



Independent Communications Authority of South Africa

MINUTES OF A SPECIAL MEETING OF COUNCIL		
Date	05 May 2022	
Time:	10:15	
Venue:	Microsoft Teams	
Present	████████████████████	Chairperson
	██████████	Councillor
	██████████████	Councillor
	██████████	Councillor
	████████████████	Councillor
By Invitation	██████████████	CEO
	██████████	CFO
	██████████████████	CAE
	██████████	Corporate Secretary
	██████████	Secretariat Officer
	██████████	Secretariat Officer
Partial Attendees	██████████	Executive: Licensing and Compliance
	██████████████████	External Legal Counsel (Senior Counsel)
	██████████	Executive: Legal Risk and CCC
	██████████	Executive: PRA
	██████████	External Legal Counsel (Gildenhuis Malatji Inc.)
	██████████	Manager: Cyber Security, PRA
	██████████	Specialist: Legislative and Regulatory drafting
	██████████	Senior Manager: ICT Licensing Services
	██████████	External Service Provider / Consultant
	██████████████	Market Analyst: PRA
	██████████	Senior Manager: Market Regulation, PRA



	██████████	Senior Manager: Social Policy, PRA
Apologies	None	

No.	Action Item	Person Responsible
1.	<p>Opening and apologies</p> <p>1.1. The Chairperson opened the meeting at 10:15 and welcomed all present.</p> <p>1.2. There were no apologies noted.</p> <p>The opening and apologies were noted.</p>	Chairperson
2.	<p>Declaration of interest</p> <p>No conflict of interest was noted.</p>	Council
3.	<p>Ratification of the Agenda</p> <p>The agenda was ratified.</p>	All
4.	<p>First Rand Bank Ltd notice to renew CECS Licence</p> <p>4.1. Council previously deliberated extensively on this matter at the Council meeting held on 28 April 2022 and subsequently requested a Senior Counsel legal opinion. The legal opinion has since been circulated to Councillors for their perusal.</p> <p>4.2. In essence, the legal opinion indicates that condonation can be given with respect to Vuma FM and Power FM, whereas with FirstRand there is no mechanism to allow the Authority to give condonation as the Authority has already made and decision and communicated same.</p>	CEO / Exec: Regions and Consumer Affairs




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	<p>4.3. ██████████ SC was present at the Council meeting to present the legal opinion and to address questions that Council may have. The highlights from the legal opinion are summarised below.</p> <p>4.4. SC indicated that although Vuma FM and Power FM have not advanced full and reasonable justification of their delay, given that condonation is not a mechanical tick box process, it is recommended that condonation should nonetheless be granted.</p> <p>4.5. Whereas, with FirstRand, SC indicated that since a decision has already been taken to refuse renewal, and FirstRand informed of this decision, there is no mechanism to empower the Authority to revisit the decision, as this would be <i>ultra vires</i>.</p> <p><u>It was recommended that:</u></p> <p>4.6. Council does not approve the late renewal notification of FRB due to the fact that the Authority does not have the legislative authority to consider and approve condonation requests relating to a licensee 's failure to comply with section 19 (2) of the ECA. FRB has other alternatives with respect to offering similar services using numbers and ensuring non-disruption of services to its clients. For example, FRB can enter into commercial negotiations with another licensee to purchase an Individual Electronic Communications Service ("IECS") licence in order to ensure that it continues to provide the current services and its customers continue to enjoy non-disruption of services.</p> <p>4.7. FRB be given a minimum of sixty (60) working days to inform ICASA of its intended course of action regarding the steps it would take to ensure that its customers continue to receive services without disruptions.</p> <p>4.8. In the event that FRB intends to engage in commercial negotiations with another licensee to acquire an individual licence, FRB would need to follow the application process for transfer of an individual licence once the sale transaction is</p>	



