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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

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INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE 2298 OF 2024

**SUPPLEMENTARY DISCUSSION DOCUMENT ON  
SIGNAL DISTRIBUTION SERVICES MARKET  
INQUIRY**

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**List of Acronyms**

<b>AM</b>	<b>Amplitude Modulation</b>
<b>ASO</b>	<b>Analogue Switch Off</b>
<b>DAB</b>	<b>Digital Audio Broadcasting</b>
<b>DMR</b>	<b>Digital Migration Regulations</b>
<b>DSB</b>	<b>Digital Sound Broadcasting</b>
<b>DTT</b>	<b>Digital Terrestrial Television</b>
<b>ECA</b>	<b>Electronic Communications Act No 36 of 2005</b>
<b>ECNS</b>	<b>Electronic Communications Network Service</b>
<b>ECS</b>	<b>Electronic Communications Service</b>
<b>DTAG</b>	<b>DSB Technical Advisory Group</b>
<b>DRM</b>	<b>Digital Radio Mondiale</b>
<b>DSTV</b>	<b>Digital Satellite Television</b>
<b>DTH</b>	<b>Direct To Home</b>
<b>FM</b>	<b>Frequency Modulation</b>
<b>FTA</b>	<b>Free To Air</b>
<b>HMT</b>	<b>Hypothetical Monopolist Test</b>
<b>HM</b>	<b>Hypothetical Monopolist</b>
<b>ICASA</b>	<b>Independent Communications Authority of South Africa</b>
<b>ICT</b>	<b>Information and Communications Technology</b>
<b>IP</b>	<b>Internet Protocol</b>
<b>ITA</b>	<b>Invitation To Apply</b>
<b>MES</b>	<b>Minimum Efficient Scale</b>
<b>MTS</b>	<b>Managed Transmission Service</b>
<b>MUX</b>	<b>Multiplexer</b>
<b>MW</b>	<b>Medium Wave</b>
<b>OTT</b>	<b>Over-The-Top Services</b>
<b>OVHD</b>	<b>OpenView High Definition</b>
<b>SABC</b>	<b>South African Broadcasting Corporation</b>
<b>SMP</b>	<b>Significant Market Power</b>
<b>SSNIP</b>	<b>Small But Significant Non-Transitory Increase In Price</b>
<b>TBFP</b>	<b>Terrestrial Broadcasting Frequency Plan</b>

## 1. Background

- 1.1. The Independent Communications Authority of South Africa (“the Authority/ICASA”) formally initiated the Inquiry into signal distribution services on 17 September 2021 (“the Inquiry”) by publication of a notice<sup>1</sup> in the Government Gazette and a questionnaire on its website.<sup>2</sup>
- 1.2. The Inquiry is carried out in terms of section 4B of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) (“the ICASA Act”) and section 67(4) of the ECA.
- 1.3. The purpose of the Inquiry is to assess the state of competition and determine whether or not there are markets or market segments within the signal distribution services value chain which may warrant regulation in terms of section 67(4) of the ECA.
- 1.4. On 2 and 18 November 2021, the Authority received submissions to the questionnaire from Radio Pulpit/Radiokansel and the SABC, respectively.<sup>3</sup>
- 1.5. On 14 January 2022, the Authority sent a letter to Sentech SOC Ltd (“Sentech”) to submit all the information requested by the Authority in terms of the questionnaire within seven (7) days of receipt of the letter.<sup>4</sup>
- 1.6. The Authority received responses to the questionnaire from Sentech on 01 February 2022.
- 1.7. On 22 April 2022, the Authority published the Discussion Document<sup>5</sup> setting out its preliminary views.
- 1.8. The Authority received six (6) written submissions to the Discussion Document from eMedia Holdings Limited, MultiChoice (Pty) Ltd, Primedia Group, Radio Pulpit 657 AM, SABC SOC Ltd and Sentech SOC Ltd before the published closing date of 29 June 2022.<sup>6</sup>
- 1.9. The Authority held virtual public hearings on the Discussion Document on 26 and 29 August 2022.
- 1.10. On 28 July 2023<sup>7</sup>, the Authority published a notice requesting additional information from identified stakeholders namely eMedia Holdings Limited, MultiChoice (Pty) Ltd, SABC SOC Ltd, Sentech SOC Ltd and Radio Pulpit in order to investigate certain areas in which there was insufficient evidence before the Inquiry is concluded.

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<sup>1</sup> Government Gazette No 45172 in Notice No 873

<sup>2</sup> <https://www.icasa.org.za/legislation-and-regulations/signal-distribution-services-market-inquiry-questionnaire>

<sup>3</sup> <https://www.icasa.org.za/legislation-and-regulations/inquiries/signal-distribution-services>

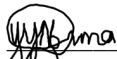
<sup>4</sup> The letter was sent to Sentech after the submission deadline of 23 November 2021 given its significance to the inquiry.

<sup>5</sup> Government Gazette No. 46255 in Notice No 986.

<sup>6</sup> <https://www.icasa.org.za/news/2022/icasa-reschedules-public-hearings-on-the-discussion-document-on-broadcasting-signal-distribution-services>

<sup>7</sup> Government Gazette Notice No. 49049.

- 1.11. The Authority received the requested additional information from the above stakeholders (except Sentech) before the published closing date of 02 October 2023.
- 1.12. The Authority now invites stakeholders to submit written representations on the supplementary discussion document. The written representations should reach the Authority within forty-five (45) working days from the date of publication of this document by email at [signaldistribution@icasa.org.za](mailto:signaldistribution@icasa.org.za). The Authority will not consider written representations received after the aforementioned closing date.
- 1.13. The written representations should be as detailed as possible and views or opinions expressed should be substantiated, as far as possible, by evidence, studies conducted by stakeholders, stakeholders' own data, international experience or precedence.
- 1.14. Stakeholders may request that specific information of the written representations be treated as confidential as envisaged in section 4D of the ICASA Act.
- 1.15. Stakeholders must indicate whether they require an opportunity to make oral representations at the public hearings, which may be held in due course. Failure to do so will be regarded as an indication of a lack of interest in participating in the public hearings.



Yolisa Kedama

**Acting Chairperson**

**Date:** 29 /01/2024

## 2. Submissions Received on General Comments

The general views expressed by the various stakeholders, but not directly related to the specific questions raised by the Authority, are summarised below, which are then followed by the Authority's response. The focus is on including only the salient points made in the various submissions and not to respond to every single point made individually.

### 2.1.1. eMedia

No comments were submitted by eMedia.

### 2.1.2. MultiChoice

MultiChoice noted that the retail services and transmission technology should not be conflated. For example, they state that the Authority was incorrect to refer to audio-visual services supplied to end consumers (i.e., DSTv, StarSat and OVHD) as satellite television transmission. Further, MultiChoice stated that referring to direct to home ("DTH") as satellite television transmission was incorrect.<sup>8</sup>

MultiChoice proposed that reference to the must carry obligation (from the Must Carry Regulations) should be deleted as it was irrelevant as well as not related to signal distribution services. MultiChoice stated that the must carry obligation was subject to commercial negotiations and was different to a signal distribution agreement between a signal provider (ECNS licensee) and a broadcaster (ECS licensee).<sup>9</sup>

MultiChoice indicated that reference to StarSat as a distributor and SABC, DSTv and e.tv as broadcasters under paragraph 3.4.1 of the Discussion Document was confusing. MultiChoice proposed that the Authority provides a clear distinction between broadcasters (or retailers of broadcasting services) and signal distributors in order to avoid confusion.

