

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE 959 OF 2022

**NOTICE IN TERMS OF SECTION 4C (6) OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ACT 13 OF 2000****FINDINGS DOCUMENT ON THE THE REVIEW OF THE INDEPENDENT BROADCASTING AUTHORITY (ADVERTISING, INFOMERCIALS AND PROGRAMME SPONSORSHIP) REGULATIONS, 1999**

1. On 26 March 2021, the Independent Communications Authority of South Africa ("the Authority") published the Discussion Document on Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999¹ ("**the Regulations**") and invited interested persons to submit their written representations on the Discussion Document.
2. The Authority received seven (7) written representations from various stakeholders of which four (4) indicated that they required an opportunity to make oral representations to the Authority. The Authority conducted oral hearings on 14 and 26 July 2021, which were held virtually via MS Teams.

¹ Government Gazette No 44333.

3. The Authority advises that it has concluded its Inquiry into the review of the Regulations and hereby, in line with section 4C (6) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act"), publishes the Authority's Findings Document which outlines its findings. The Authority's Findings Document will be published in the government gazette and on the Authority's website at <http://www.icasa.org.za> and is also available in the Authority's Library at No. 350 Witch-Hazel Avenue, Eco Point Office Park, Centurion between 09h00 and 16h00, Monday to Friday.

4. In summary, the Authority's findings are:

Findings on the Regulations and Audio and Audio-Visual Draft White Paper

- 4.1 The Authority finds that stakeholders are of the view that the Audio and Audio-Visual Draft White Paper is relevant to the review of the Regulations. Particularly, the draft white paper suggests that an inquiry be conducted prior to the review of the Regulations.
- 4.2 Some of the submissions indicated that all the content service providers should be regulated in the same way, and a watertight advertising revenue cap for subscription broadcasting services should be introduced. Other stakeholders go further to advise the Authority that when reviewing the regulations, advertising definition should be suitable for all audio and audio-visual content service providers and that the Authority should consider the realities of the audio-visual environment and advertising in a digital on-line context.

Effectiveness of the current Regulations

- 4.3 The Authority finds that four stakeholders are of the view that the current Regulations are effective however, some aspects of the Regulations should be reviewed. One stakeholder submits that the Authority should allow for a more flexible and light touch approach in the regulation of advertisement, infomercials and programme sponsorship. One stakeholder argues that the

Authority should review the Regulations substantially to remove unnecessary provisions and to shift to principle-based provisions rather than prescriptive granular requirements.

Definition of Advertising, Infomercials and Programme Sponsorship

- 4.4 The Authority's finding is that the stakeholders have opposing views in relation to whether there is a need to review the definitions of advertising. Some stakeholders are of the view that the current definition is too prescriptive and requires relaxation in the form of a principle-based approach, while others require removal of certain wording within the definition. Other stakeholders regard the definition on advertising as still relevant and must remain unchanged, whilst others are calling for total de-regulation.
- 4.5 The Authority finds that stakeholders hold contrasting views regarding the definition of infomercials. One stakeholder is of the view that an amendment is necessary in relation to time allocation. However, another stakeholder contends that infomercials are simply outdated and should just be incorporated into mainstream advertising.
- 4.6 Furthermore, the Authority finds that stakeholders propose that the definition of 'programme sponsorship' should exclude indirect funding and the financing of the transmission of a broadcast programme. Others submit that the definitions should be updated to include new players like online/OTT services and others are calling for de-regulation.

Impact of the current advertising regulations on the financial viability of broadcasters


- 4.7 The Authority finds that a stakeholder suggests lesser restrictions in the advertising regulations as the Regulations have impacted their financial viability considering the pressure, they are facing from factors such as competition with unregulated on-demand services, loss of advertising

revenue to online advertisers, and tough economic and operating conditions. Some stakeholders are of view that the current Regulations are sufficient.

- 4.8 The Authority further notes that, one stakeholder contests that if the broadcasters are to be strengthened, there will be no need for the broadcasters to depend extensively on advertising and thus compromise their respective editorial independence and news authenticity.

The balancing act between sustainability of broadcasters relating to revenue generation through sponsorships, infomercials and advertising, with the need to protect the consumers

- 4.9 The Authority finds that one stakeholder is of the view that the balancing act is achieved through the Regulations and the Advertising Regulatory Body's Code. Another stakeholder suggests that the balancing act can be achieved by removing unduly restrictive regulations and having a light touch approach. Another stakeholder believes that market forces will negatively impact broadcasters who fail to maintain the balancing act.



DR. KEABETSWÉ MODIMOENG
CHAIRPERSON
DATE: 30/03/2022



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

FINDINGS DOCUMENT

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

APRIL 2022

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1 ACKNOWLEDGEMENTS

- 1.1. The Independent Communications Authority of South Africa ("the Authority" or "ICASA") would like to acknowledge all stakeholders who participated in the process aimed at reviewing the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999.
- 1.2. The following stakeholders submitted written representations to the Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, published in Government Gazette 44333 on 26 March 2021:
 - 1.2.1 eMedia Investments;
 - 1.2.2 Media Monitoring Africa (MMA);
 - 1.2.3 MultiChoice;
 - 1.2.4 National Association of Broadcasters (NAB);
 - 1.2.5 OUTsurance;
 - 1.2.6 South African Screen Federation (SASFED); and
 - 1.2.7 The South African Broadcasting Corporation (SABC).

2 INTRODUCTION

- 2.1 The Authority published a Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999 ("the Regulations") on 26 March 2021 ("the Discussion Document")¹. The purpose of the Discussion Document was to solicit comments from stakeholders.
- 2.2 The Authority is reviewing the Regulations in line with section 55 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("ECA"). Furthermore, section 4(3)(j) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("the ICASA Act") provides that the Authority may make regulations on any matter consistent with the objects of this Act and the underlying statutes or that are incidental or necessary for the performance of the functions of the Authority.
- 2.3 The closing date for the written representations on the Discussion Document was 07 June 2021. The Authority received seven (7) written representations of which four (4) indicated that they require an opportunity to make oral presentations to the Authority.
- 2.4 The Authority conducted oral hearings on 14 and 26 July 2021, which were held virtually via MS Teams. The following stakeholders made oral representations:
- 2.4.1 eMedia;
 - 2.4.2 MMA;
 - 2.4.3 MultiChoice; and
 - 2.4.4 SABC.
- 2.5 Subsequent to that, the Authority has developed a Findings Document. This Findings Document is informed by, among other things:
- 2.5.1 Internal Desktop research (Benchmarking study),

¹ Published in Government Gazette No.44333 dated 26 March 2021.

- 2.5.2 Written submissions received in response to the discussion document,
 - 2.5.3 Oral representations made at the public hearings and additional information requested by the Authority thereof, for which was submitted after the hearings by stakeholders, and
 - 2.5.4 Relevant legislation.
- 2.6 This Findings Document summarises the views expressed by stakeholders with respect to the Regulations. The summary is not exhaustive but reflects on salient issues raised by interested parties. The Findings Document is not published for comments, but rather to inform stakeholders of the Authority's findings from the input received after the publication of the Discussion Document. However, the Authority has developed the Draft repealed Regulations for public comments.
- 2.7 The analysis of submissions, and the Authority's findings and positions are set out below under each section.

3 LEGISLATIVE FRAMEWORK

- 3.1 The Authority is empowered in terms of section 4B of the ICASA Act, to conduct Inquiries. The Authority is reviewing the Regulations in line with section 55 (1) of the ECA. Section 55 (1) 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".

- 3.2 Furthermore, section 4 (3)(j) of the ICASA Act provides that";

"the Authority may make regulations on any matter consistent with the objects of this Act and the underlying statutes or that are incidental or necessary for the performance of the functions of the Authority."

- 3.3 The Authority has summarised general comments on section 55 (1) of the ECA and its mandate received from stakeholders.
- 3.4 MultiChoice submits that the regulations prescribed by ICASA in terms of section 55 of the ECA, if any, must (a) fall within the parameters of the Authority's jurisdiction under that empowering provision; and (b) regulate no more than necessary to achieve clearly defined objectives. MultiChoice suggests that the Authority, when developing Regulations, should have careful regard to the new features that characterise the modern audio-visual and advertising environment.²
- 3.5 MultiChoice points out that in recent years the trend has shifted to focus on the protection of consumers from harmful advertising content, and away from scheduling restrictions.³
- 3.6 MultiChoice is concerned that the questions in the Discussion Document are not within the Authority's mandate. It provides an example that, in reviewing the Regulations, the Authority seeks to ensure that advertising, infomercial and programme sponsorship are clearly distinguishable from normal programming. MultiChoice's view is that this is already covered by the Advertising Regulatory Board's ("ARB") Code of Advertising Practice, which requires advertisements to be clearly distinguishable and readily recognised as an advertisement.⁴
- 3.7 Further, MultiChoice proposes that when the Authority prescribes regulations in terms of section 55 (1), it should be mindful of section 2 (y) of the ECA, which provision, according to MultiChoice, enjoins the Authority to refrain from undue interference in the commercial activities of licensees⁵.
- 3.8 MMA is of the view that as an organ of state, ICASA, needs to ensure that it does not limit the respect, protection and promotion of people's rights to

² MultiChoice submission: Advertising Discussion Document, 2021, page 13

³ Ibid, page 14

⁴ Ibid, page 15

⁵ Ibid, page 15.

freedom of expression as a result of some of the proposals entailed in the Discussion Document. MMA further states that ICASA must limit itself and exercise its authority as far as the powers contained in the legislative mandate as provided for in the ECA but must not exceed this parameter.⁶

- 3.9 MMA points out that it is brightly aware of the proposed merger between ICASA, FPB and .ZADNA and therefore, the Authority should be careful not to expand its current mandate more than is required unless it has necessary resources to do so⁷. MMA further alludes that when the Authority carries its regulatory duties, it should not undermine the respective roles of the self-regulatory bodies such as ARB and Interactive Advertising Bureau of South Africa (IABSA)⁸.

3.10 **The Authority's finding and position**

- 3.10.1 **The Authority's finding** is that stakeholders are of the view that the Authority's mandate is limited to section 55 (1) of the ECA, and it should exercise its powers and duties in line with the empowering provision. The stakeholders are emphasizing the need to be mindful of the objectives listed in section 2 (y) of the ECA and in the Bill of Rights as stipulated in the Constitution of South Africa. Furthermore, the stakeholders have also expressed concern on the overlapping jurisdictions and the importance of ensuring that regulatory bodies do not encroach on one another's mandates.

- 3.10.2 **The Authority's position** is that section 55 (1) of the ECA gives the Authority the mandate to regulate the scheduling of Advertising, Infomercials and Programme Sponsorship. On another hand, the role of ASASA, as contemplated in section 55 (1) of the ECA is with regards to content of Advertising. ICASA and the ARB have an MOU which sets out how the entities will work together.

⁶ MMA submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 5

⁷ Ibid, page 5

⁸ Ibid, page 5

- 3.10.3 The Authority is of the considered view that it is within its mandate to ensure that advertising, infomercials and programme sponsorship should be clearly identifiable from normal programming, for example, sponsorship should be subordinate to the content of programming material and be labelled as per Regulation 5.9.

4 ADVERTISING REVENUE

- 4.1 SABC states that as of 2020, the SABC's funding sources were primarily made up of advertising & sponsorships (77%) and television license fees (14%). Only 3% of revenue is currently derived from government grants. Furthermore, the SABC is of the view that section 2 (t) of the ECA empowers the Authority to develop regulations to ensure that it remains financially sustainable.⁹
- 4.2 SABC proposes that the Authority should make recommendations in accordance with section 4 (3)(a) of the ICASA Act, to Parliament for the amendment of section 60 (4) of the ECA. According to the SABC, the proposed amendment will allow the Authority to prescribe regulations that place an effective revenue cap on the advertisement and sponsorship revenue on subscription broadcasters.¹⁰
- 4.3 SABC therefore recommends that section 60 (4) of the ECA be amended as follows:

"Subscription broadcasting services may draw their revenues from subscriptions, advertising and sponsorships, however, with respect to any one subscription broadcasting service, in no event may advertising or sponsorship, or a combination thereof, be the [largest source of annual revenue.] more than 25% of the total television advertising revenue in the Republic or such lesser percentage as may be prescribed by the Authority.

⁹ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 5

¹⁰ *Ibid.* page 6

*The Authority shall also prescribe detailed requirements for compliance with such regulations and the monitoring thereof*¹¹

4.4 The Authority's finding and position

4.4.1 **The Authority's finding** is that one stakeholder is of the view that it is desirable for the Authority to propose an amendment of section 60 (4) of the ECA to give heed to the financial distress of the stakeholder by placing an effective revenue cap on the advertisement and sponsorship revenue on subscription broadcasters.

4.4.2 **The Authority's position** is that it is committed to protecting the integrity and viability of public broadcasting services as contemplated in section 2 (t) of the ECA. Further, the Authority's position is that this Inquiry process is focused on section 55 of the ECA, which is about scheduling of advertising infomercial and programme sponsorship. Section 60 (4) of the ECA falls outside the scope of this Inquiry.

5 AUDIO AND AUDIO-VISUAL CONTENT SERVICES (AAVCS) - DRAFT WHITE PAPER

5.1 eMedia submits that the Draft White Paper recognises that there is a regulatory imbalance between the regulations of advertising on broadcast platforms and online platforms. It further supports the idea that, not only broadcasters but all content service providers should be regulated in the same way insofar as advertising is concerned.¹² Furthermore, eMedia advises the Authority to put the advertising regulations on hold until the results of the Draft White Paper become an act.¹³

5.2 MultiChoice supports the legislative framework proposed in the Draft White Paper on Audio and Audio-Visual content but are concerned that, the Draft

¹¹ Ibid, pages 6 - 7.

¹² eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 1

¹³ Ibid, page 15

White Paper does not expand on regulatory framework for advertising on Audio and Audio-Visual Content. However, they implore the Authority to be flexible in the regulation of advertising as it pertains to Audio and Audio-Visual services.¹⁴

- 5.3 MultiChoice argues that the review must consider the realities of the audio-visual environment and advertising in a digital on-line context.¹⁵ It proposes that the Authority should make forward-looking regulations that could be easily applied to all audio-visual services, both linear and non-linear, to avoid ICASA having to repeat this review once the legislation is amended to apply to on-demand services. Accordingly, the outcome of this review of the Advertising Regulations should be future proof.¹⁶
- 5.4 The NAB submits that the process comes at a time when the DCDT is processing an overhauled and progressive licensing and regulatory framework through the draft white paper on audio and audio-visual content service policy framework to ensure inter alia regulatory parity, legal certainty and to promote increased investment.¹⁷
- 5.5 NAB further states that though the Draft White Paper acknowledges the need to ensure consistent application of advertising regulations across all content services, including online platforms, the Draft White Paper also recommends a more flexible approach to the regulations of advertising.¹⁸
- 5.6 Therefore, the NAB supports the policy review process currently underway and is mindful of the engagement between the policy maker and regulator. However, the NAB is concerned that the review of the current regulations at this juncture may create further inhibitors to sector investment and growth. The NAB recommends that should the Authority seek to proceed

¹⁴ MultiChoice submission: Advertising Discussion Document, 2021, page 12

¹⁵ Ibid, page 12

¹⁶ Ibid, pages 32 - 33

¹⁷ NAB submissions: Discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, Unnumbered page 2

¹⁸ Ibid, Unnumbered page 2

with this review, it should use a light touch approach to enable the industry to grow and innovate, as recommended in the Draft White Paper.¹⁹

- 5.7 SABC referenced clause 5.4.4.5 of the AAVCS Draft White Paper, which proposes that the Authority should conduct an inquiry before prescribing advertising regulations.²⁰
- 5.8 SABC further submits that, the Department of Communications and Digital Technologies (DCDT) and the Authority should consider various options, such as an advertising cap, reduction of advertising minutes per hour for subscription services, restrictions on the rate card discounts and any other necessary regulatory intervention. Essentially, a watertight advertising revenue cap for subscription broadcasting services will ensure financial sustainability of FTAs.²¹
- 5.9 SABC provides statistics to demonstrate its advertising revenue for the past four years, indicating the following fiscal percentage change in revenue for television and radio respectively:
- 5.9.1 A decline from 4.7% (F17/18 vs F16/17) to 4.1% (F18/19 vs F17/18) to 3.4% (F19/20 vs F18/19) **for Television.**
- 5.9.2 A decline followed by an increase from 12.3% (F17/18 vs F16/17) to 2.9% (F18/19 vs F17/18) to 9.0% (F19/20 vs F18/19) **for Radio.**²²
- 5.10 SABC states that its submission was made against the backdrop of the anticipated merger of regulators which will ultimately form the consolidated ICT sector regulator. It further points out that the National Integrated ICT

¹⁹ Ibid, Unnumbered page 3

²⁰ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 7.