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	<p>concluded. The application process for the transfer of an individual licence takes approximately one hundred and eighty (180) days. During the period that the Authority is considering the application for the transfer of the individual licence, it is recommended that FRB customers continue to receive services until such time that the consideration of the transfer application is complete.</p> <p><u>The following comments were made:</u></p> <p>4.9. Council sought advice from SC on how it should manage the FRB late application, marrying in the principle of “good cause”, as the institution cannot cease to operate due to the nature of services that it provides.</p> <p>4.10. Council inquired, in light of the “good cause” concept, about any possible interventions during the time that FirstRand will have expired and the interregnum between the cessation of use and any subsequent application that is to follow.</p> <p>4.11. SC informed Council that there is already a decision to not renew the licence, and, until the decision is set aside, it will remain. The decision taken by the Authority is that FRB must cease to provide electronic communication services in respect of which the licence was granted.</p> <p>4.12. SC advised that the Authority took the above-mentioned decisions and communicated the decision to FRB in February 2022. SC further advised that if FRB has not ceased to provide the services, they are acting in contravention of section 7 of the ECA, and they are operating without a licence, and, further, that they are operating contrary to the decision taken by the Authority.</p> <p>4.13. Council expressed that when FRB applied for the renewal, their licence was still valid, albeit it being outside the 6 months period, and further inquired if there could be nothing done to condone their application.</p>	



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	<p>4.14. Council inquired if it was possible to grant FRB an opportunity to bridge the conclusion of its current licence and the acquisition of a new licence, as FRB renders a critical service to the public at large.</p> <p>4.15. SC advised that the ECA is silent on a situation where a licence has already expired. There is room to accommodate FRB in terms of Section 19 of the ECA, in the instance where the Authority has not updated its licensee register, but it has been nullified by the letter sent by the Authority to FRB indicating that the Licensee should cease operations.</p> <p>4.16. Council requested Management to provide more information on the relationship between FRB and the parent company CFT, and the possibility of CFT taking over the subscribers while FRB is applying for a new licence.</p> <p>4.17. Management informed Council that the Licensing Division had a meeting with FRB last-year and asked about the relationship with CFT. FRB indicated that for various reasons the two operations had been kept separate. Management informed Council that in the intervening period Management will provide any necessary information required by Council.</p> <p>4.18. Council resolved that Senior Counsel should share an additional / supplementary legal opinion by the end of the day in relation to FRB, following which Council would decide on whether there should be a meeting tomorrow on 06 May 2022 to make a decision of the matter, or whether a round robin resolution will suffice for purposes of approval, should the supplementary legal opinion from SC not warrant further Council engagements.</p> <p>The decision of Council was deferred.</p>	
5.	<p>Application for renewal of Individual Commercial Sound Broadcasting Service and Radio Frequency Spectrum Licences by Power FM (Pty) Ltd</p> <p>5.1. The purpose of this submission was to advise Council of the applications for renewal of Individual Commercial Sound</p>	<p>Cllr </p>



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	<p>Broadcasting Service (I-CBS) and Radio Frequency Spectrum (RFS) Licences (“Licences”) submitted by Power FM (Pty) Ltd (“the Applicant”) outside the regulated timeframes, and the applications for condonation for late filing, and to recommend that Council approve the Renewals Committee’s recommendation in respect of the Applicant.</p> <p>5.2. On 16 March 2022, the Committee received applications from the Applicant to renew its I-CSBS and RFS licences. The licences are due to expire on 28 May 2022 and the Applicant was supposed to have lodged its renewal application on or before 28 November 2021.</p> <p>5.3. The Applicant attached its request for condonation, and submitted an additional application for condonation on 22 March 2022.</p> <p>5.4. The Applicant lodged its application for renewal of its licences on 16 March 2022, contra the provision of regulation 10(2) of the Regulations.</p> <p>5.5. In its renewal application, the Applicant requested condonation for late filing, advancing a reason that this was attributed to it not retaining the services of its Regulatory and Compliance Officer due to Covid- 19 lockdowns. Further, the submission was not made timeously due to an oversight on the part of management.</p> <p>5.6. On 22 March 2022, the applicant submitted an additional application for condonation for late filing, advising that it, unfortunately, failed to submit its application for renewal of its licences as prescribed and accordingly finds itself in breach of that requirement; hence, it is requesting for condonation from the Authority for this oversight, which resulted from its systems not being in place during the COVID 19 pandemic.</p> <p>5.7. On 8 April 2022, the Committee wrote to the Applicant, advising the applicant that the Committee has assessed the Applicant’s application for condonation and is of a preliminary view that the motivation submitted by the Applicant for condonation is not</p>	




