

**28 June 2022**

Chairperson: Signal Distribution Council Committee  
Independent Communications Authority of South Africa  
350 Witch-Hazel Avenue  
Eco Park, Centurion

By email: [signaldistribution@icasa.org.za](mailto:signaldistribution@icasa.org.za)

Dear Chairperson

**RE: INVITATION FOR WRITTEN REPRESENTATIONS ON THE DISCUSSION DOCUMENT ON SIGNAL DISTRIBUTION**

1. MultiChoice and M-Net welcome the opportunity to comment on the Authority's Discussion Document on the Market Inquiry into Signal Distribution services in South Africa.
2. Our inputs and comments follow below, and we reserve the right to make oral representations should it become necessary.
3. We trust that these submissions will be of assistance to the Authority.

Yours sincerely



**Thabo Makenete**

GM: Technical Regulatory

## **MULTICHOICE AND M-NET COMMENTS ON THE DISCUSSION DOCUMENT IN RELATION TO THE MARKET INQUIRY INTO SIGNAL DISTRIBUTION SERVICES**

1. MultiChoice and M-Net welcome the opportunity to provide inputs on the Discussion Document on the Market Inquiry into Signal Distribution Services (“Discussion Document”).
2. We make the following high-level comments to assist the Authority in its deliberations. Our comments focus on the following areas:
  - 2.1 Those parts of the Discussion Document where there are significant inaccuracies and / or conflation of concepts;
  - 2.2 The approach adopted in defining relevant markets; and
  - 2.3 The assessment of competition and significant market power (“SMP”).
3. As our comments below demonstrate, we are concerned that the Discussion Document may inadvertently create confusion and potentially lead to erroneous conclusions. As such, we urge the Authority to address the issues raised.
4. Please note that our comments are confined to audio-visual services and do not extend to sound broadcasting services.

### **INACCURACIES AND CONFLATION OF DIFFERENT CONCEPTS**

5. At the outset, we highlight some material inaccuracies and/or conflation of concepts which we believe need to be addressed.

#### Conflation of transmission technology and retail services

6. In paragraph 3.1.1 of the Discussion Document, the Authority explains key concepts that it considers as falling broadly under the category of broadcasting transmission services. But there is a conflation of transmission technology and retail services which creates confusion.

7. For example, when describing satellite television transmission, the Discussion Document refers to DStv, StarSat, OVHD and “DTH”. But DStv, StarSat and OVHD are retail audio-visual services supplied to end-consumers by way of multi-channel bouquets. These services are not “satellite transmission” despite the fact that they are delivered to consumers utilising satellite transmission. “DTH”, on the other hand, is an acronym generally used to refer to direct to home satellite transmission of the services.
8. To be clear the legislative framework separates broadcasting services (SABC, DStv, e.tv) from broadcasting signal distribution services (ECNS licensees such as Sentech, Orbicom, Platco). It is clear that the party engaged in transmission, unless a broadcaster has elected to self-provide and also holds an ECNS licence, is in fact the signal distributor (the ECNS licensee).
9. **We recommend that the Authority be careful not to conflate examples of retail services with examples of transmission technologies and amend the document accordingly.**

#### Reference to Must Carry obligations

10. In paragraph 3.3.2 of the Discussion Document, reference is made to subscription broadcasters (SBS) being obliged to carry the channels of the Public Broadcaster under the Must Carry Regulations. The reference to Must Carry Regulations is confusing since the Must Carry obligations are unrelated to signal distribution. In terms of Must Carry, SBSs are required to simultaneously retransmit the public broadcaster’s programmes on their broadcast services and the parties must accordingly enter into commercial negotiations and reach agreement on the terms. It is not a signal distribution arrangement between a broadcast service licensee and a signal distributor (ECNS licensee).
11. **We therefore propose that references to the Must Carry Regulations be deleted from the signal distribution services Inquiry.**

## References to “Distributors” under paragraph 3.4.1 of the Discussion Document

12. In describing the broadcasting market, the Discussion Document refers to Distributors, which are described in paragraph 3.4.1 as “*companies that distribute broadcast programming by subscription agreements out to viewers, such as StarSat on satellite networks*”. But it is not clear how StarSat differs from other broadcasters such as the SABC, MultiChoice and e.tv. The SABC, MultiChoice, e.tv and StarSat all provide their services to viewers/subscribers using various delivery mechanisms. The distinction which the Authority makes is therefore artificial, confusing and unnecessary.
13. **MultiChoice proposes that to the extent the terms “broadcasters” and “distributors” are intended to refer to retailers of audio-visual services, they should rather be simply referred to as “broadcasters” and references to ‘Distributors’ in the rest of the Discussion Document should be changed. This will also help the Authority maintain a clearer distinction between signal ‘distributors’ and retailers of audio-visual services (including traditional broadcasters).**