²¹ Ibid, page 8.

²² Ibid, page 8.

Policy White Paper speaks of the consolidation of regulations across the Internet and ICT value chain.²³

5.11 SABC is of the view that the AAVCS Draft White Paper seeks to bring about regulatory parity for all players, since it proposes that associated broadcasting services like catch-up services and internet services should be subjected to an industry code of conduct. It further states that the AAVCS Draft White Paper proposes that the code of conduct should be applied through self-regulatory bodies such as the BCCSA, in consultation with ICASA/ICT Sector Regulator for all audio and audio-visual content service providers.²⁴

5.12 SABC states that it is anticipated that at some point the ICT Sector Regulator will have jurisdiction on all the audio and audio-visual content service providers. Therefore, the advertising definition should be suitable for all audio and audio-visual content service providers.²⁵

5.13 **The Authority's finding and position**

5.13.1 **The Authority's finding** is that stakeholders are of the view that the Audio and Audio-visual Draft White Paper is relevant to the review of the Regulations. Particularly, the draft white paper suggests that an inquiry be conducted prior to the review of the Regulations.

5.13.2 Some of the submissions indicated that all the content service providers should be regulated in the same way, and a watertight advertising revenue cap for subscription broadcasting services should be introduced. Other stakeholders go further to advise the Authority that when reviewing the regulations, advertising definition should be suitable for all audio and audio-visual content service providers and that the Authority should

²³ SABC: Additional submission on the ICASA Discussion Document on the Advertising, Sponsorship, and Infomercials Regulations of 1999, page 4

²⁴ Ibid, page 4.

²⁵ Ibid, page 5.

consider the realities of the audio-visual environment and advertising in a digital on-line context.

5.13.3 **The Authority's Position** is that in terms of section 4 (3A) of the ICASA Act, the Authority must consider policy made by the Minister. The Authority has provided its representations to the Minister/ DCDT to address issues on the Draft White Paper. The Authority advises that it is reviewing the Regulations in line with the current legislation.

5.13.4 The Regulations have been in force since 1999, therefore it is necessary to continue with the repeal of the regulations to align them with the current legislation being the Electronic Communications Act. Any changes that may result from the White Paper Policy or subsequent amendments to the current legislation will be addressed by the Authority accordingly at such point.

6 PROPOSED REGULATORY APPROACH

6.1 MultiChoice proposes that the Authority should review whether it is necessary and relevant to regulate advertising in the context of the developments in the current broadcasting and audio-visual landscape. MultiChoice further submits that the current broadcasting and audio-visual landscape warrants a drastic departure by the Authority from the current regime, due to the following:

6.1.1 licensed broadcasting services are increasingly having to compete with unlicensed digital platforms, which are not subject to any regulations, and;

6.1.2 the rationale for imposing scheduling restrictions in regulations is diminishing given the commercial constraints to which broadcasters are subject to.²⁶

²⁶ MultiChoice submission: Advertising Discussion Document, 2021, pages 16 - 17

6.2 MultiChoice is of the view that the previous rationale for advertising scheduling restrictions has diminished significantly and the Authority should consider repealing the Advertising Regulations.²⁷

6.3 MultiChoice states that, the Authority should be guided by the following when reviewing the Advertising Regulations:

6.3.1 The changing landscape warrants an easing of the current advertising restrictions rather than the introduction of any additional restrictions.

6.3.2 Any Advertising Regulations which ICASA may prescribe under section 55 (1) of the ECA should be capable of being applied to all audio-visual services, not only broadcasting services, and taking into account the proposals in the Draft White Paper.

6.3.3 The Authority should make forward-looking regulations, to avoid having to repeat this review once the legislation is amended; and

6.3.4 The Authority should continue to apply the established principle and differentiated approach, to regulating different tiers of broadcasting services, with commercial subscription broadcasting services attracting the least onerous regulations.²⁸

6.4 **The Authority's finding and position**

6.4.1 The **Authority's finding** is that one stakeholder is of the view that the Authority should consider repealing the Advertising Regulations. Further, the Authority finds that the stakeholder states that licenced broadcasters compete with unlicensed digital platforms which are not regulated. The submissions indicate that easing of the current advertising restrictions rather than the introduction of any additional restrictions should be considered.

6.4.2 **The Authority's position** is that it is still in process of reviewing the Regulations, and upon the finalization of the process, it would decide on

²⁷ Ibid, pages 16 - 17

²⁸ Ibid, page 18

whether to amend certain clauses of the Regulations or not. However, the Regulations will be repealed to align them with the ECA and the ICASA Act.

- 6.4.3 Furthermore, the Authority's position is that it does not have jurisdiction over unlicensed digital platforms. The Authority is of the considered view that section 55 (1) applies to broadcasters only. The White Paper Policy is not yet finalised. ICASA cannot include audio-visual services in the ambit of section 55 (1) until such time that this section is amended. Forward looking regulations must be supported by enabling legislation.
- 6.4.4 Any changes that may result from the White Paper Policy or subsequent amendments to the current legislation will be addressed by the Authority accordingly at such point.
- 6.4.5 With regards to MultiChoice's suggestion that the Authority applies a differentiated approach to regulating different tiers of broadcasting services, the Authority is of the view that this Regulation relates to protection of consumers and ensuring editorial independence, and therefore the differentiation is not necessary.

7 RECENT TRENDS ON ADVERTISEMENTS, INFOMERCIALS AND PROGRAMME SPONSORSHIP REVENUES

- 7.1 eMedia indicates that the revenue share for eMedia investments is 21,71%, SABC Group share is 28,78%, MultiChoice is 39,02% and other broadcasters' share is 10, 49%.²⁹
- 7.2 eMedia submits that it supports the proposal made by the Draft White Paper that legislation should require the Authority to hold an inquiry concerning, *inter alia*, issues surrounding whether the current share of advertising revenue by subscription services is appropriate and what the impact of

²⁹ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, Annexure; SA TV Audience & Revenue Share

online advertising will be on the TV advertising market in both the long and short term. eMedia urges the Authority to protect the sustainability and viability of free-to-air services in South Africa which will mean that the Authority should consider the expansion of the proposed regulatory licensing framework to include all audio-visual content service providers and not only broadcasters.³⁰

- 7.3 Furthermore, eMedia states that with the shrinking advertising pie available to broadcasters, to ensure the continued viability of free-to-air broadcasters' limitations need to be placed on the amount of advertising time available to subscription broadcasters.³¹
- 7.4 MultiChoice submits that the world has changed since the publication of the 1999 regulations on advertising, sponsorship and infomercials by the then IBA. It further argues that, in 1999 broadcasters-controlled access to television advertising, and competition for viewers' attention was limited to radio, print media, movie theatres, video stores and game consoles. This has changed due to the increase in the online services.³²
- 7.5 MultiChoice further outlines the increase in online advertising which has grown from 9.2% in 2016 to 13.1% in 2019 and 21.1% in 2020.³³ It further submits that, in addition to the pressure exerted by online services, the pressure is also felt from illegal content providers.³⁴
- 7.6 MultiChoice refers the Authority to the European AVMS Directive 2010 whose aim was to protect consumers from excessive advertising and set rule to ensure such. As a result, television advertising, teleshopping and sponsorship has been updated in line with the market realities. MultiChoice is further of the view that the Authority's regulations should be in line with the market realities.³⁵

³⁰ Ibid, page 2

³¹ Ibid, page 3

³² MultiChoice submission: Advertising Discussion Document, 2021, page 3

³³ Ibid, page 5

³⁴ Ibid, page 8

³⁵ Ibid page 9

7.7 SABC submits that its TV revenue declined for the period between April 2016 to March 2020. The percentage change variance in revenue for SABC TV decreased from 10.9% to -6.2% to -10.3%. DSTV increased from -3.9% to 9.5% to 4.5% and eMedia went from 15.9% to 6.9% to 13.8%. SABC further argues that the percentage change variance in revenue for SABC Radio remained steady from 4.0% to 6% to 5.5% for April 2016 to March 2020. SABC argues that Primedia's revenue went from 16.5% to -6.7 % to 12.2%. It alludes that SABC TV and Radio advertising revenue are on a decline.³⁶

7.8 The Authority's finding and position

7.8.1 **The Authority's finding** is that all the stakeholders are concerned about declining advertising revenue however, one stakeholder indicates that whilst its television revenue declined in the period April 2016 to March 2020, other operators' television revenue increased. Another submission indicates that the increase in online advertising, including illegal content providers have put pressure on traditional broadcasters' advertising revenue. As a result, the broadcaster proposes that the Authority should align the Regulations to market realities.

7.8.2 **The Authority's position** is that it accepts that there are market forces such as audience fragmentation, competition with unregulated on-demand services which negatively impact on broadcasting revenue trends. However, it is the position of the Authority that it will continue to observe and monitor the revenue trends.

³⁶ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 9

8 RESPONSE TO SPECIFIC QUESTIONS ON THE DISCUSSION DOCUMENT

In the ensuing paragraphs the Authority addresses stakeholders' responses to the specific questions posed in the Discussion Document.

8.1 QUESTION 1: ARE THE CURRENT REGULATIONS OF ADVERTISING, INFOMERCIALS AND PROGRAMME SPONSORSHIP EFFECTIVE?

8.1.1 eMedia proposes that the Regulations need to be reviewed to consider a light touch approach which would allow a broadcaster greater flexibility in relation to advertising, sponsorship, product placement and infomercials. It proposes that the light touch approach could be determined within certain loosely defined parameters while, at the same time, allowing the broadcaster to base any of its decisions on factors determined by it, such as impact on audience share and commercial rationale.³⁷

8.1.2 Furthermore, eMedia submits that the limitations placed in e.tv's licence condition relating to advertising, disadvantages it and should be amended on its license than in any regulations. eMedia suggests that limitations placed on MultiChoice should be substantially more stringent than those placed on a free-to-air broadcaster, since MultiChoice has no such limitations.³⁸

8.1.3 MultiChoice submits that the Regulations have been in force for over 20 years, and they are not based on the current environment driven by digital advertising. They are based on a world which bears no resemblance to the current digital advertising environment.³⁹

8.1.4 MultiChoice further states that these restrictions on advertising, infomercials and programme sponsorship are no longer appropriate. In

³⁷ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, pages 5-6

³⁸ Ibid, page 6

³⁹ MultiChoice submission: Advertising Discussion Document, 2021, page 22

this regard, it urges the Authority to assess the rationale to the extent that they are retained. The Authority should review them substantially to remove unnecessary provisions and shift to principle-based provisions rather than prescriptive granular requirements.⁴⁰

8.1.5 NAB is encouraged that ICASA's document recognizes the rapid evolution of the broadcasting sector. However, the NAB is of the view that it seems ICASA's intended approach is to continue to regulate advertising in a conventional manner, one that is seemingly not informed by market conditions in an environment where regulatory parity is still under policy consideration. Such an approach is likely to adversely impact the sustainability of the broadcasting sector which is primarily dependent on advertising revenue.⁴¹

8.1.6 SABC is happy with the Regulations *albeit* 18 years have passed. Furthermore, the SABC states that the Regulations are effective in protecting consumers from excessive advertising and protecting children from inappropriate advertising content, and to ensure retention of broadcasters' editorial independence and integrity, in so far as broadcasting content is concerned.⁴²

8.1.7 SASFED submits that the Regulations are effective in their current form save for the fact that any amendment thereto needs to allow for more flexibility on the part of the Authority in discharging its mandate. The Authority should take into consideration the impact of Covid19 and the challenges and pressures the independent production sector, and the audio-visual sector at large is under.⁴³

⁴⁰ Ibid, page 22

⁴¹ NAB submission: Discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, Unnumbered page 2

⁴² SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 12

⁴³ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 4

8.1.8 SASFED is of the view that flexibility from their perspective can include more airtime for advertisement during peak time and during news time as that is where broadcasters such as the SABC generate a lot of its revenue.⁴⁴ Further to that, SAFED is reminding the Authority about the limitation it has when discharging its functions which is confined to scheduling and frequency, not actual content of advertising.⁴⁵

8.1.9 Lastly SASFED refers the Authority to the Discussion Document on regulation 5.3, which provides that television broadcasters must not derive any form of programme sponsorship from current affairs or news, however they can accept such sponsorship in so far as it relates to weather forecast and sports bulletin forming part of such news broadcast. This provision however is silent on how such is applicable to sound broadcasting.⁴⁶

8.1.10 OUTsurance is of the view that the Regulations, viewed in conjunction with the Code of advertising Practice issued by the Advertising Regulatory Board ("ARB"), provides an effective framework to regulate marketing efforts.⁴⁷

8.1.11 **The Authority's finding and position**

8.1.11.1 **The Authority's** finding is that four (4) stakeholders are of the view that the current regulations are effective however, some aspects of the regulations have to be reviewed. One stakeholder submits that the Authority should allow for a more flexible and light touch approach in the regulation of advertisement, infomercials and programme sponsorship. One stakeholder argues that the Authority should review the Regulations substantially to remove unnecessary provisions and to shift to principle-based provisions rather than prescriptive granular requirements.

⁴⁴ Ibid, page 4

⁴⁴ Ibid, page 4

⁴⁵ Ibid, page 4

⁴⁶ Ibid, page 4

⁴⁷ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 1

8.1.11.2 **The Authority's position** is that the purpose of this inquiry is to determine the effectiveness of the Advertising Regulations and whether there is a need for amendments. The Authority will apply the ECA and related legislations and consider submissions and benchmarking when reviewing the current regulations in order to make a decision on whether an amendment is necessary, and if so to what extent.

