



# Report on SIU investigations

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Submission to Turnaround Sub-Committee of the  
Board 16 August 2012

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## **1. INTRODUCTION**

The Auditor General South Africa's (AGSA) report dated September 2009 identified a number of items that impacted the SABC negatively. In order to continue the investigation of allegations made in the AGSA report, the Board appointed the Special Investigating Unit (SIU).

The SIU's contract came to an end on 31 March 2012, and the reports delivered in June 2012, aims to bring finality to the investigations.

In summary, the following has been identified and/or recommended by the SIU:

- R9.6m Fruitless and wasteful expenditure
- R428.6m Irregular expenditure
- Disciplinary action against more than 300 employees
- Financial misconduct in terms of PFMA
- 9 ongoing criminal investigations and prosecution (excluding former Board members)

The purpose of this document is to provide the SABC Board with an overview of the SIU findings and recommendations. Some concerns have also been identified from their recommendations.

Based on the findings, recommendations and concerns identified, the Board should make decisions in order to bring these matters to conclusion in the interests of good corporate governance.

## **2. REVIEW OF APPOINTMENT OF 118 CONSULTANTS**

### **Background**

The AGSA report on an investigation at the SABC dated September 2009, highlighted payments to 118 consultants amounting to R 279,8m. These payments were not investigated by AGSA.

The SIU was mandated to investigate whether the appointment of the identified consultants were carried out in accordance with SABC policies and procedures.

SIU investigated 16 of the companies identified in the AGSA report to which payments greater than R2m were made. The total amount of payments investigated were R249.2m, representing 89% of the payments identified in the AGSA report.

Name	Nature of Service / Project	AGSA 2009 Report Amount	AGSA Overstatement	AGSA Amount (verified by SIU)	Total payments October 2007 - August 2011	Irregular payments
LIB N ROSE CONSULTING CC	Marketing	2 210 576	1 105 288	1 105 288	1 304 297	1 304 297
CORPORATE TRAVEL CONSULTANCY CC	Travel consulting	2 857 466	1 419 178	1 438 288	2 581 213	2 581 213
INDYEBO CONSULTING (PTY) LTD	Accounting services	2 867 322	1 433 661	1 433 661	1 433 661	1 433 661
HI MOM C & Y CONSULTANCY CC	Content Production	3 046 055	1 523 027	1 523 027	1 523 027	1 523 027
EQUITY VALUE CONSULTING CC	Software Training	3 304 965	1 715 954	1 589 011	2 708 080	2 708 080
SEKELA CONSULTING (PTY) LTD	Risk Management	3 559 494	2 486 181	1 073 313	1 073 313	1 073 313
ZANUSI MARK. CONSULTANTS (PTY) LTD	Content marketing and production	4 575 088	2 287 544	2 287 544	2 481 695	2 481 695
ORATILWE CONSULTANTS T/A EXCLUSIVE MAN. SERVICE CC	Technical Equipment hire	4 832 546	2 791 820	2 040 726	2 976 470	2 976 470
RED FEATHER CONSULTING (PTY) LTD	Education content	7 049 988	3 586 383	3 463 605	3 882 783	3 882 783
HARVEST CONSULTING CC	Content acquisition	8 101 311	4 050 655	4 050 655	4 471 850	4 471 850
MSIMOLE CONSULTING CC	Project management	10 147 422	5 073 711	5 073 711	5 073 711	5 073 711
TATA CONSULTANCY SERVICES (PTY) LTD	CSS/MAM project	12 379 373	6 189 687	6 189 687	6 189 687	6 189 687
THAROLLO CONSULTING (PTY) LTD	TVBMS Project	13 936 548	9 395 184	4 541 364	17 916 225	17 916 225
DELOITTE CONSULTING (PTY) LTD	Consulting	18 998 787	9 780 463	9 218 325	29 646 385	29 646 385
BLUE PENCIL CONSULTING (PTY) LTD	SAP Project consultants	20 212 866	11 471 618	8 741 248	23 310 867	3 573 319
METRA CONSULTING (PTY) LTD T/A GEMINI CONSULTING	Consulting	131 157 246	65 578 623	65 578 623	66 146 343	66 146 343
		<b>249 237 053</b>	<b>129 888 978</b>	<b>119 348 076</b>	<b>172 719 607</b>	<b>152 982 060</b>

From the table above, it is evident that the AGSA report was overstated by R129.8m.

### **Non-compliance with the DAF, policy and procedures**

Non-compliance with the procurement policy was identified on all 16 (sixteen) matters investigated.

Non-compliance with the DAF was identified on all 16 (sixteen) matters investigated.

Non-compliance with Appointment of External Consultants policy was identified in 9 matters.

Criminal action was recommended in all 16 matters.

