



ICASA

**Public Hearing for Individual
Commercial Free-To-Air
Broadcast Services**

22 NOVEMBER 2018

**SOS Support Public
Broadcasting**

QUALITY: Good

Session 3

Chairperson: Welcome, please introduce yourselves.

William Bird: Thank-you, Good morning everyone, thank-you for this opportunity. I am William Bird. I am Director of Media Monitoring Africa. I am joined by Justine Limpitlaw who heads up the Legal subcommittee of SOS and is also a trustee of a Media Monitoring Africa. I just also need to tender our apologies for our other colleague Miss.Mududu Edsang who is taking much deserved break, but, so that's why she is not with us. We are going to do this as a double hander but, so I am going to do the introduction and a little bit further and then Justine will take over for some of the Legal elements. In terms of SOS,SOS is a civil society coalition called Support Public Broadcasting, we advocate for robust public broadcasting in the public interest, and sometimes does public advocacy work on other broadcasting related issues, Media Monitoring Africa ,we promote the development of a free, fair and ethical and critical media culture, our focus areas around media ethics, media quality and media freedom. We've done a number of joint submissions together as an organisations because we have similar areas of interest, for example these submissions, and nota commercial free to air TV license application, we have also done some submissions to the State Capture enquiry regarding instances of State Capture in the broadcasting sector, and we've also done a recent submission on the ECA Bill, drawing ICASA's attention to the constitutionality of provisions which undermine ICASA's Independence and its role as the broadcasting regulator, that will apparently their hearing is next week ,and I'd strongly encourage you take regard of the various inputs that are coming, there's some very deeply perturbing and disturbing elements that seek to fundamentally undermine ICASA's independence. So back to today- we've seen from the headlines in recent weeks and months that Gupta linked media enterprise that started its life as ANN7 now Infinity Media and its main Shareholder, Key Director and General Promoter Mr.Many I have featured prominently at the ZONDA Commission of inquiry. The so-called Gupta leaks have revealed the extent of the influence of the Gupta's ANN7 over the former Minister Faith Muthambi especially with regard to set-top box encryption and none encryption standards, which debacle we know has set DTT back years and which standard went against both ANC and cabinet policy, at the time. We urge ICASA to also have regard to the book behind the scenes at Gupta TV, a former ANN7 Editor we are not aware of any legal challenges to any of the explosive allegations in that book, in particular that the station was a propaganda tool to advance a clear political agenda, of a particular fraction of the ruling party. We believe it is inconceivable that ICASA should think it is in the public interest to award a license to a consortium with such obvious and close links to those involved in the States Capture scandal that is still emerging. We know that it is the biggest Political scandal of our Democratic era and we also aware that the ZONDA Commission is not finalised and that there is still a number of witnesses to come forward and present evidence- we now move to our specific concerns.

Justine Limpitlaw: Thank you William, I am going to go through the concerns one at a time they are in our written submissions but we think that it's important to highlight them here. The first one is around foreign control and I am referring to sections 64 1 of the ECA which provides that a foreigner may not directly or indirectly exercise control over a licensee that is a de facto enquiry, and B; have a

financial interest or an interest in voting shares or paid-up capital in a broadcasting licensee exceeding 20%. According to the public application document available, we were unable to find any history of the acquisition of the shares in ANN7 now Infinity Media, which resulted initially at least in a single individual owning 90%, although Infinity Media is said that this is changed we haven't been able to find the updated shareholder information in the public documents available, my colleague earlier Siphso Tsotetsi referred to them so hopefully they are indeed there and certainly hopefully ICASA has them, but the question is that we've been unable to find any detail on the very widely publicised Vendor financing arrangement the details of the Vendor financing arrangement, that was entered into between the Gupta's and Mr. Manyi to fund the acquisition – and - why are we raising this, it links to some of the broader issues around the State Capture scandal, ICASA will obviously be aware of the ongoing scandal involving former Minister Malusi Gigaba's hast to grant the Gupta family South African nationality when they hadn't met the requirements for therefore and they weren't qualified to get those. ICASA must satisfy itself, through a scrutiny of the original Vendor financing and Shareholding structure arrangement, that Indians and I want to be absolutely clear here I am not doing anti-Indian thing I'm talking about Indians in the foreign scene do not have a financial interest in Infinity Media, a financial interest of 20% or more, the difficulties around this is that the nationality issue is still in dispute, so ICASA itself can't make a definitive finding on whether or not they are in fact South African people or foreigners, and, and you have to take account that a financial stake or providing financial funding in the amount of 90% is a, very, much, much higher than is provided for in section 64 1. Another aspect, is the issue of de facto control this issue that foreign persons may not control Commercial Broadcasting licensee, and we think it's interesting here that in the application documents, they are proposed to be 12 key managerial positions, the top managers of the broadcasting service five of the top managerial positions are said to be occupied by foreigners, including the Editor, and ICASA we are not casting any aspersions on anything about those people, but the issues is the ICASA has to satisfy itself that the actual day- to- day operations of this broadcasting licensee are not effectively controlled by foreigners if they are, this is a violation of the Electronic Communications Act can't be allowed. We, we also think it's important to note that the foreign control issues are one of the few aspects of the ECA were ICASA is not given a discretion around this, so it's not possible to grant an exemption or something from de facto exercising of control. We think it's instructive - in fact we've gone so far as to say we actually think it sinister, we make detailed written representations about these problems we identified, foreign, we identified financial interests and we identified de facto control, in its response in its written, only 2 page response we note, by sorry, 4 page response by Infinity Media they've said one line " the company does not comprise any foreign ownership," we never raised foreign ownership issues, we raised foreign control issues, those were absolutely ignored in the response. We think that this is actually a red flag, on the real issues which are foreign financial interests and de facto control we think the ICASA ought to see this as a red flag, we think the ICASA must satisfy itself that there isn't a problem in relation to foreign control. Moving on to the issue of being a party political broadcaster, ANN7 role as a mouthpiece for the former President Jacob Zuma's faction of the ruling party is well known, and the key question is

