



Ref: L/T-TOP/20/054

Mr. Balkrishna Kaunhye
Managing Director
TOP FM Ltd
7th Floor, The Peninsula,
2A, Falcon Street,
Caudan
Port-Louis

05 June 2020

Dear Sir,

**Re: BREACHES BY TOP FM LTD IN THE PROGRAMME "7 sur 7" BROADCAST ON
03 APRIL 2020 AT AROUND 17h39**

SUSPENSION OF LICENCE TOP FM LTD

1. TOP FM Ltd. is the holder of a **PRIVATE COMMERCIAL FREE TO AIR FM RADIO BROADCASTING LICENCE** (the "Licence") issued by the Independent Broadcasting Authority, (the "Authority"), pursuant to the provisions of the Independent Broadcasting Authority Act.
2. The Licence was renewed by the Authority for the period 13 December 2018 to 12 December 2021.
3. Clause 9 of the Licence provides for suspension of the Licence and reads as follows:

"9. SUSPENSION

9.1 Notwithstanding Clause 8 above, where the Authority is satisfied that –

- a. the Licensee has failed to start its operation within 6 months of the issue of this Licence or within such additional period as may be allowed by the Authority;**
- b. the Licensee has ceased its operation under this Licence;**
- c. the Licensee has given the Authority information which is false or misleading in a material particular;**

d. the Licensee has failed to comply with the Code of Conduct specified in the Second Schedule to the Act (ANNEX A);

e. it is in the public interest to do so,

it may suspend the Licence."

4. TOP FM Ltd, as any other licensee, is also bound by the terms of its licence and by section 21(6) of the Independent Broadcasting Authority Act which makes it **mandatory** for it to comply with the terms and conditions of its licence. This has statutory underpinning as section 21(6) of the Independent Broadcasting Authority Act provides that:

"A licensee shall comply with the terms and conditions of a licence."

5. It is clear that the Code of Conduct for Broadcasting Services (see clause 9.1(d) of TOP FM Ltd's licence) has, as a matter of law, to be complied with. A breach of the Code of Conduct for Broadcasting Services, is also a breach of clause 9.1(d) of TOP FM Ltd's licence. TOP FM Ltd's licence, in clause 9.1(d), clearly specifies that such a breach may lead to a suspension of the licence.
6. On 03 April 2020, TOP FM Ltd broadcast the following extract in its programme "7 sur 7" at around 17h39:

Balkrishna Kaunhye:

*"...Mais sèma moi, ennsel zafer seki mo pou dire, nou bann auditeurs, mo conte lor zot, zot kapav conte lor moi pou diboute, pou continuer amen zot la vérité, pou amen zot tou seki zot bizin koné, right, kot nou pena cover-up, peu importe kisanla. Donc nou conte lor zot, nou espérer ki zot pou atan avek impatience, 6h00 du matin le 6, la reprise des émissions de Top FM. Mais si pou ena kit changement d'ici la éventuellement, **a enn moment kot sa décision la inn vini, la cour fermer, bann juges ne sont pas disponibles, mo très peiné,** mo très chagrin ki nou pa pou kapav faire nou travail dans l'intérêt de la population dan enn moment pareil. L'heure est grave, li sérieux, mais mo penser que c'est enn jour ki pou graver a tout jamais dans l'histoire..."*

7. The Authority, by way of e-Board Resolution No.6 of 2020 circulated on **10 April 2020**, considered the above item and was of the considered view that the extract broadcast by TOP FM Ltd at paragraph 6 above was in breach of paragraphs 3(1) and 3(5) of the Code of Conduct for Broadcasting Services set out in the Second Schedule to the IBA Act. Paragraphs 3(1) and 3(5) of the Code of Conduct for Broadcasting Services provide as follows:

"3. News

- (1) *Broadcasting licensees shall report news truthfully, accurately and objectively.*
- (2) ...
- (3) ...
- (4) ...
- (5) *Where it subsequently appears that a broadcast report was incorrect in a Material respect, it shall be rectified forthwith, without reservation or delay. The rectification shall be presented with such a degree of prominence and timing as may be adequate and fair so as to readily attract attention".*

8. By way of letter dated **13 April 2020** (Ref: L/T-TOP/20/041), TOP FM Ltd was requested to show cause, by **20 April 2020** at noon, as to why it should not be sanctioned for breaches of paragraphs 3(1) and 3(5) of the Code of Conduct for Broadcasting Services set out in the Second Schedule to the IBA Act.
9. On 19 April 2020, Me Jaykar Gujadhur SA, whose services were retained by TOP FM Ltd, addressed a letter to the Authority which reads as follows:

"re: IBA's letter dated 13.04.20 (ref: L/T-TOP/20/041)

I act on behalf of my client TOP FM Ltd and I am instructed to write on its behalf with reference to IBA's above referred letter requiring my client to "show cause in writing by Monday 20 April 2020 by noon, at latest why TOP FM Ltd should not be sanctioned".

An application for leave to apply for Judicial review (SCR 119914) is pending before the Supreme Court and a judgment has been delivered by the court on 16.04.20, which has been brought to your notice, in relation with IBA's letters dated 3rd and 8th April 2020. An interlocutory order is in force restraining further action by IBA in relation to Prayer E.

Bearing in mind the terms of the aforesaid judgment of the court and in the name of fairness and fair play my client urges that IBA's letter dated 13 April 2020 be also put on hold, for the time being, until the reasons for the court's decision are made known to the parties. I would be grateful for acknowledgement of receipt which is being copied to your legal adviser.

Each party shall, obviously, be at liberty to consider its position in the light of the reasons yet to be provided by the court."

10. The above letter was received by email at the Authority on **19 April 2020** at 06:51 PM and same was acknowledged on **19 April 2020** at 21h26.

11. Although the Judicial Review case had no bearing on the breaches which are the subject matter of this letter, the IBA Board, by way of e-Board Resolution No. 9 of 2020, circulated on **19 April 2020**, approved the extension of time limit for TOP FM Ltd to reply to the Authority's request to show cause. The delay to answer the Authority's letter was extended to **07 May 2020** by 12:00 hours.
12. On 20 April 2020, the Authority addressed the following letter to Me Jaykar Gujadhur SA and Mr Balkrishna Kaunhye of TOP FM Ltd.

"Dear Sir,

Re: Potential breach by TOP FM Ltd in programme "7 sur 7" broadcast on 3 April 2020 at around 17h39.

The letter from Me Jaykar Gujadhur, SA received by email at the Authority on 19 April 2020 at 06:51pm refers.

Prayer E of the application for leave to Judicial Review (SCR 119914) reads as follows:

" E. For a temporary stay of the proceedings of the respondent in relation with its letter of 8 April 2020, and, further, or alternatively, an interim or interlocutory writ of injunction restraining and prohibiting the respondent from further proceeding with its letter dated 8.4.20, until the hearing and determination of the proceedings for judicial review;"

On a plain reading of Prayer E above, the letter addressed to TOP FM Ltd dated 13 April 2020 (Ref: L/T-TOP/20/041) by the Authority is not within the ambit of Prayer E.

*Nevertheless, in a spirit of fair play, the Authority has agreed to extend the delay as stipulated in its letter of 13 April 2020 (Ref: L/T-TOP/20/041) **to 07 May 2020 by 12:00 hours**, at latest, by which date a reply is expected from your client."*

13. On 07 May 2020, Me Ashok B. Radhakisson, Barrister-at-Law, whose services have been retained by TOP FM Ltd, replied to the Authority letter dated 13 April 2020 (L/T-TOP/20/041). The contents of the reply of 07 May 2020 is reproduced below:

"Dear Sir,

Re: Your letter bearing reference – L/T-TOP/20/041

I write on behalf of TOPFM LTD and I refer to your letter under reference.

Your attention is drawn to the following preliminary point.

Section 5(1) of the IBA Act provides that the "...Authority shall inquire into public complaints against any a licensee and take any action it thinks appropriate".

It is submitted that it is not part of the object of the Authority to inquire into its own complaint as such a complaint is not a public one against any licensee.

A such the TOP FM Ltd is not bound to comply with paragraph (8) of your letter dated 13 April 2020.

In addition to the above preliminary legal point, TOP FM Ltd, as the licensee does not dispute the fact that it aired the impugned programme referred to in your letter under reference.

It is the case of TOP FM Ltd that the facts as expressed by Mr Kris Kaunhye and aired by it, are accurate at the time such statements were made. This has been confirmed by Mr Kris Kaunhye.

He has further stated to TOP FM Ltd that at the time he expressed himself during the impugned programme, i.e on 03 April 2020 around between 17.20 and 17.45 he was not aware of the two communiqués which you refer to in paragraph 5 of your letter under reference.

Mr Kris Kaunhye also stated to TOP FM Ltd that your letter under reference was delivered to him around 1700 hrs on the 03/04/2020 and reacted "a chaud" and very emotionally in the face of such a devastating decision taken by the IBA against TOP FM Ltd.

Such a reaction is all the more understandable in as much as it was one which any reasonable person would have had in the circumstances. He was confronted with a situation where his livelihood as well as those of 50 employees were being put at stake, bearing in mind also the timing of the said decision i.e Friday late afternoon when the country was under curfew.

At the material time he verily believed that, faced with the suspension which was to become effective at 0600hrs next day, that he will not be able to secure legal assistance as he was not aware of the special arrangements made by the Chief Justice to allow restricted access to the Court. Indeed for him the court was closed until the end of confinement.

Submitted in reply to your letter under reference.

*Yours sincerely
Ashok B. Radhakisson
This 07/May/2020"*



14. In an email dated **07 May 2020**, Me Ashok B Radhakissoo stated that *"Please do note that in the third paragraph of the said letter a wrong reference was made to **Section 5(l) of the IBA Act**. Accept my apologies for this and read instead **Section 4 (l)**"*
15. The reply of TOP FM Ltd as well as the breaches referred to in paragraph 6 above were considered by the IBA Board by e- Board Resolution No. 19 of 2020 circulated on **4 June 2020**.
16. After having considered the explanations of TOP FM Ltd, the Authority is not satisfied with the explanations of TOP FM Ltd and is of the considered opinion that TOP FM Ltd has breached paragraphs 3(1) and 3(5) of the Code of Conduct for Broadcasting Services set out in the Second Schedule to the Independent Broadcasting Authority Act. The Authority notes that the letter of Me. Radhakissoo factually confirms that there was **in fact**, the possibility for Mr. Kris Kaunhye, to access Courts. As evidenced at **ANNEX1**, Mr. Kaunhye did access the Supreme Court when he applied for an order in the nature of interim injunction on Saturday **04 April 2020** before the Honourable Judge in Chambers, Hon. N. Devat and the said application for interim injunction was set aside by the Honourable Judge in Chambers on **05 April 2020**.
17. The IBA has further considered the point of Me. Radhakissoo about section 4(l) of the IBA Act and is of the view that this section does not limit the powers of the Authority in view of:
- “(a) section 4(i)(iii) which mandates the Authority to:
- (i) **ensure that broadcasting services -**
- (i)...
- (ii)...
- (iii) are impartial **and accurate;**”
- (b) section 4(h) which mandates the Authority to **“set acceptable standards for programmes and advertising and monitor compliance with those standards;”** [Underlining is ours]
- The Authority is further of the view that it can act, ***proprio motu***, in case the Code of Conduct for Broadcasting Services is beached by a licensee or if a licensee fails to comply with its licence conditions.
18. The Authority highlights that a breach of the Code of Conduct for Broadcasting Services is a matter which is to be taken seriously as section 21(7) of the Independent Broadcasting Authority Act provides that licensees ***“shall carry out its activities in***



compliance with the code of conduct specified in the Second Schedule." [underlining is ours]. The Authority further highlights that the word "shall" is to be read as being imperative (vide section 5(4)(a) of the Interpretation and General Clauses Act, as judicially considered and applied in the case of **Ng Kwet Leong v Medical Council of Mauritius 2019 SCJ 1.**

19. The extract broadcast by TOP FM Ltd on **03 April 2020** at around 17:39 hours is considered by the Authority as breaching the Code of Conduct for Broadcasting Services as follows:
- (a) as being inaccurate (i.e it was reported that "***a enn moment kot sa décision la inn vini, la cour fermer, bann juges ne sont pas disponibles, mo très peiné***"); (paragraph 3(1) of the Code of Conduct for Broadcasting Services); and
 - (b) the above report was incorrect in a material respect and has not been rectified forthwith, without reservation or delay (paragraph 3(5) of the Code of Conduct for Broadcasting Services) in as much as TOP FM Ltd, represented by its Chairman, Mr. Balkrishna Kaunhye, applied for an order in the nature of interim injunction on Saturday **04 April 2020** before the Honourable Judge in Chambers, Hon. N. Devat and the said application for interim injunction was set aside by the Honourable Judge in Chambers on **05 April 2020. (ANNEX 1)**
20. The Authority is of the considered view that the suspension of the Licence of TOP FM Ltd is warranted given the breaches of the Code of Conduct for Broadcasting Services set out in this letter and explained, in detail, in the Authority's correspondence to TOP FM Ltd. The Authority notes with concern the fact that Top FM Ltd, which has had access to the Supreme Court on **4 April 2020**, has broadcast misleading information to the public about the fact that "***la cour fermer, banne judges ne sont pas disponibles (...)***" and had the possibility to rectify same without delay by virtue of paragraph 3(5) of the Code of Conduct for Broadcasting Services but failed to do so.
21. The Authority took note that the maximum period for the suspension of a licence is 21 days (vide section 25(2)(b) of the Independent Broadcasting Authority Act). The Authority has considered this matter very anxiously. In deciding the length of suspension to be meted out to TOP FM Ltd, the Authority, as an independent regulator, is fully alive to the fact that the suspension of a licence is a not a matter which may be treated lightly. A suspension of a licence prevents the broadcaster from broadcasting and it reduces the number of voices being heard and the range of programmes available to the audience. The Authority considers that the threshold to suspend a broadcaster's licence is, therefore, high.



22. The Authority has considered:

- (a) the nature of the breaches;
- (b) the explanations of TOP FM Ltd.;
- (c) the applicable law;
- (d) TOP FM Ltd's licence; and
- (e) previous conduct by TOP FM Ltd in not complying with the IBA Act, the IBA Code of Ethics and written warnings of the Authority (letters of the Authority with their Annexes dated respectively **8 March 2012 (ANNEX 2)** and **7 May 2018 (ANNEX 3)** are attached).

before coming to a conclusion on this matter.

23. The Authority has further applied the test of proportionality to decide on the length of suspension to be meted out to TOP FM Ltd. The Authority is of the considered view that that the breaches committed by TOP FM Ltd justify the suspension of TOP FM Ltd.'s licence for **four hours** out of a maximum number of 21 days suspension which could have been given to TOP FM Ltd by the Authority (vide section 25(2)(b) of the Independent Broadcasting Authority Act). Unlike the stand taken by the Authority in 2012 against TOP FM Ltd, where the Authority had then threatened TOP FM Ltd, *inter alia*, with **revocation** (see **ANNEX 2**) of its licence, the Authority has not even considered the possibility of revocation of TOP FM Ltd's licence for this particular breach.

24. The particulars of the suspension period decided by the Authority in respect of TOP FM Ltd are as follows:

Date suspension starts	:	07th June 2020
Time suspension starts	:	10:00 hours
Date suspension ends	:	07th June 2020
Time suspension ends	:	14:00 hours

25. The effect of the suspension is that during the suspension period TOP FM Ltd should not broadcast any material.

26. TOP FM Ltd. is further directed by the Authority to give public notice of this suspension **prior** to it taking effect.



27. TOP FM Ltd is further reminded that paragraph 35.1 of its licence provides as follows:

"35. BASHING

35.1 *The Licensee shall refrain from using its air to criticise decisions or directions/directives issued to it by the Authority with a view to discredit the latter.*

SIGNED FOR AND ON BEHALF OF THE INDEPENDENT BROADCASTING AUTHORITY.



**K. Ramphul
Acting Director**

Serial No./2020

IN THE SUPREME COURT OF MAURITIUS

In the matter of:-

TOP FM Ltd represented by its Chairman Mr B.Kaunhye

Applicant

V

The Independent Broadcasting Authority

Respondent

And in the matter of:-
Ex-Parte

TOP FM Ltd represented by its Chairman Mr B.Kaunhye

Applicant

ORDER

Yesterday, i.e. Saturday 4 April 2020, afternoon at 17.00 hrs, I received by e-mail an unsigned proceipe dated 4 April 2020 from Mr Attorney Jaykar Gujadhur S.A, together with an undated and unsworn affidavit from Top FM Ltd (the Applicant) represented by its Chairman, Mr B. Kaunhye, praying for "*an interim order in the nature of an injunction staying the decision of the Respondent [The Independent Broadcasting Authority] dated 3rd April 2020 and restraining and prohibiting the Respondent from enforcing the suspension of the Applicant's broadcasting licence from 4th to 6th April 2020 pending the hearing and determination of Applicant's intended application for leave to apply for a judicial review of the Respondent's decision and decision making processes, communicated by its letter dated 3 April 2020.*"

The applicant is also seeking the conversion of the order, if granted, into an interlocutory order pending "*the hearing and determination of applicant's main application by way of judicial review.*"

After due consideration of the applicant's averments in support of its *ex parte* application for interim relief, I take the view that there must be compelling reasons for a Judge exercising his/her Jurisdiction in Chambers to prevent a regulatory body from performing its statutory duties and from exercising its statutory powers (vide Marie P

& Ors v. The Local Government Service Commission [1985 SCJ 42]. Prima Facie, the affidavit and documentary evidence do not reveal any such compelling reasons.

I also note, from the annexed respondent's letter dated 3 April 2020 informing the applicant of its decision to suspend the applicant's licence, that the period of suspension is stated to be as follows:

<i>"Date of suspension starts:</i>	<i>4 April 2020</i>
<i>Time suspension starts:</i>	<i>06.00 a.m.</i>

<i>Date suspension ends:</i>	<i>6 April 2020</i>
<i>Time suspension ends:</i>	<i>06.00 a.m."</i>

In view of the above, I see no point in issuing a Summons, which is the applicant's alternative prayer (C), on the respondent as the suspension is due to end tomorrow at 06.00 a.m.

At any rate, the remedy of judicial review, which as averred by the applicant itself it intends to apply for, is available to the applicant if the regulatory body concerned has taken a decision which it was not entitled to take.

For the above reasons, the application is set aside.

Chambers, this 05 April 2020.

(sd) Mrs N. Devat
JUDGE



Independent Broadcasting Authority

ANNEX 2

Ref: ADM/TFM/LIC/12/078

Mr Balkrishna Kaunhye
Chairman and CEO
Top FM Ltd
Port Louis.

08 March 2012

Dear Sir,

Following the meeting held on 08 March 2012, whereby you took cognizance of the suspected breaches identified by the Authority, you are hereby being strongly advised to strictly comply with the IBA Act and Codes, failing which, the Authority will have no alternative than to either suspend or revoke your licence.

Enclosed is a list of potential breaches for the period 09 February 2012 to 29 February 2012.

Yours faithfully,


Dulliparsad SURAJ BALI
Director

CC: Mr Husseinjee PATEL
Representing Majority Shareholders

(Encl.)

Lever Maurice on TOP FM :**Potential Breaches by TOP FM**

NO	DATE	TIME	REPLYING TO CALLER	JIMMY'S INTERVENTION	SUSPECTED BREACH
1	9.2.12	0709	Anncy	Be sa meme ki mo pe dir, pe gaspiy larzan public. Pa pe servi larzan public a bon escient	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
2	9.2.12	0717	Sanjay: Construction pont par bane VRS, vieux bolom	Sa dapre moi ena anguille sous roche. Bizin guete ki fer le pe tarder Dir moi ene coup, pe gaspiy larzan public. Parfois nu riye, nu mazine ki point situation ine degrader, pa facile	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
3	9.2.12	0724	Navin : Incident Phoenix	Mo esperer ki PM osi pran compte ban maulana kip e dir ki PM bizin deman excuse. Mo esperer ki PM kapav certainement done bane reponse ar ban maulana ki fine joine hier, et pe decider ki li bizin presente excuse lor ban propo ki line tenir au college Aleemiah.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
4	10.02	0712	Prem: Voyage	Nou pa pu ale autan	Section 2.3 of the

			dans helicoptere	loin kisa pu ale revey les morts zordi kan ene dimoun ti fer so lichien voyage par helicoptere. dans sa cas ki ou pe dir par rapor au gran argentier la, dapres explication kifine done, li ti envi get ki ampleur developpement. Nu nou kapav get li depi enba, be li li pane capave, line bizin pran helicoptere pu li get li depi lahaut, pu li trouve li, comprend la. Nou ti dimoun, parfois nou monte lor montagne nou get developpement mais zot zot bizin pran helicoptere, ki nou pou fer papa ?	Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
5	11.02. 12	0952	-	Lote fois la ene dimoune ine dire dan Koze Do mo Pep, mo profiter puisque ou la PSC ce n'est pas li ki nomme dimoune. Li zis fer selection et apres li envoye sa bane ministeres ek bane departements , c'est la bas ki decide sa.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
6	15.02. 12	0728	Ishwar : Ti erna ene personage , li ti dir ki polilik ek religion marse ensam. Li extra faux. Dan Ramayan, dan Bagwat Geeta, kote fine ekrir sa ?	Voila, lapel est lance ce matin a Somduth Dulthumun pu done nu sa bane explication la, mais ou cone sa bane president socio- culturels la, c'est zotte meme ki nomme Chairman, ambassadeur et beaucoup kitchose ki zot faire, c'est pou zote propre lavantage.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
7	16.02. 12	0715	Sunil : La misere/la vie chere	Mo croire nou pou ale mange manioc, patate la ein, kot vine arriver la. Mauvais misere, mauvais misere, sagrin ou papa, sagrin ou, sagrin sa bane souffrance ki lepepe	Section 4 (2) Code of Conduct for Broadcasting Services – "Comment shall be presented in such manner that it appears clearly to

				sa pays la pe vive.	be comment, and shall be made on facts truly stated or fairly indicated and referred to"
8	16.02.12	0726	Mala : So tifi gradue l'Inde, pas gagne travail dans gouvernement	En principe, ou tifi pane cole l'affiche + Dans biro PM, erna dirigeants ki declare impe plisse ki PM.. + Numero 5, pli dife encore, pas gagne rencontre laba.	Section 4 (2) Code of Conduct for Broadcasting Services – "Comment shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to" Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
9	16.02.12	0728	Sunil : Critik MBC	Mo compran ou degout par rapor seki pe passer. C'est pourquoi depi certes boukou l'annee pe dir bizin liberalise sa sekter la, na pa donne a bane ti camouade, bane ki copain ki pe vine atass ou lasse soulier gramatin tanto. Donne sa bane dimoune ki kapave faire l'information couma TOP FM. Donne nou sa, ou guet couma nou revolutionne sa zistoire la. Tellement zote ecouter dans MBC, zote copier, zot copier villain copier. Sa si ti Cambridge sa, zote tou ine fail, gramatin ine mette dans prison sa.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"

10	17.02.12	0727	Prem : Probleme environnement dans Baie du Tombeau	Parfois nou demande nou si Baie du Tombeau li forme parti dan circonscription NO. 5. Kan nou imagine l'etat la route, bane infrastructure.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
11	20.02.12	0721	Anonyme : Ex-servicemen	Appel lancer un direction de Xavier Duval. Get ene coup Xavier Duval ki ou capabe fer pou sa bane ex-servicemen la. Si bizin pran helicoptere, ale get zot situation .Fer kitchose pou zote.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
12	22.02.12	0706	Raj : 2 garcon erne degre, Pa gagne travail	To colle l'affiche papa ?	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
13	27.02.12	0709	Rajesh : Critik MBC + Sharonne	Bizin casse monopole MBC. Sa meme ki fer domination a la population. Mo conner ca amertume la lors ou leker. Mo dire ou fer la priere pou gagne ene television privee madame.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
14	28.02.12	0710	Vanessa : Probleme de l'eau dans No.5	Delo pe gaspiller depi 30 jours dans No. 5. Nou pa pu fer Ramgoolam so colere lever kan li tane sa.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are

					expected to moderate and not to vehicle their personal opinion (s) on air"
15	29.02.12	-	Rajen : Dans sa pays la, Premier minis le limeme, li pe protege tout so bane dimoune. Par exemple so bane conseillers, erna conseillers kine fer crime, ki pe travail are li : +Minis protege zotte qualite..	Mo croire ki nou ine comprend ki ou pe rode dire. Li impe dans la pratik politik Maurice ki bane la travail pou zotte agent mais zotte supposer travail pour le peuple en meme temps.Mo pa croire ki PM pe protege bane criminel.	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"
16	29.02.12	0721	Rajiv	D'accord avec Remake 2000. Mo garçon erna Masters,perna travail. SAJ bizin desane	Section 2.3 of the Code of Ethics "Live Phone-in Programmes" in that "Presenters of phone-in programmes are expected to moderate and not to vehicle their personal opinion (s) on air"

Broadcaster: Top FM
Program : HARD TALK
Date: Wednesday 29 February 2012
Time: Around 18h25

Caller : Un-named

Bonsoir, mo question couma banne kreol pe ramasse beze dans sa pays la; dan tous biro nou trouve tou hindou, pli boucou hindou. Kot nou ale kreol pe ramasse beze. Mo question combien kreol pe ramasse beze dans sa pays la. Dan tou biro ki nou ale nou pe ramasse beze, Lopital nou pe ramasse beze, MBC nou pe ramasse beze ek zot television, CWA nou pe ramasse beze encore

Sunil Dwarkasing : avant mo remercie sa camarade la pou so question.....

Possible Breaches by TOP FM RADIO

(i) Section 37 (1)(g) IBA Act

"Any person who otherwise contravenes any provision of this Act, shall commit an offence"

(ii) Breach of Section 1(d)(ii) Part A – General Conditions of Licence

"The Licensee shall so conceive and schedule its broadcasting services as to ensure that the services do not encourage or incite or racial hatred, or lead to disorder or offend public feeling"



08 mars 2012

Communiqué de Presse.

L'Independent Broadcasting Authority a convoqué cet après-midi les responsables de Top FM pour un dernier rappel à l'ordre suite à des dérapages notés durant le mois de Février. Des abus potentiels à l'antenne qui vont de la haute diffamation à l'incitation à la haine raciale. L'IBA a ainsi fait savoir aux responsables de TOP FM qu'au cas où une amélioration n'est pas notée à l'antenne, la licence de cette chaîne de radio sera soit suspendue ou révoquée.

L'IBA a également donné un avertissement à Radio One pour avoir enfreint les directives de l'IBA dans le cadre des élections à l'Assemblée Régionale de Rodrigues en diffusant le jour même des élections, des extraits d'une campagne porte à porte menée par Monsieur Johnson Roussety, leader du FPR dont des candidats étaient en lice.

Le Conseil d'Administration de l'IBA a aussi demandé à la Rédaction de Radio Plus de rapporter plus fidèlement les Court Records pour éviter de diffuser des informations qui ne sont pas exactes.

L'IBA a aussi demandé à la Direction de la MBC de veiller à ce que ses programmes sur Radio Mauritius n'encouragent pas la violence chez les enfants.



ANNEX 3

Ref:L/T-TOP/18/047

Mr Balkrishna Kaunhye
Managing Director
Top FM Ltd
7th Floor, The Peninsula
2A Falcon Street
Caudan
Port Louis.

The document has been edited
to protect the identity of
a minor.

KR

07 May 2018.

Dear Sir,

Re: Potential breach by Top FM on 04 April 2018 – News Bulletin of 17h00

Please refer to the Authority's letter dated 06 April 2018 (L/T-TOP/18/034) and your reply dated 09 April 2018.

I am directed to inform you that the IBA Board at its meeting of 02 May 2018 considered the reply of Top FM dated 09 April 2018 in connection with the news item broadcast on 04 April 2018.

The Board views with much concern the breach committed by Top FM on 04 April 2018, albeit without intent but as a result of negligence.

Top FM Ltd is hereby being informed that any recurrence will be dealt with seriously by the Authority.

Yours faithfully,

K. Ramphul
Acting Director

9 April 2018

The Acting Director
The Independent Broadcasting Authority
Level 2, The Celicourt
6 Sir Celicourt Antelme Street
Port Louis

Attn : Mr K. Ramphul

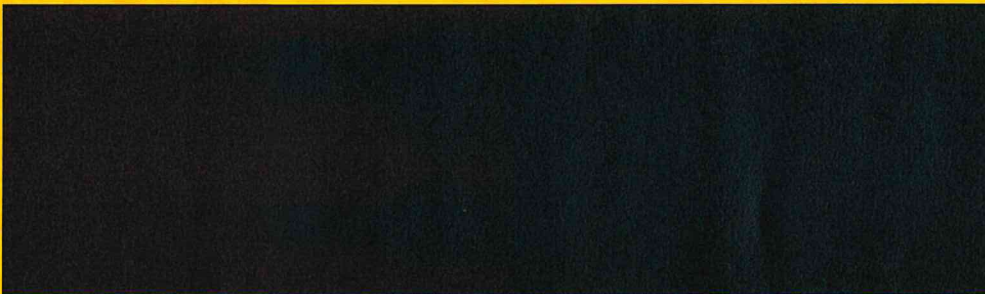
Dear Sir,

Re : L/T – TOP/18/034

Your abovementioned letter refers.

At the very outset we wish to assure you about our unflinching commitment to comply with the IBA Act and all other relevant legislations, including the code of conduct governing the written and oral press.

In reply to your letter, we wish to apprise you of the following :

1. The matter raised a lot of speculations in the public when the communique was first published by La Sentinelle Ltee, along with a post at 15H13 on 3rd April 2018 on L'Express.mu site (Annex 1) which already established the link with the victim. Speculations on the nature of the allegations and the victim was already in the knowledge of several newsrooms, including ours.
2. On the 4th April 2018 the morning edition of L'Express print newspaper on page 4 published the communique. (Annex 2)
3. 
4. The manner on how to treat this matter has been subject to lengthy discussions among our senior journalists. The duty to inform in public interests was already established.

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Fresh air you can hear

5. However, as hours were passing-by, we were informed from reliable sources the information that there were manoeuvres to cover-up the matter and pressure was exercised on the mother for her to withdraw her application before the Supreme Court.

6. [REDACTED]

7. In the same breath, the father is not a common man. He is a public figure and is considered in the industry to have a powerful pen with a powerful network which has brought down within less than 6 months between September 2017-March 2018 :

- i. An Attorney-General by using the confessions of a person who finally turned out to be unreliable and untrustworthy.
- ii. A Vice-Prime Minister.
- iii. A President of the Republic of Mauritius at such a time, a couple of days before the country was going to celebrate a landmark moment in its history 'the 50th Independence anniversary'.

8. There was also a consensus that the father should benefit from the presumption of innocence until found guilty by a court of law.

9. In the circumstances, we were guided by the following :

- a. The duty to inform in public interests.
- b. The duty not to practice the "omerta" and protect a "confrère" by concealing a matter of such importance and amplitude.
- c. The duty to protect the most vulnerable in this situation, which were the mother and the 3 year old child.
- d. That the rights of the child be protected regardless of the actions of her parents.
- e. That justice should not be denied to the child.

10. This news item was prepared based on the affidavit to be as truthful, accurate and objective as far as possible. The version of the father has been sought on several occasions but to no avail.

11. [REDACTED]

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explanations from the journalist Marc Pierre). The news was broadcasted on 4th April 2018 at 17H00. However, one need to listen very carefully to be able to figure out the name of the child in the audio as it is associated with a pronoun.



12. As soon as the mistake was noticed it was corrected immediately and when rebroadcasted at 19H00 the text did not contain the name of the child. We need to stress here that the audio with the name of the child associated with a pronoun is not available anywhere on our on-line platforms.
13. As described above, we have reasonably taken necessary steps to comply with paragraph 3 (7) of the Code of Conduct for Broadcasting Services. We would like to reassure the Authority that we are unflinchingly committed to comply with the legislation and Code of Conduct. As such we have taken several steps to tighten our internal procedures to avoid such mistakes to happen in future, albeit by inadvertence.
14. In the present situation, the child being 3 years old cannot give her consent as stipulated in paragraph 3(7) of the Code of Conduct. While the father is presumed innocent until found guilty we nevertheless have an affidavit sworn by non-other than the mother of the child. We had a duty to broadcast the news as elaborated under paragraph 9 above and by virtue of paragraph 3.4.6 of the Code of Ethics which inter-alia provides that :

*"Where consent has not been obtained or actually refused, **only overriding public interest can justify a decision to go ahead.**"*
(emphasis added)

15. As a result of such broadcast, the Ministry of Gender Equality, Child Development and Family Welfare has acted promptly and the matter was taken so seriously that the Child Development Unit (CDU) made a report to the Police for **"SEXUAL ASSAULT IN BREACH OF SECTION 11 and 14 OF THE CHILD DEVELOPMENT ACT"** in connection with this matter at Terre Rouge Police Station **late at night on 4th April 2018 at 23H45** OB No 3348/2018. (Annex 4). (emphasis added)
16. We cannot recall in history on which occasion the CDU, since its set-up, has acted with such promptitude ! At least as far as we know, they have never reacted like this for a common man ?
17. As a matter of fact, the relevant authorities have taken necessary steps to protect the child and her rights.
18. On the 5th April 2018, when we received the communique from the Ombudperson for Children's Office we acted promptly to issue our communique to state clearly our position. (Annex 5).
19. Later during the day when the Judge N. Matadeen in her order requested the press to exert caution when treating this matter, we issued another

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communiqué (Annex 6), stating that we have removed all details regarding the news broadcasted from our website also. We need to confirm here that the name of the child has never been published on any of our on-line platforms.



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20. From the above, we submit that in light with what are laid down in paragraph 3(7) of the Code of Conduct for Broadcasting services and paragraph 3.4.6 of the Code of Ethics there has not been any breach on our part.
21. Despite the reasonable control system already in place, we have nevertheless as mentioned above, taken action and several steps to tighten our internal control :
 - a. The texts are as from now not recorded prior to have been vetted by two senior most and experienced journalist.
 - b. The records in sensitive situations as this one has to be vetted by at least one senior journalist other than the ones who vetted the texts.
 - c. Even if we understand the pressure under which he was performing his duty the journalist/newscaster has been warned for negligence.

We trust that the foregoing answers your concern and we remain at your disposal for any other explanations/clarifications you may require.

Yours truly,

Balkrishna Kaunhye
Managing Director

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1st Floor, The Peninsula, 2A Falcon Street, Canton, Port Louis. Tel: (230) 213 2121. Tel: (Sales) (230) 213 6666. Fax: (230) 213 2222. Email: topfm@topfm.mu. Website: <http://www.topfmradio.com>

Ref: L/T-TOP/18/034

Mr. Balkrishna Kaunhye
Managing Director
Top FM Ltd
7th Floor, The Peninsula
2A Falcon Street
Caudan
Port Louis

06 April 2018

Dear Sir,

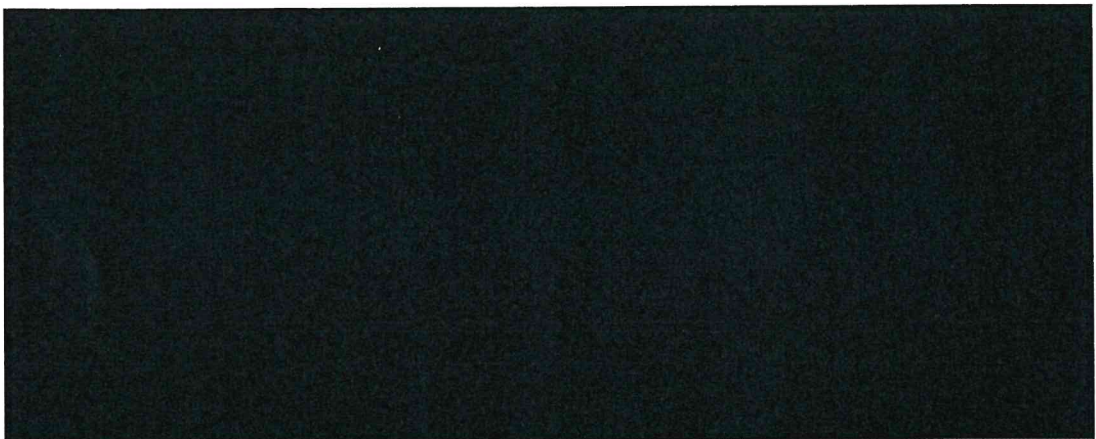
Re : Potential breach by Top FM on 04 April 2018

The Authority has noted with serious concern a clear and blatant breach of Paragraph 3(7) of the Code of Conduct for Broadcasting Services by your Radio station.

Paragraph 3 (7) of the Code of Conduct for Broadcasting Services provides:

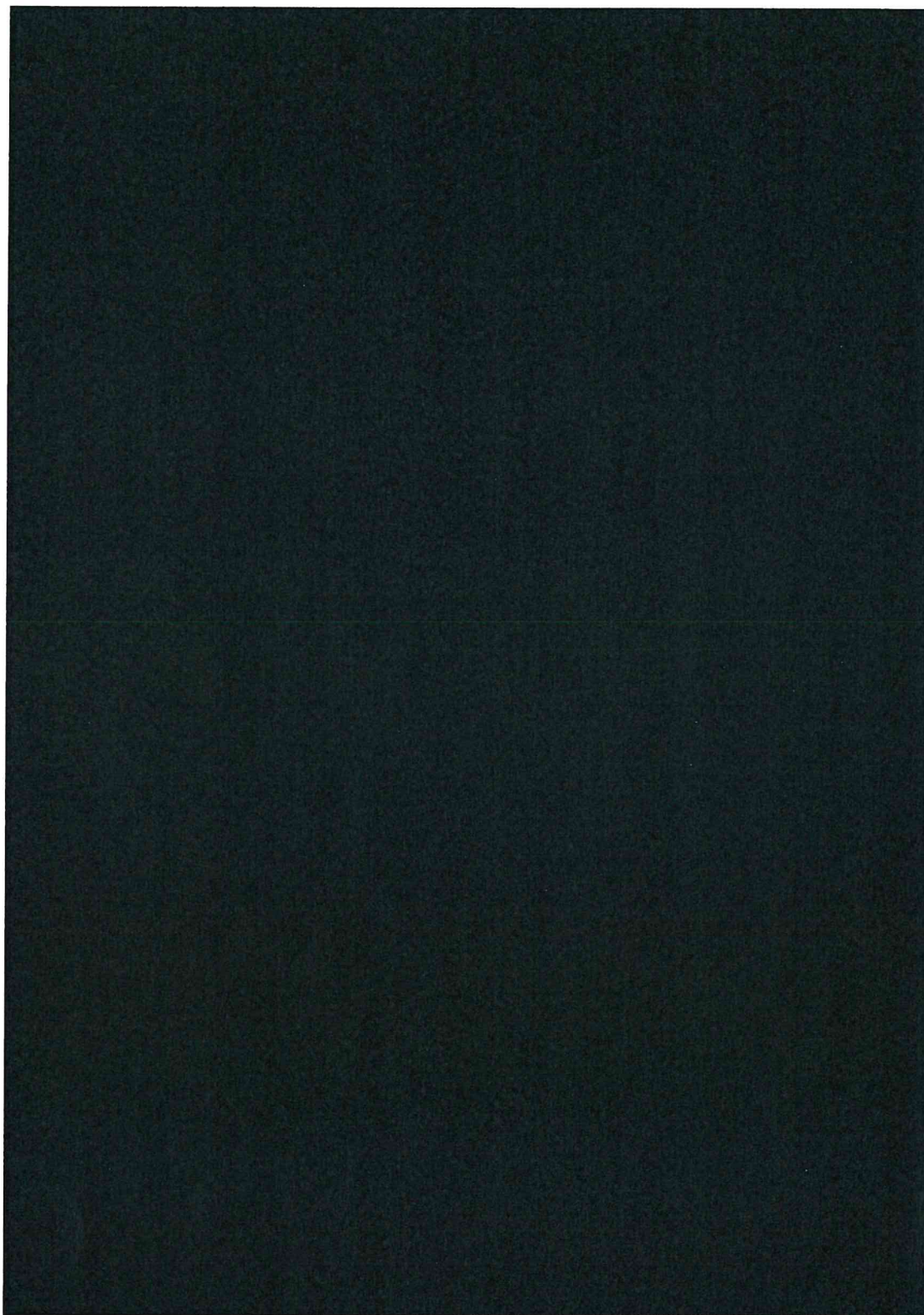
"The identity of rape victims and other victims of sexual violence shall not be divulged in any broadcast without the prior consent of the victim concerned."

During the "Le Journal" of 04 April 2018 at around 17h03 the identity of the child victim of sexual abuse was broadcast as per the transcript below.



A handwritten signature in black ink, appearing to be 'db' with a flourish.

Mark Pierre :



A handwritten signature or set of initials in black ink, located at the bottom right of the page. The signature appears to be stylized, possibly reading 'MP' or similar, with a long horizontal stroke extending to the right.

You are hereby requested to show cause, in writing, by **Monday 09 April 2018 at noon** as to why the licence of TOP FM should not be suspended under section 25(1)(d) of the IBA Act for breach of Paragraph 3(7) of the Code of Conduct for Broadcasting Services.

Yours faithfully,



K. Ramphul
Acting Director