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Reflections of a Broadcast Regulator in Democratic South Africa

In the short-lived history of the Independent Broadcasting Authority (1994–2000) its achievements were little appreciated, nor were the lessons from its scandals learnt. As a result, corruption scandals came to be repeated on a much larger scale at the higher levels of government, and the lessons for building the all-important Information Economy were not applied. Had they been heeded, thousands of good jobs would have been created, and corruption would have been lessened.

Broadcasting was the first sector to change in the new South Africa. The reason was that negotiators wanted the first democratic election covered fairly. Reflecting the dynamic of the constitutional negotiations, the ANC had an interest in ending an apartheid propaganda machine – the South African Broadcasting Corporation (SABC) – while the Nationalist government wanted to establish a regime that would give them coverage once out of power. The change started in the days of the constitutional negotiations at CODESA, with the appointment of a new SABC board in 1993.

For those of us with a long association with Namibia, it was painful to watch the South West African Broadcasting Corporation's coverage of that country's first democratic election in 1990. It was not that Swapo's victory was likely to be prevented by propaganda. Swapo's victory was even more assured than the ANC's in neighbouring South Africa four years later: no, it was about the quality of the new democracy, of citizens' participation, in becoming informed voters evaluating electoral choices. Instead, SWABC's references to the slow-moving lines of patient would-be voters over villages and hills were treated more like an alien intrusion on the white body politic than the lifeblood of the country's future. In South Africa it had to be different.

However, it was an accident of history that South Africa was going through its dramatic, relatively peaceful political revolution just as a technological revolution was sweeping the global industry: broadcasting was converging with telecommunications and computers in ways that were changing the world economy. In 1994, most readers of this journal received their phonecalls from a cable, and their radio and TV from the air. Today, the reverse might just as easily be the case.

Managing these to advance the information economy is a regulator's business. For us to capitalise on information, regarded as the oil of the economy of the 1990s,

required policies that understood and responded to this convergence of delivery systems. We didn't know that the billions sloshing around the world and available to us in South Africa in the wake of our "miracle" would hit a brick wall when the Dotcom boom turned into the Dotcom crash in 2000. But when the crash came and the funds dried up, almost none of it was on our shores.

South Africa's Broadcasting Beginnings

Thanks to the Nationalist government, South African broadcasting and telecommunications were backward in ways almost incomprehensible in developed economies.

One fact stands out: South Africans first saw television test broadcasts in 1929, in both Cape Town and Johannesburg. After the interruption of World War II, mass implementation worldwide began at the end of the 1940s, but it would be 1976 before Pretoria would risk its polluting effects here. So in 1994, South African TV had missed the boat not only because it was highly propagandist, but also because it was only 18 years old. An accurate cliché applying to the future success of competing multimedia is that "content is king" – the money follows the programming material. But we had not built the skills to take advantage of it. It was true that M-Net was building a great business supplying satellite television in Africa and elsewhere, but it was almost entirely based on its Hollywood product.

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The first permanent radio stations were established in 1923: in Johannesburg, run by the Associated Scientific and Technical Societies of South Africa; in Cape Town by the local publicity association; and in Durban by the city council. Funded entirely by licence fees from set owners, it took three years to run out of money. After a brief closure, they were re-launched by the Bronx-born industrialist I W Schlesinger as a hybrid of the American and British models: with twin revenue streams, from advertising and licence fees. Prime Minister General JB Hertzog signed the death warrant for the commercial model when he brought out the legendary BBC founder, Lord John Reith, to recommend changes.

Unsurprisingly, Reith proposed something like the BBC, though he had met enough local white leaders to know that not all of the local establishment supported the Reithian public broadcasting model of information, education and entertainment within the British empire. Hitler and Mussolini were both in office and growing in power in Europe. One of their supporters, then South African Defence Minister Oswald Pirow, made no secret that he wanted the future SABC for its propaganda possibilities. "He would like to see something approaching Nazi rule," Reith told his diary after his meeting with Pirow, "and would then hope to use broadcasting as an adjunct thereto."

Pre-1994: Preparing for democracy

By the time the new South Africa's founding fathers and mothers got to broadcasting, change to the propagandised SABC's news and current affairs output was in its infancy. But the "independent homeland" myth had poked a hole in its impact: Radio 702, particularly, nominally registered in Bophuthatswana, was broadcasting

talk radio on which ex-soldiers of Umkhonto we Sizwe and the South African Defence Force were engaging vigorously and frankly with each other, before an audience including Johannesburg and much of its surrounding areas. And because 702 is broadcast on medium wave, unusually in South Africa, its night-time talk shows can be heard in most of the country.

