

proposed service is technically feasible and that the applicant has complied with the current regulatory and legislative framework as well as with the requirements contained in the ITA.

44.14 Additional information by Close TV received on 24 July 2014

44.14.1 Close TV was requested to submit the following information:

44.14.1.1 firm proof of funding for Close-TV's proposed services from Nedbank and/or other financial institution/s;

44.14.1.2 Market research on whether the LGBT community would be interested in or support Close-TV's proposed service should it become available. The market research had to demonstrate evidence of a need and the demand for the service to be offered by Close-TV and it had to be properly informed by Close-TV's proposed programming format; and

44.14.1.3 Indicate steps which Close TV will take to ensure compliance with the 10% local content requirement in its first year of operation as required in terms of the South African Television Content Regulations published under GN 154 in Government Gazette 28454 of 31 January 2006.

44.14.2 Analysis of additional information by Close TV

44.14.2.1 Firm proof of funding

44.14.2.1.1 Close TV provided the Authority with information that it had sourced funding from Maponya Investments Holdings (Pty) Ltd ("Maponya Holdings") represented by its executive chairman Mr. Phatudi Maponya of one hundred and sixty eight million rand (R168 000.000). However, this investment allowed Maponya Holdings to gain 20% share of Close TV. The letter indicated that the said amount would be advanced to Close TV within fourteen (14) days of issue of the licence¹²⁴.

44.14.2.1.2 A letter from Nedbank is also provided confirming the value of Maponya Holdings' assets which amount to eight hundred and ninety five million four hundred and seventeen thousand two hundred and fifty one rand (R895 417 251) and this suggested at a superficial level that Close TV had submitted relevant proof of funding. It should be noted that the funding provided by Maponya Holdings exceeds the amount that Close TV had budgeted for this project which was

¹²⁴ Information is attached herewith and marked as Annexure A.

R135 000 000 as indicated in its application and during public hearings.

44.14.2.1.3 The fact that the applicant (conditional licensee) informed the Authority that Maponya Holdings is now a shareholder at this stage in the licensing process raised concerns to the Authority as the original application did not indicate Maponya Holdings as a shareholder. The effect of what the applicant has done is that it has amended its application by changing its shareholding without notifying the Authority during the application process at a point when the Authority could not consider such amendment as contemplated by regulation 6 of the Processes and Procedures Regulations for Individual licences, 2010.

44.14.2.1.4 Section 6 of the Processes and Procedure Regulations for Individual licences provides that *"Where information included in an application changes at any time after submission thereof but before the Authority makes a decision thereon, the applicant must notify the Authority and request to amend the application in writing within fourteen (14) days of such change"*. The Authority submits that a change in shareholding and the fact that it is not aware of the revised shareholding structure is a material change to the original application and the process in its totality. However, importantly such changes could only have been effected before the Authority makes a decision in terms of the licensing process. In the absence of the revised shareholders agreement, the Authority was not in position to determine the potential control issues, which will emanate from the funding from Maponya Holdings.

44.14.2.1.5 Thus, as the Authority has made a decision on the application for Close TV and the Authority believed that it would not be proper for the Authority to accept the shareholding amendment at this stage of the process.

44.14.2.1.6 The applicant did not comply with the requirements laid out in the ITA to provide firm proof of funding. Close TV has changed its ownership structure by indicating that Maponya Holdings will hold 20% of its shareholding. Close TV did not follow the prescribed process as stipulated in paragraph 44.14.2.1.5 above.

44.14.2.2 Market research

44.14.2.2.1 Close-TV submitted market research conducted by Freshly Ground Insights. The research involved a total of 627 online interviews with an error margin of 3.85%. The research indicated that 81% of the respondents showed a willingness to consider subscribing to an LGBTQIA lifestyle television bouquet that contains 3-5 channels of programming targeting the community. The majority (87%) of the respondent also indicated that they would opt for a "better value-for-money" Pay TV package over

cheaper Pay TV. 86% of the respondents also indicated that they occasionally watch LGBTQIA programming, while some indicated that there is no LGBTQIA programming available or it is not easily accessible or that they are not aware of such programming.

44.14.2.2.2 In terms of the subscription cost, most respondents believed that a monthly subscription fee of R150 would be too high, while others believed that a subscription fee of R90 or less would be too low. 33% of the respondents felt that a monthly subscription fee of R100 would be a fair value for an LGBTQIA lifestyle programming. Respondents were requested to consider a list of LGBTQIA programming and rank their order of preference with regard to what they would like to watch on an LGBTQIA bouquet.

44.14.2.2.3 The revised research provides a more representative sample and demonstrates a need, demand and support for the proposed service. The applicant has complied with the requirement of the ITA.

44.14.2.3 Compliance with local content requirement

44.14.2.3.1 Close-TV submitted a revised budget of channel/content acquisition indicating a cost ranging from 35% in year 1, up to greater than 50% by year 3. The applicant has also included Memoranda of Agreements (MoAs) with South African content production houses and LGBT media distributors. The applicant has demonstrated commitment to comply with the requirements of the local content regulations.

44.14.2.3.2 However, Close TV did not submit sufficient proof of funding to the Authority. Again, the Authority provided Close TV with an opportunity to submit additional information in respect of its proof of funding of its original application for its proposed services. The due date for submission of additional information was 31 December 2014.

44.14.2.3.3 On 10 December 2014, the Authority received the revised proof of funding letters from Maponya Investments Holdings confirming that Close TV would be advanced with an amount of One hundred and sixty eight million rands (R168 000 000.00) within 14 days of issue of the licence and a letter from Nedbank confirming that Mr Maponya is banking with Nedbank and that his net assets are valued at Eight hundred and ninety five million four hundred and seventeen thousands and two hundred and fifty one rands (R895,417,251) as at 23 July 2014.

44.14.2.3.4 The bank further confirmed that Mr Maponya has informed them of his intention to provide loan to Close TV Network Holdings (Pty) Ltd, dependent on the successful awarding of the licence to Close TV.

44.14.2.3.5 Close TV also provided copies of the letters confirming firm proof of funding that it will receive an amount of R168 000 000.00 from Maponya Investments Holdings. The bank has also confirmed the value of Maponya Investments Holdings assets.

44.15 Decision

44.15.1 The Authority has decided to grant the applicant an individual commercial subscription broadcasting service licence for the following reasons:

44.15.1.1 In the Authority's assessment, the supplementary information supplied by the applicant in respect of its financial means and commercial viability, as contemplated in section 51(e) of the Act, demonstrated that the applicant's business operation has reasonably good prospects of success.

44.15.1.2 In the Authority's assessment, the supplementary research conducted by Freshly Ground Insights indicated that 81% of the respondents showed a willingness to consider subscribing to an LGBTQIA lifestyle television bouquet that contains 3-5 channels of programming targeting the community. The applicant demonstrated that its service offering would provide diversity in the market and indicated a need, demand and support for its proposed service.

44.15.1.3 In the Authority's assessment, the applicant's supplementary market research did inform its proposed programming format.

44.15.1.4 The applicant submitted a revised budget of local content acquisition indicating a cost ranging from 35% in year 1, up to greater than 50% by year 3. The applicant has also included Memoranda of Agreements (MoAs) with South African content production houses and LGBT media distributors. The Authority is satisfied that the applicant took adequate steps to ensure compliance with the 10% local content requirement in its first year of operation, particularly when considering the programming and financial information submitted by the applicant.

45. Emerald Panther Investments 96 (Pty) Ltd (Kagiso TV)

45.1 Introduction

45.1.1 The Authority received an application from Emerald Panther Investments 96 (Pty) Ltd for an individual commercial subscription broadcasting service licence. In its application, the applicant indicated that it was in the process of changing its name to Kagiso TV (Pty) Ltd.¹²⁵ The applicant subsequently amended its application, with the approval of the Authority, to reflect a name change from Emerald Panther Investments 96 (Pty) Ltd to Kagiso TV (Pty) Ltd.¹²⁶

45.1.2 The applicant's proposed station name is Kagiso TV.¹²⁷

45.1.3 The applicant indicated that it intends providing a composite sound and television multi-channel terrestrial subscription broadcasting service on a national scale.¹²⁸

45.1.4 The Authority received written submissions on the applicant's application from Siyaya TV. On 21 February 2013, the applicant submitted its written responses to the Authority in response to Siyaya TV's written submissions. The Authority has considered Siyaya TV's submissions and the applicant's responses to the various submissions and, where relevant, Siyaya TV's submissions and the applicant's responses to those submissions, have been addressed in this Reasons Document.

45.2 Corporate structure

45.2.1 The applicant indicated that it is a private company registered and incorporated in South Africa with registration number 2012/053429/07.¹²⁹ The Authority is satisfied that the applicant is a juristic person, as provided for in terms of section 5(8)(b) of the Act.

45.2.2 The applicant indicated that it is a wholly owned subsidiary of Kagiso Media Limited.¹³⁰ The applicant submitted its share register to the Authority, after the public hearings, and this share register clearly shows that the applicant's entire shareholding is held by a single entity, namely Kagiso Media Limited.

¹²⁵ Kagiso TV application: Section 1, p 1.

¹²⁶ Kagiso TV's letter dated 27 November 2013.

¹²⁷ Kagiso TV application: Section 1, p 1.

¹²⁸ Kagiso TV application: Section 1, p 1.

¹²⁹ Kagiso TV application: Section 2, p 3.

¹³⁰ Kagiso TV application: Section 2, p 3.

45.2.3 The applicant submitted its founding documents with its application, including its certificate of incorporation, ¹³¹ memorandum of incorporation, ¹³² notifications of change of directors, ¹³³ application for name reservation, ¹³⁴ and a resolution authorising Mr Y Nabee to sign the application and/or represent the applicant at the Authority's hearings in respect of the application. ¹³⁵

45.2.4 The Authority is satisfied that the applicant complied with the requirements set in the ITA in respect of shareholding in this regard and, in particular, with the requirements of section 2, paragraph 6 of the ITA.

45.3 Empowerment of HDPs

45.3.1 The applicant indicated in its application that it is a wholly owned subsidiary of Kagiso Media Limited, a publicly traded company listed on the Johannesburg Stock Exchange. The applicant indicated further that Kagiso Media Limited had been rated by the National Empowerment Rating Agency (NERA), in accordance with the applicable codes published in terms of the BBBEE Act. ¹³⁶ In this regard, the applicant submitted that Kagiso Media Limited's BEE recognition level is 110% and that the applicant's current level of certified black ownership is 51.11% based on the flow-through principle. The applicant attached the BEE certificate issued in respect of Kagiso Media Limited, which expired on 5 February 2013, to its application. ¹³⁷ In terms of this BEE certificate, Kagiso Media Limited's BEE score for each element of BEE is as follows:

Equity ownership	23.00 points
Management and control	9.19 points
Employment equity	8.67 points
Skills development	4.62 points
Preferential procurement	9.67 points
Enterprise development	15.00 points
Socio-economic development	5.00 points

45.3.2 The BEE certificate indicates further that the black ownership of Kagiso Media Limited is

¹³¹ Kagiso TV application: Section 2, pp 20-21.

¹³² Kagiso TV application: Section 2, pp 25-86.

¹³³ Kagiso TV application: Section 2, pp 22-23.

¹³⁴ Kagiso TV application: Section 2, p 87.

¹³⁵ Kagiso TV application: Section 2, p 88.

¹³⁶ Kagiso TV application: Section 2, pp 3-4.

¹³⁷ Kagiso TV application: Section 2, p 90.

51.11%, while the black female ownership is 10.62%. As such, the applicant submitted that its effective BEE equity ownership of 51.11% exceeds the 30% threshold figure as prescribed by section 9(b) of the Act.¹³⁸

45.3.3 In its written submission, Siyaya TV stated that, in order to show a comprehensive indication of black ownership, the applicant's sole shareholder should have provided a breakdown of its shareholding.¹³⁹ In other words, Siyaya TV submitted that in terms of the ITA, applicants were required to explain how they calculated their HDP shareholding and not simply provide a BEE certificate, as the applicant did.¹⁴⁰

45.3.4 In this regard, in terms of section 6, paragraph 6.4 of the ITA, applicants were required to indicate how the percentage of equity ownership to be held by persons from historically disadvantaged groups (which must not be less than 30%) is calculated. As described above, the applicant only provided the Authority with a copy of its sole shareholder's BEE certificate which indicated that the black ownership of Kagiso Media Limited is 51.11%, as informed by the flow-through principle.¹⁴¹ The applicant indicated that this information was sufficient to indicate how BEE was calculated in the applicant. Despite the Authority's request after the public hearings for the applicant to provide the Authority with an indication as to how its HDP shareholding was calculated,¹⁴² the applicant again submitted that its HDP credentials were calculated in accordance with the BEE credentials of its sole shareholder, Kagiso Media Limited, as evidenced by Kagiso Media Limited's BEE certificate and that this was the lowest possible BEE ownership figure for the applicant.¹⁴³

45.3.5 During the public hearings, and based on the information submitted after the public hearings, the applicant submitted that some of the shares in Kagiso Media Limited are publicly traded, but that the non-publicly traded shares in Kagiso Media Limited (a total of 51.11%) are held by Kagiso Tiso Holdings (Pty) Ltd (KTH). On this basis, KTH has a 51.11% indirect interest in the applicant.

45.3.6 Although the Authority accepts that, on the basis of the information submitted by the applicant and public information which is available in relation to the applicant's shareholders, the applicant appears to have at least 30% HDP ownership, the Authority is not satisfied that the applicant complied with the requirements set out in section 2, paragraph

¹³⁸ Ibid.