8.2 QUESTION 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?

8.2.1 eMedia proposes that all public service announcements whether paid or unpaid should be excluded from the definition of advertisement. eMedia further proposes that product placement should be defined separately.⁴⁸ eMedia further proposes that product placement should be excluded from the definition of sponsorship.⁴⁹

8.2.2 eMedia submits that considering the current environment, an Infomercial should be permitted subject to it being of one minute duration or less, as would benefit free-to-air broadcasters given the limitations placed on eMedia relating to, *inter alia*, the amount of advertising it broadcast in any one hour and per hour during any licence year.⁵⁰

8.2.3 MultiChoice submits that the current definition of advertising is appropriate and does not require any amendment. It opposes the introduction of any further granular restrictions on advertising which would constrain the ability of broadcasters to earn advertising revenue at a time when they are facing increased competition and financial pressure. Furthermore, it reasons that Subscription broadcasting services, in particular, are under

⁴⁸ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 6

⁴⁹ Ibid, page 6

⁵⁰ Ibid, page 6

pressure to ensure that viewers experience minimal interruption to retain subscribers, therefore it is not necessary to impose restriction.⁵¹

8.2.4 MultiChoice argues that the definition of "infomercial" may no longer be required, as infomercials are outdated and no longer a prominent feature and could simply be treated as normal mainstream advertising. Infomercials are unlikely to be relevant in future and therefore, should be removed.⁵² To the extent that it is retained, the definition of "infomercial" is adequate.⁵³

8.2.5 MultiChoice states that, the definition of "Programme Sponsorship" is too wide. It need not extend to (a) indirect financing or, (b) the financing of the transmission of a broadcast programme. Programme sponsorship is an important means of funding local productions, and it should not be unduly restricted through excessively wide definitions.⁵⁴

8.2.6 MultiChoice points out that broadcasters are significant investors in local productions as local content is a commercial and regulatory imperative. However, local production is under pressure. Economic conditions continue to worsen in the face of competition with costs rising and, support from government and funding sources being under pressure. In this context, programme sponsorship has become an increasingly important source of funding for local production.⁵⁵

8.2.7 MultiChoice states that although it is a significant source of funding, programme sponsorship does not pose a threat to editorial control over programming. Broadcasters and producers have processes in place to ensure that the editorial integrity of programmes is not undermined when it is sponsored.⁵⁶

⁵¹ MultiChoice submission: Advertising Discussion Document, 2021, page 19

⁵² Ibid, pages 19 - 20

⁵³ Ibid, page 22

⁵⁴ Ibid, page 23

⁵⁵ Ibid, page 20

⁵⁶ Ibid, page 20

8.2.8 Given the above, MultiChoice believes that it is not necessary to introduce any further restrictions to protect the editorial integrity of sponsored programmes, but rather to amend the existing restrictions on programme sponsorship so that they are less granular.⁵⁷ MultiChoice states that the Advertising Regulations should rather focus on the key principle which is that programme sponsorship must not detract from the broadcaster's editorial control over the programme.⁵⁸

8.2.9 In that regard, MultiChoice proposes that the definition be amended to read as follows:

*"Programme sponsorship means the direct financing, whether partial or total, of the production of broadcast programme material by an advertiser or person with a view to promoting its or another person's name, trademark, image, activities or product"*⁵⁹.

8.2.10 NAB is of the view that greater flexibility is required, given the prevailing economic circumstances - that de-regulation be considered and carefully designed to address any public interest concerns regarding advertising, infomercials, and programme sponsorship.⁶⁰

8.2.11 SABC states that the Authority needs to clarify definitions across the board in respect of sponsorship, infomercials, and advertising. According to the SABC, the definitions should be updated to include new players, like online/OTT services.⁶¹

8.2.12 In essence, the SABC is advising the Authority to take into consideration the impact of the National Integrated ICT Policy White Paper when reviewing its current regulations and to consider amending the definition of an "Advertisement". The SABC's proposal regarding the definition of an

⁵⁷ MultiChoice submission: Advertising Discussion Document, 2021, page 20

⁵⁸ Ibid, page 21

⁵⁹ MultiChoice: Supplementary submission on the Discussion Document on the Advertising Regulations, page 2

⁶⁰ NAB submission: Discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, Unnumbered page 3

⁶¹ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 13.

"Advertisement" is to define it as defined in the Australian Association of National Advertisers.⁶²

8.2.13 SABC submits that the Australian Association of National Advertisers defines advertising as: "any material which is **published or broadcast** using **any medium or any activity** which is undertaken by, or on behalf of an advertiser or marketer, over which the advertiser or marketer has a reasonable degree of control, and that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct. The SABC points out that a lesson can be drawn from the above definition, as it is broad enough to cover both broadcasts and publications of all audio and audio-visual content service providers.⁶³

8.2.14 SABC states that the Authority defines advertisement as "any material broadcast, in visual and/or audio form, for which the broadcaster receives a consideration, in cash or otherwise, and which promotes the interests of any person, product or service."⁶⁴ According to the SABC, this definition is specific to broadcasters and could be improved by the inclusion of publications of all audio and audio-visual content service providers.⁶⁵

8.2.15 SASFED submits that no amendment is necessary to advertising, infomercials and programme sponsorship definitions.⁶⁶

8.2.16 OUTsurance is of the view that advertising, infomercials, and programme sponsorship are sufficiently defined within the Regulations.⁶⁷

⁶² SABC: Additional submission on the ICASA Discussion Document on the Advertising, Sponsorship, and Infomercials Regulations of 1999, page 5.

⁶³ Ibid, page 5.

⁶⁴ Ibid, page 5.

⁶⁵ Ibid, page 5.

⁶⁶ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 5

⁶⁷ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations page 1

8.2.17 **The Authority's finding and position**

8.2.17.1 **The Authority's finding** is that the stakeholders have opposing views in relation to whether there is a need to review the definitions of advertising. Some stakeholders are of the view that the current definition is too prescriptive and requires relaxation in the form of a principle-based approach, while others require removal of certain wording within the definition. Other stakeholders regard the definition on advertising as still relevant and must be retained, whilst others are calling for total de-regulation.

8.2.17.2 The Authority finds that stakeholders hold contrasting views regarding the definition of infomercials. One stakeholder is of the view that an amendment is necessary in relation to time allocation. However, another stakeholder contends that infomercials are simply outdated and should just be incorporated into mainstream advertising.

8.2.17.3 Furthermore, the Authority finds that stakeholders propose that the definition of 'programme sponsorship' should exclude indirect funding and the financing of the transmission of a broadcast programme. Others submit that the definitions should be updated to include new players like online/OTT services and others are calling for de-regulation.

8.2.17.4 **The Authority's position** is that the current definition of advertising is sufficient as it broadly affords greater protection to consumers and gives certainty to broadcasters to avoid any ambiguity regarding the context and extent of application of the definition.

8.2.17.5 The Authority has noted the stakeholders' view that the definition is restrictive and has decided that there is no need to add any further restrictions to such definition.

8.2.17.6 The Authority's position on the definition of infomercials is that the definition is still relevant and will be retained. The free to air broadcasting still relies on Infomercials in order to generate revenue. The

frequency of infomercials should be regulated as it impacts on normal programming.

- 8.2.17.7 The Authority's position is that the definition of programme sponsorship is necessary and serves to protect editorial integrity and ensure that programme sponsorship does not pose a threat nor interfere with editorial control over programming. Furthermore, if broadcasters have processes in place to ensure that the editorial integrity of programmes is not undermined when it is sponsored, then the wide definition as such will not impact them as no further undue restrictions will be put in place. Indirect funding and the financing of the transmission of a broadcast programme is considered programme sponsorship as it is intended to promote the sponsor's own or another person's name, trademark, image, activities or product.

8.3 QUESTION 3: WHAT IS YOUR VIEW ON ADVERTISING DURING NEWS AND CURRENT AFFAIRS FOR RADIO AND TELEVISION?

- 8.3.1 eMedia submits that regulations 5.3 and 5.4 restrict 24hour news channel broadcasters in generating alternative revenue on programme sponsorship in respect of news and current affairs. As a result, this poses a challenge to the broadcasters' ability to sustain themselves. Moreover, eMedia argues that considering that free-to-air broadcasters are relying solely on advertising and sponsorship revenue, they will be negatively impacted by the growth of online advertising.⁶⁸
- 8.3.2 Furthermore, eMedia submits that currently sound broadcasting services are not prohibited from obtaining or accepting any programme sponsorship in respect of any news or current affairs programme. As a result, eMedia is of view that there should not be distinction between television and radio broadcasters in this regard, considering that the rationale for this limitation is to maintain editorial control and

⁶⁸ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 5-6

independence. eMedia states that the same should apply to radio broadcasters.⁶⁹

8.3.3 eMedia proposes that Regulation 5.3 and 5.4 of the Advertising Regulations should be deleted and all broadcasters should be able to accept programme sponsorship of news and current affairs programmes which would include for weather forecasts or sports result bulletins.⁷⁰

8.3.4 MultiChoice is of the view that, there should be no restrictions on scheduling advertising during news and current affairs programmes. These could have devastating effect on the funding of news and current affairs programming which serves an important role in access to information in a democracy.⁷¹ MultiChoice further states that, Clause 12.1 of the ARB Code already requires that: "When an advertisement appears in a medium which contains news, editorial or programme matter it should be so designed, produced and presented that it will be readily recognised as an advertisement".⁷²

8.3.5 MultiChoice submits that to the extent that there is a concern that advertising should not affect the editorial integrity of a news or current affairs programme, this should be dealt with in the Regulations at the level of principle. For example, ICASA could amend the Regulations to provide that "Any advertising scheduled during a news or current affairs programme may not adversely affect the editorial integrity of the programme."⁷³

8.3.6 The above according to MultiChoice, would achieve the objective of ensuring editorial independence over news and current affairs programming in a less restrictive way, and without stifling the funding of such programming.⁷⁴

⁶⁹ Ibid, page 7

⁷⁰ Ibid, page 7

⁷¹ MultiChoice submission: Advertising Discussion Document, 2021, page 23

⁷² Ibid, page 23

⁷³ Ibid, page 23

⁷⁴ Ibid, page 23

- 8.3.7 MMA is concerned that the latest regulations do not care enough to cater for editorial independence except regulation 5.1. According to MMA, it is not clear why the editorial independence is only provided for in respect of the sponsorship and / or what is meant by the concept of editorial independence and the principles to which adherence is required⁷⁵.
- 8.3.8 MMA submits that the distinction between sponsorships, advertising and infomercials in the context of editorial independence is arbitrary and in reality, it should be safeguarded to all of the above categories in the media. This would require that regulations 3 and 4 are urgently augmented in order that editorial independence is maintained in all of these categories. MMA insists that even while some media organizations should be allowed to generate income, this should not be at the expense of editorial independence⁷⁶.
- 8.3.9 MMA advises that the Regulations should explicitly define what is editorial independence. This will assist in providing clarity to the relevant organizations on the scope of ICASA's considerations on the matter. The definition of editorial independence will also lay the foundation for any complaint to be lodged against any organization that breaches the editorial independence of the media⁷⁷.
- 8.3.10 MMA submits that although the clauses in the ARB Advertising Code of Practice clause 1 of section 1, are for introductory purposes, it simultaneously contends that the principles in the Code are so important that they should be codified so that the regulations urge the broadcasters to hold these provisions in high regard in determining the selection and placement of advertising, sponsorships and infomercials. Clause 1 of section 1 of the ARB Code of Advertising Practice stipulates that, *advertisements should be legal, decent, honest and truthful, be prepared*

⁷⁵ MMA submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 7

⁷⁶ Ibid, page 7

⁷⁷ Ibid, pages 7 -8

*in such a manner that, it owes a sense of the responsibility to the consumer, conforms to principles of fair competition in business and not to bring advertising into disrepute or reduce confidence in advertising as a service to the industry and the public*⁷⁸.

8.3.11 SABC despite its support to out-phase sponsorship for TV news and current affairs, it submits that the Authority should assess the financial sustainability of the radio industry and thus maintain the status quo.⁷⁹ The SABC motivates that sponsorship restrictions on TV and Radio News together with Current Affairs should not apply or extend to soft news, such as sports, weather, JSE financial market news, nature and lifestyle news and any other informal knowledge building news. The SABC adds that this is because this type of content is largely meant to inform and educate audiences and often does not require right of reply.⁸⁰

8.3.12 SASFED submits that there is a need for television advertising even during news and current affairs, however this must be permitted with tightened provisions on number of breaks and advertisements.⁸¹

8.3.13 OUTsurance believes that advertising during news and current affairs programming typically provides advertisers exposure to high viewership and listenership numbers. As such, advertisement bookings around such programming are an effective way for advertisers to create brand awareness.⁸²

8.3.14 **The Authority's finding and position**

8.3.14.1 **The Authority's finding** is that two stakeholders are of the view that broadcasters in general should be able to accept advertising of news

⁷⁸ Ibid, page 8

⁷⁹ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 13.

⁸⁰ Ibid, page 13.

⁸¹ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 5

⁸² OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 2

and current affairs programmes. The broadcaster suggests that the Authority can include a clause in the Regulations to ensure that editorial independence is not compromised when accepting sponsorship for news and current affairs.

- 8.3.14.2 Furthermore, the Authority's finding is that one stakeholder argues that the permission for such television advertising during news and current affairs, should be allowed provided that, there are stricter guidelines on the number of breaks and advertisements to be transmitted.
- 8.3.14.3 Although another stakeholder is of the view that the current status quo regarding sponsorship of news and current affairs should prevail, the restrictions should not be extended to soft news, such as sports, weather etc.
- 8.3.14.4 Furthermore, the Authority's finding is that other stakeholders suggest that editorial independence should not only address sponsorship but also advertising and infomercials aspects of the Regulations. Therefore regulations 3 and 4 should be amended to ensure that editorial independence is maintained in all of these categories.
- 8.3.14.5 **The Authority's position** is that regulations 5.1, 5.3 and 5.4 of the Regulations will remain intact as they are drafted in a manner that protects the editorial independence of the news and current affairs.
- 8.3.14.6 The Authority's position is that news and current affairs must be protected to ensure that editorial independence is not compromised. News and current affairs should be presented in a fair, independent, impartial manner and integrity of the news programming is also central.
- 8.3.14.7 The primary object of the ECA as per section 2(r) is to provide for the regulating of electronic communications in South Africa in the public interest and for that purpose to *promote the development of the public, commercial and community broadcasting services which are responsive*

to the needs of the public. It is then for that purpose that the Authority has to balance the interests of the broadcasters with those of the public.

- 8.3.14.8 The Authority will continue to allow advertising during news and current affairs, provided that broadcasting service licensees will ensure editorial independence.

8.4 QUESTION 4: WHAT IS THE IMPACT OF THE CURRENT ADVERTISING REGULATIONS ON THE FINANCIAL VIABILITY OF BROADCASTERS?

- 8.4.1 eMedia submits that the impact on the Advertising Regulations is substantially greater on FTA broadcasters when compared to subscription broadcasters, whereby, the impact will be insignificant. eMedia is of the view that the MultiChoice monopoly position worsen the impact on their financial viability. Furthermore, it is concerned that the subscription broadcasters have no limitations placed to their licences regarding duration of advertising, considering that the ECA allows subscription revenue to exceed advertising revenue⁸³.
- 8.4.2 Therefore, eMedia proposes that the Advertising Regulations should be read together with any regulations into subscription broadcasting services with intention to limit the amount of advertising on the latter broadcasters. This limitation should not only be effected on time limits but also to programme limits. eMedia elaborates that, no advertising should be permitted on channels not produced in South Africa or on programmes produced by any company associated with or within the group of companies providing such subscription broadcasting service.⁸⁴
- 8.4.3 MultiChoice submits that the scourge of COVID 19 pandemic has exacerbated an increasing pressure on the audience fragmentation,

⁸³ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 7

⁸⁴ Ibid, page 7

competition with unregulated on-demand services, loss of advertising revenue to online advertisers and tough economic and operating conditions. Therefore, granular requirements in the Regulations restrict broadcasters' flexibility to adapt easily and seamlessly.⁸⁵ MultiChoice adds that any amendments of the Advertising Regulations should ease the restrictions on broadcasters and should certainly not worsen the difficulties broadcasters are facing.⁸⁶

8.4.4 MMA believes that ICASA has an important role in relation to the sustainability of the media. It explains that if media organizations are self-sustaining, they will not rely on advertising revenue and probably be tempted to compromise editorial independence in the interests of an advertiser.⁸⁷

8.4.5 As a result, MMA proposes that, ICASA should consider endorsing Independent Panel Report 's⁸⁸ recommendations which are, but not limited to;

8.4.5.1 **A2** that recommended to encourage constitutional entities, government institutions and individual policy makers to publicly affirm their commitment to an independent media that robustly engages with all aspects of South African society to commit to activities that encourage trust in and support the credibility of such media and to abjure all actions and comment that undermines it;

8.4.5.2 **C26** which states collaborations with like - minded organizations on a large-scale public campaign, involving all stakeholders including law makers and policy makers, all levels and spheres of

⁸⁵ MultiChoice submission: Advertising Discussion Document, 2021, pages 23 -24

⁸⁶ Ibid, page 24

⁸⁷ MMA submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, page 8

⁸⁸ Independent Panel Report on the Inquiry into Media Ethics and Credibility.

government, industry, commerce and the education sector, so to rebuild public trust in the media⁸⁹.

