

**MULTICHOICE PTY LTD'S SUBMISSIONS:**

**ICASA'S SUPPLEMENTARY DISCUSSION  
DOCUMENT IN THE INQUIRY INTO  
SUBSCRIPTION BROADCASTING TELEVISION**

**24 MARCH 2025**

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Glossary	
Term	Definition
AV services	Audio-visual content service which is delivered over electronic communications networks
FTA	Free-to-air: provision of a traditional linear TV service to consumers without payment of a subscription fee
Inquiry	ICASA Inquiry into Subscription Television Broadcasting Services, instituted under Notice 401, Government Gazette No. 40133 of 11 July 2016
OTT	Over the Top: provision of AV services to consumers via the open internet, where anyone with a broadband connection can access the service
Pay TV	Provision of a traditional linear broadcasting service to subscribers upon payment of a subscription fee
SDD	Supplementary Discussion Document: Inquiry into Subscription Television Broadcasting Services gazetted under Notice 5647, Government Gazette No. 51848 of 6 January 2025

## A. INTRODUCTION

- 1 The Authority's December 2024 Supplementary Discussion Document in the Inquiry into Subscription Television Broadcasting Services ("**SDD**") is the outcome of a long-running inquiry and was preceded by the Authority's first discussion document in August 2017<sup>1</sup> and the draft findings document published in April 2019.<sup>2</sup> The SDD reflects a much keener appreciation of how the market in which traditional linear subscription broadcasting ("**Pay TV**") services are provided has changed not only in the past decade but, in particular, since this Inquiry commenced in 2016. The SDD also engages more objectively with the evidence relating to the evolution of competition and competitive dynamics in the rapidly evolving industry in which audio-visual ("**AV**") entertainment services are provided. As recognised in the Authority's preliminary findings set out in the SDD ("**preliminary findings**"), the market has, over several years, tended towards greater levels of competition. MultiChoice, like other AV services, therefore faces effective levels of competition, which are likely to intensify.
- 2 The Authority's decision, in May 2022, to engage in further public consultation in order to identify "*ongoing developments in what is a rapidly changing market*" and "*take account of all relevant and current developments*"<sup>3</sup> has, accordingly, resulted in more robust, preliminary findings that take account of and reflect current market realities.
- 3 MultiChoice's overarching submissions are summarised below and Appendix 1 contains direct responses to the Authority's specific questions in the SDD.

### In the market for retail distribution of AV entertainment services:

- 4 The Authority critically recognises that the proliferation of broadband and OTT services has profoundly redrawn the competitive landscape in the distribution of retail AV services. The Authority notes: "*...the Authority recognises the competitive constraint posed by OTTs on subscription services*".<sup>4</sup>

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<sup>1</sup> Discussion Document: Inquiry into Subscription Television Broadcasting Services published by ICASA and gazetted under Notice 642, Government Gazette No. 41070 of 25 August 2017

<sup>2</sup> Draft Findings Document: Inquiry into Subscription Television Broadcasting Services published by ICASA and gazetted under Notice 573, Government Gazette No. 42391 of 12 April 2019

<sup>3</sup> Media release, Independent Communications Authority of South Africa, 9 May 2022

<sup>4</sup> SDD, para 2.6.3

5 In coming to this conclusion, the Authority points to the evidence in relation to: (i) the significant declines in MultiChoice subscriptions amidst increasing OTT subscribers and (ii) the evolution of case law and regulatory frameworks in response to the ever-changing dynamics of the market.

6 The Authority's recent preliminary findings contain similar conclusions as were reached by the Department of Communications and Digital Technology in its Draft White Paper on Audio and Audiovisual Content Services Policy: A New Vision for South Africa (the "**Draft White Paper**").<sup>5</sup> Similar sentiments on the impact of OTTs (across different market segments, including at the lower end) also feature in statements made by the Minister of Communications and Digital Technologies in response to questions regarding the South African Broadcasting Corporation ("**SABC**") Bill of 2023. In particular the Minister stated that:

*"Additionally, the Bill provides the SABC with an option to create new channels and digital platforms, thereby expanding its offerings and attracting even more viewers. By offering a wider selection of channels, the SABC can better compete with other broadcasters and streaming platforms, ultimately enhancing its competitiveness in the industry. This will drive long-term profitability which is a key component of financial sustainability of the public broadcaster."*<sup>6</sup> (emphasis added)

7 As a result of these evolving competitive dynamics and the presence of effective competition at all tiers of the market, the Authority appropriately finds that no particular market participant or provider of retail services has significant market power ("**SMP**").<sup>7</sup> In coming to this conclusion, the Authority explicitly highlights the severe effects of the rise of OTT services on MultiChoice's subscriber base, stating:

*"Most notable to the Authority from evidence gathered for the period after 2019 is that MultiChoice has been experiencing significant subscriber losses to competing services pointing to increased levels of competition, mainly from OTT services."*<sup>8</sup>

8 The Authority acknowledges the significant evolving competitive dynamics within the retail market, particularly the rise of OTT services and the impact on providers of Pay TV services. Following that assessment, the Authority's preliminary view is that the retail

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<sup>5</sup> Draft White Paper on Audio and Audiovisual Media Services and Online Content Safety: A New Vision for South Africa (July 2023), published under notice number 1934 of 2023, Government Gazette number 49052, 31 July 2023 ("**Draft White Paper**")

<sup>6</sup> Question NW3367 to the Minister of Communications and Digital Technologies, 11 December 2023. Available from: <https://pmg.org.za/committee-question/24358/> [last accessed 14 February 2025]

<sup>7</sup> SDD, paras 4.17 to 4.18

<sup>8</sup> SDD, para 4.18

market should be segmented into retail distribution of (i) "basic-tier" subscription television services and free-to-air ("**FTA**") services and (ii) "premium" subscription television and OTT services.<sup>9</sup>

- 9 In defining the relevant markets, the Authority has taken crucial steps forward in its recognition of the radically changed and continuously evolving competitive landscape affecting all AV service providers and the industry as a whole. The SDD reflects that the Authority has sought to apply a more rigorous and evidence-based analysis of factors impacting the industry than previously.
- 10 MultiChoice has carefully considered the SDD and commends the Authority on the significant positive steps it has taken in its analytical approach. However, MultiChoice submits that several of the Authority's important factual findings in the assessment of competitiveness and SMP, appear not to be recognised in the Authority's assessment and definition of the relevant markets. MultiChoice believes that the Authority's own evidence and preliminary findings support the fact that competition occurs far more broadly than within narrow, separate "basic tier" and "premium" retail markets.<sup>10</sup> The Authority's evidence and findings show that competition in the retail market for the distribution of AV services is broader and more fluid than these narrower segments. Indeed, this broader delineation flows logically from: (i) the Authority's own evidence and preliminary findings alone, and (ii) even more so when read with previous MultiChoice submissions (with updated data provided in this submission where available).
- 11 In particular MultiChoice demonstrates in this response that:
- 11.1 OTT services exert a significant competitive constraint across the entire market, including the "basic tier"; and
- 11.2 the competitive interaction between MultiChoice and FTA services extends beyond the lower tier.

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<sup>9</sup> SDD, para 1.14. Under this approach, OTTs are considered to compete primarily with higher tier Pay TV services, while FTA television is seen as competing within the lower tier.

<sup>10</sup> In 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, as explained more fully in these submissions.

- 12 Nevertheless, MultiChoice agrees that the Authority's main findings on effectiveness of competition and the absence of SMP (in particular) remain valid, and sets out in these submissions why, regardless of whether the market is delineated on a narrower or broader basis, the Authority's conclusions on the nature and state of competition in retail AV service provision, including Pay TV, are correct.

**In relation to the assessment of the wholesale content market:**

- 13 The Authority's SDD also rightly highlights the significant fluidity and variety of content at the wholesale level of the market. This stems from the significant evolution in the retail market, because demand for content (at the wholesale level) is derived from consumption at the retail level.
- 14 The Authority importantly finds that -
- 14.1 distinguishing between premium and non-premium content is complicated (and seemingly unnecessary) by the fact that these concepts are fluid;<sup>11</sup>
- 14.2 there is no specific category of content required to compete effectively as a retail AV service provider<sup>12</sup> (whether at the lower end or higher end);
- 14.3 service providers can compete with each other using a wide range of content available from various sources – whether through in-house production<sup>13</sup> or from a "multitude of third-party independent studios and content producers";<sup>14</sup> and
- 14.4 local content in particular provides an attractive basis on which to compete.<sup>15</sup>
- 15 Collectively, these factors indicate that retailers have a diverse range of content enabling them to curate their services, attract audiences and remain competitive. The Authority accurately concludes that competition is effective, making it unnecessary to determine whether any particular market participant has SMP at the wholesale level of the market. However, the Authority's preliminary findings regarding the significant fluidity and differentiation in the content market, in terms of the nature of competition, do not align

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<sup>11</sup> SDD, paras 2.4.5.1, 2.8.7, 2.8.28, and 3.21.1.22

<sup>12</sup> SDD, para 3.21.1.22

<sup>13</sup> SDD, paras 2.8.15 – 2.8.16

<sup>14</sup> SDD, para 3.20.1.8

<sup>15</sup> SDD, paras 2.3.5.2, 2.8.4, and 2.8.17

with its preliminary view of the relevant market definition for content, which the Authority defines as distinct wholesale markets for the supply and acquisition of (i) premium sports content, (ii) premium movies and series and (iii) non-premium content.<sup>16</sup>

- 16 This inconsistency can be resolved. Since the factual findings on fluidity and differentiation are evidence-based (and thus correct), to resolve the inconsistency in the SDD, we submit that the Authority define a broader market for the supply and acquisition of AV content. That conclusion would flow from the same evidence and findings as set out in the SDD.
- 17 Nevertheless, regardless of whether the market is delineated on a narrower or broader basis, it remains the case that competition is effective at the wholesale level of the AV value chain. As a result, there is no market participant with SMP. We set out the evidence which supports these findings, in the submissions which follow.

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<sup>16</sup> SDD, para 1.15

## B. RETAIL MARKET DEFINITION

- 18 The Authority has taken important strides in identifying the real and significant shifts in the competitive dynamics pertaining to retail distribution of AV services.
- 19 The Authority's assessment of effective competition from OTT services and other AV services does not seem to carry through entirely to the Authority's preliminary market definition. The Authority's evaluation of effective competition acknowledges market dynamics demonstrating that competition from OTT and FTA services is more robust than the Authority's preliminary retail market definition suggests. We elaborate on these in this submission, commencing on page 19.

### **OTT services exert a competitive constraint on Pay TV services, including the lower and higher end of the market**

There is demonstrable evidence in the Authority's SDD that OTT services constrain all tiers of Pay TV services.

- 20 The SDD includes significant evidence of OTT services exerting a competitive constraint across the entire market, including in what the Authority has termed "basic tier", but this is not reflected in the Authority's market definition.

**When considering the general impact and growth of OTT services,<sup>17</sup> the Authority refers to declines in lower-tier DStv subscriptions as evidence of the competitive constraint exerted by OTTs.**

- 21 The Authority recognises that there is increased cord cutting<sup>18</sup> amongst not just higher-tier DStv subscribers but also lower-tier subscribers, which is driven by the proliferation of OTTs.<sup>19</sup>

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<sup>17</sup> SDD, para 2.4.11

<sup>18</sup> Cord cutting refers to Pay TV subscribers cancelling or simply not renewing their subscriptions due to a switch to OTT or FTA services (or both). SDD, para 2.4.11.7. While the Authority notes MultiChoice has cited loadshedding and declining disposable income (due to poor performance of the economy) as some of the factors contributing to declines in lower-tier subscriptions, MultiChoice has long held the view that OTT services are the main contributing factor to declines in subscriptions to DStv bouquets across all tiers.

<sup>19</sup> Cord shaving refers to Pay TV subscribers downgrading to a lower-priced bouquet and replacing the content they no longer get with other audio-visual services (e.g. OTT or FTA services)



- 22 One such example is the recognition by the Authority that DStv Family (a lower-tier DStv bouquet),<sup>20</sup> has experienced significant declines in subscriptions. This has contributed to the steady overall decline in DStv subscribers over the past five years.

*"The Authority notes that Multichoice has been experiencing a steady decline in subscribers since 2019 while in the same period OTTs have been adding subscribers. In this regard, the Authority notes that in the DStv Premium bouquet, there has been a decline of approximately [Redacted] between 2016 and 2023. This has lowered the number of premium bouquet subscribers to under 1 million, and the overall number of MultiChoice subscribers to just above 7 million."*<sup>21</sup> (emphasis added)

*"...the information provided to the Authority reflects that loss of subscribers has not been limited to just the DStv Premium bouquet. Between November 2021 and November 2023, it has experienced significant subscriber losses ranging between [Redacted] to its DStv Compact Plus, DStv Compact and DStv Family bouquets."*<sup>22</sup> (emphasis added)

**The Authority also finds that there has been increased cord shaving amongst lower-tier bouquets.**

- 23 The Authority also recognises that there is increased cord shaving amongst higher and lower-tier DStv subscribers in its definition of the retail market.<sup>23</sup> This includes DStv Family and DStv Access, and across all DStv bouquets generally. This demonstrates that "premium" and "basic-tier" subscribers are downgrading to lower-priced DStv subscriptions while taking up OTT services; or in the alternative rely more on OTT services. In light of the declines in subscriptions across DStv bouquets, the Authority has recognised that MultiChoice is facing increasing competition from OTT services.<sup>24</sup> This is correct because the revenue loss experienced as a result of cord shaving evidences the constraint that OTT services exert on all tiers of Pay TV service. This is not carried through in the Authority's preliminary retail market definition particularly in the "basic tier".

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<sup>20</sup> There are six DStv bouquets and they are categorised as follows:

- DStv Premium and DStv Compact Plus are termed higher-tier or 'premium' bouquets by MultiChoice, whereas DStv Compact is a 'mid-market' bouquet. The Authority categorises all three of these bouquets as 'premium' subscription broadcasting services.
- DStv Family, DStv Access and DStv EasyView are termed lower-tier or 'mass market' bouquets by MultiChoice. The Authority categorises all three of these bouquets as 'basic-tier' subscription broadcasting services

<sup>21</sup> SDD, para 2.4.11.6

<sup>22</sup> SDD, para 2.4.11.7

<sup>23</sup> SDD, para 2.4.10.2

<sup>24</sup> SDD, para 3.20.1.14

*"The Authority recognizes that cord stacking can work through cord-shaving behaviour where subscribers downgrade their subscription and take up an OTT service. The Authority has been provided with information suggesting that there has been an increase in cord-shaving particularly in the DStv Compact Plus, DStv Compact, DStv Family, and DStv Access bouquets."*<sup>25</sup> (emphasis added)

**The Authority recognises that OTT service providers are increasingly offering mobile-only subscriptions and bundled deals, by combining OTT mobile-only subscriptions with mobile data, often at discounted rates.**

- 24 As canvassed in the Authority's SDD<sup>26</sup> and MultiChoice's various submissions to the Authority during this Inquiry,<sup>27</sup> consumers are increasingly watching AV content on several devices other than a television set, such as mobile devices and phones. This provides consumers with flexibility in their viewing of AV content.
- 25 Several OTT service providers are increasingly offering mobile-only subscriptions for a lower monthly subscription fee. This caters for changing consumption habits and makes OTT services more accessible to all consumers. The offering of lower-priced mobile-only subscriptions (amidst already-declining data prices) broadens the range of products offered by OTTs, thus providing an additional dimension to the evolving competitive constraint exerted by OTT services.
- 26 Indeed, when assessing whether competition is effective, the Authority notes:

*"Operators across the board are also offering OTT related price bundles, with lower effective rates per MB."*<sup>28</sup>

*"In the South African market, the Authority sees an increase in the phenomenon of offering access to discounted data services in addition to subscribing to a television or video-on-demand service."*<sup>29</sup>

*"OTT services like Netflix which used to not have advertising-supported services are expanding to now offering these services. They also include mobile versions of their services to cater for those consumers who prefer to subscribe to the service at a lower price."*<sup>30</sup> (emphasis added)

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<sup>25</sup> SDD, para 2.4.10.2

<sup>27</sup> Most recently in paras 64 to 65 of the MultiChoice 15 February 2024 response to ICASA's November 2023 questionnaire

<sup>28</sup> SDD, para 2.4.9.5

<sup>29</sup> SDD, para 3.20.1.5

<sup>30</sup> SDD, para 3.19.6.4

- 27 Despite recognising that OTTs' mobile-only subscriptions and bundled deals reflect dynamism present in a broader market,<sup>31</sup> the Authority's preliminary retail market definition does not reflect the competitive impact of these products or the OTTs' ability to develop increasingly competitive products across the market.

