

# MMA Submissions Subscription Television Inquiry - Oral Hearings on the Supplementary Discussion Paper

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# Media Monitoring Africa: Who We Are

## Mission

**Striving for an accessible, accountable and transparent information ecosystem you can trust**

Universal, meaningful access to diverse views and information

Safe, respectful, inclusive digital spaces that allow people to express themselves freely within bounds of local and international law.

Information Integrity instilled through a healthy information ecosystem

## How we achieve the change:

Ensuring Accountability, through strategic litigation, policy submissions and advocacy

Empowering the public

Developing civic technology

Analysing data and information

# History of Subscription Television Regulation and Operations in SA

- ❑ Regulating satellite subscription television broadcasting has been a vexed issue for the IBA, then ICASA
- ❑ In 1994 there was one subscription operator, M-Net, an analogue terrestrial subscription television broadcaster operating in SA.
- ❑ IBA was created under the IBA Act to regulate broadcasting in the public interest, but the IBA Act did not specifically mention various relevant technology platforms eg satellite, analogue or digital terrestrial, cable etc
- ❑ 1999 (more than a quarter of a century ago): MultiChoice started operating a subscription satellite television service (DStv) without a licence saying the IBA lacked jurisdiction to licence/regulate ie. This despite:
  - ❑ s192 of the Constitution – establishing a statutory body to regulate broadcasting
  - ❑ References to satellite broadcasting in the new Broadcasting Act.
  - ❑ First Satellite Broadcasting Discussion Paper issued by the IBA although the process was discontinued

# History of Subscription Television Regulation and Operations in SA

- ❑ 2005 (two decades ago): ICASA issued a Subscription Broadcasting Position Paper: to provide for the licensing of satellite subscription television services
- ❑ 2007: New Satellite Subscription Services were licensed but only two (besides DStv) ever become operational ODM (later Starsat) and Deukom (German, niche)
- ❑ Over time – M-Net has been absorbed into DStv.
- ❑ 2016 (nearly a decade ago): ICASA publishes its intention to conduct an Inquiry into the State of Competition in Subscription Broadcasting Services
- ❑ 2017: ICASA published its Discussion Paper on the State of Competition in Subscription Broadcasting Services

# History of Subscription Television Regulation and Operations in SA

- ❑ 2018: ICASA conducts oral hearings on its Discussion Paper on the State of Competition in Subscription Broadcasting Services
- ❑ 2019: ICASA issues its Draft Findings Paper on the State of Competition in Subscription Broadcasting Services
- ❑ 2024: Starsat ceases operating – leaving only DStv as the *de facto* subscription broadcaster
- ❑ 2025 (six years after the publication of the Draft Findings Paper): No final Findings Paper published. Instead, ICASA publishes a Supplementary Discussion Paper on the State of Competition in Subscription Broadcasting Services for public notice and comment which is the subject of these oral hearings, and which continues to refer to Starsat as if operational and a competitor even although its services ceased three months prior to publication
- ❑ Today the reality is that DStv is the *de facto* and *de jure* monopoly provider of subscription broadcasting services in languages other than German

# History of Subscription Television Regulation and Operations in SA

- ❑ That DStv remains the monopoly provider more than a quarter of a century after the launch of subscription television highlights the reality of both market and regulatory failure in this market.
- ❑ In MMA's respectful view these failures have been exacerbated by the fact that this ICASA-driven subscription competition inquiry was initiated nine years ago, and we are, inexplicably, back at the Discussion Paper stage of the Inquiry and, therefore, are probably years away, still, from the finalisation of the Inquiry.

# Nature of MMA's Submissions

- ❑ MMA has extensive experience acting in the public interest and in contributing to ICASA broadcasting-related processes
- ❑ MMA is concerned about the broadcasting environment as a whole.
- ❑ MMA is concerned to make ICASA aware of the breadth and depth of the challenges facing the television sector in SA and the roles of MultiChoice and ICASA in creating the landscape that all television services ie public, commercial (FTA and subscription) and community, find themselves in.



# ICASA's Market Definition About-turns

- ❑ ICASA's market definitions have changed three times over the course of the enquiry:
  - ❑ In its original Discussion Paper (2017) ICASA proposed the following relevant subscription television markets:
    - ❑ For the supply of premium subscription-TV channels; and
    - ❑ For the supply of basic-tier subscription-TV channels.
  - ❑ In its Draft Findings Paper (2019) ICASA determined there were four relevant retail markets:
    - ❑ For the distribution of analogue FTA television services;
    - ❑ For the distribution of basic-tier subscription television services and FTA satellite television services;
    - ❑ For the distribution of premium subscription television services; and
    - ❑ For the distribution of VOD services but it found that OTT services were “an out of market constraint” but that their impact was “still muted” given the limited level of internet access and the lack of access to local and sports content.

