

concept in the licence area. Instead, the applicant noted that there is no talk radio station in Kwazulu-Natal.²⁹⁰

60.14.5 According to its research, the applicant's proposed broadcasting service will attract a listenership of at least 417,000 listeners with a maximum that could reach as high as 1.5 million listeners.²⁹¹ The applicant submitted that its proposed broadcasting service would reach a wide market of listeners of all races and ages.²⁹² The applicant further submitted that its proposed broadcasting service will (unlike mediums such as television and newspapers) provide an opportunity for sports enthusiasts to become involved in the pre-event hype and as well as provide a platform from which they can express their views after the relevant sports event. The proposed broadcasting service also provides sports enthusiasts with an opportunity to interact, debate and discuss their sport of choice and games that have been played. Accordingly, the applicant submitted that there is a significant gap in the market for its proposed broadcasting service.²⁹³

60.14.6 The applicant submitted the following findings from its research:

60.14.6.1 The core market of the applicant, being LSM 7-10 with an interest in sports, comprises of approximately 1 518 000 people.

60.14.6.2 Over 40% have attended sporting events in the past 12 months and a similar percentage has participated in one or more sports in the past 12 months.

60.14.6.3 Some 112 000 people already listen to a talk radio format, indicating the popularity for this form of programming.

60.14.6.4 There is no other comparable station to meet the expressed needs of this large segment of the population.²⁹⁴

60.14.7 The Authority considered the applicant's market research, but is not satisfied that the applicant demonstrated how its market research is linked to its

²⁹⁰ SLAM (KZN) application: p 124.

²⁹¹ SLAM. (KZN) application: p 121.

²⁹² SLAM (KZN) application: p 122.

²⁹³ SLAM (KZN) application: p 125.

²⁹⁴ SLAM (KZN) application: pp 113 - 126.

business plan. The applicant's business plan focuses mainly on the success of similar international broadcasting services as opposed to the specific market carved out in the applicant's market research and the manner in which revenue will be drawn from the applicant's proposed broadcasting service. Further, it appears that the entity appointed to perform the applicant's research relied on already available secondary data and not primary research as required in terms of the ITA. The research contained no survey information taken from sampled potential listeners and merely used the AMPS, RAMS, TAMS and Future fact information.²⁹⁵ It would also appear that the same research was used in respect of the regions of Gauteng, and the metropolitan areas of and surrounding Cape Town and Durban. In this regard, the Authority was concerned that the market research did not focus *specifically* on the target audience within the metropolitan area of and surrounding Durban, and in isolation from any other target audiences in other provinces, when assessing the potential demand, need and support for the applicant's proposed broadcasting service in the licence area. The Authority was further unable to determine whether the applicant will attract advertising to sustain its proposed broadcasting service, and whether the proposed service would be commercially viable, given that it used identical research in three different provinces. Further contradiction is apparent to the extent that the applicant, on the one hand, submitted that there are no existing talk radio broadcasting services in KwaZulu Natal, but then submitting that "some 112 000 already listen to a talk radio format, indicating the popularity for this form of programming".

60.14.8 In the Authority's assessment, the applicant's use of only secondary data also serves to indicate only an interest for a sports radio station but does not prove need or demand for the applicant's service in the proposed coverage area.

60.14.9 For the reasons described above, the Authority is not satisfied that the applicant demonstrated adequate demand, need and support for its proposed broadcasting service or that the proposed service will cater for the tastes and interests of the people living in the coverage area.

²⁹⁵ SLAM (KZN) application: pp 27 - 28.

60.15 Complaints and code of operation

60.15.1 The applicant submitted its complaints procedure, which sets out the steps to be followed to deal with any complaint. The applicant submitted that the station manager will be responsible for the way in which all complaints are addressed.²⁹⁶ The applicant also submitted that a code of conduct will be issued to all station employees and that, at all management or staff meetings, there will be on-going training and updating.²⁹⁷

60.15.2 The Authority is satisfied that the applicant has complied with the requirements of the ITA in this regard.

60.16 Business plan

60.16.1 The applicant submitted a business plan as required in terms of the ITA, which included financial projections.²⁹⁸ A confidentiality request was made by the applicant in respect of the business plan and financial statements which the Authority granted.