**The Authority clearly regards OTT services as a relevant competitive constraint across the entire market including at the lower tier.<sup>32</sup>**

- 28 It thus follows that OTT services should be considered as a competitive constraint across all services whether targeted at the lower or higher end.

**The Authority correctly considers OTT services to exert a meaningful competitive constraint on what it identifies as "premium" Pay TV services.**

- 29 The Authority recognises evidence of (i) declines in subscriptions to higher-tier DStv bouquets and (ii) MultiChoice's pricing of [Redacted] – DStv Premium.

- 30 It is well established, even as far back as the Authority's 2019 Draft Discussion Document, that the DStv Premium bouquet has been losing subscribers since at least 2016 when Netflix entered South Africa. The Authority considers that declines in subscriptions to higher-tier DStv bouquets alongside the rise in take up of OTT services indicates that higher-tier DStv subscribers are replacing DStv with OTT services.

*"MultiChoice has been losing a significant number of subscribers, with a significant number of those lost subscribers switching to OTT services. Between 2016 and 2023, the DStv Premium bouquet has lost [Redacted] of its subscribers to alternative services. MultiChoice submitted that in the period between 2019 and 2023, it has also been losing subscribers to its DStv Compact Plus (declining by [Redacted] between November 2021 and November 2023) and DStv Compact bouquets (declining by [Redacted] between November 2021 and November 2023).[Redacted]. Nonetheless, the Authority notes that...MultiChoice has been losing subscribers while OTTs have been rapidly gaining subscribers. Intuitively it appears that those subscribers who cancel their MultiChoice subscriptions for*

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<sup>31</sup> SDD, para 3.19.6.4

<sup>32</sup> The fact that both FTA broadcasters in South Africa (considered to be in the "basic tier" by the Authority) also have OTT offerings is reflective of the significance they attach to OTTs as an effective means to compete. The competitive constraint of OTT services is therefore also confirmed by FTA broadcasters' foray into OTT services.

whatever reason end up choosing OTTs based on the growth of OTTs in recent years."<sup>33</sup> (emphasis added)

- 31 MultiChoice's 2021 price increase for DStv Premium fell below inflation and did not keep pace with the price increase implemented by Netflix (which, conversely, has experienced significant growth in take-up of its service in South Africa). As will be discussed in more detail below, Netflix is the most common subscription-based video-on-demand ("VOD")/OTT service opted for by disconnected DStv subscribers across all tiers.

*"Further evidence that MultiChoice may be experiencing greater competitive constraints from OTT services could be observed in its pricing behaviour. In 2021 MultiChoice increased its DStv Premium bouquet price by only 1.21% (well below inflation) despite having the most comprehensive content portfolio. The Authority is of the view that one of the most significant factors, including other macro-economic factors, contributing to the lower price increases could be the loss of subscribers to alternative platforms. Furthermore, the Authority has observed that MultiChoice's price increases are not keeping pace with Netflix's own price increases."*<sup>34</sup>. (emphasis added)

**In conclusion, on the evidence in the Authority's SDD alone, the Authority should in its market definition assessment recognise that OTT services constrain all tiers of Pay TV services.**

#### **Further compelling evidence of OTT competition with all Pay TV services**

- 32 There is a wealth of other evidence, in MultiChoice's comments on the Authority's assessment of effectiveness of competition (Section C, paras 52 to 80 below), that supports of the Authority's conclusion that there is effectiveness of competition and an absence of SMP in the retail market.
- 33 That same evidence also demonstrates the extent of the competitive constraint imposed by OTT services (and other competitors such as FTA services) on all tiers of the retail market. In paragraphs 52 to 80 of this submission below, addressing the effectiveness of competition, evidence in support of a broader retail market definition is provided. This demonstrates a retail market in which differentiated AV services provide a greater competitive constraint than the Authority's market definition suggests.

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<sup>33</sup> SDD, para 2.4.10.6

<sup>34</sup> SDD, para 2.4.11.8

- 34 MultiChoice respectfully submits that if the Authority were to holistically reconsider its findings and evidence reflected in the SDD together with the other key evidence before it in this Inquiry (updated where possible), it would recognise that the retail market is more fluid and broader than the narrow preliminary market definitions adopted.

**Previous submissions to the Authority and updated data confirm that OTT services exert a competitive constraint in all tiers of the market.**

- 35 It is respectfully submitted that evidence previously submitted to the Authority with respect to the competitive constraint exerted by OTT services has not been fully considered in the Authority's SDD. This evidence is relevant to retail market definition and demonstrates that competition is effective – regardless of how the retail market is delineated.

- 35.1 The analysis of DStv subscriber behaviour<sup>35</sup> before the Authority, updated in paragraphs 55 to 64 of the effectiveness of competition section, demonstrates [REDACTED]

- 35.2 This data provides further evidence of the competitive constraints and substitutes that MultiChoice faces in the retail market. Survey evidence (paragraphs 59 to 60 below) confirms the Authority's view that consumers who are not opting for DStv (or disconnecting from DStv),<sup>39</sup> are likely opting for alternative AV services, such as paid-for and free OTT services, FTA services, or a combination. Similarly, DStv subscribers who downgrade to a lower-tier bouquet are likely replacing the portion of content no longer viewed on DStv with these alternatives.

- 35.3 The updated analysis of cord cutting, cord shaving and cord nevers amongst DStv subscribers (discussed in more detail in paragraphs 57 to 59, and 61 to 64 of the

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<sup>35</sup> Based on monthly active DStv subscriber data collected by MultiChoice

<sup>36</sup> Cord cutting refers to Pay TV subscribers who cancel or simply do not renew their subscriptions due to a switch to OTT and/or FTA services.

<sup>37</sup> Cord shaving refers to Pay TV subscribers who downgrade to a lower tier bouquet and replace the content they no longer get with OTT and/or FTA services.

<sup>38</sup> "Cord-nevers" are people that could have subscribed to traditional Pay TV services but elect not to subscribe to such services in the first place.

<sup>39</sup> Whether they were subscribers at a point in time and subsequently stopped, or in theory are in the position to subscribe to DStv but are not doing so in the first place.

effectiveness of competition section) demonstrates that OTT services and other AV alternatives have been making significant inroads at all levels of the market.

35.3.1 **There have been significant increases in net disconnections<sup>40</sup>,** [REDACTED]  
[REDACTED] For example, from FY2019 to FY2024, net disconnections amongst these lower-tier bouquets totalled [REDACTED].

35.3.2 [REDACTED]  
[REDACTED]

35.3.3 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

35.3.4 [REDACTED]  
[REDACTED]

35.3.5 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

35.3.6 **MultiChoice's real and quality-adjusted pricing also continues to decline, across all bouquets.**

**OTT services' mobile-only subscriptions address changing consumer habits and make these services more accessible.**

36 As correctly observed by the Authority,<sup>42</sup> partnerships by several OTTs with telecommunications operators to offer bundled mobile-only OTT subscription and data

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<sup>40</sup> Net disconnections is calculated as disconnections minus reconnections, which is a measure of subscribers that have voluntarily disconnected.

<sup>41</sup> In addition, [REDACTED]  
[REDACTED]

<sup>42</sup> SDD, paras 2.4.9.5 and 3.19.6.4

deals are part of the evolving strategies employed by OTT service providers<sup>43</sup> to compete in the retail distribution of AV services. High mobile and internet penetration rates, sufficient internet speeds for streaming,<sup>44</sup> and changing consumption habits whereby mobile phones are increasingly becoming a conduit for consuming AV content, make such strategies attractive to undertake. Moreover, they increase the accessibility of OTT services by making them more widely available and affordable.

**The use of free and advertising-based models by OTT services also increases accessibility to OTT services (at all tiers of the market).**

- 37 The Authority seems to restrict its assessment of OTT services to subscription VOD ("SVOD")<sup>45</sup> or paid VOD services. This is incomplete. Free, advertising-based OTT services ("AVOD") such as SABC+, eVOD,<sup>46</sup> YouTube and other social-media platforms should also be considered. Consumption patterns are changing such that free OTT services are part of the option set for all consumers across the entire market. Consumption of these services also shows that consumers have access to internet that is capable of delivering streaming services.
- 38 In addition to SVOD and AVOD, the "Freemium" model is an amalgamation of SVOD and AVOD. Freemium products provide either (i) a mix of free and paid-for content or (ii) content that is available for free with ads, but those who pay a subscription can view that content ad-free. This hybrid model, adopted by services such as eVOD and YouTube, further highlights why seeking to distinguish between separate AV markets is difficult.
- 39 Similar to mobile-only OTT subscriptions, all variations of free OTT/VOD services increase the accessibility of OTT services. As demonstrated by survey data of disconnected DStv subscribers (detailed at paragraph 69.2 of the effectiveness of competition section below), this category of free services clearly provides an additional competitive constraint at both the "basic" and "premium" tiers: For example, [REDACTED]

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<sup>43</sup> SDD, para 3.19.6.4

<sup>44</sup> SDD, paras 2.4.8.3 to 2.4.8.4

<sup>45</sup> SDD, para 2.4.4.4

<sup>46</sup> eVOD offers both free (with advertising) and paid options, with a subscription to eVOD's paid service costing R29.99 per month.

**Submissions from FTAs support OTT services as a constraint on "basic tier" Pay TV services**

40 The observed shift in competitive dynamics has also had a profound impact on FTA broadcasters. This is evident from the submissions of eMedia and the SABC to the Authority. These highlight the very real competitive constraint that they experienced as a result of the growth of OTTs, to the extent that that they found it necessary to enter the OTT space to adapt to changing consumer preferences. This is additional evidence of the fact that OTTs compete across the board including in the lower tier. The constraint by OTT services on the "basic tier" is further demonstrated by the continued growth of Openview as well as the replacement of DStv with OTT services by disconnected lower-tier DStv subscribers and DStv subscribers across the board. This is canvassed in the effectiveness of competition section.

41 eMedia's submission to the Authority acknowledges the growing role of OTTs. eMedia highlighted that the impact of OTT services on market participants would be felt by all television broadcasters, including FTA broadcasters such as itself, stating:

*"...to the extent that OTT is impacting television viewership, it will not only impact DStv but all television broadcasters including free-to-air broadcasters"<sup>48</sup> (emphasis added)*

42 Likewise, the SABC has highlighted that OTT services have had a significant impact on broadcasters. Consistent with MultiChoice's initial submissions (as supplemented in this document), the SABC argues that OTT services have changed how content is being consumed. OTTs drive uptake of their services by taking advantage of investments (by third parties) in internet infrastructure and producing local content in order to compete with traditional broadcasters.

*"OTT platforms are driving take up by producing local content tantamount to them competing with existing incumbents. They compete for creative concepts and*

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<sup>47</sup> After paid VOD services

<sup>48</sup> eMedia (2021). *Presentation: Draft Findings Document in respect of the Inquiry into the Subscription Television Broadcasting Services*, slide 25



*available production capacity (studio., staff, funding, etc.). They also have no restriction on spectrum and access."*<sup>49</sup>

- 43 In its latest Annual Report, the SABC stated that its competition does not only come from traditional broadcasters:

*"Competition to the SABC does not come only from other providers of traditional media such as radio and television. OTT has made inroads throughout Africa. The other major platforms are Prime, Netflix and Showmax, which is MultiChoice's OTT offering. Showmax has many original African productions and global sports coverage that pulls in viewers, augmented by special deals with telecom providers."*<sup>50</sup>

*"The SABC faces increasing competition not only from traditional broadcasters but also from Over-the-Top (OTT) platforms (local and international) offering streaming video content. These players enjoy economy of scale with respect to technology platforms and content".*<sup>51</sup>

- 44 Additionally, the SABC put forward that it would pursue its own strategy of focusing on a multiplatform service to increase its competitiveness in the face of the growing competitiveness of OTT services:

*"The SABC's digital multiplatform strategy is to keep pace with consumers in the market, as OTT and streaming capabilities become more feasible to the market."*<sup>52</sup>

- 45 This strategy included the introduction, in 2022, of SABC+, its own OTT service which provides viewers with access to linear and non-linear content. The importance of SABC+ as an OTT service and its contribution to the SABC's performance, as well as the growing importance of OTT services more generally, is captured in the SABC's latest annual report.

*"The SABC+ OTT platform demonstrated its relevance and strength as a broadcasting platform this fiscal year through its coverage of major sports tournaments, garnering well over a million views during this period. The success of SABC+ has demonstrated the need for an accelerated digital migration strategy. The commercialisation of SABC digital platforms remains a priority, with revenue potential tied to the effective operation of these digital platforms and improved pricing strategies."*<sup>53</sup> (emphasis added)

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<sup>49</sup> SABC (2021), *SABC submission on the ICASA Draft Findings Document in the inquiry into subscription television broadcasting services, 2019*, slides 25-26

<sup>50</sup> SABC Corporate Plan, FY2024/25 to FY2026/27, p. 17

<sup>51</sup> SABC Corporate Plan, FY2024/25 to FY2026/27, page 20

<sup>52</sup> SABC (2021), *SABC submission on the ICASA Draft Findings Document in the inquiry into subscription television broadcasting services, 2019*, slide 5

<sup>53</sup> SABC (2024). *SABC Annual Report 2024*, p. 41

**There is a growing global recognition of the constraint imposed by OTT services on traditional broadcasters.**

46 In line with South African authorities,<sup>54</sup> international authorities also note that OTT services exert a competitive constraint on traditional broadcasters. Further, these authorities do not typically confine this constraint to a particular segment of the market. This should not come as a surprise. All over the world, including in South Africa, powerful new market participants are targeting the same consumers as traditional broadcasters, and viewers are enjoying AV content on a far wider array of devices (including Smart TVs, laptops, tablets and smartphones) anywhere and at any time. Rapid growth in broadband infrastructure and connected devices has facilitated widespread consumer viewing of online video content and changed viewing patterns by consumers across the spectrum, even at the lower end of the market.

