



**THE NATIONAL ASSOCIATION OF BROADCASTERS WRITTEN SUBMISSION ON  
ICASA'S FINDINGS DOCUMENT ON THE REVIEW OF THE INDEPENDENT  
BROADCASTING AUTHORITY (ADVERTISING, INFOMERCIALS AND PROGRAMME  
SPONSORSHIP) REGULATIONS, 1999  
SUBMITTED: 1 JUNE 2022**

## INTRODUCTION

1. On or about 8 April 2022, the Independent Communications Authority of South Africa (**ICASA** or the **Authority**) published its Findings Document (the **Findings Documents**) on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999 (the **Draft Regulations**) calling for written submissions by 1 June 2022.
2. The National Association of Broadcasters (**NAB**) is a leading representative of South Africa's broadcasting industry, representing the interests of all three tiers of broadcasters (public, community and commercial). Our members include the SABC, all the licensed commercial television broadcasters; e.tv, Multichoice, M-Net, and StarSat-ODM, independent commercial radio broadcasters such as Kaya FM, YFM, Smile FM, Rise FM, YOU FM, Hot 102.7FM, and radio services of media groups Primedia, Kagiso Media, MRC Management Services, AME, MSG Afrika and a number of community radio broadcasters and community television broadcaster, Faith Terrestrial. The NAB membership also extends to signal distributors as well as a range of industry associates.
3. As the voice of South Africa's broadcasting industry, the NAB's aim is to foster and promote the development of a sustainable and robust broadcasting system that upholds the principles of South Africa's constitutional democracy. For the members of the NAB, it is important that the Draft Regulations relating to Advertising, Infomercials and Programme Sponsorship are effective and fit for purpose.
4. At the outset, the NAB welcomes the publication of the Findings Document on the Draft Regulations following the Authority's previous engagements with the broadcasting sector as part of the review process over the last few years. The NAB will confine its comments to certain aspects of ICASA's Findings Document and Draft Regulations only, and reserves its rights to address any other aspects of the Findings Document and Draft Regulations not specifically addressed in this submission at a later stage. The NAB participates in this process with the aim of providing constructive input for ICASA and looks forward to engaging further with ICASA on the process.

## LEGISLATIVE FRAMEWORK

5. ICASA notes in the Findings Document that its review of the regulations is in line with section 55 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (**ECA**), which empowers the Authority to regulate the scheduling of Advertising, Infomercials and Programme Sponsorship. ICASA further notes that in terms of section 55 of the

ECA, the role of the Advertising Standards Authority of South Africa (which was dissolved in 2018 and replaced by the the Advertising Regulatory Board (**ARB**)) is to administer the Code of Advertising Practice by considering the content of advertisements. ICASA and the ARB have a memorandum of understanding which sets out how the entities cooperate.

6. The NAB welcomes the Authority's approach to the revision of the existing regulations in light with the empowering provision of the ECA. We submit that the focus of the Authority should now be on strengthening the drafting of the Draft Regulations in order to ensure that they are appropriate and implementable.

#### **AUDIO AND AUDIO-VISUAL CONTENT SERVICES (AAVCS) – DRAFT WHITE PAPER**

7. As previously submitted by the NAB, the review of the regulations coincides with a revision of the policy framework by the Department of Communications and Digital Technologies (**DCDT**). The DCDT is currently amending its Audio and Audio-visual Draft White Paper (**Draft White Paper**) following the public participatory process and this policy process is of relevance to the Authority considering the importance of regulatory parity, legal certainty and the promotion of increased investment.
8. We understand that whilst the Authority provided representations to the DCDT in respect of the Draft White Paper, the Draft Regulations will be in line with the current legislation, and will address any changes resulting from the Draft White Paper at a later stage.
9. The NAB welcomes the Authority's aim of aligning the Draft Regulations with current legislation, however, with the ever-changing nature of the broadcast sector, the NAB submits that the Authority should consider how to best future-proof the Draft Regulations so as to address possible concerns that could arise, both in respect of the Draft White Paper and other areas. This will enable the Authority to largely circumvent the need (in the near future) for a further lengthy and detailed process of amending the Draft Regulations which may take considerable time to conclude.

**ICASA'S FINDINGS ON QUESTION 16: WHAT OTHER MEASURES CAN BE PUT IN PLACE TO ENSURE COMPLIANCE WITH PROGRAMME SPONSORSHIP REQUIREMENTS?**

