



10 March 2025

Chairperson: Subscription Television Broadcasting Service Council Committee  
The Independent Communications Authority of South Africa  
420 Witch-Hazel Avenue  
Eco-Park Estate  
Centurion  
0169

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

Dear Sirs

**RE: Responses to Supplementary Discussion Document dated December 2024**

We refer to the “Supplementary Discussion Document” in relation to the Independent Communications Authority of South Africa’s (the “**Authority**”) Inquiry into Subscription Broadcasting Services published in Government Gazette Notice 5647 on 6 January 2025 (the “Supplementary Discussion Document”). Netflix International B.V. (“Netflix”) has considered the Supplementary Discussion Document, and the questions posed by the Authority and wishes to respond to the questions on a voluntary basis.

We have bolded each question from the Supplementary Discussion Document and set out Netflix’s responses to each in turn below.

- 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.**

Netflix notes that the Authority’s approach to market definition focused primarily on the hypothetical monopolist / SSNIP test. However, Netflix is not in a position to comment on the Authority’s market definition approach or the tools it uses.

In its experience, as stated by Netflix in its previous submissions to the Authority, due to the evolving and dynamic nature of the media industry, the definition of a market is a complex exercise that requires in-depth economic analysis, and which analysis has not been undertaken by Netflix. However, Netflix notes that, in South Africa, consumers now have an array of electronic audio-visual content to choose from, including free TV channels, pay-TV channels, non-linear pay-TV services (VOD, SVOD), catch-up services, and DVDs. As a result, free TV channels, pay-TV channels, VOD/SVOD services, theatrical distributors, digital stores, suppliers of DVDs and the like all compete with each other to distribute the best possible content (movies, documentaries, series, shows, etc).



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 and data as far as possible.**

Please see the response to Question 1 above.

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.**

As indicated in previous submissions to the Authority, Netflix has not engaged in a detailed market definition exercise, and its comments in this letter should not be interpreted as a reflection of Netflix's definite opinion on market definition. However, we make the following preliminary observations:

- Netflix is of the view that it competes broadly for people's time and attention. Viewing time is a proxy in this regard. This view finds support in various public metrics, such as Nielsen in the United States<sup>1</sup> and BARB in the United Kingdom<sup>2</sup>, which track viewing time (including linear, non-linear, and YouTube);
- there exists a competitive and dynamic local audio-visual services sector that includes services via all distribution technologies, and linear as well as non-linear services. This market includes electronic audio-visual services (free and paid-for) without distinction by content genre or price point. Consumers have an extensive array of electronic audio-visual content to choose from, which they can view whenever and wherever they wish — not only on TV sets but on a range of mobile devices;
- consumers make decisions on a daily basis as to which forms of entertainment - audiovisual or otherwise - they will select and engage in. All forms of audiovisual entertainment (films, sports, and other TV content, scripted or unscripted) compete with one another, as well as with other forms of entertainment (including cost-free video hosting platforms such as YouTube, online music platforms such as Deezer or Spotify, video gaming, web browsing, and social media services), for consumers' attention and spend. There is therefore a very high level of demand-side substitutability between free TV channels, pay-TV channels, non-linear pay-TV services (VOD, SVOD), catch-up services, and DVDs. As a result of this very high level of demand-side substitutability, free TV channels, pay-TV

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<sup>1</sup><https://www.nielsen.com/news-center/2024/the-gauge-broadcast-hits-its-stride-in-october-on-strength-of-drama-and-sports-programming/>

<sup>2</sup> <https://www.barb.co.uk/viewing-data/total-identified-viewing-summary/>

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channels, VOD/SVOD services and suppliers of DVDs all compete with each other to acquire and distribute the best possible content (movies, documentaries, series, shows, etc); and

- Netflix considers that any potential downstream segment for the retail supply of TV services must also include OTT services. Netflix notes that the boundaries between the different levels of the supply chain are increasingly blurred due to the industry's increased vertical integration. A number of companies are now present at all levels of the supply chain: they produce or acquire, aggregate, and distribute audiovisual content to consumers.
- Having regard to the foregoing, Netflix agrees with the Authority's view that FTA is in the same market as basic-tier subscription services. However, Netflix remains of the view that FTA and basic-tier subscription services exist and operate within a broader market, which includes, at minimum, OTT services and premium-tier subscription services.
- Without limiting or derogating from the foregoing, we note that the Supplementary Discussion Document does not clearly define what constitutes basic-tier subscription services. This makes it difficult for Netflix to respond to this question.