## The conflation of signal distribution with commercial channel carriage arrangements

14. In paragraph 3.4.2, the Authority states that “*to get content distributed out to end users, broadcasters have to contract directly with providers of broadcasting transmission services (e.g. Sentech) or with a distributor of broadcast content (such as DStv or StarSat).*” But this is incorrect and it is important that, in its assessment, the Authority avoids creating an erroneous situation in which commercial channel carriage agreements are confused with signal distribution agreements – they are not the same thing. Commercial channel carriage agreements are not proxies or substitutes for signal distribution service agreements. In signal distribution agreements, the broadcaster (e.g. e.tv<sup>1</sup>)

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<sup>1</sup> Assume for illustrative purposes that e.tv is the licensee that owns and supplies the OpenView service.

concludes an agreement with a signal distributor (e.g. Sentech) for the purposes of having the signal distributor transmit the broadcaster's service and deliver it to the consumer as a fully-fledged standalone service of the broadcaster (e.g. the OpenView service).

15. On the other hand, when commercial channel agreements are concluded, channels are acquired at the discretion of the broadcaster as an input that goes into the creation of a retail service (e.g. OpenView) that the broadcaster (e.tv) then supplies to consumers. To deliver this compiled service (the OpenView bouquet), the broadcaster requires the means to deliver the service to the consumer which is achieved by way of an agreement with a signal distributor (e.g. Sentech or self-provisioning) or via the internet. Signal distribution services are therefore an input required for delivering the compiled service to end consumers whereas channels/content acquired under commercial channel carriage agreements are an input into the compilation of the retail services of broadcasters.

**16. As such, we recommend that paragraph 3.4.2 be substantially revised to ensure that no confusion is inadvertently created. This can be achieved by removing references to what are commercial content/channel carriage agreements as they do not have anything to do with signal distribution.**

#### Exclusion of the internet delivery from the concept of signal distribution

17. In paragraph 3.5, the Authority refers to streaming services as alternative technology platforms and concludes that these are not considered as signal distribution services. Streaming/OTT services are retail services supplied to end consumers in competition with retail services of traditional broadcasters. We agree that these streaming/OTT services are not signal distribution, but it is important to note that they are delivered to consumers via the internet which is the delivery mechanism. The alternative to traditional signal distribution is thus not the streaming/OTT services themselves, but the internet which is used to deliver the services to consumers.

18. As indicated above, the use of the internet as a delivery mechanism for audio-visual services (both for traditional services and those of new streaming services) is viable, has become more established and ubiquitous and will, on a forward-looking basis, become more entrenched. As such, characterising internet delivery of audio-visual services in the manner done in paragraph 3.5 ignores market reality. As things stand, there is ample evidence that retailers of audio-visual services have the option of delivering their services to consumers via the internet rather than having to use traditional signal distributors such as Sentech.

19. It is also important to highlight that for other delivery technologies to constitute an alternative, they do not have to have 100% or the same penetration levels, as suggested in paragraph 3.10.1.2 of the Discussion Document. It is apparent from a cursory observation of the rapid developments in the audio-visual services market that the internet is a viable alternative mechanism for delivering audio-visual services to consumers. Large global OTT services have launched and expanded rapidly in South Africa, local OTT services and traditional broadcasters are delivering their own services to consumers via the internet. This is in part because of declining data prices, increasing access to the internet and the proliferation of internet capable devices. The trends can only deepen on a forward-looking basis.

#### The identification of signal distributors in the market

20. In the Discussion Document, the Authority appears to identify signal distributors in the market as only Sentech and Orbicom. This ignores both StarTimes Media (South Africa) Proprietary Limited<sup>2</sup> and e.tv/Platco which is part of eMedia. Of all the players, Sentech is the common-carrier providing signal distribution services to several broadcasters.

