COMPLAINTS AND COMPLIANCE COMMITTEE

DATE OF HEARING: 9 MARCH 2022 **CASE NO: 415/2021**

LAST HEARING DATE: 3 AUGUST 2022

PRIMEDIA (PTY)LTD **COMPLAINANT**

V

HOT FM **RESPONDENT**

CCC MEMBERS: Judge Thokozile Masipa – Chairperson
Councillor Yolisa Kedama- 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: Justine Limpitlaw

For the Respondent: Kerron Edmunson

JUDGMENT

Judge Thokozile Masipa

INTRODUCTION

[1] The Complainant in this matter is Primedia (Pty) Ltd, ("Primedia"), a licensee in respect of four commercial sound broadcasting services, namely:- 702, Cape Talk, KFM and 94.7 FM. It lodged a complaint against the Respondent regarding its alleged failure to comply with its licence conditions, alternatively failure to comply with the 2016 SA Music Content Regulations, ("the Regulations").

[2] The Respondent is Gauteng Media Development Project NPC, a licensee in respect of a community sound broadcasting service known as Hot 91.9 FM. For convenience, I shall refer to the Respondent as Hot FM or the Respondent.

PRELIMINARY ISSUES

[3] The present complaint first came before the CCC by way of a pre-hearing conference held on 13 September 2021. A request had been made by the Respondent that the CCA be called as a witness. That request was refused as the CCC decided that it would be more appropriate and convenient to hear the parties first on the merits and then seek the expert input of the CCA later, in the event the CCC found such a step necessary.

[4] In line with its decision, the CCC sought the CCA's input only after the hearing. And the CCC is immensely grateful for the assistance it received from the CCA. For purposes of transparency, extracts from the CCA's report are incorporated into the judgment where necessary.

[5] The CCC has considered all the facts placed before it as well as the circumstances of the case. Particularly helpful were submissions by counsel and the input from the CCA. Nevertheless, what must be borne in mind is that while the expertise of the CCA is essential, the CCA is a monitoring body while the CCC alone has been tasked with investigating complaints, hearing them, where appropriate and making findings. It follows, therefore, that the decision made in this matter is that of the CCC alone.

THE REGULATORY FRAMEWORK

[6] To understand the relevance of the Regulations regarding the present complaint, it is necessary to briefly discuss the background of the Regulatory Framework as can be gleaned from the papers.

6.1 On 31 January 2006, the 2006 SA Music Content Regulations came into effect and set the prescribed minimum percentage for SA Content broadcast on a community sound broadcasting service at 40%.

6.2 On 3 August 2014, Hot FM was issued with a community broadcasting service licence. In terms of clause 5.1.2 of its licence, Hot FM was required to broadcast 60% SA music which was 20% higher than the prescribed percentage.

6.3 On 23 March 2016, the 2006 SA Music Content Regulations were repealed and replaced by the 2016 SA Music Content Regulations. These Regulations made provision for a staggered phasing in of increased SA Music Content Regulations applicable to community sound broadcasting services as set out in Regulation 3(3) of those regulations,
namely —

6.3.1 60% SA Music Content threshold to be met by 24 September 2017;

6.3.2 70% SA Music Content threshold to be met by 24 September 2018; and

6.3.3 80% SA Music Content threshold to be met by 24 September 2019.

6.4 In August 2019, ICASA renewed Hot FM's class community sound broadcasting service licence. In terms of clause 5.1.2 of its licence, Hot FM was required to broadcast 70% SA music. This was exactly the same percentage it was then required to be broadcasting in terms of the 2016 SA Music Content Regulations.

6.5 On September 2019, the uppermost threshold percentage of SA Music Content to be broadcast on community sound broadcasting services was triggered by Regulation 3(3) of the 2016 SA Music Content Regulations, from which date community sound broadcasting services have been required to broadcast 80% SA Music Content.

THE COMPLAINT

[8] Primedia alleged that Hot FM contravened Regulation 3(3) of the South Africa Music Content Regulations of 2016 ("the Regulations").

Regulation 3(3) states:

"A holder of a community sound broadcasting service licence must ensure that after eighteen (18) months from the date of gazetting of these regulations, a minimum of 60%, increasing by 10% annually to reach 80% of the musical works broadcast in the performance period, consist of South African music and that such South African music is spread evenly throughout the performance period."

