

2011/ 2012 COMPLIANCE REPORT

M-NET

Licence Period: 17 December 2008- 16 December 2023

1. PREFACE

The Independent Communications Authority of South Africa ("the Authority") has a statutory mandate in terms of the Constitution¹, the ICASA Act², the Electronic Communications Act ("EC Act")³ to regulate broadcasting activities in South Africa in the public interest. The Authority is tasked with ensuring compliance by broadcasters with the ICASA Act, the EC Act, the terms and conditions of their licence, any relevant legislation and regulation.

The following report is intended to give account of Electronic Media Network Limited ("M-Net")'s performance for the 2011/2012 financial year. Aspects of compliance that are measured comprise of Geographic Coverage Area, Signal Distribution, Language, Format, Training and Skills Development Obligations, Must Carry Regulations, Commissioning Protocol Regulations, Licence Fees Regulation, Universal Service and Access Fund Regulations, Regulations Regarding Standard Terms and Conditions for Individual Licensees, Code on People with Disabilities, South African Television Content Regulations and the Code of Conduct for broadcasters.

2. BACKGROUND

On 17 December 2008, the Authority issued M-Net a converted licence in terms of in terms of the EC Act. The converted licence is valid for fifteen (15) years and expires on 16 December 2023. M-Net provides a national subscription television broadcasting service. The M-Net channel is also offered on Multichoice's digital satellite platform DSTV.

¹ The Constitution of the Republic of South Africa Act No 108, 1996

² ICASA Act No 13 , 2000 as amended

³ Electronic Communications Act No 36, 2005

3. COMPLIANCE ASSESSMENT

3.1 Licensee

Clause 1.1 of the licence stipulates that:

"The licence is issued to Electronic Media Network Limited ("M-Net")."

The Licensee is M-Net.

The Licensee complies with clause 1.1 of its licence.

Clause 1.2 of the service licence provides that:

"Shareholders: Multichoice South Africa Holdings (100%)"

Clause 1.3 of the service licence stipulates that:

"Ownership held by persons from disadvantaged groups: 33.33%".

The Licensee maintains that Multichoice South African Holding holds hundred percent (100%) shareholding and has a minimum provision of 33.33% percent shareholding by persons from previously disadvantaged groups.

The Licensee complies with clause 1.2 and 1.3 of its licence.

3.2 Geographic Coverage Area

Clause 2 of the licence stipulates that:

"The licence area of the Licensee is the Republic or any part thereof".

The Licensee confirms that the licence area of M-Net is the Republic as provided for in its licence.

The Licensee complies with Clause 2 of its licence (*See Appendix A*).

3.3 Signal Distribution

Clause 3 of the licence stipulates that:

"The Licensee shall use the licensed electronic communications network service of Orbicom (Pty) Ltd".

The Licensee confirms that it utilises Orbicom (Pty) Ltd as its licensed electronic communications Network service provider.

The Licensee complies with clause 3 of its licence.

3.4 Language (s)

Clause (4) of the licence stipulates as follows:

"This is left to the discretion of the Licensee".

The Licensee's programmes are broadcast predominantly in English, some drama programmes are broadcast in Afrikaans.

The Licensee complies with Clause 4 of its licence.

3.5 Format

Clause 5 of the licence stipulates that:

"The Licensee is licensed to provide an entertainment service, included but not limited to feature films, sports events, magazine and community programming, documentary features, news, information programming and drama".

The Authority's monitoring exercise confirmed that the Licensee provides a variety of programming as provided for in the licence.

The Licensee complies with clause 5 of its licence.

3.6 Training and Skills Development obligations

Clause 6 (1) of the licence stipulates that:

"The Licensee must adopt equal employment opportunities".

The Licensee submits that out of the total of two hundred and ninety three (293) employees, two hundred and thirty nine (239) is made up of Blacks, Asians and Coloureds, which equates to 81.5 % of the total workforce. This demonstrates that the Licensee adopts equal employment opportunities (See Appendix B).

The Licensee complies with clause 6 (1) of its licence.

Clause 6 (2) of the licence stipulates that:

"The Licensee must ensure that its management and staff are representative of South African Society and that its human resource policies, particularly with regard to people from historically disadvantaged groups, take into account the development of managerial, production and technical skills and expertise".