47 This has been recently canvassed in merger assessments by competition authorities in France and the UK:

47.1 In its 2024 decision regarding the recent acquisition by the Canal Plus Group of OCS and Orange Studio, the French Competition Authority acknowledged the growing convergence of linear and non-linear broadcasting and its effect on markets across the value chain.<sup>55</sup> As part of its decision, the French Authority accepted that linear and non-linear distribution modes formed part of the same market when defining the intermediate market for the publishing and marketing of channels.<sup>56</sup> With reference to the retail market, the French Authority acknowledged the convergence of linear and non-linear broadcasting, but left the market definition open as it did not impact on the outcomes of the competition assessment.<sup>57</sup>

47.2 In 2023 the UK's Competition and Markets Authority ("**CMA**") reassessed certain merger conditions imposed as part of the 2001 approval of British Sky Broadcasting Group plc increasing its shareholding of British Interactive Broadcasting Holdings

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<sup>54</sup> For example the recent Draft White Paper and the Competition Commission's Paper on Competition in the Digital Economy (Version 2), which observes that there has been "*digital disruption*" in broadcasting, with "*new technologies and the dynamic effects of convergence ... changing the way consumers access audio-visual content*", p.48

<sup>55</sup> Autorité de la concurrence (2024). Canal Plus Group/OCS and Orange Studio, Decision No.24-DCC-04 of 12 January 2024

<sup>56</sup> Autorité de la concurrence (2024). Canal Plus Group/OCS and Orange Studio, Decision No.24-DCC-04 of 12 January 2024, paras 119-127

<sup>57</sup> Autorité de la concurrence (2024). Canal Plus Group/OCS and Orange Studio, Decision No.24-DCC-04 of 12 January 2024, paras 159-162

Ltd from 32.5% to 80.1%. The CMA identified the significant changes in market structure and the competition between Pay TV and online platforms, as a key reason for the lifting of certain conditions:

*"There are now an increased number of providers of pay TV in the UK which provides customers with a greater range of pay TV options and choice in terms of the nature of the content available and the packages which content can be accessed. Providers include broadband and content providers such as BT, Virgin Media O2, and Talk Talk, as well as a range of other content providers Netflix, Amazon Prime Video, Disney+, Apple TV+, Discovery Plus and Paramount+. In addition, there is a range of online video content providers that may also compete to some extent with the established pay TV providers for consumers' attention...*

*... As a result of the presence and growth of these new providers and the increased variety of ways in which consumers can view pay TV and this content, the CMA concludes that the supply side of the pay TV market has changed considerably since 2001, with consumers now enjoying a far larger range of options for viewing content and ways in which to view it. Consequently, the CMA finds that Sky now faces a significantly increased competitive constraint on its activities from a range of rival pay TV and broader content providers..."<sup>58</sup> (emphasis added)*

- 48 Sector regulators in the UK and US have similarly noted the constraint of OTT services on traditional broadcasters in their reports:
- 49 Ofcom has also acknowledged the growing competition between traditional broadcasters and OTT services in its Media Nations report, noting the pressure placed on Pay TV services by streaming services.

*"Despite a good recovery following 2020's revenue declines, growth in traditional pay-TV revenue has been relatively flat for the past five years. The sector continues to come under pressure from the rise of SVoD services, available on a flexible basis..."<sup>59</sup> (emphasis added)*

- 50 The constraint provided by OTT services is also evident in the trends experienced in the United States of America. This is captured in the 2022 Communications Marketplace Report undertaken by the Federal Communications Commission. This report indicates that households in the US have seen a significant uptake in OTT services, while at the

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<sup>58</sup> CMA (2023). Review of merger undertakings given by British Sky Broadcasting Group plc in 2001, Final Decision, pp. 10-11

<sup>59</sup> Ofcom (2022). *Media Nations: UK 2022*, p. 40

same time the number of households subscribed to traditional broadcast television has dropped significantly.<sup>60</sup>

- 51 A range of international broadcasters have also highlighted the growing convergence of non-linear services such as OTT and traditional linear broadcasting, with many noting the impact of this competitive constraint as a risk to subscriber bases of linear offerings. Comcast for example, in its 2023 Annual report, noted the direct competition its video services business (broadcasting) faces from non-linear services such as Disney+, Netflix, Hulu, YouTube TV and others.<sup>61</sup>

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<sup>60</sup> Federal Communications Commission (2022). *2022 Communications Marketplace Report*, para. 283

<sup>61</sup> Comcast (2023), *Comcast 2023 Annual Report*, pages 5-6, 11, and 20-21

### C. EFFECTIVENESS OF COMPETITION IN RETAIL MARKETS

52 MultiChoice agrees with and supports the Authority's finding that competition is effective in both the preliminary retail markets identified by the Authority. This conclusion stems in part from the Authority's assessment of non-transitory barriers to entry, and the dynamic nature of the retail market.

52.1 In terms of **non-transitory barriers to entry**, the Authority finds that switching costs, brand loyalty, vertical integration and bundling are not insurmountable barriers to entry, given that (i) Openview has achieved "exceptional growth";<sup>62</sup> (ii) OTT services have likewise been able to grow significantly,<sup>63</sup> (iii) OTTs have partnered with telecommunications operators to offer bundled subscription and data deals<sup>64</sup>; and (iv) FTA broadcasters and most OTT providers are vertically integrated such that they are able to match any advantages of vertical integration afforded to MultiChoice.<sup>65</sup> Moreover, local content is noted to be particularly popular.<sup>66</sup> Due to the ease with which it can be produced, the Authority found it not to be a barrier to entry or growth for retail distributors of AV services.

52.2 In terms of the **dynamic nature of the market**, the Authority further points to (i) strategies implemented by FTA broadcasters, OTT service providers and MultiChoice to expand and/or enhance their offerings<sup>67</sup> and (ii) OTTs being able to gain a foothold amidst MultiChoice's loss of subscribers.<sup>68</sup> In addition, the Authority expects competition, *particularly* in the "basic tier", to be enhanced by digital migration.<sup>69</sup>

53 The Authority's finding of effective competition at all levels of the retail market is further bolstered by the significant evidence pertaining to -

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<sup>62</sup> SDD, paras 3.19.3.1, 3.19.4.3 and 3.20.1.2

<sup>63</sup> SDD, paras 3.19.4.3, 3.20.1.3, 3.20.1.6 and 3.20.1.7

<sup>64</sup> SDD, para 3.20.1.6

<sup>65</sup> SDD, para 3.19.4.7

<sup>66</sup> SDD, para 3.20.1.10

<sup>67</sup> SDD, paras 3.19.6.2 and 3.19.6.4

<sup>68</sup> SDD, para 3.20.1.7

<sup>69</sup> SDD, para 3.19.6.5

- 53.1 updated analysis of DStv subscriber behaviour, the declines in DStv subscriptions and cord shaving. This is indicative of the fact that Pay TV (and MultiChoice's DStv service in particular) is losing to OTT services and other alternative AV services in this dynamic market;
  - 53.2 OTT services gaining prominence through investing in local content and offering mobile-only subscriptions;
  - 53.3 the competitive constraint posed by free, advertising-based OTT services that has not been fully appreciated by the Authority;
  - 53.4 the evolving nature of FTA broadcasters' competitive offering and the formidable competitive constraint they exert. This is evidenced by the recent expansion of FTA broadcasters into OTT service provision as they adapt to changing consumption patterns and the competitive constraint provided by pure OTT services such as the likes of Netflix and Disney+; and
  - 53.5 the competitive constraint imposed on MultiChoice by piracy.
- 54 As demonstrated below this evidence is indicative of effective competition being present in both the "basic tier" and "premium" tier: Hence, regardless of whether retail markets are delineated broadly or narrowly as per the Authority's preliminary view, competition is indeed effective.

**Updated analysis of DStv subscriber behaviour**

- 55 Historical and recent declines in MultiChoice's underlying subscriber base, evident from (i) increased **cord cutting** (and disconnected DStv subscribers across the board increasingly **opting for OTT services**), (ii) increased **cord shaving** and (iii) significant increases in "**cord nevers**", confirm that MultiChoice has been and is facing significant competitive constraints at all levels of the market.
- 56 Not only are these subscriber movements indicative of the competitive constraint exerted on Pay TV services, increased cord cutting, cord shaving and cord nevers also constitute a negative impact on MultiChoice through revenue losses. Notably, while this revenue impact may be obvious for cord cutting subscribers, cord shaving also negatively impacts MultiChoice revenue as those subscribers pay a lower subscription fee than before downgrading. The Authority itself acknowledges this effect, stating "*...data on internal*

*subscriber movements shows that there is significant switching from high bouquets to basic-tier bouquets representing significant revenue losses for MultiChoice".<sup>70</sup>*

**Cord cutting (net disconnections)**

57 Figure 1 below demonstrates that [REDACTED]  
[REDACTED]  
[REDACTED]

57.1 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

57.2 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

57.3 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

58 Increased cord cutting amongst lower-tier subscribers (observable from declines in lower-tier subscriptions referred to by the Authority<sup>72</sup>) and increasing net disconnections amongst lower-tier bouquets, demonstrates that lower-tier and higher-tier subscribers

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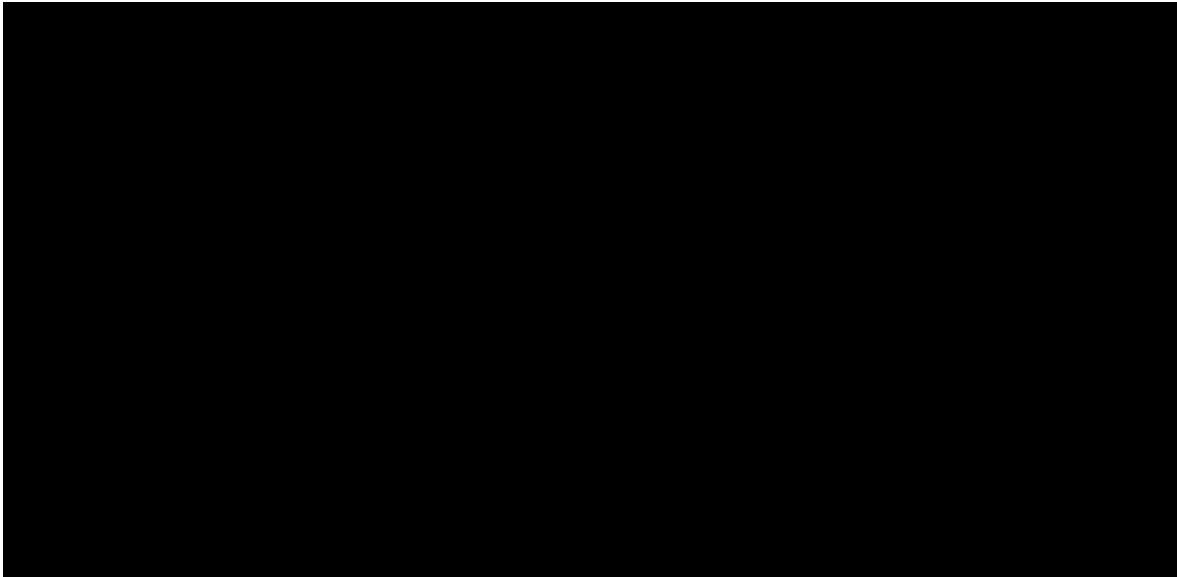
<sup>70</sup> SDD, para 3.21.1.20

<sup>71</sup> Cord cutting is measured by analysing net disconnections. Net disconnections is calculated as disconnections minus reconnections, which is a measure of subscribers that have voluntarily disconnected

<sup>72</sup> SDD, para 3.21.1.19

are replacing DStv with alternative AV services. This dynamism in DStv subscriber behaviour is indicative of the effectiveness of competition in retail services.

**Figure 1: Net disconnections by bouquet (FY2019 to FY2024)**



**Viewing behaviour of disconnected DStv subscribers**

59 The observation of increased cord cutting, and the conclusions are complemented by survey evidence of a significant share of disconnected DStv subscribers who are viewing OTT (and other AV) services. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

59.1 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



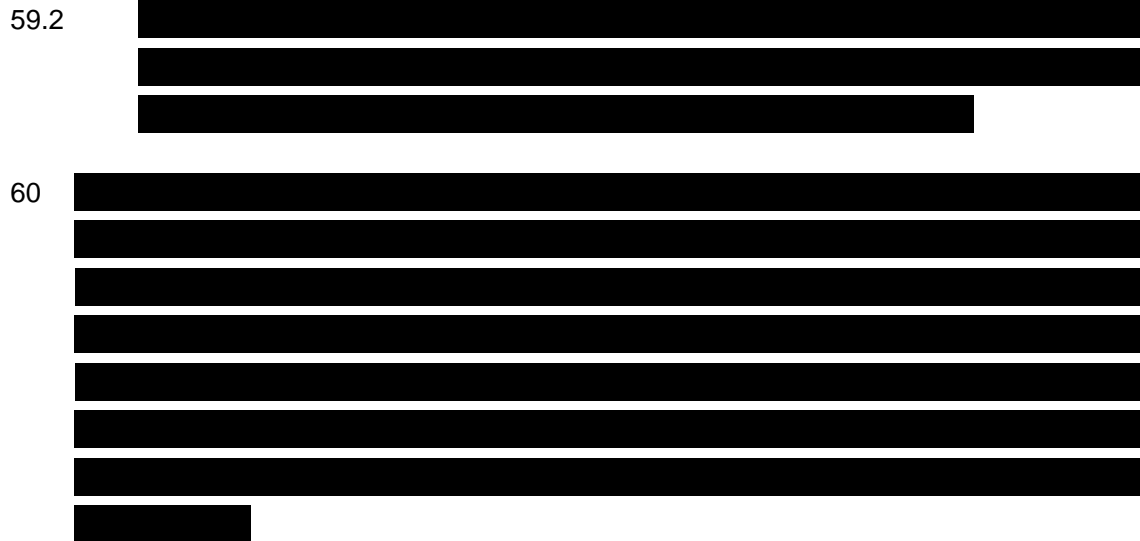
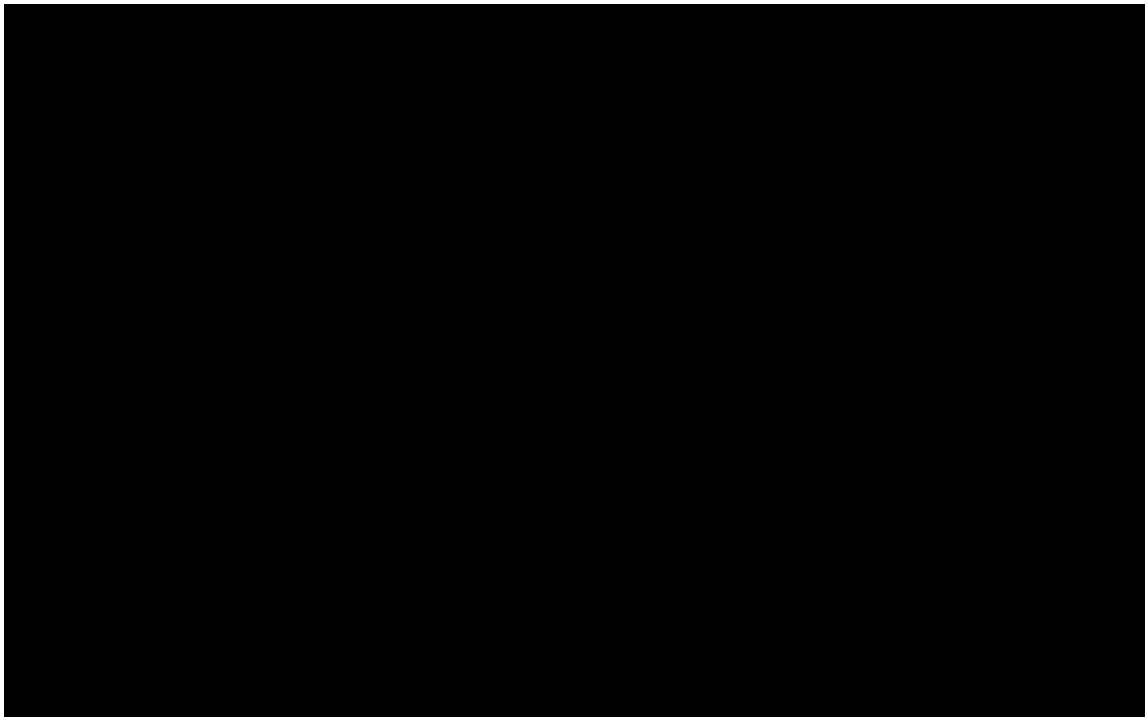


