

Chairperson: Signal Distribution Committee

Email: signaldistribution@icasa.org.za

28 June 2022

Dear Chairperson,

Discussion Document on the market enquiry into signal distribution services in South Africa, 2022

1. Introduction

- 1.1 ICASA published its Discussion Document on the Market Enquiry into Signal Distribution Services in South Africa (the Discussion Document) in government gazette number 46255 dated 22 April 2022 (the Notice). Interested parties were granted 45 working days from the date of publication to submit written inputs.
- 1.2 Primedia (Pty) Ltd (Primedia) is the licensee in respect of four commercial sound broadcasting services, namely CapeTalk (broadcasting on MW) 702, KFM and 947 (all of which are broadcasting on FM) and makes use of the managed transmission services (MTS) provided by Sentech SOC Limited (Sentech) to distribute its stations' signals to the public in the respective coverage areas.
- 1.3 Primedia thanks ICASA for the opportunity to make its submission on the Discussion Document and requests an opportunity to make oral representations at the public hearings. Primedia's submission does not address every aspect of the Discussion Document but focuses on those issues/questions that are of particular concern to it. We trust that ICASA will find these helpful.

2. Market definition



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Ad paragraph 2.1.1

- 2.1 Primedia notes and agrees with the contents of this paragraph and encourages ICASA to exercise its powers to “impose appropriate and sufficient pro-competitive licence conditions on licensees where there is in effective competition, and if any licensee has significant market power in such markets or market segments” as is provided for in section 67(4)(a) of the Electronic Communications Act, 2005, as amended (the ECA).

Ad paragraph 2.1.3

- 2.2 Primedia agrees that a market definition exercise is not and should not be “an end in itself”.

3. Broadcasting transmission services market in South Africa

Ad paragraph 3

- 3.1 Primedia is concerned with the lack of discussion regarding the advantages enjoyed by Sentech in respect of facilities. Sentech has, as a result of its apartheid-era history of being the technical and signal distribution unit within the SABC, a monopoly over the backbone signal distribution network in South Africa for sound broadcasting services. This includes the “high sites” which are those geographically-strategic sites for antennae situating that result in the most coverage for the least cost given the line-of-sight technical coverage issues pertaining to terrestrial sound broadcasting signal distribution.
- 3.2 Primedia respectfully submits that these sites constitute “essential facilities” for the purposes of section 67(5) of the ECA and, without more, mean that Sentech’s control thereof gives it significant market power in the broadcasting signal distribution MTS market and particularly, in the radio segment and digital terrestrial television segment thereof.

4. Provision of analogue and digital managed transmission services for terrestrial radio broadcasting (local or regional)

Ad paragraph 6.4.1

- 4.1 Primedia is concerned by certain statements made in this paragraph. It is not correct to state that local or regional radio broadcasting services are provided by class licensees while national radio broadcasting services are provided by individual licensees.



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4.2 Primedia has four commercial sound broadcasting services each of which operates under an individual licence and not under a class licence. Furthermore all four sound broadcasting services have a regional footprint. To the best of Primedia's knowledge only the SABC operates national radio services.

Ad paragraph 6.4.5

4.3 Primedia notes the statement that a hypothetical monopolist of MTS for local or regional radio broadcasting may be constrained from raising prices by 10% "due to the likelihood of alternative supply-side options being available, due to low barriers to entry into the market". However it is not clear the basis upon which this statement has been made in order for Primedia to consider the correctness thereof.

4.4 As submitted in paragraph 3.1 above, Sentech has, as a result of its apartheid-era history, a continuous monopoly over the backbone signal distribution network in South Africa for sound broadcasting services.

4.5 Theoretically, all individual Electronic Communications Network Services (ECNS) licensees are authorised to provide signal distribution services to the broadcasting industry as signal distribution is a form of ECNS. As ICASA is aware, a number of individual ECNS licences have been granted. Therefore, these ECNS licensees are theoretically all potential competitors to Sentech.

