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GENERAL NOTICE

NOTICE 1496 OF 2002



INDEPENEDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

APPLICATION TO AMEND TERRESTRIAL FREE TO AIR TELEVISION LICENCE No. 002/PRI/ TV/ 98: MIDI TELEVISION (Pty) LTD TRADING AS e-tv

1. The Independent Communications Authority of South Africa ("the Authority") hereby gives notice in terms of section 52(2)(a) of the Independent Broadcasting Authority Act, 153 of 1993, as amended, ("the IBA Act") that it has received an application in terms of section 52(1)(c) of the IBA Act for the amendment of Midi Television (Pty) Ltd ("Midi") licence conditions as issued by the Independent Communications Authority of South Africa on or about the 2 October 1998 and subsequently amended during or about November 1999.
2. The nature of the amendments which Midi seeks to have approved are aimed at ensuring the following:

A. OWNERSHIP AND CONTROL

- 2.1 Consent by the Authority to certain changes in arrangement of the shareholding of Midi including:

- 2.1.1 agreements entered into by Venfin Limited (formerly Rembrandt Group Limited) ("Venfin"), in relation to Midi;

- 2.1.2 the exercise by Midi of certain rights granted to it in terms of an agreement concluded between various parties including Midi, Warner Brothers International Television Distribution ("Warner Bros") and South African Television Holdings LLC ("Sathold");
- 2.1.3 The amendment of clause 17.1 of the licence to reflect the proposed shareholding structures in Midi;
- 2.1.4 The amendment of clause 17.1 of the licence to enable the shareholders in Midi to trade their interest and/ or shareholding with degree of flexibility thereby attracting capital and investment in, but subject to the provisions of clause 17.2 as amended hereunder;
- 2.1.5 The amendment of clause 17.2 of the licence, to clarify the procedure Midi is to follow to obtain the Authority's consent to a change in the ownership or control of Midi;
- 2.1.6 The amendment of clause 17.2.2 of the licence in order to clarify the Authority's requirements of Midi with regard to the

promotion of empowerment in relation to questions of ownership and control.

2.2 In support for the amendments referred to above, Midi submits that its current licence conditions are a serious obstacle to investment in it due to amongst other reasons:

2.2.1 An investment in Midi whether through Sabido or directly in Midi or the exercise of the option agreement, will by necessity, change the control structures that exist to the extent that minority protections granted to such investors are deemed to constitute "control" as defined in the IBA Act.

2.2.2 Minorities that have small interests in e-tv which are not material to the control of the licensee are prohibited from disposing of their shares.

2.2.3 The empowerment restrictions on the shareholding in Midi and Sabido are such that no non-empowered shareholders may be brought into Midi's shareholding at all, in future.

- 2.2.4 By defining Sabido as a "South African shareholder", the licence purports to restrict foreign shareholders from the shares in Sabido.

PROPOSED AMENDMENTS

- 2.3 Midi accordingly proposes that paragraph 17 of its licence conditions ought to be amended to read as follows:

AD PARAGRAPH 17.1.1

- 2.3.1 The shareholding structure of the licensee is currently that it is controlled by Sabido Investments (Pty) Ltd which holds in excess of 50% plus 1 of the issued share capital of the licensee;

AD PARAGRAPH 17.1.2

- 2.3.2 Sabido Investments (Pty) Ltd is currently controlled by HCI which holds in excess of 50% plus 1 of the issued share capital of Sabido Investments (Pty) Ltd;

AD PARAGRAPH 17.1.3

2.3.3 The Authority hereby consents to Venfin joining the control structure of Sabido Investments (Pty) Ltd.

2.4 Midi further proposes the amendments to paragraph 17.2-17.2.2 of the licence conditions, as in its view, the wording thereof does not deal with the manner in which the licensee can obtain the Authority's consent in respect of changes it seeks to implement which require prior approval from the Authority but do not involve any wording of the licence. To that end Midi proposes that paragraphs 17.2-17.2.2 of its licence conditions ought to be amended to read as follows:

AD PARAGRAPH 17.2

2.4.1 Unless:

2.4.1.1 the Authority has consented thereto after an application by the licensee for an amendment to the relevant provision(s) in this licence in terms of section 52 of the IBA Act, or;

2.4.1.2 where the consent sought will not result in an amendment to any provision(s) in this licence, the Authority has given its consent thereto, in writing, on such terms and conditions as it deems necessary in the circumstances:

AD PARAGRAPH 17.2.1

2.4.1.2.1 the control structures of the licensee or Sabido Investment (Pty) Ltd may not be altered without the prior written consent of ICASA.

