

MULTICHOICE'S SUPPLEMENTARY SUBMISSIONS IN RESPONSE TO QUESTIONS RAISED BY ICASA AND THE PUBLIC AT MULTICHOICE'S ORAL REPRESENTATIONS ON 11 JULY 2025

Q2.1: "Please provide any internal factors (i.e. pricing and non-pricing) that may have contributed to the observed change in DSTV subscriber behaviour as indicated in slide 22 of MultiChoice's presentation"

- 1 At the public hearings on 11 July 2025, MultiChoice explained, with reference to slide 22 of its presentation, that MultiChoice has been, and is still, facing significant competition at all levels of the market which has resulted in increased cord-cutting,¹ cord-shaving² and cord-nevers.³
- 2 The factors contributing to this subscriber behaviour are primarily external. As stated in our various sets of written and oral submissions, increased competition from over-the-top content streaming services ("OTT services") is the main contributing factor to increased cord-cutting, cord-shaving and cord-nevers.
- 3 However, the general state of the economy, with high unemployment and declining wages, has impacted consumers' budgets and disposable income which has also had a bearing on such subscriber behaviour experienced by MultiChoice. Indeed, the current environment has meant that consumers have become increasingly discerning, intensifying competition amongst service providers for their attention and spend.
- 4 A pay TV service⁴ is a discretionary expense. Some OTT services are available free of charge (ad-funded OTT services) while many others have low price points (due to economies of scale and the use of the internet for distribution), providing budget-constrained consumers with alternative content viewing options.
- 5 At the public hearings, when posing this question, the Authority intimated that it is MultiChoice's current and historical pricing that has contributed to MultiChoice's loss of subscribers, suggesting that MultiChoice has priced its services too high. Such a sentiment was also expressed by some third parties. There is however, no evidence to support that MultiChoice's historical prices have not been set at competitive levels.
- 6 Although there are OTT services that are at a lower price point than MultiChoice's services, MultiChoice's pricing is competitive when considering the value we give subscribers both in terms of the variety, quantity and quality of the content included in the DStv services, as well as the innovations in its set top boxes through which subscribers consume those services. Our prices are reasonable,

¹ When subscribers terminate Pay TV services altogether and replace with OTT and/or free-to-air ("FTA") services

² When subscribers downgrade to lower-tier Pay TV services and combine those Pay TV services with OTT and/or FTA services

³ When consumers do not subscribe to Pay TV services at all and opt rather to consume OTT, FTA and/or pirated services

⁴ When we use the term "Pay TV service" in this submission we refer to traditional linear subscription broadcasting

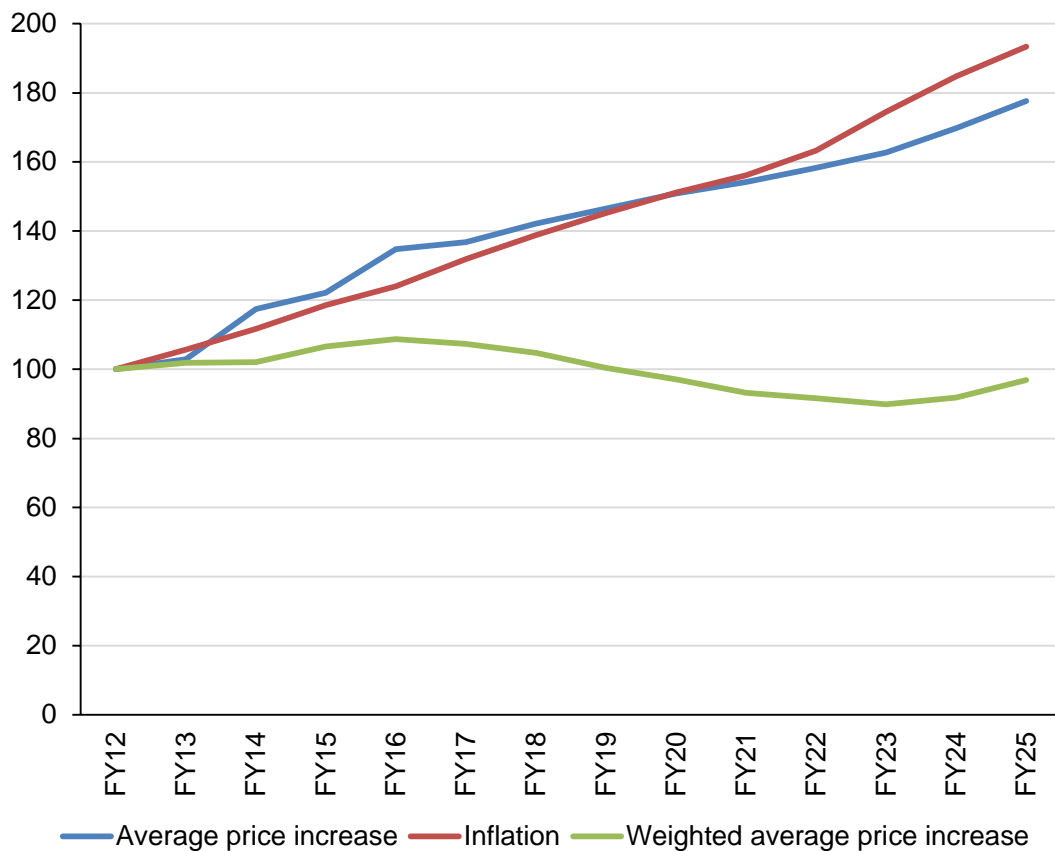
allowing MultiChoice to keep investing in the services and all aspects of the business as we always strive to offer good value for money to our customers.

- 7 Pay TV services face higher distribution costs than OTT services, such as legacy satellite infrastructure lease costs, and they do not benefit from the extent of economies of scale available to global OTT players. This has a bearing on the price that Pay TV services are able to set for their services. MultiChoice has no incentive to price too high as that will impact subscribers willingness to pay for a discretionary product in tough economic times.
- 8 Internal factors that impact our pricing include various initiatives undertaken to stem the loss of subscribers in response to the external factors described above. MultiChoice has responded to increased levels of competition by intensifying investments in its services, intensifying customer win-back initiatives including a rewards programme and price lock deals, giving consumers value-added services such as discounted Showmax subscriptions, and limiting the extent of price increases to well below inflation, resulting in the pricing of the DStv services having declined in real terms over the last few years.

