

# ICASA's Supplementary Discussion Document: Inquiry into Subscription Broadcasting Services

## Economic Assessment of the Preliminary Findings

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RBB Economics,

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### **Introduction and executive summary**

- 1 RBB Economics ("RBB") has been instructed by ENSafrica, attorneys acting for the South African Broadcasting Corporation SOC Ltd ("SABC"), to provide an economic assessment of the preliminary findings set out in the Independent Communications Authority of South Africa's ("ICASA's") supplementary discussion document published on 6 January 2025 (the "Discussion Document") in the context of ICASA's market inquiry into subscription broadcasting services (the "Market Inquiry").
- 2 In particular, RBB has been instructed to provide an assessment of the Discussion Document's preliminary view that competition is effective in each of the relevant broadcasting markets defined by ICASA.
- 3 In summary, we find as follows.

## Relationship between upstream and downstream competition

- 4 For competition in downstream broadcasting markets to be effective, competition in upstream broadcast rights markets must also be effective. Given audiences heterogeneous content preferences, access to a wide portfolio of premium content plays a central role in drawing audiences and, in turn generating advertising and/or subscription revenue.<sup>1</sup> Without effective competition upstream, broadcasters will therefore lack the ability to broadcast sufficiently wide portfolios, and hence lack the ability to compete effectively downstream.
- 5 This arises because the ability to broadcast a portfolio of premium content is likely to create positive spill-over effects that increase the size of the potential audience, and thus the advertising and/or subscription revenue, that a platform is able to attract. This effect exists not only in respect of broadcasts of those programmes themselves, but also other programmes broadcast by the platform. This, in turn, enhances broadcasters' ability to monetise content rights, and thus both ability and incentive to compete for premium content rights in future – ineffective upstream competition therefore has a self-reinforcing effect, potentially impeding effective competition in upstream and downstream broadcasting markets in future.

## Ineffective upstream competition, leading to ineffective downstream competition

- 6 The Discussion Document reaches a preliminary view that competition is effective in the upstream / wholesale markets for the acquisition of broadcast rights. In our view, this finding is not well founded. To the contrary, the available evidence on this score suggests that competition in the upstream / wholesale markets for the acquisition of broadcast rights is likely to be ineffective. This is for the following reasons:

- First, the evidence presented by the Discussion Document that premium content is not necessary for broadcasters to compete effectively downstream does not, in our view, provide a sound basis to reach such a conclusion.

Specifically, the basis for the Discussion Document's finding in this regard is principally that some broadcasters have managed to grow audiences without the need to provide a variety of premium programming. However, the growth of some broadcasters does not necessarily imply that they have been able to compete effectively with incumbents (such as MultiChoice). It may simply be that some platforms are able to offer a complementary portfolio of content compared to incumbents. Given the variety of consumer preferences, there may simply exist consumers who value both premium and non-premium content, and choose to make use of different services in order to access each type. The growth of smaller broadcasters may also reflect that they have been able to draw new customers to the market who are seeking a lower price point than that offered by the incumbent (e.g., MultiChoice). Absent evidence that the growing broadcasters have been able to attract audiences away from incumbents, the Discussion Document's findings are therefore misplaced.

- Second, we consider the Discussion Document's finding on the ability of platforms other than Multichoice to compete for premium sports (and other premium content) to be similarly misplaced.

This is because the Discussion Document does not present a robust analysis of whether firms other than MultiChoice do compete *effectively*, and hence exert an effective competitive constraint, on MultiChoice (as opposed to simply participating in the same market(s)). Instead, the Discussion Document simply claims that these other platforms “could” compete for such rights if they wanted to. Moreover, even if certain rivals to MultiChoice have the notional *ability* to compete for premium sports content, in the sense of having the financial resources necessary to do so, in order for there to be effective competition for those rights such firms would also need to have the *incentive* (i.e., willingness)

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<sup>1</sup> The Discussion Document defines premium content as broadcast content that is capable of drawing larger audiences than other types of content, and acts as a key differentiator for broadcasters.

to do so. There is no reason to expect that this likely is, or will likely be, the case, and the Discussion Document presents no evidence to the contrary. In contrast, the Discussion Document notes that MultiChoice has held a substantial share of premium sports (and other premium content) rights on an exclusive basis for an elongated period of time. This is particularly important given that the Discussion Document finds that local broadcasters (such as the SABC and OpenView) are not able to compete effectively for premium sports rights due to structural barriers, and that effectively therefore only international OTT platforms are capable of effectively constraining MultiChoice in the relevant upstream markets.

- Third, the Discussion Document finding that there are several ways through which broadcasters can access premium sports rights if they are unable to compete effectively to acquire those rights directly from rights holders (most notably through the notional ability to sublicense those rights from other broadcasters) provides an insufficient basis to conclude that competition is effective in the relevant upstream or downstream markets.

The notional ability of local broadcasters to sublicense certain premium sports rights does not render effective competition for those rights in the first instance, nor does it mitigate the adverse spillover effects on competition in the relevant downstream markets. While in theory sublicensing agreements could allow for firms that are unable to acquire certain rights the opportunity to broadcast that content, the Discussion Document itself finds such agreements have historically not been widespread. Moreover, we understand that in practice the firms, when they do reach an agreement have been able to sub-license the content on restrictive terms only that impede the ability of rival broadcasters to compete effectively for audiences and advertisers.

- 7 In short, we therefore find that the Discussion Document's reasoning that (i) effective competition for a portfolio of premium content is not necessary for effective downstream competition, and (ii) that some international OTTs may be able to effectively constrain MultiChoice in respect of upstream premium sports rights (if they wanted to) does not provide a sound basis on which to conclude that upstream competition is effective. In contrast, we find that the available evidence indicates that competition in upstream broadcast rights markets is likely to be ineffective. In turn, this provides a strong indication that competition in the relevant downstream broadcast markets is similarly ineffective.

### **No reliable direct evidence of effective downstream competition**

- 8 In light of the above, it is important to appreciate that the Discussion Document also fails to present any robust direct evidence that competition in the relevant downstream markets is effective. This is for the following reasons:

- First, the Discussion Document's finding that evidence of entry and growth by new players indicates that competition in these markets is likely to be effective, and that new entrants are able to overcome barriers to entry and effectively constraint MultiChoice, is misplaced.

Mere evidence of entry does not, in and of itself, indicate effective competition in a market. In order for new entry to result in effective competition, new entrants must be capable of exerting an effective competitive constraint on incumbents. In broadcast markets, this requires that new entrants are able to attract viewers, advertisers/advertising revenues and/or subscribers away from incumbent broadcasters (such as MultiChoice) to a sufficiently large extent that the behaviour of these incumbents becomes constrained by these rivals. Similarly, the growth of smaller and new broadcasters and platforms does provide a reliable indication that such growth has arisen as a result of customers switching away from incumbents, such that smaller broadcasters and new entrants are able exert an effective competitive constraint on MultiChoice.

