SUBMISSION BY THE SOUTH AFRICAN BROADCAST CORPORATION IN RE: ICASA's FOLLOW UP QUESTIONS ON 15 JULY 2025

Question 2.1: Provide the Authority with samples of Invitation to Tender documents and sub-licensing contracts for sports rights entered into over the last 5 years?

- These are included in the zipped folder entitled "Q 2.1. – ITT Documents and Sports Contracts".

Question 2.2: The SABC indicated that there is a need for relaxation of regulations or light-touch regulations for the SABC to better compete post the analogue switch-off, on paragraph 95.2 of the submission. What regulatory proposals should ICASA consider in the context of this inquiry?

1. The SABC plays a constitutionally protected and legislatively mandated role as South Africa's primary public service broadcaster. Unlike other licensees, the SABC is expected to fulfil an expansive public mandate, including language diversity, educational programming, universal access, and coverage of national events, with minimal public funding and within a highly competitive commercial environment.

2. It is therefore concerning that the SABC does not enjoy the requisite regulatory protection envisioned under section 2(t) of the ECA, which directs ICASA to "protect the integrity and viability of public broadcasting services." The SABC submits that all regulations developed by ICASA — including the outcome of this current Inquiry — must be interpreted in a manner that gives effect to the objects of the ECA including:

   2.1. Section 2(b) – promoting technological neutrality;

   2.2. Section 2(f) – promoting competition within the ICT sector;

   2.3. Section 2(g) – promote an environment of open, fair and non-discriminatory access to broadcasting services, electronic communication networks and to electronic communications services;

   2.4. Section 2(h) – promoting broad-based black economic empowerment; and

   2.5. Section 2(t) – protecting the integrity and viability of public broadcasting services.

3. In light of the analogue switch-off and broader structural challenges identified in the RBB Economics Assessment (submitted 24 March 2025), the SABC submits that regulatory relaxation or light-touch regulation is imperative in key areas where current rules create unjustified burdens and exacerbate market asymmetries.

4. The SABC is structurally disadvantaged within the broadcasting market. Without a recalibrated regulatory framework, including the proposals below, the SABC will remain unable to compete fairly or sustainably fulfil its public mandate. ICASA is therefore urged to interpret its mandate in line with the constitutional and legislative objects of the ECA and to apply the proposed urgent, light-touch, and pro-public interest regulatory reforms in this Inquiry and related regulatory processes.

A. Digital Migration Regulations: The Case for Light-Touch DTT Regulation

5. The SABC faces disproportionate regulatory burdens in transitioning to digital terrestrial television (DTT), limiting its flexibility, reach, and competitiveness. We propose the following reforms:

6. **Technology Neutrality**

   6.1. ICASA currently regulates a split between DTT and Direct-to-Home (DTH) transmission and stipulates fixed percentages for each. This undermines broadcasters' ability to innovate and adapt to evolving platforms.

   6.2. **Proposal:** Repeal or revise the DTT-DTH ratio requirement, allowing broadcasters to choose the most efficient and cost-effective transmission technologies.

   6.3. **Justification:** Section 2(b) of the ECA promotes technology neutrality. The rigid split artificially increases costs and limits the SABC's audience reach, particularly in rural areas where STB penetration remains low.

7. **Use-It-or-Lose-It Rule (Multiplex Licence Capacity)**

7.1. The current time-limited requirement to "use" licensed multiplex capacity creates artificial pressure to launch new channels prematurely, and places undue commercial pressure on the SABC as the PBS licensee.

7.2. **Proposal:** Remove or extend the use-it-or-lose-it period for PBS licensees.

7.3. **Justification:** This rule imposes commercial pressure on the SABC without considering its resource constraints or market conditions.

8. **Channel Authorisation Process**

8.1. Under Regulation 6(6) of the Digital Migration Regulations, the SABC is subject to potential public hearings before new public service channels are authorized; a requirement not imposed on any other broadcaster.

8.2. **Proposal:** Harmonise the authorisation process across licensees or eliminate the public hearing requirement for SABC-only channels.

8.3. **Justification:** This requirement is procedurally unfair and delays service innovation.

9. The SABC notes that the Draft DTT Regulations (Gazetted July 2025) should serve as a vehicle to correct these imbalances, and we urge ICASA to consider the above during that parallel process.

