



EXHIBIT CC 41

AFFIDAVIT & ANNEXURES

OF

YUNIS CARRIM



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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INDEX: EXHIBIT CC 41

#	Description	Pages
A.	Affidavit & Annexure of Y Carrim	001 to 206
1.	Affidavit of Yunis Carrim	001 to 080
2.	Annexure "1"	081 to 085
3.	Annexure "2"	086 to 088
4.	Annexure "3"	089 to 099
5.	Annexure "4"	100 to 102
6.	Annexure "5"	103 to 110
7.	Annexure "6"	111 to 114
8.	Annexure "7"	115 to 117
9.	Annexure "18"	118 to 119
10.	Annexure "9"	120 to 127
11.	Annexure "10"	128 to 132
12.	Annexure "11"	133 to 136
13.	Annexure "12"	137 to 139

#	Description	Pages
14.	Annexure “13”	140 to 143
15.	Annexure “13A”	144 to 156
16.	Annexure “14”	157 to 164
17.	Annexure “15”	165 to 169
18.	Annexure “16”	170 to 175
19.	Annexure “17”	176 to 182
20.	Annexure “18”	183 to 188
21.	Annexure “19”	189 to 193
22.	Annexure “20”	194 to 202
23.	Annexure “21”	203 to 206
B.	Affidavit & Annexure of MO Maguvhe	207 to 227
24.	Affidavit of Mbulaheni Obert Maguvhe	207 to 210
25.	Annexure “MOM001”	211 to 227

SUBMISSION OF MR YUNUS CARRIM

TO

**THE JUDICIAL COMMISSION OF INQUIRY INTO
ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND
FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF
STATE: INVESTIGATION INTO THE SOUTH AFRICAN
BROADCASTING CORPORATION**

30 JANUARY 2020

Contents

INTRODUCTION	4
PURPOSE OF THE AFFIDAVIT	5
OVERVIEW OF “DIGITAL MIGRATION” AND SET TOP BOXES	9
The importance of digital migration.....	9
BDM Policies of 2008 and 2012	11
Set Top Box Manufacturing Strategy.....	12
The Need to conform to SABS standards.....	15
“e.tv Court Judgment” of December 2012 limits, but does not remove the Minister’s power	16
Causes of persistent delays in implementing digital migration.....	17
Independent Facilitation – September 2013	17
Use and misuse of the Terms “Control”, “conditional access” and “encryption” ...	18
ANC December 2012 Conference Resolutions on Need for Competition in the Pay-TV sector.....	20
Criteria used for deciding the approach to control on STBs	22
December 2013 Policy	23
ICASA fully supported the control policy	28
Sentech supported STB control.....	28
STB Control in some form in other African countries	28
STB Control – The TV Programme Re-transmission Aspect of the South African Market	30
HOW NASPERS SOUGHT TO INFLUENCE GOVERNMENT POLICY ON DIGITAL MIGRATION.....	31
High concentration of the media industry	32
The SABC/MultiChoice 2013 Agreement	33
Naspers/MultiChoice’s opposition to STB Control	39
The role of Mr Bekker.....	43
Need for a New Minister.....	47
Is STB Control outdated?	48
POLITICAL INTERFERENCE IN THE EXECUTION OF YOUR MANDATE AS MINISTER OF COMMUNICATIONS, AND HOW THIS AFFECTED THE DIGITAL MIGRATION PROJECT.....	50
SABC Overview	50
e.tv Overview	58
Community TV Overview	60
TOP TV Overview	61
Process following the 4 December 2013 Cabinet Decision.....	61

YOUR REASONS FOR ATTEMPTING TO ENFORCE CONDITIONAL ACCESS TO SET TOP BOXES, WHICH RESULTED IN YOUR DRAFT AMENDMENT TO THE DIGITAL MIGRATION POLICY IN DECEMBER 2013	62
Small cost for control facility in the STB versus the huge gains.....	63
FRAUD AND/OR CORRUPTION YOU ARE AWARE OF, IN RELATION TO THE DIGITAL MIGRATION PROJECT AND THE 2013 CONTRACT CONCLUDED BETWEEN MULTICHOICE AND THE SABC.....	64
ANY OTHER ISSUE YOU MAY WANT TO BRING TO THE ATTENTION OF THE COMMISSION.....	64
Divisions within emerging manufacturers.....	64
Allegations that the Minister was serving e.tv's commercial Interests	68
The inadequate apology of MultiChoice	71
Need for policies, legislation and Codes of Conduct for business lobbying of parliament.....	73
Is this affidavit trying to settle scores?	75
A case of "regulatory capture"	76
CONCLUSION	78

ORIGINAL

AFFIDAVIT

I, the undersigned,

YUNUS CARRIM

do hereby state that:

1. I am an adult male serving in the National Council of Provinces as the Chairperson of the Select Committee on Finance.
2. The facts contained in this affidavit are within my personal knowledge, except where otherwise stated from the context, and are to the best of my belief both true and correct. Insofar as I do not have personal knowledge of all the matters referred to herein, I refer to the confirmatory affidavits of **Lulama Mokhobo** and **David Niddrie**.
3. Where I make submissions of law I do so on the advice of my legal representatives.

INTRODUCTION

4. I was the Minister of Communications ("**the Minister**") from 10 July 2013 to 24 May 2014. I served as the Minister of Communications for approximately 10 months. Although it was just over 10 months, it was very intensive, and thanks to the cooperation of a very good team, we were able to get Cabinet approval for three major inter-related policy initiatives:
 - 4.1. The ICT Green Paper;
 - 4.2. Digital Migration; and
 - 4.3. The Broadband Policy, which was called South Africa Connect.
5. I fully support the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State ("**the**

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Commission”) and commend the work that it is doing. I confirm my cooperation with the Commission.

6. I did not approach the Commission with any complaints about my experience as a Minister, nor did I nudge anybody to do so. It was the Commission that approached me for cooperation. I was, in fact, asked by a few Ministers, senior members of the African National Congress (“**ANC**”) and Alliance leaders and others to approach the Commission about my experience as a Minister, but I did not want to as I felt that the Commission has enough on its plate. I also felt that my experience was far overshadowed by that of former Deputy Minister Mcebisi Jonas, Minister Pravin Gordhan, former Ministers Ngoako Ramathlodi, Barbara Hogan and others, as well as senior civil servants such as Mr Themba Maseko and Ms Phumla Williams. Besides, I did not want it to seem as if I was some sort of “cry baby” running to the Commission to try to settle political scores because I was not re-appointed as the Minister after the May 2014 elections. Anyway, in some political circles there is a sense that those former Ministers and others who were removed from positions or not re-appointed, approached the Commission to settle political scores.
7. However, on 6 August 2019, I received a notice and/or letter from the Commission (“**the Notice**”) requesting an affidavit in respect of my term of office as the Minister of Communications. A copy of the Notice is attached hereto as “**annexure 1**”.
8. As set out in the Notice, the Commission requested that I submit my affidavit, referred to above, on 8 August 2019 at 14h00. However, due to the nature of the questions and/or issues raised in the Notice, I explained to the Commission that I needed an extension of time to submit my affidavit, and this was granted.

PURPOSE OF THE AFFIDAVIT

9. The purpose of the affidavit is to respond to the following questions and/or issues set out in the Notice:
 - 9.1. *“How Naspers sought to influence government policy on digital migration;*
 - 9.2. *Political interference in the execution of your mandate as Minister of Communications, and how this affected the digital migration project;*

- 9.3. *Your reasons for attempting to enforce conditional access to Set Top Boxes, which resulted in your draft amendment to the digital migration policy in December 2013;*
- 9.4. *Fraud and/or corruption you are aware of, in relation to the digital migration project and the 2013 contract concluded between MultiChoice and the SABC; and*
- 9.5. *Any other issue you may want to bring to the attention of the Commission."*
10. I try to respond to the questions, referred to above, by focusing on two inter-related issues in respect of digital migration:
- 10.1. The use of Set Top Box ("**STB**") control as part of the digital migration process from analogue to digital television and, in particular, as a means of encouraging new Black, particularly African, entrants into the highly concentrated Pay-TV sector, ensuring competition and reducing the cost of accessing Pay-TV.
- 10.2. The controversial R553 million agreement between MultiChoice and the South African Broadcasting Corporation ("**SABC**"), signed on 3 July 2013 by SABC's former acting chief operating officer Mr Hlaudi Motsoeneng ("**Mr Motsoeneng**"), ("**the SABC/MultiChoice Agreement**").
11. I first provide an overview of what digital migration is, its importance, and the evolution of policy on it; and it is against this relevant background that the specific questions posed by the Commission are answered more directly.
12. I have prepared this affidavit without full access to the necessary documents. Moreover, with so much time having passed since the 2013–2014 period, when I served as the Minister of Communications, and the usual limits of memory and recall, I have tried to be as accurate as possible. But even if there might be some errors, the basic thrust of what is contained in this affidavit, I must insist, is accurate. Ultimately, it is for the Commission to decide on the accuracy and value of what is said in this affidavit.
13. I have used media articles in this affidavit and have drawn on those aspects of the articles that are, in my view, relevant to my actual experiences of the digital migration

process, but to arrive at a holistic and more balanced view it would be necessary to read the articles in full. These articles usually contain rebuttals and counter-rebuttals and the views of those who support and oppose STB control.

14. I have also sought to be careful to avoid making statements that might make people from both the public and private sector, who spoke to me in confidence at the time and still do not want to be identified, vulnerable, especially as some may feel that they could lose their jobs or be penalised in some other way if they were to be identified.
15. There are several other matters that I have not raised here for various reasons, but mainly because I am not able to provide a reasonable degree of proof to substantiate the allegations.
16. I am not a technical expert on digital migration or STB control systems, and nor do I have any broadcasting engineering or other relevant broadcasting technology background. I did however receive technical advice from several technical experts while I served as a Minister. The most influential technical experts were:
 - 16.1. Mr Roy Lawrence Kruger (**"Mr Kruger"**), who was appointed by my predecessor, Minister Dina Pule, as a technical advisor;
 - 16.2. Mr Setumo Mohapi, the then chief executive officer of Sentech SOC Limited (**"Sentech"**);
 - 16.3. Ms Rosey Sekese, the then Director General of the Department of Communications (**"the DoC/ the Department"**); and
 - 16.4. Mr Wonder Dlangamandla, the then Chief Director of Technology at the DoC.
17. The people referred to above were in those positions before I was appointed Minister. When I was the Minister, they worked closely with Mr David Niddrie (**"Mr Niddrie"**), whom I appointed as a Ministerial Advisor. While he is a media expert and a journalist, and had a good understanding of the technical issues relevant to this affidavit, he did not have the experience and expertise of the other technical experts.
18. Soon after I was appointed as the Minister, I realised that I had entered a very challenging environment. There were deep suspicions and hostilities between

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officials of the department. In addition, there were accusations and counter-accusations of corruption.

19. It seemed to me that the DoC lacked coherence and cohesion. Different officials had different relationships with different Board members and managers and other staff members of the SABC and other public entities falling within the Communications portfolio – and these relationships were mostly outside of a professional relationship defined by the Department's oversight responsibilities over these entities.
20. The SABC and these other entities were riven with deep rivalries and accusations and counter-accusations of corruption. To a lesser extent, many of the private sector companies in the industry and the Department operated in, also had similar challenges. In short, it was a highly factionalised, fractionalised and toxic space. The SABC and other state entities in the Communications portfolio were severely divided.
21. Despite the challenging environment, we had to ensure that South Africa met its 17 June 2015 deadline for the completion of the digital television migration process, set by the International Telecommunications Union ("ITU"), a United Nations Agency, for Region 1. In addition, other Ministers and senior ANC leaders, as well as the many stakeholders I had met, made it clear to me that we needed to prioritise the inter-related tasks of digital migration and the Broadband Policy.

BACKGROUND

22. Below, I set out the key stakeholders relevant to the issues set out in paragraph 9 above, including the private companies:
 - 22.1. Independent Communications Authority of South Africa ("ICASA");
 - 22.2. Sentech, the state-owned company responsible for broadcasting and telecommunications signals;
 - 22.3. The Department of Trade and Industry ("DTI");
 - 22.4. The SABC;
 - 22.5. e.tv (Pty) Ltd ("e.tv");
 - 22.6. TopTv;

- 22.7. Community TV, represented by the Association of Community Television of South Africa;
- 22.8. Naspers;
- 22.9. MultiChoice Group Ltd and/or MultiChoice South Africa (Pty) Ltd ("**MultiChoice**");
- 22.10. National Association of Electronic Manufacturers in Electronic Components ("**Namec**");
- 22.11. ANC; and
- 22.12. South African Communications Forum ("**SACF**").

23. It is important to note that until recently MultiChoice was a subsidiary of Naspers. It was unbundled and listed separately on the Johannesburg Stock Exchange ("**JSE**") in March 2019. Although, legally, MultiChoice functioned as an independent company, Naspers, especially through its Chief Executive Officer ("**CEO**") and later Chairperson, Mr Koos Bekker ("**Mr Bekker**"), played a very active and hands-on role in MultiChoice's ferocious opposition to STB control at the time. As such, this affidavit will make reference to Naspers/MultiChoice except where it is necessary to specifically refer to Naspers and MultiChoice separately. In any case, the Commission requests me to give my views on: *"How **Naspers** sought to influence government policy on digital migration"*.

OVERVIEW OF "DIGITAL MIGRATION" AND SET TOP BOXES

24. Below is an overview of digital migration and the use of the STB control system, however, the overview is by no means full and comprehensive, and it does not contain all the technical aspects related to digital migration and STBs. I have tried to avoid technical language and use plain English where possible. The experts themselves, in the media space, could not even agree on the basic meaning of terms such as "control", "conditional access (CA)" and "encryption" in relation to STBs.

The importance of digital migration

25. Television broadcasts can be transmitted using a cable, satellite or terrestrial network. Digital Terrestrial Television ("**DTT**") refers to a television broadcast that is transmitted through a digital format using ground-based radio frequency transmitters.

The majority of televisions in South Africa can only receive analogue terrestrial broadcasting signals unless a decoder or STB is used to convert the signal from analogue to digital. Through the use of STBs, the DTT television broadcast signal is converted from a digital into an analogue format so that it can be watched using analogue television sets.

26. Digital Migration refers to the transformation of the entire analogue based broadcasting system into a digital based broadcasting system. This entails building a new digital broadcasting network, in which STBs or decoders decode digital signals into analogue signals, and a period in which both networks are broadcast simultaneously, leading ultimately to switching off the old analogue network.
27. Apart from converting a digital signal into analogue, STBs can also provide additional services, for example, messaging; better quality video; audio and data; a return path that allows for inter-activity; internet; and storage space for recording audio and video channels which can be consumed later.
28. Digital migration can contribute to bridging "the digital divide" between the rich and poor, and building an inclusive information society and knowledge economy in South Africa. Access to information and knowledge in an "Information Age" is regarded as a prerequisite to economic and societal development.
29. The analogue method of transmission is highly inefficient in the use of spectrum. For example, the amount of frequency spectrum that is required to transmit one analogue television service can be used to transmit between 6 and 15 DTT services, depending on whether they are high or standard definition channels. Hence, digital television allows for many additional services, using much less spectrum. The spectrum that becomes available when analogue signals are switched off is called the Digital Dividend Spectrum and it has the following public benefits:
 - 29.1. It enables the spread of broadband and other services operating at much higher speeds than the current speeds. Mobile broadband operators will be able to transmit more data at a lower cost, as low frequency spectrum allocations allow for more distance using fewer cell towers, at higher speeds and better communication capacities.

- 29.2. It enables the licensing of new broadband service providers, which will increase competition in the sector, the diffusion of broadband in the country and cheaper internet rates, if properly regulated.
- 29.3. It provides space for e-Government and other services. The new digital platform could be used for specific targeted interventions in areas such as health, education and agriculture.
- 29.4. It adds versatility to a range of applications, including, among others, interactive services, enhanced information services, management of natural and other disasters, and mobile and portable television reception.
- 29.5. It allows for radio services to be received anywhere in the country through a television via the DTT network.

BDM Policies of 2008 and 2012

- 30. The objectives of the 2008 BDM policy are summarised below:
 - 30.1. Strengthening South Africa's capacity to be a more effective information society and knowledge economy;
 - 30.2. Reducing the digital divide between the rich and poor;
 - 30.3. Releasing much-needed radio frequency spectrum for wireless broadband and mobile communications;
 - 30.4. Stimulating the development of the local electronic manufacturing industry and job creation;
 - 30.5. Provision of e-Government services;
 - 30.6. Encouraging additional television channels and in different languages to promote access to information and contribute towards nation-building;
 - 30.7. Providing a framework for community television and mobile broadcasting services;
 - 30.8. Providing access to broadcasting for people with disabilities;

- 30.9. Developing the electronic manufacturing industry;
 - 30.10. Encouraging the creative industries; and
 - 30.11. Serving the needs of the disabled.
31. The 2008 BDM policy stated that the STBs would have a control system for the following reasons:
- 31.1. To protect government's investment in subsidised STBs;
 - 31.2. To protect consumers from low quality non-conformant STBs;
 - 31.3. To unscramble encrypted signals;
 - 31.4. To stimulate the local electronic manufacturing industry;
 - 31.5. To prevent the STBs from being used outside South Africa and disable stolen STBs; and
 - 31.6. To allow for mass and unique messaging and interactivity with government.
32. In 2012, an amendment to the 2008 BDM policy was gazetted, mainly to revise the transition period for digital migration and to adopt the advanced DVB-T2 as the DTT standard and soften the use of the STB control system ("**2012 BDM**"). The 2012 BDM policy retained the main objective as set out in the 2008 BDM policy, namely, to facilitate the development of the South African electronic manufacturing industry. However, the term "*encryption*" was deleted, but the "control" on STBs remained to ensure that STBs comply with the standards of the South African Bureau of Standards ("**SABS**").

Set Top Box Manufacturing Strategy

33. On 14 September 2012, the STB Manufacturing Sector Development Strategy was gazetted. The strategy emphasised the need to:
- 33.1. procure STBs from local manufacturers;

- 33.2. ensure that the *"local industry and government's investment is protected through the use of technical and non-technical barriers to entry"*;
 - 33.3. transform the industry to encourage black-owned STB manufacturers; and
 - 33.4. use the manufacture of STBs to stimulate the manufacturing of digital TVs in South Africa.
34. The STB Manufacturing Strategy estimated that about 23 500 jobs would be created.
35. The STB Manufacturing Sector Development Strategy emphasised the need for B-BBEE policies.
36. According to the DTI, the following also needed to be taken into account:
- 36.1. The local development of STBs would develop a new value chain required to meet the production levels; and
 - 36.2. It will enable the training and employment of local people in different sections of the industry.
37. The DTI emphasised that Black manufacturers would be extensively harmed if cheap STBs are allowed into the country. They said that these cheap versions generally do not meet the standards of the SABS and are sold at prices which no local company can compete with, especially new up-and-coming small, medium and micro enterprises ("**SMMEs**").
38. The DoC and DTI engaged on how the subsidised STBs could be protected from foreign imports through state procurement localisation programmes and "designation". The import tariff at the time was kept at 15% (fifteen percent) at the insistence of Naspers/MultiChoice. The DoC engaged with the DTI about the need to increase this tariff in terms of the World Trade Organization ("**WTO**") agreement rules, which allowed for a maximum of 30% (thirty percent).
39. In documents sent by the DTI to the DoC, the DTI set out the following:




"It has been part of the dti's strategy to leverage government procurement to support the local manufacturing industry and the digital migration program presents government with that opportunity to specifically support electronics manufacturing in S.A. In the event of CA not being adopted other measures will have limited leverage and impact...."

"The impasse on the conditional access systems decision in South Africa as well as the prolonged delay to transition to digital broadcasting already has a material impact on the economy with respect to job creation, import taxes, investment, release and reallocation of frequencies, availability of broadband based services and the local content production industry all bearing the most significant impact."

"It is the dti's view that the issue of conditional access, apart from negligible increasing the price of the set-top box – as indicated by some industry players, has been supported in the context of protecting South African government's investment on the subsidised set-top boxes due to the possibility of the black market. The dti believes that this is more of a broadcasting industry issue that must be urgently concluded with broadcasters. The delay is negatively affecting the local STB manufacturing industry given the investments they have made to prepare for the digital migration programme." (sic)

40. The DTI also pointed out that:

40.1. Without the SABS standards, South African TV households would become vulnerable to grey market importers¹ which would result in adverse consequences for the economy. The grey importers will dominate this sector and circumvent it as they continue to do so in other sectors including the electronics devices sector.

¹See in Christopher Heath in 'Parallel Imports and International Trade' at https://www.wipo.int/edocs/mdocs/sme/en/atrip_gva_99/atrip_gva_99_6.pdf and Roussel Uclaf v. Hockley International, decision of 9 October 1995, [1996] R.P.C. 441.:

"The term "parallel importation" refers to goods produced and sold legally, and subsequently exported. In that sense, there is nothing "grey" about them, as the English Patents Court in the Deltamethrin decision correctly pointed out. Grey and mysterious may only be the distribution channels by which these goods find their way to the importing country. In the importing country, such goods may create havoc particularly for entrepreneurs who sell the same goods, obtained via different distribution channels and perhaps more expensively."

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- 40.2. South African households with TVs could become vulnerable to STBs with no after-sale support. The DoC may find itself in a logistical nightmare when companies that have supplied small quantities of STBs in the market have closed their doors when the opportunities diminish, and they become unsustainable.

The Need to conform to SABS standards

41. The protection of the local electronics industry was supported by the SABS SANS 862:2012 which required STB control. All STBs had to be tested at SABS for compliance according to the prescripts of the SABS testing regime.
42. According to Mr Kruger, the stakeholders, including MultiChoice, agreed on the SABS SANS 862.
43. The original requirement as provided by the DoC and partially reflected in the SABS Document SANS 862:2012 ED2 was for a *“Set-top box decoder for free-to-air digital terrestrial television”* as a control mechanism *“that will allow decoders to be disabled and to prevent them from being utilized outside South Africa”*. It also noted that: *“The main functional elements specified for security are: a) a secure over-the-air software and bootstrap loader; b) a mechanism to prevent STB decoders from functioning in non-RSA DTT networks; c) STB control system that will enable mass messaging.”* Another DoC requirement was to ensure that the decoder was protected from being stolen.
44. In a letter dated 12 February 2014, SABS informed the Department that to amend the standard, it would take a minimum of 34 weeks – and **only** if there was consensus among the parties. The change of the standards on two previous occasions had taken 17 months and 16 months, respectively. The DoC believed that given the recent entrenched differences between those who supported and opposed a control system, it was unlikely that consensus would easily emerge on changing the standards.
45. On 27 March 2014, following various claims by those opposing a control system that the SABS standard could be quickly changed, SABS issued the following media statement:

"As a member of the International Organisation of Standardisation (ISO) the SABS is obliged to subscribe to the good standardisation principles in the development of South African National Standards. One of the six principles includes the effective engagement of stakeholders in the consensus development process of publishing national standards. The process of amending a national standard is guided by SANS 1-1 : Development of South African National Standards which is a document that is aligned to the International guidance document for standards development as published by ISO. This amendment process involves adherence to the amendment stages of developing a South African National Standard and can vary from a reasonable time frame of 34 weeks to a period of 15 months. The duration of this process is dependent on the complexities of the scope of the standard which impacts on the consensus to be achieved by the various stakeholders participating in the technical committees".

"e.tv Court Judgment" of December 2012 limits, but does not remove the Minister's power

46. The issue before the court was who should decide on the selection and management of STB control – the mandatory use of STB control was not in dispute among the parties and was not considered at all by the court.²
47. Basically, the court declared that free-to-air ("FTA") broadcasters are responsible for the STB control system, subject to ICASA's regulatory powers.
48. In processing further amendments to the BDM policy in the time I served as the Minister, we sought several legal opinions on the "e.tv court judgment", including from Senior Counsel, both before and after Cabinet adopted them in December 2013. All the lawyers were clear that the government has the right to make policy on STB control but it cannot prescribe the supplier, the operator of the control system, or how it should be managed. These decisions had to be made by the FTA broadcasters. The mandatory use of STB Control was not in dispute among the parties in the December 2012 court process and was not considered at all by the court.
49. In fact, a DoC official said that government argued strongly in favour of STB control in that case.

² e.tv (Pty) Limited and others v Minister of Communications and others (34694/2012) ZAGPJHC 268

Causes of persistent delays in implementing digital migration

50. In July 2013, when I became the Minister, we were already 5 years behind with beginning the STB roll-out programme, and the ITU deadline to complete the process was less than 2 years away.
51. There were various reasons for the delay, including:
 - 51.1. An initial delay resulted from substituting the originally accepted European digital standard, the Digital Video Broadcast–Terrestrial (“DVB-T”) standard with a Japanese standard, ISDB-T and eventually back to the updated DVB-T2 standard.
 - 51.2. The litigation against the Department in 2012 and the e.tv judgement thereof;
 - 51.3. Debates over a STB standard, and whether or not to opt for a simple digital-analogue converter or a more substantial STB, with additional functionalities.
 - 51.4. The inability to finalise the STB tender process because of constant disputes between the broadcasters and also among the manufacturers.
 - 51.5. Changes in the positions of e.tv and the SABC (or some of their leaders) on whether STB control was correct or not.
 - 51.6. The failure of the SABC and e.tv to agree on who the vendor and operator of the STB control system would be, as required by the e.tv judgment.
 - 51.7. The refusal of the broadcasters to reach a compromise in the interests of progress on the long overdue implementation of digital migration.
 - 51.8. The constant change in Ministers of Communications – there were 4 Ministers during a 5-year presidential term, between 2009 and 2014.

Independent Facilitation – September 2013

52. When I became the Minister, the DoC, other Ministers and senior ANC leaders, as well as the many stakeholders I met, made it clear to me that we needed to prioritise the inter-related tasks of digital migration and broadband policy.
53. After reviewing the process since 2008 it seemed to me that there was no prospect that the feuding broadcasters would arrive at a degree of consensus through their own engagements or through mediation by the DoC or Ministry. I then proposed to the stakeholders that a facilitation process, by an independent team, should be embarked upon. The facilitation process began in September 2013.
54. The aim of the facilitation process was to reduce the differences between the stakeholders, and to set up a representative committee that would work with government to see if there could be a measure of consensus on policy issues and agreement on amending the BDM policy, if necessary, so that we could move swiftly ahead in view of the looming June 2015 ITU deadline. The subsidiary aim of the facilitation process was to assist me, as the new Minister, to better understand the respective positions of the various stakeholders.
55. The facilitators held several separate meetings with the different stakeholders. The first "roundtable" meeting was on or about 11 September 2013, and it was attended by the broadcasters, Sentech, ICASA and the DTI. Despite their best attempts, the facilitators were unable to secure consensus from the stakeholders.
56. Government then reshaped its policy taking into account what all the parties had to say, including the documents given to us by representatives of some of the emerging entrepreneurs at a separate meeting we had with them in September 2013. The country could not be endlessly held to ransom by the feuding of the broadcasters and manufacturers.

Use and misuse of the Terms "Control", "conditional access" and "encryption"

57. Before and after the STB control policy was amended in December 2013 (refer to section headed December 2013 policy below) there was contestation among the broadcasting engineers and other technical experts regarding the meaning of the terms "control", "conditional access" ("CA"), and "encryption". Some experts insisted that the terms had specific meanings, others insisted the three terms had the same or similar meaning. Experts across the sector often used the terms interchangeably.

58. The stakeholders, through independent facilitation as described above, tried to obtain agreement on the meaning of terms and arranged a discussion with the broadcasting engineers and other experts. The approach was to align the meaning of control and CA in terms of the SABS SANS 862 standard. It was agreed that the STB control that would meet the policy objectives required a CA system with encryption functionality and that:
- 58.1. STB control is not a technical term but a policy directive to protect STBs.
- 58.2. The aim of government was to protect its investment in STB subsidies, thus stimulating local manufacturing through the introduction of policy provisions for STB control.
- 58.3. The CA system is the technology used for STB control and requires encryption to meet policy objectives.
- 58.4. To meet the objectives of the BDM policy, a CA system should be implemented.
59. However, despite the broad agreement on these terms, the stakeholders, including their respective technical experts, kept using these terms to mean different things and sometimes continued to use them interchangeably.
60. The DoC, on the advice of the experts working with us, decided to use the term "control" in a generic sense to refer to any system which can be used to control the functions of a STB, not any specific system, like encryption or conditional access. Simply put, while "encryption" and "conditional access" are forms of "control" – and, in fact, they are widely used forms of "control" – they are not the only forms of control, and with changes in technology new forms of control could emerge.
61. A STB control system is a computer-based hardware device which offers a number of services. Among these services is the ability to switch STBs on or off; send messaging services; and switch encryption services on or off as required by individual broadcasters. The 2013 BDM policy specified that STBs must include a control system with the ability to perform various functions. Most, but not all of these can be performed using encryption; but the EPG (electronic programme guide) function, for example, does not require encryption.

62. The December 2013 amended BDM policy specified the minimum functional requirements for the control mechanism but did not compel FTA broadcasters to select one form of control over any other. As stated earlier, the decision on the form of control selected for inclusion in the subsidised STBs was the responsibility of FTA broadcasters within any regulations ICASA may impose.
63. For the government, it did not matter which system of control was used as long as the STB achieved the goals of the STB control policy.
64. Globally, FTA broadcasters transmit their signals over the air, unencrypted or encrypted, without charge for the delivery of the signal to the viewer. In South Africa, we have examples of both encrypted FTA signals in the case of e.tv in respect of their satellite channel (Open View High Definition) and unencrypted FTA signals in the case of the SABC, but both are FTA broadcasters, meaning that the viewers do not pay to watch SABC or e.tv channels.
65. It was better to use the word "control" to avoid any deliberate "misunderstandings" that were being made at the time. In terms of the e.tv judgment, government could not decide on the vendor nor appoint the operator of the control function. It was appropriate to use the term "control" rather than encryption or CA since these would be prescriptive on the underlying CA technologies.
66. In this affidavit, I have used the term "control" mainly as it was the term we used during my tenure as the Minister. I have used the term in its generic sense of "control", which the experts advising the Ministry and Department explained, as mentioned above, referred to various forms of control including "conditional access" and "encryption".

ANC December 2012 Conference Resolutions on Need for Competition in the Pay-TV sector

67. Below are some relevant excerpts from the policy resolution on communication at the ANC's December 2012 National Conference:
- 67.1. *"...Black owned and emerging companies is (are) minimal and require(s) support from government to speed up the pace of transformation....."*

- 67.2. *There should be local manufacturing of ICT products for domestic and exports (markets) and government ICT procurement should benefit South African companies including SMMEs....*
- 67.3. *The review of the Broadcasting Policy by 2014 should be underpinned also by the policy desire to reduce barriers to entry, especially in the pay TV market....*
- 67.4. *Significant entry barriers remain in place in the pay commercial broadcasting sector. Regulation of this sector to enforce effective competition has not produced the desired competition. There is a need to relook at the behaviour of dominant players, access to premium content including sports rights and access to critical infrastructure by the competitors in this sector to enable the entry of new Pay TV services during the migration process, and new Free to Air players after switch-over in 2015...*
- 67.5. *Given its immense public benefits, Digital terrestrial television (DTT) should be treated as a service with wider implications beyond the ICT sector and broadcasting...*
- 67.6. *DTT should present an opportunity to create a new industry that is owned and controlled by South Africans. The manufacture of Set-Top-Boxes (STBs) should be linked to a long-term vision to manufacture Integrated Digital TVs (IDTVs)...*
- 67.7. *Digital broadcasting should be implemented as soon as possible in order to accelerate the release the of "digital dividend" spectrum. The International Telecommunication Union recognises that the Digital Dividend is to be allocated to new broadcasting services, wireless services, mobile broadband, public emergency and other services.*



68. The approach adopted by government on STB control in December 2013 was supported by the ANC NEC Communications Sub-Committee. It was also supported at a meeting of the South African Communist Party office-bearers.

Criteria used for deciding the approach to control on STBs

69. In deciding the approach to STB control, the Department had to consider, among other issues, the need to:
- 69.1. Begin implementing the migration process as soon as possible, given that South Africa was five years behind schedule, the ITU June 2015 deadline loomed, and there was an urgent need to release radio frequency spectrum.
 - 69.2. Protect government's investment in subsidised STBs, including through reducing the prospects of them being stolen or used outside the country.
 - 69.3. Stimulate the local electronics industry and create jobs.
 - 69.4. Benefit emerging entrepreneurs.
 - 69.5. Reduce the prospects of the South African market being flooded by cheap STBs that are not fully functional.
 - 69.6. Reduce the extent of concentration and monopolisation, and encourage competition by creating space for new players in the Pay-TV market without them unfairly benefiting from any government subsidy.
 - 69.7. Through competition, reduce the cost of accessing Pay-TV.
 - 69.8. Best serve the viewers' needs.
 - 69.9. Protect content providers against piracy.
 - 69.10. Contribute to "levelling the playing fields" between the FTA and Pay-TV broadcasters.
 - 69.11. Protect the interests of the SABC against commercial broadcasters, particularly Pay-TV broadcasters eroding its advertising revenue.
 - 69.12. Be sensitive to rapid changes in the broadcasting and information and communications technology ("ICT") sector as a whole.

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- 69.13. Provide e-Government services to households in an effective manner.
- 69.14. Recognise that while the views of TV broadcasters are important, the government has to act in the public interest and in terms of its socio-economic and developmental goals.
- 69.15. Reduce the prospects of legal action from broadcasters and manufacturers that would delay the migration process.
70. These criteria need to be looked at as a whole without undue emphasis on any particular one as against the others.
71. The STB control policy had to be firmly understood in terms of a broader strategy to transform the broadcasting landscape to serve the country's developmental needs.
72. Crucially, the STB control policy was not just a broadcasting matter; it related to broader issues of industrial policy, particularly the need to stimulate the local electronics industry, encourage emerging entrepreneurs and create jobs. The Department worked closely with the DTI on finalising government's approach.
73. Government was planning to supply approximately 5 million STBs free of charge to poor households and these STBs were going to be manufactured mainly by emerging manufacturers.

December 2013 Policy

74. In December 2013, the BDM policy was again amended. The 2013 BDM policy did not prescribe to the broadcasters how their individual broadcasting services had to be managed and specifically what control system would be used and who the vendor and operator of the system would be.
75. Basically, building on the existing policy spelt out above, the purpose of digital migration as set out in the 2013 BDM policy included:

- 75.1. The release of urgently needed radio frequency spectrum for mobile broadband and other services, with lower costs to communicate over time.
- 75.2. Job creation;
- 75.3. There would be more TV channels, with more features, including greater use of indigenous languages, educational spin-offs, better quality viewing, electronic programme guides, e-Government services and access to the internet.
- 75.4. The cost of broadcasting would be significantly lower over time, including for the following reasons:
 - 75.4.1. Analogue broadcasting uses a large portion of the spectrum in order to transmit because of the bandwidth required.
 - 75.4.2. Considerable energy is also required by the transmitters for the signals.
 - 75.4.3. The new digital means of transmission would reduce the bandwidth required and minimise the spectrum usage. Digital transmission technologies also utilise less power and therefore introduce significant cost savings. One expert stated that the cost of broadcasting a single television channel would drop from about R800 to about R250 a minute at that time.
- 76. In finalising the amendments to the BDM policy adopted by Cabinet on 4 December 2013, government took into account, among other things, what has been covered above, namely:
 - 76.1. The value of Digital Migration;
 - 76.2. The e.tv judgment;
 - 76.3. The delays in the STB roll-out programme;
 - 76.4. The failure of the facilitation process to arrive at some consensus;
 - 76.5. The criteria for STB control;

- 76.6. The requirements of the STB Manufacturing Sector Development Strategy;
- 76.7. The SABS SANS 862;
- 76.8. South Africa's highly concentrated media market (refer to section below on "How Naspers sought to influence government policy on digital migration"); and
- 76.9. The ANC's December 2012 Mangaung National Conference resolutions on digital migration and the need for competition in the Pay-TV sector

77. The Broadcast Digital Migration Policy included the following:

*"To avoid challenges in implementing the Digital Migration programme, caused mainly by differences between broadcasters and also between some manufacturers, **the use of** a control system is not mandatory (my emphasis). However, the STBs will have a control system to protect Government's investment in the subsidised STB market and the local electronics industry and, with rapid technological changes, for future use by broadcasters who might not want to use it on implementation."*

"Taking account of the rapid technological changes taking place in the ICT sector, the evolving business models in the content industry, the need to ensure efficient and effective communication between government and citizens, the need to protect consumers of content services from low-quality electronic consumer devices, the need to protect the investment that government continues to make in support of the digital migration programme, including in the subsidisation of STBs for indigent households (subsidisation of STBs as contemplated in paragraph 2.1.4), and finally, the need to stimulate the local electronics industry and drive job creation, STB control will remain a mandatory requirement in the manufacture of STBs. The use of STB control will however be non-mandatory and broadcasters can choose whether or not they make use of STB control."

It was decided to "have a control system that can be used to prevent STBs from being used outside the borders of South Africa and that can be used to disable the usage of stolen STBs"

"The envisaged growth of the digital television broadcasting sector in South Africa after the cessation of analogue television transmissions, the rapid technological

changes that will continue to accelerate and the evolving business models in the converging ICT sector may result in new terrestrial television broadcasters wishing to use STB control. In addition, existing free-to-air broadcasters who currently do not have a requirement to use the STB control system, may wish to do so in future due to changed circumstances. The BDM policy therefore provides that STB control will remain a mandatory requirement in the manufacture of STBS but the use of STB control by broadcasters will be non-mandatory."

78. Crucially, it was decided that:

"To avoid subscription broadcasters unfairly benefitting from the STB control system, Government's investment in the STB Control System will be recovered from those subscription broadcasters that choose to make use of the STB Control system."

79. Discussions had begun with National Treasury on the possibilities of ring-fencing the money paid by broadcasters who opted to use the STB control system and using it to assist the SABC financially.

80. Prior to the amendments, referred to above, *e.tv (Pty) Limited*³ instituted court proceedings against the Department. As stated earlier, the issue before the court was who should decide on the selection and management of STB control – the mandatory use of STB control was not in dispute among the parties and was not considered at all by the court.

81. The SABC claimed that the December 2013 BDM policy amendments were not legally tenable in terms of the Public Finance Management Act 1 of 1999 ("PFMA") because they gave a "subsidy" to broadcasters to launch a Pay-TV channel. It seems that this was based on a tendentious reading of an early draft opinion hastily drawn by the State Attorney that did not take into account that broadcasters would pay for the use of the STB control facility nor the DTI policy on industrial incentives. In brief, the DoC's response pointed out, amongst other things, that:

³ Ibid.

- 81.1. The legal opinions received were clear that the policy amendments were lawful.
- 81.2. National Treasury had been involved in shaping the policy amendments and would not have approved the amendments if they violated the PFMA.
- 81.3. Broadcasters wanting to use control would have to pay a fair cost.
- 81.4. The DTI and National Treasury support for industrial development programmes would be unlawful if the SABC's claims were true.
82. Both sides - those who support and oppose control – continued to threaten to go to court if they did not get their way. Those supporting STB control argued that their lawyers said the amendments are lawful. While those arguing against control said their lawyers argued that the amendment were unlawful.
83. Essentially, as we saw it, there was a vicious struggle between MultiChoice and e.tv over the STB policy – and both sides tried to influence the SABC, and a variety of other stakeholders. Our Department strongly objected to both Naspers/MultiChoice and e.tv using the STB control policy as ransom to settle their contractual and other disputes, but there was little we could do about their disagreements.
84. As pointed out above, the Department consulted lawyers, including senior counsel, and it was clear that government had the right to make policy on STB control, but it could not prescribe the supplier, the operator of the control system, the type of control system to be used or how it should be managed. In terms of the 2013 policy, those that wanted to use STB control were free to decide on the nature of the system, the vendor and operator of the control system.
85. There was also the possibility of a legal challenge against government by manufacturers who had already invested in a control system and applied for the government tender on the subsidised DTT STBs based on the fact that a control system was specified as a requirement in the last amendment to the Broadband Digital Migration Policy (of 13 February 2012), SANS 862:2012 (Edition 2) and the tender on Government subsidised DTT STBs of 2012. As such, by retaining control in the STBs, we reduced the prospects of further litigation.

ICASA fully supported the control policy

86. Despite the legal action and/or threats of legal action to be instituted against the Department, the regulator, ICASA, strongly supported government's position regarding STB control. In a letter, attached hereto as "annexure 2", dated 28 January 2014, ICASA's Acting Chairperson stated the following:

"The Independent Communications Authority of South Africa is broadly supportive of the amendments made to the Broadcasting Digital Migration Policy which you proposed in Government Gazette No. 37120 published on 6 December 2013.

...

The measures you propose to make Set-Top-Box control non-mandatory while asserting the Government's responsibility to protect its investment in subsidised Set-Top-boxes bring the wisdom of Solomon to an intractable matter on which all stakeholders are unlikely to agree. We believe the measures are reasonable and fair and should survive legal challenge. So we urge you to proceed with the amendments regarding Set-Top-Box control as they are. This will prevent further delay to the digital switch-on which is so overdue that it places enormous pressure on the ITU deadline for analogue switch-off on 18 June 2015."

Sentech supported STB control

87. Sentech confirmed that it had a conditional access system which could be implemented and that both DTT and DTH were encrypted.

STB Control in some form in other African countries

88. A matter of contention between the DoC and Naspers/MultiChoice was whether any other countries were using STB Control. The DoC argued that there were specific circumstances in South Africa that shaped the need for STB control (these are covered in various aspects of this affidavit). The Doc also looked into the approach of some other African countries, and concluded that while not having elaborate policies on control, some other countries were using it in some form or another.

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89. At the Southern African Development Community (“SADC”) Communications Ministers Forum in Johannesburg on 25 March 2014, it emerged that Tanzania, Malawi and Namibia were moving toward using “hybrid” STBs.
90. While Tanzania and Namibia had references to some form of control in their policies, they did not have a detailed policy like in South Africa. Unlike these countries, South Africa had the capacity to manufacture STBs and so, it needed to protect the local industry, as well as the subsidy for the poor, which Tanzania and Namibia were not providing.
91. According to the DoC, some of the reasons put forward by SADC Member States for using some form of a control system in their networks included:
 - 91.1. Most networks are publicly funded and managed - the member states are using limited resources to implement these networks, hence if the infrastructure can be used by most broadcasters (PayTV and FTA) this would reduce the public fund investment in the public network.
 - 91.2. It would encourage infrastructure sharing by broadcasters.
 - 91.3. It would encourage new broadcasters to enter the market.
 - 91.4. It would protect local economies - the Member States collect tax revenue from the import and sales of STBs, and the general registration of STBs on the network assists with the curbing of pirated hardware. It also restricts hardware dumping tendencies (cheap STBs flooding the market).
 - 91.5. It would assist the state to communicate – most states call for sustainable network operators to safeguard the state’s obligation to communicate relevant public messages.
 - 91.6. It would protect against piracy – having a network control system assists in curbing signal hijacking which deters content pirates who affect the lifeblood of independent channels and producers by “stealing” their content, which is crucial to local employment of creative and production members of society.

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92. Ultimately, while the STB policies in other countries, including elsewhere in Africa, had lessons to offer us, we had to shape our policies taking into account the conditions in our country and our goals. For example, according to the DoC and the Ministerial advisors, none of the other countries in Africa offered a subsidy for the poor and none of them had local STB manufacturing capacity. Moreover, we had our own specific urgent imperatives to deracialise the economy, create space for emerging entrepreneurs and reduce the huge social and material inequalities.

