

Top court to rule on review of SABC deal

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The details of the multimillion-rand broadcasting deal between the SABC and MultiChoice may never be made public if the two companies get their way in the Constitutional Court.



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The five-year agreement entered into by the two entities in 2013 resulted in the SABC pocketing more than R500m in exchange for extensive rights to its archived content, with an added pact that MultiChoice would not encrypt SABC TV channels when the country migrates to digital terrestrial television.

If the applicants have their way, not only will the Competition Commission get to investigate whether the deal between the SABC and MultiChoice constitutes a measure, but will also allow the public an opportunity to scrutinise the value of the material the public broadcaster traded with MultiChoice.

Disgraced former SABC boss Hlaudi Motsoeneng secured himself a R33m bonus, R11.4m of which was paid out to him in August 2016.

On Thursday, the media companies' legal representatives told the court, during an application for leave to appeal an April

decision of the Competition Appeal Court, that the four-year-old matter had dragged on for long enough and the Competition Commission had no power to revive its investigation into the matter as it had missed the opportunity to do so on numerous occasions.

The SOS Coalition and Caxton and CTP Publishers and Printers want the court to determine whether the Competition Commission was entitled to use its provisioned investigative powers to determine whether a channel licensing agreement concluded between the SABC and MultiChoice was a notifiable merger in terms of the Competition Act.

While lawyers Rafik Bhana for the SABC and David Unterhalter SC for MultiChoice said the question of the Competition Commission's investigative powers was not applicable in the case as Caxton had sidestepped it by approaching the Competition Tribunal directly, the applicants argued the body could still effect section 49 (a) of the Competition Act, which granted it the power to do so. "When Caxton went to the tribunal and when the matter was before the Competition Appeals Court, the commission sat there silently," argued Bhana.

The tribunal dismissed the application, saying there was no basis for it as the applicants had failed to make a case for an order directing the commission to conduct an investigation into the agreement. The subsequent urgent application made to the Competition Appeal Court, seeking to reverse this decision also failed after the court found that the first order was clear in its refusal to authorise the commission to exercise the disputed investigative powers.

Ngwako Maenetje SC - for the Competition Commission - said in his argument that the order made by the Competition Appeal Court did not hamper the institution's investigatory powers.

The applicants argue that the Constitutional Court should overturn the Competition Appeal Court decision.

Judgment has been reserved.

Source: Business Day

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