



THE SABC'S SUBMISSION ON THE REVIEW OF PUBLIC BROADCASTING POLICY

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

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THE REVIEW OF PUBLIC BROADCASTING POLICY

EXECUTIVE SUMMARY

1. The SABC submits that public broadcasting has an even more important role to play in a world dominated by privately-owned, often global, entities that are primarily driven by commercial interests.
2. The SABC not only represents the soul of the nation and its creative potential but is one of the bedrocks of South African culture, showcased by our television productions, our films, radio shows and our music in all our languages.
3. Most people accept the view that not all media, news and content should be privately-owned and that having a sustainable, publicly-owned national broadcaster is a necessary condition for the success of our democracy. In fact the SABC has been described by our courts as one of the key institutional pillars of our democracy. Therefore, the main question to answer is how do we ensure that the SABC and its unique public service content is sustainable in a highly competitive world?
4. This review comes at a time when the SABC is undergoing a process of rehabilitation and renewal. The SABC is mindful that it must carefully manage and restore the Corporation with the view to ensuring fulfillment of its unique public mandate.
5. To this end, good progress has been made in terms of stabilising the SABC, strengthening governance and regaining integrity.
6. The SABC has developed a new Strategic Roadmap which is aimed at ensuring that the SABC is able to operate competitively in the evolving media and digital landscape of the Fourth Industrial Revolution while fulfilling its

public mandate to provide informative, educational and entertaining content to all South Africans.

7. In order to properly transition the SABC into the Fourth Industrial Revolution, the Corporation has commenced development of a comprehensive Over the Top (OTT) strategy which will ensure that, over time, all SABC radio and television services are available and affordable everywhere on all devices and platforms.
8. The SABC sees itself as a multiplatform content provider which delivers public service content that includes content gathering, creation, commissioning, curation, packaging and distribution through public service media. It is critical to re-imagine public broadcasting in a multichannel digital age.
9. However the SABC has noted that in order for the Corporation to deliver on its public service mandate it requires financial sustainability.
10. The mixed funding model of the SABC should be retained as set out in section 8(b) of the Broadcasting Act No.4 of 1999 ("Broadcasting Act").
11. The SABC is of the view that it can be financially viable and sustainable on the basis of a strengthened, mixed funding model, if fundamental, internal organisational changes are made and, at the same time, a conducive policy, regulatory and legislative environment is created.
12. While the SABC addresses its cost base and transforms the public broadcaster into one that is fit for purpose, the SABC has focused its submission on issues that require urgent policy, regulatory and legislative attention.
13. The SABC's unfunded public mandate must be addressed through:
 - 13.1 The review of legislation and regulations that have led to an exponential increase in the cost of public mandate programming, have reduced potential

revenue and created unfair competitive conditions, namely the Broadcasting Act, the Electronic Communications Act (ECA), TV Licence Fee regulations, Sports Rights Regulations, Must Carry Regulations and DTT regulations; and

13.2 Funding of the shortfall for public mandate programming, either directly or indirectly by government through increased programme sponsorship or increased content funding by institutions set up for this purpose. Notwithstanding the successful review and amendment of the four sets of regulations above, covering the costlier, loss-making elements of the SABC's public mandate may not be achievable without additional government funding. Currently government grants amount to 2% of the SABC's total revenue base.

14. The SABC's key submissions on legislation, licensing, policy and regulations can be summarised as follows:

Legislation

Broadcasting Act, 1999

15. The SABC submits that the Broadcasting Act of 1999 should be renamed the SABC Act and it should only deal with the establishment and governance of the public broadcaster. Thus, amendments should ensure that it is SABC-specific and does not contain provisions relevant to broadcasting more generally as these ought properly to be in the Electronic Communications Act No.36 of 2005 ("ECA").

16. The legislative mandate of the SABC as provided for in the Broadcasting Act should be categorized into high priority objectives and general objectives.

17. The SABC has proposed that the legislative provisions on the public service division and commercial service division should be removed from the statute when the Act is amended as a consequence of this policy process. The SABC

can still account for its public service mandate from both a programming and finance point of view without radio and television services having to be divided into the two statutory divisions based on inconsistent criteria. Retaining these two divisions will also further complicate the SABC financial and administrative reporting in the multichannel, digital platform environment where there needs to be more flexibility across multiple channels.

18. The SABC submits that a new, broadened definition of Television Set in relation to the levying of Television Licence Fees should be included in the Broadcasting Act. The SABC further submits that in order to enforce compliance on the payment of licence fees additional entities must be required to report on the sale or lease or use of television sets. In particular, the entities should include insurance companies and Pay TV operators. Reporting obligations to the SABC currently only apply to Retailers, Lessors and Businesses. The SABC also recommends stricter enforcement and penalties for non-payment of licence fees in order to encourage a culture of payment. TV Licence Fee Regulations should be reviewed to align any newly amended provisions of the Broadcasting Act.

Electronic Communications Act (ECA), 2005

19. The SABC has proposed amendments to the ECA that will allow ICASA to prescribe regulations placing an effective revenue cap on the advertising and sponsorship revenue on subscription broadcasters. The current provision in section 60(4) of the Act no longer provides a solution to the problem the legislature wanted it to solve back in 2005.

Licensing

20. The SABC recommends that the current, analogue-based licensing model should be amended. The SABC can deliver its services much more effectively if the licensing model is aligned to the digital, multichannel environment. It is further noted that ICASA will soon embark on the inquiry into the DTT

broadcasting licensing framework and as such the SABC will engage ICASA during the inquiry process.

21. ICASA should be required through policy to conduct market research prior to the licensing of new players in order to avoid instances where players are unable to launch their services due to market structure and revenue limitations.

Content

22. The SABC submits that there should be a focus on how the existing content funding bodies and mechanisms can be consolidated, strengthened and better resourced. By providing funding for independent television producers, content funding bodies will not only share the obligation with the SABC and other broadcasters but will ensure that producers are able to retain a greater share of the rights, post-initial broadcast. It is therefore recommended that Government should consolidate and strengthen funding mechanisms for audiovisual content as well implementing the development of content hubs in all the provinces.

Regulations

23. There is a need to review and amend four key regulations to enable the SABC to compete fairly in this sector, deal with exponential increases in publicly mandated sport rights and enable improved revenue generation. These regulations are the ICASA Must Carry Regulations, the ICASA Sports Services Broadcasting Regulations, the DTT regulations and the Regulations regarding Television Licence Fees.

23.1 DTT Regulations

- 23.1.1 The SABC has identified the DTT regulations as key to the SABC's sustainability and long term viability. The Corporation has submitted to ICASA that the DTT regulations should be amended to deal with a range of issues,

including the DTT/DTH split, ‘the lose it or use it’ principle relating to the SABC’s spectrum and the onerous and potentially anti-competitive ICASA licensing process for new SABC digital broadcasting channels (a process which the SABC’s large competitors do not have to go through).

23.2 Must Carry Regulations

23.2.1 On 21 November 2017 the SABC made a formal request for ICASA to review and amend the following regulations: The Extent to Which Subscription Broadcasting Services Must Carry the Television Programmes Provided by The Public Broadcast Service Licensee (“The Must Carry Regulations”) set out in Gazette No. 31500 on 10 October 2008. For reasons detailed in this submission, the SABC has submitted to ICASA that the Must Carry regulations must be amended to comply with the enabling legislation to allow for commercial negotiations between the parties.

23.2.2 With respect to the SABC’s funding model, the SABC intends that carriage fees from channels such as SABC News, Encore and fees that the SABC should be receiving from other broadcasters for SABC1, 2 and 3, must become part of a more significant revenue stream for the public broadcaster, in addition to advertising, sponsorship and television licence fees.

23.3 Sports Broadcasting Regulations

23.3.1 The SABC intends to engage ICASA during the review of the ICASA Sports Broadcasting Regulations on: (1) the review of the list of national sporting events (2) sub-licensing conditions and the pricing of sports rights to address anti-competitive concerns; (3) the bidding process for subsidiary rights which should specify that the process of determining the subsidiary rights be fair and have set criteria on which fairness would be judged; and (4) the implementation of anti-hoarding and anti-siphoning provisions.

23.3.2 The SABC supports the Australian model which lists national sporting events that should first be made available to FTA broadcasters and only if these are

not bought, the rights are then opened to bidding by subscription broadcasters.¹ Furthermore, the SABC submits that the ICASA Sports Regulations should advocate unbundling sports rights and not allow subscription broadcasters to access FTA rights. The ICASA Sports Broadcasting Regulations should also expressly state that coverage of listed national sporting events are dependent on their commercial affordability by FTA broadcasters.

23.4 TV Licence Fee regulations

23.4.1 There are currently only approximately 1,8m paying television households and businesses out of a total of 14 million television households and thousands of businesses. The SABC has over 9m accounts on its database. The SABC is of the view that an improved TV licence fee revenue stream could help sustain the SABC, if the system is strengthened by broadening the types of devices, by extending reporting obligations to additional parties and by ensuring effective enforcement mechanisms. Compliance should first be tightened up at the point of sale. On the basis of a more credible, trusted and properly run public broadcaster, the SABC's proposed legislative amendments will seek to create a culture of TV licence payment amongst users.

23.4.2 The SABC submits that the TV Licence Fee Regulations should be reviewed every three years to take into account any market developments, including further technological changes.

Commitment to the Public Service Mandate

24. The SABC is fully committed to the public service mandate. The Board and Management are determined to run the Corporation efficiently and effectively in line with all the applicable legislation and to steer the public broadcaster to long term sustainability.

¹ <https://www.communications.gov.au/policy/policy-listing/anti-siphoning> (visited on 15 August 2018); https://en.wikipedia.org/wiki/Anti-siphoning_laws_in_Australia (visited on August 2018)

1. INTRODUCTION AND BACKGROUND HISTORY

1.1 Introduction

The SABC would like to thank the Minister of Communications for the opportunity to make a written submission on the Review of Public Broadcasting, Government Gazette No.41738, Notice 358 of 29 June 2018. The SABC supports the Minister's intention to review and develop new policy on public broadcasting and to allow interested parties to contribute to the development process. The SABC welcomes and appreciates the Minister's invitation to participate in public discussion and contribute to the proposed policy reform and amendments to the legislative and regulatory framework.