STB Control – The TV Programme Re-transmission Aspect of the South African Market

93. A key aspect of the debate between the FTA and the Pay-TV broadcasters was that Pay-TV takes the FTA programmes for free and re-broadcasts them and uses the programmes to build market share. In so doing, they acquired two revenue streams: subscriptions and advertising, which is unfair and needs to be rectified.
94. STB control would allow FTA broadcasters to protect their content against unauthorized use. Encryption of the FTA signal means that Pay-TV STBs will not be able to simply pick up the FTA off the air. Encryption therefore allows FTA broadcasters to assert the right to control the use of their own signals and, where appropriate, to charge Pay-TV broadcasters for the re-transmission of their content and to be compensated for the value which they are adding to the Pay-TV platform.
95. The SABC/MultiChoice Agreement does not allow the SABC to encrypt its FTA channels, thereby allowing the M-Net STBs to transmit these FTA channels to the viewers and make significant advertising revenue from customers, as the SABC has the most watched channels.
96. According to Mr Kruger, FTA broadcasters are routinely encrypted around the world when they are broadcast on satellite platforms. However, it is less common on DTT platforms for the reason that most governments have not prioritised a uniform, addressable DTT platform and invested as significantly in DTT. The relatively recent advent of low cost cardless conditional access technologies has enabled encryption to become affordable for FTA DTT platforms.
97. At that time, advisors and officials informed me that about 40% (forty percent) of those watching subscription television on DStv watch one of the SABC channels or e.tv on

the Dstv bouquet – yet these channels are available separately from the original broadcasters at no cost. If these were available on a similarly sophisticated platform, with similar levels of convenience, at no subscription cost, the migration of audience from DStv would be high, and commercially damaging to MultiChoice. It would result in a decline in subscriptions and significantly threaten DStv's share of the advertising pool. Notably, if these advertising revenues were split between FTA broadcasters, it would significantly improve the financial positions of both the SABC and e.tv.

98. However, the ICASA rules under the "must carry" regulations⁴ ensure that MultiChoice has access to all FTA channels, hence MultiChoice continues to benefit financially from these "must carry" regulations. The "must carry" regulations of ICASA requires Pay-TV broadcasters or any other broadcaster that transmits 30 or more channels on their network to carry all the FTA channels on their network and the FTA broadcasters may not charge for these channels. This disadvantages the FTA broadcasters.
99. This has a direct negative impact on the sustainability of the South African broadcasting industry. In particular, the participation of Pay-TV players in the advertising market is unregulated and erodes the revenue base of the FTA channels which rely almost entirely on advertising for revenue.
100. Crucially, M-Net and DStv gain market share on the back of the popular FTA channels. The "must-carry" requirement enables DStv (and will enable M-Net when the DTT system is in place) to benefit significantly. The "must-carry" regulations are reported to be currently under review by ICASA. For the moment, however, South Africa's FTA broadcasters are effectively cross-subsidising DStv.
101. Importantly, if there is no STB control, FTA DTT is not able to broadcast a wide range of High Definition (HD) movie content as many programme suppliers will refuse to licence HD programming for broadcasting on a platform which cannot guarantee universal copy protection.

HOW NASPERS SOUGHT TO INFLUENCE GOVERNMENT POLICY ON DIGITAL MIGRATION

⁴ Published in Government Gazette No 31500 of 10 October 2008.

High concentration of the media industry

102. The STB policy also has to be understood as part of government's overall approach to the transformation of the economy, including through its de-racialisation, encouraging competition, and tackling high market concentration and the dominance of monopolies.
103. As such, before responding to the specific question, it is important to provide the Commission with a sense of Naspers' dominance in the media industry at that time. As noted by Mr Niddrie, Professor Eli Noam of the University of Colombia observed in *Who Owns the World's Media? Media Concentration and Ownership Around the World*⁵ at that time, Naspers-owned Media 24:
- 103.1. Was launched more than a century ago as the voice of the Cape Town wing of the National Party;
 - 103.2. Was the only South African media group that refused to appear before the Truth and Reconciliation Commission ("TRC");
 - 103.3. It dominated the combined presence of all its competitors: The Independent, Times Media and Caxton & CTP Publishers.
 - 103.4. Internationally, Naspers was one of just 20 South African companies listed in the Forbes top 2 000 global companies.
 - 103.5. South Africa was in the world's top five most concentrated markets. Media 24:
 - 103.5.1. Accounted for more than 60% of all daily newspaper sales and readership;
 - 103.5.2. Accounted for more than half of all weekly newspaper sales and readership;

⁵ Oxford University Press, 2016

- 103.5.3. Accounted for about 70% of all magazine sales and readership; and
- 103.5.4. Accounted for nearly half of all community newspaper sales and readership.
- 103.6. Naspers also:
 - 103.6.1. Had a monopoly in terrestrial subscription TV in the form of M-Net, owned by MultiChoice;
 - 103.6.2. Had more than 98% of direct to home (DTH) satellite subscription TV; and
 - 103.6.3. Controlled the country's major internet service providers, mainly through MWeb.
- 104. In an environment in which a fast-growing proportion of South Africa's people were receiving their information from digital platforms, Naspers' combined traditional media and digital influence was enormous. "Digital platforms" means:
 - 104.1. The internet – via personal computer and mobile phones – including news websites operated by print and broadcasting media (with News24 being by far the most used).
 - 104.2. Social media – Twitter, Facebook, YouTube, Instagram, amongst others.
 - 104.3. Traditional broadcast media – in the process of migrating to digital broadcasting platforms.

The SABC/MultiChoice 2013 Agreement

- 105. The SABC entered into a controversial agreement with MultiChoice on 3 July 2013. In terms of the agreement, MultiChoice would pay the SABC R553 million over a period of 5 years for the SABC's 24-hours new channel and an entertainment channel, SABC Encore, and MultiChoice would have exclusive access to the SABC's archives. The commercial agreement was concluded a week before I was appointed Minister.

106. The agreement included clauses that were irrelevant in a commercial transaction of this nature - a major precondition for flighting the 24-hours news channel on DStv was that the SABC will not, at any time, allow any of its channels to be distributed through a system capable of encryption.
107. Mr Motsoeneng, the SABC Acting COO and not the SABC CEO, Ms Lulama Mokhobo (**"Ms Mokhobo"**), signed the SABC/MultiChoice Agreement. I was informed that there was no board approval from the SABC Board prior to the agreement being signed. Moreover, Mr Motsoeneng did not have the legal authority to sign such an agreement on behalf of the SABC. I was informed by Ms Mokhobo that the agreement was concluded while she was on leave as she was opposed to certain parts of the agreement, including the precondition that the SABC change its policy from support to opposition of STB control.
108. I subsequently read in the media that a narrow majority of 8 votes against 6 voted in favour of the agreement after the new Board was appointed – however, the Board approval was done over 14 months after the agreement was signed, which is irregular.
109. I understand that human rights lawyer and SABC Board member, Mr Krish Naidoo, at the time concluded that the agreement was "ultra vires" and was interviewed about this by representatives of the Commission last year.
110. In December 2017, minutes of a SABC meeting, dated 6 June 2013, where the agreement was discussed, surfaced in the public domain. It is very clear that a major precondition of the contract was the "no encryption clause". The minutes reveal that Mr Imtiaz Patel (**"Mr Patel"**), of MultiChoice, said that MultiChoice was willing to pay R100 million a year towards a 24-hour SABC news channel but that this was not usual practice. A copy of the minutes is attached hereto as **"annexure 3"**, and Mr Patel states the following:

"So we wouldn't normally pay you for a news channel. Number two: we then said, to be able to justify to our Board, we need to justify to our Board to say why would we pay you R100m a year which is a lot of money. Ok. It's after tax money. To make R100m net you have to make R150m or R200m, R300m in turnover. We are looking for the excuse and the excuse for us is to be able to justify to our Board




*that you are giving us something in return. What are you giving us in return for the R100m? We're saying you giving us a news channel, you're giving us a general entertainment channel from your archives, your old, you know. We are less focussed on the core elements of it being new content. And we've been sort of quite open about it with Lulama, saying even if it's old stock. And thirdly, **we are saying we also need to justify this problem of conditional access is a big problem.** And in order to justify that we're saying in addition to that, your additional channels will be available on our platform. That's the third wind for you."* (sic)

111. It was reported in an article on the Politicsweb website, dated 8 October 2013, that the SABC agreed that *"should any one or more of the SABC FTA [free-to-air] channels be made available on the SABC DTT platform in South Africa at any time during the term [of the deal] on an encrypted basis, and that access to the SABC FTA channel(s) is/are controlled or limited by means of a conditional access systems or otherwise not freely available for viewing" penalties would apply.*"(sic) A copy of the article is attached hereto as **"annexure 4"**.

112. Furthermore, the Politicsweb article, referred to above, stated that:

"MultiChoice could then suspend the agreement by which it pays SABC R553 million over five years for the rights to flight its 24-hour news and entertainment channel on its platform and ask for its money back, or continue to air the channels without paying further fees, or be refunded by SABC for the money paid."

113. In any case, the SABC's obligations to ensure "no encryption" were subject to the strongest sanction for any breach of contract – significantly more severe than any other performance breaches of the contract. Yet this clause was irrelevant to the substance of the agreement. I believe that this clause was included to ensure that the SABC change its policy from support to opposing STB control. In addition, the clause would also ensure that the SABC exerts pressure on the government to also change its policy, in relation to STB control, which is what the SABC, led by Mr Motsoeneng, did.

114. The DoC raised some of its concerns with the SABC about the agreement but did not receive much cooperation from the SABC – and with the May 2014 elections looming, it was not possible to give it enough attention. One of the DoC's concerns was the

low amount that MultiChoice was paying the SABC despite the fact that SABC 1 and SABC 2 were among the most viewed channels on the DStv bouquet.

115. In terms of the SABC/MultiChoice Agreement, MultiChoice had full and exclusive access to the invaluable archives of the SABC. The issue was not just whether or not MultiChoice had legal co-ownership of the archives, but the low amount they paid for it. One expert suggested that the archives were worth over R1 billion.
116. In an article dated 29 May 2015, Amabhungane stated that at the launch of the SABC Encore channel, the chairperson of the SABC Board, Mr Obert Maguvhe, proposed a marriage between the public broadcaster and Multichoice. A copy of the article is attached hereto as “**annexure 5**”. The chairperson is quoted as saying the following:

*“Actually, for me, I wouldn’t have preferred it to just be a partnership,”...
“Actually it should be a marriage. You can be our bride and we will be the bridegroom.” “We love you so much, MultiChoice,” ... “We want to enter into a marriage.”*

117. After a meeting of the Parliamentary Ad Hoc Committee Inquiry into the SABC it became necessary for me address certain misrepresentations made by Ms Zandile Ellen Tshabalala (“**Ms Tshabalala**”), who was the chairperson of the SABC during that period. As such, I addressed a letter, dated 16 January 2017, to Mr Vincent Smit, who was the chairperson of the ad hoc committee. A copy of the letter is attached hereto “**annexure 6**” and it stated the following:

“...The Department agreed that in view of SABC’s financial challenges and the need for a 24-News Channel that could be broadcast on the Continent and internationally, there was a need for an Agreement with MultiChoice. The Department’s concerns revolved around, among other issues, the following:

- i. The process by which the Agreement was finalized, including the extent of consultation.*
- ii. The financial aspects of the Agreement, including what experts said was a significantly low payment the SABC settled for.*
- iii. The terms on which the archives were made accessible to Multi-Choice and the inadequate compensation for this.*
- iv. The provision that excluded the SABC from supporting STB Control (the reference to “encryption”), which had implications that government policy was*

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being pre-empted by a private sector monopoly. (In any case, several people in the SABC said that the SABC could not support the government policy on STB Control because of the SABC-MultiChoice Agreement.)..."

118. On 9 November 2018, the Competition Commission found the encryption aspect of the SABC/MultiChoice Agreement resulted in a notifiable change of control as envisaged in section 12(2)(g) of the Competition Act 89 of 1998, as amended (**"the Act"**), and that MultiChoice and the SABC failed to notify the Competition Commission, in contravention of the Act⁶. The Competition Commission specifically said the following:

"On a consideration of evidence before the Commission as a whole, the Agreement influenced the SABC's policy on encryption. The CAC in Distillers Corporation South Africa Limited and Another vs Bulmer (SA) (Pty) Ltd stated the following:

"It follows that the Act was designed to ensure that the competition authorities examine the widest possible range of potential merger transactions to examine whether competition was impaired, and this purpose provides a strong pro-pointer in favour of a broad interpretation to section 12 of the Act".

Being able to influence a policy on encryption materially impacted the structure of the market in that it protected Multichoice's dominance in the PayTV market in that the STB Control would have enabled new DTT entrants into the market that would have significantly challenged the dominance of MultiChoice particularly at lower LSM segments of the market."

119. It is of major significance that the Competition Commission arrived at a finding that MultiChoice influenced a policy on encryption and that the consequence thereof was that it materially impacted the structure of the market in that it protected MultiChoice's dominance in the Pay-TV market. In essence, this was the real impact of the SABC/MultiChoice Agreement signed by Mr Motsoeneng and entered into by the

⁶ Competition Commission Report 'The-Commercial-and-Master-Channel-Distribution-Agreement-between-the-SABC-and-Multichoice' at

<http://www.compcom.co.za/wp-content/uploads/2018/01/Background-The-Commercial-and-Master-Channel-Distribution-Agreement-between-the-SABC-and-Multichoice-005-copy.pdf>

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SABC without the knowledge or consent of the SABC CEO, Ms Mokhobo. It should be noted that the agreement signed by Mr Motsoeneng, essentially selling the crown jewels of the SABC to MultiChoice, namely its archives and also, strangely, agreeing to support MultiChoice's position on encryption of set top boxes, was done without the consent of the shareholder and was done contrary to Cabinet policy. It was also not authorised by the SABC Board at the time it was signed.

120. It is submitted that the nefarious alliance of MultiChoice, in the form of Mr Patel, supported by Ms Clarissa Mack ("**Ms Mack**"), the group executive for regulatory and policy affairs, with Mr Motsoeneng and the then Chair of SABC, Ms Tshabalala, had the consequence of government policy on set top box control and encryption being turned on its head. This was completely unacceptable. The fact that Mr Motsoeneng ensured that he received a bonus payment for signing the SABC/MultiChoice Agreement of about R11,3 million, which he claimed was the first tranche of the approximately R33 million he was entitled to, and that he is now being sued by the SABC for the return of those monies, is an indication of the fact that the agreement was improper and should never have been entered into in the first place. In an article by *Sowetan Live* dated 17 July 2017 attached hereto as "**annexure 7**", it is reported that:

"The SABC's interim board is on a mission to claw back millions of rands paid to disgraced former COO Hlaudi Motsoeneng.

It is also thinking of laying criminal charges against the fired boss. The board, appointed by President Jacob Zuma in March, plans to sue Motsoeneng for the return of a R11.4-million bonus he received in 2016.

The bonus was linked to a deal that granted MultiChoice access to the public broadcaster's archives without the authorisation of the then SABC board. The deal, worth R533-million, gave MultiChoice control of the SABC's archives for five years and also involved the creation of two new channels on DStv.

The total amount for Motsoeneng's bonus on this deal was R33-million, to be paid out over three years. The R11.4-million was the first portion and was paid in August.




"We have handed over Mr Motsoeneng's matter to the SIU [Special Investigating Unit] to fast-track [the investigations] so that we can go to [lay] criminal charges and ... we do intend to follow whatever avenues are available to us using the legal criminal justice system to recover [money] if the end of the investigations is that there are recoveries to be made," SABC interim chairwoman Khanyisile Kweyama told Sowetan's sister publication The Times."

121. In my view, the Agreement was a crude attempt by MultiChoice to maintain its dominance in the market and in so doing improperly influence government's position on set top box control through its willing acolytes, Mr Motsoeneng and Ms Tshabalala of the SABC.

Naspers/MultiChoice's opposition to STB Control

122. Naspers/MultiChoice argued that government's policy on STB control would benefit e.tv and other Pay-TV licensees to launch Pay-TV channels through the STBs – and this constituted unfair competition, as Naspers/MultiChoice already had their own STBs with their own control system which their customers were paying for.
123. Naspers/MultiChoice did not want to accept government's case for introducing STB control, including that broadcasters, whether e.tv or any of the broadcasters who would get the 5 new Pay-TV licences that ICASA was intending to issue at that time would have to pay the state appropriately for the use of STB control. They also said that STB control would be very costly for the state and increase the cost of TV for the viewers. They presented themselves as defending the interests of the poor.
124. In essence, Naspers/MultiChoice was defending its market position. The absence of STB control was advantageous to them for many reasons, it ensured that:
- 124.1. The FTA DTT platform was weak and chaotic (including being flooded with cheap imported STBs, with no common user interface, and no ability to do e-government services.).
- 124.2. The M-Net DTT STB would onboard the FTA channels without the need for agreement with the FTA broadcasters, in so doing, entrenching M-Net as the dominant terrestrial platform in the country.




125. Naspers/MultiChoice waged a ferocious campaign against STB Control and mobilised the SABC, Association of Community Television of South Africa (**"Act-SA"**) and Namec leaders and others in this process. This is not to suggest that these leaders were simply Naspers/MultiChoice puppets; they also had their own interests which coincided with those of Naspers/MultiChoice; but they were quite prepared to work with Naspers/MultiChoice even against the interests of their own organisations.
126. It has been alleged that Naspers/MultiChoice assisted Keith Thabo (**"Mr Thabo"**), the former president of Namec, to draft an opinion piece. An article in the *Mail & Guardian*, dated 29 May 2015 (**annexure 5**), states the following:

"AmaBhungane has also learned that at about the same time MultiChoice's management was involved in producing an opinion piece, published in April last year, that attacked Carrim.

The article was published under the byline of Keith Thabo, then-president of the National Association of Manufacturers in Electronic Components (Namec).

It is an important lobby group for mainly black small, medium and micro-enterprises in the electronic manufacturing sector.

AmaBhungane has seen email correspondence from April 21 last year between Calvo Mawela, the head of stakeholder and regulatory affairs for MultiChoice South Africa, and Thabo, referring to Mawela's role in penning an opinion piece published on the technology website TechCentral on the same day.

In the email Mawela writes: "Herewith the final article as requested."

He then provides Thabo with the email address of the TechCentral editor, Duncan McLeod, saying: "I think try get it to him as soon as possible."

The article, titled "Minister you are misleading the public", accuses Carrim of rewriting history and distorting facts.

MultiChoice described the allegation that it was involved in authoring opinion pieces for Namec "insulting".

"Through its office bearers, Namec asked for Mr Mawela's input as a broadcasting engineer, and he shared his thoughts based on his expert knowledge of the broadcasting sector," said MultiChoice's spokesperson, Jackie Rakitla."

127. In addition, just as the facilitation process was beginning, Mr Yunis Shaik (**"Mr Shaik"**) an e.tv executive director wrote on 5 September 2013 to inform me that Naspers/MultiChoice threatened to punish e.tv if they argued in favour of STB control in the facilitation process. A copy of Mr Shaik's email is attached hereto as **"annexure 8"** and it stated the following:

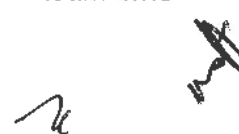
"We draw to your attention the following:

- 1. We have been advised this day, by Dstv, that if we should express support for the BDM Policy and set top box control during the course of the facilitation process, they will cancel the contract with ETV to host the ENCA news channel on the Dstv platform. In addition, we have been handed a script, drawn by Dstv, which we are called upon to articulate in parrot fashion to the facilitators you have appointed.*
- 2. In addition, we have been informed by Hlaudi of SABC that they intend to oppose the BDM Policy and set top box control. We understand, they too, may well have been issued with a similar script and have elected to succumb least they suffer similar consequence with regard to their 24 hour news channel.*

The declaration of Dstv, issued no less by its CEO, Koos Bekker to our CEO Marcel Golding is at once designed to place us under duress and undermine the BDM Policy and the facilitation process. In our view, the facilitation process, has been violated and the participants placed under considerable duress to oppose the BDM Policy and set top box control.

For this reason, we are of the view, subject to your advice, that we should withdraw from the facilitation process altogether. As the process is conducted under aegis of the Ministry, we should want to hear from you before we make a final determination on the matter."

128. I was not involved in the facilitation process and did not want to interfere with the process, I then asked Mr Niddrie to refer this matter to the facilitation team who



intervened and the matter was settled, and e.tv agreed to participate in the facilitation process.

129. Interestingly, Mr André-Pierre du Plessis wrote an article in the *Daily Maverick* on 8 December 2017 claiming that he was hired by Naspers/MultiChoice to "sink e.tv". A copy of the article is attached hereto as "**annexure 9**". But he also made sweeping and inaccurate claims, echoing the Naspers/MultiChoice line, that I was in e.tv's pocket and I replied in detail to these on 11 December 2017, attached hereto as an "**annexure 10**".
130. There were also constant allegations that at least one senior DoC official worked closely with Naspers/MultiChoice and shared confidential DoC documents with them. Mr Kruger told me that Naspers/MultiChoice seemed to have had a hand in drafting the 2012 amendments of the BDM policy; he said that he was at a workshop when an irate Naspers/MultiChoice senior representative in their DTT technology division (who was sitting next to him) got up to take a call and was annoyed that the Minister (Ms Dina Pule), who had that morning released the 2012 amendments of the BDM policy, had still not removed the requirement for STB control, as if they had already finalised with DoC that it would be removed. The Naspers/MultiChoice representative was not aware that Mr Kruger was the Minister's Advisor.
131. In any case, in a News24 media article, dated 24 November 2017, titled "*#Gupta Leaks: How MultiChoice paid the Gupta's millions*", Ms Mack, is alleged to have drafted a crucial government document on the relocation of broadcasting policy powers to the newly created separate Ministry and Department of Communications. As stated above, Ms Mack and Mr Patel were the lead negotiators for MultiChoice in the STB control negotiations. The media article is attached hereto as "**annexure 11**", and it states the following:

"MultiChoice executive Clarissa Mack (who had since resigned) sent policy documents directly to Muthambi, who shared them with Gupta lieutenant Ashu Chawla, setting out proposals for Zuma to transfer broadcasting powers back to Muthambi after he split the communications portfolio into two departments in 2014"
132. The document was sent to Minister Faith Muthambi, who was appointed immediately after my term. She reversed the government and ANC position on set top box control, deciding that STBs would not have a control facility. The ANC NEC Communications

Subcommittee subsequently, on more than one occasion, reiterated its support for STB control in the public domain

133. The influence of MultiChoice in drafting a policy for government which is thereafter transmitted to the Guptas is irregular.
134. The role of the Gupta family and their representative, Mr Ashu Chawla, in state capture in South Africa and the looting of state coffers is currently the subject of this Commission.

The role of Mr Bekker

135. Mr Patel asked me several times to meet Mr Bekker because of his important role in Naspers and his knowledge of media issues, including broadcasting. I met Mr Bekker on or about 2 September 2013 in Cape Town. It was clear that, for him, the main purpose of the meeting was to persuade me to change the policy on STB control. I explained to him that there was an independent facilitation process underway to seek some level of consensus among the stakeholders, but he was very dismissive of this and insisted on arguing MultiChoice's case.
136. Mr Bekker served on major government ICT panels and had done very well in the media industry. It seemed to me that he almost saw himself as an advisor to me because he was so well versed with the sector. Yet because of his vested profit and other interests in the Pay-TV sector, he obviously could not play any such role. He seemed annoyed that I could not see how brilliant he is. Even if he is so, it cannot follow that he must decide government policy. He seemed to have a remarkable sense of entitlement – and it was almost as if he believed that what is good for Naspers is good for our country.
137. I believed that it was important to keep the door open to Mr Bekker and all the other stakeholders. Mr Bekker and I agreed that we would meet again to get his views on how to get broadband going and on other broader ICT issues. This did not happen. We had a subsequent unhelpful telephonic exchange in December 2013 and a meeting in Tshwane in March 2014 in which we only focused on STB control.
138. After the facilitation process reached an impasse, I began from late January 2014 to meet the stakeholders, especially those opposed to STB control, separately to see if

we could still find some consensus. Several people, including senior ministers, department officials, advisors, the Parliamentary Communications Committee Chair and those in the industry suggested that I meet Mr Bekker to see if he could be persuaded to come up with some compromises to take digital migration forward in view of the urgent ITU deadlines. Most of them felt that if Mr Bekker agreed, Mr Patel and the MultiChoice Board would.

139. Certainly, in all my exchanges with Mr Patel, he did not offer a single original idea, and was in considerable awe of Mr Bekker, constantly singing his praises. He came across more as a process person than a person of substance in his own right. On the first day of the facilitation process, when SABC and Naspers/MultiChoice said that they did not believe the facilitation process should continue, Mr Patel constantly left the room to speak on his phone, and several people said that he was consulting Mr Bekker on the way forward. I cannot say if this is true but it certainly seemed that Mr Bekker was often present when he was not there.
140. It seemed to me that at that time, unlike now with Naspers having expanded significantly through its investment in Tencent, the Chinese internet company, MultiChoice was too important for Naspers' financial fortunes for Mr Bekker to give it the space to function independently in terms of corporate governance conventions and rules. Neither Mr Nolo Letele ("**Mr Letele**"), the executive chairman of Multichoice, nor Mr Patel seemed to have the power or authority that really mattered.
141. I asked Mr Patel to facilitate the meeting with Mr Bekker. Mr Patel said that would help as Mr Bekker thinks "out-of-the-box".
142. Mr Bekker and I met in March 2014 in Tshwane but the meeting got nowhere. Mr Bekker focused unnecessarily on his global reach and how welcomed Naspers/MultiChoice was all over the world and the huge taxes it paid in South Africa. He was not particularly interested in the Cabinet's decision on STB control, reducing it to being mine, and was highly dismissive of it. He was completely determined to have his way. He was not prepared to make any compromises at all. There certainly was not any of the "out-of-the-box" thinking that Mr Patel said we could expect from Mr Bekker.

143. During our meeting in March 2014, I insisted that there had to be effective competition in the sector. At one stage, Mr Bekker said something to this effect "okay, can you give me two or three names of Black people whom you think we could work with". I was taken aback and replied that it is not for him or me to decide on this, those issues have to be decided by policies and regulation, and through an open and transparent process.
144. Naspers/MultiChoice cannot itself decide who its competitors should be. It seems as though Naspers/MultiChoice wanted to determine the terms of transformation rather than allow the government and parliament to do so; in effect, Naspers/MultiChoice wanted transformation only on its terms. It is prepared to give empowerment shares, provide funding for Black South African television productions, Black South Africans in senior management and Board positions and so on – but this, it seems to me, is in good part geared towards ensuring that there is no competition to it.
145. As explained above, Nasionale Pers - which became Naspers after 1994 - was the mouthpiece of the National Party, and it was closely associated with the Broederbond. Because of its role in the apartheid era and its close relationship with the apartheid government, Naspers benefitted significantly, including by being issued the only Pay-TV licence for M-Net. It is this significant advantage which contributed to its huge growth. No doubt the creativity and enterprise of its leaders, not least Mr Bekker, also contributed significantly to its growth into the third largest media company in the world at that time. Nevertheless, given the huge head-start it received under apartheid it seems to me it should be more understanding of the need to ensure the racial transformation of the Pay-TV sector, and grudgingly, accept that there has to be competition; in any case Naspers/MultiChoice is streets ahead and will be difficult to outstrip.
146. Mr Bekker insisted that the STB control policy adopted by Cabinet in December 2013 came about because I spoke the language of e.tv. I challenged Mr Bekker to prove the above accusations against me, but he was disdainful of my protestations. Whatever else I am, I am not nepotistic or corrupt – and pushed by him as I was, I swore at him. That was certainly not decorous – but, well, I am human; and I was utterly fed up with this ludicrous falsehood that I favoured e.tv that he and others in the anti-STB control group were peddling. But the heat subsided, and the meeting

continued. Mr Bekker then agreed that he would give examples of what exactly I had said that came from e.tv documents and who at e.tv drafted my statements.

147. Despite this undertaking no such information or corroboration for his assertion was forthcoming from him.

148. In late 2014, I was told that a Naspers/MultiChoice representative had told a journalist that I had told Mr Bekker that if Naspers/MultiChoice refused to support control, I would de-list them from the JSE or would see to it that this happened, or something absurd like that. Obviously, I could not have said that as Mr Bekker knows better than I do that I have no such power or authority.

149. I also viewed Mr Bekker's statement that I spoke the language of e.tv as being part of a campaign by Naspers/MultiChoice to malign me and reflect on my professionalism and impartiality. In so doing, Mr Bekker, representing Naspers/MultiChoice, supported by Mr Patel, Mr Motsoeneng and Ms Tshabalala from the SABC and others from Act-SA and Namec, made it clear that they were not prepared to engage on the issues and that they preferred to attack my integrity and focus on my unsuitability for office.

150. This campaign of MultiChoice and Mr Motsoeneng against me started to gather force. The role of Mr Bekker and Mr Motsoeneng in this smear campaign was soon to become apparent.

151. On 16 March 2014, MultiChoice, Act-SA and Namec published an open letter to me in various newspaper publications, attached hereto as "annexure 12", in which Mr Letele, the executive chairman of MultiChoice, stated the following:

"Your current proposals advance certain narrow commercial interests – rather than being in the interests of our nation."

152. In an article in the Mail & Guardian dated 29 May 2015 (annexure 5), a memorandum sent by Mr Bekker in March 2014 to senior management of MultiChoice is quoted. Mr Bekker is quoted as follows:

"Bekker describes Carrim as "temperamentally unsuited to high political office" and states that he is "in the power of e.tv"."

Need for a New Minister

153. There was also a campaign against me not to be re-appointed as the Minister after the May 2014 elections. Mr Motsoeneng, I was told, had been saying since shortly after the 4 December 2013 Cabinet decision on STB control that he had removed an entire SABC Board and he would see to it that I would be removed as the Minister. Mr Motsoeneng encouraged stakeholders not to engage any further with the facilitators, the DoC or me on the STB control policy as I would "soon be gone".
154. Mr Bekker suggested in his March 2014 memorandum to the senior management of MultiChoice that it was not certain that I was likely to be re-appointed. It is not clear how he knew this about two months ahead of the President announcing the new Cabinet. In the Mail & Guardian article, dated 29 May 2015 (**annexure 5**), Mr Bekker is quoted as having stated the following in his March 2014 memorandum:
- "He adds that Carrim will not be re-appointed as communications minister after the elections..."* (The actual words Mr Bekker used, which suggest that he is not absolutely certain of this, are quoted below)
155. Mr Niddrie told me that a former Naspers/MultiChoice employee told him that Naspers/MultiChoice had some sort of "STB War Room" that met regularly to work on their campaign against STB control. Apart from Mr Patel, Mr Niddrie says he was told that Ms Mack played an important role in this. About two months before President Zuma appointed the new Cabinet, Ms Mack mentioned that Ms Muthambi would be the new Minister. How would Ms Mack have known? Also, is there a connection with this and what was revealed in the media (**annexure 5**) about her role later in that year in assisting with the drafting of government documents on digital migration? As the former Naspers/MultiChoice employee is vulnerable and does not want to be identified, Mr Niddrie has provided an affidavit to confirm what he was told.
156. An NGO activist informed me that he ended up at a party in Sandton "by accident", through a friend, at which Mr Motsoeneng, several people from Naspers/MultiChoice, including Mr Calvo Mawela, the then MultiChoice head of stakeholder and regulatory affairs, now the CEO, and others, were present. It was about two weeks before the President announced the new Cabinet.




157. The NGO activist said that he was not sure exactly what the purpose of the party was, however, Mr Motsoeneng and Mr Mawela seemed to be key figures. He said, from what he gathered, part of it had to do with “celebrating” that I would not be re-appointed, Mr Jackson Mthembu would not be replacing me, and that Ms Faith Muthambi would be the new Minister. How was it possible for Mr Motsoeneng and others to know about two weeks before the appointments were announced who was going to be the new Minister? The NGO activist referred to feels vulnerable and does not want to be identified, but he has agreed that his name be forwarded to a representative of the Commission should there be a need to confirm this confidentially.

Is STB Control outdated?

158. Questioned by the media in December 2017 in the Sunday Times about his role in the change of STB policy to drop control, Mr Bekker said that: *“That’s just a sideshow. Set-top box encryption is not interesting today to anyone.”* A copy of the article dated 3 December 2017 is attached hereto as “**annexure 13**”.
159. With streaming services and the rise of “video-on-demand”, the broadcasting sector has undergone major changes in recent years. But the majority of tv viewers are not able to access this given the huge cost of data. Technology may have moved on – but it is still necessary to consider how technology, in whatever form, could, as part of an overall strategy, contribute to new entrants entering the Pay-TV market and ensuring competition in and transformation of the Pay-TV sector. By saying STB control is not important anymore, Mr Bekker was distracting from Naspers/MultiChoice’s role in derailing a key government policy, purely to maintain his company’s commercial advantage – an advantage originally achieved because of the preferential treatment it received from the apartheid government. In any case, a few months before he said that, the previous Minister of Communications, Ms Ayanda Dlodlo, said that she was going to revert to the ANC position on supporting control. In fact, the 2017 ANC Conference reiterated the need for competition in the sector. Also, Minister Jackson Mthembu in early 2018, on behalf of the ANC NEC Communications Subcommittee, re-affirmed that STB control remains ANC policy.
160. My reply to Mr Bekker’s claim in my 14 February 2018 letter to Mr Letele bears relevance. The letter is attached hereto as “**annexure 13A**”. The letter states: *“I am*

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long out of the digital migration space now, and it may well be that technology has moved on and STB encryption is yesterday's matter, as Mr Bekker claims, but even if that is true, it seems to me, that the ANC and government have to explore how any relevant new technologies and/or other ways and policies could be found to assist in facilitating competition in the sector. I am also aware of the way in which the entire pay-TV sector globally is being challenged by video-on-demand services. However, the issue is not about whether STB encryption is correct or not; it is about addressing allegations about Naspers/MultiChoice buying government policy. We need to learn lessons from appropriate inquiries into Naspers/MultiChoice's behaviour and those into state capture generally to reduce the corrosive effects of corruption in our country. While the issue of state capture has received extensive publicity and is the subject of numerous intensive investigations, the issue of "policy capture" or "regulatory capture" and the means by which such capture takes place, warrants detailed investigation.'

161. Naspers/MultiChoice insisted that the new integrated digital televisions (Idtv) would make STBs redundant. Yet there is no prospect for many years to come that the poor and disadvantaged are going to be able to afford new digital TVs and would continue to need STBs – and they have a fundamental right to have access to broadcasting.
162. I raised the matter about the current relevance of STB encryption recently with Mr Kruger, and this was his reply:

"Control and encryption have become a major technology requirement today as hackers, business espionage traders and saboteurs try to use private information and intellectual property for gain or disruption...Whatsapp, Apple, Blackberry and Facebook have all implemented encryption into their networks and technology.

STB sales have grown exponentially as new features and technologies have been added to the STB units....e.g. Hard Disk Drives for storing information, USB reading capability i.e. able to look at photos, movies, documents stored on a USB via the STB and onto the TV screen, connection to the internet to allow for streaming (live watching of programmes from the internet).

STBs will always be around, so much so that Multichoice has released 4 new versions of STB over the past 3 years, with more to come....so much for the

Multichoice statement 'STBs are old technology and will not be around for long' – stated in 2012/13''.

POLITICAL INTERFERENCE IN THE EXECUTION OF YOUR MANDATE AS MINISTER OF COMMUNICATIONS, AND HOW THIS AFFECTED THE DIGITAL MIGRATION PROJECT

163. It is not clear to me what political interference is being referred to. As the Minister, I was the politician mainly responsible for the communications portfolio at the time and I functioned as part of the Cabinet and answered to it, the President and Parliament. I will however focus on how the digital migration project was shaped by the positions of the key stakeholders.

SABC Overview

164. The SABC is a public, not a state, broadcaster, and the Minister of Communications and the Department, as I understand it, have broad oversight responsibilities and cannot interfere in its internal decisions. However, they can exercise active oversight in the public interest as provided for within the applicable regulatory and legislative framework. Parliament also has a very important oversight role to play.
165. While the SABC's views on broadcasting policy are crucial, these policies must be approved by the majority of the Board. In addition, government has to consider the views of other broadcasters and other stakeholders, including the public, and decide on broadcasting policies in the public interest. As crucial as the views of the SABC are, the SABC cannot determine or prescribe government policies. Government has to decide government policies after appropriate consultation with the SABC but also other relevant stakeholders, and these policies must be within the legal framework.
166. As stated earlier, there were constant complaints about DoC members interfering in the internal affairs of the SABC and constant counter claims of SABC Board members and officials interfering in DoC's internal matters in ways that were not consistent with their respective roles and were not professional. Often these engagements, it was said, related to the personal business interests of the individuals on both sides.

167. At the time of my appointment as the Minister, the SABC had an Interim Board of four members, with Ms Tshabalala as the Chairperson, Ms Noluthando Gosa as the Deputy Chairperson, Mr Vusi Mavuso and Ronnie Lubisi.
168. The SABC had supported STB control since 2008. This was also expressed in the memorandum of understanding between the SABC and e.tv, in which they both agreed to cooperate on STB control. The SABC and e.tv had been working on STB control for more than five years.
169. Despite the SABC policy in support of STB control, during the facilitation process and thereafter, the SABC, particularly Mr Motsoeneng, vigorously opposed STB control and worked closely with MultiChoice, their main rival for viewer numbers and advertising revenue, in their joint opposition.
170. The SABC leaders opposed to STB control presented these as their main reasons:
- 170.1. The STB control facility would be a subsidy to e.tv to launch a Pay-TV service.
- 170.2. The cost of the STB would increase if a control facility was included.
- 170.3. As a FTA service they had no interest in control and had no intention to launch a Pay-TV channel.
- 170.4. The SABC did not need control as it cannot switch viewers off if they do not pay their licence fees.
- 170.5. According to them, the e.tv court judgment found that the Minister cannot take any decisions on STB control.
171. It seemed as though the SABC wanted the government subsidy, which was to be used to procure STBs for poor households, to be given to the broadcaster to enable the SABC to procure the STBs directly. In essence, Ms Tshabalala and Mr Motsoeneng wanted control of a major portion of the STB procurement process. Our advice was that it would not have been legal to give the SABC the subsidies to procure the STBs.

172. In any case, the Deputy Chairperson of the Interim Board, Ms Gosa and the two other Interim Board members continued to support STB control. On 20 September 2013, Ms Gosa sent me an email stating that she, Mr Mavuso and Mr Lubisi believed that Ms Tshabalala and Mr Motsoeneng had no mandate to change the existing policy of the SABC in support of control and that they were representing their own views in the facilitation process. Ms Tshabalala also sent me copies of the email exchanges in which she contested this. A copy of the email correspondence is attached hereto as **"annexure 14"**.

173. The SABC had consistently supported STB control prior to my appointment. Ms Mokhobo sent an email to the Board Chairperson, dated 25 September 2013. A copy of the email is attached hereto as **"annexure 15"**, it was referred to me, and in it Ms Mokhobo stated the following:

- *"The 2007 Board of the SABC passed a resolution on 18 October 2007 adopting the Digital Migration Strategy as was presented by the then executives of the SABC..."*
- *In August 2008 the Department of Communications launched the Digital Migration Policy (BDM). The policy closely resembled the SABC strategy as reflected above. This led to the crafting of a joint SABC/etv presentation 2008.*
- *On 11 March 2011 an open tender process to acquire a set top box control (STB) vendor was launched by the SABC and etv. The tender was never concluded.*
- *On 23 July 2012, the SABC Board took a resolution that the GCEO be mandated to sign the SABC/etv memorandum of agreement allowing the two entities to cooperate in the sourcing of the STB control vendor as per the 2008 SABC/etv strategy presentation.*
- *It should be noted that following the decision by the former Minister of Communications' decision not to proceed with the etv judgement appeal, the former Technology subcommittee of the Board passed a recommendation on 14 March 2013 to adopt the Sentech Nagravision solution as had been*

presented to the meeting. This was to be done via a round-robin resolution of the Board, and followed by a letter to the Minister under the signature of the GCEO on the 15 March 2013.

- The letter was written but never sent as the standing of the Board remained illegal without a Chairperson or Deputy being available as they had resigned from the board.*
- On 19 April 2013 the FIPT subcommittee of the current Board received separate presentations from etv and Sentech. The meeting resolved to recommend to the Board that the SABC proceed with its own tender process to acquire an STB vendor.*
- The ACOO and his team subsequently embarked on a process that led them to arriving at a completely different position.*
- The joint meetings of the Board and group executives were presented with both alternatives on 9 and 16 September 2013.*
- On 11 September 2013 the SABC represented by the Chairperson, ACOO and the GCEO attended the first Round Table meeting convened by the Minister but did not present as the second option had not been presented to the SABC exco and Board. The divergent views presented at that meeting, coupled with the fact that the SABC could not deliver its own presentation, led to a decision to interrogate the technical issues surrounding STB control at a workshop attended strictly by technology representatives on 13 February 2013. The GE Technology was precluded from attending that workshop.*
- On 16 September 2013, the Board and executives of the SABC met in a joint meeting to receive the alternative presentation, and agree what would ultimately be presented to the Round Table meeting on the same day. That meeting reached no agreement as to what would be presented as the official SABC position as disagreements persisted.*

- *The presentation that was thus made to the Round Table could therefore not be presented as an official SABC position but was, surprisingly, presented that way.” (sic)*

174. As far as I can recall, at the first SABC Board meeting where digital migration was discussed, Mr Motsoeneng opposed STB control. He later told me that I should not take seriously those who support control as they had been bought off by e.tv. Ms Tshabalala, who also opposed control, said the same. Ms Mokhobo and others told me that Mr Motsoeneng and Ms Tshabalala were in cahoots with Naspers/MultiChoice to advance their personal interests.

175. On 26 July 2013, Ms Tshabalala addressed a letter to me stating that the SABC was in support of STB control. A copy of the letter is attached as “**annexure 16**”, and it states:

“After careful scrutiny of the policies, standards, regulations and progress made thus far with regards to the DTT project since 2008, and the ITU deadline set for July 2015, we are pleased today to inform the Shareholder that the SABC has reached a position that when viewed from various dimensions, it believes is progressive and in the best interest for itself, the industry and the Republic.

The proposed position being:

- *That the SABC supports the implementation of STB control as originally envisaged in partnership with other FTA Broadcasters except the limitation of access to TV and Radio serviced by switching off the STBs...” (sic)*

176. However, on 12 August 2013 Ms Tshabalala addressed another letter to me which stated that the SABC was opposing the implementation of STB control and provided a letter by Mr Motsoeneng and Mr Tian Olivier, the Acting CFO, to explain this. The letter is attached hereto as “**annexure 17**”. All the reasons given by Mr Motsoeneng and Mr Olivier for opposing STB control were dealt with in the months thereafter, including through the facilitation process, and are covered in this affidavit, including the cost-benefit analysis of STB control.

177. Ms Mokhobo told me, on at least two occasions, that the SABC had changed its position on STB control, as set out in the letter of 12 August 2013, because

MultiChoice had intervened and informed them that Ms Mokhobo's letter of 26 July 2013 was in violation of the SABC/MultiChoice Agreement.