### **Irregular Expenditure**

SIU identified irregular expenditure amounting to R 152,9m with reference to the 16 consulting matters.

### **Corporate Governance**

The SIU identified that previous SABC Boards had not practiced sound corporate governance in the execution of its responsibilities, and is guilty of financial misconduct on the basis that:

- In terms of section 51(1)(b)(ii) of the PFMA the Board, at the time, as the accounting authority must take effective and appropriate steps to prevent fruitless and wasteful and irregular expenditure resulting from not complying with the operational policies of SABC;
- The Board at the time contravened section 51(1)(b)(ii) of the PFMA in that it failed to prevent irregular expenditure amounting to R152,9m.
- In terms of section 86(2) of the PFMA the members of SABC Board, as the accounting authority, were liable to be criminally prosecuted if the Board willfully or in a grossly negligent way failed to comply with a provision of section 50, 51 or 55.

In terms of the SIU Act, the SIU referred the matter to the SCCU for further investigation, as evidence exists which points to the commission of a criminal offence in terms of section 86(2) of the PFMA.

SIU has identified financial misconduct by 22 individual Board members that served on 3 separate Boards during the period 1 January 2004 to 31 December 2009.

In terms of section 83(3), the former Head of Procurement: Mabela Satekge was also found to commit acts of financial misconduct in that he willfully or negligently failed to exercise a duty assigned to him in terms of the PFMA.

No other former or current employee of the SABC is identified in the SIU report as being implicated in any criminal matter relating to the appointment of consultants.

In terms of the SIU Act, the SIU has referred the matter to the Special Commercial Crimes Unit (SCCU) for further investigation.

The majority of the non-compliance identified in the SIU report is due to lack of compliance to the Supply Chain Management (SCM) policy. This non-compliance in turn resulted in the lack of compliance with the Delegation of authority Framework (DAF).

The SCM policy stipulates:

Paragraph 21 - The Procurement Department is responsible for contract negotiations, renewals, extensions, terminations and holding of a copy of the contract;

Paragraph 23 – information gathering, recording and reporting of the same, related to supply chain activities to promote good governance is the responsibility of the Head of Procurement, or delegate; and

Paragraph 14.16 – a minimum of 3 written quotes must be obtained from the prospective supplier database for the procurement between R100,000 and R2m. If it is not possible to obtain 3 quotes, the reasons should be recorded and approved by the Head of Procurement, or delegate.

Further non-compliance with the DAF was due to contracts not being found for the consultants identified.

## **Observations**

### 1. Depth of SIU investigations

In order to reach their conclusions, the SIU interviewed only the following employees:

Jane Mbatia – Acting Company Secretary

Simon Molaudzi – Acting Head of Procurement

Andries van Dyk – Manager: Financial Shared Services

Zak Yunus – HCS (only for Deloitte matter)

Lisa Phillips – Company Secretariat (only for Deloitte matter)

Celesta Rosenzweig – SAP CCC (only for Blue Pencil matter)

Had the interviews been extended to Legal Department and relevant business units, more documentation would have been obtained, thus leading to lesser classification of irregular expenditure.

2. The SCM policy is not in line with current business practice, with regards to:

*Paragraph 21 - The Procurement Department is responsible for contract negotiations, renewals, extensions, and terminations and holding of a copy of the contract;*

Procurement does not keep copies of contracts. It is common practice that 3 copies are made for every contract and that it is distributed in the following manner:

- 1 copy to Supplier
- 1 copy to Legal Department
- 1 copy to Business Unit concerned (example: news)

*Paragraph 4 - The acquisition of content is included in the scope of the policy*

The procurement department is not involved in the content acquisition process at all. The processes are carried out by Content Division.

**Required Actions:**

It is recommended that the Board inform the SIU of SABC practices and request that they investigate further, or alternatively that Internal Audit investigates further.

### **3. NEW ALLEGATIONS RECEIVED BUT NOT INVESTIGATED**

#### **Background**

In October 2011, certain employees came forward with allegations of wrongdoing at the SABC. These allegations have not been investigated by SIU as they fell outside of the proclamation period which was from 1 January 2005 to 29 October 2010.

#### **Required Actions:**

It is recommended that the Board approves that the allegations be investigated further.