Indeed, the growth of OpenView and OTT platforms (at a combined 5.1 million subscribers between 2019 and 2023) dwarfs the loss in subscribers by MultiChoice (800,000 over the same period). This suggests that OpenView's and OTT platforms' growth is unlikely to have come predominantly from customers switching away from MultiChoice. Instead, such growth is likely to be due to customers that are seeking a different content offering, or lower price point, than that provided by MultiChoice and were therefore never potential MultiChoice subscribers to begin with. Such growth may also reflect that viewers are increasingly multihoming between MultiChoice and other services (i.e., that viewers increasingly subscribe simultaneously to MultiChoice on the one hand and OpenView and/or OTT services on the other).

- Second, the Discussion Document's finding that the ability of FTA broadcasters to broadcast more channels at higher broadcast quality will mean that they will be better able to better compete with incumbent Direct-to-Home ("DTH") broadcasters following the switch from analogue to digital broadcasts is misguided.

There is no reason to expect the analogue switch off will necessarily remove structural barriers to competition for FTA broadcasters. The ability for FTA broadcasters to compete effectively for viewers will depend not only on the number of channels and broadcast quality of those channels, but crucially also on their ability to broadcast a wide portfolio of premium content and their audience reach. However, the analogue switch-off will likely result in FTA broadcasters reaching fewer viewers, as well as more viewers switching to DTH platforms. FTA viewers will be required to incur sunk cost investments in set-top boxes in order to remain an FTA viewer post-switch-off, thus also reducing the incremental switching costs associated with switching to a DTH platform.

Consistent with this, following the transition from analogue to digital broadcasts in the five provinces in 2022, the SABC has lost viewers while DTH broadcasters have gained viewers in three provinces. In the remaining two provinces, the SABC's viewership increased by a significantly smaller proportion than the percentage gain in viewership by DTH broadcasters.

- 9 In short, we therefore consider the Discussion Document's finding that competition in the relevant downstream broadcast markets is effective is misguided. This is because the evidence presented in the Discussion Document that (i) newer entrants and existing players have been able to grow their subscriber base, and (ii) FTA broadcasters will be able to broadcast more channels at higher broadcast quality following the analogue switch-off does not provide a sound basis on which to conclude that competition in these markets is, or will be, effective. In contrast, given that the available evidence suggests that competition in upstream content rights markets is ineffective, there are strong grounds on which to expect that expect that downstream competition is ineffective.
- 10 Below, we set out our findings in further detail.

## 1 The nature of (effective) competition in broadcast markets

- 11 The Discussion Document's preliminary view is that that competition is effective in each of the relevant markets it has defined and assessed.<sup>2</sup> In particular, the Discussion Document reaches the preliminary view that:

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<sup>2</sup> Namely, the Discussion Document identified the following markets:

- the downstream market for the retail distribution of basic-tier subscription television services and free-to-air television services in South Africa (the "market for subscription and FTA services");
- the downstream market for the retail distribution of premium subscription television and OTT services in South Africa (the "market for premium subscription and OTT services"); and

- In the wholesale markets for premiums sports, entertainment, and non-premium content, the upstream markets for the acquisition of media content, “*competition is effective in all three [wholesale] markets*”.<sup>3</sup>
  - In the market for subscription and FTA services, “*there is no indication of ineffective competition*”.<sup>4</sup>
  - In the market for premium subscription and OTT services, “*MultiChoice has been experiencing significant subscriber losses to competing services pointing to increased levels of competition*” (i.e., effective competition).<sup>5</sup>
- 12 As set out further below, in the RBB’s view, the evidence upon which the Discussion Document relies does not constitute robust evidence that competition in any of these markets is effective. Moreover, in our view, the available evidence suggests competition in these markets is ineffective.
- 13 In order to properly assess the effectiveness of competition in broadcast markets, it is important to appreciate how competition operates in those markets. This is important, for example, to properly interpret market outcomes. It is also important to appreciate how the effectiveness of competition at one level of the broadcast supply chain affects the effectiveness of competition at other levels of the supply chain. For example, it is important to appreciate how the effectiveness of competition for crucial upstream inputs can affect the effectiveness of competition in downstream markets.
- 14 Broadly speaking, there exist two levels to the broadcasting supply chain that are of relevance:
1. the upstream (wholesale) level, where broadcasters acquire broadcast rights for programmes (or develop programming themselves);<sup>6</sup> and
  2. the downstream (retail) level, where broadcasters exploit these rights in order to compete for viewers for these programmes, in turn, subscription revenue and/or advertisers seeking exposure to those viewers.<sup>7,8</sup>
- 15 In this context, it is important to appreciate that a broadcaster’s ability to compete in the relevant downstream/retail markets depends critically on its ability to compete effectively in the upstream/wholesale markets for broadcasts rights that will draw viewers, and, where relevant, advertisers, to their platforms. In other words, effective competition downstream relies, to a significant degree, on there being effective competition upstream. This is for the following reasons:
- As noted in the Discussion Document, certain types of broadcast content (“premium content”) are capable of drawing larger audiences than other types of content (“non-premium content”). The Discussion Document goes on to explain that access to premium content is used as a key differentiator and, in turn, acts as an important source of revenues, for broadcasters.<sup>9</sup> Moreover, as the Discussion Document notes in its preliminary findings, given differences in viewer preferences, different types of premium content are not fully interchangeable (e.g., live sports is likely not a direct substitute for a

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– the upstream wholesale markets for the supply and acquisition of (i) premium sports content, (ii) premium movies and series, and (iii) non-premium content, for the distribution in South Africa (collectively, the “wholesale markets for premiums sports, entertainment, and non-premium content”).

(Discussion Document, para 1.13.1-1.13.5, page 6)

<sup>3</sup> Discussion Document, para 5.6, page 108.

<sup>4</sup> Discussion Document, para 4.17, page 105.

<sup>5</sup> Discussion Document, para 4.18, page 105.

<sup>6</sup> This is consistent with the Discussion Document’s definition of wholesale markets for the supply and acquisition of (i) premium sports content, (ii) premium movies and series, and (iii) non-premium content, for the distribution in South Africa (Discussion Document, para 2.8.27, page 66)

<sup>7</sup> This is the case both for broadcasters that are partially funded by advertising revenue, as well as those that are partially funded by advertising revenue – such as subscription television broadcasters, and public broadcasters that receive government funding.

<sup>8</sup> This is consistent with the Discussion Document’s definition of downstream markets for (i) the retail distribution of basic-tier subscription television services and free-to-air television services and (ii) the retail distribution of premium subscription television and OTT services, for the distribution in South Africa (Discussion Document, paras 2.4.3.6 & 3.19, pages 20 & 72)

<sup>9</sup> Discussion Document, paras 2.3.5.1-2.3.5.2, page 17. (“The Authority also noted that there is a wide array of content that broadcasters considered as premium content including local content which has become a key differentiator and source of audiences and revenues for FTA, subscription and OTT services”)

movie). Accordingly, since viewer preferences are heterogeneous, in order to attract a wide audience, a broadcaster requires access to a wide range of (premium) content rights. In turn, this implies that a broadcaster that only has access to limited set of broadcast content rights is only able to attract a more limited audience. Put differently, effective access to a wide portfolio of premium content is important for broadcasters to be able to compete effectively for audiences in the relevant downstream/retail markets.