178. We were never provided with the minutes of an Interim or full Board meeting in which the positions expressed by Ms Tshabalala and Mr Motsoeneng on STB control were adopted by either of the two Boards.
179. It should be noted that Ms Theresa Geldenhuys, the SABC's Company Secretary, and others in the SABC said that, at times, minutes of meetings were changed under pressure.
180. In early October 2013, a new SABC Board was appointed with Ms Tshabalala as Chairperson and Professor Mbulaheni Maguvhe as the Deputy Chairperson. Initially, the newly appointed SABC Board of October 2013 was not familiar with the issues, but over time at least four members informed me, in breaks during SABC Board meetings or at other functions, that they did not agree with what was presented as the changed SABC policy opposing STB control. They claimed that the majority shared their views. I told them that it was not appropriate to raise their concerns with me but they should rather raise these at Board meetings because I did not want it to appear as if I was mobilising them; in any case, they had to take a Board resolution on their STB control policy.
181. I was told that Mr Motsoeneng was waging a "witch-hunt" against those in the SABC who supported control. I read in the media and was told that Mr Motsoeneng had dismissed Mr Sipho Masinga, the Group Executive of Technology, because he refused to change his stance that the STBs should have a control system. I also understand that Ms Mokhobo was forced to resign from her position as the SABC CEO because of her support for STB control and her unhappiness with certain aspects of the SABC/MultiChoice Agreement.
182. In December 2013, Mr Motsoeneng convened a media conference at the SABC to attack the 04 December 2013 Cabinet decision. Mr Patel and Mr Collin MacKenzie ("**Mr MacKenzie**"), the Secretary General of the Act-SA, took part in the media briefing. Ms Mokhobo told me that Mr Motsoeneng asked her to participate in the media conference to "deal with the Minister" or something to that effect – but she refused. Subsequently, it emerged that some Board members said it was not an authorised media conference. It is not clear on whose authority or in terms of which

rules of the SABC Mr Motsoeneng convened the media conference or on what basis Naspers/MultiChoice and Act-SA participated in a media conference held at the SABC.

183. On 16 March 2014, Naspers/MultiChoice placed a full-page advert, supported by Act-SA and Namec, in several Sunday newspapers objecting to the 4 December 2013 Cabinet decision and personalising the Cabinet decision around me. In addition, there was a suggestion that I was acting in the business interests of e.tv rather than the public.
184. All the arguments of the SABC against STB control presented in this section and others were dealt with in great length, including that it was certainly not part of the policy that the SABC should switch off viewers who were not paying their licence fees as that would be illegal.
185. It is important to reiterate that the 4 December 2013 Cabinet decision was mainly taken in the interests of the SABC. FTA broadcasters were being threatened by Pay-TV. The STB policy was meant to provide a platform for the SABC to, over time, win market share from both its rivals – Naspers/MultiChoice and e.tv.
186. The aim was also for the SABC to, in the long term, incrementally launch a Pay-TV service to improve the SABC's financial situation and gradually begin to compete with MultiChoice. According to Mr Kruger, FTA broadcasters in other countries were exploring and beginning to launch Pay-TV services. MultiChoice was the SABC's main rival for market share and advertising revenue. Naspers/MultiChoice's sole objection to STB control was that it would be used by e.tv and the SABC to threaten its market share. Yet Ms Tshabalala and Mr Motsoeneng vigorously did Naspers/MultiChoice's bidding. Why was this? How can the SABC, a public broadcaster, side with a huge private sector monopoly, which was its main rival for adverts and market audience, against government and against a policy that benefits the SABC? Why would senior SABC representatives oppose a policy designed to benefit the public broadcaster and new African entrepreneurs in the Pay-TV sector and instead favour the continued domination by Naspers/MultiChoice? Why would Mr Motsoeneng support essentially a big business monopoly with deep roots in apartheid?

187. It also became clear shortly after I became the Minister of Communications that Mr Motsoeneng saw himself as some sort of interlocutor between the President and me, and as the debate over STB control escalated, he told me on several occasions told me that “uBaba” – meaning the President – would not or did not agree that there should be STB control. Ms Tshabalala also asked me several times if the President agreed with me, implying he did not. I pointed out to them that President Zuma presided over the ANC and the country when the December 2012 ANC Conference took the relevant decisions on competition in the Pay-TV sector, the ANC NEC Communications subcommittee had expressed its support for STB control, the Cabinet took that decision on 4 December 2013, and also that I had briefed him on the policy before taking it to the Cabinet Committee. I made it very clear to Mr Motsoeneng that when I was appointed a Minister I was not told by President Zuma that I had to answer to Mr Motsoeneng. I remain astonished at Mr Motsoeneng’s sense of propriety.
188. Ms Tshabalala believed that since she was appointed by the President, she was directly answerable to him. I am aware that she and Mr Motsoeneng had several meetings with the President on the STB control matter at which I was not present.
189. It is not clear in what capacity Mr Motsoeneng attended these meetings with the President in a situation where the GCEO of SABC was not present. Presumably, the Board Chair would have had to, at least to some degree, brief the SABC about these meetings if they were relevant to SABC’s role or its decisions. These meetings took place without my prior knowledge. It is the prerogative of the President to meet who he wants and to agree to any meetings that are requested by others. If these meetings affect policy or implementation decisions within a particular Minister’s portfolio, ideally, a Minister should be informed at least of the outcomes of these meetings, if he or she has not been invited to them.
190. I had briefed the President at some length on the BDM policy that was adopted on 4 December 2013 before it was taken to a Cabinet Committee. He agreed with the approach set out. It is possible that he may have misunderstood me, but Mr Motsoeneng and Ms Tshabalala went about saying that I had “misled” the President. It would make no sense for me to do this. There would be no benefit in this at all. Also, in my engagements with senior Ministers and other ANC leaders there was unanimous support for the policy so why would I need to “mislead” the President?



191. Mr Motsoeneng and Ms Tshabalala also lobbied members of the ANC Communications Study Group in Parliament, members of the executive and of the ANC NEC Communications subcommittee in order to win favour for their position, and also that of Naspers/MultiChoice, that STB control should be abolished.
192. Ms Tshabalala even claimed that e.tv had drafted the December 2013 policy, and when challenged about it said that e.tv representatives had told her this. This allegation by Ms Tshabalala was absurd as I drafted the 2013 policy based on the advice and notes I received from DoC officials and advisors, and discussions I had with senior political leaders. If e.tv had indeed said that to Ms Tshabalala it is absolutely not true. I had no contact with e.tv or any of the stakeholders in processing the policy from the time I attended the first "roundtable" facilitation meeting on 11 September 2013 until the Cabinet decision on 4 December 2013.
193. As the SABC is the public broadcaster and government the shareholder, the DoC obviously had to take the SABC's views seriously. Ordinarily, we would have taken our cue from the SABC, but we also had to take into account the needs of the poor and disadvantaged viewers, the industrial policy issues, the legal challenges, the ITU and other deadlines, and other considerations set out above. In any case, it was seriously contested that the SABC Board had approved the change in policy to oppose STB control.

e.tv Overview

194. We had very little to do with e.tv. Our prime concern was the SABC.
195. e.tv also did an about-turn. At one stage they were also opposed to STB control. It is not exactly clear why, but according to Mr Kruger and Mr Niddrie, they did not initially understand the policy reasons for STB control and they thought it would affect them negatively. However, they were having problems with broadcasting current "A" rated movies as the content providers would only make these available to broadcasters who had encryption capabilities and could therefore protect the content providers' intellectual property. Also, said the advisors, they were having problems with the piracy of their channel signal in the neighbouring countries in which viewers were watching their programmes through cheap STBs. Much of their imported content was licensed only for South Africa, and the suppliers were demanding more for regional use licenses.

196. They realised that STB control could be of benefit to them and so they began to vigorously support control. e.tv had a Pay-TV licence and could have launched a Pay-TV service on DTT or satellite. However, they said that that was not on their agenda at the time; because they were unable to procure recent Hollywood and other movies and tv series on their FTA channel without a control system that would allow them to encrypt these movies.
197. e.tv also campaigned for STB control with members of the executive, the ANC Parliamentary Communications Study Group and maybe NEC Communications Subcommittee members. However, they had fewer resources and political connections (despite the struggle history of Mr Shaik and Mr Marcel Golding) than those in the SABC and Naspers/MultiChoice (who mostly had no struggle history and several, including those in the Naspers/MultiChoice leadership, had supported apartheid), and as e.tv was seen as critical of the government and the ANC and the Alliance, they had difficulties making headway.
198. There may well have been transgressions on the part of e.tv, but I do not know anything about them.
199. As pointed out above, Ms Tshabalala claimed that representatives of e.tv told her that they had drafted the policy. e.tv did not and could not have done that, but they saw the policy as suiting them; and since they were involved in a feud with the SABC, they might well have been gloating about this, and one or other of their leaders may well have claimed this. If so, it was highly irresponsible and immature, and it is most certainly a blatant lie. e.tv also may not have fully appreciated how much it would have cost them to use the control facility in the STBs.
200. In any case, our focus was not on e.tv in particular. We decided on a non-mandatory approach for the multifarious reasons explained above, and our interest was in encouraging new Black, particularly African, entrants into the Pay-TV market, especially as ICASA was about to issue 5 new Pay-TV licences.
201. For the record, apart from a fleeting exchange with Mr Shaik at the premiere launch of a movie (at which Mr Patel also spoke with me briefly, with neither conversation being on STB policy) I had not met or discussed anything about the STB control policy we were going to decide on with Mr Shaik or any other e.tv representative.

Community TV Overview

202. The community TV stations were represented by Act-SA on the STB control issues. Act-SA was established in 2013 and, according to a media report, seems to have not functioned effectively since about May 2014 and two of their affiliates have withdrawn. Their key representative, Mr MacKenzie, argued fiercely against STB Control offering the same arguments as SABC and Naspers/MultiChoice did.
203. Others within the community TV affiliates of Act-SA said that Mr MacKenzie had no mandate to take that position. Some of them said that they had a neutral attitude to STB control as they felt it did not affect them directly, while others said either that they supported control or would agree with whatever position the government decided on.
204. The government was unable to fund community tv stations and so they were dependent on DStv for their survival.
205. All the people who expressed reservations about the position expressed by Mr MacKenzie said that as they were totally dependent on Naspers/MultiChoice to air their channels, they could not come out in support of STB control for fear that Naspers/MultiChoice would find a way to remove them from the DStv platform. As I recall, one or two of them said that they would support control if the government agreed to fund them but we could not agree to do this on these terms. I do not know if any of these people raised their concerns within Act-SA.
206. There were allegations that Naspers/MultiChoice threatened representatives of some of the community TV channels that their channels would be removed from DStv if they supported control. There were also claims that the documents Act-SA submitted on STB control were drafted to some or other extent by Naspers/MultiChoice.
207. I understand that Mr MacKenzie had no mandate to append Act-SA's name to the 16 March 2014 full-page newspaper advert.
208. Mr MacKenzie was obviously working very closely with Naspers/MultiChoice and although Mr Patel denied this, it was said repeatedly to me that this was the case. Once, also, a TV journalist who interviewed me on STB control said he had just been to Naspers/MultiChoice's head office and met with Mr Patel on this, and that a very

aggressive community TV representative was present and answered several questions, and that he and Mr Patel were saying basically the same things. It seemed to me by character, appearance and choice of words that the journalist was referring to Mr MacKenzie as the community TV representative. Mr MacKenzie was certainly fanatically opposed to control in ways that made no sense because community TV was not threatened by it in any direct way.

209. Mr MacKenzie also had an interest in supporting MultiChoice's opposition to the STB control policy because as the head of Tshwane Television, he had a lucrative commercial relationship with MultiChoice for broadcasting his channel on DStv.

TOP TV Overview

210. ODM TopTV, a Chinese-owned Pay-TV broadcaster, supported having a full conditional access system because, among other reasons, they said it would:
- 210.1. Prevent theft of set top boxes and piracy of content.
 - 210.2. Allow some pay-DTT channels to be offered, so it was good for competition and therefore the consumer.
 - 210.3. Avoid grey imports and overspill to neighbouring countries.

Process following the 4 December 2013 Cabinet Decision

211. After the December 2013 Cabinet decision on STB control, the Ministry convened a meeting of all the stakeholders to explain the decision, get initial responses, encourage them to send written responses and invite them to attend a follow up "roundtable" meeting to be convened in January 2014 by the facilitators. However, those opposing STB control were just as hostile to the non-mandatory use of control as they were to its mandatory use in the policy since 2008.
212. E.tv, ToPTV, ICASA, Sentech, the SACF and Tellumat supported the 04 December 2013 Cabinet decision on STBs. Naspers/MultiChoice, the SABC, Act-SA and the Keith Thabo wing of Namec (for the two camps in Namec, refer to the section on "Divisions within emerging manufacturers" below) opposed it. Both those who

supported and opposed control mainly repeated the arguments they had made before, but some of them also made additional useful points.

213. A meeting was convened by the facilitation team on 30 January 2014 to respond to those that made submissions to the Cabinet decision that was gazetted on 06 December 2013. The four organisations opposed to STB control decided not to take part in any further "roundtable" meetings. Those who supported STB control attended the meeting.
214. The Ministry and DoC explained at the meeting on 30 January 2014 that we believed we should make further concessions to those opposing control but keep to the non-mandatory use of STB control approach. We also felt that there should be some amendments to make the policy clearer to address concerns which were based on a genuine misunderstanding of the policy, not the many deliberate distortions of it. The parties that attended the meeting in January 2014 decided to keep the door open for further negotiations, especially with the four organisations that did not attend the meeting – and these organisations were informed about this.
215. The issue arose at the above meeting as to whether the gazetted amendments were final. It was explained that they were meant to be, unless there was something fundamentally flawed with the amendments.

YOUR REASONS FOR ATTEMPTING TO ENFORCE CONDITIONAL ACCESS TO SET TOP BOXES, WHICH RESULTED IN YOUR DRAFT AMENDMENT TO THE DIGITAL MIGRATION POLICY IN DECEMBER 2013

216. In the first instance, the policies were, as I explain above in this affidavit, not **mine**, even though I took responsibility for processing the policy through several collective structures, notably Cabinet. The policy was originally adopted by Cabinet in 2008 when the Minister was Ms Ivy Matsepe-Cassaburi, and Cabinet retained the policy with the the 2012 changes explained above. The ANC's December 2012 National Conference policy resolution also called for competition in the Pay-TV sector.
217. Moreover, the policy changes effected while I was Minister were discussed in several ANC NEC communications subcommittee meetings. They were unanimously agreed to in all structures, including Cabinet. Furthermore, the policy adopted by the Cabinet in December 2013 did **not** "enforce conditional access" (a form of STB control); but

instead made it non-mandatory; in other words, those broadcasters who did not want to use STB control were free not to do so and those who wanted to use it were free to do so, provided they paid the state for its use. Control, in terms of the December 2013 policy, was optional.

218. Ultimately, this affidavit is not about the merits or demerits of STB control, but about the irregular manner in which the policy was changed to serve the narrow interests of Naspers/MultiChoice and others who colluded with them.

Small cost for control facility in the STB versus the huge gains

219. It would have cost the government about R20 per subsidised box for STB control.
220. Broadcasters wanting to use control would have had to pay a fair cost to the government.
221. As explained earlier, the DoC began discussions with the National Treasury about the possibility of ring-fencing the money raised to assist the SABC.
222. According to the DTI, the government's cost for the STB control had to be related to the benefits of the local electronics industry, emerging entrepreneurs and jobs. They pointed out that the South African government, like most governments, has invested in a variety of ways for industrial returns. The government deploys a wide range of incentives - tax incentives and rebates, trade measures such as standards and specifications, and strategic tariff policies in support of industrial development. These measures were designed to support the achievement of a range of policy objectives and secure commitments from the private sector including on B-BBEE; support for enterprise development and competition in the domestic economy; competitiveness upgrading; localisation; and supplier development. The procurement policies of government enshrined in the amended regulations of the PPPFA, the Competitive Supplier Development Programme and the National Industrial Participation Programme are designed to support these policy objectives. It was estimated that in its various forms, including direct and indirect incentives and tax foregone, this amounted to about R7 billion a year at the time.

223. The government believed that the many benefits of STBs, beyond just converting the digital signal for analogue transmission on TVs, far outweighed the extra cost of about R20 per STB. It did not make sense for the government to subsidise a “dumb” or “zapper” STB, given the significant investment by government in the migration to digital terrestrial broadcasting.
224. Despite the many advantages of the STB control policy, we did not go ahead with implementing it because government and parliamentary work began to wind down from February 2014 because of the May 2014 elections, and it was decided that the new administration would begin with the process.

FRAUD AND/OR CORRUPTION YOU ARE AWARE OF, IN RELATION TO THE DIGITAL MIGRATION PROJECT AND THE 2013 CONTRACT CONCLUDED BETWEEN MULTICHOICE AND THE SABC

225. Even though there were persistent allegations and counter-allegations of corruption, I cannot attest to having any personal knowledge of any fraud and/or corruption in respect of the SABC/MultiChoice Agreement. However, I refer the Commission to paragraphs 105 to 162 of this affidavit, which deal with the issues regarding how Naspers sought to influence government policy on digital migration.

ANY OTHER ISSUE YOU MAY WANT TO BRING TO THE ATTENTION OF THE COMMISSION

Divisions within emerging manufacturers

226. The National Association of Manufacturers in Electronic Components (Namec) was set up in 2009 as a lobby group for black SMMEs in the electronic manufacturing sector in anticipation of the implementation of the digital migration policy. The DTT project would have been an important stepping stone in the development of the South African electronics industry and the manufacturing sector.
227. For several reasons, including differences on whether the STB should have control or not, Namec split into two camps. The one camp was led by Mr Thabo, the then

President of Namec, and Vijay Panday ("**Mr Panday**") ("**Thabo-Panday camp**"), who fiercely opposed STB control, working very closely with Naspers/MultiChoice.

228. The other camp was led by Adil Nchabeleng ("**Mr Nchabeleng**") , the Secretary General of Namec, and Professor Kunene, the Deputy Secretary General, and they supported STB control, but they were not particularly active when I served as Minister, and I did not receive any official representation from them that they were in favour of control. They did not seem to be active in the STB policy space at the time.
229. On the other hand, the Thabo-Panday camp was very active and, as stated above, worked closely with Naspers/MultiChoice. The *Mail and Guardian* article, dated 29 May 2015, published e-mail correspondence between Mr Panday and Mr Thabo, who were involved in the anti-control lobby group (**annexure 5**). In the article, the journalist says that Namec:

"... appears to have acted as a MultiChoice puppet in launching a public attack on Carrim and his backing for conditional access...."

"In a further email from Panday, dated May 25 last year, the day Zuma announced his new Cabinet following the elections, he wrote: 'A big thank you to all from Keith and I for all the support with the recent fight with DOC Carrim. He is officially out. We will have an easier run. She is a nice person and supports Namec.'

The she in the email appears to be a reference to Muthambi, the new communications minister..."

230. The article also quotes from an e-mail written by Mr Panday to Mr Thabo which stated:

"You have to tell BRU [presumably a MultiChoice manager whose identity is unknown] we want some protection. Between you and me, they [are] under pressure from the top to relook at UEC [Altech UEC, a rival set-top box manufacturer]."

Before that happens, we put a lot of time, effort, lost face with govt and DTI [department of trade and industry], fighting the [conditional access] battle. A year from now, when all is over, they can allocate the forecast to anyone."

231. There were complaints from others in Namec that Mr Thabo and Mr Panday were acting without a mandate in opposing STB control and that they had no authority to append Namec's name to the March 2014 newspaper advert. An official of Namec's Western Cape chapter approached me after a parliamentary briefing on the digital migration process to say that their structure supported control and wanted us to finalise matters and go ahead. After the Cabinet decision, some other chapters of Namec said that they supported control, even those who were previously opposed to it – they wanted us to move on and ensure that the tenders were issued as soon as possible in a way that benefitted small manufacturers.
232. There were also questions about how representative Namec was of emerging entrepreneurs. The SACF also claimed to represent emerging entrepreneurs. Nafcoc, also representing black entrepreneurs, wrote to say that they supported encryption.
233. An advisor prepared a report on Namec in which he said:

"Most emerging Black manufacturers anyway support control. Without it, they will lose out to foreign imports. The use of the phrase 'the emerging manufacturers' implies that all emerging manufacturers oppose the inclusion of the control function. Research and consultation by the Department of Communications indicates that only a single group of emerging manufacturers, that calling itself the National Association of Manufacturers in Electronic Components or Namec, is opposed to the inclusion of a control function. Namec does not in fact represent 'emerging manufacturers' or even a majority of manufacturers of electronic components from historically disadvantaged backgrounds."

234. The Mail & Guardian article, dated 29 May 2015 (**annexure 5**), reported on allegations that the Thabo-Panday camp were "empowerment raiders" for hijacking an empowerment deal for their own benefit. The article noted that *"At the heart of the dispute was the relationship Namec had entered into with MultiChoice and the Chinese manufacturer Skyworth Digital, to potentially supply 15-million decoder boxes over three years."*

"Namec's secretary general, Adil Nchabaleng, a leader of the faction opposed to Thabo and Panday, said, in his view, 'a predatory approach was used by MultiChoice to get them [Thabo and Panday] on side for conditional access'."

235. Elsewhere it was reported that there was *"a massive fraud scheme to dump millions of dollars worth of Chinese Set Top Boxes (STB's) on to the South African market as the country gears up for the migration to Digital Terrestrial Television (DTT). A mind-numbing insider deal was hatched by the soon to be defunct President of the empowerment business association, National Association of Manufactures in Electrical Components (NAMEC) Keith Thabo and his shadowy partner Mr. Vijay Panday CEO of NAMEC Electronics Manufacturing involving their Asian Partners in an empowerment raiding transaction that would see thousands of South African jobs migrate to Chinese Factories and \$51million and in the offshore bank accounts of Mr Keith Thabo and Mr Vijay Panday without their empowerment structure and its membership earning a cent for their years of hard work and passionate loyalty to the promise of DTT empowerment, this would have been the sad truth until the plot was uncovered."*
236. Mr Thabo said Mr Nchabeleng was relieved of the secretary general's position in 2010: *"This is a desperate man who has been used by the white electronic industry to frustrate the aspirations of the black players in transforming the industry and creation of black industrialists....". (annexure 5)*
237. There were about 70 000 Chinese made STBs without control that did not meet the SABS standard that were being warehoused at Richards Bay harbour in premises linked to Namec Electronics Manufacturing.
238. According to media reports, the Thabo-Panday camp's commercial vehicle, Namec Electronics Manufacturing, secured a contract with MultiChoice worth about R5-billion to supply R15-million GoTV STBs (GoTV is a platform for African viewers outside South Africa). It was alleged that Namec Electronics Manufacturing was owned by Mr Thabo and Mr Panday, each with a 50% (fifty percent) stake in the business. While the bulk of the R5-billion was going to Chinese STB manufacturer Skyworth Digital, which actually produced the boxes, we understand that Mr Thabo and Mr Panday, as go-betweens, received a significant share.
239. According to the ITWeb website, MultiChoice also provided Namec Electronics Manufacturing with R60-million in enterprise development funding ahead of the STB contract.

240. The Nchabeleng-Kunene camp said that it would take MultiChoice to the Competition Commission and would request a full inquiry by the parliamentary portfolio committee on communications.
241. The Nchabeleng-Kunene camp joined Caxton and two other non-government organisations in 2016 to lodge a dispute with the Competition Tribunal, which ultimately resulted in the Competition Commission's finding that the encryption aspect of the SABC/MultiChoice Agreement was a "notifiable merger".
242. The matter of which wing of Namec was legitimate went to court – and the court at some stage found in favour of the Nchabeleng-Kunene wing. The current situation is not clear to me.

Allegations that the Minister was serving e.tv's commercial interests

243. Mr Bekker in a memorandum of March 2014, referred to above, stated the following:

"In South Africa the DTT transition bogged down in an ugly mess of recriminations. An open letter to the minister of communications from the Association of Community Broadcasters, Multichoice and National Association of Manufacturers In Electronic Components appeared in press on 16 March to point out the folly of his intended policy. Intensive debate followed in the media. Should the minister proceed as planned, these parties intend to take his decisions on review. It is clear that the current minister is in the power of etv and temperamentally unsuited to high political office. We understand he will not survive the elections in May, but these predictions are never certain. It is unclear when and in what form DTT in South Africa will commence."

244. This was brought to my attention by a *Mail & Guardian* journalist. I explained to the journalist that it was not the norm for an ex-Minister to comment on a previous portfolio, but I could not fold my arms while my integrity was being attacked and replied. I responded as below and quote from the article (annexure 5):

"No, no. I was not in the power of e.tv."

"That, however defined, would be a crime. The national fiscus wasn't my personal money box that I could just use to benefit a particular company I chose."

Carrim said the December 2013 policy that was decided on on his watch aimed to encourage new African pay-TV players rather than serving e.tv's narrow interests. 'It was a Cabinet decision, not a personal whim,'..." (sic)

245. My fuller response to the allegations that I was in e.tv's pocket, as it were, is contained in an article in the *Daily Maverick* dated 11 December 2017 (**annexure 10**).
246. Leaders from Naspers/MultiChoice, SABC, Act-SA and the Thabo-Panday wing of Namec waged a whispering campaign that I had taken a bribe from e.tv in return for deciding on the STB control policy. When I confronted some of them, they either denied this or refused to respond. When this allegation did not get traction, they played the race card and alleged that the policy was adopted to favour e.tv because Mr Shaik and I are both of Indian descent and/or because we served in the Natal Indian Congress together.
247. When the above allegations did not get much traction either, it was alleged that I was a "workerist" as was then e.tv CEO, Mr Marcel Golding ("**Mr Golding**"), and the policy was shaped to suit the narrow ideological interests of "workerism"/trade unionism, because the South African Clothing and Textile Workers' Union (SACTWU) through Hosken Consolidated Investment Limited owned a share of e.tv.
248. I obviously have empathy with the unions – and I refuse to make any apology for that – but whatever Mr Shaik and Mr Golding were in the struggle era, they had long moved on. In any case, I was serving as an ANC, not SACP, Minister and, as explained, I was bound by its policy frameworks and had to take decisions through collective structures and could not act in terms of my personal ideological whims. In addition, when these various attacks on me would not make headway, it was said that I was a "naïve," and being "misled" by my advisors.
249. As pointed out earlier, on 16 March 2014, Naspers/MultiChoice put full page adverts, supported by Act-SA and Namec in several Sunday newspapers objecting to the 4 December 2013 Cabinet decision and personalising the Cabinet decision around me. Worse, there was a suggestion that I was acting in the business interests of e.tv rather than the public. The advert contained many inaccuracies and questionable interpretations but what was most offensive was this claim: "**Your** current proposals

advance certain narrow commercial interests – rather than being in the interests of our nation". (my emphasis)

250. In reply, we issued a statement which pointed out, among other things, that:

250.1. At the heart of the dispute were the fears of the MultiChoice monopoly about competition. It was 20 years into our democracy, and we had to de-racialise the economy. In all economic spheres where monopolies are challenged in our country, they resisted fiercely. MultiChoice feared competition – it was this that explained its position and its sudden "concern" about the plight of the consumers and even the poor.

250.2. MultiChoice could not speak for the poor. It had no mandate from them. It is the poor, after all, who are excluded from watching MultiChoice, including major sports events, over which it has exclusive control.

250.3. It was absurd that a monopoly that made such huge profits could claim that it represented the country's interests more than the elected government did.

251. My response was also covered sometime later in a media article dated 8 December 2017 by the *Mail & Guardian*. The article is attached hereto as "**annexure 18**", and it stated the following:

"Carrim maintains that the full-page newspaper advertisements saying that he was in the pocket of e.tv were an 'outrageous insult' and 'libellous'.

'It was unprecedented,' he said. 'I was told that Bekker had a hand in that'.

'I spoke to Bekker over the phone in December 2013 and told him that, while they [Naspers and MultiChoice] have every right to oppose encryption, to suggest that I was supporting encryption to favour e.tv and may be getting a bribe was outrageous," said Carrim.

'Frankly, I'd rather die than be corrupt. The encryption policy was aimed to encourage new African pay-TV players rather than serving e.tv's narrow interests, yet the decision to drop encryption benefits only MultiChoice," he said.

"I told him that I've never had a business interest in my life and gave a substantial part of my salary away ever since I started working in 1983. What would I do with the bribe? How many more novels could I buy?" Carrim says he asked Bekker.

Bekker's alleged response was: "You tell me, minister!"

Said Carrim: "He clearly knew about the [smear] campaign and he was dismissive about my complaints. He also knew what was happening in closed SABC board meetings and in a lot of the negotiations on the encryption issue. So it's bizarre of him to suggest that it was a MultiChoice matter, not a Naspers issue.....

He was completely determined to have his way. Bekker's attitude seemed to reflect a very primitive defence, not just of profits but of territory, of legacy.

He was ahead of everybody in introducing pay-TV in South Africa and on the continent and elsewhere, and he wasn't going to allow any new upstarts in his space." (sic)

252. Mr Bekker has done very well in the ICT sector and no doubt he is very creative and enterprising, but I saw very little of that in my exchanges with him. Interestingly, the title of an article on his role in the STB saga in the *Daily Maverick* (Rebecca Davis, 7 December 2017) is entitled "The Way of Gupta?...". A copy of the article is attached hereto as **"annexure 19"**.

The inadequate apology of MultiChoice

253. In addition to the above, on 31 January 2018 during a MultiChoice press conference, Mr Mawela, the chief executive officer of MultiChoice, apologised to me regarding the open letter, referred to above. The statement of Mr Mawela is attached hereto as **"annexure 20"**, and he said:

"I also would like to take this opportunity to confirm that the open letter which MultiChoice published in the media on 16 March 2014 regarding Digital Migration was in no way intended to cast aspersions on the integrity of the former Minister of Communications, Mr Yunis Carriem. We express our regret if that impression was created." (sic)

254. I subsequently addressed a letter to Mr Letele, dated 14 February 2018, wherein I raised my dissatisfaction regarding the apology of 31 January 2018 by Mr Mawela




and, numerous other concerns in relation to digital migration. My letter ("**annexure 13A**") stated the following:

"15.18 Did MultiChoice tell people that I was taking bribes from e.tv to ensure government policy on encryption served e.tv's interests?

15.18.1. Is there a single shred of evidence that I took a single cent from e.tv or anybody else?

15.18.2. In the context of your claims allegedly made by MultiChoice and two SABC representatives that I was taking bribes, what was meant in your advert in March 2014 in which you stated in reference to me: "Your current proposals advance certain narrow commercial interests – rather than being in the interest of the nation"?..."

255. Thereafter, Mr Letele addressed a letter to me, dated 16 February 2018, in response to my letter, referred to above. The contents of the letter, attached hereto as "**annexure 21**", reiterated the apology of 31 January 2018 by Mr Mawela.

256. However, I felt that the response did not go far enough, and in my exchanges with Mr Letele I said the following (**annexure 13A**):

"17. I feel very strongly that N/MC (Naspers/MultiChoice) should apologise publicly in print and in writing to me for your conduct insofar as it reflected on my reputation and integrity. Ideally, you should put full page adverts in the very same newspapers you did in March 2014 and apologise for attacking my integrity and acknowledge that I was implementing ANC policy on encryption that was adopted by Cabinet. Obviously, you can in the advert reiterate your opposition to encryption and your views that I was not a suitable minister – this you certainly have every right to do. But to suggest I am corrupt is outrageous and you most certainly have no right to do this unless you have evidence.

18. I feel very strongly about this issue. I do not want a student 20 years from now googling on this encryption matter and picking up that I was accused of corruption. Given the many accusations of corruption of public representatives today, it might well be believed. I do not want my grandchildren to pick up these downright false innuendos and allegations! Who cares that I was a Deputy Minister and Minister?? We come and go all the time! That is most certainly the case in communications! All I have at the end of the day is my integrity! As I told the M&G, I would rather

die than be corrupt. Let me categorically state: if you can prove that I took even one cent from e.tv or anybody else as a bribe, I do not want to be even tried in a court of law, I believe I must go straight to jail to serve a long sentence. If what is alleged about your role in accusing me of corruption is accurate, it was grotesque, immoral, and unconscionable! I want you to apologise!

19. Mr Calvo Mawela apologised to me at the media conference on 31 January 2018 for any aspersions that may have been cast on my integrity through your March 2014 advertisement. Based on my fleeting exchanges with you while serving as a Minister and information I received then, I have no reason to believe that you were complicit in an attempt to smear me, and I know that you might have had a hand in this decision to apologise, and I express my appreciation to you. But this apology, I am afraid, is not enough. I raise the following:

- 19.1 Why was it only an oral apology, and not included in the media statement?*
- 19.2 In any case, the apology was lost in the other decisions you covered in your statement, especially about not renewing the contract with ANN7 and it was not covered in the media – unlike your full page 2014 adverts. There is no fair-play in your apology.*
- 19.3 Why was there no apology from Mr Bekker for insisting that I was 'in the power of e.tv'?"*

Need for policies, legislation and Codes of Conduct for business lobbying of parliament

- 257. In terms of the laws and rules of Parliament, Committees are required to be very open and transparent and have public hearings on major issues, as the Constitutional Court has also made clear, so business can hardly argue that they do not have enough space to contribute to shaping legislation and policies.
- 258. However, in recent years there has been a spate of allegations against businesses for their wrongdoing in their relations with the state. This includes the allegations against the Gupta family, KPMG, Naspers/MultiChoice, SAP, McKinsey and Bosasa. These transgressions are, indeed, an important part of the focus of this Commission on "state capture".

259. Of course, businesses have every right to lobby government as vigorously as they want, but that lobbying should be within reasonable limits and within a generally accepted framework of ethics.
260. The ANC, government and parliament need to shape clearer policies on this issue, after consulting business, labour, other civil society stakeholders and the public. There is a need for policies, legislation, and codes of conduct to reduce the prospects of business buying government policies and politicians, and being unethical.
261. Business organisations like Business Unity South Africa (BUSA), Business Leadership South Africa (BLSA), National African Federated Chamber of Commerce and Industry (NAFCOC) and others need to have a clearer Code of Ethics. Parliament may need to extend its Code of Ethics for MPs.
262. Companies also need stronger internal Codes of Ethics. In my letter of 14 February 2018 to Mr Letele, the executive chairperson of MultiChoice, I raised the need for Naspers/MultiChoice to have a strong internal Code:

"25. I think that out of the experience of NMC's role in the encryption saga, the following, among other issues, need to be considered:

25.1 Naspers needs to develop a policy and/or Code of Ethics on lobbying of government by its companies. It should publish this policy and/or Code and act decisively against those in its companies who violate it.

25.2 There should also be regulations and/or a policy and/or a Code of Conduct on business lobbying of politicians that binds both business and those in the political sphere. Those who transgress this, whether from business or politicians, must be severely sanctioned.

25.3 N/MC needs to give serious attention to its role in the pay-TV sector as a supremely dominant player and how such dominance should be addressed in order to ensure appropriate transformation and competition within the sector as a whole. This should not be attained through the appointment or selection of certain 'willing' partners by Mr Bekker to compete against Multi-Choice.

25.4 N/MC has to stop challenging every attempt by the government to introduce competition in the pay-TV sector. Just as the ANC, government and parliament are tackling monopolies in the banking, insurance, mining, auditing and other sectors, they should also be tackling monopoly domination in the pay-TV sector – N/MC has to accept that you cannot be exempt from this process.

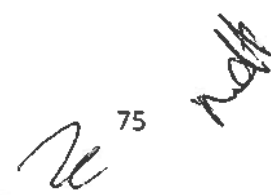
25.5 While recognising the complexities and the financial issues entailed, MultiChoice needs to consider in what ways it is possible to reduce its monopoly control of popular sport which ordinary people want to watch but from which they are excluded because they cannot afford the subscription fees."

Is this affidavit trying to settle scores?

263. I expect that those who opposed STB control and others will allege that I say what I do in this affidavit because I am upset (over 5 years later) that I was not re-appointed as a Minister in May 2014. What I said to Mr Letele in my 14 February 2018 letter bears relevance in this regard:

"20. Of course, I am aware that you may think I am trying to settle scores with N/MC because I was not re-appointed as a Minister. You are, obviously, free to think that. As I explained briefly in the Daily Maverick article (Annexure 5), I was not cheesed-off about not being re-appointed. I was well aware about a campaign that allegedly involved two people from the SABC and others from N/MC lobbying for me not to be re-appointed. I was told by people in the private and public sectors that I may not be re-appointed because of the encryption policy. But I refused to wail in my commitment to the ANC's and government's encryption policy. Whatever lobbying took place, it was President Zuma who decided on who he wanted as the Minister of Communications, and if he wanted to keep me on, he would have. So it would be quite silly for me to blame those who might have lobbied him. When I found that he would not keep me on, I certainly did not retreat. I moved on! I did not resign. I went to the back benches of parliament, and subsequently got appointed to chair a parliamentary committee.

21. I had long moved on when the encryption issue broke into the public domain with the release of those SABC minutes and the Gupta emails about the MultiChoice/ANN7 contract (about which I knew nothing) – and N/MC'S disingenuous replies to media inquiries about these issues.

75


22. It is not appropriate for a former Minister to speak about his or her former portfolio and whenever I have been asked by journalists about issues relating to my brief stint as the Minister, I have said I would not respond unless my integrity is attacked – hence my reply in the M&G article of 29 May 2015 (Annexure 1) when it was drawn to my attention that Mr Bekker had once again made his absurd and possibly libellous statement that I was in “the power of e.tv”? What he was in effect saying was that the ANC and government were in the “power of e.tv”. Is it true that Mr Bekker believes that politicians are either in the “power of N/MC” or one of its rivals? That we are incapable of making any decisions simply in the interests of our constituencies, particularly the disadvantaged? If this is Mr Bekker’s approach, could this be because of the way Naspers related to politicians during the apartheid era?”

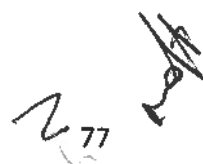
A case of “regulatory capture”

264. Naspers and MultiChoice play a very important role in our economy and have contributed significantly to economic growth and job creation, and in many other ways to the country. However, they can and need to do even more, and the country needs them and the private sector as a whole to play a more effective role in our economy and society. Government and parliament need to do everything possible to encourage them to play a role that advances the country.
265. However, this does not entitle Naspers and MultiChoice to determine government policy the way they do. Their representatives mentioned here, in my view, were in some or other way and to some or other degree, involved in a form of “regulatory capture”.
266. It must be stressed that leaders of the SABC, Act-SA and Namec who worked in cahoots with Naspers in ferociously opposing STB control were by no means puppets; they also had their own narrow material interests and saw a means to advance them through the weight of Naspers. There was a sense in which some of them were using Naspers more than Naspers them. Ultimately, not just Naspers and MultiChoice, but those who worked closely with them must take responsibility for the failure of the digital migration project.

267. Although this affidavit sets out the reasons for deciding on STB control between 2008 and May 2014, ultimately it is about is not about the specific merits or demerits of STB control but about **the exercise of influence by Naspers/MultiChoice outside of the conventional ethics of lobbying to determine policies, legislation and regulations to suit their narrow profit and other material interests at the expense of the public interest; it is about a type of “regulatory capture” which is a form of state capture.** Even if the policy we adopted on STB control was mistaken – and I do not believe it was - it still would not have justified the behaviour of Naspers/MultiChoice in determining a government policy the way it did.
268. Ultimately, it seems to me that my experience may be of some value in understanding a particular form of “regulatory capture”, where the private sector through some or other improper form of persuasion of a politician, state official, or representative of an organ of state ensures that policies, legislation or regulations are adopted that serve its narrow material interests against the interests of the public.
269. I certainly cannot summon to my aid the expertise and experience to match the scores of experts that particularly Naspers/MultiChoice has at its disposal. Also, I cannot summon to my aid the battery of top lawyers that those opposed to STB control, particularly Naspers/MultiChoice, can. Even if I could do so, I would not; there is no need to; this is not a court of law; I am not an accused; I am merely recalling my brief experience as a Minister.
270. The anti-STB control group, particularly Naspers and MultiChoice, have huge resources and expertise at their disposal and are likely to bring these to bear in their responses to this affidavit. As they have already done, they may well seek to malign and discredit me in various ways. Others who have been before this Commission, whom I know to be very decent people, have been so victimized. Regrettably, this is happening too often. But, so be it. To be intimidated by this would almost be to be complicit in state capture.
271. Mr Letele, in his reply to my 14 February 2018 letter, seemed to see the Constitutional Court decision of 8 June 2017 as a vindication of Naspers/MultiChoice's position on STBs without control. As I understand it, the Constitutional Court decided that Minister Muthambi had the right to change the policy on control.⁷ My reply To Mr

⁷ *Electronic Media Network Limited and Others v e.tv (Pty) Limited and Others* [2017] ZACC 17

277



Letele was: *"Of course, you are free to disagree with government or any particular Minister on any issue – that is your absolute right. And it has never been questioned. The issue is not about whether encryption is right or wrong for our country. I am not a lawyer, and I have not read the Constitutional Court decision, but based on media coverage of it at the time and an exchange today with a media expert familiar with the judgment, I understand that the Constitutional Court dealt mainly with the powers of the Minister and the processes followed to change the policy to instead drop encryption; it was not about the merits or demerits of encryption. The fundamental issue is: whether your lobbying of politicians and government officials constituted "regulatory capture", a form of "state capture". The Constitutional Court most certainly did not pronounce on that."*

272. Mr Letele said he would not answer the "further issues" I raised in my 14 February 2018 letter as the "relevant authorities are looking into the matters and we are cooperating with them". My reply: *"I hope the relevant authorities do indeed thoroughly investigate the issues I raised in my 14 February letter. Of course, N/MC has enormous power and can bring considerable legal and technical weight to bear on any investigation and will, no doubt, fiercely combat any allegations of wrongdoing. Despite this, I hope the investigating bodies will be able to fairly and effectively fulfil their responsibilities and arrive at credible outcomes."*

Of course, N/MC might get away scot-free, and you may continue to behave in the irregular manner that you are accused of doing. But, ultimately, the individuals accused of wrongdoing will have to deal with their own consciences, either consciously or unconsciously. Whatever my failings and inadequacies, I do not have any such challenge."

CONCLUSION

273. Obviously, the tensions and fights over STB control have to be located within the context of a vicious competition for viewers among the broadcasters and for STB tenders among the manufacturers in a changing and unpredictable broadcasting, financial and economic landscape. But it went beyond the norms and conventions of even a primitive free market system – and our economic and social system is not that; it is more social democratic, and we could not afford that destructive competition. We have amongst the most acute material inequalities in the world, and these

inequalities are highly racialized and becoming increasingly explosive. The fanatical pursuit by these private sector companies and individuals of profit and other material interests at any and every cost at the expense of the country's economy and its people, particularly the poor and disadvantaged, if it persists in this sector and others, will ultimately cost us all hugely - both the rich and poor.

274. It is now 11 years since government decided to launch DTT. The aim was to complete the process in 2011. Yet the STB roll-out has barely got off the ground. The STB tender was awarded to 26 bidders in 2015 on the understanding that STBs would be ordered as and when required. Apparently, several of these companies have closed down due to a lack of STB orders. There are also claims that many STBs that were procured are lying dormant in warehouses.
275. The process has dragged on since 2008 - yet digital migration is so crucial to the Fourth Industrial Revolution. The delivery of faster and universal broadband has been seriously held up because of the delay in finalising the digital migration process. While spectrum is now being released, the necessary full spectrum will only become available once the DTT network takes over from the analogue TV network.
276. Mr Kruger told me that at the time he was in the Ministry, the CEO of a major cell phone service provider estimated the value of the spectrum – the 800Mhz and 2600Mhz - at around R15 to 20 billion rand. Apart from speeding up broadband, lowering data costs, spreading access to broadband and boosting the economy, the government can raise valuable and much-needed revenue from the sale of spectrum.
277. It seems to me regrettable that all the hard and creative work done by the DoC officials, advisors, experts and Ministry staff that I had the privilege to work with was ultimately wasted when the policy on STBs with control was jettisoned.
278. It is only Naspers and MultiChoice that have benefited from this – even though they are increasingly being challenged by “streaming” services, they still retain their stranglehold and domination of the Pay-TV sector at huge cost to the economy and the country, especially the poor and disadvantaged. Previously, as stated earlier, they did this through their close links to the apartheid government, now they do so through the frailties of those of us elected to govern and the inertia of our own democratic state.

279. But we cannot allow this. We waged a titanic struggle over decades, at a huge cost, against apartheid, and we finally triumphed over it through an unprecedented negotiated transfer of power. Of course, the legacy of apartheid persists, there are many problems that we have inflicted on ourselves and the transition still has a very long way to go. But we can and must, over time, triumph over our current challenges. As one of many aspects of this transition, we need to accelerate the digital migration process as part of transforming our country in the interests of all the people, particularly the poor and disadvantaged. And we need to do this soon - otherwise the Fourth Industrial Revolution will leave us far behind, to the detriment of all our people, not just the poor and disadvantaged!



