

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CC CASES CCT 89/22 and CCT 92/22

In the matter between:

	CCT89/22
e.tv (PTY) LTD	Applicant
and	
MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES	First Respondent
THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA	Second Respondent
CHAIRPERSON: INDEPENDENT COMMUNICATION AUTHORITY OF SOUTH AFRICA	Third Respondent
NATIONAL ASSOCIATION OF BROADCASTERS	Fourth Respondent
SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED	Fifth Respondent
VODACOM (PTY) LIMITED	Sixth Respondent
MOBILE TELEPHONE NETWORKS (PTY) LIMITED	Seventh Respondent
CELL C (PTY) LIMITED	Eighth Respondent
TELKOM SA SOC LIMITED	Ninth Respondent
WIRELESS BUSINESS SOLUTIONS (PTY) LIMITED t/a RAIN	Tenth Respondent
LIQUID TELECOMMUNICATIONS SOUTH AFRICA (PTY) LIMITED	Eleventh Respondent
SENTECH SOC LIMITED	Twelfth Respondent
MEDIA MONITORING AFRICA	Thirteenth Respondent
SOS SUPPORTING PUBLIC BROADCASTING	Fourteenth Respondent

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CCT 92/22

MEDIA MONITORING AFRICA	First Applicant
SOS SUPPORTING PUBLIC BROADCASTING	Second Applicant
and	
e.tv (PTY) LTD	First Respondent
MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES	Second Respondent
THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA	Third Respondent
CHAIRPERSON: INDEPENDENT COMMUNICATION AUTHORITY OF SOUTH AFRICA	Fourth Respondent
NATIONAL ASSOCIATION OF BROADCASTERS	Fifth Respondent
SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED	Sixth Respondent
VODACOM (PTY) LIMITED	Seventh Respondent
MOBILE TELEPHONE NETWORKS (PTY) LIMITED	Eighth Respondent
CELL C (PTY) LIMITED	Ninth Respondent
TELKOM SA SOC LIMITED	Tenth Respondent
WIRELESS BUSINESS SOLUTIONS (PTY) LIMITED t/a RAIN	Eleventh Respondent
LIQUID TELECOMMUNICATIONS SOUTH AFRICA (PTY) LIMITED	Twelfth Respondent
SENTECH SOC LIMITED	Thirteenth Respondent

CONFIRMATORY AFFIDAVIT

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I, the undersigned,

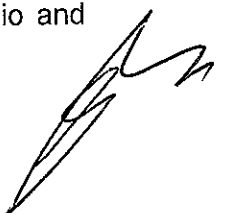
GARY WHITAKER

do hereby make oath and state that:

- 1 I am the Chief Executive Officer of the Broadcast Research Council of South Africa (BRC), with its principal place of business at Albury Office Park, off Jan Smuts Avenue, Hyde Park. My area of professional expertise is in market-related research.
- 2 The BRC is a non-profit industry organisation which aims to provide objective, transparent research measuring audiences for radio and television to service the needs of broadcasters and advertisers and marketers in South Africa.
- 3 The facts contained in this affidavit are, except where the context indicates otherwise, within my personal knowledge and belief and are true and correct.
- 4 I have read the supplementary affidavit of WILLIAM ROBERT BIRD and confirm the correctness of the facts and figures, to the extent that they relate to audience measurement figures, particularly those contained in paragraph 43.1 of the supplementary affidavit. I set out an explanation of the BRC Television Audience Measurement Survey below.

BRC AND TAMS

- 5 The Broadcast Research Council of South Africa (BRC) was established in 2015. The role of the BRC is to commission and oversee the delivery of radio and


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television audience measurement research for broadcasters, as well as for the advertising and marketing industry.

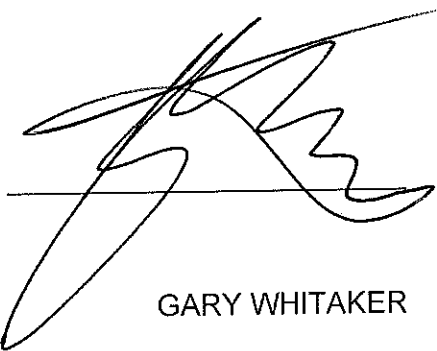
- 6 The BRC is a non-profit entity whose members consist of operators in the broadcasting industry. All television service providers in South Africa are members of the BRC and work together (notwithstanding the fact that they are all competitors) to secure the veracity and integrity of audience measurement research data for the benefit of the television industry as a whole.
- 7 One of the research surveys the BRC commissions and publishes is the Television Audience Measurement Survey (TAMS) which is scrutinised by representatives of every television broadcaster in the country in monthly technical oversight meetings.
- 8 The current TAMS research provider to the BRC is Nielsen Media Research South Africa (Pty) Ltd, an affiliate of the global Nielsen group of companies, which is the television audience measure survey global industry leader. Nielsen provides the TAMS research services to the BRC in terms of a long-term multi-year contract entered into between Nielsen and the BRC.
- 9 TAMS uses peplemeters, a technological tool comprising hardware and software which measures audience television viewing habits directly via the television sets of panel members in real time and on an ongoing, always-on, basis.



- 10 The TAMS panel is recruited, established and maintained by Nielsen to be an accurate statistical representation of the entire adult South African population, in terms of: area of residence (metro, urban, rural) province (all nine), race, and the manner of access to television programming, that is, the television platform used that is, Digital Terrestrial Television (DTT) – whether subscription or free to air; free to air analogue terrestrial television; Direct to Home Satellite - whether subscription or free to air.
- 11 TAMS Research has industry-best practice standards for proper panel and technology controls to ensure accuracy of the television audience data. The key performance indicator that Nielsen is expected to reach in relation to daily television audience measurement accuracy is 90%, although variations as a result of external factors such flooding events or Eskom load-shedding can occur.
- 12 The BRC additionally ensures that the TAMS itself is externally audited by internationally-recognised television audience measurement research experts, both local and foreign.
- 13 No source of South African television audience research is more accurate than the BRC TAMS, which is commissioned by the television industry at a cost to it of tens of millions of Rands annually, the results of which are calculated continuously and reported to the BRC and its members as well as to marketers and advertising agencies on a daily basis.

A handwritten signature in black ink, followed by the initials 'TK' written below it.

- 14 TAMS is relied on by every television operator and every marketer and advertising agency in the country for their television advertising media planning for accurate and up to date, that is, daily, information as to what percentage of the population (broken down into residential area, in every province), and race, is watching what television programme on what channel, on what platform (including Digital Terrestrial Television (DTT) – whether subscription or free to air; free to air analogue terrestrial television; Direct to Home Satellite - whether subscription or free to air) on which day and at what time.
- 15 The TAMS figures relating to the number of South African households that are entirely reliant on analogue free to air television contained in paragraph 43.1 of the supplementary affidavit of WILLIAM ROBERT BIRD are accurate as at 25 May 2022 and were provided to me, as CEO of the BRC, by Nielsen on 26 May 2022.



GARY WHITAKER

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at SANDTON on this the 20 day of MAY 2022, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

TK



COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

TSHEGOFATSO KHUNOU

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Commissioner of Oaths