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	<p>sufficient to demonstrate “good cause” for late filing of the renewal application, which would warrant the Authority to accept the Applicant’s late renewal application. The Applicant was accordingly invited to make written representations in terms of Section 3 of PAJA. The Applicant was invited to make written representations in terms of Section 3 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) ("PAJA").</p> <p>5.8. On 20 April 2022 the Applicant submitted its written representations.</p> <p>5.9. Drawing from the external legal opinion received from [REDACTED] (GMI) on 19 April 2022, in respect of Vuma FM (Pty) Ltd, the Committee has assessed Power FM’s application for condonation and the accompanying written representations, taking into consideration, inter alia, the following rubric factors: Degree of Lateness, Explanation for the Delay, Prospects of Success, Prejudice and Public Interest.</p> <p>5.10. Despite the Committee’s recommendation for approval of condonation, it must be noted that the Committee has considered the submission by the Applicant that failure to renew its licence by the Authority will result in regression in the attempts by the Authority to achieve the objectives of the ECA and HDG Regulations.</p> <p>5.11. Section 2(h) of the ECA requires that the Authority promote broad-based black economic empowerment with particular attention to the needs of women, opportunities for youth and challenges for persons with disabilities.</p> <p>5.12. The Committee reasons that this objective requires that the Authority promotes empowerment and transformation of the sector as a whole, as opposed to focusing on individual Licensees. This could still be achieved, for example, by ensuring that - should the Applicant's application for condonation not succeed, therefore resulting in its licence not being renewed - the Authority may still achieve this objective by replacing it</p>	



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	<p>(following an ITA process if deemed necessary) with a Licensee that is wholly owned by HDIs. Therefore, the Applicant's submission regarding regression of the HDI and empowerment objectives by the Authority, should its (the Applicant's) application for condonation not succeed, is not persuasive and not assist its quest for the Authority to condone late filing.</p> <p><u>Recommendation</u></p> <p>5.13. It was recommended that Council approves the application for condonation by Power FM as the Applicant has been able to demonstrate (notwithstanding failure to submit proof of retrenchment) that the pandemic had an impact to its business and operations.</p> <p><u>The following comments were made:</u></p> <p>5.14. Council requested the SC to advise on how “good cause” should be factored and dealt with under the circumstances, and further inquired if there should be an amendment to the regulations that would stipulate how “good cause” should be regulated.</p> <p>5.15. Council inquired if the stipulations for “good cause” should be included into the Regulations to avoid varying interpretations, or should the Authority leave it open to be judged on a case-by-case basis.</p> <p>5.16. SC relayed to Council that the phrase “good cause” is not defined in the legislation, and that precedent from the Courts should be assessed to derive guidance. The Courts have always been reluctant to set strict requirements to define what good cause is, and it is usually dealt with on a case-by-case basis. Condonation leaves room for discretion that the decision maker will be given to exercise.</p> <p>5.17. SC advised Council to leave the good “cause clause” as is, and to be guided by paragraph 2.29.1 until 2.28.4 of the legal advice given to the Authority, as those are the issues the Court would use to assess if the condonation granted was in line.</p>	



