**COMPLAINTS AND COMPLIANCE COMMITTEE**

**DATE OF HEARING: 21/08/2023** **CASE NO: 456/2023**

**POSTPONED TO 22/09/2023.**

**LICENSING AND COMPLIANCE DIVISION OF ICASA** **COMPLAINANT**

**V**

**ON DIGITAL MEDIA (PTY) LTD ("ODM")** **RESPONDENT**

**CCC MEMBERS:**

Judge Thokozile Masipa – Chairperson
Councillor Catherine Mushi - Member
Mr Monde Mbanga - Member
Mr Peter Hlapolosa - Member
Mr Thato Mahapa - Member
Mr Paris Mashile – Member
Ms Ngwako Molewa - Member

**FROM THE OFFICE OF THE CCC:**

Lindisa Mabulu - CCC Coordinator
Meera Lalla - CCC Assessor
Thamsanqa Mtolo - CCC Assessor
Amukelani Vukeya – CCC Administrator

**LEGAL REPRESENTATION FOR PARTIES**

For the Complainant - Busisiwe Mashigo (Manager: Broadcasting Compliance) and Yolani Goci (ODM's Compliance Officer)

For the Respondent - Kerron Edmunson

## JUDGMENT

Judge Thokozile Masipa

**INTRODUCTION**

[1] The Complainant is the Licensing and Compliance Unit of ICASA. It brought a complaint against the Respondent, for a number of contraventions. These included non-compliance with certain clauses of its licence, as well as a number of Regulations as detailed hereunder.

[2] The Respondent is On Digital Media (Pty) Ltd (ODM). At the time the allegations were raised against it, ODM held the following service licences issued in terms of the ECA:

2.1 an individual broadcasting service (IBS) licence under licence number 003/COMM/SUB/TV/JULY/08; and

2.2 an individual electronic communications network service (IECNS) licence under licence number 0440/IECNS/NOVEMBER/09.

[3] a radio frequency spectrum licence under licence number 00-516-178-5 issued in terms of the ECA.

[4] The services provided by ODM in terms of its IBS and IECNS licences, together with the radio frequency spectrum licences, are those of satellite subscription television services to its subscribers in the Republic of South Africa.

**PRELIMINARY ISSUE**

***Is the Respondent a Licensee?***

***And***

***Does the CCC have jurisdiction to hear the matter?***

[5] At the outset, a preliminary issue arose that had to be disposed of first. It is common cause that ODM's licence expired on 08 July 2023, and that there was no evidence that ODM tried to renew it. Currently there is no renewal application pending before the Authority.

[6] This raised a question whether the CCC had jurisdiction to entertain the matter as the Respondent is, in essence, currently not a licensee.

[7] In terms of Section 17B of the ICASA Act, the CCC has the power to investigate, and hear if appropriate, and make a finding on —

***inter alia,*** allegations of non-compliance with the ICASA Act or the underlying statutes.

[8] Notably, the non-compliance must be by a licensee. This is confirmed by the wording of section 17D of the ICASA Act that deals with recommendations in respect of sanctions.

[9] In terms of section 17D, the Complaints and Compliance Committee must recommend what action the Authority should take, if any, against a licensee who is found to have contravened the ICASA Act and/or the underlying statutes.

[10] The relevant legislation gives no guidance as to what happens in a case where a Respondent's licence expires before a hearing takes place. In view of that, it becomes a matter of determining what would be in the public interest as that is the objective of the ICASA Act.

[11] Public interest dictates that, regardless of the current status of the Respondent, at the time of the hearing, where there has been a non-compliance, the law must take its course.

[12] It follows, therefore, that it is not the current status of the Respondent that determines jurisdiction, but the status of the Respondent at the time the non-compliance allegedly occurred. The said jurisdiction does not come to an end simply because the licence expired, and Respondent failed to renew it.

[13] If the Respondent was a licensee, at the time of the alleged non compliances, then the CCC has a legal obligation to investigate, and hear the complaint if appropriate, and make a finding on the matter.

[14] In the present case, the complaint before the CCC, concerns alleged non compliances by the Respondent between 2018 and 2021. At the time, ODM was a licensee and its licence only expired on 8 July 2023. There is no pending application for a renewal.

[15] In terms of the ICASA Act, the Authority must regulate in the public interest. Ensuring that licensees are held accountable for their actions would align with this objective of the legislation to *"regulate in the public interest."*

[16] It's only proper, therefore, that a Licensee, who contravenes the law, should face the consequences of its actions irrespective of the status at the time the complaint is heard.

[17] To allow failure of ODM to renew its licence, to serve as an escape route from the consequences of its own wrongdoing, cannot, in my view, be in the public interest.

***The Respondent's Failure to renew its licence***

[18] It is common cause that currently the Respondent is operating without a licence. However, since the Respondent has not been charged with operating without a licence, this is not something the CCC can entertain. Save to say that, at the time of the contraventions, ODM was a licensee, nothing more needs to be said about the matter.

[19] Because the CCC has jurisdiction to hear the matter, not to proceed, because of the issue of the licence, would be tantamount to dereliction of duty. In addition, it would send the wrong message to the public and encourage lawlessness in the industry.

**THE COMPLAINT**

[20] The Complainant alleged that ODM contravened a number of Regulations and its licence terms and conditions namely: —the Third Amendment to the Standard Terms and Conditions for Individual Broadcasting Services, 2023; the General Licence Fees Regulations (2012); The ICASA Local Television Content Regulations, 2016; Regulations on the Commissioning of Independently Produced South African Programming, 2009 and clauses 6 and 7 of its service licence.

[21] For convenience, the allegations in respect of each charge, the Respondent's individual responses there to, shall be dealt with simultaneously in tranches. This would serve to simplify issues and avoid any confusion that might arise as a result of the complex nature of the complaint.

[22] In addition to the above, it is convenient to deal with the written submissions by the Respondent, as well as submissions by counsel simultaneously. This is necessary to ensure that the defence by the Respondent is placed in perspective.

**DETAILS OF THE COMPLAINT**:

[23] Details of the complaint are to be found in the Annual Compliance Reports compiled by the Compliance Unit. For purposes of this judgment, it shall not be necessary to go into such details. It, is, however, proper to state that the Annual Compliance Reports, which form part of the papers, greatly assisted in placing the issues in perspective. The CCC is grateful to the Compliance Unit for the assistance.