- Access to a portfolio of broadcast rights for premium content can give also rise to wider-reaching benefits, enhancing the ability of broadcasters to compete effectively downstream. For instance, we understand that live broadcasts of major sports events can draw viewers wishing to watch related programming before and after the live broadcast (such as commentary by sports pundits), in addition to attracting viewers that may remain to watch similar other sporting events. In a similar vein, broadcasts of premium movies and series content may also attract viewers that may then choose to remain on the channel to watch other kinds of programming.
- The ability to consistently provide coverage of a wide portfolio of premium content can also be important in developing the brand image of a channel and strengthening loyalty among its viewers (and thus its ability to compete effectively with other broadcasters). As the Discussion Document notes, if a broadcaster is able to position itself as a reliable source for broadcasts of certain (types of) premium content, this can encourage audiences to consider the broadcaster as a “point of reference” for viewing such programming. This can, in turn, mean that the channel(s) in question is (are) able to attract higher audiences for future broadcasts.<sup>10</sup>

- 16 The ability to attract a wide audience through consistently broadcasting a wide range of premium content can also have feedback effects on a broadcaster’s ability to compete for premium content in future. As the Discussion Document notes in its preliminary findings, the consistent broadcasting of premium content can act as a signal to rights holders, who would prefer to sell its rights to an established broadcaster with a reliable audience base.<sup>11</sup>
- 17 Likewise, a broadcaster that already has access to a wide portfolio of premium content is likely to have an enhanced ability to monetise premium content in the future, and thus the ability and incentive to bid higher prices for premium content in future (compared to a broadcaster with a more limited portfolio of premium content). This is because a broadcaster with a wide portfolio of premium content is likely to have already attracted a wide audience, and thus a greater ability to monetise premium content in future (through advertising and/or subscription revenue). Similarly, since viewers have a preference for a wide portfolio of content, adding an individual content right to an existing wide content portfolio is likely to attract more viewers than adding the same individual content right to a more limited content portfolio.
- 18 As the Discussion Document notes, these factors are likely to “*create a vicious cycle*” which forecloses new entrants from competing effectively for premium sports rights. In particular, the Discussion Document explains that “*[t]he cycle begins with the acquisition of premium content on an exclusive basis for a stipulated time frame. Exclusive premium content attracts more viewers thereby increasing the broadcaster’s chances of acquiring even more premium content as rights holders would prefer to sell to an established broadcaster with an established and growing subscriber base. More viewers also mean an increase in advertising and subscription revenue that enables the broadcaster not only to outbid its*

<sup>10</sup> Discussion Document, para 3.21.1.11, page 94. (“MultiChoice has benefited from the first mover advantage [in sports coverage], having provided subscription television services over a long period of time with limited competition. The Authority took the view that this enabled MultiChoice to secure a large subscriber base and build a strong brand that reinforced customer loyalty.”)

<sup>11</sup> Discussion Document, para 3.21.1.9, pages 92-93. (“Exclusive premium content attracts more viewers thereby increasing the premium content as rights holders would prefer to sell to an established broadcaster with an established and growing subscriber base.”)



*rivals but also acquire even more exclusive content. Consequently, new entrants are foreclosed from the market*".<sup>12</sup>

- 19 In short, the ability to broadcast a portfolio of premium content can create positive spill-over effects that can increase the size of the potential audience, and thus the advertising and/or subscription revenue, that a platform is able to attract not only in respect of broadcasts of those programmes themselves, but also other programmes broadcast by the platform. This, in turn, enhances broadcasters' ability to monetise content rights, and thus both ability and incentive to compete for premium content rights in future. Accordingly, access to a wide portfolio of premium content rights is central in enabling broadcasters to compete effectively.
- 20 An important implication of the above is that, for competition in downstream broadcasting markets to be effective, competition in upstream broadcast rights markets must also be effective. As set out further below, in our view, the Discussion Document does not present robust evidence that competition in the upstream broadcast rights markets is effective, and several factors suggest that competition in these markets is ineffective. This, in turn, suggests that competition in the relevant downstream markets is likely to be ineffective.
- 21 When considering a broadcaster's ability to compete effectively for viewers in the relevant downstream markets, it is also important to appreciate that its ability to do so will depend on both the reach and quality of the platforms / technologies over which it is able to broadcast. In other words, a broadcaster's ability to compete effectively for audiences (and, in turn, advertisers/subscribers) depends critically on its ability to reach a large number of viewers with high-quality broadcasts.
- 22 As explained further below, the Discussion Document appears to acknowledge that the quality of broadcasts is an important determinant of a broadcaster's ability to compete effectively.<sup>13</sup> However, the Discussion Document fails to properly consider that, irrespective of the quality of broadcasts, if a broadcaster is unable to reach a large audience, its ability to compete effectively in the relevant upstream and downstream markets will be impeded.
- 23 This has important implications when considering FTA broadcasters' ability to compete effectively following the impending analogue switch-off (which has already occurred in five provinces).<sup>14</sup> While we understand that a switch from analogue broadcasts to digital terrestrial television ("DTT") broadcasts may mean that FTA broadcasters will be able to broadcast a greater number of programmes at a higher level of quality, it is also likely to limit the number of potential viewers that FTA broadcasters can reach.
- 24 This is because, as is noted in the Discussion Document, the roll-out of the set-top boxes ("STBs") required to view DTT broadcasts has not been as successful as initially intended.<sup>15</sup> We are of the view that this will both limit the ability of FTA broadcasters to reach wide audiences, and also mean that FTA broadcasters will need to access viewers through alternative platforms, in addition to DTT. This will likely both increase costs to FTA broadcasters and may also risk the loss of viewers to other broadcasters (such those with DTH platforms), as there will be a "switching cost" both to remain an FTA viewer and when switching to a new broadcaster.

<sup>12</sup> Discussion Document, para 3.21.1.9, pages 92-93.

<sup>13</sup> The broadcasting market inquiry draft findings (2019), para 5.10.6-5.10.7, pages 72-73. ("This is consistent with the results of the Authority's survey which found that a better quality TV signal is the strongest reason to purchase the Basic Dstv package over the FTA offering" and "If viewers perceive subscription television services as of better quality than [FTA] services ... they are highly unlikely to substitute backwards from subscription services to [FTA] services.")

<sup>14</sup> Briefly, the analogue switch-off is the migration in the provision of FTA broadcasts from analogue to digital signals (i.e., to digital terrestrial television, or DTT). The switch-off has already occurred in five of the nine provinces in South Africa (Discussion Document, para 3.19.12, page 73).