10. As the Authority is aware, the NAB indicated that ICASA should engage with radio broadcasters on the financial implications of phasing out of programme sponsorship for news in respect of radio broadcasters. The Authority indicated that the Draft Regulations on programme sponsorship should be maintained in their current form and that it will review the sponsorship of news and current affairs twenty four (24) months after the publication of the Draft Regulations. The Authority indicated that it will take into consideration the impact of sponsorship on news and current affairs on radio, and the financial status of radio broadcasters, with the aim of eventually phasing this out in the interest of editorial independence.
11. The NAB members support the Authority's position to continue to allow sponsorships on radio news and current affairs, as the financial viability of the radio industry is in a precarious state. The NAB notes that sponsorship revenue primarily assists licensees with content production and acquisition.
12. The COVID-19 pandemic has demonstrated the vital role that the broadcasting sector plays during a national state of disaster. Radio services were needed to inform audiences of news and current affairs, ensuring that accurate and timely information was provided to as many citizens as possible. This was possible because radio broadcasters were allowed to have their news and current affairs content sponsored.
13. As the Authority is aware, the BCCSA Code ensures that licensees provide news programming in accordance with the high standards of journalism, including accurate, truthful and fair reporting. The current Advertising Regulations<sup>1</sup> have mechanisms to ensure that licensees retain editorial control on all sponsored content; licensees are required to specify in their sponsorship contracts that editorial control shall remain with the licensee/broadcaster. In this respect, regulation 5.1 reads "*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 addition, regulation 5.1.2 requires all broadcasters to enter into a "*written sponsorship contract with the sponsor which shall provide that the sponsor shall not be entitled in*

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<sup>1</sup> GNR.426 of 1 April 1999: Regulations relating to the definition of advertising and the regulation of infomercials and programme sponsorship in respect of broadcasting activities (Government Gazette No. 19922)

any way to influence the content or scheduling of the sponsored programme". Thus, there are sufficient measures in place to promote accurate and truthful reporting by licensees.

14. Furthermore, licensees understand the importance of maintaining editorial independence and control across all their news and current affairs content. The integrity of news and current affairs programming is a key factor in audience retention for broadcasters, and as such; licensees strive and aim to maintain editorial independence and integrity in order to retain and grow audiences. We therefore recommend that regulation 6.6<sup>2</sup> be removed in its entirety. Consequentially, we recommend that the words "other than news and current affairs" be removed from regulation 6.7 so that it reads "*Product placement in programming shall be subordinate to the content of the programme material*".
15. The NAB previously proposed 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. Essentially, this economic review will assist the Authority in determining appropriate regulatory interventions that enable financial sustainability for licensees to continue to deliver on their varied mandates.
16. In addition, as noted to ICASA by the NAB, the proliferation of online content distribution platforms paved the way for exponentially increased volumes of online advertising, which has increased competition for advertising revenue between traditional broadcasters, video sharing platforms and other online platforms. Online advertising has already begun to significantly erode traditional broadcasters' advertising market share, with studies anticipating online advertising surpassing television advertising in 2022.<sup>3</sup> The economic review by the Authority should also be cognisant of the developments in the advertising sector and the move away from traditional broadcasters.

## **SUBSTANTIVE COMMENTS ON THE DRAFT REGULATIONS**

17. In addition to the comments above on the Findings Document, the NAB has considered the Draft Regulations and while we note that there are a few drafting errors in the Draft

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<sup>2</sup> Regulation 6.6 states that "A BSL must not permit any product placement in any news or current affairs programme transmitted by it."

<sup>3</sup> NAB State of the Broadcasting Industry Report 2015 - 2018 pg.21

Regulations that need to be corrected, the NAB specifically wishes to bring the following to the Authority's attention:

- 17.1 The definition of "*current affairs programme*"<sup>4</sup> is too broad, as this definition could capture additional types of programming other than true "*current affairs*". The current wording of this definition could be damaging to broadcasters as the Draft Regulations will prevent any possible sponsorship of this kind of programming. In this respect regulation 6.3 requires that a broadcaster "*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.*"
- 17.2 The NAB requests the Authority to reconsider the wording of the definition of current affairs programme to ensure that while it addresses the concerns of the Authority, it still allows reasonable opportunities for sponsorship for programmes which do not constitute "current affairs". The NAB respectfully submits that the terms "*immediate social, political, economic relevance*" and "*national, regional and local significance*" are too broad, and proposes that these phrases be removed from the definition of "*current affairs programme*", and be replaced with "*current socio-political issues*". We submit that the amended definition will read:
- "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 current socio-political issues;
- 17.3 It is unclear why the definition of "*programme competition*"<sup>5</sup> has been amended and whether this amendment is implying that a "*programme competition*" must have no commercial interests. The wording of the Draft Regulations reads "*...and which does not have the promotion of the commercial interests of a person, product, or service*". If the intention of the Authority is that a "*programme competition*" cannot promote a commercial interest, this will not be feasible for broadcasters and will cause a loss of revenue for broadcasters. The NAB requests the Authority to consider the wording of this section and whether it is necessary to prohibit the promotion of a commercial interests.
- 17.4 Regulation 6.8 requires that product placement must be signalled by means of a logo before and after a programme. This is extremely onerous for broadcasters and the

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<sup>4</sup> Regulation 1.11

<sup>5</sup> Regulation 1.18

NAB submits that the Draft Regulations be amended to only require broadcasters to signal product placement at the end of the programme in the end/closing credits.

## **CONCLUSION**

18. The NAB welcomes the Authority's approach to the amendments to the Draft Regulations and reiterates that its members remain committed to the principles of responsible advertising. The NAB thanks the Authority for the opportunity to provide written submission on the Findings Document and the Draft Regulations.