60.16.2 However, based on the Authority's review of the business plan, the Authority was not satisfied that the applicant provided an adequate business plan. In this regard, the business plan submitted by the applicant did not contain sufficient information for the Authority to fully understand the applicant's service offering (i.e. the business plan supporting SLAM KZN). Further, the business plan submitted by the applicant was identical to the business plan that was submitted in support of an I-BS licence in both Gauteng and the Western Cape, despite the obvious variances in market size and demographics. Further, in the Authority's assessment, there is no synergy between the business plan and the financial statements submitted by the applicant (i.e. aspects of the business plan, such as marketing and financial plans supported by revenue and market projections, are not provided).

²⁹⁶ SLAM (KZN) application: Appendix 25.1, p 126.

²⁹⁷ SLAM (KZN) application: Appendix 25.2, p 127.

²⁹⁸ SLAM (KZN) application (confidential bundle): pp 4 - 6.

60.17 Projected financial statements

60.17.1 In the Authority's view, the applicant submitted insufficient projected financial statements, which meant that the Authority was unable to conduct a full analysis of the financial statement. The applicant only submitted income statements to do profit margins calculations and the Authority was unable to make any conclusive determination or conduct any comprehensive analysis in respect of the applicant's financial viability and sustainability.

60.17.2 The applicant also submitted the same pro forma financial statements across the three regions of Gauteng, Kwazulu-Natal, and Western Cape, in which it applied for an I-BS licence, despite the significant variations in market size, demographics, and listenership across these regions.

60.18 Funding (financial requirements, sources and financing plans)

60.18.1 The funding requirement in respect of KwaZulu-Natal is R46 million.²⁹⁹ However, in the Authority's assessment, the applicant provided insufficient proof of funding. In this regard, the applicant indicated that one of its shareholders, Moloko Investments (Pty) Ltd, would provide 50% of the required funding, while the NEF would provide the remaining funding. A funding letter from the NEF, which confirmed that the applicant had approached the NEF for funding, was submitted by the applicant in this regard.³⁰⁰ However, the Authority was not satisfied that the funding from the NEF was approved, and the applicant did not clearly indicate whether the funding would be available. Subsequent to the public hearings, the applicant proposed a new funder and a new funding structure. The Authority exercised its discretion not to accept this new information which, in the Authority's assessment, altered a material part of the applicant's application.

60.18.2 Further, although the pro forma financial statements submitted by the applicant in respect of each of the various regions were identical, the applicant's funding requirements varied within the different licence areas. It

³⁰⁰ S.L.A.M. (KZN) Application: p 3.

was not clear to the Authority why there was such a variation in funding requirements in the different licence areas.

60.18.3 For the reasons described above, the Authority was not satisfied that the applicant's business operation would be commercially viable or that it would have reasonably good prospects of being successful.

60.19 Technical

60.19.1 The applicant provided details of its proposed signal distribution service and indicated that Sentech would be contracted in this regard.³⁰¹

60.19.2 The applicant indicated that it would be utilising a new site for the transmission of its sound broadcasting service.³⁰² The applicant did not include further details regarding the site as required in terms of the ITA, such as the location of the site by geographic coordinates, its ownership, the present use, actual antenna pattern, reasons for selecting the site, and information on investigations that have been made regarding the suitability of the site to accommodate the proposed service.

60.19.3 The applicant listed the principal items and configuration of the transmitter equipment and indicated that Sentech would be responsible for ensuring compliance with the Authority's technical specifications.³⁰³ The applicant did not give full details of the person's technical competence to undertake this task.

60.19.4 The applicant indicated that Sentech would be contracted for transmitter maintenance.³⁰⁴

60.19.5 While the applicant provided the location of the proposed studio,³⁰⁵ the applicant did not provide a rough plan of the studio as required in terms of the ITA. The applicant has, however, provided full details relating to the studio maintenance as required.³⁰⁶

³⁰¹ SLAM (KZN) application: p 129.

