



ELECTRONIC MEDIA NETWORK LIMITED ANNUAL COMPLIANCE REPORT

MARCH 2024

2022/23 ANNUAL COMPLIANCE REPORT

ELECTRONIC MEDIA NETWORK LIMITED BROADCASTING AS M NET

LICENCE PERIOD: 17 December 2008 – 16 December 2023

1. PREFACE

The Independent Communications Authority of South Africa (the Authority) has a statutory mandate in terms of the Constitution, the ICASA Act¹, the Electronic Communications Act² (ECA) and the Broadcasting Act³ to regulate broadcasting activities in South Africa in the public interest. One of the main tasks of the Authority is to ensure compliance by broadcasters with the terms and conditions of their licence, and any relevant legislation and regulations.

The purpose of the report is to give an account of M NET's compliance with the terms and conditions as set out in its licence for the 2022/23 financial year. Furthermore, the report will measure compliance with regulations that include ICASA Must Carry Regulations, Regulations on the Commissioning of Independently Produced South African Programming, Regulations on a Code on People with Disabilities, Standard Terms and Conditions for Individual Licensees, ICASA South African Television Content, Universal Service and Access Fund, General Licence Fees and Code of Conduct for Broadcasters.

2. BACKGROUND

The Authority issued a subscription broadcasting licence on 17 December 2008 to Electronic Media Network Limited broadcasting as M Net valid for fifteen (15) years from the effective date. The Licensee provides subscription television broadcasting services in the Republic of South Africa.

¹ Act No. 13 of 2000, as amended.

² Act No. 36 of 2005.

³ Act No. 4 of 1999.

3. COMPLIANCE ASSESSMENT

3.1. Geographic Coverage Area

Clause 2 of the schedule to M Net service licence stipulates that:

"The licence area of the Licensee is the Republic or any part thereof".

The coverage area is as per the coverage map on the frequency spectrum licence. The signal distribution is provided for by Orbicom (Pty) Ltd.

The Licensee complies with its geographic coverage area.

3.2 Broadcast Language (s)

Clause 4 of the schedule to M Net service licence stipulates that:

"This is left to the discretion of the Licensee".

The majority of the shows on M Net are broadcast in English with few local programmes being broadcast in Afrikaans.

The Licensee complies with its language of broadcast.

3.3 Format

Clause 5 of the schedule to M Net service licence stipulates that:

"The Licensee is licensed to provide an entertainment service, including but not limited to feature films, sports events, magazine and community programming, documentary features, news, information programming and drama".

The Licensee broadcasts different genres of programming which include blockbuster films on Sunday evening, weekly talk shows such as *"The Kelly Clarkson Show"*, drama shows like the *"Good Doctor"* and lifestyle programmes such *"Nantes Kookboek Met Nataniël En Erik"* among others.

The Licensee complies with its format.

3.4 Training and Skills Development Obligation

Clause 6 of the schedule to M Net service licence stipulates that:

(1)(1) The Licensee must adopt equal employment opportunities.”

(2)The Licensee must ensure that its management and staff are representative of South African society and that its human resource policies, particularly with regards to persons from historically disadvantaged groups, take into account the development of managerial, production and technical skills and expertise”.

Form 1⁴ of the Compliance Procedure Manual Regulations submitted by the Licensee list the number of employees on a fixed and permanent basis with an average of 94% occupied by historically disadvantaged groups at the different occupational levels. The top and senior management structure of the Licensee is at an average of 80% representatives from historically disadvantaged groups persons.

The Licensee complies with its training and skills development obligation.

3.5 Ownership by persons from historically disadvantaged groups

Clause 7 of the schedule to M Net service licence stipulates that:

“The Licensee shall have no less than thirty percent (30%) ownership from historically disadvantaged groups”.

The Licensee submits in their Form 1⁵ of the Compliance Procedure Manual Regulations (CPMR) that, it has an average of thirty-eight percent (38%) black ownership held by historically disadvantaged groups inclusive of the BBBEE economic interest.