<b>Allegation</b>	<b>Details of allegation</b>
Asante Sana - supplier of financial services to the SABC	<ul style="list-style-type: none"><li>- Asante Sana was rendering financial services to the SABC when a Chief Financial Controller and Chief Financial Officer were appointed to perform these same tasks.</li><li>- Payment made was R2,5 million from 3 May to 1 October 2011.</li><li>- They used reports generated by SABC employees to supplement their reporting which means they did not perform the work themselves.</li><li>- They allegedly received a large payment for reimbursements although they were working from the SABC premises.</li></ul>
Staff did not know or refused to adhere to SABC policies	Senior managers were unable to resolve queries with reference to SABC policies
Non-compliance with the SABC's Delegation of Authority Framework requirement for the submission of business plans	The allegation was that the SABC's DAF were not adhered to, specifically for the completion and submission of a formal Business Plans for the approval of expenditure.
Mr. Justice Ndaba	<ul style="list-style-type: none"><li>- Services rendered were allegedly not procured in terms of SCM Policy and the DAF. Mr. Lerato Nage (Acting: CFO) and Mr. Robin Nicholson (Former acting: GCEO) were involved in the negotiations.</li><li>- Payments to Mr. Ndaba were not requested through normal payment process and were instead requested as freelance payments through Ms Petra Campher.</li><li>- Costs incurred for the training course Mr. Justice Ndaba attended in UK are allegedly constituted fruitless and wasteful expenditure.</li></ul>



SABC Sports department	<ul style="list-style-type: none"> <li>- Members of senior management questioned a loss of approximately R500 million when they were themselves responsible for the negotiations of the deals.</li> <li>- Another loss incurred in the Sports Department was a contract negotiated with SportsFive by the Minister of Sport and Chairman of the SABC.</li> <li>- SABC owned the SAFA approximately R 12 million which is outstanding since 15 February 2011.</li> <li>- SABC owed the SAFA approximately R 22 million, the account of SAFA has since been blocked at the SABC.</li> </ul>
Contracts with payment terms outside the DAF framework	Certain contracts with SABC vendors were being negotiated outside of the DAF framework.
Employees unable to perform daily duties to a lack of knowledge	SABC staff did not at the time know the basics of performing their daily duties.
Partiality to vendors	<ul style="list-style-type: none"> <li>- Junior Financial Officers allegedly instructed the Treasury to make payments in disregard of financial processes.</li> <li>- Incessant requests were made for payment to be made to supplier, Spencer Stuart.</li> </ul>
Senior managers did not act on issues that were raised	Senior management did not act to rectify and resolve issues that were brought to their attention.
Payments without a contract	Requests were constantly made for payments to be made to suppliers with no contract in place and no official recordkeeping was done of these payments without contracts.
Risks identified for the 2010 Soccer World Cup was not addressed	Possible risks around the 2010 Soccer World Cup were identified in 2009 but the risks and concerns identified were ignored.
Board members' expenses and requests to staff to incur expenses	Board members requested staff to incur expenses outside of the approved business plan. Board member's alleged instruction for more drinks to be served at the 2011 Durban July which resulted in the budget being exceeded by R32,000 was alleged to be fruitless and wasteful expenditure.
Issues with vendor creation	<ul style="list-style-type: none"> <li>- Procurement Department did not at that time understand issues around vendor creation relating to individuals, companies and close corporations.</li> <li>- Banking details on the invoice from supplier differed from the recorded vendor registration documentation.</li> </ul>

	- Two invoices were submitted for the same service and same amount but different supplier names.
Procurement from vendors	Individual purchase orders were created every time a standing purchase was made instead of creating a single purchase order for the entire annual value.
Inconsistencies in "work back contracts" with SABC employees	There were inconsistencies in the "work back agreements" with SABC employees for whom studies and training were paid for by the SABC.
Inappropriate staff appointments	The News Department bypassed an SABC directive to reduce staff numbers and not employ new staff members by appointing maintenance staff and messengers through the freelance process.
Metro FM Christmas lunch	The radio station submitted a business plan of "One full day conference" for 50 people including breakfast and dinner which was in actual fact a means to fund the Christmas lunch, notwithstanding that Christmas functions were not permitted at the expense of the SABC.
Metro FM Awards 2010	<ul style="list-style-type: none"> <li>- Invoice issued by SABC to Mpumalanga Tourism and Parks Agency for R 10 Million sponsorship to finance the cost of the Metro FM Awards was generated outside the SAP system.</li> <li>- Two invoices were submitted by Afroshine Holding for R1 million commissions to secure the sponsorship for the SABC each of which had different banking details, business address and VAT numbers.</li> <li>- Mr. Matsobane Gololo (head of Metro FM) did not return office equipment (Laptop and 3 G modem) when he left the SABC. This matter was brought to the attention of the CFO on 21 November 2010 with no response.</li> </ul>
Penalty for non-payment of tax in respect of 2008 Olympic Games	<ul style="list-style-type: none"> <li>- SABC incurred additional tax expenses due to traveling expenses not being recorded as fringe benefits to employees.</li> <li>- Mr. Henk Lamberts (GM: Finance in the Content Enterprises division) was aware of the fact and failed to act accordingly.</li> </ul>
Financial reporting to Parliament	SABC employees were instructed not to present the financial quarterly forecasts.