<sup>15</sup> Discussion Document, para 3.19.12, page 73. ("Even with a possible delay, the Authority understands [households without STBs] will only account for 4,4 million indigent households who cannot afford to purchase set-top boxes or digital televisions.")

- 25 The Discussion Document is likely, in our view, to be misguided in its preliminary view that the switch from analogue to DTT will necessarily remove structural barriers to competition for FTA broadcasters, and therefore that it is “*not necessary at this stage to identify a licensee with significant market power since there is no indication of ineffective competition*”.<sup>16</sup>

## 2 The effectiveness of competition in the upstream markets for broadcast rights

- 26 The Discussion Document reaches a preliminary view that competition is effective in the upstream / wholesale markets for the acquisition of broadcast rights. The basis on which the Discussion Document reaches this view can be summarised as follows:

- Premium content is not necessary for broadcasters to compete effectively downstream, because broadcasters appear able to compete for audiences without the need to provide a variety of premium programming.<sup>17</sup>
- There are several ways through which broadcasters can access broadcast rights, including by tendering for broadcasting rights from rights holders, sub-licencing from other broadcasters, and/or investing in the production of its own premium content.<sup>18</sup>

- 27 However, as explained below, in our view the Discussion Document’s preliminary findings in this regard are not well founded. In particular, as set out in 2.1.2 and 2.1.3, we do not consider there to be sufficiently robust evidence that competition in the acquisition of broadcast rights is effective. Moreover, as set out in sub-section 2.1.1, effective access to wide portfolio of premium broadcast content rights remains necessary for broadcasters to compete effectively. In contrast, the Discussion Document’s identification of the mere existence of multiple avenues for broadcasters to access premium content rights fails to properly consider whether broadcasters can, or do, compete effectively for those rights.

- 28 The outcome of this is that, in our view, the Discussion Document does not present a robust analysis of whether firms other than MultiChoice are able to compete effectively, and hence exert an effective competitive constraint, on MultiChoice (as opposed to simply participating in the same market(s)). To the contrary, the available evidence on this score suggests that competition in the upstream / wholesale markets for the acquisition of broadcast rights is likely to be ineffective.

### 2.1.1 The importance of access to a wide portfolio of premium content for downstream competition

- 29 For the reasons set out in section 1, access to a wide bouquet of premium content is highly likely to be necessary for broadcasters to compete effectively for viewers (and, in turn, advertisers/subscribers).
- 30 In contrast, the Discussion Document claims that some broadcasters are able to act as effective constraints to incumbents without needing to invest in or acquire premium content rights. Therefore, it is posited in the Discussion Document that premium content may not be as essential a requirement for broadcasters to be able to compete effectively in the relevant downstream broadcasting markets.

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<sup>16</sup> Discussion Document, para 4.17, page 105.

<sup>17</sup> Discussion Document, para 3.21.1.8, page 92. (“Evidence of significant losses of subscribers by dstv to providers who do not have sports content also points to the fact that competitors may be able to successfully compete to a large extent without having to spend significant amounts of money on expensive sports content.”)

<sup>18</sup> By way of example, Discussion Document, para 4.21, page 106. (“The Authority views [the market for premium movies and series] as not having high barriers to entry. Here are many suppliers of content locally and internationally. Both free-to-air and subscription television broadcasters and channel producers can acquire content in this market”)



- 31 The Discussion Document notes, in particular, that “*evidence of significant losses of subscribers by dstv to providers who do not have sports content also points to the fact that competitors may be able to successfully compete to a large extent without having to spend significant amounts of money on expensive sports content.*”<sup>19</sup> In addition, “[a]mongst FTA services, it appears e.tv can compete successfully against the SABC without investing in content that the Authority considers as premium. e.tv advertising revenue has shown consistent stability with some growth in 2022. While SABC advertising revenue has been on a decline”.<sup>20</sup>
- 32 While we agree with the fact that the available evidence indicates that some competitors have been able to grow subscribers without access to premium content, and that such content may not be as relevant to all customers, we do not consider this sufficient so as to indicate that access to premium content is not an important barrier to effective competition. Indeed, this is in contrast to the Discussion Document’s own findings of the importance of premium programming as a way to differentiate broadcasters’ offerings (and therefore attract viewers and, in turn, advertising and/or subscription revenue).<sup>21</sup>
- 33 Importantly, in order to conclude that premium content is not a relevant criterion for customers in choosing a particular service provider, we are of the view that evidence would be required showing that customers actively switch from providers of premium content to those that provide no / significantly less premium content. Absent such evidence, it may simply be that some platforms are able to offer a complementary portfolio of premium content compared to incumbents.<sup>22</sup>
- 34 Given the variety of consumer preferences, there may simply exist consumers who value both premium and non-premium content, and choose to make use of different services in order to access each type. Indeed, the Discussion Document itself notes “*it would be a fallacy to assume that lovers of live soccer would all of a sudden be satisfied with watching a movie, drama series, a reality show or news, in the event that a broadcaster that airs such live matches is faced with a SSNIP and decides to purchase other content*”.<sup>23</sup>
- 35 The above indicates that absent evidence that the growth in viewership of more recent entrants has arisen as a consequence of consumers switching away from incumbent providers (due to their content offerings or other factors), there is no sound basis for the Discussion Document to conclude that, despite ineffective competition for premium content upstream, competition in the relevant downstream markets is effective. Indeed, the Discussion Document fails to assess whether, notwithstanding its (erroneous) finding that effective access to premium content is not necessary for broadcasters to compete effectively, more effective competition for premium content would promote more effective competition in the relevant downstream markets (as is likely).
- 36 In short, in our view, the reasoning and evidence relied upon in the Discussion Document does not provide a sufficient basis on which to conclude that competition in respect of the acquisition of premium content is not necessary for effective downstream competition and, in turn, that competition in the relevant downstream markets is effective.

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<sup>19</sup> Discussion Document, para 3.21.1.8, page 92.

<sup>20</sup> Discussion Document, para 3.21.1.21, page 98.

<sup>21</sup> See for example, Discussion Document, para 2.4.5.1 & 2.8.5.1, page 22 & 62. (“...the differentiated nature of video entertainment services makes market definition complicated because one of the key ways that providers of these services use to differentiate their offerings is through content” and “[t]he importance of content is also seen in the way major OTT players such as Netflix, Amazon Prime, Disney plus amongst others focus on creating their own inhouse content to drive new subscriptions.”)

<sup>22</sup> That is, the fact that a subsection of firms has been able to increase viewership and advertising revenue absent any material investment into acquiring premium content may instead reflect that either these firms have succeeded in bringing in new customers to the market (which exhibit different content preferences), and/or is evidence of existing customers’ willingness to utilise multiple broadcast services (i.e., to multi-home). In other words, given the importance to broadcasters of offering a wide range of premium content historically, the likelihood of such programming being less relevant to audiences overall is lower than the likelihood that there exist a small subset of customers for which premium content is less important, or whom are able to access premium content through traditional channels, whilst simultaneously make use of FTA providers that invest less in premium content .