[24] The alleged non compliances concerned are set out hereunder:

**CHARGE 1**

**NON-COMPLIANCE WITH THE THIRD AMENDMENT TO THE STANDARD TERMS AND CONDITIONS FOR INDIVIDUAL BROADCASTING SERVICES, 2023.**

***Allegations***

[25] The allegation was that:

25.1 The Respondent failed to comply with sub-regulation 2 of the Third Amendment to the Standard Terms and Conditions for Broadcasting Services, 2023 in that it did not file a notification regarding changes in its physical address, change of contact person and changes in the shareholding structure within fourteen days of the occurrence of the changes.

[26] The Licensee's physical address as reflected on ODM's service licence is 28 Saddle Drive, Woodmead Office Park, Woodmead, 2191. According to the Licensee's annual compliance submission to the Authority, the physical address of the Respondent is reflected as Block C Review Office Park, Halfway Gardens, Midrand, 1686.

[27] The Authority was not notified of this change within the required 14 days after the occurrence.

[28] Similarly, it is common cause that the shareholding structure of ODM was changed and that the Authority was not apprised of this fact within the required period of 14 days after the occurrence.

[29] At this stage it is necessary to briefly discuss circumstances that led to the charge.

**Charge 1**

[30] In its 2018/2019 compliance submission, the Compliance Unit noted that the Licensee changed the contact person and the contact details as reflected on the service licence but did not notify the Authority of this change.

[31] On the 10 June 2020, the Compliance Unit sent a written notification to the Licensee requesting it to deal with this oversight.

[32] It appears that there was no response to the above letter.

[32] On 9 May 2014, the Licensee filed a notification with the Authority that there were changes to its shareholding structure. In this notification, the Licensee requested confidentiality regarding the shareholder's subscription agreement.

[33] When the Authority refused to grant confidentiality in respect of the Shareholder's Agreement, the Licensee withdrew the Shareholders Agreement.

[34] On 27 September 2018, the Authority requested the Licensee to submit a notification to update its details with the Authority (i.e., to change its physical and its shareholding structure) and a Processes and Procedures Regulations manual was forwarded to the Licensee.

[35] On the 11 November 2018 and again on the 6 December 2018, the Authority sent a reminder to the Licensee.

[36] On the 11 December 2018, the Licensee submitted an incomplete notification without a Board resolution and a Shareholders Agreement. On the same day, the Authority sent a notification to the Licensee, where it drew the latter's attention to the outstanding documents, but no response was forthcoming.

[37] As a result, the Compliance Unit was unable to process the change.

***Submissions by Counsel***

[38] Counsel for the Respondent made several submissions on behalf of ODM in the above regard. In the main the submission was that ODM had been charged under the wrong regulation. It was argued that since all the alleged violations had occurred prior to the year 2023, the charge under the 2023 regulations was defective as legislation could not apply retrospectively.

[39] It is common cause that the 2010 regulations were repealed by the 2023 regulations, and that the regulations currently in force are the 2023 regulations.

[40] The question is whether the 2023 Regulations apply retrospectively.

**CAN LEGISLATION APPLY RETROSPECTIVELY AND IF SO, IN WHAT CIRCUMSTANCES?**

[41] This question has been debated in numerous cases. The approach to be followed in matters of this nature is to be found in the judgment of the Full Court in the Gauteng Local Division in the following cases, heard simultaneously namely: —

**Raumix Aggregates (Pty) Ltd 2019/8153; Firstrand Bank Limited t/a Wesbank 2017/14846X; SA Taxi Impact Fund (RF) (Pty) Ltd 2019/12142;**

**Masango Attorneys 2019/14229; Hartless (Pty) Ltd 2019/10245; Standard Bank of South Africa Limited 2019/7918; Nedbank 2019/14870; ABSA Bank Limited 2018/37011.**

Para [7] thereof reads:

"*When new legislation comes into effect, existing rights or expectations of the parties are often affected. New legislation that affects substantive rights will be presumed to have a prospective effect, unless it is possible to discern a clear legislative intent that it is to apply retrospectively. Mokgoro J in* ***Veldman v Director of Public Prosecutions, Witwatersrand Local Division 2007 (3) SA 210 (CC) paragraph 26,*** *held that:*

***"Generally, legislation is not to be interpreted to extinguish existing rights and obligations. This is so unless the statute provides otherwise, or its language clearly shows such a meaning. That legislation will affect only future matters and not take away existing rights is basic to notions of fairness and justice which are integral to the rule of law, a foundational principle of our Constitution. Also central to the rule of law is the principle of legality which requires that law must be certain, clear and stable. Legislative enactments are intended to "give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed. "***

[42] Therefore, the general rule is that a statute is, as far as possible, to be construed as operating only on facts which come into existence after its passing. **(S v Mhlungu and Others 1995(3) SA 867 (CC) paragraph 65).**

[43] The test, is therefore, whether any substantive rights and obligations would be impaired if the new legislation were to apply retrospectively. A perusal of both the repealed regulation and the current regulation would be of some assistance in resolving the issue.

[44] In the present case regulation 2 of the current Regulations reads:

> **"2 NOTIFICATION OF CHANGE IN LICENSEE DETAILS AND INFORMATION**
>
> *(1) A Licensee must submit a written notice to the Authority within fourteen (14) days of occurrence of the following changes:*
>
> *(a) the name of the Licensee;*
> *(b) contact details including the contact persons (e.g. telephone, cell number and email);*
> *(c) shareholding;*
> *(d) Principal place of business; and*
> *(e) Postal address."*

[45] Sub section 2 of the 2010 Regulations reads:

> **"2 NOTIFICATION OF LICENSEE DETAILS AND INFORMATION**
>
> *(1) A Licensee must submit written notice to the Authority within seven (7) days of the occurrence of the following changes in its licence: -*
>
> *(a) the name of the Licensee;*
> *(b) contact details;*
> *(c) shareholding; and*
> *(d) notices and addresses.*
>
> *(2) Any transfer of shares undertaken in terms of 2(1)(c) above must comply with all licence terms and conditions and the Act."*

[46] As can be seen, both the repealed regulations and the current laws seek to convey the same information relating to the obligations of the Licensee. In both instances, the Licensee is obliged to submit written notice to the Authority, within a specified period of the occurrence of certain specified changes in its licence.

[47] Significantly, the only difference between the 2010 Regulations and the 2023 Regulations is the period within which the Licensee is obliged to submit the written notice concerned.

[48] In the 2010 Regulations, the submission of written notification must be made within 7 days of the changes. On the other hand, in the 2023 Regulations, the period has been extended to 14 days.

[49] Going back to the question whether the substantive rights and obligations of the Licensee would be impaired, if the 2023 Regulations were to apply retrospectively, the answer would be a resounding "No".

[50] No rights or obligations of the Licensee would be adversely affected by the retrospective application of the 2023 Regulations. On the contrary, the retrospective application of the 2023 Regulations, in this case, has an advantage to the Licensee as the latter has been given more time within which to comply with the requirements.