Specific Human Resource matters	<ul style="list-style-type: none"> <li>- Requests for information on salary increases were ignored.</li> <li>- Several staff appointments made by the SABC since January 2011 which was not in line with the Turnaround Strategy.</li> <li>- Senior SABC employees were borrowing amounts from the Commemorative Fund in excess of the maximum prescribed threshold.</li> <li>- Leave encashment ceased in the 2009 financial year but selected SABC employees still received leave encashments.</li> </ul>
Leasing of fleet vehicles	SABC policies and procedures were not adhered to in the procurement of SABC fleet vehicles.
Payment to a supplier that did not deliver on the contract	Ndabazabanthu People Solutions CC was a supplier contracted to enhance the Risk Management Strategy and Policy was paid by SABC, Deloitte referred to non-delivery by this supplier.
Reconciliation between business plans and actual expenditure	The reconciliations were not being performed between the approved Business Plans submitted and the actual expenditure incurred.
Possible irregularities in conduct of SABC employee	<ul style="list-style-type: none"> <li>- SABC employee involved in tender processes signed the attendance register for a compulsory briefing session on behalf of a supplier Mr. Rudy Rashama enable the supplier to submit a tender which was held on 19 September 2011.</li> <li>- The employee requested kickbacks and loans from various other suppliers on numerous occasions.</li> </ul>
Possible irregularities in conduct of SABC employee	<ul style="list-style-type: none"> <li>- Allegation of Ms Nompilo Dlamini as Procurement Manager colluded with the owners or members of companies registered as suppliers on the SABC database.</li> <li>- Ms Dlamini would award business to these entities in exchange for kickbacks involving the following entities: NSS Civil Building Construction; CC Leitam Stationers CC; YZA-YZA Music and Video and Alien Galaxy CC.</li> </ul>

#### **4. DECLARATIONS OF INTEREST RELATING TO 698 EMPLOYEES AND 32 BOARD MEMBERS**

The analysis of CIPC database as at 30 April 2010 against the SABC employee database for the period 1 October 2007 to 30 November 2010 showed that 698 employees and 32 Board members held interests in 1105 and 177 companies respectively.

SIU conducted further analysis to determine whether the above employees and Board members had a duty to disclose their interests. Based on the analysis:

##### Employees:

687 employees had a duty to disclose 1052 business interests in 1013 corporate entities

Of the 687 employees, 89 declared their business interests. Only 30 of these employees obtained the approval of the Group Executive or GM of their business unit.

SIU has recommended disciplinary action against these employees who have transgressed the SABC Personnel Regulations by failing to disclose their interests. SIU has prepared disciplinary files for 369 employees. As at 02 July 2012, 304 were still employed at SABC.

##### Board Members:

26 Board members had a duty to disclose 103 business interests in 102 business entities

Of the 26 Board members, 17 declared their directorships in other companies. The remaining 19 Board members did not declare directorships in 73 business entities. Of these 19 Board members, 3 were still Board members as at 20 November 2010.

According to the Companies Act 61 of 1973, section 216, failure to disclose directorships by Board members constituted a criminal offence.

SIU has sent letters to the Board members concerned requesting explanation for apparent non-declaration. These responses will be submitted to SAPS in accordance with the SIU Act.

In previous reports, SIU made recommendations to strengthen the control environment for the declarations process. The Acting Company Secretary's (Jane Mbatia) responses to these recommendations are included in the SIU report.

### Concerns with SIU Report:

Some of the recommendations to improve the control environment were not practical.

The disciplinary processes of employees who did not declare their interests would not be accepted by the employees, as SABC Personnel Regulations were unclear at the time.

The declarations process has since been extensively communicated to all staff. It has also been included in the Code of Ethics and Business Conduct Policy. This new policy is included in the HR policies to be presented to Board for approval.

### **5. POTENTIAL CONFLICT OF INTEREST: EMPLOYEES**

SIU was mandated to further investigate 16 employees and 5 entities to establish if a conflict of interest existed.

SIU compared the CIPC database against the SABC employee and vendor database for payments made during the period 1 October 2007 to 30 November 2010.

Compliance against procurement and declaration processes was reviewed.

#### Of the 16 employees:

- 3 employees / Board members had a duty to disclose their interests, and duly declared same.
- 2 employees did not have a duty to declare their interests.
- 11 employees did not declare their interests.
- As at 02 July 2012, 5 employees remain in the employ of the SABC.

Of the 5 entities investigated, SIU identified non-compliance to the SABC Supply Chain Management Policy in the appointment of Sedibeng Multimedia Services (Pty) Ltd and Mashabela Creatives CC.