<sup>23</sup> Discussion Document, para 2.8.22, page 64.

- 37 In addition to effective access to a wide portfolio of premium content being necessary for broadcasters, we understand that effective competition for access to *premium sports rights* in particular is necessary to enable broadcasters to compete effectively with MultiChoice downstream (and therefore for competition in the relevant downstream markets to be effective).<sup>24</sup> This is because, as the Discussion Document notes that “[s]port [content] has the strongest reputation for delivering large live audiences and retention of subscribers for broadcasters and pay TV providers” and that “the sports broadcasting product is a non-substitutable good”, citing evidence from the ESSEC Sports Chair.<sup>25, 26</sup>
- 38 As set out further below, in our view, competition for premium sports rights is likely to be ineffective, which limits the ability of the SABC and other broadcasters to compete effectively against MultiChoice. We understand that the SABC has consistently attempted to increase portfolio of premium sports rights, but has faced material impediments to competing effectively for these rights against MultiChoice. In addition, we further understand that the SABC has been unable to consistently reach competitive sub-licencing arrangements from MultiChoice in order to broadcast its sports content.

## 2.1.2 Ineffective competition to acquire premium sports rights

- 39 The Discussion Document provisionally finds that competition in the upstream market for the acquisition of premium sports content rights “is effective”.<sup>27</sup> The primary basis on which the Discussion Document reaches this view is its finding that certain broadcasters (in particular global OTT providers) “have the financial resources to successfully challenge MultiChoice for content rights”, and therefore that MultiChoice’s high share of premium sports content rights may simply reflect “competitors not competing for the rights”.<sup>28</sup>
- 40 In other words, the Discussion Document finds that, while MultiChoice has held a substantial share of premium content rights on an exclusive basis for an elongated period of time, competition for those rights is effective because (some) rivals to MultiChoice *could* also compete for those rights if they wanted to.
- 41 In our view, this finding is misplaced for two main reasons.
- 42 First, even if certain rivals to MultiChoice have the notional *ability* to compete for premium sports content, in the sense of having the financial resources necessary to do so, in order for there to be effective competition for those rights such firms would also need to have the *incentive* (i.e., willingness) to do so.
- 43 In other words, while international OTT platforms (such as Netflix) may have the financial ability to compete for the rights to broadcast premium sports content in South Africa, such as the PSL, this would not lead to a situation in which MultiChoice faces effective competition when bidding for such content if these other platforms were inclined to compete for those rights in reality.
- 44 In our view, there is no reason to expect that this likely is, or will likely be, the case. While some OTT platforms have started to offer sports content internationally (where audiences are larger), these platforms do not currently broadcast (or broadcast to only a limited extent) a portfolio of sports content considered to be premium to South African audiences. This suggests that international OTT platforms’ incentives to bid for such content may be limited.

<sup>24</sup> We note that the broadcasting market inquiry draft findings (2019: para 5.7.4) defines premium sports content as content which possess the following features: “(i) be of a high quality production; (ii) must be broadcast live; (iii) with sufficient regularity; (iv) popularity; and (v) costs of acquiring the content rights should be relatively higher”. We understand these to include live broadcasts of national and international sports events that attract significant South African viewership.

<sup>25</sup> Discussion Document, para 2.8.9, page 59.

<sup>26</sup> Discussion Document, para 2.8.10, page 60.

<sup>27</sup> Discussion Document, para 5.6, page 108.

<sup>28</sup> Discussion Document, para 3.21.1.13 & 4.22, page 94 & 106.

- 45 We note that the Discussion Document itself indicates that it has not been able to assess whether international OTT platforms (or other broadcasters) have indeed bid against MultiChoice for premium sports content in South Africa.<sup>29</sup> As such, the Discussion Document contains no evidence to the contrary.
- 46 Accordingly, in our view, the Discussion Document does not provide sufficient credible evidence that the presence of international OTT platforms effectively constrains MultiChoice in respect of competition for premium sports rights.
- 47 Second, while local broadcasters may have the incentive to bid for premium sport rights, as the Discussion Document notes, the ability of these broadcasters to compete effectively with MultiChoice for premium sports rights is materially impeded by structural barriers arising due to MultiChoice's conduct.
- 48 This is most acutely apparent when considering the ability of the SABC to compete for premium sports content rights following the launch of its SABC Sport channel, which we understand to be the first rival dedicated sports channel to MultiChoice's SuperSport channels.
- 49 We understand that SABC Sport is available on DTT, DTH and OTT platforms, and therefore has the potential to significantly increase competition in respect of sports broadcasting, both by attracting new viewers that are currently unable to afford access to live broadcasts of major sports events and by providing existing SuperSport (i.e., MultiChoice) subscribers with a potential effective alternative to the subscription TV channel. This would, in turn, provide advertisers wishing to advertise during major sports events with an effective alternative to SuperSport.
- 50 This is because, as the Discussion Document notes, "*premium sports content is now beyond the reach of many broadcasters and new smaller local OTT service providers*".<sup>30</sup> We understand that this is in large part a result of the long-term, exclusive rights held by MultiChoice, which, as explained above and noted by the Discussion Document, is likely to "*create a vicious cycle*" which forecloses new entrants from competing effectively for premium sports rights.<sup>31</sup> (As we discuss further in sub-section 3.2, as a DTT channel, there are also structural barriers that impede the SABC's ability to compete effectively for audiences on its SABC Sport channel).
- 51 Accordingly, in our view, the Discussion Document has not presented sufficient evidence to conclude that MultiChoice is effectively constrained in the market for the acquisition of premium sports content.
- 52 To the contrary, we understand that, while the SABC (and other local broadcasters) has sought to compete for premium sports rights, it has been unable to compete effectively against MultiChoice to acquire the rights to a portfolio of premium sports content that would enable it to compete effectively against MultiChoice's SuperSport channels.<sup>32</sup>
- 53 This is evidenced by our understanding that, while the SABC has been able to acquire the rights to broadcast a limited set of premium sports content (such as the EPL), the Discussion Document acknowledges that "*MultiChoice owns the majority of the rights to the major live soccer matches, including the PSL, EPL, Bundesliga, La Liga and Serie A. MultiChoice has also acquired rights to the major rugby tournaments as well as the cricket competitions. MultiChoice has held these rights over an elongated period of time*".<sup>33</sup>

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<sup>29</sup> Discussion Document, para 4.22, page 107. ("At this point, the Authority is unclear whether MultiChoice having more sports rights is a result of outbidding competitors or competitors not competing for the rights. The Authority considers that it may be inappropriate to conclude that MultiChoice having the rights causes market failure if this is a result of competitors choosing to invest in other content rather than compete for the content.")

<sup>30</sup> Discussion Document, para 3.21.1.1, page 89.

<sup>31</sup> Discussion Document, para 3.21.1.9, page 92.

