MTN'S RESPONSE TO ICASA'S INQUIRY INTO SUBSCRIPTION TELEVISION BROADCASTING SERVICES IN TERMS OF SECTION 4 B OF THE ICASA ACT 13 OF 2000 IN GORVENMENT GAZETTE NO. 41070 DATED 25 AUGUST 2017

1. Introduction

1.1. Mobile Telephone Networks Proprietary Limited ("MTN") welcomes the opportunity to make a submission to the Independent Communications Authority of South Africa ("the Authority"), in respect of the Inquiry into Subscription Television Broadcasting Services.

1.2. On 24 June 2016, the Authority published a questionnaire with the intention of soliciting views on the Subscription Television Broadcasting Services market to determine whether there are competition issues in the sector which require action to be taken by the Authority through the imposition of pro-competitive conditions on relevant licensees. Interested persons were required to complete the questionnaire which would result in the Authority conducting one on one interviews with all those persons who submitted written representations.

1.3. On 25 August 2017, the Authority published a discussion document for the Inquiry into Subscription Broadcasting Television Services, published in Government Gazette No. 41070 together with a notice inviting interested persons to submit written representations in response to the Discussion Document.

1.4. MTN's submission is structured as follows:

- Part A: Executive Summary
- Part B: MTN's views on the Industry
- Part C: MTN's specific comments on the Discussion Document

2. Part A: Executive Summary

2.1. Section 1 of the Broadcasting Act defines a subscription broadcasting service as: "a broadcasting service provided to an end user upon the payment of a fee[1].

2.2. South Africa issued its first subscription broadcasting licence, which led to the establishment of M-Net in 1986. In 1993, M-Net was separated into two (2) companies: M-NET, which became a pure subscription television station, while the company's subscriber management, signal distribution and cellular telephone activities were formed into a new company called Multichoice Proprietary Limited ("MultiChoice")[2] which is now a wholly owned subsidiary of Naspers Proprietary Limited.

[1] South African Broadcasting Act, Section 1.
[2] Global Forum on Competition, South Africa's contribution paper dated February 2013.

2.3. The Authority went on to licence other subscription television broadcasters, namely: On Digital Media Proprietary Limited and Deukom Proprietary Limited which launched in 2010 and 2012 respectively.

2.4. The Authority has also licensed subscription television broadcasters such as: Telkom Media, eSat, WOW TV, Close TV, Kagiso TV, Mindset, Mobile TV, which to date, have never launched.

2.5. The South African subscription television broadcasting market is made up of three (3) vertical layers. The content layer is responsible for producing the content such as: Premier Soccer League games, South African Rugby Union games, blockbuster movies etc. and sells the rights to the content to broadcasters for their packaging and transmission to viewers. The retail layer is responsible for acquiring the content and channels from broadcasters then selling it to viewers through a transmission mechanism. The broadcasting layer is responsible for the acquisition of broadcasting rights, creating content and packaging the content into channels, for sale to downstream retailers[3].

3. Part B: MTN's views on the Industry

3.1. There are imminent structural changes in the Television industry due to the upcoming move from Analogue to Digital Terrestrial Television (''DTT"). The broadcasting industry is being impacted by the advent of the internet and technological advancements through digital broadcasting, which is not only faster and more efficient, but will also enable customers to access television content anywhere, anytime.

3.2. The 2013-18 PWC Media and Entertainment Report forecasts South Africa's entertainment and media market to be worth R190.4 billion in 2018, growing at a compound annual growth rate (CAGR) of 10.2%. Combined revenues from internet access and internet advertising are estimated at R71.6 billion, which is 37.6% of total revenue. Within the internet segment, mobile internet access spending will take in the most revenue, adding over R40 billion over the forecast period. The number of South Africans who are becoming mobile internet subscribers was forecast to rise from 15 million in 2013 to 35.2 million in 2018. Mobile internet access will be a great enabler for growth in other segments such as consumer spending on online games and digital music downloads[4]. As such, telecommunication operators such as MTN will move from voice to data and then digital in terms of revenue streams.