#### SIU Recommendations:

SABC should ensure that all invoices paid comply with the VAT Act, and claim vat on only valid tax invoices.

SABC should institute disciplinary action against employees who failed to comply with SABC policies.

SABC should lodge criminal complaints in terms of the Corrupt Activities Act of 2004, against the following employees for failure to declare their interest in a supplier of the SABC, whilst employed by the SABC:

- Mr Motubatse David Mashabela
- Ms Eunice Junior Motsogae
- Mr Kristnan Madurai Nair

EMPLOYEE	INTEREST	PAYMENTS MADE	DECLARATION OF INTEREST	DAF COMPLIANT	SCM POLICY COMPLIANT	INFLUENCE IN PROCUREMENT	CURRENTLY EMPLOYED	RECOMMENDATIONS
Mr Quaresh Patel	Sentech (Pty) Ltd	R 1 168 847 988	No duty to declare	Not investigated	Not applicable	No	No	No further action
Mr Leon Edgar Meintjies	MAMCA (Pty) Ltd	R 79 880 065	No duty to declare	Not investigated	Excluded - professional membership	No	No	SABC should have formal agreement with MAMCA, approved as per DAF.
Mr Nhlanhla Paul Sibisi	Recording Industry of South Africa (RISA)	R 11 206 761	No	Yes	Yes	No	Yes	Yes, disciplinary action for failure to declare interest.
Ms Fellang Lorraine Sekha	Business Connexion (Pty) Ltd	R 2 649 758	Yes	Not investigated	Not applicable	No	No	No further action
Mr Edmund Thamsanqa Mazwai	Mafube Publishing (Pty) Ltd	R 368 591	Yes	Yes	Yes	No	No	No further action
Mr Sizwe Edward Nzimande	Western Province Ruby (Pty) Ltd	R 276 735	No duty to declare	Yes	Yes	No	Yes	No further action
Mr Morne van Zyl	Media Credit Co-Ordinators	R 71 250	Yes	Yes	Excluded - professional membership	No	No	No further action
Ms Eunice Junior Motsoagae	Mamepe Communications CC	R 64 478	No	Yes	No	Yes	Yes	Yes, (1) lodge criminal complaint for corruption, (2) disciplinary action for failure to declare interest.
Ms Tara Leigh Ranson	Design 32 CC trading as Tara's Craft	R 58 788	No	Yes	No	No	No	No further action
Mr Kristnan Madurai Nair	Nash Nair Photograph CC	R 42 750	No	Yes	No	Yes	No	Yes. (1) Disciplinary against Eugene Zwane for signing business plan without sufficient information. (2) Lodge criminal complaint against Mr Nair for failure to declare interest. (3) For fraudulently charging VAT, SIU referred matter to SARS and SAPS.
Ms Angela Kagiso Molefe	Nimba Productions CC	R 17 500	No	Yes	Excluded (Sole source supplier)	No	No	No further action
Ms Sarah Elizabeth Mary McGregor	June July Entertainment CC	R 10 000	No	Yes	Excluded (Sole source supplier)	No	No	No further action
Mr Mathumo Cedric Manaka	IBVE Holdings (Pty) Lty	R 7 770	No	Yes	Yes	No	Yes	Yes, disciplinary action for failure to declare interest.
Ms Sumitra Govender	Masala - The Curry House CC	R 5 867	No	No	No	No	No	No further action
Mr Mjikijeli Welcome Nzimande	Nazabo Promotions and Marketing CC	R 3 500	No	No	No	No	No	Yes, disciplinary action against other employees for SCM infringements: Tinus Breed, Felicity Guma, Valerie Dierkse.
Mr Amos Mandla Mdletshe	Magnavolt Trading 138 CC	R 1 639	No	Yes	No	No	Yes	Yes, disciplinary action for failure to declare interest. Disciplinary action also against other employees for SCM infringements: Tinus Breed, Valerie Kriel, Zakes Dube and Kogie Mudaly.
Mr Magata Kaizer Kganyago	Sedibeng Multi Media Services (Pty) Ltd	R 177 800	Yes	Yes	No	No	Yes	No further action
Mr Motubatse David Mashabela	Mashabela Creative CC	R 859 288	No	Yes	No	Yes	No	Yes. (1) Disciplinary against Luzinda Breet and Eugene Mametsefor SCM policy non compliance. (2) Lodge criminal complaint against Mr Mashabela for failure to declare interest and influence in procurement process.
Mr Thuso Wilfred Phale	9 11 Events CC	R 1 374 031	No	Yes	Excluded	No	No	No further action
Mrs Yvonne Busisiwe Kgame	Film & Market Initiative (Pty) Ltd	R 150 000	No duty to declare	Yes	Excluded (Sole source supplier)	No	No	No further action
Mr Benney Loto Motaung	North West Film Festival (Pty) Ltd	R 112 139	No	Yes	Not applicable - sponsorship	No	Yes	Yes, disciplinary action for failure to declare interest.

