



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

Briefing to the Parliamentary Portfolio Committee on Communications

“SABC’s Regulatory Compliance & Monitoring”

“Update on the IMT Spectrum ITA Process”

“Update on Industrial Relations”

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Presentation Outline

1. Legislative Overview
2. Universal Service Mandate
3. SABC Licence Terms and Conditions
4. Content Monitoring
5. SABC TV Programming Obligations
6. ICASA Ruling – Media Monitoring Project v SABC



The Constitution of the Republic of South Africa, 1996:

192. Broadcasting Authority

National legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society.



Electronic Communications Act, 2005 - section 2(s)(ii) directs ICASA to ensure that broadcasting services provide for regular:

- news services
- actuality programmes on matters of public interest
- programmes on political matters on public interest
- programmes on matters of international, national, regional and local significance

Broadcasting Act, 1999 - Chapter IV sets out the charter for Public Broadcasting Services and requires that the SABC programming content:

- reflects SA attitudes, opinions, ideas, values and artistic creativity
- Advances the national and public interest
- Promotes the rights of all South Africans to receive and impart information and ideas
- Provide for a wide range of audience interests, beliefs and perspectives
- Reflect a high standard of accuracy, fairness and impartiality in news that deal with matters of public interest



The SABC has a public broadcasting service mandate with associated extensive Universal Service Obligations (USOs) including:

- obligation to provide coverage to 100% of the population
- obligation to cater for all South African languages, particularly “marginalised” languages, through its national and regional licences
- obligation to cater for minority groups, children, women and people with disabilities

ICASA is obliged to monitor and enforce compliance by the SABC with the Charter of the Corporation (section 6(2) of the Broadcasting Act) to amongst others:

- contribute to democracy, development of society and nation building
- safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa
- ensure plurality of news, views and information and provide a wide range of entertainment and education programmes



Programming Obligations

Financial Obligations

Complaints Handling
Obligations

Human Resource
Obligations

Training and Employment
Equity Obligations



SABC TV Licence Conditions (Programming Obligations)



Category	SABC 1	SABC 2	SABC 3
NEWS	7h / week (3hrs 30 min in prime time packaged as a single programme daily)	Same as SABC 1	Same as SABC 1
CURRENT AFFAIRS	5h / week (2hrs in prime time)	Same as SABC 1	5h / week (1hr in prime time)
INFORMAL KNOWLEDGE BUILDING	16h / week (2hrs in prime time)	18h / week (2hrs in prime time)	12h / week (2hrs in prime time)
DOCUMENTARY	4h / week (2hrs in prime time)	5h / week (2hrs in prime time)	5h / week (2hrs in prime time)
DRAMA	24h / week (8hrs in prime time & 4h S.A. in prime time)	Same as SABC 1	Same as SABC 1
CHILDREN'S	20hrs / week	15h / week	12hrs / week
EDUCATIONAL	10hrs / week	10h / week	None



Overall Local Content percentages measured annually as per current effective Regulations- 2006 the new Regulations are effective 24 months from March 2016 which is March 2018:

Overall percentages measured annually:

- Public = 55% (SABC 1 & 2)
- Commercial = 35% SABC 3

Weekly programming breakdown:

Programme Type	Public Service	Commercial Service
S.A. Drama	35%	20%
Children's Programming	55%	25%
Documentary Programming	50%	30%
Informal Knowledge Building	50%	30%
Current Affairs	80%	50%
Educational Programming	60%	-



Complaint Against SABC: Background & Process



- ❑ On **26 May 2016**, the SABC issued a media statement indicating that it will no longer broadcast footage of destruction of public property during protests. The SABC believed that the broadcast of destruction of property constituted an act of encouragement by the public broadcaster and continuing to broadcast such footage of destruction might encourage other communities to do the same

- ❑ On **24 June 2016**, the Complaints and Compliance Committee (CCC) heard the complaint lodged by the following complainants: (i) **The Media Monitoring Project Benefit Trust**, (ii) **S.O.S Support Public Broadcasting Coalition** and (iii) **Freedom of Expression Institute**

- ❑ On **03 July 2016**, the CCC made its findings regarding the complaint against the SABC

- ❑ On **11 July 2016**, the Authority issued a media statement endorsing the recommendations by the CCC



CCC Recommendation and ICASA Decision



Decision A:

Direct the SABC to withdraw its resolution as published in its statement of 26 May 2016, which states that *“the SABC will no longer broadcast footage of destruction of public property during protests”*.