Q2.2: "While we note in slide 29 of MultiChoice presentation that the annual price increases were below CPI, does this not suggest that DSTV's pricing may have already been above the competitive level since 2017? Additionally, please include the graph with annual pricing vs CPI from 2012 to 2017."

- 9 As indicated in the response to the previous question, MultiChoice's pricing has and continues to align with the costs of providing its services.
- 10 The figure below shows trends in MultiChoice's average prices relative to inflation for the period FY2012 to FY2025. The figure shows the increase in both the simple and weighted average⁵ price for MultiChoice bouquets. While the simple average considers the price increase across bouquets equally regardless of the number of subscribers for each bouquet, the weighted average places a greater weight on those bouquets with more subscribers.

Figure 1: DStv average nominal price vs CPI (2012=100)



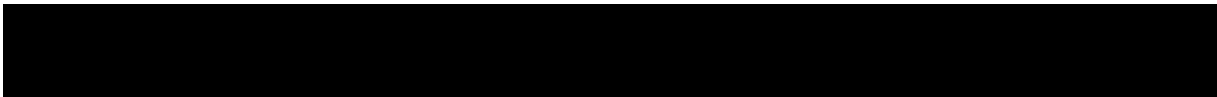
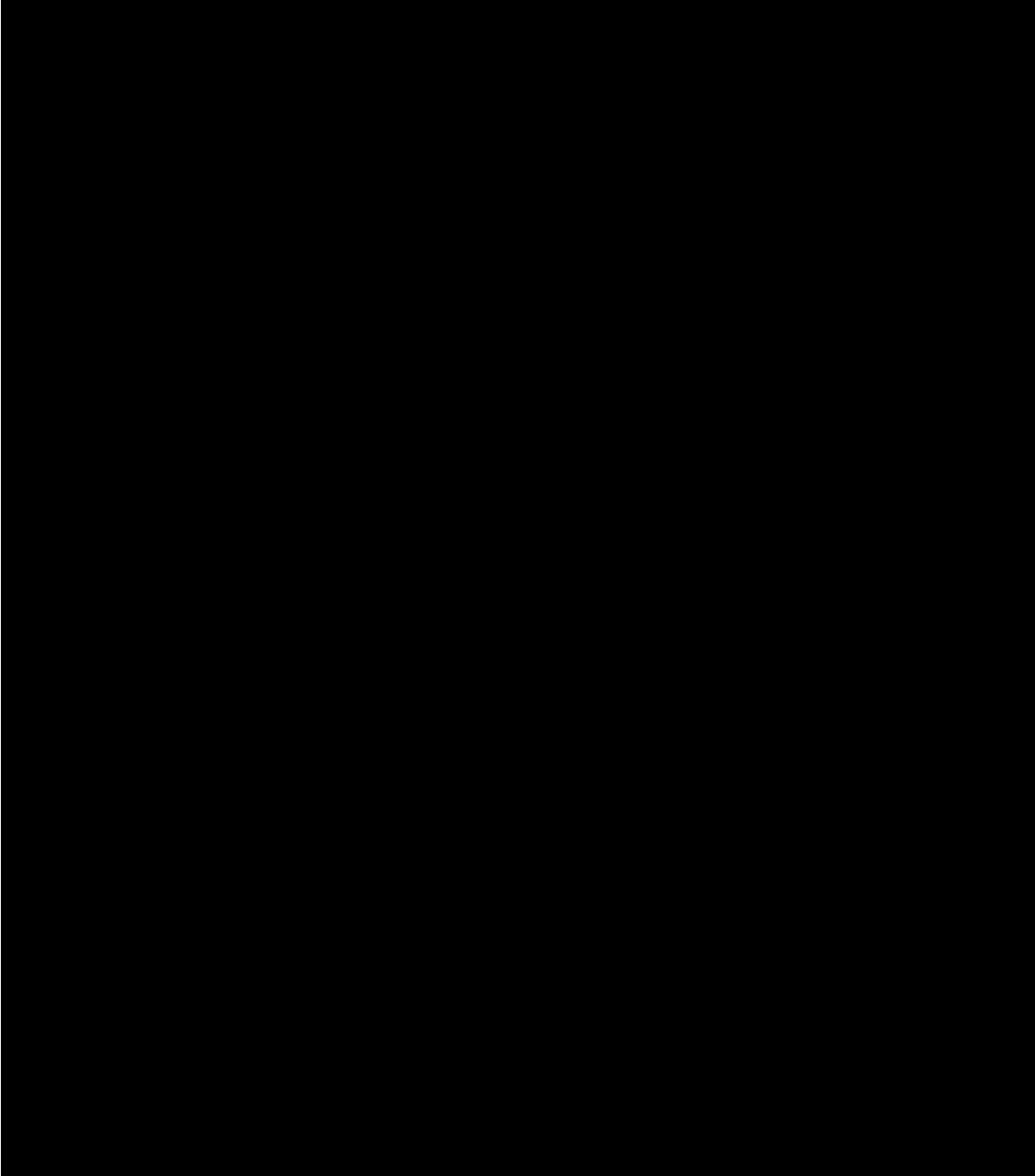
Source: MultiChoice bouquet price and subscriber data, Stats SA

- 11 The fact that MultiChoice is facing a loss of subscribers in the last few years despite below inflation average price increases is not evidence of prices being above competitive levels. MultiChoice gained subscribers up until FY2021 as a

⁵ The weighted average price is based on the price for each bouquet in a given financial year weighted by the total number of active subscribers in each of the bouquets as at the end of the financial year.

result of its attractive pricing. The loss of subscribers since FY2021 in the presence of falling prices is the direct result of OTTs becoming increasingly competitive in the South African market, not least because of their scale and cost advantages. If MultiChoice had not continued to reduce its prices (in real terms) then it would have lost an even greater number of subscribers, leading to further downward pressure on its revenues.