## **6. CRIMINAL MATTERS**

### Matilda Gaboo – International Acquisitions

#### Findings:

- The role of content buyers became obsolete after the formation of Internal Acquisitions unit as Ms Gaboo played a significant role in the acquisition of content.
- The acquisition process became secretive and acquisitions were made without communication of channel's needs.
- As a result of acquisitions made by Ms Gaboo, SABC ended up with high volumes of redundant inventory and impairment losses of about R170m.
- SABC suffered revenue and reputational losses.

#### Investigation Status:

Allegations of kickbacks are still under investigation.

SIU is finalising the docket, however, the matter has been referred to the National Prosecuting Authority (NPA). SIU criminal law practitioners drafted a charge sheet and made it available to the investigating officer.

### Clover SA contract / OMD / Joe Public

#### Findings:

SABC signed two contracts with two different versions.

Joe Public used contract version 1 to bill Clover SA, therefore Clover SA did not reap the financial benefit of 48 value added spots.

Joe Public used contract version 2 to pay SABC, therefore reaped the benefit of the added value spots.

SABC suffered a revenue loss of R239,543.

#### Investigation Status:

Investigation has been completed and the matter handed over to the NPA.

The NPA has indicated that prosecution will be instituted.



Mr Strini Naicker / Mango Airlines / Nestle SA

Findings:

Discounts offered to Mango Airlines were irregular and excessive and could have resulted in a potential loss of R13, 7m to the SABC.

Discounts offered to Nestle SA were irregular and excessive and could have resulted in a potential loss of R838, 640 to the SABC.

Investigation Status:

Investigation has been completed and the matter handed over to the NPA. However, the prosecutor issued a nolle prosequi certificate.

Mr Mafika Sihlali

Findings:

Fraudulent invoicing – SIU identified 23 matters that were outsourced during the period of Mr Sihlali's employment at the SABC. Invoices paid by the SABC appeared to be grossly inflated or the work had not been performed.

Actual losses suffered by SABC for invoices paid to Sihlali Molefe Incorporated (SMI) amounted to R 482,594.

The allegation that payments to Barry Aaron, Mr Sihlali's personal attorney, to the value of R1,9m was not substantiated.

Outsourced services paid by the SABC to SMI and SBS attorneys to the value of R 1,6m were found to be inflated or work was not performed.

A potentially corrupt relationship between Mr Sihlali and SBS Attorneys was found after SBS made payments to Sihlali's Leandra Soccer Club of R 330,000 in exchange for work awarded to SBS to the value of R6, 1m.

Investigation Status:

NPA prosecution is underway. Mr Sihlali and Mr Sithole are out on bail.

### RMN Productions CC

Findings:

The Community Builder of the Year Awards was an annual nation building project sponsored by the SABC, Sowetan and Old Mutual.

In 2004, SABC entered into a standard TV production agreement with RMN Productions CC to produce inserts of the 4 winners per region and the production of the Gala Event.

RMN Productions submitted falsified invoices as supporting documentation for expenditure incurred. RMN defrauded the SABC of R 196,994.

Investigation Status:

NPA prosecution was undertaken.

The suspect has failed to appear in court and a warrant of arrest has been issued.

The suspect has been black listed by SAPS and details have been circulated to the media.

### Moratiwa Trading CC / SAMRO

Preliminary Findings:

The SABC, according to the contract with Moratiwa Trading CC, should have received 5475 video tapes consisting of music content, but only received 970 music videos during the contract period.

SABC possibly overpaid Moratiwa Trading CC by R 5.9m as the content was not received.

Investigation Status:

The criminal case was opened by SAMRO.

The matter is still being investigated by SIU and Special Commercial Crimes Unit of SAPS.

#### Oilers Clothing CC

##### Findings:

Ms Motau was employed as the personal assistant of Mr Gab Mampone.

Payments from Oilers clothing to and from Ms Motau were identified.

Goods were ordered at inflated prices and paid by the SABC.

In some instances, goods were never delivered.

Additional payments between Ms Motau and Mr Mampone involving other SABC suppliers were also identified. These transactions were referred to SAPS.

##### Investigation Status:

The matter was referred to the NPA, prosecution is underway.

Two suspects were already arrested and appeared in court.

#### Nash Nair Photography CC

##### Finding:

Mr Krishnan Madurai Nair, an employee of the SABC failed to declare his interest in Nash Nair Photography. Through the declaration of interest investigation, SIU discovered that the company invoiced the SABC for an amount of R42,750 inclusive of VAT, even though it was not registered for VAT.

