



SABC SUPPLEMENTARY SUBMISSION ON THE ICASA DRAFT REGULATIONS REGARDING ADVERTISING, INFORMECIALS AND PROGRAMME SPONSORSHIP 2022

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South African Broadcasting Corporation SOC Limited: Registration Number: 2003/023915/30

Non-Executive Directors: Mr B E Makhathini (Chairperson); Ms M Mohlala-Mulaudzi (Deputy Chairperson); Prof S Cooper; Dr R Horne, Adv M B B Lekalakala; Mr D M Maimela; Mr M G Markovitz; Mr D K Mohuba; Ms J Patel; Mr J H Phalane; Ms M B Papayya; Dr M Socikwa

Executive Directors: Mr M T Mxakwe (Group Chief Executive Officer); Mr I C Plaatjes (Chief Operations Officer); Ms Y van Biljon (Chief Financial Officer); **Company Secretary:** Ms L V Bayi

1. Introduction

On 11 July 2022, the Independent Communications Authority of South Africa (the "Authority") held public hearings with respect to the Draft Regulations regarding Advertising, Infomercials and Programme Sponsorship of 2022 ("the Draft Regulations"). The South African Broadcasting Corporation ("SABC") would like to thank the Authority for the opportunity to make additional submission regarding the Draft Regulations.

In this submission, the SABC will focus on questions raised by the Authority during the above-mentioned public hearings on the Draft Regulations.

2. SABC Submission on the Draft Regulations

2.1 Provide more detail regarding prime time in terms of why it should be deregulated.

2.1.1 It is understood that primetime regulation was introduced so as to cater for the majority of audiences that are available to watch content during that period. However, this norm is changing as audiences are able to dictate what their prime time is.

2.1.2 The SABC calls for the deregulation of primetime restrictions, to bring about regulatory parity which enables broadcasters to compete fairly with online content service providers. As is, online content service providers have an added advantage in the following areas:

- Invest large amounts of money in local and international content production, to attract subscribers;
- Access to global subscriber bases;
- Piggyback on the existing infrastructure; and
- Have no licence requirements and obligations/quotas.

2.1.3 At this point, audiences have a myriad of content available at their fingertips, i.e. analogue and digital television, satellite TV and online content. However, the playing fields of all these content providers are not levelled, despite the fact that broadcasters compete with online content service providers for the same audiences.

2.1.4 Whilst it is understood that the Authority seek public interest content during primetime; it should equally be taken into account that the standard has already been set by audience needs. Audiences expect appealing content during primetime from broadcasters. Thus, the Authority should take comfort that broadcasters are already regulated by preferences of audiences, and as such self-regulation in this area is absolutely guaranteed. Hence, it is submitted that prime time restrictions should be repealed so as to allow broadcasters to source revenue for content production.

2.1.5 In a multichannel digital broadcasting environment, primetime and performance period relatively no longer exists. Thus, primetime regulation will not be feasible going into the future. The audience trends are beginning to show that primetime is not the only time when content is consumed the most. In the table below, some SABC 3 programmes, which were first broadcast in primetime and were repeated during performance period, show more audience growth during daytime, as audiences watch and track content at their convenient time.

SABC3 – PROGRAMME COMPARE (PRIME TIME vs NON-PRIME TIME)

National S3 ALL ADULTS (15yrs+)						
PROGRAMME	DAY OF WEEK	START	GENRE	AR (%)	SHARE (%)	AR000s
A NEW COUNTRY	Wed/Thu	20:30	Documentary	0.2	0.7	78 293
A NEW COUNTRY-R	Thursday	14:30	Documentary	0.6	3.3	216 660
RAMY	Friday	21:00	Drama	0.1	0.5	49 461
RAMY-R	Sunday	21:45	Drama	0.4	2.2	167 490
SHARPVILLE ECHOES	Wednesday	20:30	Documentary	0.3	1.0	107 425
SHARPVILLE ECHOES-R	Thursday	14:30	Documentary	0.5	3.3	208 046
SPECIAL ASSIGNMENT	Tuesday	20:30	Actuality	0.3	0.9	100 643
SPECIAL ASSIGNMENT -R	Wednesday	14:30	Actuality	0.4	2.4	156 376
SPEECHLESS (SITCOM)	Monday	18:30:29	Sitcom	0.2	0.6	66 089
SPEECHLESS (SITCOM) -R	Sunday	09:02:18	Sitcom	0.2	1.3	72 755
THE ESTATE REWIND	Mon-Fri	19:00	Drama	0.2	0.9	87 190
THE ESTATE REWIND-R	Mon-Fri	11:00	Drama	0.4	2.9	142 895
UNFILTERED	Monday	20:30	Actuality	0.2	0.6	70 416
UNFILTERED-R	Tuesday	14:30	Actuality	0.3	1.7	110 488
VUTHA	Mon-Fri	19:00:16	Drama	0.2	0.7	80 722
VUTHA-R	Mon-Fri	11:00:09	Drama	0.3	2.0	121 792
WILDLIFE DEFENDERS	Wednesday	20:31:28	Documentary	0.3	0.9	102 141
WILDLIFE DEFENDERS-R	Thursday	14:30:23	Documentary	0.3	2.1	122 066