1.2 Background and History of the SABC

The SABC was established through an Act of Parliament in 1936, which replaced the previous African Broadcasting Corporation ("ABC"). ABC included the South West African Broadcasting Corporation, later became Namibia Broadcasting Corporation.

The SABC's role as the propaganda arm of the apartheid government is well documented and for decades the corporation was used to perpetuate apartheid and its entire racist edifice.

The SABC first established radio services in what were then the country's then official languages English and Afrikaans, with broadcasts in languages such as isiZulu, isiXhosa, Sesotho and Tswana following later. The SABC's first commercial radio service started in 1950, known as Springbok Radio, broadcasting in English and Afrikaans. Regional FM music stations were established in the 1960s. In 1966 the SABC established an external radio service, known as Radio RSA, which broadcast in English, Swahili, French, Portuguese, Dutch and German.

From 1 June 1962, radio broadcasts from Pretoria were made in Tswana and Sotho, which included Southern Sotho and Northern Sotho. This was followed on January 1 1963 with Zulu from Durban and from 1 June 1963, Xhosa from Grahamstown. It was only in February 1965 that broadcasts in Venda and Tsonga were inaugurated from studios in Johannesburg and transmitted from stations in the then Northern Transvaal province.

The SABC launched its television service in 1976. Throughout the 1970s and 1980s, the apartheid government used the SABC's monopoly over radio and television broadcasting in South Africa to protect the image of the government, to promote its racist ideology and to help demonise liberation movements and leaders.

In the 1990s, the SABC came under huge pressure to break its political control by the National Party government and to finally transform the organisation from being a state broadcaster to a public broadcaster.

Until 1993, the SABC Board was appointed unilaterally by a Minister in the apartheid government. During the early 1990s, a broad-based civil society coalition – the Campaign for Independent Broadcasting (CIB) – made a strong case for the independent appointment of the SABC Board before the first democratic elections, in order to ensure a free and fair, level playing field. During the negotiations process that brought about South African democracy, the parties agreed that a panel of judges would conduct the first independent appointment process for an SABC Board. In May 1993, in the first public interview process for any official appointment in South Africa, a judicial panel received over 700 nominations and publicly interviewed a shortlist of 86 people in the full glare of the media. Although the final appointment of the board was still contested by the apartheid government and was not without its problems, the appointment of the 1993 SABC Board represented an important moment in the history of the SABC.

With a democratic parliament in place from 1994, the SABC Board was appointed with the involvement of a multi-party parliamentary committee and this system remains to date.

The SABC was soon placed under the regulatory oversight of a new regulator, the Independent Broadcasting Authority (“the IBA”), set up in 1994.

The new democratic dispensation later ensured that the role of the SABC was reviewed by way of policy, through the 1998 White Paper on Broadcasting and thereafter the Broadcasting Act, No.4 of 1999 (“the Broadcasting Act”) and the IBA (and later ICASA) regulations that followed.

The Broadcasting Act was an important milestone for the SABC. Section 7 of the Broadcasting Act established the incorporation of the SABC, as the successor to the 1927 Corporation, and provided that the affairs of the SABC would be run in accordance with the Companies Act of 1973 as repealed by the Companies Act No. 71 of 2008, as amended.

The SABC was later corporatized and placed under the Companies Act with clearly defined rules in the articles and memoranda of association, with the view to create a transparent and accountable entity. It was divided into two operational divisions, a public service and a commercial service division. The public service division is comprised of fifteen radio stations and two full spectrum multilingual television channels (SABC1 and SABC2). The commercial service division is comprised of three radio stations and one television channel, SABC3, which provides entertainment and information for viewers predominantly in English. The SABC has requested for this distinction to be removed because in practical terms the SABC has a unitary model that governs its services and is consequently unable to account separately for each group of services (See more on this distinction below). Each of the SABC’s services holds a public service broadcasting licence issued by the Authority. The SABC also currently has a 24 hour news channel and a classic entertainment channel on the Pay TV platform as well as 18 Radio stations. The intention of the SABC’s corporatisation was to make it operate along business lines with a view to the public broadcaster becoming self-sustaining.

After delays in the broadcasting digital migration process for a number of years, the SABC welcomes government’s decision to expedite digital migration. A successful migration process cannot happen without the Corporation playing a leading and

effective role and as such we support the work of the Digital Migration Advisory Council. The SABC favours a rapid migration to digital broadcasting platforms which will give certainty to the entire broadcasting sector. Most of the SABC's viewers and listeners are currently accessing the SABC's TV services through analogue TV's and have yet to migrate to a digital broadcasting platform (DTT or DTH).

The SABC is committed to its mandate of providing its audio and audiovisual content services which are informative, educational and entertaining to all citizens in all official and other languages. The SABC delivers 24 hours a day in all 11 official languages on its radio service platform on dedicated language stations. With only three free-to-air TV channels, the SABC fulfills its language mandate on TV within the constraints of the analogue environment. The SABC remains optimistic that the migration to digital broadcasting platforms and a multichannel environment will enable the SABC to increase these services.

The SABC supports Government's review of the South African broadcasting policy framework as it will position the broadcasting industry for the digital environment. It remains imperative for sector policies and regulations to evolve at the same pace as the progression of technologies. It is noted that the convergence of technologies and the growth of Internet access on fixed, and especially mobile, platforms in South Africa, requires the SABC to reconsider how to fulfill its mandate on all these new platforms. Going forward the SABC sees itself as a multiplatform content provider which delivers public service mandate that includes content gathering, creation, commissioning, curation, packaging and distribution through public service media. In a nutshell, public broadcasting requires adaptation, innovation, the bringing together of legacy media with new media and ICTs. Thus, it is critical to re-imagine public broadcasting in a multichannel digital age.

Furthermore, the SABC envisages a public service media which has the following attributes:

- A clear and legal mandate;
- Nationwide access with maximum interactivity and cross-platform strategies;

- Opportunities to learn about, and participate in national, African and international cultures;
- An independently-appointed board of directors with guaranteed independence from political and commercial interests;
- Editorial impartiality on political issues;
- Content for all communities, including all ages, genders, as well as all official languages, all religion and ethnic groups;
- Sustainable funding from government;
- A range of accountability and transparency mechanisms.

The SABC strongly believes that there is still a place for public broadcasting in the multichannel environment. Public broadcasters around the world develop knowledge, broaden horizons and enable people to better understand the world and others. Thus, public broadcasting provides information and education that is accessible to all and serves all irrespective of their socio-economic status². The SABC is of the view that public service broadcasting should be characterized by these pillars

- universality (Reach all South Africans)
- accessibility (Provision of relevant, compelling programming in all official languages)
- diversity and choice (Provision of a wide range of programmes and reflection of majority and minority views)
- quality (Provision of well researched and professionally produced content to all)
- accountability and efficiency (account to relevant authorities and operate cost effectively).

Even if the SABC had not gone through a sustained period of governance failures, management would still have had to deal with the same challenges faced by public broadcasters across the globe.

Public broadcasting is under pressure in many countries, facing challenges from rapidly changing technologies, global streaming services, video sharing platforms as well as uncertainty regarding sustainable funding.

² UNESCO, Public Service Broadcasting: A Best Practice SourceBook, 2005, at page 14

The SABC submits that public broadcasting has an even more important role to play in a world dominated by privately-owned, often global entities that are only driven by commercial interests.

The SABC not only represents part of the soul of the nation and its creative potential but is one of the bedrocks of South African culture, showcased by our television productions, our films, radio shows and our music in all our languages.

The SABC, despite its recent challenges, has still risen to the challenge of meeting its important and sometimes complex public mandate.

Most people accept the view that not all media, news and content should be privately-owned and that having a sustainable, publicly-owned national broadcaster is a necessary condition for the success of our democracy. In fact the SABC has been described by our courts as one of the key institutional pillars of our democracy. Therefore, the main question to answer is how do we ensure that the SABC and its unique public service content is sustainable in a highly competitive world.

The only way to remain relevant and command large audiences, is for the SABC to continue to focus on making excellent television and radio content. This includes commissioning programming that excites, entertains, challenges and disrupts. This means providing an SABC News service that is not just Independent and Impartial, but that reflects the length and breadth of this country in a way that no other broadcaster can.

2. DEFINITION OF BROADCASTING SERVICE

2.1 Broadcasting Definition

Definition of broadcasting services

Section 1 of the Electronic Communications Act defines broadcasting as “any form of unidirectional electronic communications intended for reception by-

- a) the public;
- b) sections of the public; or
- c) subscribers to a broadcasting service.

The word unidirectional is restrictive to a technology platform which is bidirectional, thus, this definition will be redundant in the digital space.

Furthermore, section 1 defines broadcasting services as “any service which consists of broadcasting and which service is conveyed by means of an electronic communications network, but does not include:

- a) a service which provides no more than data or text, whether with or without associated still images;
- b) a service in which the provision of audio-visual material or audio material is incidental to the provision of that service;
- c) a service or a class of service which the Authority may prescribe as not falling within this definition”

In light of the above mentioned definitions and the fact that traditional broadcasting services are heavily regulated, a new, broader definition of audio and audio visual content services is required, that will include broadcasting services as a subset but will also include on demand services, video sharing platforms and other broadcasting-like services. This was proposed in the National Integrated ICT Policy White Paper, 2016 and the conclusion of the policy process on the broadcasting sector will help promote fair competition and ensure that all audio and audio visual content services will contribute to content in South Africa.