Decision B:

The withdrawal must be done retrospectively from the date when the resolution was taken on 26 May 2016.

Decision C:

The Chairperson of the Board of the SABC must confirm in writing to Council of the Authority via the Office of the Coordinator of the CCC within seven (7) calendar days from the date on which the order is served that the resolution as endorsed by Council of the Authority was taken as ordered.

Despite numerous written demands to the SABC to comply with the order, the licensee is yet to submit proof regarding compliance with decisions A – C. The Authority will in due course take appropriate enforcement action in this regard



Legislation Considered by ICASA in Taking the Decision:

- ❑ **Section 39(2) of the Constitution**: *When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.*

- ❑ **Section 6(4)(c) and (d) of the Broadcasting Act**: *The Corporation must encourage the development of South African expression by providing, in South African official languages, a wide range of programming that encourage the development of South African expression by providing a wide range of programming that offers a plurality of views and a variety of news, information and analysis from a South African point of view, and advances the national and public interest.*

- ❑ **Section 6(8)(f) of the Broadcasting Act**: *The Corporation must develop a code of practice that ensures that the services and personnel comply with a high standard of accuracy, fairness and impartiality in news and programmes that deal with matters of public interest.*



Legislation Considered by ICASA in Taking the Decision:

- Clause 11(8) of the Broadcasting Code:** *Broadcasting service licensees must advise viewers in advance of scenes or reporting of extraordinary violence, or graphic reporting on delicate subject-matter such as sexual assault or court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates.*

- Clause 11(9) of the Broadcasting Code:** *Broadcasting service licensees must not include explicit or graphic language related to news of destruction, accidents or sexual violence which could disturb children or sensitive audiences, except where it is in the public interest to include such material.*

- SABC 1, 2 & 3 Licence Terms and Conditions:** *Provide fair, unbiased, impartial and balanced coverage independent from governmental, commercial or other interference; and provide a reasonable opportunity for the public to receive a variety of points of view on matters of public concern.*



Legislation Considered by ICASA in Taking the Decision:

Section 17H (Offences and Penalties) of the ICASA Act

- A person is guilty of an offence if that person fails to comply with a decision made by the Authority.

- A person convicted of an offence (i.e. for failing to comply with a decision made by the Authority) is liable to a fine not exceeding R1 000 000,00 (one million Rand) or to imprisonment not exceeding 1 (one) year.



Presentation Outline

1. Background / Context
2. Basis of the court action
3. Court's decision on Part A of the Minister's application
4. Amendments to the IMT ITA



IMT ITA licensing process commenced in 2006

- 2011 - Draft Spectrum Licensing Plan and a draft ITA for a combined licensing of the 800 and 2600 MHz bands
- 2013 – SA Connect Policy
- 2014 – Draft IMT Roadmap
- 2015 Final IMT Roadmap and Radio Frequency Spectrum Plan

IMT ITA published in line with SA Connect Policy to realise the Government’s rollout targets for broadband services in order to:

- Increase universal service and access by ensuring rural connectivity
- Give consumers more choice
- Promote Investment in the sector and economic growth
- Ensure quality of service and experience
- Ensure affordability of services



1. During August 2016 the Honourable Minister of Telecommunications and Postal Services proceeded against ICASA in an urgent application to review and set aside the licensing process for the IMT ITA

Part A: urgent interdict suspending the implementation of the decision pending the review

Part B: setting aside the decision to implement the licensing process on the basis that:

- ICASA may not lawfully issue the ITA until has considered the spectrum policy then before Cabinet
- The ITA contradicts the 2013 Radio Frequency Spectrum Policy
- The ITA does not meet the statutory obligation on ICASA to promote competition
- ICASA's conduct was irrational and unlawful