<sup>32</sup> Please refer to Annex A for a list of the premium sports rights SABC lost to MultiChoice since 2016.

<sup>33</sup> Discussion Document, para 4.22, page 106.

- 54 Moreover, it is notable that in cases in which separate broadcast rights for a sports event are available for FTA and subscription TV broadcasts, we understand that SuperSport has often acquired both types of broadcast rights (despite not requiring FTA rights to broadcast these games). In this way, MultiChoice is likely to foreclose FTA broadcasters from being able to access premium sports rights.
- 55 An example of an instance relates to the broadcast of the FA Cup games. In particular, we understand that the SABC previously acquired the rights to broadcast the FA Cup football games on FTA platforms in South Africa for the 2019/2020 and 2020/2021 seasons of the league, alongside broadcasts of these games by SuperSport on its subscription-tv platform. However, the SABC was subsequently unable to acquire the FTA broadcast rights to FA Cup games for the 2021/2022 to 2023/2024 English league seasons and understands that this is because SuperSport acquired both the FTA and subscription-tv broadcast rights to the FA Cup for those seasons (despite not providing any FTA broadcasts of the sports event).
- 56 The available evidence suggest that other local broadcasters have faced similar challenges in seeking to compete effectively against MultiChoice for premium content rights (and in turn, audiences, advertisers and subscribers). By way of example, Kwese TV (owned by Econet Media) indicated in its submissions to the Market Inquiry that its inability to compete effectively was due to the “*significant barriers to entry in accessing premium content due to MultiChoice's ability to exclusively control the acquisition and distribution of premium content in South Africa*” and that “*coupled with the limited pool of first run content and the long-standing relationships held by MultiChoice with content suppliers, [this] has stifled Econet Media's ability to launch a pay television service, showcasing a wide portfolio of content.*”<sup>34, 35</sup>
- 57 In respect of premium sports rights in particular, Econet Media noted that, while it was able to acquire the rights to some sports content (e.g., NFL), “*MultiChoice has on occasion paid substantial amounts for sports rights under circumstances where it was the sole bidder*”, limiting Kwese TV’s ability to compete for such rights as a smaller player.<sup>36</sup>
- 58 Notably, Kwese TV began operation in 2017 by providing a Pay TV service in several Africa countries, but was unable to effectively enter the South African market.<sup>37,38</sup> This suggests that ineffective upstream competition for premium content rights is likely to pose a material barrier to entry, even for broadcasters that have been able to enter successfully in other countries.

### 2.1.3 Ineffective sublicensing of premium sports content

- 59 As noted above, we are of the view that competition for the acquisition of premium sports rights is likely to be ineffective, and that structural barriers have likely impeded local broadcasters’ ability to compete effectively against MultiChoice to acquire such rights. In light to this, we note the Discussion Document’s preliminary view is that, in theory, the ability of local broadcasters to sub-license broadcasts rights to some premium sports content may serve to mitigate any resulting anticompetitive effects. In particular, the Discussion Document finds that in “*some instances FTA services are able to enter into sublicensing agreements with the winning bidder*”.<sup>39</sup>
- 60 In our view, the ability of local broadcasters to sub-license certain premium sports rights does not render competition in this market effective in the first instance, nor does it mitigate the adverse spillover effects on competition in the relevant downstream markets.

<sup>34</sup> Submission by Econet Media Limited (2017), para 6.4.4, page 36.

<sup>35</sup> Submission by Econet Media Limited (2017), para 6.4.7, page 37.

<sup>36</sup> Submission by Econet Media Limited (2017), para 5.8.4, page 22..

<sup>37</sup> Submission by Econet Media Limited (2017), para 1.2, page 3.

<sup>38</sup> See for example <https://techlabari.com/the-inevitable-downfall-of-kwese-tv/>

<sup>39</sup> Discussion Document, para 3.21.1.14, page 95.

- 61 While in theory sub-licencing agreements allow for firms that are unable to acquire certain rights the opportunity to broadcast that content, in practice where rights have been acquired on an exclusive basis (by a competitor) the original acquirer has significant bargaining power in sub-licensing negotiations, which we understand it is able to use to either (i) restrict rival broadcasters' ability to sublicense that content at all, or (ii) sub-licensee the content on restrictive terms that impede the ability of rival broadcasters to compete effectively for audiences and advertisers.
- 62 Where exclusive rights have been acquired for a significant period (e.g., for multiple years or seasons), the sub-licensee of the rights also has no guarantee that the rights holder will continue to sub-license the rights to broadcast future games / seasons. Put differently, the sub-licensee may only be provided the rights to broadcast certain premium sports content on a once-off basis. This is likely to impede its ability to develop its brand image by positioning itself as a reliable source for broadcasts of the premium sports content in question (thereby impeding its ability to compete effectively for audiences and advertisers and/or subscribers in future).
- 63 Indeed, as noted in the Discussion Document, the instances in which broadcasters have been able to negotiate successful sub-licences for premium sports content "*appear to be few and far between with the SABC accusing DSTV of opening negotiations late, which does not give them an opportunity to raise sponsorships and advertising revenue to recoup the cost of the sublicense.*"<sup>40</sup>
- 64 In other words, the Discussion Document's reasoning appears to rely on a notional ability for broadcasters such as the SABC to sub-license premium sports content from MultiChoice. However, this is insufficient to conclude that sub-licensing arrangements enable local broadcasters to compete effectively against MultiChoice in respect of broadcasts of premium sports content. This is because, even if broadcasters have the notional ability to sub-license premium sports content, in order for there to be effective competition in respect of broadcasts of premium sports, content broadcasters would also need to have sufficient opportunities to enter into such arrangements on competitive terms.
- 65 Accordingly, in our view, the Discussion Document does not present sufficient evidence to appropriately conclude that sub-licensing arrangements are effective at alleviating the adverse effects arising from ineffective competition for premium sports content at the tender stage.
- 66 Indeed, we understand that in the limited instances in which SuperSport has willing or required to sub-license broadcast rights for major sports events to the SABC, it has imposed restrictions on the SABC's broadcasts of those events that materially impeded the SABC's ability to compete with SuperSport's channels to attract audiences and advertisers.
- 67 On such example is the SABC's sub-licensing agreement with MultiChoice to broadcast certain Springbok rugby events. In this regard, we understand that SuperSport indicated that it would only sub-license the Springbok broadcast rights if the SABC agreed that it would only broadcast games:
- on a fully-delayed basis (i.e., after the final whistle);
  - on SABC 1, SABC 2 or SABC 3 (i.e. not on SABC Sport); and
  - via terrestrial FTA television (i.e. not on any DTH or OTT platforms).
- 68 We note that these restrictions were particularly prejudicial to the SABC in circumstances where the SABC is developing its own dedicated sports channel (SABC Sport) and also broadcasts its channels over a

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<sup>40</sup> Discussion Document, para 3.21.1.14, page 95.



number of platforms other than terrestrial FTA (most notably, DTH and OTT platforms) in order to reach a wider audience.