Figure 2: Current viewing of disconnected subscribers (October 2023)



**Cord shaving**

61 In recent years there has also been an increase in cord shaving.<sup>74</sup> DStv subscribers are increasingly downgrading to a lower tier bouquet, replacing the content with OTT and/or FTA services. [REDACTED]

61.1 [REDACTED]  
[REDACTED]  
[REDACTED]

61.2 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

61.2.1 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

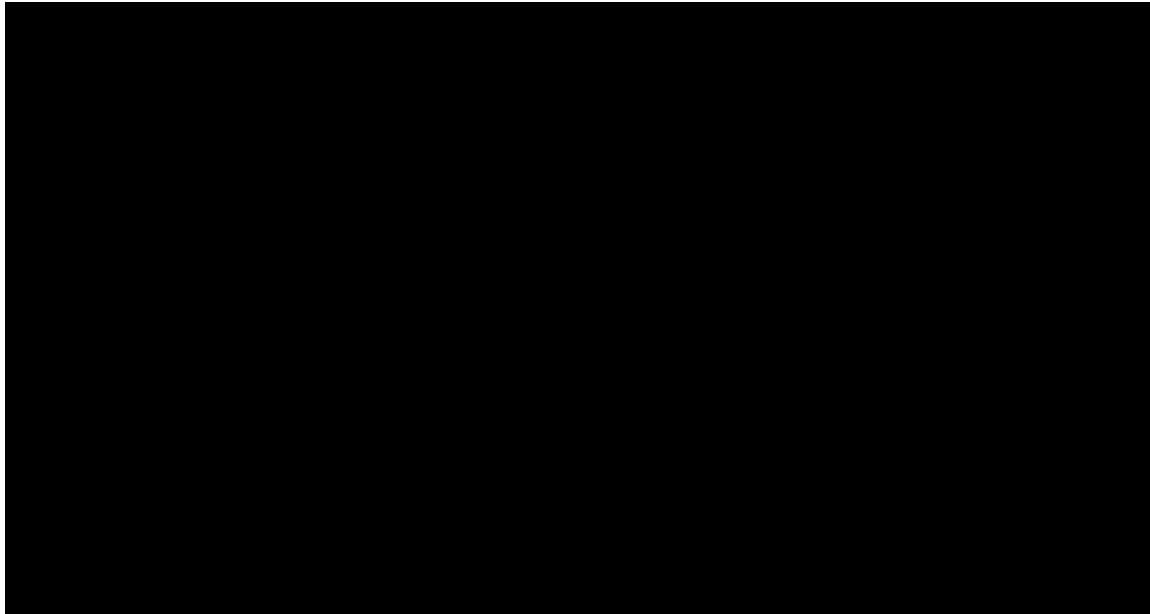
61.2.2 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

62 [REDACTED] demonstrates that OTT services are a competitive constraint at this end of Pay TV services, and further confirms the effectiveness of competition across the board in retail services.

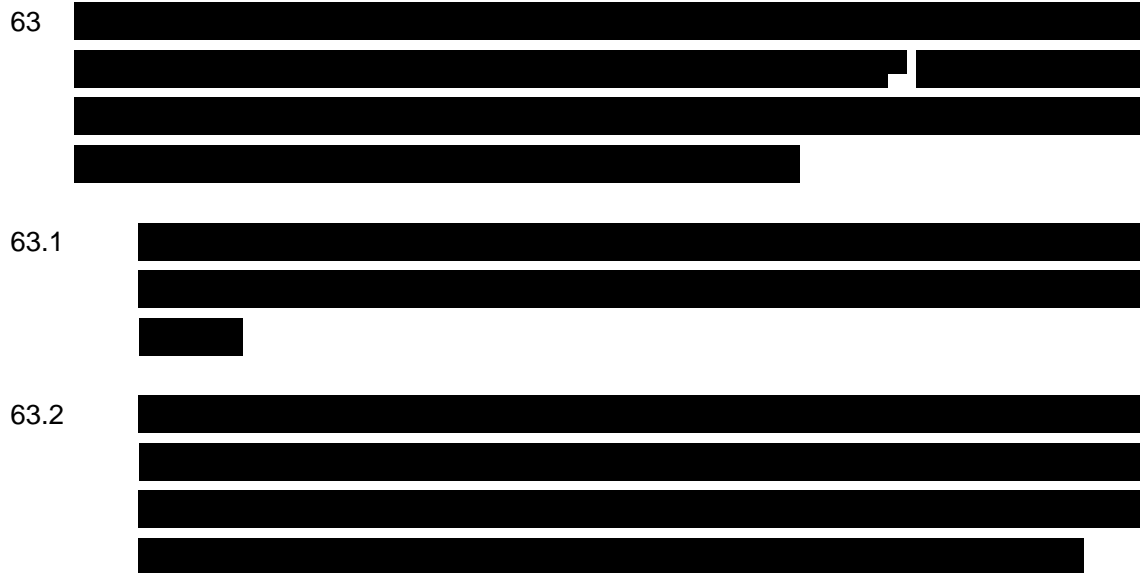
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<sup>74</sup> [REDACTED]

Figure 3: Upgrades in less downgrades out (FY2019 to FY2024)

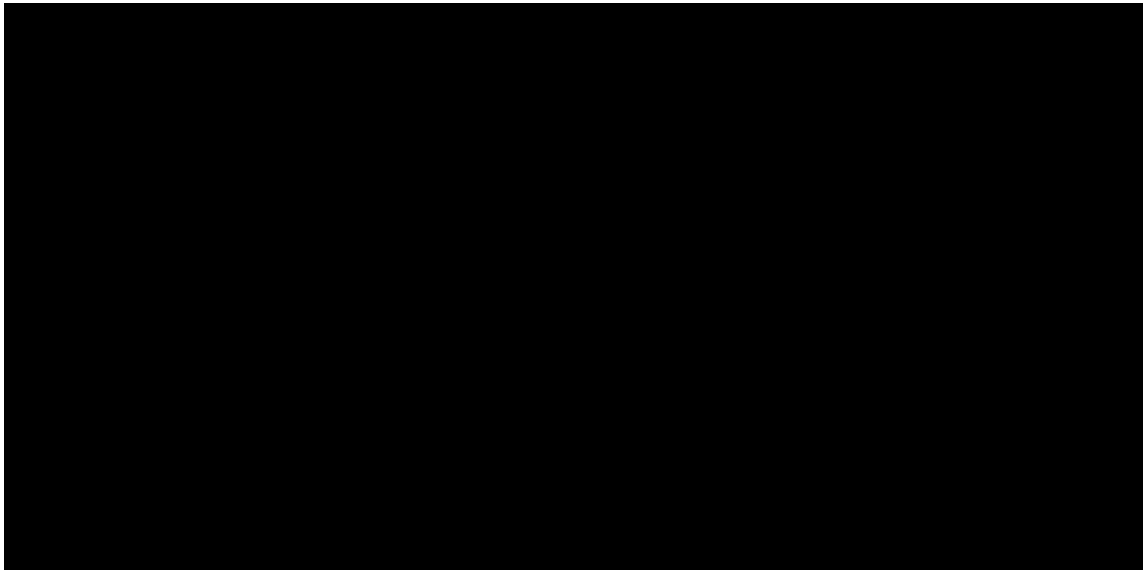


**Cord nevers**



63.3	[REDACTED]
	[REDACTED]
	[REDACTED]
64	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]

**Figure 4: Trends in acquisition of new subscriptions by bouquet (FY2019 to FY2024)**



**Pricing**

65 The effect of competition on MultiChoice, not only from OTT services but from AV services generally, is observable from (i) below-inflation price increases for DStv Premium as identified by the Authority<sup>76</sup> (ii) and updated analysis of MultiChoice's pricing, which demonstrates the continuing *substantial falls in quality-adjusted prices across most DStv bouquets*. While several market-related factors drive pricing, declines in DStv

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<sup>76</sup> SDD, para 2.4.11.8

prices are indicative that MultiChoice is operating in a fiercely competitive environment across all tiers.

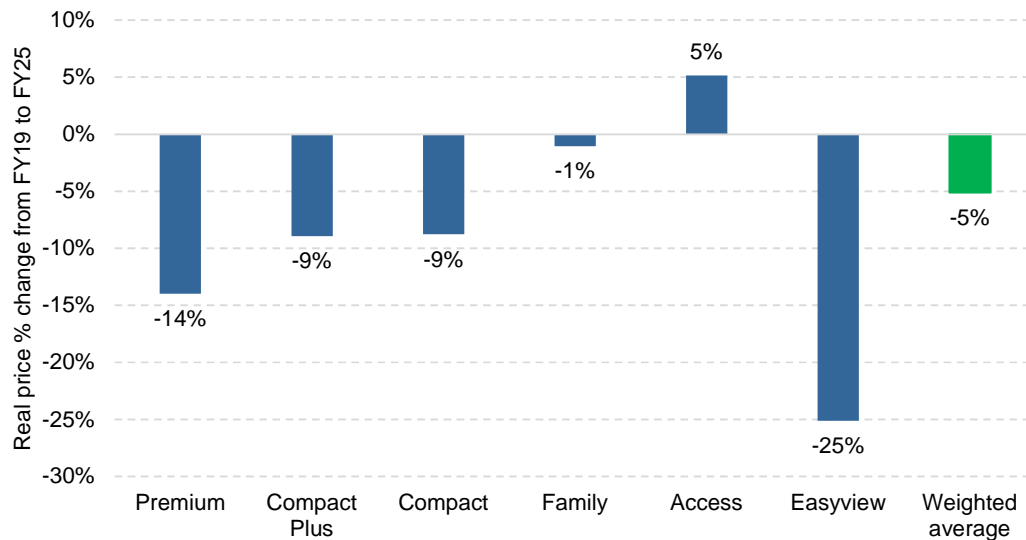
66 Between April 2018 and April 2024, prices of DStv bouquets overall have fallen in real terms as depicted in Figure 5. This occurred despite significant increases in (i) the quantity and quality of content on these bouquets<sup>77</sup> and (ii) value-added services offered. This is again indicative of the competitive constraint exerted by OTT and FTA services at the lower tier, and across DStv bouquets generally.

66.1 Amongst the lower-tier bouquets, DStv Access prices have risen by 5%, while DStv Family and DStv EasyView prices have fallen in real terms between April 2018 (FY2019) and April 2024 (FY2025).

66.2 DStv Premium bouquet prices have fallen by 14% in real terms, while DStv Compact Plus and DStv Compact bouquet prices have each fallen by 9% in real terms between April 2018 and April 2024.

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<sup>77</sup> Since FY2019, the number of channels on DStv Premium and Compact Plus have increased by 6% and 11% respectively. The number of channels on DStv Compact has increased by 15%. The number of channels on the DStv Family, Access and EasyView bouquets have increased by 23%, 31% and 6% respectively.

**Figure 5: DStv bouquet real price changes FY2019 – FY2025**

Source: MultiChoice bouquet price and subscriber data, Stats SA<sup>78</sup>

### **OTT services provide an additional robust competitive constraint through mobile-only subscriptions**

67 In considering the effectiveness of competition, the Authority correctly refers to OTT service providers increasingly offering mobile-only subscriptions at a lower price, often partnering with telecommunications operators to offer bundled mobile subscriptions with discounted data deals. However, the Authority does not fully reflect the extent to which these subscriptions add a different dimension of competition by OTT service providers who are adapting to changing consumer habits across the board. These mobile offerings are an affordable and accessible means of consuming OTT services. They present a viable and attractive option for all consumers, particularly those who choose to increasingly consume AV content on mobile devices.<sup>79</sup>

68 There are several examples of global OTTs offering mobile-only subscriptions in South Africa and partnering with telecommunications operators to offer bundled mobile-only

<sup>78</sup> CPI and bouquet prices refer to the starting month (April) in the applicable financial year. Every year MultiChoice announces bouquet prices effective from April. CPI for April 2018 (the start of the 2019 financial year) has been used as the base for inflation adjustment to reflect real price increases from FY2019 to FY2023. Subscriber data is based on the closing balance in March of each financial year, with the exception of FY2024, where the closing balance references November 2023

<sup>79</sup> While viewing experiences may differ in screen size and usage patterns, the content remains the same. Mobile-only offerings appeal to consumers whether they are more cost-conscious or simply seek more viewing options. Accordingly, mobile-only offerings are an integral part of the AV market.

OTT subscription and data deals. These deals make OTT services available at a lower price while also providing mobile data, often at discounted rates.<sup>80</sup>

- 68.1 Partnerships for such deals exist between Disney and MTN.<sup>81</sup> OTT services also partner with more than one telecommunications operator: Viu partners with both MTN<sup>82</sup> and Vodacom<sup>83</sup>; while Amazon Prime Video has partnerships with both Vodacom<sup>84</sup> and Telkom<sup>85</sup> for bundled data and mobile subscription deals.
- 68.2 In addition to the above-mentioned streaming giants, Netflix is also targeting lower-income consumers by offering a mobile-only version of its subscriptions in South Africa. Netflix's mobile-only subscription was launched in South Africa in June 2021.<sup>86</sup>
- 68.3 By concluding that OTT services do not form part of the "basic tier" market, the Authority does not sufficiently consider the dynamics introduced by OTT providers in offering such services or the range of additional evidence including the switching behaviour of DStv subscribers. This is despite the Authority acknowledging that these offers reflect the dynamism prevailing in the retail market. Providers of OTT services effectively use different product packaging and pricing to supply their services to consumers (i.e., bundled with data services, mobile-only plans and lean back plans). This approach has proven successful in making the services more affordable across all consumers including the lower-tier, and is evidenced by the rapid growth of OTT services.
- 68.3.1 For Viu in particular, partnership with telecommunications operators has been cited as a key driver of its take-up in South Africa,<sup>87</sup> and its subscriptions have grown significantly. In October 2023, it was publicly reported that Viu had 4.5

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<sup>80</sup> This is also attractive to lower-income consumers because OTT services are becoming more affordable.