During the period under review, the Licensee indicated that occupational levels in percentages were as follows:

Top management = 50% Blacks, Asians and Coloureds and 50% White;
Senior Management = 51.9% Blacks, Asians and Coloureds and 48.1% White;
Professionals = 61.8% Blacks, Asians and Coloureds and 38.2% White;
Skilled Technicians = 88.7% Blacks, Asians and Coloureds and 11.3% White; and
Semi-skilled = 100% Blacks, Asians and Coloureds and 0% White.

The above indicates that there is almost equal representation in terms of the numbers from top management to professionals; although from skilled technicians to semi-skilled employees, the numbers are skewed towards Black, Asians and Coloured to hundred percent on semi-skilled .

The Licensee complies with clause 6(2) of its licence.

3.7 Ownership by Persons from Historically Disadvantaged Groups

Clause 7 of the licence stipulates that:

"The Licensee shall have no less than 30% ownership by persons from historically disadvantaged groups".

The Licensee maintains that ownership by persons from historically disadvantaged groups constitutes 33.33%.

The Licensee complies with clause 7 of its licence.

4. REGULATIONS

4.1 Must Carry Regulations

Regulation 5 (1) stipulates that:

"subject to regulation (5) (3) a subscription broadcasting service (SBS) whose Service offering has twenty nine (29) channels or less is exempt from the obligation to carry the television programmes of the PBS Licensee".

Regulation 5 (2) stipulates that:

(a) "SBS may be exempted where a written notice has been submitted to the Authority by the SBS Licensee; and (b) Approval of such exemption has been granted in writing by the Authority".

The Licensee submitted a written notice on 3 April 2009, advising the Authority that its subscription broadcasting service consists of only two (2) channels and requested the Authority to give written approval in terms of Regulation 5(2)(b), exempting M-Net from the Must Carry Regulations. The exemption was subsequently granted on 02 July 2009.

The Licensee complies with the Regulation 5 (1) and 5 (2) of Must Carry regulations.

4.2 Commissioning Protocol

Regulation 3 (a) (i) of the regulations on Commissioning Protocols as published in the government gazette No 32767 on 01 December 2009 stipulates that:

"A Licensee must compile and maintain a Commissioning Protocol for Independently Produced South African Programming" (referred to as "the Protocol").

M-Net submitted its proposed Commissioning Protocol to the Authority within 120 days of the promulgation of the regulations. The Authority approved M Net's Commissioning Protocol subsequent to amendments being effected by the Licensee.

The Licensee complies with Regulation 3(a) (i) of Commissioning Protocol.

Regulation 3 (a) (iii) of Commissioning Protocol stipulates that:

"ensure that copies of the Protocol are always available on their websites and to independent producers or their agents, a reasonable fee for the printing and/or copying thereof".

A copy of the Protocol is available on the M-Net's website⁴.

The Licensee complies with Regulation 3 (a) (iii) of Commissioning Protocol.

Regulations 4 (a), (b), (c) and (d) of Commissioning Protocol stipulates that:

"A Licensee must submit an annual report to the Authority setting out its respective procurement activities in terms of independently produced South African programming from independent producers for the year preceding the date of the report this report will include (a) a list of the names of independent producers from whom the programmes were commissioned, (b) the number of programmes and episodes commissioned from independent producers, (c) the number of programmes commissioned from historically disadvantaged individuals and small medium

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<http://www.mnetcorporate.co.za/ContentImages/MNetCorporate/Documents/PDF/MNet%20Commissioning%20Protocol.pdf>

independent producers in the production industry and (d) the total amount spent by the Licensee on independently produced South African programming”.

The following outlines compliance by the Licensee with regulation 4 above. This information was submitted by the Licensee. The amounts are not reflected as the Licensee requested confidentiality in respect of its financials in terms of section 4 (D) of ICASA Act of 2000, which confidentiality was granted by the Authority in June 2012:

| <i>programmes commissioned,</i> | <i>Production Company</i> | <i>number of Episodes Commissioned</i> | <i>the total amount spent by the Licensee on independently produced South African programming</i> |
|--|----------------------------------|--|--|
| <i>Cart Blanche</i> | <i>Combined Artists</i> | <i>52 x 48 episodes</i> | x |
| <i>The Wild</i> | <i>Magic Factory</i> | <i>208 x 24 minutes</i> | x |
| | <i>Curious Pictures</i> | <i>18 x 42 min 01 x 72 min Finale</i> | x |
| <i>Idols</i> | <i>Never Machines</i> | <i>19 x 72 minutes 08 x 24 minutes 01 x 96 minutes</i> | x |
| <i>Crimes Uncovered</i> | <i>Clive Morris Productions</i> | <i>13 x 44 minutes</i> | x |

4.3 General Licence Fees Regulations

The General License Fees Regulations, as published in Government Gazette No. 32084, came into effect on 01 April 2009.