³⁰² SLAM (KZN) application: p 130.

³⁰³ SLAM (KZN) application: p 131.

³⁰⁴ SLAM (KZN) application: p 132.

³⁰⁵ SLAM (KZN) application: p 133.

³⁰⁶ SLAM (KZN) application: p 135.

60.19.6 Based on the assessment above in relation to the relevant technical requirements, it is the Authority's view that the applicant did not provide sufficient information to support the technical feasibility of its proposal. In this regard, the Authority distinguished between the technical proposal submitted by the applicant in this application and the technical proposal submitted with the SLAM Gauteng application. In the Gauteng application, SLAM Gauteng provided the details of an existing site which it intended to use for signal distribution. However, the applicant in KwaZulu-Natal opted for a greenfield site, but did not provide the details of the proposed site.

60.20 Decision and reasons

60.20.1 The Authority has decided not to grant the applicant a commercial sound broadcasting licence in the metropolitan area of and surrounding Durban for each of the following reasons considered separately, each of which is regarded as constituting adequate reason for turning down the application:

60.20.1.1 In the Authority's assessment, the key individuals who would be appointed to manage the applicant's affairs during its operations have the necessary capability and expertise to operate a commercial radio station. The Authority was further satisfied that the applicant's ownership structures as described in its application would contribute to the diversity of ownership of broadcasting services in South Africa given that none of the applicant's shareholders presently has an interest in any other broadcasting licensee. However, the information supplied by the applicant in respect of its financial means, business record and commercial viability, as contemplated in section 51(e) of the Act, was inadequate and did not enable the Authority to analyse and assess the commercial viability of the applicant's proposal. The applicant also submitted identical financial statements in respect of each of the licence areas for which it applied for a licence, and did not appear to consider the distinctions in market size, demographics and listenership within each of these coverage areas. For these reasons, the Authority was not satisfied the applicant's proposed broadcasting service will be commercially viable or that it will have good prospects of success.

60.20.1.2

The applicant could not provide the Authority with proof of funding and, as a result, the Authority was not satisfied that the applicant had the necessary finance to run the proposed broadcasting service. In this regard, while the applicant indicated that one of its shareholders, Moloko Investments (Pty) Ltd, would provide 50% of the required funding, the NEF was supposed to provide the remaining funding. A funding letter from the NEF, which confirmed that the applicant had approached the NEF for funding, was submitted by the applicant in this regard. However, the Authority was not satisfied that the funding from the NEF was approved, and the applicant did not clearly indicate whether the funding would be available.

60.20.1.3

In the Authority's assessment, the applicant's proposed service is different from existing services and would contribute to the diversity of radio programming that is presently available in the coverage area, given that no radio station is presently providing a comparable sports-focused service. However, the Authority, after considering the applicant's market research, is not satisfied that the applicant has demonstrated how its market research is linked to its business plan. The applicant's business plan focuses mainly on the success of similar international broadcasting services as opposed to the specific market carved out in the applicant's market research. In this regard, it appears that the entity appointed to perform the applicant's market research relied on secondary data that was already available and not on primary research as required in terms of the ITA. The research contained no survey information taken from sampled potential listeners, who were given an opportunity to listen to the applicant's proposed programming and format, but instead used existing information from AMPS, RAMS, TAMS and Future fact to draw its conclusions.³⁰⁷ In other words, although the applicant's secondary research shows a significant proportion of the applicant's potential target audience may have an interest in sports, these findings cannot necessarily be extrapolated to reach a conclusion that a proportion of the targeted listeners will be interested in a sports radio station and will actually listen to the applicant's proposed broadcasting service.

³⁰⁷ SLAM (Gauteng) application: pp 25 - 26.

