

RESPONSE TO THE
PROPOSED AMENDMENT OF
BROADCASTING DIGITAL
MIGRATION POLICY (AS
AMENDED) PUBLISHED IN
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1. Introduction



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NAMEC (National Association of Manufacturers of Electronic Components) is a leading Small Medium and Micro Enterprises (SMME) in Electronic Industry body in South Africa, formed through convergence of several of Electronics sector SMMEs.

It offers the electronics industry in particular the black owners of small, medium and micro enterprises and, collective voice and enabling environment for their businesses. NAMEC is a black owned SMME focused organization based on relationships which are fluent in integrity, filled with passion and systematically guided with expertise, driven by excellence with the ultimate goal being an enabling environment for enterprises, innovative and diverse solutions in order to establish a globally competitive manufacturing sector in ICTs, Automotives and Energy.

NAMEC has been involved in the digital migration process for a while now and our interest is to have a successful migration which will stimulate the manufacturing industry to the benefit of its members. It is our submission that the delays thus far have cost our members dearly and the continued delays further put our businesses at huge risk due to the investment that our members have made.

The continuing impulse on the issue of STB control present a huge problem to our members and has the potential to destroy the many businesses that have been set up to take advantage of the migration from an analogue broadcasting system to a digital system.

2. Why Digital Migration Process is undertaken?

The International Telecommunications Union, held two conferences in 2004 and 2006, and they were respectively called Regional Radio communications Conference (RRC-04) and RRC-06. These two conferences culminated in the signing of an agreement in 2006 and the agreement is called Geneva Agreement of 2006 (GE-06), which South Africa is a signatory and has a



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treaty status. The Agreement is a plan that ITU Region 1 countries and the Islamic Republic of Iran agreed to migrate their broadcasting transmission from analogue to digital by June 2015

The South African government as with all governments in Region 1 of the ITU began a process of planning to meet this deadline immediately after GE-06 agreement.

The migration from analogue to digital is mainly driven by the following

- The need to free spectrum for other services in the band
- The need to use spectrum efficiently and increase the quality and number of channels provided in the same spectrum

The two are the main key drivers for migration from analogue to digital broadcasting. Governments all over the world have recognized that the migration brings greater social and economic benefits and have actively engaged the broadcasting sector to facilitate the migration from analogue to digital broadcasting

Governments have also realized that this new technology present an opportunity to introduce more role players in the market and facilitate the electronic manufacturing sector. In the South African context the electronic manufacturing industry has been in decline for many years and these presented an opportunity to revive the sector and promote transformation in favor of previously disadvantaged groups

3. How has these process being undertaken elsewhere?

In many countries all over the world the migration from analogue to digital has taken place in an orderly and a simple process was followed to make the migration as smooth and seamless as possible.



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- 3.1 In our current state countries recognized that the transmission is going to change from an analogue transmission to a digital transmission
- 3.2 The digital transmission would not be able to be interpreted by the old analogue television sets
- 3.3 In order for the old analogue television sets to be able to interpret the digital signals a set-top-box is required to convert the digital signal back to analogue for the analogue television sets to depict the pictures to the consumer
- 3.4 In future the analogue television sets will be replaced by digital TV sets which will be able to interpret digital signals
- 3.5 The countries recognized that STBs are temporary to take care of the inability of old television sets to interpret digital signals
- 3.6 Many countries chose the basic STB for the migration from analogue to digital

The process as described above has been followed by many countries and has proven to be successful.

4. Amendments in the Digital Migration Policy as proposed

The draft policy amendments make the following provisions:

In the executive summary it proposes the insertion of the following words:

The draft policy proposes the insertion of a sub-paragraph of paragraph 1

"To avoid challenges in implementing the Digital Migration programme, caused mainly by differences between broadcasters and also between some manufacturers, the use of a control system is not mandatory. However, the STBs will have a control system to protect Government's investment in the subsidized STB market and the local electronics industry and, with rapid technological changes, for future use by broadcasters who might not want to use it on implementation"



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NAMEC's interpretation of the statement is that the policy makes STB control mandatory, however the use of such a control system is non-mandatory. It is our considered view that as we have stated in the earlier discussions with the Ministry and department, the inclusion of a STB control system is not in the interest of the country.

STB control as is currently captures is a form of conditional access and includes encryption because the policy goes further to make the statement by insertion after paragraph 5.1.2.7 of the paragraph as follows:

"5.1.27(A) to avoid subscription broadcasters unfairly benefitting from the STB control system Government's investment in the STB Control System will be recovered from those subscription broadcasters that choose to make use of the STB Control System; and"

The paragraph above illustrates that the control system envisaged is a full Conditional Access system that is capable of being used by Pay TV operators. NAMEC is and continues to oppose the inclusion of any form of conditional access and encryption capability in the STBs.

NAMEC is opposed of the inclusion of conditional access for the following reasons:

- a) The current approach (implementation of foreign CAS) appears to be detrimental to many aspects of the DTT rollout, including economic growth, consumer experience (and acceptance) etc.;
- b) Obviously the implementation of a Subscriber Management System (SMS) which is a required component of operating a CAS has not yet been arranged to such an extent which would be necessary to guarantee a smooth and efficient DTT integration;
- c) In as much as NAMEC understands the proponents of STB control arguments, it is our view that this system is going to undermine the potential of emerging black manufacturers entering the market and hampers any chance of the industry transforming.



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NAMEC has conducted a study on the implication of the introduction of a STB control system from a manufacturing perspective and these are the implication

- I. Black manufactures will need to be accredited by the Conditional Access vendor to produce the boxes, and this accreditation comes at an unnecessary significant cost to the manufacturer
- II. The manufacturing process will then be subject to a decision by a foreign company which will serve as a gate-keeper to manufacturers
- III. The CA vendor would essentially have the unilateral powers to decide who eventually manufacturer set top boxes in the country
- IV. The CA vendor will continue to benefit from this system because there are ongoing costs that manufacturers will pay to keep the system operational
- V. The manufacturers will be hampered in their development costs because any applications that need to be incorporated will be subjected to integration costs that the CA vendor charges
- VI. The incumbent manufacturers would be the beneficiaries because they have already been accredited by CA vendors
- VII. The black emerging manufacturers will have to stand in a queue to be accredited and the process could take time which may affect the potential to be successful bidders in the government tender for set top boxes
- VIII. The costs that this system introduces will have to be borne by the tax payer forever in the day, to no benefit to the South African tax payer
- IX. It is an undesirable system that has never been implemented as a government policy anywhere in the world
- X. It would badly affect the stimulation of electronic manufacturing in the country, which has been on a decline for many years



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5. Legal Position

It is important to reflect on the legal position of the draft amendment as proposed in the draft policy amendment. The draft policy raises very critical questions on the legality of the provisions as proposed.

We have sought a legal opinion on the draft policy amendments. The advice is that the Minister has overstepped his powers and that the draft policy is ultra vires and the Minister is acting in violation of a court decision. This means that the Minister is in his action in contempt of Court.

The South Gauteng High Court has made it clear and Judge Pretorius in reference to EC Act states that.

"The Minister has no legal power to prescribe or make binding decisions relating to set top box control"

and that:

"The Minister does not have the power to prescribe to FTA broadcasters how they should manage set top boxes"

The pronouncement by the judge makes it unambiguously clear that this issue is beyond the Ministers competency. We would like to advise the Minister that failure to amend the policy to give effect to the decision of the South Gauteng High Court would imply that he is undermining a court decision and as a result in contempt of Court. We again call on the Minister to remove all references to STB Control in the policy amendment, or he will face a court challenge and cause further delays to the migration from analogue to digital broadcasting.

6. Conclusion

In conclusion NAMEC would like to state the following:

6.1 The inclusion of STB control is not in the interest of the country and should be deleted in the draft policy



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6.2 The Minister should delete all references to STB control in the draft policy

6.3 The Minister will be in contempt of court if he fails to amend the policy and NAMEC would not hesitate to approach the courts to ensure that the policy is in compliance with the South Gauteng High Court judgment that says "the Minister has no legal powers to prescribe or make binding decisions relating to set top box control"

6.4 We urge the Minister to move swiftly in complying with the court decision by desisting from making pronouncements on STB control in the draft policy.

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