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	<p>The submission was approved.</p>	
<p>6.</p>	<p>Application for renewal of Individual Commercial Sound Broadcasting Service and Radio Frequency Spectrum Licences by Vuma FM (Pty) Ltd</p> <p>6.1. The purpose of this submission was to advise Council of the applications for renewal of Individual Commercial Sound Broadcasting Service (I-CBS) and Radio Frequency Spectrum (RFS) Licences (“Licences”) submitted by Vuma FM (Pty) Ltd and Power FM (Pty) Ltd (“the Applicants”) outside the regulated timeframes, and the applications for condonation for late filing, and to request Council to approve the Renewals Committee’s recommendation in respect of Vuma FM.</p> <p>6.2. On 20 January 2022, the Renewals Committee received applications from the Applicant to renew its I-CSBS and RFS licences. The licences are due to expire 24 May 2022, and the Applicant was supposed to have lodged its renewal application on or before 24 November 2021.</p> <p>6.3. On 1 February 2022, the Committee received an application for condonation for late filing of the renewal application from the Applicant’s law consultant, Ms Limpitlaw.</p> <p>6.4. On 1 February 2022, the Committee received an application for condonation for late filing from the Applicant. In the main, the application in this regard states as follows:</p> <p>6.4.1 The Applicant engaged in a complex change of control process in 2020, culminating in a change of control approval being granted by ICASA in 2021;</p> <p>6.4.2 The Applicant had had ongoing engagements with ICASA’s compliance division over its failure to comply with its local content and format-related licence conditions, culminating in a CCC process and settlement agreement being made a ruling of ICASA in 2021; and</p>	<p>Cllr </p>



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	<p>6.4.3 The Applicant was under the incorrect impression that it needed to only submit the renewal application any time before the expiry of its licence. The Applicant indicates that this erroneous assumption was compounded by the fact that it has no in-house legal and compliance support to advise it accordingly.</p> <p>6.5. On 18 March 2022, the Committee wrote to the Applicant advising that the Committee had assessed the Applicant's application for condonation and was of the considered view that the reasons provided did not demonstrate good cause for late filing of the renewal application, and that, as such, it could not accept the Applicant's renewal application. Accordingly, the Committee invited the Applicant to make written representations in terms of Section 3 of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000) ("PAJA").</p> <p>6.6. It has to be noted that, prior to communicating the Committee's preliminary view on the application for condonation, the Committee sought an internal legal opinion on: (1) the correct interpretation of section 11(9) in terms of how the Authority should deal with the late filings for renewal of individual licences submitted outside the regulated timeframes and with condonation request where the good cause has not been shown; and (2) whether the Committee should refer the Applicant's failure to comply with the Regulations and failure to demonstrate good cause for consideration of the CCC.</p> <p>6.7. On 19 April 2022, having considered the written representations, amongst others, the Committee requested Gildenhuys Malatji Incorporated Attorneys (GMI) to provide the Committee with a legal opinion on the following key questions:</p> <p>6.7.1 What constitutes good cause;</p> <p>6.7.2 Has Vuma shown 'good cause', and should their application for condonation be granted by the Committee;</p> <p>6.7.3 In the event that the Committee finds that Vuma has not shown 'good cause', what are the Authority's prospects</p>	



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	<p style="text-align: center;">of success should Vuma take the decision on judicial review?</p> <p>6.8. In proffering the legal opinion (memorandum of advice) external legal focuses on the following rubric factors: Degree of Lateness, Explanation for the Delay, Prospects of Success, Prejudice, and Public Interest.</p> <p>6.9. Based on the common law principles, the opinion states that Vuma has shown good cause, and that the Committee should consider making a recommendation to Council to accept the condonation application.</p> <p>6.10. Further, the legal opinion opines that the Authority's chances of success at court are slim. Accordingly, if Council decides to condone the lateness of Vuma's application, then the powers in terms of Section 11 (7) of the ECA should be invoked.</p> <p>6.11. Alternatively, the opinion opines that the Committee may advise Council to decline Vuma's condonation application due to the excessive delay and failure to adequately explain the delay, with a view to allowing the court to set jurisprudence governing the late application of individual licence renewals. This may assist the Authority in establishing a consistent framework in dealing with individual renewal licences.</p> <p>6.12. The Committee has deliberated extensively on the options as contained in the legal opinion. There were arguments for and against condoning the late filing of the application, and the views in favour of recommending rejection have prevailed. The Committee has considered the common law principle of what constitutes good cause, prejudice and public interest issues contained in the legal opinion.</p> <p>6.13. Whereas the Committee notes the consequences of possibly shutting down the radio station due to late filing and concurs that radio stations play a significant role in society, thus not condoning late filing would have adverse effects on the communities served, the Committee is of the view that that the public interest burden should not be borne only by the Authority. Licensees are equally obligated to adhere to the legislative and regulatory provisions governing their existence. They have a</p>	