8.4.6 Furthermore, MMA indicates that the South African National Editors' Forum (SANEF) embarked on a process to develop a list of strategies to attain media sustainability and access to public interest journalism in South Africa. The strategy includes, but not limited to; the establishment of a Media Sustainability Fund, promoting access to public interest news websites and fostering competition in the digital economy.⁹⁰

8.4.7 MMA is of view that through these initiatives media organisations can be less dependent on advertising revenues, and can thereby safeguard their editorial independence without fear or favour. Furthermore, MMA is of view that this will ensure the balancing act between sustainability of broadcasters relating to income-generation through sponsorships, infomercials, and advertising, with the need to protect consumers.⁹¹

8.4.8 SABC states that the current restrictions of clock hour advertising could be retained but it is advisable not to make more stringent restrictions in this area.⁹²

8.4.9 OUTsurance submits that the current Regulations provides a framework for generating revenue in the form of advertising sales, which is essential in enabling the creation of new content and job opportunities.⁹³

8.4.10 **The Authority's finding and position**

8.4.10.1 **The Authority's finding** is that one stakeholder raises concerns that the subscription broadcaster is granted excess time and scheduling to

⁸⁹ MMA submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, page 8

⁹⁰ Ibid, page 10

⁹¹ Ibid, page 10

⁹² SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 14.

⁹³ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 2

transmit its advertisements. Therefore, the stakeholder suggests that the advertising time allocated to the subscription broadcasters should be limited in comparison to the free to air broadcasters. On the other hand, another stakeholder suggests lesser restrictions in the Advertising Regulations as the Regulations have impacted their financial viability considering the pressure, they are facing from factors such as competition with unregulated on-demand services, loss of advertising revenue to online advertisers, and tough economic and operating conditions.

- 8.4.10.2 The Authority finds that there is a dissenting view that the current Regulations are sufficient. The Authority further finds that, one stakeholder contests that if the broadcasters are to be strengthened, there will be no need for the broadcasters to depend extensively on advertising and thus compromise their respective editorial independence and news authenticity.
- 8.4.10.3 The Authority also finds that there should be a consideration for the Authority to endorse the Independent Panel Report's recommendations and SANEF list of strategies initiatives, as it envisages that the initiatives would ensure the balancing act between sustainability of broadcasters relating to income-generation through sponsorships, infomercials, and advertising, and the need to protect consumers.
- 8.4.10.4 **The Authority's position** is that it will continue to ensure that subscription broadcasters comply to the legislative requirement, section 60 (4) of the ECA, until such time that the legislation is amended.
- 8.4.10.5 The Authority's position is that the Advertising Regulations are drafted in such a manner that they strike a balance between the broadcasters' financial revenue while protecting consumers.

8.5 QUESTION 5: ARE CURRENT ADVERTISING REGULATIONS ABLE TO PROTECT BROADCASTERS' EDITORIAL INDEPENDENCE?

8.5.1 eMedia is of the view that the current Advertising Regulations are effective and therefore, able to protect broadcasters' editorial independence.⁹⁴

8.5.2 MultiChoice is of the view that broadcasters should be incentivised to maintain their editorial integrity failing which they could lose audiences. MultiChoice states that broadcasters have sufficient controls in place to ensure that their editorial independence is not compromised by advertising or programme sponsorship.⁹⁵

8.5.3 SABC states that the Regulations have sufficiently enabled broadcasters to foster editorial independence, as sponsorship contracts have a standard clause which ensures the retention of the broadcaster's editorial independence. In addition, the SABC has incorporated prescripts of these regulations in its Editorial Policies in order to foster compliance by SABC Services.⁹⁶

8.5.4 OUTsurance is of the opinion that the current Regulations provide sufficient safeguard to ensure editorial independence of broadcasters.⁹⁷

8.5.5 The Authority's finding and position

8.5.5.1 **The Authority's finding** is that the stakeholders state that the broadcasters have measures in place to ensure that advertising does not interfere with editorial independence. The stakeholders further state that the Regulations assist the broadcasters to ensure that there is editorial independence

⁹⁴ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 8.

⁹⁵ MultiChoice submission, Advertising Discussion Document, 2021, page 24

⁹⁶ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 14.

⁹⁷ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 2.

8.5.5.2 **The Authority's position** is that the current regulations are sufficient to protect editorial independence.

8.6 QUESTION 6: DOES THE CURRENT LABELLING OF ADVERTISING MAKE IT EASY FOR VIEWERS/LISTENERS TO DIFFERENTIATE IT FROM NORMAL PROGRAMMING?

8.6.1 eMedia is of the view that the current Advertising Regulations are effective. eMedia states that it agrees that the current labelling of advertising make it easy for viewers/listeners to differentiate it from normal programming.⁹⁸

8.6.2 MultiChoice states that advertising on its services is easily differentiated from programming. MultiChoice indicates that it has not experienced any difficulties in this regard. According to MultiChoice, this requirement is covered by clause 12.1 of the ARB Code which requires advertisements to be clearly distinguishable and readily recognised as an advertisement.⁹⁹

8.6.3 The SABC states that generic advertising is not labelled and should not be labelled in the future. The SABC points out that it is worth noting that audiences understand that programmes have commercial breaks which are used for advertising. The SABC submits that therefore, the status quo should remain.¹⁰⁰

8.6.4 SASFED submits that in certain instances there can be blurred lines in the identification or labelling of an advert from the actual programme. SASFED makes an example with a campaign of washing hands during a pandemic which is undertaken and sponsored by a soup brand and states that it can either be regarded as an advert of a public service announcement.¹⁰¹

⁹⁸ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 8.

⁹⁹ MultiChoice submission, Advertising Discussion Document, 2021, page 24.

¹⁰⁰ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 14.

¹⁰¹ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 5.

8.6.5 OUTsurance states that the increasing sophistication of the audience results in viewers and listeners who are well adept to differentiate advertisement from normal programming. OUTsurance states that it is of the opinion that no further regulations regarding the labelling of advertising is necessary.¹⁰²

8.6.6 The Authority's finding and position

8.6.6.1 **The Authority's finding** is that the current labelling of advertising makes it easy for viewers/listeners to differentiate it from normal programming. The Authority noted that a stakeholder submitted that generic advertising should not be labelled, but the status quo should remain.

8.6.6.2 **The Authority's position** is that the current labelling is sufficient as advertising is clearly distinguishable and readily recognised as an advertisement.

8.7 QUESTION 7: WHAT IS YOUR VIEW ON ADVERTISEMENTS THAT SUPERSEDE PROGRAMMING?

8.7.1 eMedia states that advertisements would never supersede programming due to the time limits placed on advertising in any one hour or year. Furthermore, eMedia argues that should any broadcaster elect to have advertisements supersede programming, this would impact its audience share.¹⁰³

8.7.2 Multichoice points out that programming is considered primary, whereas advertising is secondary. According to MultiChoice, this is particularly important in the pay TV context where excessively intrusive advertising

¹⁰² OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 2.

¹⁰³ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 8

will alienate subscribers. MultiChoice states that if advertising intrudes too much on the programme material, viewers will simply tune out.¹⁰⁴

8.7.3 SABC points out that it regulates itself to some extent in that, excessive advertising can be a tune out factor and as such, broadcasters will automatically gravitate to approaches that keep audiences tuned in. The SABC states that it will not provide excessive advertising as it will translate into a tune out factor. Further, the SABC alludes that there are advertising durations prescribed by the Authority that must be adhered to.¹⁰⁵

8.7.4 SASFED submits that they have not seen any evidence of advertising that supersedes programming.¹⁰⁶

8.7.5 OUTsurance indicates that it is of the opinion that broadcasters should be allowed to formulate their own guidelines in terms of advertisements superseding programming, taking into account the needs of their respective audience, rather than formulating detailed regulations on the subject.¹⁰⁷

8.7.6 **The Authority's finding and position**

8.7.6.1 **The Authority's finding** is that all stakeholders agree that advertising will never supersede programming since there are regulations on the duration of the advertisement. Furthermore, the Authority finds that the stakeholders believe that advertising that supersedes programming will make consumers to tune off.

8.7.6.2 **The Authority's position** is that advertising is necessary, however, broadcasters need to ensure proper planning so that advertisements are

¹⁰⁴ MultiChoice submission: Advertising Discussion Document, 2021, page 24

¹⁰⁵ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 14.

¹⁰⁶ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 5

¹⁰⁷ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 2.

placed in a right space, duration or time during the programme to avoid unnecessary interruption during the programme which might be against the objectives of section 2 (r) of the ECA. The objective of section 2 (r) of the ECA is to "promote the development of public, commercial and community broadcasting services which are responsive to the needs of the public". The Authority regards poorly planned advertisement placement in order to generate more profit as interfering with the broadcasters' editorial independence.

8.8 QUESTION 8: WHAT PROGRAMMES SHOULD NOT ALLOW INFOMERCIALS?

8.8.1 eMedia submits that programmes are clearly distinguishable from Infomercials and this is covered by the definition of Infomercials in the Advertising Regulations. However, eMedia is of the view that the issue is not of which programmes should not allow Infomercials but rather the time periods during which Infomercials should be permitted. Therefore, eMedia proposes that a light touch approach to the regulations should apply, meaning that the limitations placed on Infomercials regulation in terms of regulation 4.1 and 4.3 of the Advertising Regulations should no longer apply. Regulations 4.1 and 4.3 provides that;

- a. no broadcaster may transmit any infomercials during prime time or during the transmission of, or in breaks during the transmission of, any children's programme; and*
- b. no channel may transmit infomercials for more than two hours during performance period in any one day.*

8.8.2 eMedia states that the broadcaster should be permitted to schedule Infomercials based on their own internal regulation.¹⁰⁸

¹⁰⁸ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 8

8.8.3 SABC submits that in a multichannel environment, audiences are able to choose the channels they prefer, and they watch content at their preferred times. Therefore, according to the SABC, there is no need to overregulate this area as audiences are in charge of the content they choose to watch.¹⁰⁹

8.8.4 Further, the SABC states that the current regulations prohibit infomercials during prime time and children's programming. The SABC suggests that deregulation on prime-time is necessary in the digital environment as outlined above.¹¹⁰ The SABC states that the Authority needs to do away with the prime time and performance period as they are no longer necessary since we are in a digital environment. The SABC submits that there is no need to regulate because viewers are in a position to watch or view what they want and relevant to them at any time of the day.¹¹¹

8.8.5 OUTsurance submits that it is in favour of the relaxation of regulations relating to the timing of infomercials. It further submits that infomercials often do not only serve to create brand awareness for advertiser, but also the potential to fulfil a need for customer education in terms of a particular type of product, due to the longer nature of the material. OUTsurance states that as such allowing access to infomercials to a broader audience may prove to be beneficial to such audience.¹¹²

8.8.6 **The Authority's finding and position**

8.8.6.1 **The Authority's finding** is that stakeholders propose deregulation or a light touch regulation on the regulation of infomercials. One stakeholder further points out at the importance of infomercial in educating the audience about the product.

¹⁰⁹ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 14.

¹¹⁰ Ibid, page 15.

¹¹¹ SABC: Additional submission on the ICASA Discussion Document on the Advertising, Sponsorship, and Infomercials Regulations of 1999, page 3.

¹¹² OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 2.

8.8.6.2 **The Authority's position** is that there should be no infomercials during children's programmes in order to protect children, and during prime time. Prime time is a period when most of the consumers are available to watch or listen to their broadcasting stations and therefore normal programming that is in the public interest should not be overly interrupted. Advertising and sponsorship are allowed during prime time. Therefore regulation 4 should still apply.

8.9 QUESTION 9: SHOULD THE AUTHORITY REGULATE THE DURATION OF INFOMERCIALS? PLEASE ELABORATE

8.9.1 eMedia is of view that it is not necessary for the Authority to regulate the duration of infomercials and proposes that it should be left to the discretion of the broadcaster who is able to assess the impact of the duration of any infomercials on its audiences or business. Furthermore, eMedia raises a concern that placing a limit of two hours in the performance period in any one day, is overly restrictive and proposes that it should be increased to three hours.¹¹³

8.9.2 SABC submits that the Authority should not regulate the duration of infomercials, since audiences will be able to skip or fast-forward infomercials in a multichannel environment. The SABC is of the view that the Authority should allow niche channels for infomercials or teleshopping so as to allow broadcasters to optimize commercial revenue.¹¹⁴

8.9.3 SASFED states that it agrees with both issues of the regulation of infomercials in respect of duration and frequency, however they are of the view that such regulation must take place only outside dedicated tele-channels.¹¹⁵

¹¹³ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 9.

¹¹⁴ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 15.

¹¹⁵ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 5.

8.9.4 OUTsurance argues that broadcasters should be allowed to formulate their own guidelines in terms of the duration of infomercials, taking into account the needs of their respective audiences, rather than formulating detailed regulations.¹¹⁶

8.9.5 **The Authority's finding and position**

8.9.5.1 **The Authority's finding** is that one stakeholder supports the regulation of infomercials, while other stakeholders do not see it necessary for the Authority to regulate the duration of the infomercials.

8.9.5.2 **The Authority's position** is that the regulation of the duration of infomercials is necessary during the performance period to ensure that broadcasters do not broadcast excessive infomercials that will compromise compliance with the licence terms and conditions. The Authority will not increase the duration of infomercials during performance period. This is to ensure that there is a balance between revenue generation and the broadcasting mandate being to inform, educate and entertain. Broadcasters can broadcast more infomercials outside the performance period to maximise revenue. The current regulation on duration of infomercials will continue to apply as is.

8.10 QUESTION 10: SHOULD THE AUTHORITY REGULATE THE FREQUENCY OF INFOMERCIALS? PLEASE ELABORATE.

8.10.1 eMedia is of the view that the Authority should not regulate the frequency of Infomercials. Therefore, eMedia proposes a light touch approach which would allow broadcasters to determine the frequency of Infomercials based on commercial criteria.¹¹⁷

¹¹⁶ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 3.

¹¹⁷ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 9

8.10.2 SABC states that the Authority should not regulate the frequency of infomercials since free-to-air services generate their operational revenue from infomercials.¹¹⁸

8.10.3 SASFED agrees with the regulation of infomercial in respect of duration and frequency, however they are of the view that such regulation must take place only outside dedicated tele-channels.¹¹⁹

8.10.4 OUTsurance is in support of allowing broadcasters to formulate their own guidelines in terms of the frequency of infomercials, taking into account the need of their respective audience.¹²⁰

8.10.5 The Authority's finding and position

8.10.5.1 **The Authority's finding** is that stakeholders propose that the frequency of infomercials should not be regulated. Some stakeholders submit that free to air broadcasters' operational revenue rely on infomercials and propose a light touch approach to the Regulations. Other stakeholders propose that stakeholders should develop their own guidelines in terms of regulating frequency of infomercials. One stakeholder supports the regulation of frequency and duration of infomercials.

8.10.5.2 **The Authority's position** is that it will continue to regulate the frequency of infomercials to ensure consumer protection from the excessive infomercials. Further, the Authority will require that infomercials do not exceed two hours during performance period in terms of regulation 4.3.

¹¹⁸ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 15.