¹³⁹ Siyaya TV written submission, p 5, para 3.7.

¹⁴⁰ Ibid.

¹⁴¹ Kagiso TV written response, p 4, para 5.6.

¹⁴² See the Authority's request for further information dated 8 August 2013.

¹⁴³ Kagiso TV response to request for further information, 20 August 2013, pp 1-2.

6.4 of the ITA. In this regard, the applicant submitted its sole shareholder's BEE certificate instead of providing details of how that shareholder's BEE (and thus HDP) ownership and, by extension, the BEE and HDP ownership levels in the applicant itself (as a wholly-owned subsidiary) was calculated.

45.4 Section 64 of the Act

45.4.1 The applicant indicated that foreigners own approximately 2.53% of its shares. ¹⁴⁴

45.4.2 Clause 16.2.1.1 of the applicant's memorandum of incorporation provides that the board must comprise not less than one and not more than ten directors. ¹⁴⁵ The holder of each 10% of the issued share capital of the company shall be entitled by written notice to the company to appoint one director to the board. In this regard, the applicant submitted its proposed directors to be: Murphy Morobe, Omar Essack and Yusuf Nabee. ¹⁴⁶ However, the applicant notified the Authority that it had accepted the resignation of Murphy Morobe as a director, and that it had appointed three new directors, namely Omar Essack (a black, South African man), Siphokazi Chivizhe (a black South African woman), and Marcia Mondi (a black South African woman) with effect from 30 July 2013. All supporting documents, including identity documents and curricula vitae, were also submitted.

45.4.3 The applicant submitted that only Kagiso Media Limited and presumably KTH is in a position to appoint the members of the applicant's board of directors or to direct or restrain the applicant on substantial management or other issues. ¹⁴⁷ As such, no other person is in a position to exercise *de facto* control of the applicant.

45.4.4 The Authority is satisfied that the applicant does not contravene section 64 of the Act.

45.5 Section 65 of the Act

45.5.1 Murphy Morobe and Omar Essack both indicated that they owned shares in Kagiso Media Limited. ¹⁴⁸ The applicant also indicated that it has shareholding in various advertising agencies. ¹⁴⁹

¹⁴⁴ Further information submitted by the Kagiso TV on 20 August 2013, as requested by the Authority.

¹⁴⁵ Kagiso TV application: Section 2, p 54.

¹⁴⁶ Kagiso TV application: Section 2, Appendix 7.1, p 91.

¹⁴⁷ Kagiso TV application: Section 2, p 4.

¹⁴⁸ Kagiso TV application: pp 93 and 97.

¹⁴⁹ Kagiso TV application: Appendix 11.1, p 120.

- 45.5.2 The applicant submitted that Kagiso Media Limited, of which the applicant is a wholly-owned subsidiary –
- 45.5.2.1 indirectly holds an effective 100% shareholding stake in East Coast Radio, a commercial sound broadcasting service;
 - 45.5.2.2 indirectly holds an effective 80% shareholding stake in Jacaranda FM, a commercial sound broadcasting service;
 - 45.5.2.3 indirectly holds 24.9% shareholding stake in OFM, a commercial sound broadcasting service;
 - 45.5.2.4 indirectly holds an effective 20% shareholding stake in Heart FM, a commercial sound broadcasting service;
 - 45.5.2.5 indirectly holds an effective 20% shareholding stake in Gagasi FM, a commercial sound broadcasting service;
 - 45.5.2.6 indirectly holds an effective 12% shareholding in One Gospel KNI (Pty) Ltd, a recently-licensed commercial sound broadcasting service licensee;
 - 45.5.2.7 indirectly holds an effective 47.4% economic interest in Kaya FM, a commercial sound broadcasting service; and
 - 45.5.2.8 holds 50.1% of the shareholding in Urban Brew, an independent television and audio-visual production company which produces quality local content and which has extensive television experience and expertise. Urban Brew has entered into management agreement contracts with three community television broadcasting licensees, namely Bay Community Television, Soweto Community Television, and Bold Moves 852.¹⁵⁰
- 45.5.3 In its written submission, Siyaya TV indicated that it believed that the applicant had contravened section 65 of the Act, which relates to control of commercial broadcasting services.¹⁵¹ The applicant submitted that it had not contravened section 65 of the Act as its interests are held in FM stations that do not have overlapping coverage areas.¹⁵²

¹⁵⁰ Kagiso TV application: Appendix 11.1, p 121.

¹⁵¹ Siyaya TV written submission, pp 12-13, para 3.32-3.42.

¹⁵² Kagiso TV written response, pp 8-9, para 12.

45.5.4 The Authority is satisfied that the applicant does not contravene section 65 of the Act for the purposes of this licensing process as neither the applicant nor its shareholders holds any interest in any commercial television licensee. As such, there is no contravention of section 65(1) of the Act. Any possible contravention of section 65(2) of the Act must be dealt with separately.

45.5.5 On 15 October 2013, the applicant made an application to amend its application in respect of changes to its other broadcasting interests as contemplated by paragraph 11.4, section 2 of the ITA. The applicant indicated that its holding company, Kagiso Media Limited, was providing content to other licensees, which affected the applicant's response in respect of its "other interests". The Authority decided not to publish the applicant's application to amend in the *Government Gazette*, as the changes did not, in the Authority's assessment, have a material impact on the application and would not have prejudiced any of the other applicants or the application process.¹⁵³

45.6 Section 66 of the Act

The applicant indicated that its directors do not hold any interest, either directly or indirectly, in any newspaper. The Authority is satisfied that the applicant does not contravene sections 66(2) and (3) of the Act.

45.7 Management and human resources

45.7.1 As indicated above, the applicant's proposed directors were: Omar Essack, Yusuf Nabee and Murphy Morobe.¹⁵⁴ The applicant requested the Authority's approval to amend its application to remove Murphy Morobe as a director, and to include Marci Nombulelo Mondli and Siphokazi Chivizhe as directors, and to confirm Omar Essack as a director of the board with effect from 30 July 2013.¹⁵⁵ The Authority granted the applicant's request to amend its application in this regard.¹⁵⁶ The applicant also submitted copies of the curricula vitae for all of the directors, and their identity documents and written undertaking to act as directors of the applicant.

45.7.2 Based on the Authority's analysis of the submitted curricula vitae, the Authority is satisfied that the proposed senior management has the requisite experience and capabilities to operate the proposed service in accordance with requirements set out in section 51(d) of the Act read

¹⁵³ See the Authority's letter to the applicant, dated 28 November 2013.

¹⁵⁴ Kagiso TV application: Vol 2, p 137.

¹⁵⁵ Kagiso TV's letter dated 16 August 2013.

¹⁵⁶ Council decision of 11 September 2013 contained in ICASA's letter dated 28 November 2013.

with section 2, paragraph 7.1 of the ITA.

45.7.3 The applicant also provided an organogram of its staff by division in Annexures 8.1 and 8.2 of its application which indicated as follows: ¹⁵⁷

45.7.3.1 an initial 15 full-time staff and ultimately 20 full-time staff in the office of the Chief Executive Officer;

45.7.3.2 an initial 15 full-time staff and ultimately 46 full-time staff in the Content Division;

45.7.3.3 an initial 15 full-time staff and ultimately 89 full-time staff in the Marketing and Sales Division;

45.7.3.4 an initial 17 full-time staff and ultimately 40 full-time staff in the Finance Division; and

45.7.3.5 an initial 46 full-time staff and ultimately 75 full-time staff in the Technology Division. ¹⁵⁸

45.7.4 The applicant indicated that it anticipated having a total of approximately 265 full-time staff after 10 years of operation, with a further 180 part-time staff in respect of its two main outsourced providers, i.e. Urban Brew and Call Centre. ¹⁵⁹

45.7.5 The applicant also indicated, in Annexure 8.4, those divisions that it intended outsourcing. ¹⁶⁰ These included divisions such as its call centre operations to ensure that it provides quality services to its customers via the outsourced call centre, and a marketing agency that would be outsourced to support the in-house team. ¹⁶¹

45.7.6 In relation to local content, the applicant submitted that it would outsource a majority of this service to Urban Brew Studios while other providers would handle smaller portions. The applicant submitted further that channel management would be outsourced to Urban Brew Studios, particularly the packaging and play-out of channels. ¹⁶²

45.7.7 The applicant also indicated that it would manage the strategy development of channels,

¹⁵⁷ Kagiso TV application: Vol 2, p 169.

¹⁵⁸ Kagiso TV application: pp 104-111.

¹⁵⁹ Kagiso TV application: Vol 2, p 172.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid.

including the master schedule development.

45.8 Finance

45.8.1 Business Plan

- 45.8.1.1 The applicant proposed to offer seven channels which would include general entertainment, a music channel, local news and an African channel. These channels would be targeted at LSM 5 to LSM 7 households. The applicant projected that it would reach 844 000 subscribers within 5 years, which represents 4.4% of total South African households and 14% of LSM 5 to 7 households.¹⁶³
- 45.8.1.2 The applicant indicated that it intends to use, as one of the options, subsidised set-top boxes (STBs). In terms of the Digital Migration Policy these government-subsidised STBs are to be utilised for the poorest television-owning households and is intended for Free to air services.¹⁶⁴ In the Authority's assessment, the applicant did not address how the use of subsidised STBs correlated with its intended target audience (i.e. the LSM 5 to 7 households).
- 45.8.1.3 In its written submission, Siyaya TV questioned the feasibility and reasonableness of the applicant's pricing plan (at R120 to R250 per month) including the pay-per-channel package expected to cost R50 per channel per month.¹⁶⁵ Siyaya TV also submitted that the applicant's proposed channel offering did not "offer its targeted audience any diversity or reasonable prices," and would therefore not persuade subscribers to incumbent pay-TV operators to change service offerings.¹⁶⁶
- 45.8.1.4 The applicant's response was that Siyaya TV made use of publicly available information only, while the correct pricing plan was contained in its confidential bundle as it considered pricing "critical to the competitiveness of the service".¹⁶⁷ The Authority is satisfied that the applicant's proposed pricing plan is feasible and reasonable, and that it is supported by the applicant's research in this regard.

¹⁶³ Kagiso TV application: Appendix 26, p 269.

¹⁶⁴ See para 2.1.4 of the Digital Migration Policy, 2008.

¹⁶⁵ Siyaya TV written submission, pp 8-9, paras 3.18-3.22.

¹⁶⁶ Siyaya TV written submission, p 9, para 3.22.

¹⁶⁷ Kagiso TV written response, pp 6-7, para 9 and para 9.2, in particular.

45.8.2 Financial Projections and Cash-Flow Analysis

45.8.2.1 The applicant submitted a ten-year cash-flow forecast with its application. The Authority granted confidentiality in respect of this information. ¹⁶⁸

45.8.2.2 The applicant also submitted some information relating to the resources required in order to manufacture, subsidise and distribute STBs. The Authority granted confidentiality in respect of this information. In short, the Authority was of the view that the applicant did not give a firm commitment in terms of putting up resources or making budgetary provision in respect of the manufacturing, subsidisation and distribution of the STBs that are necessary for the reception of its service. The applicant also did not make financial projections relating to the manufacturing, subsidisation and distribution of the STBs. As such, the Authority is not satisfied that the applicant has provided sufficient financial information to support its business case.

45.8.3 Funding and methods of raising capital

45.8.3.1 The applicant indicated that it had not approached any banks or other funders for any loans and that initial funding would be provided by its shareholder, Kagiso Media Limited. ¹⁶⁹ Amongst other documents, the applicant submitted Kagiso Media Limited's latest annual financial reports, in respect of which the Authority granted confidentiality, in respect of the availability of reserves to fund the proposed serviced.

45.8.3.2 In its written submissions, Siyaya TV raised concerns regarding the applicant's required funding and the applicant's funding letter from Kagiso Media Limited. In particular, Siyaya TV submitted that the applicant should have submitted a resolution of the board of directors of its sole shareholder committing to providing the required funding, and should not have just relied on a funding letter. ¹⁷⁰ In response, the applicant referred the Authority to the funding letter provided by Kagiso Media Limited in response to the requirements of the ITA and invited the Authority to raise any other issues related to the funding letter with it. ¹⁷¹ After the public hearings, the Authority requested the applicant to furnish it with explicit proof of funding or financial commitment for its proposed services. ¹⁷² The applicant submitted that, further to what was already provided, it would be inappropriate to provide, for example, a facility letter from a lending institution such

¹⁶⁸ Kagiso TV application: Vol 2, p 236.

¹⁶⁹ Kagiso TV application: Appendix 19, p 124.

¹⁷⁰ Siyaya TV written submission, p 7, para 3.14.

¹⁷¹ Kagiso TV written response, p 6, para 8.2.

¹⁷² See the Authority's request for further information dated 8 August 2013.

as a bank because institutions which are cash-flush, such as Kagiso Media Limited, do not have need of lending facilities.¹⁷³ The applicant also submitted a further letter from Kagiso Media Limited, signed by Omar Essack (an executive director and chief executive officer: broadcasting), in which it was reiterated that Kagiso Media Limited would support the application (which was also evidenced by the resolution prepared by Kagiso Media Limited authorising the applicant to apply for a commercial subscription broadcasting service licence).

- 45.8.3.3 The Authority noted that the funding letter did not necessarily confirm that Kagiso Media Limited's reserves, as alluded to by the applicant, were exclusively "ring fenced" or guaranteed to fund the applicant. In particular, the Authority is concerned that (1) these reserve funds were not expressly set aside for the applicant's proposed service, and (2) funding for the applicant would be subject to all governance processes being completed once the licence has been awarded (i.e. funding is not automatic).