<sup>81</sup> Disney+ launched its mobile plan in August 2023 (see <https://mybroadband.co.za/news/broadcasting/503014-disney-launches-mobile-plan-for-south-africa-on-mtn.html>)

<sup>82</sup> See <https://play.mtn.co.za/get/viu-premium-pass/>

<sup>83</sup> See <https://www.vodacom.co.za/vodacom/shopping/v/viu>

<sup>84</sup> See <https://www.vodacom.co.za/vodacom/shopping/primevideooffer>

<sup>85</sup> See [https://www.telkom.co.za/deals/primevideomobileedition?srsId=AfmBOOpEETRnKYzfUeFUmfTmEmT9u\\_pTP8MpMMfLvISmMumzvGdnRyN](https://www.telkom.co.za/deals/primevideomobileedition?srsId=AfmBOOpEETRnKYzfUeFUmfTmEmT9u_pTP8MpMMfLvISmMumzvGdnRyN)

<sup>86</sup> See <https://mybroadband.co.za/news/broadcasting/403877-netflix-mobile-plan-launched-in-south-africa.html>

<sup>87</sup> Moyo. A., (2023) OTT player VIU targets low-budget streamers in SA. Available online: <https://www.itweb.co.za/content/xnkIOqz1dNxM4Ymz> [last accessed 7 February 2025]

million active monthly users.<sup>88</sup> As of August 2024, less than a year later, Viu monthly active users have grown by 36% to 6.1 million.<sup>89</sup>

68.3.2 MultiChoice's Showmax offering includes mobile subscriptions.<sup>90</sup> It has partnered with MTN to provide bundled data and Showmax mobile subscription deals, which MultiChoice considers to be key to its success:

*"Data bundle offerings with mobile partners such as MTN and Safaricom, as well as smartphone brands such as Infinix Nigeria, are key to this success, making Showmax affordable and accessible to a mobile-friendly African market."<sup>91</sup>*

68.3.3 Showmax mobile subscriptions have proven to be popular. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**OTTs provide an additional competitive constraint across the entire retail market through advertising-based models**

69 Free, advertising-supported OTT services further enhance the accessibility of OTT services, particularly to lower-income consumers. Some examples include SABC+ and

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<sup>88</sup> Moyo, A., (2023) OTT player VIU targets low-budget streamers in SA. Available online: <https://www.itweb.co.za/content/xnklOqz1dNxM4Ymz> [last accessed 7 February 2025]

<sup>89</sup> Ndlovu, N., (2024) The dark horse in SA streaming – and Canal+ is a big investor. Available online: <https://techcentral.co.za/dark-horse-in-sa-streaming-canal-investor/249749/> [last accessed 7 February 2025]

<sup>90</sup> These previously comprised Showmax Mobile and Showmax Pro Mobile (launched in 2019 and 2020 respectively). These, along with the standard Showmax subscription have since been discontinued with the February 2024 relaunch of Showmax. Current Showmax offerings are Showmax Entertainment, Showmax Entertainment Mobile and Showmax Premier League Mobile (which is a mobile subscription). There is also a combined Showmax Entertainment and Premier League subscription available which enables subscribers to watch Entertainment content on any device and Premier League content on a mobile device.

<sup>91</sup> Illidge, M., (2025) Showmax 2.0 mobile-only subscriber surge. Available online : <https://mybroadband.co.za/news/broadcasting/536053-showmax-2-0-mobile-only-subscriber-surge.html> [last accessed 14 February 2025]

<sup>92</sup> Note this only includes paying Showmax subscribers. Users who receive a free Showmax subscription as a value-added service to DStv Premium are not included.



the free versions of eVOD and Viu. In addition, YouTube<sup>93</sup> and other social media platforms are widely used for accessing free AV content.

69.1 The expansion of FTA broadcasters into OTT services appears to have yielded competitive results. SABC+ amassed 500 000 registered users in the 2024/25 financial year and is said to be targeting 1 million registered users by the 2027/28 financial year.<sup>94</sup> eVOD reportedly reached 1.13 million registrations and recorded 1.3 billion minutes watched in FY2024, a 19% increase in watch time from the previous financial year.<sup>95</sup>

69.2 The disconnects data referred to above (and depicted in Figure 2), demonstrates that [REDACTED]

69.2.1 [REDACTED]

69.2.2 [REDACTED]

70 This highlights that the competitive constraint exerted by OTTs on Pay TV services is not just limited to paid VOD/OTT services, but also extends to free VOD/OTT services.

**The competitiveness of FTA services is broader than the Authority suggests**

71 MultiChoice agrees with and commends the Authority's finding that FTA services *at minimum* exert a competitive constraint on lower-tier subscription services, which is supported by the evidence.

71.1 When considering the effectiveness of competition in the Authority's market for "basic-tier" Pay TV and FTA services, the Authority highlights the growth of

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<sup>93</sup> There is also a paid version of YouTube available, YouTube premium, which currently costs R71.99 per month for a single user and R109.99 per month for a family plan.

<sup>94</sup> Mzekandaba, S. (2025), SABC+ targets 1m users for streaming app by 2027. Available: <https://teeveetee.blogspot.com/2024/07/sabc-app-relaunched-again-as-it-adds.html><https://www.itweb.co.za/article/sabc-targets-1m-users-for-streaming-app-by-2027/j5alrMQAK95MpYQk> [last accessed: 14 March 2025]

<sup>95</sup> eMedia Holdings Integrated Annual Report for the year ended 31 March 2024, p.34

Openview and finds that its growth is indicative of set-top box ("STB") interoperability and brand loyalty not being a prohibitive barrier to switching.

*"The lack of set-top box interoperability can lead to high switching costs because a consumer who has invested in a set-top box and a satellite dish may view these as sunk costs that he or she cannot recover when switching to an alternative satellite broadcaster. However, further evidence of the exceptional growth of OpenView...shows that this may not be a prohibitive barrier to switching."*<sup>96</sup>

*"A new entrant has to contend with establishing its brand among consumers and gain their loyalty. This process takes time, thus potentially weakening the competitive constraints exerted by new entrants. However, evidence of the rapid growth of OpenView suggests that this potential challenge can be overcome with success. Similarly, the rapid growth of OTT services also shows that this can be overcome."*<sup>97</sup>

- 71.2 Openview has experienced phenomenal growth as depicted in the figure below, which is an update of Openview STB activations data contained in the Authority's SDD. Openview has continued to grow as per eMedia's latest reported figures.<sup>98</sup> The launch of Openview in 2013 was a significant development in the retail distribution of AV services, and its continued growth establishes Openview as a formidable competitor.
- 71.3 Openview has grown in spite of eMedia reducing<sup>99</sup> and eventually no longer finding it necessary<sup>100</sup> to subsidise the cost of STBs. Conversely, MultiChoice subsidises the cost of its STBs.

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<sup>96</sup> SDD, para 3.19.3.1

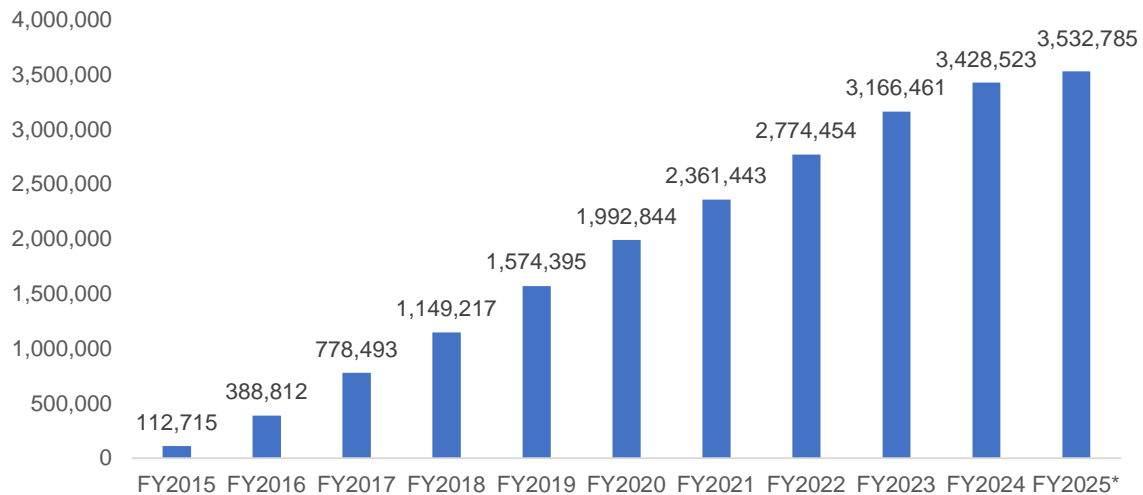
<sup>97</sup> SDD, para 3.19.4.3

<sup>98</sup> eMedia Holdings Interim results for the six months ended 30 September 2024, p.1

<sup>99</sup> eMedia Holdings Limited 2019 Integrated Annual Report, p.45

<sup>100</sup> eMedia Holdings Limited 2021 Integrated Annual Report, p.50

**Figure 6: Total Openview STB activations (FY2015 to mid-FY2025)**



Source: eMedia annual reports.

Notes: \*Openview STB activations as of September 2024 (mid-FY2025)

72 Outside of Openview's phenomenal growth, it is important to emphasise that, generally, FTA broadcasters are formidable and exert a competitive constraint because they remain important to South African audiences, who resonate with the local content and local language programming that they offer. In its assessment of effectiveness of competition in the "basic tier" market, the Authority points out the importance of local content at the lower tier by noting that "[the] majority of the content at this level of the market is freely available, with local productions being the most watched content at this level of the market"<sup>101</sup>. [REDACTED]

72.1 Submissions already before the Authority<sup>102</sup> report that both the SABC and eMedia (via e.tv and Openview) broadcast FTA programming which resonates with their audience's demand for extensive local content. Their daily programmes, such as the SABC's "*Uzalo*" and eMedia's "*Scandal!*" consistently rank amongst the top 10 most popular TV shows in the country. The strong competitive position of FTA

<sup>101</sup> SDD, para 3.19.6.14

<sup>102</sup> MultiChoice 15 February 2024 response to ICASA's November 2023 questionnaire, paras 70 to 79

broadcasters is demonstrated, for example, by eMedia's recent performance. In FY2024, eMedia reported that it is "the largest broadcaster in prime-time audience share" and has been able to grow its TV advertising revenue year on year, despite a 1% decline in industry TV advertising revenue between FY2023 and FY2024.<sup>103</sup>

72.2 FTA broadcasters do not only rely on the popularity of their local content, but they are also evolving the nature of their competitive offering:

72.2.1 Most notably, they are expanding into OTT services. As discussed in the market definition section, FTA broadcasters offer OTT services for free or at low subscriptions (R29.99 for a paid eVOD subscription) as they adapt to the changing AV services landscape. Based on take-up, this expansion into OTT appears to be paying off: see the SABC+ and eVOD growth data in paragraph 69.1 above. eMedia continues to invest extensively in eVOD, having grown its content library by releasing 23 original movies and six original series for eVOD in FY2024,<sup>104</sup> and enhancements to the eVOD service were reportedly planned for FY2025 to increase take-up and advertising revenue.<sup>105</sup>

72.2.2 Notwithstanding the delays in the migration to DTT, the FTA broadcasters' competitive offering is strengthened by their multichannel digital terrestrial television ("**DTT**") offerings. The SABC and eMedia respectively have three and four channels broadcast via DTT. DTT is an additional avenue for FTA services to reach subscribers and therefore strengthens them as a competitive constraint.

73 However, it is respectfully submitted that the Authority has not fully considered that the interaction between FTA and Pay TV services extends beyond the lower tier. The above-mentioned survey of disconnected DStv subscribers shows that [REDACTED]

This is significant, and at the very least provides evidence indicating that the combination of OTT and FTA services is likely to provide a formidable constraint across all tiers of Pay TV services.

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<sup>103</sup> eMedia Holdings Limited 2024 Integrated Annual Report, p.27

<sup>104</sup> eMedia Holdings Limited 2024 Integrated Annual Report, p.34

<sup>105</sup> eMedia Holdings Limited 2024 Integrated Annual Report, p.24 (eMedia's financial year-end is March)

**The competitive constraint imposed by piracy**

- 74 The Authority has importantly stated that it *"recognises that piracy is a pervasive problem for content creators and broadcasters alike."*<sup>106</sup> Further, the Authority notes this has a direct impact on MultiChoice stating that it *"recognises that piracy may have a significant impact on MultiChoice and any other paid service"*.<sup>107</sup>
- 75 Indeed, MultiChoice has previously made submissions to the Authority to demonstrate the competitive constraint of piracy on Pay TV services in South Africa, estimating that two million people view pirated versions of movies and series available on DStv.<sup>108</sup> This amounts to approximately 28% of the 7.19 million closing DStv subscriber base as at FY2024. This is a material impact on MultiChoice as it represents potential DStv subscribers (and the associated revenue) who are instead opting for piracy.
- 76 MultiChoice estimates that 25% of TV households in South Africa consume pirated AV content, demonstrating how pervasive piracy is generally. MultiChoice's research indicates that the perceived high cost of Pay TV and SVOD services is amongst the justifications provided for using piracy sites/services. This is despite efforts by Pay TV and OTT providers alike to make their services more accessible and affordable.
- 77 In summary, piracy continues to put further pressure on paid AV services providers, whether Pay TV or SVOD, and acts as an additional competitive constraint across all tiers.

**The Authority's findings of effective competition apply regardless of retail market delineation.**

- 78 The available evidence presented above (and in the SDD) indicates that competition is effective in the retail distribution of AV services across all tiers:
- 78.1 In the "basic tier", effectiveness of competition is demonstrated by the following:
- 78.1.1 Although not carried through to its preliminary definition of the market (where OTT services are excluded from the preliminary "basic-tier" market), the

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<sup>106</sup> SDD, para 2.5.4

<sup>107</sup> SDD, para 2.5.6

<sup>108</sup> SDD, para 2.5.2

Authority clearly and correctly considers OTT services to be relevant in the competitive dynamics at the lower tier. In particular, when assessing effective competition at the "basic tier", the Authority explicitly references OTT services by discussing (i) their rapid growth,<sup>109</sup> (ii) mobile-only subscriptions and (iii) FTAs' expansion into OTT services.<sup>110</sup>

78.1.2 Increased cord cutting, cord shaving, and cord nevers amongst consumers in the lower tier indicates that OTT and FTA services exert a competitive constraint on lower-tier Pay TV services. Survey data of disconnected DStv subscribers demonstrates that lower-tier DStv subscribers report watching paid VOD services, followed by free VOD services. This confirms that OTT services exert a competitive constraint in the lower tier.

78.1.3 There are OTT services available at low to no costs (mobile-only and free, advertising-based OTTs) from a range of local and global OTT service providers, as well as the local FTA broadcasters. This increases the accessibility of such services to all consumers, including lower income consumers.

78.1.4 FTA broadcasters continue to be formidable competitors and important to the South African audience, particularly to lower-tier consumers for whom local content is particularly important. This is demonstrated by [REDACTED]  
[REDACTED]  
[REDACTED] Not only do they have highly popular content, but FTA broadcasters also consider OTT services to be a competitive constraint and have themselves deemed it necessary to expand into offering OTT services.

78.2 In the "premium tier":

78.2.1 The constraint exerted by OTT services continues to be pervasive as demonstrated by [REDACTED]

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<sup>109</sup> SDD, para 3.19.4.3

<sup>110</sup> SDD, para 3.19.6.4

[REDACTED]  
[REDACTED]<sup>111</sup>

78.2.2 While mobile-only and free advertising-based OTT services (as well as OTT services offered by FTA broadcasters which fit into these categories) could be considered to cater for lower-income consumers, these options are equally available to all consumers. These further cement the competitive constraint of OTT services across the market.