MultiChoice proposed substantial revision of commercial content/channel carriage agreement under paragraph 3.4.2 of the Discussion Document to avoid confusion with signal distribution agreements. Further, MultiChoice stated that the former was not a proxy or substitute for the latter. MultiChoice stated that signal distribution services are an input required for delivering the compiled broadcasting service to end consumers, whereas channels/content acquired under commercial channel carriage agreements are an input into the compilation of the retail services of broadcasters.<sup>10</sup>

Whilst MultiChoice agreed with the Authority's view that streaming/OTT services are not signal distribution, it argued that the Internet, which is the delivery mechanism, should be considered as a viable substitute to traditional signal distribution. Also, MultiChoice argued that the Internet delivery mechanism is more established, ubiquitous and is expected to be more entrenched in the future. Furthermore, MultiChoice argued that "*...for other delivery technologies to constitute an alternative, they do not have to have 100% or the same penetration levels, as suggested in*

<sup>8</sup> MultiChoice response to Discussion Document, para. 6 – 9.

<sup>9</sup> Ibid, para. 10 – 11.

<sup>10</sup> MultiChoice response to Discussion Document, para. 14 – 16.

*paragraph 3.10.1.2 of the Discussion Document*<sup>11</sup>. MultiChoice stated that the growth in the adoption of the Internet by local and international OTT services and traditional broadcasters to deliver broadcasting services to consumers via the Internet was underpinned by the decrease in data prices, increased access to the internet and internet capable devices.<sup>12</sup>

MultiChoice acknowledged Sentech (common signal distribution carrier) and Orbicom as signal distribution services' providers. MultiChoice was of the view that the Authority acted erroneously by not identifying StarTimes Media (SA) (Pty) Ltd as well as e.tv/Platco (part of eMedia) as signal distributors.<sup>13</sup>

Despite acknowledging that some satellite services were subscription based, MultiChoice stated that some satellite services do not attract a subscription fee (i.e., free to air or free to view such as OpenView).<sup>14</sup>

MultiChoice provided an input on the industry value chain for audio-visual services which included the following four components: (1) content creation; (2) content aggregation (including traditional broadcasters and OTT services); (3) delivery mechanism (including DTT and DTH, and the Internet); and viewing. MultiChoice stated that most providers are active at all or some of the levels of the value chain.<sup>15</sup>

#### 2.1.3. Primedia

No comments were submitted by Primedia.

#### 2.1.4. Radio Pulpit

No comments were submitted by Radio Pulpit.

#### 2.1.5. SABC

No comments were submitted by the SABC.

### 2.2. *The Authority's Response to Submissions on General Comments*

The Authority agrees with MultiChoice that the Authority incorrectly referred to audio-visual services and DTH as satellite television transmission. In addition, the Authority agrees with MultiChoice that must carry obligation is not relevant to the inquiry into signal distribution services.

Further, the Authority agrees with MultiChoice that reference to StarSat as a distributor and SABC, DSTv and e.tv as broadcasters in the Discussion Document was confusing given that

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<sup>11</sup> Ibid, para. 19.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid, para. 20.

<sup>14</sup> Ibid, para. 21.

<sup>15</sup> Ibid, para. 22.

these licensees provide retail broadcasting services to end-users albeit using different transmission platforms (i.e., satellite and analogue and or DTT).

The Authority acknowledges an important development in the broadcasting sector, in particular with regard to the entry and growth of OTT services and the use of the Internet (as a delivery mechanism) in addition to traditional terrestrial signal distribution. The Authority has since considered this development in the assessment of the relevant wholesale markets as will be discussed.

In a manner similar to OTTs and the Internet, the Authority considered the possible constraints posed by alternative platforms, such as satellite and this will be expanded upon in the relevant sections.

The Authority agrees with MultiChoice that some satellite-based retail broadcasting services do not attract a subscription fee. The Authority also notes MultiChoice's input on the proposed industry value chain and considered this in the analysis of the relevant wholesale markets.

**Question 1:** Do you agree with the Authority's responses to the above general issues? If not, please motivate your response by providing comprehensive reasoning thereof.

### 3. Analysis of Submissions on Specific Comments

In the Discussion Document and the request for additional information, the Authority invited comments on specific questions on market definition, broadcasting transmission services market, defined retail and wholesale markets, evaluation on effectiveness of competition in the relevant markets as well as significant market power.<sup>16</sup> The views expressed by the various stakeholders are summarised below, followed by the Authority's response. The focus is on including only the main points made in the various submissions and not to respond to each and every point made.

#### 3.1. Market Definition Approach

The Authority is required to conduct a market definition exercise to provide an analytical framework for its competition analysis. The market definition exercise is the first step in assessing the effectiveness of competition in the relevant markets in terms of S67(4)a of the ECA.

Market definition entails the following dimensions:

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<sup>16</sup> Refer to question 1 – 15 of the Discussion Document.



- The relevant products (or services) to be included within the market (called product market); and
- The geographic extent of the market (called geographic market)

The market definition exercise is not an end in itself, but a means to assessing the exact boundaries of competition in order to identify actual and/or potential competitive constraints that will prevent the abuse of market power.

The Authority uses the hypothetical monopolist test (“HMT”) to determine the relevant market. When applying the HMT test, a product is considered to constitute a separate market if the hypothetical monopolist firm could impose a ‘small, but significant non-transitory increase in price’ (“SSNIP”) above the competitive level without losing sales and profitability. If such a price increase is unprofitable because a significant number of consumers switch to other products as a result of the price increase or because suppliers of other products compete with the hypothetical monopolist, then the market definition should be expanded to include the substitute products.

The Authority defines markets first from the demand-side perspective by considering if other services could be considered as substitutes by consumers if the hypothetical monopolist firm is able to increase prices above the competitive level. Thereafter, the Authority assesses supply-side substitution in order to consider any additional constraints on the pricing behaviours of the hypothetical monopolist firm, which may not necessarily have been captured by the demand-side substitution analysis.

- Approach to defining the relevant product market

As outlined in section 3.2 of the Guideline for Conducting Market Reviews of 2010, the typical starting point in the product market definition exercise is the definition of the retail markets. This is then followed by the definition of the corresponding wholesale markets. However, as this review is concerned with broadcasting signal distribution, which is a wholesale market, the Authority focuses on wholesale signal distribution markets. However, as the demand for the upstream (wholesale) transmission services is derived from or depends on the demand for the downstream (retail) broadcasting services, the indirect constraints resulting from customer behaviour in the downstream market is considered in the assessment of the relevant wholesale market

- Approach to defining the relevant geographic market

In addition to the products (or services) to be included within a market, the Authority is required to specify the geographic extent of the market within which conditions of competition are sufficiently familiar. The geographic market refers to the area in which the relevant product (or service) is offered on approximately similar and sufficiently homogeneous conditions of competition.

### 3.2. Specific Comments on Market Definition Approach

In the Discussion Document, the Authority invited comments on the approach to the product and geographic market definition used by the Authority. The views expressed by the various

stakeholders are summarised below, followed by the Authority's response. The focus is on including only the main points made in the various submissions and not to respond to every single point made individually.

### 3.2.1. Sentech

Sentech raised a concern that the Discussion Document did not take into account how the broadcasting environment has evolved from a traditional terrestrial service to provisioning with new IP-based technologies for broadcast.<sup>17</sup>

### 3.2.2. eMedia

No comments were submitted by eMedia.

### 3.2.3. MultiChoice

Whilst MultiChoice broadly agreed with the theoretical approach used by the Authority in defining the relevant markets, it has stated that the analysis and findings should take into consideration market reality such as the use of the Internet as a delivery mechanism by traditional broadcasters and OTT services providers.<sup>18</sup>

MultiChoice is of the view that the use of Internet delivery mechanism will become more pervasive resulting in less reliance on traditional signal distribution services, particularly by traditional broadcasters as OTT services' providers "*have no need at all for traditional signal distribution services provided by the likes of Sentech*".<sup>19</sup>

### 3.2.4. Primedia and Radio Pulpit

Primedia and Radio Pulpit agreed with the approach used by the Authority in defining the relevant markets. They stated that the Authority should impose pro-competitive remedies on licensees with SMP.<sup>20</sup>

### 3.2.5. SABC

The SABC stated that there were no substitutes for the services provided by Sentech due to its control or ownership of the transmission equipment and the strategically located high sites.<sup>21</sup> In their response to the request for further information the SABC note that there are currently regulatory impediments to transmission on alternative platforms and that they are currently using multiple platforms to reach end users.