[9] Alternatively, that the Respondent contravened clause 5.1.2 of its licence conditions.

Clause 5.1.2 states:

"the Licensee shall provide programming as follows - South African Music Content: 70%."

[10] In summary, the essence of the complaint is that Hot FM was failing to comply with the requirement that 80% of music broadcast is to be South African Music. It was alleged that Hot FM played South African music content far less than the percentage prescribed by the Regulations. There was also an allegation that Hot FM failed to comply with its own licence conditions which required that 70% of music broadcasts be South African music.

[11] Primedia annexed an affidavit by the music manager of 94.7 FM, Ms Debra-Ann Sharratt, and various attachments ("Annexure D").

[12] In her affidavit and supporting spreadsheets attached, Ms Sharratt provided monitoring-related evidence contained in the Radiomonitor Airplay Logs of Hot FM, that in the three-month period from 1 December 2020 to 28 February 2021, Hot 91.9 FM did not comply with:

12.1 the 70% SA Music Content requirement stipulated in clause 5.1.2 of Hot FM's currently applicable licence; or with

12.2 the 80% SA Music Content in terms of the 2016 SA Music Content Regulations for the broadcast period, in any single week during the three months monitored. Primedia stated further that the maximum percentage of SA Music played in a single week during the three-month period reviewed was only 31.33% (thirty one point thirty three percent).

[13] The Respondent questioned the reliability of the logs by Radiomonitor Airplay. (I shall come back to this defence in due course).

RATIONALE FOR THE COMPLAINT BY PRIMEDIA

[14] Primedia argued that the manner in which Hot 92.9 FM has consistently failed to comply with its licence condition and with the SA Music Regulations in relation to the broadcast of SA Music, undermines five key broadcasting principles namely:-

1. It is unfair
2. It undermines the three-tier system that our broadcasting system is predicated upon;
3. It is anti-competitive;
4. It dissuades investment in commercial sound broadcasting
5. It undermines South Africa's local content industry.

[15] While parties made submissions for and against the relevance and importance of the principles above, a focus on that debate in this judgment is unnecessary as none of the said principles are needed to determine whether there has been any contravention.

RELIEF SOUGHT

[16] The relief that Primedia seeks is set out hereunder in full:

1. *Requests the CCC*

"1.1 to investigate the complaint in terms of section 17B(a)(ii) of the ICASA Act;

1.2 to make recommendations to ICASA regarding the performance of the functions of ICASA or achieving the objects of the ICASA Act in terms of section 17B(b)(i) and (ii) of the ICASA Act;

1.3 to consider the complaint in terms of section 17C(1)(b) of the ICASA Act;

1.4 to conduct an oral hearing in terms of section 17C(3) of the ICASA Act in respect of this complaint;

1.5 to make a finding in terms of section 17D(1) of the ICASA Act on this complaint;

1.6 to make a recommendation to ICASA in terms of section 17D(2) of the ICASA Act in respect of this complaint regarding action to be taken by ICASA in regard to the complaint;

1.7 to make a recommendation to ICASA to make one or more of the following orders in terms of section 17E(2) of the ICASA Act, namely:

1.7.1 to direct the licensee to desist from any further contravention - s17E(2)(a) of the ICASA Act; and

1.7.2 to direct the licensee to pay a fine in the prescribed amount - s 17E(2)(b) of the ICASA Act".

REGULATIONS VS LICENCE CONDITIONS

[16] Counsel debated the question whether the requirements of the SA Music Content Regulations take precedence over the licence conditions.

[17] In my view whether one takes precedence over the other is not important at this stage, since that is not what the CCC was called upon to determine.

[18] In any event, the two allegations in the complaint are framed in the alternative. The import of this is that it is inconsequential which of the two is found to have merit.

[19] What is significant is that it is common cause that the 70% requirement in terms of the licence conditions is binding on Hot FM. This then becomes the point of departure. In view of this, it might not be necessary to discuss the details of the 80% requirements in terms of the Regulations.

HOT FM's DEFENCE

[20] Hot FM denied the allegations of non compliance brought against it, stating that it *was "entirely compliant"* with its licence conditions and with the applicable regulations. Striking was the fact that, simultaneously, Hot FM pleaded that *"Hot has been able to sustain substantial performance."*

HOT FM's LICENCE CONDITIONS

[21] For reasons already stated it is convenient at this stage to deal with Hot FM's Licence Conditions.