The decisions were: that the SABC board and CEO be replaced; the new board to be independent unlike the old; and that an Independent Broadcasting Authority to licence and regulate broadcasting in the public interest be set up, to replace the secretive and obstructionist Postmaster-General's office.

Numerous civil society groups became involved in the push for a fairer system, many under the Campaign for Independent Broadcasting. In February 1992 all affected sectors, old and new, came to a conference, "Free, Fair and Open", at which some principles were thrashed out. I returned briefly from the University of Chicago, where I was a William F. Benton Fellow in Broadcast Journalism, to chair it. Both the ANC and the NP were represented, and moves to implement its proposals were soon under way.

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CODESA set up a panel of jurists to choose the new board. Under the CODESA arrangement, President FW de Klerk was expected to appoint the board as recommended, but an outcry arose from the right because the chosen chair, Professor Njabulo Ndebele, a distinguished scholar and author, was "not bilingual." That meant he spoke a number of European and African languages, but Afrikaans was not among them. De Klerk arbitrarily replaced him with Dr Frederik Van Zyl Slabbert, with Dr Ivy Matsepe-Casiburri, a former Freestater and therefore "bilingual", as deputy. This hybrid lasted two months, before Slabbert was pressured to resign by his board colleagues, giving Matsepe-Casiburri her big break.

The IBA Act was passed in September 1993 and the new council was chosen by a panel representing all political parties under the chair of a non-partisan media lawyer. The independence of the council was protected by Section 192 of the Constitution, as one of the "Chapter Nine" bodies ensured independence to fulfil their role in strengthening democracy.

With only two staffers, seconded from the Department of Home Affairs, we had to build the IBA from scratch, while dealing with demands from community and commercial would-be broadcasters, as well as some already pirating, to open the airwaves and meet the promise of the new democracy.

Post-1994: Let 100 Flowers Bloom?

Regulation should be targeted and minimal: decide precisely what you need to achieve, then give people the maximum freedom to decide how they want to achieve it for their own ends as well as for the public interest by the totality of the resulting spectrum of programming.

Obviously, this requires marrying free expression and creativity with regulatory direction. A regulator's biggest danger is "Christmas tree regulation" – adding regulations to satisfy every lobby group until being a broadcaster becomes a nightmare of red tape with resultant interference with creativity and success.

The IBA Act had a long list of objectives which we were expected to achieve. I summarised them into four: promote diverse ownership, historically disadvantaged ownership, diverse programming content, and South African content. Achieving these would foster free expression as well as the creative arts and economic development.

Regulators have considerable leeway and therefore power. This was not widely understood in 1994, and it was likely that as that knowledge spread, so political and commercial pressures on us would grow, slowing down delivery. We had to move fast.

The officials proposed we continue an existing moratorium on granting new licences for at least a year, while we got organised. I proposed the opposite, that we licence as many community radio stations as soon as possible, while setting up the rest of our work. This was agreed, though it required leaping a further hurdle, in that the Act blocked new permanent licences until a major inquiry was conducted into the protection and viability of the public broadcasting system. We used

a loophole, saying temporary licences could still be granted, stretching the word “temporary” as far as we thought we decently could, to a year.

That mechanism enabled us to licence 82 stations quite quickly. All were community radio licences. The Act provided for three kinds of licence – public, private and community. The loophole only applied to community. In less than a year, stations started going on the air not only in the 11 official languages, but in communities in high-population, underserved, sprawling townships like Botshabelo and Winterveldt which had an alternative to the SABC station in their home languages. There were Chinese, Greek, Portuguese stations, and some programming in Urdu, Tamil, Gujarati and Arabic.

At the same time, we began the triple inquiry – required by the Act – into the protection and viability of the public broadcaster, local content and cross media ownership regulations.

Local Content

There were two opposing positions on local content, exemplified on one side by broadcasters who wanted a zero local content requirement, with talk of “the democracy of the dial” and interference in the free market. If viewers and listeners want local content, the market will provide it. On the other side, local musicians demanded up to 100% of music on radio to be South African. Why should South Africa be infiltrated and dominated by American culture?

First, South Africans, like citizens of other countries, want content from their own culture. They love plenty of it. But the broadcaster pays one twentieth of the cost for an American sitcom, which has already met its costs in its own market.

What was the right balance between freedom of choice, commercial viability and ensuring local culture had a shot at gaining audience? Plenty of research and witnesses from Australia and other countries that had such rules demonstrated a number of points. First, South Africans, like citizens of other countries, want content from their own culture. They love plenty of it. But the broadcaster pays one twentieth of the cost for an American sitcom, which has already met its costs in its own market. So, even though South African audiences for local programming are often higher than for Hollywood material, the broadcaster has no incentive to provide it. Cheap and culturally transposed wins the day.