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<sup>17</sup> Sentech response to Discussion Document, para 2.2.

<sup>18</sup> MultiChoice response to Discussion Document, para. 23.

<sup>19</sup> Ibid, para. 25.

<sup>21</sup> SABC's response to Discussion Document, para. 2.7.

### 3.3. The Authority's Response on Market Definition Approach

The Authority has considered responses from Sentech and Multichoice that highlight the changes in the environment including the introduction of services over internet-based delivery systems. This is explicitly considered in section 3 that follows. However, for reasons that will be discussed, the Authority disagrees with MultiChoice's view that the use of the Internet delivery mechanism will become pervasive during the period under review.

The Authority noted Sentech's submission that the Authority should include certain elements when applying the SSNIP test. The Authority excluded the elements proposed by Sentech as they are suggested in a manner primarily focused on the operational sustainability of Sentech as opposed to being tools to assess substitution as is required in a market definition. This is not considered to be appropriate or useful to market definition and they are not a requirement in terms of the ECA. However, we note that this type of analysis would require suitable data. While the Authority had attempted to collect data from Sentech, data and information has not been provided by Sentech. While a diversion ratio analysis to consider changes in the broadcasting environment was not and cannot be done due to a lack of suitable data, other forms of evidence were considered and assessed as will be shown in the sections below.

The Authority notes Primedia and Radio Pulpit's view that the Authority should impose pro-competitive remedies on licensees with SMP. It should be noted that it is important for the Authority to follow the necessary steps envisaged in section 4B of the ICASA Act and section 67(4) of the ECA before making a pronouncement whether to intervene in the relevant markets.

The Authority notes SABC's comment and has considered substitutes in the market definition section as well as control or ownership of the transmission equipment and the strategically located high sites as part of the evaluation of the effectiveness of competition and the determination of SMP.

No submissions were received on the geographic market definition.

<p><b>Question 2:</b> Do you agree with the Authority's market definition approach and the responses provided above? Motivate your response by providing reasons and any supporting evidence or data as far as possible.</p>
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### 3.4. Retail Market Definition and Analysis

Given that the focus of this inquiry is signal distribution, the Authority begins with the wholesale markets involved. Retail markets will only be considered to the extent that downstream customer choices impact on upstream alternatives for broadcasters. The Authority, therefore, is of the view that there is no need to formally define and analyse downstream broadcast markets in detail for the purpose of this inquiry.

However, insofar as stakeholders have provided comments on retail markets, this will be considered in the analysis and assessment of indirect constraints from retail markets on wholesale market definition and the assessment of competition in wholesale markets.

*3.5. Submissions on Retail Market Definition Received:*

3.5.1. Sentech

Confidential submission

3.5.2. eMedia

No comments were submitted by eMedia.

3.5.3. MultiChoice

MultiChoice stated that there was a broad retail market for the provision of audio-visual services to end consumers because the services compete for the same audiences and/or advertisers even though they are delivered via different platforms (analogue, DTT, satellite [whether free or subscription based] and the Internet). In addition, MultiChoice disagreed with the Authority's view that there were two separate markets for the provision of analogue terrestrial television content to end-users and for the provision of digital terrestrial content broadcast to end-users.<sup>22</sup>

3.5.4. Primedia

No comments were submitted by Primedia.

3.5.5. Radio Pulpit

No comments were submitted by Radio Pulpit.

3.5.6. SABC

No comments were submitted by the SABC.

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<sup>22</sup> MultiChoice response to Discussion Document, para. 26 – 27.

### 3.6. The Authority's Response to Submissions on Retail Market Definition:

The Authority considered Sentech and MultiChoice's submissions in its analysis when considering indirect constraints from retail markets, it has therefore not considered analogue services. Furthermore, it has considered competition from different platforms in its wholesale market assessment. The Authority agrees with Sentech's submission in relation to retail markets insofar as there is an analogue switch-off and that digital radio has yet to be developed.

**Question 3:** In your opinion, is the approach adopted by the Authority not to define and analyse downstream broadcast markets separately and focus mainly on wholesale markets appropriate? Motivate your response by providing reasons and any supporting evidence or data as far as possible.

## 4. Wholesale Markets Definition

### 4.1. Overview and Further Analysis of Wholesale Markets

The Authority identified the following wholesale markets in the Discussion Document:

- Wholesale market for the provision of analogue and digital terrestrial broadcasting services.
- Wholesale market for the provision of analogue and digital managed transmission services for terrestrial television broadcasting.
- Wholesale market for the provision of analogue and digital managed transmission services for terrestrial radio broadcasting (national).
- Provision of analogue and digital managed transmission services for terrestrial radio broadcasting (local or regional).

Having considered the submissions and oral representations on the Discussion Document, the Authority revised the wholesale markets as follows:

- Wholesale markets for the provision of managed transmission of terrestrial television services
- Wholesale markets for facilities for transmission of terrestrial television services
- Wholesale markets for managed transmission of analogue and digital terrestrial radio services
- Wholesale markets for facilities for analogue and digital terrestrial radio services

The Authority did not analyse digital radio services further at this stage as there is no existing commercial offering.

The reasoning and analysis will be discussed in the sections that follow.

4.2. Submissions Received on Wholesale Market Definition:

4.2.1. Sentech

Sentech disagreed with the Authority's view with respect to wholesale market for the provision of analogue and digital managed transmission services for terrestrial radio broadcasting. Sentech stated that the assessment of this market should consider the migration from analogue to digital terrestrial television services. It proposes that the access network for terrestrial analogue radio, AM and FM, and for digital radio, DRM and DAB+, must be considered to be in the same wholesale product market due to them having similar procuring patterns for network access.

Wholesale market for the provision of analogue and digital managed transmission services for terrestrial television broadcasting:

Confidential submission.

Geographic Markets:

Confidential submission

4.2.2. eMedia

No comments were submitted by eMedia on the Discussion Document.

In response to the request for further information, eMedia submits that it does not consider satellite to be a competitive alternative due to the set-up costs and cost of transitioning. Furthermore, it does not consider internet streaming to be a competitive alternative, but considers it to be an adjunct to the provision of terrestrial services due to the need for access to high-speed internet which comes at a high cost.

4.2.3. MultiChoice

MultiChoice disagreed with the Authority's view that there was no alternative delivery mechanism to the SABC owing to its regulatory obligations. MultiChoice argued that this is not forward-looking and was not aligned to the theoretical approach to market definition.<sup>23</sup>

MultiChoice stated that the distinction between analogue and digital terrestrial broadcasting services as well as the provision of analogue and digital managed transmission was unnecessary as signal distributors like Sentech provide end-to-end analogue and DTT signal distribution services.<sup>24</sup>

MultiChoice recommended that the Authority consider terrestrial and satellite end-to-end signal distribution function as the narrowest market when defining the relevant markets. Also, MultiChoice was of the view that traditional signal distribution (terrestrial or satellite) is in the

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<sup>23</sup> MultiChoice response to Discussion Document, para. 28.