Q2.3: Reference has been made by MultiChoice in its written submission regarding a consumer survey(s) that was conducted (for example at paragraph 59, figure 2, paragraphs 72, 73, 78.1.4, 78.2.1, 78.2.3. The Authority requests that MultiChoice provide it with the survey(s) and all underlying data used to generate the results of the survey(s)



Q2.4: "How are the Pay TV rights packaged when acquiring them? Do they come bundled with FTA rights?"

- 17 Although not clear from the question above, we assume based on the discussions at the hearings that the Authority's question relates to the sale of sports rights.
- 18 The broadcasting rights to a sports event are typically owned by the sports body that organises the event. Sports bodies decide how to package the rights to their sporting event based on a number of factors. This includes how best to monetise its rights in order to meet its numerous obligations, based on the sports body's own assessment of its requirements, to find the balance between the need for exclusivity to maximise revenue and exposure for the sport. There are also other considerations, such as transaction costs, rights protection, and operational resources involved when dealing with a single bidder as opposed to having multiple contractual agreements in place. Each sports body makes these decisions taking into account the individual circumstances and interests of the sport which it administers. The way sports rights are packaged reflects the commercial imperatives of rights holders rather than buyer preferences.
- 19 In MultiChoice's experience, rights owners in some cases prefer offering a composite package of Pay TV and FTA rights when licensing the broadcasting rights to sporting events rather than selling these separately.
- 20 However, there are many instances where sports bodies do sell the Pay TV and FTA rights to their sports events separately.
- 21 This is evident from the SABC's ability to bid for and acquire the FTA broadcasting rights for numerous popular sporting events, including football world cups, regional and international football competitions, (such as the Africa Cup of Nations), the English Premier League, international cricket test matches, ODIs and T20s, Olympic games, boxing, and wrestling.
- 22 Despite eMedia's claim during the hearings that it has historically been unable to acquire the rights to broadcast the FIFA World Cup and the Olympic Games allegedly due to MultiChoice, we point out that MultiChoice has, since 2002, never acquired, the FTA rights to broadcast the FIFA World Cup or the Olympic Games. MultiChoice has therefore never precluded the ability of eMedia, or any other FTA broadcaster, to acquire the rights to broadcast these (and many other) events. In fact, the SABC has acquired the rights including, in some cases, the Pay TV broadcasting rights, for example the rights to the FIFA World Cup, which MultiChoice has sub-licensed from the SABC.⁷
- 23 Certain sports bodies, like the PSL offer both (i) a separate FTA package in their ITA and (ii) a composite package (i.e. combine FTA and Pay TV rights), and then include a contractual obligation on a Pay TV broadcaster who acquires the composite package to sub-license the FTA rights to an FTA broadcaster.

⁷ In 2010 and in 2014

- 24 As such, there is no uniform model in rights packaging. Rights owners adopt different licensing models depending on the sport's objectives including market value of the rights and concomitant revenue as well as intended audience reach. As a matter of jurisdiction, the Authority cannot impose restrictions or requirements on sports rights owners regarding the packaging and sale of broadcasting rights to their sporting events. In any event, such decisions are best left to the sport rights owners themselves given their need to ensure the value of the rights and protect investment into the sporting code in general, which also varies from one sporting code to another and from one sports body to another.

Q2.5: "In MultiChoice's submission on the Supplementary Discussion Document, it makes reference to 'premium' and 'basic-tier' subscribers as well as to 'higher' and 'lower-tier' DStv subscribers. What metrics, requirements, standards and/or criteria does DStv use to determine which subscribers constitute 'premium' or 'basic-tier' subscribers or 'higher' or 'lower-tier' DStv subscribers?"

- 25 When MultiChoice used the terms "premium", "basic-tier", "higher" and "lower-tier" DStv subscribers in its submissions to the Supplementary Discussion Document dated 24 March 2025 ("MultiChoice's March 2025 submissions"), it did so in reference to the terms used by the Authority in the Supplementary Discussion Document. This was noted in footnote 10 on page 3 of MultiChoice's March 2025 submissions where it is stated that "*[i]n this submission, MultiChoice uses the Authority's terminology of "basic tier" and "premium", in particular in reference to the retail markets as defined by the Authority in the SDD. This is for consistency in use of terminology in this stage of the public consultation process, but this does not reflect MultiChoice's view of the retail market...*".
- 26 MultiChoice understands that the Authority's reference to "premium" is used interchangeably with "higher-tier," and that "basic-tier" is used interchangeably with "lower-tier".
- 27 For reporting purposes, we find it useful to divide our bouquets into three subscriber segments. This is a practice that MultiChoice has adopted since MultiChoice Group Limited's listing in February 2019:
- 27.1 the premium segment which consists of the *Premium* and *Compact Plus* bouquets;
 - 27.2 the mid-market segment which consists of the *Compact bouquet*;⁸ and
 - 27.3 the mass market segment which consists of the *Family*, *Access* and *EasyView* bouquets.
- 28 This subscriber segmentation was adopted to simplify financial reporting for investors and the board by grouping products into categories according to the historical tiering of the bouquets and their general price points.
- 29 As indicated in our various submissions, there is significant switching by consumers between bouquets across these different segments.

⁸ For reporting purposes, the mid-market segment also includes DStv's Commercial bouquets, which are bouquets not offered to retail customers but rather to business establishments such as restaurants and hotels

Q2.6: "Which of MultiChoice's bouquet offerings does it consider to fall within 'premium' and 'basic-tiers' and based on what metrics, requirements, standards and/or criteria?"

