Introduction:

Despite the Supreme Court’s decision to declare the then Zimbabwe Broadcasting Corporation’s (ZBC) monopoly illegal in the Capital Radio judgment of 2000, the government still retains a technical monopoly in the broadcast sector in Zimbabwe. Monopolies over broadcasting violate Section 20 of the Constitution, unless sanctioned by a constitutionally valid law. This monopoly is maintained in several ways by the government via the Broadcasting Services Act (2001) (BSA).

Signal carrier licences:

The BSA states that only one other signal carrier licence shall be issued other than that of the Zimbabwe Broadcasting Holdings (ZBH).

Save for the ZBH, no other person shall be issued with both a broadcasting and signal carrier licence (see section 9 (2) and (3)). This severely limits the number of people who may purchase and utilise signal carrier equipment.

This means that holders of broadcasting licenses are only limited to programme production (and buying) since they can only broadcast these via a second party (the signal carrier licensee). In the meantime, the signal carrier (other than the ZBH) is limited to the provision of the equipment for transmission to those with broadcasting licences and is not allowed to produce or flight programmes of their own.

Further, until the Minister of Information calls for applications for licenses for a new signal carrier, all prospective licensees will have to purchase airtime from the ZBH, which is notorious for reneging on broadcasting contracts and for refusing to flight some material on political basis.

In order to transmit its programme, a broadcaster must of necessity enter into a transmission agreement with a party holding a signal carrier licence. Since no one has a signal carrier license except for the ZBH, this means that all prospective broadcasters must make such agreements with their competitor, the ZBH. In addition, the Broadcasting Services Act does not compel the signal carrier (in this case the ZBH) to flight all material they receive from a broadcaster. In practice, therefore, the government will use the ZBH as a censorship board, for political, ideological or commercial reasons.

It is, therefore, reasonable to assume that the signal carrier licensee, especially ZBH, will not transmit all the material, or programmes submitted by rival broadcasters, thus effectively censoring matter that may be broadcast.

The fact that the law does not oblige the signal carrier to be impartial and not to use commercial, corporate, political or other biases to refuse to flight submitted programme material creates room for conflict of interest. The ZBH has an unfair advantage over others because it is both a broadcaster and a signal carrier. It is impractical to expect the Corporation, as a competitor, to flight another competitor’s materials, particularly if the Corporation stands to lose potential or existing market share or advertising sponsorship.

The provisions cited above are anti-competitive and unreasonably restrict the exercise of freedom of expression.
The fact that there will be another player, besides the ZBH who will be allowed to have a signal carrier license is no source of comfort either. Given the government's desire to control the media, it is highly unlikely this licence will be awarded to a person independent of government. Assuming that the second signal carrier licence is granted to an independent person, there is a very real likelihood that commercial or ideological considerations will be used to determine material which the licensee may or may not broadcast.

Further, the regulations also impose onerous conditions on the prospective private signal carrier licensee (see section 9). For example, the BSA stipulates that the second signal carrier will be required by law to:

(1) set up appropriate signal transmitting equipment with capacity to cover the whole of Zimbabwe; and,
(2) accommodate both commercial and community broadcasters.

This places an unviable responsibility on the shoulders of the private signal carrier licensee to cover the whole of Zimbabwe when the ZBH, which has had more than a 30-year head start, cannot even sufficiently cover 80% of the country! The requirement that the second signal carrier must cater for both community and commercial broadcasters is a potential headache, which is aimed at over-burdening the licensee.

Ends.