertised on television<sup>72</sup>.

5.8.22 Product placement must be signalled clearly, by means of a universal neutral logo, as follows:

- (a) at the beginning of the programme in which the placement appears;
- (b) when the programme recommences after commercial breaks; and
- (c) at the end of the programme<sup>73</sup>.

5.8.23 In terms of section 9.5 of the OFCOM Code, no undue prominence may be given in programming to a product, service or trademark. The section further states that undue prominence may result from:

- (a) *“the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or*

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<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> OFCOM Broadcasting Code (2011).

<sup>73</sup> Ibid.

- (b) *the manner in which a product, service or trade mark appears or is referred to in programming*<sup>74</sup>.

## **Sponsorship**

5.8.24 Programme-related material may be sponsored, and the sponsor may be credited when details of how to obtain the material are given<sup>75</sup>. News and current affairs programmes must not be sponsored<sup>76</sup>. Section 9.16 states that programming (including a channel) may not be sponsored by any sponsor that is prohibited from advertising on television<sup>77</sup>. Sponsorship must comply with both the content and scheduling rules that apply to television advertising<sup>78</sup>. A sponsor must not influence the content and/or scheduling of a channel or programming in such a way as to impair the responsibility and editorial independence of the broadcaster and must not be unduly prominent<sup>79</sup>.

5.8.25 In terms of section 9.19, sponsorship must be clearly identified by means of sponsorship credits. Sponsorship credits must be broadcast at the beginning and/or during and/or end of the programme<sup>80</sup> and must be distinct from editorial content and advertising<sup>81</sup>. These must make clear the identity of the sponsor by reference to its name or trade mark and the association between the sponsor and the sponsored content<sup>82</sup>.

5.8.26 Sponsorship credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor's products, services or trademarks for the

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<sup>74</sup> Section 9.5 of the OFCOM Broadcasting Code (2011).

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Section 9.20 of the OFCOM Broadcasting Code (2011).

<sup>81</sup> Section 9.21 and 9.22 of the OFCOM Broadcasting Code (2011).

<sup>82</sup> Section 9.19 of the OFCOM Broadcasting Code (2011).

sole purpose of helping to identify the sponsor and/or the sponsorship arrangement<sup>83</sup>.

5.8.27 Such credits must consist of a brief, neutral visual or verbal statement identifying the sponsorship arrangement. This can be accompanied by only a graphic of the name, logo, or any other distinctive symbol of the sponsor. The content of the graphic must be static and must contain no advertising messages, calls to action or any other information about the sponsor, its products, services or trademarks<sup>84</sup>.

5.8.28 Sections 9.26 to 9.29 provides for premium rate telephony services (PRS). Section 9.27 states that PRS will normally be regarded as products or services, and must therefore not appear in programmes, except where:

- (a) they enable viewers to participate directly in or otherwise contribute directly to the editorial content of the programme; or
- (b) they fall within the meaning of programme-related material<sup>85</sup>.

5.8.29 Section 9.28 provides that where a PRS is featured in a programme, the primary purpose of the programme must continue to be clearly editorial and PRS must be clearly subsidiary to that primary purpose.

### **Programme related material**

5.8.30 Programme-related material consists of products or services that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from, or to interact with, that programme. The OFCOM Code states that broadcasters may refer to the availability of programme-related material without such references counting towards the amount of advertising they are permitted to transmit<sup>86</sup>. Programme-related

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<sup>83</sup> Section 9.22 of the OFCOM Broadcasting Code (2011).

<sup>84</sup> Section 9.22 of the OFCOM Broadcasting Code (2011).

<sup>85</sup> OFCOM Broadcasting Code (2011).

<sup>86</sup> Ibid.

material may be promoted only during or around the programme from which it is directly derived and only where it is editorially justified<sup>87</sup>.

5.8.31 Further, the OFCOM Code states that charity appeals are allowed in programming only if they are broadcast free of charge. Whilst charities differ from purely commercial entities, there is still a potential risk that the audience may suffer financial harm as a result of such appeals. Many charities operate in competition with one another and the rules therefore aim to ensure that charity appeals benefit a range of charities. Where appropriate, broadcasters must pay attention to section 5 of the OFCOM Code on due impartiality<sup>88</sup>.