<sup>24</sup> Ibid, para. 29.

same market with the Internet delivery mechanism as the latter was available to and also used by broadcasters at the retail level.<sup>25</sup>

#### 4.2.4. Primedia

Primedia raised a concern with lack of discussion with regard to historical cost advantages enjoyed by Sentech as well as its monopoly over the backbone signal distribution network for sound broadcasting services (including high sites). In addition, Primedia stated that high sites should be declared essential facilities in terms of section 67(5) of the ECA. Further, Primedia stated that Sentech's control of high sites gives it SMP in the market for the provision of managed transmission services for terrestrial sound broadcasting signal distribution.<sup>26</sup>

Primedia disagreed that local or regional radio broadcasting services were provided by class licensees while national radio broadcasting services were provided by individual licensees. Primedia stated that it was issued four individual licenses by the Authority, used for the provision of regional commercial sound broadcasting services.<sup>27</sup>

#### 4.2.5. Radio Pulpit

Radio Pulpit disagreed with the Authority's view that local or regional radio broadcasting services are provided by class ECS licensees and nationally by individual ECS licensees. Radio Pulpit stated that all commercial radio stations were regional but were provided by individual ECS licensees.<sup>28</sup>

Radio Pulpit raised a concern that the Discussion Document did not consider important differences in technical requirements and barriers to entry in respect of FM and AM. Radio Pulpit recommended that the Authority provide a distinction between AM and FM MTS for national and/or regional analogue and digital terrestrial radio broadcasting services.<sup>29</sup>

#### 4.2.6. SABC

No comments were submitted by the SABC.

### 4.3. *The Authority's Response on Wholesale Market Definition:*

The Authority considered Sentech's and MultiChoice's submission and has revised its analysis of the wholesale markets to consider whether signal distribution by means of different technologies (such as satellite and internet) are in the same market as well as whether managed facilities and facilities are part of the same market.

The Authority notes Primedia's concerns with regard to historical cost advantages enjoyed by Sentech and its monopoly over the backbone signal distribution network for sound broadcasting

<sup>25</sup> Ibid, para. 30.

<sup>26</sup> Primedia response to Discussion Document, para. 31. – 3.2.

<sup>27</sup> Ibid, para. 4.1 – 4.2.

<sup>28</sup> Radio Pulpit response to Discussion Document, para. 2.4.1 – 2.4.3.

<sup>29</sup> Ibid, para. 2.5.1 – 2.5.3.

services (including high sites). This issue and barriers to entry have been considered by the Authority under section 4 on the evaluation of the effectiveness of competition.

The Authority agrees with Primedia, and Radio Pulpit's view that local/regional radio broadcasting services could be provided by class and/or individual licensees.

The Authority notes Radio Pulpit's concern that the Discussion Document did not consider important differences in technical requirements and barriers to entry in respect of FM and AM. This has been considered in sections 4.4 and 5.1 below.

#### 4.4. Analysis of Market Definition

##### Wholesale Market for the Provision of Broadcasting Signal Distribution of Television Services

###### **Product Market**

The Authority does not consider it necessary to analyse the analogue transmission service which is expected to be superseded by DTT service after the switch-off date.

The Authority considered the starting point to be the provision of managed transmission for terrestrial television services by a hypothetical monopolist via the DTT network. The Authority, therefore, considered whether a hypothetical monopoly provider of DTT services would be able to sustain a SSNIP of 5-10% or sufficient customers (in this case broadcasters that require signal distribution services) would switch to an alternative substitute product such that it would render the increase unprofitable for the HM provider. The Authority acknowledges that the HM provider of DTT service could, in principle, be constrained indirectly at the retail level or directly at the wholesale level.

At the wholesale level the substitution could occur when a broadcaster substitutes DTT service with alternative platforms. The candidate platforms are: (i) satellite and (ii) the Internet-based platforms.

The Authority considered whether broadcasting signal distribution for different technologies (satellite, terrestrial and internet-based) is in the same market. We consider this using the SSNIP test. If a monopoly provider of broadcasting signal distribution services using a particular technology (e.g. terrestrial) were to increase their prices by 5-10% would its customers, namely broadcasters, move their signal distribution to a provider of an alternative technology (such as satellite)?

###### *Satellite*

Whether a broadcaster would find signal distribution via satellite to be a substitute on the demand side depends on a range of factors.

Firstly, it is important to consider whether a provider of terrestrial television services is able to switch to an alternative channel from a **legal and regulatory perspective**. Submissions received by the Authority note that switching from terrestrial is not possible in terms of licence obligations. For example, eMedia notes "*Irrespective of the proportion of viewers who access the e.tv channel terrestrially or via satellite, e.tv is obliged in terms of its licence to make the e.tv*



*and incentive channels available terrestrially.*" Likewise, the SABC notes that it would consider moving to other platforms if regulatory impediments were removed or lowered. At present both SABC and eMedia are licensed with terrestrial based assignments in the 470-694MHz frequency band. Their radio frequency licence specifies terrestrial frequency assignments and coverage maps. In particular, the SABC is required to provide national coverage while eMedia is required to provide national coverage with a minimum of 77% population coverage in terms of its service licence and radio frequency spectrum licence. eMedia's radio frequency licence also specifies technical specifications in terms of sites.

Furthermore, the DMR specifies roll out targets for DTT. While the initial Digital Migration Regulations of 2012 specified that SABC requires a 95% population coverage by the end of the dual illumination period this was amended in 2015 to coverage of 84% of the population with an allowance for areas "deemed difficult or uneconomical to reach" covered by free-to-air satellite. It should be noted that this, however, does not allow for satellite to be used as a substitute in other areas. eMedia requires coverage in line with its service licence (77%) in terms of these regulations.

It is therefore only possible for customers to switch to satellite if they are able to use it to cover sufficient people to meet the requirements of their service licences and in line with policy. While there have been comments that this conceptual exercise should not take into account the specifics of particular licensees, the Authority disagrees. Understanding what is feasible from a switching perspective requires a contextual understanding of the market that is being assessed. Where regulatory requirements make switching infeasible this is a necessary consideration. In the South African context this does not appear viable for reasons discussed below.

Secondly, we consider whether the different platforms are substitutes on the demand side. This is done using the HM or SSNIP test. The question is whether sufficient number of broadcasters would switch to alternative substitute(s) in response to the 5-10% increase in DTT services. In order to assess the impact, the Authority considered whether this would be feasible given indirect constraints downstream as switching by a broadcaster would depend on downstream customer responses. This is setting aside whether it is possible from a legal and regulatory perspective.

The General Household survey from 2022 showed that while 81.5% of South Africans owned televisions, 58.4% had access to payTV or Openview decoders. The remaining 23.1% use terrestrial television. This shows that a sizeable segment of the population watches terrestrial television. It is the customer response of this downstream segment that we are concerned with.

While DTT requires that a customer purchase a set top box or have a smart television after which television can be viewed on a cost-free basis, watching television via satellite requires a dish, set top box and installation. The cost of a decoder or STB to access DTT is in the region of R500-R600, but is subsidised for those on SASSA grants (earning under R3500). However, in contrast, the cost of satellite dishes and installation can be more than three times that cost. The submission from eMedia estimates the cost to be R1500-R1800 while SABC estimates it as R2000 for higher LSMs and R1000 for lower LSMs.<sup>30</sup> As such, while the increase in price of signal transmission to the broadcaster may be 5-10%, the impact on customers is a 300%

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<sup>30</sup> See eMedia October 2023 Submissions. Filename: *RESPONSE BY EMEDIA TO STAKEHOLDERS QUESTIONNAIRES (final)*. See also: SABC October 2023 Submissions. Filename: *Annexure-C-Request-for-Information-Broadcasters-SABC v3*.

increase in installation costs, even though the final cost of viewing free-to-air channels is the same regardless of platform used.

Research from the Broadcasting Research Council in May 2022 estimates that there are 8.6 million households earning less than R4000 a month of which 4 million have analogue and 675 632 have DTT television. This puts the number of terrestrial households earning under R 4000 a month at around 4.6 million.<sup>31</sup> It is likely that for a subset of final customers (such as households earning under R4000 a month) a 300% increase in the cost of installation will be challenging. In the absence of subsidization of the dish and installation costs, if the broadcasters switched to signal distribution via satellite these customers are likely to stop watching television altogether.