- 30 MultiChoice does not in the normal course of business separate its bouquets into "premium" versus "basic-tier" categories as referred to in this question. While, as explained in the previous question, MultiChoice does classify its bouquets into premium, mid-market and mass-market categories, these segments were developed for practical reporting purposes and do not reflect separate markets as defined for competition purposes. Nor, as stated in MultiChoice's March 2025 submissions, would such a delineation accord with MultiChoice's view of the retail market.⁹
- 31 Notwithstanding this, it is our understanding¹⁰ that the Authority views:
- 31.1 the *Premium*, *Compact Plus* and *Compact* bouquets as "premium" subscription broadcasting services;¹¹ and
 - 31.2 the *Family*, *Access* and *EasyView* bouquets as "basic-tier" subscription broadcasting services.¹²

⁹ See paras 10 to 12 and 20 to 45 of MultiChoice's March 2025 submissions

¹⁰ See Footnote 20 on page 7 of MultiChoice's March 2025 submissions

¹¹ See para 3.21.1.20 of the Supplementary Discussion Document read with para 2.6.4 of the Draft Findings Document

¹² See para 3.21.1.20 of the Supplementary Discussion Document read with paras 2.6.4 and 7.3.8 of the Draft Findings Document

Q2.7: "In paragraphs 25 to 27 of its submissions on the Supplementary Discussion Document Multichoice indicated that the increasing number of mobile-only subscription offerings by OTTs have a competitive impact and OTT service should be considered by ICASA as a competitive constraint across all services whether targeted at the lower or higher end. In this regard Multichoice requested to indicate:

(a) Whether it is correct that it also offers a mobile-only subscription product called 'mobile stream'.

(b) Whether the content available on the mobile-only 'mobile stream' subscription product offered by Multichoice differs in any manner from the content available in MultiChoice's other subscription offerings and, if so, how."

32 MultiChoice currently provides mobile-only subscriptions through Showmax. Specifically, these mobile-only packages include:

32.1 the Entertainment offering at R50/pm;¹³

32.2 the Premier League offering at R99/pm;¹⁴ and

32.3 the Entertainment plus Premier League offering at R120/pm.

33 The programming content available on the mobile-only subscription is no different to the content made available on the comparable standard Showmax packages which are accessible on all devices. As previously indicated, the key difference is that the content on the mobile-only plans can only be accessed on a mobile device.

34 The launch of this product represents a competitive response to the increasing pressure MultiChoice faces in the AV retail market. This pressure stems in part from the increased availability and popularity of mobile-only services and data-bundled offerings provided by OTT competitors. Through the mobile-only services, MultiChoice aims to enhance the accessibility and flexibility of its services by catering to consumers who prefer to consume content on mobile devices, often in a more affordable and data-conscious manner. It also reflects MultiChoice's recognition of shifting consumer behaviour, particularly among younger or lower-income segments who may not have access to traditional satellite or fixed-line broadband infrastructure.

35 For clarity, MultiChoice also offers a streaming only DStv product called "DStv Stream". This product is available to any subscriber who wishes to have access to any DStv bouquet over the internet via the DStv Stream application, on payment of a subscription fee. Access to the content on the DStv Stream bouquet

¹³ Streaming of a vast library of local and international series, movies, Showmax Originals, kids' content.

¹⁴ The streaming of all Premier League and PSL games

subscribed to is not restricted to mobile devices but can be accessed on any internet enabled device such as smart TVs, laptops, smartphones, and tablets.

- 36 In addition to this, MultiChoice offers subscribers to its DStv Premium, Compact Plus, Compact, Family and Access bouquets the option to add on two extra mobile streams to their subscription. These Mobile streams are not a standalone product, but can be accessed on payment of an additional monthly fee, allowing subscribers to stream the content on their existing DStv bouquet on up to two extra mobile devices.

Q2.8: "How many subscribers have stopped using MultiChoice's 'premium' subscription services between 2018 and 2024?"

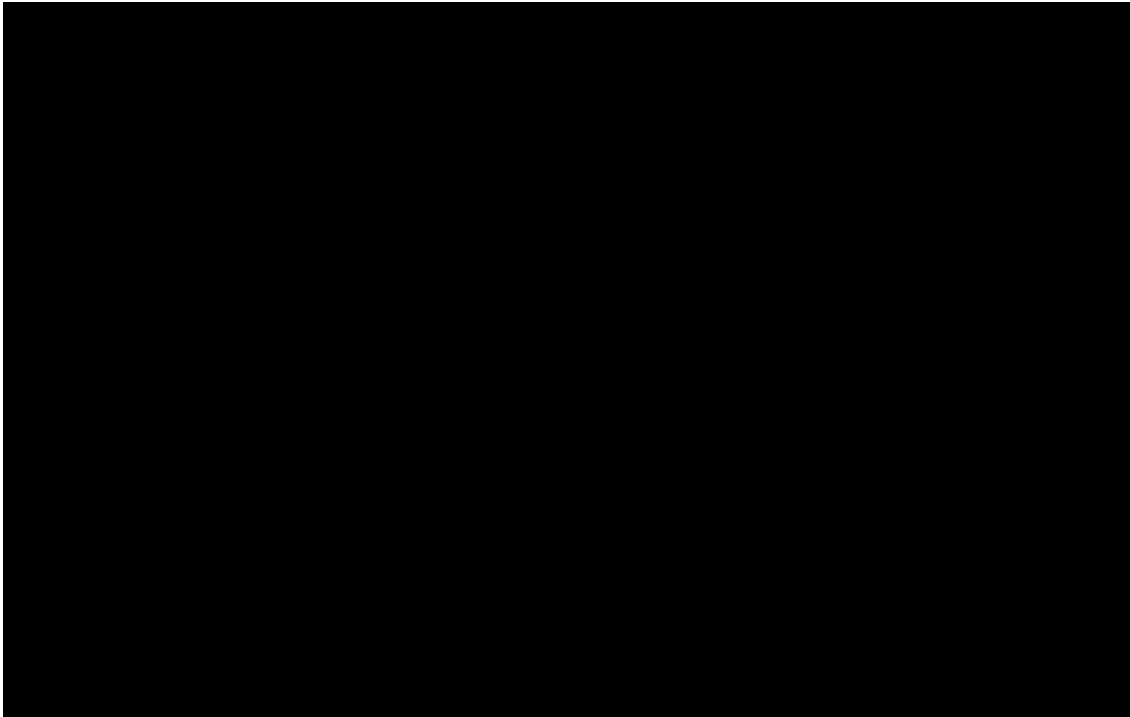
Q2.9: "Of those subscribers who have allegedly stopped using MultiChoice's 'premium' subscription services, how many of those have downgraded their subscriptions from 'premium' packages to mid-market or basic packages, and how many of them have cancelled subscriptions altogether?"