[51] The interests of justice dictate that the 2023 Regulations should apply retrospectively. In any event, the circumstances of this matter point to the fact that this would have been the intention of the Legislature; the amendment of the period within which the Licensee must comply, (from 7 days to 14 days) made the obligation less onerous and this is to the advantage of the Licensee.

[52] Except for the difference pointed out earlier, in the present instance, in both cases, we are dealing with the applicability of essentially the same law relating to the alleged non-compliance. Accordingly, the retrospective application of the 2023 Regulations would not adversely affect the rights and obligations of the Respondent. It follows, therefore, that the Respondent was correctly charged.

[53] Since the facts are common cause, the next step is to examine the defence proffered by the Respondent, if any.

***Defence of the Respondent***

[54] In defence, Counsel for the Respondent submitted that ODM complied with the requirement that a Licensee must notify the Authority of its change of contact person and details as well as its physical address. She based this submission on the fact that the Authority had recently been able to communicate with ODM's current contact person at its current address. According to counsel, this is

adequate proof that the Respondent must have made the required information available to ICASA and that ICASA had accepted it.

[55] The submission overlooks the requirement that the notification must be made within 14 days after the occurrence of the event concerned.

[56] Counsel for the Respondent submitted further, that the Regulations were silent about information in a prescribed format. That may be so, but, considering that the information, in whatever form, was not submitted within a period of 14 days after the occurrences, this argument will not avail the Respondent.

[57] The Respondent seemed to be at a loss as to what exactly was expected of it. This is unacceptable. I say this because it is the duty of every licensee to familiarise itself with all the laws, regulations, procedures and/or practices that apply in the industry in which it operates, so as to ensure compliance. No licensee, therefore, can successfully use ignorance as a defence.

[58] In the present case, a **Processes and Procedures Regulation Manual** is available as an additional tool to assist Licensees to operate within the law. There is evidence, (which was not contradicted), that the Authority forwarded a copy of this manual to ODM to assist it to follow the correct procedure. Sadly, ODM failed to take advantage of this assistance.

[59] That the Regulation makes no reference to the **Processes and Procedures Regulation Manual**, is not material. It, therefore, cannot assist the Respondent as a defence.

[60] From the papers, it can be deduced that ICASA did all it could to assist the Respondent to put its house in order. When ODM repeatedly failed to comply, despite the assistance offered to it, ICASA forwarded it samples from other licensees which showed step by step what was expected of a licensee such as ODM. The latter ignored this further assistance at its own risk.

[62] Accordingly, the Respondent is found to have no valid defence at all with regard to change of address, contact person and details without notifying the Authority within the prescribed period.

[63] A further interesting feature of this charge was that the Respondent submitted notification of change in shareholding and withdrew the notification when its request for confidentiality in respect of the Shareholders Agreement was not granted. At no time, thereafter, did ODM resubmit the required information. Because of this withdrawal, the Authority was not able to process any change.

[64] So Counsel's argument that the Authority was, at some time, notified of the change cannot be correct.

[65] In view of the above, the CCC finds that Charge 1 has been proven and that the defence raised by ODM is not a valid defence.

**CHARGE NO 2**

**NON-COMPLIANCE WITH SCHEDULE 3(2) OF THE GENERAL LICENCE FEES REGULATIONS OF 2012.**

***The Law***

[65] 3(2) provides as follows:

*"All licence holders must submit within six (6) months of their financial year end:*

*(a) audited financial statements, or;*

*(b) financial statements signed by the accounting officer of the Licensee where the Licensee is not legally obliged to provide audited financial statements."*

***The Allegations***

[66] The allegations are that:

A. In the 2018/2019 financial year, ODM submitted a draft of the 2017/2018 financial statements and not the audited annual financial statements, as required by the Regulations.

B. For the following financial year, 2020/2021, ODM allegedly once more failed to submit its audited financial statements. Instead, it submitted a confirmation of income statement from its auditors.

***Response and Submissions in respect of the allegations***

[67] In response, ODM admitted the allegations and proffered the explanation hereunder.

*32.1 "ODM at the time had recruited alternate auditors (ADVOCA) to replace KPMG and as such audits over the periods had to be redone and were in draft stages.*

*32.2 For the 2020/2021 financial period ODM audit was incomplete when the compliance report for the period was due and ODM, in light of this, requested a confirmation of income statement from its independent auditors.*

[ODM attached Appendix 3.2 Annual Financial Statements - For periods 2018/2019 to 2020/2021 'for the CCC's inspection'].

[68] Although initially ODM appeared to admit the non-compliance and offered an explanation, which, with more details, could have been plausible, it transpired during counsel's submissions that ODM was in fact denying any wrongdoing.

[69] The position of ODM was that it had fulfilled its legal obligations in terms of this Regulation, when it paid its licence fees in full, for all the relevant years referred to in the Charge Sheet. In any event, argued counsel, ODM has no legal obligation to file audited financial statements.

[70] Counsel for the Respondent submitted, further, that the reason for the regulation was to ensure that Licensees paid their licence fees. Since ODM had paid its fees in full, it had discharged its financial obligations.

[71] By implication, the above suggests that once the licence fees were paid in full, it was, in any event, no longer necessary to submit the audited financial statements.

[72] In our view, this submission cannot be sustained. It seeks to water down the purpose of the relevant legislation and the rationale behind the manner in which the regulation was formulated.

[73] There is good reason why the regulation above is specific as to the exact nature of the financial statements required to be submitted to the Authority. It is not just **any** financial statements that are required in terms of the Regulation. In (a) it is the **audited** financial statements while in (b) it is financial statements **signed by the accounting officer** of the Licensee.

[74] The submission of any other financial statements, which do not fall under (a) or (b), is not valid under the applicable regulation as such statements cannot be relied upon. So, the notion that any financial statements, (including draft financial statements), will do, is misplaced.

[75] It is so, that the payment of the licence fees is inextricably linked to the financial statements of the licensee, but only insofar as such statements fall under (a) or (b).

[76] For obvious reasons, as alluded to earlier, statements which fall under (a) or (b) are the only ones that can be trusted to be what they purport to be. I say this because without audited financial statements, or without financial statements signed by the Licensee's accounting officer, it is impossible to determine the licence fee amount that is due to the Authority. For that reason, the fact that ODM may have been paying its licence fees, cannot suffice as an answer, at least not until it can be ascertained, that the fees paid, correctly reflect the amount that was due.

[77] Counsel's argument was further that ODM was uncertain as to whether it had an obligation to submit audited financial statements. On its own version, *"ODM is not aware that it is legally required to submit audited financial statements to ICASA."* This statement is startling, to say the least.