Submissions have drawn parallels to difficulties faced by households as a result of digital migration<sup>32</sup>. For example, eMedia notes that the costs involved with purchasing and installing a satellite dish and set top box "as digital migration has shown, ...is all, but impossible." In South Africa the digital migration process is instructive of the difficulty in migrating poorer households from analogue to digital STBs resulting in delays whether from a policy, implementation and availability perspective. Some of these difficulties are described in the Constitutional Court judgement in the case between e.TV and the Minister of Communications and others which relates to digital migration, where the Court notes that only 1.2 million out of 3.75 million eligible households had registered for a subsidized STB between 2015 to October 2021.<sup>33</sup> If a free to air broadcaster chooses to switch to a platform that requires a start-up cost of three times that of the digital STBs this is likely to be infeasible for at least that subset of customers. Therefore, a switch in response to a price increase would be contingent on subsidisation for that portion. Even if some customers could switch to satellite, the fact that a large number are unable to switch without government assistance (as has been clearly demonstrated by data utilised during the digital migration process) means that switching to satellite by FTA broadcasters is not feasible in response to a 5-10% price increase in the period under review and the more plausible outcome is that they are likely to accept the price increase.

In addition, broadcasting is a public good. Therefore, a loss of access due to unaffordability is likely to have repercussions from a social, economic and political standpoint, particularly for the public broadcaster. As such, the Authority is of the view that it is unlikely that FTA broadcasters would switch easily within a short timeframe.

In terms of radio, there are similar costs to transitioning to satellite. In addition, satellite radio is not used by the bulk of listeners for most radio stations.

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<sup>31</sup> Broadcasting Research Council of South Africa (2022), BRC TAMS Update, 13 May 2022, available at <https://brcsa.org.za/wp-content/uploads/2022/05/BRC-TAMS-Update-Roadshow-13-May-2022.pdf&hl=en>

<sup>55</sup> See: eMedia October 2023 Submissions. Page 3. Filename: *RESPONSE BY EMEDIA TO STAKEHOLDERS QUESTIONNAIRES (final)*.

<sup>33</sup> e.tv (Pty) Limited v Minister of Communications and Digital Technologies and Others; Media Monitoring Africa and Another v e.tv (Pty) Limited and Others (89/22;CCT 92/22) [2022] ZACC 22; 2022 (9) BCLR 1055 (CC); 2023 (3) SA 1 (CC) (28 June 2022).

Given these statistics, the test is whether a small, but significant non-transitory increase in price would induce sufficient consumers to switch so that the proposed price increase is not feasible. The Authority is of the view that this is not the case. At this stage, broadcasters seem unlikely to withdraw from the terrestrial market based on a SSNIP. Therefore, satellite is not considered to be a competitive constraint on terrestrial signal distribution in the current market in South Africa.

The Authority finds that while distribution via satellite may be a functional alternative, in certain circumstances it is unlikely to be a practical nor economically viable alternative during the period under review in South Africa given (i) broadcasters' licence national coverage obligations (hence significant reliance on the terrestrial network) (ii) the potential cost implications to end-users in the form of satellite dish.

#### *Internet*

A second question is whether distribution via the Internet or IP based technologies is an alternative to terrestrial signal distribution. The Authority notes that the legal and regulatory implications of broadcasters switching to distribution via the Internet is the same as switching to distribution via satellite.

With regard to indirect retail constraints, from a consumer perspective, there are significant usage cost implications for watching video broadcast over the Internet (for example, through video on demand or streaming). Streaming requires high speed internet and incurs monthly data costs as opposed to terrestrial which is free after the initial set up costs. It is therefore not a realistic alternative for a large number of South African households.

As shown below, ITU statistics show that less than 1.69 million households in South Africa have internet speeds required for internet streaming. For example, the SABC streaming option, SABC+, requires a minimum speed of 2Mbps, but recommends speed of 4Mbps<sup>34</sup>.

**Table 1: Speed tier of fixed broadband subscriptions in South Africa, 2021**

Speed tier	2021
256 kbit/s to less than 2 Mbit/s	5 150
2 Mbit/s to less than 10 Mbit/s	222 000
10 Mbit/s to less than 30 Mbit/s	563 000
30 Mbit/s to less than 100 Mbit/s	561 000
Equal to or above 100 Mbit/s	344 000
<b>Total</b>	<b>1 697 150</b>

Source: ITU. (2023). South Africa: Fixed broadband subscriptions. Available [here](#).

It therefore seems unlikely that a broadcaster faced with a price increase of 5-10% would switch to internet-based distribution at this stage given the limited households that currently have access to it.

If we consider the upstream market, a provider broadcasting on DTT cannot switch to a signal provider utilizing the Internet or satellite as it would not be able to reach a significant proportion

<sup>34</sup> SABC+ Website ("FAQs"), accessed on 16 October 2023 at <https://www.sabcplus.com/en/about/faq#:~:text=4.5%20What%20Internet%20Line%20Speed,streaming%20at%20the%20same%20time>

of their end-users. Furthermore, end-users would face significant costs either upfront or monthly in comparison to DTT. This is likely to be prohibitive for poorer end-users. Therefore, the Authority finds that distribution via the Internet or IP based technologies is not a viable alternative to DTT from a broadcaster's perspective at this point.

A similar pattern holds for radio. The response from Radio Pulpit supports the contention that while terrestrial radio is free, listening via the Internet is billed. Its research shows that many listeners have access to the Internet, though this may be through cell phone, work, public access points. However, the fact that a high proportion still use terrestrial suggests that many are not switching.

We therefore find that distribution of services through different technologies are in different competition markets at this time, noting that this could change in the future if viewing habits, cost and internet penetration change.

#### Provision of Managed Transmission and Facilities

Sentech has submitted that managed transmission should be considered separately to facilities. It proposed the definition used by Ofcom of managed transmission as "*services including network design, procurement and installation of transmitters, network monitoring, quality assurance of the signal and maintenance of the transmission equipment*" and suggest that this be distinguished from facilities.<sup>35</sup> The Authority has considered this and notes that a similar approach of having two wholesale markets has been taken in other jurisdictions such as France and Ireland.<sup>36</sup> As such, the Authority has considered the two segments separately. The conceptual exercise with respect to facilities is whether a 5-10% price increase by a hypothetical monopolist of facilities would lead to users of facilities switching to an alternative(s). At present it is not clear what this alternative(s) would be. Therefore, the Authority considered facilities leasing to be in a separate market to managed transmission, but considers it as a potential constraint when assessing competitive effects.

**Question 4:** Do you agree with the Authority's views on product market definition for wholesale television services? Are there any factors that the Authority should have either included or excluded from the product market definition?

#### **Geographic Market for the Provision of Terrestrial Television Services**

From the geographic market definition perspective, the Authority is of the view that the geographic market for the provision of DTT services is regional in scope as each DTT site constitutes a separate market for the provision of DTT services. However, given the market dynamics at this stage, the Authority's view is that all DTT sites can be analysed together as they are subject to homogeneous competitive constraints.

<sup>35</sup> Sentech Discussion Document, dated 29 June 2022. Page 32.

<sup>36</sup> See: ARCEP. (2022). *Decision No. 2022-0931 of the Regulatory Authority for Electronic Communications, Posts and Press Distribution*. See also: Communications Regulation. (2021). *Market Review: Broadcasting Transmission Services in Ireland*.

**Question 5:** Do you agree with the Authority's views on geographic market definition? Are there any factors that the Authority should have either included or excluded from the geographic market definition?

*Wholesale Market for the Provision of Terrestrial Radio (analogue and digital) Services*

The Authority's view is that the appropriate wholesale focal product is the provision of national, local/regional terrestrial analogue services. The hypothetical monopolist provider of terrestrial radio services, at the wholesale level, is not constrained by other platforms, such as the distribution via the internet or IP based technologies, as a significant number of listeners still listen to radio via analogue. According to the Broadcast Research Council of South Africa, just below 80% of South African radio listeners use traditional radio receivers while the rest of radio listeners use other devices such as mobile phones, computers, etc.<sup>37</sup> The Authority does not expect this trend to change significantly during the period under review.

