



Judge Kathleen Satchwell

CC: Sanef Executive Director, Kate Skinner

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1 March 2021

Dear Judge Satchwell

**Independent Panel Report: Inquiry into Media Ethics and Credibility**

1. We refer to the independent panel report on the findings of the inquiry into media ethics and credibility, commissioned by the South African National Editors' Forum, dated January 2021 ("**the Report**").

2. We have noted that, at paragraph 12.3.4, the Report states the following:

*"The NAB provides the funding for the BCCSA, which is nevertheless, entirely independent from it. The NAB is however currently asking the courts for a redefinition: it is seeking a ruling that the BCCSA is a voluntary association, which members of the NAB can also join. The BCCSA, while indicating that it will abide by the decision of the court, is concerned about the impact of such a ruling. The requested finding would mean that members of the NAB, in respect of whom the BCCSA adjudicates complaints, would now be the higher authority of the BCCSA and able to amend the BCCSA constitution. The concern is that this will have a negative impact on media ethics and credibility in general."*

3. With respect, this paragraph does not accurately reflect the outcome of the dispute between the NAB and the BCCSA, nor the context of the dispute. It is regrettable that the NAB was not provided an opportunity to comment on this section of the Report prior to its finalisation. The purpose of this letter is therefore to provide clarity on this matter and to respectfully request that the Report be amended accordingly.

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*The NAB is a voluntary association funded by its members*



#### **4. There is no live dispute between the NAB and BCCSA**

4.1 The Report states that "*The NAB is ... currently asking the courts for a redefinition*". This is not so. The court proceedings were referred to arbitration, by agreement between the parties, in May 2020. The arbitration proceedings were finalised on 29 September 2020, when the arbitration appeal panel handed down its award (the findings contained in the award are discussed further below).

4.2 It is also not correct that the BCCSA indicated that it will abide by the decision of the court. The BCCSA opposed the declarators sought by the NAB, both before the court and in the arbitration proceedings.

4.3 The context of the dispute is important. The NAB sought to clarify that its members were the members of the BCCSA, in order to ensure appropriate corporate governance changes could be made to the BCCSA's constitution. The commissioners resisted the right of the broadcasters to make these changes – which did not impact at all on the independence of the commissioners in adjudicating complaints against the broadcasters.

#### **5. The arbitration appeal award**

5.1 The arbitration appeal panel (comprising Judges R Nugent and F Malan and Advocate P Ginsburg) handed down its decision on 29 September 2020.

5.2 The award settled the issue of principle in favour of the NAB – that the broadcaster members of the NAB are the members of the BCCSA. This is fully in accordance with section 54 of the Electronic Communication Act, which states that the broadcasters must be members of the body (which is the BCCSA) that ICASA has approved pursuant to that provision.

5.3 This does nothing to change the adjudicative independence of the BCCSA. The commissioners will discharge their functions of adjudicating complaints against broadcasters impartially and independently, as they have always done.

#### **6. The adjudicatory independence of the BCCSA remains sacrosanct**

6.1 The NAB wishes to disabuse the panel of any concern relating to the BCCSA's independence when exercising its core function – to adjudicate disputes between members of the public and broadcasters.



- 6.2 The ruling of the arbitration appeal panel does not create any impediment to the adjudicatory independence of the BCCSA, and the arbitration appeal panel acknowledged the NAB's position in this regard. The NAB respects the adjudicative independence of the BCCSA, which the NAB considers to be sacrosanct. The NAB and its members have no interest or intention to interfere in the BCCSA's adjudicative independence - this would be entirely counter-productive.
- 6.3 The findings of the arbitration appeal panel are not a threat to this adjudicatory function or independence. The arbitration award is available for your perusal, should this be necessary.
- 6.4 The NAB wishes to emphasise that the adjudicative independence of the BCCSA, and its commissioners, remains sacrosanct and the disciplinary mechanisms prescribed in the amended constitution have not been changed in any way which may impact this independence. All that the amendments have done is to introduce sound, and necessary, corporate governance principles into the constitution.
- 6.5 The recognition of the BCCSA by the sector regulator, ICASA, remains intact and all signatories to the BCCSA adhere to the rulings of the commissioners - as they always have since the formation of the BCCSA in 1993.
- 6.6 Consequently, there is absolutely no negative impact on media ethics and credibility and the NAB has consistently advocated for independent co-regulation.
7. Thank you for the opportunity to provide input and we trust that we have clarified the context of the dispute and we look forward to a revision of the Report.

Yours faithfully



**Nadia Bulbulia**  
**NAB Executive Director**

