



# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

Vol. 467

Pretoria, 18 May  
Mei 2004

No. 26367



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## GENERAL NOTICE

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### NOTICE 835 OF 2004



#### **INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA AMENDMENT OF BROADCASTING LICENCE: ELECTRONIC MEDIA NETWORK LIMITED ("M-NET")**

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, Act No 153 of 1993 ("the Act"), that it is considering the possibility of amending the subscription television service licence of Electronic Media Network Limited ("M-Net") in terms of section 52(1)(d) of the Act.

The proposed amendments to M-Net's licence are set out in the schedule to this notice.

The Authority indicated, when renewing M-Net's licence in June 2002, that it had identified certain aspects of M-Net's licence conditions that might warrant amendment in terms of section 52(1)(d) of the Act. Accordingly, the Authority stated, in paragraph 43 of the reasons for its decision to renew M-Net's licence, that it proposed to initiate the necessary proceedings for that purpose in due course.

It is intended that the proposed amendments to M-Net's licence will take effect on 31 March 2006, or as soon as reasonably practicable after that date, but not less than 18 months from the date of publication of the notice referred to in subsection (5) of section 52.

Interested persons are hereby invited to make written representations on the proposed amendments to the Authority within twenty-one (21) days of the date of publication of this notice in the *Government Gazette*. Interested persons who make such written representations to the Authority must simultaneously indicate whether they require an opportunity to make oral representations to the Authority on the proposed amendments. Any interested person who makes written representations on the proposed amendments to the Authority must, at the time of doing so, furnish proof to the Authority's satisfaction that he or she has delivered a copy of such representations to M-Net by hand, or has sent a copy of such representations to M-Net by registered mail or has sent it by facsimile to M-Net.

M-Net shall be entitled to respond in writing to written representations made by interested persons on the proposed amendments, and any such written response must be lodged with the Authority within sixty (60) days of the date of publication of this notice in the *Government Gazette*. M-Net must, at the time of lodging such written response, furnish proof to the Authority's satisfaction that it has delivered a copy of such response by hand, or has sent a copy of such representations by registered mail, or sent it by facsimile to the relevant person having made such written representations.

All written representations, responses and other correspondence regarding the proposed amendments must be directed to Lydia Jordaan, Senior Manager: Licensing, Monitoring and Complaints at Block D, Pinmill Farm, 164 Katherine Street, Sandton, 2146 OR Private Bag X10002, Sandton, 2146 OR by facsimile on (011) 444 1461 by 8 June 2004.

Persons, who lodge representations in terms hereof, shall at the time of lodgement, furnish proof to the satisfaction of the Authority that a copy of the representation has been sent by registered post or delivered to Mr. Glen Marques, CEO, M-Net at 137 Hendrik Verwoerd Drive, Randburg, 2194 OR PO Box 2963, Pinegowrie, 2123 OR by facsimile on (011) 686-6665.

#### Schedule

[ ] Words in bold type in square brackets indicate deletions from the existing licence conditions.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in the existing licence conditions.

#### Clause 1.9

[**"Open Window" means the period between 17h00 and 19h00 each day during which the broadcast signal on the M-Net Channel is unencoded**"].

#### Clause 4.3.1

[**Subject to paragraph 4.4.1, the** The licensee may televise its programmes in encoded form only, for reception by persons who subscribe to its service.

#### Clause 4.4

**4.4.1 The licensee may broadcast an unencoded signal on its M-Net Channel only during the period 17h00 to 19h00 each day.**

**4.4.2 During the broadcast of the unencoded signal on its M-Net Channel, the licensee must comply with the following programming requirements:**

**4.4.2.1 Generally, the Open Window must reflect at least three genres of the programming broadcast during encoded time. Compliance with this condition will be measured annually.**

**4.4.2.2 Ensure that a weekly average of 20% of its programming consists of South African drama. Compliance with this condition will be measured annually.]**

### **Clause 11.3**

**[The licensee must use no more than an average of eight minutes per hour of the Open Window for the televising of advertisements subject to the provisions of 11.4. This average will be measured over a year.]**

### **Clause 11.4**

**[Advertising must not exceed a maximum of twelve minutes in any one hour during the Open Window.]**

### **Clause 12**

**[The Authority encourages the licensee to include persons from previously disadvantaged groups in its ownership and control structures.]**

12.1 Unless and until the Authority will have amended this clause in terms of section 52 of the Act:

12.1.1 the licensee is, and shall continue to be, controlled by MNH Holdings (1998) (Pty) Ltd ("MNH"), which holds and shall continue to hold a majority of the shares in the licensee's issued share capital;

12.1.2 MNH is, and shall continue to be, controlled jointly by Naspers Ltd ("Naspers") and Johnnic Communications Ltd ("Johncom"), which jointly hold and shall continue to hold a majority of the shares in MNH's issued share capital;

12.1.3 Johncom is, and shall continue to be, a subsidiary of Johnnic Holdings Ltd, which in turn is, and shall continue to be, controlled by the National Empowerment Consortium;

12.2 The licensee must obtain the Authority's prior written consent, in accordance with such procedure as the Authority may consider appropriate, for:

12.2.1 any alteration of the licensee's control structures which does not amount to a contravention of clause 12.1;



12.2.2 any reduction in the extent, if any, to which the licensee, MNH or Johncom is owned or controlled by black economic empowerment entities over the licensee, MNH or Johncom.

12.3 Subject to clause 12.4, the licensee's broadcasting service to be provided by it in terms of the licence and the licence conditions must be operated by the licensee or by bona fide employees of the licensee.

12.4 The licensee may be assisted by foreign consultants in the operation of its broadcasting service, provided there is a written agreement with clear terms of reference between the licensee and such foreign consultants, a copy of which must be supplied to the Authority.

#### **Clause 17.1**

The licensee must submit to the Authority, on a quarterly basis, records of South African content, including South African Drama, broadcast [**in both the Open Window and encoded time**] during the previous quarter.

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Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504  
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