It would also appear that exactly the same research was used in respect of the metropolitan areas of and surrounding Durban, as was used in respect of Gauteng and the metropolitan areas of and surrounding Cape Town in which the applicant also applied for an I-BS licence. In this regard, the Authority was concerned that the market research did not focus *specifically* on the target audience in the metropolitan areas of and surrounding Durban (i.e. the target audience in and around Durban was not isolated from any other target audiences in other provinces). Further contradiction is apparent to the extent that the applicant, on the one hand, submitted that there are no existing talk radio broadcasting services in KwaZulu Natal, but then submitted that “some 112 000 already listen to a talk radio format, indicating the popularity for this form of programming”. As such, in the Authority’s assessment, the applicant has not shown sufficient evidence to demonstrate that there is a demand for the proposed service, as provided for in section 51(a) of the Act.

60.20.1.4

In the Authority’s assessment, the applicant did not demonstrate that there is a need for the proposed service, as provided for in section 51(b) of the Act. While the applicant’s proposed service is clearly different from any other existing service and while the applicant did submit that a proportion of the applicant’s target audience have an interest in sports, the applicant did not demonstrate that the absence of the applicant’s proposed programming format indicates a need for it, particularly having regard to the other sources of news and information on sport, including newspapers, magazines and television. As such, in the Authority’s assessment, the applicant did not clearly demonstrate that its target audience in the metropolitan area of and surrounding Durban requires or would be interested in additional sports and lifestyle programming on radio.

60.20.1.5

The Authority was further unable to determine whether the applicant will attract advertising to sustain its proposed broadcasting service and, accordingly, was not satisfied that the proposed service would be commercially viable, given that the applicant used identical research in three different provinces.

60.20.1.6

The applicant did not provide sufficient information to support the technical feasibility of its proposal, as it did not, in the Authority's assessment, provide sufficient information or details regarding the proposed greenfield site which it intended to use for signal distribution.

60.20.1.7

In the Authority's assessment the applicant's application, viewed holistically, did not meet the minimum requirements specified in paragraph 21 of the ITA and the Act.

61. Capital Radio 604 (Pty) Ltd (Capital Radio 604)

61.1 Introduction

61.1.1 The Authority received an application from Capital Radio 604 (Pty) Ltd for a commercial free-to-air sound broadcasting service licence in the primary market of the metropolitan area of and surrounding Durban.³⁰⁸ The applicant authorised Mark Williams and Kevin Savage to act on its behalf.³⁰⁹

61.1.2 The applicant's proposed station name is "Capital Radio 604".

61.1.3 The applicant applied for an I-BS licence in respect of the 603 kHz frequency available for the metropolitan area of and surrounding Durban.³¹⁰

61.1.4 The Authority received general representations from the SABC in respect of the primary markets licensing process. The SABC submitted that it is important for the Authority to take into consideration the format and nature of services provided by the SABC radio stations when licensing new players. As such, the applicant submitted that the Authority should strike a balance between the needs of existing broadcasters and new entrants. Given that the SABC's representations did not address the applicant's application in particular, the Authority has not addressed the representations in the context of this applicant. No other written representations were received in respect of the applicant's application.

61.2 Corporate status

61.2.1 The applicant is a private company incorporated in South Africa, with registration number 2012/144643/07. The applicant has attached to its application a certificate of registration and an endorsed memorandum of incorporation.³¹¹ Based on these documents, the Authority is satisfied that the applicant is a private company registered in South Africa with its principle place of business in South Africa, as required in terms of section 5(8)(b) of the Act.

³⁰⁸ Capital Radio 604 application: p 1.

³⁰⁹ Capital Radio 604 application: pp 19-20.

³¹⁰ Capital Radio 604 application: p 1.

³¹¹ Capital Radio 604 application: pp 3-4.

61.2.2 The applicant did not provide its complete shareholding structure in its application after its HDP shareholder withdrew its support just before the closing date for submission of the application. The information that was provided by the applicant in relation to its shareholding structure was contradictory: in Appendix 5.4, the applicant indicated that its HDP shareholding would be 45%,³¹² while in Appendix 6.6.1, on the other hand, the applicant stated that its HDP shareholding would be 40%, while Mark Williams would hold another 30%.³¹³ The application did not contain any other information relating to the shareholders, and no shareholders agreement was submitted.