[78] ODM was issued a licence in 2008. How ODM could operate for so many years without knowing what was legally required of it, as a Licensee, is baffling.

[79] The statement also sounds disingenuous, as the regulation is simple and straightforward. In addition, it specifically refers to *"all licence holders"* and leaves no room for doubt that ODM is included as a licence holder.

It provides as follows:

*"All licence holders must submit within six (6) months of their financial year end:*

(emphasis added).

*(a) audited financial statements, or.*
*(b) financial statements signed by the accounting officer of the Licensee where the Licensee is not legally obliged to provide audited financial statements."*

[80] It is worth repeating that the regulation is unambiguous. As can be seen from the word **"All"**, every licensee, without exception, is included. The provision then refers to two categories of licensees namely: —

1. those in category (a) who are *legally obliged to provide audited financial statements* and
2. those in category (b) who are *not legally obliged to provide audited financial statements.* The requirement in this category is that the Licensee submit *financial statements signed by its accounting officer.*

[81] If ODM was uncertain as to its obligations, all it had to do was to make enquiries and then conduct its affairs accordingly, so as to operate within the ambit of the law. It is vitally important that a business entity, (in this case the Licensee), arm itself with the necessary knowledge about applicable legislation to ensure that it complies with its legal obligations.

[82] In this case there is no evidence that ODM, prior to the lodging of this complaint, took any steps to make the necessary enquiries. The least that ODM could have done was to approach the Authority for guidance. It did not do so at its own peril. ODM's defence, in respect of this charge, therefore, falls short of what is expected of a valid defence.

[83] There is yet another reason why the purported defence proffered by ODM has no merit, and it is this:

The word **"must",** in the regulation is peremptory and is applicable to **"all"** licensees. So, even if there had been no legal obligation for ODM to submit audited financial statements, under sub regulation (a), ODM would still have been legally required to submit financial statements, signed by its accounting officer,

under sub regulation (b). The fact that ODM complied with neither (a) nor (b) casts serious doubt on its credibility.

[84] The result is that although ODM sought to deny charge 2 vehemently, it failed dismally to raise a valid defence. Accordingly, charge 2 has been proven.

**CHARGE 3**

**NON-COMPLIANCE WITH REGULATION 6(2) OF THE LOCAL TELEVISION CONTENT OF 2016.**

***The Law***

[85] Regulation 6(2) provides as follows:

> *"A subscription broadcasting service licensee that acquires channels must ensure that, a minimum of 15% of their total annual channel acquisition budget, measured across its service as a whole, is spent on channels with local television content that are compiled and up linked from South Africa."*

***The Allegations***

[86] The allegations were that ODM failed to ensure that a minimum of 15% of its total annual acquisition budget, was spent on channels with local television content that were compiled and up linked from South Africa.

**Response and submissions in respect of the allegations**

[87] In this regard ODM made the following admissions:

1. *"For the 2018/2019 financial year, it spent 14% of its annual content acquisition budget on local content instead of the minimum of 15% that it required in terms of the Regulations.*
2. *For the 2019/2020 financial year, it spent 9% of its annual content acquisition budget on local content instead of the minimum of 15% requirement as stipulated in the Regulations; and*

3. *For the 2020/2021 financial year it spent 11% acquiring local content from its total acquisition budget instead of the minimum of 15% requirement in terms of the Regulations."*

[88] In view of the admission, ODM is found to have contravened the regulations as charged.

Having conceded the non-compliance, ODM raised a defence which, for convenience, shall be repeated verbatim hereunder:

1. *"Locally produced programs/channels are to a great extent more expensive than international content. Hence for a local broadcaster such considerable operational expenditure impact adversely on profitability and general financial stability. For ODM, a company that has been operating and competing in a highly monopolised market, merely the cost of acquisition of local content has become extremely difficult.*
2. *ODM realises that local content significantly increases local audiences and strengthens the domestic market, but the lack of local content within a realistic affordable acquisition price range makes content unaffordable for subscription broadcasters that cater for subscribers in the lower LSMs. The acquiring of local content at higher pricing would inevitably lead to subscription price increases and loss of subscribers.*

3. *During the periods under review, ODM's content budget both for local and international content acquisition were reduced to accommodate the prevailing Covid-19 crisis. Local content protocols were to a large extent set aside due to lack of funding and increased operational expenditure. ODM in essence like the rest of South Africa and other broadcasters were in survival mode. This led to eventual noncompliance to applicable local content regulations."*

[89] In summary, ODM's main defence was that it failed to comply with the applicable local content regulations because it was struggling financially and was a small player in a highly monopolistic environment.

[90] ODM's submission was that local content is expensive and, with its limited resources, the Respondent had no financial wherewithal to meet its budget requirements of 15% every year.

[91] The second defence was that COVID-19 had a significant negative impact on the limited financial resources of ODM. Lack of funding and increased operational expenditure worsened the situation.

[92] The explanation above is plausible. A perusal of the audited financial statements for the financial years 2018/2019, 2019/2020, and 2020/2021, which were submitted to the Authority after the complaint had been lodged against ODM, makes for disturbing reading. It also lends credence to the claims that ODM is teetering on the brink of bankruptcy. It cannot be disputed that ODM, as a business concern, is in the red. Even its auditors repeatedly expressed a serious concern that:

*"a material uncertainty exists that may cast significant doubt on the company's ability to continue as a going concern."*

[93] ODM's second defence is also valid. It cannot be denied that Covid-19, with its ramifications, destroyed many business entities worldwide, and that, of those which survived, some are still licking their wounds.

[94] For the above reasons, the defence by ODM, in respect of count 3, has merit and the CCC accepts it as a legitimate explanation why ODM's performance, in respect of the regulation, repeatedly fell below the required standard. As a result, this will be taken into account when the CCC considers mitigating factors.

**CHARGE 4**

**NON-COMPLIANCE WITH REGULATION 4 OF THE REGULATIONS GOVERNING THE COMMISSIONING OF INDEPENDENTLY PRODUCED SOUTH AFRICAN PROGRAMMING OF 2009**.

***The Law***

[95] The relevant provision states as follows:

*"A licensee must submit an annual report to the Authority setting out its respective procurement activities in respect of independently produced South African programming from independent producers for the year preceding the date of the report."*

***The Allegations***

[96] It was alleged that ODM had failed to submit to the Authority, ODM's annual reports for the periods 2018/2019, 2019/2020 and 2020/2021 relating to procurement activities and notes.

[97] It was also alleged that ODM admitted to only acquiring completed broadcast ready content ("licensing") and that this admission was in contravention of its own content procurement policy of 2010, as approved by the Authority.