DEPONENT

I certify that the Deponent acknowledged that he knows and understands the contents of this affidavit, that he has no objection to the making of the prescribed oath and that he considers this oath to be binding on his conscience. I also certify that this affidavit was signed in my presence at JOHANNESBURG on this 30th day of JANUARY 2020 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.



COMMISSIONER OF OATHS

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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

06 August 2019

Tracking reference: RPS13/0016/IM

To: Yunus Carrim

Per email: yicarrim12@gmail.com

Dear Mr. Carrim

**RE: THE COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF
STATE ("THE COMMISSION"): INVESTIGATION INTO THE SOUTH AFRICAN
BROADCASTING CORPORATION ("SABC")**

1. As discussed with you telephonically on 05 August 2019, the Commission is currently undertaking an investigation into various allegations of capture at the SABC and as agreed with Mr. Terence Nombembe, you offered to provide the Commission with an affidavit setting out information relevant to our investigation, obtained during your term of office as the Minister of Communications.
2. In this regard, your affidavit needs to address the following issues identified during the course of our investigation:
 - 2.1. How Naspers sought to influence government policy on digital migration;
 - 2.2. Political interference in the execution of your mandate as Minister of Communications, and how this affected the digital migration project;

Handwritten signatures and initials.

- 2.3. Your reasons for attempting to enforce conditional access to Set Top Boxes, which resulted in your draft amendment to the digital migration policy in December 2013;
 - 2.4. Fraud and/or corruption you are aware of, in relation to the digital migration project and the 2013 contract concluded between Multichoice and the SABC; and
 - 2.5. Any other issue you may want to bring to the attention of the Commission.
3. You are also requested to provide copies of all and or any document, which may be in your possession, and which may be of assistance to us in our investigation, and which may include:
 - 3.1. All and any affidavits previously deposed by yourself, which relate to the affairs of the SABC; and
 - 3.2. Any other document that you may feel is necessary to consider in our investigation.
4. Due to the urgency of this request, we would wish such an affidavit to be provided to this office by **08 August 2019** and at **14h00**
5. It is understood that some of the information may be confidential. To this end, the Commission assures you that it will treat any confidential information as confidential and protect its confidentiality during the process of conducting its investigations. You are required to submit the requested documents to the Commission as follows:
 - 5.1. All printed documentation should as far as possible, be in A4 format. Any colour photographs should be scanned onto A4 print at 600dpi to ensure that we can easily feed them into a bulk scanner or easily print them again later.
 - 5.2. All documents in digital form must be submitted in pre-OCR'ed PDF format as far as possible, that is, PDFs where the text can be selected and highlighted. If your scans are not of this type, kindly arrange such prior to submitting them.
 - 5.3. It is preferable that you do not submit Word or Excel or similar documents unless they are primary evidence, as these can be tampered with. This is particularly relevant to affidavits.
 - 5.4. All PDFs and other documents, including spreadsheets and word processing documents, in any format (e.g. Word, Excel), must be password-protected, unless they are on a locked drive (see (v) below). No emailed submissions should be sent with attachments unless the files are password protected.

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- 5.5. All Flash Disks submitted must have "Bitlocker" turned on and a password created. Bitlocker can be accessed on a Windows computer by right-clicking the drive icon and choosing "turn on bitlocker". Please make sure that you write the password down. If you are using an Apple Mac, use Filevault. If you are using Linux, you can use Veracrypt. Please ensure that you provide the password to the SCC with your submission.
 - 5.6. Flash disks must be in a separate sealed envelope attached to any paper versions of the submission. The password must not be in the same envelope, as if the envelope is lost, the password will give anyone access to the files.
 - 5.7. If your paper submission is identical to the flash disk files, there is no need to submit paper printouts. If your paper version differs from the flash disk, kindly ensure that you scan all the paper versions and include them on a flash disk as well, named clearly, as per whether they are annexures, affidavits, etc.
 - 5.8. All emailed documents must be password protected. The password must be sent by another means, e.g. Whatsapp, SMS, Telegram, Signal, or via a voice call. The email must be sent to evidence@commissionsc.org.za. Please call the commission at (010) 214-0651 to confirm receipt.
 - 5.9. Faxed submissions are not accepted.
 - 5.10. Posted submissions are not accepted.
 - 5.11. CDRoms and DVDs are not accepted as they cannot be secured.
 - 5.12. Couriered submissions are only accepted if they are in sealed containers and the submission arrives in a form which has not been tampered with. Ideally tamper-proof bags should be used.
 - 5.13. If you are unable to send a flash disk, but a file is too large to send as an email attachment, kindly use one of the many cloud service providers such as Dropbox, WeTransfer, GoogleDrive, etc., to share the file. However, it is imperative that if you do this, you send the email link to only one recipient at SCC, and remind that recipient that the submission must be captured by the document archiving team as a first step.
 - 5.14. Furthermore, all files sent via Cloud services **MUST** be password protected before you upload them, and the password again must be sent separately, e.g. via WhatsApp, SMS, Telegram, Signal, or via a voice call.
6. Should you require any further information, in the above regard, please direct same to:

Dr A Poee

Cell phone: 060 742 5273

E-mail: antoniop@commissionsc.org.za

Advocate J Hershensohn

Cell phone: 060 748 1367

E-mail: johannh@commissionsc.org.za

Yours sincerely



Ms Brigitte Shabalala

ACTING SECRETARY

**Judicial Commission of Inquiry Into Allegations of State Capture, Corruption,
and Fraud in the Public Sector including Organs of State.**

02

**Independent Communications Authority of South Africa**

Pinmill Farm, 164 Katherine Street, Sandton
Private Bag X10002, Sandton, 2146

Office of the Chairperson
Tel +2711 566-3007
Fax +2711 566-3008
Email: chairperson@icasa.org.za

Ref. No: 16/1/P

Hon. Yunus Carrim, MP
Minister of Communications
Private Bag X860
Pretoria
0001

Per email: sindiswa@doc.gov.za

Dear Honourable Minister

BROADCASTING DIGITAL MIGRATION POLICY AMENDMENT

The Independent Communications Authority of South Africa is broadly supportive of the amendments made to the Broadcasting Digital Migration Policy which you proposed in Government Gazette No. 37120 published on 6 December 2013.

The Authority was not in a position to make a formal submission on the amendment within the 30 day period. Nevertheless, we think it is important to make our views known to you especially on the question of Set-Top-Box control and the proposed date for the digital switch-on of 01 April 2014.

The measures you propose to make Set-Top-Box control non-mandatory while asserting the Government's responsibility to protect its investment in subsidised Set-Top-Boxes bring the wisdom of Solomon to an intractable matter on which all stakeholders are unlikely to agree. We believe the measures are reasonable and fair and should survive legal challenge. So we urge you to proceed with the amendments regarding Set-Top Box control as they are. This will prevent further

Dr SS Mncube (Chairperson), NA Batyi, WH Currie, JM Lebooa, MR Mohlaloga, N Ndhlovu, KGS Pillay,
Dr MM Socikwa, WF Stucke (Councillors), PK Pongwana (CEO)

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delay to the digital switch-on which is so overdue that it places enormous pressure on the ITU deadline for analogue switch-off of 18 June 2015.

Regarding the date for digital switch-on and the commencement of the period of dual illumination, we regard the date of 01 April 2014 as optimal because the digital signal is already available and can be received by members of the public today. The availability or otherwise of subsidized Set-Top-Boxes is a problem but that can be solved during the period of dual illumination and should not further delay the switch-on of the digital signal. So we urge you to confirm the switch-on of the digital signal of 01 April 2014 in the final version of the Broadcasting Digital Migration amendment.

Regarding the coverage area for Multiplex One, we note that the amendment of paragraph 7.2 of the Policy proposes an 84% coverage area by the switch-on of the digital signal, while regulation 10(1)(a) of the Authority's Digital Migration Regulations published in Government Gazette No. 36000 on 14 December 2012 indicate a coverage area of 74% for Multiplex One within six months of digital switch-on. Regulation 10(1)(a) reads 'An electronic communications network service licensees appointed to provide signal distribution services to the SABC must ensure that the digital broadcast signal for the SABC's DTT services reaches seventy four per cent (74%) of the population of the Republic, within six (6) months after the commencement of the dual illumination period'.

We would not like to reopen our regulations for amendment at this stage of the digital migration process as this would cause further delays. So we recommend that the amendment to paragraph 7.2 of the Policy harmonises with the Authority's Digital Migration regulations.

Yours sincerely,


Nomvuyiso Batyi
Acting Chairperson

Date: 28/01/2014

cc: Rosey Sekese (DG)

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Vuka Sizwe!

SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

REGISTRATION NUMBER 2003/023915/06

**MINUTES OF THE MEETING BETWEEN THE INTERIM BOARD OF THE SOUTH AFRICAN
BROADCASTING CORPORATION AND MULTICHOICE HELD IN THE 28TH FLOOR
BOARDROOM, RADIO PARK, HENLEY ROAD, AUCKLAND PARK, JOHANNESBURG**
AT 12:30**ON 6 JUNE 2013****PRESENT**

Ms L P Mokhobo	Chairman
Ms Z E Tshabalala	Member
Mr M R Lubisi	Member
Mr V G M Mavuso	Member
Mr C Olivier	Acting Chief Financial Officer
Mr G H Motsoeneng	Acting Chief Operations Officer

APOLOGIES

Ms N Gosa	Member
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IN ATTENDANCE

Ms T V Geldenhuys	Group Company Secretary
Ms L V Bayi	Deputy Company Secretary
Mr J Matthews	Acting Head of News
Ms R D Shibambo	Logistics Manager

BY INVITATION

Mr N Letele	Multichoice
Mr G Hamburger	Multichoice
Mr I Patel	Multichoice

1. CONSTITUTION OF THE PROGRAMMING SUMMIT

The Chairman, Ms L P Mokhobo, welcomed everyone present at the meeting.

1.1 ATTENDANCE REGISTER

The attendance register was signed by all present.

1.2 APOLOGIES

Apologies were received and noted.

1.3 DECLARATION OF INTEREST

The Declaration of Interest document was circulated and signed as required by legislation. No interest was declared in the matters on the agenda.

1.4 THE AGENDA

Discussions regarding the Multichoice proposal in terms of the twenty-four hour news channel.

2. CHAIRMAN'S OPENING REMARKS

Ms L P Mokhobo: Right. I think we can start. Special welcome to MultiChoice. It's indeed an honour to be graced by the presence of the Chairman of MultiChoice. Ntate Letele and Comrade Greg who's always fighting with us on legal matters. You are a Comrade, huh?

Mr G Hamburger: I'm glad you're calling me a Comrade. The status has just gone up

Ms L P Mokhobo: You know Comrades fight, and disagree not to agree, that's what we do all the time with Comrade Greg. And a very special welcome to you, Imi. We have with us here the members of the Interim Board of the SABC. Ms Ellen Tshabalala is the Chairperson, Mr Mavuso who is the Board member and also the Chairperson of the Technology Sub Committee and the Finance Investment Sub Committee and Mr Ronnie Lubisi who is also the Chairman of the Risk and Audit Sub Committees of the Board. I also have my colleagues here. You know Mr Hlaudi Motsoeneng who has been liaising with you on this matter quite a while, Jimmy Matthews who's the Head of News, Acting, Tian Olivier who's the Acting CFO, Lindiwe Bayi, Deputy Company Secretary, and Theresa Geldenhuys, the Company Secretary.

I just need to first establish the status of this meeting. It is not a regular Board meeting per se. What the Board thought they would do is to meet together with ourselves and yourselves so that their oversight role can play through. They have engaged us. They understand fully what it is that we are trying to achieve from both ends on the twenty-four hour news channel. They've been given all the relevant documents including the last letter that was written on the 15th of May to Hlaudi Motsoeneng by yourself, Imi. Perhaps I should preface the meeting by saying we are very, very excited and hugely grateful that MultiChoice has come forward with such a robust proposition, unlike the one that we had before. We are sensing urgency, a sense of commitment to the public Broadcaster and for us, it's going to be wonderful to be able to provide the country and, in terms of our previous agreement even the rest of Africa. In terms of our previous carriage agreement, be able to provide our news all over the place. We believe this is something that the continent has been waiting for and South Africans are indeed waiting for it.

We have interrogated the offer letter, the proposed partnership letter, that came under your signature, Imi, and we would like to have a discussion around some of the provisions that are contained in the letter. I'm not going to be the first one to talk to them, and, if you don't mind, I'd like my colleagues on the Board to probably kick-start the discussion.

3. DISCUSSION REGARDING THE MULTICHoice PROPOSAL IN TERMS OF THE TWENTY-FOUR HOUR NEWS CHANNEL

Mr N Letele: Before we even kick-off let me just to take the opportunity to maybe re-iterate a few things that we view the SABC really as our partner of choice and that goes without saying. Its, I think, it's a useful, you know, concept to internalise and we've had a long-term relationship which we'd like to build on and take it into the future. I think, on any given day, if we have to look at free-to-air Broadcasters, including your competitors on the other side, we've always wanted to work with SABC and there has been cooperation which is well documented over the years, I think, more recently, on the Sporting side, the cricket deal, the rugby deal and it's what comes to mind. But, I think on that note, you know, we would like to open discussions then with you.

Mr I Patel: May I just say, is this a recording by the way or just as a matter of interest?

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Ms L P Mokhobo: Yes.

Mr I Patel: Ok. I have to be sure. No, no. When we want to say something off the record.

Ms L P Mokhobo: Remember that we are in?????so whatever discussions we have will.

Mr I Patel: Will be more circumspect

Ms Z E Tshabalala: But it can be off the record if you want to say something off the record.

Mr I Patel: Thank you. I'll, no, I just wanted to add and re-iterate what Nolo. It's a privilege and honour to be here first of all. We do have a relationship and there is no question, we, it's not the first time we're saying it, Chairperson. We've said consistently over the last few years that it is a relationship of choice for us. And it stretches back many, many years. So, in the past, we've, you know, the best example that we can use has been the relationship around, remember the news channel, the old news channel, what was it called, Greg? The Africa news channel or Africa to Africa and then we had a relationship.

We've always had the Sporting relationship so Soccer World Cup for example, we bought together, The Olympics we did together last year. A number of other properties, the PSL we do together. A number of other properties. I mean there have been some wobbles as an example on the PSL deal. We're not going to re-hash all those kinds of things but I think we've got the relationship back on the road. And, it is definitely from our side a relationship of choice for us. And I think the fact that we could agree as Nolo has already said on the cricket deal, which is not a thing from our side, it was completely necessary, the first thing when we did anything like that. We've managed to secure a further enhancement of the relationship. So we do come here as potential, deeper partners in the spirit of a potentially deeper relationship, you know. Thank you.

Ms L P Mokhobo: Thank you very much.

Mr G H Motsoeneng: Thank you, Chair. I think from SABC side we have briefed our Board about some of the proposal, and, as Management, also have taken a decision, which I think this meeting we'll just talk about the high-level issues and then the operational issues and the specifics. As Officials, we shall deal with those matters with Mr Patel and raise after this meeting but here I think is the principle just sharing information. But we are not going in details about that issue. After this meeting, we can meet Mr Patel and deal with specific issues. Because our Board they oversight, they are not more specific on the operation. Thank you.

Ms L P Mokhobo: Thank you, Hlaudi. Can I ask the Chair to put in a word?

Ms Z E Tshabalala: Thank you Chair. Let me take this opportunity to also just welcome MultiChoice and we are very grateful that, you know this time has come because we know that we have had many in-roads with SABC and on this specific offer, you have had some interactions with the previous Board. And Management has just alluded to some of the agreements that were made. So we are happy, and I'm sure Management is very happy, that we've reached this level where we really want to conclude whether we want to go MultiChoice or not. But, we are very delighted to finally agree. Thanks, GCEO.

Ms L P Mokhobo: Thank you very much, Chair. Can I now throw the discussion open to the floor on the various areas that we've discussed? Who would like to start? Sorry. The outcome, yes, yes. There are two particular clauses that are contained in your proposal letter which pose a bit of a challenge for the SABC. And they pose a challenge not because of anything other than policy provisions, Government policy provisions. The first clause is in relation to clause 9 on page 2 of your letter. I don't know if you still have it.

Mr I Patel: Greg has a copy?

Ms L P Mokhobo: Greg has a copy. We have reviewed this clause, read it many times, argued about it backwards and forwards and we've reached kind of like a cul de sac on it. The clause reads "the offer presupposes that all SABC channels on its DTT platform will be made available to the public unencrypted, without a conditional access system, and thereby incidentally receivable by the MCA DTT decoder". Perhaps to start off, I should be asking our colleagues from MultiChoice what motivated this kind of provision because we need to understand why you feel uncomfortable with conditional access so that we can be able to deal with it more reasonable.

Mr I Patel: Well I think we've been very consistent and you and I have had a number of interactions on that, Lulama. We are very, very consistent in our view that we do not believe that conditional access is good for this country in terms of costs to the fiscals. Number two we believe that it is the inclusion of conditional access is, and I have to be careful of my wording, is motivated by certain particular forces who have their own particular agendas, not in this room necessarily, and are prepared to use Government money to do that. And we, as a very broad principle believe

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that the availability, that clause is motivated by those two very, very powerful facts. We've been consistent, very consistent regarding that.

Ms L P Mokhobo: Now, given the fact that the SABC is a Government owned entity, and this decision really is a Government decision. The SABC has no power over it. How do you propose we move forward? We cannot tell Government that if they made a policy provision that speaks conditional access, we are not going to do conditional access, we cannot do that. We are owned by a Shareholder who is driving this process.

Mr I Patel: Our understanding is that the Minister has proclaimed that it's not mandatory, and, secondly that it's the Board's, this Board's decision to decide whether it includes the cost of conditional access or not. So, we may be wrong but, from our narrow perspective, the way we see it, given the latest development in the last few weeks, our understanding is that it is the prerogative of the Broadcasters now to decide on whether they include conditional access or not. It's as clear as that.

Ms L P Mokhobo: Mr Mavuso?

Mr I Patel: I think we know that the Minister pronounced it in her budget speech.

Mr V G M Mavuso: Thank you very much, Chair. Perhaps if one must to go a few days back, during the budget quota the Minister made a pronouncement about the fact that she's going to amend the policy, around digital migration which then poses a challenge for us that is no longer within our realm. She's going to be running with that to the best of her ability and whatever was proposed initially falls flat. As it were, we're still awaiting for much more greater clarity from her to be able to indicate precisely where we stand. For us it becomes superfluous because it's not something which is within our realm. So it's within her domain, and it leaves us completely out of sync with the proposals that she'll actually put on the table.

Mr N Letele: I know this, I mean, this is not the agreement per se, but could this not be a condition precedent because it's out of your hands, it's out of our hands as to what the decision would be around conditional licence. Because our understanding is very much that the outcome is going to be one where there will be no conditional access. For example, the RFP that was put out several months ago has now been amended to actually delete the reference to Set Top Box control. So, it looks like the outcome is one that will actually

Mr I Patel: Will get us there anyway.

Ms L P Mokhobo: Mr Mavuso.

Mr V G M Mavuso: The take we would have on this one would be perhaps we could take off the clause for now, and whilst there's clarity we can then be able to re-engage with one another to be able to find a much more better balance to be able to allow the process to unfold because if it's going to be a stickling source I don't think it would be approved under the circumstances. We will agree with the broad thrust of the document, save for this clause, and of course, clause nine which we believe is not within our control. It's not something that we will be able to do anything about at this juncture.

Mr N Letele: Which is why I'm suggesting we make it a condition precedent.

Mr I Patel: But I think you may be missing each other because by condition precedent. You are suggesting that if conditional access is in there, the agreement falls flat.

Mr N Letele: Correct.

Mr I Patel: I'm not sure that's your understandings.

Mr V G M Mavuso: The point is that it may be so, but is it taking the relationship to any high level as intended because I think the initial point was that we need to have a particular relationship to be able to say that we're in this together. We want to make sure that we can be able to advance because you regard us as partners of choice. And in that regard I think we need to find each other, have a common cause to be able to advance the process. I think that's where we stand.

Mr I Patel: Can I step back for a, Chairperson, may I sort of just in terms of the relationship, I'm glad, Mr Mavuso, that you sort of talking about the relationship. So, if I may step back, for a second. If you consider this, for us, we're saying why are we doing this agreement. We want to show that you are our partner and we can do this. Ok. We would not normally pay for a news channel. Sorry, let me go back. Our understanding is the SABC requires a new revenue source, or a revenue source, there's a funding issue, etc. etc. number one. Number two: we want to have a deeper relationship with you and you want a deeper relationship with us. Number three: how do we find each other, and often in finding each other you need an excuse. Ok. So the excuse is the proposal we put on the table. Now, if we look at it and we say let's take the news

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channel. We would not normally pay for a news channel. Ok. We don't. There's a unique relationship with eTV that everybody espouses etc. It's got its unique conditions. They're supposed to supply us with many more channels and it's really quite tricky at this point in time.

But, besides that we don't pay for any other news channel, anyway, ok. So we wouldn't normally pay you for a news channel. Number two: we then said, to be able to justify to our Board, we need to justify to our Board to say why would we pay you R100m a year which is a lot of money. Ok. It's after tax money. To make R100m net you have to make R150m or R200m, R300m in turnover. We are looking for the excuse and the excuse for us is to be able to justify to our Board that you are giving us something in return. What are you giving us in return for the R100m? We're saying you giving us a news channel, you're giving us a general entertainment channel from your archives, your old, you know. We are less focussed on the core elements of it being new content. And we've been sort of quite open about it with Lulama, saying even if it's old stock. And thirdly, we are saying we also need to justify this problem of conditional access is a big problem. And in order to justify that we're saying in addition to that, your additional channels will be available on our platform. That's the third wind for you.

The minute your channels come on our platform, you have access to sixteen million people or four and a half million homes. Immediately you get revenue for that. You can sell advertising on that base. If you did not have access to that, and you started your own DTT platform, it would take many years to get that kind of viewership in order to monetise the investment that you have to make in, obviously content. So we are, and please we don't want to be sounding patronising, Chairperson, but we are thinking of ways, and that's why we put forward a proposal. Because we've been thinking of ways ok to say, if we were in your shoes, is this an opportunity for me. And, therefore, we're saying you have to, in our minds, you have to invest in lots of content, costs lots of money, but, in the meanwhile your revenue for that content is going to take years to come because you have to build the base.

So we're saying immediately we're giving you that base. Immediately you can go and monetise perhaps hundreds of millions of advertising revenue based on that base. So, in addition to the R100m in cash, you will be getting a lot of advertising revenue, probably the equivalent, even more, I don't know, I don't know the details, I don't know to what extent, you know, given that kind of base, how much you can monetise it. In return, we can justify to our Board that, we are paying this extraordinary sum of money but we are getting something for it. That was the simple logic that we applied in our own minds. So I'm giving you a sense and therefore I'm hoping that if we can co-create a solution we are also happy to co-create a solution. We are not coming here saying this is, you know, this is the be all and end all, you know. But I must say though, Lulama, that this is the very important point for us. It's a deal breaker point, I'll be honest. And I have reiterated it. I have said this to you before.

Mr G H Motsoeneng: Thank you, Chair. As far as I'm concerned, this is not an issue, anymore from where I'm sitting, because the Minister pronounced herself about this matter. Remember the eTV and us and so on that court case. The issue there is we are not gonna go that route as far as I'm aware personally. The conditional access, the way we call it technically is not gonna be because now but the DoC is reviewing the policy to deal with this matter. Even in Parliament during the budget speech, now I remember, the Minister did highlight this issue.

So I don't think it is an issue now whether we ???? both of us. I think for me, Chair, I think for now it is a non-issue because it is a policy that even Government is reviewing. Because from our side, well we have different views, and this is not an official what I'm saying. The views was as SABC we can't allow people to, by law we can't switch off people TV licence if they don't pay TV licence. That is the standpoint we took, but not as collective, but different views. And that different views influenced the DoC to review the policy to check whether really this is necessary for SABC. So that is our standpoint now.

Ms L P Mokhobo: Chair?

Ms Z E Tshabalala: Thank you, Imtiaz, for giving us that feedback. I think you know all relationships we've got to find a way of a win-win situation. I think, if I may reign or if other Board members would really like your input on this. Maybe, through your Chairperson, since you have presented this condition, if you can just give a day to bounce it to the Minister because you know we have, as Mr Mavuso mentioned, we have an unclear position on the matter. And then we can approve all others except for that one and we can revert back to you. But, of course we have to agree to all others. So I'd like CEO to go to the other clause. Thanks.

Ms L P Mokhobo: Ok. Yes, so we hold clause ten, clause nine in abeyance while we get absolute clarity because what we need is a written confirmation of the stance. And we cannot pre-suppose a relationship on the basis of what is not written. A statement is a statement until its committed in paper. Thank you for that, Chair. The second clause, which is clause ten, I'll read

it. "MCA, and the SABC and Sentech (if required), work together to promote carriage of all the SABC's free to air channels on the SABC free-to-air multiplex will be made available on the MCA satellite platform, subject to available capacity". The last sentence is fine. Again, there is a policy review on must carry regulations and at this point we honestly don't know which way it's going to go. And, once again, as a state owned entity, it could potentially be harmful for us to agree to this when we actually don't know what the policy, the new policy is going to say. So. Would you like to respond? It's a caucus.

Mr N Letele: I'm sorry. No, I think we understand that.

Ms L P Mokhobo: You understand that? So ya.

Mr N Letele: Its subject to the policy.

Ms L P Mokhobo: Ya.

Mr I Patel: So sorry. So let us understand it. You'll make the channels available, if must carry regulations change, they will override this clause.

Mr I Patel: So in other words.

Mr N Letele: ??????

Mr I Patel: Yes, so we'll have to accept that. I mean, we cannot go against regulations, right? So we're saying right now, as it stands the channels will be available. When there's a review 'must carry' happens, and 'must carry' says sorry, jy moet betaal MultiChoice or you must do this, or you must do that, it has to supersede what this says. I mean we have to accept that it's not a???

Ms L P Mokhobo: Thank you. Mr Mavuso.

Mr V G M Mavuso: How goes the analogy of a marriage?

Mr N Letele: Am I understanding correctly?

Mr I Patel: My apologies.

Mr V G M Mavuso: Yes. I say, I always make the analogy of a marriage because marriage is a relationship and if you want it to work, it's like a garden, you have to weed it, make sure that you nurture it,

Mr I Patel: Yes absolutely.

Mr V G M Mavuso: Add water and nutrients to make sure that it works. As and when we do find bumps and all those kinds of things it's important for us to come back.

Mr I Patel: Yes.

Mr V G M Mavuso: And be able to have a discussion and find out whether we cannot be able to resolve those glitches that may come up

Mr I Patel: Yes.

Mr V G M Mavuso: Because it's not about if we disagree, therefore you go your way, I go mine. We can find each other.

Mr I Patel: Absolutely.

Mr V G M Mavuso: In other many instances other than this other one. So I'm of the view that if we have a common understanding where we stand because it's not within our control again, let's say that we can be able to review this as and when the time comes about and be able to deal with it accordingly.

Mr I Patel: Absolutely.

Mr V G M Mavuso: For me, it's not the be all and end all but I think we can be able to find common ground and be able to move forward with the relationship.

Mr I Patel: Ah. I appreciate that very much Mr Mavuso. I mean we would be silly if we said it cannot be reviewed when 'must carry' came, we must adhere to those regulations if it changes.

Mr V G M Mavuso: Yes.

Mr N Letele: I think a simple way of putting it, to maybe paraphrase your words then is that carriage of SABC's free-to-air channels will be governed by the policy.

Mr I Patel: When policy changes.

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Mr N Letele: Ya.

Ms L P Mokhobo: I think this was much easier than I thought it was going to be. So the only area that we are proposing to yourselves is that we come back to you on this clause nine. As it is this afternoon, there is a meeting that's due to take place at the DoC which is discussing precisely the DTT matter. We may actually be able to come back to you much sooner.

Mr I Patel: Chairperson, from what we've heard we are quite confident, you know, from all sources that we've heard that this clause nine will be a stumbling block, you know, that the view is that. And I don't want to re-hash it but, putting conditional access in this is going to cost the fiscals money, it's going to take South Africa and put a mote around it and we'll be a hundred years behind the rest of the world. IDTTVs are coming where a set of box is built-in. It's gonna be crazy to, you know, put the country backwards and one gets the feeling that, you know, that is going to be the case.

Can I just, finally also say that, and you're right, Sir, sometimes you have bumps and you have bumps and I must say that internally many times we've been told are you mad. You have signed one news agreement, you've signed two news agreement. Why do you keep going back? I'm being very honest with you. And for our view has always been to say, you know what? If you don't try in life you'll get nowhere, you know. And sometimes you have to find each other after many bumps, you know. And we believe that this Board, look it's smaller, it's more, it seems more focussed, it seems more, I don't know, focussed is the word I guess. And we believe that we can get somewhere, Lulama. We really do believe we can get somewhere. And we would be delighted to enhance the relationship. We also this could be the starting point of a lot more things to come in terms of, you know, potential opportunities going forward together.

Mr N Letele: If I may add on that one. I mean we're not casting, you know. We're not fishing in the dark here. We have spoken and, you know, met our Board and presented to them and we're coming with a mandate to the extent that our Board wishes that someday, you know, when we're past all this, someday perhaps the two Boards can meet, you know, to just chat and discuss things and then take the relationship further.

Mr I Patel: That will be wonderful.

Mr N Letele: And I'm praying that this will come about.

Ms L P Mokhobo: Absolutely. And one of the big advantages for conditional access was going to be that we'll be able to do DTH and directional broadcastings so that you can close off certain audience groups and just concentrate on one audience group. And what I'd like to know from you is, is this the kind of capacity that MultiChoice could potentially provide to the SABC if we say we don't do conditional access at all?

Mr N Letele: On satellite?

Ms L P Mokhobo: Hm

Mr N Letele: Technically.

Ms L P Mokhobo: Or even a deep question. Your DTT buffering, what does it have? Does it have conditional access?

Mr N Letele: Yes, it does.

Mr I Patel: But remember then, your channels will be made available free. It won't be part of, you know, so they have to pay us for ours but then they'll have access to your channels. But, to answer your point, is that there's the potential when we've settled this matter is to almost go into like a free set kind of an arrangement where we have a satellite Set Top Box that we may provide. You provide channels, we provide channels. We use Sentech's transport capacity and we could do a proper free set offering together which could be a very interesting proposition, something that we can, and to answer your question. Then we almost create a closed system together, you know, could be very interesting.

I don't know what your views are. But it's certainly something we have thought about as a further enhancement of this kind of relationship. Unfortunately, time doesn't allow to. We are having, have been scratching our heads saying how do we do that, you know. What's the business model? We believe, at the gut level, that there could be a very nice opportunity for us together to do that. But obviously we need, you know, we need, it could be the second phase of the relationship to take us together

Ms L P Mokhobo: Chair.

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Ms Z E Tshabalala: If I may just magnify what Mr Mavuso says in terms of marriage. I think even in that setting we must bring happiness before you go and look for happiness somewhere.

Mr I Patel: Yes.

Ms Z E Tshabalala: So we are not actually going to look for happiness. I think we want to bring happiness to both parties. And I echo the sentiment by the Chair that, it would be quite good to also come with fresh innovations as the GCEO has alluded to say. After five years when we review this proposal, we should be able to say, you know, from Jimmy. Jimmy, what have you thought of in terms of consolidating our partnership? And I'm sure a lot can happen during that time. Thank you.

Mr I Patel: We echo that.

Ms L P Mokhobo: Thank you very much. Are there any further comments? Hlaudi, Ronnie?

Mr G H Motsoeneng: Chair, just to maybe, just to add to say no, well we are also in discussion to take the relationship further. As you are aware, that Mr Mavuso raised this issue about spouse. I'm surprised that he's not talking about La Liga and Barcelona. So, but we are still.

Mr I Patel: Are you a Barcelona fan?

Mr V G M Mavuso: No.

Mr G H Motsoeneng: Trying to take it further so that, but as you are aware that, to be honest, SABC, we are a Public Broadcaster. We are struggling for funding. If you can come on, not on those two channels that we are talking about, other channels and then we can build that relationship so that it grows. But, also you know, you can't cheat. You see when you have a partner you don't cheat so my tradition me I can cheat. So I think we'll do the same thing.

Mr I Patel: Whose tradition is that to cheat?

Mr G H Motsoeneng: No Leave politics. So what I'm saying, our relationship, we should not have another third party that will de-stabilise us. So we need to, in principle we need to work together. If there are issues we need to resolve the issues because, to be honest, we need to be open. There are some Broadcasters that are coming on board and it's all competition. So as the Chair was saying, it should, the relationship benefit both of us, especially Public Broadcaster because they also like Public Broadcasters. I think we want to make sure that that Public Broadcaster, we protected, even by law. So that is what I'm saying. The relationship should be a closer relationship.

Mr I Patel: Chairperson, if I may respond. There is no question. I think in the relationship you need building blocks. When you've done this thing you build trust. And, once you've built trust, you can do another thing together you build more trust. And I think that for us, that starting point to your Sports point, Hlaudi. I spoke to Sizwe yesterday and I think I mentioned to you a few weeks ago that the Olympics as an example is coming up for renewal. I've spoken to the people in Lusanne??. And, they are very keen that we talk together. They are very keen we get together. It's not collusion, it's not, and I must be very careful, this thing's, it's not collusion. But they themselves, the Olympics have said we want to talk to you and the SABC together because they were trying to talk to me and then talk to you separately and I said to them we want to talk to you together. Because we've had a fantastic relationship on the Olympics. You've had all the rights, we've had all the rights, etc. etc. etc. And I think we have another opportunity within the next few weeks to build on that with this as an example and I believe you have to take a brick at a time, brick at a time. And that's another brick that I see as an opportunity to build trust. And you'll know, I mean we said to you, we sent you an agreement on the Olympics. Unfortunately your Board that time, your previous Board, it's easy to. We can rubbish them now, they're gone but they didn't sign the agreement, unfortunately.

Ms L P Mokhobo: Boet Vusi?

Mr V G M Mavuso: I do believe that we are all in one mind, all in one thought. We all of the view that we need to move with the greatest speed in the issue we put our country first and to make sure that things are done accordingly. And we want to give a commitment in that whatever we do is not for our personal interest, it's about the National interest. And the sooner we handle some of the matters, the better. So long as it's an advantage to have a smaller Board.

Mr I Patel: Yes

Mr V G M Mavuso: We can meet around coffee quickly, and say agree on certain issues to be able to resolve matters that may be of a greater importance and be able to make it ourselves quite promptly. That for us is an advantage and I think we need to optimally utilise that. You

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know that things can be sneaked behind the backs and all that, no, but we'll do things above board throughout. Thank you.

Ms L P Mokhobo: I think finally we really appreciate your offer for one free-to-air channel which would allow us to carry on with DTT and I'd like to know if we can share a peek.

Mr I Patel: Can we make that an operational discussion?

Ms L P Mokhobo: Yes, within an operational discussion but I'm already putting it on the table.

Mr I Patel: Because it must be reciprocal, you know that, hey.

Ms L P Mokhobo: It will be good for us to get, in particular, PBS type content that something like the History channel, Discovery channel, those kinds of channels, the ones that really talk to us.

Mr I Patel: I think the big thing is the discussions. If we build trust then we can say give a little bit here, take a little bit there, you know.

Ms L P Mokhobo: Ok. Jimmy, any last words from you?

Mr J Matthews: No.

Ms L P Mokhobo: Greg, you've been very quiet. You've said enough in your silence. Ok. Thank you very much. If there is nothing else can I thank you very much for coming through. And we will come back to you with finality on clause nine.

Mr I Patel: Chairperson, what's more or less the aim for you to revert to us and for the legal people then to put an agreement together, if I might ask, timing wise?

Ms Z E Tshabalala: The matter is going to be escalated to the Board meeting which is taking place on the 12th which is next week.

Mr I Patel: Ok.

Ms Z E Tshabalala: And the finality will be next week.

Mr I Patel: I see.

Ms Z E Tshabalala: So we can take it from there.

Mr I Patel: So we will hear from you after the Board meeting?

Ms Z E Tshabalala: Yes.

Mr I Patel: Ok. Fantastic.

Mr G H Motsoeneng: Maybe from operational side what we need to do cos we need to lock the business plan together and the contract. Cos when the Board meet they shall have what is the details of the what is inside so that one, the operational one. We'll do it between our lawyers, your lawyers and our lawyers so when the Board meet at least we can give them what is concrete.

Mr I Patel: Well if the Board is, sorry, sorry.

Mr N Letele: And within twenty-four hours you will revert to us regarding number nine, clause nine.

Ms L P Mokhobo: Well, that will be entirely dependent on how the meeting today concludes.

Mr N Letele: Correct, I understand.

Ms L P Mokhobo: Ya. It might very well be that they will still need to go to their principles to present a picture, I'm not sure.

Mr N Letele: Perhaps you can just let us know.

Ms L P Mokhobo: Ya. Yes, we can.

Ms Z E Tshabalala: Ya Chair, we can just give you the comfort that we are taking the matter there and we also expressed urgency into the meeting so when you go to the Board on the 12th there's a resolution.

Ms L P Mokhobo: Well, thank you very much.

Mr I Patel: Thank you. Thank you.

Ms L P Mokhobo: The, our wish is to start on the 1st of August, right?

Mr N Letele: What?

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Ms L P Mokhobo: Our wish is to start when?

Mr I Patel: He's just fallen off his chair.

Ms Z E Tshabalala: Chair, I just.

Mr I Patel: Tell me, sleep is overrated?

Mr J Matthews: Since ????????????????

Mr I Patel: Oh, I see.

Ms L P Mokhobo: Can you press the one on Tian's side?

Mr I Patel: Can you put the bug off?

Mr J Matthews: We're quite keen to get going. And so the, we're confident that on the 12th the Board will give us the nod. And then, from an operational point of view, I can then start getting a team together here again. And then I engage with the bureaucracy of this place.

Ms L P Mokhobo: Oh, Jimmy.

Mr J Matthews: So, I don't want to say I'm going to give you a date right now. But I can assure you.

Mr I Patel: Group CEO, that's your internal decision. We're not going to respond to that.

Mr J Matthews: Ok.

Ms Z E Tshabalala: I just want to request that, you know, as a team we have to keep this matter confidential.

Mr I Patel: Absolutely. Absolutely.

Ms Z E Tshabalala: Up until a decision has been made.

Mr I Patel: Good point.

Ms Z E Tshabalala: This is a real appeal. We know how print media reacts to this kind of thing.

Mr N Letele: Thank you very much.

Ms L P Mokhobo: Well, thank you very much. Can I?

Mr I Patel: Thank you. Thank you for hosting us. Thank you for the sandwiches. Nice to see you.

Ms L P Mokhobo: Can we consider the meeting adjourned?

4. CLOSING

There being no further business to transact, the Chairman terminated the meeting at 13:55.

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04

Wednesday, 04 December 2019 04/12/19

Annexure 4

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- [BOKAMOSO](#)
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- [GORDIN](#)
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- [HSF](#)
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OPINION

**DTT policy review continues despite SABC's MultiChoice deal - Marian Shinn**

Marian Shinn |
08 October 2013

DA MP says this is despite the threat of punitive financial penalties should public broadcaster adopt access controls for STBs

DTT policy review continuing despite SABC's MultiChoice deal

The Department of Communications is continuing its review of the policy on access control for set-top boxes (STBs) needed for the transition to Digital Terrestrial Television (DTT), according to a reply to a DA parliamentary question.

This is despite the threat of punitive financial penalties for the South African Broadcasting Corporation (SABC), should it adopt such controls for its free to air TV broadcasts.

Communications Minister, Yunus Carrim, gave no further details of who was involved in this review or when it would conclude, and confirmed that independent facilitators had been called in by the Department of Communications to seek consensus "among the feuding parties".

The DA will submit follow-up questions to Minister Carrim to determine whether SABC's Acting Chief Operating Officer, Hlaudi Motsoeneng, had the government's approval to decide that the broadcaster's TV programmes will be made freely available without access control systems and, if not, what actions will be taken against him.

The Minister must also answer what steps will be taken to re-negotiate these terms of the SABC's contract with MultiChoice, as well as whether the Interim SABC Board that approved this deal sought clarity from the government on whether the public broadcaster was authorised to sign away the need for an access control system.

In its deal, signed on 3 July 2013, for two 24-hour TV channels on the MultiChoice subscriber channels, the SABC agreed that "should any one or more of the SABC FTA [free-to-air] channels be made available on the SABC DTT platform in South Africa at any time during the term [of the deal] on an encrypted basis, and that access to the SABC FTA channel(s) is/are controlled or limited by means of a conditional access systems or otherwise not freely available for viewing" penalties would apply.

MultiChoice could then suspend the agreement by which it pays SABC R553 million over five years for the rights to flight its 24-hour news and entertainment channel on its platform and ask for its money back, or continue to air the channels without paying further fees, or be refunded by SABC for the money paid.

SABC and eTV were early champions of the need for an access control system on STBs and this was seen as a critical component of the local STB manufacturing strategy for which about 36 South African electronics companies bid, last September, for the manufacturing rights.

Transparency and clarity is needed to ensure that the deal between the SABC and MultiChoice will not hamper the public broadcaster, or the Department of Communications, to deliver on their DTT transition promises.

Statement issued by Marian Shinn MP, DA Shadow Minister of Communications, October 8 2013

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05

NATIONAL ([HTTPS://MG.CO.ZA/SECTION/NEWS-NATIONAL](https://mg.co.za/section/news-national))

MultiChoice accused of hijacking digital TV

Lloyd Gedye (<https://mg.co.za/author/lloyd-gedye>) 29 May 2015 00:00<https://mg.co.za/article/2015-05-28-multichoice-accused-of-hijacking-digital-tv>

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Email

Pay-TV operator MultiChoice waged a campaign to overturn a crucial government decision that critics claim crossed the line between acceptable lobbying and capturing state policy.

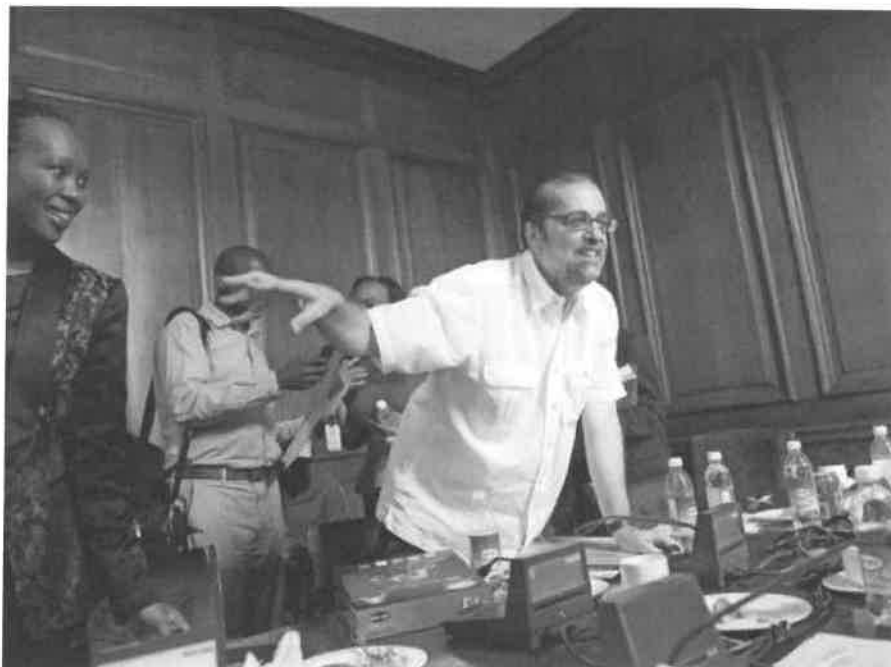
At issue is the government's plan to move all television broadcasting to a digital system that, depending on the policy choices, could threaten MultiChoice's dominance of the pay-television market. This possibility exists because the government plans to subsidise the distribution of millions of set-top boxes (STBs) needed to convert the new digital signal into a form that can still be received by old-fashioned TV sets.