78.2.3 [REDACTED]  
[REDACTED]  
[REDACTED] indicating the material constraint exerted by FTA services on the higher end.

79 In sum, the evidence that OTT services constitute an additional competitive constraint in the "basic tier" and continue to be a constraint in the "premium tier"; and the competitive interaction between FTA and higher-tier Pay TV, confirms that there is competition at both ends of the market. This bolsters and confirms the Authority's finding that competition is effective across the market, regardless of whether the retail market is defined broadly or into the narrower segments identified by the Authority in the SDD.

**As a result of these dynamics, no participant holds SMP, regardless of whether the retail market is defined broadly or segmented into "premium" and "basic" tiers as per the Authority's preliminary view.**

80 Not only is the significant loss in MultiChoice subscribers an indication that it does not hold SMP (as stated by the Authority<sup>112</sup>), but this is also re-enforced by the fact that, as stated in paragraphs 78.1.1 to 78.1.3 above:

80.1 OTTs exert a growing and evolving competitive constraint, as demonstrated by the growth in OTT subscribers, diversification of their content strategies (particularly

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<sup>111</sup> [REDACTED]  
[REDACTED]  
[REDACTED]

<sup>112</sup> SDD, para 4.18

through investing in local content) and targeting lower-income consumers with mobile-only subscriptions and free, advertising-based models.

80.2

[REDACTED]

80.3

There have been significant falls in quality-adjusted prices for DStv bouquets. In response to the competition MultiChoice faces from other pay TV services, OTT and FTA services, it has had to increase the volume and value of service to subscribers (increasing the quantity and quality of content in bouquets and offering value-added services) without a correlating increase in price.



#### D. CONTENT MARKET DEFINITION

- 81 The proliferation of OTT services and the resulting expansion of the retail market has, in turn, led to a proliferation in high-quality content at the wholesale level. In this regard, the Draft White Paper has recognised the impact of these changing dynamics on the AV supply chain including that the supply of content is becoming increasingly broader.

*"Audio and audio-visual content consumption via the internet are fundamentally transforming the South African audio and audio visual landscape creating a broader content market than traditional broadcasting."<sup>113</sup> (emphasis added)*

- 82 Likewise, the Authority finds in the SDD that the content market has become increasingly more fluid, and that AV service providers do not rely on a specific type or category of content to curate their services:

*"...video entertainment services (OTT, subscription and FTA) are not made up of one type of content and...consumers' preferences for content are not uniform and change over time. This creates possibilities for substitution."<sup>114</sup>*

- 83 In considering these dynamics, the Authority accurately finds that it is not necessary to make a finding on whether any particular market participant has SMP at the wholesale level of the market (which also aligns with its finding of effective competition at the retail level). Yet, the Authority's conclusion on the relevant content market delineation – separating wholesale markets for the supply and acquisition of (i) premium sports content, (ii) premium movies and series, and (iii) non-premium content – lies in tension with the competitive dynamics highlighted in the SDD.

- 84 In this section, MultiChoice highlights that the Authority's findings are consistent with a broader content market rather than the narrower ones identified by the Authority.

- 85 Further, the Authority seems to largely base its narrower market delineation on the preferences and potential behaviour of a narrow group of consumers within the overall market. This approach is inconsistent with the true market dynamics (highlighted by the Authority in the SDD) that underpin competition at this level of the market.<sup>115</sup>

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<sup>113</sup> Draft White Paper, para 1.1.16

<sup>114</sup> SDD, para 2.8.28

<sup>115</sup> It is also inconsistent with the relevant conceptual approach to market definition.

86 Lastly, MultiChoice explains that irrespective of whether broad or narrower content markets are adopted by the Authority, competition is effective as the Authority finds, and no market participant has SMP.

**The proliferation of content and shifting market dynamics underpins a broader content market.**

87 The Authority has rightly highlighted several key observations in relation to the shifting dynamics at play across the AV value chain and the associated impact of these dynamics on content supply. All of these factors point to a broad content market. The Authority's key findings in this regard include:

87.1 The traditional delineation of premium versus non-premium content is no longer a meaningful basis on which to define content markets.

87.2 Content that previously may have been considered to be "must-have" is not essential in order for providers of AV services to be able to compete effectively.

87.3 The range of content that can be used by an AV retail service provider to build an audience and compete is extremely broad.

**The traditional delineation of premium versus non-premium content is no longer a meaningful basis on which to define content markets.**

88 The Authority has found that there is significant dynamism and fluidity which characterises the supply of content and the general availability of content. It has also noted that the proliferation of OTTs has brought with it increased availability of high-quality content of different genres.<sup>116</sup> This has resulted in a blurring of the notion of premium versus non-premium content. The Authority finds that this presents difficulties in the delineation of content markets along strict segments and points to a broader market.

*"... the concept of premium content is a fluid concept that is dependent on the circumstances prevailing at a particular point in time..."*

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<sup>116</sup> SDD, paras 2.4.5.8, 2.4.5.25, 2.8.15, and 3.21.1.24

*... there is a wide array of content that broadcasters considered as premium content including local content which has become a key differentiator and source of audiences and revenues for FTA, subscription and OTT services.<sup>117</sup>*

- 89 The Authority also recognises the difficulty in determining what is meant by "premium" content and that some of these concepts are based on historical notions of premium and non-premium content:

*"...it is quite difficult to determine what constitutes premium content as this concept is fluid and is dependent on a number of factors. The Authority will however focus on Hollywood movies and series as these are the categories of content that have been identified as "premium" by some stakeholders and previous international case precedents."<sup>118</sup> (emphasis added)*

- 90 MultiChoice asserts that the historical definitions of "premium" content no longer apply in today's highly dynamic, streaming era and given changed consumer preferences and consumption patterns. The rapid expansion of OTT services such as Netflix, Disney+ and Amazon Prime Video has flooded the market with high-quality films and series that were once reserved for elite packages on Pay TV services. There are significant investments by most global OTT providers in original programming content – series, documentaries and live sports - which have increased access to content and shattered traditional notions of what was once considered "premium" content. Even traditional social media platforms such as Instagram, Facebook and music streaming apps are delving into provision of programming content such as movies, series, documentaries and live sport.<sup>119</sup> These developments have democratised access to high calibre entertainment on demand, rendering the conventional premium/non-premium distinction increasingly ambiguous – a shift that the Authority has yet to fully appreciate.

- 91 Lastly, in a range of decisions from 2017 onwards, the European Commission has left open the question of segmenting the market by type/genre or "premium" and "non-premium" content.<sup>120</sup> This points to the Authority's seeming reliance on previous

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<sup>117</sup> SDD, paras 2.3.5.1 and 2.3.5.2

<sup>118</sup> SDD, para 2.8.25

<sup>119</sup> See paras 184, 431.5.3, 431.5.4, and 663, including figure 23 of Multichoice's 4 October 2019 submissions on ICASA's Draft Findings Document. Additionally, in late 2024, Spotify announced that it was expanding its content acquisition strategy to include video content. See Rosenberg, R (2024), Beyond video podcasts: Spotify's investment in video creators reveals its format agnosticism. Available at: <https://www.midiaresearch.com/blog/beyond-video-podcasts-spotifys-investment-in-video-creators-reveals-its-format-agnosticism>

<sup>120</sup> Delineation of premium vs non-premium content has been left open in various European Commission decisions from 2017 onwards, including Case No. M.8354 – *Fox / Sky*, para. 56; Case No. M.8785 – *The Walt Disney Company / Twenty-First Century Fox*, para. 68; Case No. M.10456 – *Sky / VIACOM CBS / JV*, para. 36; and Case No. M.10343 – *Discovery / Warner Media*, paras. 24-25.

international case precedent for the determination of content types deemed to be "premium", as likely to be outdated. This can only be assumed given that the specific international precedent relied upon by the Authority has not been presented. The reliance on outdated case precedent is particularly relevant not only due to the openness in more recent decisions but also due to the shifting dynamics of the AV services value chain (which have been acknowledged by the Authority), as well as the shift in case precedent and views of authorities with reference to retail markets. A definition, or a clear and objective means by which to determine what constitutes each category, would thus seem to remain wholly elusive.

**Content previously considered "must-have" is no longer essential for AV service providers to develop an effective offering**

- 92 Based on its own observations and stakeholder submissions, the Authority further finds that content previously considered "must-have" such as sports is not required for providers of AV services to be able to compete effectively. This finding lends itself to a broader, not a narrower, content market. According to the Authority:

*"Evidence of significant losses of subscribers by dstv to providers who do not have sports content also points to the fact that competitors may be able to successfully compete to a large extent without having to spend significant amounts of money on expensive sports content. This applies to both OTT providers and the OpenView service which continues to grow rapidly without sports content."*<sup>121</sup> (emphasis added)

*"Amongst FTA services, it appears e.tv can compete successfully against the SABC without investing in content that the Authority considers as premium. e.tv advertising revenue has shown consistent stability with some growth in 2022. While SABC advertising revenue has been on a decline."*<sup>122</sup>

*"Stakeholders such as the EPL and MultiChoice argue that OTTs are able to grow without sports content. This appears to be consistent with the evidence on the rapid growth of OTT services when compared to subscription services."*<sup>123</sup>

- 93 MultiChoice's previous submissions on the decline of the importance of sports rights and Hollywood studio movies and series are consistent with the Authority's present views, indicating a broader content market.

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<sup>121</sup> SDD, para 3.21.1.8

<sup>122</sup> SDD, para 3.21.1.21

<sup>123</sup> SDD, para 2.4.5.11

- 93.1 The rise of OTT services has driven a surge in investment in content, (a) enabling OTTs to compete directly with Hollywood studios—even in movie production, and (b) resulting in the proliferation of high-quality content. Consequently, other studios and production houses have gained prominence, diminishing the more central role previously held of Hollywood studios.
- 93.2 The proliferation of this wide array of content has demonstrated that it is no longer the case that AV retailers require access to specific genres of content to compete, which may historically have warranted separate content markets. The growth of OTTs in the South African market is testament to their impact on the value chain, and their ability to attract customers to their platforms despite not having access to "premium" content.
- 93.3 The notion that movies are a main motivation for retail AV subscriptions has been debunked. The proliferation of highly valued series, documentary and reality content developed by and for OTT services offer varied reasons to subscribe. Further, the global popularity of award-winning shows like "Baby Reindeer",<sup>124</sup> "The Bear",<sup>125</sup> "Shogun"<sup>126</sup>, "The Crown",<sup>127</sup> "Pachinko"<sup>128</sup>, "Squid Game",<sup>129</sup> "Sacred Games",<sup>130</sup> "My Octopus Teacher", "Money Heist" and "and Narcos"<sup>131</sup> has shown that such content, including many series and documentaries from emerging markets, can be as popular as (if not more than) Hollywood content. Such content is valuable as it is high quality and available immediately after release (whereas

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<sup>124</sup> A multiple Emmy award-winning British autobiographical comedy-drama thriller television miniseries released in 2024 (Netflix)

<sup>125</sup> A psychological comedy-drama television series released in 2022 that won 11 awards in the 2024 Emmys (Disney)

<sup>126</sup> A multiple Emmy award-winning historical drama series released in 2024 (Disney)

<sup>127</sup> A multi-season historical drama television series about Queen Elizabeth II which has won numerous awards between 2016 and 2014, including Primetime Emmy Awards, Golden Globes and Screen Actors Guild Awards and several British Academy of Film and Television Arts "(BAFTA)" nominations (Netflix)

<sup>128</sup> A Korean drama series released in 2022 that was nominated for several awards including BAFTA Awards and won numerous awards including a Critics Choice award in 2023 (Apple TV)

<sup>129</sup> A Korean thriller released in September 2021 that went on to be the first non-English television series to receive nominations and win 6 Primetime Emmy Awards (Netflix)

<sup>130</sup> An Indian crime thriller series received critical acclaim released in 2018 was nominated for an International Emmy Award (Netflix)

<sup>131</sup> A Colombian series, first released in 2015, about the rise of the drug trade in Colombia which received multiple Emmy nominations (Netflix)

movies are windowed). The added advantages of the release of several episodes also increases subscriber retention, generating more eyeballs for advertising.

93.4 With reference to sports content, it is clear that there have been significant shifts in the competitiveness at the retail level of the value chain despite numerous competitors choosing not to invest in sports rights or not carrying extensive sports content on their services.

93.5 Openview's phenomenal growth has been illustrated in Figure 6 above, with STB activations having more than doubled from 1.57 million in FY2019 to 3.43 million in FY2024.<sup>132</sup> [REDACTED]

[REDACTED] Over this period Openview grew at a compound annual growth rate of 17% (compared to 7% for lower-tier DStv subscriptions over the same period). The rapid Openview growth rate has been consistent in the absence of eMedia making any investments to include sports content on its services. Openview's phenomenal growth has been illustrated in Figure 6 above, with STB activations having more than doubled from 1.57 million in FY2019 to 3.43 million in FY2024<sup>133</sup> ([REDACTED]) amounting to a compound annual growth rate of 17%. The rapid growth rate has been consistent in the absence of eMedia making any investments to include sports content on its services.

93.6 The Authority has acknowledged that MultiChoice has continued to experience significant losses and that there is content, other than sports content, that can be used to win subscribers. Indeed, as recognised by the Authority, MultiChoice has been losing subscribers to OTT service providers (not to mention the likes of Openview) who have been able to continue to grow without sports content or significant investment in sports content.<sup>134</sup>

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<sup>132</sup> eMedia Holdings Reviewed Consolidated Condensed Annual Results 2024, p.2 and eMedia Holdings Integrated Annual Report for the year ended 31 March 2023, p.

<sup>133</sup> eMedia Holdings Reviewed Consolidated Condensed Annual Results 2024, p.2 and eMedia Holdings Integrated Annual Report for the year ended 31 March 2023, p.

<sup>134</sup> SDD, paras 3.21.1.12 and 3.21.1.13

The range of content that can be used by an AV retail service to build an audience and compete is extremely broad

- 94 Consistent with a broader and more fluid content market, the Authority critically finds that retail AV service providers can develop attractive offerings through a wide range of content. The Authority in fact finds that "premium" content is substitutable with other content. Hence, providers of retail services compete against each other with differentiated content.

*"The differentiated nature of video entertainment services makes market definition complicated because one of the key ways that providers of these services use to differentiate their offerings is through content". "...mere observation of differences in content is not sufficient to conclude that OTT services and subscription television services are in separate markets"<sup>135</sup>*

*"This evidence suggests that to some extent consumers and providers of video entertainment services can substitute other content for the content that the Authority has identified as premium content and be able to attract a significant number of subscribers from DStv services.*

...

*It simply recognises that in a differentiated market, providers of the services can compete against each other despite differences in their content."<sup>136</sup> (emphasis added)*

- 95 The finding – that the decision to subscribe to AV services depends on the overall programming offered – is correct and consistent with the growth, for example, of OTT services without Hollywood movies or sports and Openview without any significant investment in sports content.<sup>137</sup> The growing role of local content for market participants in retail AV service provision has served to further broaden the scope of content that can be used to build an audience. For the Authority's assistance, in the effective competition section, we provide updated viewing data at paragraph 101 that further demonstrates that a broad range of content can be used to build audiences for electronic AV services.
- 96 In summary, the Authority does not differentiate the retail market on the basis of different categories of content. If the characteristics of retail demand are that when acquiring content rights, a retailer can choose from among a variety of content to create an attractive offering, then if faced with an increase in price for a particular content genre

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<sup>135</sup> SDD, para 2.4.5.1

<sup>136</sup> SDD, para 3.21.1.22

<sup>137</sup> SDD, para 3.21.1.8

such as sport, retailers would likely substitute this with content in other genres in order to build compelling packages which will attract subscribers. It is this key dynamic that underscores a broader content market that does not need to be segmented by genre or category.