[98] The said policy provides as follows:

*"There are six (6) main methods that ODM will employ ..."*
The allegation was that only one method was used.

**Response and submissions by counsel in respect of the allegations**

[99] With regard to the alleged non-compliance with Regulation 4 of the Regulations governing the Commissioning of Independently Produced of South African Programming of 2009, ODM submitted that the only relevant period in which the charges can apply is 2019 and according to ODM this was the year when it did submit its programming procurement method (reporting).

[100] Counsel for ODM pointed out that the charge relates to an alleged failure to report - not the format of the report or that any details are missing. In the circumstances, as ODM filed its report each year, this charge is denied.

[101] Furthermore, ODM did not deny the allegation that it admitted to only acquiring completed broadcast ready content, when its content procurement policies it provided to the Authority in 2010 specified 6 methods that it would employ to procure content. ODM explained that this was:

*"Due to financial constraints of existing content expenses that required fulfilment and completion of already existing acquisition arrangements at the time."*

[102] In her submissions counsel for the Respondent further explained ODM's position thus:

The fact that the policy specified six methods for procuring content did not necessarily mean that all these methods had to be used. The use of only one of these methods was adequate compliance, she argued.

[103] In my view, although the above is not the correct interpretation of what ODM's policy seeks to convey, the policy still has its shortcomings: It specifically states:

*"There are six (6) main methods that ODM will employ..."*

but is not specific as to how, how often and what sequence or manner these methods are going to be employed. Was the intention to employ the methods in sequence or alternatively? Or was the intention to employ all the methods simultaneously? The intention is not clear.

[104] Because of this lack of clarity in what the policy above sought to convey, it cannot be said with certainty that ODM has contravened its own policy.

[105] In any event, the debate about whether ODM has contravened its own policy appears to be a red herring. I say this because the charge against ODM was not that it had used only one of the methods, instead of all six. The charge was that ODM had failed to submit reports relating to the procurement activities and notes to the Authority, for the period 2018/2019, 2019/2020, and 2020/2021.

[106] To this charge the answer was to the effect that "a report was submitted wherein it was disclosed that ODM had employed only one method".

[107] The above answer is at odds with ODM's earlier statement that it was unable to comply *"due to financial constraints of existing content expenses that required fulfilment and completion of already existing acquisition arrangements at the time."*

[108] What is significant is that at the outset, when Counsel for ODM was asked whether she had been given a mandate to withdraw the admissions previously made, the answer was that the oral submissions were offered merely to explain the written submissions made earlier.

[109] A careful examination of both the written and oral submissions have revealed serious contradictions. The above is just one instance.

[110] In any event, it is not clear how the "content expenses" are related to ODM's failure to submit its annual reports to the Authority relating to its procuring activities.

[111] For that reason the purported defence proffered by ODM cannot be said to be a valid defence. Accordingly, ODM is found to have contravened the regulation as charged.

**CHARGE 5**

**NON-COMPLIANCE WITH CLAUSE 6.1 AND CLAUSE 6.2 OF ODM's SERVICE LICENCE:**

***The clauses allegedly contravened***

[112] Clause 6.1 provides that:

*"The Licensee shall submit its workplace skills plan to the Authority within a month of issuing of its licence and thereafter by the 30th June of each year."*

[113] Clause 6.2 of the schedule of the licence provides that:

*"The Licensee shall submit its workplace skills plan and its annual training report in the format prescribed by the Authority."*

***Allegations***

113.1 Regarding Clause 6.1:

The allegation was that ODM resubmitted a 2017/2018 workplace skills plan training report for the 2018/2019 financial year.

113.2 Regarding Clause 6.2:

It was alleged that the Licensee had not submitted its workplace skills plan on the prescribed format to the Authority. The Licensee submitted training reports for Ekurhuleni Metropolitan Municipality from Mict Seta, a training centre in Midrand, Gauteng.

**Response and Submissions in Respect of Allegations of Non-Compliance of Clauses 6.1 and 6.2 of ODM's Service Licence**

[114] The Respondent did not deny that it resubmitted the workplace skills plan and training report for the previous financial year. It also did not deny that it failed to submit the required information on the prescribed format.

[115] The defence raised and the submissions by counsel were along these lines:

*"We cannot find any prohibition in ODM's licence on having the same workplace skills plan for each year. In fact, having the same plan would seem to encourage consistency and provide certainty. It is unclear how this could be a breach of any licence condition at all because the plans were submitted annually."*

[116] ODM's response is baffling for the following reasons:

116.1 The charge says nothing about ODM's licence prohibiting ODM from having the same workplace skills plan for each year.

116.2 ODM has not said it submitted a workplace skills plans for the years mentioned above, and that those plans happened to be the same every year.

[117] There is a difference between "*resubmitting a skill plan and report from the previous year*" and "submitting a workplace skills plan and training report for the current year that is the same as or similar to that of the previous year."

[118] A conclusion is irresistible that ODM was deliberately evasive, because it knew that it had no defence.

[119] The evasive nature of the response only serves to weaken ODM's defence even further. In fact, in view of the above, an adverse inference can be drawn that ODM has no defence at all. Accordingly, the alleged contravention in respect of clauses 6.1 and 6.2 has been proven.

**NON-COMPLIANCE WITH CLAUSE 7**

***The clause allegedly contravened***

[120] Clause 7 provides that:

> *"The Licensee shall submit an annual staff development and employment equity plan report to the Authority."*

***Allegations***

120.1 The allegation was that ODM resubmitted a 2017/2018 annual staff development and employment equity plan report for the 2018/2019 financial year.

120.2 For the 2019/2020 financial year, ODM did not submit its workplace skills plan. Instead, it submitted training reports for Ekurhuleni Metropolitan Municipality

120.3 For the 2020/2021 financial year ODM attached a letter of acceptance as proof of training from the University of Witwatersrand for its Chief Executive Officer to a Master of Business Administration program and not proof of registration from the University.

120.4 For the 2020/2021 financial year, ODM submitted as proof of training, attendance registers for training courses presented or facilitated by the Licensee's own employees.

**Response and Submissions by Counsel in respect of the allegations**

[121] ODM denied the allegation of non-compliance on the basis that it empowered its own staff by providing its employees with on-the-job training. To this effect, ODM submitted as follows:

*"Some of our employees were call centre agents and were since trained in other technical positions. When ODM does internal training we use qualified and skilled employees to transfer skills whenever possible."*

[122] It is significant that out of the four allegations, ODM chose to respond to only one aspect of a single allegation, that is, the nature of the training. Once more, instead of making an admission or a denial and then raising a defence, ODM chose to go off a tangent.