[22] Condition 5 reads as follows:

"5 Programming

5.1 The Licensee shall provide programming as follows:

5.1.1 News and Information: The Licensee shall broadcast a total of thirty-two (32) minutes of news per day of which 30% will be local, 30% national and 40% international and 40% international news

5.1.2 South African Music Content: 70%

5.1.3 Talk v Music: 30% Talk and 70% Music.

5.1.4 Language(s) of broadcast: English - 100%.

5.2 The Licensee shall keep a log of programmes which must be submitted on a monthly basis to the Authority. A pro-forma of the log to be kept will be supplied by the Authority."

EVIDENCE

Logs of South African Music Played by Hot FM

[23] Primedia deposed to an affidavit through the person of Ms Debra-Ann Sharratt. In support of allegations of non compliance, Primedia relied on logs produced by a company called Radiomonitor Ltd for all music broadcast by Hot FM during the period 07h00 to 21h00 for the period 1 December 2020 to 28 February 2021. [This is the shortened period based on what is set out in the Covid Regulations].

[24] In response, Hot FM questioned the reliability of the logs concerned but offered no alternative logs for the same period. It also did not present a version of what percentage of South African music it played during the period concerned. Counsel for Hot FM submitted that broadcasters submitted their reports to ICASA under the Compliance Manual Regulations, 2011 (the Compliance Manual Regulations), on a monthly basis, as set out in Forms 8, 8A, 8B and 8C of the Compliance Manual Regulations.

[25] Hot FM further pointed out that under paragraph 5.2 of its licence, the licensee is required to present 30% Talk and 70% music on a monthly average basis.

[26] For this reason, the allegations contained in the affidavit of Ms Debra-Ann Sharratt in paragraph 5 to 8, that … ***"in the three-month period from 1 December 2020 to 28 February 2021, Hot 91.9 FM did not comply… for the broadcast period in any single week during the three months mentioned. Indeed, the maximum percentage of SA music played in a single week during the three months period reviewed was only 31.33% (thirty-one point thirty three percent)"*** were founded on a misunderstanding of both the Compliance Manual Regulations and the licence conditions.

[27] Counsel for Hot FM submitted further that, while the music played is done on a weekly basis, the measurement for compliance purposes takes place on a monthly average basis.

[28] Hot FM submitted that Primedia mistook the measurement period for a shorter period than it was in terms of the regulations and the Hot licence conditions. Accordingly, the complaint by Primedia was based on a fundamental error in the calculation of music by calculating music played over a week, rather than a month.

[29] Moreover, because the logs, by Ms Sharratt, were prepared on the basis of ***ad hoc*** weeks, selected randomly from the calendar, during a three-month period, instead of across the relevant months, the information could not be relied upon. In addition, the logs were inaccurate as there were a number of South African music tracks which had been omitted. For that reason, the complaint should be dismissed, it was argued.

[30] In support of its submission above, Hot FM submitted Annexure B through which it sought to demonstrate that in compiling the logs, Radiomonitor omitted in excess of 2500 "spins" or plays of local music.

[31] At this stage, it is important to note that, following Hot FM's response, Primedia re did its monitoring exercise by adding most of the songs referred to in Annexure B. Primedia stated that RadioMonitor SA was able to identify all but 66 of the 560 tracks listed in Hot FM's Annexure B. As a result of this exercise, the picture relating to percentages was slightly altered as follows:

In December 2020 the percentage was 36.95% (per Annexure R2);
In January 2021 the percentage was 37.53% (per Annexure R3);
In February 2021 the percentage was 40.08% (per Annexure R4).

[32] As can be seen, the improved percentages, are still far less than the 70% or 80% requirements. Such performance can hardly qualify as substantial compliance let alone entire compliance, in my view. If the bulk of the retrieved missing songs could make only such a small difference, it is reasonable to conclude that the 66 still "missing" tracks would have made only a marginal difference.

[33] In view of the above, the defence, raised by Hot FM, that the logs were incomplete and that, therefore, the monitoring by Primedia was unreliable, has no merit. I say this because Hot FM could offer no further explanation why, after the missing songs had been added, its performance still fell far short of the required percentages.

[34] Hot FM had more than enough time to raise a proper defence when it became clear that the revised percentages were nowhere near 70% or 80% but it didn't use the opportunity. Instead it continued with a bald denial which defence was woefully inadequate.