On radio, the disparity in practice was even less defensible. On state-owned, SABC-run Radio 5, the country’s biggest “commercial” (in content and revenue) station, less than one percent of output was local. It was laziness as much as anything. And perhaps – given that the vast majority were excluded from the vote – being out of touch with their listeners.

Based on the research and foreign example, we set the local content for music stations at 20%, during the 18 hours of major listening time. The decision was based partly on the fact that South Africa has a music culture. If we were all tone-deaf, no regulation in the world would have worked. But 20% was entirely doable.

We had fears that there could be exceptions. What about classical music stations? How many eighteenth century composers would we find in the Karoo? An exception was provided for. A station could apply for exemption if its circumstances warranted it. In the event, we needn’t have worried. The Act provided a definition of local content that took account of whether the musicians were South African and

if it was recorded in South Africa. In that way, local orchestras have been promoted on air and, in the time I was involved, no station even applied for exemption. They were enthusiastic about the local scene. It brought the music, and their stations, to life and in touch with their communities. We now hear Xhosa opera. And 80% of airtime on the classical stations is filled with Barenboim and Menuhin and Mehta and their peers.

This decision, regarding music, is probably one of the IBA's most spectacular, unsung successes. It's hard to imagine the international prominence of groups like Freshly Ground, Die Antwoord and many others, without it. Music that took off could not have been contemplated by the regulator, but it didn't try to. Local kwaito music, not heard of when we started, spread beyond our borders, starting at YFM in Johannesburg, and African gospel and something called "white Rock" took off with a bang too. Growth of the music industry has been strong and steady in the years since. Countries like Zaire, home to wonderful local music, were running all American music on their stations. Kwaito had a better chance in Zaire than Zairean (now Congolese) music! I firmly support a local content rule in Congo.

Local content was just one piece of the complete ecology we needed to facilitate. The future of public broadcasting was critical to the whole picture. At one extreme is the American system, built entirely commercially.

For TV, various formulae were set, but the results have been erratic. The sector is so heavily dependent on the SABC's mismanaged and sickly financial position that each SABC cold causes pneumonia in parts of the local producer sector.

Breaking the SABC monopoly

Local content was just one piece of the complete ecology we needed to facilitate. The future of public broadcasting was critical to the whole picture. At one extreme is the American system, built entirely commercially. In the early days of radio, the US, with its rhetorical commitment to a pure free market, even tried letting broadcasters on air without a regulator at all. The result: bigger stations, with stronger transmitters, deliberately drowned out their weaker competitors on the same frequencies. Often, this was part of a battle between two rival, highly partisan pastors of different Christian denominations or factions. As a result, what became the Federal Communications Commission was established. But its free market philosophy kept its role very limited, until the advent of President Reagan, when its impact on fairness almost entirely disappeared.

There are public broadcasting services in the US – National Public Radio and the Public Broadcasting Service (television). They were only established in the early 70s, are much-loved by a sizeable minority of the national audience, and are under constant threat of axing each time conservative Republicans gain political ascendance in Washington.

Meanwhile, the Reagan administration's relaxation of the limited fairness requirements of the FCC in the 1980s opened the way to rightwing shock-jocks like Rush Limbaugh, who cobbled together morning drive-time radio outlets to form a powerful voice that promiscuously confuses news and comment, no longer restrained by the requirement to give opponents an equal say in news programming. It is cheap content – a single voice is the "news" and the entertainment! In the 1990s, Rupert Murdoch gave Limbaugh company on television, when he established the fourth terrestrial television network, Fox. The absence of the fairness doctrine has

left him free to hire lopsidedly, Republican presidential candidates from the right wing of the party, like former House of Representatives Speaker Newt Gingrich and former Governors Sarah Palin and Mike Huckabee, with only an occasional minor league Democrat for “balance.”

We didn’t want that. Most other developed economies, which had started with only a government-owned broadcaster had, by 1994, regulated broadcasting to achieve national objectives that kept a public broadcaster while adding commercial broadcasters to the mix, providing programming they did better than their public counterparts.

But achieving a healthy balance is difficult. On radio, the first round of 82 community stations took us quite a long way. The first station licenced was, symbolically, Radio Maritzburg, home of terrible violence pre-1994. The station’s movers and shakers were Christian, Hindu, local community leaders, all races. The stations accumulated: Muslim, Christian, non-religious, left wing, white right, grassroots communities, gospel, music-obsessed, universities.