[123] The charge sheet makes no mention of the nature of the training or the identity of the trainers. It is, therefore, odd that ODM finds it necessary to mention that their skilled employees are used to do on-the-job training to train fellow employees, as if that was the issue.

[124] The complaint was that instead of proof of training from the University of the Witwatersrand for its CEO to a Master of Business Administration program, *"a letter of acceptance' was attached*." In addition, *instead of "proof of training" for employees, "an attendance register"* was submitted.

[125] ODM's response failed to focus on the real issue. The real issue was whether a letter of acceptance or an attendance register are equal to proof of training. Failure by ODM to answer that issue again weakened its defence.

[126] The other two allegations were the following:

126.1 That ODM resubmitted a 2017/2018 annual staff development and employment equity plan report for the 2018/2019 financial year.

126.2 That for the 2019/2020 financial year, ODM did not submit its workplace skills plan.

[127] ODM's failure to answer to this allegation above can be explained in one sentence: "ODM has no defence." Accordingly, the allegations per the charge have been proven.

**MITIGATING FACTORS AND AGGRAVATING FACTORS**

[128] The issue to be determined was whether there was any substance in any of the responses put up by the Respondent and whether the Respondent succeeded in raising any valid defences.

[129] The circumstances under which the non-compliances occurred are always important. This is so as they might also serve to illustrate the presence or absence of mitigating factors and/or aggravating factors.

[130] A unique feature of this case is the role of circumstances over which ODM had no control. That these circumstances had an impact on the ability of ODM to operate as it should, cannot be denied. What is not so easy to determine is the extent of the impact.

[131] Hereunder is set out the circumstances concerned.

***Historical Background***

[132] In the present case, a historical background, not only of ODM, but also of the market place, is necessary to place the case in perspective. On behalf of the Respondent, the following information, which was not contradicted, was presented:

[133] ODM was licensed as a Pay TV or subscription broadcaster in 2008 at the same time as seven other broadcasters. These included MultiChoice Africa, Telkom Media, and E-Sat which was the Pay-TV version of ETV.

[134] Of those eight licensees, only ODM and Multichoice remained in operation. The others have either gone out of business or have decided not to proceed with launching a service. It is also important to note that Multichoice had been operating without a licence in the market from 1996. So, it was actually providing

subscription broadcasting services via satellite from 1996. That was more than 10 years prior to the launch of ODM.

[135] In addition, Star Times Media, which is a Chinese Broadcast Group, has been a major shareholder in the Licensee, not above 20% because they are foreign. This was very much in line with the government and ICASA policy of attracting investment, particularly by international companies. And Star Times Media, which is now called Star Sat, also has operations across Africa and other countries.

[136] ODM's current subscriber base is about 100 000 subscribers, compared to the subscriber base for MultiChoice which is about 9 million.

[137] It was submitted, on behalf of ODM, that the latter was not given any regulatory assistance on launch. So, although ODM and other six, aside from MultiChoice, were completely new entrants to the market they were not afforded any regulatory assistance at all.

[138] Counsel for ODM contrasted the above with what happened in the telecommunications sector. She gave an example of Cell C which was a new and small entity in 2010 but was given regulatory support in a form of what is called asymmetric rates. This was in recognition of the fact that new and smaller players in the industry needed some sort of leg up, in order to compete with existing operators such as MTN and Vodacom in the Telecoms market.

[139] Counsel for ODM bemoaned the fact that although ICASA did grant support to new players in the telecoms industry, it gave no such support to the new entrants in broadcasting.

[140] In 2019, and after a market inquiry into Pay TV, ICASA found that MultiChoice had what is called significant market power. In other words, it is dominant in the market like pay-tv. It was also stated that in all the identified markets where there is ineffective competition in pay-tv, MultiChoice possesses significant market power on the basis of its high market share and the nature of its vertical integration which authorities consider to harm competition.

[140] Counsel for ODM pointed out, further, that when ODM applied for its licence, their shareholders included the NEF and the IDC both which are government

entities in order to grow the business. These shareholders and other shareholders were required to put in additional funding. This was done because, among other things, it is very expensive to acquire content and to manage the sophisticated satellite and encryption services.

[141] Star Times Media or Star Sat, the Chinese investor, had to contribute more than 20% in cash. It didn't change its shareholding but had to contribute more than its share because neither NEF nor IDC put in any money.

[142] With these challenges ODM went into business rescue, which saved it from being liquidated. So, it had to find additional funding and other shareholders.

[143] The business rescue practitioner created a business plan which included an injection of funds and some changes to shareholding. It was either this or ODM would have been forced to exit the market, only some short four or five years after launch.

[145] The exit by ODM would have had some serious implications. It would have brought lack of diversity and competition in the industry to the fore, and MultiChoice would have had a factual monopoly in the market. In addition, foreign investment, through Star Times Media, would have left the country.

[146] The above history sketches a useful background that will assist the CCC to place the facts in perspective, before making its finding and recommendations.

**ANALYSIS**

[147] In the present case, several admissions and concessions were made on behalf of ODM. During the course of the hearing, however, counsel for ODM made submissions which appeared at odds with the admissions made in the papers.

[148] No adverse inference is drawn from any of this as ODM was initially not legally represented. It transpired from the submissions by counsel that ODM was not withdrawing its initial admissions. Instead, the aim of counsel's oral submissions was to place the written admissions in perspective. And the CCC is grateful to counsel for the assistance.

[149] During 2014 ODM battled funding challenges and eventually went into business rescue as sketched out earlier. That fact cannot be ignored as it probably had a significant impact on the trajectory of ODM and on its performance ability as a Licensee.

[150] While the business rescue plan may have been successful in keeping ODM afloat, its financial problems lingered for years. This made it difficult for ODM to comply with various obligations that needed funding, such as the acquisition of local content.

[151] What is not so easy to understand, however, is that the non-compliances included failure to comply with basic requirements such as notification to the Authority of changes to ODM's licence such as change of address and change of contact person and details. I say this because there appears to be no link between the lack of financial resources and the said non-compliance.

[152] Counsel for the Respondent also pointed out that because of its limited resources, ODM had only one person dealing with compliance issues. This made it extremely difficult for ODM to keep track of the various requirements over the years.

**LACK OF EVIDENCE**

[153] Much as we would like to sympathise with the Respondent, no evidence was placed before us in support of several of the submissions made.

[154] Counsel for Respondent submitted, ***inter alia***, that ODM regularly apprised the Authority of the difficulties that it was going through, but unfortunately, *"the bundle did not reflect the meetings, calls and emails that had passed between ODM and ICASA in relation to all of the matters."*

[155] If that was really the case, and there was relevant and necessary information that had been omitted from the bundle, it was up to counsel to ask for the opportunity to present such information to the CCC to enable it to come to a just resolution of the matter. That was not done. For that reason, ODM has no one to blame but itself.