B. Structural Competition Challenges and Other Regulatory Proposals

10. **Signal Distribution and Sentech Tariffs**

10.1. Sentech's signal distribution tariffs remain opaque, unregulated, and unaffordable for the SABC. The absence of cost-based, service-specific tariffs results in unfair cross-subsidisation that unfairly penalises the public broadcaster, which is required to maintain universal service obligations across all nine provinces; including rural and low-income areas with limited commercial viability.

10.2. **Proposal:** ICASA must inquire into and regulate Sentech tariffs under section 62(3)(b) of the ECA, which requires that Sentech must "duly take into account the nature and technical parameters of the service provided to each broadcasting licensee" and ensure tariffs are commensurate with the services rendered.

10.3. Justification:

10.3.1. The SABC's broadcasting obligations include extensive geographic and linguistic coverage, which demands greater transmission capacity and, in turn, higher signal distribution costs compared to commercial broadcasters that can focus on high-revenue urban audiences.

10.3.2. As a public broadcasting service with limited public funding, the SABC is structurally unable to absorb excessive or arbitrary costs that are not benchmarked to the actual nature of its services.

10.3.3. The lack of tariff transparency and regulatory oversight over Sentech may create distortions that entrench market power and shift disproportionate costs onto the SABC, weakening its sustainability and capacity to innovate.

10.3.4. Regulating Sentech's tariffs in line with section 62(3)(b) would ensure pricing fairness, cost transparency, and service-specific proportionality, thereby protecting the integrity and viability of public broadcasting services, as envisaged in section 2(t) of the ECA.

11. **Licensing Flexibility and Quota Rationalisation**

11.1. Current licensing imposes channel-specific content quotas, limiting the SABC's ability to efficiently schedule content across multiple platforms.

11.2. **Proposal:** Replace channel-based quotas with television-wide quotas, allowing the SABC to meet its obligations across its platform holistically, in line with the 2011 proposal by SABC during ICASA's DTT Regulation development process.

11.3. **Justification:** This would improve scheduling flexibility while ensuring compliance with public mandate obligations.

12. **Advertising Market Regulation**

12.1. The SABC remains dependent on advertising and sponsorship for approximately 80% of its revenue. Meanwhile, MultiChoice not only enjoys dual revenue streams (subscriptions and advertising) but also captures a disproportionate share of TV advertising spend.

12.2. Although section 60(4) of the ECA was intended to limit advertising revenue for subscription broadcasters, thereby protecting free-to-air (FTA) services, it has become ineffective because high subscription revenue means the cap is never triggered.

12.3. **Proposal:**

12.3.1. Amend legislation to allow ICASA to set binding rules on advertising revenue limits;

12.3.2. Urgently initiate an inquiry into the television advertising market, including online advertising's effect on FTA broadcasters;

12.3.3. Consider implementing caps on ad revenue, minute-based limits, or discount restrictions for dominant players.

12.4. **Justification:** This aligns with the Audio and Audiovisual Media Services and Online Content Safety Draft White Paper (2025), which empowers ICASA to intervene. Given the urgency, we propose ICASA be given specific deadlines to act.

C. Sublicensing of Premium sports Rights

13. As detailed in the RBB Economic Assessment (paras 59–71), the current sublicensing framework is infrequently used, subject to restrictive terms (e.g., delayed broadcasts, terrestrial-only restrictions), and undermines the ability of FTA broadcasters to attract viewers and advertisers.

14. **Proposal:** ICASA should institute a pro-competitive sublicensing regime, ensuring that exclusive rights holders are required to offer sublicences on fair, reasonable, and non-discriminatory (FRAND) terms for major events, particularly where public interest access is concerned.

15. **Justification**: The absence of a clear and enforceable sublicensing framework has enabled rights holders to impose exclusionary conditions that limit downstream access and entrench dominance. This has the effect of depriving the public of access to events of national importance, in conflict with the constitutional and statutory obligations placed on public broadcasting.

D. Revisiting Must-Carry Regulations

16. The SABC's channels are carried for free on subscription platforms despite delivering high-value public content.

17. **Proposal:** Amend must-carry regulations to allow for commercial negotiation or mandated compensation, consistent with international norms.