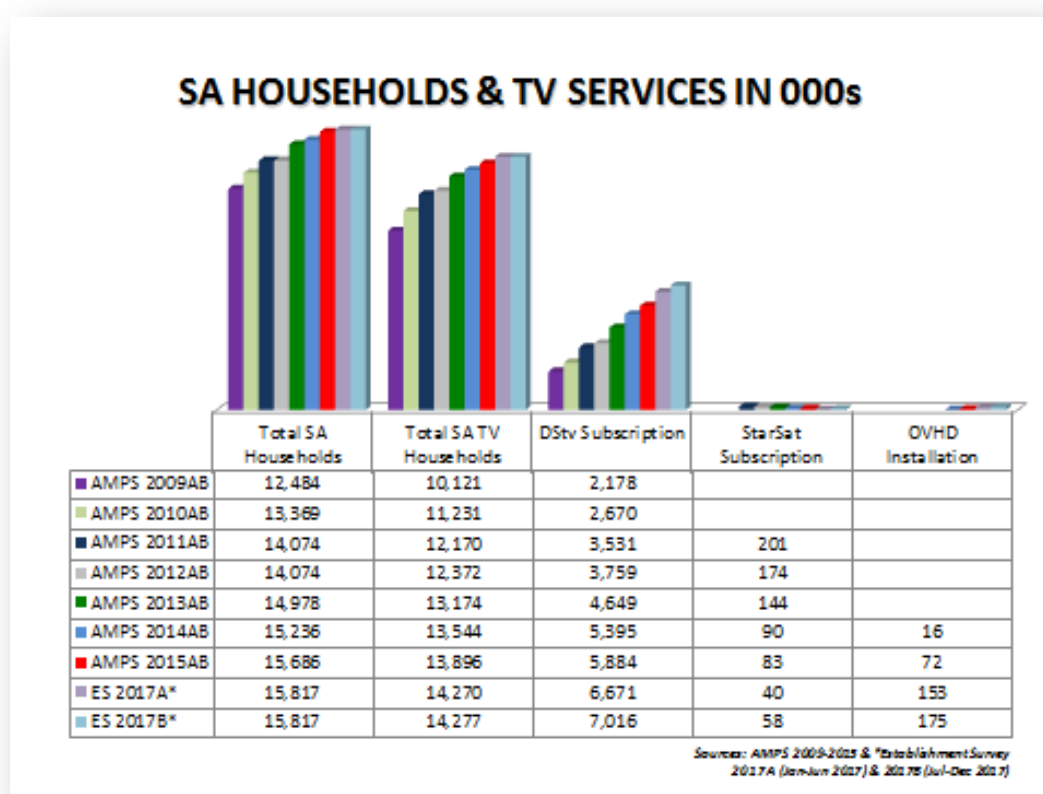
Policy recommendation

The SABC submits that a new broader definition of audio and audio visual content services should be developed that is inclusive, futuristic and will enable broadcasters to compete with new content services in a fair and equitable way.

3. MARKETS AND COMPETITION

3.1 SABC's performance over the years

The tables below indicate the extent to which the broadcasting market has grown over the years. Whilst the current legislative framework encourages the co-existence of the three-tiers of broadcasting, there is still a need for the policy and legislation to protect the viability of public broadcasting services, given the increased competition for the finite advertising 'cake' and taking into account the SABC's extensive public mandate.



% REACH INTO HH	AMPS							ES	
	2009AB	2010AB	2011AB	2012AB	2013AB	2014AB	2015AB	2017A	2017B
Any Pay TV								42.4	44.7
HH pay subscription DStv service	17.4	20.0	25.1	26.7	31.0	35.4	37.5	42.2	44.4
DStv Premium (full service)	11.8	11.5	12.4	11.6	12.1	12.3	12.0	8.1	7.6
DStv Extra								1.1	1.2
DStv Family						0.6	0.7	3.4	4.1
DStv Compact	5.2	7.6	11.7	13.4	16.4	19.5	20.3	24.4	25.0
DStv Select	0.2	0.4	0.6	0.9	0.8	0.7	0.7		
DStv Easy View	0.3	0.3	0.4	0.7	1.0	1.0	1.2	1.7	1.7
DStv Access (previously Lite)			0.1	0.2	0.4	0.8	1.9	3.4	4.7
StarSat subscription			1.4	1.2	1.0	0.6	0.5	0.3	0.4
OVHD						0.1	0.5	1.0	1.1
No Pay TV (SABC & e.tv only)								44.0	42.5

Please note that ES is not trendable with AMPS

Source: AMPS 2009-2015

The abovementioned tables indicate the South African television growth from 2009 to 2017. It is a fact that the number of PayTV households in South Africa has overtaken FTA households and as such the broadcasting policy decisions have to be made in a way that enables the FTA services to be financially sustainable.

Apart from the current PayTV operators in SA, Multichoice Africa (MCA) and Star Sat, several other companies have been granted licences but failed to launch new PayTV channels due to barriers to entry into the sector. To this end, ICASA has invited interested parties to apply for a commercial free-to-air TV and a Pay TV licences. The SABC is of the view that these upcoming services will add to competitive pressures as more players will be competing for limited advertising revenue.

The introduction of new satellite players means the fragmentation of the advertising pie. With multiple platforms available, advertising revenue could increasingly shift away from the SABC advertising space towards new media platforms. Therefore, the viability of an effective and sustainable public broadcaster must be a significant consideration in developing licensing policy in the multichannel, digital environment.

Advertising measurement challenges and opportunities

The changing expectations of viewers will increasingly affect the TV advertising industry over the next five years. The sector is faced with a TV audience that is being fragmented by greater programming choice. This gives advertisers additional

locations to place their messages, but has also led them to question the rates that they have been paying to the mainstream TV stations.

One of the key manifestations of viewer evolution is a move away from being a passive consumer to someone typically much more engaged. Linked to this is the growth of social TV and the 'second screen' where people use smart devices – often to access social media – while watching traditional TV at the same time. A greater proportion of viewing will take place on non-TV devices, such as mobile phones, tablets and computers.

The TV industry's whole premise – that audiences are actively engaged with a TV screen – has helped create South Africa's most lucrative advertising platform. But now that model needs to adapt to the new reality of TV as an increasingly ambient part of a multiscreen environment, one that is often viewed in the background and is just one screen among many. While the many of the SABC's audiences still cannot afford to consume in the data-heavy way of the media rich, new measurement metrics are essential for the SABC to accurately predict and safeguard revenue levels.

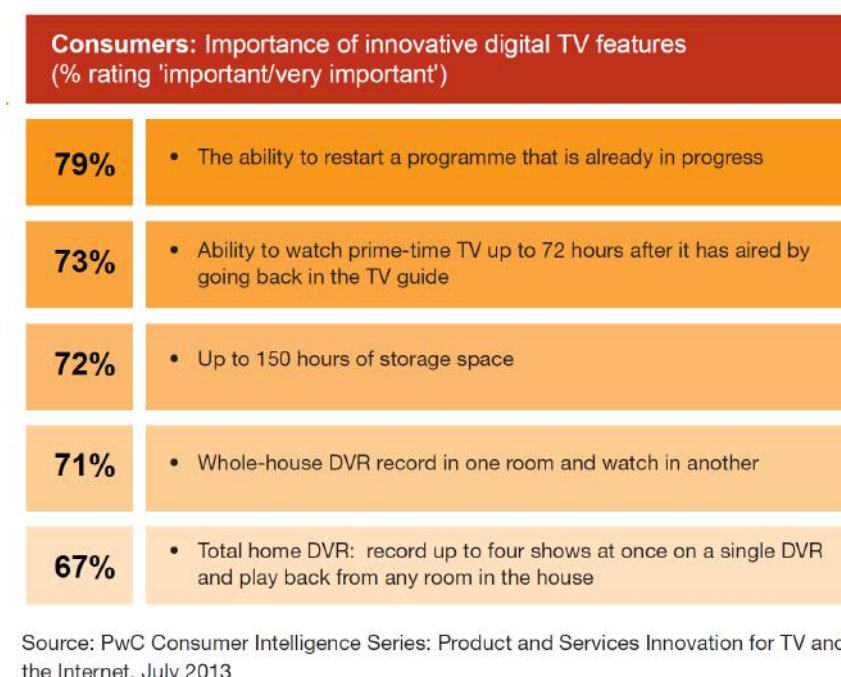
Policy recommendation

The SABC submits that policy should require that ICASA conduct market research prior to the licensing of any new player as historically we have seen licensed players fail to launch a broadcasting service or to break even in the sector. The SABC is in favour of a lighter touch, more holistic approach to regulating the SABC in order to ensure its viability in the multichannel, digital environment

Audience Choice

For consumers, control and flexibility are crucial – especially when it comes to their digital TV service. They want to choose what they watch and when and how they watch it, whether that means using on-demand services to stream movies, watching prime-time shows at 5am or storing an entire season of a show on their DVR. They want their Internet speed to be fast and reliable. And, if something goes wrong, they

want their providers' website and customer service representatives to help them quickly and solve the problem easily.



In order to properly transition the SABC into the Fourth Industrial Revolution, the Corporation has commenced development of a comprehensive OTT strategy which will ensure that over time that all SABC radio and television services are available and affordable everywhere on all devices and platforms.

4. SABC ROLE, MANDATE, LICENSING AND REGULATIONS

4.1 The SABC's role and mandate as the national public broadcaster.

The SABC's mandate as a public broadcaster is derived from the Charter, which defines its objectives, the licence conditions, the legislation and other ICASA Regulations. The Charter is laid down in Chapter IV of the Broadcasting Act ("Broadcasting Act") No. 4 of 1999, as amended and requires the SABC to encourage the development of South African expression by providing, in the official languages, a wide range of programming that:

- (a) reflects South African attitudes, opinions, ideas, values and artistic creativity;

- (b) displays South African talent in education and entertainment programmes;
- (c) offers a plurality of views and a variety of news, information and analysis from a South African point of view;
- (d) advances the public interest.

4.2 SABC Mandate as per the legislative provisions

Section 10 of the Broadcasting Act prescribes that the mandate of the Public Service division of the SABC is to –

- (a) make services available to South Africans in all the official languages;
- (b) reflect both the unity and diverse culture and multilingual nature of South Africa and all of its cultures and regions to audiences;
- (c) strive to be of high quality in all of the languages served;
- (d) provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests;
- (e) include significant amounts of educational programming, both curriculum-based and informal educative topics from a wide range of social, political and economic issues, including, but not limited to, human rights, health, early childhood development, agriculture, culture, religion, justice and commerce and contributing to a shared South African consciousness and identity;
- (f) enrich the cultural heritage of South Africa by providing support for traditional and contemporary artistic expression;
- (g) strive to offer a broad range of services targeting, particularly children, women, the youth and disabled;
- (h) include programming made by the Corporation as well as those commissioned from the independent production sector; and
- (i) include national sports programming as well as developmental and minority sports.