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

As indicated above, Netflix is of the view that the distribution of audio-visual broadcasting is continuously evolving due to ongoing innovation and technological advancements. As broadcasting services adapt, the landscape remains dynamic. Given this rapid evolution, Netflix is unable to predict future changes in OTT and subscription-based services, insofar as to say that Netflix will continue to compete for customer attention with the broad range of options available.

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

- Netflix agrees that premier-tier subscription television is in the same market as SVOD OTTs but submits that the market is not limited to premier-tier subscription television and SVOD OTTs but is broader and includes all audio-visual broadcasting services, including FTA, basic-tier subscription services, premier-tier subscription services, and OTTs.
- Without limiting or derogating from the foregoing, it is noted that it is unclear from the Supplementary Discussion Document what the Authority defines as premium tier subscription services and that the Authority's reasoning regarding

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premium content is unclear and inconsistent. The Authority acknowledges that premium content is difficult to define due to its fluid nature, shaped by factors such as market conditions, geography, culture and consumer preferences. Despite this concession, the Authority appears to arbitrarily ascribe premium content to movies and television series produced in Hollywood, whilst also noting that two locally produced television shows, namely *Uzalo* on SABC and *Sibongile and the Dlaminis* on Mzansi Wethu, are amongst the most popular in the country. In this regard, it is evident that the Authority's focus on movies and television series produced in Hollywood ignores customer preferences, which are dependent on local conditions.

- In particular, we note that the Authority recognizes (in paragraph 2.8.28 of the Supplementary Discussion Document) that video entertainment services (OTT, subscription and FTA) are not made up of one type of content and that consumers' preferences for content are not uniform and change over time. The Authority expressly recognises that this creates possibilities for substitution, between premium and non-premium content. In addition, in paragraph 3.21.1.22 of the Supplementary Discussion Document, the Authority also confirms that the evidence suggests that to some extent consumers and providers 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 is submitted that these findings clearly support Netflix's position above.
- Also noteworthy is that Netflix does not focus solely on Hollywood productions, sports, or local content; rather, it offers a diverse mix of content to cater to varied consumer preferences. This broad content strategy aligns with evolving viewer expectations and highlights that premium content (as defined by the Authority) is not the primary driver of subscription choices.
- It is worth noting that over the period of 1991 to 2010, the European Commission defined distinct markets for FTA and pay-TV services. However, since 2010, the European Commission has deviated from this distinction and opted not to define the market too narrowly. Instead, the European Commission has favored a broader market definition when it comes to video entertainment services, concluding that FTA, basic subscription services, and OTT services all form part of the same market.<sup>3</sup>
- Based on these factors, Netflix maintains that the market definition should be broadened to include FTA services, basic-tier and premium-tier subscription services, and OTT services.

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<sup>3</sup> M.6369 HBO/Ziggo/HBO Nederland; M.7000 Liberty Global / Ziggo; M.7194 Liberty Global / Corelio / W&W / De Vijver Media; M.8665 Discovery / Scripps; M.8785 The Walt Disney Company / Twenty-First Century Fox; M.10343 Discovery / Warner Media; M.10349 Amazon / MGM