The Authority has considered whether analogue (including FM and AM) and digital audio broadcasting (DAB) transmission services fall within the same wholesale market. The Authority was not provided with evidence that assists in answering this question. At this stage DAB is still in a trial phase in South Africa and covers a limited area. It also requires specialised equipment. We believe that as a result it does not currently constrain analogue. For a broadcaster faced with a 5-10% increase in the cost of managed transmission of analogue radio distribution, it is unlikely to be feasible to shift to an alternative with limited geographic and household coverage. This is because they would have access to insufficient number of listeners which would impact on their advertising revenues. As such, they are likely to be in different markets at this stage.

A further question is whether FM and AM transmission is in the same market. Radio Pulpit stated that AM has different technical requirements and therefore more limited alternatives including an inability to self-provide. A broadcaster on AM may not be able to easily move to FM. As such, they may be in separate markets. However, as the competitive dynamics of the two markets in this case are similar we aggregate them for analysis.

**Question 6:** Do you agree with the Authority's views on market definition for signal distribution of radio services? Are there any factors that the Authority should have either included or excluded from the market definition?

The Authority also considered whether analogue and DAB services for national and local/regional radio services fall within the same wholesale market. The question is whether the purchase requirements of national and local/regional radio broadcasters closely resemble each other to the extent that one can be substituted for the other at the wholesale level. The Authority's view is that differences exist because of the different technical requirements for national and local/regional radio broadcasting, mainly in terms of power (i.e., national radio broadcaster would require antennas that provide higher power levels compared to local and regional radio broadcasters) as well as factors such as topography which impact on coverage.

<sup>37</sup> See: The Broadcast Research Council of South Africa. (Undated) Available at: <https://brcsa.org.za/>

Therefore, the Authority is of the view that the geographic scope of the wholesale terrestrial market for radio services relates to their areas of coverage. The Authority note that self-supply becomes more feasible where there is localised coverage and less feasible for higher levels of coverage. However, again, for the purposes of analysis we aggregate it.

**Question 7:** Do you agree with the Authority's views on geographic market definition for radio services? Are there any factors that the Authority should have either included or excluded from the geographic market definition?

#### 4.5. Conclusion on Market Definition

The Authority's preliminary view is that the following markets exist:

1. Wholesale markets for the provision of managed transmission of terrestrial television services
2. Wholesale markets for facilities for transmission of terrestrial television services
3. Wholesale markets for managed transmission of analogue and digital terrestrial radio services
4. Wholesale markets for facilities for analogue and digital terrestrial radio services

**Question 8:** Do you agree with the above revised list of wholesale markets? Please provide separate reasoning for each market you propose to delete from and or add to the list.

### 5. Evaluation of the Effectiveness of Competition

After due consideration of the written submissions and oral representations on the Discussion Document and the responses to additional request for information, the Authority considered the following factors when assessing the effectiveness of competition in the relevant wholesale markets:

- Current competition;
- Potential competition;
- Countervailing buying power; and
- Market dynamics.

#### 5.1. Submissions Received on the Effectiveness of Competition:

##### 5.1.1. Sentech

Confidential submission

### 5.1.2. MultiChoice

MultiChoice stated that the Authority's assessment of competition excluded two competitors (i.e., StarSat and Platco) who provide competing satellite services. In addition, MultiChoice indicated that competition assessment should include alternative delivery mechanisms that are available and used by audio-visual services providers in the market.<sup>38</sup>

MultiChoice disagreed with the Authority's view that satellite is not an alternative. MultiChoice stated that both DTT and satellite-delivered services require end-user equitation such as set-top boxes and antenna or dish and also that a significant portion of the South African television households was served via satellite, rather than by DTT. In addition, MultiChoice argued that TV licence fees were not relevant for this exercise and should therefore be removed.<sup>39</sup>

### 5.1.3. Primedia and Radio Pulpit

Primedia stated that there were no commercial providers of MTS for sound broadcasting services licensees, with the exception of some community broadcasters who self-provide, other than Sentech. Primedia stated that the reason why individual ECNS were not self-providing was because of Sentech's monopoly over high sites.<sup>40</sup> Also, Primedia argued that the barriers to entry into the MTS market for the provision of sound broadcasting services were due to lack of access to high sites controlled by Sentech.

Whilst Primedia agreed with the Authority that it was unlikely that new entrants would enter the market for the provision of analogue and digital MTS for terrestrial radio broadcasting services, it recommended that reference to Orbicom and M-Net should be removed as both licensees do not provide terrestrial radio broadcasting services.<sup>41</sup>

Primedia stated that the assessment of competition in the market for the provision of analogue and digital MTS for terrestrial radio broadcasting services at national and non-national level did not sufficiently consider Sentech's monopoly over high sites which represents an important barrier to entry for potential entrants in the market.<sup>42</sup>

Radio Pulpit strongly disagreed with the Authority's view that community broadcasters have countervailing bargaining power and alternative suppliers to Sentech due to the option to self-provide their signal distribution. Radio Pulpit argued that self-provision on AM was not technically feasible.<sup>43</sup>

### 5.1.4. SABC

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<sup>38</sup> MultiChoice response to Discussion Document, para. 31 – 32.

<sup>39</sup> Ibid, para. 33-34.

<sup>40</sup> Ibid, para. 4.4 – 4.7.

<sup>41</sup> Ibid, para. 6.1 – 6.2.

Radio Pulpit response to Discussion Document, para. 2.6.1 – 2.6.2.

<sup>42</sup> MultiChoice response to Discussion Document, para. 6.3 – 7.2.

<sup>43</sup> Radio Pulpit response to Discussion Document, para.2.9.1 – 2.9.3.

The SABC stated that most of Sentech's transmission sites were located on high sites and therefore, it might be difficult for a new entrant to find the same or equivalent sites to build its masts.<sup>44</sup>

The SABC indicated that Sentech's refusal to include penalty clauses for failure to meet service levels in the service level agreement of the facilities leasing agreement is tantamount to monopolistic tendencies.<sup>45</sup>

Further, the SABC raised a concern about the regulatory barrier to competition with respect to the licensing of multiplexers to one entity. The SABC recommended that the licensing process should be subject to a competitive bidding process or should take into account competition in the market.

In their response to the further request for information, the SABC notes that Sentech is unwilling to reduce costs and negotiate lower prices. Furthermore, it notes that regulatory stipulations prevent the SABC from self-providing signal distribution and that human capital will be required. Also, the SABC notes that while FM transmission can be co-located on some mobile towers, entry via mobile towers is limited by the fact that it does not use high masts.

#### 5.1.5. eMedia

eMedia stated that despite having an I-ECNS licence its ability to self-provide was hindered by sunk costs to put the signal distribution infrastructure in place, failure to regulate signal distribution services and lack of cost-oriented pricing regulation of Sentech's facilities.<sup>46</sup>

eMedia stated that Sentech, as a government-owned entity, has access to government funding or has cost advantage due to access to financial resources at privileged rates via government.<sup>47</sup>

eMedia stated that Sentech is likely to use the analogue terrestrial broadcasting to rollout DTT resulting in economies of scope, which will not benefit broadcasters given Sentech's dominance and the lack of substitutes or competitors.

eMedia stated that it is unlikely that there will be new potential competitors in the signal distribution services market due to the following:<sup>48</sup>

- High sunk costs of investment.
- The existence of long-term contracts.
- Technological barriers making it difficult for a new entrant to provide an equivalent service to existing suppliers given the cost of building a new network of transmission sites and the need to re-adjust antennas for existing end-users.
- Broadcasters are unlikely to exert any significant countervailing bargaining power on Sentech.

<sup>44</sup> SABC response to Discussion Document, para. 1.4.

<sup>45</sup> Ibid, para. 3.6 – 3.7.

<sup>46</sup> eMedia response to Discussion Document, para. 14.

<sup>47</sup> eMedia response to Discussion Document, para. 28.5.