Section 11 of the Broadcasting Act prescribes that the Commercial Service division of the SABC must:

- a) be subject to the same policy and regulatory structures as outlined in this Act for commercial broadcasting services;
- b) comply with the values of the public broadcasting service in the provision of programmes and service;
- c) commission a significant amount of their programming from the independent sector;
- d) subsidise the public services to the extent recommended by the Board and approved by the Minister; and
- e) be operated in an efficient manner so as to maximize the revenues provided to its shareholder.

Furthermore the SABC licence conditions for TV and Radio services prescribe local content quotas which the SABC must comply with in relation to News, Current Affairs, Informal Knowledge Building (IKB), Drama, Children's programming, music, documentaries and other programming genres which have no quotas.

Policy recommendation

The current legislative framework prescribes the objectives of the Corporation. However, these objectives are overly broad and should rather be categorized in two sections, namely: high priority objectives and general objectives.

4.3 The proposed categorization

4.3.1 High priority mandate

- Provision of universal service
- Provision of audio and audiovisual content services in all official languages
- Provision of diversity of services and programmes which are educative, informative and entertaining
- Provision of services targeted at people with disabilities, youth, children and women
- Provision of international, national, regional and local news and information

- Development of the creative industry and focus on South African television content and South African music.

4.3.2 General mandate

- Provision of ancillary services
- Provision of books, magazines, periodicals, etc.
- Provision of libraries
- Organise, present, produce, provide or subsidise concerts, shows and events
- Conduct research on innovation
- Provision of international services

4.4 The proposed licensing framework for the SABC Network

The SABC is of the view that there is a need to review the licensing model of the public broadcaster in order to enhance its delivery on the public service mandate. There is a need to licence SABC television as a network or a bouquet of public broadcasting services rather than as individual channels with individual quotas. Individual channel quotas do not enhance strategic delivery of service in terms of audience needs and may not be practical in instances where there are niche channels such as sports.

The ICASA Local Content Regulations of 2016 have introduced holistic quotas for the multichannel environment. However, the SABC still has channel-based licence obligations since the digital migration is not fully implemented. The SABC submits that a new digital broadcasting licensing framework should allow flexibility in scheduling and assist the SABC to reposition its channels, incubate new channels and allow them space to grow in a DTT environment.

The SABC submits that in the digital environment more flexible regulation will be required in order to allow the Corporation to compete over the top and streaming content services which are currently unregulated. The development of a new definition of audio and audio visual content services must bring these services into

the policy framework. When assessing whether the SABC meets its objectives, the SABC believes that it should be sufficient that the Corporation complies with policy and licence conditions, when viewed collectively across its radio, television and digital content services.

Policy recommendation

The SABC recommends that the current, analogue-based licensing model should be amended. The SABC can deliver its services much more effectively if the licensing model is aligned to the digital, multichannel environment. It is further noted that ICASA will soon embark on the inquiry into the DTT broadcasting licensing framework and as such the SABC will engage ICASA during the inquiry process.

4.5 Content and Platforms

The SABC has been at the forefront of industry development when it comes to sourcing content from South African Independent Producers. Whilst the SABC agrees that one aspect of its priority mandate should be to develop the creative industry in the digital environment the SABC should not be the sole driver of the creative industry development. Rather government should consolidate funding mechanisms for television and audio content as well implementing the development of content hubs in all the provinces. It is known that for a successful digital migration to be achieved, compelling content is required to retain audiences. The policy should create an environment which ensures that there is fair access to content funding by all content providers.

Recommendation

The SABC submits that there should be a focus on how the existing content funding bodies and mechanisms can be consolidated, strengthened and better resourced. By providing funding for independent television producers, content funding bodies will not only share the obligation with the SABC and other broadcasters but will ensure that producers are able to retain a greater share of the rights, post initial broadcast. It

is therefore recommended that government should consolidate and strengthen funding mechanisms for audiovisual content as well implementing the development of content hubs in all the provinces.

5. SABC STRUCTURE IN TERMS OF SECTION 9

Section 9 (1) of the Broadcasting Act provides that the SABC must consist of two separate operational divisions, namely, a public service division and a commercial service division. Section 9 (2) further provides that the public and commercial service division must be separately administered and a separate set of financial records and accounts are to be kept in respect of each division.

The SABC has found this requirement to be unworkable. After careful review of the history of this requirement, the SABC believes that the separation of services in this way does not work in a broadcaster owned by the State. This is because some PBS stations make money and some commercial stations do not, undercutting the rationale for the split.

The second reason this does not work at the SABC is that, unlike other SOEs, SABC's commercial stations have public service value, and its public service stations have commercial value. This makes a broadcaster of this type different from other SOEs, where public and commercial activities can more easily be defined and separated.

Furthermore it is not possible for the 3 commercial radio stations to fully subsidise the public mandate of the 15 public radio stations. It is noted that sections 10(4) and 11(3) impose an obligation on the Board to keep separate books of accounts for the two divisions. This has serious administrative implications on the SABC as an entity that runs television and radio as platforms from various support departments such as Human Resources, Finance, Logistics etc. that cut across divisions.

Policy recommendation

The SABC therefore proposes that the legislative provisions on the public service division and commercial service division are removed from the statute when the Act is amended as a consequence of this policy process. The SABC can still account for its public service mandate from both a programming and finance point of view without radio and television services having to be divided into the two statutory divisions based on inconsistent criteria. Retaining these two divisions will also further complicate the SABC financial and administrative reporting in the multichannel, digital platform environment where there needs to be more flexibility across multiple channels.

6. FUNDING OF THE SABC MANDATE

6.1 Background

Broadcasters globally are undergoing profound transformation caused by changes in the economy, new technologies, a change in audience behavior and media consumption, as well as increasingly complex competitive environment. Sustaining and reinvigorating the SABC is important as we now live in a digital world where information is delivered on increasingly diverse platforms and from increasingly diverse sources. Forces of globalization within media are diluting national and local culture like never before.

The SABC recognises that in a world of limited resources it must strive to be fit for purpose as an organisation in order to deliver maximum value for money from our content and services and to direct as much of the Corporation's funding as possible into serving the South African audiences.

Section 8(b) of the Broadcasting Act, provides that the SABC should be funded through **advertisements, subscription, sponsorship, licence fees or any other means of finance**. Currently the SABC is largely funded by advertising and sponsorship and this calls for a greater protection of the Corporation for the delivery

of the public service mandate. The SABC is of the view that the policy and regulatory framework should create an enabling environment which allows the public broadcaster to perform and deliver on its mandate.

Later in this submission the SABC sets out in detail the changes to the regulatory framework required in order to sustain the public broadcaster.

The current mixed funding model has shown the following mix over the last five years:

The general funding model of the SABC is evident from the graph below:

SABC REVENUE BREAKDOWN

	FY 2017	FY 2016	FY 2015	FY 2014	FY 2013
Advertising Revenue	4,677,421	4,949,857	4,665,473	4,352,414	4,078,100
Sponsorship Revenue	339,422	405,819	388,940	452,615	369,670
Trade Exchanges	78,412	111,639	135,535	110,800	137,796
Licence Fees	915,090	986,361	986,016	990,160	913,838
Government Grants	253,501	212,122	203,874	121,395	210,188
Revenue: Content & Commercial Exploitation	97,862	129,537	37,875	36,330	32,288
Revenue Websites	7,697	6,776	6,277	4,726	2,134
Other Revenue	166,963	174,528	161,867	109,137	87,447
Revenue	6,536,368	6,976,641	6,585,857	6,177,577	5,831,460
Other Income	34,944	113,384	44,967	179,258	97,986
Revenue & Other Income	6,571,313	7,090,025	6,630,823	6,356,835	5,929,447

Source: SABC Finance Division

The table below indicates the SABC revenue breakdown percentages

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

6.2 PUBLIC MANDATE COST AND SABC FUNDING MODEL

6.2.1 Reducing the SABC's Cost Base

When discussing the SABC's funding model, the focus has tended to be exclusively on the Corporation's revenue streams and whether these are sufficient to meet its public mandate. But a funding model cannot be considered in isolation of its cost base.

The Corporation sits on a huge and unsustainable cost base, built up over time without proper consideration for a workable operational model. The SABC is in a process of rehabilitation and renewal and must be carefully managed and restored to ensure fulfilment of its unique public mandate.

Good progress has been made in stabilising the SABC, strengthening governance and regaining integrity. However, the SABC's current financial position remains severely under pressure..

A new strategic roadmap has been achieved which is aimed at ensuring that the SABC operates competitively in evolving media and digital landscape and provides informative, educational and entertaining content to all South Africans. The main objective is to ensure financial sustainability with a focus on reducing operating costs. The current review of the SABC's operating model will assist to ensure that the organisation is properly aligned for future operations and is fit for purpose.

Therefore, any policy discussion on the future sustainability of the SABC must take into account that the SABC will be addressing its cost base in a meaningful way.

6.2.2 Commercial Revenue

The SABC is still predominantly reliant on the commercial revenue, as this constitutes approximately 80% of its annual income. The funding models of benchmarked countries (see below), have been reformed in order that the financing of the public broadcaster becomes reliable and consistent. The importance of

reliable and consistent financing cannot be understated, as the mandate of the public broadcaster has to be met by the SABC.³

SABC believes that through improvements and efficiencies the SABC cannot only generate more revenue but can collect more licence fee revenue. The overall dependency on commercial revenue will not necessarily change as there is no other funding source that could replace this and make a similar contribution to funding the SABC's programming.