The Licensee complies with clause 7 of the schedule to its service licence.

⁴ Form 1 of CPMR

⁵ *Ibid*

4. REGULATIONS

4.1 ICASA Must Carry Regulations

Regulation 5 of ICASA Must Carry Regulations as published on government gazette No. 31500 on 10 October 2008 read with Must Carry Amendment Regulation of 2022 stipulates that stipulates that:

“(1) subject to regulation (5) (3) a subscription broadcasting service (SBS) whose service offering has twenty-nine (29) channels or less is exempt from the obligation to carry the television programmes of the PBS Licensee”.

“(2) (a) a SBS may be exempted where a written notice has been submitted to the Authority by the SBS Licensee; and (b) Approval of such exemption has been granted in writing by the Authority”.

The Licensee has less than twenty-nine channels and therefore is exempt from the above-mentioned regulations.

The Licensee complies with the ICASA Must Carry Regulations.

4.2 Regulations on the Commissioning of Independently Produced South African Programming

Regulation 3 (a) of the Regulations on Commissioning Protocols as published in the government gazette no 32767 on 01 December 2009 stipulates that:

“(i) A Licensee must compile and maintain a Commissioning Protocol for Independently Produced South African Programming” (referred to as “the Protocol”).

“(iii) ensure that copies of the Protocol are always available on their websites and to independent producers or their agents, a reasonable fee for the printing and/or copying thereof”.

Regulation 4 Commissioning Protocol stipulates that:

“A licensee must submit an annual report to the Authority setting out its respective procurement activities in respect of independently produced South

African programming from independent producers for the year preceding the date of the report."

M Net submitted its Commissioning Protocol to the Authority and a copy of the Commissioning protocol is available on the Licensee's website⁶. Further, the Licensee has submitted a report to the Authority for the 2022/2023 financial year accordingly.

The Licensee complies with the Commissioning Protocol Regulations.

4.3 Standard Terms and Conditions

The Authority did not find instances of non-compliance by the Licensee with the Regulations regarding Standard Terms and Conditions for Individual Licences during the year under review.

4.4 Regulations in Respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund

Regulation 3 of the Regulations in respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund (USAF), published in Government Gazette, No. 34010 of 10 February 2011, stipulates that:

(1) "Every holder of a licence granted in terms of Chapters 3, 4 and/or 9 or converted in terms of Chapter 15 of the Act, must pay an annual contribution of 0.2% of its Annual Turnover to the Fund".

(2) "A BS licensee who has paid an annual contribution to the MDDA must set off that contribution against its USAF Contribution, provided that the MDDA contribution and the USAF contribution against which it is set off are for the same financial year".

M Net has paid its contribution for the year under review.

The Licensee complies with the USAF regulations.

⁶ <https://www.dstv.com/m-net/en-za/page/commissioning-protocol>

4.5 General Licence Fees Regulations

Regulation 3 (1) of the General Licence Fees Regulations published on Government Gazette No. 36323 dated, 28 March of 2013 stipulates that:

"The annual Licence fees prescribed in these regulations and as set out in schedule 2 apply to holders of individual and class ECS Licences, individual and class ECNS Licences and individual commercial BS Licences".

Schedule 2 provides for Licensees to pay an annual licence fee in accordance with their licensed revenue and to be calculated using the set formula.

Regulation 7(a) (b)(c) of Schedule 3 provides that Annual Licence Fees:

- a) "Are due annually based on the licensee's financial year;*
- b) Are due and payable within 6 months from the end of the licensee's financial year;*
- c) May only be paid by way of an electronic transfer or via direct deposit into the Authority's bank account".*

The Licensee made the prescribed payment and submitted proof thereof to the Authority.

The Licensee complies with the General Licence Fees Regulations.