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<sup>2</sup> <https://www.icasa.org.za/uploads/files/List-of-Individual-ECS-and-ECNS-licences.xlsx>

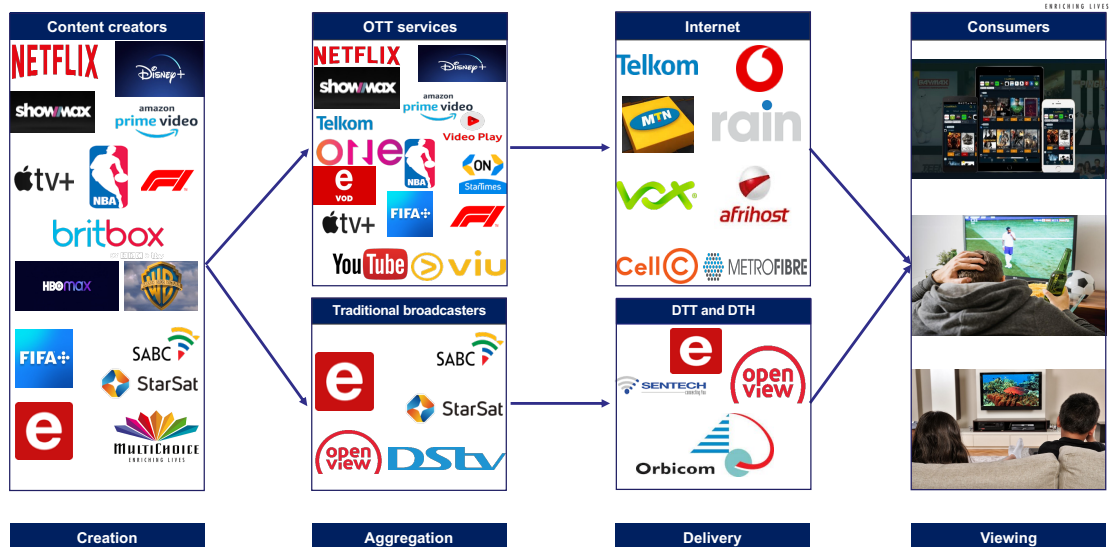
The assumption that all audio-visual services delivered via satellite require a subscription (paragraph 3.9.3)

21. While it is correct that certain satellite services are subscription-based, it is important to note that not all services delivered by satellite require a subscription (e.g. OpenView). Satellite delivery is not limited to subscription-based services and as such, has nothing to do with whether consumers pay a subscription fee. In fact, in South Africa we have free to air, free to view and subscription-based satellite services

Our inputs on the industry value chain and how services are delivered to consumers

22. In order to assist the Authority in understanding the value chain, we have provided a graphic below depicting the value chain. This explains how audio-visual services are compiled, the players at various levels of the value chain, and how the audio-visual services are delivered to consumers. As can be seen in the graphic, signal distribution services fall under the **delivery mechanisms** - how the audio-visual services are delivered from the provider to the end consumer. Note that the players under each section are not necessarily exhaustive. For example, the SABC's programming can be accessed via the internet and it has announced that it is in the process of working on launching its own OTT service.

## Value chain as it looks today in SA



NB: Most providers audio-visual services (traditional broadcasters and OTT) are active at all levels of the value chain – SABC, eMedia and MultiChoice included

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## COMMENTS ON MARKET DEFINITION

23. The conceptual framework outlined by the Authority on the approach to market definition is broadly consistent with the common approach used in defining relevant markets. It is, however, worth emphasising that as the Authority seeks to apply this conceptual framework in this Inquiry, it does so in a manner that focuses on competitive constraints, is grounded in a proper application of economics principles and is supported by evidence. Even more important, the analysis and findings need to be grounded in market reality.

24. This is particularly important because, at its core, signal distribution is concerned with how providers of audio-visual services get their service (whether bouquets or a single channel) to the consumer. As technology has advanced and evolved over the years, various ways of delivering the services to consumers have either emerged or become more established. For example, as stated earlier, it is indisputable that the use of the internet as a means of delivering services to consumers has become more established and more ubiquitous. Now both traditional broadcasters (FTAs and SBSs) and OTT services provide audio-visual services via the internet. This phenomenon is not limited to audio-visual services,



but also applies to South African radio services which are now widely available over the internet on websites and applications.