**The Authority's approach to defining separate narrow content segments requires correction**

97 There are several shortcomings in the Authority's approach to defining separate content segments.

97.1 The scope of retail customers relied on by the Authority when applying the small but significant and non-transitory increase in price test ("**SSNIP**")<sup>138</sup> is incorrect. In particular, the Authority has relied on the preferences of a very specific, narrow subset of consumers who have a preference for certain content (i.e. infra-marginal consumers). For example, the Authority notes "lovers of live soccer" would be dissatisfied in switching to other genres in the face of a SSNIP.<sup>139</sup> There may be some subscribers who prefer sport or movies, who may not switch in the face of a SSNIP. However, this is not the correct basis for defining a *market*. As Bishop and Walker have observed: "*[t]he existence of even a large group of consumers who would not switch in response to a relative price increase is not by itself sufficient to conclude that the relevant market should be defined narrowly.*"<sup>140</sup>

97.2 Generally, and as a matter of economics, the relevant question when applying the SSNIP test is whether *enough* consumers switch so as to render the SSNIP unprofitable. It follows that what matters are the responses to the price rise of marginal consumers (those who value the service at a small amount more than the current price and hence might consider switching in response to a SSNIP) and the number of marginal consumers that would switch. The question in this instance is thus is whether, in response to a SSNIP in relation to the focal content, a sufficient number of broadcasters would substitute to other content to defeat the profitability

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<sup>138</sup> The SSNIP is a tool used for market definition. It assesses whether a hypothetical monopolist could profitably impose a small (5%-10%) price increase without losing enough customers to make the price increase unprofitable. If sufficient customers switch to alternatives – making the increase unprofitable – the market definition expands to include those substitutes

<sup>139</sup> SDD, para 2.8.22

<sup>140</sup> Bishop and Walker, p134.



of the SSNIP. To answer that question one needs to understand the proportion of actual and potential subscribers that do not view those contents as "must have" and would therefore be attracted to offerings from broadcasters that do not include those contents.

- 97.3 MultiChoice considers that any broadcaster or VOD provider faced with a SSNIP in relation to premium movies or live soccer matches would give consideration to whether some or all of its content budget currently devoted to that content could be spent more effectively on other content. While this may result in a loss of some subscribers, that loss would not preclude substitution to other content, since the other content would attract other subscribers. To put it simply, a broadcaster or a VOD provider does not have to have all content and can trade off the value to it of certain content against the value of other content.
- 97.4 Indeed, the evidence set out above in fact demonstrates that many DStv subscribers have alternative retail AV services and will switch to those in the face of a SSNIP, including AV services that do not include sport. Therefore, retail AV service providers can similarly substitute different genres of content to create attractive offerings (without "premium" sports).
- 97.5 This is the only conclusion consistent with the Authority's findings, as the SDD repeatedly recognises that market participants compete with differentiated content offerings. Further, when competing on this basis there is no particular "must-have" content. As discussed above, the Authority finds that this principle applies to sports content as well. The reasoning is clear: lack of access to either "premium sports" content or Hollywood movies cannot - and has not - forced market participants out of the market, thwarted their ability compete or prevented market entry and expansion.
- 97.6 Lastly, sports and/or other genres of entertainment content (such as Hollywood movies) are also not priced separately. Such varied content is provided within various bouquets or offerings, catering for the differentiated needs and preferences of subscribers in the most efficient manner. As a result, the logic of the SSNIP test cannot be applied to specific content genres, such as live soccer, in isolation. Nor is this content priced separately from the rest of the content that is being provided in the various services on offer.

**E. IRRESPECTIVE OF THE DELINEATION OF THE WHOLESALE CONTENT MARKET, THERE IS EFFECTIVE COMPETITION AND NO SMP**

98 We commend the Authority's recognition that the content market, too, has evolved and that competition is effective. On the basis of a broader market, it is evident that this must be the case (to a greater extent than the Authority recognises). However, even in the Authority's narrower content markets, the Authority's findings of effective competition and that no market participant has SMP are entirely correct. They are evidenced by the fluidity of the content market and the ability of all market participants to effectively compete with differentiated content offerings, as highlighted by the Authority in the SDD. Effective competition is underscored further when due consideration is given to the underlying competitive dynamics across the various content segments highlighted by the Authority.

**There is no "must have" content required for AV services to compete effectively**

99 A key factor making competition effective is the fact that no single category of content is "must-have" for an AV retail service provider to effectively compete. As discussed in the market definition section, previously valuable content such as sports and Hollywood films do not determine competitive outcomes. Even on the conservative contention that this was previously highly valuable content, it is no longer viable to contend that this content is required for entry or successful expansion.

99.1 The proliferation of high-quality content via the growth of OTT platforms in South Africa has meant that Hollywood studio movies and series no longer hold a central place in supply markets. The abundance of content has resulted in the increased ability of market participants to effectively compete.

99.2 With reference to sports content, as has been demonstrated above, there are a number of broadcasters (e.g. Openview) and OTTs that have been able to grow despite not including sports content - or extensive sports content - in their services.<sup>141</sup> Their phenomenal growth has taken place while DStv has lost significant numbers of subscribers, despite having a varied sports offering.

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<sup>141</sup> SDD, paras 3.21.1.8 and 3.21.1.13

**Effective competition is possible with a wide array of content**

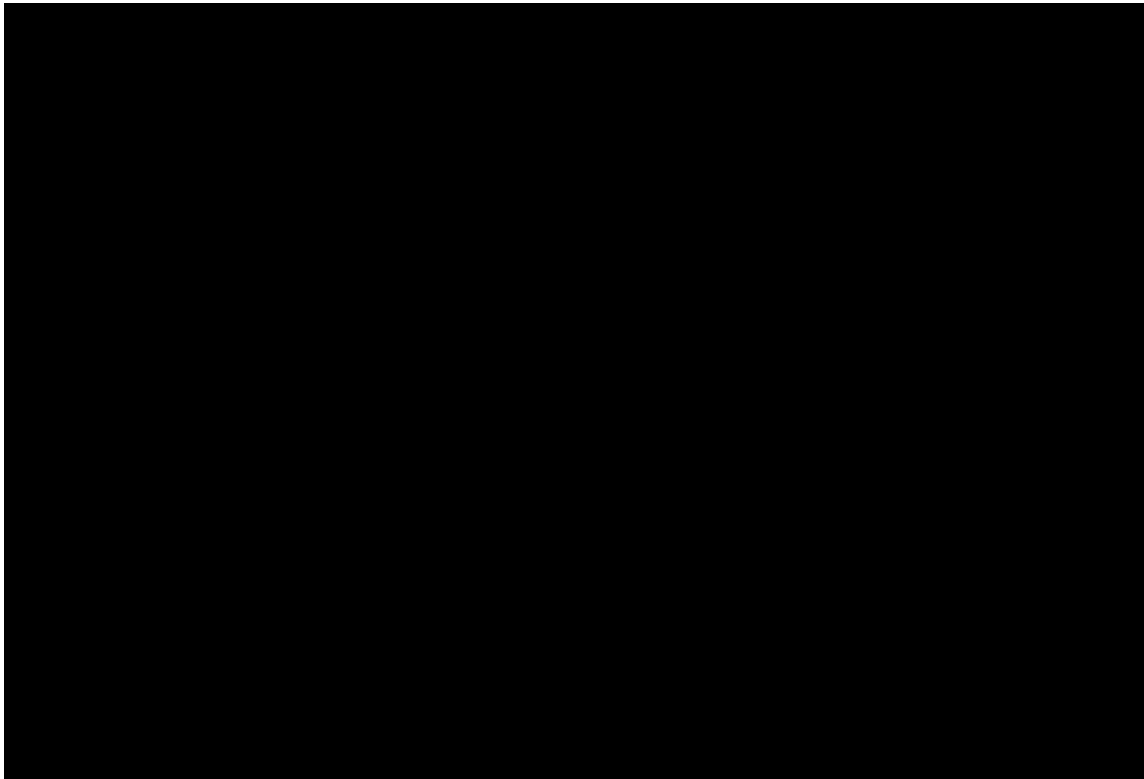
100 Retail AV service providers' competitiveness is based on their providing differentiated content offerings. As MultiChoice has demonstrated above, no single genre or category of content is "must-have". Further, the proliferation of high-quality content has improved the ability of retail AV service providers to acquire content and develop competitive downstream services.

101 The importance of a broad range of content in developing an audience is demonstrated by MultiChoice's viewership behaviour data. [REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]. The differences in a spread of these preferences across a wide range of content ensures that acquirers of content are able to substitute between content types in order to differentiate their service in an attempt to improve its attractiveness.

**Figure 7: Premium, Compact Plus and Compact by channel genre (FY2023 to FY2025 YTD)**



102 For MultiChoice specifically, there is no identifiable content genre that it could use to exclude downstream retail competitors. As has been noted by the Authority<sup>142</sup> (and presented at paragraphs 57 to 58 above), MultiChoice has experienced a significant reduction in its subscriber base while its competitors – including FTAs and OTTs – have experienced growth in their customer bases. This is despite the fact that MultiChoice has, through its focused approach to curation and investment in content acquisition, historically acquired sports rights and Hollywood movies which may have previously been considered as "must have" content.

103 As reflected in the above data, the variety of content genres, combined with the ability of many retail market participants to grow a subscriber/audience base without content historically labelled as "premium", highlights the importance of a differentiated content offering.

104 This, demonstrates competitors' ability and capacity to place meaningful and active competitive constraints on market participants like MultiChoice, using differentiated offerings.

**Local content provides an important and accessible lever for effective competition**

105 An additional factor contributing to significant levels of effective competition in the content market is the proliferation and popularity of *local content*, and its role in enabling market participants in AV retail service markets to establish a consumer base.

106 Traditional broadcasters (FTA and Pay TV) and global OTTs have invested heavily in producing local content for different domestic markets which also appeals to global audiences.<sup>143</sup> Local content meets unique viewing needs related to culture, representation, language and geography that cannot fully be met by international content. Indeed, local content is the most viewed content in South Africa (as MultiChoice has previously demonstrated). As a result, investment in local content is another way to compete and grow subscriber/audience bases. This content can be acquired, commissioned or produced, relatively easily, by OTT, Pay TV and FTA service providers.

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<sup>142</sup> SDD, paras 2.4.5.13, 2.4.10.6, 3.20.1.6, 3.20.1.9, 3.20.1.14, 3.21.1.19, and 3.21.1.23

<sup>143</sup> SDD, paras 2.8.17 – 2.8.18

- 106.1 Local broadcasters have long placed local content at the centre of their growth strategies having identified the attractiveness of this content to domestic consumers. For example, eMedia continues to invest heavily in local content for use on its different services. In FY2024 it invested an estimated R833.1 million on local content.<sup>144</sup> The importance of local content for entities such as eMedia is highlighted by the positioning of this content as a key element of its overall business.<sup>145</sup> As highlighted by the Authority, MultiChoice continued to increase its investment in local content in order to differentiate its offering.<sup>146</sup> As has been indicated to the Authority previously, MultiChoice spent [REDACTED] on local content in each of the financial years from 2019 to 2023.<sup>147</sup>
- 106.2 However, significant investment in local content is not unique to local broadcasters. Demand for local content is driving investment by global OTTs such as Netflix (approximately US\$125 million according to the SDD).<sup>148</sup> It is clear from the magnitude of the investment as well as the volume of content produced, that the global OTT services see these investments as important for attracting South African subscribers.<sup>149 150</sup>
- 107 There is no scarcity of local content rights and there are no material barriers to entrants and participants acquiring or producing their own local content. The increased investment in and proliferation of local content has contributed to the overall availability of desirable content across the market.
- 108 In summary, the growing importance of this content in the downstream market has provided market participants at the wholesale content level of the value chain with an additional avenue through which to more effectively compete with established market participants.

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<sup>144</sup> eMedia, (2024). *Integrated Annual report 2024*. p. 2

<sup>145</sup> eMedia, (2024). *Integrated Annual report 2024*. p. 24

<sup>146</sup> SDD, paras 2.8.17 and 2.4.5.1.

<sup>147</sup> MultiChoice 15 February 2024 response to ICASA's November 2023 questionnaire, pp. 70-71.

<sup>148</sup> SDD, para 3.21.1.1

<sup>149</sup> See paragraphs 180.2, 181.2, 181.3, 233.4 and 341.3 of MultiChoice's 4 October 2019 representations.

<sup>150</sup> Indeed, Netflix appears to have prioritised investment in local content over that of live sporting events – suggesting that it considers such investment more important for growth than acquiring sports content.

**Even on the basis of wholesale content markets delineated by the Authority, a finding of effective competition remains valid**

109 Despite MultiChoice's submissions on market definition, MultiChoice supports the Authority's findings that competition is effective also within the market delineations identified by the Authority.

110 With respect to "premium" movies and series:

110.1 The proliferation of diverse, high-quality programming means that a broad range of content can attract, build and sustain an audience. Retail AV service providers do not need access to specific genres.

110.2 Highly successful movies and series are available from a wide range of suppliers. Movies and series have seen a significant expansion in quality content suppliers. This includes independent studios and production houses such as Vision Films, GEM Entertainment, Fremantle, Africa in Motion, Ferguson Films, Tshedza Pictures and Miramax, which produce and distribute competitive content. The rise of OTT providers has also led to a rapid influx of high-quality, high-budget productions. The landscape is diverse, expanding and competitive.

111 Additionally, there is ample "non-premium" content, which is generally characterised by low barriers to entry (e.g. low costs), which allows for effective competition.

112 With respect to "premium" sports:

112.1 There is also a growing investment in sports and sports-related content by other AV retail service providers. This investment and interest in this content will continue to serve as a competitive constraint on those market participants – e.g. MultiChoice – which currently compete to purchase high-value sports rights.

112.1.1 Global OTT providers with retail AV services in South Africa have large budgets which enable them to compete with those market participants which currently purchase sporting rights for South Africa.

112.1.2 It is important for the Authority to recognise that AV services are not static, but highly dynamic. In a dynamic and evolving market, the absence of sport from a particular service, at a point in time, is not a reliable indicator that this would

remain that way, even in the short term. The global OTTs have significant ability to develop and acquire new sports or sport-related content. Netflix is a clear example of an OTT platform which has already started to increase its investment and interest in sports and sports-related content. For example, it developed highly popular sports-based series which give behind-the-scenes looks at players and tournaments.<sup>151</sup> In recent years Netflix has also invested significantly into broadcasting live sporting events. This includes live golf (the Netflix Cup), tennis (the Netflix Slam), American Football<sup>152</sup>, and Professional Wrestling (the World Wrestling Entertainment's Raw programming).<sup>153</sup> This makes it inappropriate to draw conclusions based on current features of services, especially given that the Authority has found the retail and content markets to be dynamic.

112.1.3 Other OTT services such as Showmax Premier League Mobile<sup>154</sup>, SABC Plus<sup>155</sup>, StarTimes On<sup>156</sup>, and DAZN<sup>157</sup> also serve as active participants in sports related content markets.

