Dear Mr President

IN RE: THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD ("THE SABC")

1. As you are aware, we act on behalf of:

1.1 Media Monitoring Africa; and

1.2 S.O.S Support Public Broadcasting Coalition,

(referred to collectively as "our clients").

2. We refer to our letter dated 2 April 2019 (a copy of which is attached as "A" for ease of reference), as well as your letter dated 10 April 2019, in which you confirm that:

2.1 the President has received the security clearances and CVs for the recommended candidates;

2.2 the appointment “will be made soon”.

3. We also refer to public statements made by the President’s Spokesperson, Ms Khusela Diko, which make it clear that the vetting process has been completed “with an announcement due imminently”.

Attn: His Excellency, President MC Ramaphosa
President of the Republic of South Africa
Union Buildings
Government Avenue
Pretoria

By email: presidentrsa@presidency.gov.za
president@presidency.gov.za
malebo@presidency.gov.za
mike@presidency.gov.za

CONFIDENTIALITY NOTE: This letter contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this letter or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax, e-mail or telephone at the numbers listed above and we will reimburse the costs of doing so.
4. We attach a news article in this regard, dated 9 April 2019, as “B”.

5. Our clients submit that there is no plausible basis for any further delay in the appointment of the candidates. Particularly where (as set out in our letter, dated 2 April 2019), the President has no discretion regarding whether to appoint the candidates recommended by the National Assembly.

6. Accordingly, all that is pending is for the President to make the announcement of the appointments. Our clients urge the President to appoint the recommended candidates by no later than 12h00 on Monday, 15 April 2019.

7. If the President does not do so, our clients will have no option but to approach the Constitutional Court on an urgent basis for an order, inter alia, directing the President to appoint the candidates.

8. All our clients’ rights are reserved.

Yours faithfully

WEBBER WENTZEL
Dario Milo / Nadia Padayachee
Partner / Senior Associate
Direct tel: +27 11 530 5232
Direct fax: +27115306232
Email: dario.milo@webberwentzel.com

Letter sent electronically without signature.
Dear Honourable President

IN RE: THE SOUTH AFRICAN BROADCASTING CORPORATION (SOC) LIMITED (“the SABC”)

1. As you are aware, we act on behalf of:

1.1 Media MonitoringAfrica, a non-profit organisation which promotes ethical and fair journalism that supports democracy and human rights; seeks to protect the constitutional right to freedom of expression, and advocates for the free flow of information to the public on matters of public interest; and

1.2 S.O.S Support Public Broadcasting Coalition, a non-profit, voluntary association which supports the strengthening of public and community broadcasting in the public interest, primarily by monitoring and assisting with the resolution of problems facing the SABC, (referred to collectively as (“our clients”).

2. As set out in our previous letters, our clients are deeply concerned about the delays in appointing candidates to fill the 8 vacancies on the SABC’s Board as it is inquorate and cannot function until their appointment by the President.

3. Our clients were encouraged that the list of recommended candidates was approved by
the National Assembly on **Tuesday, 19 March 2019** and that the list of candidates by now will have been sent to the Office of the President for the recommended members to be appointed.

4. Our clients are concerned that it has been 2 weeks since the National Assembly approved the candidates, but you have not yet appointed them.

5. Our clients again emphasise that:

5.1 a functioning Board is critical to ensuring the SABC's independence;

5.2 The Constitutional Court has held that the public broadcaster facilitates the public's rights to freedom of information and the media, as well as their right to vote;

5.3 The SABC's role in these rights is particularly significant given the upcoming national elections in May 2019. The most critical period for a constitutional democracy to have a properly functioning and independent public broadcaster is in the build-up to, and coverage of, national elections.

6. Our clients point out that:

6.1 Section 13 of the Broadcasting Act provides that "[t]he twelve non-executive members of the Board must be appointed by the President on the advice of the National Assembly."