6.2.3 Overall public mandate cost

The table below indicates the public mandate costs for the past 3 years

SABC - SUMMARY OF THE COSTS OF MANDATES			
	FY2015/16	FY2016/17	FY2017/18
SPORTS	546 656 996	760 001 101	760 522 932
Rights	546 474 000	572 943 000	549 397 000
Production	182 996	187 058 101	211 125 932
RADIO	28 253 522	30 094 287	31 693 009
Education	2 561 980	2 802 613	3 271 058
Children	664 093	764 883	866 563
Drama/Soapies	2 354 418	2 504 700	3 003 496
Music	22 673 032	24 022 092	24 551 892
NEWS	12 690 494	53 121 471	14 300 000
Elections	0	39 957 141	0
Government events (Budget Speech, SONA, President address, etc)	11 862 356	12 387 709	12 800 000
Special events and State funerals	828 138	776 620	1 500 000
TV	834 466 379	682 274 740	794 679 114
IKB	103 602 265	160 890 647	138 956 459
Documentary	108 687 662	34 706 428	44 801 539
Drama	426 164 822	352 045 697	430 044 966
Children	71 593 268	69 645 154	91 067 460
Education			
Total cost	1 422 067 391	1 525 491 599	1 601 195 054

The SABC has incurred mandate costs to the value of **R4,5b** in the past 3 financial years of which was mainly driven by Sports division with an amount of **R2,0b (44%)** and TV division with an amount of **R2,3b (51%)**. The SABC is currently revising public mandate projections for the next 3 years. But the initial view is that, given the historical accumulated costs of the unfunded mandate and even assuming some changes in the regulatory environment, the SABC will require funding to be able to

³ M. Osterlund-Karinkata, The reform of YLE's financing, September 2013.

meet all the public mandate requirements of the Broadcasting Act, licence conditions and ICASA regulations.

Policy recommendation

The SABC's unfunded public mandate must be addressed through:

- (a) The review of legislation and regulations that have led to both an exponential increase in the cost of public mandate programming, have reduced potential revenue and created unfair competitive conditions; (the Broadcasting Act, the ECA, TV Licence Fee regulations, Sports Rights Regulations, Must Carry Regulations and DTT regulations); and
- (b) Funding of the shortfall for public mandate programming, either directly or indirectly by government through increased programme sponsorship or increased content funding by institutions set up for this purpose. Notwithstanding the successful review and amendment of the four sets of regulations above, covering the costlier, loss-making elements of the SABC's public mandate may not be achievable without additional government funding. Government funding may be classified into three main funding options; Direct funding, indirect funding and service payment. The public broadcaster has received very limited funding from government. However, it is worth emphasizing that a government subsidy revenue stream would greatly assist the SABC with the provision of educational content, provincial content developmental and minority sports. Currently government grants amount to 2% of the SABC's total revenue base.

6.3 Challenges with the current funding model

6.3.1 Cross-subsidisation

Section 11(d) provides that the Commercial Services of the SABC must subsidise the Public Service to the extent recommended by the Board and approved by the Minister. In terms of the White Paper on Broadcasting Policy of 1999, the division

was based on the assumption that the commercial services would generate sufficient revenue to cross-subsidise public stations and channels, and therefore that this division would protect and enhance public content. However, this assumption has proven to be false. In practical terms it is both impractical and expensive for the SABC to have separate books for the two divisions as it requires duplication of services to implement this legislative obligation. Thus, the SABC submits that all SABC commercial licences should be converted to public licences and the Broadcasting Act should be amended to reflect this change.

6.3.2 TV Licence Fees Collection Model

The current collection TV licence fees are governed by section 27 of the Broadcasting Act. Section 27 makes payment of a television licence fee a statutory obligation and it further provides that the collected funds should be used solely to fund the SABC public service mandate.

Section 2 of the Broadcasting Act defines a television licence as “a current and valid written licence issued in terms of this Act for the use of a **television set**” and a television licence fee is defined as “a fee prescribed in terms of this Act and **payable for the use of a television set**”.

Section 27(9) of the Broadcasting Act requires the SABC to “establish and maintain a national database register listing all sales of new television sets in the Republic...”. Revenue from licence fees is allocated to the SABC’s two PSB channels, SABC1 and SABC2. Television licence revenue also assists in funding the Corporation’s full-spectrum PSB radio services in all 11 official languages.

A definition of television set needs to be agreed that broadens the net to include all receiving devices and apparatus that are capable of receiving television broadcasts over the broadcasting radio frequency spectrum but not so broad as to include all mobile phones and computing devices. A broadened definition will require all those entities with reporting obligations to enforce the regulations in relation to a defined type of devices or apparatus.

Recommendation

A definition of television set and broadened as follows:

“television set - means any device or apparatus or system designed or adapted by technological or any other means, to be capable of receiving transmissions broadcast in the course of a television broadcast over the radio frequency spectrum, whether broadcast on a free-to-air or subscription basis, including but not limited to set top boxes, decoders, PVRs and satellite dishes: Provided that this definition of television set shall not include mobile phones, tablets and other computing devices that are unable receive television broadcasts on the radio frequency spectrum.”

The SABC further submits that in order to enforce compliance on the payment of licence fees, additional entities must be required to report on the sale or lease or use of the broadened definition of television sets. In particular, these additional entities should include insurance companies and Pay TV operators. Reporting obligations to the SABC currently only apply to Retailers, Lessors and Businesses. The SABC also recommends stricter enforcement and penalties for non-payment of licence fees in order to encourage a culture of payment. More legislative amendments pertaining to TV licence fees are addressed in detail in section 9.3 of this submission.

6.3.3.1 TV licence fee pricing

TV LICENCES PRICING																	
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2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	% 2018 VS 2017	% Overall
R208	R208	R225	R225	R225	R225	R225	R250	R250	R250	R250	R265	R265	R265	R265	R265	R265	0%	27%

The SABC's Television licence fee of R265 has remained unchanged since 2013. In the past TV licence fees were supposed to be increased once every 5 years. Senior citizens (70 Yrs +) pay R74 per annum and public schools are exempt from paying for TV licences. The licence fee grew marginally by 27% from 2002 to date - a very small effective increase over a 16 year period. Currently the SABC TV licence fee amounts to 72c a day. In 2018 this is very little if anything that you can buy for 72c a

day. However, for this average daily fee of 72c a day, the public broadcaster presents the licence fee payer with 18 radio services and 5 TV channels (including those on DStv).

The TV licence remains the second largest source of revenue for the SABC. Thus, there is a need to rebase the fee and strengthen the collection of this revenue for purposes of funding the public service mandate and have frequent increases of TV licence fees.

It is recommended that the legislation, policy and regulations in respect of television licence fees should be amended to cater for annual tariff increase in line with CPI, subject to Ministerial approval.

The following table illustrates the missed opportunity for more licence revenue due to lack of CPI based licence fee increase since 2002:

ASD - CPI INCREASE ON TV LICENCE YEARLY FROM 2002 TO 2018					
Year	without yearly increase				
	Amount		Effect in July rate	Effect in Sept rate	Amount if Sept rate
2002	208,00		9,60	11,2	231,30
2003	208,00		5,20	3,7	239,85
2004	225,00		1,60	1,3	242,97
2005	225,00		3,40	4,4	253,66
2006	225,00		5,00	5,3	267,11
2007	225,00		7,00	7,2	286,34
2008	225,00		13,40	13,1	323,85
2009	250,00		6,70	6,1	343,60
2010	250,00		3,70	3,20	354,60
2011	250,00		5,30	5,70	374,81
2012	250,00		4,90	5,50	395,43
2013	265,00		6,30	6,00	419,15
2014	265,00		6,30	5,90	443,88
2015	265,00		5,00	4,60	464,30
2016	265,00		6,00	6,10	492,62
2017	265,00		4,60	5,10	517,75
2018	265,00		5,10		517,75

6.4 Inquiry on a Suitable Funding Model for Public Broadcasting Service

Over the last 15 years the SABC has researched the PBS funding model question and investigated the challenges with the current mixed funding model and learnings

from international best practices. The SABC hosted two colloquiums in 2004 and 2012 which considered the funding of public broadcasting in India, Irish, UK, Europe New Zealand, Nigeria. The key learnings from these colloquiums were as follows:

- There is a need to first establish the role of PSB. There is a need to understand and interrogate first what the PSB is expected to deliver and to then address the Funding Model;
- The mixed funding models with some commercial revenue are a reality for most PSBs. There is a need to manage the challenges associated with each funding model; and
- Whatever the funding model, it is key to establish a measure of independence from the funder, whether commercial or state.

Therefore, the SABC still supports a mixed funding model that is progressive and dynamic.

6.5 Other Comparison of Public Broadcasters globally

Country	South Africa	Japan	China	UK	Australia	Canada	Germany	US	India
Broadcaster	SABC	NHK	CCTV	BBC, CHANNEL 4	ABC	CBC/RADIO CANADA	ARD, ZDF	PBS, NPR AND PRI	Prasar Bharti (DD & AIR)
Status	State-owned broadcaster	Special public corporation	State-owned controlled by State Administration of Radio, Film & Television	Autonomous public service corporation, constitutionally backed by a Royal Charter as well as an agreement with secretary of state for Culture, Media and Sport and governed by the BBC Trust	Autonomous public service corporation	Autonomous public service corporation	ARD: joint organisation of Germany's regional public service broadcasters ZDF: Run as an independent nonprofit institution	Private non-profit corporation	Statutory "autonomous body in law"
Number of properties	5 TV Channels 19 Radio Channels	4 TV Channels 3 Radio Channels 1 International channel	46 TV Channels (21 public channels, 19 pay channels, 6 international channels in 6 languages)	10 UK TV Services 40 local radio stations 2 national radio stations	8 TV Channels (5 National TV stations,	8 national radio channels, 11 TV channels, 11 digital services	ARD: 4 TV Channels 54 regional and local radio station, 7 regional TV networks	350 public TV station	35 satellite TV channels 366 radio stations

							ZDF: 4 TV channels		
Funding model	Mixed funding model (Commercial revenue, TV Licence Fees, Government grants, donations)	Licence fees and commercial income	Commercial revenue	Funded through license fees BBC World News, BBC Studios and BBS Worldwide Funded through commercial operation/revenue	Government funding and commercial income	Government funding, other incomes and commercial income	Licence fees, commercial income, and other incomes	Government income, private sector donations	Government income, commercial income
Management structure	12 non-executive members appointed by the President on the advice of the national assembly Executive committee (CEO, COO, CFO & 11 other members)	12 Board of Governors appointed by the Prime Minister, Executive Board (President, the Vice President, between 7 and managing directors)		BBC Trust (Chairman, Vice-Chairman and 10 ordinary members) BBC Executive Board (DG, 6 Executive Directors and 4 non-executive directors)	ABC 7 Board of Directors, ABC Advisory Council 12 members	12 Board of Directors (incl. Chairperson, President and CEO)			

Source: Annexure 1: Report of Group on Comparative Analysis of Public Broadcasters - 2015

6.6 Alternative funding model structure

The SABC has reviewed various funding models namely:

a) Mixed funding model

This model consists of public funding and commercial revenue including retransmission fees. The SABC will receive government subsidy on the public service mandate, including, sports of national interest, minority and developmental sports.

b) Government funded model

This model envisages a state funded broadcaster, where the public broadcaster is fully funded by government. The Public Commercial Service company may be

privatized with majority shareholding in the hands of the SABC. This wing could be a subsidiary of the SABC under its own separate management structure.

c) Public Private Partnerships funded model

In complete contrast, the public broadcaster may be privatized and the funding may be reliant upon monthly subscription fees.