whether or not Infinity Media will continue in this vein, and be as is prohibited by Section 52 a Broadcasting service held by an organisation which is of a party political nature, Mr. Manyi who, at one point we don't know whether certainly in terms of the application held 90% of the shares in Infinity Media has held several senior Government positions including Government Spokesperson and Special Adviser to the former DOC Minister Faith Muthambi. Now- next slide, thanks. In responding to this Infinity Media were very upset, they accused SOS and MMA of quote; exhibiting dictatorial apartheid style tendencies by seeking to make choices for which political party public candidate should Mr. Manyi support. The point is not about dictating political choices, it's about whether or not the conduct of such a key person, in relation to the application ,and the keyness of that, the centrality of Mr. Manyi, frankly was evidenced this morning, where he sat here alone, to make a presentation about what ought to be a multi-million rand, huge massive operation for a new Free- to- air television broadcasting, license. I have, I think I might be the only person in the room I'm not even sure that Siphos Tsotetsi is old enough to remember this-[background noise] but I was Siphos where you at the ETV hearings, in 1997?

Siphos Tsotetsi: I was.

Justine Limpitlaw: He was, oh ok then he is aging much better than I am, but I remember Siphos and I will remember those hearings they were absolutely massive, I mean you wouldn't have, you wouldn't have made a presentation without News, without Children's programming without, without, without, and that was for one service not a DTT service which, which could be multichannel. So what we're saying is, the, the political, the inherently political nature of, the key person behind, Infinite Media needs to be a source of extra investigation for ICASA and its advisers, to make sure that this is not a violation of Section 52, and then we think it's important to raise other serious considerations, in, in relation to this application, first of all we were genuinely horrified at the nature of the written responses that SOS and MMA's quite detailed submissions got from Infinity Media, they were inadequate and they didn't deal substantively with any of the legality concerns relating to the requirements of the Electronic Communications Act. We thought it was amazing, that they a, they spent fully a quarter of the submission, simply repeating what is set out in the ITA, not dealing with our substantive arguments which are dealing, with the provisions and prohibitions contained in the Electronic Communications Act. It seems to us that they displayed gross ignorance of the legal and regulatory environment, pertaining to the broadcast sector, Infinity Media also accuses SOS and MMA of slanderous, slanderers and defamatory accusations in an attempt to eliminate any competition, goes without saying that as civil society bodies we know, we not competitors to anyone, least of all with Infinity Media. We also want to point out this issue about our stance with regard to ANN7. They make a great deal about the fact that SOS as an organisation which is one of the organisations that is making these submissions, was against the closure of ANN7 by DSTV, that's correct, and it was a very unpopular position to take at the time, but they are very disingenuous about the reasons for that, they say it was because SOS and it's a direct quote; acknowledged the relevance and weight of the ANN7. SOS's press statement at the time came out in February this year, made it clear that we disagreed with DSTV's processes, both in bringing ANN7 onto its

bouquet, and in relation to terminating the channel, but on the quality of ANN7 was we expressly stated the SOS coalition has a very low opinion of the news values evidence on the ANN7 channel, ANN7 is not and never has been a reputable News channel. Now this might seem a very small point to take up, but absolutely instructive of a channel, that has said, that it wants to build itself on a rock of being a credible News channel. This is a publicly available press statement it's been in the public space for over 10 months it's not very long, a page and a half, and ANN7 couldn't see fit to either read it or quote from it properly and mangled what was actually said in it It just goes to the point that this is not a credible News channel never has been and ICASA needs to take our concerns around this seriously. Right - and now we come onto the last issue which is around Mr. Manyi's credibility himself, he is a key figure in Infinity Media. We saw that here clearly this morning. To be effectively, a central person, he needs to be beyond reproach in his personal capacity if it is going to be in the public interest for his company, to be awarded a Free- to air TV license in-

Chairperson: 10 minutes.

Justine Limpitlaw: Oh, we'll be finished before thank you Councillor, sadly in this respect he falls far short, 3 issues stand out, defamation, when you run a Media company you need to be very careful around defaming people, he's already been the subject of at least one defamation suit that, that we are aware of. On the even more important issue of disinformation, Mr. Manyi was widely reported to have played a key role in the Bell Pottinger disinformation campaign, in support of former President Zuma as well as for the Guptas, this for someone to want to run a Media company, when his personal dealings in a widely, internationally discredited, disinformation campaign, again we raise the question of whether it's in the public interest for such a person to be associated, with being awarded a license by ICASA for Free-to-air television company, and then there's the issue of hate speech. Mr. Manyi's been the subject of a Human Rights Commission investigation for hate speech, he was censured in a, media op aired piece by senior ANC member and former Finance Minister, for, for hate speech. We submit that ICASA cannot award Infinity Media a license unless it's in the public interest to do so, this license has been long-awaited, if granted, it will be the only, only the second Commercial Free-to-air TV license awarded in the Democratic era. In the 21 years since the awarding of ETV's license, it cannot be, that the scandal plagued Infinity Media headed by a man who is himself scandal plagued, with state capture, fake news, disinformation, hate speech, Vendor financed by the Gupta's, ought to be recognised by ICASA as a suitable licensee for such an important broadcasting service, we argue that it's manifestly not, and submit that ICASA must decline the application by Infinity Media in the public interest- Thank you.

Chairperson: Thank-you very much SOS and MMA, we would then like to give Infinity Media right of reply, let's see what the time is- thank you very much.