5.8.32 Broadcasters may broadcast appeals for donations to make editorial content or fund their service<sup>89</sup>. Section 9.38 states that broadcasters must not offer any additional benefits or other incentives to donors<sup>90</sup>. Appeals for funds for programming or services must not be given undue prominence in relation to the overall output of the service<sup>91</sup>.

5.8.33 The OFCOM Code defines a financial promotion as an invitation or inducement to engage in investment activity (in accordance with section 21(1) of the Financial Services and Markets Act 2000). Further, the Code defines an investment recommendation as the one that occurs when someone directly recommends a particular investment decision, for example, buying or selling a particular share or underwriting a particular share offer<sup>92</sup>. In terms of the Code, the rules applying to such promotions and recommendations reflect the particular risk that such references could result in financial harm to the audience, and the resulting need for editorial independence and transparency to be maintained and protected<sup>93</sup>.

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<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> The OFCOM Broadcasting Code (2011), p 62.

<sup>90</sup> Section 9.38 of the OFCOM Broadcasting Code (2011).

<sup>91</sup> Section 9.39 of the OFCOM Broadcasting Code (2011).

<sup>92</sup> The OFCOM Broadcasting Code (2011), p 61.

<sup>93</sup> The OFCOM Broadcasting Code (2011), p 61.

## 5.9 Australia<sup>94</sup>

5.9.1 In Australia, broadcasting is regulated by the Australian Communications and Media Authority ("ACMA"). On the other hand, advertising is regulated by three regulators, namely the Advertising Standards Bureau ("ASB"), the Australian Competition and Consumer Commission ("ACCC") and the State Departments or Offices of Fair Trading ("State Department")<sup>95</sup>.

### Advertising Regulations

5.9.2 Television and radio advertising regulation in Australia differs according to the industry or sector involved<sup>96</sup>. The regulations/codes on broadcasting include the following:

- (a) the Commercial Television Industry Code of Practice ("Australia Code") has provisions about placement of advertisements, the amount of non-program matter (including advertisements) scheduled per hour, loudness of advertisements in relation to adjacent programming and disclosure of commercial arrangements (agreements or arrangements under which products or services are endorsed or featured in programs) in exchange for payment<sup>97</sup>;
- (b) The Children's Television Standards ("Children's Standards") regulate the amount and content of advertisements directed specifically at children during designated children's viewing periods<sup>98</sup>;
- (c) The Television Program Standard for Australian Content in Advertising ("TPS 23") regulates the amount of foreign-produced advertising that may be broadcast<sup>99</sup>;
- (d) The Commercial Radio Australia Code of Practice ("Commercial Radio Code") requires that advertising is clearly distinguishable from other

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<sup>94</sup> <https://www.acma.gov.au/theACMA/About/Corporate/Responsibilities/regulation-responsibilities-acma>, retrieved on 9 July 2019.

<sup>95</sup> <https://www.acma.gov.au/theACMA/About/Corporate/Responsibilities/advertising-on-radio-and-tv>, retrieved on 8 July 2019.

<sup>96</sup> Ibid, retrieved on 8 July 2019.

<sup>97</sup> Ibid, retrieved on 8 July 2019.

<sup>98</sup> Ibid, retrieved on 8 July 2019.

<sup>99</sup> Ibid, retrieved on 8 July 2019.

- program material and places restrictions on the promotion of betting odds and gambling advertisements in live sports coverage<sup>100</sup>;
- (e) The Commercial Radio Disclosure Standards (“Disclosure Standards”) regulate the disclosure of sponsorship arrangements<sup>101</sup>;
  - (f) Community radio and television stations are not allowed to broadcast advertisements. They may broadcast sponsorship announcements, within hourly limits (five minutes for radio stations and seven minutes for television stations)<sup>102</sup>;
  - (g) The Special Broadcasting Service Code of Practice (“Special Broadcasting Code”) has provisions about placement of advertisements and hourly time limits on advertisements<sup>103</sup>;
  - (h) The ASTRA Code of Practice for Subscription Narrowcast Television (“ASTRA Code”) has provisions about the placement of advertisements and the content of locally produced advertisements<sup>104</sup>; and
  - (i) The Open Narrowcast Television Code of Practice (“Open Code”) has provisions about the placement of advertisements<sup>105</sup>.

## 5.10 Canada

5.10.1 In Canada the Canadian Radio-television and Telecommunications Commission (“CRTC”) regulates advertising.

### **Advertising**

5.10.2 The CRTC defines advertising material as *“any commercial message or programming that promotes a station, network or program but it does not include;*

*(a) a station or network identification;*

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<sup>100</sup> Ibid, retrieved on 8 July 2019.