37 This information has been provided to the Authority, most recently in MultiChoice's March 2025 submissions.

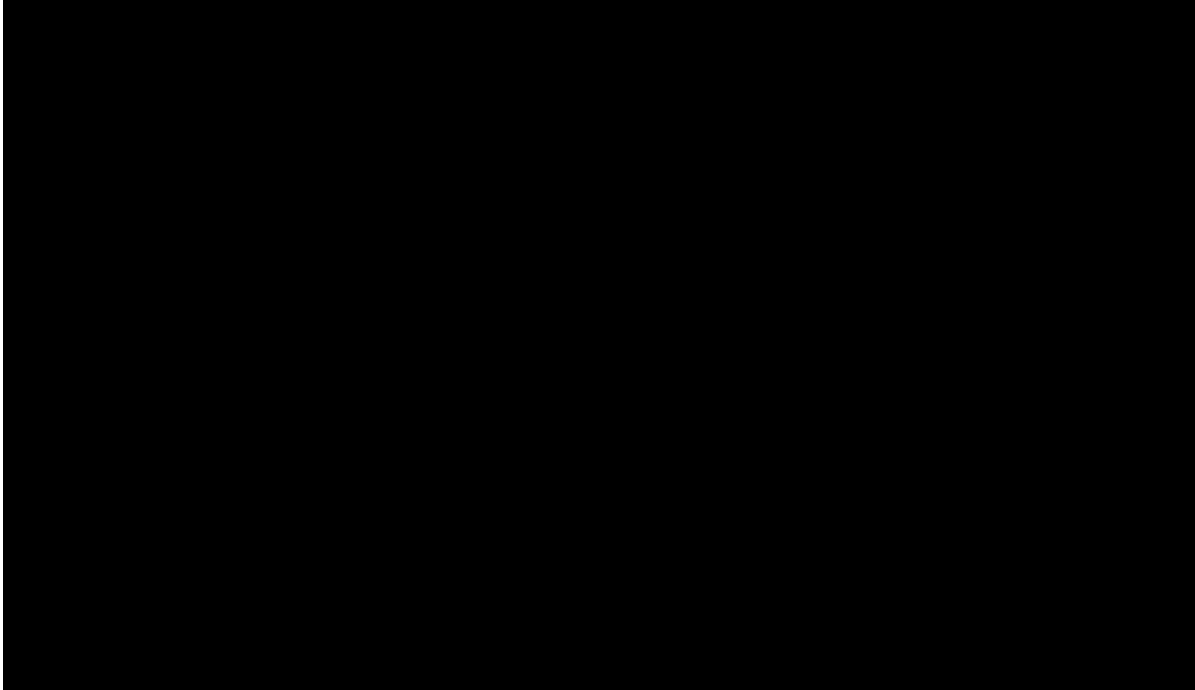
37.1 In Appendix A and B to MultiChoice's letter to the Authority dated 7 December 2018, we provided data demonstrating how many subscribers voluntarily disconnected from the bouquets in MultiChoice's premium segment (being the Premium and Compact Plus bouquets) for FY2018.

37.2 In paragraphs 57 to 58 and Figure 1 of MultiChoice's March 2025 submissions, we provided data demonstrating how many subscribers voluntarily disconnected from MultiChoice's Premium and Compact Plus bouquets for the period FY2019 to FY2024.

38 In slide 23 of MultiChoice's presentation at the hearings, we indicated that cord-cutting across all DStv bouquets increased in FY2025. The graph that was included in that slide was a non-confidential graph which did not include the confidential data. Please see below Figure 3, being the confidential version of the cord-cutting graph to include data for FY2025. This graph demonstrates an increase in the overall number of subscribers disconnecting their DStv services.



- 39 For completeness, we include the confidential version of the cord-shaving slide which was presented at slide 24 of MultiChoice's presentation. This illustrates that although between FY2017 and FY2021 there was a net upgrade position (there were more subscribers upgrading their bouquets than there were downgrading), from FY2022 there has been a significant increase in net downgrades, i.e. more subscribers are now downgrading their bouquets rather than there are subscribers upgrading to higher bouquets.



¹⁵ MultiChoice's view is that net downgrades would have been significantly worse had it not been for aggressive promotional campaigns that had been run in the last quarter of FY2025.

Q2.10: "Of those subscribers that have cancelled their DStv subscriptions, how many have switched to OTT services?"

- 40 This information has been provided to the Authority in paragraphs 59, 60, 69 and Figure 2 of MultiChoice's March 2025 submissions, where we provided the Authority with MultiChoice's interpretation of the results from the October 2023 survey of disconnected DStv subscribers.
- 41 The cord-cutting data provided is a clear indication that both lower-tier and higher-tier subscribers are replacing DStv with alternative AV services, they cannot be said to be simply ceasing consumption of AV content altogether.