45.9 Demand, need and support for the proposed service

- 45.9.1 The applicant submitted that it undertook extensive analysis of viewer genre preferences using available research sources such as AMPS, TGI and TAMS, as well as quantitative primary research.¹⁷⁴ The applicant submitted further that a detailed assessment of current and potential future competitive offerings was used to refine its offering. The applicant submitted that it had adopted a multifaceted approach to identify the content preferences of viewers and to build a comprehensive understanding of viewer needs.¹⁷⁵
- 45.9.2 The applicant submitted that the need for a new pay television offering was established in the qualitative phase of its research, which motivated a more in-depth investigation in a quantitative phase that would determine the potential size of the market interested in the applicant's offering.
- 45.9.3 The applicant submitted that, based on the available information in its qualitative research, penetration for low-end packages is negligible and that a market gap exists in the middle market segment.¹⁷⁶ In this regard, among LSM 5-7 households, almost 80% have no pay television subscription and in households with an income of R1400 - R7999 per month, 85% do not subscribe.¹⁷⁷ The applicant submitted further that, based on its research, the biggest

¹⁷³ Kagiso TV response to the request for further information, 20 August 2013, p 8.

¹⁷⁴ Ibid. See also Kagiso TV application: Appendix 25, p 154.

¹⁷⁵ Kagiso TV application: Appendix 24, p 127.

¹⁷⁶ Kagiso TV application: Appendix 24, p 133.

¹⁷⁷ Kagiso TV application: Appendix 24, p 134.

limitation for most non-subscribing households is price.¹⁷⁸

- 45.9.4 In the quantitative phase, the following research objectives were formulated: a focus on the LSM 5+ market establishing their current television consumption behavioural trends; establishing the demand in the market for a new pay-television product; determining the need in the market for a pay TV product specifically establishing the point of differentiation against competitive offerings; determining the key drivers for pay-TV consumers; identifying the propensity to churn should they be TopTV or DSTV subscribers; and identifying the ideal price point for such an offering. In this regard, Ask Africa conducted (1) 220 20-minute face-to-face interviews with viewers who currently subscribe to a pay TV service (TopTV or DSTV), and (2) 551 18-minute interviews with viewers who do not subscribe to any pay TV service.¹⁷⁹
- 45.9.5 In the primary quantitative research conducted for the applicant by Ask Africa, "Free to Air" viewers indicated that not being able to afford a pay television subscription was the main reason they did not access a pay service and that price was one of the key determining factors when considering pay television.¹⁸⁰ The applicant submitted further that nearly two thirds of free-to-air viewers indicated that they do not have pay TV because they cannot afford it, while a further 18% did not feel that current packages offer sufficient value for the price.¹⁸¹ The applicant submitted that its programming service addresses this gap by offering a service that is affordable with a price point below current pay TV offerings, focused by providing selected but highly relevant channels at an affordable price, and flexible by providing options to be able to access the various channels on offer.¹⁸²
- 45.9.6 Three-quarters of respondents in the qualitative research that was undertaken, of which there were four focus groups, indicated that they were interested or somewhat interested in the proposed service (where the channel package tested included the following genres: news and information, international movies, local series, soaps, movies and entertainment, comedy, international series and entertainment, music, documentaries, wildlife, and children's programmes).¹⁸³ The applicant submitted that the potential market size can be predetermined as 2 890 080 consumers (48% of the market), biased towards free-to-air consumers. As such, pay TV consumers' propensity to churn can be summarised as follows: 55% of the pay TV consumers would be willing to buy the applicant's offering in addition to

¹⁷⁸ Kagiso TV application: Appendix 24, p 136.

¹⁷⁹ Kagiso TV application: Appendix 25, pp 162-163.

¹⁸⁰ Kagiso TV application: Appendix 24, p 136.

¹⁸¹ Kagiso TV application: Appendix 24, p 137.

¹⁸² Kagiso TV application: Appendix 24, p 137.

¹⁸³ Kagiso TV application: Appendix 24, p 154 and Appendix 25, pp 155 and 255.

their current offering, while 16% were willing to replace their current offering with the applicant's offering.¹⁸⁴ The applicant indicated that this research was conducted in the major metropolitan areas of South Africa only, and that the projected numbers of consumers who will consider taking up the service only reflect take-up in these areas.

45.9.7 As such, the applicant submitted that, through analysis of the current trends, take-up of subscription TV services and primary research conducted among the target market, it had identified a gap for an affordable subscription TV service for the middle class (LSM 5 to 7), and particularly slightly younger black persons.¹⁸⁵ The applicant submitted further that the market does not have access to a subscription TV service with high levels of relevant local content at an affordable price, or certain genres of programming.¹⁸⁶ The applicant proposed addressing this need by providing a low-priced, targeted channel offering with local and international content that is more relevant to the target market.

45.9.8 The applicant projected that it would reach 844 000 subscribers (representing 4.4% of South African households and 14% of LSM 5 to 7 households) within five years.¹⁸⁷ The applicant submitted further that, its offering to cater for the needs of LSM 5 to 7 with increasingly relevant content, it projected an average daily time spent viewing television of 45 minutes.¹⁸⁸

45.9.9 The Authority is satisfied that the applicant has conducted sufficient quantitative and qualitative research and that it adequately addressed the demand, need and support for the proposed service.

45.10 Complaints and codes of operations

45.10.1 The applicant indicated that it would have a customer service department, headed by the chief marketing officer, that would be responsible for all customer relations contact whether by social media, e-mail, fax, call centre, and walk-ins.¹⁸⁹ Where first-line support could not resolve a complaint, the applicant's query resolutions department, also headed by chief marketing officer, would deal with, investigate and/or resolve complaints.¹⁹⁰

45.10.2 The applicant indicated that it intended on being a member of the NAB and submitted that

¹⁸⁴ Kagiso TV application: Appendix 25, pp 160, 164 and 267.

¹⁸⁵ Kagiso TV application: Appendix 24, p 126.

¹⁸⁶ Ibid.

¹⁸⁷ Kagiso TV application: Appendix 26, p 269.

¹⁸⁸ Ibid.

¹⁸⁹ Kagiso TV application: Appendix 28.1, p 270.

¹⁹⁰ Kagiso TV application: Appendix 28.1, p 270.

it would forward content-related complaints to the BCCSA.¹⁹¹

45.10.3 The applicant also submitted that its parent company, Kagiso Media Limited, has extensive broadcasting experience and has developed sustainable and workable processes and procedures for dealing with customer complaints. The applicant submitted that Kagiso Media Limited would make this expertise available to the applicant.¹⁹²

45.10.4 The applicant further undertook to ensure, through on-going in-house training, that all staff members and contractors would be familiar with the legal requirements applicable to subscription broadcasting licensees, and that the applicant would appoint a dedicated regulatory and compliance manager, who would report directly to the chief executive officer, to manage and advise on regulatory compliance matters.¹⁹³ The applicant also indicated that it has access to Kagiso Media Limited's two regulatory compliance consultants who would assist the applicant to adhere to relevant regulatory requirements and to report timeously and accurately on compliance matters.¹⁹⁴

45.11 Programming

45.11.1 The applicant indicated that it had developed its programme strategy and optimal mix by using a process of assimilating and filtering key information gleaned from various sources, including international models, local market trends, and primary research studies rather than providing a variety of channels with increasingly less relevance.¹⁹⁵ In developing the optimal mix, the applicant indicated that it intended to offer a complementary service to the free-to-air digital terrestrial television (DTT) offering that would enable viewers to access a core bouquet of selected channels over and above free-to-air channels.

45.11.2 The applicant's programming proposition was in respect of the following channels genres: general entertainment (local and international/African series, drama, sitcoms and reality content); local and international news; music; movies; documentary (Mateo Gold); children; and sport.¹⁹⁶ The applicant submitted that this programming proposition was subject to new players being given sufficient capacity to compete effectively during the DTT roll-out.

45.11.3 The applicant indicated that it was in discussions with several content suppliers to assess the

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Kagiso TV application: Appendix 28.2, p 271.

¹⁹⁴ Ibid.

¹⁹⁵ Kagiso TV application: Appendix 29, p 273.

¹⁹⁶ Kagiso TV application: Appendix 29, p 274.

availability and costs of local and international content and that the final supply agreements would only be concluded should the applicant be awarded a licence.¹⁹⁷ The applicant submitted a letter of commitment from Urban Brew Studios in this regard.¹⁹⁸

45.12 Compliance with the Content Regulations

45.12.1 The applicant submitted that it would utilise local content as a key competitive advantage and requirement to meet the needs of its target market.¹⁹⁹ The applicant also undertook to comply with the Content Regulations and further undertook to spend at least 10% of its channel acquisition budget on channels with South African television content that are compiled and uplinked from South Africa. The applicant further undertook to ensure that at least 10% of the average weekly programming minutes will consist of South African television content spread across the bouquet, and at least 2% of the average weekly programming minutes will consist of South African drama programming.²⁰⁰

45.12.2 The Authority is satisfied that the applicant responded satisfactorily to all the questions listed in section 4, 5 and 6 of the ITA.

45.13 Technical

The applicant indicated that it would use Sentech SOC Limited (Sentech) as its signal distributor.²⁰¹ The applicant also provided details of its network configuration as required in terms of the ITA, and the Authority granted confidentiality in respect of this network configuration information.

45.14 Additional information by Kagiso TV received on 24 July 2014

45.14.1 Kagiso TV was requested to submit the following information:

45.14.1.1 How the percentage of Kagiso TV's equity ownership held by persons from historically disadvantaged groups (HDGs) was calculated;

45.14.1.2 Firm proof of funding for Kagiso TV's proposed services from Kagiso Media Limited and/or other financial institution/s; and

45.14.1.3 Firm commitment to put up resources or make budgetary provision for the manufacture,

¹⁹⁷ Kagiso TV application: p 408.

¹⁹⁸ Kagiso TV application: Appendix 32, pp 409 and 410.

¹⁹⁹ Kagiso TV application: Appendix 33, p 277.

²⁰⁰ Kagiso TV application: Appendix 33: p 277.

²⁰¹ Kagiso TV application: Appendix 34, p 279.

subsidization and distribution of the Set Top Boxes (STBs) that will be required for subscribers to access Kagiso TV's proposed service.

45.14.2 Analysis of additional information by Kagiso TV

45.14.2.1 How the percentage of equity ownership was calculated

45.14.2.1.1 In its letter to the Authority dated 5 February 2013, Kagiso TV provided that it is 100% effectively black owned (in respect of both voting rights and economic interest), with 63.24% effective black ownership in respect of voting rights and 63.73% in respect of economic interests when measured in terms of the flow through method. While effective ownership held by black women is at 23.87% in respect of both voting rights and economic interests using the flow through method.

45.14.2.1.2 Kagiso TV submitted information of its equity ownership in terms of the BBBEE Codes however; it did not provide the Authority with information on *how* it calculated its percentage of equity ownership held by HDGs. The information is in respect of beneficiaries to its charitable trusts, the trustees of the various charitable trusts; individual shareholders; and indirect shareholders (shareholders of corporate shareholding entities). However, the information does not correlate to the above said letter.

45.14.2.1.3 Kagiso TV further requested that the Authority treat the information with sensitivity. On 29 August 2014, a letter was sent to Kagiso TV advising on the Authority decision on its confidentiality request. The Authority granted confidentiality to Kagiso TV in relation to the beneficiaries of its charitable trusts and refused confidentiality on the details of its trustees to the various charitable trusts; information regarding individual shareholders; and indirect shareholders. The Authority informed Kagiso TV on the same letter that it placed a responsibility on the applicant to decide whether to withdraw or allow the information to be subjected to public scrutiny.

45.14.2.1.4 Kagiso TV was required to inform the Authority of its decision within fourteen (14) days of receipt of this correspondence. On 10 September 2014, Kagiso TV sent a letter to the Authority abiding to the Authority decision on confidentiality and also informing the Authority that it does not consider it necessary to withdraw the shareholder information in respect of which confidentiality was not granted.

45.14.2.1.5 In response to the Authority's request to provide information indicating a minimum

of 30% ownership by HDGs, Kagiso TV provided the following information that illustrates *Kagiso Tiso Holdings Proprietary Limited's* shareholders as at 1 June 2014 –

No	Shareholder	Percentage shareholding
1	Tiso Investment Holdings Proprietary Limited (RF)	14.102 %
2	The Tiso Foundation Charitable Trust	7.521 %
3	Kagiso Trust Strategic Investments Proprietary Limited (KCT)	6.716 %
4	Kagiso Charitable Trust (KCT)	31.318 %
5	Industrial Partner Investment Limited (a wholly owned subsidiary of Remgro Limited)	32.289 %
6	Kagiso Trust Investments Share Scheme	0.952 %
7	Cardona Investment 428 Proprietary Limited (RF) (a wholly owned subsidiary of KTH – treasury shares)	6.883 %
8	Mbonisi Danisa	0.158 %
9	Litha Gcwabe	0.027 %
10	Collin Clark	0.034 %

45.14.2.1.6 Kagiso TV also provided details of its trust beneficiaries namely beneficiaries in the KCT and the Tiso Foundation Charitable Trust which beneficiaries are HDGs.

45.14.2.1.7 However, the Authority requested Kagiso TV to provide information on how the percentage of its equity ownership held by HDGs was calculated. Kagiso TV provided the Authority with information on how its BBB-EE equity ownership was calculated and not the HDGs calculation.