61.2.3 In the Authority's assessment, it was not in a position to assess the applicant's shareholders nor was it in a position to ascertain which entities control the applicant.

61.3 Empowerment of HDPs

61.3.1 The Authority did not receive information in respect of the applicant's HDP shareholding. On 23 August 2012, one day after submitting its application, the applicant sent a letter to the Authority indicating that its HDP investor had withdrawn financial support and that the applicant had opened negotiations with another probable HDP investor. The applicant asked for an extension of 21 days within which to provide evidence of its HDP ownership. The Authority refused this request on 14 September 2012, for the reason that HDP ownership is a substantive requirement of the ITA and the Act and no extension could be considered at that late stage of the process. On 7 November 2012, the applicant submitted a formal request to amend its application to include information as to HDP ownership. The Authority refused this request on the basis that the inclusion of this information would not be an amendment as this information was not included in the initial application and on the basis that the Authority had refused to grant the applicant an extension to submit information in relation to a new HDP investor. During the public hearings, the applicant attempted to present a new shareholding structure, but the Authority again refused this request on the basis that it had already refused similar requests earlier in the process.

³¹² Capital Radio 604 application: p 21.

³¹³ Capital Radio 604 application: p 31.

61.3.2 Capital Radio's request for extension, in terms of which Capital Radio essentially requested a further 21 days in which to furnish the HDP information that was not included in its original submission, was based on regulation 8(3)(b) of the Processes and Procedures Regulations. It appears that by seeking to rely on regulation 8(3)(b) of the Processes and Procedures Regulations, Capital Radio was aware that -

61.3.2.1 its application for a licence did not comply with the requirements of the ITA (i.e. Capital Radio's application did not include the details of its HDP shareholding which was a requirement of the ITA); and

61.3.2.2 it was within the Authority's powers to exercise its discretion to direct Capital Radio to furnish the HDP information within a specified period (i.e. Capital Radio could not furnish further information of its own accord, but required a direction by the Authority to allow it to do so).

61.3.3 In essence, however, a request for an extension of time to submit particular information may actually amount to a request to condone the late submission of an application, or at least certain information forming part of an application, which is the subject of regulation 8(3)(c) rather than 8(3)(b) of the Processes and Procedures Regulations. There is a distinction between regulation 8(3)(b) and regulation 8(3)(c) of the Processes and Procedures Regulations. Regulation 8(3)(b) does not contemplate that an applicant must apply for or show cause as to why it should be permitted to file any required information. Instead, the Authority has the discretion of its own accord to request an applicant to submit such information. By contrast, regulation 8(3)(c) provides that an applicant must show "good cause" as to why the late submission of its application should be permitted. The Authority is not obliged to call for supplementary information where an applicant has failed to submit the information that is required by the ITA and need not call for all the information that would allow the applicant's application to be granted. In fact, the Authority may reject an application that does not contain the requisite information in terms of regulation 8(3)(a) of the Processes and Procedures Regulations. However, the Authority may call for supplementary information to be submitted by an applicant when it considers it appropriate. The Authority did not consider it appropriate to exercise its discretion in this

regard in the applicant's case. This is on the basis that this was not a situation where the information in question already existed but was simply not provided e.g. where an applicant has inadvertently omitted certain documents. In the Authority's assessment, regulation 8(3)(b) of the Processes and Procedures Regulations cannot be construed as allowing the Authority to direct applicants to provide material information in order to render materially defective applications compliant. This would essentially allow the Authority to direct certain applicants as to what parts of their applications to change to make them more likely to be granted, which has potential to undermine the fairness of the adjudication process. In addition, the Processes and Procedures Regulations (through regulation 6) cater for situations where non-material parts of a licence application change subsequent to submission. It would make little sense if the Authority was empowered to direct applicants to submit information in relation to material aspects of their licence applications while at the same time not being permitted to allow material amendments to applications. For the same reasons, the Authority did not consider it appropriate to grant the applicant an extension to submit its licence application (as dealt with in regulation 8(3)(c) of the Processes and Procedures Regulations).