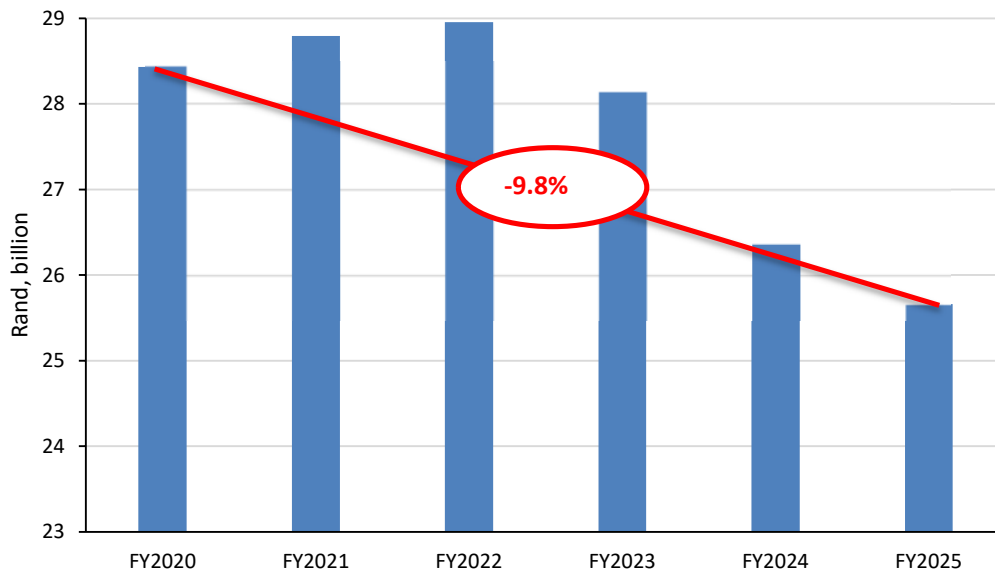
Q2.11: "What evidence, if any, does Multichoice have to substantiate its conclusion in paragraph 23 of its submissions on the Supplementary Discussion Document that premium and basic-tier subscribers are downgrading to lower-priced Dstv [sic] subscriptions while taking up OTT services?"

- 42 Multichoice has previously referred the Authority to the following evidence that substantiates Multichoice's conclusions that premium and basic-tier subscribers are downgrading to lower-priced DStv subscriptions while taking up OTT services.
- 43 In paragraph 64.5.4 of Multichoice's response to ICASA's Questionnaire dated 15 February 2024 ("Multichoice's February 2024 submissions") we noted that [REDACTED]
- 44 Such evidence must be read with the data referred to in Figure 14 of Multichoice's February 2024 submissions and Figure 3 of Multichoice's March 2025 submissions.

Q2.12: "What is the 'revenue lost as a result of cord shaving' that is referred to by Multichoice in paragraph 23 of its submission on the supplementary Discussion Document?"

- 45 MultiChoice does not, in the normal course of its business operations, directly measure the isolated impact of cord-shaving on revenue. Such an exercise is highly complex and would require analysing and tracking subscription and revenue changes at the individual subscriber level over multiple periods of time. This is because someone who downgrades in a given month not only has an impact on the revenue that MultiChoice could have generated from that subscriber in that month, but also on all revenues it could have generated from that specific consumer in subsequent months (assuming that the subscriber stays subscribed or stays downgraded). Instead, MultiChoice typically considers how revenues and subscribers for each bouquet are changing due to a variety of factors including not only cord-shaving but also cord-cutting and cord-nevers. This approach is consistent with proper economic analysis that assesses the impact of competitive constraints in aggregate.
- 46 As has been highlighted in the oral submission both the total revenue and number of subscribers has decreased substantially in recent years underscoring the significance of the competitive constraint that it is currently facing from increased competition from a wide range of AV retail services. Total subscriber revenue has decreased by nearly 10% over the last five years, from R28.4 billion in FY2020 to R25.7 billion in FY2025. This decline has been particularly stark since FY2022, where subscriber revenues reached a peak of approximately R29.0 billion. Since this peak DStv's subscriber revenue in South Africa has declined by approximately R3.3 billion.

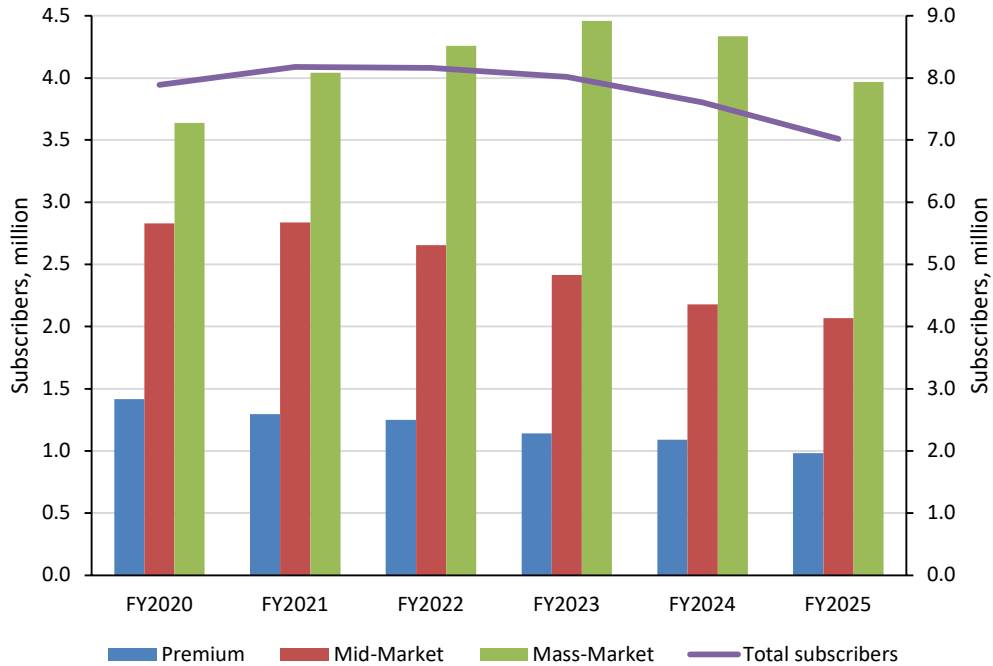
Figure 4: DStv SA subscription Revenue (R, billion)



Source: MultiChoice AFS

- 47 The impact is also illustrated when considering subscriber declines across MultiChoice's retail offering (see the figure below). Having peaked in FY2021 at 8.2 million, MultiChoice has since seen a reduction of approximately 1.2 million subscribers as of FY2025, with a subscriber loss of 0.6 million in the last financial year. Subscriber losses have been evident across MultiChoice's business, with significant declines across the period in both the premium and mid-market segments. After an initial period of growth, the mass-market segment has also declined.