<sup>48</sup> eMedia response to Discussion Document, para. 28



- Sentech is a government-owned entity and has access to government funding or other funding at privileged rates that government may attract.

eMedia stated that the lack of regulatory intervention in the signal distribution services market has resulted in Sentech engaging in anti-competitive pricing to the uneven bargaining position between Sentech and its customers.<sup>49</sup>

In its response to the request for additional information, eMedia notes that it cannot access signal distribution at a reasonable price, and that Sentech has market power and that it has not been able to negotiate with Sentech on a transparent basis. It further states that there are barriers to self-provision including prohibitive costs and the fact that the use of Sentech sites and facilities leasing is not straightforward as they operate in a largely unregulated environment. eMedia notes that no broadcaster is able to use mobile sites for television.

## 5.2. Further Analysis on the Effectiveness of Competition

After due consideration of the written submissions on the Discussion Document, the Authority considered the following factors when assessing the effectiveness of competition in the relevant wholesale markets:

- Current competition;
- Potential competition;
- Countervailing buying power; and
- Market dynamics.

### Current Competition

When assessing current competition dynamics in the relevant wholesale markets, the Authority considered factors such as market shares of existing players, overall size of the undertaking(s) as well as the relative strength of existing competitors.

Currently, Sentech is the only supplier of terrestrial TV and radio broadcasting transmission services at national level. At present Sentech has 100% of the market for terrestrial signal distribution. This has been the case over time and will likely persist over the period of review. According to Sentech's 2021 Integrated Report, its infrastructure includes, among others, 100% satellite coverage, 181 DTT sites with coverage of about 84% of the population. It is thus a large company. There are no competitors for television.

In the market for radio signal distribution, the Authority understands that only Sentech is capable of broadcasting for national and regional radio stations. Further, the Authority understand that there are some local (or community) broadcasters who self-supply and/or buy signal distribution services from suppliers, other than Sentech, such as BluLemon (Pty) Ltd which can assist with broadcasts from mobile tower sites.<sup>50</sup> However, this is limited to radio with localised reach. Responses from stakeholder engagements suggest that use of these services is very limited and that Sentech is responsible for the bulk of signal distribution in South Africa. At present

<sup>49</sup> Ibid, para. 4.

<sup>50</sup> See: Blue Lemon Website, available at: <http://blulemon.net/Pages/Signal-Distribution.asp>

there is no alternative provider of signal distribution for terrestrial television or for national and regional terrestrial radio.

At present self-provisioning is not used. The Authority is not aware of any national or regional terrestrial broadcasters who self-supply television and commercial radio.<sup>51</sup>

According to Sentech's 2021 Integrated Report, its infrastructure includes, among others 192 FM sites servicing 151 radio broadcasters (20 public broadcasters, 21 commercial broadcasters and 118 community radio stations).<sup>52</sup> According to the Authority's records there are around 230 community radio stations, 13 commercial and 18 public radio stations in total which suggests that they cover most radio. There is thus little competition at present. Further, Sentech has historically benefited from government support.

*Potential Competition:* The Authority considered factors relating to potential competition such as control of essential facilities that cannot be easily duplicated, economies of scale and scope, vertical integration and strength of potential competitors. Therefore, the Authority considered whether potential entry and expansion in the relevant markets would likely constrain Sentech's ability to act independently of TV and radio broadcasters to the detriment of consumers.

Potential competition involves considering whether market entry is likely within the period of review. The Authority considered whether new entry is possible and likely, through greenfield entry or self-provisioning.

We consider this through assessing:

1. Greenfields self-provision.
2. The likelihood of self-provisioning using Sentech facilities.
3. The likelihood of self-provisioning using facilities from other providers such as tower companies and MNOs.

There are various barriers to self-provisioning through greenfield entry. The Authority's assessment is that the relevant wholesale markets are characterised by high barriers to entry. The barriers are observed mainly due to legislative requirements, and high and sunk fixed costs which hinder competition in the market. The time and the cost involved to build an alternative network is likely to make it uneconomical for broadcasters or other firms that enter to compete effectively with Sentech. Further, there are substantial financial costs involved in order to build a vast national network of terrestrial broadcasting sites similar to that of Sentech.

It should be noted that a typical terrestrial broadcasting network is designed to give the maximum possible population coverage with a minimum of broadcast transmission sites. This requires selecting the most suitable higher altitude sites, to yield the greatest coverage of the population. In addition to the challenge of locating suitable high-site locations (some, if not all, are already taken by Sentech), it is likely that new and small entrants would find it difficult to obtain planning permission for new high-sites, which carry a significant risk of rejection or significant delays given that many factors (i.e., environmental impact assessments, etc.) must be considered by the relevant authorities. Whilst it might be possible to build an alternative network, the Authority is not convinced that a new entrant would be able to replicate Sentech's

<sup>51</sup> This was corroborated by eMedia during the public hearings.

<sup>52</sup> Sentech Integrated Report 2021, page 5.

current coverage levels during the period under review because the sunk costs associated with such an investment are prohibitive.

Building a network from scratch appears to be prohibitively expensive. Sentech's current revalued property, plant and equipment is worth R 1 948 688 000.<sup>53</sup>

eMedia stated that self-provision was not feasible due to the key economic feature of the signal distribution infrastructure, namely, that it involves large sunk costs which makes it financially infeasible for broadcasters with I-ECNS licence such as eMedia<sup>54</sup> to self-provide. In a submission made in response to the Authority's request for additional information, it stated that while their subsidiaries had considered self-provision "*the prohibitive cost associated with self-provision made it a non-starter.*" Further, eMedia stated that it would not consider self-provision absent government subsidisation of towers and equipment. The Authority also considered the economies of scale and scope. Signal distribution providers would benefit from economies of scale and scope. This is because certain costs are incurred regardless of the number of sites used (for example, satellite uplink for national distribution, costs of head office technical teams etc). In addition, there are also economies of scope that could be gained from the provision of multiple types of distribution. As such, entry on one or two sites would be extremely costly, and is unlikely to attract customers who require a regional or national footprint. It would therefore be difficult for a new entrant to achieve the minimum scale required for efficient entry.

The facilities leasing requirement in terms of Chapter 8 of the ECA and the Facilities Leasing Regulations requires that Sentech provide access to and/or lease its sites and/or facilities to new entrants or broadcasters who would like to self-provide. Therefore, in theory, these barriers to entry could, be negated by the facilities leasing requirement. However, there are still challenges to this alternative.

Firstly, broadcasters are required to have an individual electronic communications network services licence ("I-ECNS") in order to self-provide. Limited numbers of broadcasters have this licence. It should be noted that the process to issue an I-ECNS licence by the Authority must be preceded by the policy directive by the Minister of Communications and Digital Technologies in terms of section 5(6) of the ECA.

Secondly, even though an I-ECNS licensee can potentially self-provide, this may not be feasible due to uncertainty related to leasing high sites. At present Sentech owns the strategic high sites. Currently, companies are not leasing facilities from Sentech. While mobile companies have towers, they do not at present have high enough masts. eMedia argues "*There is no broadcaster in the world that broadcasts on low-sites*" with respect to television broadcasts.

Thirdly, signal distribution is a different business from broadcasting, requiring a different staff component and skill set. Broadcasters compose and package television or radio services and have a range of skills centred on producing and packaging such content. In contrast, signal distribution involves a technical process of distributing content to the final consumer. This requires technological expertise and understanding of signal distribution. It is therefore not necessarily straightforward for broadcasters to enter signal distribution.

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<sup>53</sup> Sentech. (2022). *Integrated Report: 2022*. Page 79.

<sup>54</sup> eMedia's submission to Discussion Document. Paragraph 14.

The Authority notes that this may be different for certain broadcasters. In particular class network licensing process is not subject to the Policy Directive requirement which limits other broadcasters, which may make it easier for local (or community) radio broadcasting licensees (though not television) who typically have a smaller footprint and are therefore more able to use low sites (such as that offered by tower companies) to self-provide or enter the infrastructure market. However, the Authority understands that this is limited at present.