# ICASA's Market Definition About-turns

- ❑ ICASA's market definitions have changed three times over the course of the enquiry:
  - ❑ In its Supplementary Discussion Paper (2025) ICASA now finds there are only two relevant retail markets:
    - ❑ Basic tier subscription television services AND FTA television services; and
    - ❑ Premium subscription television services AND Subscription VOD OTTs.
  - ❑ The market definitional changes in the Supplementary Discussion Paper are extraordinary given that the Inquiry began as an Inquiry into a market (singular) ie the Subscription Television Market. And yet the Inquiry now considers:
    - ❑ FTA broadcasting to be part of the same market as subscription broadcasting even although these are, statutorily, two distinct and different types of broadcasting services which are subject to entirely different legislative and regulatory obligations and rights (local content, independent commissioning, Codes of Conduct etc).
    - ❑ OTT services when these are not broadcasting services at all.

# ICASA's Market Definition

## About-turns: MMA Concerns

- ❑ So, we find ourselves in the extraordinary situation where we have a single, monopoly provider of subscription television broadcasting services and ICASA cannot bring itself to look at the ONLY issue that the Inquiry was established to probe, namely, whether the retail market for subscription television services is effectively competitive.
- ❑ Instead, ICASA has chosen to ignore subscription broadcasting as a specific type of broadcasting service despite the clear delineation thereof in the Broadcasting Act and the Electronic Communications Act and in regulations and instead to lump subscription broadcasting with FTA broadcasting and entirely unregulated OTTs.

# ICASA's Market Definitions: MMA Concerns - General

- ❑ ICASA's determinations of the two markets said to be relevant to subscription broadcasting are markets that include:
  - ❑ FTA television broadcasting (with basic tier subscription television services);
  - and
  - ❑ OTT subscription VOD services (with premium subscription television services).
- ❑ But nowhere in the Supplementary Discussion Paper does ICASA even identify which of DStv's six different subscription packages fall within which subscription market.
- ❑ Consequently, ICASA's market definitions are inadequate and not fit for purpose.

# ICASA's Market Definitions: MMA Concerns – FTA and Subscription

- ❑ MMA has long argued that MultiChoice's monopoly position in subscription broadcasting has had an outsize impact on FTA broadcasting as well as on the subscription broadcast market.
- ❑ But this does not mean it is appropriate for ICASA to simply lump certain (unspecified) DSTV subscriber packages with FTA television services for the purposes of determining markets.
- ❑ According to BRC Research MMA provided to ICASA as of March 2025, more than 7 million of the 15.5 million TV households were subscription television only households. With the next biggest category being analogue only TV households at 4.3 million.
- ❑ The scale of MultiChoice's market penetration has entirely undermined the legislative safeguards erected to protect FTA broadcasters against having their advertising cannibalised by subscription broadcasters.

# ICASA's Market Definitions: MMA Concerns – FTA and Subscription

- ❑ S60(4) of the ECA provides that “in no event may advertising or sponsorship, or a combination thereof be the largest source of annual revenue [of subscription broadcasting services]”. However, the scale of dominance exercised by the MultiChoice monopoly means that MultiChoice can operate without any meaningful limits on its ability to chase advertising and sponsorship.
- ❑ The logical conclusions of ICASA's determination that some of DStv's services fall within the same category of FTA television services are:
  - ❑ FTA (community public and commercial) television services are to compete with MultiChoice for advertising with no effective limitations on the amount of advertising MultiChoice can earn
  - ❑ That there is effective competition between FTA television broadcasters and MultiChoice even although none of the FTA broadcasters can generate revenue from subscriptions.

# ICASA's Market Definitions: MMA Concerns – FTA and Subscription

- ❑ The logical conclusions of ICASA's determination that some of DStv's services fall within the same category of FTA television services are:
  - ❑ There is no differentiation between the distribution mechanisms of different types of FTA broadcasters ie analogue terrestrial, DTT, FTA DTH and MultiChoice even though the BRC research shows:
    - ❑ Only 2.7 million households have access to FTA DTH services only
    - ❑ Only 1.2 million households have access to FTA DTT services only, factors that are clearly taken into account by media buyers and advertisers.
  - ❑ There is no differentiation between different tiers of FTA broadcasters, public, commercial or community, in competing with MultiChoice as the monopoly provider of subscription television broadcasting services. This undermines the essential architecture of ICASA's regulatory regime in several ways.