Figure 5: DStv Subscriber base, FY2020-FY2025



Source: MultiChoice AFS and internal subscriber data

Q2.13: "What competitive constraint is imposed on Multichoice by piracy as referred to in paragraph 53.5 of its submissions on the Supplementary Discussion Document? Relatedly, is any such competitive constraint unique to Multichoice and, if so, why?"

48

[REDACTED]

[REDACTED] This practice has a material impact on the company, as consumers who view pirated content represent potential subscribers and associated revenue lost to piracy.

- 49 Piracy has an impact on all legitimate providers of AV services, undermining the investment that is made in the licensing and curating of content for their services. Piracy poses a particular threat to subscription-based providers such as MultiChoice and is a constraint. This is because, such providers make significant investments in exclusive content, which if pirated has a direct impact on the value of these investments and acts as a direct financial constraint through the loss of revenue that would have otherwise been generated from potential subscribers. Compounding this issue, the widespread availability of free content fundamentally erodes the perceived value of legitimate paid-for entertainment, creating market uncertainty and making consumers less willing to pay for subscription services. In MultiChoice's experience this is true even if the content is not exactly the same or there are differences in the quality of service.
- 50 Piracy is, however, also likely to have some impact on FTA or ad-based services, in this case through competition for a consumer's attention. Time that users spend on pirate websites is time they are not spending on legitimate, ad-supported platforms, representing a loss of potential advertising revenue. It is also worth noting that piracy can also negatively impact on the wholesale supply of content. This is because it affects the ability of producers to monetise their content on a continuous basis and thus also has an incremental chilling effect on content creation and/or supply.
- 51 In MultiChoice's view, if the issue of piracy is not resolved, the consequences for the audio-visual services industry will be far-reaching. Specifically, MultiChoice anticipates a decline in investments in content, particularly in sports and general entertainment. This will negatively impact content production revenues, leading to job losses and, for sports bodies, a reduced ability to invest in their sporting codes and ultimately the overall quality of the sport.

[REDACTED]

Q3: "Please provide any other relevant information emanating from the discussions during the public hearings that might add value to the work of this committee"

Essentiality of content

- 52 During the hearings, MultiChoice was asked whether "*there [is] must-have content? And how does access to this content impact competition?*". We indicated in our oral response to that question that we would like to supplement the response in writing. We do so below.
- 53 The proliferation of OTT services and the expansion of the retail market have transformed the wholesale content landscape, leading to a surge in high-quality programming. This, in turn, has fostered a more competitive retail environment in which services succeed by creating differentiated offerings rather than concentrating only on content historically defined as 'premium'. For instance, OTTs have increased the availability of quality international and local general entertainment content, while free-to-air broadcasters such as eMedia and the SABC, and subscription services like MultiChoice have invested heavily in popular local productions.
- 54 Consequently, these developments have broadened the scope of content available to build an audience, removing the notion of 'essential' or 'must-have' content. Securing rights for what might have been referred to in the past as 'premium' content (e.g First Window Hollywood movies and series, and live sport) is not required to build an audience and no longer guarantees market success, as evidenced by MultiChoice's declining subscriber numbers in spite of it including such content in its services. This contrasts sharply with the growth of global OTTs and domestic players such as Openview which have expanded their offering and continue to thrive without so-called 'premium' content. Indeed, some of the most popular content on Openview is international telenovelas dubbed into Afrikaans.
- 55 Because of these trends too, it is impossible to reliably delineate between so-called 'premium' and non-premium content. Indeed, as is evident from the submission of various players, premium content is a highly subjective term. For example, both the SABC and eMedia consider local content to be premium content and a key differentiator.¹⁷
- 56 It follows that the absence of specific programming or genre of content from an AV service retailer's offering has no bearing on its ability to compete and is not, in itself, indicative of ineffective competition downstream. This is because no single piece of content is essential for a retailer to build an audience as retail providers are able to invest in alternative events, formats and genres of content to curate an attractive offering. For example, it is clear from the observed competitive dynamics (as described above) that the broadcast rights for South African rugby are not indispensable for competition downstream nor do such

¹⁷ See The SABC (2021), *SABC Presentation Draft Findings Document on the Inquiry Into Subscription Television Broadcasting Services*: slide 25; and eTV (2021), *ETV Presentation: Draft Findings Document on the Inquiry Into Subscription Television Broadcasting Services*: slide 27

rights constitute their own market.¹⁸ This is evidenced by Openview's sustained, rapid growth in spite of it not investing in acquiring any live sports content including South African rugby.

- 57 Similarly, the number of bidders for the rights to any particular piece of programming content is not indicative of ineffective competition upstream. What matters most is whether the rights are generally contestable should a provider be willing to make the relevant investments and, more broadly, that sufficiently alternative attractive content is available for competitors to build viable audiences.
- 58 The evidence shows that OTTs can purchase content should they want to. Similarly, while FTA providers by virtue of their business model have more limited budgets, they too are able to acquire rights directly from the plethora of providers as there is no shortage of attractive content (including local content). In fact, the SABC's CEO indicated at the hearing that the SABC acquires rights directly from sports bodies with no difficulty. This is consistent with paragraph 21 above which reflects the types of sports rights that the SABC has licensed directly from sports rights owners. By way of example, some of the rights held by the SABC include the EPL, Bundesliga, and rights to inbound tour games for Cricket South Africa.
- 59 It appears that much of the concerns raised with respect to competitors' access to content relates to affordability of rights, particularly for the public broadcaster. This, however, is a public interest issue rather than a competition issue. Indeed, when there is increased demand for, and therefore more competition, for sports rights – the result is that there is a concomitant increase in the price of those rights. This is consistent with economics theory and would in fact make it more difficult for the SABC to afford rights given its financial constraints. This has been demonstrated by the fact that the entry and expansion of OTT providers, whose growing participation in rights markets (including sports) both domestically and internationally, has contributed to increased competition and higher content acquisition costs. It should be noted that, the carving out of any specific set of rights to the benefit of a particular player would limit rather than enhance competition for those rights: this could well provide some players with an anti-competitive advantage and diminish the value of the rights themselves to the detriment of the rights owner. The same dynamics apply to other categories of so-called 'premium' rights.