Due to the contravention of the VAT Act, the matter was reported to the SCCU of SAPS.

##### Investigation Status:

This case was opened during March 2012, no further status as yet.

#### Gun amnesty Campaign / Mercury Media

Finding:

SABC provided airtime to the value of R2m to the SAPS. For the latter, SABC billed Mercury Media an amount of R575,355. SAPS was not aware of the discounts and the discounts were not passed on to SAPS. A revenue loss was also suffered by SABC due to the excessive discount granted.

Investigation Status:

The matter is still being investigated by SIU and Special Commercial Crimes Unit of SAPS.

## **7. REVIEW OF 20 REVENUE MATTERS**

SIU undertook an investigation of 20 revenue matters referred by the SABC Board.

The review comprised of the following:

- Review of compliance with SABC policies and procedures
- Financial analysis of the revenue contract
- Investigation into the specific allegations received on the contract

Non-compliance to DAF and/or SABC sales policy was identified on all 20 revenue matters.

For 4 of the matters investigated, SABC did not ensure that the advertisers spend their total commitment values, thus resulting in revenue losses.

SIU identified revenue losses to the value of R209m due to advertisers spending less than their commitment values for the period 1 October 2007 to 16 July 2009.

The members of the Board during this period contravened section 51 (1) (c) of the PFMA in that they failed manage revenue. SIU recommends that action be instituted against the Board members at the time for financial misconduct committed in terms of PFMA section 83.

Criminal cases have been opened with the Special Commercial Crimes Unit of SAPS for the following matters:

- Clover contract
- Mango Airlines contract
- Nestle SA contract
- SAPS Gun Amnesty campaign

Disciplinary action was recommended for the following matters:

- Reckitt Benckiser
- Kellogg's
- Cambridge Foods
- MTN Soccer World Cup
- Coca Cola World Cup

Disciplinary action against the following employees for transgressions against DAF and/or sales policy was recommended:

- Mr Abdul Mathee
- Mr Kevin Cunningham
- Mr Ernest Stoop
- Mr Anton Heunis
- Ms Ebeth Jordaan
- Mr Eugene Zwane
- Ms Lungile Nkosi
- Mr Yasin Mahomed

For the following 5 revenue matters, there is a reasonable suspicion of possible fraud and/or corruption:

- GCIS Commitment agreements for TV – 2007/8 to 2009/10
- Twins / Hollard campaign
- Reckitt Benckiser campaigns concluded in 2010
- Kellogg's campaigns concluded in 2008
- SAPS gun Amnesty Campaign

SIU recommends further investigation be undertaken by the SABC, and if necessary, institute criminal proceedings.

SIU has made the following control environment recommendations:

- Updating of sales policies to incorporate Sports and Sponsorship elements.
- Policy relating to Public Service Announcements to be drafted and approved by Board.
- All policies applicable to sales environment should be properly approved by Board.
- Where policies and/or procedures are no longer applicable, these should be removed from the SABC Intranet.
- SABC should implement proper records management procedures within Group Sales & Marketing.
- Maintenance of accurate and complete attendance registers and meeting minutes must be kept.
- The preservation of SABC's electronic information to be addressed by means of an approved operating procedure which requires regular backup of data on laptops and desktops.
- In depth market research required to determine whether the discount structure results in excessive discounts and subsequent loss of revenue.
- Re-evaluation of discount provisions as per sales policies against corporate strategy in relation to revenue.
- Monitoring of advertisers actual spend against commitment value should be done on an ongoing basis.
- Where advertisers do not perform against commitments, the discount granted should be re-negotiated.
- Discounts granted to advertisers should be monitored on an ongoing basis to ensure that it is within the thresholds contained in the commitment agreement.
- Billings per Landmark should be reconciled to SAP on a monthly basis. The differences should be followed up and reconciled.
- Where new market offerings are made, proper consultative procedures should be undertaken to determine whether resources are available. This would prevent financial and reputational loss arising from an inability to deliver on what was promised.

## **8. REVIEW OF 14 PROCUREMENT MATTERS**

The AGSA report on an investigation at the SABC dated September 2009, highlighted non-compliance with the SABC Procurement policy. The SIU was mandated to investigate the allegations on the following 7 agreements:

- NSA Security Services (Pty)Ltd
- Norman Bisset and Associates Group (Pty) Ltd
- New Integrated Credit Solutions (Pty) Ltd
- Munnik Basson Dagama Inc Attorneys
- Van de Venter Mojapelo Attorneys
- Bid Information Exchange (Pty) Ltd
- Broadcast and Installation Engineering (Pty) Ltd

SABC Board requested SIU to investigate additional allegations received by the AGSA but not investigated at the time of the report. The allegations relate to the following agreements:

- Blue Dust Six (Pty) Ltd trading as AFStereo
- La Liga - Entertainment Highway Limited of Lagos
- SAP – Blue Pencil Consulting (Pty) Ltd and Accenture (South Africa) (Pty) Ltd
- Young and Rubicam (Pty) Ltd
- Siemens Business Solutions (Pty) Ltd
- IMMIX Solutions (Pty) Ltd
- SABC supplier names “Essential”

### **Key Findings and Recommendations:**

Non-compliance with DAF and/or procurement policy was identified on 9 matters investigated.