AD PARAGRAPH 17.2.2

2.4.1.2.2 the empowerment component of the licensee or Sabido Investments (Pty) Ltd may not be reduced to below 50% plus 1.

B. PROGRAMMING CONDITIONS

3. Midi submits that the extent of local content and other public service obligations on SABC 3 compared with those that are applicable to it, has resulted in an anomalous situation where it has a greater public service mandate than the SABC. It further submits that this allows the SABC greater flexibility in programme scheduling and therefore provides it with an unfair advantage in respect of advertising revenue. It accordingly, applies for the amendments mentioned below as, at the time the licence was granted and Promises of Performance were made by Midi, it had envisaged that the SABC would operate in a regulated environment where its conditions would be at least as onerous as those of Midi. To this end, Midi proposes the following amendments:

AD PARAGRAPH 18.9

- 3.1 The deletion of clause 18.9 of the licence, dealing with training expenditure. Midi argues that staff training is regulated in terms of the Skills Development Act 97 of 1998 and accordingly, reference to the training expenditure ought to be deleted from its licence conditions and regulated in terms of the Skills Development Act;

AD PARAGRAPH 22.3

3.2 The amendment or temporary suspension of clause 22.3 of the licence, dealing with advertising limits per hour. In terms of this licence condition Midi may not broadcast advertisements in excess of 12 minutes in any one hour and accordingly proposes that the limit ought to be 14 minutes in any one hour. In support for this amendment, Midi argues that the limit on the number of advertising minutes ought to be within the discretion of the broadcaster, as it may lose audience share if the number of advertising in the hour exceeds the tolerance threshold of the audience;

3.3 The insertion of a new clause, to provide for the temporary suspension of licence obligations during the broadcasting of news and sporting events of national significance. In support for the insertion of a paragraph in its licence conditions dealing with the temporary exemption from its licence conditions, Midi argues that the broadcast of live sporting events such as five-day cricket test matches and the FIFA World Cup necessitates major changes to the programme schedule. It further argues that because of the duration of such events, the cost implications of "catch up" on local content and other programming licence requirements after the broadcast of such events, is prohibitive.

- 3.4 To this end, Midi proposes that the following clause be inserted into its licence conditions:

"The Authority may, on written application by Midi, consent in writing, on such terms and conditions as it deems necessary in the circumstances, to exempt Midi from compliance with some or all of the on-air programming obligations set out in the licence, for a specified period, in the event that Midi is unable to comply with such obligations as a result of the broadcast of a sporting event or news of national interest".

4. The effective date of the proposed amendments (if granted) shall be the date on which the decision is published by the Authority in the Government Gazette.
5. The amendment application together with the supporting documents and any written representations received in respect of this application shall be open to public inspection by interested persons during the Authority's normal office hours.
6. Interested persons are invited to lodge written representations to the Authority in relation to the proposed amendments within (twenty) 21 days from publication of the notice in the Government Gazette.

7. Interested persons shall further indicate in their written representation, whether they require an opportunity to make oral representations to the Authority.
8. Any person who lodges representations pursuant to this notice shall at the time of lodgment furnish proof to the satisfaction of the Authority that he or she has sent by registered post or delivered a copy of such representations to Midi.
9. Any person who has so lodged representations may be required in writing by the Authority to furnish it, within the specified period by it, with such further information as it considers necessary.
10. Midi shall submit its written response (if any) to any representations lodged in terms of this notice to the Authority within fourteen days (14) days and shall at the same time furnish proof to the satisfaction of the Authority that it has sent by registered post or delivered a copy of such written response to the person having made such written representations.
11. Midi's contact details insofar as this notice is concerned are the following:

Postal Address: **Chief Executive Officer**
Midi Television (Pty) Ltd
P.O Box 12124
Mill Street
8010
or;

Physical Address: **Longkloof Studios B**

Darters Road

Gardens

Cape Town

Or;

Fax: **(021) 481-4510**

12. Any submissions to be made to the Authority shall be made at the following contact details:

Postal Address: **Project Leader**

Attention: Mr. Sipho Tsotetsi

**Independent Communications Authority of
South Africa**

Private Bag x 10002

Sandton

2146

or;

Physical Address: **Block D, PinMill Farm**

164 Katherine Street

Sandton

Or;

Fax: **(011) 448-2186**