[156] The CCC can only make a decision based on what was presented to it and is not at liberty to speculate in favour of any party.

[157] One mitigating factor that cannot be ignored is that ODM has a clean record. The fact that ODM has been in operation since 2009 and has never once appeared before the CCC must count for something.

[158] However, whether or not this mitigating factor is sufficiently weighty to tip the scales in favour of ODM, remains to be seen. It would depend on the weightiness of other equally important considerations, some of which have been extensively dealt with above.

[159] ODM sought to provide possible solutions to the various challenges but did so in very vague terms. It is, for example, difficult to understand what is meant by ODM's.

*"Mitigating strategies to local content compliance"* where ODM states:

*"3.3.1 With international content agreements both programme/channel agreements coming up for either or replacement. ODM will restructure content acquisition cost and adjust existing budgets to align with international content acquisition vs local content acquisition to obtain a ratio that meets with the required 15% spend.*

*3.3.2 Local commissioning protocols will be re-assessed to sourcing new production endeavours with local providers and production houses that fall within ODM's financial constraints.*

*3.3.3 ODM has bolstered internal employees, local actors and local voice over artists that will produce internal local content."*

[160] What is striking about these strategies is that no details or timelines have been set out. This makes it difficult to assess the usefulness or effectiveness of the proposed or planned strategies.

[162] What stands out is ODM's submissions that it was struggling financially and that this made it difficult for it to comply with some of the Regulations such as meeting the 15% requirements on local content by South African producers.

[163] ODM further submitted that Covid-19 crisis exacerbated an already serious situation of limited resources.

[164] ODM, through its counsel, expressed regret at not taking action earlier to remedy the issues that brought it before the CCC.

[165] In her Heads of Argument, counsel for the Respondent stated:

> *"ODM accepts that its compliance activities could have been more professional, and it has in the last year, and certainly as at July 2023, rectified as many of the problems as possible."*

[166] The challenge with this submission is that none of the problems, referred to, is identified. It is also unclear what exactly ODM did to deal with the problems concerned. This, among other things, made it difficult to determine the possible effectiveness of the alleged attempts by ODM to rectify whatever needed to be rectified.

[167] An aggravating factor, that stands out, is that ODM has been charged with numerous contraventions of a very serious nature. The fact that the alleged non-compliances have been going on for more than three years and would have probably continued, if the complaint had not been lodged, makes the matter even more troubling.

[168] There is evidence that, during the period of non-compliance, the Authority did all it could to assist ODM to take remedial action, without any success. Also evident is that, despite these efforts by the Compliance Unit, there was very little cooperation on the part of ODM.

[169] Despite a constant flow of correspondence from the Authority, and numerous notifications to remind ODM of what was required of it, ODM failed to take this as an opportunity to remedy the situation. Instead, it either failed to acknowledge the notifications or simply refused to respond appropriately. An example is when

ODM forwarded incomplete information to the Authority regarding the change to its shareholding. When ODM was reminded of the outstanding documents, it ignored the reminder.

[170] There was no explanation either on the papers or during submissions by counsel, for this laxity on the part of ODM. This inability or unwillingness on the part of ODM to comply with the relevant laws is disturbing and unacceptable.

[171] Of course, ODM sought to explain that it had limited resources. It also pleaded that it was a small player in a highly monopolistic environment. That may be so. However, it does not in any way explain ODM's non-compliance in all cases. It is difficult, for instance, to see how the limited financial resources could have contributed to the failure by ODM to notify the Authority of changes of its physical address and changes of its contact person and details.

[172] What is also concerning was the lack of response from ODM when the Complainant alerted it to the non-compliances. This may be a strong indication that ODM lacks insight into the seriousness of the contraventions that it was charged with. This is of some concern as, without such insight, there is a strong likelihood that the non-compliances by the Licensee might be repeated.

[173] The failure of ODM to take the Authority into its confidence has also worsened the situation. The Authority's willingness to assist Licensees cannot be denied, but Licensees must also show a willingness to do their part.

[174] In this case, ODM appeared reluctant to cooperate with the Compliance Unit. I say this because even when the Authority engaged ODM, sent numerous reminders and advice to ODM, the latter often failed to respond. This is partly why the matter was eventually referred to the CCC. The case against ODM is formidable. One would, therefore, have expected ODM to come up with an equally compelling defence. That did not happen. That left the CCC with one conclusion only – an adverse finding against the Respondent.

**FINDING:**

[175] Accordingly the CCC makes the following finding:

175.1 ODM failed to comply with the following:

175.1.2 sub regulation 2 of the Third Amendment to the Standard Terms and Conditions of Broadcasting Services 2023,

175.1.2.1 in that the Licensee failed to inform the Authority of changes to its physical address, contact person and to its shareholding structure within 14 days after the changes had occurred.

175.1.3 The Licensee is non-compliant with schedule 3(2) of the General Licence Fees Regulations of 2012

175.1.3.1 in that the Licensee failed to submit within six (6) months of their financial year end 2018/2019 and 2019/2020;

175.1.4 The Licensee is non-compliant with Regulation 6(2) of the Local Television Content Regulations of 2016,

175.1.4.1 in that the Licensee failed to spend a minimum of 15% of its annual content acquisition budget on local content for the periods of 2018/2019, 2019/2020 and 2020/2021;

175.1.5 The Licensee is non-compliant with regulation 4 of the Regulations governing the Commissioning of Independently Produced South African Programming of 2009,

175.1.5.1 in that it failed to submit an annual report to the Authority setting out its respective procurement activities in respect of independently produced South African programming from independent producers for the year preceding the date of the report;

175.1.6 The Licensee is non-compliant with clauses 6.1 and 6.2 of the schedule to its licence,

175.1.6.1 in that ODM failed to submit its workplace skills plan to the Authority within a month of issuing of its licence and thereafter by the 30th of June of each year;

175.1.7 The Licensee is non-compliant with clause 7 of the schedule to its licence,

175.1.7.1 in that the Licensee failed to submit an annual staff development and employment equity plan report to the Authority for the 2018/2019 financial year.

[176] In an attempt to find a fair and just sanction, the CCC has considered all the facts including the mitigating factors and the aggravating factors. As serious as the non-compliances are, a sanction tempered with mercy is called for. This is especially so, in this case, since we are here dealing with a Respondent that is already on the verge of collapse.

