

**SABC SUBMISSION ON THE DISCUSSION  
DOCUMENT ON THE REVIEW OF THE  
INDEPENDENT BROADCASTING  
AUTHORITY (ADVERTISING,  
INFOMERCIALS AND  
PROGRAMME SPONSORSHIP)  
REGULATIONS, 1999**

**07 JUNE 2021**

## **1.Introduction**

1.1 The SABC would like to thank the Independent Communications Authority of South Africa (ICASA) for the opportunity to make a written submission on the 1999 Advertising, Infomercials and Programme Sponsorship Regulations – Discussion Document (Discussion Document). In principle, the SABC supports the review of the Advertising Regulations because there is a need to align this regulatory framework with the changes in the audio and audio-visual content services sector.

1.2 Essentially the SABC's submission will cover areas that affect the SABC's business. The SABC would like to further request an opportunity to make oral submission to amplify its position, when the opportunity arises.

1.3 The SABC, as the only public broadcaster in the Republic of South Africa provides radio and television programming and services that inform, educate, and entertain the public. Currently the SABC delivers on this mandate through 7 TV Channels and 18 Radio Stations. The SABC remains committed to its public service mandate and intends to offer its services through multiple platforms of distribution in its quest to advance universal access of public broadcasting services.

## **2.Overview of the Discussion Document**

2.1 Firstly, it is the SABC's view that these regulations can either break or make a broadcaster; as such, it is crucial for Authority to be cognisant of all dynamics, including the funding model of the SABC. It is noted that the Authority has conducted an international benchmark study in which countries like UK, Canada and Australia were looked at; however, the funding models of these countries

are not considered in the Discussion Document. It is important for a holistic picture to be drawn and portrayed in these studies. The Authority's attention is further drawn to section 2 (z) of the Electronic Communications Act (ECA) that enjoins the Regulator to promote stability in the ICT sector; meaning regulations should enable licensees to be financially sustainable and deliver on their mandates. It is common course that the SABC is largely funded by commercial revenue to run its operations and that the delivery on its public service mandate is capital intensive. In terms of the Broadcasting Policy of 1998, which is currently under review, free-to-air services (FTAs) should have access to substantial advertising revenue. Thus, it is submitted that as regulations are being reviewed and developed, the funding model of the SABC and its mandate should be considered against the advertising regulatory requirements.

2.2 Secondly, it should be emphasised that advertising revenue is an essential element of any media house. To this end, the rapid growth of internet has prompted many advertisers to shift a portion of their advertising budgets to online content service providers. As a result, the advertising revenues for most broadcasters have declined due to the existing fragmentation of the advertising pie. Therefore, the playing fields should be levelled for all players to compete fairly without regulatory constraints.

2.3 Thirdly, the SABC cautions the Authority about overregulation of advertising which could yield unintended negative consequences. More restrictions will inhibit growth rather than enabling it. Therefore, it is submitted that a light-touch regulation is ideal for this ever-changing environment wherein the SABC competes with unregulated content providers such as OTTs or online services.

2.4 Fourthly, the SABC wishes to point out that the regulations under review should be consumer-centric, in accordance with section 2 (r) of the ECA provides that the Authority should promote the development of public, commercial and community broadcasting services which are responsive to the needs of the public. Furthermore, the Authority is advised to consult the Advertising Research Community in order to have a fuller picture of the advertising dynamics and how best to protect children as the buying patterns of adults are largely influenced by children. Thus, more engagements with the public and all stakeholders in the advertising ecosystem are necessary in order to pitch the regulations at a level that resonates with audience needs.

2.5 Fifthly, it is the SABC's view that a self-regulatory system, in the form of Advertising Regulatory Broadcasting (ARB) has worked well in terms of the adjudication of complaints related to advertising content and the legislation is clear about the powers of the ARB versus that of ICASA. It is further noted that the Authority and ICASA has entered into a Memorandum of Understanding (MOU) in order to address the overlapping responsibilities. Thus, the SABC supports the continuation and retention of self-regulatory system going into the future.

2.6 Lastly, the SABC supports the principle of editorial integrity and independence of broadcasters, as prescribed in the current regulations, it gives comfort to audiences with regards to the integrity and objectivity of broadcasting content. Furthermore, the SABC supports the intention to protect the constitutional rights of children and the credulity and naivety of the children in so far as advertising content is concerned. Thus, going into the future, the rights of children should be protected by all players, irrespective of their platform of distribution.