4.6 However, as ICASA is aware, there are currently no commercial providers of MTS for sound broadcasting service licensees (except for certain community sound broadcasting services that have their own ECNS licences in order to self-provide their signal distribution services) other than Sentech.

4.7 In Primedia's respectful view, the single biggest difference between Sentech and the licensed ECNS providers operating in the country and the reason why no commercial ECNS operators are providing MTS to the sound broadcasting industry is because of the monopoly (note not significant market power) that Sentech enjoys over the high sites.



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4.8 It is on this basis that Primedia is concerned by the statement which refers to “ low barriers to entry into the market”. Primedia respectfully submits that, given the technical nature of sound broadcasting signal distribution in the country, not having access to the high sites is an almost insurmountable barrier to entry into the MTS market for sound broadcasting services.

4.9 The consequence of this barrier to market entry is that Sentech and not a hypothetical monopolist of MTS for local (or indeed regional and/or national) radio broadcasting is not constrained from raising prices by 10% as is stated.

5. Geographic markets

Ad paragraph 6.5.1.3

5.1 Primedia is concerned with the statement that “there is scope to supply-side substitution at the local or regional level for MTS for radio (particularly self-provision by radio... broadcasters)” for the reasons set out in paragraphs 4.1 and 4.2 above.

5.2 Primedia reiterates that scope for self-provision is not practical for regional MTS due to lack of access to the high sites which would be required. Primedia further submits as it did above, that unlike Sentech, none of the other ECNS licensees have access to this high-sites and this factor entrenches Sentech’s monopoly (not market power) in respect of MTS for radio broadcasting services.

6. Assessment of effectiveness of competition in the market for the provision of analogue and digital managed transmission services for terrestrial radio broadcasting (national)

Ad paragraph 7.2.2

6.1 Primedia is concerned at the contents of this paragraph as it refers to Orbicom and M-Net but M-Net is not a national terrestrial radio broadcaster and Orbicom does not distribute signals on behalf of any national (or indeed any other) terrestrial radio broadcaster (our emphasis).



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6.2 Consequently, Primedia respectfully suggests that ICASA appears to have confused terrestrial television broadcasting with terrestrial radio broadcasting in this paragraph. However Primedia agrees that it is “unlikely that any new entrants will emerge in the near future”.

Ad paragraph 7.2.6.1

6.3 Unfortunately, it appears that the Discussion Document is insufficiently nuanced because this section, does not examine the importance of the high sites and access to them by other ECNS providers in determining what constitutes the high barriers to market entry.

6.4 Consequently, Primedia is of the view that the Discussion Document does not pay sufficient attention to the monopoly access that Sentech enjoys over the high sites which are a particularly important barrier to market entry for potential competitors, of whom there are legion.

7. Assessment of effectiveness of competition in the market for the provision of analogue and digital managed transmission services for terrestrial radio broadcasting (non-national)

Ad paragraph 7.3.3

7.1 Unfortunately, it appears that the Discussion Document is insufficiently nuanced here because this paragraph does not unpack the impact on all aspects of competition in the MTS market, including in respect of the impact on market entry, the statement that Sentech “also owns 240 towers and masts”.

7.2 Consequently, Primedia is of the view that the Discussion Document does not sufficiently detail the impact of the advantages enjoyed by Sentech in respect of all the transmitter towers/masts (including at the high sites) that it currently owns as a result of its historical legislated-for monopoly. It is crucial that this be done in a Discussion Paper on MTS.

8. Significant market power

Ad paragraph 8



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8.1 Primedia respectfully agrees with ICASA that “Sentech has significant market power in the analogue and digital managed transmission services markets” but is of the view that this finding should be augmented by a specific reference to the towers, masts and high sites controlled by Sentech.