<sup>101</sup> Ibid, retrieved on 8 July 2019.

<sup>102</sup> Ibid, retrieved on 8 July 2019.

<sup>103</sup> Ibid, retrieved on 8 July 2019.

<sup>104</sup> Ibid, retrieved on 8 July 2019.

<sup>105</sup> Ibid, retrieved on 8 July 2019.



- (b) *the announcement of an upcoming program that is voiced over credits;*  
or
- (c) *a promotion for a Canadian program or a Canadian feature film, even if a sponsor is identified in the title of the program or film or as a sponsor of that program or film, as long as the identification is limited to the sponsor's name and does not include a description, representation or attribute of the sponsor's products or services*<sup>106</sup>.

5.10.3 On the other hand, a commercial message is defined as "an advertisement that is intended to sell or promote goods, services, natural resources or activities, including an advertisement that mentions or displays in a list of prizes, the name of the person selling or promoting the goods, services, natural resources or activities, and that is broadcast in a break within a program or between programs"<sup>107</sup>.

5.10.4 The CRTC allows various aspects of broadcasting to advertise for specified minutes depending on their importance<sup>108</sup>. The time limitations exclude the promotion of Canadian programming, public service announcements, political advertisements and product placements within a television programming and virtual advertisements<sup>109</sup>.

5.10.5 The CRTC stipulates that discretionary services<sup>110</sup> receive a maximum of 12 minutes of national advertising, and mainstream sports services and national news services receive an average of 12 minutes per hour over the broadcast day<sup>111</sup>. In contrast, television stations and commercial AM and FM radio stations do not have limitations on advertising<sup>112</sup>. The Canadian Broadcasting Corporation's ("CBC") radio networks are prohibited from carrying advertising, except for programming already available on networks but strictly on a sponsored basis.

<sup>106</sup> <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2017-159/page-1.html>.

<sup>107</sup> <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2017-159/page-1.html>.

<sup>108</sup> <https://crtc.gc.ca/eng/television/pulicit/publicit.htm>.

<sup>109</sup> <https://crtc.gc.ca/eng/television/pulicit/publicit.htm>.

<sup>110</sup> A discretionary service is a Canadian specialty channel which, as defined by the Canadian Radio-television and Telecommunications Commission, may be carried optionally by all subscription television providers.

<sup>111</sup> <https://crtc.gc.ca/eng/television/pulicit/publicit.htm>.

<sup>112</sup> <https://crtc.gc.ca/eng/television/pulicit/publicit.htm>.

## Community Broadcasting Advertising

5.10.6 CRTC regulations require that<sup>113</sup>:

- (a) the cable community channels be restricted from carrying commercial advertising but be allowed to transmit sponsorships and contra advertising<sup>114</sup>;
- (b) community based low power television and digital services be restricted to 12 minutes of local advertising per hour;
- (c) campus radio stations are allowed 4.2 minutes per day of advertising; and
- (d) community radio stations are free from any time limitations of advertising.

## Infomercials

5.10.7 The CRTC defines an infomercial as “a combination of entertainment and information with the sale or promotion of goods and services in a programme that is more than 12 minutes long”. The infomercial must have a disclaimer informing the audience that the programming has been paid for by the company concerned<sup>115</sup>.

5.10.8 On commercial radio stations, an advertisement that’s more than 3 minutes long must be identified as a paid commercial, by clear and prominent announcements, before and after the segments. Announcements must be repeated during breaks and before returning to a programme.<sup>116</sup>

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<sup>113</sup> <https://crtc.gc.ca/eng/television/pulicit/publicit.htm>.

<sup>114</sup> Contra advertising refers to oral or written acknowledgement contained within a community program that has received goods and services free of charge for the use in connection with the product of the program.

<sup>115</sup> <https://crtc.gc.ca/eng/television/pulicit/publicit.htm>.

<sup>116</sup> <https://crtc.gc.ca/eng/television/pulicit/publicit.htm>.