¹¹⁹ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 5

¹²⁰ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 3

8.11 QUESTION 11: WHAT INDICATORS OF INFOMERCIALS CAN BE USED SO THAT THEY ARE EASILY IDENTIFIABLE?

8.11.1 eMedia submits that regulation 4.2 of the Advertising Regulations which provides that *every broadcaster shall ensure that all infomercials transmitted by it are presented and labelled in such a manner that it will be clear to the audience that such infomercials do not constitute programme material*, is adequate to deal with what indicators can be used to make infomercials easily identifiable.¹²¹

8.11.2 MultiChoice submits that it is not necessary to require the use of indicators to easily identify infomercials. To the extent that a broadcaster still broadcasts infomercials the requirement for advertisements to be clearly distinguishable and readily recognised as an advertisement would be covered by the ARB Code (since an infomercial is a kind of advertisement under the ARB Code).¹²²

8.11.3 SABC proposes that infomercials can have opening billboards for purposes of identification.¹²³

8.11.4 SASFED is of the view that an on-screen static copy for the duration of the infomercial that clearly identifies it as such will serve such purpose, similar to how it is done in print media. Such identifier will clear out any ambiguity, distinguishing such infomercial from actual programme material.¹²⁴

8.11.5 The Authority's finding and position

8.11.5.1 **The Authority's finding** is that one stakeholder submits that regulation 4.2 of the current Regulations is sufficient to ensure that

¹²¹ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 9

¹²² MultiChoice submission: Advertising Discussion Document, 2021, page 25

¹²³ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 15.

¹²⁴ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 6

infomercials are easily identifiable. Another stakeholder proposes using opening billboards as indicators whilst one stakeholder suggests an on-screen static copy for the duration of the infomercial. Lastly, another stakeholder states that it is not necessary to use indicators as the ARB Code covers such.

8.11.5.2 **The Authority's position** is that it is the responsibility of the broadcasters to ensure that all infomercials are labelled in such a manner that it is clear to the viewers that such infomercials do not constitute programme material.

8.12 QUESTION 12: SHOULD THE REGULATIONS CONTINUE TO PROHIBIT THE TRANSMISSION OF INFOMERCIALS DURING PRIME TIME? KINDLY PROVIDE A REASON FOR YOUR ANSWER.

8.12.1 eMedia is of the view that there should be less limitations on advertising, infomercials and sponsorships during prime time and proposes a light touch approach, whereby the broadcaster would rely on a commercial rationale as to when to schedule Infomercials.¹²⁵

8.12.2 MultiChoice submits that infomercials are outdated and no longer feature prominently – or at all. It is therefore not necessary to prohibit infomercials during any particular programmes, to regulate the duration or frequency of infomercials, or to prohibit their transmission at any time (such as prime time).¹²⁶

8.12.3 SABC submits that prime-time regulation should be out-phased because it is only appropriate for the analogue environment. This will enable the SABC to generate more revenue for its operations and public service mandate.¹²⁷ SABC further submits that in a multichannel or digital

¹²⁵ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 9

¹²⁶ MultiChoice submission: Advertising Discussion Document, 2021, page 25

¹²⁷ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 15.

broadcasting environment prime time and performance period no longer exists. Viewers are able to decide when their prime time is, thus prime time and performance period regulation will not be feasible.¹²⁸ SABC raises concern that the concept of prime-time regulations is slowly becoming redundant and problematic.¹²⁹

8.12.4 OUTsurance submits that it is in favour of the relaxation of regulations relating to the timing of infomercials.¹³⁰

8.12.5 **The Authority's finding and position**

8.12.5.1 **The Authority's finding** is that some stakeholders are of the view that due to change in market dynamics, it is no longer necessary to regulate infomercials during prime time. On the other hand, another stakeholder proposes a light touch approach in regulating infomercials during prime time.

8.12.5.2 **The Authority's position** is that it would continue to prohibit the transmission of infomercials during prime time in order to ensure that the broadcasting mandate is not highly interrupted by commercial messages. The Authority has noted broadcasters' view that broadcasting is moving towards, or it is in a multichannel environment, however, the Authority's position is that stakeholders did not provide enough evidence showing that performance period and prime time no longer exist. Prime time is a period when most of the audience are available to watch or listen to their broadcasting stations and therefore normal programming that is in the public interest should not be overly interrupted. Advertising and sponsorship are allowed during prime time.

¹²⁸ Ibid, pages 11 – 12.

¹²⁹ Ibid, page 12.

¹³⁰ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 3

8.13 QUESTION 13: HOW SHOULD THE AUTHORITY DEAL WITH PUSH ADVERTISEMENT (SQUEEZEBACKS)?

8.13.1 eMedia submits that push advertisements should be allowed across all types of content offerings such as News, Local Drama's etc, as it would be an opportunity for broadcasters to generate an alternative revenue stream in monetising their offering, which in turn would lead to their sustainability.¹³¹ Furthermore, eMedia proposes a light touch approach regulation in which push advertisements are not limited to any specific genre of content, but to the discretion of the broadcaster to integrate a sponsor into the said content while maintaining the final editorial control.¹³²

8.13.2 MultiChoice is of the view that squeezebacks should be permitted, subject to the ARB requirement that they be distinguishable and readily recognised as an advertisement. Subscription broadcasters are already constrained to ensure that advertisements do not excessively intrude in or disrupt viewing. No further restrictions are required.¹³³

8.13.3 SABC states that the current regulation of squeeze-backs is sufficient.¹³⁴ However, SABC suggests that the Authority should fully explain terms such as "predominance" and "subordinate" for ease of implementation of the Regulations. This can be done in a form of Guidelines rather than Regulations.¹³⁵

8.13.4 SASFED submits that squeezebacks should remain regulated in respect of the size, duration, and number, as they are designed to disrupt viewing.¹³⁶

¹³¹ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 10

¹³² Ibid, page 10

¹³³ MultiChoice submission: Advertising Discussion Document, 2021, page 25

¹³⁴ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 16.

¹³⁵ Ibid, page 16.

¹³⁶ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 6

8.13.5 OUTsurance believes that squeezebacks provide a quick and unique way of grabbing the consumer's attention, without taking time away from normal programming. It further submits that it will be preferable for broadcasters to formulate their own guidelines around the use of squeezebacks, based on the appetite of the particular broadcasters' audience for such marketing.¹³⁷

8.13.6 The Authority's finding and position

8.13.6.1 **The Authority's finding** is that a stakeholder is the view that squeezebacks should not be regulated whilst another stakeholder suggests that broadcasters should formulate their own guidelines around the use of squeezebacks. On the other hand, other stakeholders submit that the current Regulation on squeezebacks is sufficient and should remain regulated. Another stakeholder submits that squeezebacks should remain regulated as squeezebacks are disruptive in nature. In general, stakeholders indicate that squeezebacks are important for sustainability of broadcasters.

8.13.6.2 **The Authority's position** is that it will maintain the status quo with regards to the regulation of squeezebacks as part of sponsorship elements.

8.14 QUESTION 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?

8.14.1 eMedia submits that given the current definition of product placement, it is clear that product placement and promotional material inside a programme would not supersede programming or tamper with editorial control. Moreover, eMedia is of the view that there is no reason why

¹³⁷ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 3

product placement as opposed to advertising or sponsorship generally should tamper with editorial control.¹³⁸

8.14.2 Furthermore, eMedia suggests that measures such as entering into a written contract with the sponsor, will enable the parties to outline the rights of both the advertiser and the broadcaster. eMedia states that if a broadcaster maintains the final editorial, it will continue to ensure that an advertiser's or sponsor's exposure within a programme does not supersede programming or interfere with editorial control. This will protect the consumers.¹³⁹

8.14.3 MultiChoice is of the view that it is not necessary to place restrictions on product placement to ensure that it does not supersede programming or tamper with editorial control.¹⁴⁰ Product placement is important to both advertisers (for brand exposure) and to broadcasting services (in allowing added value to be provided to clients).¹⁴¹

8.14.4 MultiChoice submits that they agree with the Authority that further restriction on product placement will negatively impact local content production as this is recognised by the Authority in the Discussion document.¹⁴² Furthermore, MultiChoice is of the view, that product placement does not detract from the viewing experience or interfere with editorial control over programming. This is because, in general, the product owners look for opportunities to expose their products or brands in programmes that are already in production and have an established story line. Product placement usually does not affect the plot. Rather, it is concerned with brand exposure. The channel retains editorial control and implements measures to ensure quality and programme integrity.¹⁴³

¹³⁸ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 10

¹³⁹ Ibid, page 10

¹⁴⁰ MultiChoice submission: Advertising Discussion Document, 2021, page 26

¹⁴¹ Ibid, page 26

¹⁴² Ibid, page 26

¹⁴³ Ibid, page 26

8.14.5 MultiChoice insists that broadcasters also ensure that product placement is not overly intrusive to annoy viewers. Subscription broadcasters in particular are constrained not to alienate viewers.¹⁴⁴ In addition, MultiChoice submits that regulation 5.7 of the current Regulations already requires product placement to be subordinate to the content of the programme material and therefore, already is adequately dealing with concerns about product placement superseding programming or interfering with editorial control.¹⁴⁵

8.14.6 SABC states that product placement should not supersede the main programming and tamper with editorial control of a broadcaster.¹⁴⁶

8.14.7 SASFED submits that product placement does not in any way temper with or threaten editorial integrity. SASFED believes that product placement and integration is currently enforced appropriately by broadcasters.¹⁴⁷

8.14.8 OUTsurance supports regulations promoting and strengthening editorial independence of programming. OUTsurance further submits that promotional placement should be strategic and should not detract from the content of the programme. The suitability of product placement and promotional material inside programming may differ vastly between different types of programme material and as such, OUTsurance, is of the opinion that broadcasters would be positioned best to formulate their own detailed guidelines around the use of product placement.¹⁴⁸

8.14.9 **The Authority's finding and position**

8.14.9.1 **The Authority's finding** is that stakeholders are of the view that product placement and promotional material inside a programme would

¹⁴⁴ Ibid, page 26

¹⁴⁵ Ibid, page 26

¹⁴⁶ SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 16.

¹⁴⁷ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 6

¹⁴⁸ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 3

not supersede programming or tamper with editorial control as it will alienate the viewers. Therefore, stakeholders propose that the final editorial control should continue to remain with broadcasters. Stakeholders point out that the current regulations on product placement are sufficient.

8.14.9.2 **The Authority's position** is that the broadcasters should continue to maintain editorial control with regards to product placement. As a result, the Authority would retain regulation 5.7, which states that *"product placement in programming other than news and current affairs shall be subordinate to the programme material"*.

8.15 QUESTION 15: WHAT MECHANISMS SHOULD BE PUT IN PLACE TO ENSURE THAT PROGRAMME SPONSORSHIP DOES NOT INFLUENCE PROGRAMMES?

8.15.1 eMedia alludes that the mechanism of requiring that the broadcaster maintains editorial control in respect of the sponsored programme and is required to enter into an agreement with the sponsor to ensure that programme sponsorship do not influence programmes, is sufficient.¹⁴⁹

8.15.2 MultiChoice states that regulation 5.1 already provides that: "every broadcaster who derives benefit from a programme sponsorship shall ensure that, in relation to the relevant sponsored programme, editorial control remains with that broadcaster". In that regard, the requirement is sufficient and no additional mechanisms are required to ensure editorial integrity over programming.¹⁵⁰ MultiChoice further alludes that the Regulations should also recognise that there may be instances where programme sponsorship may influence programme material other than news.¹⁵¹

¹⁴⁹ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 10

¹⁵⁰ MultiChoice submission: Advertising Discussion Document, 2021, page 27

¹⁵¹ Ibid, page 27

8.15.3 SABC states that programme sponsorship doesn't include content integration, but only opening billboards and closing billboards and 30 second recorded generic.¹⁵² Further SABC submits that naming rights as association should be permitted.¹⁵³

8.15.4 SASFED submits that the limit on the use of sponsorship elements, for example, presenters wearing sponsorship material, or even the issue of background branding would achieve the desired result to ensure that programme sponsorship do not influence programmes.¹⁵⁴ SASFED is of the view that to ensure editorial independence, the only time sponsorship elements can be used should be outside the programme and done in the form of squeezebacks, onscreen logos and adverts.¹⁵⁵ It further submits that broadcasters are good in ensuring that product integration does not influence editorial integrity, and further ensure that the primary purpose of broadcasting of such material is to promote the broadcaster itself or the programme concerned as opposed to the commercial interest of the product or service.¹⁵⁶

8.15.5 OUTsurance is of the view that the current Regulations provide the basis to ensure that programme sponsorship does not influence programmes. It believes that this could be enhanced by the guideline as established by individual broadcasters.¹⁵⁷

8.15.6 **The Authority's finding and position**

8.15.6.1 **The Authority's finding** is that some stakeholders believe that the current mechanism in the Regulations is sufficient to ensure that broadcasters maintain editorial independence in a sponsored

¹⁵² SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 16.

¹⁵³ Ibid, page 16.

¹⁵⁴ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, pages 6-7

¹⁵⁵ Ibid, page 7

¹⁵⁶ Ibid, page 7

¹⁵⁷ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 4

programme. One stakeholder suggests a limit to the use of branding during programmes and to have sponsorship elements outside programmes. In addition, a stakeholder submits that the provision in the Regulations can be enhanced by broadcasters through developing individual guidelines.

8.15.6.2 **The Authority's position** is that the current provisions in Regulation 5.1, 5.2, 5.5 and 5.9 are sufficient. This is to ensure that broadcasters are not using branding material inside programmes that will compromise editorial independence or give the sponsor undue prominence. It is not clear what SABC means when it states that naming rights as association should be permitted. The Authority's considered view is that naming rights are permitted but should be subordinate to the content of the programme material to ensure that undue prominence is not given to such naming. Naming rights are also prohibited in news and current affairs as per the prohibition of sponsorship for news and current affairs.

8.16 QUESTION 16: WHAT OTHER MEASURES CAN BE PUT IN PLACE TO ENSURE COMPLIANCE WITH PROGRAMME SPONSORSHIP REQUIREMENTS?

8.16.1 eMedia indicates that no other measures are required as the current Advertising Regulations are effective.¹⁵⁸

8.16.2 MultiChoice states that the current mechanisms are sufficient, and it is not aware of any unresolved complaints in this regard.¹⁵⁹

8.16.3 NAB submits that the discussion document notes that whilst the current Regulations do not expressly prohibit program sponsorship for news in respect of radio broadcasters, ICASA has previously encouraged radio

¹⁵⁸ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 11

¹⁵⁹ MultiChoice submission: Advertising Discussion Document, 2021, page 27

broadcasters to phase out this practice. The NAB recommends that ICASA engages radio broadcasters on the financial implications of such a phase out as well as the most feasible transitional period.¹⁶⁰

8.16.4 **The Authority's finding and position**

8.16.4.1 **The Authority's finding** is that some stakeholders are of the view that the current measures to ensure compliance with programme sponsorship are sufficient and there is no need for additional measures. Furthermore, the Authority's finding is that one stakeholder suggests that in order to phase in the prohibition of programme sponsorship for news on radio, there is a need to consult on the financial impact of such decision.