Facilities leasing has not occurred thus far, which suggests that the associated challenges are real. eMedia, for example, stated in the public hearings that this is also problematic as the cost is exorbitant and there are technical issues, for example, requiring end users to move their aerials. It also notes that prices of facilities are not regulated so they are still dependant on Sentech for high site access<sup>55</sup>. In addition, they would require access to the frequency as well as the MUX.

While the Authority considered vertical integration this factor is not relevant as Sentech is not vertically integrated. However, the Authority understands that Sentech may launch an OTT platform for content distribution by broadcasters in 2024.<sup>56</sup>

#### Countervailing Buying Power

The Authority considered whether there is an absence of, or low countervailing buying power in the relevant wholesale markets. A concentrated market may not necessarily lead to harmful outcomes if buyers have sufficient countervailing buyer power to limit the exercise of market power. Generally, a wholesale purchaser may have a degree of buyer power where it purchases large volumes and can make a credible threat to switch suppliers or to meet their requirements through self-supply to a significant degree. However, the volumes purchased must be large enough to make a material difference to the profitability of the seller. Therefore, countervailing buyer power can only occur if terrestrial TV and radio broadcasters have the ability to obtain services from an alternative supplier other than Sentech, are able to self-provide or have the ability to substitute an alternative platform other than the terrestrial broadcasting transmission platform.

As stated previously, Sentech is the sole supplier of national terrestrial broadcasting transmission services in South Africa and broadcasters have no alternatives. With regard to self-provision, the Authority is of the view that this would require extensive and costly network build as well as access to high sites, which are currently occupied by Sentech.

The buyers are concentrated with some large purchasers such as the SABC, Primedia and eTV. The costs of signal distribution make up a significant component of these companies' expenditure. As such, they should be incentivised to bargain down the costs. The Authority notes that Sentech's customers are large and sophisticated operations, including the SABC which is similarly also under the purview of the state. Despite this, customers have not been

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<sup>55</sup> Page 65 of the public hearings transcript held 26 August 2022.

<sup>56</sup> See: McLeod, D. (2023). *Sentech to launch streaming platform to rival SABC*. Available at: <https://techcentral.co.za/sentech-to-launch-streaming-platform-to-rival-sabc/222284/>

able to use their size or sophistication to negotiate on prices. The prices charged to customers appears to be based on non-cost factors and there is no room for negotiations.

Given the above, broadcasters do not have countervailing power, given that Sentech is the sole supplier of national terrestrial broadcasting transmission services and there is a lack of viable alternatives to terrestrial signal distribution services.

### Market Dynamics

There has been no entry in the market for managed transmission of television or radio (in national and regional markets). There is no evidence suggesting that any entry is likely. The Authority notes that the markets in which Sentech operates are prone to natural monopoly. This is primarily due to the large unrecoverable fixed costs (or sunk costs). Furthermore, Sentech is required to ensure national coverage, even in areas where it is not profitable to supply its services. This likely discourages entry to the market. Furthermore, even if there were a new entrant it would take time to build out a large and sufficient network. As already indicated above, a potential competitor to Sentech may be able to reduce the timeframe and minimise the significant sunk costs by leasing existing sites and/or facilities from Sentech. However, there is substantial uncertainty as to the terms on which this will occur. Furthermore, at present, no broadcaster has indicated an intent to self-supply and there is no external likely entrant that we have been made aware of.

**Question 9:** Do you agree with the Authority's views on the effectiveness of competition in the relevant markets? Please provide reasons for your response.

## 6. Significant Market Power<sup>57</sup> (“SMP”)

### 6.1. Further Analysis on SMP

In terms of section 67(5) of the ECA, a licensee has SMP in the relevant market or market segment if that licensee is dominant,<sup>58</sup> has control of an essential facility or has a vertical relationship that the Authority determines could harm competition.

Having regard to the Authority's view in respect of the assessment of the effectiveness of competition, the Authority's view is that Sentech has SMP. Sentech is dominant by virtue of having a market share of 100% in television and national as well as some regional radio markets. Furthermore, there is no prospect of entry in the near future.

### 6.2. Submissions Received on SMP:

#### 6.2.1. Sentech

<sup>57</sup> Market power in terms of section 1 of the ECA and also section 1 of the Competition Act.

<sup>58</sup> Dominant in terms of section 1 of the ECA and also section 7 of the Competition Act.

Provision of Analogue and Digital Managed Transmission Services for Terrestrial Radio Broadcasting (National):

Confidential submission

Analogue and Digital Managed Transmission Services Markets:

Analogue (Television) Managed Transmission Services

Confidential submission

Analogue (Regional and local Radio) Managed Transmission Services

Confidential submission

Digital (Radio) Managed Transmission Services

Confidential submission

Digital (Television) Managed Transmission Services

Confidential submission

6.2.2. eMedia

eMedia stated that the issues relating to SMP were ignored for many years despite concerns raised by broadcasters with the Authority in the past.<sup>59</sup> Further, eMedia stated that the Authority's failure to declare Sentech as dominant has allowed it to engage in anti-competitive pricing to the detriment of broadcasters.<sup>60</sup>

6.2.3. MultiChoice

No comments were submitted by MultiChoice.

6.2.4. Primedia

Whilst Primedia agreed with the Authority's views on SMP, it stated that the Authority should also refer to Sentech's control of towers, masts and high sites.<sup>61</sup>

6.2.5. Radio Pulpit

Radio Pulpit agreed with the Authority's view that Sentech has SMP in the market for the provision of analogue and digital managed transmission services.<sup>62</sup>

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<sup>59</sup> eMedia response to Discussion Document, para. 3

<sup>60</sup> Ibid, para. 4

<sup>61</sup> Primedia response to Discussion Document, para. 8.1.

<sup>62</sup> Radio Pulpit response to Discussion Document, para. 2.10.

#### 6.2.6. SABC

The SABC stated that Sentech has monopoly in the markets for the provision of the following services:<sup>63</sup>

- Analogue terrestrial radio transmission.
- Analogue terrestrial television transmission.
- DTT transmissions.
- DTH transmissions.

#### 6.3. The Authority's Response on Significant Market Power

The Authority notes Sentech's comments regarding analogue television becoming irrelevant in light of the imminent switch-off. As such the relevant retail markets have been revised.

With regard to Digital (Television) managed transmission services, the Authority disagrees with Sentech's statement that the Authority has not acknowledged that there are licensees with resources and skills to provide whole broadcasting transmission services and do not do so. No evidence has been provided that this is a feasible option. The Authority acknowledges that there are ECNS licensees who have the potential to self-provide. However, they are under no obligation to and have chosen not to.

The process that the Authority followed as per the ECA required the assessment of competition before the determination of licensees with SMP. In the assessment of effectiveness of competition, the Authority considered factors such as market shares, barriers to entry, market concentration, countervailing power and dynamic characteristics of the market. This analysis shows that Sentech is dominant in the market for digital terrestrial signal distribution in television with 100% market shares. In addition, Sentech is dominant in the market for the provision of analogue and digital terrestrial radio signal distribution with a share that is 100% for national and regional distribution.

**Question 10:** Do stakeholders agree with the Authority's preliminary view that Sentech has SMP? Are there any other licensee(s) or provider(s) with SMP that the Authority has (have) not identified? Please provide reasons for your response.

## 7. The Way Forward

After due consideration of written representations on the supplementary discussion document, the Authority may hold public hearings, if deemed necessary, before concluding publication of its findings. It is therefore important for stakeholders to indicate whether they require an opportunity to make representations at the public hearings on the supplementary discussion document. Following the conclusion of the Inquiry (i.e., after the publication of the findings document), the Authority **may** commence the regulations making process to address significant market power in the relevant markets.

<sup>63</sup> SABC response to Discussion Document, para. 5.2.

**Question 11:** Please provide us with any other comment relating to the Inquiry.