25. It is common-cause that, on a forward-looking basis, the use of the internet as a means to provide audio-visual services to consumers will only become more entrenched. As a result, reliance on traditional forms of delivery (traditional signal distribution services) is going to become less and less important. In fact, OTT services have no need at all for traditional signal distribution services provided by the likes of Sentech.
26. The preceding comments also apply to the approach that the Authority follows in seeking to define relevant retail markets. The Authority should avoid artificially defining relevant markets and should use terminology that best reflects the services that are being provided to end-consumers. At the retail level, providers are supplying competing audio-visual services to consumers. These services are delivered to consumers via the internet, via satellite, via digital terrestrial and analogue transmission. All these services compete for both audiences (who are subscribers in the case of SBSs) and/or advertisers meaning that there is a broad retail market for the provision of audio-visual services to end consumers.
27. The Authority would be hard-pressed to suggest that the SABC services delivered via analogue do not compete, for example, with the satellite-delivered OpenView service for both audiences and advertisers. The same OpenView service competes with subscription-based audio-visual services. It is also important to properly capture that the competing services being provided to consumers are the broader audio-visual services, which include those delivered via analogue transmission, DTT, satellite and the internet. There is therefore, no basis for the Authority to conclude that there is a separate relevant market for the provision of analogue terrestrial television content to end-viewers and another separate relevant market for the provision of digital terrestrial content broadcast to end-users as reflected in section 5.2 of the Discussion Document.

28. At the wholesale level (paragraph 6.1 of the Discussion Document), there is a suggestion that satellite is not a real alternative to the SABC because of its regulatory obligations. This is an issue peculiar to the SABC and cannot be assumed to apply to the entire market. Nor is it forward looking, as the current regulatory obligations arose out of the Broadcasting Digital Migration Policy, not legislation, and if government policy were to change in the future to permit further coverage by the satellite platform the current regulatory obligations imposed by the Authority would no doubt be amended accordingly. However, it is also important to state that, at a conceptual level, it is not appropriate to define relevant markets by reference to the peculiar circumstances of a single player in the market. The circumstances may not apply to other players and those players would be capable of switching from terrestrial signal distribution to satellite signal distribution and even to delivery via the internet.

29. Further, the distinction between the provision of analogue and digital terrestrial broadcasting services in paragraph 6.1 and the provision of analogue and digital managed transmission services for terrestrial television broadcasting in paragraph 6.2, creates unnecessary confusion. A provider like Sentech provides end-to-end signal distribution services for both analogue and DTT. It is unclear why the distinction is needed.

**30. We recommend that the Authority simplifies these unnecessary complexities by considering the end-to-end signal distribution function (covering both terrestrial and satellite) as the narrowest relevant market to begin the exercise of defining relevant markets. We are also of the view that, when viewed properly in light of market reality, traditional signal distribution (whether terrestrial or satellite) competes with delivery of audio-visual services via the internet, as this is an option available to and used by retailers of audio-visual services.**

## **COMMENTS ON COMPETITIVE ASSESSMENT AND SMP**

31. MultiChoice notes that in its assessment of the effectiveness of competition, the Authority seem to consider Orbicom as a potential competitor to Sentech. As highlighted above, identification of just Sentech and Orbicom ignores StarSat and Platco.
32. As indicated above, it is also important to make sure that the competitive assessment includes all available alternative delivery mechanisms that providers of audio-visual services use to provide their services to consumers. This will help avoid assessments and conclusions that are not in line with market realities. It is also important to highlight that the competitive assessment and findings on SMP are affected by the accuracy with which the relevant markets have been defined. As such, we recommend that the Authority has regard to our comments on the relevant markets and only once those issues are resolved can the competitive assessment be properly undertaken.
33. In paragraph 7.1.5.1 the Authority suggests that satellite is not an alternative because only a minority of the population have the equipment needed to receive satellite broadcasting. This proposition has factual limitations. As things stand, both DTT and satellite-delivered audio-visual services require end-user equipment (set-top boxes and either an antenna or a dish). Further, a significant portion of the population (TV households) are served via satellite delivery, rather than by DTT.
34. In addition, references that are made in relation to TV licence fees in paragraph 7.1.5.2 need reconsideration. TV licence fees are an irrelevant consideration for the issues involved in signal distribution and we would recommend that the Authority leaves these out from its considerations.

## **CONCLUDING REMARKS**

35. As stated at the outset, MultiChoice and M-Net appreciate the opportunity to share these high-level views on the Discussion Document. We trust that the submissions will be of assistance to the Authority.