Policy recommendation

The SABC does not support (b) or (c) above and submits that the current mixed funding model should be retained as most developed countries consider it as the most progressive model to deliver the public service mandate. The current funding mix consists primarily of advertising and sponsorship revenue plus TV licence fees. A third significant funding source includes carriage fees from non-SABC platforms that wish to broadcast or retransmit SABC channels.

SABC submits that elements of its public mandate should be funded by government and measures must be put in place to ensure that the Corporation accounts for the public funding. These measures should be outlined in the shareholder compact between the Minister of Communications and the SABC. The SABC should be required to account on how public money was spent and how its programming can be more responsive to the needs of the public. Furthermore, this process could be monitored by ICASA

7 LEGISLATION AND GOVERNANCE

7.1 Broadcasting Act to be renamed the SABC Act

The SABC submits that the Broadcasting Act of 1999 should be renamed the SABC Act and it should only deal with the establishment and governance of the public broadcaster. Thus, amendments should ensure that it is SABC-specific and does not contain provisions relevant to broadcasting more generally as these ought properly to be in the ECA. For example, the following amendments should be considered:

- a) the preamble should be changed to ensure that it relates only to the SABC and not to broadcasting in general;
- b) the definitions section should be changed to ensure that it relevant to the SABC Act only; and
- c) Sections 5 (classes of licences) and 38 (South African Broadcast Production Advisory Body) be removed and inserted into the ECA as they relate to general broadcasting issues.

7.2 Provisions of the Broadcasting Act

Section 13 (4) of the Broadcasting Act provides guidance concerning the appointment of the caliber of leadership appointed to non-executive and executive roles. Section 14 of this Act furthermore indicates the composition of the executive committee. The hierarchical structure of the board must provide clarity as to the appointing powers of the “appointing body” as legislated in Section 15 of the Broadcasting Act. However, section 14 of the Act is silent as to who should appoint the SABC Executive Directors; thus there is a need to close this gap to bring the Act in line with the recent judgment by Matojane J.

The Broadcasting Act read in conjunction with the Public Financial Management Act (“PFMA”) No 1 of 1999, as amended, indicates the reporting lines which must be adhered to by the public broadcaster. In terms of the PFMA, the SABC is one of the major public entities which fall under Schedule 2. As such the SABC’s accounting authority/ Board is required to report and comply with the applicable provisions of the PFMA. Amongst other things, the accounting authority has to report to Parliament as per the prescripts of the PFMA.

Policy recommendation

The SABC submits that the Broadcasting Act should clearly state the powers of the Minister as a shareholder representative of the Corporation, the powers of the Board

of the Corporation and the powers of the Executive Committee. Any changes to the legislation must be aligned to the High Court judgment of 17 October 2018 which held, inter alia, that the SABC executive directors are appointed solely by the non-executive directors of the SABC Board⁴.

8. AMENDMENT TO LEGISLATION AND POLICY

The SABC has identified a number of legislative and policy changes that could assist in promoting competition in the television broadcasting market:

8.1 AMENDMENT OF SECTION 60(4) OF THE ECA

8.1.1 With the ever increasing cost of its public service mandate and nearly 80% of its revenue coming mainly from advertising and sponsorship, the SABC's financial sustainability is compromised with its advertising revenues under threat, while subscription broadcasters have an extra layer of revenue - subscriptions revenue – in addition to nearly half of television advertising revenue.

8.1.2. Section 60(4) of the ECA provides that:

Subscription broadcasting services may draw their revenues from subscriptions, advertising and sponsorships, however, in no event may advertising or sponsorship, or a combination thereof, be the largest source of annual revenue.

8.1.3. The intention of the legislators was to cap advertising and sponsorship revenue for subscription broadcasters and therefore protect FTA broadcasting services that depend on the same advertising and sponsorship revenue for their survival and financial sustainability. Unfortunately, the “advertising cap” envisioned in this section 60(4) has become totally ineffective in that MCA's subscription revenue is so high that it is not possible for advertising or sponsorship revenue “or a combination thereof” to exceed subscriptions. There is therefore no effective legislative cap on advertising and sponsorship

⁴ SOS Support Public Broadcasting Coalition and Others v South African Broadcasting Corporation SOC Limited and Others (81056/14) [2017] ZAGPJHC 289 (17 October 2017)

revenue and the intention of the legislature is being thwarted.

8.1.4. As demonstrated by the most recent Adynamix revenue data for 2017 by consolidating DSTV/MNET revenue gives Multichoice Africa (MCA) nearly half of the total television ad revenue market in South Africa. As at September 2017 this consolidated share amounted to 48%, with the SABC at 36% and e.tv at 16%.

Television Advertising Revenue Share: 2017 Year to Date (YTD)

COMBINED MEDIA TYPE	COMBINED YTD TOTAL	REVENUE %
SABC 1,2,3	5,479,600,568	36
ETV	2,520,971,796	16
MNET& DSTV	7,303,899,491	48
GRAND TOTAL	15,304,471,855	100

Source: Adynamix January-September Ad Revenue totals for 2017

Policy recommendation

The SABC hereby proposes amendments to the legislation to allow the Regulator (ICASA) 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. Currently, the Regulator may not have the power to prescribe such regulations and 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. The Authority shall also prescribe detailed requirements for compliance with such regulations and the monitoring thereof

8.2 AMENDMENTS TO SECTION 27 OF THE *BROADCASTING ACT*

8.2.1 INTRODUCTION

The convergence of technologies – with new devices resulting in new media platforms and content dissemination methodologies – is also impacting on TV licence legislation. These new technologies have not yet replaced traditional public service broadcasting, and therefore a television licence, and the revenue it yields, still has a right of existence. However, with further developments in technology this may no longer hold true – there is a window of opportunity during which legislation must be reviewed.

The SABC has exhausted every avenue of optimising television licence revenue at its disposal in terms of the current television licence legislation. Changes to the legislation are therefore a crucial prerequisite for any new public funding strategies envisaged by *TV Licence*, which are long overdue. Without amended it would be extremely difficult to exploit the opportunities opened up by the convergence of the media and other technological developments in the broadcasting industry. Furthermore, the SABC's initiative aimed at broadening and tightening compliance by pulling more stakeholders / role players into the net would also require their inclusion into revised television licence legislation.

It is imperative that the limitations placed on the SABC's freedom of movement by the current legislation be removed without delay before opportunities are lost.

8.2.2 PROPOSED CHANGES TO TV LICENCE LEGISLATION

The SABC accepts that the definition of “broadcasting” will be reviewed in the broad policy process and may be included in a broadened audiovisual services definition. However, in the meantime, the following proposed additions and amendments to the *Broadcasting Act* are aimed at optimising television licence revenue and/or enforcing stricter compliance. These amendments include, *inter alia*:

8.2.2.1 Definitions

- a) A definition of a “**television set**” must be inserted in the Act as follows:

“television set - means any device or apparatus or system designed or adapted by technological or any other means, to be capable of receiving transmissions broadcast in the course of a television broadcast over the radio frequency spectrum, whether broadcast on a free-to-air or subscription basis, including but not limited to set top boxes, decoders, PVRs and satellite dishes: Provided that this definition of television set shall not include mobile phones, tablets and other computing devices that are unable receive television broadcasts on the radio frequency spectrum.”

- b) “**business**”, for the purposes of the definition of “record” and section 27 means a person who uses a television set—

- i. in the course of conducting his or her business;
 - ii. in the course of engaging in commercial transactions;
 - iii. as part of his or her activities for gain or not for gain; or
 - iv. on premises which are occupied for business purposes,
- but excludes a dealer and lessor;

- c) “**short term insurer**” shall have the same meaning ascribed to it under the Short Term Insurance Act, No.53 of 1998;

- d) “**subscription broadcasting service licensee**” means any person who has been issued with a licence to provide subscription broadcasting services;

- e) “**television broadcasting service**” means a broadcasting service consisting in the sending / broadcasting of visual images or other visible signals whether with or without accompanying sounds, where the visual images are such that sequences of them are seen as moving pictures;

- f) “**television licence**” means a current and valid (paid up to date) written licence issued in terms of this Act for the use of a television set;

- g) “**television licence fee**” means a fee prescribed in terms of this Act and payable for the use or possession of a television set;

- h) “**television licence collection policy**” means the functions relating to the management of the collection of all television licence monies that is due and payable to the Corporation.”

- i) **“use”** means the use or possession of a television set or permitting any other person to use or possess a television set and the words “user” and “used” are construed accordingly;

8.2.2.2 Other proposed amendments

The current enforcement provisions are weak or ineffective. In order to ensure much improved compliance with legislative requirements with respect to payment of TV license fees, the SABC submits that section 27(4) be amended to read as follows:

“A dealer who sells or alienates television sets as defined in the regulations to a person who is not in possession of a television licence should be liable to pay a penalty of R3000 per broadcast-enabling device sold or alienated”.