9. Primedia’s submissions in respect of what is left out of the Discussion Paper

9.1 Primedia was disconcerted to read to the end of the discussion paper and find that the only determination of the Discussion Paper is as set out in paragraph 2.9 above, namely that “Sentech has significant market power in the analogue and digital managed transmission services markets.”

9.2 Primedia is of the view that a Discussion Paper into MTS that reached that conclusion would have to then discuss all of the elements provided for in the ECA in relation to markets or market segments that ICASA finds to have insufficient competition as ICASA itself said it would do in paragraph 2.1.3 of the Discussion Paper.

9.3 In this regard, Primedia is of the view that ICASA is under an obligation in terms of section 67(4) of the ECA, “to prescribe regulations defining the relevant markets and market segments and impose appropriate and sufficient pro-competitive licence conditions on licensees where there is ineffective competition, and if any licensee has significant market power in such markets or market segments”.

9.4 Consequently, and respectfully, Primedia was expecting to find proposed or specific interventions regulations as envisaged in section 67(4) of the ECA and in particular to find proposed regulations which set out the proposed pro-competitive licence conditions to be imposed on Sentech to remedy the market failure as provided for in section 67(4)(d) read with section 67(7) of the ECA and in this regard, Primedia particularly hoped to see “obligations in respect of...facilities leasing” and in this respect Primedia wishes to make the further submissions below.

9.5 Primedia is experiencing a noticeable degeneration of service levels from Sentech across all of its stations all of which contribute to Primedia losing audiences:

9.5.1 the signal is patchy in places where it used to be strong;



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9.5.2 signal outages are more frequent; and

9.5.3 signal outages are lasting for longer.

9.6 Primedia finds that the service levels offered by Sentech are too low and the financial penalties for missed Key Performance Indicators (KPIs) in respect of the service are also too low – meaning that it is very difficult to in fact obtain reduced fees for missed KPIs by Sentech. Consequently, Primedia would like ICASA to prescribe that Sentech must submit MTS agreements to ICASA and, in the event of a dispute in respect of the commercial terms thereof, particularly over issues such as quality of service provision, KPIs and financial penalties for KPIs, ICASA must make a determination on such dispute, in terms of section 67(4) read with section 67(7)(a) of the ECA.

9.7 Further, Primedia would like the option of being able to contract with a different ECNS-licensed signal distributor, but none can offer MTS in the sound broadcasting sector because they lack access to the masts and towers and high sites that Sentech enjoys as a result of its previous decades-long monopoly over that infrastructure. Consequently Primedia would like ICASA to prescribe that licensed ECNS operators be given access to the essential facilities that are owned by Sentech in order to provide similar services to broadcasters, in terms of section 67(4) read with section 67(7)(a) of the ECA.

9.8 Following from the above, Primedia respectfully recommends that there be a schedule outlining the periodic reviews to be undertaken by ICASA in relation to the markets and market segments taking into account subsection (9) and the determination in respect of the effectiveness of competition and the application of pro-competitive measures in those markets.

9.9 It is imperative that there be efficient monitoring and investigation of anti-competitive behaviour in the relevant market and market segments, particularly in relation to:

9.9.1 the costs for MTS charged to licensees by Sentech;

9.9.2 the quality of the MTS services provided by Sentech; and

9.9.3 access to essential facilities for competitor ECNS.



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9.10 Primedia is of the view that that another iteration of the Discussion Document, but one containing the proposed regulations which ICASA is required to develop in terms of section 67(4) of the ECA (having found that there is insufficient competition in the MTS market and in various MTS market segments, including because of Sentech's control over essential facilities, and that Sentech has significant market power in all of these), must be published in the Government Gazette for public notice and comment as Primedia is of the view that this is required in terms of the public enquiry provisions contained in section 4 of the Promotion of Administrative Justice Act, Act 3 of 2000.

10. In conclusion, Primedia thanks ICASA for the opportunity of making the submissions and trusts that its suggestion for another iteration of the Discussion Document will be taken up by ICASA

Yours sincerely,



Tholoana Ncheke

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