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	<p>duty to consider and guard the interests of the very public that indirectly contribute to their sustainability and viability.</p> <p><u>Recommendation:</u></p> <p>6.14. It was recommended that approves the recommendation to approve the application for condonation by Vuma FM.</p> <p>The submission was approved.</p>	
7.	<p>Inquiry into Subscription TV Broadcasting</p> <p><u>Market Definition & How it has been applied in the Subscription TV Inquiry</u></p> <p>7.1. The process of identifying sources of competition that are likely to constrain, minimise or discourage the exercise of market power by a firm.</p> <p>7.1.1 Market power is generally understood to refer to the ability of a firm, by virtue of its position in the market, to control prices or to exclude competition or to disregard the reaction of its competitors, customers or suppliers.</p> <p>7.1.2 Market power is a function of a product's price elasticity of demand. The more price elastic the demand for a certain product, the more customers will opt away when the product's price increases and the less the ability of a seller to price at above the competitive level.</p> <p>7.2. A relevant market has two dimensions: (a) product/service; and (b) geographic;</p> <p>7.2.1 A relevant product market is a grouping of products that are interchangeable or substitutable;</p> <p>7.2.2 A relevant geographic market comprises all those areas where the conditions of competition are the same and suppliers pose a competitive constraint on each other.</p>	<p>CIlr</p> <p>██████████</p>



No.	Action Item	Person Responsible
	<p>7.3. Various tools are used to test for substitutability between two or more products, including the ‘small-but-significant-non-transitory-increase-in-price’ (SSNIP) test, cross-price elasticity of demand and critical loss analysis, among others.</p> <p>7.3.1 The SSNIP or hypothetical monopolist test (HMT) is a hypothetical, intuitive test applied in an iterative manner to test whether a hypothetical monopolist could profitably increase prices by a margin of about 5%-10%.</p> <p>7.4. A relevant market is established when it becomes unprofitable for the hypothetical monopolist to raise prices by the said margin. The purpose of the SSNIP test is to determine whether there are substitute products or services to the focal product or service. Other factors include:</p> <p>7.4.1 Barriers and costs associated with switching demand to potential substitutes;</p> <p>7.4.2 Product characteristics and intended use;</p> <p>7.4.3 Evidence of substitution in the recent past;</p> <p>7.4.4 Views of customers and competitors;</p> <p>7.4.5 Consumer preferences; and</p> <p>7.4.6 Patterns in price changes.</p> <p>7.5. A subscriber to a subscription television service chooses a bouquet that meets his or her preferences both in terms of content, affordability and accessibility.</p> <p>7.6. Subscription television service providers segment consumers into different target groups based on household income levels, being the low income, middle income and high income, viz:</p> <p>7.6.1 StarSat: Basic tier or entry-level market</p> <p>7.6.2 Deukom: High-income bracket</p> <p>7.6.3 MultiChoice: Basic tier, middle tier and premium tier</p> <p>7.7. Therefore, three different bouquets can be identified:</p> <p>7.7.1 Basic-tier or entry level bouquets: kids’ shows, news, music and a couple of general interest factual channels;</p> <p>7.7.2 Middle level bouquets: basic tier plus selected movies, series and sport; and</p>	