Depending on whether the government policy allows the signal to be encrypted and for the STBs to act as decoders – with a technology known as “conditional access” (See “Battle over limits on access”) – the proliferation of STBs would allow new pay channels and services alongside the existing free channels on the SABC and e.tv.

But without conditional access, new service providers would have no way of using the STBs to offer paid-for services, and MultiChoice's virtual monopoly would be secured.

When the then communications minister, Yunus Carrim, tabled a final policy decision in the Cabinet in December 2013 allowing conditional access, it represented a major threat to MultiChoice's profits and opened the door to rivals such as e.tv to offer pay services of their own.

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Yunus Carrim (David Harrison)

An amaBhungane investigation has shown how MultiChoice fought back, including by:

- Signing a controversial deal with the SABC in June 2013 that bought the support of the politically powerful public broadcaster. The SABC chairperson, Obert Maguvhe, recently declared he liked to think of the SABC as being married to MultiChoice;
- As part of the 2013 contract, the SABC agreed to bar conditional access on its free-to-air channels for five years. The deal is now the subject of a fierce legal battle in the Competition Tribunal. (See “Legal face-offs create static for state and broadcasters”);
- Apparently securing political access and intelligence, including appearing to know that Carrim was going to be removed long before the minister himself knew it;
- Backing an empowerment lobby group that appears to have acted as a MultiChoice puppet in launching a public attack on Carrim and his backing for conditional access; and
- Succeeding in having Carrim’s policy, which was accepted by the Cabinet in 2013, dramatically reversed by Faith Muthambi, the new minister appointed by President Jacob Zuma after last year’s elections. In doing so, Muthambi seemingly also flouted ANC policy, and her about-face is being challenged in court by e.tv. (See “Legal face-offs create static for state and broadcasters”).

Extraordinary attack

Exhibit A against MultiChoice is an extraordinary attack on Carrim by Koos Bekker, the chairperson of Naspers, MultiChoice’s parent company. It highlights MultiChoice’s deep unhappiness with the 2013 Cabinet decision to include conditional access.

In a memorandum sent to senior management, dated March 2014, which amaBhungane has seen, Bekker describes Carrim as “temperamentally unsuited to high political office” and states that he is “in the power of e.tv”.

He adds that Carrim will not be re-appointed as communications minister after the elections (in May last year).

The source of Bekker’s information is unclear, but well-placed insiders in the broadcasting sector sympathetic to Carrim allege that, months before the memo was circulated, MultiChoice was stating as fact that he would be replaced.

Approached for comment, Naspers spokesperson Meloy Horn said Bekker “is currently abroad. It is not our policy to comment on press speculation.”

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Carrim responded to Bekker's allegations, which amaBhungane brought to his attention, by saying it was "not appropriate" for a former minister to comment on a previous portfolio. But he was not going to allow his integrity to be attacked, he said. "No, no. I was not in the power of e.tv.

"That, however defined, would be a crime. The national fiscus wasn't my personal money box that I could just use to benefit a particular company I chose."

Carrim said the December 2013 policy that was decided on on his watch aimed to encourage new African pay-TV players rather than serving e.tv's narrow interests.

"It was a Cabinet decision, not a personal whim," he said.

AmaBhungane has also learned that at about the same time MultiChoice's management was involved in producing an opinion piece, published in April last year, that attacked Carrim.

The article was published under the byline of Keith Thabo, then-president of the National Association of Manufacturers in Electronic Components (Namec).

It is an important lobby group for mainly black small, medium and micro-enterprises in the electronic manufacturing sector.

AmaBhungane has seen email correspondence from April 21 last year between Calvo Mawela, the head of stakeholder and regulatory affairs for MultiChoice South Africa, and Thabo, referring to Mawela's role in penning an opinion piece published on the technology website TechCentral on the same day.

In the email Mawela writes: "Herewith the final article as requested."

He then provides Thabo with the email address of the TechCentral editor, Duncan McLeod, saying: "I think try get it to him as soon as possible."

The article, titled "Minister you are misleading the public", accuses Carrim of rewriting history and distorting facts.

MultiChoice described the allegation that it was involved in authoring opinion pieces for Namec "insulting".

"Through its office bearers, Namec asked for Mr Mawela's input as a broadcasting engineer, and he shared his thoughts based on his expert knowledge of the broadcasting sector," said MultiChoice's spokesperson, Jackie Rakitla.

The *Mail & Guardian* reported in August last year that Namec had split into two factions.

The article reported on allegations made against Thabo and Vijay Panday, another Namec leader. They were accused by one of the factions of being "empowerment raiders" for hijacking an empowerment deal for their own benefit.

At the heart of the dispute was the relationship Namec had entered into with MultiChoice and the Chinese manufacturer Skyworth Digital, to potentially supply 15-million decoder boxes over three years.

Responding this week, Thabo said: "We formulate academic opinions and write articles on our own, as we have a research and development team that has done research on DTT [digital terrestrial television] and visited Europe, Asia and South America."

Quid pro quo?

Some Namec members said the only reason MultiChoice was interested in doing a deal was Namec could help in the fight against conditional access.

This appears to be backed up by correspondence between Panday and Thabo, dated June 16 last year.

The email from Panday, titled "MCA", an abbreviation for MultiChoice Africa, reads: "You have to tell BRU [presumably a MultiChoice staffer whose identity is unknown] we want some protection. Between you and me, they [are] under pressure from the top to relook at UEC [Altech UEC, a rival set-top box manufacturer].

Before that happens, we put a lot of time, effort, lost face with govt and DTI [department of trade and industry], fighting the [conditional access] battle. A year from now, when all is over, they can allocate the forecast to anyone."

The email appears to show that Panday saw the fight against conditional access as a quid pro quo for the set-top box orders Namec was getting from MultiChoice.

But Rakitla said the pay-TV operator had no knowledge of the email.

"We concluded a purely commercial agreement ... It had absolutely nothing to do with who took what position on digital migration."

In a further email from Panday, dated May 25 last year, the day Zuma announced his new Cabinet following the elections, he wrote: "A big thank you to all from Keith and I for all the support with the recent fight with DOC Carrim. He is officially out. We will have an easier run. She is a nice person and supports Namec."

The she in the email appears to be a reference to Muthambi, the new communications minister.

Rakitla said MultiChoice could not comment on Panday's email, as it was unaware of it.

"However, it's important to note that when Minister Muthambi was appointed, we had no knowledge of her position on [set-top box] control," Rakitla said.

Panday did not respond to questions from amaBhungane.

Namec's secretary general, Adil Nchabaleng, a leader of the faction opposed to Thabo and Panday, said, in his view, "a predatory approach was used by MultiChoice to get them [Thabo and Panday] on side for conditional access".

Thabo said Nchabaleng was relieved of the secretary general's position in 2010.

"This is a desperate man who has been used by the white electronic industry to frustrate the aspirations of the black players in transforming the industry and creation of black industrialists," he said.

"A big thank you to all from Keith and I for all the support with the recent fight with DOC Carrim. He is officially out".

Legal face-offs create static for state and broadcasters

Two ongoing legal challenges are set to spotlight government's stunning about-turn on the inclusion of conditional access in five million state-subsidised set-top boxes (STBs).

The STBs will underpin the migration of South African television from analogue to digital (See "Battle over limits on access").

It is unclear what led Minister of Communications Faith Muthambi, in March this year, to change the broadcast digital migration policy approved by Cabinet under previous communications minister Yunus Carrim in December 2013.



Faith Muthambi (Mail & Guardian)

Her decision to remove conditional access from the policy reverses a previous Cabinet decision and flies in the face of ANC policy, which favours conditional access. Both the South African Communist Party and labour federation Cosatu have called for the implementation of the 2013 Cabinet decision.

Muthambi's decision also contradicts a position the Competition Commission took in February in a submission to a policy review process run by the telecommunications department.

The commission argued that excluding conditional access from the STBs would be anti-competitive and that it "must be incorporated".

This week the Pretoria high court began hearing a legal challenge by e.tv to Muthambi's policy reversal. At the same time, publisher Caxton and nongovernmental organisations Media Monitoring Africa and the SOS: Support Public Broadcasting Coalition have taken the SABC and MultiChoice to the Competition Tribunal.

The matter involves the R550-million contract between the two that stipulates the terms under which the SABC supplies a 24-hour news channel and an entertainment channel to MultiChoice.

The parties argue that clauses seen as giving MultiChoice control over the SABC archives and dictating that SABC channels cannot be encrypted using conditional access constitute a merger between the two broadcasters.

e.tv versus Faith Muthambi

In its legal challenge, e.tv argues that Muthambi's about-turn on conditional access is both "irrational" and "unreasonable" and calls for the relevant clauses of the policy to be "reviewed and set aside". e.tv argues that the amendments are "unlawful" and exceed the minister's powers.

Referring to a 2012 judgment of the Pretoria high court in e.tv's dispute with former communications minister Dina Pule over conditional access, it says the court found it unlawful for the minister to decide on certain key technical issues affecting free-to-air broadcasters, and that he or she had to leave these to the broadcasters themselves.

"The effect of the encryption amendment is to unlawfully breach these principles," reads the e.tv affidavit in the current case. "The amendment means that the minister has done precisely what the high court held she could not do."

Speaking last week before her budget vote in Parliament, Muthambi said she was not concerned about e.tv's legal challenge and that digital terrestrial television (DTT) would go ahead.

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Caxton's case

In the case set to go before the Competition Tribunal, Caxton and the two NGOs argue that the SABC/MultiChoice contract constitutes a mandatory notifiable merger.

According to their reading, the Competition Commission should have been notified when the deal was signed so that it could give regulatory approval. In affidavits, Caxton chief executive Terry Moolman argues that, through the agreement, MultiChoice has "acquired control" over the SABC's TV broadcasting policy as well as its programme archives.

"Until it concluded the agreement with MultiChoice, the SABC supported the delivery of DTT signals to South African viewers on the basis that these signals would be encrypted," Moolman states. "The SABC has, as a result of concluding the agreement with MultiChoice, aligned itself with MultiChoice by departing from that position."

This gave MultiChoice a "powerful tool to lobby government", he claims. Elsewhere, Moolman argues that MultiChoice "does not want the prospect of increased competition that would be facilitated by a policy that provides for encryption as a standard in STBs".

MultiChoice and the SABC respond MultiChoice and the SABC deny that the deal constitutes a merger or gives MultiChoice control over the SABC archives.

The SABC's responding affidavit says the argument that MultiChoice secured control of the SABC's stance on the encryption of DTT signals in the DTT broadcasting environment, through the contract is "incorrect".

The SABC argues that, if the regulations change and encryption is required, it will comply and that the contract "provides for such eventualities".

MultiChoice chairperson Nolo Letele told amaBhungane that the company's contract with the SABC is a standard, "run of the mill" channel supply agreement. Letele denied that the contract constitutes a merger, gives MultiChoice control over the SABC's archive or hands MultiChoice the right to dictate policy on conditional access.

M-Net's director of regulatory and legal affairs, Karen Willenberg, told amaBhungane that it is "factually incorrect" that MultiChoice offered the SABC a contract in order to get it to change its position on conditional access.

"The SABC opposed encryption before the MultiChoice contract was signed," she said. Letele said Encore, the entertainment channel that the SABC is supplying to MultiChoice, will revive old SABC television shows from the 1980s and 1990s, amounting to 1% of the SABC archive.

A 'marriage proposal'

Despite the protestations, the apparent love affair between the SABC and MultiChoice seems to have strengthened. At the launch of the SABC rerun channel Encore two weeks ago, SABC chairperson Obert Maguvhe proposed a marriage between the public broadcaster and MultiChoice.

"Actually, for me, I wouldn't have preferred it to just be a partnership," said Maguvhe. "Actually it should be a marriage. You can be our bride and we will be the bridegroom." "We love you so much, MultiChoice," continued Maguvhe. "We want to enter into a marriage."

Battle over limits on access

Since 2012 there has been a highly contested battle over whether or not to include conditional access in the set-top boxes that will be used for the migration of South Africa's television services from analogue to digital.

This process is known as the digital terrestrial television (DTT) migration process. Digital television allows for more television channels to be broadcast on spectrum bands than on analogue television.

Because spectrum is a finite resource, this migration process is important as it will free up spectrum to be used to deliver many more television channels and other services such as broadband wi-fi.

Conditional access is a security system that can be included in a set-top box and used by broadcasters to control access to certain channels through encryption.

For example, if a person does not pay their DStv bill, MultiChoice can use the conditional access system in its set-top box to deny them access to their television services until they have paid up.

MultiChoice is opposed to the inclusion of conditional access in the DTT set-top boxes. Many critics have argued that this is because it wants to prevent rival broadcasters from beginning to offer new subscription services through the boxes. MultiChoice argues that its objections are based on the cost of the conditional access to taxpayers and are in the public interest.

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Lloyd Gedye

Lloyd Gedye is a freelance journalist and one of the founders of The Con.

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06



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16 January 2017

Mr Vincent Smith
Chairperson
Ad Hoc Committee on SABC Board Inquiry
National Assembly

Dear Vincent

BRIEF RESPONSE TO REFERENCES MADE BY PREVIOUS SABC BOARD CHAIR, MS ZANDILE TSHABALALA, AT THE PUBLIC HEARINGS ABOUT MY ROLE AS THE THEN MINISTER

This letter follows on my 12 January letter. In that letter I made no references to Ms Tshabalala at all, though I could so easily have.

On 13 January I was informed by people who were watching the Committee's public hearings on TV that Ms Tshabalala made several references to my role as the then Minister. Of course, as the Minister then it is understandable that she might have referred to me. But when I subsequently saw the re-casting of the hearings on Channel 408, I realised that her comments about me were mostly unfair or inaccurate. It is not clear to me why I was referred to in most of the cases I was, especially as Ms Tshabalala is quite vulnerable. She also left the SABC in very embarrassing circumstances and, from what I gather from print media reports and TV news bulletins (I have not watched the Channel 408 hearings, except the "repeat" referred to above), many former Board members seemed to have already revealed much about the way she performed as the Board Chair. Maybe she felt she had a certain latitude to refer to me in the way she did because I was not going to be appearing before the Committee and she was the last witness anyway. Whatever the reasons however, I do not think it is necessary for me to spell out at length my experience of her – others have been critical enough of her. But it would not be fair to me and others who worked with me to simply not respond at all. Without being presumptuous, it might possibly help the Ad Hoc Committee to finalise a reasonably fair and accurate report if you had more information. Maybe this reply, as brief as it is, could be of some value? Of course, the Committee is free to reject anything I say, as you are to write to me or call me before the Committee to explain anything you want.

I do not have the full set of necessary documents before me as I write this, and write partly from my recollection of the issues.

Briefly:

1. I do not know what Ms Tshabalala meant by 'political interference' nor the extent to which she was referring to me in this regard. When I was appointed Minister in early July 2013, the Interim Board was deeply divided and not functioning effectively (and this was later the case with the new Board as well); the SABC was confronting huge challenges; and there were constant allegations and counter allegations of Board members and staff advancing their personal business and other material interests through the SABC. Yet Ms Tshabalala wanted minimal oversight from the Ministry and Department over the SABC and she often contested our role even though it was required in terms of the laws, regulations and norms.
2. Ms Tshabalala did not refer to SABC "interference" in politics – there were Board and staff members who would constantly lobby politicians and Department officials to seek outcomes that were often not in the interests of the SABC or the country.

Handwritten signature/initials

Handwritten signature/initials

3. I serve in the SACP's Central Committee and Politburo. But I do not know of any SACP leader contacting Ms Tshabalala about the Department's Set Top Box (STB) policy, and I certainly did not ask any SACP leader to do so.
4. On the Set Top Box (STB) matters:
 - a. This was the "Elephant in the Room" of the SABC divisions at the time! There were constant allegations and counter-allegations of the SABC changing its policies on this to advance the business and other material interests of different Board members and staff. Interestingly, on 26 July 2013 the SABC wrote to say that they support STB Control (a system that would allow "encryption") but on 12 August 2013 they wrote to oppose it.
 - b. At the Committee hearings, Ms Tshabalala reduced the STB policy to a "technical matter" that broadcasters should decide on and referred to the "e.tv" court judgment in this regard. But:
 - i. It is a major policy matter affecting the whole digital migration process and the overall ICT sector, including the release of radio frequency spectrum for the mobile phone sector. The government decided on STB Control to, among many other reasons, allow for new Black emerging entrepreneurs to enter the pay-tv market to reduce the extremely high level of monopoly and increase access to pay-tv to those who could not afford it. And it was not just a broadcasting matter, but had major industrial policy implications, especially for the local electronics industry and job-creation, which was also set out in the Cabinet-approved September 2012 "STB Manufacturing Sector Development Strategy". So the policy was also shaped by the Department of Trade and Industry.
 - ii. The e.tv court judgment did not conclude that that government cannot make policy on Set Top Box Control but that it could not prescribe the supplier, the operator of the control system, the type of control system to be used or how it should be managed. These decisions had to be made by SABC and e.tv.
 - iii. While the SABC's views on STB policy were important, it was not for SABC to decide government policy on this. Government had to decide government policy after appropriate consultation with the relevant stakeholders.
 - iv. In any case, my information was that the majority of the Interim Board and the key managers did not agree with what was presented as the SABC's STB policy. Initially, the new Board was not familiar with the issues, but over time at least four members informed me at breaks during SABC Board meetings or other functions at which they were present that they did not agree with what was presented as SABC policy. They claimed that the majority shared their views. I told them that it was not appropriate to raise their concerns with me and they should rather raise these at Board meetings.
 - c. The STB policy issues were closely related to the SABC-MultiChoice Agreement. The Department agreed that in view of SABC's financial challenges and the need for a 24-News Channel that could be broadcast on the Continent and internationally, there was a need for an Agreement with MultiChoice. The Department's concerns revolved around, among other issues, the following:
 - i. The process by which the Agreement was finalized, including the extent of consultation.
 - ii. The financial aspects of the Agreement, including what experts said was a significantly low payment the SABC settled for.
 - iii. The terms on which the archives were made accessible to Multi-Choice and the inadequate compensation for this.
 - iv. The provision that excluded the SABC from supporting STB Control (the reference to "encryption"), which had implications that government policy was being pre-empted by a private sector monopoly. (In any case, several people in the SABC said that the SABC could not support the government policy on STB Control because of the SABC-MultiChoice Agreement.).

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Walt

- d. Essentially, as the Department saw it, there was a vicious struggle between MultiChoice and e.tv over STB policy – and both sides tried to influence the SABC, and a variety of other stakeholders. After consulting the broadcasters on names, we put together an accomplished independent mediation team that sought a compromise among the contending parties – but despite much effort they were not successful. So, to put it in a nutshell for the purposes of the Ad Hoc Committee, we went to Cabinet in December 2013 with a compromise proposal - that STB Control would not be mandatory, and so those broadcasters who did not want to use it need not do so, and those who wanted to use it could do so but would have to pay government for its use. But this was still challenged! And after my term ended, Cabinet took further decisions on the matter.

Of course, the issues are presented in a condensed and in parts crude form. I have tried to be as brief and as relevant as possible to the Committee's work. Some of the issues I raise may assist in providing a background or broader context to some of the issues that have been raised in the Committee's hearings, as reported in the media. However should you need any further clarity from me, or question me in any way, please do not hesitate to contact me.

I thank you for your attention and convey good wishes.

Yours sincerely



Yunus Carrim MP

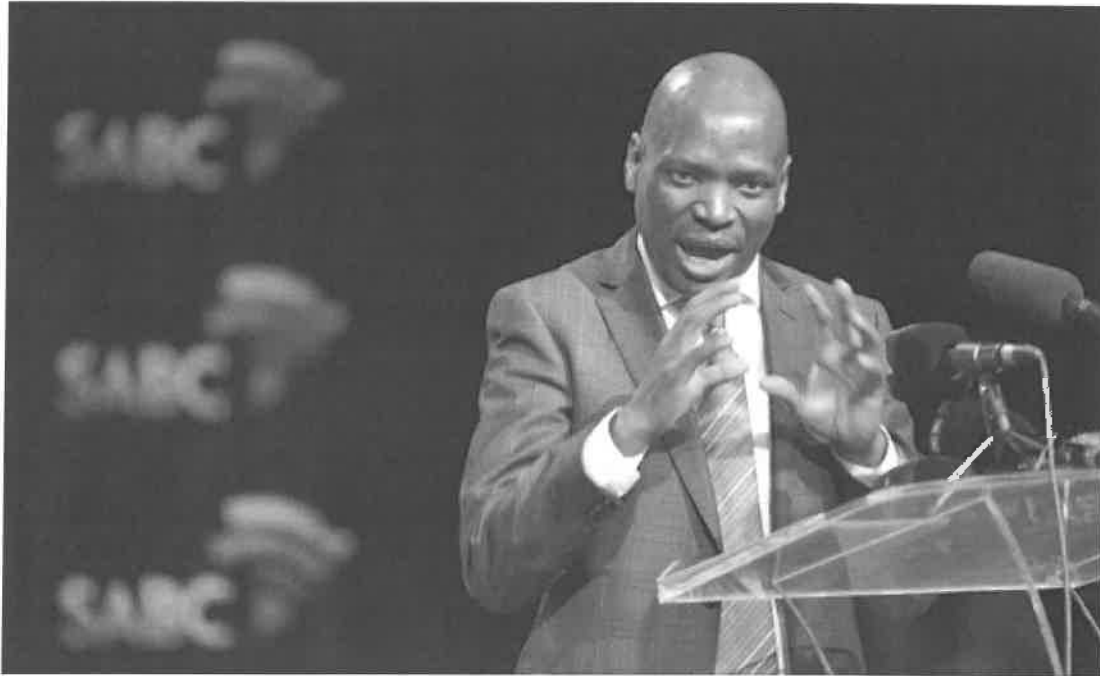


07

NEWS

SABC to sue Hlaudi Motsoeneng in a bid to recover R11.4m

BY NEO GOBA - 17 July 2017 - 12:10



Picture credit: Freddy Mavunda

The SABC's interim board is on a mission to claw back millions of rands paid to disgraced former COO Hlaudi Motsoeneng.

It is also thinking of laying criminal charges against the fired boss. The board, appointed by President Jacob Zuma in March, plans to sue Motsoeneng for the return of a R11.4-million bonus he received in 2016.

The bonus was linked to a deal that granted MultiChoice access to the public broadcaster's archives without the authorisation of the then SABC board. The deal, worth R533-million, gave MultiChoice control of the SABC's archives for five years and also involved the creation of two new channels on DSTV.

The total amount for Motsoeneng's bonus on this deal was R33-million, to be paid out over three years. The R11.4-million was the first portion and was paid in August.

• SABC channel head resigns

"We have handed over Mr Motsoeneng's matter to the SIU [Special Investigating Unit] to fast-track [the investigations] so that we can go to [lay] criminal charges and ... we do intend to follow whatever avenues are available to us using the legal criminal justice system to recover [money] if the end of the investigations is that there are recoveries to be made," SABC interim chairwoman Khanyisile Kweyama told Sowetan's sister publication The Times.

"Where it is determined that there is a debt due, if you can't recover [the debt] from the person, you obviously go after the assets ... We met with them [SIU] about two weeks ago and they have told us they are doing the necessary follow ups."

Another employee privy to the SABC discussions said Motsoeneng would not be off the hook even if he paid back all of the bonus as that was not the only irregular decision he had made.

"Besides the R11.4-million bonus, he could also be asked to repay funds he put up and made available to the 'Thank You SABC' concert held in Orlando, at which an impression was created that the artists were paying for

the show," said the source.

- **Failed Thank You SABC Music Concert to get a bailout to pay artists**

"In fact, Motsoeneng arranged the payment from the SABC and he also - without approval from anyone - paid musicians R50000 each, which amounted to about R9-million in total, from SABC funds."

The concert was designed to applaud the public broadcaster's 90% local content policy, which was ordered by Motsoeneng. Motsoeneng's 90% policy made him a hero to many local artists who saw the move as empowering musicians.

"We are not going to wait for the SIU to finish their investigation. If there are allegations of fraud and corruption the SABC can directly open criminal charges because these payments were made without the board's approval," said the source.

The SABC board recently told parliamentarians that the 90% local content policy was a flop and had caused losses for the public broadcaster. The policy had a negative impact of R29-million on radio and R183-million on television, it said.

- **SABC dodges questions on R2.6m concert bill**

Motsoeneng was fired from the SABC on June 12 after being found guilty of misconduct for comments he made at a media briefing in which he criticised SABC board members and a parliamentary committee that was looking into alleged irregularities.

When asked for comment, Motsoeneng said: "I don't want to get involved in those things, mshana. I am busy and I don't want to talk about those issues. You must just wait and see."

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08

From: Yunis Shaik <nausheen@iafrica.com>
Date: Thursday, 05 September 2013 at 1:19 AM

5.09.2013

Dear Minister

PRIVATE AND CONFIDENTIAL

BDM POLICY and FACILITATION

We draw to your attention the following:

1. We have been advised this day, by Dstv, that if we should express support for the BDM Policy and set top box control during the course of the facilitation process, they will cancel the contract with ETV to host the ENCA news channel on the Dstv platform. In addition, we have been handed a script, drawn by Dstv, which we are called upon to articulate in parrot fashion to the facilitators you have appointed.
2. In addition, we have been informed by Hlaudi of SABC that they intend to oppose the BDM Policy and set top box control. We understand, they too, may well have been issued with a similar script and have elected to succumb least they suffer similar consequence with regard to their 24 hour news channel.

The declaration of Dstv, issued no less by its CEO, Koos Bekker to our CEO Marcel Golding is at once designed to place us under duress and undermine the BDM Policy and the facilitation process. In our view, the facilitation process, has been violated and the participants placed under considerable duress to oppose the BDM Policy and set top box control.

For this reason, we are of the view, subject to your advice, that we should withdraw from the facilitation process altogether. As the process is conducted under aegis of the Ministry, we should want to hear from you before we make a final determination on the matter.

YUNIS SHAIK

Handwritten signature

09

Daily Maverick, 8 December 2017

MultiChoice's content procurement has always been obscure. Although little is now known about its ANN7 dealings, it's worth examining its relationship with e.tv to understand why local news is a particularly touchy subject. By ANDRÉ-PIERRE DU PLESSIS.

I was part of a plan to try to sink e.tv. In 2014 a fight had been dragging on between MultiChoice and e.tv over the use of encryption in free-to-air set-top boxes. Government was planning to overhaul the country's broadcasting airwaves with e.tv and MultiChoice at opposite ends of a fundamental argument and lucrative contract.

In one corner, e.tv lobbied to include encryption in digital broadcasting while MultiChoice argued encryption would lead to unfair competition.

ADVERTISING

At the time I was working in New York, a city whose media was fixated with South Africa. The Oscar Pistorius trial and Nelson Mandela's death were must-watch TV even in America where Debora Patta and Robyn Cumow became household names.

In an attempt to profit from the media frenzy, MultiChoice launched a 24-hour news channel solely focused on Pistorius. Since M-Net's launch in the 1980s, Naspers had vowed never to produce local TV news. Because the apartheid government backed M-Net financially, a critical voice inside the pay-TV operator would be political suicide. Although Carte Blanche played a big role in M-Net's early days, the investigate journalism programme was never intended by the Naspers' big wigs to celebrate our free press at a time of severe media censure. Like many of M-Net's first programmes, Carte Blanche was following a successful international TV format. The BBC's Panorama and CBS's 60 Minutes were the inspiration, which proved more important for its advertising revenue than its journalism awards.

The Oscar Pistorius Channel made me realise that MultiChoice had a renewed appetite and willingness to depart from that apartheid-era promise at a time when DStv viewers were more interested in news than ever before. Media24 journalists featured regularly on the channel and I envisioned them being part of a news network that could live on beyond Pistorius's sentencing.

I first pitched the idea to Media24 in January 2014. Nothing came of it and I was about to let it go when two employees visiting New York convinced me otherwise. I created a business strategy for what could become the first Afrikaans news channel and sent it off in May. By June, Naspers CEO Koos Bekker threw his weight behind it and I packed my bags for Cape Town.

Unknown to me, Bekker was looking for solutions to an ever-increasing headache. MultiChoice's monopoly was at risk over e.tv's encryption lobbying efforts. For e.tv

4/10/17

22

the appointment of Yunus Carrim in July 2013 was a god-send since one of its largest shareholders, Yunus Shaik, had a history with the new communications minister. Shaik seemingly succeeded in undoing much of the favour MultiChoice CEO Imtiaz Patel won with Carrim's department just two months prior. By October e.tv had launched OpenView HD as proof that it had the technical know-how to compete with MultiChoice. Confident that government would choose their side and their product, e.tv CEO Marcel Golding increased his financial holdings in Ellies, manufacturer of the OpenView set-top box.

When Carrim tabled his support of e.tv that December, Bekker had good reason to be upset. Not only was Golding beating him at his own game but on top of that he was paying him to do so.

Since at least 2009 MultiChoice has paid e.tv to broadcast eNCA on DStv. They became a valuable partner in 2010 when MultiChoice was planning to increase advertising rates while targeting South Africa's most lucrative pay-TV demographic.

As the most watched channel on the entire DStv bouquet, kykNET had captured most of the country's Afrikaans viewers. But Riaan Cruywagen's news bulletin on SABC2 still drew more viewers in his time slot and MultiChoice had a plan to lure them away. They turned to eNCA to tailor their special brand of news to an Afrikaans audience. Calling it eNuus the plan worked and MultiChoice made sure e.tv felt their gratitude financially.

But by March 2014 the relationship had soured and open warfare was declared in the form of a full-page print advertisement. MultiChoice launched a multi-pronged attack against e.tv and Carrim. Hinting at renegotiating its financial commitments, MultiChoice had since decreased its payments to e.tv even though the number of channels it has made available to DStv has increased. On top of that M-Net offered its expertise and technical know-how to sister company Media24 to help it create this new news channel.

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However, e.tv's threat to the MultiChoice monopoly was resolved unexpectedly when a bloody boardroom battle led to Golding's resignation in October 2014. His departure, together with Carrim's ousting as minister, was a MultiChoice wet dream. The war was won in less than six months.

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So how is this story relevant to MultiChoice's dealings with the Guptas? It isn't, except that it provides some insight into how easily the pay-TV operator makes, amends and abandons deals with little oversight. Its subterranean offices hold secret deals hiding from public scrutiny that could more importantly perhaps indicate collusion to undermine eNCA's viability in the fight for the hearts and minds of South African viewers. Considering how easily money is thrown around, it could be argued that MultiChoice bankrolled SABC News and ANN7 at the expense of eNCA. At a time when our country's only independent news channel is struggling financially, the company that used and abused it owes it to all of us to make sure it's kept alive.

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Op-Ed: A personal glimpse at how MultiChoice cuts, amends and abandons deals

By André-Pierre Du Plessis • 8 December 2017



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This article was amended on Sunday 10 December 2017.

AM

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Ne Hoff

10

MultiChoice scandal: Yunus Carrim – when did I ever voice my support for e.tv?

- Yunus Carrim
- South Africa
- 11 Dec 2017 12:26 (South Africa)

ANC MP YUNUS CARRIM hits back at a suggestion that he was doing e-TV's bidding in its battle over encryption with MultiChoice. Here, the former communications minister presents some of his own facts.

"For e.tv the appointment of Yunus Carrim in July 2013 was a godsend since one of its largest shareholders, Yunus Shaikh, had a history with the new communications minister. Shaikh seemingly succeeded in undoing much of the favour MultiChoice CEO Imtiaz Patel won with Carrim's department just two months prior".

This from Andre-Pierre du Plessis in Daily Maverick on 8 December. Wow.

And if this is not bad enough there's lots more. "Carrim tabled his support for e.tv...." The new minister was open to "reversing Carrim's support of e.tv." "Dec 2013: Carrim voices support for e.tv".

Wow and wow and wow again.

There you have it. Out in the open. A minister introduces a major policy to suit somebody who shares his first name! Another example of corruption!

And where did investigative reporter Mr Du Plessis get this? Guess who? Why the Famous Four, of course. This is exactly what Koos "it's not me" Bekker, Imtiaz "do-this-or-else" Patel, Hlaudi "I'm underpaid" Motsoeneng and Ellen "UNISA stole my degree" Tshabalala – please, please feel free to trust them – were saying. In trying to break away from Bekkerism, Mr Du Plessis – poor soul – is exactly Bekkerist! After all, he was happy to do Bekker's bidding to "sink e.tv" until Bekker, being Bekkerist, dumped him (are you listening, Patel?).

Here are a few of the facts:

1. Cabinet decided on encryption in 2008 during Minister Matsepe-Casaburri's tenure. I was in the parliamentary back benches then.
2. The 2012 ANC Mangaung Conference noted that "significant entry barriers remain in place in the pay commercial broadcasting sector" and decided to "reduce barriers to entry, especially in the pay-TV market" and "to enable the entry of new pay-TV services during the migration process". That wasn't me, Mr du Plessis. I was the rapporteur for the local government commission at that conference.
3. The ANC NEC Communications Subcommittee decided in November 2013 on the approach to encryption adopted by Cabinet in December 2013.

Handwritten signature and initials

4. Just last week the subcommittee's current chair, Jackson Mthembu, said that encryption remains ANC policy. And the SACP's Central Committee on 3 December reiterated their commitment to encryption.
5. My "history with Yunus Shaikh"? We were activists in the same structures in the 1980s, as with hundreds of others. But he wasn't my buddy. He lived in Durban, I in Pietermaritzburg, he's national democrat, I'm a Marxist, he was close to a particular camp within the UDF, I was close to another. Oh, and we don't even spell our first names the same – He's Yunis, I'm Yunus. I saw him twice between 1994 and 2013 – at an airport and at a wedding. I had a fleeting 10-minute exchange with him alone, mostly pleasantries, shortly after I became Minister and never met him alone before the December 2013 Cabinet decision on encryption. So, no, absolutely no, Shaik never lobbied me separately.
6. Among the many reasons the ANC and government decided on encryption were to:
 - a. Facilitate new black entrepreneurs to enter the pay-TV market to encourage competition and reduce monopoly control;
 - b. Increase access to pay-TV to those who could not afford it;
 - c. Encourage the SABC to compete against DSTV, which was its main rival as it was eroding its market share and advertising revenue;
 - d. Stimulate the local electronics industry and job-creation;
 - e. Reduce the prospects of the South African market being flooded by cheap imported STBs;
 - f. Provide e-government services; and
 - g. Reduce the prospects of government-subsidised set-top boxes (or decoders) being stolen.

So no, absolutely no, the encryption policy was not designed to suit e.tv's Yunis Shaik. In fact, the Cabinet policy from 2008 until December 2013 on compulsory encryption suited e.tv better. The policy adopted in December 2013 made encryption optional – broadcasters were free to decide whether they wanted to use encryption but those who did would pay the state for its use. While e.tv would have been a beneficiary, the policy was aimed at bringing in new Black, mainly African, pay-TV entrepreneurs and achieving the many other aims set out above.

Crucially, Du Plessis does not explain how I, not in the ANC NEC and a marginal minister, could have got my way with the NEC subcommittee and the entire Cabinet to suit my buddy-who-is-not-my-buddy, Shaikh? It's insulting to suggest that the entire ANC subcommittee and Cabinet were my sheep. And the national budget was certainly not my personal moneybox that I could use to benefit anyone I chose. That would have been criminal anyway. And can you imagine Cabinet agreeing, with all the stresses on the budget at the time, to fund a broadcaster other than the SABC? Many NEC members and Cabinet felt that e.tv was too critical of the government anyway. Can you imagine them giving e.tv a freebie at the taxpayer's expense?

To refer to Du Plessis' words, when did I ever voice my support for e.tv? When did I table my support for e.tv? And why would I? The timeline he provides, it's no more than a list of expedient dates chosen to suit his theory.

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Were e.tv crowing about the policy? Probably. Was Bekker mad? You bet he was. But what has that to do with the ANC or government? Are we supposed to shape government policy to suit Bekker's moods or business interests? Surely that would be just as corrupt as deciding policy on the basis of Shaik's (very limited) history with me?

Our department strongly objected that both MultiChoice and e.tv were using the encryption policy as ransom to settle their contractual and other disputes, but there was little we could do about their destructive spats. What concerned us more was the role of Motsoeneng and Tshabalala. Why would senior SABC representatives oppose a policy designed to benefit the public broadcaster and new African entrepreneurs in the pay-TV sector and instead favour the continued domination by MultiChoice of 98% of the pay-tv market? What was in it for them?

The majority of Interim Board members claimed that Motsoeneng and Tshabalala had no mandate to change SABC's policy in support of encryption and were serving their personal interests. Of course, Motsoeneng, the media reports, received R11.4-million of an expected R33-million commission fee for the MultiChoice-SABC deal. Yet the then CEO, Ms Lulama Mokhobo, refused to sign it because, I understand, she disapproved of it.

At the time, our advisers said that Naspers owned about 60% of the daily papers, about 50% of the weeklies, about 50% of the community newspapers (yes!) and about 70% of the magazines. If we are tackling monopolies in the banking, insurance, mining, auditing and other sectors, what about Naspers? Why are Bekker and Patel being protected and by whom? That's the major question, Mr Du Plessis, not your ridiculous suggestion that I single-handedly reshaped the encryption policy to suit my buddy-who-is-not my-buddy.

And if Du Plessis is hinting that I was empathising with Shaik's trade union representation on e.tv, of course I identify with the unions. I'm a Marxist after all. But encryption was ANC policy long before the SACP could spell the word, let alone understand it.

So, no, Mr Du Plessis, I'm not corrupt. And you certainly are a Bekkerist. What's worse is that you don't seem to know it.

Am I trying to settle scores? Cheesed off I wasn't re-appointed Minister? Blaming the Famous Four? No, please. I knew about a campaign against me not being re-appointed. Did I wilt in my commitment to the ANC policy on encryption? Of course, not. Besides, it's the president who takes responsibility for who he decides on for the Cabinet. And I certainly didn't rush to the media to speak about the issues in the public domain now even though I'd been approached by about 10 journalists these past three years. I had long moved on – but then came the latest Gupta email leaks and the SABC minutes in the public domain, and Naspers and MultiChoice's refusal to acknowledge any wrongdoing whatsoever. I had no idea my brief response to a single journalist 10 days ago would spiral like this.

About the plot to sink e.tv that Du Plessis writes about: I certainly don't know enough. Is it true? I don't know. Is it credible? It certainly sounds very Bekkerish. Except that Du Plessis spoils his story by reducing the considerable complexities of

the encryption policy to an individual minister and his liking for his buddy-who-is-not-his-buddy and the ANC and Cabinet sheep who followed him. That's not just crude. It's corny. DM

A handwritten signature in black ink, appearing to be 'Hoff' or similar, written over the page number.

11

Exposing a sexual predator who taught me about news

He was once my mentor, but News24 now exposes Willem Brëytenbach as a sexual predator, writes Adriaan Basson.

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#GuptaLeaks: How MultiChoice paid the Guptas millions

2017-11-24 12:23

Johannesburg – MultiChoice, the pay-TV company that owns DStv and M-Net, made a questionable payment of R25m to the Guptas' controversial ANN7 channel, the #GuptaLeaks show.

In addition, MultiChoice increased its annual payment to ANN7 from R50m to R141m.

The payments came after the family seemingly assisted former communications minister Faith Muthambi in getting President Jacob Zuma to transfer certain broadcasting powers to her, something MultiChoice was lobbying the minister for.

ALSO READ: #GuptaLeaks: How Ajay Gupta was trusted with crafting SA's global image

Following the transfer of powers, Muthambi controversially pushed through a decision in favour of unencrypted set-top boxes, which benefitted MultiChoice.

Muthambi's decision flouted her own party's policy on the issue. The ANC supported encryption – required for pay-TV – to promote competition in the sector.

After a lengthy court battle, the Constitutional Court earlier this year ruled that it was within Muthambi's right to make policy decisions affecting the broadcasting sector.

MultiChoice however deny that there is any relationship between the policy outcome in its favour and payments made to ANN7. In a statement, the company said: "MultiChoice rejects your insinuations in the strongest possible terms."

CLICK HERE TO READ THE COMPANY'S FULL RESPONSE

The #GuptaLeaks reveal that:

- MultiChoice executive Clarissa Mack (who had since resigned) sent policy documents directly to Muthambi, who shared them with Gupta lieutenant Ashu Chawla, setting out proposals for Zuma to transfer broadcasting powers back to Muthambi after he split the communications portfolio into two departments in 2014;

- In September 2015, six months after Muthambi confirmed there would be no encryption, MultiChoice increased its annual payment to the Guptas' controversial ANN7 channel from R50m to R141m – at a time when the channel had failed to win a significant slice of DStv's news audience, and whilst the channel received widespread criticism over the quality of its content;

- MultiChoice CEO Imtiaz Patel was once a director of a company with the youngest Gupta brother, Tony, and Zuma's son Duduzane. Patel says his appointment was done without his permission, and CIPC records show that he resigned from the company on the same day he was appointed.

New ANN7 owner Mzwanele Manyi, who took over the station this year in a vendor-financed deal, said: "The so-called Gupta emails have NOT been authenticated. What if all this is part of a larger

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The Guptas did not respond to questions but have previously dismissed the #GuptaLeaks as "not authentic".

Pay for Play

MultiChoice has been in the news this week for paying the Guptas R50m per annum for ANN7.

The pay-TV giant denied signing a "third channel amendment agreement" which would have taken ANN7's annual income from MultiChoice to R150m, but neglected to disclose the existence of a "fourth channel amendment agreement".

This document was unearthed in-between the more than 200 000 emails that have become known as the #GuptaLeaks.

The agreement was signed by MultiChoice's Glen Marques and Nazeem Howa for Infinity Media Networks, ANN7's holding company, on September 9, 2015.

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The agreement not only ensured that MultiChoice would fork out R141m a year for ANN7 from April 1, 2016, but also guaranteed the Gupta-controlled company a "once off amount" of R25m.

This had to be paid to Infinity within seven days of the contract being signed, according to the agreement.

Two broadcasting insiders who had previously been involved in MultiChoice's negotiations with news channels say such a "once off amount" is unheard of in the industry.

"The once-off fee you refer to is a pro rata payment in terms of an amendment agreement. The amendment agreement was entered into in order to assist with improving production quality," MultiChoice said about the payment.

ALSO READ: #GuptaLeaks: How the family encircled Lynne Brown

MultiChoice also maintains that its fee for ANN7 represented a "fair value" at the time of signing the fourth contract amendment, given the cost of running a 24-hour news channel.

"After several rounds of negotiations over a period of three years, during which we developed an understanding of the channel's operating costs and the need for improvements in production quality over time, the final fee was set," says MultiChoice.

MultiChoice admits that it made policy proposals to Muthambi, but the company says the majority of its suggestions were not taken up in later amendments to government legislation.

The company also denies that it was aware that Muthambi was forwarding MultiChoice's suggestions to the Guptas.

"MultiChoice has absolutely no knowledge of the minister sending our proposals to any other person, and can in no way be held responsible for that," says the company.

The issue at hand involves a long-running battle over whether government should favour either encrypted or unencrypted set-top boxes for the country's digital migration process.

Critics of a policy supporting unencrypted set-top boxes argue that would-be rivals of MultiChoice can only compete with the latter's DStv service if government enforces the roll-out of encrypted devices.

In December 2013, then-communications minister Yunus Carrim published proposed amendments to government's digital migration policy that opened the door for encrypted set-top boxes.

But Carrim would not have the last say on the matter.