8.2.3 Reporting Obligations to the SABC

Regulation 30 of the 2004 TV Licence Regulations (“the TV licence Regulations”) prescribes the reporting obligations of businesses. Flowing from this provision, the SABC submits that this obligation that applies on the sale, lease, use of television sets (currently applying only to Retailers, Lessors and Businesses) should be extended to the following industries:

- a) Pay TV operators. It is also proposed that subscribers should be in possession of a valid television licence prior to subscription and purchasing or renting a decoder);
- b) Section 27 “(4) A dealer who sells or alienates a television set to a person who is not in possession of a valid television licence and who is not exempted from the obligation to be in possession of a television licence...”

8.2.4 Penalties / Fees

The SABC hereby proposes that penalties for non-compliance with legislative and regulatory requirements related to the payment of TV licence fee be increased with a view to deter future non-compliance. Thus the following is suggested.

- a) Penalties for late renewal of a television licence to be increased from 10% to 20% per month, to a maximum of 100% after 5 months. The 100% penalty threshold would thus be reached after 5 months and not after 10 months, as is currently the case.
- b) Penalties of R3000 per Television Set must be levied on Retailers and or Pay-TV operators who issue subscriptions services and or decoders to unlicensed/invalid viewers.

- c) Penalties for unlicensed viewers – to be amended from double to four times the amount of the applicable licence fee.
- d) Retailers found without a valid dealer's licence – penalty of R10 000 per store.

8.2.5 TV Licence Regulations (Government Gazette No. 25959 , Notice 151 of 2004)

These regulations have not been significantly amended in 14 years.

In some instances Acts quoted in the *Regulations* are no longer in existence or have been repealed and replaced with new legislation. For example the Regulations make reference to the Independent Broadcasting Authority Act of 1993 instead of the EC Act of 2005. This poses a legal risk/threat to the SABC, as it has removed the legal foundation for enforcing compliance. Changes are also required to the TV licence tariffs, which are specified in the *Regulations*.

8.2.6 Other (Compliance Enforcement Mechanisms)

- a) Prescription – it is suggested that, as in the case of taxation, prescription of television licence fee arrears should set in only after 30 years as per Section 11(a) (iii) of The Prescription Act 68 of 1969.
- b) The SABC should be allowed to place “adverse listings” on non-compliant licence holders’ credit profiles.
- c) VAT – Zero-rated VAT should be levied on television licence fees, instead of the full Value-Added Tax currently payable by the SABC.

Recommendation

There are currently only approximately 1,8m paying television households and businesses out of a total of 14 million television households and thousands of businesses. The SABC has over 9m accounts on its database. The SABC is of the view that an improved TV licence fee revenue stream could help sustain the SABC, if the system is strengthened by broadening the types of devices, by extending reporting obligations to additional parties and by ensuring effective enforcement mechanisms. Compliance should first be tightened up at the point of sale. On the basis of a more credible, trusted and properly run public broadcaster, the SABC's

proposed legislative amendments will seek to create a culture of TV licence payment amongst users.

The SABC submits that the TV Licence Fee Regulations should be reviewed every three years to take into account any market developments, including further technological changes.

9. REVIEW OF ICASA REGULATIONS

9. Digital Migration Regulatory Framework

ICASA published the final Digital Migration Regulations (“the Regulations”) and Policy in December 2012 and February 2013 respectively. The following challenges were identified by the SABC:

9.1.1 DTH/DTT Coverage

Clause 7.2 of the *Digital Migration Policy, 2015*, (Government Gazette No. 38583), prescribes that the SABC should aim to cover 84% of the population through a DTT Network and may cover the remaining 16% of the population through DTH satellite network. This provision deprives the SABC of optimizing the benefits of DTH transmission. It is much costlier to operate and maintain DTT transmitters than DTH technology. With DTT the SABC would have to spend up to R15m per month (R400mil per annum) for signal distribution whereas on the DTH transmission, the SABC would have to pay a quarter of that.

When it comes to the infrastructure modalities (maintenance, upgrades and alignment), DTT is a more rigid technology whilst the DTH is more flexible and less costly. Thus, it is progressive to allow the SABC to offer its services over the most conducive and cost-effective technology available. It is submitted that clause 7.2 of the Policy contradicts section 2(b) of the EC Act which provides that the Authority has to create a technologically neutral licensing framework. Thus, the SABC is of the

view that this legislative provision should be adhered to in order to level the playing fields and promote fair competition in the sector.

9.1.2 Forfeiture of unused capacity

Paragraph 2 of the BDM Policy introduces a ‘use it or lose it’ principle which will result in licensees losing their frequencies to competing licensees for unused capacity. Paragraph 3 of the BDM Policy prescribes the time within which to utilize capacity is 3 years for existing channels. Regulations prescribe a period of 18 months for new digital channels.

The SABC has submitted to ICASA that such stringent rules could work against the public broadcaster which has a huge public mandate and must still provide new services prescribed by the BDM policy, which are largely unprofitable. If the public broadcaster has no funding to offer the required services, it will lose the allocated capacity to other licensees. It will be unfortunate for the SABC to lose its allocated spectrum while it is dealing with its funding challenges. Amongst other things, the SABC pays spectrum fees for Outside Broadcasting (“OB”) links which are solely used for broadcasting services.

9.1.3 Channel authorization process

Applications for every new digital channel which a broadcaster needs to air must be submitted to ICASA. Upon approval it must be aired within 18 months from the approved date.⁵

For commercial broadcasters, the application process is administrative, without the public consultation process. In contrast, the public broadcaster’s application may involve the consultation process which tests if the proposed channel is of public value. ICASA would therefore take longer than a year to authorize new SABC digital channels and therefore commercial broadcasters would gain leverage over the public broadcaster.

⁵ Notice No 1070, Electronic Communications Act 36/2005: Digital Migration Regulations published on GG 36000, 14 December 2012, s 3(9).

This regulatory requirement takes away from the SABC the ability to flexibly adjust its channel lineup to address needs. In contrast, the commercial broadcasters have that leeway to change their schedule with a far less onerous process prescribed by ICASA.

9.2 MUST CARRY REGULATIONS

On 21 November 2017 the SABC made a formal request for ICASA to review and amend the following regulations: *The Extent to Which Subscription Broadcasting Services Must Carry the Television Programmes Provided by The Public Broadcast Service Licensee* ("The Must Carry Regulations") set out in Gazette No. 31500 On 10 October 2008.

In the main, the Must Carry Regulations require of SABC television channels, SABC 1, SABC 2 and SABC 3 to be carried by Subscription Broadcasting Services ("SBS") Licensees that have 30 or more channels. Areas of concern for the SABC are as follows:

- a) Clause 6(1) of the regulations has enforced non-payment by SBS Licensees for the three SABC Must Carry Channels. This clause provides that:

"The PBS Licensee must offer its television programmes, at no cost, to a SBS Licensee upon request from the SBS Licensee".

- b) This provision is *ultra vires* the enabling legislation, namely subsection (3) of section 60 of the EC Act which envisages "commercially negotiable terms" being agreed between the SABC and SBS Licensees; and
 - i. by reviewing and amending the regulations to comply with the enabling legislation, ICASA will be fulfilling one its core statutory objectives as set out in section 2(t) of the ECA which is to *"protect the integrity and viability of public broadcasting services"*

- ii. It is the SABC's view that the 2008 regulations have unfortunately failed to protect the viability of the public broadcaster and it is on this basis that we submit that ICASA should urgently commence a separate, public regulatory process to review the Must Carry Regulations.
- c) Notwithstanding this current review of public broadcasting process, the SABC requested that the Must Carry regulatory review should commence as soon as possible as a separate process for the following reasons:
 - i. The SABC's relatively simple, proposed amendments to clauses 6(1) and 7(1) of the regulations only seek to bring the Must Carry Regulations in line with the enabling legislation and create the correct regulatory framework for commercial negotiations between the public broadcaster and SBS Licensees.
 - ii. While the SABC and SBS Licensees may indeed commence commercial negotiations in good faith before the Must Carry Regulations are amended, it is still possible the SBS Licensees will rely on the provision which effectively 'zero rates' the SABC Must Carry Channels and enforces a precedent-setting, non-commercial negotiating environment.
 - iii. The Must Carry Regulations were gazetted over nine years ago and are, in any event, due for a separate review process. At the time the regulations seemed to be drafted on the basis that the "must carry obligation" was an onerous one for SBS Licensees and that these broadcasters would be 'doing the public broadcaster a favour' by carrying its channels as part of an SBS television bouquet. On the contrary, the SABC submits that the Must Carry Channels have commercially benefited subscription broadcasters at the expense of the public broadcaster, a point which was argued by the public broadcaster at the time.
- d) In addition to asking for a separate process on Must Carry from ICASA, the SABC hereby also submits that clause 2.3.5 of the Broadcasting Digital Migration

Policy of 2008 which provides that Must Carry Regulations will apply in the digital environment should be amended. Some of the unintended, anticompetitive consequences of Must Carry 'for free' are as follows:

- i. SBS receive free access to SABC content on their bouquet – content that has partly been acquired partly through public funding. In some instances, the SABC bids for the same content rights against the SBS. However, whether or not the SABC wins that tender often becomes irrelevant because the SBS will still gain free access to that content through the must carry obligations. Without any material commercial benefit to the SABC, this gives SBS licensees an unwarranted competitive edge and leverage over the expense of the public broadcaster and public funding. This is highly disadvantageous to the SABC given its huge investment in content which it often acquires through a competitive process.
- ii. SABC FTA channels are often used by SBS to promote the uptake of their bouquets and packages as a driver to get more subscribers, without any commercial benefit to the public broadcaster. In fact, the SABC's leading South African television programmes *Uzalo*, *Generations*, *Skeem Saam*, *Muvhango*, and *Isidingo* are the most watched shows on the DSTV bouquets in terms of audience numbers. All DSTV packages offer SABC 1, 2 and 3 and, because of the strong SA content programming pull, the SABC channels consistently appear in the top most watched channels on DStv with very little if no commercial value to the SABC as demonstrated in the graph below.