45.14.2.1.8 Kagiso TV also submitted information indicating percentages of shares held in various companies (totalling 100% and not the amount of equity ownership by the HDGs as requested by the Authority). Kagiso TV does not indicate how all the information put together was used to come to the equity ownership held by HDGs.

45.14.2.2 **Firm proof of funding**

45.14.2.2.1 Kagiso TV requested an extension to submit firm proof of funding to the Authority. Kagiso TV indicated that due to critical policy, regulatory and litigation processes impacting the subscription sector, and particularly on Kagiso TV's financial plan

being premised on primarily providing services on the DTT platform having not yet been finalised, it would therefore be difficult for Kagiso TV to make financial plans in this regard.

- 45.14.2.2.2 Kagiso TV was previously advised at a meeting held on 16 May 2014 between Kagiso TV and the Authority and as per the Authority's letter dated 23 April 2014 to provide firm proof of funding. In the meeting referred to above, the Authority advised Kagiso TV that a letter from a financial institution should specify the amount that will be provided to Kagiso TV for the purposes of this venture. It was also mentioned that a letter from Kagiso TV's parent company should indicate a specific amount available from its reserves and the exact amount that it is willing to provide for Kagiso TV's venture.
- 45.14.2.2.3 The request for extension in submitting firm proof of funding by Kagiso TV contradicts its original submission after the public hearings.
- 45.14.2.2.4 Before the public hearings, the Kagiso TV submitted that, further to what was already provided, it would be inappropriate to provide, for example, a facility letter from a lending institution such as a bank because institutions which are cash-flush, such as Kagiso Media Limited, do not have need of lending facilities.
- 45.14.2.2.5 The applicant also submitted a further letter from Kagiso Media Limited, signed by Omar Essack (an executive director and chief executive officer: broadcasting), in which it was reiterated that Kagiso Media Limited would support the application (which was also evidenced by the resolution prepared by Kagiso Media Limited authorising the applicant to apply for a commercial subscription broadcasting service licence).
- 45.14.2.2.6 The Authority noted that the funding letter did not necessarily confirm that Kagiso Media Limited's reserves, as alluded to by the applicant, were exclusively "ring fenced" or guaranteed to fund the applicant.
- 45.14.2.2.7 On 30 September 2014, Council resolved to grant Kagiso TV an extension to submit firm proof of funding by 12 December 2014.
- 45.14.2.3 Firm commitment for Set Top Boxes (STBs)
- 45.14.2.3.1 Kagiso TV requested an extension to submit a firm commitment in relation to budget allocations for STBs. Kagiso TV requested an extension of three months to comply and submit the required information upon the finalisation of the following:

- 45.14.2.3.1.1 The Department of Communication's Proposed Amendment to the Digital Migration Policy;
- 45.14.2.3.1.2 The determination of the final switch on and switch off dates for digital migration;
- 45.14.2.3.1.3 ICASA's Draft Diversity and Competition on DTT Regulations; and
- 45.14.2.3.1.4 The ongoing litigation over STB control and conditional access involving the Department of Communications.

On 30 September 2014, the Authority resolved to grant Kagiso TV an extension to submit firm commitment on STBs by 12 December 2014. The Authority confirmed on its letter dated 06 October 2014 that the requested information by Kagiso TV should be submitted by 31 December 2014 as opposed to 12 December 2014 originally stated on the Authority's letter dated 06 October 2014.

- 45.14.2.3.2 On 23 December 2014, the Authority received an e-mail from Justin Limpitlaw acting on behalf of Kagiso TV with an information on the calculation of Kagiso TV HDI information.

45.14.3 Additional information by Kagiso TV received on 31 December 2014

- 45.14.3.1 On 31 December 2014, the Authority received a letter from Kagiso TV requesting the Authority to delay issuing its subscription broadcasting service licence. Kagiso TV was requested to submit the following information:

- 45.14.3.1.1 Submit to the Authority how the percentage of Kagiso TV's equity ownership held by persons from historically disadvantaged groups was calculated.
- 45.14.3.1.2 Submit to the Authority firm proof of funding for Kagiso TV's proposed services from Kagiso Media Limited and/or other financial institution/s.
- 45.14.3.1.3 Submit to the Authority firm commitment to put up resources or make budgetary provision in relation to the manufacturing, subsidization and distribution of the Set Top Boxes that will be required for subscribers to access Kagiso TV's proposed service.

45.14.3.2 **How the percentage of equity ownership was calculated**

- 45.14.3.2.1 Kagiso TV provided that it had prepared a detailed schedule which sets out all available information regarding Kagiso Tiso Holdings' ("KTH") direct and indirect individual black beneficiaries (in respect of trusts) and owners (in respect of shareholding). However, they did not provide identity documents to the Authority

in this regard with Kagiso TV stating that it could only provide a comprehensive list of same in 2015.

- 45.14.3.2.2 Kagiso TV provides that its trust deed provides that eighty five percent (85%) of the beneficiaries for the Kagiso Trust are black persons as contemplated by the BBBEE Act being women, people living in rural areas and the youth with their intention being that such beneficiaries are black women.
- 45.14.3.2.3 There are nine (9) schools that was being sponsored by the trust located in the QwaQwa, Free State area and a sample verification process conducted by Blacklite and Veridex BBBEE verification agencies proved that such students were in fact one hundred percent (100%) black.
- 45.14.3.2.4 Kagiso TV provided that with regards to Kagiso Trust Strategic Investments is a 100% subsidiary of Kagiso Charitable Trust and is 100% black owned. They also stated that the industrial Partnership Investments Limited which is a 100% subsidiary of Remgro.
- 45.14.3.2.5 They state that Blacklight is not in a position to obtain detailed individual black shareholder information, and has placed reliance on their independent BEE certificate. About Cardona Investments, these shares are held by KTH, and are treated as treasury shares.
- 45.14.3.2.6 The table below give details of Kagiso TV effective black shareholding by entity in KTH.

Name of shareholding in KTH	Effective Black Shareholding by entity
Tiso Investment Holdings (Pty) Ltd	7.051%
Tiso Foundation Charitable Trust	7.521%
Kagiso Trust Strategic Investments	6.716%
Kagiso Charitable Trust	31.318%
Industrial Partnership Investments Limited (Remgro)	4.346%
Kagiso Trust Investment Share Scheme	0.897%
Mbonisi Danisa	0.158%
L Gcwabe	0.027%
Total	58.034%

- 45.14.3.2.7 Kagiso TV has provided a detailed breakdown of its black shareholding by entity in KTH which is its parent company.
- 45.14.3.2.8 Kagiso TV stated that they had previously provided ICASA with a list of schools that are beneficiaries of the Kagiso Charitable Trust and upon request, they could provide an additional letter from the Free State Department of Education. The said letter would confirm that the schools so mentioned are in fact in the rural areas and that the learners in each of the schools are 100% black or from historically disadvantaged groups (HDGs).
- 45.14.3.2.9 The Authority was of the view that the information provided by Kagiso TV on HDI was not sufficient. Kagiso TV was only able to demonstrate how it has calculated 15.654 % HDI and not 30% HDI as required by the ITA.
- 45.14.3.2.10 The Authority requested Kagiso TV to provide it with the said letter from the Free State Department of Education indicating the names of the schools, the total number of learners in each school and confirmation of the number of learners that are from HDGs.
- 45.14.3.3 Request for delay in issuing subscription broadcasting service licence due to market, policy and regulatory uncertainty
- 45.14.3.3.1 Kagiso TV formally requested that the Authority not act to refuse its licence at this stage and instead to leave the granting of the licence in place but to delay the issuing thereof until after the finalisation of the DTT and related processes.
- 45.14.3.3.2 Kagiso TV states that it is of the view that none of the successful applicants for a subscription licence who wish to make use of DTT are able to develop business plans or to commence operations in any way whether or not their licences are in fact issued by ICASA pending the finalisation by the Ministers of Communications and Telecommunications and Postal Services and/or ICASA:
- 45.14.3.3.2.1 The specifications for STBs, particularly regarding conditional access to STB's as no subsidization, or general STB marketing decisions, can be made in the absence of such specifications.
- 45.14.3.3.2.2 The decision regarding the switch on or switch off dates for digital migration. In this regard, Kagiso TV is of the view that South Africa may decide to extend

the digital switch off date beyond June 2015 date set by the International Telecommunications Union, which would push out the date on which Multiplex 3 is likely to become operational. Multiplex 3 is not dependent on the digital migration process. Multiplex 3 comprises of the existing Mobile Television Multiplex 2 which is currently available.

- 45.14.3.3.2.3 **The finalisation of the ICT Sector Competition Enquiry** which is currently underway at ICASA. In this regard, the issue of competition in the television sector and in particular in the subscription broadcasting sector would be fundamental to the development of an effective competitive strategy for a start – up subscription broadcasting licence. The Competition Enquiry has no bearing on the licensing process, as the licensing process was initiated before the inquiry. The outcome of the inquiry will of course will be considered in the subscription television sector but not in relation to this licensing process.
- 45.14.3.3.3 **Kagiso TV states that there can be no harm to ICASA or to the public interest were ICASA not to issue the licence to Kagiso TV at this time but to hold the issuance thereof in abeyance until such time as the above said processes have taken place and finalised.**
- 45.14.3.3.4 **Kagiso TV further states that increased competition in the subscription broadcasting sector would support ICASA’s ability to meet the objectives in the Electronic Communications Act and Broadcasting Acts and Kagiso TV believes it can be such a competitor.**
- 45.14.3.3.5 **However, it provides that it is unable to commence its operations at this stage or to make financial plans as all other grantee of the licences who wish to make use of DTT until regulatory processes set out above are finalised. Kagiso TV believes that there will be no prejudice to any other applicant, members of the public and or ICASA if such allowance is granted.**
- 45.14.3.3.6 **The Authority is of the considered view that the request for the delay in issuing its Individual Subscription Broadcasting Licence pending finalisation of the DTT and STBs specifications is not acceptable.**
- 45.14.3.3.7 **Similar reasons were provided by Kagiso TV on its letter of 22 July 2014 on their request for extension to submit further information. The Authority rejected Kagiso TV request for extension on the DTT and STBs issues on its letter of 06 October 2014, as the subscription broadcasting licensing process is not reliant on the two processes. However, the Authority granted Kagiso TV an extension to submit additional**

information taking into account that the Authority has previously granted extensions to other applicants in the Secondary Markets project.

45.14.3.3.8 The Authority sent a letter to Kagiso TV on 10 February 2015 reiterating that the subscription broadcasting service licensing process is not reliant on the processes mentioned in Kagiso TV's letter of 31 December 2014. The Digital Migration Policy states that government subsidized set top boxes (STBs) are to be utilised by the poorest TV-owning households while Kagiso TV intends on utilising such STBs for its targeted LSM of 5-7 which is not line with the said policy and lastly that subsidized STBs are intended for free-to-air and not subscription broadcasting services.

45.14.3.3.9 The Authority requested Kagiso TV to submit the requested information regarding firm proof of funding and STBs, and the letter from the Free State Department of Education confirming learners who are from HDGs on or before 10 March 2015.

45.14.3.3.10 The information provided by Kagiso TV on HDI was not sufficient. As it only able to demonstrate how it has calculated 15.654 % HDI and not 30% HDI as required by the ITA. Again, Kagiso TV requested the Authority to delay the issue of the licence pending finalisation of the Digital Terrestrial Television and Set-Top Boxes specifications. However, Kagiso TV provided similar reasons on their request for extension to submit further information.

45.14.4 Additional information by Kagiso TV received on 10 March 2015

45.14.4.1 On 10 March 2015, the Authority received additional information in relation to how the percentage of equity ownership was calculated and the request for delay in issuing the licence.

45.14.4.2 How the percentage of equity ownership was calculated

45.14.4.2.1 Kagiso TV provided that it had prepared a detailed schedule which sets out all available information regarding Kagiso Tiso Holdings' ("KTH") direct and indirect individual black beneficiaries (in respect of trusts) and owners (in respect of shareholding). However, they did not provide identity documents to the Authority in this regard with Kagiso TV stating that it could only provide a comprehensive list of same in 2015.

45.14.4.2.2 Kagiso TV provides that its trust deed provides that eighty five percent (85%) of the beneficiaries for the Kagiso Trust are black persons as contemplated by the BBBEE Act being women, people living in rural areas and the youth with their intention

being that such beneficiaries are black women.

- 45.14.4.2.3 There are nine (9) schools being sponsored by the trust located in the QwaQwa, Free State area and a sample verification process conducted by Blacklite and Veridex BBBEE verification agencies proved that such students were in fact one hundred percent (100%) black.
- 45.14.4.2.4 Kagiso TV provided that with regards to Kagiso Trust Strategic Investments is a 100% subsidiary of Kagiso Charitable Trust and is 100% black owned. They also stated that the industrial Partnership Investments Limited which is a 100% subsidiary of Remgro.
- 45.14.4.2.5 They stated that Blacklight is not in a position to obtain detailed individual black shareholder information, and has placed reliance on their independent BEE certificate. In regard to Cardona Investments, these shares are held by KTH, and are treated as treasury shares.
- 45.14.4.2.6 The table below give details of Kagiso TV effective black shareholding by entity in KTH.