MultiChoice fingerprints in the #GuptaLeaks

After having created the separate departments of communications and telecommunications in May 2014, Zuma issued a presidential proclamation that transferred certain regulatory powers from Muthambi to Siyabonga Cwele, the then-telecommunications minister.

On July 18, 2014, only three days after the proclamation was published in the government gazette, Muthambi sent an email to known Gupta associate Ashu Chawla. She attached the government gazette containing the proclamation.

Minutes later, Muthambi again emailed Chawla, this time attaching a Microsoft Word document titled "Effect of presidential proclamation". The document was forwarded by Chawla to Tony Gupta on the same day.

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Muthambi forwarded it to Chawla. Mack was also the last person to have modified the file.



Mack wrote that when Zuma created the two departments, there was an "assumption ... that broadcasting including digital migration would report to the Minister of Communications".

"The proclamation published on 15 July 2014 did not give effect to this division," complained Mack. She also made detailed suggestions with regards to how the relevant decision-making powers should be split between Muthambi's and Cwele's departments.

Mack's letter made it clear that MultiChoice wanted key powers guaranteed by parts of the Electronic Communications Act to be transferred back to Muthambi.

"Broadcasting is regulated by the Electronic Communications Act, 2005 (Act No 36 of 2005). The ability to make broadcasting policy and issue broadcasting policy directions are set out in section 3 of this Act. These powers have been transferred from the Minister of Communications to the Minister of Telecommunications and Postal Services," Mack stated.

"It is therefore the Minister of Telecommunications and Postal Service [Cwele] who will make policy and issue policy directives to Icasa for broadcasting, including public service broadcasting," Mack added.

Muthambi lobbies the Guptas

Over the course of the next few months, Muthambi would send Chawla four other documents relating to broadcasting policy. Chawla forwarded most of these to Tony Gupta and Duduzane Zuma, the president's son.

On July 25, Muthambi sent Chawla a Word document called "proclamation [sic] new 18 July 2014".

MultiChoice has admitted that this document was also penned by Mack.

Chawla forwarded the document to Tony Gupta and Duduzane Zuma on the same day. The document stipulated in detail which aspects of the Electronic Communications Act Muthambi wanted to be moved from Cwele back to her.

"These sections must be transferred to the Minister of Communications," Muthambi wrote to Chawla.

The document specifically focused on the parts of the Act dealing with the Independent Communications Authority of South Africa (Icasa), one of the key government bodies involved in the digital television migration process.

ALSO READ: #GuptaLeaks: How the Guptas paid for Zuma home

Muthambi also sent Chawla a Word document called "Responsibility for Infraco and Sentech" on July 25, adding in her email that "Sentech's signal distribution must rest with the Ministry of Communications". Apart from Icasa, Sentech is a key role-player in the digital migration process, whilst Broadband Infraco is a state-owned telecommunications company.

This document was also created by Mack, according to MultiChoice.

Perhaps the most shocking aspect of Muthambi's communications with Chawla came in the form of a document called "final proclamation 01 August", sent by the minister to the Gupta associate on the date mentioned in the document's title.

"See attached Proclamation that President must sign," Muthambi wrote Chawla, who subsequently forwarded it to Tony Gupta.

The proposed proclamation stipulated that control over section 3 of the Electronic Communications Act needed to be transferred back to Muthambi, exactly as Mack had originally pleaded in her letter.

It also included the proposed changes to the Icasa Act that Muthambi had earlier sent to Chawla.

Asked whether Mack had also created this document, MultiChoice said: "As mentioned previously, MultiChoice, like other companies in the sector, regularly engages the industry regulator and government on matters that affect the broadcasting sector. This includes making proposals that may take a specific regulatory or legislative form. Yes, this document was sent to Ms Muthambi. The proposals were inserted in a legislative template we took from previous Proclamations in the Government Gazette. Again, many of our proposals were rejected."

Muthambi uses her powers

On November 25, Zuma signed proclamation 79 of 2014. With the stroke of a pen, Zuma gave legislative effect to the transfer of some of the powers advocated for in Mack's documents.

Muthambi wasted little time to make use of her newly-won policy powers. In March 2015, she stunned the broadcasting industry by issuing an amendment to government's digital migration policy that went directly against her own party's stance on the matter.

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Give us free, unencrypted digital TV now

Staff Writer 16 March 2014



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Multichoice, Act-SA and Namec published an open letter to communications minister Yunus Carrim, asking him to allow free, unencrypted digital terrestrial television to launch without any further delay.

According to the three parties the current position is that set-top boxes must include technology which is unnecessary and expensive, specifically encryption technology which is used to control access to TV services

"We have serious reservations about this – it has been almost universally rejected internationally, it will make the migration process more expensive and it is opposed by most South African broadcasters," MultiChoice and others said in a press statement.

The full open letter to minister Carrim is provided below.

Dear Minister Carrim

Give us free, unencrypted

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regulate the migration of TV services from the current analogue broadcast system to digital.

Digital migration marks an exciting new phase in broadcasting (with great opportunities) and will have far reaching consequences for consumers, Government and broadcasters. The major impact will be on South African consumers.

Nearly 8 million analogue TV households will need a set-top box ("STB") to allow older TV sets to receive the new digital signals.

Your position is that set-top boxes must include technology which is unnecessary and expensive, specifically encryption technology which is used to control access to TV services. We have serious reservations about this - it has been almost universally rejected internationally, it will make the migration process more expensive and it is opposed by most South African broadcasters.

Including this technology in every free-to-air STB will:

- 1. Harm consumers by raising the cost of digital migration and binding consumers to an STB forever; Over time all TV sets will be digital, which in other countries do not need set-top boxes. However, if the current proposals are implemented, in South Africa (almost alone in the world) even consumers with digital TV sets will be forced to buy a completely unnecessary set-top box, because the free TV signal will be encrypted.*
- 2. Harm free-to-air broadcasting by increasing the cost of free-to-air television for broadcasters;*
- 3. Disadvantage emerging black manufacturers;*
- 4. Increase the costs of migration for Government, which has already committed itself to subsidizing STBs for the poorest 5 million TV households. Unlike in other countries, this need to subsidise will continue forever because free TV signals will be encrypted here; and*
- 5. Make the migration process complex and result in further delays.*

We dispute this aspect of your policy and believe the costs greatly outweigh any supposed benefits.

Your current proposals advance certain narrow commercial interests - rather than being in the interests of our nation.

We appeal to you to allow free, unencrypted digital terrestrial television to launch without any further delay.

Yours Sincerely

*Collin Mackenzie
Secretary General, Act-SA*

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- ☐ DionWired
- ☐ Tafelberg
- ☐ Kloppers
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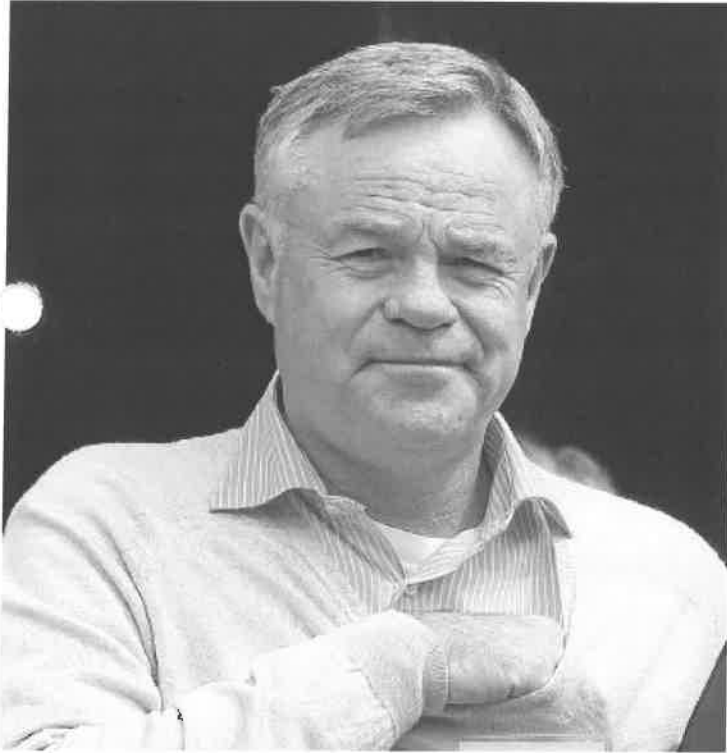
13

Poor taste, says Koos of graft allegations

Multimedia giant in state capture claims over payments to SABC and ANN7

Sunday Times · 3 Dec 2017 · By ASHA SPECKMAN and NICK HEDLEY

Koos Bekker, Naspers chairman, has dismissed accusations of corruption against Africa's biggest media company as nothing more than mischief in a dramatic week of growing alarm over the extent of state capture in the country.



The billionaire owner of print, e-commerce and pay-TV assets faces a slew of inquiries over accusations that it paid the SABC R500-million and the then Gupta-owned TV station, ANN7, millions of rands to secure influence over the government's encryption policy for set-top boxes.

Bekker says MultiChoice could not have known, when it signed with ANN7 in 2012, that the Gupta family would subsequently be exposed as close associates of President Jacob Zuma and accused of corruption. The company's dealings with the SABC were above board, he says.

FBI investigation

As long as a year after the deal to air the ANN7 channel was signed, "respectable business leaders" attended the high-profile Gupta wedding, "so to say that MultiChoice should have foreseen [what was to come] is total nonsense", he said.

The family hosted a wedding in 2013 at Sun City that was attended by some of the country's leading politicians and businessmen and which created a furore because they landed guests at the Waterkloof Air Force Base, a national key point.

Naspers could face a probe by the FBI, which is investigating US links to South Africa's Guptas after the Financial Times reported in October that the bureau was investigating all

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companies associated with the family — escalating a scandal over the Guptas' alleged use of a friendship with Zuma to control state businesses.

Naspers joins a list of major corporations such as auditors KPMG, US consultancy firm McKinsey and British-based Bell Pottinger that have come under the spotlight for their dealings with the family.

This week the DA released minutes of an SABC meeting in 2013 at which MultiChoice apparently offered the public broadcaster cash in exchange for influence. The DA claimed the meetings were clandestine.

Bekker said: "That's a complete piece of mischief of the Democratic Alliance. I think that's in poor taste. They released a statement without asking us to provide input or comment." He said Naspers had consulted two senior counsel over the minutes and they had concluded that nothing illegal had taken place during the meeting at the SABC headquarters in Auckland Park. The proceedings were recorded and minuted "in the normal manner", he said.

"The idea, of course, is if they provoke Naspers sufficiently maybe the board will get so embarrassed maybe it will override MultiChoice and take the channel [ANN7] off the air," Bekker said.

Asked about claims that MultiChoice tried to influence state policy on encryption, he said: "That's just a sideshow. Set-top box encryption is not interesting today to anyone."

The government's set-top box project has failed to take off. It has been stalled by numerous policy disagreements, some of which have been fought in court between the industry and the government over encryption.

In 2008 the SABC supported the government's position to encrypt the boxes but made a U-turn allegedly after the meeting with MultiChoice. The DA alleges MultiChoice intended to sway government policy towards one of no encryption.

The relationship has been the subject of numerous inquiries. The Special Investigating Unit (SIU) is now investigating several SABC contracts, including the MultiChoice agreement, which comes up for renewal in 2018.

On Friday MultiChoice said its board was aware that the ANN7 channel had "caused real public concern because of the allegations of corruption levelled at the former owners of the channel".

It had instructed its audit and risk committees to assess potential corporate governance failures at MultiChoice, assess whether the total amount paid to ANN7 was comparable to payments for other locally produced channels, especially the estimated cost of running a 24-hour news channel, and report back to the board.

Bekker said the timeline of the board investigation was not confirmed.

"But I would think it's a matter of weeks rather than months. It's not a massively long thing," he said.

He said it was for MultiChoice to decide if it would continue carrying the ANN7 channel following growing calls for it to be booted off the DStv platform.

"But one has to be very careful. It's a very severe act on a platform carrying so many hundreds of channels to single one out... it's better for someone at [communications regulator] Icasa to make the decision."

"If the ownership of the current channel is not acceptable, I don't think MultiChoice is in a very good position to judge that . . . we would not like to make a political judgment like that."

Bekker said that cutting the channel soon before the ANC's elective conference would amount to "a complete interruption of the democratic discussion process", adding that MultiChoice had signed up ANN7 in the first place because the channel added to the diversity of views on DStv.

The ANC hosts its elective conference from December 16 to December 20.

Asked whether MultiChoice would terminate its relationship with ANN7 once the elective conference had been concluded, Bekker said: "I frankly don't know because the contract runs out in June next year and it's for MultiChoice to decide."

In a separate interview, Naspers CEO Bob van Dijk said parent company Naspers would "let the MultiChoice board do its job" but if the outcome of the investigation [MultiChoice board investigation] was "not fully satisfactory" then Naspers would step in.

MultiChoice, the South African and African pay-TV operations of Naspers, accounts for more than half of Naspers' revenue if the company's investments such as Chinese internet firm Tencent are excluded.

Asked about the merits of the SABC's deal with MultiChoice, the SABC board's recently elected chairman, Bongumusa Makhatini, said he understood that there were a lot of people defending the deal. "I have no problem with people defending the current deal as long as they can justify the economics of the deal and explain how it is mutually beneficial. Is it sustainable?"

"In our discussion with them [MultiChoice] I can see no value in this board tackling and challenging different aspects or clauses in the contract. We are looking for a total overhaul."

That's a piece of mischief of the Democratic Alliance Koos Bekker Naspers chairman

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14 February 2018

Mr Nono Letele
The Chairperson
MultiChoice Board
Johannesburg

Dear Mr Letele

1. This letter follows on my 21 December 2017 letter in relation to your Audit and Risk Committees' investigation into the MultiChoice-ANN7 contract, and your 17 January 2018 response and our verbal exchanges.
2. I also note your 31 January 2018 media statement on the outcomes of the investigation.
3. As you will no doubt have seen, almost all the media coverage has been dismissive of, if not scathing about, the outcomes of the investigation.
4. Your investigation, in my view, was too limited and did not address the key issues in the public domain about the undue influence MultiChoice (and Naspers) exercised over the change of government policy on encryption, which solely served Multichoice's interests. The investigation should have included the MultiChoice/SABC contract, and should have focused, among other issues, on the clauses dealing with encryption and MultiChoice's access to the SABC archives. It is not clear to me how your inquiry could have come to any conclusions about MultiChoice's lobbying of government without considering the MultiChoice/SABC contract. In fact, within Parliament there have been constant rumours about MultiChoice's irregular behaviour since the late nineties. The fact that the Special Investigation Unit (SIU) and the Independent Communications Authority of South Africa (Icasa) are investigating these matters does not mean that MultiChoice should not have had an independent inquiry into these issues.
5. Many commentators and politicians whose views I respect have suggested that MultiChoice decided to dump ANN7 because the Guptas are not of use to it anymore in view of the changed political terrain. Even if this is not true, and the payments to ANN7 were altogether financially legitimate, surely MultiChoice needs to ask why they and so many other people think

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this is the case? What is it about the behaviour of MultiChoice (and Naspers) that makes so many people so suspicious about you? Actually, it is even being suggested that it is a bit rich for MultiChoice to jettison the Guptas because of reputational risk (presumably because of allegations of "state capture") when you are accused of "regulatory capture".

6. There are many other inadequacies in the 31 January media statement by the Audit and Risk Committees but I will not dwell on them here.
7. The inquiry, it seems to me, would have had significantly more credibility if it had been conducted by an independent external body whose impartiality and credibility were beyond question. The fact remains that the investigation was conducted by a committee of the Board of MultiChoice; even if there were non-executive independent members on that Committee, and they had assistance from some independent experts, it nonetheless was a committee of the Board of MultiChoice, appointed by the Board and accountable to the Board.
8. I wrote to you on 21 December about the scope of the inquiry because I had been asked by a journalist on TV whether I would be prepared to appear before the inquiry and I immediately said I would. If the scope of the inquiry had been wider and it was conducted by an independent committee, I would have appeared before it, if the committee would have allowed this.
9. It should also be noted that a number of key stakeholders in the sector, including within both wings of the National Association of Manufacturers of Electronic Components (Namec), community TV, e.tv and others, would also have been relevant to a proper inquiry. But they are vulnerable to MultiChoice because you are such a dominant player in the industry and they are dependent on you and, as such, they may have been concerned that if they were to contribute to the investigation you had, their relationship with MultiChoice may be negatively affected. In the brief time I served as Minister, I was very struck by how so many organisations and individuals dependent on MultiChoice feared reprisals from you should they come in your way, as it were.
10. It would certainly have given an increased sense of comfort and security to organisations and individuals who may have wanted to contribute to the investigation if they knew that it was being conducted by an independent body which would afford them some protection, both in

terms of the confidentiality of their contributions and the fact that there would be no negative repercussions in terms of their relationship with MultiChoice.

11. In relation to employees of MultiChoice who may be in possession of information which, in their view, may have contributed to the investigation, it is submitted that, they too, are in a vulnerable position and that perhaps they may have been more prepared to take part in an investigation if it was conducted by an independent committee.
12. I believe that the linkages between the SABC and its "about face" in terms of its policy on encryption were a direct result of the contract entered into between MultiChoice and SABC. In my view, both the MultiChoice/SABC and the MultiChoice/ANN7 agreements involve significant failures of corporate governance at MultiChoice.
13. Business lobbying of governments is an endemic and perfectly normal aspect of a democracy. However, it has to be done within reasonable limits and a code of ethics. Can MultiChoice's role in the Set Top Box encryption saga be considered to be ethical?
14. It is also submitted that a proper investigation, in looking at the role of MultiChoice, would have had to include the role of Mr Koos Bekker and Naspers more generally. Mr Bekker was centrally involved in pushing for the dropping of encryption in the Set Top Boxes (STBs) and he was key to MultiChoice's rigid position. That was certainly my impression gained from my two meetings with Mr Bekker and an exchange over the phone, as well as what others in the Department, Ministry, others in government, parliament and in the industry said.
15. I set out below certain critical questions and issues that, in my view, the inquiry should have addressed. As several issues I raise are in the public domain anyway, I have attached as Annexures some media articles that provide an overview of the issues and supplement what I raise in this letter:
 - 15.1. Why did MultiChoice insist on the "no encryption" provision in the MultiChoice/SABC agreement, if not to influence government policy on encryption? And why were the SABC's obligations to ensure no encryption subject to the strongest sanction for any breach of contract – significantly more severe than any other performance breaches of the contract? Would this not explain the fact that on the 26 July 2013, the SABC wrote to me to say that they supported encryption, however, on 12 August 2013, they wrote to inform me of their

opposition to encryption? In this regard, it should be noted that I was informed by a senior SABC official that MultiChoice intervened between the above two dates and insisted that if the SABC supported encryption, it would be a violation of the agreement entered into between SABC and MultiChoice. Are you aware that the majority of the SABC Interim Board members said that the SABC Board Chair, Ms Zandile Ellen Tshabalala and Mr Motsoeneng had no mandate from the Board to change the SABC's position in favour of encryption? Certainly, at the first Board meeting I attended where the issue was raised, only Mr Motsoeneng and Ms Tshabalala opposed encryption. I was also informed by several SABC Board members, and others in the industry, that the SABC could not support encryption because of "pressure" from MultiChoice.

- 15.2. Apart from the about R33 million Mr Motsoeneng claimed he was entitled to for the MultiChoice/SABC contract (about R11 million of which he took as the first tranche), did MultiChoice pay him any money directly to ensure that the policy on encryption was changed?
- 15.3. Why did Mr Motsoeneng, and not the SABC CEO, Ms Lulama Mokhobo sign the MultiChoice/SABC contract? Are you aware that it was said that Ms Mokhobo refused to sign it because she did not think it was in the interests of the SABC?
- 15.4. Did MultiChoice offer Ms Tshabalala any material incentives to so actively oppose encryption without an SABC mandate?
- 15.5. What exactly was the role of Naspers/MultiChoice ("N/MC") in funding Namec? (See Annexures 1 and 8). Is it true that it funded the Keith Thabo-Vijay Panday – known as the MultiChoice-wing of Namec - in return for their support for opposing encryption? Did N/MC not create divisions within Namec as the Adil Nchabeleng-Professor Kunene wing did not agree with the positions of the Thabo-Panday wing? If I am correct, there was a court decision that found the Nchabeleng-Kunene wing as the legitimate Namec – how has this affected N/MC's relationship with the Thabo-Panday wing?
- 15.6. What role did Mr Calvo Mawela and Ms Clarissa Mack play in drafting the Business Times article referred to in the 2015 M&G article (Annexure 1)? What role did they play in other statements issued by Namec opposing encryption? What does N/MC think of the email exchanges referred to in the M&G article (Annexure 1) among the Thabo/Panday wing of Namec since you supported them?
- 15.7. Did N/MC threaten representatives of some of the community TV channels that they would be removed from the DSTV channels if they supported encryption?
- 15.8. Did Mr Patel and Mr Bekker threaten that they would punish e.tv, when its contract had to be re-negotiated with MultiChoice DSTV, if e.tv pushed for encryption?

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- 15.9. Did N/MC pay or in other ways provide material inducements to senior officials of the Department of Communications to serve their business interests?
- 15.10. Did N/MC pay or in other ways provide material inducements to members of parliament and members of the executive to serve their business interests?
- 15.11. Did N/MC in the mid 1990s offer all MPs free DSTV? If so, why, if not to influence them on broadcasting policy?
- 15.12. Did Mr Bekker and/or N/MC arrange international study tours for members of the Portfolio Committee on Communications, such as the "study tour" by the Communications Portfolio Committee or ANC Study Group in Parliament to the West Indies in the 1990s? Is it true that these tours were little more than material inducements to seek to influence those MPs to favour MultiChoice?
- 15.13. Did N/MC assist in the preparation of documents opposing encryption by the Association of Community Broadcasters of South Africa (ACTSA) and SABC?
- 15.14. Did N/MC pay or in other ways provide material inducements to anybody in Icasa to serve their business interests?
- 15.15. What was the relationship between Mr Patel, Mr Mawela and Mr Collin McKenzie of ACTSA in the ferocious campaign waged against encryption?
- 15.16. Did MultiChoice pay, or provide other material inducements, to Mr McKenzie to take such an extremely aggressive approach in opposing encryption?
- 15.17. What was MultiChoice's role in the media conference convened at the SABC in late December 2013 to oppose the Cabinet decision on encryption?
- 15.18. Did MultiChoice tell people that I was taking bribes from e.tv to ensure government policy on encryption served e.tv's interests?
 - 15.18.1. Is there a single shred of evidence that I took a single cent from e.tv or anybody else?
 - 15.18.2. In the context of claims allegedly made by MultiChoice and two SABC representatives that I was taking bribes, what was meant in your advert in March 2014 in which you stated in reference to me:

"Your current proposals advance certain narrow commercial interests – rather than being in the interests of our nation"?

Whose narrow commercial interests were you referring to? Why does MultiChoice think it, rather than the elected government, represents the interests of the nation? Who mandated MultiChoice to speak on behalf of the nation? Or even on behalf of its customers whom it charges such high subscription fees?

- 15.18.3. Why did your advert, referred to above, reduce ANC policy and a Cabinet decision on encryption to me personally? (See Annexure 5 for why it would have been impossible for me to have personally driven through encryption policy to simply suit e.tv)
- 15.18.4. What role did Mr Bekker play in the processing of the advert?
- 15.18.5. Are you aware that several representatives of Community TV claimed that Mr McKenzie had no mandate to append ACTSA's name to your advert?
- 15.18.6. Were material inducements offered to Mr McKenzie and the Thabo-Panday wing of NAMEC to support your advert?
- 15.18.7. What role did Mr Motsoeneng and Ms Tshabalala play in the processing of the advert?
- 15.19. Is it true that N/MC had contracted a media consultant to push for its encryption policy in the public domain (which you have every right to do) whose brief also included targeting me personally (which, in my view, in the circumstances, was uncalled for)? Did this consultant prepare material on encryption for use by organisations other than MultiChoice or individuals not within N/MC?
- 15.20. Ms Clarissa Mack has been accused of irregularly shaping a Cabinet Memo in late 2014. Did Ms Mack and/or any other MultiChoice representative shape the 2012 Cabinet Memo that sought to dilute the government's policy on encryption (even if encryption was retained)?
- 15.21. In our second meeting in Tshwane in about March 2014, Mr Bekker informed me that he noted that what I said in the public domain essentially came from e.tv documents. This was an absurd allegation. Will Mr Bekker cite examples of what exactly I said that came from e.tv documents? Who in e.tv drafted my statements? Did I pay them or did they pay me for this?
- 15.22. Do N/MC think it is right that you control 98% of pay-TV? Is it not true that N/MC got a heads-up through support from the apartheid state? Nasionale Pers was the mouthpiece of the National Party – yet Naspers was the only media company that refused to appear before the TRC and apologise for its role in bolstering apartheid. Why? Given Naspers' benefits from and role in the apartheid era, does Naspers not feel that it has an obligation, at the very least, not to oppose government policies that seek to encourage competition in the pay-TV sector?
- 15.23. Is it not correct that N/MC want transformation ONLY on its terms? N/MC is prepared to give empowerment shares, provide funding for Black South African television productions,

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Blacks in senior management and Board positions and so on – but is not all this to ensure that there is NO competition to N/MC?

- 15.24. In the second very fractious Tshwane meeting with Mr Bekker, I insisted that there has to be competition to DSTV. At one stage Mr Bekker said something to this effect: okay, can you give two or three names of Black people whom I think he could work with? I was taken aback, and replied that it is not for him to decide on this nor indeed me; those issues have to be decided by policy and regulation. N/MC simply cannot decide who its competitors should be. Does Mr Bekker believe that he must decide on who your competitors are?
- 15.25. In response to my saying to a journalist in November 2017 that Mr Bekker was very involved in pushing for the dropping of encryption of the STBs, why did Mr Bekker only mention in the media the meeting that we had in Tshwane at which another cabinet minister was present, and not the meeting he had with me on 2 (or 3) September 2013 in which he vigorously lobbied for the dropping of encryption? (See the Annexures – several references to this). And, why did he say that at the Tshwane meeting we did not discuss the Guptas or anything illegal when I did not suggest this at all? Why did he link my response to those who called for DSTV to annul their contract with ANN7? Was this not disingenuous and directed to distract from his role in the STB encryption matter?
- 15.26. Mr Bekker suggested in March 2014 (see annexure 1) that I was on my way out. Of course, Mr Bekker is perfectly entitled to his views about my unsuitability as a minister, even if his views, from what I could tell, were not shared by others in the industry, but how did he know that I was not likely to be appointed at least two months ahead of the President's decision?
- 15.27. What role did N/MC play in the campaign to remove the Minister "in our way"?
- 15.28. The Guptas have been accused of influencing the appointment of ministers and deputy ministers to advance their business interests. Did N/MC have any say in the appointment of the new Minister of Communications in June 2014?
- 15.29. It has been alleged that Mr Mawela and others from N/MC were at a party shortly before the appointment of the new cabinet in June 2014 at which Mr Motsoeneng and others from the SABC were present. It is alleged that the party was a celebratory party about my not being re-appointed and Minister Faith Muthambi being appointed. Is there any truth to this allegation?
- 15.30. Did N/MC have any role in the events which led to Ms Joyce Moloi-Moropa resigning as Chair of the Parliamentary Portfolio Committee on Communications?
- 15.31. What is N/MC's response to the aspects of Mr Andre-Pierre du Plessis' claims about N/MC's attempts to "sink e.tv" that are not about my supposed role in favouring Mr Shaikh?

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16. It is unfortunate that MultiChoice chose to resort to innuendo and inference, particularly, as referred to above, in relation to its March 2014 advertisement that stated that I was supporting encryption to "... advance certain narrow commercial interests – rather than being in the interests of our nation." The clear implication of such a statement was that I am corrupt and was in the thrall of certain commercial interests; at the very least, that I was nepotistic. Mr Bekker in his March 2014 Memo said that I was "in the power of e.tv" and, as explained above, said that my public statements on encryption derived from e.tv documents. There was also a whispering campaign that I was being bribed by e.tv. Why if N/MC had no hand in smearing me as corrupt did Mr Bekker not dissociate himself from this when I phoned him in December 2013 (See Annexure 4)? There was a clear attack from N/MC on my integrity, which attack was neither justified, nor warranted. In fact, I was implementing ANC and government policy on encryption and not my personal policy. Cabinet had decided in 2008 on encryption and the 2012 ANC Conference decided on the need to ensure competition in the pay-TV sector. In fact, the 2017 ANC Conference reiterated the need for competition in the sector.
17. I feel very strongly that N/MC should apologise publicly in print and in writing to me for your conduct insofar as it reflected on my reputation and integrity. Ideally, you should put full page adverts in the very same newspapers you did in March 2014 and apologise for attacking my integrity and acknowledge that I was implementing ANC policy on encryption that was adopted by Cabinet. Obviously, you can in the advert reiterate your opposition to encryption and your views that I was not a suitable minister – this you certainly have every right to do. But to suggest I am corrupt is outrageous and you most certainly have no right to do this unless you have evidence.
18. I feel very strongly about this issue. I do not want a student 20 years from now googling on this encryption matter and picking up that I was accused of corruption. Given the many accusations of corruption of public representatives today, it might well be believed. I do not want my grandchildren to pick up these downright false innuendos and allegations! Who cares that I was a Deputy Minister and Minister?? We come and go all the time! That is most certainly the case in communications! All I have at the end of the day is my integrity! As I told the M&G, I would rather die than be corrupt. Let me categorically state: if you can prove that I took even one cent from e.tv or anybody else as a bribe, I do not want to be even tried in a court of law, I believe I must go straight to jail to serve a long sentence. If what is alleged about your role in accusing

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me of corruption is accurate, it was grotesque, immoral, and unconscionable! I want you to apologise!

19. Mr Calvo Mawela apologised to me at the media conference on 31 January 2018 for any aspersions that may have been cast on my integrity through your March 2014 advertisement. Based on my fleeting exchanges with you while serving as a Minister and information I received then, I have no reason to believe that you were complicit in an attempt to smear me, and I know that you might have had a hand in this decision to apologise, and I express my appreciation to you. But this apology, I am afraid, is not enough. I raise the following:

19.1. Why was it only an oral apology, and not included in the media statement?

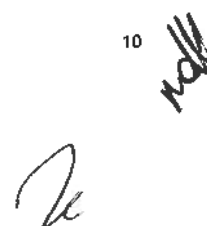
19.2. In any case, the apology was lost in the other decisions you covered in your statement, especially about not renewing the contract with ANN7 and it was not covered in the media – unlike your full page 2014 adverts. There is no fair-play in your apology.

19.3. Why was there no apology from Mr Bekker for insisting that I was “in the power of e.tv”?

20. Of course, I am aware that you may think I am trying to settle scores with N/MC because I was not re-appointed as a Minister. You are, obviously, free to think that. As I explained briefly in the *Daily Maverick* article (Annexure 5), I was not cheesed-off about not being re-appointed. I was well aware about a campaign that allegedly involved two people from the SABC and others from N/MC lobbying for me not to be re-appointed. I was told by people in the private and public sectors that I may not be re-appointed because of the encryption policy. But I refused to wilt in my commitment to the ANC's and government's encryption policy. Whatever lobbying took place, it was President Zuma who decided on who he wanted as the Minister of Communications, and if he wanted to keep me on, he would have. So it would be quite silly for me to blame those who might have lobbied him. When I found that he would not keep me on, I certainly did not retreat. I moved on! I did not resign. I went to the back benches of parliament, and subsequently got appointed to chair a parliamentary committee.

21. I had long moved on when the encryption issue broke into the public domain with the release of those SABC minutes and the Gupta emails about the MultiChoice/ANN7 contract. (about which I knew nothing) – and N/MC'S disingenuous replies to media inquiries about these issues.

22. It is not appropriate for a former Minister to speak about his or her former portfolio and whenever I have been asked by journalists about issues relating to my brief stint as the Minister, I have said I would not respond unless my integrity is attacked – hence my reply in the M&G article of 29 May 2015 (Annexure 1) when it was drawn to my attention that Mr Bekker had once again made his absurd and possibly libellous statement that I was in “the power of e.tv”? What he was in effect saying was that the ANC and government were in the “power of e.tv”. Is it true that Mr Bekker believes that politicians are either in the “power of N/MC” or one of its rivals? That we are incapable of making any decisions simply in the interests of our constituencies, particularly the disadvantaged? If this is Mr Bekker’s approach, could this be because of the way Naspers related to politicians during the apartheid era?
23. In any case, when I was phoned by a journalist in late November last year about the SABC minutes and the emails I had no idea that my responses and N/MC’s inept, disingenuous public statements on this would spiral the way they did.
24. I am long out of the digital migration space now, and it may well be that technology has moved on and STB encryption is yesterday’s matter, as Mr Bekker claims, but even if that is true, it seems to me, that the ANC and government have to explore how any relevant new technologies and/or other ways and policies could be found to assist in facilitating competition in the sector. I am also aware of the way in which the entire pay-TV sector globally is being challenged by video-on-demand services. However, the issue is not about whether STB encryption is correct or not; it is about addressing allegations about N/MC buying government policy. We need to learn lessons from appropriate inquiries into N/MC’s behaviour and those into state capture generally to reduce the corrosive effects of corruption in our country. While the issue of state capture has received extensive publicity and is the subject of numerous intensive investigations, the issue of “policy capture” or “regulatory capture” and the means by which such capture takes place, warrants detailed investigation.
25. I think that out of the experience of NMC’s role in the encryption saga, the following, among other issues, need to be considered:
- 25.1. Naspers needs to develop a policy and/or Code of Ethics on lobbying of government by its companies. It should publish this policy and/or Code and act decisively against those in its companies who violate it.

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- 25.2. There should also be regulations and/or a policy and/or a Code of Conduct on business lobbying of politicians that binds both business and those in the political sphere. Those who transgress this, whether from business or politicians, must be severely sanctioned.
- 25.3. N/MC needs to give serious attention to its role in the pay-TV sector as a supremely dominant player and how such dominance should be addressed in order to ensure appropriate transformation and competition within the sector as a whole. This should not be attained through the appointment or selection of certain "willing" partners by Mr Bekker to compete against MultiChoice.
- 25.4. N/MC has to stop challenging every attempt by the government to introduce competition in the pay-TV sector. Just as the ANC, government and parliament are tackling monopolies in the banking, insurance, mining, auditing and other sectors, they should also be tackling monopoly domination in the pay-TV sector – N/MC has to accept that you cannot be exempt from this process.
- 25.5. While recognising the complexities and the financial issues entailed, MultiChoice needs to consider in what ways it is possible to reduce its monopoly control of popular sport which ordinary people want to watch but from which they are excluded because they cannot afford the subscription fees.
- 25.6. Business organisations like Business Unity South Africa, Business Leadership South Africa and others should develop a clear and firm Code of Ethics on lobbying of politicians that should bind its members. Maybe the JSE also needs to look further into this issue?
26. The Steinhoff scandal has pushed the N/MC issues off the national agenda for now, but I do not think your issues will disappear.
27. A copy of this letter is being sent to MultiChoice CEO, Mr Mawela. After all, even if not as central as Mr Bekker and Mr Patel, he was complicit in the allegations against MultiChoice covered in this letter. I very much doubt N/MC will hold him to account for this – but, who knows, maybe someday when he is much older he might have to deal with his conscience and he may finally acknowledge some of the wrongs he is alleged to have done, and make some amends by personally funding projects among African youth in the ICT sector or in some such way?
28. Since this issue broke out in November, I have been taken aback by the number of people who have approached me, including within the business community, mainly when they bump into me at meetings or in the public domain to express their concerns about the way Naspers and

MultiChoice behaves. I find it very hard to believe that you are not aware of how Naspers and MultiChoice are perceived. Of course, you have these endless very impressive adverts about how much you are doing to empower Black, especially African, people. Could it be that you are seduced by your adverts? My own sense is that even if one-tenth of what you are alleged to have done is true, you have problems! But will you do anything about it? Not likely, if your 31 January media statement is anything to go by...

I thank you for your attention and convey good wishes.

Yours faithfully



Yunus Carrim MP



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On 2013/09/20, 1:44 PM, "NGosa" <thando.gosa@gmail.com> wrote:

>> Dear Hon Minister,

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>> It is with a profound sense of regret that we have to take this step. We as non-executive Interim Board members were completely astounded by the intransigent attitude of the chairperson in this morning's Special Board meeting when she blatantly refused to retract the submission presented to yourself sometime this week on the above subject matter under the guise of an SABC position when, in fact, it was not an SABC position.

>> To be frank, the events that have transpired around the above mentioned matter leave us with no option but to proceed thus in our attempt to protect the interests of the SABC in terms of the PFMA, and the Companies Act amongst others. Our duty of care in our actions when it comes to SABC matters, compel us to take this drastic step. The fundamental issue is the incredible breach of corporate governance in reaching a decision of such important magnitude. As the Accounting Authority, we have an obligation to exercise our fiduciary duties at all times.

>>

>> As background, on Monday 16th September, the Chairperson hastily convened a "Joint meeting of Group Exco and the Board" to, seemingly reach an SABC position on the above mentioned matter. When I tried to question what governance structure was this because it doesn't exist in the SABC Corporate Governance Framework, the company secretariat confirmed that that meeting was not a decision making structure but more like a brainstorming structure. I agreed that that was proper but I couldn't attend it because of prior commitments but will await an invite to a Board meeting wherein we'll process the output of this joint meeting and take a resolution. Those Board members who attended that meeting say they felt steamrolled into a pre-conceived position as the official SABC board decision on this subject matter. The meeting itself ended up inconclusively on the matter on its agenda.

Out of this concern, Board member Mavuso requested a Special Board meeting in terms of section 16:3 of the Memorandum of Incorporation for this morning in order for the Board to take stock of where we are as the Corporation on the subject matter, especially given its urgency. This meeting took place this morning at 07h30.

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>> In this morning's meeting, the Chairperson informed us that in a meeting with the Ministry (or DoC...the transcripts and Resolution can be made available to provide her exact words) last Monday, because neither EXCO, nor the Board had taken a position on the STB control matter at the Joint Meeting, she took it upon herself to exercise her "casting vote".

>> According to her, while at the DoC/ Ministry on Monday, she exercised this by phoning various members of EXCO and, when 8/10 Exco members told her that they do not want STB control, she "used her casting vote" and made a decision that the SABC position on STB control is that, "The SABC does not want STB control".

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>> As individual Board members, we then tried to explain to her that:

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>> 1. As Chair of the Board, she has no role in EXCO decisions. That is the prerogative of the GCEO. Thus she had no right calling various members of EXCO soliciting their views on any matter, let alone collating those views and somehow translating them into a decision outside a formal meeting,

>> 2. A casting vote is only exercised in a properly constituted meeting with a requisite quorum. She can only exercise her 'casting vote' in a meeting of the Board. Not on an EXCO decision. (The

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GCEO then added all manner of other similar instances that now serve as a matter for the Board to deal with as they are now, a Board matter).

>>

>> While the Chairperson later on in this morning's meeting, seemed to somehow acknowledge the improper processing of an SABC decision wherein what is really "a view" was conveyed to the Ministry as an SABC decision (citing the lack of time and the urgency of an SABC view on this matter - which we indicated clearly that time could never be an excuse for flouting proper governance processes), she indicated that she would not write to you nor the DoC to retract the "view" she expressed to yourselves as an SABC position.

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>> Thus, this serves to put on record to yourselves that, as we speak, there is no formal SABC position arrived at during our tenure as the Interim Board on the subject matter mentioned above. Our Company Secretariat and the GCEO are now trying to see if the previous Board had any position (captured in a resolution) and, if she finds (we've given them a deadline of no later than today), then, THAT will be the position of the SABC until this Board rescinds it.

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>> We are available to meet with the Minister so that we can reiterate this position verbally in a Board meeting at the Minister's earliest availability. Also, transcripts of the Monday 16th ("Joint meeting of Group EXCO and the Board..a non decision making structure), as well as of today's Board meeting are also available should the Minister so wishes to access them for background information ahead of such meeting.

>> Our interest is in the speedy correction of this irregularity and a properly arrived at SABC decision made so that the SABC cannot be seen as delaying progress in this very important matter of national interest, the roll out of DTT.

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>> Kind Regards,

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>> Ms Noluthando P. Gosa

>> Mr Ronnie Lubisi

>> Mr Vusi Mavusi

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>> Sent from my iPad

On 2013/09/25, 8:09 AM, "Ellen Tshabalala" <ellen@fortuneholdings.co.za> wrote:

Dear Ms Gosa

Thank you for the e-mail dated 20th Sept 2013. Your attention is called to the recent events of the month of September. I trust you all had a good break and a joyful Heritage Day!

Ms Gosa, it is disturbing to realize that, despite our meeting (requested by Mr Mavuso) to clarify our position on Set-Top-Box control, you are still unhappy that the outcome does not satisfy you. I accept that, as it is a norm that in meetings, members are allowed to disagree, and you have done so, in many meetings since the inception of this Interim Board in April 2013. You have been in more disagreements than agreements.



My other concern about you is that, in a well constituted meeting, you will dissent, then mobilize other board members after, to gang against the view you are not supporting. This I find

highly immature, and destructive to say the least. What is also worrisome for me, is that, you are always so bogged down to companies act, corporate governance, PFMA and fiduciary responsibility without understanding the subject for debate, attendance and follow up on discussions tabled. As a result, you build on corridor rumors as you mentioned in our last meeting that "this is not what is said in the DoC corridors". Now, with due respect, some of us do not conduct business based on rumors.

Coming back to the issues you raise, you are deliberately misleading the Minister, the DG and members of the board. I am warning you to desist from pushing your untrue and misrepresentation of facts, in order to create an impression that you are creating order where there is chaos.

1. It is NOT true that I called members of EXCO, personally. (we can listen to the recorder) to confirm.

2. The meeting held to discuss STB control was a board meeting and NOT an EXCO, it is recorded so accordingly and it was clarified in the meeting.

3. Your dessention in the outcome of the meeting was accepted and that was the only voice, why are you dragging Mr Mavuso and Mr Lubisi when they didn't join your usual dissention?

They are allowed Ms Gosa, to speak for themselves.

4. I explained to all of you, how time was against us in delivering what the Minister wants. Prior to the date we set to discuss the matter, I invited members of the board (Mr Mavuso and Mr Lubisi) who are chairing two committees that have great impact on the subject, they could not make it, despite all this you were passive when Minister presented the matter to the board, you should have raised your concern about time allowed to deliberate on the matter, instead you are on record saying Minister does not have a right to fastback this issue at the expense of proper process being followed.

5. I raised the issue of the previous position, which the three of you believed was a sanctioned resolution by the previous board, condoning that position (as per GCEO submission). To my surprise, again, GCEO has mislead the board, there is NO minute capturing that resolution of the previous board. The conclusion is, even that previous position does not stand the test of scrutiny and proper governance process adherence.

6. In our Monday (joint Board and Exco meeting) Mr Mavuso proposed that we reopen this discussion and debate the STB control and I accepted that. But you continuously create an impression as if there's deliberate avoidance to open it for a debate to all our governance structures. I accepted your meeting, and to my surprise, Mr Mavuso still calls the Minister before we meet, this I find disturbing, and in breach with the corporate governance norms. Why subject the Min to issues we can discuss and conclude? Why not raise issues with me in a meeting first? Worse of all refuse to pencil them down?

7. Please note that your position as deputy chair does not allow you to open a "gang" to speak on their behalf, they can speak for themselves. (My advice to them, they must speak to the chairperson of the board first and not the Minister) if they have any matter to raise. I've always accepted their views and have always taken their individual views seriously. I do not know why you are now assuming the role of being their spokesperson of the two members.

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8. You spoke about rumors in the corridors of the DOC on the matter, but I shall not subject the matters of the board to rumors, one day when you become chair, you can do so at your own peril.