8.16.4.2 **The Authority's position** is that the Regulation on programme sponsorship should be maintained in its current form. In the 1999 Position Paper, the Authority highlighted the fact that sponsorship of news and current affairs on radio will be allowed however at some point, the sponsorship of news and current affairs will be phased out¹⁶¹. The Authority will review the sponsorship of news and current affairs twenty-four (24) months after the publication of the Regulations, taking into consideration the impact of sponsorship on news and current affairs on radio, and the financial status of radio broadcasters, with a view of phasing out same. This is drawn from history of the media in South Africa, in terms of danger from political and business influence. This is for the interest of editorial independence. If left as is, it would be to the detriment of editorial independence. Unfortunately, the 1999 resolution hasn't been considered until now. This would be in parity with the restrictions on television. *"The news and programme policy prohibits journalists from accepting gifts or favours of any sort in the course of*

¹⁶⁰ NAB submission: Discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, Unnumbered page 3

¹⁶¹ Position Paper on a definition of Advertising, the regulation of Infomercials and the Regulation of Programme Sponsorship, 31 March 1999, page 14, published on the Authority's website at www.icasa.org.za

their professional duties. Further, broadcasters are prohibited from having a relationship with political and financial organisations".¹⁶²

8.17 QUESTION 17: SHOULD THE AUTHORITY REQUEST THAT PRODUCT PLACEMENT BE SIGNALLED? HOW SHOULD IT BE SIGNALLED?

8.17.1 eMedia submits that product placement differs to sponsorship. eMedia points out that to apply the same rule of programme sponsorship in terms of regulation 5.9 of the Advertising regulations, to any element other than sponsored programme would be cumbersome and hence, unnecessary.¹⁶³ Regulation 5.9 provides that *the broadcaster shall, before and after transmission of the 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 with" as opposed to descriptions such as "brought to you by" or with complements of".*

8.17.2 MultiChoice is of the view that product placement could be required to be signalled in the credits at the end of the show however, this is not necessary.¹⁶⁴

8.17.3 SASFED submits that product placement need not be signalled. They further hold the view that it appears that the Authority does not favour product placement without substantiating a reason to that regard.¹⁶⁵ SASFED indicates that should there be any partial or complete prohibition on product placement, such will lead to dire and adverse effect on revenue collection and local content production in turn. SASFED fully support the status quo of how product placement is integrated into content.¹⁶⁶

¹⁶² Fourie P.J. Media Studies "Institutions, Theories and Issues", Vol. 1, page 193.

¹⁶³ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 11

¹⁶⁴ MultiChoice submission: Advertising Discussion Document, 2021, page 27

¹⁶⁵ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, pages 7-8

¹⁶⁶ Ibid, page 7

8.17.4 OUTsurance submits that the Authority should not request signalling of product placement. It proposes that this could rather be stipulated in the agreement between the advertiser and creator of the specific programme, taking into account the nature of the programming, the nature of the placement and needs of the particular audience.¹⁶⁷

8.17.5 The Authority's finding and position

8.17.5.1 **The Authority's finding** is that some stakeholders submits that there is no need to signal product placement. One stakeholder state that should there be a need to signal it, credits can be used at the end of the show. Furthermore, a stakeholder states that prohibiting product placement will have a financial impact on broadcasters.

8.17.5.2 **The Authority's position** is that product placement must be signalled clearly, by means of a logo, at the beginning of the programme in which the placement appears, and at the end of the programme. The reason for such provision is to provide certainty and transparency to audiences so that they are able to differentiate normal programming from product placement.

8.18 QUESTION 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?

8.18.1 eMedia submits that the best interest of the child is paramount. It is of the view that no harm would be caused by allowing product placement and

¹⁶⁷ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 4

sponsorship during children's programme, provided that protective measures detailed in any applicable codes or regulations are adhered to.¹⁶⁸

8.18.2 MultiChoice states that product placement should not be permitted in programming targeted at children aged 7 or under. Regulation 5.1 already adequately deals with sponsorship and no additional provisions are required in relation to children's programming.¹⁶⁹

8.18.3 MMA is concerned that the Regulations are wholly insufficient in respect of the protection of children, and fail to respect, protect, promote and fulfil the best interests of the child.¹⁷⁰ In essence, the MMA argument is that the Authority must ensure the protection of children through the regulations.¹⁷¹ To the extent that advertisements, product placements or sponsorships are permitted during the broadcast of children's programming, MMA submits that every measure should be taken to ensure that this is not dangerous or harmful to the health, development and best interests of a child who may view such content. In order to define the parameters of such content, MMA proposes that ICASA establish a task team, comprising experts, academics and civil society organisations working on issues pertaining to children's rights, to inform the final determination.¹⁷² According to MMA, ICASA's role in the regulation of advertising is that the Authority should require licensees to comply with the code on advertising as prescribed by the advertising Authority and any other regulations as prescribed by ICASA.¹⁷³

8.18.4 SASFED submits that both sponsorship and product placement need to be permitted subject to the regulation of the type of product placed during such children programming in relation to product placement. It is of the

¹⁶⁸ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 11

¹⁶⁹ MultiChoice submission: Advertising Discussion Document, 2021, page 27

¹⁷⁰ MMA submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, page 11.

¹⁷¹ Ibid, page 12.

¹⁷² Ibid, page 14

¹⁷³ Ibid, page 13.

view that child friendly products such as books, children's magazines and yogurt might encourage good practice as opposed to harmful products being depicted. It further alludes that sponsorship, ordinarily, does not impact on the editorial if it is kept largely outside of the programming.¹⁷⁴

8.18.5 OUTsurance states that it cautions against a blanket prohibition of product placement and sponsorship during children's programming. However, it is in favour of regulation of product placement and sponsorship that might be harmful or offence to children. OUTsurance is of the view that a principles-based approach would be favoured in this regard, taking into account the average age of the target audience of the programming.¹⁷⁵

8.18.6 **The Authority's finding and position**

8.18.6.1 **The Authority's finding** is that some stakeholders are of the view that product placement and programme sponsorship can be allowed in children's programming, provided that measures are taken to ensure that there is no harm to children. One stakeholder alludes that product placement should be allowed subject to the type of product placed during children's programming whilst another stakeholder proposes that product placement should not be permitted for children aged 7 years and below. Another stakeholder suggests that the Authority should align the Regulations to different statutes on children.

8.18.6.2 **The Authority's position** is that it will not phase out product placement and programme sponsorship on children's programming in the current process. The Authority encourages broadcasters to provide age specific product placement, considering that younger children might not be able to read but rather to listen when sponsorship and product placement credits are communicated. Furthermore, broadcasters are encouraged comply with relevant statutes when making decisions on

¹⁷⁴ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 8

¹⁷⁵ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 4

the kind of product placement and sponsorship to accept for children's programming.

8.19 QUESTION 19: PRODUCT PLACEMENT IS A COMPONENT OF BRANDING, WHAT OTHER ELEMENTS OF BRANDING SHOULD THE AUTHORITY BE CONCERNED WITH?

8.19.1 eMedia submits that it is not aware of any other elements of branding.¹⁷⁶

8.19.2 MultiChoice states that no additional requirements are necessary in relation to branding.¹⁷⁷

8.19.3 SASFED cautions the Authority not to overreach and overextend its mandate with regard to this question. The Authority should take into account its mandate which is limited to duration and frequency of advertising as reflected in paragraph 4.6 of the discussion document. Therefore, the Authority should take a soft approach in regulation of such.¹⁷⁸

8.19.4 The Authority's finding and position

8.19.4.1 **The Authority's finding** is that the stakeholders are of the view that there are no other elements of branding to be added in the Regulations.

8.19.4.2 **The Authority's position** is that it will not add any other branding elements to the current product placement provisions.

¹⁷⁶ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 12

¹⁷⁷ MultiChoice submission: Advertising Discussion Document, 2021, page 28

¹⁷⁸ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 8

8.20 QUESTION 20: IN YOUR VIEW HOW SHOULD THE AUTHORITY ENSURE THAT PUBLIC INTEREST IS PROTECTED WHEN REGULATING ADVERTISING, INFOMERCIALS, PRODUCT PLACEMENT AND PROGRAMME SPONSORSHIP?

8.20.1 eMedia is of the view that the current Advertising, Infomercials, Product placement and Programme Sponsorship regulations along with the Code of Advertising from the ARB are sufficient to ensure that public interest is protected when regulating advertising, infomercials, product placement and programme sponsorship. Therefore, eMedia proposes that a light touch approach is encouraged, particularly in the current environment.¹⁷⁹

8.20.2 MultiChoice states that in relation to public interest, the protection from harmful content is already addressed through the ARB Code.¹⁸⁰ Multichoice is of the view that when it comes to scheduling, regulating in the public interest requires the Authority to balance the needs of all interested and affected parties, including broadcasters, advertisers, producers and the viewing public. Regulating in the public interest requires the Authority to regulate no more than necessary and, to ensure that the Advertising Regulations do not unduly restrict broadcasters' abilities to earn revenue.¹⁸¹

8.20.3 MultiChoice further emphasise that no measures are required in the subscription broadcasting context, as subscription broadcasters are inherently constrained to ensure that they do not alienate viewers.¹⁸²

8.20.4 OUTsurance is of the opinion that a principles-based approach would be favoured in this regard, due to the wide range of types of programmes and the different approaches to advertisements linked to each of these.¹⁸³

¹⁷⁹ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 12

¹⁸⁰ MultiChoice submission: Advertising Discussion Document, 2021, page 28

¹⁸¹ MultiChoice submission: Advertising Discussion Document, 2021, page 28

¹⁸² Ibid, page 28

¹⁸³ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 4

8.20.5 **The Authority's finding and position**

8.20.5.1 **The Authority's finding** is that all stakeholders are of the view that the current Regulations are sufficient and that there is no need to introduce more regulations as the regulatory framework in place ensures the protection of the public from harmful content.

8.20.5.2 **The Authority's position** is that it will apply the ECA and related legislation and consider submissions and benchmarking when reviewing the current regulations in order to make a decision on whether an amendment is necessary, and if so to what extent.

8.21 **QUESTION 21: WHAT LESSONS CAN BE LEARNED FROM OTHER COUNTRIES IN TERMS OF ADVERTISING, INFOMERCIALS, PROGRAMME SPONSORSHIP AND PRODUCT PLACEMENT?**

8.21.1 eMedia is of the view that South Africa is lagging behind other jurisdictions, instead, it is likely following the trends in other countries that online advertising will take an increasingly greater share of the advertising market, thereby directly impacting broadcasters and particularly FTA broadcasters whose sole source of income is advertising. Therefore, eMedia proposes that South Africa must be a unique market, whereby any regulations should be tailored to that specific market.¹⁸⁴

8.21.2 MultiChoice points out that internationally there is a trend towards co-regulation, the easing or, where appropriate removal of restrictions, and a shift towards greater flexibility in implementation.¹⁸⁵

8.21.3 OUTsurance submits that although international trends in advertising might provide valuable insight into aspects to consider, the primary focus

¹⁸⁴ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 12

¹⁸⁵ MultiChoice submission: Advertising Discussion Document, 2021, page 28

should remain on South African consumers, who have specific and unique needs in terms of advertising, infomercials, programme sponsorship and product placement.¹⁸⁶

8.21.4 The Authority's finding and position

8.21.5 The Authority's finding is that stakeholders are of the view that South Africa is a unique market with unique needs and regulations should be specific to the South African market. One stakeholder state that South Africa is lagging behind in terms of advertising regulation making.

8.21.6 The Authority's position is that lessons taken from benchmarking on advertising, infomercials, programme sponsorship and product placement regulations should take into consideration the local conditions such as the impact of online media on traditional broadcasters, local market forces and revenue trends.

8.22 QUESTION 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?

8.22.1 eMedia is of the view that the Authority has achieved the balancing act between sustainability of broadcasters relating to revenue generation through sponsorships, infomercials and advertising, with the need to protect the consumers. This is achieved through the existing regulations in conjunction with the ARB code, which ensures that content of advertising rules supplement similar objectives. However, broadcasters are losing revenue due to limitations /prohibitions on:¹⁸⁷

¹⁸⁶ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 4

¹⁸⁷ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 13

- 8.22.1.1 programme sponsorships of any news or current affairs programme.
 - 8.22.1.2 limitations placed on duration of advertisements in any hour and/or in any financial year.
 - 8.22.1.3 programme sponsorships in children's programming which can also benefit the children.
 - 8.22.1.4 the duration of Infomercials as well as the prohibitions relating to the broadcast of Infomercials during primetime.
- 8.22.2 Furthermore, eMedia proposes that the Authority need to assess scheduling of Advertising not only in the Advertising Regulations but in any licence conditions.¹⁸⁸
- 8.22.3 MultiChoice states that it supports the Authority's statement in paragraph 6.3 of the Discussion Document that there is a "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."¹⁸⁹
- 8.22.4 Multichoice opines that the Authority could achieve the aforementioned balance by ensuring that restrictions on advertising are strictly necessary to achieve clearly defined objectives and only to the extent that those objectives cannot be achieved through market-forces and regulation.¹⁹⁰
- 8.22.5 Further, MultiChoice proposes the removal of unduly restrictive regulations, taking into account the pressures on broadcasters, and the development of flexible, future-proof principle-based regulations that do not unduly interfere with the commercial activities of licensees.¹⁹¹ MultiChoice submits that, a lighter touch regulation is warranted in relation to subscription broadcasting services.¹⁹²

¹⁸⁸ Ibid, page 13

¹⁸⁹ MultiChoice submission: Advertising Discussion Document, 2021, page 29

¹⁹⁰ Ibid, page 29

¹⁹¹ Ibid, page 29

¹⁹² Ibid, page 29

8.22.6 NAB states that it remains committed to the principles of responsible advertising, consumer protection and importantly child protection in line with section 28 of the Constitution of the Republic of South Africa, 1996.¹⁹³

8.22.7 OUTsurance is of the view that a principle-based approach would be best to ensure a balance between revenue generation and consumer protection. Furthermore, OUTsurance believes that market forces will negatively impact broadcasters who fail to maintain such balance sufficiently.¹⁹⁴

8.22.8 The Authority's finding and position

8.22.8.1 **The Authority's finding** is that one stakeholder is of the view that the balancing act is achieved through the Regulations and the ARB Code. Another stakeholder suggests that the balancing act can be achieved by removing unduly restrictive regulations and having a light touch approach. Another stakeholder believes that market forces will negatively impact broadcasters who fail to maintain the balancing act.

8.22.8.2 **The Authority's position** is that it will continue to ensure that there is a balance between the revenue generation and public interest. The balancing act would mean having certain restrictions to ensure that the Authority addresses areas that the market forces might not adequately take care of. Those will include sensitive areas such as regulation involving children, news and current affairs.

8.22.8.3 With regards to eMedia's proposal that the Authority needs to assess scheduling of Advertising not only in the Advertising Regulations but in any licence conditions, the Authority's position is that the license conditions process is separate from this process. This process is in line with section 55 of the ECA which talks to prescribing Regulations related to the scheduling of advertisement.

¹⁹³ NAB submission: Discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, Unnumbered page 4

¹⁹⁴ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 5

8.23 QUESTION 23: WHAT IS YOUR VIEW IN TERMS OF PROMOTIONAL MATERIAL INSIDE PROGRAMMES AND ADVERTISING DURING THE BREAKS ON WHETHER THESE AMOUNT TO EXCESSIVE ADVERTISING?

8.23.1 eMedia¹⁹⁵ and SASFED¹⁹⁶ are of the view that promotional material inside programmes and advertising during the breaks do not amount to excessive advertising.

8.23.2 MultiChoice submits that broadcasters are best placed to determine when promotional materials and advertising breaks are excessive, as viewers will tune out if it is too intrusive. Free-to-air broadcasters are subject to licence conditions in this regard while subscription broadcasters are subject to inherent constraints due to the contractual nature of their relationship with subscribers, as well as section 60 (4) of the ECA.¹⁹⁷ It further states that given the current environment, broadcasters should not be subject to further restrictions.¹⁹⁸

8.23.3 OUTsurance is of the view that broadcasters themselves would be best positioned to formulate guidelines in this regard, taking into account the nature of programming and the needs of the particular target audience.¹⁹⁹

8.23.4 The Authority's finding and position

8.23.4.1 **The Authority's finding** is that stakeholders are of the view that promotional material inside programmes and advertising during the breaks does not amount to excessive advertising. Further, stakeholders

¹⁹⁵ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 13

¹⁹⁶ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 9

¹⁹⁷ MultiChoice submission: Advertising Discussion Document, 2021, page 29

¹⁹⁸ Ibid, pages 29 - 30

¹⁹⁹ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 5

are of the view that they are best placed to determine whether promotional material is excessive.