2. ICASA acted on legal advice and defended its actions on the basis that:

- ICASA is independent and the Minister cannot demand deference to a draft policy
- The delays to the finalisation of the spectrum policy can no longer be tolerated
- The ITA is consistent with the National Radio Frequency Plan
- Certain valid criticisms against the ITA had been remedied by subsequent amendments to the ITA



In relation to Part A of the court case (Urgent Interdict), the court found in favour of the Honourable Minister pending the finalisation of Part B of the review. The following grounds were considered:

- Lawfulness to issue the ITA before policy is released by Minister - ICASA did have a duty to co-operate with the Minister, but that this was confined to existing policies and the law
- National Radio Frequency Plan 2013 was violated by the ITA – ICASA's decision to assign spectrum now and defer access to it seems reckless and therefore an irrational decision
- ICASA's obligation to promote competition – court was convinced that ICASA had considered the competitive impact of the ITA prior to releasing it
- Irreparable harm and balance of convenience – court found that no irreparable harm to ICASA or participants would flow from granting the interdict

Part B of the review in respect of final relief to set the ITA aside is currently pending before the court



The ITA was amended, prior to court's decision on Part A, to clarify the following:

- **Application date:** to extend the application date from 3 October 2016 to 3 February 2017.
- **Coverage obligations:** obligations with regard to coverage (i.e. 30 Mbit/s to 100% of the population) to only apply in instances where the applicant has full usage of the spectrum in the assigned lot.
- **Participation in the auction process:** in instances where an Applicant did not have 30% equity ownership in terms of the ECA, the applicant must at least be a level 4 and above contributor (BBBEE status) in terms of the Codes of Good Practice published in terms of section 9(1) of the BBBEE Act.



1. Introduction
2. Background
3. Disputes
4. Strike Management Plan
5. Mediation
6. Dispute Consideration
7. Post Strike
8. New Union and Wayforward



- Historically, ICASA employees belonged to the Communications Workers Union (CWU), where matters of collective bargaining, such as salaries, policies, terms and conditions of employment etc. were negotiated between the Union and the Authority;
- Over a period of 5 years, since 2010, negotiated salaries were unmitigated, inordinate to norms in the labour market and the ICT Industry. Unfortunately, this created squeeze between Managers and Senior Managers, who were part of the bargaining council, as well as internal anomalies and remuneration inequalities within the Authority, and
- The uncoordinated organisational structure led to the duplication of resources/positions, wherein a detailed study on Organisational Development by Adam Smith International was conducted which triggered restructuring or structural realignment that started in 2009, but never executed.



- ICASA embarked on an organisational re-alignment process during 2014. As per section 189 of the Labour Relations Act, ICASA consulted CWU from the commencement of the process.
- A Steering Committee (SteerCo) comprising of 2 CWU representatives, HR, PE Corporate Services (Service Provider) and 2 General Managers was established (this SteerCo met on a weekly basis).
- There were also CEO's staff meetings to update all employees on the realignment process.
- All documentation pertaining to the process was placed on ICASA's intranet for easy access by all.
- A special communication platform was also created to allow employees to send queries, questions, comments etc. directly to the SteerCo on any aspect of the realignment process.



- In 2014, ICASA also embarked on a process to revise old policies and formulate new ones.
- As per the provisions of ICASA / Communication Workers Union Recognition Agreement, all the HR policies were subject to consultation.
- The consultations took the form of monthly meetings or and special meetings as arranged by the Human Resources Division.
- The meetings were attended by the Authority's shop stewards and the National Union Office Bearers.
- The policies that were updated are:
 - Performance Management;
 - Disciplinary Code;
 - Grievance; and
 - Overtime policies.
- Remuneration, Job Evaluation and Probation policies were newly developed policies.
- All the above mentioned policies were subsequently approved by Council on 31 March 2015.



- From September 2015, employees started resigning from the Communication Workers Union.
- As a result, the union's membership threshold fell below 30%.
- In line with the provisions of the Recognition Agreement, the union was notified of the decline in membership and was given 90 days to correct the situation.
- By November 2015, the situation did not change and the union was given a month's termination of the agreement notice.
- In December 2015, the Recognition Agreement with CWU came to an end by operation of law.