Most-Watched TV Shows		
Channel	Show	Peak Viewers
Top 5		
SABC 1	Uzalo	8,987,691
SABC 1	Generations: The Legacy	8,761,610
SABC 1	Skeem Saam	7,066,679
SABC 2	Muvhango	5,247,821
Etv	Scandal	4,801,027
Top per channel		
SABC 1	Uzalo	8,987,691
SABC 1	Generations: The Legacy	8,761,610
SABC 2	Muvhango	5,247,821
SABC 2	The Vodacom Show	3,477,101
SABC 3	Isidingo – R	1,116,280
SABC 3	Isidingo: The Need	1,068,658
Etv	Scandal	4,801,027
Etv	Rhythm City	3,517,897
DStv	The Queen	1,412,240
DStv	Our Perfect Wedding	1,228,369

Source: <https://mybroadband.co.za/news/broadcasting/255533-the-most-watched-tv-shows-in-south-africa-6.html> (visited on 15 August 2018)

- iii. The Must Carry ‘for free’ regulation also creates distortions in the Sports Rights area. The SABC often acquires expensive sub-licensed rights from a subscription broadcaster, such as MCA, broadcast national sporting events. Under the Must Carry regulations and notwithstanding the fact that the SABC has duly paid for these rights, the SBS then benefits from the SABC’s retransmission of these events through the channels that must be carried under the Must Carry regime. Other subscription broadcasters having acquired no rights to broadcast these events, would especially benefit under the regime by being able to

broadcast the events (albeit on a delayed or delayed live basis), without incurring acquisition or sub-licensing costs.

- iv. In order to deal with all these distortions which are clearly unfair on the public broadcaster, the SABC has submitted to ICASA that the Must Carry regulations must be amended to comply with the enabling legislation to allow for commercial negotiations between the parties. The SABC intends to make further input on the subject matter when ICASA reviews of these regulations.

With respect to the SABC's funding model, the SABC intends that carriage fees from channels such as SABC News, Encore and fees that the SABC should be receiving for SABC1, 2 and 3, should become a more significant revenue stream for the public broadcaster, in addition to advertising, sponsorship and licence fees.

9.3 SPORTS BROADCASTING RIGHTS REGULATIONS

9.3.1 The *ICASA Sports Broadcasting Services Regulations* ("The ICASA Sports Regulations") on national sporting events provide a list of sporting games or tournaments that are expected to be broadcast by the Free to Air broadcasters which include the SABC. Therefore, the SABC is expected to broadcast the listed events in the regulations. This gets more complex when considering the public service obligations that the SABC have to the general public. So far the broadcast of listed events such as the PSL and Bafana Bafana games have yielded negative financial returns relative to the high cost of the rights investment made.

9.3.2. The *ICASA Sports Regulations*, ICASA has not restricted key national sports to free-to-air carriers. It has not made it clear in the regulations, that the bidding process for subsidiary rights be open and transparent, neither has it specified that the process of determining the subsidiary rights be fair, or set criteria on which fairness would be judged. Consequently, MCA grants FTA broadcasting services stringent sub-licensing terms and conditions that do not give FTA broadcasters sufficient time to advertise the events in order to realise return on investment;

9.3.3 Whilst the SABC appreciates the existence of the ICASA Sport Broadcasting Regulations and its quest to ensure that FTA broadcasters also carry listed national sporting events, sport rights have indeed become highly expensive and FTA services continues to bear the brunt of uncompetitive sublicensing conditions that deter the SABC from gaining return on investment for sport rights.

9.3.4 MCA as the primary right holder of most premium sport content,

sublicenses these rights to FTA broadcasting services at a high cost with stringent terms and conditions that do not guarantee return on investment. It is possible that the FTA broadcasting services could be paying more than 50% towards the primary rights acquisition through sublicensing or secondary rights; thereby becoming an equal funder of MCA primary sport rights. So the regulation of pricing of secondary rights becomes very critical and necessary.

9.3.4 To this end, for Super Rugby, the SABC is only permitted to broadcast

delayed live broadcasts through its sublicensing condition. SuperSport and MCA has locked-in all important sporting codes and thus FTA broadcasting services struggle to access these rights on reasonable terms. Therefore, regulatory intervention is required in order to deal with the long term locking-up of sports rights.

9.3.5 The key challenges and proposed solutions regarding the ICASA Sports Regulations are therefore as follows:

- a) The acquisition and production of sports broadcast rights are generally expensive and requires huge financial injections. Whilst the ICASA Regulations do not prescribe that the SABC should broadcast all of the listed National Sporting Events, the SABC has consistently faced public pressure and condemnation when it has failed to broadcast some of these events.
- b) The ICASA Sports Regulations term all agreements “commercial”, although the EC Act does not provide that subscription broadcasters can set

commercial terms for subsidiary rights. This may result in subscription services demanding high prices from FTA broadcasters for subsidiary rights.

- c) ICASA has not made it clear in the regulations that the bidding process for subsidiary rights be open and transparent and neither has it specified that the process of determining the subsidiary rights be fair, or set criteria on which fairness would be judged.
- d) Regarding anti-hoarding rights, the revised regulations should cater for instances when the subscription broadcasting service does not intend to broadcast the event, or be a part of it, it should be required that the rights be offered to the public broadcaster at a nominal fee.
- e) Subscription broadcasters with market power should not be allowed to “lock-up” rights for years because this arrangement substantially lessens competition in the broadcasting television market as other broadcasters are unable to access desirable content which could potentially make their programming more attractive to audiences. It appears that subscription television broadcasters ‘overpay’ for content in order to extend its window of exclusivity and locking out FTA and subscription broadcasting competitors.
- f) Subscription broadcasters with market power should be required to conclude agreements for the on-selling of rights timeously before the broadcast of events to enable the sub-licensor to be able to sell advertising space around such events. The practice has been that the subscription broadcaster concludes negotiations with sub-licensee in the month or the week in which the event is to be broadcast of the event. Consequently, a sub-licensee is unable to sell advertising space given the time constraints. Additionally, the practice of late, sub-licensing also precludes the SABC from applying for exemption from the relevant programming licence conditions obligations when programming of national interest is broadcast. The Authority expects the SABC to apply for exemptions at least four weeks prior the event but the current sub-licensing practices does not enable the SABC to meet this time frame.

- g) Where another broadcaster decides not to buy the full rights from a subscription broadcaster but opts for certain packages, such as, local team games and the quarter, semi-finals and finals, subscription broadcasters should be obligated to sell such packages at a reasonable rate.
- h) In other cases, subscription broadcasters sub-licence the rights to big games but then only allow the broadcasts to be used on a delayed basis. This arrangement makes the event less attractive and it inhibits the sub-licensor from generating revenue as advertisers are reluctant to advertise when there is a delayed broadcast

9.3.6 The SABC is in discussions its shareholder representative regarding the challenges of meeting its public mandate to offer the South African public full access to sports of national interest, as well non-commercial, developmental and minority sports. Sports programming is costly from both a rights acquisition and production point of view and therefore the SABC is in discussions about how best this part of our public mandate may be funded, either wholly or partly.

Recommendation

The SABC intends to engage ICASA during the review of the ICASA Sports Broadcasting Regulations on: (1) the review of the list of national sporting events (2) sub-licensing conditions and the pricing of sports rights to address anti-competitive concerns; (3) the bidding process for subsidiary rights which should specify that the process of determining the subsidiary rights be fair and have set criteria on which fairness would be judged and (4) the implementation of anti-hoarding and anti-siphoning provisions.

The SABC supports the Australian model which lists national sporting events that should first be made available to FTA broadcasters and only if these are not bought, the rights are then opened to bidding by subscription broadcasters.⁶ Furthermore,

⁶ <https://www.communications.gov.au/policy/policy-listing/anti-siphoning> (visited on 15 August 2018); https://en.wikipedia.org/wiki/Anti-siphoning_laws_in_Australia (visited on August 2018)

the SABC submits that the ICASA Sports Regulations should advocate unbundling sports rights and not allow subscription broadcasters to access FTA rights. The ICASA Sports Broadcasting Regulations should also expressly state that coverage of listed national sporting events are dependent on their commercial affordability by FTA broadcasters.

9.4 ADVERTISING AND SPONSORSHIP REGULATIONS

In 2009, the Authority issued the Draft Regulations on Advertising, Infomercials and Programme Sponsorship for Broadcast service licensees. The provisions in Regulation 5 determine the placement and duration of advertisements, where a licensee may not;

- a) during any licence year, broadcast more than an average of ten minutes of advertisements per hour on the licensed service; and
- b) broadcast advertisements in excess of twelve minutes in any one hour.

Policy recommendation

The SABC acknowledges that section 55 of the EC Act enjoins ASA to regulate advertising content whilst ICASA has retained the duty to regulate the scheduling and the duration of advertising. Thus, the SABC submits that the current regulations should be reviewed with due consideration to the digital integration. In light of increased competition and the prospective further segmentation of advertising revenue, the SABC should be provided with the opportunity to offer increased advertising space (and therefore advertising minutes per hour) to product providers, in order to remain financially secure in an increasingly competitive environment.

10. CONCLUSION

The SABC understands that it occupies a unique position in the industry as a public broadcaster in that it largely depends on commercial revenue to sustain itself. The substantial public mandate and the high expectations on the SABC by the public and

all stakeholders require a regulatory environment that is more enabling and less restrictive for the public broadcaster. The SABC has submitted that a mixed funding model should be retained, that government should be engaged further on how the funding shortfall for public mandate programming should be met and four key regulations must be reviewed and amended, to protect the integrity and viability of the public broadcaster.

There is still a need to have a separate statute on the SABC that will comprehensively deal with all matters affecting the corporation. As recommended, the Broadcasting Act should be amended to become the SABC Act, dealing solely with matters relating to the establishment and governance of the public broadcaster.