**RECOMMENDED SANCTION IN TERMS OF SECTION 17E (2) OF ICASA ACT**

[177] Accordingly, the CCC recommends the following orders to be issued by the Authority namely:—

177.1 In respect of contravention of Regulation 2 of the Standard Terms and Conditions of Broadcasting Services 2023, the Licensee failed to notify the Authority of the changes as required in Regulation 2, the Respondent is fined as follows:

(1) 2014/2015 – An amount of R100000.00 (one hundred thousand Rand).

(2) 2015/2016 – An amount of R100000.00 (one hundred thousand Rand).

(3) 2016/2017 – An amount of R100000.00 (one hundred thousand Rand).

(4) 2017/2018 – An amount of R100000.00 (one hundred thousand Rand).

(5) 2018/2019 – An amount of R100000.00 (one hundred thousand Rand).

(6) 2019/2020 – An amount of R100000.00 (one hundred thousand Rand).

(7) 2020/2021 – An amount of R100000.00 (one hundred thousand Rand).

(8) 2021/2022 – An amount of R100000.00 (one hundred thousand Rand).

(9) 2022/2023 – An amount of R100000.00 (one hundred thousand Rand).

A total payment of R900 000 (nine hundred thousand Rand) in respect of contravention of the Standard Terms and Conditions of Broadcasting Services 2023. No portion of the fine is suspended and the total amount payable is due within ninety (90) days of the date of the publication of the decision.

177.2 In respect of contravention of Schedule 3(2) of the General Licence Fees Regulations of 2012, the Respondent is fined as followed:

(1) 2017/2018 – An amount of R500 000.00 (five hundred thousand Rand) for failure to submit the Annual Financial Statements in terms of the Regulations. R100 000,00 of this amount is payable within 90 days of the date of publication of the decision, an amount of R400 000.00 (four hundred thousand Rand) shall be suspended on condition that the Respondent submits the Annual Financial Statements and the requisite set out in Schedule 3(1) of the General Licence Fees Regulations for the financial year within the 90 day period of suspension of the fine.

(2) 2018/2019 – An amount of R500 000.00 (five hundred thousand Rand) for failure to submit the Annual Financial Statements in terms of the Regulations. R100 000.00 of this amount is payable within 90 days of the date of publication of the decision, provided an amount of R400 000,00 (four hundred thousand Rand) shall be suspended on condition that the Respondent submits the Annual Financial Statements and the requisite report set out in Schedule 3(1) of the General Licence Fees Regulations for the financial year within the 90 day period of suspension of the fine.

(3) 2019/2020 – An amount of R500 000.00 (five hundred thousand Rand) for failure to submit the Annual Financial Statements in terms of the Regulations. R100 000.00 of this amount is payable within 90 days of the date of publication of the decision, provided an amount of R400 000.00 (four hundred thousand Rand) shall be suspended on condition that the Respondent submits the Annual Financial Statements and the requisite report set out in Schedule 3(1) of the General Licence Fees Regulations for the financial year within the 90 day period of suspension of the fine.

(4) 2020/2021 – An amount of R500 000.00 (five hundred thousand Rand) for failure to submit the Annual Financial Statements in terms of the Regulations. R100 000.00 of this amount is payable within 90 days of the date of publication of the decision, provided an amount of R400 000.00 (four hundred thousand Rand) shall be suspended on condition that the Respondent submits the Annual Financial Statements and the requisite report set out in Schedule3(1) of the General Licence Fees Regulations for the financial year within the 90 day period of suspension of the fine.

(5) 2021/2022 – An amount of R500 000.00 (five hundred thousand Rand) for failure to submit the Annual Financial Statements in terms of the Regulations. R100 000.00 of this amount is payable within 90 days of the date of publication of the decision, an amount of R400 000,00 (four hundred thousand Rand) shall be suspended on condition that the Respondent submits the Annual Financial Statements and the requisite report set out in Schedule 3(1) of the General Licence Fees Regulations for the financial year within the 90 day period of suspension of the fine.

A total of payment of R500 000.00 (five hundred thousand Rand) in respect of contravention of the General Licence Fees Regulation is due and payable, subject to the suspension as set out above. Should the Respondent fail to comply with the conditions for the suspension, the portion so suspended becomes immediately due and payable.

177.3 In respect of contravention of Regulation 6(2) of the Local Television Content Regulations of 2016, the Respondent is fined as follows:

(1) 2018/2019 – An amount of R100 000.00 (one hundred thousand Rand) for failure to spend a minimum of 15% of its annual content acquisition budget on local content.

(2) 2019/2020 – An amount of R100 000.00 (one hundred thousand Rand) for failure to spend a minimum of 15% of it annual content acquisition budget on local content.

(3) 2020/2021 – An amount of R100 000.00 (one hundred thousand Rand) for failure to spend a minimum of 15% of its annual content acquisition budget on local content.

A total payment of R300 000.00 (three hundred thousand Rand) in respect of contravention of the Local Television Content Regulations of 2016. No portion of the

fine is suspended and the total amount payable is due within 90 days of the date of the publication of the decision.

177.4 In respect of the contravention of Regulation 4 of the Regulations governing the Commissioning of Independently Produced South African Programming of 2009, the Respondent is fined as follows:

(1) 2018/2019 – An amount of R1 000 000.00 (one million Rand) for failure to submit the report required in terms of Regulation 4.

(2) 2019/2020 – An amount of R1 000 000.00 (one million Rand) for failure to submit the report required in terms of Regulation 4.

(3) 2020/2021 – An amount of R1 000 000.00 (one million Rand) for failure to submit the report required in terms of Regulation 4.

A total payment of R3 000 000.00 (three million Rand) in respect of contravention of the Licence Terms and Conditions issued to the Respondent. No portion of the fine is suspended and the total amount payable is due within 90 days of the date of publication of this decision.

177.5 In respect of the contravention related to charge 5, which is non-compliance with clauses 6.1, 6.2 and clause 7 of the schedule to its service license, the Respondent is fined as follows:

(1) 2018/2019 - An amount of R1 000 000.00 (one million Rand) for failure to submit the reports required in terms of the service licence obligations.

(2) 2019/2020 - An amount of R1 000 000.00 (one million Rand) for failure to submit the reports required in terms of the service licence obligations.

(3) 2020/2021 - An amount of R1 000 000.00 (one million Rand) for failure to submit the reports required in terms of the service licence obligations..

A total payment of R3 000 000.00 (three million Rand) in respect of contravention of the Licence Terms and Conditions issued to the Respondent. No portion of the fine is suspended and the total amount payable is due within 90 days of the date of

publication of this decision."

A total fine of R7 700 000,00 (seven million and seven hundred thousand Rand) is due and payable by the Respondent within 90 days of publication of this decision.

TM Masipa

**Judge Thokozile Masipa**
**Chairperson of the CCC**

**Date: 12 June 2024**