# ICASA's Market Definitions: MMA Concerns – FTA and Subscription

- ❑ No differentiation between different tiers of FTA broadcasters, public, commercial or community, in competing with MultiChoice undermines the essential architecture of ICASA's regulatory regime:
  - ❑ All FTA broadcasters are subject to much higher local content obligations than MultiChoice is
  - ❑ ICASA imposes different local content obligations on different tiers of FTA broadcasters: commercial (least) public (more) community (most).
  - ❑ Community FTA broadcasting services have only municipality-sized coverage areas as opposed to DStv's national coverage.
  - ❑ Commercial FTA broadcasters are subject to stringent ownership restrictions in terms of s65 of the ECA which ICASA determined MultiChoice is exempt from in para 5.6.2 of its Reasons for Decision on the 2007 satellite television licensing process.
  - ❑ FTA broadcasters are subject to much more stringent programming-related licence conditions eg language, genre, news etc which are not imposed on MultiChoice



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So, MMA respectfully queries on what rational basis ICASA can continue to enforce the clear provisions of the Broadcasting Act and the ECA which impose different obligations on television broadcasters based on whether they are: public, commercial or community and FTA or subscription broadcasters if ICASA views them all as competing against each other in a single market?

”

# ICASA's Market Definitions: MMA Concerns – OTTs and Subscription

- ❑ As ICASA is not doubt aware, MMA has long pushed for the finalisation of the various policy processes that have been underway since 2011 to provide for the regulation of all audio and audiovisual media services and further has pushed for ICASA to be regulator thereof (as opposed to, for example, the FPB).
- ❑ However, the failure of the Executive to finalise the relevant audiovisual media policy does not mean that ICASA can determine that all VOD OTTs (which ICASA lacks the ability to regulate) fall within the same market as subscription broadcasting services for the purposes of s67 of the ECA.
- ❑ MMA submits that ICASA cannot determine that a class of licensee, namely the sole monopoly provider of subscription broadcasting television services does not exercise market power by taking into account the impact of non-broadcasting services provided by unregulated non-licensees.
- ❑ Further ICASA's new market definitions are in any event irrational on their own terms. Why exclude non-subscription/free OTTs from consideration in the basic tier subscription services market too? Why are some VOD OTTs in/out of the market definitions?

# ICASA's Competitiveness Assessments About-turns

- ❑ In its Draft Findings Paper (2019), ICASA found:
  - ❑ FTA TV did not face major competition challenges
  - ❑ In the distribution of basic tier subscription television services and satellite FTA television services: MultiChoice exercised SMP in that market
  - ❑ Distribution of premium subscription television services: Multichoice commands 99% of the market and exercised SMP in that market. (Note this was prior to StarSat ceasing operations).
  - ❑ Regarding VOD services – ICASA would monitor development but lacked the statutory authority to regulate OTTs.
- ❑ In its Supplementary Discussion Paper (2025) ICASA now finds:
  - ❑ No-one is exercising SMP in either the market for the retail distribution of basic tier subscription and FTA television services or in the market for the retail distribution of premium subscription and OTT services in SA despite MultiChoice being the sole/monopoly provider of subscription television services constituting more than half of all television households.

# ICASA's Competitiveness Assessments About-turns

- ❑ In its Supplementary Discussion Paper (2025) ICASA now finds that despite DStv being the *sole* monopoly provider of subscription television broadcasting services in SA languages, it does not exercise SMP in the subscription television-related markets because, despite the *raison d'être* of the Inquiry being an inquiry into *subscription* broadcasting, ICASA has determined that FTA television services and OTT services are relevant markets to include subscription broadcasting services in too.

# ICASA's Competitiveness Assessments About-turns

- ❑ In its Draft Findings Paper (2019), after having found that MultiChoice did exercise SMP, it held that there was general support for its proposed pro-competitive licence conditions that ICASA proposed to impose on MultiChoice, by way of a separate regulatory process, namely:
  - ❑ reducing the duration of long-term contracts for the acquisition of premium content;
  - ❑ unbundling of sports rights to make the rights available on different platforms or to more than one broadcaster;
  - ❑ wholesale must offer regulations in respect of premium sports content at regulated prices;
  - ❑ limiting the number of Hollywood Studio's that a broadcaster may enter into exclusive agreements with for the purposes of distributing movies; and
  - ❑ requiring STB inter-operability.
- ❑ In its Supplementary Discussion Paper (2025) ICASA now does a 180 degree turn to find that, despite MultiChoice's only competitor having ceased operating, all markets that DStv competes in are competitive and so there is no need for any pro-competitive licence conditions to be imposed on the sole monopoly provider of subscription television services in SA.