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	<p>7.7.3 High-end or premium bouquets: basic and middle tier, plus a wide variety of latest movies and series, a wider selection of sport channels, and a host of other general channels.</p> <p><u>Type of content – Movies shown in different windows – OTT v FWPTV</u></p> <p>7.8. Viewing experience :</p> <p>7.8.1 According to the IHS Markit survey, live sports, however it is consumed, is a premium product, and viewers paying for such expect a premium experience. For streaming services this means experiencing seamless streaming, low latency and high-quality video with no interruptions. Achieving all three is more difficult than it seems at the moment;</p> <p>7.8.2 A video-on-demand user chooses to watch a video, movie or clip anywhere, anytime, at his or her convenience. A television viewer has to wait for the programme to be broadcast on air at a particular set time – apart from catch up features.</p> <p><u>Substitution v complementarity</u></p> <p>7.9. According to Ofcom, on-demand and streaming services (such as Netflix, Amazon Prime and NOW TV) are mainly complementary to, rather than a replacement of traditional subscription TV services.</p> <p>7.10. According to PWC, in the short term at least, the likes of Netflix and Amazon Prime will likely be taken as complementary services due to the dearth of premium entertainment content in the South African market.</p> <p>7.11. 82% of Showmax subscribers also have a DStv subscription (N.B.: Showmax is free for Premium subscribers).</p> <p>7.12. MultiChoice acknowledges the fact that the OTT market is expected to develop in parallel with, and to complement pay-tv in the future, both in terms of subscribers and revenue.</p>	



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	<p>7.13. Udoakpan and Tengeh (2020), use a survey to provide scientific evidence of the impact of OTT services on subscription television services in South Africa. The study concludes that the incidence of cord-cutting is very low owing to subscription television viewers stacking OTT services onto their existing subscription television services.</p> <p>7.14. Nyarenda conducted a quantitative study in South Africa to explain variability in consumers' behavioural intent to use OTT platforms.</p> <p>7.15. About 89% of the respondents interviewed indicated that they use OTT services in conjunction with their subscription television platform (DStv).</p> <p><u>Stakeholder Comments</u></p> <p>7.16. Econet Media concludes that subscription-TV and OTT are not in the same product market.</p> <p>7.17. Act-SA indicates that data costs and Internet accessibility remain a hindrance to the uptake of OTT services.</p> <p>7.18. Cricket South Africa (CSA) is unable to maximise the commercial viability of its content offering in the absence of adequate competition within the broadcasting sector, and, particularly, within Pay tv.</p> <p>7.19. e.tv discredits the narrative that OTTs pose a competitive constraint on broadcasting services in South Africa.</p> <p>7.20. MultiChoice equates the impact of OTTs on the subscription broadcasting market with how the Internet altered the newspaper and music industry, leading to a seismic shift in audio-visual content market.</p> <p>7.21. MultiChoice points to the impact of out-of-home viewing, other regional subscription TV services, telecoms service providers, on subscription TV and concludes that they exert competitive constraints on its business.</p> <p>7.22. In addition to the above, MultiChoice contends that piracy acts as a competitive constraint.</p>	



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	<p>7.23. MultiChoice contends that it has provided evidence already showing that a significant number of churning premium subscribers switch to OTT services.</p> <p>7.24. English Premier League (EPL) contends that the Authority's conclusion that OTT services should not be seen as part of the market for the distribution of television services amounts to a serious flaw, which undermines the Draft Findings Document's conclusions.</p> <p>7.25. Most rights owners raised concerns with the proposed remedies.</p> <p><u>Reasons why licensed subscription tv broadcasters failed to commence operations</u></p> <p>7.26. There were various reasons advanced by pay-tv licensees that failed to launch. The reasons advanced include competition issues.</p> <p>7.27. The Authority has conducted a section 67 Inquiry process and found ineffective competition in certain identified markets and identified Multichoice as a licensee that has significant market power.</p> <p>7.28. The Authority is duty bound to intervene in the market once it has found ineffective competition and determined a licensee that has significant market power in the relevant markets. Hence, the pro-competitive remedies proposed by the Committee.</p> <p><u>Legality of Pro-competitive remedies as contained in the draft regulations</u></p> <p>7.29. Section 67(4) of the ECA states that the Authority must, following an inquiry, prescribe regulations defining the relevant markets and market segments, and impose appropriate and sufficient pro-competitive licence conditions on licensees where there is ineffective competition, and if any licensee has significant market power in such markets or market segments.</p>	