*AR 000s represents the real audience in thousands attracted to the programme.

*Share looks at the percentage of people watching compared to the available audience watching TV at that point in time.

2.1.6 It is arguable that the concept of prime time regulations is slowly becoming redundant and a misnomer. Of great significance, the innovation that came with appointment watching through catchups, recordings, repeats and various ways of selecting content to watch at any time on various platforms, enables audience to choose their primetime. For example, in the 24hour News Channel environment, daytime could be primetime and primetime news may not be watched by many as it competes with entertainment content.

2.1.7 Additionally, SABC News research shows appetite for news broadcasts during the entire day and through the entire week. A timeslot performance changes with the nature of programme broadcasted – example SABC has been soap opera fans follow their content (during live fifa soccer broadcasts-inspired schedule changes) SABC as a network grew, whilst audiences had been jockeying between the two broadcasts, most notably in one television-set households. (Please see the table below).

SABC News Channel (PRIME TIME vs NON-PRIME TIME)

NATIONAL										
			ALL ADULTS (15yrs+)				ALL INDIVIDUALS (4yrs+)			
			PERFORMANCE PERIOD		PRIME TIME		PERFORMANCE PERIOD		PRIME TIME	
GENRE	CHANNEL	DATE PERIOD	SHARE (%)	AR000s	SHARE (%)	AR000s	SHARE (%)	AR000s	SHARE (%)	AR000s
News	SABC News Channel	JAN-JUN 2017	0.3	20,418	0.2	17,768	0.3	22,012	0.2	19,419
	SABC News Channel	JAN-JUN 2022	0.7	44,132	0.3	28,860	0.6	45,080	0.3	29,694

Source: BRC TAMS

2.1.8 In the main, the SABC discourages micro-management of schedules under the notion of prime time regulation, as online content service providers do not have these type of regulatory restrictions. The Authority can be assured that the SABC commits to offer appealing content during prime time, in accordance with the needs of audiences.

2.1.9 It cannot be overemphasized that it is in the interest of the SABC and the public to broadcast content that is in need by the audiences for its relevance and sustainability. Thus, it is submitted that the Authority should consider deregulation with respect to prime time restrictions, with the view to enable broadcasters to seamlessly respond to audience needs whilst sourcing commercial revenue for financial sustenance.

2.2 Provide more detail regarding your view on product placement and how the regulations should deal with it

2.2.1 Ad Regulation 6.8 provides that “product placement must be signaled clearly, by means

of a logo, at the beginning of the programme in which the placement appears, and at the end of the programme.” This proposed new provision has the potential to be disruptive and could easily become a tune out factor for audiences. It is advisable to not prescribe regulations which will result in unintended consequences.

2.2.2 It is SABC’s considered view that the Authority should only intervene where necessary and such intervention should be commensurate with the potential risk/harm posed, while the cost of regulation should be identified and kept to a minimum.

2.2.3 As it stands, broadcasters do “label” all programme sponsors at the beginning and end of programmes as part of a commercial arrangement. i.e. the sponsor would be interested in being associated with the programme and therefore we would do this be way of “This programme is brought to you by”, or “brought to you in association with”. This is standard practice which has been prescribed by the Authority and has proven to be effective.

2.2.4 When products are used within a production as part of a commercial arrangement, they are acknowledged in the end credits of the programme, as a standard process. The beginning is not feasible from a storyline and creative perspective, as audiences will tune out if they are subjected to too much text or brand information within the opening title sequence of the programme concerned. This is the same reason why only the main cast is included in the opening. Thus, it is imperative for the Authority to assist broadcasters to still source product placements or sponsorships, with minimal regulation or no regulation.