### 3. Submission on the Discussion Document

#### 3.1 Funding Model of the SABC

3.1.1 In terms of section 8(b) of the Broadcasting Act of 1999 (“the Broadcasting Act”), the SABC must be funded through advertisements, subscription, sponsorship, licence fees and any other means of finance.

3.1.2 As at 2020, the SABC’s funding sources were primarily made up of advertising & sponsorships (77%) and television licence fees (14%). Only 3% of revenue is currently derived from government grants. The current funding model has shown the following mix over the last eight (8) years:

SABC REVENUE BREAKDOWN ( %)	2020	2019	2018	2017	2016	2015	2014	2013
Advertising Revenue	71%	69%	71%	71%	70%	70%	68%	69%
Sponsorship Revenue	6%	6%	6%	5%	6%	6%	7%	6%
Trade Exchanges	1%	2%	1%	1%	2%	2%	2%	2%
Licence Fees	14%	15%	14%	14%	14%	15%	16%	15%
Government Grants	3%	3%	3%	4%	3%	3%	2%	4%
Revenue: Content & Commercial Exploitation	1%	0%	1%	1%	2%	1%	1%	1%
Revenue Websites	0%	0%	0%	0%	0%	0%	0%	0%
Other Revenue	4%	3%	3%	3%	2%	2%	2%	1%
<b>Revenue</b>								
Other Income	0%	1%	1%	1%	2%	1%	3%	2%
<b>Revenue &amp; Other Income</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

3.1.3 Since the SABC is heavily dependent on commercial revenue for its operations and the delivery of its public service mandate, it is advisable for the Authority to develop enabling regulations so as to ensure that the SABC remain financially sustainable, in accordance with the prescripts of section 2(t) of the ECA.

### 3.2 Advertising revenue restriction for subscription broadcasting services

3.2.1. On 04 December 2017, during the review of the Subscription Broadcasting Services Regulations, the SABC requested the Authority to recommend legislation amendment to Parliament with respect to the advertising revenue cap<sup>1</sup>. Section 60(4) of the ECA states that subscription broadcasting services subscription fee revenue should not exceed the advertising and sponsorship revenue or the combination thereof. The spirit and the letter of this provision recognise that the free-to-air broadcasting services also depend on the same advertising revenue for survival and financial sustainability; hence, this legislative restriction was introduced for subscription broadcasting services.

3.2.2. Thus, the SABC submits that the Authority should make recommendation in accordance with section 4(3) (a) of the ICASA Act of 2000, to the policymaker and Parliament for the amendment of section 60(4) of the ECA. The amendment will allow the Authority to prescribe regulations that place an effective revenue cap on the ad and sponsorship revenue on subscription broadcasters. The current provision no longer provides a solution to the problem it sought to originally solve. It is therefore recommended that section 60(4) of the ECA be amended as follows:

*Subscription broadcasting services may draw their revenues from subscriptions, advertising and sponsorships, however, with respect to any one subscription broadcasting service, in no event may advertising or sponsorship, or a combination thereof, be the largest source of annual revenue. more than 25% of the total television advertising revenue in the Republic or such lesser percentage as may be prescribed by the Authority.*

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<sup>1</sup> The SABC Submission on the ICASA Discussion Document: Inquiry into Subscription Television Broadcasting Services, 04 December 2017 , page 25

*The Authority shall also prescribe detailed requirements for compliance with such regulations and the monitoring thereof*

### **3.3 Audio and Audio-Visual Content Services (AAVCS) - Draft White Paper**

3.3.1. Clause 5.4.4.5 of the AAVCS Draft White Paper proposes that the Authority should conduct an inquiry before prescribing advertising regulations. In essence, the SABC strongly supports this recommendation which provides as follows:

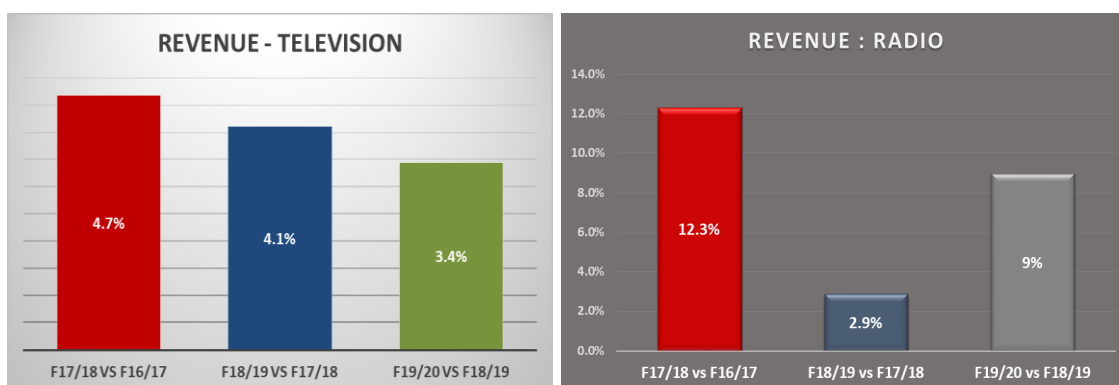
*“Section 60(4) of the ECA which focuses on traditional television be replaced with a requirement that the regulator hold an inquiry into whether the current share of advertising revenue by subscription services is appropriate (own emphasis) and what the impact of online advertising will be on the TV advertising market in the short and long term. If it is detrimental to the survival and viability of free-to-air services, the regulator must make regulations to protect the sustainability and viability of free-to-air services in South Africa taking into consideration the expansion of the regulatory licencing framework to include all AAVCS”*

3.3.2 Fundamentally, a review of the current share of advertising revenue for subscription services is necessary to ensure the financial viability of FTAs. It is anticipated that the DCDDT will set timeframes within which the Authority should complete this inquiry and prescribe regulations as the financial viability of FTAs hinges on an effective regulatory intervention.

3.3.3 It is worth noting that the SABC, in its submission to the AVVCS Draft White Paper, has proposed that the DCDDT and the Authority should consider

various options, such as, an advertising cap (as mentioned above), reduction of advertising minutes per hour for subscription services, restrictions on the rate card discounts and any other necessary regulatory intervention. Essentially, a watertight advertising revenue cap for subscription broadcasting services will ensure financial sustainability of FTAs.

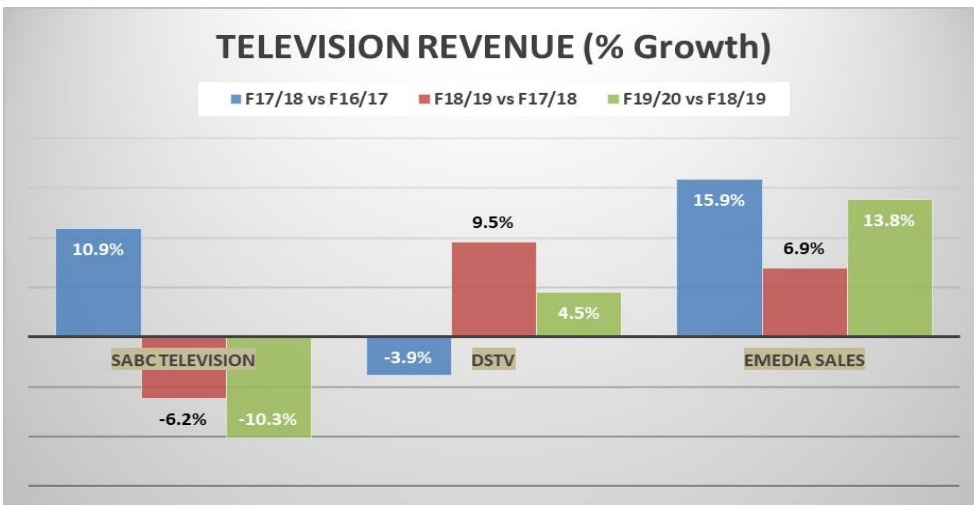
3.3.4 In the past four (4) years advertising revenue has declined across all TV and Radio; meaning greater regulatory intervention is required for FTAs survival. The figures below indicate the percentage change in revenue between the 2 specified fiscals (between Apr 2016 and Mar 2020), revenue across all television and radio, excl. self-promotions, discounts, etc.