Name of shareholding in KTH	Effective Black Shareholding by entity
Tiso Investment Holdings (Pty) Ltd	7.051%
Tiso Foundation Charitable Trust	7.521%
Kagiso Trust Strategic Investments	6.716%
Kagiso Charitable Trust	31.318%
Industrial Partnership Investments Limited (Remgro)	4.346%
Kagiso Trust Investment Share Scheme	0.897%
Mbonisi Danisa	0.158%
L Gcwabe	0.027%
Total	58.034%

- 45.14.4.2.7 In its submission, Kagiso TV provided details of its black shareholding as follows:
- 45.14.4.2.7.1 Tiso Investment Holdings (Pty) Ltd: Nkululeko Sowazi is stated as the black shareholder holding the said 7.051% effective black ownership;
- 45.14.4.2.7.2 Tiso Foundation Charitable Trust: Kagiso TV provides a list of names of trust beneficiaries all of which appear to be those of black persons and/or of historically disadvantaged persons. The effective black shareholding for such beneficiaries is listed as 7.521%;
- 45.14.4.2.7.3 Kagiso Trust Strategic Investments, Kagiso Charitable Trust (KCT) and Industrial Partnership Investments Limited (Remgro): there are no details provided of black shareholding, the parties merely provided for Kagiso Trust Strategic Investments that this is a wholly owned subsidiary of the KCT and no details are provided for the other two entities. In its letter Kagiso TV provides that Kagiso Trust Strategic Investments is a 100% subsidiary of KCT, and will have the same ownership as that of KCT being 100% black owned, however the parties do not provide details of the black shareholding but merely provide that KCT is 100% black owned with effective black ownership at 31.318%, with Industrial Partnership Investments Limited having 4.346% effective black shareholding and Kagiso Trust Strategic Investments at 6.716% effective black shareholding;
- 45.14.4.2.7.4 Kagiso Trust Investment Share Scheme: Kagiso TV provides a list of names of trust beneficiaries all of which appear to be those of black persons and/or of historically disadvantaged persons. The effective black shareholding for such beneficiaries is listed as 0.897%;
- 45.14.4.2.7.5 Mbonisi Danisa and L Gcwabe are listed as black persons with effective black shareholding at 0.158% and 0.027% respectively.
- 45.14.4.2.7.6 From the Authority's assessment, it appears that some of the said information is that of HDI ownership as requested and the total percentage of ownership by such HDI's is 15.654% which is below the required 30% HDI in the absence of a detailed breakdown of black ownership.
- 45.14.4.2.7.7 Kagiso TV has provided a detailed breakdown of its black shareholding by entity in KTH which is its parent company which necessarily means that the same

shareholding is applicable to Kagiso TV. The shareholding by black persons is above the requisite 30% required for HDI.

45.14.4.2.7.8 Kagiso TV provides that its BBBEE consultant Blacklight could upon request by the Authority, provide a letter from the Free State Department of Education confirming that the schools listed by Kagiso TV are in fact in rural areas, and that the learners are 100% black and/or a detailed list of all learners in each of the schools although these details are constantly changing.

45.14.4.2.7.9 The Authority in its letter of 11 February 2015 requested Kagiso TV to provide it with a letter from the Free State Department of Education indicating that the schools sponsored by the Kagiso Charitable Trust are schools in rural areas as well as the students being 100% black students.

45.14.4.2.7.10 Kagiso TV has since provided the said information satisfactorily.

45.14.4.3 **Request for delay in issuing subscription broadcasting service licence due to market, policy and regulatory uncertainty**

45.14.4.3.1 Kagiso TV formally requested that the Authority not act to refuse its licence at this stage and instead to leave the granting of the licence in place but to delay the issuing thereof until after the finalisation of the DTT and related processes.

45.14.4.3.2 Kagiso TV states that it is of the view that none of the successful applicants for a subscription licence who wish to make use of DTT are able to develop business plans or to commence operations in any way whether or not their licences are in fact issued by ICASA pending the finalisation by the Ministers of Communications and Telecommunications and Postal Services and/or ICASA:

45.14.4.3.2.1 **The specifications for STBs**, particularly regarding conditional access to STB's as no subsidization, or general STB marketing decisions, can be made in the absence of such specifications. However, the Authority had previously in correspondence to Kagiso TV indicated that this process of licensing Subscription television is not related to that STB specifications process.

45.14.4.3.2.2 **The decision regarding the switch on or switch off dates for digital migration.** In this regard, Kagiso TV is of the view that South Africa may decide to extend the digital switch off date beyond June 2015 date set by the International Telecommunications Union, which would push out the date on which Multiplex

3 is likely to become operational. Multiplex 3 is not dependent on the digital migration process. Multiplex 3 comprises of the existing Mobile Television Multiplex 2 which is currently available.

45.14.4.3.2.3 The finalisation of the ICT Sector Competition Enquiry which is currently underway at ICASA. In this regard, the issue of competition in the television sector and in particular in the subscription broadcasting sector would be fundamental to the development of an effective competitive strategy for a start - up subscription broadcasting licence. The Competition Enquiry has no bearing on the licensing process, as the licensing process was initiated before the inquiry. The outcome of the inquiry will of course will be considered in the subscription television sector but not in relation to this licensing process.

45.14.4.3.2.4 Kagiso TV states that there can be no harm to ICASA or to the public interest if ICASA were not to issue the licence to Kagiso TV at this time but to hold the issuance thereof in abeyance until such time as the above said processes have taken place and finalised.

45.14.4.3.2.5 Kagiso TV further states that increased competition in the subscription broadcasting sector would support ICASA's ability to meet the objectives in the Electronic Communications Act and Broadcasting Acts and Kagiso TV believes it can be such a competitor. However, it provides that it is unable to commence its operations at this stage or to make financial plans as all other grantee of the licences who wish to make use of DTT until regulatory processes set out above are finalised. Kagiso TV believes that there will be no prejudice to any other applicant, members of the public and or ICASA if such allowance is granted.

45.14.4.3.2.6 Further, the Authority wrote a subsequent letter Kagiso TV on 11 February 2015 requesting that it provide it with the said information. Kagiso TV again responded in exactly the same manner as it had before sighting the same reasons that it cannot provide proof of funding as well as a commitment in relation to STBs and again requesting that the Authority not refuse to issue its licence sighting the lack of prejudice to any and all parties concerned.

45.14.4.3.2.7 The Authority is of the considered view that the request for the delay in issuing its Individual Subscription Broadcasting Licence is unreasonable as all the factors pointed out by Kagiso TV stating why it cannot commence its operations and necessarily why it cannot provide the Authority with firm proof of funding for its proposed services and or commitment to funding its STB's is not

dependent on any of the processes that Kagiso TV listed as a cause for failure to comply with the Authority's repeated request for information.

45.14.5 Additional information by Kagiso TV received on 11 August 2015

45.14.5.1 On its letter dated 10 June 2015, Kagiso TV was requested to provide following information by 11 August 2015:

45.14.5.1.1 Firm proof of funding for Kagiso TV's proposed services from Kagiso Media Limited and/or other financial institution/s; and

45.14.5.1.2 Firm commitment to put up resources or make budgetary provision in relation to the manufacturing, subsidization and distribution of the Set Top Boxes that will be required for subscribers to access Kagiso TV's proposed service.

45.14.5.2 In its letter dated 07th August 2015, Kagiso TV stated that it is unable to provide the Authority with the firm proof of funding and commitment to put aside resources for the manufacturing, subsidization and distribution of the Set Top Boxes. Consequently, Kagiso TV would like to withdraw from the licensing process.

45.15 Decision

45.15.1 Kagiso TV submitted that is unable to make the necessary commitments required by the Authority due to significant policy and regulatory uncertainty that will have a critical negative impact on the roll-out of DTT and on the business plans of players who are to enter the market.

45.15.2 Kagiso TV further indicated that it is unable to develop business plans or to commence operations as key issues like switch off dates for digital migration and finalisation of the ICT Sector Competition Enquiry, have not been finalised by the Minister of Communications and Telecommunications and Postal Services.

45.15.3 Kagiso TV informed the Authority that it is unable to enter into the subscription broadcasting TV space given the lack of policy and regulatory certainty which, in their view, makes it impossible for new market entrants to commit to the critical business planning, operational, and financial decisions (due to the required guarantees) going forward.

45.15.4 Based on the explanation above by Kagiso TV, the Authority decided to withdraw the granting of the licence to Kagiso TV.

46. Mindset Media Enterprises (Pty) Ltd (Mindset TV)

46.1 Introduction

46.1.1 The Authority received an application from Mindset Media Enterprises (Pty) Ltd for an individual commercial subscription broadcasting service licence.

46.1.2 The applicant indicated that it intends operating a subscription broadcasting service under the name of "Mindset TV".²⁰²

46.1.3 The applicant indicated it intends providing a multi-channel television subscription service on a national scale.²⁰³

46.1.4 The Authority received written submissions on the applicant's application from Kagiso TV. The applicant did not submit a written response to the Authority in this regard, although the applicant did respond to Kagiso TV's written submissions during the public hearings. The Authority has considered Kagiso TV's submissions and the applicant's responses during the public hearings and, where relevant, Kagiso TV's submissions and the applicant's responses to those submissions have been addressed in this Reasons Document.

46.2 Corporate structure

46.2.1 The applicant is a private company registered and incorporated in South Africa with registration number 2010/019105/07.²⁰⁴ The applicant submitted copies of its certificate of confirmation, its certificate of incorporation and proof of a change of name (from Kidronex (Pty) Ltd to Mindset Media Enterprises (Pty) Ltd).²⁰⁵ The Authority is satisfied that the applicant is a juristic person duly registered and incorporated in South Africa. The applicant also submitted a copy of the resolution passed by the applicant authorising Roith Rajpal to sign the relevant documents necessary for the application and to represent the applicant at any public hearings.

46.2.2 The applicant submitted a shareholders' agreement between Mindset Trust (which it indicated was an entity yet to be formed) and various management shareholders, but none of the parties to this agreement have signed the agreement, and the agreement also contains

²⁰² Mindset TV application: Section 1, p 1.

²⁰³ Ibid.

²⁰⁴ Mindset TV application: Section 2, p 3.

²⁰⁵ Mindset TV application: Appendix 1.

a few drafting notes. ²⁰⁶ In terms of this shareholders' agreement, it is indicated that the applicant will have the following shareholders:

46.2.2.1 Mindset Trust, which will be the registered holder of 3000 ordinary shares representing 60% of the applicant's issued share capital; and

46.2.2.2 various management shareholders who shall be the registered holders of 2000 ordinary shares, representing 40% of the applicant's issued share capital. ²⁰⁷

46.2.3 In this regard, the applicant indicated that its shareholding structure would be as follows: ²⁰⁸

Mindset Trust	3000 shares
H Appelbaum	500 shares
R Rajpal	500 shares
R Kander	50 shares
J Els	60 shares
D Busa	150 shares
T Senne	20 shares
G Watt	50 shares
E Wilcock	20 shares
C Willoughby	20 shares
R Appelbaum	100 shares
V Naidoo	20 shares
S Bissoon	50 shares
Total	4540 shares (with 460 shares still unissued)

46.3 The applicant did not submit any further details in respect of its shareholders (with the exception of those shareholders that were also part of senior management).

46.4 In its written submissions, Kagiso TV submitted that, while the applicant submitted its full list of shareholders in Annexure 35, the application refers to other entities in a manner that suggests that they are also participants in the applicant. Kagiso TV accordingly submitted that the Authority should investigate the shareholding of the applicant. ²⁰⁹ During the public hearings, the applicant provided clarification in respect of the role of Mindset Network NPC in the

²⁰⁶ Mindset TV application: Annex 34, pp 143-174.

²⁰⁷ Mindset TV application: Annex 34, clause 3.1.2.

²⁰⁸ Mindset TV application: Annex 35, p 175.

²⁰⁹ Kagiso TV written submission, pp 6-7, para 6.2.

applicant.²¹⁰ The Authority is satisfied that the applicant submitted a full list of its shareholders, and complied with the requirements contained in the ITA.

46.5 The applicant also submitted that no individual on his or her own has the authority or power to appoint or veto the appointment of a board member of the applicant or to direct or restrain the company on substantial management issues.²¹¹ The applicant submitted further that no individual is able to appoint or veto the appointment of at least half the board members of the applicant. However, the applicant indicated elsewhere in its application that its directors are appointed by its shareholders, of which Mindset Trust is the largest, with the result that Mindset Trust will have the right to appoint three of the five directors on the board.²¹² In other words, Mindset Trust will be in a position to appoint at least half of the board members of the applicant. In this regard, the applicant also submitted that the majority of the nominations and appointments to, and removals from, the board are subject to ratification by a duly constituted quorum of the board of trustees of the Mindset Trust.²¹³ In terms of the shareholders' agreement, Mindset Trust, as a 60% shareholder in the applicant, will be in a position, by exercising more than 50% of the voting rights, to direct or restrain the company on any of the following issues: the carrying on of any other business, the borrowing or lending of monies by the applicant, the purchase, sale, hiring or letting of any immovable property and the appointment or removal of the managing director of the company, amongst other things.²¹⁴ However, the Authority is satisfied that this does not affect the applicant's compliance with the requirements of the ITA, or with the requirements of sections 64, 65 and 66 of the Act, as discussed further below.

46.6 Empowerment of HDPs

46.6.1 The applicant submitted that its black shareholders hold 81% of the shares in the applicant, and that it had accordingly met the requirement set by the ITA of 30% equity ownership by HDPs.²¹⁵

46.6.2 The applicant submitted that it will be majority owned by Mindset Trust, whose sole beneficiary is Mindset Network NPC.²¹⁶ Mindset Network NPC is a not-for-profit organisation whose beneficiaries are underserved and underprivileged communities, 95% of which are HDPs. On this basis, 57% of the applicant's shares would be regarded as being in the hands of HDPs through the Mindset Network NPC. . The applicant submitted a copy

²¹⁰ Public hearing transcript, 25 July 2013, p 7.