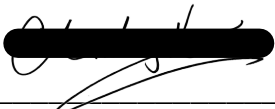
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	<p>7.30. The draft regulations propose the following categories of pro-competitive licence conditions to remedy the market failure identified pursuant to the Inquiry:</p> <p>7.31.1 reducing rights in respect of contract duration; 7.31.2 prohibiting automatic renewal of rights contracts; 7.31.3 restricting MultiChoice from acquiring premium sports rights on all distribution platforms; 7.31.4 limiting the number of agreements with major movie studios.</p> <p>7.31. The proposed licence conditions apply directly to the Authority's licensees. Whilst one aspect operates retrospectively, the circumstances identified by the Inquiry are such that the Authority must include an element of retrospectivity to address the market failure.</p> <p>7.32. The property rights of the rights holders are not incapable of limitation. Section 36 of the Constitution provides that rights in the Bill of Rights may be limited, provided such limitation is reasonable and justifiable.</p> <p><u>Link between market failure and proportionality of remedies:</u></p> <p>7.33. Following identification and definition of relevant markets and market segments, the ECA provides that the Authority must assess the effectiveness of competition in those markets and market segments.</p> <p>7.34. The Authority must consider, among other things: (a) the non-transitory (structural, legal, and regulatory) entry barriers to the applicable markets or market segments, and; (b) the dynamic character and functioning of the markets or market segments.</p> <p>7.35. The scarcity and cost of premium content, long-term exclusive contracts, and incumbency of special relationships were identified as some of the barriers to entry.</p> <p>7.36. Remedies regarding access to premium sports content and premium movies, as well as the shortening of contract duration,</p>	



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	<p>are meant to address the identified market failures (structural and behavioural barriers to entry).</p> <p><u>Recommendation</u></p> <p>7.37. It was recommended for the Council to approve the Findings Document, and the draft Regulations on Subscription Television Broadcasting Service Inquiry, for publication in the Government Gazette.</p> <p><u>The following comments were made:</u></p> <p>7.38. Council inquired what the ‘no single buyer’ rule actually means.</p> <p>7.39. Council requested clarity on the specific thing that Multichoice has done to make it impossible for WOW TV to launch.</p> <p>7.40. Management expressed, with regards to the issue around digital platforms, that there was an assumption that the Authority has looked at Analogue Free-to Air services and not so much at Digital Free-to Air platforms that may be in the market. Management inquired if there would not be a benefit in assessing the Digital Free-to-Air market.</p> <p>7.41. Council expressed that the Committee should assess if there is correlation between the reasons provided for non-commencement of services and the Authority claiming competition.</p> <p>7.42. Council was of the view that, when talking about competition, the Authority has made meaningful interventions for competition in the Subscription TV space. The reasons provided are inconsistent, and, where there is inconsistency, the Regulator should aim to ascertain the actual reasons for non-commencement.</p> <p>7.43. Council expressed that the presentation made reference to a hypothetical monopolistic service provider. Council stated that there is no monopoly in this market, as the Authority has licensed more than one licensee.</p> <p>7.44. Council expressed concern that the draft Regulations did not take cognisance of the Sports of National Interest Regulations.</p>	



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	<p>Therefore, there is an inadequate alignment to these Regulations.</p> <p>7.45. Council expressed that the concern over the costs incurred through the process, cannot be a reason to prevent the process being started afresh. Council expressed that it could not take a decision based on the fact that stakeholders have incurred costs.</p> <p><u>Council resolved as follows:</u></p> <p>7.46. Council concluded that the Authority should not proceed to publish the Findings Document, knowing that there is a plethora of issues and concerns over their substance.</p> <p>7.47. Notwithstanding the above, Council clarified that the work already done by the Committee is not lost or wasted. Council was of the view that it merely needs to 'retrace' its steps and 'reboot' the process. The Committee will develop a questionnaire to ask stakeholders for more information on the issues that have not been covered adequately.</p> <p>7.48. A media statement in light of the aforementioned will be formulated and circulated to Council for review and inputs.</p> <p>The submission was not approved.</p>	
8.	<p>Closure</p> <p>Secretariat will confirm the date of the next Council meeting.</p> <p>The Chairperson thanked all who were present at the meeting and declared the meeting adjourned at 15:55 pm.</p>	Chairperson

Signed: 

Date: 2023-03-16

Dr Charley Lewis
(Acting Chairperson)