Regulation 3 (1) (a) stipulates that:

“The annual Licence fees prescribed in these regulations and as set out in Schedule 2 apply to holders of Individual and Class ECS licences, Individual Licences, Individual

and Class ECNS licences and Individual Commercial BS licences”.

Schedule 2 stipulates that:

“Individual Commercial Broadcasting Service Licensees to pay an annual licence fee of 1.5% of gross profit to the Authority”.

Schedule 3 (4) (b) (c) stipulates that:

(b) “in respect of payment, such are due and payable within 6 months from the end of the licensee’s financial year;

(c) “may only be paid by way of an electronic transfer or via direct deposit into the Authority’s bank account”

During the period under review, M-Net made a payment of 1.5% of its gross profit on 27 September 2012 which is within the six (6) months after their financial year of March of every year (See Appendix C).

The Licensee complies with Schedule 2 of General Licence Fees Regulations.

4.4 Universal Service and Access Fund Regulations

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

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

Further, Regulation 3 (3) stipulates that:

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

The Licensee paid its contribution to the Universal Service Fund on 17 August 2012 (See Appendix D).

The Licensee complies with Regulation 3 (1) and 3 (3) of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund.

4.5 Standard Terms and Conditions Regulations for Individual Licensees

During the year under review, the Authority did not identify any non-compliance by the Licensee with the standard terms and conditions for individual licences.

4.6 General Obligations of Licensees

Regulation 13 (3) of the Standard Terms and Conditions for Individual Licences provides that:

"a station must clearly identify itself at intervals of not more than thirty (30) minutes".

The Licensee maintains that it fully complies with the regulation by regularly broadcasting the blue M-Net logo together with theme music.

The Authority's monitoring confirmed that the Licensee regularly broadcasts programme inserts which promote the programming of the day which includes displaying the M-Net logo at the beginning and end of programmes.

The Licensee complies with regulation 13 (3) of the Standard Terms and Conditions for Individual Licences.

4.7 Code on People with Disabilities

Regulation 3 of the Code on people with Disabilities, as published in Government Gazette No. 30441 on 07 November 2007, stipulates the basic standards for broadcasting service licensees.

Regulations 3.1 (a) stipulates that:

"Improving accessibility (a) broadcasting service licensees must ensure that their services are made available and are accessible to people with disabilities".

During the period under review the Licensee reported to have either completed or implemented a number of initiatives some of which included the following:

The Licensee has reported on the progress regarding the possibility audio descriptive (AD) track on selected M-Net channels after their engagement with the SA National Council for the blind. The Licensee has in the previous financial year reported that it was looking into introducing audio descriptive track. In the current period under review, the Licensee has reported that it has conducted internal tests with regards to the framework, technical specification as well as the cost implications thereof.

Furthermore, the Licensee has reported that it conducted internal tests that were followed by live on air testing which was conducted with the support for the Council for the Blind which advertised on various websites, braille magazines and the response was a positive one. The National Council for the Blind placed an advert on their website for the test on 26 August 2012 for High Definition decoders only.

Furthermore, the Licensee reports that it will still engage the Council for the Blind further with regards to guidance on the optimal implementation of the audio tracks services. The Licensee has made progress to make sure that its services are accessible to people with disability, although it should be noted that the AD is being tested on High Definition decoders only.

Regulation 3.2 stipulates that:

"Broadcasting service licensees must ensure that the broadcasting content does not stereotype people with disabilities. Regulations 3.2.1 stipulates that broadcasting services must consult organisations of and for people with disabilities on the way disability is portrayed on programming"

The Licensee continues to engage the South African National Council for the Blind with regards to making available programme schedule Microsoft Word since there is now technology that offers voice to texts to visually impaired people. Furthermore, the Licensee has reported that it is continuing with its awareness campaign through its programming on the issues confronting people with disabilities just like in the previous financial years. The Licensee reported that they broadcast an association slide with contact details of the organization and a visual promo directly after the end credits of each programme which depicts people with disabilities. The above mentioned demonstrates that there are initiatives being undertaken to improve accessibility for people with disabilities.

The Licensee complies with the Regulations 3 on Code for People with Disabilities.