61.3.4 The applicant's submissions as to its HDP shareholding were also contradictory and incomplete:

61.3.4.1 In Appendix 5.4, the applicant stated that 45% of its share capital would be held by HDPs, of which 40% would be held by the entity replacing the HDP funder that had withdrawn and 5% would be held by M Bishop.³¹⁴ As discussed above, the Authority did not permit the applicant to submit information relating to its new shareholding structure

61.3.4.2 In Appendix 6.6.1, on the other hand, the applicant indicated that only 40% of its share capital would be held by HDPs.³¹⁵

61.3.5 In the Authority's assessment, the version of the applicant's application that must be evaluated by the Authority is the version that does not include a percentage of equity ownership held by HDPs, given that the applicant had

³¹⁴ Capital Radio 604 application: p 21.

³¹⁵ Capital Radio 604 application: p 31.

not, at the time of the submission of its application, identified the relevant 40% HDP shareholder. As such, in the Authority's assessment, the applicant failed to comply with the 30% HDP equity ownership threshold stipulated in the ITA and the Act.

61.4 Section 64 of the Act

Based on the version of the applicant's application which was submitted to the Authority, it would appear that the applicant does not have any foreign shareholder and as such, the applicant complies with the requirements imposed in terms of section 64(1) of the Act.

61.5 Section 65(4) and (5) of the Act

61.5.1 The applicant indicated that it does not have any ownership or control interests in the commercial sound broadcasting sector in South Africa.³¹⁶ However, Mark Williams, who is a director and, according to the applicant's initial application, a 30% shareholder in the applicant, has a 25% shareholding in a dormant television-production house.³¹⁷ In the Authority's assessment, this is not relevant for the purposes of section 65 of the Act.

61.5.2 On the basis of the information provided to the Authority, it would appear that the applicant complies with section 65 of the Act.

61.6 Section 66 of the Act

The applicant indicated that it does not have any ownership or control interests in any newspapers published in South Africa. Based on the profiles provided by the applicant, it does not appear that any of the applicant's shareholders, who may be in a position to exercise control of the applicant, currently have an interest in any newspaper published in South Africa.³¹⁸ On the basis of the information provided to the Authority, it would appear that the applicant complies with section 66 of the Act.

³¹⁶ Capital Radio 604 application: pp 46 and 48.

³¹⁷ Capital Radio 604 application: p 48.

61.7 Management, control and human resources

61.7.1 The applicant submitted the names and details of its senior management team. It appears from the information provided that the members of the applicant's management have experience in management and broadcasting. In particular, Matseliso Bishop has extensive experience in journalism and news reporting both locally and internationally. Kevin Savage was managing director at M-Power FM and OFM, an executive programme director at Kfm and a radio presenter at 5fm and Capital Radio. Other members of the management have management skills in other areas such as marketing.³¹⁹

61.7.2 The applicant also submitted an organogram of the station's staff. The station will be overseen by a chairman. A marketing director, a news director, a commercial and sales director, a station manager, an accountant, a technical director, a programme and music director and a communications director report to the chairman. The applicant predicts that it will have a staff complement of 38 employees in the first year of operation, 42 in the second year and 44 in the third year.³²⁰

61.8 Programming

The applicant submitted a detailed programme schedule covering typical weekdays, Saturdays and Sundays. It intends to be on-air 24 hours a day, seven days a week.³²¹ The applicant has not specified when the applicant will begin broadcasting if granted a licence.

61.9 Format

61.9.1 The applicant proposes to be a predominantly music-led station offering music from the 60s, 70s and 80s, R&B, soft rock and pop, as well as current songs. The backbone of the station's music offering will be R&B and soft rock from the 80s. The station will also have news, current affairs, lifestyle shows and talkback.³²²

³¹⁹ Capital Radio 604 application: pp 23-26.

³²⁰ Capital Radio 604 application: pp 37-38.

³²¹ Capital Radio 604 application: pp 52-56.

³²² Capital Radio 604 application: p 52.