¹⁸ With respect to market definition and as per paragraph 97 of MultiChoice's March 2025 submission, from an economic perspective the relevant question under a SSNIP test at the retail level is not whether any die-hard rugby or content-specific loving fan would switch, but simply whether enough consumers would switch to render a SSNIP unprofitable. In other words, the SSNIP considers the marginal consumers (i.e. those least wedded to any particular content and hence most likely to switch in response to a price increase). If there are enough consumers that are attracted by offerings that do not include certain content (i.e. the content is not "must-have"), then it follows broadcasters and VOD providers can substitute between such different types of content at the wholesale level.

Confidentiality

- 60 At the hearings, some third parties took issue with the Authority not making MultiChoice's confidential information, that the Authority relied on in its Supplementary Discussion Document, available to the public.¹⁹
- 61 As the Authority is aware, section 4D(2) of the ICASA Act grants the Authority the power to determine whether or not confidentiality will be granted in respect of specific information that is subject to a request for confidentiality. The information that the Authority must treat as confidential information includes:
- 61.1 financial or commercial information *"the disclosure of which is likely to cause harm to the commercial or financial interests of such person"*;²⁰
- 61.2 information of which the disclosure could reasonably be expected *"to put the person at a disadvantage in contractual or other negotiations" or "to prejudice the person in commercial competition"*;²¹ and
- 61.3 business plans of a licensee.²²
- 62 If the Authority determines that the request for confidentiality cannot be granted, *"the party providing the information must be given an opportunity to withdraw the information that is the subject of the confidentiality request"*.²³
- 63 The confidential information belonging to MultiChoice that the Authority relied on in its Supplementary Discussion Document is information over which the Authority has already granted MultiChoice's requests for confidentiality, in its letter dated 7 March 2025. In addition, some of the confidential information referred to in this supplementary submission constitutes information over which the Authority has already granted MultiChoice's requests for confidentiality in its letters dated 7 March 2025 and 5 June 2025 (the remainder of the information shaded in pink constitutes confidential information over which MultiChoice now requests confidentiality for the reasons set out in the schedule attached to this submission).
- 64 The Authority was *functus officio* once it granted MultiChoice's request for confidentiality on 7 March 2025 and 5 June 2025, and therefore has no statutory power to revoke its decision on confidentiality.
- 65 We reiterate that the Authority does not have the power to make confidential information, over which it has already granted confidentiality, available to third parties.
- 66 Additionally, in terms of the new information over which MultiChoice now requests confidentiality (for the reasons set out in the schedule attached to this

¹⁹ These parties also raised this in their written submissions

²⁰ Section 4D(4)(b) of the ICASA Act

²¹ Section 4D(4)(c) of the ICASA Act

²² Section 4D(4)(e) of the ICASA Act

²³ Section 4D(3) of the ICASA Act

submission), the Authority is not empowered to make such information available to third parties. It must first consider the request for confidentiality and make a determination in terms of section 4D(2) of the ICASA Act. If the Authority determines that the request for confidentiality cannot be granted, MultiChoice must, in terms of section 4D(3), be given the opportunity to withdraw the information.

Scope of the Inquiry

- 67 The Inquiry is being conducted in terms of section 4B of the ICASA Act and section 67 of the Electronic Communications Act, 36 of 2005 ("ECA").
- 68 Before the Authority may, under section 67(4) of the ECA, impose pro-competitive licence conditions on a licensee, it must first establish the following key jurisdictional facts set out in section 67:
- 68.1 the relevant market/s in which subscription broadcasters provide services;
- 68.2 whether competition is effective or ineffective in that/those market/s, in particular with reference to the dynamic character and functioning of the market, to be assessed on a forward-looking assessment of the relative market power of the licensees in the market/s; and
- 68.3 **only if** it has determined that there is ineffective competition in a relevant market, whether (i) a licensee has significant market power in that market and (ii) the market failure can be remedied by a pro-competitive licence condition.
- 69 In the Supplementary Discussion Document, the Authority correctly determined that there is no ineffective competition in any relevant market. Consistently with that determination, the Authority correctly determined that no licensee has significant market power in any relevant market.
- 70 In an evident attempt to advance narrow commercial interests under the guise of public interest concerns, some parties in the hearings and in the questions addressed to MultiChoice have raised matters that fall outside the lawful boundaries of this Inquiry, including matters concerning the Must Carry Regulations²⁴ and the Sports Broadcasting Services Regulations.²⁵
- 71 Determination of those issues is not only outside the scope of the Inquiry, but would also involve the consideration, by the Authority, of (i) irrelevant considerations; and (ii) bald factual allegations that MultiChoice has not had an opportunity to address. The Authority would, in other words, be acting unlawfully, irrationally, and procedurally unfairly if it were to consider those issues as part of this Inquiry.

²⁴ Published under General Notice 1271, Government Gazette 31500 on 10 October 2008, and last amended by General Notice 1951, Government Gazette 46148 on 31 March 2022

²⁵ Published under Government Notice R275, Government Gazette 33079 on 7 April 2010, and last amended by General Notice 469, Government Gazette 44569 on 13 May 2021

- 72 Notwithstanding this, many of the irrelevant matters raised by third parties are already addressed or have been considered comprehensively by the Authority or the Minister through separate processes. For example, the issues improperly raised in this Inquiry were ventilated in comprehensive consultation processes conducted by the Authority in terms of the relevant statutory provisions (sections 60(1), 60(2) and 60(3) of the ECA), in the context of the amendment of the Sports Broadcasting Regulations and Must Carry Regulations in May 2021 and March 2022 respectively.
- 73 We respectfully urge the Authority, in considering our supplementary submissions and other submissions before it, to maintain the rigour that underpinned its evaluation and findings in the Supplementary Discussion Document, and not entertain issues that fall to be considered under other legislative powers in another forum.