# ICASA's Treatment of Digital Migration

- ❑ MMA is extremely concerned about several statements regarding the migration of analogue terrestrial television to DTT that ICASA has made in the Supplementary Discussion Paper. And which have, manifestly, influenced its decision to determine that basic tier subscription broadcasting competes in the same market as FTA television and that the market is characterised by “effective competition”.
- ❑ First, ICASA states that analogue terrestrial television signals have been switched off in five provinces. This is not true:
  - ❑ The SABC's analogue signals have been switched off in five provinces but
  - ❑ Etv's signals remain switched on in those five provinces (as in all provinces).
  - ❑ In the recent High Court proceedings on the ASO (in which MMA and etv again successfully prevented the ASO) the SABC's CEO filed an affidavit in which she stated that the switch off of the SABC's analogue signals in the five provinces “resulted in a major loss of audiences and revenues to the SABC” and that “had accurate information been provided the SABC would not have switched off some of those areas”.

# ICASA's Treatment of Digital Migration

- ❑ MMA is extremely concerned about several statements regarding the migration of analogue terrestrial television to DTT that ICASA has made in the Supplementary Discussion Paper (cont):
  - ❑ Second, ICASA states that even if the ASO date is further extended (which the High Court has now ordered) this is likely to have “limited impact on competition” as the affected households that have not yet transitioned to DTT have been identified as “indigent” and unlikely to switch to satellite or any other means. MMA find this statement shocking given FTA analogue television is the ONLY way that 4.3 million households access television content ie 28% of the entire SA population and that if FTA television (provided by etv and SABC) collapses then DTT and DTH (also provided by etv and the SABC) would likely collapse too and then what would the market look like?

# ICASA's Treatment of Digital Migration

- ❑ MMA is extremely concerned about several statements regarding the migration of analogue terrestrial television to DTT that ICASA has made in the Supplementary Discussion Paper (cont):
  - ❑ Third, ICASA states at para 2.4.3.3 of the Supplementary Discussion Paper that the SABC competes for advertising based on the viewership of its content on analogue, DTT, satellite and online and as such “competition for advertisers is not limited by the categorisation of services”. But this statement is entirely at odds with the SABC’s actual financial position which is that its advertising is heavily dependent on its analogue audiences and its repeated warnings that losing its analogue audience would be an existential threat to its continued existence and ability to provide content across all of its platforms.
- ❑ MMA was one of the applicants in the latest recent ASO High Court process and has placed on record its disappointment, even alarm, that ICASA failed to engage with the High Court proceedings. In this regard, the ASO is an existential threat to FTA television (analogue and digital (DTT and DTH)) in SA and ICASA cannot rationally determine that there is effective competition in the demarcated markets where it is feasible that MultiChoice could become the sole monopoly provider of television in the country in the medium term.



# ICASA's Treatment of Premium Sports Content

- ❑ MMA is concerned at statements made by ICASA at paragraph 3.21.1.14 of the Supplementary Discussion Paper to the effect that the ability for FTA broadcasters to enter into sub-licensing rights for premium sports content are “few and far between”. In this regard:
  - ❑ ICASA is responsible for enforcing the provisions of the ECA which, at s 60(1) prohibit subscription broadcasters from acquiring exclusive rights to prevent or hinder the FTA broadcasting of national sporting events.
  - ❑ So, to the extent that ICASA is admitting that the SABC (or etv) is prevented from sub-licensing such rights, this is an admission of its own regulatory failure to ensure compliance with the ECA and fair competition in the critical realm of sports rights which is the rationale for its own Sports Broadcasting Regulations.
  - ❑ These findings undermine also its statement that there is effective competition in its demarcated markets.
  - ❑ These findings clearly demonstrate the cannibalisation by MultiChoice of FTA television services through unlawful and anti-competitive behaviour.
  - ❑ Recent rulings by the Comp. Tribunal in favour of etv and against both the SABC and MultiChoice clearly point to regulatory failures on the part of ICASA in the regulation of Sports rights.