4.8 South African Television Content Regulations

Regulation 5.1 of the South African Television Content Regulations, as published in Government Gazette No. 28454 on 31 January 2006, stipulates that:

"A terrestrial or cable subscription television broadcasting Licensee must ensure that a minimum weekly average of 10% during the South African television performance period, measured over the period of a year, consists of South African television content. In fulfilling this obligation, a terrestrial or cable subscription television broadcasting licensee may broadcast the South African television content on dedicated channel (s) or across its bouquet".

The table below demonstrates compliance for the period under review as submitted by the Licensee:

| MONTH | TOTAL HOURS LOCAL CONTENT | % LOCAL CONTENT | TOTAL HOURS LOCAL DRAMA | % LOCAL DRAMA |
|---|--|----------------------------|------------------------------------|--------------------------|
| April | 85.60 | 18.85 | 18 | 21.03 |
| May | 97.35 | 17.45 | 19.5 | 17.45 |
| June | 101.10 | 18.72 | 20 | 19.78 |
| July | 107.02 | 19.18 | 18.5 | 17.29 |
| August | 99.65 | 17.86 | 21 | 21.07 |
| September | 76.70 | 14.20 | 19.5 | 25.42 |
| October | 84.15 | 15.08 | 19 | 22.58 |
| November | 77.50 | 14.35 | 20 | 25.81 |
| December | 50.6 | 12.55 | 19.5 | 27.84 |
| January | 39.50 | 7.08 | 19 | 48.10 |
| February | 58 | 11.11 | 19 | 32.76 |
| March | 56.70 | 10.16 | 19.5 | 34.39 |
| Annual average local content | | 14.46% | | 26.12% |

The Authority's monitoring exercise confirmed that M-Net's programming content consists of amongst others, "Carte Blanche", which is investigative current affairs programme broadcast one (1) hour on Sundays at 19h00 with repeats on Mondays at 15h00. Other programmes monitored included a lifestyle magazine programme "Kwela" broadcast by Kyknet and sporting events including local cycling, rugby and cricket presented by SuperSport as well as "Idols" broadcast on Sundays between 17h30 and 19h00.

In total, an average of four percent (14 %) of South African television content programming was monitored.

The Licensee has complied with Regulation 5.1 of the South African Television Content Regulations.

Regulation 5.2 of the South African Content Regulations stipulates that:

“in complying with its obligation in terms of Regulation 5.1 above, a terrestrial or cable subscription television broadcasting licensee must, to the extent that it is applicable to the type of broadcasting service, ensure that a minimum of 2% of its South African television content programming consists of South African drama programming”.

The Authority’s monitoring confirmed that Licensee broadcasts locally produced drama programmes. Two programmes were identified as follows:

- “*The Wild*” broadcast on Mondays to Thursdays from 18h00 until 18h30, with repeats at 11h30 weekdays and an omnibus on Sundays.
- “*Binnelanders*” broadcast on Mondays to Thursdays at 18h30.

In total, approximately twenty six percent (26%) of the overall South African content is dedicated to locally produced drama programming.

The Licensee has complied with Regulation 5.2 of the South African Television Content Regulations.

5. CODE OF CONDUCT FOR BROADCASTERS

Section 54 (3) of the EC Act stipulates that:

“The provisions of subsection (2) do not apply to a broadcasting service licensee who is a member of a body which has proved to the satisfaction of the Authority that its members subscribe and adhere to a code of conduct enforced by that body by means of its own disciplinary mechanisms, provided such code of conduct and disciplinary mechanisms are acceptable to the Authority”.

The Licensee is a member of the National Association of Broadcasters ("NAB"). All complaints related to the Code of Conduct are adjudicated by the Broadcasting Complaints Commission of South Africa ("BCCSA").

6. CONCLUSION

The Licensee has complied with the licence terms and conditions and relevant regulations.

7. APPENDICES

Appendix A: M-Net Licence

Appendix B: Employment Equity and Recruitment Report

Appendix C: Commissioning Protocol

Appendix D: Licence Fees Payment

Appendix E: USAF Contribution

Appendix F: Must Carry Regulations

Appendix G: Standard Terms and Conditions for Individual Licensees

Appendix H: Commissioning Protocol Regulations

Appendix I: South African Television Content Regulations

Appendix J: Code on People with Disabilities Regulations

Appendix K: Universal Service and Access Fund Regulations

Appendix L: General Licence Fees Regulations