8.23.4.2 **The Authority's position** is that the status quo should remain as there is no evidence to support the view that the use of promotional material inside programmes and advertising during the breaks amounts to excessive advertising.

8.24 QUESTION 24: WHAT ARE THE DETERMINANTS OF ADVERTISING REVENUE?

8.24.1 eMedia is of the view that Advertising revenue is earned from advertising, sponsorship including advertiser funded programmes, infomercials and product placements, in respect of which a broadcaster receives revenue.²⁰⁰

8.24.2 MultiChoice submits that advertisers are the ones who determine where to spend their money. Broadcasting services are only one of a choice of platforms available to advertisers, among print media, online media, social media, out of home media and many others.²⁰¹

8.24.3 MultiChoice further argues that advertising revenue is determined by the advertiser's ability to spend according to their financial budgets. Advertisers will consider the extent to which a particular advertising platform will meet its particular requirements having regard to the product offering, the target market, the reach of the platform and its demographics, quality of service, value for money, the availability of data and analytics, and the ability to direct advertising to as targeted an audience as possible.²⁰²

8.24.4 NAB makes comments on the ICASA's discussion document that ICASA has highlighted an increase in advertising and infomercial revenue for a

²⁰⁰ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 13

²⁰¹ MultiChoice submission: Advertising Discussion Document, 2021, page 30

²⁰² Ibid, page 30

period of five years. However, NAB is of the view that this data must be assessed within the context of overall industry development, the costs associated with broadcasting services (such as investments in content, technology, infrastructure), as well as the growth of online advertising.²⁰³

8.24.5 Further the NAB proposes that an independent economic review be conducted in advance to gauge the appropriateness of any further regulatory interventions in the revenue streams of the broadcasting sector.²⁰⁴

8.24.6 OUTsurance is of the view that market forces are the main determinates of advertising revenue. It submits that if broadcasters fail to maintain a balance between advertising and programming, audiences will react accordingly and thereby influencing the value of advertising slots available.²⁰⁵

8.24.7 **The Authority's finding**

8.24.7.1 **The Authority's finding** is that stakeholders are of the view that the advertisement revenue is earned from advertising, sponsorship, infomercials and product placement. The revenue is determined by the advertiser's ability to spend which is influenced by market forces including target market, platform, and demographics amongst others.

8.25 **QUESTION 25: WHAT IS THE IMPACT OF ONLINE MEDIA ON RADIO AND TELEVISION ADVERTISING REVENUE?**

8.25.1 eMedia submits that online media negatively impacts on broadcasters considering that online media is taking an increasing share of the advertising pie and they are not subject to regulation. Moreover, eMedia

²⁰³ NAB submission: Discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, Unnumbered page 2

²⁰⁴ Ibid, Unnumbered page 3

²⁰⁵ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 5

supports the suggestion in the Draft White Paper that all audio and audio-visual service providers should be subject to similar regulation.²⁰⁶

8.25.2 MultiChoice submits that online platforms are the most significant threat to broadcasters. This is a global trend that regulators and governments have since recognised in countries like the UK, Canada and Australia. The UK has recognised that digital advertising is taking an ever-larger share of ad spend as advertisers are following audience online thus television ad revenue is under pressure due to online growth. This has caused the UK House of Lords to caution against further regulatory burdens on broadcast advertising.²⁰⁷

8.25.3 MultiChoice, further state that the Australian Communications and Media Authority has recognised that "online platforms that offer new content are challenging traditional funding models for print media and commercial broadcasters".²⁰⁸

8.25.4 MMA is of the view that ICASA should consider regulating online advertising.²⁰⁹

8.25.5 NAB argues that the proliferation of online content distribution platforms has paved the way for online advertising which has increased exponentially. The NAB believes that this in turn increased competition for advertising revenue between traditional broadcasters, video sharing platforms and other online platforms. The NAB points out that online advertising has already begun to significantly erode broadcasters advertising market share. The NAB further submits that studies anticipate that online advertising will surpass television advertising in 2022.²¹⁰

²⁰⁶ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 14

²⁰⁷ MultiChoice submission: Advertising Discussion Document, 2021, page 30

²⁰⁸ Ibid, page 30

²⁰⁹ MMA submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, page 14.

²¹⁰ NAB submission: Discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, Unnumbered page 1

8.25.6 OUTsurance indicates that online media does not necessarily have negative impact on radio and television advertising revenue. It is often found that online advertising success is boosted by television advertising.²¹¹

8.25.7 The Authority's finding and position

8.25.7.1 **The Authority's finding** is that most stakeholders are of the view that advertising revenue is affected by online media advertisement in a negative way for sound and television broadcasting. One stakeholder is of the view that online media does not necessarily impact broadcasting as its success is boosted by television advertising. Some stakeholders propose the regulation of online media.

8.25.7.2 **The Authority's position** is that it does not have jurisdiction over online media. The Authority is following the process emanating from Draft White Paper, and any changes that may result from the Draft White Paper being made law will be addressed accordingly at that point.

8.26 QUESTION 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?

8.26.1 eMedia states that the ARB already regulates both online advertising as well as advertising by broadcasters. However, eMedia raises concern that no other limits are placed on broadcasters, such as no sponsorship of news, duration of advertising in any one hour, and the like. Furthermore, eMedia suggests that there should be an alignment whereby digital broadcasting, whether it is a simulcast or video-on-demand, apply the same rules. eMedia states that it has noted that the Draft White Paper is

²¹¹ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 5

aiming to bring about parity between traditional linear broadcasting and digital broadcasting.²¹²

8.26.2 MultiChoice submits that it is not clear whether this question seeks guidance on the Authority's jurisdiction under section 55 of the ECA broadly or specifically in relation to the digital era. However, it is of the view that, section 55 permits, but does not require, ICASA to prescribe regulations on the scheduling of adverts, infomercials and programme sponsorships. As the Discussion Document notes, the Authority's jurisdiction is confined to this role. ICASA may not regulate advertising content or override or alter the limit section 60 (4) of the ECA imposes on the revenue subscription broadcasting licensees may derive from advertising and sponsorship. The ECA is technologically neutral and does not differentiate between analogue and digital broadcasting services insofar as advertising restrictions are concerned.²¹³ Regarding the question of advertising regulation "during the digital era", MultiChoice submits that we are already in the digital era.²¹⁴

8.26.3 MultiChoice indicates that although ICASA's jurisdiction does not currently extend to on-demand services, the Government's Draft White Paper has proposed the inclusion of new audio-visual services within the country's licensing and regulatory framework. This review should take into account the realities of the modern audio-visual environment and advertising in a digital online context and provide for maximum flexibility so as to regulate in a way which is cognizant of, and appropriate for, the dynamic features of the modern advertising environment.²¹⁵

²¹² eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 14

²¹³ MultiChoice submission: Advertising Discussion Document, 2021, page 31

²¹⁴ Ibid, page 31

²¹⁵ Ibid, page 32

8.26.4 **The Authority's finding and position**

8.26.4.1 **The Authority's finding** is that a stakeholder submits that it has noted that the Draft White Paper is aiming to bring about parity between traditional linear broadcasting and digital broadcasting. Another stakeholder submits that the ECA is technologically neutral and does not differentiate between analogue and digital broadcasting services, and the country is already in a digital era.

8.26.4.2 **The Authority's position** is that it does not have jurisdiction over online media. The Authority is following the process emanating from Draft White Paper, therefore, any changes that may result from the Draft White Paper being made law will be addressed accordingly at that point.

8.26.4.3 **The Authority's position** is that the ECA recognises digital broadcasting and therefore the regulations on Advertising, Infomercials and Programme Sponsorship will be applicable to the digital broadcasting environment, subject to changes that might be brought about by changes in the broadcasting landscape or market forces that warrants a review of the Regulations.

8.27 QUESTION 27: TO WHAT EXTENT SHOULD THE AUTHORITY REGULATE ADVERTISING, INFOMERCIALS AND PROGRAMME SPONSORSHIP IN THE DIGITAL ENVIRONMENT TO ENSURE THAT THE REGULATIONS PROTECT CONSUMERS?

8.27.1 eMedia is of the view that it is not necessary for the Authority to regulate Advertising, Infomercials and Programme Sponsorship in the digital environment to ensure that the regulations protect consumers, considering the role of ARB. However, eMedia submits that online advertising has no limitations when compared to broadcasters, which gives online advertisers a substantial advantage over broadcasters.²¹⁶

²¹⁶ eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 14

Furthermore, eMedia proposes that any form of audio or audio-visual service provider should have the same limitations placed on it as contemplated in the Draft White Paper.²¹⁷

8.27.2 MultiChoice submits that there is a need to review the relevance of all regulations given that licensed broadcasting services are increasingly having to compete with unlicensed digital platforms (which are not subject to any regulations). Advertising revenue is increasingly flowing (largely offshore) to these unregulated services (which hardly make fiscal and other contributions to the local broadcasting industry and economy) at the expense of local broadcasters.²¹⁸

8.27.3 MultiChoice further highlights that any review of the Advertising Regulations should consider how restrictions can be equitably applied to all audio-visual services and not just broadcasting services. These circumstances warrant an easing of the advertising restrictions on broadcasting services rather than the introduction of any additional restrictions.²¹⁹

8.27.4 SASFED is of the view that ICASA should regulate to the extent necessary.²²⁰

8.27.5 OUTsurance is of the opinion that the ARB would be best positioned to regulate advertising in the digital environment via the Code of Advertising Practice.²²¹

²¹⁷ Ibid, page 14

²¹⁸ MultiChoice submission: Advertising Discussion Document, 2021, page 33

²¹⁹ Ibid, page 33

²²⁰ SASFED submission: Comments on ICASA's review of Advertising, Infomercials and Programme Sponsorship, page 9

²²¹ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 5

8.27.6 **The Authority's finding and position**

8.27.6.1 **The Authority's finding** is that some stakeholders suggest that the digital environment should be regulated by ARB to protect consumers as they have been doing it for some time. They substantiate that the code of Advertising gives ARB power to regulate the digital environment. Another stakeholder submits that the review of the Advertising Regulations should consider how restrictions can be equitably applied to all audio-visual services.

8.27.6.2 **The Authority's position** is that both the ARB and the Authority will be relevant in the regulation of Advertising, Infomercials and programme sponsorship in the digital environment as these two entities have different mandates. The Authority does not have jurisdiction over online media. The Authority is following the process emanating from Draft White Paper, therefore, any changes that may result from the Draft White Paper being made law will be addressed accordingly at that point.

8.28 QUESTION 28: ARE THERE ANY OTHER ISSUES THAT THE AUTHORITY SHOULD CONSIDER IN THE REGULATION OF ADVERTISING, INFOMERCIALS AND PROGRAMME SPONSORSHIP?

8.28.1 eMedia proposes a light touch approach which will protect broadcasters, particularly free-to-air broadcasters who rely on advertising, sponsorships, and infomercials. These are critical for generating of revenue and sustainability. eMedia continue to state that, this should be considered against the current environment where advertising revenue in the broadcasting sector is declining and that of online revenue increasing.²²²

8.28.2 eMedia submits that the Authority should not collect confidential contracts between the broadcaster and advertisers except in exceptional cases, such

²²² eMedia submission: Comments and submissions on the discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 15

as in the event that it is required by the Complaints and Compliance Committee.²²³

8.28.3 MultiChoice proposes the drafting of regulations that focuses on the issue of principle to allow more flexibility.²²⁴ MultiChoice submits that sections 5(1), 5(2)(1) and 5(2)(2) of the Regulations as they stand deals with editorial integrity of sponsored programmes. Therefore, the focus of these provisions is to guard against editorial interference by sponsorships which will ultimately ensure that the integrity of the programme is not compromised. Therefore, instead of being overly prescriptive as to how that objective must be achieved the said provisions could be replaced by principle-based provisions as follows:

8.28.3.1 Regulation 5.1 should read: "Programming content may be sponsored, provided that the sponsorship does not undermine the editorial integrity of the sponsored programme".²²⁵

8.28.3.2 Regulation 5.2.1 should read: "Licensees who accept sponsorship of their programmes must put in place mechanisms which will ensure that the said person who is providing programme sponsorship to a broadcaster does not unduly acquire control of editorial and /or scheduling decisions in relation to the sponsored programme".

8.28.3.3 Regulation 5.2.2 should read: "Licensees shall provide an annual report to the Authority, six months after the end of each financial year, on the procedures they have implemented to ensure that the editorial integrity of sponsored programming is not undermined by its sponsorship".²²⁶

8.28.4 MultiChoice further submits that regulation 5.5 which deals with subordination of programme sponsorship to programme material, aims to

²²³ Ibid, page 15

²²⁴ MultiChoice: Supplementary submission on the Discussion Document on the Advertising Regulations, page 6

²²⁵ Ibid, page 6

²²⁶ MultiChoice: Supplementary submission on the Discussion Document on the Advertising Regulations, page 7

prevent undue prominence being given to a person who provides a programme sponsorship to a broadcaster.²²⁷ In this regard, MultiChoice is of the view that Regulation 5.5 could be replaced with a principle-based provision and to read as follows:

"Where a person provides a programme sponsorship to a broadcaster and a product or service of the sponsor is depicted in the sponsored programme, the depiction of such product or service in the programme must not be unduly prominent such that it excessively supersedes the programming content without editorial justification".²²⁸

8.28.5 MultiChoice further submit that regulation 5.9 which deals with sponsor credit, require a broadcaster who accepts programme sponsorship to clearly state the nature of the sponsor's association with the relevant sponsored programme.²²⁹ Therefore MultiChoice is of the view that Regulation. 5.9 could be replaced with a principle-based provision to read as follows:

"Where a broadcaster accepts a programme sponsorship, the broadcaster must indicate clearly before, during or after the programme that the programme is sponsored".²³⁰

8.28.6 NAB submits that ICASA should balance the interests of the broadcasters and the public interest in assessing whether this review is necessary at this stage.²³¹

8.28.7 SABC states that it is commendable that the Authority has entered into Memorandum of Understanding to deal with the overlapping

²²⁷ Ibid, page 7

²²⁸ Ibid, page 7

²²⁹ Ibid, page 7

²³⁰ Ibid, page 7

²³¹ NAB submission: Discussion document on the review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, Unnumbered page 3

responsibilities of the two bodies. It is submitted that the two bodies should avert double jeopardy at all costs.²³²

8.28.8 OUTsurance submits that while it is mindful of the need to balance the need for revenue generation and consumer protection, it would caution against any approach which decreases opportunities for advertising and sponsorship, as such an approach could have a detrimental effect on advertisers and ultimately consumer alike.²³³

8.28.9 **The Authority's finding and position**

8.28.9.1 **The Authority's finding** is that there is a common view among the stakeholders regarding the Authority's approach in the handling of the review process. Stakeholders are of the view that a light touch, flexible and not rigid approach be exercised by the Authority in as far as protecting the sustainability of traditional broadcasters. One stakeholder proposes amendments to some provisions in Regulation 5 to allow flexibility in the regulation of programme sponsorship.

8.28.9.2 **The Authority's position** is that the purpose of this inquiry is to determine the effectiveness of the Advertising Regulations and whether there is a need for amendments. The Authority's position is that the Advertising Regulations are still relevant hence a need to be reviewed and updated in the public interest for the protection of consumers and children. The Authority believes that the Regulations are not stringent, they strike a balance for public interest and viability of broadcasters.

9 **CONCLUSION**

9.1 The Authority has compiled the Findings Document, having considered different views from stakeholders, the legislation and the effect of the

²³² SABC Submission: Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, page 10

²³³ OUTsurance submission: Comments on Advertising, Infomercials and Programme Sponsorship Regulations, page 6

Draft White Paper on Audio and Audio-Visual Content Services Policy Framework (AAVCS). The Authority appreciates all the views provided by stakeholders. The Findings Document is not published for comments, but rather to inform stakeholders on the Authority's findings from the input received after the publication of the Discussion Document.