112.1.4 Sports bodies also increasingly offer their content directly to consumers. FIFA's FIFA+ streaming service, UEFA's free OTT streaming service,<sup>158</sup> Formula 1,<sup>159</sup> the NBA channel<sup>160</sup> and the WWE Network<sup>161</sup> all provide live sports content via OTT in South Africa.

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<sup>151</sup> This includes "Formula 1: Drive to Survive" (Formula 1), "Full Swing" (PGA Tour), "Unchained" (Tour de France), "Break Point" (ATP and WTA tour) and "Six Nations: Full Contact" (Rugby)

<sup>152</sup> In December 2024, Netflix aired two NFL games on Christmas Day. This move marked Netflix's initial foray into live sports, aiming to enhance viewer engagement and diversify its content offerings.

<sup>153</sup> The live WWE content does not currently include the rights in South Africa.

<sup>154</sup> Showmax Premier League offers a wider variety of football content, including major local and international leagues. See: <https://www.showmax.com/za/premier-league>

<sup>155</sup> All sport broadcast on SABC Sport can be found on the SABC+ platform. See: <https://sabc-plus.com/live/323/SABC-Sport>

<sup>156</sup> StarTimes On offers a wide variety of sport, most notably some combat sports and football from European leagues. See <https://m.startimestv.com/browser/liveDetail?channelId=1031981242>

<sup>157</sup> DAZN offers a wide variety of sports, primarily boxing, NFL and women's football. See: <https://www.dazn.com/en-%20ZA/sport/Sport:289u5typ3vp4ifwh5thalohmq>

<sup>158</sup> <https://tmbroadcast.com/index.php/uefa-tv-free-ott-platform-ready-operate-premium-distribution-channel/>

<sup>159</sup> <https://www.formula1.com/en/subscribe-to-f1-tv.html#en-ZA>

<sup>160</sup> <https://www.nba.com/watch/nba-tv>

<sup>161</sup> <https://www.wwe.com/wwenetwork>

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- 112.2 Sports rights opportunities are open to any retail AV service provider willing to invest in such content. Rights to sporting events are contestable and become available for acquisition by any interested provider at regular intervals.
- 112.3 Retailers of AV services are able to compete effectively in the downstream market without including sports content in their offerings.
- 112.4 FTA services such as Openview have been able to consistently grow their customer base despite not acquiring sporting rights. This is in the face of MultiChoice – a direct competitor – experiencing a significant reduction in its own subscriber numbers despite its services including popular sports rights.
- 112.4.1 OTT services (both "premium" and "basic") have been able to develop a meaningful offering in South Africa without including a significant sports programming. Larger global OTT providers such as Amazon Prime Video, Disney+ and Viu have all been able to establish a competitive offering domestically with significantly differentiated content offerings.

### **No single market participant as SMP**

- 113 It is clear from all the submissions above that the competitive dynamics of the content market have evolved and no content supplier can possibly hold SMP given the proliferation of high-quality content available to retail AV service providers and their ability to compete with differentiated service offerings and the growth of OTTs which in any event makes the downstream market extremely competitive.



## APPENDIX 1: RESPONSES TO ICASA'S QUESTIONS

In the main body of these submissions, MultiChoice has provided a comprehensive, substantiated response to the SDD, including references to evidence cited by the Authority in the SDD, findings in the SDD, earlier submissions from MultiChoice and other stakeholders, updated data where available and submissions regarding economics principles.

While MultiChoice endeavours below to provide the Authority with cross-references to those parts of MultiChoice's submissions that relate directly to the particular questions in the SDD,<sup>162</sup> the economics questions raised by the Inquiry and addressed in MultiChoice's submissions are interrelated matters that cannot be read in isolation. Accordingly, the cross-references below are for the Authority's assistance and the Authority is kindly requested to consider MultiChoice's submissions as a single, comprehensive response to all the matters relevant to the Inquiry and the findings which the Authority needs to make.

**Question 1:** *Do you agree with the Authority's market definition approach provided above? Motivate your response by providing reasons and any supporting evidence or data as far as possible.*

**Question 2:** *Do you agree with the Authority's identified tools for defining the relevant market? Motivate your response by providing reasons and any supporting evidence or data as far as possible.*

**Question 3:** *Do you agree with the Authority's preliminary view that FTA is in the same market as basic tier subscription television? Motivate your response by providing reasons and any supporting evidence or data as far as possible.*

**Question 5:** *Do you agree with the Authority's preliminary view that premium tier subscription television is in the same market as SVOD OTTs? Motivate your response by providing reasons and any support evidence or data as far as possible.*

- 1 MultiChoice agrees that the Authority's approach and methodology to market definition is greatly improved and more true to economic principles than was the first discussion document and draft findings document. This includes the Authority's recognition that in

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<sup>162</sup> Unless stated otherwise below, any reference in this appendix to a paragraph number, figure number or footnote is a cross-reference within these submissions.

an Inquiry into MultiChoice's Pay TV service, MultiChoice's Pay TV bouquets are the focal product for application of the SSNIP.<sup>163</sup> However, there are some shortcomings in methodology which we identify in our submissions (see paragraph 97.1). It is also worth re-emphasising<sup>164</sup> the following well-understood implications of the application of the SSNIP test as standard practice for identifying closes substitutes and competitive constraints for a focal product:

- 1.1 constraints should be considered in aggregate, rather than one-by-one: the basic idea behind this is that the profitability of a SSNIP is determined by the total loss of customers following a price increase regardless of where the customers go;
  - 1.2 the relevant responses are those of marginal consumers, and the relevant question is whether marginal consumers would switch away from the focal product in response to a SSNIP in sufficient numbers as to render the SSNIP unprofitable.
  - 1.3 differences in product characteristics, prices and business models do not necessarily imply that products belong in separate markets. Such differences may be taken into account, but the ultimate question that must be asked and answered is: would there be enough substitution away from the focal product, in aggregate, in response to a SSNIP, to render the SSNIP unprofitable for a hypothetical monopolist. Significant substitution may occur to differentiated products notwithstanding the differences; and
  - 1.4 products that contribute significantly to aggregate constraints indirectly, through a chain of substitution, should be included within the relevant market.
- 2 As regards the Authority's recognition of the applicable facts, although the Authority has taken crucial steps forward in recognising the evolving competitive landscape and impact of OTTs on Pay TV in South Africa, MultiChoice does not agree with the Authority's narrow retail market definitions. OTT services exert a significant competitive constraint across the entire market, including the "basic tier" and the competitive interaction between MultiChoice and FTA services extends beyond the lower tier.

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<sup>163</sup> SDD, paras 2.2.2, 2.2.7 and 2.5.6

<sup>164</sup> More detail on these implications can be found in the Market Definition section of MultiChoice's 2019 submission, paras 353 to 384.

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- 3 The Authority correctly considers OTT services to exert a meaningful competitive constraint on what it identifies as "premium" Pay TV services.
- 4 In paragraphs 20 to 31 of our submissions, we demonstrate that there is demonstrable evidence in the Authority's SDD that OTT services constrain all tiers of Pay TV, even the lower tiers. Based on the evidence in the Authority's SDD alone, the Authority should in its market definition assessment recognise that OTT services constrain all tiers of Pay TV services.
- 5 In paragraphs 32 to 45 of our submissions, we set out how previous submissions to the Authority and updated data confirm that OTT services exert a competitive constraint in all tiers of the market.
- 6 Lastly, in paragraphs 46 to 51 of our submissions, we demonstrate how international authorities also note that OTT services exert a competitive constraint on traditional broadcasters and that they do not typically confine this constraint to a particular segment of the market.
- 7 In paragraphs 52 to 77 of our submissions, we set out the evidence that demonstrates that OTT services constitute an additional competitive constraint in the "basic tier" and continue to be a constraint in the "premium tier". This, taken with the competitive interaction between FTA and higher-tier Pay TV, confirms that there is competition across the entire AV market. This bolsters and confirms the Authority's finding that competition is effective across the market, regardless of whether the retail market is defined broadly or into the narrower segments identified by the Authority in the SDD.

**Question 4:** *What other changes can the Authority expect to occur in OTT services and subscription services which have an impact on competition between these services?*

- 8 The Authority's findings as set out in the SDD already reflect correct expectations that the Authority should have as regards OTT services. The Authority found that the provision of retail AV services is highly dynamic. The competitive landscape will likely shift further as service providers adapt to changes. Most importantly in the context of question 4, in line with the Authority's findings in the SDD (as supplemented by MultiChoice's submissions), the Authority can expect that OTT services - and global OTT services in particular - are best placed to and will continue to adapt their technology,

products and business models to evolving consumer preferences given their massive content budgets and global scale.<sup>165</sup>

9 MultiChoice's submissions provide extensive further evidence of product innovation in relation to OTT services. See, for example -

9.1 changes in mobile AV consumption behaviour and various developments in relation to OTT mobile-only offerings (paras 24 to 25 and 36 above);

9.2 the development of OTT ad-based and Freemium products (paragraphs 37 to 39);

9.3 OTTs developing highly popular sports-based series (paragraph 112.1.2);

9.4 the increasing interest that OTTs have in sports content (paragraphs 112.1.2 to 112.1.3) and

9.5 increasing interest by social media platforms and music streaming services in programming such as movies, series, documentaries and live sport (paragraphs 69 and 90).

10 Also see, for example, the discussion of the way -

10.1 FTA broadcasters have evolved their services by expanding into OTT services (paragraph 72.2 read with paragraph 69); and

10.2 sports bodies have become providers of direct-to-consumer sports content through an OTT offering (paragraph 112.1.4).

11 OTTs are also likely to maintain, if not increase their focus on, local content. See paras 42, 53.2, 80.1 and 106, and footnote 150. See also the Authority's existing expectation in the SDD in this regard, referenced in the second quote below paragraph 82 of these submissions. Additionally, Netflix has stated that its investment in providing "*more content*" is "*not anywhere near a ceiling*" and that it is "*still just getting started*". It has also indicated that part of this strategy is to develop content that will have "*big, local*

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<sup>165</sup> See, for example: <https://broadcastmediaafrica.com/2025/03/10/netflix-plans-us18-billion-content-investment-for-2025-aiming-for-global-growth-and-enhanced-entertainment-value>

*impact*",<sup>166</sup> indicating that a focus on local content remains an important part of its content investment strategy.

12 Accordingly, the Authority's existing expectations are correct that -

12.1 *"MultiChoice will likely lose more subscribers while subscriber bases of OTT services continue to grow" and "OTTs have access to content both local and international that keeps driving viewership numbers";*<sup>167</sup> and

12.2 *"[g]iven the structure of this evolving relevant market... competition is likely to continue to be dynamic becoming even more effective. Evidence considered by the Authority... showing significant subscriber losses by MultiChoice, supports the view that it is facing greater levels of competition including from well-financed global competitors."*<sup>168</sup>

**Question 6:** *Do you agree with the Authority's view on the wholesale market definition? Are there any factors that the Authority should have either included or excluded from the wholesale market definition?*

13 The Authority's conclusion on the relevant content market delineation is in tension with the competitive dynamics and effective competition in the retail market highlighted by the Authority in the SDD.

14 In paragraphs 83 to 113, MultiChoice highlights that the Authority's findings are consistent with a broader content market than the narrower ones identified by the Authority.

**Question 7:** *Do you agree with the Authority that market definition in upstream content markets should not be limited to simply establishing whether the notion of premium content exists and whether there are differences between premium content and non-premium content? Provide evidence to support for your answer.*

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<sup>166</sup> See Netflix announcement cited in footnote 166 above

<sup>167</sup> SDD, para 3.20.1.10

<sup>168</sup> SDD, para 3.20.1.14

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- 15 MultiChoice agrees. The Authority's market definition in relation to the upstream content markets appears to simply focus on considering whether the notion of "premium" content exists and on apparent differences between "premium" and "non-premium" content and subsets of such "premium" content. This, however, is not aligned with economic best practice for market definition.
- 16 The Authority needs to consider how *wholesale* content customers would react in relation to a SSNIP. This, in turn must be applied, not in relation to considering a narrow subset of end-consumers who have a particular preference for certain content (i.e infra-marginal consumers), but in relation to whether a sufficient number of marginal consumers (i.e. those least wedded to Pay TV services and prone to cancelling subscriptions) would be likely to switch to make the SSNIP unprofitable for the content supplier (paragraph 97.2). This exercise must be conducted by reference to *actual* competitive dynamics (see paragraphs 83 and 86).
- 17 The Authority also needs to assess whether the notional premium/non-premium concepts provide a *meaningful* basis to basis to define content markets (see paragraphs 88 to 91), which must be considered also by reference to the retail market dynamic in which content can be used by AV retail services to offer a competitive service (paragraphs 94 to 96), which the Authority has already found to be the case (see footnote 116).

**Question 8:** *Since the inception of this Inquiry in 2016 and more specifically in the last 5 years have you competed for any premium sports content and or premium movies and series directly from the owners of the content?*

**Question 9:** *If you have competed for the rights identify each of the rights you have competed for and provide details of each bid/request.*

**Question 10:** *If you intend to acquire any content from rights owners provide details of your content acquisition strategy over the past 5 years and over the next 3 to 5 years including and/or particularly in relation to sports content.*

- 18 In its submissions, MultiChoice has referenced the Authority's correct finding that no particular genre of content (or any category of content within any genre) is required in order for a retail AV service to build an audience and develop a competitive product.<sup>169</sup>
- 19 MultiChoice has provided updated evidence of -
- 19.1 the extent of demand for diverse content from MultiChoice's own subscribers (Figure 7), demonstrating the importance of a diverse range of content in a retail AV services, including among MultiChoice's subscribers (see paragraphs 100 to 102);
  - 19.2 the high levels of demand for non-sport content, such as local content, which consistently ranks in the most watched programming for FTAs such as SABC and eMedia (paragraphs 72 and 72.1); and
  - 19.3 the ability of AV services, particular eMedia's Openview, to grow phenomenally without sport (paragraphs 93.5 and 99.2).
- 20 Accordingly, retail AV services are able to substitute between content types in order to differentiate their service in an attempt to improve its attractiveness and there is no identifiable content genre that MultiChoice, as an acquirer of content from upstream content suppliers, could use to exclude downstream retail competitors (see paragraphs 102 and 103, read with paragraphs 99 and 100 and Figure 1).
- 21 In any event, the Authority has also correctly found that the upstream market is effectively competitive.
- 22 Accordingly, MultiChoice has nothing further to add to its response to questions 8, 9 and 10 save to note that the questions are overly narrow and misplaced in terms of their ability to provide relevant information that the Authority could use to meaningfully advance the findings in the SDD. These questions are also specific fact-finding questions that would be sought during the questionnaire process and not by way of public consultation on a discussion document.

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<sup>169</sup> See references at footnote 116

**Question 11:** *Do you agree with the Authority's view that none of the players in the defined markets hold significant market power? In your answer kindly provide a detailed reasons for your view and evidence.*

- 23 Although MultiChoice does not agree with the Authority's market definition, the Authority's main findings on effectiveness of competition and the absence of SMP (in particular) remain valid, regardless of whether the market is delineated on a narrower or broader basis.
- 24 The Authority's conclusions on the nature and state of competition in retail AV service provision, including Pay TV, are correct.
- 25 Please refer to our submissions at paragraph 80.