Source: WizzardPlus Apr 2016 – Mar 2020

3.3.5 For television the fiscal % change in revenue has declined from 4.7% (F17/18 vs F16/17) to 4.1% (F18/19 vs F17/18) to 3.4% (F19/20 vs F18/19). and for Radio the fiscal % change in revenue has declined followed by an increase: from 12.3% (F17/18 vs F16/17) to 2.9% (F18/19 vs F17/18) to 9.0% (F19/20 vs F18/19).

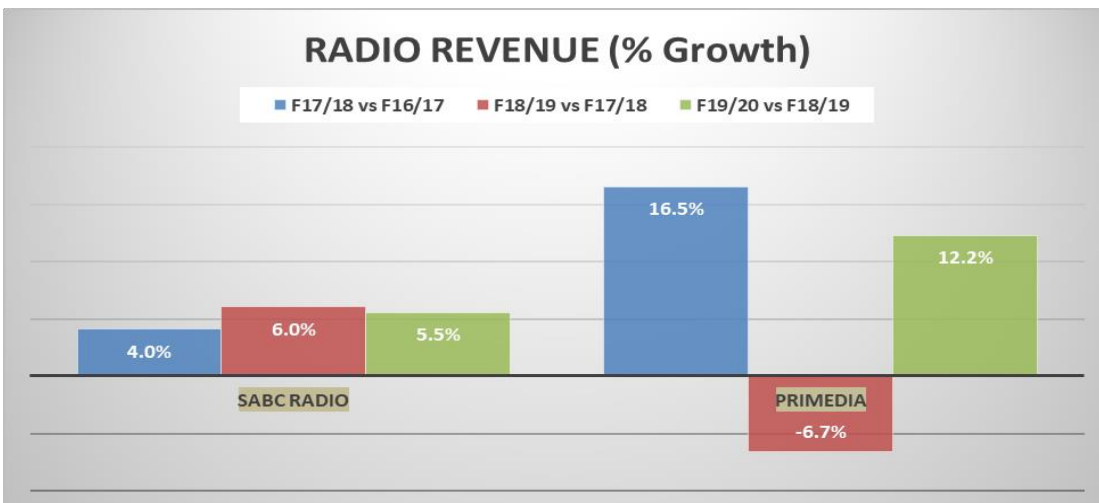




Source: WizzardPlus Apr 2016 – Mar 2020

3.3.6 The table above shows SABC TV revenue decline for the period between April 2016 to March 2020. The % change variance in revenue for SABC TV decreased from 10.9% to (-6.2%) to (-10.3%). DSTV increased from (-3.9%) to 9.5% to 4.5% and EMedia increased 15.9% to 6.9% to 13.8%.

3.3.7 The figures below indicate the percentage change in revenue between the 2 specified fiscals (between Apr 2016 and Mar 2020).



3.3.8 The % change variance in revenue for SABC Radio remained steady from 4.0% to 6% to 5.5%. Primedia increased from 16.5% to (-6.7) % to 12.2%. All these tables indicate that SABC TV and Radio advertising revenue are on a decline and it means that since the SABC is dependent on commercial revenue, it has become increasingly difficult to fully deliver on its public service mandate without a sustainable source of funding.

### 3.4 Concurrent jurisdiction (ARB and ICASA)

3.4.1 It is noted that the Authority is empowered through section 55 (2) of the ECA to adjudicate complaints concerning alleged breaches of the ARB Code by broadcasters who are not members of the ARB. The obligation to regulate the scheduling and duration of advertising by the regulator (ICASA) is not necessarily expressed in the ECA. However, the obligation to regulate the Code of Advertising Practice by the Advertising Regulatory Board (ARB) still remains. That said, the section 55 of the ECA provides as follows:

- a) S55(1): *“All broadcasting service licensees must adhere to the Code of Advertising Practice as from time to time determined and administered by the Advertising Standards Authority of South Africa or its successor organisation” (Own emphasis)*
  
- b) S55(2): *“The Complaints and Compliance Committee must adjudicate complaints concerning alleged breaches of the Code (Own emphasis) by broadcasting service licensees who are not members of the Advertising Standards Authority of South Africa, in accordance with section 17C of the ICASA Act, as well as complaints concerning the alleged breaches of the advertising regulations”.*

c) S55(3): *“Where a broadcasting licensee, irrespective of whether or not he or she is a member of the said Advertising Standards Authority of South Africa, is found to have breached the Code or the advertising regulations, such broadcasting licensee must be dealt with in accordance with applicable provisions of sections 17A to 17H of the ICASA Act”*