9. Ms Gosa, this Interim Board has been working very well with your little participation, and as we reach our final journey, we do not need this negative energy you are trying to breed. Spare yourself some time to understand how your actions impact on SABC and begin to create some optimism going forward. There is no war on Set-Top-Box control, it is supposed to be a healthy, commercial debate.

10. In the instance of the above, the underlying confidentiality principle that embodies the sanctity of the board has been undermined and unacceptable. The Board Charter signed upon your appointment references the minimum acceptable standards and conduct of the SABC's board members

Section 8:7 of the Charter defines misconduct by directors to include "leaking of confidential information and/or matters discussed by the board and its committees" as well as actions "in relation to the performance of duties, acts in a manner of gross negligence, willful misconduct of breach of trust" These are both grounds for termination of the services of a director.

I'm mentioning the above, since you, and fellow directors seem to downplay the breach of confidentiality by the GCEO, in Minister's round table meeting, by calling for support from a fellow board member who was not present at that meeting.

As expressed in our last board meeting, the Hon. Min, Dep Min and I met to deal with the matter and a presentation to the new board (new board), Minister and Dep Minister shall be prepared soon. I hope and wish that the above conduct does not cascade to the new board.

Regards
Zandile Ellen Tshabalala

On 2013/09/25, 8:36 AM, "Noluthando" <thando.gosa@gmail.com> wrote:

Dear Chair, In the interests of limiting ourselves to facts, the transcript of Friday's meeting are available to settle the matter. Kind regards, Noluthando Gosa, Deputy Chairperson

Sent from my iPhone

On 2013/09/25, 8:56 AM, "Lulama Mokhobo" <mokhobolp@sabc.co.za> wrote:

Dear Chairperson

I am once again sending you the letter I wrote to you on 17 August 2013 responding to a litany of your allegations. You continue to argue that I misled the Board on the issue of the Head of Legal despite the explanations I have given to you.

You once again insist that I have breached Board confidentiality when I consulted Mr Mavuso on the round table meeting. I suppose you would have preferred that I kept quite knowing that what was being argued as

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an SABC position was in fact not, i.e. that a resolution of the Board had NOT been passed to that effect.

I suggest that you leave it to the Honourable Minister and the Director General of Communications to decide whether I did breach the confidentiality of his meeting by consulting a Board member to check the accuracy of my understanding.

You further more quote Section 8:7 of the Charter saying "defines misconduct by directors to include "leaking of confidential information and/or matters discussed by the board and its committees" as well as actions "in relation to the performance of duties, acts in a manner of gross negligence, willful misconduct of breach of trust" These are both grounds for termination of the services of a director.

I'm mentioning the above, since you, and fellow directors seem to downplay the breach of confidentiality by the GCEO, in Minister's round table meeting, by calling for support from a fellow board member who was not present at that meeting." To justify the paragraph above. As you know, that section has got nothing to do with the agenda you are attempting to drive.

As for this afternoon's meeting you have asked for with me, please note that I will not attend it.

Please also note that I reserve my legal rights in your intention to sully my name to the incoming Board.

Lulama Mokhobo | SABC Limited
Group Chief Executive Officer
Tel: +27 (11) 714 4989 | Fax: +27 (11) 714 4869
Private Bag X1, Auckland Park, 2006, Gauteng, South Africa
E-mail: mokhobolp@sabc.co.za
www.sabc.co.za

Sent from my iPhone

On 2013/09/28, 11:20 AM, "NGosa" <thando.gosa@gmail.com> wrote:

Dear Ms Tshabalala,

While on the subject of setting the record straight, may I address the following points you sought to make in your email addressed to me below, which, because of time pressures last Wed I didn't respond to:

1. On the subject of my dissenting notes, please note that the new companies act provides for directors to have their notes of dissent on resolutions they believe could have grave consequences for the organizations and themselves, to be captured. I have previously

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exercised this right on two matters (a) the approval of the 24hr News channel and, (b) on the financial settlement for Phil Molefe. This provision of the companies act seeks to protect directors from decisions of a majority, which the director's conscience does not allow him or her to support.

Of course this does not invalidate the decision made by the majority, unless of course it is illegal, but it exonerates the said board member from the collective responsibility for that decision should it be proved to be in breach of either corporate governance or the Board's governing statutes (or both).

In case you are not aware, I sit on Boards of companies listed on the Johannesburg and the London Stock Exchanges. I passed the probity checks of these strict institutions and, to remain on those Boards, I cannot be part of a decision that, in my opinion, can or is later proved not to have complied with governing statutes. Having found to have breached corporate governance is not an option for me.

2. On your allegation about me not attending meetings, as indicated, when I was interviewed for the SABC Board, I committed to two or three meetings a month, not two or three meetings A WEEK! Even worse, meetings that get convened with 24 or 48hr notice periods without anyone bothering to check in advance if my diary allows.

Apart from the risk to the quality of decisions made therein due to insufficient time to process documents, according to our Memorandum of Incorporation, the Board is required to set a schedule of its meetings beginning of term and stick to it. If it wants to veer outside of this schedule, permission has to be sought from the Minister. I do not remember seeing a letter to the Minister requesting permission for us to veer from our schedule.

The requirement to seek the Minister's permission must have been prompted by previous Board Chairpersons and Members who depended on the SABC Board fees for a living. I recall the Mkonza and Funde Boards. They'd convene numerous Board meetings to boost their Board emoluments, resulting in them assuming to themselves taking operational decisions and also, taking up too much of executives time as executives have to spend all their time preparing and attending these meetings instead of running the business.

In short, I do not believe being effective and doing the right thing is

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demonstrated by convening and attending too many meetings. Effectiveness can be achieved by working smarter. But, that is just, my opinion.

3. On the STB matter, below the GCEO has captured the essence of the matter. I will let the Board members accused of having me as their spokesperson to speak for themselves when requested to do so. However, as indicated in my brief response to you on the 25 September, the transcript of the Board meeting of two Fridays ago will quickly settle the matter.

Kind regards,
Noluthando Gosa

2. *Ng*

15

From: "Mokhobo" <mokhobo@telkomsa.net>
 Date: September 17, 2013 6:32:44 AM GMT+02:00
 To: <roseys@doc.gov.za>
 Cc: "David Niddrie" <david.niddrie60@gmail.com>
 Subject: STB

Dear DG

I hereby confirm that the STB control position presented to the Minister, officials of the DoC and other delegates present yesterday by the acting COO, Hlaudi Motsoeneng and the Chairperson of the SABC Board, Ellen Tshabalala was in fact NOT an SABC position as posited. The deliberations held by the joint group executive and the Board raised a number of very serious concerns about the presentation, and these were clearly ignored by the 2 colleagues.

Secondly, the Board did not provide any mandate to the 2 colleagues to present what they did yesterday as an SABC position. This effectively means that the forum, as led by the Minister and the DG, was misled.

I did not raise the issue in front of all the delegates as I did not want to turn the session into a screaming match. I did however inform you of it via sms as soon as I could, having also garnered the opinion of board member Vusi Mavuso, which I forwarded to you.

The transcript and sound clip of the meeting will be forwarded to you as soon as my work ipad operates properly again.

I hope you will find the above in order.

Kind regards

Lulama

From: Lulama Mokhobo <mokhobolp@sabc.co.za>
 Date: Wednesday, 25 September 2013 at 9:16 AM
 To: <ellen@fortuneholdings.co.za>, Ellen Tshabalala <TshabalalaEZ@sabc.co.za>, <ngosa@broll.co.za>, <maveeso@gmail.com>, <mrlinc@mweb.co.za>
 Cc: Yunus Carrim <yicarrim12@gmail.com>, DG Rosey Sekete <Roseys@doc.gov.za>
 Subject: FW: 2nd notes on STB

Dear Chairperson

May I once again draw your attention the email I sent to you and the

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other Directors on the STB control matter. The Company Secretary, Ms Fahmida Valla is, as you know, checking the veracity of this submission.

Lulama Mokhobo | SABC Limited
Group Chief Executive Officer
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Private Bag X1, Auckland Park, 2006, Gauteng, South Africa
E-mail: mokhobolp@sabc.co.za
www.sabc.co.za

From: Lulama Mokhobo
Sent: 21 September 2013 05:28 PM
To: <ellen@fortuneholdings.co.za> (ellen@fortuneholdings.co.za);
ngosa@broll.co.za; maveeso@gmail.com; mrlinc@mweb.co.za; Hlaudi
Motsoeneng; Tian Olivier
Cc: Theresa Geldenhuys; Fahmida Valla
Subject: 2nd notes on STB

Dear Fellow Directors

Herewith are additional documents. The previous email could not carry all.

In addition, I hereby offer the following facts as I know them:

- The 2007 Board of the SABC passed a resolution on 18 October 2007 adopting the Digital Migration Strategy as was presented by the then executives of the SABC. Both documents are attached to this email.
- In August 2008 the Department of Communications launched the Digital Migration Policy (BDM). The policy closely resembled the SABC strategy as reflected above. This led to the crafting of a joint SABC/etv presentation 2008.
- On 11 March 2011 an open tender process to acquire a set top box control (STB) vendor was launched by the SABC and etv. The tender was never concluded.
- On 23 July 2012, the SABC Board took a resolution that the GCEO be mandated to sign the SABC/etv memorandum of agreement allowing the two entities to cooperate in the sourcing of

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the STB control vendor as per the 2008 SABC/etv strategy presentation.

- It should be noted that following the decision by the former Minister of Communications' decision not to proceed with the etv judgement appeal, the former Technology subcommittee of the Board passed a recommendation on 14 March 2013 to adopt the Sentech NagraVision solution as had been presented to the meeting. This was to be done via a round-robin resolution of the Board, and followed by a letter to the Minister under the signature of the GCEO on the 15 March 2013.
- The letter was written but never sent as the standing of the Board remained illegal without a Chairperson or Deputy being available as they had resigned from the board.
- On 19 April 2013 the FIPT subcommittee of the current Board received separate presentations from etv and Sentech. The meeting resolved to recommend to the Board that the SABC proceed with its own tender process to acquire an STB vendor.
- The ACOO and his team subsequently embarked on a process that led them to arriving at a completely different position.
- The joint meetings of the Board and group executives were presented with both alternatives on 9 and 16 September 2013.
- On 11 September 2013 the SABC represented by the Chairperson, ACOO and the GCEO attended the first Round Table meeting convened by the Minister but did not present as the second option had not been presented to the SABC exco and Board. The divergent views presented at that meeting, coupled with the fact that the SABC could not deliver its own presentation, led to a decision to interrogate the technical issues surrounding STB control at a workshop attended strictly by technology representatives on 13 February 2013. The GE Technology was precluded from attending that workshop.
- On 16 September 2013, the Board and executives of the SABC met in a joint meeting to receive the alternative presentation, and agree what would ultimately be presented to the Round Table meeting on the same day. That meeting reached no agreement as to what would be presented as the official SABC position as disagreements persisted.
- The presentation that was thus made to the Round Table could therefore not be presented as an official SABC position but was, surprisingly, presented that way.

Best regards

Not

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Lulama Mokhobo | SABC Limited
Group Chief Executive Officer
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26 July 2013

Hon. Minister Yunis Carrim
 Minister of Communications
 Private Bag X01
 Pretoria
 0001

Dear Honorable Minister

SABC POSITION ON DTT, DTH AND STB CONTROL

The above mentioned subjects have reference.

Pursuant to our introductory meeting held at the SABC's offices on the 17th of July 2013, where a way forward was discussed to address urgent matters that could be addressed during the short period left to 2014, with DTT matters being priority number one, the selected task team members met the next Friday on the 19th of July 2013 and agreed that the SABC was going to urgently revert back to the DOC with its official Board approved position on the salient matters.

After careful scrutiny of the policies, standards, regulations and progress made thus far with regards to the DTT project since 2008, and the ITU deadline set for July 2015, we are pleased today to inform the Shareholder that the SABC has reached a position that when viewed from various dimensions, it believes is progressive and in the best interest for itself, the industry and the Republic.⁴

The proposed positions being:

- That the SABC supports the implementation of STB control as originally envisaged in partnership with the other FTA Broadcasters except the limitation of access to TV and Radio serviced by switching off the STBs.
- The SABC is highly in favour of launching DTH as an immediate achievable objective; and.
- The SABC recommends that the subsidy budget for Set Top Boxes be utilized for DTH boxes, or majority of the budget, prioritizing communities that had been on the identified list for low power transmitters to speed up access to services to the indigent communities that had been previously disadvantaged and/ or marginalized.

South African Broadcasting Corporation Limited SOC: Registration Number: 2003/023915/06
 Non-Executive Directors: Ms Ellen Tshabalala (Chairperson); Ms Noliuthando Gosa (Deputy-Chairperson)
 Mr Vusumuzi Mavuso; Mr Ronny Lubisi; Dr Iraj Abedian

Executive Directors: Ms Lulama Mokhobo (Group Chief Executive Officer) Ms Gugu Pride Duda (Chief Financial Officer)
 Mr Hlaudi Motsoeneng (Acting Chief Operations Officer); Company Secretary: Ms Theresa Victoria Geldenhuys

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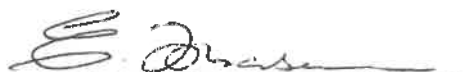
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Upon receipt of approval or alternative position from the Honorable Minister, the SABC shall immediately commence to:

- Communicate the relevant respective decisions to the relevant stakeholder's i.e. ICASA, SENTECH, other broadcasters, SABS, Post Office, USSASA and the Manufactures.
- Submit the Free to Air MOA to ICASA for approval on its fairness and openness as requested by ICASA as the custodian of industry bodies.
- Work with other Free to Air broadcasters to select the vendor for STB control through normal governance processes, taking into account the lateness of the DTT project. Once the decision on the supplier/mechanism is resolved, a communication will immediately be issued again advising all parties to such.

We look forward to hearing from you soon

Yours sincerely



ZANDILE E. TSHABALALA (Ms)
CHAIRPERSON: SABC BOARD





SABC BOARD

26 July 2013

DTT SET TOP BOX CONTROL

1 Purpose

The purpose of this submission is to propose to the SABC Board, an official SABC position with regards to DTT STB control, a position which will need to be negotiated with Broadcasters, Community Broadcasters and jointly communicated in writing to the DOC, ICASA, and the industry at large.

2 Background

After an introductory meeting held at the SABC on the 17th of July 2013 to introduce the new Minister of Communications and acquire a fresh mandate from the Shareholder, a select advisory team was constituted to deal with salient items that were identified as high priority matters. DTT STB control was one of the priority areas identified. Subsequent to that, a follow up meeting chaired by the DG was held at the DOC on Friday the 19th of July 2013, during which a request and commitment was made for the SABC to return to the DOC with its position on STB control in writing within three days, in order to allow for the shareholder to apply his mind and ultimately make a decision having considered all inputs.

This submission seeks to facilitate that request through following the SABC's governance processes. After the Board approves the SABC's position by way of resolution, the other stakeholders can then be informed by the Chairperson and the GCEO in writing.

The STB control matter has been a very contentious issue due to various factors that have unfortunately delayed the DTT project.

There has been profound confusion in the past on who was to give direction on the matter, which constantly exposes the project to a continuous high risk of litigation. This submission intends in no way to deliberate on the past, but rather seeks to establish a forward looking solution, within the complexities of the present.

The submission is based on the approved BDM policy read together with its regulations, SANS 862 standard, the 2007 Board approved SABC digital migration strategy, various Group Exco and Board Committee resolutions that reaffirmed the position of the SABC based on the strategic guidelines to:

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- Increase licence fee revenues and create new unique revenue opportunities;
- Strengthen SABC brand and value proposition to the customer;
- Enhance public service delivery; and
- Protect market share.

3 Risks

- The DTT project will continue to delay if a decision is not made
- Threat of Litigation.
- Continued project delays risk fracturing relationships amongst all incumbent Broadcasters to such an extent that the overall DTT project will most probably be irreversibly jeopardised.
- Loss of revenue and market share due to the SABC falling behind competition and new entrants in the market, which will inevitably render the SABC as an unviable going concern as over time its revenue begins to fall below its operating costs.
- The SABC's lead role as a public/ national broadcaster will be overtaken by commercial players, further threatening its relevance as its competitors make inroads to its traditional audience LSMs.
- Once DTT/DTH is launched, any advancement not included on the initial system design will not be implementable due to logistics of working on live systems and budgetary constraints associated with secondary migration of the citizens.

4 Recommendation

1. The following will be recommended that the Board approves the proposed SABC's official position on DTT at its next scheduled meeting:
 - That the SABC supports the implementation of STB control as originally envisaged in partnership with the other FTA Broadcasters, except the limitation of access to TV and Radio services by switching off the STBs.
 - The SABC is highly in favour of launching DTH as an immediate achievable objective; and
 - The SABC recommends that the subsidy budget for Set Top Boxes be utilized for DTH boxes, or majority of the budget, prioritizing communities that had been on the identified list for low power transmitters to speed up access to services to the

indigent communities that had been previously disadvantaged and/or marginalized.

2. It is further recommended that the Board approves:

- the SABCs position to be communicated to e.TV, DOC, ICASA and Industry;
- the Free to Air MOA to be submitted to ICASA for approval on its fairness and openness as requested by ICASA; and
- the SABC to work with other Free to Air broadcasters to select the vendor for STB control through normal governance processes, taking into account recommendation 1 above, and the lateness of the DTT project.

Supported by:


Sipho Masinga
GE: Technology

26/07/2013
Date

Supported by:


Hlaudi Motsoeneng
ACOO

26-07-2013
Date

Requested by:


Lulama Mokhobo
GCEO

26/07/2013
Date

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Annexure 17



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 www.sabc.co.za

12 August 2013

Honourable Mr Yunus Carrim (MP)
 Minister of Communications
 Private Bag X860
 Pretoria
 0001

Dear Honourable Minister Carrim

SUPPORT OF THE SABC POSITION ON STB CONTROL MATTER

The bilateral meeting between you and the SABC Board refers.

At the meeting, the SABC was requested to prepare a narrative encapsulating a cost - benefit analysis for the exclusion of Set-Top-Box (STB) control mechanism in the individual STB units.

Herewith, please find the narrative summary from the SABC which is against the first proposal as promised.

Should the need arise to get some clarity on any aspect of the letter, please feel free to contact me anytime so that I can assemble the team to provide it as soon as possible.

Yours sincerely

ZANDILE E. TSHABALALA (Ms)
SABC BOARD CHAIRMAN

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Ms Ellen Tshabalala
Board Chairperson
28th Floor, Radio Park
Auckland Park

STRATEGIC PERSPECTIVE ON THE DIGITAL BROADCASTING ROLE OF THE SABC AS A PUBLIC BROADCASTER

Background

It has since come to CBOC's attention that there is information that Group Executive Committee was not privy to, prior to the approval of the Joint Venture with eTV. In light of this, the Operations Committee is therefore of a different view than the previous position taken by Group Exco. The CBOC has prepared a Business case for submission to Group Exco to rescind the previous Group resolution.

Operational Involvement of Department of Communications

In 2008, when the first Broadcasting Migration Policy was adopted by the Department of Communications (DoC) and National Treasury (NT) made a financial allocation of funds for the subsidies for STB control to the Universal Service and Access Agency of South Africa.

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(USAASA). The Department allocated itself the role of procuring STBs which makes it a player and a referee as the policy making Department.

When the Department lost the case against e-TV, it became certain that the policy position of the Department that placed Sentech at the core of Digital broadcasting distribution failed. SABC is affected by this because e-TV as it aims to out manoeuvre the SABC by launching its satellite business and selling its own STB with over 20 free-to-air channels in September 2013. This e-TV venture is a threat to the SABC and the market audiences it currently commands, and goes against the goodwill of the MOU signed between SABC and eTV

This is a situation that requires an urgent response by the Department as a Shareholder and the SABC to return the SABC to a position of leadership. The Department needs to urgently consider the following:

- Allow SABC to decide its own free-view platform independently of e-TV.
- SABC must not be forced into a marriage with Free to Air (FTA) broadcasters based on the STB control which arrangement will not last long due to conflicting interests.
- Allow the SABC to explore obtaining its own STB within its own procurement process in order for it to determine and control its own creative and innovative destiny.

The SABC is of the opinion that posts the e-TV case judgement, the Department cannot be responsible for appointing manufacturers to design and manufacture boxes. This is now a market issue. The SABC must be empowered, by government, with funding, to obtain the boxes and launch its services urgently. The SABC will obtain legal opinion in order for it to ensure that it protects its right of broadcasting to the public, and that this constitutional right is not infringed upon.

Policy Inconsistencies and legal crisis

e-TV has used the courts to create a crisis for the country and the SABC by threatening to interdict every action or decision that the government and the SABC make in this respect. The Department must lead public policy in the public's interest which means that the SABC must be the leading free-to-air platform offering various genres of content services to the public by executing its basic mandate in terms of the law and the constitution.

The Department made policy pronouncements which intended to amend the policy in respect of enforcing STB Control. The SABC supports this policy amendment. This policy will help reduce the cost of boxes and free the system from the controversial issue of binding the country to a

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single system operator. SABC supports a broadcasting system which is free from Conditional Access so that the public can benefit from their government's investment in a technology free from interference. South Africa must learn from the experiences of Italy where a similar system of Conditional Access was implemented but collapsed.

The country needs consensus on new systems whilst taking cue from the likes of e-Tolling software and e-NaTIS where the government was made to fund foreign designed systems. This led to economic loss in funds, jobs and electronic excellence development potential which was exported to foreign countries.

The policy of no STB Control is aligned with the Government position of extending universal access to broadcasting services to the population of this country. This supports the views expressed by the late Honourable Minister Padayachee who questioned the need for STB control and the location, as well as who must control it.

The SABC is committed to work with Sentech as the signal distributor and potential carrier of SABC channels.

The SABC will lead the process of determining the STP specifications suitable for its purposes and will also determine the most suitable distribution channels.

Increased costs for SABC from STB controls

The SABC desires to allow the public to benefit from STBs at the lowest cost possible. However, the SABC will be forced to incur the following avoidable costs, if it is to adopt eTV's position on STB control:

- On-going royalties per activated box that we will pay to the STB Control vendor
- The establishment and support of a business system to manage the STB control, involving significant costs
- We will need a permanent call centre to support STB control, which will deviate us from our mandate of broadcasting, it should be noted that we are not in the business of managing call centres as these are complex and costly
- What happens when the system fails? Does the SABC have to take responsibility for such failure and again incur huge costs to upgrade the system
- We know that software needs constant upgrading – This will mean additional once off costs from time to time




Inadequate SABC commercial benefits for SABC from STB control

There is no benefit for the SABC, but there is very clear benefit for eTV. A normal pay TV licensee has to buy market and sell boxes into retail shops like Makro and to subscribers. If the DTT box already has encryption (STB Control/ CA) paid for by Government, eTV won't have to do this and will not have to incur this cost which runs into hundreds of millions of rands per annum. Unlike the SABC, eTV has a pay TV license and a free to air license. People will be able to access their pay service through this box. Only these people will be able to get access to the free to air services of the SABC and eTV. Other pay TV broadcasters will be blocked from receiving the free to air services on the DTT. All broadcasters are under obligation on the Must Carry principle, and thus should be able to carry FTA services.

Further, eTV is launching a FreeSat (Openview) which in future will logically include a pay service which use the same system – so it will benefit from reduced costs for this platform as well.

We, as the SABC, will be enabling and supporting a competitor who will undermine the service of the SABC in the future with free channels and cheap pay TV bouquets which is exactly our target market. They will take valuable advertising revenue away from the SABC, eTV benefits and grows at our expense.

Partnering with eTV and supporting STB control is not in our interests – it will only benefit eTV and in the long run, we as the SABC will be the ultimate loser.

Disaster Management

The Broadcasters are currently able to do the following without investing in the STB control:

- South African Weather Bureau gives regular update to SABC and other broadcasters to alert the public, countrywide or in certain areas
- Radio stations can be used to broadcast area specific alerts
- Cellphone infrastructure can be used for cell broadcast, and
- The Department of Water Affairs via the National Joint Operations Centre (NATJOINTS) gives updates to broadcasters on flood warnings as it monitors river and dam water levels across the country.




Languages

The SABC will continue to broadcast in different official languages. The SABC will continue to sub-title popular, educative or informative programmes into other languages, including disaster alert messages if and when required.

Resolutions Taken

The CBOC considered all the above matters, and came to the resolutions below:

We do not support the inclusion of STB control going forward. The SABC as a public broadcaster, with a mandate not to switch off any viewer, cannot affect the feature of access control. The inclusion of the control feature will also cause the cost of STB unit to be higher than it would ordinarily be which is against the public interest.

Yours Sincerely,


.....
Mr Hlaudi Motsoeneng
Chief Operations Officer (Acting)
.....
Mr Tian Olivier 12/8/13.
Chief Financial Officer (Acting)

18

Mail & Guardian

AFRICA'S BEST READ

MultiChoice: Bully boy or dirty player?

[Lloyd Gedy](#) 08 Dec 2017 00:00



Battle royale: It is alleged that Koos Bekker instructed Imtiaz Patel to threaten to penalise e.tv when it came to renewing eNCA's contract with MultiChoice if the free-to-air channel did not toe the line. (Halden Krog/Bloomberg/Getty Images)

MultiChoice threatened to drop 24-hour news channel eNCA from its DStv platform if parent company e.tv did not reverse its pursuit of encrypted set-top boxes, it has been alleged.

The set-top box dispute involving MultiChoice, e.tv and the government — which went all the way to the Constitutional Court — was crucial in deciding whether e.tv would get a look into pay television or whether MultiChoice would continue to enjoy its 98% market dominance.

This week MultiChoice, parent company Naspers and Naspers chief executive Koos Bekker rallied against allegations by amaBhungane and News24 that it had paid the Gupta family through ANN7, and had unduly influenced former communications minister Faith Muthambi, to ensure it won the battle over set-top boxes.

Now the *Mail & Guardian* can reveal that, on the eve of a mediation process to resolve the issue of set-top boxes in mid-2013, MultiChoice chief executive Imtiaz Patel threatened to penalise e.tv when its eNCA contract came up for renewal. This was confirmed by Yunus Carrim, who was communications minister before Muthambi, and three sources privy to the negotiations.

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Carrim told the *M&G* that, shortly before the mediation process began, an e.tv representative had phoned him.

“Patel had threatened that, if they [e.tv] persisted with their support for encryption, DStv would sort them out when it came to the renewal of the five-year contract,” said Carrim. “I think one of the mediators reached out to MultiChoice and the matter was addressed.”

One of the three sources confirmed that an e.tv representative had raised the issue with Carrim and another said that a member of the mediation team had addressed it with MultiChoice.

MultiChoice was this week sent a number of detailed questions by the *M&G* but chose to comment only generally on the issues about set-top boxes, drawing a distinction between lobbying and “unacceptable and illegal activities such as the bribery of an official”.

“The ex-minister [Carrim] seems to suggest that it was somehow improper for MultiChoice to lobby widely for its view of DTT [digital terrestrial television] conversion. This is, however, exactly how standards are settled anywhere in the world when a technology changeover occurs,” it said.

Although it was Patel who lobbied directly, Carrim says the chief executive was merely Bekker’s “aggressive enforcer”, and that the Naspers boss was so determined to protect his pay-TV monopoly that he wasn’t going to allow any “new upstarts” into his space.

“On the first day of the mediation process, when the SABC and MultiChoice said that they did not believe the mediation process should continue, Patel constantly left the room to speak on his phone. ... Bekker was certainly present, even when he wasn’t around,” said Carrim.

Some months later, in a 2014 memorandum penned by Bekker and sent to Naspers group’s senior management — as reported by the *M&G* in 2015 — he criticised Carrim, claiming the minister was in thrall to free-to-air channel e.tv, which would benefit from encryption.

In the memo, Bekker also reportedly said Carrim would not be reappointed after the elections. Carrim was, as predicted, replaced by Muthambi after the May poll.

AmaBhungane and News24 recently revealed the contents of emails that suggest MultiChoice paid the Gupta family via ANN7 and lobbied Muthambi to influence the decision on set-top boxes in their favour. MultiChoice has rejected the accusation.



[Imtiaz Patel (Lee Warren, Gallo Images)]

Speaking about the relationship between Patel and former SABC chief operating officer Hlaudi Motsoeneng, Carrim said the two were “very close” and alleged that they had “colluded” on their approach to the mediation process, a claim that Motsoeneng denies.

“There was no collusion between the SABC and MultiChoice or myself and Patel,” said Motsoeneng.

Carrim said that Patel seemed to play some sort of role in “co-ordinating” those opposed to encryption.

The former minister alleges that the real fight against him and the DTT policy began in earnest in December 2013, shortly after the Cabinet’s decision on DTT was announced.

Carrim maintains that the full-page newspaper advertisements saying that he was in the pocket of e.tv were an “outrageous insult” and “libellous”.

“It was unprecedented,” he said. “I was told that Bekker had a hand in that.

“I spoke to Bekker over the phone in December 2013 and told him that, while they [Naspers and MultiChoice] have every right to oppose encryption, to suggest that I was supporting encryption to favour e.tv and may be getting a bribe was outrageous,” said Carrim.

“Frankly, I’d rather die than be corrupt. The encryption policy was aimed to encourage new African pay-TV players rather than serving e.tv’s narrow interests, yet the decision to drop encryption benefits only MultiChoice,” he said.

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"I told him that I've never had a business interest in my life and gave a substantial part of my salary away ever since I started working in 1983. What would I do with the bribe? How many more novels could I buy?" Carrim says he asked Bekker.

Bekker's alleged response was: "You tell me, minister!"

Said Carrim: "He clearly knew about the [smear] campaign and he was dismissive about my complaints. He also knew what was happening in closed SABC board meetings and in a lot of the negotiations on the encryption issue. So it's bizarre of him to suggest that it was a MultiChoice matter, not a Naspers issue."



[‘Outrageous’: Yunus Carrim was shocked by newspaper adverts accusing him of being in e.tv’s pocket. (Herman Verwey, Gallo Images, City Press)]

The first time Carrim met Bekker was when the Naspers boss came to his office in Cape Town in September 2013. Carrim said the meeting had been requested via Patel numerous times.

"Bekker's main purpose was to persuade me about the folly of set-top box encryption, and he seemed annoyed that I couldn't see how brilliant he is," said Carrim. "Even if he is so, it can't follow that he must decide government policy."

Carrim said that Bekker saw himself as an "adviser" to him as a relatively new minister, even though his business interests would have precluded such a role.

The second time he met Bekker was seven months later in Tshwane, with Patel and then finance minister Pravin Gordhan also present.

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"Following advice from several people, including senior ministers, department officials, advisers and the parliamentary committee chair that I meet Bekker, I suggested the meeting to Patel to see if we can persuade Bekker to come up with some compromises to take digital migration forward in view of the urgent International Telecommunication Union deadlines," said Carrim.

"I was told that Bekker respected Pravin and, since he too wanted the process to move forward, I suggested he be included."

Carrim said several people had suggested to him that Patel and MultiChoice board chair Nono Letele were not really the "ultimate decision-makers" but that Bekker was.

"The second meeting with Bekker also got nowhere," said Carrim. "He was completely determined to have his way. Bekker's attitude seemed to reflect a very primitive defence, not just of profits but of territory, of legacy.

"He was ahead of everybody in introducing pay-TV in South Africa and on the continent and elsewhere, and he wasn't going to allow any new upstarts in his space."

Carrim said he also had a few conversations with Bekker over the phone, but that he was unyielding.

Pointing out that, as the Guptas have been accused of having a say in the appointment of Cabinet ministers that serve their business interests, he suggested: "Maybe the same question should be asked about Bekker?"

Asked whether he knew at that time whether he was going to return as communications minister after the elections, Carrim said no, but mentioned an SABC official who had boasted that he had "got rid of an entire SABC board and would soon get rid of this minister".

"Several people, including in the private sector, told me that they'd heard this," he said.

The allegations against MultiChoice, which have dominated headlines the past few weeks, are starting to cause serious headaches for the television company and parent company Naspers.

United States law firm Pomerantz announced this week that it was investigating whether Naspers or certain directors may have been engaged in unlawful business practices.

In addition, the National Association for Manufacturers in Electronic Components said this week that it would take MultiChoice to the Competition Commission and would request a full inquiry by the parliamentary portfolio committee on communications.

19

DAILY MAVERICK

Business

The Way of Gupta? Pressure mounts for Naspers as MultiChoice faces fires on multiple fronts

- Rebecca Davis
- Business
- 07 Dec 2017 12:39 (South Africa)



With MultiChoice accused of having essentially “bought” government policy over digital encryption to benefit its business, calls for investigations are heaping up both locally and internationally. In addition to a potential class action lawsuit against the company being mooted by a US firm, the Chinese Securities Regulatory Commission has also been asked to launch an inquiry into Naspers. Comparisons between Naspers and the Gupta-owned company Oakbay, meanwhile, are inevitable. By REBECCA DAVIS.

The current scandal in which MultiChoice finds itself embroiled – and by extension its holding company, Naspers – has cast retrospective light on a number of issues from South Africa’s recent past.

One is the removal of Communications Minister Yunus Carrim in 2014 after just 10 months in his post, despite Carrim being hailed by industry players as the most effective minister ever to serve in that department.

Now it seems likely that the sticking point was Carrim’s outspoken support for the introduction of encrypted set-top boxes when South Africa was about to make the migration from analogue to digital TV broadcasting. Shortly after Carrim was replaced by Minister Faith Muthambi, Muthambi expressed her support for unencrypted devices – contrary to the preference not just of Carrim, but the ANC itself.

Asked if Carrim believes he was moved out of the Communications portfolio as a result of his support for encryption, he responds:

"That's what most people said, including senior ANC leaders."

Carrim says he was informed shortly after Cabinet took a decision in favour of encryption, in December 2013, that there was a campaign to remove him as a result of that policy.

"It was alleged that among the key people in it were an SABC official and board member, and people from MultiChoice and Naspers," Carrim told Daily Maverick.

These rumours have now been lent credence by the #GuptaLeaks report showing how MultiChoice lobbied Muthambi – and paid off the Guptas via ANN7 – to ensure the encryption decision went in the direction that would benefit the company. They have been further strengthened by the DA's release of minutes of a meeting between SABC executives and MultiChoice CEO Imtiaz Patel, in which Patel tells his audience that MultiChoice is willing to pay R100-million a year towards a 24-hour SABC news channel with the "deal breaker" condition that the "problem" of the set-top issue is resolved.

It seems likely that Carrim was viewed as the fly in the ointment as Communications Minister, with Carrim having made it clear to Naspers chair Koos Bekker that he did not agree with him on the topic of encryption.

Unencrypted set-top boxes would allow MultiChoice to maintain its monopoly over paid TV programming via DStv. If the government instituted encryption capacity, by contrast, it would mean that other broadcasters would be able to implement high quality paid programming.

Today, Carrim says that the choice was clear for both him and the ANC.

"Among many other reasons, encryption was aimed at facilitating new black entrepreneurs to enter the pay-TV market to reduce the extremely high level of monopoly; increase access to pay-TV to those who could not afford it; encourage the SABC to compete against DStv, which was usurping its market and advertising revenue; and stimulate the local electronics industry and job-creation," Carrim says.

"Who benefits from the dropping of encryption? Only DStv, of course, and a section of black entrepreneurs linked to them, certainly not the majority of black entrepreneurs. Why else do you think DStv so aggressively opposed encryption? They were fiercely protecting their 98% control of the market."

Naspers' response to the claims that the company exerted improper pressure and used financial incentives to influence policy has been twofold. First, Naspers says that for big businesses to lobby government over policy is completely normal.

"We interact with the government every single day," Naspers chair Koos Bekker told 702 on Friday. "We are debating, as of now, probably 10 policy elements with five government departments."

Naspers has also pointed out that it has never hidden its preferences about the encryption debate. "At some stage we even took out a full-page [newspaper] advertisement and we put

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out an open letter in which we put out our views," Naspers CEO Bob van Dijk told Fin24 this week.

But Carrim points out that there is a distinction between lobbying and buying policy. He says it is nonsense to suggest that MultiChoice's actions are par for the course for big business.

"Of course, business has every right to lobby and should do so, but within reasonable limits and within a code of ethics," Carrim says.

The second line of defence has been for holding company Naspers to seek to separate itself from MultiChoice, pointing out that MultiChoice has an independent board responsible for corporate governance failures.

Naspers is the sole owner of MultiChoice.

Doubt has been cast on this notion – of the essential separation of the two bodies – by reports that Naspers chair Koos Bekker was personally and intimately involved with the set-top encryption lobbying. Carrim has said that he met with Bekker twice and also received text messages and calls from him on the topic. Bekker has only confirmed that one meeting took place, at which he says Finance Minister Pravin Gordhan was present and nothing untoward took place.

Bekker has managed to maintain a relatively low profile in post-apartheid South African politics, despite building Naspers into Africa's largest company. The recent allegations, however, raise serious questions about the level of influence his financial muscle may have been able to exert on government policy.

A 2015 investigation by amaBhungane produced a 2014 memorandum sent by Bekker to senior management at MultiChoice stating confidently that Carrim would not be re-appointed as Communications Minister after the 2014 general elections – as indeed proved the case. The question of how Bekker would have had this information remains an urgent one, particularly as it brings to mind similarities to the Gupta brothers' approach to business.

Other old rumours are now being re-examined. A 2013 TechCentral article repeated a claim that President Jacob Zuma met personally with Bekker before the launch of ANN7 to "propose the idea of DStv providing the platform for the Guptas".

Asked for comment on this allegation on Wednesday, Naspers spokesperson Meloy Horn told Daily Maverick that the suggestion was "mischievous".

Horn said: "Mr Bekker has never met President Zuma privately and has never discussed any broadcast-related matters with him at all."

Bekker's personal response to the new MultiChoice claims thus far has seemed irritated and defensive, with the Naspers chair using the phrase "load of crap" in two separate interviews to dismiss notions of impropriety.

But this particular scandal looks unlikely to disappear quietly. This week, US law firm Pomerantz, which specialises in class action lawsuits, put out a call for Naspers shareholders who wished to investigate the possibility of launching a class action suit against Naspers on

the basis of "whether Naspers and certain of its officers and/or directors have engaged in securities fraud or other unlawful business practices".

To join the class action, Naspers stakeholders must sign a declaration to the effect that they are "willing to serve as a representative party on behalf of a class of investors who purchased or acquired Naspers securities during the [unspecified] Class Period, including providing testimony at deposition and trial, if necessary".

As the Mail & Guardian pointed out last week, just 0.2% of Naspers shareholders – a tiny group including Koos Bekker – control 68% of its vote.

On Tuesday, meanwhile, a civil society group called the #SA1stForum wrote to the Chinese Securities Regulatory Commission asking the body to launch an investigation into Naspers, on the basis of Naspers being a significant shareholder in Chinese tech company Tencent.

MultiChoice and Naspers are now facing investigations on multiple fronts. The Democratic Alliance has asked that ICASA (the Independent Communications Authority) launch its own probe. Other opposition parties have called for a parliamentary inquiry, and the ANC's Jackson Mthembu told journalists this week that he supported calls for an investigation.

Naspers has announced an internal investigation into MultiChoice, but Carrim says this isn't good enough.

He asks: "If Naspers has nothing to hide why don't they propose inquiries by Parliament, ICASA, the Competitions Commission and the Public Protector, instead of MultiChoice investigating itself?" DM

Photo: President Jacob Zuma greets Chairman designate of Naspers Koos Bekker after addressing a Team South Africa meeting on the margins of the World Economic Forum (WEF) in Davos, Switzerland, 20-24 January 2015. (Photo: Department of Communications)

20

JANUARY 2018

CALVO MAWELA, CEO OF MULTICHOICE
31 JANUARY 2018

Thank you Carol, and thank you to everybody joining us here today.

This afternoon, we are releasing the findings of a board review that was initiated by MultiChoice on November 30th.

It is, for all of us, a very humbling day.

Through the board process, it has become obvious that mistakes have been made, and that these mistakes have affected the level of public trust in MultiChoice. We accept that, with humility, and apologise for our mistakes.

We have put a number of management controls and corrective measures in place to make sure this does not happen again. These are genuine attempts to ensure we carry out our business as a responsible corporate citizen, and that we win back public trust.

Let me give you the headlines about what we are announcing today:

- Firstly, the board has found we made some mistakes in our dealings with ANN7 – but there is no evidence of corruption or any illegal activity.
- Secondly, we acknowledge that we should have looked into the controversies around ANN7 before public concern was raised – and these should have been escalated to the board sooner.



- Thirdly, we will not be renewing our contract with ANN7. Instead, we are going to be hosting a new black-owned news channel, and will be calling for proposals soon from interested media groups.

Let me repeat: We will not be renewing ANN7's contract, and the channel will not be broadcast on DStv once the contract ends on the 20th of August 2018.

In addition, we will ensure processes are put in place to highlight issues of controversy as they arise - and we will deal with them swiftly

As background, let me remind you about the mandate of the Audit and Risk committee. It was instructed by the MultiChoice board to examine:

- Whether appropriate procedures were followed in relation to the ANN7 contract;
- Whether the payments to ANN7 were handled correctly; and
- Whether there were irregularities in our submissions to government.

The audit and risk committees came together to examine these issues on behalf of the board. The committee was made up of four non-executive directors and chaired by Don Eriksson. The committee also included Advocate Kgomo Moroka - an independent non-executive director.

The committee also sought external support from Webber Wentzel (for legal advice on lobbying and contracts) and auditors Grant Thornton (for forensics, data analytics and validation of payments).

This was to strengthen their work and verify the findings.

The committee met several times, studied all relevant contracts, reviewed related payment information and emails dating back a number of years, interviewed those involved and did various objective price comparisons.

The committee made findings and some recommendations. These findings were supplemented by further recommendations from the MultiChoice management and board.

Mr Eriksson and Advocate Moroka are both here with us today and will be able to answer any process questions you may have.

Bob van Dijk, who is CEO of Naspers and a MultiChoice board member, is also here and will be able to answer questions you may have about the Naspers process.

Let's now turn to the findings.

The committee found the following:

- It is common practice to pay for content, including local news channels.
- The commercial terms of the ANN7 contract are within acceptable parameters associated with the establishment and cost of producing a news channel.

The analysis of the ANN7 contract highlighted the complexity of negotiating a start-up local news channel – a process which is very costly. The negotiations with ANN7 began at a time when MultiChoice wanted to add local black voices to reflect more diverse local news coverage on the DStv platform.

In addition, annual payments to eTV had escalated substantially, heading towards R500m p.a.



The commercial rationale was to assist in the development of the new ANN7 channel by contributing to its costs, allow it a reasonable term of three/five years to develop and, should it fail, let the agreement lapse at the end of the period as allowed for in the contract.

- The value paid to ANN7 was not abnormal relative to other local news channels carried on the DStv platform. MultiChoice paid an amount to ANN7 for a start-up 24-hour local news channel that was substantially lower than that paid to eTV and higher than that paid to SABC – both established news channels. MultiChoice.
- The committee found that the R25-million upfront payment to ANN7 made on 1 April 2016 was neither abnormal nor unusual. Other channels had, in the past, received upfront payments as part of channel negotiations.
- A detailed data analytics exercise covering five years of payments made by MultiChoice to ANN7 was completed, and this validated the payments against the contract.
- The process of negotiating the ANN7 agreements was a collective MultiChoice management process and not that of an individual. In the committee's opinion, this materially reduces the risk of corrupt activity.
- MultiChoice regularly makes submissions to regulatory stakeholders, both formal and informal. This is in accordance with acceptable practice. No irregularities were found in the way the regulatory submissions were made.
- No correlation was found between payments made to ANN7 and the MultiChoice lobbying effort.

However: The Committee believes that processes can be improved:

- Whilst it is acknowledged that MultiChoice had in the past not performed a due diligence on any channel ownership, the committee is of the view that in future such due diligence should be instituted and should be compulsory for all new start-up channels.
- Given the fluid nature of lobbying, which is part of the broadcasting and telecoms industry globally, MultiChoice shall study international best practise and formalise its lobbying process. The process shall be adhered to by all involved to ensure that an acceptable line is not crossed in such activities.
- When concerns were raised about the owners of ANN7, MultiChoice management should have acted more swiftly to escalate issues to the Board for formal consideration and decision.