[3] Global Forum on Competition, South Africa's contribution paper dated February 2013.
[4] 2013-18 PWC Media and Entertainment Report.

3.3. As DTT is set to introduce more players in the market, the attractiveness of any broadcasting service, will rely solely on its ability to acquire and broadcast premium content to its subscribers. MTN has experienced challenges in the acquisition of premium content due to certain industry players owning exclusive rights to premium content.

4. Part C: MTN's specific comments on the Discussion Document

4.1. How the Authority can remedy the market failure of the acquisition of premium content

4.1.1 The Authority can address the possible market failure of the acquisition of premium content through amendment of current legislation. This can be done by specifically amending sports broadcasting regulations to ensure it eliminates the exclusivity and reduces the tenure contained in the current agreements between content providers and licensees. Additionally, the Authority should encourage a broader level of participation between content providers and licensees, by potentially making provisions for minimum quotas for new and previously disadvantaged players in the market.

4.1.1. Alternatively, the Authority can address the failings by changing the current market structure. This can be done by the Authority amending current broadcasting regulations to ensure that premium content holders in South Africa are independent from broadcasters. This would eliminate key industry content being controlled by one broadcaster to the detriment of new and other existing players. Further, this would allow content to be freely available to any broadcasting player who has the commercial means to acquire it.

4.2. Barriers of Entry at Retail Level

4.2.1. Current Monopolistic Dominance: Current identifiable market and product segments are dominated by a single and established player which has long standing, and in many instances, exclusive relationships with key service providers in the industry's value chain. The above is highlighted in MultiChoice's 2017 Annual Report[5] which states that, it has a subscriber base of 6,3 million[6]. Furthermore, MultiChoice has

[5] MultiChoice 2017 Annual Report.
[6] Multichoice subscriber base number may include the rest of Africa.

dominance across all key product segments evident in its diverse service offerings, including but not limited to: Box Office (which offers up to thirty (30) blockbusters movies, including Bollywood movies), Showmax (a video on demand service with extensive catalogues, shows and movies), PVR (a personal video recorder decoder which allows viewers to record 150 hours of standard television or 50 hours of HD television) and Various Packages (offering up to six (6) different packages in the bouquet, as per the customer's preference and affordability)

4.2.2. High Cost of Market Entry: The cost of establishing a subscription broadcasting service, including the procurement of content is prohibitively high, given that the subscription broadcasting regulations[7] require that subscription broadcasters' largest source of revenue must be subscription fees. This means that an entrant must fund costs for significantly long periods until the entrant eventually breaks even.

4.3. Barriers to Entry in the Upstream Market

4.3.1. Access to High Quality Content: MTN has experienced immense challenges in acquiring premium content such as sports, movies and series because of the lack of an affordable access layer (FTTH, WIFI etc.). Moreover, market competitors that own rights, on an exclusive basis, particularly so with live sports rights that can be OTT streamed.

4.3.2. Capital Requirements: There are exorbitant costs for providing Video on Demand for mobile users due to limited spectrum.

4.4. Subscribers numbers to determine market share

4.4.1. The Authority has proposed a methodology of using subscriber numbers to determine market share[8]. In addition to the above methodology, we propose that the Authority considers a financial metric as a secondary determinant to market share. This because Subscription Television Broadcasting Services in their nature are primarily aimed at subscribers, which are consumers with finite resources. A dominant broadcaster, would in our view, be an entity with a significant number of

[7] ICASA Subscription Broadcasting Regulations, Government Gazette No. 28452, 31 January 2006.
[8] ICASA Inquiry to Subscription Television Services Discussion paper.

subscribers, but also an entity which draws a significant portion of the consumer's spending towards broadcasting.

4.5. Conclusion

4.5.1. As a broader industry player, MTN believes that it is important for it to participate in the second leg of the Authority's Inquiry by putting its views forward: to facilitate robust debate and discussions and to provide the Authority with conclusive views on this matter, as well as to guide the Authority in shaping the South African Subscription broadcasting landscape.