3.4.2 The above mentioned provisions confer the power to impose and administer the Advertising Code to ASA or any entity that replaces it but has the same functions. In this case, ASA has been replaced by ARB. Thus, it is clear that ARB should impose and administer the Advertising Code. However, ICASA is empowered to regulate the scheduling and duration of advertising, sponsorships and infomercials.

3.4.3 Thus, section 55(1) empowers ARB and not ICASA to determine a Code that would bind all broadcasters. Section 55(2) then empowers the Authority to adjudicate complaints by those broadcasters who are not members of ARB. However, as it's further outlined in section 55(3), the adjudication powers of both the ARB and ICASA are based on the Code and the advertising regulations. This provision seems to imply that ICASA can still adjudicate on cases already adjudicated by ARB. It is commendable that the Authority has entered into Memorandum of Understanding to deal with the overlapping responsibilities of the two bodies. It is submitted that the two bodies should avert double jeopardy at all costs.

### **3.5 Prime-time and performance period**

3.5.1 In a multichannel or digital broadcasting environment primetime and performance period no longer exists. Viewers are able to decide when their prime time is, thus

primetime and performance period regulation will not be feasible.

3.5.2 The concept of prime time regulations is slowly becoming redundant and problematic. For example, in the 24hour News Channel environment, daytime is primetime and primetime news is not watched by many as it competes with entertainment news. Furthermore, some programmes which are broadcast during prime time and repeated during daytime, perform so well during daytime, as audiences watch and track content at their convenient time. Thus, it is submitted that the Authority should consider deregulation with respect prime time restrictions.

#### **4. ICASA Questions**

##### **4.1 Are the current Regulations of Advertising, Infomercials and Programme Sponsorship effective? Please elaborate.**

- a) Yes, the SABC is of the view that the regulations under review have worked exceedingly well because there haven't been major contraventions on the part of the SABC. Save to say, these regulations have been in operation for more than 18 years. Since 1999 so much has changed in the broadcasting industry with regards to new legislation and new business models. All in all, these regulations have sufficiently served their purpose.
  
- b) Additionally, these regulations have been effective in terms of mechanisms which seek to protect consumers from excessive advertising and children from inappropriate advertising content, and to ensure retention of broadcasters' editorial independence and integrity, in so far as broadcasting content is concerned. In the case of the SABC, these regulatory requirements have been incorporated in the Corporation's Editorial Policies as a measure to drive compliance across SABC platforms/services<sup>2</sup>.

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<sup>2</sup> SABC Editorial Policies of 2020, at page 29

#### **4.2 Is there a need to revisit the definition of Advertising, Infomercials and Programme Sponsorship? If the response is yes, how should they be redefined?**

The Authority needs to clarify definitions across the board in respect of sponsorship, infomercials and advertising. It is submitted that the definitions should be future proofed with the view to cover new players, like Online/OTT services.

#### **4.3 What is your view on advertising during news and current affairs for radio and television?**

- a) In respect of sponsorship restrictions for TV news and current affairs, the SABC would not want to contaminate its news content with sponsorships during broadcast of hard news, as they are heavily editorial<sup>3</sup>. However, it is submitted that sponsorship restrictions on TV and Radio News together with Current Affairs should not apply or extend to soft news, such as sports, weather, JSE financial market news, nature and lifestyle news and any other informal knowledge building news as this type of content is largely meant to inform and educate audiences and often does not require right of reply.
- b) It is further noted that the current regulations seek to out-phase sponsorships on radio news and current affairs. It is submitted that the Authority should consider if the radio industry would still be financially sustainable without these sponsorships.

#### **4.4 What is the impact of the current Advertising Regulations on the financial viability of broadcasters?**

- a) The current regulations have ensured that editorial independence and integrity of broadcasters is retained, particularly on sponsored content. The required labelling of sponsored content and the requirement of a standard clause with respect of retention of the broadcasters editorial independence, have been very effective and could persist in the digital environment.