The committee's findings and recommendations have been accepted by the Boards of MultiChoice and Naspers.

MultiChoice will therefore take the following steps:

- Ensure that robust due diligence processes will always be followed for start-up channels,
- Management will be called upon to highlight issues of controversy and reputational risk at quarterly Audit and Risk committees meetings. Key issues will be brought to the MultiChoice board for further consideration, and
- In the absence of national guidelines on lobbying and interaction with regulators and government, MultiChoice's lobbying process will be formalised.

Guidelines will be developed by the MultiChoice management for approval by the board.

As part of the review, the committee also commented on allegations concerning Imtiaz Patel's relationship with the Guptas.

MultiChoice notes that concerns have been raised about Mr Patel's prior connection to the Guptas, as well as the suggestion of inappropriate influence regarding MultiChoice's dealings with ANN7.

Following the Ccommittees's work and enquiries made by Naspers, it is clear that Mr Patel's previous relationship with the Guptas predates his appointment at MultiChoice, played no role in the terms negotiated for the ANN7 channel, and that he acted in the interests of the company.

The channel was negotiated as a collective by members of the senior management team.

MultiChoice's agreement with SABC has also been questioned. It should be noted that the SABC contract did not form part of the brief given to the committee. However, to be clear, Parliament has referred a number of third party agreements to the Special Investigations Unit (SIU), among them the SABC agreement and MultiChoice is co-operating fully with this investigation.

The future of ANN7

The Board of MultiChoice South Africa has decided that in light of the ongoing controversies, it would not be appropriate to renew ANN7's current contract when it ends in August this year.

Instead, ladies and gentlemen, we are starting the process of finding a new, black-owned local news channel.

MultiChoice continues to believe that the wide range of foreign and local news channels on our platform – representing widely divergent views -- need to be supplemented with another local voice. In particular, a black-owned and run channel that represents the majority of people in this country.

Therefore, a bid process for a replacement news channel will be opened shortly. The successful bid will have to meet the following criteria:

- It must be owned, managed and run by a black South African company, free from any political or other interference.
- It must be able to provide independent, non-partisan and critical news coverage of current affairs.
- It must take into account South Africa's history, diversity of cultural backgrounds, language and socio-economic circumstances in the way it produces content.

We're very excited about this new initiative. We see it as a game-changer in the South African media landscape, and will be announcing more details in the near future.

In conclusion, let me emphasise that this has been a humbling episode for MultiChoice.

While we entered into an agreement with ANN7 at a time that the extent of State Capture was unknown, we fully understand the outrage of the public regarding endemic corruption in our country – and accept that we should have dealt with the concerns around ANN7 far more swiftly.

There's no doubt we have managed our communication of this issue poorly.

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I also would like to take this opportunity to confirm that the open letter which MultiChoice published in the media on 16 March 2014 regarding Digital Migration was in no way intended to cast aspersions on the integrity of the former Minister of Communications, Mr Yunis Carriem. We express our regret if that impression was created.

We must say that while we are pleased that the investigation into the ANN7 contract did not discover any corruption or other illegal activity, the questions we have faced throughout this process have been sobering.

Today we hold our hands up to our mistakes and set out a path to restoring public trust.

I know Bob would also like to say a few words, so let me hand over to him...

21

16 February 2018

The Honorable Yunus Carrim
National Assembly
Member of Parliament
P O Box 15
Cape Town
8000

via email: gsalie@parliament.gov.za

Dear Honorable Carrim

Thank you for your letter dated 14 February 2018, I have once again noted your views.

As stated during the recent MultiChoice press conference. We reiterate our words at the press conference that were expressed by the CEO: *"I also would like to take this opportunity to confirm that the open letter which MultiChoice published in the media on 16 March 2014 regarding Digital Migration was in no way intended to cast aspersions on the integrity of the former Minister of Communications, Mr Yunus Carrim. We express our regret if that impression was created."*

We are sorry indeed that during your ministry we could not agree on a suitable DTT set top box policy, we (like most countries) favouring an open system and you an encrypted system. Of course both parties were entitled to their own views. We need to point out that the matter was pursued all the way to the Constitutional Court, which gave a clear ruling.

We are also sorry that you do not give credit to the recent MultiChoice review of the allegations regarding the contract with ANN7, which were recently announced. In so far as you refer to further issues, the relevant authorities are looking into the matters and we are cooperating with them.

Kind Regards,



Nolo Letele
Executive Chairman



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE:
INVESTIGATION INTO THE SOUTH AFRICAN BROADCASTING CORPORATION**

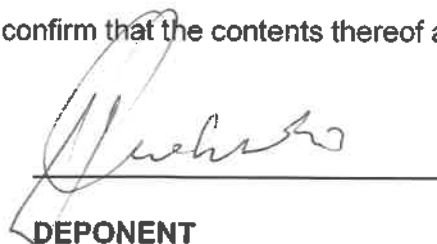
CONFIRMATORY AFFIDAVIT

I, the undersigned,

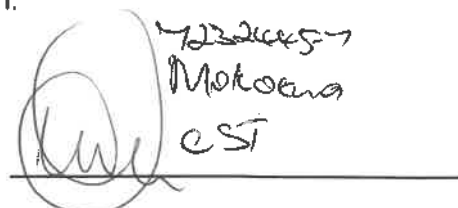
LULAMA MOKHOBO

do hereby declare under oath as follows:

1. I am an adult female currently unemployed and residing in Randburg, Gauteng.
2. The facts contained in this affidavit are within my personal knowledge, except where otherwise stated from the context, and are to the best of my belief both true and correct.
3. I have read the affidavit of Mr Yunis Carrim, and I confirm that the contents thereof are both true and correct insofar as it relates to me.


DEPONENT

I certify that the Deponent acknowledged that she knows and understands the contents of this affidavit, that she has no objection to the making of the prescribed oath and that she considers this oath to be binding on her conscience. I also certify that this affidavit was signed in my presence at Linden on this 30 day of 01 2020 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.


COMMISSIONER OF OATHS





JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE:
INVESTIGATION INTO THE SOUTH AFRICAN BROADCASTING CORPORATION

CONFIRMATORY AFFIDAVIT

I, the undersigned,

DAVID NIDDRIE

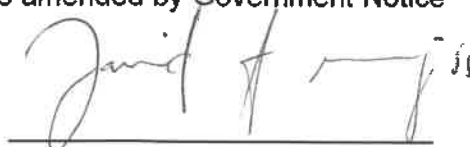
do hereby declare under oath as follows:

1. I am an adult male currently residing at 71 Highland Road, Kensington, 2094, Johannesburg.
2. The facts contained in this affidavit are within my personal knowledge, except where otherwise stated from the context, and are to the best of my belief both true and correct.
3. I have read the affidavit of **Mr Yunis Carrim**, and I confirm that the contents thereof are both true and correct insofar as it relates to me.



DEPONENT

I certify that the Deponent acknowledged that he knows and understands the contents of this affidavit, that he has no objection to the making of the prescribed oath and that he considers this oath to be binding on his conscience. I also certify that this affidavit was signed in my presence at Johannesburg on this 30th day of JANUARY 2020 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.



COMMISSIONER OF OATHS

DAVID THOKOZANI MBUYISA
Practising Attorney
Commissioner of Oaths
3rd Floor, 1 Bompas Road
Dunnkeld West, Johannesburg

**IN THE COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE ("THE COMMISSION")**

**AN INVESTIGATION INTO THE SOUTH AFRICAN BROADCASTING
CORPORATION**

AFFIDAVIT

I, the undersigned,

MBULAHENI OBERT MAGUVHE

hereby declare under oath as follows:

1. I am an adult male currently residing in Pretoria.
2. The content of this affidavit is true and correct and falls within my own personal knowledge, unless the contrary clearly appears from the context or is otherwise stated.
3. I have been approached by investigators associated to the Commission of Inquiry into Allegations of State Capture, Fraud and Corruption in the public

sector and certain Organs of State ("the Commission") and have been requested to provide an affidavit as to my knowledge as to certain affairs which took place during my tenure as Chairman of the Board at the South African Broadcasting Corporation ("SABC").

RULE 3.3 NOTICE

4. The purpose of this affidavit is to respond to your attached notice as emailed to me on 5 February 2020. I attached herewith said notice as Annexure '**MOM001**'.

MULTICHOICE CONTRACT WITH THE SABC

5. I wish to bring to the attention of the Commission that:
6. The Multichoice/SABC contract was entered into by both parties prior to my appointment as a deputy chair of the SABC board. Moreover, I confirm said appointment date to be 25 September 2013.
7. According to my recollection, the renewal of the said Multichoice/SABC contract took place approximately two years after my resignation as the Chair of the SABC board.
8. This therefore means I was not involved in contract negotiations and the renewal thereof.

71
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AMABHUNGANE ARTICLE

9. Regarding the Amabhungane article dated 29 May 2015, I cannot recall what I have said.
10. I initially wanted to know whether the article writer have a recorded speech or whether he paraphrased in his/her own way what was said. If the recorded information is available, it will help us to understand the context from which the statement was uttered.
11. I have since learned, with the assistance of the investigators of the Commission, that the AmaBhungane article quoted from a speech which I gave at the launch of the Encore channel. The full recording of my speech is available from this link as provided to me by the investigators of the Commission: <https://www.youtube.com/watch?v=y-1vNR8spv8>
12. Regarding "marriage" between the SABC and Multichoice, per paragraph 116 of the affidavit deposed to by Mr Yunus Carrim, I do not think it is an institution to break the laws of our country. I could have used it as a metaphor to mean that the partnership grows from strength to strength. There is nothing untoward from my side which I used that phrase for if it is found in the records.
13. This is all I wish to declare.

Prof. M.O. Maguvhe

DEPONENT

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Signed and sworn to before me at PRETORIA on this the 13 day of 02 2020, the deponent having acknowledged that she knows and understands the contents of this affidavit, has no objection to taking the prescribed oath and considers the oath binding on her conscience. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).

COMMISSIONER OF OATHS:

[Signature]

FULL NAMES:

JIMMY SHIATS

CAPACITY:

BRANCH MANAGER

ADDRESS:

PRETORIA 5TH LINDA MAM CAMP



"I certify that the DEPONENT has acknowledged that he/she knows and understands the contents of this affidavit, that he/she has no objection to taking the oath, and that he/she considers the oath binding on his/her conscience, and that we, the Commissioner of Oaths, have administered the oath in compliance with the Regulations contained in Government Gazette No. R 1258 of 21 July 1972, as amended."

[Signature]
FULL NAMES
JIMMY SHIATS
2020/02/13
Designation: Branch Manager
Office: Pretoria
Business Address: UNISARAND 0148

ANNEXURE “MOM001”



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Tel (Tollfree): 0800 222 097
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Web: www.sastatecapture.org.za

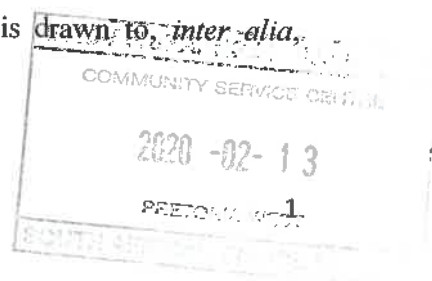
**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

NOTICE IN TERMS OF RULE 3.3

TO : PROF OBERT MAGUVHE
TEL : 012 481 2768
EMAIL : maguvmo@unisa.ac.za

IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE ("THE COMMISSION"), YOU ARE HEREBY GIVEN NOTICE THAT:

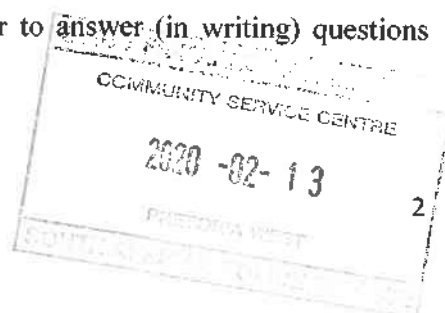
- 1 The Commission's Legal Team intends to present the evidence of Mr Yunus Carrim ("Mr Carrim") at its hearing held at 4th Floor, Hill on Empire, 16 Empire Road, Parktown, Johannesburg. The presentation of Mr Carrim's evidence will form part of the evidence to be presented in relation to the South African Broadcasting Corporation ("SABC") which will commence on **24 February 2020**, or soon thereafter as his evidence may be heard. In the event of a change of date, it will be announced on the Commission's website (www.sastatecapture.org.za) and in the media.
- 2 The evidence in question implicates or may have implicate you in unlawful or improper conduct concerning the SABC and Multichoice.
- 3 The affidavit of Mr Carrim which implicates or may implicate you in the above allegations is annexed hereto marked "A". Your attention is drawn to, *inter alia*, **paragraph 116** of his affidavit.



- 4 The relevant annexure to Mr Carrim's affidavit which implicate or may implicate you in the above allegations is annexed hereto marked "B". Your attention is drawn to Annexure "5".
- 5 Due to the fact that you are implicated or may be implicated by the evidence of Mr Carrim, you are entitled to answer to the allegations raised by Mr Carrim by statement or affidavit. You are also entitled to be assisted by a legal representative of your choice when your evidence is being presented. The full transcript of Mr Carrim's evidence will be uploaded on the Commission's website (www.sastatecapture.org.za).
- 6 If you wish to:
 - 6.1 give evidence yourself;
 - 6.2 call any witness to give evidence on your behalf; or
 - 6.3 cross-examine the witness

then you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.
- 7 An application referred to in paragraph 6 above must be submitted to the Secretary of the Commission. The application must be submitted with a statement from you in which you respond to the witness' affidavit insofar as it implicates you. The statement must identify what parts of the witness' affidavit are disputed or denied and the grounds on which they are disputed or denied.
- 8 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.
- 9 Please take note that even if you do not make an application under Rule 3.4:
 - 9.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the affidavit; and

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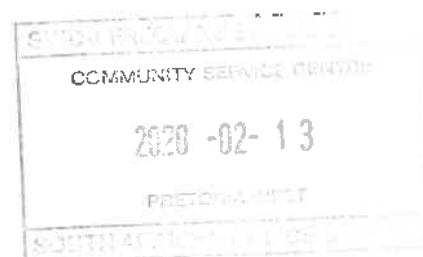
- 9.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.
- 10 The affidavit provided to you is confidential. Your attention is drawn to Regulations 11(3) and 12(2)(c) governing the Commission, which make it a criminal offence for anyone to disseminate or publish, without the written permission of the Chairperson, any document (which includes witnesses' statements/affidavits) submitted to the Commission by any person in connection with the Commission's inquiry.
- 11 Any response, affidavit or statement in regard to this notice must be sent to Advocate André Lamprecht, Ms Shannon van Vuuren and Mr Warren Redcliffe at secretary@commissionsc.org.za.

DATED AT PARKTOWN ON THIS 4th DAY OF FEBRUARY 2020



MS K B SHABALALA
Acting Secretary
Judicial Commission of Inquiry into Allegations
of State Capture, Corruption and Fraud
in the Public Sector including Organs of State

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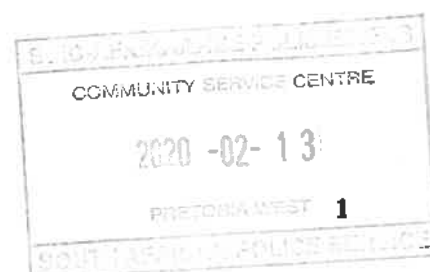
ORIGINAL

SUBMISSION OF MR YUNUS CARRIM

TO

**THE JUDICIAL COMMISSION OF INQUIRY INTO
ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND
FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF
STATE: INVESTIGATION INTO THE SOUTH AFRICAN
BROADCASTING CORPORATION**

30 JANUARY 2020



Contents

INTRODUCTION	4
PURPOSE OF THE AFFIDAVIT	5
OVERVIEW OF "DIGITAL MIGRATION" AND SET TOP BOXES	9
The importance of digital migration.....	9
BDM Policies of 2008 and 2012	11
Set Top Box Manufacturing Strategy.....	12
The Need to conform to SABS standards.....	15
"e.tv Court Judgment" of December 2012 limits, but does not remove the Minister's power	16
Causes of persistent delays in implementing digital migration.....	17
Independent Facilitation – September 2013	17
Use and misuse of the Terms "Control", "conditional access" and "encryption" ...	18
ANC December 2012 Conference Resolutions on Need for Competition in the Pay-TV sector.....	20
Criteria used for deciding the approach to control on STBs	22
December 2013 Policy	23
ICASA fully supported the control policy	28
Sentech supported STB control.....	28
STB Control in some form in other African countries	28
STB Control – The TV Programme Re-transmission Aspect of the South African Market	30
HOW NASPERS SOUGHT TO INFLUENCE GOVERNMENT POLICY ON DIGITAL MIGRATION	31
High concentration of the media industry	32
The SABC/MultiChoice 2013 Agreement	33
Naspers/MultiChoice's opposition to STB Control	39
The role of Mr Bekker.....	43
Need for a New Minister	47
Is STB Control outdated?	48
POLITICAL INTERFERENCE IN THE EXECUTION OF YOUR MANDATE AS MINISTER OF COMMUNICATIONS, AND HOW THIS AFFECTED THE DIGITAL MIGRATION PROJECT.....	50
SABC Overview	50
e.tv Overview	58
Community TV Overview	60
TOP TV Overview	61
Process following the 4 December 2013 Cabinet Decision.....	61

SERVICE CENTRE

2020-02-13

PRETORIA WEST

SOUTH AFRICA

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YOUR REASONS FOR ATTEMPTING TO ENFORCE CONDITIONAL ACCESS TO SET TOP BOXES, WHICH RESULTED IN YOUR DRAFT AMENDMENT TO THE DIGITAL MIGRATION POLICY IN DECEMBER 2013	62
Small cost for control facility in the STB versus the huge gains.....	63
FRAUD AND/OR CORRUPTION YOU ARE AWARE OF, IN RELATION TO THE DIGITAL MIGRATION PROJECT AND THE 2013 CONTRACT CONCLUDED BETWEEN MULTICHOICE AND THE SABC.....	64
ANY OTHER ISSUE YOU MAY WANT TO BRING TO THE ATTENTION OF THE COMMISSION	64
Divisions within emerging manufacturers.....	64
Allegations that the Minister was serving e.tv's commercial interests	68
The inadequate apology of MultiChoice	71
Need for policies, legislation and Codes of Conduct for business lobbying of parliament.....	73
Is this affidavit trying to settle scores?	75
A case of "regulatory capture"	76
CONCLUSION	78

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AFFIDAVIT

I, the undersigned,

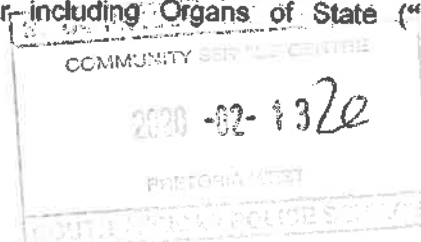
YUNUS CARRIM

do hereby state that:

1. I am an adult male serving in the National Council of Provinces as the Chairperson of the Select Committee on Finance.
2. The facts contained in this affidavit are within my personal knowledge, except where otherwise stated from the context, and are to the best of my belief both true and correct. Insofar as I do not have personal knowledge of all the matters referred to herein, I refer to the confirmatory affidavits of **Lulama Mokhobo** and **David Niddrie**.
3. Where I make submissions of law I do so on the advice of my legal representatives.

INTRODUCTION

4. I was the Minister of Communications ("the Minister") from 10 July 2013 to 24 May 2014. I served as the Minister of Communications for approximately 10 months. Although it was just over 10 months, it was very intensive, and thanks to the cooperation of a very good team, we were able to get Cabinet approval for three major inter-related policy initiatives:
 - 4.1. The ICT Green Paper;
 - 4.2. Digital Migration; and
 - 4.3. The Broadband Policy, which was called South Africa Connect.
5. I fully support the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State ("the



low amount that MultiChoice was paying the SABC despite the fact that SABC 1 and SABC 2 were among the most viewed channels on the DStv bouquet.

115. In terms of the SABC/MultiChoice Agreement, MultiChoice had full and exclusive access to the invaluable archives of the SABC. The issue was not just whether or not MultiChoice had legal co-ownership of the archives, but the low amount they paid for it. One expert suggested that the archives were worth over R1 billion.
116. In an article dated 29 May 2015, Amabhungane stated that at the launch of the SABC Encore channel, the chairperson of the SABC Board, Mr Obert Maguvhe, proposed a marriage between the public broadcaster and Multichoice. A copy of the article is attached hereto as "annexure 5". The chairperson is quoted as saying the following:

"Actually, for me, I wouldn't have preferred it to just be a partnership,"... "Actually it should be a marriage. You can be our bride and we will be the bridegroom." "We love you so much, MultiChoice," ... "We want to enter into a marriage."

117. After a meeting of the Parliamentary Ad Hoc Committee Inquiry into the SABC it became necessary for me address certain misrepresentations made by Ms Zandile Ellen Tshabalala ("Ms Tshabalala"), who was the chairperson of the SABC during that period. As such, I addressed a letter, dated 16 January 2017, to Mr Vincent Smit, who was the chairperson of the ad hoc committee. A copy of the letter is attached hereto "annexure 6" and it stated the following:

"...The Department agreed that in view of SABC's financial challenges and the need for a 24-News Channel that could be broadcast on the Continent and internationally, there was a need for an Agreement with MultiChoice. The Department's concerns revolved around, among other issues, the following:

- i. The process by which the Agreement was finalized, including the extent of consultation.*
- ii. The financial aspects of the Agreement, including what experts said was a significantly low payment the SABC settled for.*
- iii. The terms on which the archives were made accessible to Multi-Choice and the inadequate compensation for this.*
- iv. The provision that excluded the SABC from supporting STB Control (the reference to "encryption"), which had implications that government policy was*

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279. But we cannot allow this. We waged a titanic struggle over decades, at a huge cost, against apartheid, and we finally triumphed over it through an unprecedented negotiated transfer of power. Of course, the legacy of apartheid persists, there are many problems that we have inflicted on ourselves and the transition still has a very long way to go. But we can and must, over time, triumph over our current challenges. As one of many aspects of this transition, we need to accelerate the digital migration process as part of transforming our country in the interests of all the people, particularly the poor and disadvantaged. And we need to do this soon - otherwise the Fourth Industrial Revolution will leave us far behind, to the detriment of all our people, not just the poor and disadvantaged!

Nkomo

DEPONENT

I certify that the Deponent acknowledged that he knows and understands the contents of this affidavit, that he has no objection to the making of the prescribed oath and that he considers this oath to be binding on his conscience. I also certify that this affidavit was signed in my presence at ~~Johannesburg~~ on this 30th day of JANUARY 2020 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.

David Thokozi Mbuyisa

COMMISSIONER OF OATHS

DAVID THOKOZANI MBUYISA
Practising Attorney
Commissioner of Oaths
3rd Floor, 1 Bompas Road
Dunnkeld West, Johannesburg



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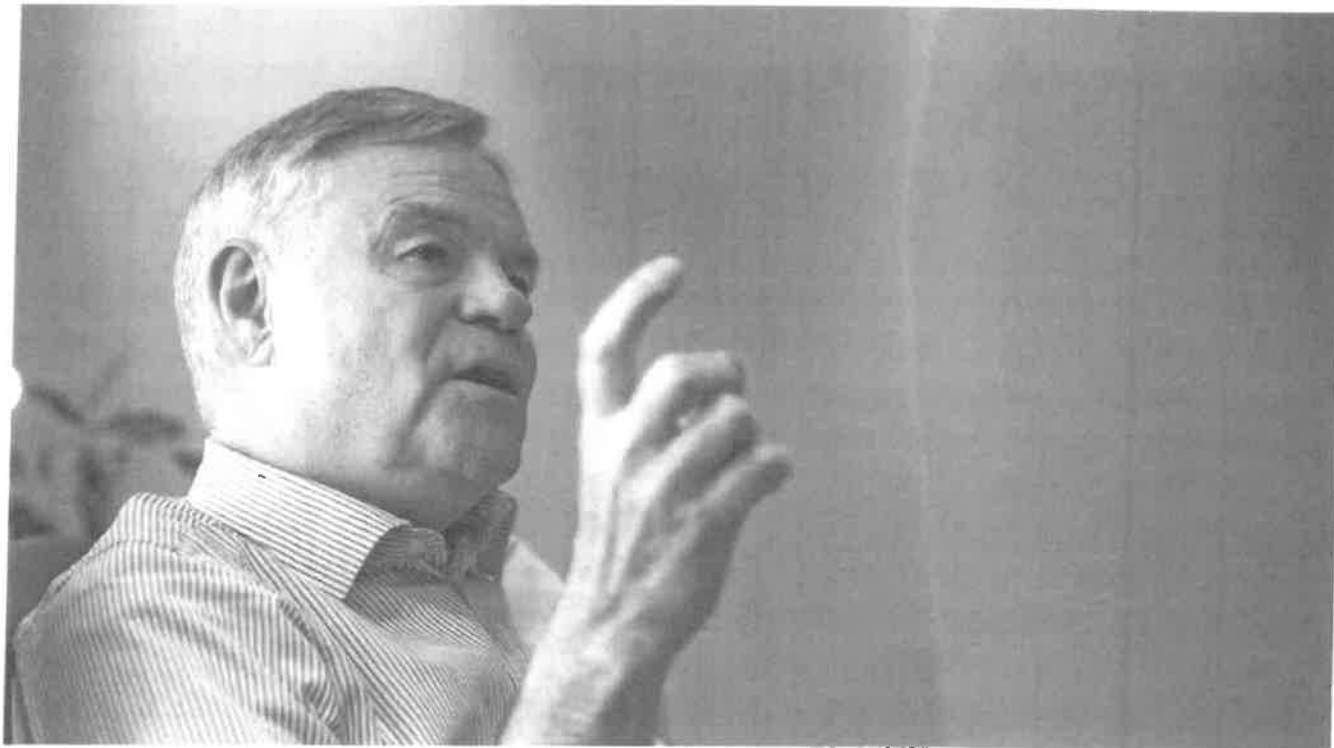
12/6/2019

MultiChoice accused of hijacking digital TV | News | National | M&G

Annexure 5

NATIONAL ([HTTPS://MG.CO.ZA/SECTION/NEWS-NATIONAL](https://mg.co.za/section/news-national))

MultiChoice accused of hijacking digital TV

Lloyd Gedye (<https://mg.co.za/author/lloyd-gedye>) 29 May 2015 00:00

(<https://mg.co.za/article/2015-05-28-multichoice-accused-of-hijacking-digital-tv>)

LinkedIn

Twitter

COMMENTS ([HTTPS://MG.CO.ZA/ARTICLE/2015-05-28-MULTICHOICE-ACCUSED-OF-HIJACKING-DIGITAL-TV#COMMENT_THREAD](https://mg.co.za/article/2015-05-28-multichoice-accused-of-hijacking-digital-tv#comment_thread))

Facebook 240

Email

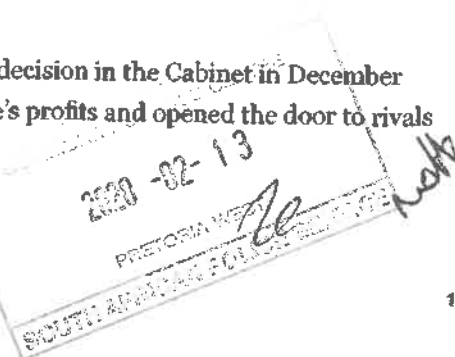
Pay-TV operator MultiChoice waged a campaign to overturn a crucial government decision that critics claim crossed the line between acceptable lobbying and capturing state policy.

At issue is the government's plan to move all television broadcasting to a digital system that, depending on the policy choices, could threaten MultiChoice's dominance of the pay-television market. This possibility exists because the government plans to subsidise the distribution of millions of set-top boxes (STBs) needed to convert the new digital signal into a form that can still be received by old-fashioned TV sets.

Depending on whether the government policy allows the signal to be encrypted and for the STBs to act as decoders – with a technology known as “conditional access” (See “Battle over limits on access”) – the proliferation of STBs would allow new pay channels and services alongside the existing free channels on the SABC and e.tv.

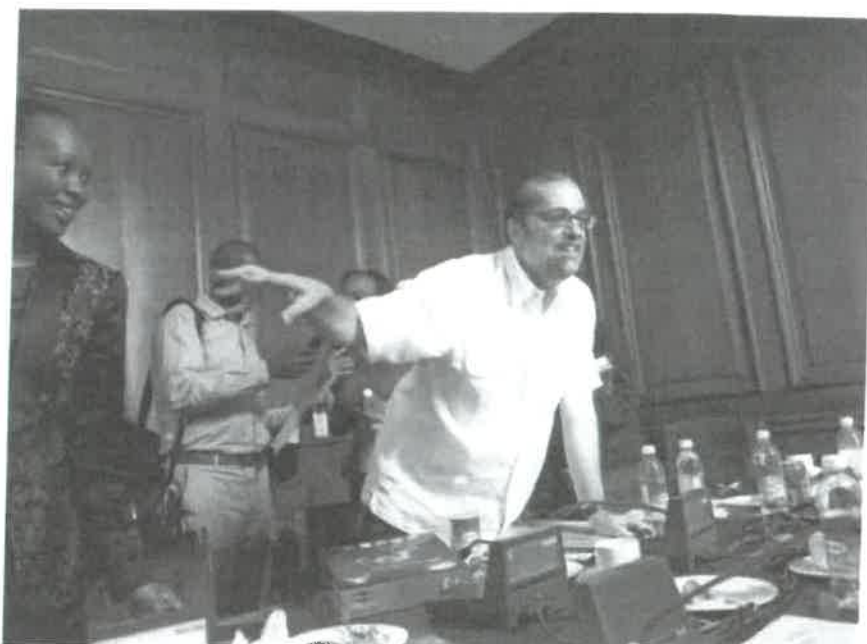
But without conditional access, new service providers would have no way of using the STBs to offer paid-for services, and MultiChoice's virtual monopoly would be secured.

When the then communications minister, Yunus Carrim, tabled a final policy decision in the Cabinet in December 2013 allowing conditional access, it represented a major threat to MultiChoice's profits and opened the door to rivals such as e.tv to offer pay services of their own.



12/6/2019

MultiChoice accused of hijacking digital TV | News | National | M&G



Yunus Carrim (David Harrison)

An amaBhungane investigation has shown how MultiChoice fought back, including by:

- Signing a controversial deal with the SABC in June 2013 that bought the support of the politically powerful public broadcaster. The SABC chairperson, Obert Maguvhe, recently declared he liked to think of the SABC as being married to MultiChoice;
- As part of the 2013 contract, the SABC agreed to bar conditional access on its free-to-air channels for five years. The deal is now the subject of a fierce legal battle in the Competition Tribunal. (See “Legal face-offs create static for state and broadcasters”);
- Apparently securing political access and intelligence, including appearing to know that Carrim was going to be removed long before the minister himself knew it;
- Backing an empowerment lobby group that appears to have acted as a MultiChoice puppet in launching a public attack on Carrim and his backing for conditional access; and
- Succeeding in having Carrim’s policy, which was accepted by the Cabinet in 2013, dramatically reversed by Faith Muthambi, the new minister appointed by President Jacob Zuma after last year’s elections. In doing so, Muthambi seemingly also flouted ANC policy, and her about-face is being challenged in court by e.tv. (See “Legal face-offs create static for state and broadcasters”.)

Extraordinary attack

Exhibit A against MultiChoice is an extraordinary attack on Carrim by Koos Bekker, the chairperson of Naspers, MultiChoice’s parent company. It highlights MultiChoice’s deep unhappiness with the 2013 Cabinet decision to include conditional access.

In a memorandum sent to senior management, dated March 2014, which amaBhungane has seen, Bekker describes Carrim as “temperamentally unsuited to high political office” and states that he is “in the power of e.tv”.

He adds that Carrim will not be re-appointed as communications minister after the elections (in May last year).

The source of Bekker’s information is unclear, but well-placed insiders in the broadcasting sector sympathetic to Carrim allege that, months before the memo was circulated, MultiChoice was stating as fact that he would be replaced.

Approached for comment, Naspers spokesperson Meloy Horn said Bekker “is currently abroad. It is not our policy to comment on press speculation.”

12/6/2019

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Carrim responded to Bekker's allegations, which amaBhungane brought to his attention, by saying it was "not appropriate" for a former minister to comment on a previous portfolio. But he was not going to allow his integrity to be attacked, he said. "No, no. I was not in the power of e.tv.

"That, however defined, would be a crime. The national fiscus wasn't my personal money box that I could just use to benefit a particular company I chose."

Carrim said the December 2013 policy that was decided on on his watch aimed to encourage new African pay-TV players rather than serving e.tv's narrow interests.

"It was a Cabinet decision, not a personal whim," he said.

AmaBhungane has also learned that at about the same time MultiChoice's management was involved in producing an opinion piece, published in April last year, that attacked Carrim.

The article was published under the byline of Keith Thabo, then-president of the National Association of Manufacturers in Electronic Components (Namec).

It is an important lobby group for mainly black small, medium and micro-enterprises in the electronic manufacturing sector.

AmaBhungane has seen email correspondence from April 21 last year between Calvo Mawela, the head of stakeholder and regulatory affairs for MultiChoice South Africa, and Thabo, referring to Mawela's role in penning an opinion piece published on the technology website TechCentral on the same day.

In the email Mawela writes: "Herewith the final article as requested."

He then provides Thabo with the email address of the TechCentral editor, Duncan McLeod, saying: "I think try get it to him as soon as possible."

The article, titled "Minister you are misleading the public", accuses Carrim of rewriting history and distorting facts.

MultiChoice described the allegation that it was involved in authoring opinion pieces for Namec "insulting".

"Through its office bearers, Namec asked for Mr Mawela's input as a broadcasting engineer, and he shared his thoughts based on his expert knowledge of the broadcasting sector," said MultiChoice's spokesperson, Jackie Rakitla.

The *Mail & Guardian* reported in August last year that Namec had split into two factions.

The article reported on allegations made against Thabo and Vijay Panday, another Namec leader. They were accused by one of the factions of being "empowerment raiders" for hijacking an empowerment deal for their own benefit.

At the heart of the dispute was the relationship Namec had entered into with MultiChoice and the Chinese manufacturer Skyworth Digital, to potentially supply 15-million decoder boxes over three years.

Responding this week, Thabo said: "We formulate academic opinions and write articles on our own, as we have a research and development team that has done research on DTT [digital terrestrial television] and visited Europe, Asia and South America."

12/6/2019

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Quid pro quo?

Some Namec members said the only reason MultiChoice was interested in doing a deal was Namec could help in the fight against conditional access.

This appears to be backed up by correspondence between Panday and Thabo, dated June 16 last year.

The email from Panday, titled "MCA", an abbreviation for MultiChoice Africa, reads: "You have to tell BRU [presumably a MultiChoice staffer whose identity is unknown] we want some protection. Between you and me, they [are] under pressure from the top to relook at UEC [Altech UEC, a rival set-top box manufacturer].

Before that happens, we put a lot of time, effort, lost face with govt and DTI [department of trade and industry], fighting the [conditional access] battle. A year from now, when all is over, they can allocate the forecast to anyone."

The email appears to show that Panday saw the fight against conditional access as a quid pro quo for the set-top box orders Namec was getting from MultiChoice.

But Rakitla said the pay-TV operator had no knowledge of the email.

"We concluded a purely commercial agreement ... It had absolutely nothing to do with who took what position on digital migration."

In a further email from Panday, dated May 25 last year, the day Zuma announced his new Cabinet following the elections, he wrote: "A big thank you to all from Keith and I for all the support with the recent fight with DOC Carrim. He is officially out. We will have an easier run. She is a nice person and supports Namec."

The she in the email appears to be a reference to Muthambi, the new communications minister.

Rakitla said MultiChoice could not comment on Panday's email, as it was unaware of it.

"However, it's important to note that when Minister Muthambi was appointed, we had no knowledge of her position on [set-top box] control," Rakitla said.

Panday did not respond to questions from amaBhungane.

Namec's secretary general, Adil Nchabaleng, a leader of the faction opposed to Thabo and Panday, said, in his view, "a predatory approach was used by MultiChoice to get them [Thabo and Panday] on side for conditional access".

Thabo said Nchabaleng was relieved of the secretary general's position in 2010.

"This is a desperate man who has been used by the white electronic industry to frustrate the aspirations of the black players in transforming the industry and creation of black industrialists," he said.

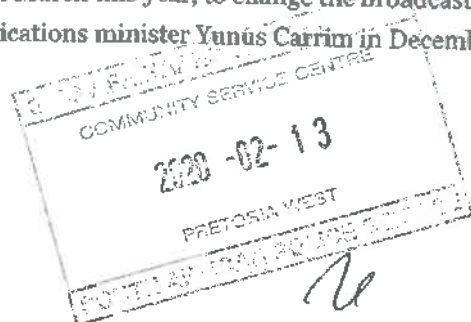
"A big thank you to all from Keith and I for all the support with the recent fight with DOC Carrim. He is officially out".

Legal face-offs create static for state and broadcasters

Two ongoing legal challenges are set to spotlight government's stunning about-turn on the inclusion of conditional access in five million state-subsidised set-top boxes (STBs).

The STBs will underpin the migration of South African television from analogue to digital (See "Battle over limits on access").

It is unclear what led Minister of Communications Faith Muthambi, in March this year, to change the broadcast digital migration policy approved by Cabinet under previous communications minister Yunus Carrim in December 2013.



12/6/2019

MultiChoice accused of hijacking digital TV | News | National | M&G



Faith Muthambi (Mail & Guardian)

Her decision to remove conditional access from the policy reverses a previous Cabinet decision and flies in the face of ANC policy, which favours conditional access. Both the South African Communist Party and labour federation Cosatu have called for the implementation of the 2013 Cabinet decision.

Muthambi's decision also contradicts a position the Competition Commission took in February in a submission to a policy review process run by the telecommunications department.

The commission argued that excluding conditional access from the STBs would be anti-competitive and that it "must be incorporated".

This week the Pretoria high court began hearing a legal challenge by e.tv to Muthambi's policy reversal. At the same time, publisher Caxton and nongovernmental organisations Media Monitoring Africa and the SOS: Support Public Broadcasting Coalition have taken the SABC and MultiChoice to the Competition Tribunal.

The matter involves the R550-million contract between the two that stipulates the terms under which the SABC supplies a 24-hour news channel and an entertainment channel to MultiChoice.

The parties argue that clauses seen as giving MultiChoice control over the SABC archives and dictating that SABC channels cannot be encrypted using conditional access constitute a merger between the two broadcasters.

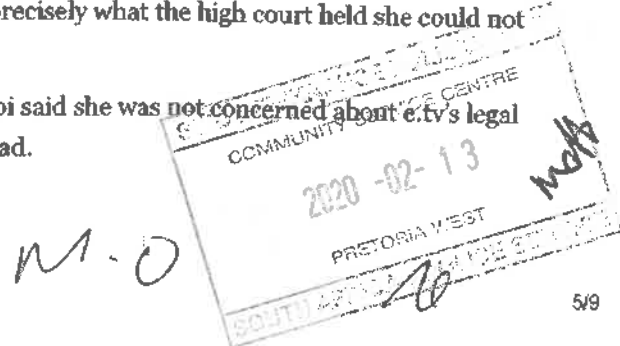
e.tv versus Faith Muthambi

In its legal challenge, e.tv argues that Muthambi's about-turn on conditional access is both "irrational" and "unreasonable" and calls for the relevant clauses of the policy to be "reviewed and set aside". e.tv argues that the amendments are "unlawful" and exceed the minister's powers.

Referring to a 2012 judgment of the Pretoria high court in e.tv's dispute with former communications minister Dina Pule over conditional access, it says the court found it unlawful for the minister to decide on certain key technical issues affecting free-to-air broadcasters, and that he or she had to leave these to the broadcasters themselves.

"The effect of the encryption amendment is to unlawfully breach these principles," reads the e.tv affidavit in the current case. "The amendment means that the minister has done precisely what the high court held she could not do."

Speaking last week before her budget vote in Parliament, Muthambi said she was not concerned about e.tv's legal challenge and that digital terrestrial television (DTT) would go ahead.



12/6/2019

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Caxton's case

In the case set to go before the Competition Tribunal, Caxton and the two NGOs argue that the SABC/MultiChoice contract constitutes a mandatory notifiable merger.

According to their reading, the Competition Commission should have been notified when the deal was signed so that it could give regulatory approval. In affidavits, Caxton chief executive Terry Moolman argues that, through the agreement, MultiChoice has "acquired control" over the SABC's TV broadcasting policy as well as its programme archives.

"Until it concluded the agreement with MultiChoice, the SABC supported the delivery of DTT signals to South African viewers on the basis that these signals would be encrypted," Moolman states. "The SABC has, as a result of concluding the agreement with MultiChoice, aligned itself with MultiChoice by departing from that position."

This gave MultiChoice a "powerful tool to lobby government", he claims. Elsewhere, Moolman argues that MultiChoice "does not want the prospect of increased competition that would be facilitated by a policy that provides for encryption as a standard in STBs".

MultiChoice and the SABC respond MultiChoice and the SABC deny that the deal constitutes a merger or gives MultiChoice control over the SABC archives.

The SABC's responding affidavit says the argument that MultiChoice secured control of the SABC's stance on the encryption of DTT signals in the DTT broadcasting environment, through the contract is "incorrect".

The SABC argues that, if the regulations change and encryption is required, it will comply and that the contract "provides for such eventualities".

MultiChoice chairperson Nolo Letele told amaBhungane that the company's contract with the SABC is a standard, "run of the mill" channel supply agreement. Letele denied that the contract constitutes a merger, gives MultiChoice control over the SABC's archive or hands MultiChoice the right to dictate policy on conditional access.

M-Net's director of regulatory and legal affairs, Karen Willenberg, told amaBhungane that it is "factually incorrect" that MultiChoice offered the SABC a contract in order to get it to change its position on conditional access.

"The SABC opposed encryption before the MultiChoice contract was signed," she said. Letele said Encore, the entertainment channel that the SABC is supplying to MultiChoice, will revive old SABC television shows from the 1980s and 1990s, amounting to 1% of the SABC archive.

'marriage proposal'

Despite the protestations, the apparent love affair between the SABC and MultiChoice seems to have strengthened. At the launch of the SABC rerun channel Encore two weeks ago, SABC chairperson Obert Maguvhe proposed a marriage between the public broadcaster and MultiChoice.

"Actually, for me, I wouldn't have preferred it to just be a partnership," said Maguvhe. "Actually it should be a marriage. You can be our bride and we will be the bridegroom." "We love you so much, MultiChoice," continued Maguvhe. "We want to enter into a marriage."

Battle over limits on access

Since 2012 there has been a highly contested battle over whether or not to include conditional access in the set-top boxes that will be used for the migration of South Africa's television services from analogue to digital.

This process is known as the digital terrestrial television (DTT) migration process. Digital television allows for more television channels to be broadcast on spectrum bands than on analogue television.

Because spectrum is a finite resource, this migration process is important as it will free up spectrum to be used to deliver many more television channels and other services such as broadband wi-fi.



12/8/2019

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Conditional access is a security system that can be included in a set-top box and used by broadcasters to control access to certain channels through encryption.

For example, if a person does not pay their DStv bill, MultiChoice can use the conditional access system in its set-top box to deny them access to their television services until they have paid up.

MultiChoice is opposed to the inclusion of conditional access in the DTT set-top boxes. Many critics have argued that this is because it wants to prevent rival broadcasters from beginning to offer new subscription services through the boxes. MultiChoice argues that its objections are based on the cost of the conditional access to taxpayers and are in the public interest.

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Lloyd Gedye

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