- 69 We understand that similar conditions were imposed on the SABC’s sub-licencing of the 2024 Currie Cup live events, with the SABC being required to broadcast the events on a fully-delayed basis.
- 70 Thus, the ability for firms like MultiChoice to either decide to not offer sub-licences, or to impose restrictive conditions on the sub-licences it does offer, implies that the sub-licencing of content is not, in practice, operating in such a way as to enable effective competition downstream. In particular, and in our view, this is because:
- restrictions placed on broadcasting sports events live (e.g., requiring that events are broadcast on a fully-delayed basis) materially impacts the attractiveness of the events to audiences, as the uncertainty related to the outcome of the event is then removed;
  - limitations placed on which platforms the sports content can be broadcast (e.g., restricting the ability to broadcast sports content on OTT and DTH platform, or on particular channel) limits the scope of the audience broadcasters are able to reach; and
  - since firms are not always able to sub-license premium sports events from MultiChoice, this limits their ability to generate brand loyalty by acting as a “point of reference” for such content.
- 71 In our view, each of these factors likely serves to reduce the size of the audiences, and thus the share of advertising revenue, that rival broadcasters are able to generate from the provision of premium sports content. As exemplified above in sub-section 2.1.2, this further limits rival broadcasters’ ability to effectively compete against MultiChoice’s for premium sports content in the future.

### 3 Effectiveness of competition in downstream broadcast markets

- 72 The Discussion Document reaches a preliminary view that competition is effective in the relevant downstream broadcast markets. In short, it reaches this finding on the basis that:
- In the market for subscription and FTA services, “*there is no indication of ineffective competition*” due to the presence of MultiChoice, StarSat, the SABC, and e.tv in the market, and because the migration from analogue to DTT will remove a structural impediment to FTA broadcasters’ ability to compete effectively in this market.<sup>41, 42</sup>
  - In the market for premium subscription and OTT services, competition is effective because “*MultiChoice has been experiencing significant subscriber losses to competing services pointing to increased levels of competition*”.<sup>43</sup>
- 73 However, as explained above, for competition in downstream broadcasting markets to be effective, competition in upstream broadcast rights markets must also be effective. Since, for the reasons set out above, competition in upstream broadcast rights markets is likely to be ineffective, this provides a strong indication that competition in the relevant downstream broadcast markets is similarly ineffective.

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<sup>41</sup> Discussion Document, para 4.17, page 105.

<sup>42</sup> Discussion Document, para 3.19.1.3, page 73. (“...once digital migration is completed, the current free-to-air incumbents will have capacity to introduce more channels that are of a better quality. This will enable the free-to-air incumbents and new entrants to compete with basic tier subscription and satellite-based FTA services in the long term”)

<sup>43</sup> Discussion Document, para 4.18, page 105.



74 Moreover, as set out in the sub-sections below, in our view, the evidence set out in the Discussion Document does not provide any reliable basis on which to conclude that competition in these markets is effective. The Discussion Document's conclusions in this regard are therefore, in our view, not well founded.

### 3.1 The entry of new and the growth of existing broadcasters

75 While the Discussion Document identifies several barriers to entry in the downstream broadcast markets (including access to premium content, switching costs, and brand loyalty), the Discussion Document cites the growth of new and existing broadcasters as evidence that such barriers to entry are readily surmountable.<sup>44, 45</sup>

76 In particular, in respect of the market for subscription and FTA services, the Discussion Document finds that *"the growth of OpenView shows that there are no switching costs that are insurmountable"*.<sup>46</sup> Similarly, in relation to the market for premium subscription and OTT services, the Discussion Document finds that *"new entrants at the OTT level have continued to grow their market share despite not having access to premium sports"*, and that *"competition has increased in the premium tier as a result of the entry of OTTs in the subscription video-on-demand market"*.<sup>47</sup>

77 However, in our view, evidence of entry and growth by new players does not amount to reliable evidence that competition in these markets is likely to be effective.

78 Starting with the Discussion Document's emphasis on entry, we note that the mere evidence of entry does not, in and of itself, indicate effective competition in a market. In order for new entry to result in effective competition, new entrants must be capable of exerting an effective competitive constraint on incumbents. In broadcast markets, this requires that new entrants are able to attract viewers, advertisers and/or subscribers away from incumbent broadcasters (such as MultiChoice) to a sufficiently large extent that the behaviour of these incumbents becomes constrained by these rivals.

79 Moreover, the growth of smaller and new broadcasters and platforms does not provide a reliable indication that such growth has arisen as a result of customers switching away from incumbents, such that smaller broadcasters and new entrants are able exert an effective competitive constraint on MultiChoice. To reach such a conclusion, it would be necessary to understand where such growth has come from – for instance whether it has occurred at the expense of MultiChoice or whether it has arisen due to attracting new customers to the market and/or encouraging existing customers to make use of new services in addition to (rather than instead of) MultiChoice. Only the former would, in our view, constitute clear evidence of competition.

80 In the case at hand, we are of the view that the growth of viewers for smaller broadcasters and new entrants may simply reflect that such firms have been able to attract new viewers to the market, as opposed to these customers having been won from MultiChoice. For example, the subscribers that firms such as OpenView have gained may well be customers that are seeking a different content offering than that provided by MultiChoice (or at a different price point), and were therefore never potential MultiChoice subscribers to begin with.

81 In addition, part of the growth of smaller broadcasters and new entrants may be attributed to viewers increasingly seeking to multi-home (i.e., use multiple services). For example, we understand that

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<sup>44</sup> Discussion Document, para 3.11, page 71.

<sup>45</sup> See for example, Discussion Document, para 3.11, page 71.

<sup>46</sup> Discussion Document, para 3.20.1.2, page 83.

<sup>47</sup> Discussion Document, paras 5.6 and 5.4, page 108.

OpenView offers a free-to-view service, meaning that there is only a once-off cost (purchasing an OpenView decoder) incurred by a subscriber to MultiChoice also becoming a viewer of OpenView. Similarly, many OTT services offer low-cost plans that are easily cancellable, meaning the costs of multi-homing between MultiChoice and OTT platforms (or between different OTT platforms) is comparatively small. This suggests that there may be significant scope for multi-homing between OTT platforms and other broadcast platforms.