4.6 South African Television Content Regulations

Regulation 6 of the South African Television content regulations as published in the Government Gazette No 39844 on 23 March 2016 stipulates that:

- (3)A subscription television broadcasting licensee that acquires channels must ensure that, a minimum of 15% of its total annual channel acquisition budget, measured across its services as a whole, is spent on channels with local television content that is compiled and up linked from South Africa*

Table. 1 MNET spending on local channel acquisition

Regulation	Requirement	M-Net performance
6.2	15% of total channel acquisition budget spent on local channels	84%

The Licensee submitted that it allocates eight four (84%) percent of its annual channel acquisition budget to local content television content.

Regulation 7 of the South African Television content regulations as published in the Government Gazette No 39844 on 23 March 2016 stipulates that:

- (1) Public, commercial, community, and subscription television broadcasting licensees must ensure that a minimum of 40% of their local television content programming consists of programmes which are independent television productions, and the independent television production are spread evenly between, South African arts programming, South African drama, South African documentary, South African knowledge- building, South African children’s and South African educational programming.*
- (2) A Public, commercial, community, and subscription television broadcasting licensees must ensure that after twenty-four (24) months of the gazetting of these regulations or such longer period as the Authority may determine, that fifty (50%) percent of annual independently produced programmes budget is spent on previously marginalised local African languages and/or programmes commissioned from regions outside the Durban, Cape Town and Johannesburg Metropolitan cities”.*

The table below shows the Licensee’s compliance with the above mentioned South African Television Content Regulations.

Table 2. M NET’s compliance with the Music Content Television Regulations

Regulation	Requirement	M-Net performance
7.1	40% of the local programming commissioned to the independent production sector	40%
7.2	50% of the budget for the above spent on programmes which have African languages or produced by companies outside JHB, CT and Durban	100%

The Licensee submitted that it allocates 40% of its local content budget to the independent production sector. Further, the majority of the independent production content has been allocated to marginalised local African languages in compliance with regulation 7 (2). The Licensee submits that their local content performance report has been reviewed by independent auditors and such confirmation report was submitted to the Authority.

The Licensee complies with the South African Television Content Regulations.

4.7 Code of Conduct for Broadcasters

The Licensee is a member of the National Association of Broadcasters (NAB) and complaints in relation to the Code of Conduct for Broadcasters, are administered by the Broadcasting Complaints Commission of South Africa (BCCSA).

4.8 Code on People with Disabilities

The Authority in March 2021 published the Code for Persons with Disabilities Regulations which would come into effect eighteen (18) months after publication in the Government Gazette which falls within the third quarter of the reporting period.

The 2021 regulations define Year 1 as *the twelve-month period commencing on the date on which these Regulations come into operation in accordance with the commencement date of these Regulations.*

Regulation 4 (4) of the Code for Persons with Disabilities Regulations stipulates that:

"A television broadcasting service licensee must implement the minimum level percentages applicable to Accessibility Services relevant to its broadcasting service licence category, as indicated below".

The quotas came into effect in October 2022 and M- Net started tracking performance with effect from week 41 (starting Monday 10 October 2022). In relation to sub-titling, M-Net submits that they carried 14 271 hours of programming with subtitles, meaning that the quota of 2.5% was exceeded, whilst the closed captioning threshold of 2% was exceeded as well. The M-Net submits that they have exceeded the 2% quota with 848 hours of programming with audio description.

Furthermore, in relation to compliance with Regulation 4 (2) of the Code that refers to improving accessibility, the Licensee submits that they have increased their services both for the visually and hearing impaired by increasing their audio descriptive tracks and HI subtitles. This has also been enhanced by the relationship that the Licensee has with Deaf SA which helps for a better understanding of the needs and ensures that the Licensee can respond to those needs accordingly.

The Licensee complies with the Code For Persons with Disabilities.

5. CONCLUSION

The Licensee has complied with the relevant Regulations and its service license terms and conditions for the year under review.

6. TERMS OF REFERENCE

6.1 Appendix A: M Net broadcasting service licence

6.2 Appendix B: Form 6B of the CPMR

6.3 Appendix C: Form 1 of the CPMR

6.4 Appendix D: Employment Equity and Recruitment Report

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