2.2.5 It is worth noting that the inclusion of advertiser information in a programme is empirically based on a commercial relationship. If the advertiser has not spent any money in the creation of the programme they are not credited by the production company. A case in point would be the cars used in multiple programmes but no commercial arrangement has been entered into with the car manufacture; however, the car is necessary for the production. The same is true with a number of other products such as cell phones, computers, and appliances.

2.2.6 Furthermore, the SABC places in content advertising or digital brand integration into all commissioned programmes. It would be impossible to have labels for all in content advertising or digital brand integration these programmes because there could be more than one placement per episode, in a form of billboards, instore table top posters, indoor posters and digital product placement. All this is done post production and the episodes or programmes are only available to SABC Channels forty-eight (48) hours prior to broadcast, so it would be impractical to implement the proposed labeling, given the dynamics and work that must factored in, prior broadcast.

2.2.7 Therefore, it is not advisable to include advertiser information in the beginning of the programme, based on the above-mentioned reasons. Thus, it is submitted that the status quo should remain and the labelling of product placement, should be placed at the end of the programme (end credits) rather than at the beginning of the programme, so as not to disrupt the programme material

2.3 Provide suggestions on what constitutes a minor vs major contravention in terms of the Draft Regulations, and what would be the appropriate fines respectively.

2.3.1 The SABC acknowledges that the Authority is well empowered to prescribe fines for contraventions these regulations, as per the section 17E (1) (2) (b) of the ICASA Act of 2000, as amended. However, it is equally important for the Authority to consider and apply the principle of proportionate penalties. Meaning, the fines should fit the contraventions. It is submitted that when determining penalties, amongst other things, the Authority should be guided by these factors:

- The nature and gravity of non-compliance;
- The consequences of non-compliance;
- Measures to deter future contraventions; and
- Circumstances under which the non-compliance occur.

2.3.2 For non-serious contraventions the Authority should prescribe the following:

- Order a licensee to refrain from further contraventions; and
- Order a licensee to take remedial steps to correct the identified contravention.

2.3.3 For serious contraventions the Authority may order that a licensee pay a fine (i.e. R50K- R100K).

2.3.4 For very serious contraventions the Authority may order a licensee to pay a maximum fine. A steep fine should only be applicable in very extreme circumstances of continuous and substantial contraventions. For example, in cases wherein a broadcaster repeatedly refuses to comply with the CCC order. In this case a licensee could be fined up to a maximum fine of R500 000.00.

2.3.5 It is submitted that the primary goal of a fine should be to deter contraventions and these fines should not be overly punitive. Meaning, the severity of the fine should fit the contravention. Furthermore, It is submitted that the provisions related to penalties should be predictable in order to give stability and certainty to broadcasters.

2.4 Provide a study if done on the revenue that goes to the OTTs as opposed to free to air and public service broadcasters

2.4.1 The SABC has no study which compares the OTT advertising revenue figures from that of free-to-air broadcasting services. Be that as it may, the PriceWaterCoopers Insights from Media and Entertainment Outlook: 2019-2023 An Africa Perspective study ¹, can be considered, as it indicates that growth outside internet access is hard to find and that OTTs continue grow even though their advertising revenue is hard to compute.

¹ PWC Insights from Media and Entertainment Outlook : 2019-2023 An Africa Perspective, 10th Annual Edition, October 2019, at page 19

2.4.2 Be that as it may, the table below indicate that Radio, and TV advertising revenue will continue to be in a decline, as audiences find other means of entertainment, i.e. Esport and Virtual Reality and consequently the advertising revenue growth is predicted for Esport and Virtual reality services. Thus, these forecasts dictate that broadcasting services should be protected more through enabling regulatory frameworks.