Reith’s British/Commonwealth model, blotched with former SABC and Broederbond chairman Piet Meyer’s propagandistic distortions, was our inheritance. What should be the democratic South African solution? We needed all three licence types – public, private and community stations – to succeed.

My three months as Executive Editor, Election for SABC Radio in early 1994 taught me how hard it is to deliver quality service on each of the outlets. Though handling of the election was well received, there were severe structural limits. With one newsroom covering 22 radio stations in 11 languages, who do you send to cover the president?

Believe it or not, there are journalists who speak passably well all 11. More common is two or three or four, in some cases only one. Even trying to interview Cyril Ramaphosa in his native Venda, or Mandela in Xhosa, is not as easy as it sounds. Since nearly all their political work is in English, they are often not comfortable conveying complex ideas in the vernacular.

To convert the SABC from a state propagandist to an independent public broadcaster, we set out the mandate of the public broadcaster, what it would do to meet its responsibility to the underserved audience that did not draw advertising revenue. Then we sought to reduce its domain to something more manageable, removing stations that had a purely commercial brief. At the same time, the local music content rules would apply even to commercial broadcasters. Not all public goods needed state ownership to be achieved.

We earmarked for privatisation seven regional radio stations out of the SABC’s 22, ones aimed at a purely commercial, entertainment market: Radios Highveld, Jacaranda, East Coast, Oranje, Good Hope, KFM and Algoa. There was no compelling reason for them to stay in public hands. All seven broadcast adult contemporary music, with short news bulletins drawn from the SABC’s common newsroom.¹ Since this was the new democratic government’s first privatisation, and many might follow, it was a test. It would impact the SABC’s bottom line, so we determined that after we chose the successful bidders in terms of our public criteria, the proceeds would have to go to the SABC to shore up its balance sheet.

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It was a ground-breaking plan. Privatisation brought new players into the market. Historically disadvantaged owners came in, and what they learnt about broadcasting and business stood them in good stead as they went on to start new private stations and move on to other businesses. The first eight new private radio stations followed. The same criteria achieved youth and classical stations, jazz and talk radio. Some of the companies have passed substantial profits on to trade union members and charities. Several are listed on the JSE. They've grown real businesses and added value.

A comprehensive report proposed the conversion, which had already begun under new SABC CEO Zwelakhe Sisulu, from a state propaganda broadcaster into an independent public broadcaster.

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The most significant broadcasting legacy besides the SABC was Bop-TV. Lucas Mangope's folly turned out to include a world-class, state of the art, suite of sound studios, designed to get the US music industry's biggest stars, with sufficient accommodation for their entourages. The expense would never bring the needed returns. Besides, technology changed so much that it

was soon obsolete.

We proposed the conversion of Bop broadcasting into an arm of the SABC, specialising in educational and provincial output. This was part of the IBA mandate – to promote provincial and educational broadcasting, and all 11 official languages. The report costed the requirements of the Act, for provincial, educational and 11 language broadcasting: the level of “public broadcasting” these requirements would take could not be funded within the current budget. On the other hand, government funding can be a mixed blessing. The proposal indicated what the government would have to commit for each. The report went to Parliament, which voted to adopt it. What most of us didn't realise was that “adoption” in our system is no different than the US Congress' passing a “sense of the Congress” motion. Not being attached to a budgetary commitment, it has no legal force.

Destabilising the SABC, “javelin throwing”

By the time we turned to private television, it was clear that oversight of the SABC was slipping out of our hands. After parliament adopted our report without budgeting for its provisions, and the privatisation that would reap R500 million for the “new” SABC was well under way, the executive decided it would not allow the SABC to keep the proceeds. We as the independent regulator were not consulted. Power was shifting away from the regulator. Relations with government became secretive. SABC board changes would be disruptive and political. A new Minister of Communications developed legislation to give the Minister the right to approve executive appointments at the SABC.

A new broadcast training school was planned by government, based on a foreign grant, but the IBA was kept out of the loop. Parliament was not overseeing us effectively, but the Executive became more obtrusive, contrary to the constitution's intention. When Parliament did come into the picture, it seemed to be taking its orders from the executive. And somewhere in the Executive there was an agenda. Sometimes the Minister of Communications was bypassed. Was this “javelin-throwing” – decisions taken in the political world that turned out to benefit politicals when they left for the private sector?

The last major action of our four-year term was adjudicating the national commercial television licence. By this time it was fairly clear that the regulator was no longer in prime position watching over the SABC. The new station would need to be the competitor, but not just over advertising. By requiring a minimum of one hour a day of home grown news, 30 minutes of which in prime time, and other current affairs and local content programming, it was compelled to go head to head against SABC TV news. In return, it had a valuable licence without further competition for the near term. It would compete over quality as much as revenue.