- 82 In the presence of significant multihoming, growth of new and existing broadcasters does not imply that such broadcasters are able to effectively constrain incumbent broadcasters, such as MultiChoice. This is because significant multihoming would imply that new and existing platforms are not able to attract viewers away from the incumbent, and thus constrain the incumbents ability to increase prices to subscribers or reduce the quality of its services. Indeed, multihoming by viewers may instead reflect that different broadcasters have *complementary* rather than competing offerings. For instance, consumers may use one service for sports and another for certain types of general entertainment, but this does not indicate that rivals are able to effectively constrain the incumbent in respect of its complete offering.
- 83 In light of this, the extent of the competitive constraint that smaller broadcasters and new entrants are able to exert on MultiChoice is likely to be far weaker than is suggested by their growth in subscriber numbers alone.
- 84 We note that the Discussion Document presents no evidence that the growth of OpenView, or OTT platforms, is due to customers using OpenView or OTT platforms having switched from using a different, non-FTA provider.
- 85 To the contrary, the available evidence on subscriber numbers suggests that OpenView and OTT's growth is more than likely a result of platforms attracting new viewers and/or customers exhibiting multi-homing. In particular, between 2019 and 2023, MultiChoice lost approximately 800,000 subscribers.<sup>48, 49</sup> In contrast, OpenView gained approximately 1.6 million subscribers and OTT platforms gained approximately 3.5 million subscribers.<sup>50, 51</sup> In other words, OpenView alone was able to attract double the number of subscribers that MultiChoice lost during the same period, while OTT platforms were able to attract more than 4 times the number of subscribers that MultiChoice lost. This suggests that OpenView's and OTT platforms' growth is unlikely to have come predominantly from customers switching away from MultiChoice.
- 86 It is also notable that, in reaching its findings that barriers to entry do not impede effective competition in the relevant downstream broadcasting markets, the Discussion Document focusses only on one example of successful entry and growth of a DTH competitor to MultiChoice - namely, eMedia's launch of a DTH offering (OpenView). However, little consideration is given to instances of failed attempted *de novo* entry by Kwese TV, Walking-on-Water, and StarSat.
- 87 At most, the evidence set out in the Discussion Document therefore suggests that an existing FTA broadcaster in South Africa may not face insurmountable barriers to entry when seeking to launch a DTH service (though, for the reasons set out above, we do not consider that this amounts to evidence of effective competition). However, it does not provide any evidence that there are insurmountable barriers to entry for new DTH services launched by broadcasters with no existing presence in the relevant broadcast markets in South Africa. To the contrary, the examples of unsuccessful entry by such players is consistent with material barriers to entry existing.

<sup>48</sup> MultiChoice Integrated Annual Reports FY2019 - FY2024 (8.4 million in FY2020 to 7.6 million in FY2024).

<sup>49</sup> Discussion Document, para 2.4.5.12, page 28.

<sup>50</sup> Discussion Document, figure 4, page 74.

<sup>51</sup> Discussion Document, para 2.4.5.12, page 28.

88 Accordingly, in our view, the Discussion Document provides no reliable evidence that new entry has resulted in MultiChoice being effectively constrained, or of effective competition more generally.

### 3.2 The potential impact of the analogue switch-off

89 In the respect of the market for subscription and FTA services, the Discussion Document reaches the primary view that “*once digital migration is completed, the current free-to-air incumbents will have capacity to introduce more channels that are of a better quality*” which will enhance the ability of “*free-to-air incumbents and new entrants to compete with basic tier subscription and satellite-based FTA services in the long term*”.<sup>52</sup> Seemingly on this basis, the Discussion Document finds that it is “*not necessary at this stage to identify a licensee with significant market power*”.<sup>53</sup>

90 However, in our view, the Discussion Document is misguided in its assumption that the ability of FTA broadcasters to broadcast more channels at higher broadcast quality will necessarily mean that they will be better able to better compete with incumbent DTH broadcasters. This is because, as outlined above, the ability of FTA broadcasters to compete effectively will depend not only on the number and broadcast quality of the channels but also on the size of the audience they are able to reach (as well as the portfolio of content they are able to broadcast).

91 Accordingly, and contrary to the Discussion Document’s conclusion, we consider that the analogue switch-off, rather than increasing FTA broadcasters’ ability to compete effectively with DTH platforms, may result in FTA broadcasters reaching fewer viewers. This is for the following reasons:

- Access to DTT broadcasts typically requires viewers to purchase a STB (given the limited roll-out of STBs by the government), and potentially also a newer generation aerial. FTA viewers will therefore face a “switching cost” to remain an FTA viewer, potentially limiting FTA broadcaster’s audiences.
- Incurring sunk costs to remain an FTA viewer will reduce the relative switching costs to consumers from FTA to DTH platforms, as a sunk cost investment in a STB will be required regardless of whether the viewer continues to watch FTA broadcasts or switches to a DTH platform. In other words, since an FTA viewer will be required to incur a sunk cost to remain an FTA viewer, the incremental switching cost to that viewer of moving to a DTH platform instead will be reduced following the analogue switch-off. It is notable in this context that a number of DTH platforms, including DStv, OpenView and StarSat, offer a number of low-cost subscription packages. We understand that these alternative options give viewers access to a materially wider range of channels, compared to what is available through other broadcast technologies, and cost as little as R29 per month (in the case of the DStv EasyView package) and often includes a decoder in the subscription price. There is therefore a high likelihood that some proportion of viewers currently using analogue FTA services will switch to basic-tier and non-FTA providers following the digital migration.
- Consistent with this, we understand that, following the switch off of analogue broadcasts in early 2022 in five provinces, the SABC lost viewers while DTH services gained viewers, in three provinces.<sup>54</sup> In particular, the SABC lost 18% of its viewers on average across the Free State, Mpumalanga, and Limpopo provinces between 2021 and 2024, whereas DStv and OpenView, gained 19% and 18% more viewers, respectively, on average in the same provinces over that period. In addition, whilst in the Northern Cape and the North West provinces the SABC gained an 8% increase in viewers on average viewership across the two provinces following the digital transition, DStv and OpenView increased its viewership base by a larger proportion, gaining 44% and 54% more viewers on average, respectively.

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<sup>52</sup> Discussion Document, para 3.19.1.3, page 73.

<sup>53</sup> Discussion Document, para 4.17, page 105.

<sup>54</sup> We understand that the five provinces that have switched to digital broadcasting are the Northern Cape, the Free State, Mpumalanga, Limpopo, and the North West.

- 92 Accordingly, in our view, the Discussion Document is misguided in its finding that FTA broadcasters' ability to effectively constrain incumbent DTH providers will be materially improved following the analogue switch-off.

# Annexes

## A Inability to compete for premium sports rights

- 93 As indicated in sub-section 2.1.2, whilst the SABC has sought to compete for premium sports rights, it has been unable to compete effectively against MultiChoice to acquire the rights to a portfolio of premium sports content that would enable it to compete effectively against MultiChoice’s SuperSport channels.
- 94 In particular, the following table indicates some examples of premium sports content rights that the SABC has historically lost to MultiChoice. As is evident, the following examples relate to content considered particularly important to sports-viewing audiences in South Africa.

**Table 1: Premium sports rights SABC lost to MultiChoice, 2016-2024**

Premium sports rights	Years lost	Contract period
Premier Soccer League	2019	147 matches (2019/2020 to 2023/2024 seasons)
Rugby World Cup	2023	16 matches
Cricket World Cup	2019-2030	All matches each season
Athletics South Africa	2022; 2024	All events

Source: SABC’s list of sports rights