Table 1

REVENUE: ENTERTAINMENT & MEDIA

SA ADVERTISING: E&M SPENDING 2014-2023

CAGR

Total advertising market (R millions)											
South Africa		Historical data					Forecast data				
Category	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	CAGR % 2018-23
Business-to-business	4 453	4 633	4 779	4 928	5 059	5 192	5 314	5 423	5 520	5 607	
YOY growth (%)		4.0%	3.2%	3.1%	2.7%	2.6%	2.4%	2.0%	1.8%	1.6%	2.1%
Cinema	406	435	442	405	428	450	473	497	520	543	
YOY growth (%)		7.0%	1.7%	-8.4%	5.7%	5.2%	5.1%	5.0%	4.8%	4.4%	4.9%
Internet	2 041	2 567	3 132	3 924	4 873	5 669	6 485	7 304	8 135	8 746	
YOY growth (%)		25.7%	22.0%	25.3%	24.2%	16.3%	14.4%	12.6%	11.4%	7.5%	12.4%
Magazines	1 946	2 015	1 950	1 935	1 936	1 959	1 997	2 053	2 123	2 213	
YOY growth (%)		3.6%	-3.2%	-0.8%	0.1%	1.2%	2.0%	2.8%	3.4%	4.2%	2.7%
Music and podcasts	269	302	334	375	437	502	576	658	745	842	
YOY growth (%)		12.5%	10.5%	12.2%	16.7%	14.7%	14.8%	14.2%	13.2%	13.0%	14.0%
Newspapers	4 518	4 498	4 434	4 291	4 179	4 094	4 031	3 974	3 922	3 873	
YOY growth (%)		-0.4%	-1.4%	-3.2%	-2.6%	-2.0%	-1.5%	-1.4%	-1.3%	-1.2%	-1.5%
Out-of-home	2 514	2 561	2 657	2 687	2 735	2 787	2 844	2 902	2 961	3 019	
YOY growth (%)		1.9%	3.7%	1.1%	1.8%	1.9%	2.0%	2.0%	2.0%	2.0%	2.0%
Radio	3 972	4 177	4 172	4 248	4 368	4 482	4 587	4 681	4 768	4 844	
YOY growth (%)		5.2%	-0.1%	1.8%	2.8%	2.6%	2.3%	2.1%	1.8%	1.6%	2.1%
TV and video	6 438	7 085	7 387	7 472	7 232	7 131	7 286	7 475	7 680	7 903	
YOY growth (%)		10.1%	4.3%	1.2%	-3.2%	-1.4%	2.2%	2.6%	2.8%	2.9%	1.8%
Video games	38	43	56	63	70	77	83	89	93	95	
YOY growth (%)		13.9%	28.6%	12.4%	11.5%	9.6%	8.1%	7.0%	4.7%	2.6%	6.4%
E-sports	3.8	6.7	13	25	38	53	67	83	98	114	
YOY growth (%)		76.3%	91.0%	98.4%	50.4%	38.0%	26.2%	24.2%	18.6%	16.4%	24.5%
Total advertising	25 423	26 976	27 870	28 699	29 509	30 346	31 485	32 667	33 877	34 890	
YOY growth (%)		6.1%	3.3%	3.0%	2.8%	2.8%	3.8%	3.8%	3.7%	3.0%	3.4%

Sources: Entertainment & Media Outlook: 2019-2023, An African Perspective, PwC, Ovum, www.pwc.co.za/outlook

Source : PWC Entertainment & Media 2019-2023

2.4.3 Thus, it is submitted that the playing fields should be levelled so as to enable fair competition. A combination of deregulation, light-touch regulation and self-regulation should be employed in regulatory frameworks, so as to safeguard the future of broadcasting services.

2.5 Send a consolidated list of questions that were asked by Nashin at the public hearings

2.5.1 MultiChoice speaks of advertising revenue declines. SABC requests a total revenue review and then a view of advertising revenue over the last few years. Advertising revenue is as much a barrier of entry (as content acquired for years by subscription broadcasters) and discriminator to success in broadcasting. New channels cannot simply enter into the market without attracting audiences & revenue. Thus, the Authority should review this area with the view to assess the effectiveness of section 60(4) of the ECA.

2.5.2 MultiChoice mentioned the issue is more around foreign OTT players entering and taking revenue. Prior to OTT entering into the market, similar challenges were experienced between subscription broadcasters and free-to-air services. Subscription broadcaster had the unfair advantage of subscription revenue added in which allowed for deep pockets, negotiation strength to acquire content, and create many channels and platforms. MultiChoice also has, as part of its model, OTT platforms which it is now asking ICASA to protect. Thus, all these contributing factors need to be taken into account when looking into advertising revenue decline.

2.5.3 MultiChoice proposal says the current affairs definition is too narrow. SABC's position is for news and current affairs programming to be allowed to generate all forms of revenue. As it stands, the SABC Editorial Policies and BCCSA Code protect and prevent abuse of such platforms. This is an example of overregulation. The question is - is there any evidence that, by restricting/controlling revenue to news and current affairs, one achieves the objective of inhibiting nefarious actions and vice versa?

3. Conclusion

The SABC would like to thank the Authority for the opportunity to make this additional submission and looks forward to the final regulations that will enable the Corporation to deliver on its mandate and to be financially viable.