- On 16 November 2015, the Authority received a group grievance in line with the provisions of ICASA's Grievance Policy.
- On 27 November 2015, employees' representative were invited for a meeting with the CEO (scheduled for 30 November 2015), to discuss the raised grievances.
- The employee representatives failed to attend the scheduled meeting, without tendering any apology nor an explanation.
- On 03 December 2015, a letter was sent to the employee representatives in response to the grievance.
- Upon reaching the last stage of the Grievance process, the employees referred the matter to the CCMA for a dispute resolution in accordance with the grievance policy.



- On 1 April 2016, ICASA received a letter from a Labour Consultant (acting on behalf of ICASA employees) listing the below demands:
 - i. Performance Bonus backdated for 2014-15FY;
 - ii. Backdated salary increases from 1 April 2015;
 - iii. Restructuring / re-alignment of the organisation to be reversed;
 - iv. All policies that were approved after 31 March 2015 to be discarded; and
 - v. Unilateral change to terms and conditions of employment to be reversed.

- The letter was duly responded to on 18 April 2016.

- Subsequent to that, ICASA received a CCMA referral regarding the same demands.

- Both parties then met at the CCMA for Conciliation on 31 May 2016. No agreement could be reached and accordingly, a certificate of non-resolution was issued by the CCMA.

- On 22 June 2016, a notice of intention to embark on a protected strike was received from the Labour Consultant. The strike commenced on 4 July 2016 with 39% (139/356) of the workforce participating in strike.



Strike Management Plan



- The Strike Management Committee was established to ensure the effective management of the strike by putting contingency measures in place to mitigate the impact of the strike action, and ensure that service delivery is affected as little as possible.
- Communication was distributed to employees on 30 June 2016, outlining the application of the following principles during the strike action:
 - No Work No Pay
 - No form of intimidation will be allowed
 - No picketing allowed inside the ICASA Offices
- Employees not participating in the strike were religiously signing attendance registers twice a day, at 9h00 and 15h00. From those registers, daily statistical reports were compiled of percentages of striking versus non-striking employees.
- At the beginning of the strike, there was 39% (139/356) strike participating rate. The number gradually reduced to 37% (129/356) as at 08 August 2016 when the strike ended.
- The strike was fairly peaceful, with no major incidents reported.



Mediation



- The Management Task Team was appointed to engage with the representatives of the striking employees;
- The parties mutually agreed to the appointment of the Mediator;
- Mediation process commenced on 29 July and proceeded on 4, 5 and was concluded on 8 August 2016;
- Management committed to consider all the remuneration related disputes in accordance with the relevant Governance structures (REMCO), and approval from Council, and
- Striking employees returned and commenced duties on 10 August 2016.



- Deliberations on the presented disputes were held with the Management Team, and the following was unpacked:

	Disputed Issues	Findings
1.	Performance Bonus backdated for 2014-15FY.	A decision was taken in 2015 not to pay any bonuses, due to the dismal overall 29% performance of the Authority.
2.	Backdated salary increases from 1 April 2015.	All employees did receive 5.5% salary increase effective from 01 April 2015, in 2015.
3.	Restructuring / re-alignment of the organisation to be reversed.	Management requested the striking employees' representatives to engage them further on the specifics of these disputes, before 31 March 2017.
4.	All policies that were approved after 31 March 2015 to be discarded.	
5.	Unilateral change to terms and conditions of employment to be reversed (Claw-back on salaries)	



- The Management Team made the following recommendations that were supported by REMCO and approved by Council:
 - i. The payment of Performance Bonuses, in recognition of the drastic improvement to the Authority's 76.7% audited performance results;
 - ii. 7% salary increase across the board, and a merit escalation as guided by the Performance Management and Development Policy; and
 - iii. Explore different options pertaining to the Claw-back strategy, for consideration by Council.



- Post the Strike, 163 employees joined the National Trade Union Congress(NTUC).
- First Meeting was held with NTUC on 14 September 2016 to discuss Organisational Rights of the Union in accordance with Section 21 of the LRA;
- Second Meeting is being arranged for 24 October to discuss matters of a collective agreement.



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

Thank you