On winning the licence, in part based on its impressive promises for vigorous, independent news, one of e.tv's earliest actions was to petition the regulator to drop the news requirement. The IBA stood firm. After exhausting all other options, e.tv capitulated and did the right thing, and the country is the richer for it. In times when SABC TV news is particularly poor or propagandistic, its viewer numbers fall and e.tv news benefits. South African TV is far from a perfect world, but the two stations have in effect regulated each other. And the quality of South African democracy has benefitted, in a decade when SABC-TV news has veered towards propaganda in successive waves.

Scandal

Ironically, despite the significant amounts at stake in the IBA's licencing decisions, no real scandal arose around those decisions. Inside the council room, even when there were differences, discussions were cordial and the majority vote on licence decisions prevailed.

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The real tension among councillors was over ethics. It began in the first hours of our first meeting. I pushed that we not accept, as gifts, TV decoding equipment from the sole commercial broadcast grandfathered into the new South Africa, M-Net.

One new councillor objected: "But I'd like to know what's on TV." The option of buying it herself with her new salary was explained. Our decision on this licensee was worth R1 billion a year to them. The appearance must be the same as the reality – that we do not accept anything from them that might compromise our decisions.

Industry players sent presents: a commemorative clock, Sun City tickets valued at up to R2 000, luggage. I sent them back and advised my colleagues to do the same. Most kept the goodies. I tried twice to get our salaries of R320 000 pa cut. It won me no friends.

Despite a growing array of ethics rules and bodies, nobody responded to my attempts to get guidance, support or leadership. Where was parliament or government? This led to broadcasting's next "first". The Auditor-General, and then the media, got a whiff of scandal.

Besides the Auditor-General, the only official watchdog in the system to provide oversight would be Scopa – Parliament's Select Committee on Public Accounts. When the Auditor-General's report got to Scopa, ANC MPs were at least as forceful as the opposition. I attended with files, supported by the (black) leadership of the IBA staff association. By the end of the day several councillors had talked to the government and resigned. This was all behind the scenes. By next morning, word from government was that innocent councillors should resign too! What

reason could there be for that? And what message were they sending the idealistic and honest staff? If anything showed that whistle blowers had no support in government it was the decision to try to mix up the innocent and guilty. Those who resigned were assured long careers of subsequent “deployment”, while honest ones who refused to resign, because it would imply they had done something wrong, were shunned.

So the difference between playing by the rules and breaking them was to be fudged. The message for every level was evident for all to see.

By 1998, plans were advancing to amalgamate with the telecommunications regulator. The idea had merit, but overseas experience also warns that joining a regulator over an industry more than ten times broadcasting’s size would leave broadcasting much neglected. The pace of broadcast licencing slowed. For a young democracy, more licences should be a constant effort.

The SABC has been the worst hit by the last 18 years. It’s been subject to a permanent state of transformation. Constant pressure from successive ministers or directors-general, new laws (sometimes constitutionally questionable) showed government tinkering on issues which were not the real issues concerning how to build the sector. The Board’s “musical chairs” has continued.

Conclusion

Licensed and absent interference, commercial radio and TV got on with the job. Claims that South African media diversity has not improved or that there is still a media monopoly are baseless, except on a very myopic reading. Every community and commercial radio licenced is required to provide some news of its own community, and control of these is in a diverse range of hands. Though there are danger zones, for

example, single newspaper groups dominating the smaller towns’ broadsheet markets, most citizens have access to multiple media voices.

As in other countries, fears that combining of the broadcast and telecommunications regulators would sideline the relatively tiny broadcasting sector have proved correct. The community radio sector is lively and productive, though many struggle to make ends meet, and quality suffers.

The public broadcasting sector has shown the least improvement. Despite the constitutional injunction to be independent, it’s been the most politicised. Starting in the Mbeki era, public and private pressures, combined with the revolving door between the regulator, the broadcaster, the Department of Communications and other organs of state have undermined its position at the top. The current board and news managers may be an improvement, but its financial position and top management remain weak and it is failing to keep up with competitors. Its staff is not well served by the political and managerial leadership.

Government’s management of the IBA scandal sent exactly the wrong signals – whistle-blowers were not appreciated and those implicated continued to ever more stellar government careers.

Finally, it is hard not to reach the counter-factual conclusion: if the Telkom monopoly had been managed or broken, as the SABC’s was, so that the massive funds washing around the telecom sector in the 1990s had been allowed to go to a competing telecommunications provider, our world internet standing would have been higher, we would have been a bigger factor in the world information economy, and many very good, clean, above-ground jobs would have been created.