²¹¹ Ibid.

²¹² Mindset TV application: Annex 4.

²¹³ Ibid.

²¹⁴ Mindset TV application, Annex 34, clause 7.2.

²¹⁵ Mindset TV application: Annex 3 and Annex 35, p 28.

²¹⁶ Mindset TV application: Annex 3.

of the generic BEE scorecard verification for Mindset Network NPC, as prepared by m-Power Ratings (Pty) Ltd, which indicated that Mindset Network NPC is a level 3 BEE contributor.²¹⁷ During the public hearing, the applicant indicated that the beneficiaries of the Mindset Trust are learners and teachers in South Africa.²¹⁸

46.6.3 In its written submission, Kagiso TV submitted that the Authority should investigate the applicant's BEE credentials and shareholding, particularly as Kagiso TV indicated its concern that the 81% HDP shareholding indicated by the applicant could not be verified in any manner.²¹⁹

46.6.4 On a detailed consideration of the above issues, the Authority was not satisfied that the applicant had complied with the requirements set out in section 5(9)(b) and 9(2) of the Act as well as the requirements contained in section 2, paragraph 6 of the ITA, as the applicant did not provide details of the means by which its equity ownership was calculated and there was no independent confirmation that black shareholders, in fact, hold the percentage shares indicated by the applicant. In this regard, the Authority would expect to see a clear breakdown of which shareholders are HDPs for the purposes of section 2, paragraph 6.4 of the ITA. The applicant did not provide this.

46.7 Section 64 of the Act

46.7.1 Roith Rajpal, a South African citizen, is indicated to be the sole director of the applicant.²²⁰ The applicant indicated that its board of directors will be altered in due course and that five directors will be appointed.²²¹ In this regard, the applicant indicated that its directors are appointed by its shareholders, of which Mindset Trust is the largest, with the result that Mindset Trust will have the right to appoint three of the five directors to the board.²²²

46.7.2 Based on the information provided by the applicant, the Authority is satisfied that the applicant does not currently have any direct or indirect foreign shareholders, or any foreign directors. As such, the Authority is satisfied that the applicant complies with the requirements of section 64 of the Act.

²¹⁷ Mindset TV application: Annex 3.

²¹⁸ Public hearing transcript, 25 July 2013, pp 2-3.

²¹⁹ Kagiso TV written submission, pp 6-7, para 6.1.

²²⁰ Mindset TV application: Annex 4.

²²¹ Mindset TV application: Annex 34, Clause 5.2.1.

²²² Mindset TV application: Annex 4.

46.8 Section 65 of the Act

46.8.1 The applicant indicated that no member of the applicant's senior management team has any media interests, except for their involvement in the management and operation of television broadcast services for Mindset Network NPC managing the broadcast channels in Mindset Network NPC's portfolio that have been operated on a non-commercial basis, including Mindset Learn, Mindset Health and Top Learn.²²³ The applicant indicated further that none of the applicant, its shareholders, or its senior management has any interest in any non-South African broadcasting interests, or in other broadcasting interests (including radio, television, satellite, cable broadcasting, and allied activities).²²⁴

46.8.2 The Authority is satisfied that neither the applicant nor its shareholders hold any other broadcasting interests. Accordingly, there is no contravention of section 65 of the Act.

46.9 Section 66 of the Act

The applicant indicated that neither it nor its shareholders has any interest in any newspaper (including holdings in a group having substantial control over one or more newspapers).²²⁵ The Authority is satisfied that there is no contravention of section 66 of the Act.

46.10 Management and human resources

46.10.1 The applicant's proposed senior management is made up of the following individuals: Roith Rajpal, Johan Els, Sheryl Victoria Yeadon, Rasigan Kander, and Kofi Falconer.²²⁶ The applicant submitted the identity numbers, gender, nationality, profession, qualification, experience, and curriculum vitae for each member of the senior management team.²²⁷

46.10.2 Based on the Authority's analysis of the submitted curricula vitae, the Authority is satisfied that the proposed senior management has the requisite experience and capabilities to operate the proposed service in accordance with requirements set out in section 51(d) of the Act and section 2, paragraph 7.1 of the ITA.

46.10.3 The applicant provided the Authority with a staff organisational chart,²²⁸ and indicated that

²²³ Mindset TV application: Annex 13.

²²⁴ Mindset TV application: Annex 22 and 24.

²²⁵ Mindset TV application: Annex 23.

²²⁶ Mindset TV application: Annex 5, pp 32-53.

²²⁷ Mindset TV application: Annex 5 and 6.

²²⁸ Mindset TV application: Annex 14, p 106.

its staff component would consist of 31 full-time employees and no part-time employees.²²⁹

46.11 Finances

46.11.1 Business plan

- 46.11.1.1 In its application, the applicant indicated that its revenue model “steers away from profiting from subscription fees to earning revenue from advertising, sponsorships and government contributions” and that it would charge a subscription fee of R1.00 (one rand) per month per subscriber.²³⁰ The cost of the hardware (i.e. the decoder, television and satellite dish) would be borne by the subscriber and, where possible, through sponsorship or donations, and would be distributed on a breakeven basis and not for profit making purposes.²³¹
- 46.11.1.2 During the public hearings, the applicant was requested to explain how it would meet the requirements imposed in terms of section 60(4) of the Act considering that it would be charging such a nominal subscription fee.
- 46.11.1.3 The applicant indicated during the public hearings that it had rethought its business model, that it would ensure that it met the requirement set by section 60(4) of the Act, and that it had since engaged with provincial and national education departments for the purposes of levying a subscription fee of R5 000 per annum on these departments. The applicant indicated that this subscription fee would cover the applicant’s costs.
- 46.11.1.4 As a marketing strategy, the applicant indicated that its primary focus would be on developing relationships or partnerships within all media environments (pay TV, free-to-air TV, radio, print, web, and social media) to create funded programming opportunities that would maximise return and exposure of its programmes/channels, and would create events that would fuel interest in its channels.²³² The applicant indicated further that it would also use social media as it expects this to resonate with its target audience.²³³ Once established, the applicant indicated that it would invest in above/below the line marketing activities to ensure maximum exposure for the channel, and focus groups and qualitative/insight research would have also have been conducted annually for key channels to ensure that the applicant would deliver on its brand

²²⁹ Mindset TV application: Annex 15, pp 107-114.

²³⁰ Mindset TV application: Annex 26, pp 128 and 191.

²³¹ Mindset TV application: Annex 26, p 128.

²³² Mindset TV application: Annex 26, p 128.

²³³ Mindset TV application: Annex 26, p 129.

promise.

46.11.1.5 In its written submission, Kagiso TV submitted that the applicant would be in contravention of section 60(4) of the Act to the extent that the Authority granted it a licence given that its main source of revenue will be advertising and sponsorships, and not subscription fees. ²³⁴ Kagiso TV relied on the applicant's assertions that the proposed subscription fee was a nominal R1.00, that the "revenue model steers away from profiting from subscription fees to earning revenue from advertising, sponsorship and government contributions", and that subscription revenue for the applicant would account for just under 0.06% of total revenue. ²³⁵ As discussed above, the applicant addressed this issue during the public hearings.

46.11.1.6 On a detailed consideration of the above issues, the Authority is not satisfied with the applicant's original business model given that the applicant would not, in the Authority's assessment, comply with section 60(4) of the Act (i.e. based on the applicant's original subscription revenue, it is likely that revenue from advertising and sponsorship will exceed revenue from subscription fees). Despite the applicant proposing a revised subscription fee model during the public hearings, the applicant did not submit any proof that there was demand and support for such a subscription fee model within education departments, and the Authority is accordingly not satisfied, even on this revised business plan, that the applicant would comply with section 60(4) of the Act.

46.11.2 Financial projections and cash-flow analysis

46.11.2.1 In the Authority's assessment, the applicant's cash flow statement lacked detail, but did indicate that the applicant would be operating at a net loss during its first year of operation, and that it would thereafter make a profit from the second year of its operation onwards. ²³⁶

46.11.2.2 The applicant indicated that it had already acquired assets since it has three existing channels that would be utilised for its proposed service. ²³⁷ Therefore, in the Authority's assessment, the need for capex in order to set up the service was not applicable.

46.11.2.3 Although the applicant's projected balance sheet was not provided, the applicant did submit its financial statements for the year ending 31 December 2011, which indicated

²³⁴ Kagiso TV written submission pp 3-4, paras 3.2.1 - 3.2.3.

²³⁵ Ibid.

²³⁶ Mindset TV application: Annex 27, p 132.

²³⁷ Mindset TV application, Annex 29, p 138.

the applicant's revenue stream, including donations from different companies amounting to more than R20 million.

46.11.2.4 The applicant indicated that its equity funding would be derived from revenue from existing channels. The applicant also indicated that it would not require any long-term debt funding and no liquidity ratio was calculated. The applicant also indicated that it would make use of its overdraft facilities (short-term borrowings) should this be required.

46.11.2.5 In the Authority's assessment, the applicant's gross profit margin was very low compared with the other applicants, which the Authority assumed was most likely due to the applicant's proposed reliance on sponsorship with very little subscription revenue. However, during the public hearings, the applicant indicated that it would consider revising its funding/revenue model and that it was engaged in discussions with national and provincial education departments.²³⁸

46.11.2.6 The applicant indicated that it believed that it would continue to receive donations and sponsorship to fund its venture, but in the Authority's assessment, the applicant did not provide any clear commitment in this regard from any of its current sponsors or donors.

46.11.3 Funding and methods of raising capital

46.11.3.1 The applicant indicated that it did not require any traditional financing other than support through Mindset Network NPC and from its founding partners.²³⁹ The applicant did not specifically indicate how much it needed to fund its business except to say that it would fund its business from services it currently provides to other pay TV channels. The applicant also provided a list of its sponsors, but did not indicate if these sponsors would continue to provide donations once the applicant was granted a licence.²⁴⁰ In the Authority's assessment, the applicant's proposed reliance on sponsorships as a means to sustain its operations is of concern as the reliability of such "funding" may not be guaranteed.

46.11.3.2 The applicant also indicated that it had an overdraft facility of R500 000 with Standard Bank through Traffic Corporate Communications.

²³⁸ Public hearing transcripts, 25 July 2013, pp 5-6.

²³⁹ Mindset TV application: Annex 31, p 139.

²⁴⁰ Mindset TV application: Annex 36, p 176.

46.12 Demand, need and support for the proposed service

46.12.1 The applicant indicated that it intended offering a service that would carry television channels that would focus primarily on educational issues, including providing formal education, skills development, sports education, health education, financial education and religious education.²⁴¹

46.12.2 The applicant indicated that its target market is primarily the youth, but that there would be programmes for older viewers. In this regard, the applicant submitted that the service would be designed in a manner so as not to limit it to a specific demographic, i.e. the station will provide educational content for people of all ages and cultural backgrounds.²⁴² In this regard, the applicant submitted that in South Africa there is currently no television channel that caters for the educational needs of a wide range of the population except for the services which is provided by MultiChoice and Top TV, both of which are premium pay-television services. This has the result that a great portion of the population has no access to this content.²⁴³ As such, the applicant submitted that if it were granted as licence this would allow for the general public to have access to these services instead of only certain sectors of the population having access to this service through premium payTV.

46.12.3 The applicant indicated that it anticipated reaching at least 50 000 subscribers across its channels at various intervals in the day, such as during early morning family preparations, by job seekers during the day, by primary school learners between 13h30 and 15h30, by Grade 10-12 learners from 15h30 and 19h00, and 25-49 year old adults from 19h00 to 22h00.²⁴⁴ However, during the public hearings, the applicant emphasised that it wanted to focus primarily on schools.²⁴⁵ The applicant did not indicate by when it would reach this level of viewership and / or subscribers.

46.12.4 The applicant also did not conduct primary market research for the purpose of its application, and all research referred to in the application was research conducted by Multichoice and TopTV. In this regard, the applicant submitted that its current viewer research on DStv indicates that 32% of its audience is split

²⁴¹ Mindset TV application: Annex 45, p 193.

²⁴² Mindset TV application: Annex 46.1, p194.

²⁴³ Ibid.

²⁴⁴ Mindset TV application: Annex 47, p 241.

²⁴⁵ Public hearing transcript, 25 July 2013, p 15.

into three: “pre-schooler to tween”; the largest audience (44%) is between the ages of 15 and 24 (mainly black, female Zulu-speaking persons), while 10% of the audience is over 34.²⁴⁶ The applicant submitted further that over 70% of its viewers list their household income as being below R20 000. The applicant also submitted that recent research conducted by DStv indicates that there is a market for pay TV services in the LSM 4-6 market.²⁴⁷ The applicant submitted that about 6.2 million households currently do not access any form of pay TV, but respondents have indicated a strong need for education and information services.²⁴⁸

46.12.5 The Authority found it difficult to ascertain whether the applicant’s service would yield the same results as indicated in the research reports prepared by DStv, that were attached to the application. The applicant also did not address the issue of whether, to the extent that it is granted a broadcasting service licence, its content would still be provided on the DStv and TopTV platforms and, if so, whether there would still be sufficient demand, need and support to offer its content independently.