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<sup>3</sup> SABC Editorial Policies of 2020, clause 5.21, at page 29

- b) The current restrictions of clock hour advertising could be retained but it is advisable not to make more stringent restrictions in this area.

#### **4.5 Are current Advertising Regulations able to protect broadcasters on editorial independence?**

Yes, these regulations have sufficiently enabled broadcasters to foster editorial independence, as sponsorship contracts have a standard clause which ensures the retention of the broadcaster's editorial independence. Additionally, the SABC has incorporated prescripts of these regulations in its Editorial Policies in order to foster compliance by SABC Services.

#### **4.6 Does the current labelling of advertising make it easy for viewers/listeners to differentiate it from normal programming?**

- a) Generic advertising is not labeled and should not be labeled into the future. It is worth noting that audiences understand that programmes have commercial breaks which are used for advertising. Thus, the status quo should remain.

#### **4.7 What is your view on advertisements that supersede programming?**

- a) If this question is related to excessive advertising, the SABC regulates itself to some extent, in that, excessive advertising can be a tune out factors and as such, broadcasters will automatically gravitate to approaches that keep audiences tuned in. Thus, the SABC will not provide excessive advertising as it will translate into a tune out factor. Additionally, there are advertising durations prescribed by the Authority that must be adhered to.

#### **4.8 What programmes should not allow infomercials?**

- a) In a multichannel environment, audiences are able to choose the channels they prefer and they watch content at their preferred times. Therefore, there is no need to overregulate this area as audiences are in charge of the content they choose to watch.

- b) The current regulations prohibit infomercials during prime time and children's programming. Deregulation on prime-time is necessary in the digital environment as outlined above.

**4.9 Should the Authority regulate the duration of infomercials? Please elaborate**

No, since audiences will be able to skip or fast-forward infomercials in a multichannel environment, it is not necessary to prescribe duration for infomercials. In actual fact, the Authority should allow niche channels for infomercials or teleshopping so as to allow broadcasters to optimize commercial revenue.

**4.10 Should the Authority regulate the frequency of infomercials? Please elaborate.**

No. Infomercials assist free-to-air services to generate revenue for their operations. Furthermore, a multichannel environment will result in numerous channels for all broadcasters.

**4.11 What indicators of infomercials can be used so that they are easily identifiable?**

Infomercials can have opening billboards for purposes of identification.

**4.12 Should the Regulations continue to prohibit the transmission of infomercials during prime time? Kindly provide a reason for your answer.**

No, prime time regulation should be out-phased because it is only appropriate for the analogue environment. This will enable the SABC to generate more revenue for its operations and public service mandate.

#### **4.13 How should the Authority deal with push advertisement (squeezebacks)?**

- a) The current regulation of squeeze-backs is sufficient. The squeeze backs should not supersede broadcaster's content. The current industry measurements of 720 X 576 pixels are sufficient because they are secondary.
- b) For example, each squeezeback lasts for 10 seconds while the main programme lasts for 24minutes. The SABC allocates only 2 squeezebacks per episode. Thus, in terms of time allocation, the main programme has predominance over the squeezeback.
- c) The Regulations do not expressly define the term "predominance" and do not specify activities which are regarded as actions that overwhelm the main programme.
- d) The SABC wishes that the Authority can fully explain terms such as "predominance", "subordinate" for ease of implementation of the Regulations. This can also be done in a form of Guidelines rather than Regulations.

#### **4.14 How should the Authority regulate product placement and promotional material inside a programme in a way that it does not supersede programming or tamper with editorial control?**

It suffices to prescribe that product placement should not supersede the main programming and tamper with editorial control of a broadcaster.

#### **4.15 What mechanisms should be put in place to ensure that programme sponsorship does not influence programmes?**

- a) Programme sponsorship doesn't include content integration, only opening billboards and closing billboards and 30 second recorded generic.
- b) It is submitted programme that naming rights as association should be permitted.



**4.16 What other measures can be put in place to ensure compliance with programme sponsorship requirements?**

None, instead more flexibility is required for programme sponsorship association.

**4.17 Should the Authority request that product placement be signaled? How should it be signaled?**

No, however broadcasters can have end credits.