## **6. CONCLUSION**

- 6.1 Section 55(1) of the ECA states that the Authority regulates the scheduling of Advertising, Infomercials and Programme Sponsorship. The role of ASASA, as contemplated in section 55 (1) of the ECA is with regards to content of Advertising whilst the Authority's focus is on scheduling of adverts, infomercials and programme sponsorship.
- 6.2 The Authority acknowledges the rapid evolution of the broadcasting sector; hence, it started the process to review the Regulations and has conducted an international study, comprising of six countries. The study signifies the importance of distinguishing advertising, infomercials and programme sponsorship from normal programming and highlights the broadcasters' responsibility to maintain editorial independence. Further, the rules serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising.
- 6.3 The Authority acknowledges the need for the broadcasters to generate revenue to sustain themselves, which should be balanced with the purpose of broadcasting, which is to inform, educate and entertain, whilst considering protection of consumers. Therefore, the purpose of this Discussion Document is to solicit comments as part of the process of reviewing the Regulations.
- 6.4 The Authority will hold public hearings on the Discussion Document to allow interested parties an opportunity to make oral presentation to their submissions. This will be followed by a Findings Document together with Draft Regulations. Further, the interested parties will be afforded an opportunity to make oral presentations on the Draft Regulations. After this stage the final Advertising Regulations will be published.

## **7. QUESTIONS**

- 7.1 In reviewing the current Regulations on Advertising, Infomercials and Programme Sponsorship, the Authority considered the provisions of the

legislation, the current Regulations, the views of interested parties as expressed in their responses to a questionnaire as well as international benchmarking. The information gathered through the aforesaid process necessitated a further engagement with stakeholders regarding provisions they would like to see forming part of the Regulations. The Authority felt that it is necessary and fair to provide interested stakeholders with an opportunity to make inputs that will strengthen the Regulations.

7.2 The following questions seek to get inputs and different views from stakeholders:

- 1. Are the current Regulations of Advertising, Infomercials and Programme Sponsorship effective? Please elaborate.**
- 2. Is there a need to revisit the definition of Advertising, Infomercials and Programme Sponsorship? If the response is yes, how should they be redefined?**
- 3. What is your view on advertising during news and current affairs for radio and television?**
- 4. What is the impact of the current Advertising Regulations on the financial viability of broadcasters?**
- 5. Are current Advertising Regulations able to protect broadcasters on editorial independence?**
- 6. Does the current labelling of advertising make it easy for viewers/listeners to differentiate it from normal programming?**
- 7. What is your view on advertisements that supersede programming?**
- 8. What programmes should not allow infomercials?**

- 9. Should the Authority regulate the duration of infomercials? Please elaborate**
- 10. Should the Authority regulate the frequency of infomercials? Please elaborate.**
- 11. What indicators of infomercials can be used so that they are easily identifiable?**
- 12. Should the Regulations continue to prohibit the transmission of infomercials during prime time? Kindly provide a reason for your answer.**
- 13. How should the Authority deal with push advertisement (squeezebacks)?**
- 14. How should the Authority regulate product placement and promotional material inside a programme in a way that it does not supersede programming or tamper with editorial control?**
- 15. What mechanisms should be put in place to ensure that programme sponsorship does not influence programmes?**
- 16. What other measures can be put in place to ensure compliance with programme sponsorship requirements?**
- 17. Should the Authority request that product placement be signalled? How should it be signalled?**
- 18. Should product placement and sponsorship be allowed during children's programme? If so, what mechanisms should be put in place to ensure that there is a clear distinction between product placement and the programme?**

- 19. Product placement is a component of branding, what other elements of branding should the Authority be concerned with?**
- 20. In your view how should the Authority ensure that public interest is protected when regulating advertising, infomercials, product placement and programme sponsorship?**
- 21. What lessons can be learned from other countries in terms of advertising, infomercials, programme sponsorship and product placement?**
- 22. How should the Authority ensure the balancing act between sustainability of broadcasters relating to revenue generation through sponsorships, infomercials and advertising, with the need to protect the consumers?**
- 23. What is your view in terms of promotional material inside programmes and advertising during the breaks on whether these amount to excessive advertising?**
- 24. What are the determinants of advertising revenue?**
- 25. What is the impact of online media on radio and television advertising revenue?**
- 26. To what extent does the ECA provide the Authority with the requisite legislative mandate to regulate the broadcasting Advertising, Infomercials and Programme Sponsorship during the digital era?**
- 27. To what extent should the Authority regulate Advertising, Infomercials and Programme Sponsorship in the digital environment to ensure that the regulations protect consumers?**

**28. Are there any other issues that the Authority should consider in the Regulation of Advertising, Infomercials and Programme Sponsorship?**