46.12.6 On an assessment of the application, the Authority is not satisfied that the applicant demonstrated that there would be sufficient demand, need, and support for the applicant’s proposed service for it to be a sustainable and viable commercial entity. The Authority was also unable to assess demand, need and support for the applicant’s proposed service without any primary research conducted by the applicant in respect of the applicant’s proposed service offering (as opposed to, for example, merely making the applicant’s service available as a channel offering) on other subscription services.²⁴⁹

46.13 Complaints and codes of operations

46.13.1 The applicant undertook to develop an internal code that all its employees would have to adopt, that would be strictly aligned to the Act, applicable regulations, licence conditions, and the Code of Conduct for Broadcasting Services.²⁵⁰ Where required, the applicant undertook to offer all its affiliates training to ensure full understanding and compliance.

²⁴⁶ Mindset TV application: Annex 46.2, p 194.

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Mindset TV application: Annex 46.1 and 46.2, pp 194-195.

²⁵⁰ Mindset TV application: Annex 50, p 244.

46.13.2 Prior to commencing its service, the applicant also indicated that it would devise a complaints-handling procedure, which would be made available to members of the public on its website, at its offices and on request. ²⁵¹

46.13.3 The applicant also stated that it would decide whether to join associations, such as the NAB and to becoming a signatory of the BCCSA, only to the extent that it is granted a subscription broadcasting services licence. ²⁵²

46.14 Programming

46.14.1 The applicant indicated that it already has more than 1 000 hours of footage already archived for future use, and is working closely with the South African Democratic Teachers Union (SADTU) to develop a teacher-dedicated channel that would offer live and pre-recorded programming. ²⁵³

46.14.2 The applicant's schedule will feature the following programmes: open university, parenting and early childhood development, primary-school curriculum-aligned lessons, teacher talk and high-school curriculum-aligned lessons. Learn Xtra and exam revision programme, lifestyle, medical, wellness and environment.

46.14.3 The Authority recognises and respects the social and educational contribution that the applicant wishes to create and appreciates that the proposed programming would be invaluable to strengthening the educational framework of the country.

46.15 Compliance with the Content Regulations

The Authority is satisfied that the applicant's content would be 100% locally produced and sourced, and that it would be of an educational nature aimed at educating the public, including learners, teachers, health care providers, and adults.

²⁵¹ Mindset TV application: Annex 49, p 243.

²⁵² Mindset TV application: Annex 51, p 245.

²⁵³ Mindset TV application: Annex 52, p 248.

- 46.16.1 The applicant indicated that it would use Traffic Corporate Media Communications, which is a business unit of Mindset Network NPC, as its preferred signal distributor.²⁵⁴
- 46.16.2 In its written submission, Kagiso TV indicated its concerns with Traffic Corporate Media Communications, as the applicant's signal distribution partner, on the basis that it was not familiar with this entity and on the basis that it was not sure that Traffic Corporate Media Communications holds the requisite individual ECNS licence to provide the applicant with signal distribution services.²⁵⁵ With regard to signal distribution, the applicant indicated during the public hearings that Traffic Corporate Media Communication had applied for a class ECNS licence for the City of Johannesburg, which the applicant believed would be adequate for application to the applicant's services.²⁵⁶ However, in the Authority's assessment, a class ECNS licence would not allow the applicant to provide its proposed service nationally.
- 46.16.3 The applicant provided a detailed configuration of its proposed network. Delivery of the broadcasting service will be achieved utilising a satellite radio network, and the service would offer a full satellite bouquet providing up to nine standard definition video channels.²⁵⁷
- 46.16.4 The applicant submitted that it would make use of the transponder capacity on the Intelsat IS17 on the Ku band to deliver encrypted TV channels with Conditional Access System to its subscribers' STBs, and that all channels would have been coded using MPEG4 that would have originated either from the applicant's studios or from subscribers' premises.²⁵⁸
- 46.16.5 In the Authority's assessment, the applicant's downlink channel capacity would depend on commercial agreements between the applicant and the satellite company (IntelSat) and the availability of transponder capacity, but these agreements did not appear to be in place.

²⁵⁴ Mindset TV application: Annex 57, p 251.

²⁵⁵ Kagiso TV written submission, p 7, para 7.

²⁵⁶ Mindset TV application: pp 13 -46.

²⁵⁷ Mindset TV application: Annex 58, p 252.

²⁵⁸ Mindset TV application: p 178.

46.16.6 As such, the Authority is not satisfied that the applicant has complied with the technical requirements as prescribed in the ITA.

46.17 Additional information by Mindset TV received on 24 July 2014

46.17.1 Mindset TV was requested to submit the following information:

46.17.1.1 How the percentage of Mindset TV's equity ownership held by persons from historically disadvantaged groups was calculated;

46.17.1.2 Revised subscription fee model which will not rely heavily on sponsorships and will not contravene section 60(4) of the Electronic Communications Act, 2005;

46.17.1.3 Primary research which demonstrates demand, need and support for Mindset TV's proposed service; and

46.17.1.4 Provide details of the entity, which will be responsible for Mindset TV's broadcasting signal distribution on a national scale and whether such has an Individual Electronic Communications Network Service Licence.

46.17.1.5 Analysis of additional information by Mindset TV

46.17.1.5.1 How the percentage of equity ownership was calculated

46.17.1.5.1.1 Mindset TV indicated that from their original submission they have showed that a total of 4540 shares have been issued with 460 additional shares still to be issued. From these 4540 issued shares, 3660 shares are held by HDIs. Mindset TV further indicates that there is currently 81% of its equity ownership held by persons from HDGs in Mindset Media Enterprises (Pty) Ltd.

46.17.1.5.1.2 Mindset TV has further indicated that the Mindset Trust portion of the shares is for a new trust that is in the process of being formed, of which Mindset Network NPC will be the sole beneficiary.

46.17.1.5.1.3 Mindset TV stated that Mindset Network NPC is a non-profit company launched in 2003 by the late President Nelson Mandela to support education and health in South Africa. The beneficiaries of Mindset Network NPC are public school learners and educators as well as public health care workers. Mindset Media TV indicated that for the education program, their beneficiaries are currently 96% Black viewers (as stated by Multichoice DSTV).

- 46.17.1.5.1.4 The Authority's concern is that Mindset Trust has the bulk of the shares in Mindset TV and it is not clear which beneficiaries make up the HDGs. Mindset TV has not attempted to comply with the requirements set out in section 5(9) (b) and 9(2) of the EC Act as well as the requirements contained in section 2, paragraph 6 of the ITA, though the Authority raised this question in the public hearings and also requested same information on its letter of 23 April 2014.
- 46.17.1.5.1.5 The Authority is of the view that Mindset TV has not provided the information on how the percentage of equity ownership was calculated.
- 46.17.1.5.2 Revised subscription fee model
- 46.17.1.5.2.1 Mindset TV provided the Authority with a financial document called the "Detailed Budget Account". This account indicates that Mindset TV is projecting to have about 1 710 subscribers, the subscription revenue amount is six million, six hundred and thirty two thousand, one hundred and thirty six rand and five cents (R6 632 136.05) on its first year of operations, however Mindset TV has not given a breakdown of its subscription fees and the Authority cannot establish how it reached this figure.
- 46.17.1.5.2.2 This projected subscription fee revenue is not supported by any research or surveys from Mindset TV's target market. The assumption is that when one divides the subscription revenue by the number of subscribers in year 1 which is 1 710 and the amount of revenue in the first year Mindset TV would be collecting about R323.00 per subscriber each month. If this assumption is correct Mindset TV's audience which is said to be poor communities would not be able to afford to pay the subscription fee.
- 46.17.1.5.2.3 The Authority is of the view that Mindset TV has failed to ensure that it complies with section 60(4) of the Electronic Communications Act, 2005, as amended as it cannot be established how it arrived at its subscription revenue. The estimated price of R323.20 is not supported by any research or surveys from Mindset TV's target market.
- 46.17.1.6 Primary research
- 46.17.1.6.1 Mindset TV submitted a summary of a study it conducted on Facebook, which had six hundred and sixty (660) of its "fans on Facebook" as its respondents. These respondents indicated that they wanted to see more of the Mindset Media Channel as offered on Multichoice's DSTV. The respondents also gave very positive feedback on the need for this service.

- 46.17.1.6.2 Market research is defined as an investigation done to determine whether there is willingness from the consumers to take up a product. However, Mindset TV's research on the demand and need for its proposed service did not yield any result on the willingness of its target audience to pay for the service independently from the current carrier of such product.
- 46.17.1.6.3 Mindset TV's submission on the request for Primary Research is thus not sufficient and it has failed to comply in this regard.
- 46.17.1.7 Details of entity providing signal distribution
- 46.17.1.7.1 Mindset TV was requested to provide the details of the entity that will be providing its signal distribution should it be issued a licence. The applicant indicated that it has secured the services of a signal distributor being Sentech, to provide its signal distribution. However, it has only provided the first page of Sentech's Individual Electronic Communications Network Service licence and Traffic Corporate Communications (Pty) Ltd's ("Traffic Corporate") Class Electronic Communications Network Service licence in answering this question.
- 46.17.1.7.2 In Mindset TV's application, it indicated that its signal distributor will be Traffic Corporate. Traffic Corporate's licence is not appropriate for national signal distribution as the area of application of the said licence is restricted to the City of Johannesburg (CoJ) a metropolitan municipality and not of a national scope. Further, the copy of Sentech's I-ECNS licence, which is in the public domain, is not enough proof that Sentech has committed to provide signal distribution to Mindset TV.
- 46.17.1.7.3 The ITA requested that the applicant provide details of the company responsible for the Applicant's signal distribution. The Authority is not satisfied with the Applicant's technical requirement as the Applicant has not provided any form of evidence that indicates that Sentech will be its signal distributor.
- 46.18 Additional information by Mindset TV received on December 2014
- 46.18.1 On 24 November 2014, the Authority received a letter from Mindset TV requesting the meeting to discuss and clarify further information requested by the Authority.
- 46.18.1.1 The Authority met with Mindset TV on 04 December 2014 to discuss and clarify further information requested.
- 46.18.1.2 The details of the meeting were to clarify Mindset TV with the requested information by the Authority in order to assist Mindset TV to comply with the requirements of the ITA. The Authority requested Mindset TV to provide clarity with respect to the calculation of

Mindset TV HDI, primary research, subscription fee model and details of their signal distributor.

46.18.1.3 On 05 December 2014, the Authority received a letter from Mindset TV, requesting extension to submit further information by 28 February 2014.

46.18.1.4 Mindset TV indicated that, given the complexities on the response, the festive season approaching and availability of legal counsel, they therefore request an extension to submit further information by 28 February 2015

46.18.1.5 However the Authority did not respond to the Mindset request for extension by December 2014.

46.18.1.6 On 31 December 2014, the Authority received a submission from Mindset TV in respond to the letter of 12 November 2014.

46.18.1.7 On 27 January 2015, the Authority granted the request for extension to submit additional information by 27 February 2015 and acknowledged receipt of information submitted on 31 January 2014.

46.19 Additional information by Mindset TV received on 24 February 2015

46.19.1 On 05 December 2014, the Authority received a letter from Mindset TV, requesting extension to submit further information by 28 February 2014.

46.19.2 Mindset TV indicated that, given the complexities on the response, the festive season approaching and availability of legal counsel, they therefore request an extension to submit further information by 27 February 2015.

46.19.3 However the Authority did not respond to the Mindset request for extension by December 2014.

46.19.4 On 31 December 2014, the Authority received a submission from Mindset TV in respond to the letter of 12 November 2014, requesting submission of additional information.

46.19.5 On 27 January 2015, the Authority granted the request for extension to submit additional information by 27 February 2015 and acknowledged receipt of information submitted on 31 January 2014.

46.19.6 Below is the analysis of the information submitted on 28 February 2015.

46.19.6.1 How the percentage of equity ownership was calculated

46.19.6.1.1 Mindset TV has provided calculation of the percentage of equity held by persons from HDGs which comprises of the revised shareholding arranged to comply with the HDGs

requirements and issued shares which shows that the shareholding is 30.8% as of the date of its original application. The breakdown of how the percentage of equity ownership is calculated is indicated below:

Name of Shareholder	HDI	% HDI
Roith Rajpal	YES	23.4%
Tuki Senne	YES	0.9%
Rasigan Kander	YES	2.3%
Candice Willoughby	YES	0.9%
Vis Naidoo	YES	0.9%
Shamla Bissoon	YES	2.3%
Total		30.7%

46.19.6.1.2 Mindset TV has indicated that the shareholding has been revised to comply with the HDGs requirement.

46.19.6.1.3 Mindset TV has provided new information at this stage of the licensing process on its shareholding which was not part of their origin application attempting to comply with the requirement for the HDI. The issue is no longer whether Mindset TV comply with the requirements set out in section 5(9) (b) and 9(2) of the EC Act as well as the requirements contained in section 2, paragraph 6 of the ITA, but that they have amended their application in contravention of regulation 6 of the Process and Procedure Regulations, 2010 for Individual licences.

46.19.6.1.4 The Authority was of the view that Mindset TV has not provided the information as required by the Authority, but instead opted to amend their application in order to ensure that it complies with section 5 and 9 of the EC Act.