**4.18 Should product placement and sponsorship be allowed during children's programme? If so, what mechanisms should be put in place to ensure that there is a clear distinction between product placement and the programme?**

Relevant products (age appropriate) should be allowed and broadcasters should ensure that appropriate product placement and sponsorship are implemented.

**4.19 Product placement is a component of branding, what other elements of branding should the Authority be concerned with?**

None

**4.20 In your view how should the Authority ensure that public interest is protected when regulating advertising, infomercials, product placement and programme sponsorship?**

The SABC has Editorial Policies, which are informed by ICASA's prescripts, to regulate advertisement, infomercials, product placement and programme sponsorship.

**4.21 What lessons can be learned from other countries in terms of advertising, infomercials, programme sponsorship and product placement?**

In terms of the Authority's international benchmark study, countries like UK, Canada have advertising restrictions with respect duration but unfortunately their funding models are not interrogated. Thus, it is submitted that advertising regulatory frameworks should be looked at in isolation as funding models of broadcasters are the cornerstone of their financial sustainability.

**4.22 How should the Authority ensure the balancing act between sustainability of broadcasters relating to revenue generation through sponsorships, infomercials and advertising, with the need to protect the consumers?**

Light-touch regulation is recommended. Broadcasters have to compete with online audio and audio-visual content service providers that are unregulated. As such, less regulation is important for the survival of free-to-air broadcasters.

**4.23 What is your view in terms of promotional material inside programmes and advertising during the breaks on whether these amount to excessive advertising?**

It is impractical to calculate if the promotional material inside a programme excessive. There should be an objective yardstick with which the Authority measure excessiveness. It is submitted that the general rule that promotional material inside a programme should not be primary.

**4.24 What are the determinants of advertising revenue?**

Essentially, advertisers advertise to get return on investment. The more popular the programme the more it will attract advertisers

**4.25 What is the impact of online media on radio and television advertising revenue?**

It is gaining more traction on Radio than television. But multinationals are shifting budgets to digital. As such radio services should be shielded and be allowed more flexibility.

**4.26 To what extent does the ECA provide the Authority with the requisite legislative mandate to regulate the broadcasting Advertising, Infomercials and Programme Sponsorship during the digital era?**

- a) The provision in respect of section 55 (2) ECA, empowers the Authority to adjudicate complaints concerning alleged breaches of the ARB Code by broadcasters who are not members of the ARB. Section 55(3) of the ECA provides that where a broadcasting licensee, irrespective of whether or not he or she is a member of the ARB, is found to have breached the Code or the advertising regulations, such broadcasting licensee must be dealt with in accordance with applicable provisions of sections 17A to 17H of the ICASA Act. It can be argued that section 55(3) implies that there are existing advertising regulations. However, the ECA is silent about ICASA's powers to regulate the scheduling and duration of advertising, infomercials and programme sponsorship but it is acknowledged that the Authority has always been concerned about the scheduling and duration of adverts.
- b) It is worth noting that the SABC advocates light-touch regulation in the digital era, as regulatory parity is required for all audio and audio-visual content services to compete fairly;
- c) Furthermore, it is proposed that these regulations should be aligned to the dictates of the AAVCS White Paper at the end.

**4.27 To what extent should the Authority regulate Advertising, Infomercials and Programme Sponsorship in the digital environment to ensure that the regulations protect consumers?**

The Authority should deregulate where necessary and prescribe more flexible regulations, which enable broadcasters to secure commercial revenue for their operations and mandates.

**4.28 Are there any other issues that the Authority should consider in the Regulation of advertising, infomercials and programme sponsorship**

On live reads, on-air presenters create a personal connection with their listeners with this type of advertising, which helps them reach out to them and respond to their messages. Studies show that live endorsements are more successful than recorded ones in terms of recall and response rates<sup>4</sup>. Whilst it is noted that this type of advertising is currently unregulated; it is submitted that live reads should be allowed into the future, as it is more effective than recorded advertising.

**5. Conclusion**

The SABC would like to thank the Authority for the opportunity to respond to the draft regulations and looks forward to the opportunity to engage further on this important matter.

We wish the Authority well for its deliberations.

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<sup>4</sup> [https://en.wikipedia.org/wiki/Radio\\_advertisement#cite\\_note-berman-22](https://en.wikipedia.org/wiki/Radio_advertisement#cite_note-berman-22)