- 9.2 Whilst the Authority does not have jurisdiction over online media, it notes the views raised regarding the AAVCS and the regulation of online media and will be following the process emanating from Draft White Paper. The Advertising Regulations are still relevant hence a need to be reviewed and updated in the public interest for the protection of consumers and children, and to provide certainty for broadcasters in their dealings with advertisers. The Authority believes that the Regulations are not stringent, they strike a balance between public interest and viability of broadcasters.



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

DRAFT REGULATIONS REGARDING ADVERTISING, INFOMERCIALS AND PROGRAMME SPONSORSHIPS 2022

The Independent Communications Authority of South Africa ("ICASA" or the "Authority") hereby publishes the Draft Regulations regarding Advertising, Infomercials and Programme Sponsorships, 2022 for public comments in terms section 4 (3)(j) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act") read together with sections 4 (1) and 55 (1) of the Electronic Communications Act, 2005 (Act No. 36 of 2005).

A copy of the Draft Regulations will be made available on the Authority's website at <http://www.icasa.org.za> and in the Authority's Library at No. 350 Witch-Hazel Avenue, Eco Point Office Park, Eco Park, Centurion between 09h00 and 16h00, Monday to Friday.

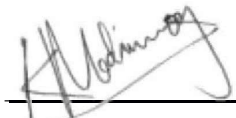
Written representations on the Draft Regulations must be submitted to the Authority by no later than 16h00, on **01 June 2022** by post, hand delivery or electronically and marked specifically for attention: Gladys Malefo. Delivery address: No. 350 Witch-Hazel Avenue, Eco Point Office Park, Eco Park, Centurion. Where possible, written representations should also be e-mailed to: rarc@icasa.org.za and mkgatshe@icasa.org.za. Enquiries should

be directed to 012 568 3259 between 10h00 and 16h00, from Monday to Friday.

Written representations received by the Authority pursuant to this notice will be made available for inspection by interested persons at the Authority's library.

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 explaining why the specific information should be treated as confidential, in accordance with ICASA Guidelines for Confidentiality Request published in Government Gazette No. 41839 of 17 August 2018. 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.



DR. KEABETSWE MODIMOENG

CHAIRPERSON

DATE: 30/03/2022

SCHEDULE

1. Definitions

In these regulations, any word or expression has the meaning assigned in the Electronic Communications Act, 2005 (Act No. 36 of 2005), unless otherwise specified:

- 1.1 **"Act"** means the Electronic Communications Act, 2005 (Act No. 36 of 2005);
- 1.2 **"advertisement"** means any material broadcast, in visual and/or audio form, for which a broadcasting service licensee receives a consideration, in cash or otherwise, and which promotes the interests of any person, product or service, provided that:
 - 1.2.1 spot commercials public service announcements for which a broadcaster receives a consideration, any material that would constitute an infomercial but for the fact that it is of two minutes' duration or less, that part of sponsorship packages which is constituted by spot commercials, and commercial features shall be regarded as being advertisements; but
 - 1.2.2 public service announcements in respect of which the broadcaster does not receive any consideration, supply agreements, infomercials exceeding two minutes in duration, branded filler material which receives no consideration is of a public service nature, sponsorship elements which form part of in-programme material, presenters' credits and (in relation to competitions and self-promotions) programme competitions, branded promotional spots and self-promotion promos shall not be regarded as being advertisements;
- 1.3 **"Advertising Standards Authority of South Africa"** has the same meaning given to that term in the Act;

- 1.4 **"Authority"** means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No.13 of 2000);
- 1.5 **"branded filler"** means a visual and/or audio announcement transmitted by a broadcasting service licensee and aimed at imparting knowledge the dissemination of which is in the public interest, regardless of whether such announcement has the effect of promoting the interests of a commercial entity;
- 1.6 **"branded promotional spot"** means a promotional announcement transmitted by a "broadcasting service licensee regarding a forthcoming programme or regarding a channel or station and which mentions or refers to an advertiser or a commercial entity;
- 1.7 **"broadcasting service licensee"** means a person to whom a broadcasting service licence has been granted in terms of the Act;
- 1.8 **"BSL"** means broadcasting service licensee;
- 1.9 **"commercial feature"** means a stand-alone feature, unrelated to a programme, and which may take the form of (but is not limited to) a commercial competition, advertising feature or advertising programme which is primarily intended to promote the interests of one or more persons, product, service, or sponsor, regardless of duration, and excludes any programme competition;
- 1.10 **"Complaints and Compliance Committee"** has the meaning assigned to it in the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);
- 1.11 **"current affairs programme"** means programming that is not a news bulletin, which focuses on and includes comment on and interpretation and analysis of issues of immediate social, political or

economic relevance and matters of international, national, regional and local significance;

- 1.12 "**infomercial**" means material of more than two minutes' duration, broadcast in visual and/or audio form, for which the broadcasting service licensee receives a consideration, in cash or otherwise, which is usually (but not necessarily) presented in a programme format, which promotes the interests 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;
- 1.13 "**news**" means programming that is not current affairs by a broadcasting service licensee in which it reports on news events of immediate social, political or economic relevance and on matters of international, national and local significance;
- 1.14 "**performance period**" means the period between 05h00 and 23h00 every day;
- 1.15 "**presenters' credits**" means any acknowledgement of the provision of hair products, clothing, accessories, make-up or other goods or services to a production company or BSL by a third party;
- 1.16 "**prime time**", in relation to a person who provides a television broadcasting service, means the period between 18h00 and 22h00 every day;
- 1.17 "**product placement**" means 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 BSL and/or the producer of the material concerned receives payment or

other consideration, and which promotes the interests of any person, product or service;

- 1.18 "**programme competition**" means a competition that forms part of, or is linked to, a programme by way of a competition window, insert or slot, and which does not have the promotion of the commercial interests of a person, product, or service;
- 1.19 "**programme sponsorship**" means the direct or indirect financing, whether partial or total, of the production or transmission of broadcast programme material by an advertiser or person with a view to promoting its own or another person's name, trademark, image, activities or product;
- 1.20 "**public service announcement**" means an announcement broadcast by a broadcasting service licensee aimed at providing information concerning a disaster or immediate grave danger to the public or in the interests of public welfare;
- 1.21 "**self-promotion promo**" means a promotional announcement transmitted by a broadcaster and which focuses on a forthcoming programme to be transmitted by that broadcaster, or on the broadcaster itself or one of its channels;
- 1.22 "**sponsorship element**" means marketing material which forms part of, or is superimposed on, broadcast programme material and includes on-screen corner logos, opening middle and closing billboards, stings, squeeze backs, the on-air depiction of, or referral to, any brand, product or name, ribbons and crawls, naming rights, and product placements;
- 1.23 "**spot commercial**" is an advertisement found in an advertising break;

- 1.24 **"supply agreement"** means any agreement that forms part of a programme purchasing contract concluded between a broadcasting service licensee and a content provider and which usually, but not necessarily, specifies the amount and frequency of promotional material which the broadcasting service licensee is obliged to transmit before, during or after the transmission of the purchased programme material.

2. **Scope**

These regulations are binding on every BSL who provides a television broadcasting service and a sound broadcasting service.

3. **Code of Advertising Practice**

- 3.1 Every BSL must, in addition to complying with these regulations, comply with the Code of Advertising Practice of the Advertising Standards Authority of South Africa, as required by section 55 (1) of the Act.
- 3.2 To the extent that there may be inconsistencies between these regulations and the Code of Advertising Practice of the Advertising Standards Authority of South Africa in respect of any matter which falls within the jurisdiction of the Authority, these regulations shall prevail.

4. **Advertising**

- 4.1 The definition of "advertisement" shall be used by the Authority to distinguish between programme material, advertisements, infomercials, and programme sponsorships transmitted by BSL, for the purposes of:

- 4.1.1 ensuring compliance by BSL with these Regulations;

- 4.1.2 determining whether jurisdiction in respect of complaints concerning material transmitted by BSL vests in the Complaints and Compliance Committee or the Advertising Standards Authority of South Africa; and
- 4.1.3 in the case of BSL who provide a television broadcasting service, regulating the amount of advertising that may be transmitted.
- 4.2 Any BSL 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 on-air depiction of, or referral to, any brand, product or name, must ensure that the primary purpose of the broadcast is to promote the BSL or the programme concerned, rather than the commercial interests of the person, product or service referred to in the course of such transmission.
- 4.3 Transmission elements such as continuity announcements and station identification, in the form of on-screen logos, signature tunes and the like, do not constitute advertisements.
- 5. **Infomercials**
 - 5.1 A BSL must not transmit any infomercials during prime time or during the transmission of, or in breaks during the transmission of, any children's programme.
 - 5.2 Every BSL must ensure that all infomercials transmitted by it are presented and labelled in such a manner that it will be clear to the consumers that such infomercials do not constitute programme material.
 - 5.3 No channel may transmit infomercials for more than two hours during the performance period in any one day.

- 5.4 The provisions of regulation 5 shall not apply to any dedicated infomercial channel provided by a BSL.

6. **Programme Sponsorship**

- 6.1 Every BSL who derives benefit from a programme sponsorship must ensure that, in relation to the relevant sponsored programme, editorial control remains with that BSL.

- 6.2 Every BSL must:

- 6.2.1 in respect of every programme sponsorship obtained or accepted by it, enter into a written sponsorship contract with the sponsor which shall provide that the sponsor shall not be entitled in any way to influence the content or scheduling of the sponsored programme; and

- 6.2.2 on the Authority's request, furnish the Authority with copies of sponsorship contracts concluded by that BSL.

- 6.3 A BSL who provides a television broadcasting service must not obtain or accept any programme sponsorship from any person in respect of any news or current affairs programme.

- 6.4 Notwithstanding sub-regulation (3), a BSL who provides a television broadcasting service shall be entitled to obtain or accept a programme sponsorship in respect of a weather forecast or sports results bulletin which constitutes part of a news programme broadcast by that BSL.

- 6.5 Any depiction of, or referral to, the name, logo, product or service of a person who provides a programme sponsorship to a BSL, whether before, during or after the broadcast of the relevant programme, shall be subordinate to the content of the programme material to

ensure that undue prominence is not given to that name, logo, product or service.

- 6.6 A BSL must not permit any product placement in any news or current affairs programme transmitted by it.
- 6.7 Product placement in programming other than news and current affairs shall be subordinate to the content of the programme material.
- 6.8 Product placement must be signalled clearly, by means of a logo, at the beginning of the programme in which the placement appears, and at the end of the programme.
- 6.9 A BSL must not accept any programme sponsorship from any person who is prohibited by any legislation from procuring the transmission by a broadcasting service licensee of any advertisement, infomercial or other marketing material.
- 6.10 In all cases of programme sponsorship, a BSL must, before and after the transmission of the sponsored programme, state clearly the nature of the sponsor's association with the relevant sponsored programme. Preference should be given to descriptions such as "sponsored by" or "in association with" as opposed to descriptions such as "brought to you by" or "with compliments of".

7. Contraventions and penalties

A licensee that contravenes any provision set out in these Regulations is liable to a fine not exceeding 10% of the licensee's annual turnover and/or a fine not exceeding R3 000 000 (three Million Rand).

8. **Repeal**

These regulations repeal, in their entirety, the Independent Broadcasting Authority (Advertising, Infomercials and Programme and Sponsorship) Regulations, 1999 published in Notice No. 426 (Government Gazette No. 19922) of 1 April 1999.

9. **Short title**

These Regulations are called the Advertising, Infomercials and Programme Sponsorship Regulations, 2022 and come into force upon publication thereof in Gazette.



Independent Communications Authority of South Africa

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

EXPLANATORY MEMORANDUM ON ADVERTISING, INFOMERCIALS AND PROGRAMME SPONSORSHIP DRAFT REGULATIONS

1. INTRODUCTION

This Explanatory Memorandum stipulates the proposed regulations by the Authority regarding advertising, infomercials and programme sponsorship. The Explanatory Memorandum is intended to provide a basis/context for the new regulations proposed by the Authority and must be read with the attached Findings Document.

2. THE PROCESS

- 2.1 On 26 March 2021, the Authority published the Discussion Document on Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999¹ ("the Regulations") and invited interested persons to submit their written representations on the Discussion Document.
- 2.2 The Authority received written comments from seven (7) stakeholders, namely eMedia Investments, MultiChoice, Media Monitoring Africa (MMA), National Association of Broadcasters (NAB), OUTsurance, South African Broadcasting Corporation (SABC) and South African Screen Federation (SASFED). Four (4) stakeholders

¹ Published in Government Gazette No.44333 dated 26 March 2021

indicated that they are interested in making oral presentations at the public hearings. The public hearings were held on 26 July 2021.

3. PROPOSED ICASA ADVERTISING, INFOMERCIALS AND PROGRAMME SPONSORSHIP DRAFT REGULATIONS, 2022.

- 3.1 It is important to mention that most of the regulations that were in the repealed regulations have been retained in this Regulation on the basis that the Authority is of the view that those regulations are still relevant.

Definitions

- 3.2 The Authority has aligned the following definitions with the Electronic Communications Act, 2005, Act No. 36 of 2005, (ECA) and the Independent Communications Authority of South Africa Act, 2000, Act No.13 of 2000, (ICASA Act);

- 3.2.1 Advertising Standards Authority of South Africa;

- 3.2.2 Authority now refers to the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No.13 of 2000) whereas the 1999 Regulations referred to the Independent Broadcasting Authority;

- 3.2.3 By replacing "broadcaster" with "broadcasting services licensee" throughout the Regulations, to read "BSL". Broadcasting service licensee means a person to whom a broadcasting service licence has been granted in terms of the Act;

- 3.2.4 By replacing the word Broadcasting Monitoring and Complaints Committee (BMCC) with Complaints and Compliance Committee (CCC).

- 3.3 The following new definitions are proposed by the Authority:

3.3.1 The reason for separating the definitions of “news” and “current affairs” is that although news and current affairs might have similar elements, they are not the same and that should be reflected in the definition for ease of reference. The definitions are aligned with the definitions as contained in other broadcasting regulations published by the Authority. Namely, the definition of current affairs is aligned to the definition in the Local Television Content Regulations 2016² and the definition of news is aligned to the definition in the National Elections Regulations, 2014³.

3.3.2 The definition of the Public Services Announcement has been aligned with the Standard Terms and Condition 2021, Government Gazette 39844 of 23 March 2016.

3.3.3 The Authority has decided to add the definition of Spot Commercial. The Authority is aligning itself with the definition by Ofcom.

Scope

3.4 This provision is intended to indicate the persons that will be subject to the Regulations.

Advertising

3.5 This provision seeks to clearly distinguish the term “advertisement” from other similar terminologies such as branded filler material, self-promotion promo and others.

Infomercials

3.6 This provision seeks to regulate the transmission of infomercials.

² Government gazette 39844 of 23 March 2016

³ Government gazette 37350 of 17 February 2014

Programme Sponsorship

3.7 Regulation 6.8 seeks to ensure that the audiences are not confused when seeing certain products and services as part of the storyline, to confuse such with material that is paid for. This will also add to transparency and accountability. In this way broadcasters are able to separate editorial content from commercial messages. The Authority will be able to clearly monitor the amount of commercial messages within programmes to ensure that commercial messages do not overtake editorial content, and that audiences are not oversupplied with such material.

Contravention and Penalties

3.8 The “contraventions and penalties” provision is in line with section 17H of the ICASA Act and it seeks to regulate non-compliance with the Regulations.

3.9 The Authority is of the view that the market has changed and there is more competition hence it is necessary to ensure monitoring and compliance with the Regulations.

3.10 The proposed fine is a maximum fine, and a far lesser fine could be imposed. The fine is meant to indicate the seriousness for which the Authority views these Regulations and is meant as a deterrent to non-compliance.