46.19.6.2 Revised subscription fee model

46.19.6.2.1 Mindset TV provided the revised financial projections. Their new financial projections indicate that Mindset TV would derive most of its income from the subscription fees. The subscription income that Mindset TV is expecting is based on the following factors mentioned in the letter of 28 February 2015:

46.19.6.2.1.1 Mindset Media Enterprises believes this to be a very modest annual subscriber target against possible market share available within the 27 000 public target schools in South Africa;

- 46.19.6.2.1.2 Mindset has not factored any subscription from parents of school learners (homes) although this will be targeted;
- 46.19.6.2.1.3 Mindset Network NPC has been provided broadcast education services very cost effectively, to schools, public hospitals and clinics through other pay cost TV operators since its launch by the late Nelson Mandela in 2003;
- 46.19.6.2.1.4 Broadcast infrastructure and expertise already exists within Mindset Media Enterprise group;
- 46.19.6.2.1.5 Mindset Media Enterprises included sponsorship income, advertising revenue and operating expenses based on what Mindset Network NPC has been doing;
- 46.19.6.2.1.6 Mindset Media Enterprises understand that subscriptions cannot be targeted at the end user, as these users will be minors or individuals that do not have the means to pay said subscriptions. Subscriptions would be collected from provincial government, individual schools and organisations (public or private) that have the means to support the schools that need the services. Mindset Media Enterprises submits that this does not change the subscription nature of the funding and that the agreements which it enters into with representative organisations including Government departments – will be based on a set subscription fee payable by such representatives. Mindset Media Enterprises notes further that aggregating individual subscription in this manner is an arrangement which is already commonplace in the subscription broadcasting environment;
- 46.19.6.2.1.7 Mindset Media Enterprises included a growth model against the income where additional channels and programmes will be introduced as the subscriber base increases keeping future expenses aligned to income; and
- 46.19.6.2.1.8 As such Mindset submits that it will not be in contravention of section 60(4) of the ECA.
- 46.19.6.2.2 From the above information stated by Mindset Media, the applicant strongly believe that they would be able to collect subscription fees from all the organisations mentioned above. The challenge with this information is that there is no concrete evidence that these organisations will commit to the subscription fees, which are not even mentioned.
- 46.19.6.2.3 There are no agreements in place or any organisation that has agreed to a certain amount of subscription fees. There is no agreement or sort of arrangement from the national government and Mindset Media as their main source of subscribers which give an indication of how much the subscription amount from national government would cost.
- 46.19.6.2.4 Mindset Media's submission does not comply with section 60(4) of the Electronic Communications Act, 2005 and it should not be considered.
- 46.19.6.2.5 The Authority was of the view that Mindset TV has failed to ensure that it complies with section 60(4) of the Electronic Communications Act, 2005, as amended as it cannot be

established how it derived its subscription revenue.

- 46.19.6.2.6 There was no correlation between the subscription revenue projected by Mindset TV and the number of subscribers where they will collect subscription fees from except that they have indicated that the government will be their main source of subscription fees.
- 46.19.6.2.7 There was no clear indication how much the provincial governments would be paying as subscription fees for the schools. The subscription fee model for Mindset TV was not a model for subscription television model as the end users of its services would not be the ones paying the subscription fees.
- 46.19.6.2.8 Subscription television suppliers needed to collect their subscription fees from individuals and organisations that they provide services for whereas Mindset TV was planning to collect the bulk of its subscription fees from the provincial governments.
- 46.19.6.2.9 Moreover Mindset TV did not indicate how much it will receive from each provincial government. It is not clear whether the government has been informed of the Mindset TV's intention of not being a content provider anymore for Multichoice but to start its own business as a subscription tv provider. Although the subscription tv market fees is not regulated, the subscription fee model for each subscription provider is clear. In this instance provincial governments are going to be sponsors/donors for schools as the provincial governments are not going to receive the services of Mindset TV but the schools who are not able to pay the subscription for themselves.
- 46.19.6.3 **Primary research**
- 46.19.6.3.1 Mindset TV believes that it has provided sufficient research and existing user feedback to show a very clear demand and need for the planned service. Mindset TV also understands from its own research that the individuals that demand and need the service are not in a financial position to be able to financially support the service. Mindset TV also believes that private sector support directly to individuals is the only way to satisfy the demand and need for the service. Mindset TV with the support of Mindset Network, National Department of Basic Education and Sentech are able to obtain public sector funding to satisfy the support requirements in the form of paid subscriptions and advertising support and has included public sector support letters in their submission.
- 46.19.6.3.2 Market research was defined as an investigation done to determine whether there is willingness from the consumers to take up a product. However, Mindset TV's research on the demand and need for its proposed service did not yield any result on the willingness of its target audience to pay for the service independently from the current

carrier of such product.

46.19.6.3.3 Mindset TV has on its submission of 28 February 2015, provided the Authority with exactly the same information provided on its submission of 31 December 2014, before the Authority grant the request for extension for submission of additional information.

46.19.6.3.4 Mindset TV's submission on the request for Primary Research was thus not sufficient and it has failed to comply in this regard.

46.19.6.3.5 **Details of entity providing signal distribution**

46.19.6.3.5.1 Mindset TV was requested to provide the details of the entity that will be providing its signal distribution should it be issued a licence. The applicant indicated that it has approached Sentech through the existing relationship that exists between Mindset Network NPC and Sentech to be the IECNS licensee.

46.19.6.3.5.2 The applicant further stated that Sentech has indicated commitment to this regard, however, given that no licence has been awarded as yet, no contract exists to date to this regard. The applicant has attached a letter from Sentech Limited stating its intention to provide signal distribution to Mindset TV subject to Mindset TV being issued with the licence.

46.19.6.3.5.3 The Authority was satisfied with the Applicant's technical requirement as the Applicant has provided evidence that indicates that Sentech will be its signal distributor.

46.20 Additional information by Mindset TV received on 11 August 2015

46.20.1 On its letter dated 10 June 2015, Mindset TV was requested to provide following information by 11 August 2015:

46.20.1.1 How the percentage of Mindset TV's equity ownership held by persons from historically disadvantaged groups was calculated. In this regard, Mindset TV was requested not change/amend the shareholding as contained in its application.

46.20.1.2 Revised subscription fee model which will not rely heavily on sponsorships and will not contravene section 60(4) of the Electronic Communications Act, 2005. The Authority was unable to establish from the provided information how Mindset TV intends to derive its subscription revenue. There was no correlation between the subscription revenue projected by Mindset TV and its target subscribers except that it has indicated that the

government will be its main source of subscription fees.

- 46.20.1.3 Primary research which demonstrates willingness of consumers to subscribe to the intended service as a separate service. Mindset TV's research did not demonstrate the willingness of its target audience to pay for the service independently from the current carrier.

46.20.2 **How the percentage of equity ownership was calculated**

- 46.20.2.1 Mindset TV provided calculation of the percentage of equity held by persons from HDIs which comprises of the revised shareholding arranged to comply with the HDI requirements. The breakdown of the calculation is provided below:

Name of Shareholder	HDI	% HDI
Roith Rajpal	YES	23.4%
Tuki Senne	YES	0.9%
Rasigan Kander	YES	2.3%
Candice Willoughby	YES	0.9%
Vis Naidoo	YES	0.9%
Shamla Bissoon	YES	2.3%
Total		30.8%

- 46.20.2.2 Mindset TV indicated that it provided an amended shareholding structure which was revised to comply with the HDI requirement.
- 46.20.2.3 The issue is therefore no longer whether Mindset TV complies with the requirements set out in sections 5(9) (b) and 9(2) of the EC Act as well as the requirements contained in section 2, paragraph 6 of the ITA, but that by amending its application in a bid to comply with the HDI requirements, it is in contravention of regulation 6 of the Process and Procedure Regulations, 2010 for Individual licences.
- 46.20.2.4 The Authority considered the submission made by Mindset TV in relation to HDI ownership and noted that Mindset TV originally indicated that 81% of its shareholding is owned by HDIs. In its previous submission, Mindset TV provided a new shareholding of 30.7% in relation to its HDIs whilst the current submission reflects an updated shareholding of 30.8% for its HDIs.
- 46.20.2.5 The Authority's instruction to Mindset TV on its letter dated 10 June 2015 was to provide clarity on the way in which the percentage of equity ownership held by persons from HDIs was calculated but that it must not change/amend the shareholding as contained in its application.
- 46.20.2.6 The Authority is of the view that Mindset TV has not provided the information as

required by the Authority, but instead opted to amend its application in order to ensure compliance with section 5 and 9 of the EC Act.

46.20.3 Revised subscription fee model and Primary Research

The Authority considered Mindset TV's submission in relation to its Subscription Fee Model and Primary Research and notes that despite the Authority's request for Mindset TV to submit primary research, it has failed to do so. Mindset TV referred the Authority to "Annexure D", which we would have imagined is the "primary research" requested by the above-mentioned letter.

46.20.3.1 Mindset TV failed to provide primary research which demonstrates consumer willingness to subscribe to the intended service as a separate service and to pay for the service independently from the current carrier which is the Multichoice platform.

46.20.3.2 In its submission, Mindset Media indicates that it expects to receive its subscription fees as follows:

46.20.3.2.1 *"Mindset has revised its approach to the subscriptions based model and will be approaching the venture as a much needed extra-lessons and educational support service. Its income will be derived from learners' families at the very start and very end of the learning framework. In short, the service is aimed at adding value and augmenting education for learners at primary schools; final 3 years of high school and the first 2 years of University (Annexure D)."*

46.20.3.2.2 Mindset TV indicated in its submission that the service would match the successful models of Kumon and Mastermath in the schooling arena, as well as provide extra lessons and exam prep for both the IEB exam, NSC and University application NBT exam.

46.20.3.2.3 It further submits that established bricks and mortar institutions such as the Boston Group (at the low end of the LSM) and AdvTech (on the high end of the LSM spectrum) have committed to subscribing. The projections also include break-downs for the adoption of a variety of product offerings from Grade 1 - Higher education and the imagined cost to the subscriber. In many cases the total number of students enrolled, versus the pass rate talks to the need and potential success of such offering.

46.20.3.2.4 Mindset TV projects that at launch, the service will have 98,721 committed subscribers from the AdvTech and Boston groups of companies. Arrangements with

them would be to grow this number year on year. Mindset has priced the model to attract and accommodate lower LSMS and work on a volume based business model. These subscribers will be grown from focussed marketing campaigns in each market and various 'first lesson free' models.

46.20.3.2.5 The applicant attached a document indicating the amounts to be paid by its subscribers as follows:²⁵⁹

46.20.3.2.5.1 From the NBT Exam for University Entrance, the total number of subscribers is expected to be 317 791 and the subscription fee (once off) is 189.00, and the applicant expects to receive 6 006 249.90 in the first year of operations.

46.20.3.2.5.2 From the IEB Matric Candidates, the total number of expected subscribers is 29 000 and the subscription fee (once off) is 449.00 and the applicant expects to receive 1 447 100.00 in the first year of operations.

46.20.3.2.5.3 From the NCS Matric Candidates, the total number of expected subscribers is 668 660 and the subscription fee is 89.00 (once off) and the applicant expect to receive 5 951 074.00 in the first year.

46.20.3.2.5.4 From HEI Bridging Lessons (sciences), expected number of subscribers 273 282 and the subscription fee is 199.00 (once off) and the total expected subscription fee in the first year is 5 438 311.80.

46.20.3.2.5.5 From HEI Bridging Lessons (all lessons), expected number of subscribers is 95 373 and the subscription fee is 89.00 (once off) and the total expected subscription fee is 8 485 019.70 in the first year of operations.

46.20.3.2.5.6 From FET Colleges, expected number of subscribers is 234 528 and the subscription fee is 199.00, the total expected in the first year is 4 667 107.20.

46.20.3.2.5.7 From the Extra Lessons Foundation Phase (modelled on Kumon), the expected number of subscribers 3 000 000 with the subscription fee of 29.00 per month and the expected subscription fee at the end of the year is 104 400 000.00.

²⁵⁹ Annexure D, landscape of extra lessons and paid tuition market.

- 46.20.3.2.5.8 From the Extra Lessons Senior Phase, the expected number of subscribers is 130 000 with 29.00 subscription fee and the expected subscription fee on the first year is 4 524 000.00.
- 46.20.3.2.5.9 Private Tuition Centres (Boston post matric), the expected number of subscribers is 50 000 at 89.00 once off fee, the expected subscription fee at the end of the year is 445 000.00.
- 46.20.3.2.5.10 Private Tuition Centres (IVY schools), the expected number of subscribers is 25 000 at 89.00 once off subscription fee, the total expected subscription fee at the end of the year is 225 000.00.
- 46.20.3.2.5.11 Private Tuition Centres (AdvTech), the expected number of subscribers is 23 721 at 89.00 once off subscription fee, the total expected subscription fee at the end of the year is 211 116.90.
- 46.20.3.2.5.12 It is not clear whether the proposed Subscription Fees were discussed with and agreed upon by Mindset TV and its subscribers. It is important to note that the, arrangements with AdvTech and Boston have not been concluded.
- 46.20.3.2.5.13 In total the applicant estimates an income of one and forty two million nineteen thousand nine hundred and seventy nine hundred rand and fifty cents (R 142 019 979.50) in its first year of operations. It is the view of the Authority that this is a big overestimation.
- 46.20.3.2.5.14 The Authority also noted that Mindset TV revised its subscription model to derive its income from learners' families and made projections in this regard. However, the Authority was not satisfied with Mindset TV's subscription model in the absence of primary research which demonstrates the willingness of learners' families to subscribe to the service at the indicated subscription fee.
- 46.20.3.2.5.15 The Authority was therefore unable to assess the willingness of consumers to subscribe to the intended service.

46.21 Decision

- 46.21.1 The Authority has decided not to issue the applicant an individual commercial subscription broadcasting service licence for the following reasons: