



Ref: L/R-R1/20/053

Mr. Nicolas Adelson
Managing Director
Radio One
Viva Voce Ltee
United Docks Business Park
Caudan
Port Louis

02 June 2020

Dear Sir,

RE: BREACHES IN THE NEWS BROADCAST AT 12H00, 16H30 AND 18H00 BY RADIO ONE ON 08 MAY 2020

SUSPENSION OF LICENCE OF VIVA VOCE LTEE (RADIO ONE)

1. VIVA VOCE Ltee, trading under the name of Radio One, 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 4 April 2018 to 3 April 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. VIVA VOCE Ltee, 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 VIVA VOCE Ltee’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 VIVA VOCE Ltee’s licence. VIVA VOCE Ltee’s licence, in clause 9.1(d), clearly specifies that such a breach may lead to a suspension of the licence.
6. On **08 May 2020**, VIVA VOCE Ltee broadcast the following extract in its news bulletins of 12h00, 16h30 and 18:00 hours:

‘Insert :

Nou nou bizin compran banla zot probleme.

Insert :

...avoye ferfout, si mo ti konn sa, mo ti pou éclate zot fesse mo ti pou garder.

Insert :

Kan ou ti dan probleme, oun gagne loan.

Insert :

Ou pa envi travail, bez fesse aller. Faire banla retourne gouvernement so bénéfice.

Insert :

Lor la zonn alle station, ... alle station coumha”

7. The Authority, by way of e-Board Resolution circulated on **17 May 2020**, considered the above item and was of the considered view that the news item broadcast by VIVA VOCE Ltee at 12h00, 16h30 and 18h00 on **08 May 2020** was in breach of paragraphs 2(a) and 2(c) of the Code of Conduct for Broadcasting Services set out in the Second Schedule to the IBA Act.

8. Paragraphs 2(a) and 2(c) of the Code of Conduct for Broadcasting Services read as follows:

"2. General

Broadcasting licensees shall —

- (a) not broadcast any material which is indecent, obscene or offensive to public morals or offensive to the religious convictions or feelings of any section of the population or likely to prejudice the safety of the State or the public order or relations between sections of the population;*
- (b) ...*
- (c) exercise due care and responsibility in the presentation of programmes where a large number of children are likely to be part of the audience."*

9. By way of letter dated 20 May 2020 (Ref: L/R-R1/20/049), VIVA VOCE Ltee was requested to show cause, by 27 May 2020 at noon, as to why it should not be sanctioned for breaches of paragraphs 2(a) and 2(c) of the Code of Conduct for Broadcasting Services set out in the Second Schedule to the IBA Act.
10. By way of letter dated 27 May 2020, VIVA VOCE Ltee replied to the Authority's letter dated 20 May 2020 which requested it to show cause why VIVA VOCE Ltee should not be sanctioned for the potential breaches in its news item broadcast on 08 May 2020 at 12h00, 16h30 and 18h00.
11. The reply of VIVA VOCE Ltee is as follows:

"It is with great concern that we have taken note of the contents of your letter dated 20 May 2020.

First and foremost, we would like to send our sincere apologies to IBA for all inconvenience that it may have caused. We wish to reassure you that necessary measures have been taken to prevent this from happening in the future.

We wish thank you for bringing this to our attention."

12. After having considered the explanations of VIVA VOCE Ltee, the Authority is not satisfied with the explanations of VIVA VOCE Ltee and is of the considered opinion that VIVA VOCE Ltee has breached paragraphs 2(a) and 2 (c) of the Code of Conduct for



Broadcasting Services set out in the Second Schedule to the Independent Broadcasting Authority Act.

13. 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).
14. The underlined words set out at paragraph 6 above, and which were broadcast, by VIVA VOCE Ltee on 08 May 2020 at 12h00, 16h30 and 18h00 are considered by the Authority as breaching the Code of Conduct for Broadcasting Services as follows:
 - (a) the underlined words in the news item broadcast by VIVA VOCE Ltee was indecent; (paragraph 2(a) of the Code of Conduct for Broadcasting Services); and
 - (b) a large number of children are likely to be part of the audience (paragraph 2(c) of the Code of Conduct for Broadcasting Services) and VIVA VOCE Ltee did not, by broadcasting the underlined words, exercise due care and responsibility in the presentation of programmes where a large number of children are likely to be part of the audience.
15. The Authority is not satisfied with the explanations of VIVA VOCE Ltee and considers that the suspension of the Licence of VIVA VOCE Ltee is well warranted given the breaches of the Code of Conduct for Broadcasting Service set out in this letter and explained, in detail, in the Authority's correspondence of 20 May 2020 to VIVA VOCE Ltee.
16. 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 given to VIVA VOCE Ltee, 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.



17. he Authority has considered:

- (a) the nature of the breaches;
- (b) the letter of apology from VIVA VOCE Ltee dated 27 May 2020 in reply to the Authority's letter dated 20 May 2020;
- (c) the applicable law;
- (d) VIVA VOCE Ltee's licence; and
- (e) similar breaches in the past committed by VIVA VOCE Ltee,

before coming to a conclusion on this matter.

18. The Authority wishes to place on record that the letter of apology dated 27 May 2020, weighed very heavily in favour of VIVA VOCE Ltee in determining the length of suspension to be meted out to VIVA VOCE Ltee. But for the letter of apology dated 27 May 2020 and the remedial measures mentioned therein, the Authority would have imposed a suspension of 2 days on VIVA VOCE Ltee. The Authority expects that VIVA VOCE Ltee will inform the Authority, in writing, about the ***"necessary measures that have been taken to prevent this from happening in the future"***. It is expected that such breaches will not recur.

19. The Authority has further applied the test of proportionality to decide on the length of suspension to be meted out to VIVA VOCE Ltee. The Authority is of the considered view that the breaches committed by VIVA VOCE Ltee justify the suspension of VIVA VOCE Ltee's licence for 2 hours out of a maximum number of 21 days suspension which could have been given to VIVA VOCE Ltee by the Authority (vide section 25(2)(b) of the Independent Broadcasting Authority Act).

20. The particulars of the suspension period decided by the Authority in respect of VIVA VOCE Ltee are as follows:

Date suspension starts	:	03rd June 2020
Time suspension starts	:	04:00 p.m.
Date suspension ends	:	03rd June 2020
Time suspension ends	:	06:00 p.m.

21. The effect of the suspension is that during the suspension period VIVA VOCE Ltee should not broadcast any material.



22. VIVA VOCE Ltee is further directed by the Authority to give public notice of this suspension prior to it taking effect.

23. VIVA VOCE Ltee 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**