# ICASA's Redacted Content

- ❑ MMA is concerned about how much information that is critical to understanding how ICASA arrived at its conclusions on market definition and its lack of competition concerns in the sector has been redacted in the Supplementary Discussion Paper.
- ❑ The word “Redacted” aka “kept from the public” appears 13 times in the Supplementary Discussion Paper.
- ❑ This information is critical and requires robust debate and discussion to test the integrity of the regulatory process and is manifestly being hidden from the public. This cannot be in the public interest and undermines public confidence in the integrity of the Inquiry process.
- ❑ MMA calls for ICASA to reexamine what redacted information genuinely constitutes “commercially sensitive information” as required in terms of s4B of the ICASA Act and to make the rest available with additional opportunities for public comment.
- ❑ MMA points out the irony of the communications regulator agreeing to redact information in a public Inquiry on the future of television and notes that ICASA is undermining the constitutional principles and values governing public administration, particularly s195(1) of the Constitution which provides that “Transparency must be fostered by providing the public with timely, accessible and accurate information”.

# Broadband Penetration

- ❑ MMA is not a luddite organisation cut off from the real world of converging content platforms.
- ❑ MMA understands the disruptive nature of OTT content services *vis a vis* broadcasting.
- ❑ MMA submits that ICASA must urgently make its own submissions to Parliament on the kinds of amendments to the ECA and the ICASA Act that are necessary to enable ICASA to regulate OTT content services in the public interest given the DCDT's abject failure to finalise a coherent policy position on audiovisual content services over the past 14 years.
- ❑ Vast areas of the country are without access to 3, 4 or 5G which means mobile broadband services remain a pipedream for residents of those areas. And ICASA itself recognises the continuing reality of the “digital divide” in para 2.4.9.7 of the Supplementary Discussion Paper.

# Broadband Penetration

- ❑ ICASA's own research – at Table 5 of the Supplementary Discussion Paper shows that the average download speed of mobile broadband is 47.95 Mbps and of fixed broadband is 43.66 Mbps but it fails to refer to national SA Connect targets which were:
  - ❑ 50% population coverage of 100 Mbps by 2020; and
  - ❑ 80% population coverage of 100 Mbps by 2030.

Meaning that by 2025 the country ought to be at a population coverage of 65% at 100Mbps. SA is manifestly nowhere near that and so streaming content is out of reach of the majority of the population.

- ❑ ICASA states, at para 2.4.8 of the Supplementary Discussion Paper that SA has an internet penetration rate of 74.7% of the population ie leaving 25.3% without internet access.
- ❑ However, no mention is made of the massively unequal distribution of Internet users with more privileged sectors of the population having multiple Internet-enabled devices eg smart TVs, computers, tablets, and smart phones. Thus, the actual percentage of South Africans without any access to the Internet may be higher than the 25.3% figure and these will be concentrated in poor and rural areas and provinces.

# Broadband Penetration


- ❑ MMA submits that people who lack any access to the Internet are also likely to be reliant on analogue free to air television services (some 28% of the population).
- ❑ This isn't an abstract problem. On 8 July – Tuesday – The DCDT launched its “Connect Mzansi One Device at a Time” Campaign saying “Millions of South Africans are cut off from the digital world because they can't afford a smart device”. ICASA knows better than that high data costs as well as the lack of smart devices which prevent millions from accessing streaming content online.

# Conclusions

- ❑ MMA reiterates that services forming a particular market must be subject to similar regulatory constraints. In this regard it is clear, that in the Supplementary Discussion Paper:
  - ❑ non-broadcasting services such as OTT content services are subsumed into the determination of a broadcasting market
  - ❑ FTA and subscription broadcasting services are subsumed into the same television broadcasting market
  - ❑ the monopoly provider of subscription broadcasting services, MultiChoice will continue to cannibalise the more heavily regulated FTA television broadcasting services to the detriment of FTA commercial, public and community television services.
  - ❑ OTT services will continue to cannibalise the entire broadcasting market as they are entirely unregulated by ICASA.
- ❑ The ASO threatens FTA broadcasting in SA as FTA DTH and DTT broadcasters are reliant on their analogue audience base for sustainable income.
- ❑ Consequently, it is possible, failing ongoing intervention by the Courts, that MultiChoice could become the sole television broadcaster with the ability to derive income from the SA market.

# Conclusions

- ❑ Further, MultiChoice is likely to be, effectively, 100% foreign owned with devastating consequences for all sectors of the economy dependent on television broadcasting, particularly the local independent production industry.
  - ❑ This anti-competitive regulatory approach is a betrayal, particularly, of the poorest quartile of the population and their need (and right) to access quality information.
  - ❑ MMA urges ICASA to reconsider its unexpected, controversial Supplementary Discussion Paper which is entirely at odds with:
    - ❑ all previous proposed policy positions taken by ICASA; and
    - ❑ the reality of the broadcasting environment in which MultiChoice is the sole/monopoly provider of subscription broadcasting services which already cannibalises advertising the FTA television broadcasting sector is dependent on.
- This is not in the public interest.



Thank You

Questions?