[35] The sum total of Hot FM's defence, therefore, was a denial without a basis. This pattern was repeated throughout Hot FM's response.

[36] Although Hot FM boldly asserted more than once, that it *"is in fact entirely compliant with its obligations" and that* it was *"substantially compliant"*, none of these statements was borne out by any evidence.

[37] Moreover, it is significant that Hot FM raised substantial compliance as a defence without spelling out the details of such substantial compliance. Instead, in support of its case, Hot FM cited Rhythm FM, as authority. This it did without pointing out the similarities or any other basis which might qualify the case cited as authority in the present complaint.

[38] Merely quoting from the judgment in the Rhythm FM matter: *"This is one of the matters which demonstrates that, given the intricacies of setting up a radio station - and in this case, over a wide area - the matter cannot simply be addressed by resorting to a strict application of the Regulations…"* does not assist the CCC in determining whether and/how the case cited is relevant to the adjudication of the present complaint.

[39] The reason for the equivocal and somewhat confusing nature of the response by Hot FM becomes apparent when one considers the input by the CCA. According to the CCA, Regulation 5 states that *"there are format factors that can contribute towards the calculation of the relevant minimum South African music content quota."* These format factors include the coverage of live music, interviews with South African musicians and composers and the promotion of new musicians whose debut albums have been on the market six months or less.

[40] In its analysis of the logs for Hot FM, the CCA stated that for the month of December 2020, the total South African music that was broadcast, ranged between an average of thirty-five (35%) and thirty-eighty (38%) percent; for the month of January 2021, the total South African music that was broadcast ranged between an average of thirty-two (32%) and thirty-five (35%) percent; for February 2021, the total South African music broadcast ranged between an average of thirty (30%) and thirty five (35%) percent.

[41] In all the above instances the logs showed that the majority of music broadcast by the Licensee was of international origin.

[42] The CCA added the following:

"The Broadcasting Compliance Unit wishes to advise the CCC that the logs that the Broadcasting Compliance Unit have been provided with and requested to analyse, only provide data of songs that were broadcast between the period of 07h00 and 21h00. This amounts to 15 hours per day, instead of the normal 18 hours as per the definition of the performance period. These reduced hours of reporting impacted the analysis. It is important to note that during the National State of Disaster, there was a reduced Performance period. However, the licensee

was still below the minimum requirement as shown on the graphs above." (my emphasis).

CONCLUSION

[43] In conclusion it is important to emphasise that this is a complaint regarding the non-compliance by Hot FM with its SA Music Obligations as set out in its licence conditions and in the SA Music Content Regulations. The interesting debate between the parties, therefore, concerning the unfairness or otherwise of the regulations applicable to the community sound broadcasters versus the commercial sound broadcasters is an issue for another forum, not the CCC.

[44] To determine whether the complaint has merit we had to analyse not only the complaint but also examine the defence raised by Hot FM. Of significance is that being *"entirely compliant"* and being *"substantially compliant"* are diametrically opposite. In addition, such statements by Hot FM are far from helpful as they were not supported by facts. As a result, the defence was found to be neither credible nor ***bona fide.***

[45] The analysis by the CCA accords with the CCC's conclusion on the facts of this case, that the percentage of South African music broadcast by Hot FM was far below the required threshold. Although the CCA stated that its analysis is not conclusive, what is interesting is that the low percentages serve to confirm that the percentage of South African music broadcast by Hot FM falls far below the required percentage. Even more interesting is that while Primedia's revised percentages range from 36.95% in December 2021, 37.53% in January 2022 to 40.08% in February 2022, the percentages by the CCA range between an average 35% to 38% in December 2021; 32% to 35% in January 2022 and 30% to 35% in February 2022. The discrepancies in these percentages are marginal. What is significant, is they all fall below fifty (50) percent.

FINDING

[46] In the light of the above, the finding of the CCC is that Hot FM failed to comply with clause 5.1.2 of its licence in that during the three-month period from

December 2020 to 28 February 2021 it played SA music content far below the threshold requirement of 70%. **The complaint as appears on the charge sheet is, therefore, upheld.**

MITIGATING CIRCUMSTANCES

[47] Parties in this matter were given an opportunity to argue mitigatory circumstances in the event a finding of non-compliance was made against the Respondent.

[48] Counsel for the Respondent seemed aggrieved that her client had to make submissions in mitigation, in circumstances where the parties had not been furnished with a judgment or where the Respondent had not been informed that the CCC had made a finding of non-compliance against it.

[49] In my view, the unhappiness stemmed from a possible misunderstanding of how the CCC carries out its mandate. The CCC is mandated by Section 17B(a) of the Independent Communications Authority of South Africa ("ICASA ") Act No.13 of 2000 which provides as follows:

"The Complaints and Compliance Committee —

(a) must investigate, and hear if appropriate, and make a finding on —

(i) …
(ii) Complaints received by it; and
(iii) Allegations of non-compliance with this Act or the underlying statutes received by it."

[50] While the section explicitly states that the CCC "must investigate" it does not state the nature of the investigation, nor does it say when the investigation is to commence and when it must come to an end. In my view, unlike the approach followed in a court of law, the CCC has a duty to investigate throughout the proceedings. The investigation would include testing the authenticity of the information or any material brought before it, calling for more information and giving the affected parties an opportunity to make submissions.

[51] Unlike a criminal court, which has first to pronounce on the guilt of an accused, before it can hear mitigating circumstances and aggravating circumstances, the CCC does not have to wait until it has made an adverse finding against the Respondent. To conduct the hearing piece meal, in a fashion similar to that of a criminal court, would be a waste of time and other limited resources.

[52] Counsel for the Respondent pleaded that in the event that a finding of non-compliance was made against the Respondent, a monetary sanction would be too harsh as the financial position of her client was tenuous. She argued that an imposition of a financial penalty on a non-profit company such as the Respondent was "counter intuitive" as the licensee did not and could not make a profit. In the words of counsel for the Respondent:

"The licensee may not make a profit and cannot foresee what complaint might or might not be upheld or what infringements the complainant made desires to complain about. It is therefore impossible for a non-profit company to budget for penalties…"

[53] The above was reiterated when counsel for the Respondent continued:

"We have no finding against Star FM pronounced by the CCC which is irregular. Star FM is a community station and a non-profit company and has no access to funding other than for donations, sponsorship and advertising revenue. It must operate according to its budget. It's current budget does not and cannot accommodate a penalty set out in the regulations even if were to agree that had been non-compliance and from day one it has been the position of my client that it has complied fully with the regulations."

[54] As stated earlier, a finding against a licensee before the CCC can request submissions in mitigation is not necessary. However, if by requesting the parties to make submissions in mitigation, the Respondent is of the view that the CCC acted irregularly, then it is at liberty to take the matter on review.

[55] As a creature of statute the CCC can do only that which it is empowered to do by statute. It's powers and functions are, therefore, limited. When seized with a complaint, the CCC is empowered to, among others, make a finding and thereafter recommend a sanction to the Council of ICASA.

[56] In the present case, local content regulations provide only for financial penalties. It is not for the CCC to deviate from the prescribed penalty no matter how harsh it might seem. To simply ignore such a penalty or replace it with another, would be to usurp the powers of the Legislature.

[57] Having said that, the CCC has borne in mind that a community radio station is not only owned by a community, but also exists to serve the community. It is only proper that the interests of that community be factored in to ensure that listeners are not punished for the sins of the Respondent. This approach is in line with the legal mandate of ICASA - to regulate the industry in the public interest. So, if the penalty recommended and/or imposed is likely to cause the Respondent to close its doors, then an approach with a less catastrophic result must be explored, where possible.

[58] In the present case the CCC explored the possibility of ordering that the Respondent pay the fine recommended in manageable instalments.

[58] This was after the Respondent had pleaded, albeit inelegantly, an inability to pay a fine, in the event that a fine was recommended as a sanction. For this reason the CCC requested audited financial statements from the Respondent to ascertain its true financial position.

[59] The financial statement were regarded and treated by the CCC as confidential. Suffice it to say that the audited financial statements are clearly in support of the submissions of counsel for the Respondent, it shall not be necessary to give any details.

[60] It important to emphasise that the reason the CCC wanted to study the financial statements was not to absolve the Respondent from any wrong doing or help it escape punishment. Rather, the sole reason for this approach was to ensure that

the Respondent was punished firmly but fairly for its contravention without causing its demise, if that was possible.

[61] It was with this in mind that the CCC made a determination of what was an appropriate sanction. Before proceeding with the sanction, however, it is important to look at what can easily be regarded as an aggravating factor. Even during mitigation, the Respondent still harped on the issue of whether a finding of non-compliance should have been made against it.

[62] Counsel for the Respondent seemed to labour under the impression that because the Respondent had argued that the complaint before the CCC was defective, it should not have been entertained but should have been dismissed.

[63] The Respondent had, during the course of the hearing, submitted that the complaint was defective and that, therefore, no finding of non-compliance could be made against it. This submission was rejected as it overlooked the fact that unlike court proceedings which are of an adversarial nature, proceedings before the CCC are inquisitorial.

[64] The above means that in proceedings before a Tribunal such as the CCC, a higher value is placed on discovering the truth. (I have already discussed above how the CCC goes about its investigations). For that reason the CCC must be more flexible in its approach. On the other hand, in an adversarial system such as in a court of law, the court is prepared to discover the truth only strictly within evidential and procedural boundaries.

[65] In the present case the CCC had a duty to not only study and analyse the complaint as well as the evidence, but it also had to look at the purported defence of the Respondent and facts in support of such a defence.

[66] Investigation is pivotal to the role of the CCC as a decision making body. The CCC is also legally empowered to consult experts where is deems it necessary to do. Hence the decision to consult with the CCA.

[67] The mitigating factors were placed before the CCC in two phases. This was because on the first occasion it was clear that the Respondent was not ready to argue in mitigation. The CCC then further granted counsel for the Respondent an opportunity to stand the matter down for a proper consultation with her client to enable her to make written submissions in mitigation. Similarly, counsel for the Complainant was also requested to submit written submissions on aggravating factors.

[68] The input by the Respondent, thereafter, was baffling to say the least. Among the documents attached by the Respondent were the 2017 and 2019 Annual Compliance Reports compiled by the CCA. There was also a document titled a **"Finding by ICASA in Compliance Reports supporting Leniency and Remediation".** How these documents could serve to show mitigating circumstances was not made clear to the CCC. The purported submissions in mitigation by the Respondent were clearly inadequate and of no assistance to the CCC.

[69] Counsel for the Complainant correctly submitted, in my view, that none of the documents submitted on behalf of the Respondent could be said to be mitigating. In fact, the 2017 and 2019 CCA's Annual Compliance Reports for Hot FM made things worse as they served to confirm that the Respondent was a repeat offender.

[70] In her oral submissions, counsel for the Complainant had urged the CCC to impose a fine on the Respondent from 2017 as that was the first date of non-compliance.

[71] In my view, the above submission is misplaced for the following reason: The CCC is tasked with investigating, hearing, where appropriate, and making a finding only on complaints before it. A sanction should be determined on the complaint that has been heard and adjudicated upon, not on any other. To make a proper recommendation, therefore, regarding the appropriate sanction, the CCC cannot go beyond what is on the Charge Sheet.

[72] While the history of non-compliance is important as an aggravating factor, it has no other relevance in the present hearing. It would, therefore, be improper for the CCC to impose sanctions for past non-compliances which are not part of the

present complaint and on which no details were furnished and/or on which no evidence was led.

[73] In the present case, at no stage did the past non compliances of the Respondent feature during the hearing nor were they ever part of the Charges. It follows, therefore, that the imposition of a sanction can only cover the 3-month period mentioned in the Charge Sheet.

[74] Aggravating circumstances in the present case include the lack of remorse on the part of the Respondent. More disturbing is the fact that the Respondent failed to take advantage of the opportunity granted to it to submit written submissions on mitigation. Failure to earnestly submit mitigating factors leads to a reasonable conclusion that the Respondent lacks insight into the transgression and, therefore, is likely to repeat the same contravention.

ORDER

[75] Accordingly, the CCC recommends to the Authority that the following orders be issued:

75.1 direct the Licensee to desist from any further contravention;

75.2 direct the Licensee to pay a fine in the amount of R100000. Half of this amount is suspended for a period of three years on condition that a finding of the same non-compliance is not made against the Licensee during the period of suspension.

75.3 The amount of R50000 is to be paid as follows:

75.3.1 R10000 per month until the full amount has been settled.

TMMasipa

Date: 13 December 2022

Judge Thokozile Masipa

CCC Chairperson