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

- As is noted by the Authority, video entertainment services (OTT, subscription services and FTA) are not made up of one type of content and consumers preferences for content are not uniform. Consumer preferences and content availability are ever-changing. Thus, any specific wholesale market definition is likewise continually subject to change. In addition, due to the dynamic nature of consumer preferences, the acquisition of content will always be subject to ongoing change.
- In respect of the distinction between the acquisition of premium and non-premium content, Netflix notes that the Authority has arbitrarily ascribed premium content status to movies and television series made in Hollywood, whilst disregarding the popularity of local content. This view is contradictory to the Authority's own submissions that two locally produced television shows were the most viewed in South Africa as of 2024. Additionally, we note that the National Association of Broadcasters, in their State of the Industry Report<sup>4</sup>, noted that the investment in local content continues to rise. The sustained growth in the production of local content demonstrates not only strong audience demand but also industry confidence in the viability of local content. This further calls into question the Authority's arbitrary distinction, which does not align with market realities.
- Netflix notes that it does not view the market in the manner set out in the wholesale market definition. Netflix produces and acquires content (including games), which is then distributed to consumers when they subscribe to the service. Netflix employs a number of different production models in its content acquisition including self-produced content, partner co-managed content, and content acquired from a third party. Netflix does not only produce content outside of South Africa, but it is also a contributor to the local creative economy and produces a number of locally made television series and movies.
- In the circumstances, Netflix notes that the market for the licensing and acquisition of broadcasting rights for audio-visual content should be broadly construed. In this regard, boundaries between the different levels of the supply chain are increasingly blurred on account of the increased vertical integration that the industry is undergoing. A number of firms are now present at all levels of the supply chain: they produce and acquire, aggregate, and distribute audiovisual content to consumers.
- Netflix therefore submits that the definition of the wholesale market should be broadened to include both globally produced and locally produced content, with no distinction between so-called premium and non-premium content.

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<sup>4</sup> [NAB\\_State\\_of\\_Industry\\_Report\\_-\\_3rd\\_edition\\_\(2019-2024\)\\_-\\_Final\\_Version.pdf](#)

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- 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 your answer**

- Please see the response to question 6 above. Netflix submits that the definition of the wholesale market should be broadened to include both globally produced and locally produced content, with no distinction between so-called premium and non-premium content.
- Netflix does not focus solely on Hollywood productions, sports, or local content; rather, it offers a diverse mix of content to cater to varied consumer preferences. This broad content strategy aligns with evolving viewer expectations and highlights that no one type of content is the primary driver of subscription choices.

- 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?**

As indicated above, Netflix does not distinguish between particular types of content in the same way that the Authority has done. Netflix focuses on offering a basket of content that includes both international and local content in order to satisfy its dynamic consumer base.

- 9. If you have competed for the rights, identify each of the rights you have compete for and provide details of each bid / request?**

Netflix confirms that the content available on its service has either been produced by Netflix itself, or it has been acquired from third parties. Given the breadth of Netflix's offering, it is not possible for Netflix to provide the information requested.

- 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.**

Netflix confirms that the content available on its service has either been produced by Netflix itself, or it has been acquired from third parties. Netflix's content strategy evolves in the face of dynamic and shifting consumer demand because as noted above, all types of entertainment compete for consumer attention and spend. Netflix notes that in recent times it has featured some live content on its service including [WWE](#), [live boxing](#) and last year [two NFL games](#).

**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 detailed reasons for your view, and evidence.**

- As indicated above, Netflix is of the view that the markets should be defined more broadly than that suggested by the Authority.
- Notwithstanding this, Netflix agrees that none of the players in the defined markets hold significant market power. As a general comment, Netflix notes that many new entertainment players have entered the South African market in recent years (including Netflix itself, as well as many others, including AppleTV+, Disney+, Plex and Amazon Prime Video as well as YouTube), alongside various regional services (SABC+ and eVOD). This influx of competitors has diluted the market concentration, making it difficult for any one player to enjoy the level of dominance required to exercise significant market power.

We thank the Authority for the opportunity to participate in this process and remain available should any aspect of our submission require clarification.

Kind regards



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*About Netflix*

*Netflix is a streaming entertainment service with members in 190+ countries enjoying TV series, documentaries and feature films across a wide variety of genres, languages and devices. Our business model is a simple one: we give our members control over their entertainment. Our service is on-demand, personalized and available on any screen. We have built an audience - in South Africa and globally - by finding and creating the best stories working with local producers from around the world, and offering advert-free, unlimited viewing on any screen.*



*Netflix launched in South Africa in 2016. South Africa is important to Netflix, which is why we continue to ramp up our content investments in the country. We are delighted to support South African storytellers in bringing their unique stories to audiences all around the world so that more people can experience South African storytelling and cultures.*