Disciplinary action recommended against 2 SABC Employees, namely:

- Anton Killian
- James Mathebula

Criminal action recommended in the Siemens matter.

Civil action recommended against:

- Mr Mbebe in the La Liga matter,
- Advocate Mpofo and Mr Mafika Sihlali in the Siemens matter

From the 14 agreements, for the period September 2006 and March 2008, the SIU identified:

R 9.6m fruitless and wasteful expenditure

R 275.7m irregular expenditure

The SIU identified that 2 previous SABC Boards had not practiced sound corporate governance in the execution of its responsibilities, and is guilty of financial misconduct on the basis that:

- In terms of section 51(1)(b)(ii) of the PFMA the Board, at the time, as the accounting authority must take effective and appropriate steps to prevent fruitless and wasteful and irregular expenditure resulting from not complying with the operational policies of SABC;
- The Board at the time contravened section 51(1) (b) (ii) of the PFMA in that it failed to prevent fruitless and wasteful expenditure amounting to R9.6m and irregular expenditure amounting to R275.7m.
- In terms of section 86(2) of the PFMA the members of SABC Board, as the accounting authority, were liable to be criminally prosecuted if the Board willfully or in a grossly negligent way failed to comply with a provision of section 50, 51 or 55.

In terms of the SIU Act, the SIU referred the matter to the SCCU for further investigation, as evidence exists which points to the commission of a criminal offence in terms of section 86(2) of the PFMA.



## **9. Detailed findings and recommendations - Siemens Business Solutions (Pty) Ltd**

### Key Findings

- SABC Group Exco approved the establishment of a Technology Programme Office with Siemens at a cost of R10m for one year, to be reviewed on an annual basis.
- The tender process may have been flawed as respondents were only given 2 weeks to submit their tenders as opposed to Siemens that had significantly more exposure to the SABC's requirements. As a result, only 1 company other than Siemens submitted a bid from the 21 companies that attended the tender briefing session.
- The GCEO: Adv. Dali Mpofu and Mr Mafika Sihlali signed a 3 year contract with Siemens for R326m, which was not in compliance with the Group Exco resolution of R10m.
- The GCEO: Adv. Dali Mpofu and Mr Mafika Sihlali contravened the DAF as the amount of the contract was signed outside of their delegated authority.
- The MOU extending the contract with Siemens was signed by the Acting GCEO: Mr Gab Mampone. SIU could not locate any evidence of Board approval. Mr Mampone therefore contravened DAF and the PFMA.
- Siemens commenced work without a written contract in place, thus resulting in non-compliance with the DAF.
- The appointment of Siemens amounted to a potential conflict of interest.
- The then Acting Chief Technology Officer: Ms Sharoda Rapeti misrepresented to Group Exco that the contract would cost R10m in year one where she knew that Siemens tendered R23m for year one. Therefore Ms Rapeti has contravened the PFMA and possibly committed fraud. She also contravened the PFMA by instructing Siemens to commence work without a written contract in place.
- Adv. Mpofu ignored a legal opinion received before the contract was signed. The opinion concluded that Siemens had an unfair advantage and resulted in a PFMA contravention.
- Financial Misconduct in terms of the PFMA – the SABC Board at the time, failed to comply with s51 (1) (b) (ii) as there was irregular expenditure amounting to R 149m.
- In conclusion, the facts constitute a reasonable possibility that fraud and/or corruption and/or criminal non-compliance has been committed.

Recommendations:

- SABC to consider instituting a civil claim against Adv. Dali Mpofu and Mr Mafika Sihlali for the losses incurred as a result of their gross negligence in disregarding legal advice.
- SABC to refer the matter to the SAPS, as the evidence points to the commission of a criminal offence.
- Action should be instituted against the Board members at the time for financial misconduct in terms of PFMA, section 83.
- Action should be instituted against the Board members at the time in terms of PFMA, section 86(2) in that it made or permitted irregular expenditure amounting to R149m.
- The current Board should report the PFMA non-compliance and financial conduct to the relevant authority and Treasury as required by the PFMA, section 52(2).

Submitted by

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**Ms. Sully Motsweni**

**GE: Risk & Governance (Acting)**

Approved by:

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**Mrs. Lulama Mokhobo**

**SABC GCEO**