6.2 The phrase "on the advice of" must be contrasted with the text used in relation to numerous other appointments and decisions, where the President is required to make an appointment or decision "after consultation with" a given entity.

6.3 Where the President is required to act "on the advice of" an entity, the President has no discretion. Once the twelve people have been selected by the National Assembly and the names are sent to the President, the President is obliged to appoint those persons.

7. This has been made clear by respected academics and courts. For instance:

7.1 In *Cape Bar Council v Judicial Service Commission and Others* [2011] ZAWCHC 388; 2012 (4) BCLR 406 (WCC) at para 21 the court held:

> "The JSC serves a unique and crucial function in the South African judicial system, whether one accepts the construction that it has sole responsibility for deciding who should be appointed as judges to the various High Courts, or whether one inclines to the view that the President retains some limited form of discretion as the respondents contended. The latter construction is however difficult to reconcile with the imperative terms of s 174(6) of the Constitution."

7.3 Iain Currie and Johan de Waal, discussing the process of judicial appointment state:

“Others judges of the superior courts are appointed by the President on the advice of the [Judicial Services] Commission which means that the President is bound to accept the decision of the Commission and appoint as judges the persons that it recommends, effectively removing executive control over the appointment of superior court judges.”

8. Section 13(3) of the Broadcasting Act provides that the President “must designate one of the members referred to in subsection (2) as the chairperson and another member as the deputy chairperson, both of whom must be non-executive members of the Board.” Our clients respectfully submit that as the Board presently has a chairperson Mr Bongumusa Makhatini who has been functioning very well (particularly under extremely challenging circumstances) the President should exercise his power in terms of section 13(3) simply to re-designate Mr Bongumusa Makhatini as the chairperson.

9. Accordingly:

9.1 Our clients request that your office confirms that the President has indeed received the list of candidates from the National Assembly as well as clarifying why there has been a delay in the appointment. Please respond by Friday, 5 April 2019; and

9.2 Our clients urge the President to appoint the recommended candidates by Wednesday, 10 April 2019, failing which our clients will consider the legal avenues open to them.

10. All our clients' rights are reserved.

Yours faithfully

WEBBER WENTZEL
Dario Milo
Partner
Direct tel: +27 11 530 5232
Direct fax: +27 11 530 6232
Email: dario.milo@webberwentzel.com

Letter sent electronically without signature.


2 I Currie and J de Waal New Constitutional and Administrative Law at 304.
Failure by the Presidency to fill the eight vacancies by tomorrow (Wednesday), the non profit organisation says it will pursue legal avenues.

The Presidency says it's still considering the National Assembly's recommendations of 8 candidates to be appointed on the SABC Board.

Presidential spokesperson Khusela Diko says the announcement on the Board is imminent, without committing to a time frame.

"The President realises the urgency as it relates to the appointment of the SABC Board. But having appreciated that, – it's also important that he satisfy himself with the recommendation as made. And it is for this reason that a process of vetting as we normally do with all appointments has been undertaken. There hasn't really been a delay. If you would member that this recommendation came to the president at the end of March. So with the Minister of Communications we have gone through the applications. We have gone through that process again. And it's sitting on the desk of the President with an announcement due imminently," Diko explains.

Earlier on Tuesday, the DA has accused President Cyril Ramaphosa of kowtowing to ANC Secretary general Ace Magashule's faction on the appointment of the eight candidates to serve on the SABC Board.

Today marks three weeks since the National Assembly passed a resolution to appoint the candidates.

Lobby group Media Monitoring Africa (MMA) has written to the Presidency to ensure whether the President had received the recommended candidates to serve on the board.

Lawyers for Media Monitoring Africa and the SOS Support Broadcasting Coalition have given Ramaphosa until the end of business on Wednesday to appoint the Board or face legal action.

DA spokesperson Phumzile van Damme says her party has been reliably informed that Magashule’s faction is fighting against the appointment of the approved candidates.