18. **Justification:** The current model results in value destruction for the public broadcaster, who bears the production costs and public obligations, while subscription broadcasters benefit from SABC's popular content without compensation. This contributes to the structural underfunding of public broadcasting.

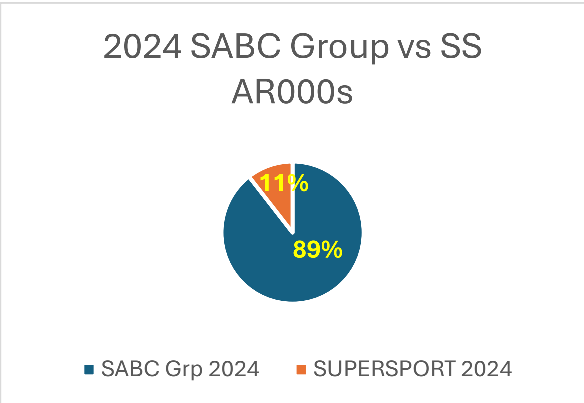
Question 2.3: On slide 18 of the presentation, SABC indicated that "MultiChoice control an incredibly high share of the upstream market in respect of premium sporting content, and in non-sporting content". Please provide an estimate of the abovementioned market share.

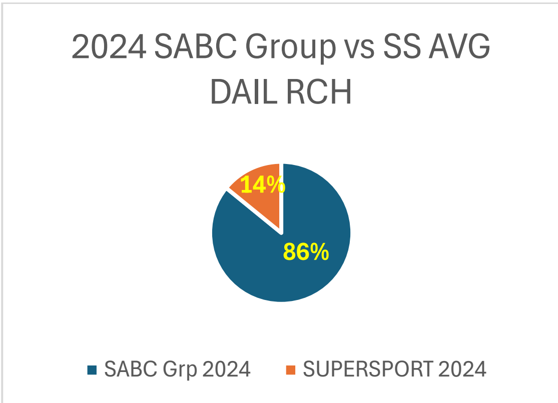
19. Audience data provides some insight into MultiChoice's dominance in securing premium content. However, certain aspects of the resulting competitive distortions and long-standing barriers to entry cannot be fully quantified. MultiChoice's acquisition of exclusive geo-zone licences means that any other broadcaster wishing to access such content must obtain a sub-licence from MultiChoice, reinforcing its market power.

20. Furthermore, MultiChoice's substantial financial resources allow it to outbid any other local broadcaster, driving up the cost of sports rights and contributing to rights inflation. The premium nature of this content means that only South Africans in a strong financial position can afford the subscription packages on which it is offered, effectively excluding large segments of the population. MultiChoice leverages these exclusive rights to sell more subscriptions, but this pay-tv model inherently limits audience numbers due to its smaller subscriber base. When SABC is granted access to broadcast the same content live, it consistently outperforms MultiChoice owing to its universal reach among South African viewers.

Performance

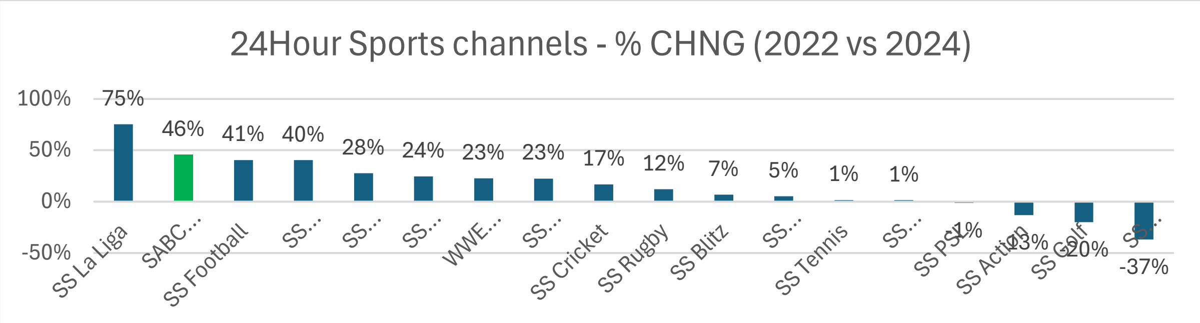
SABC Group (sport genre) vs Supersport (share distribution)

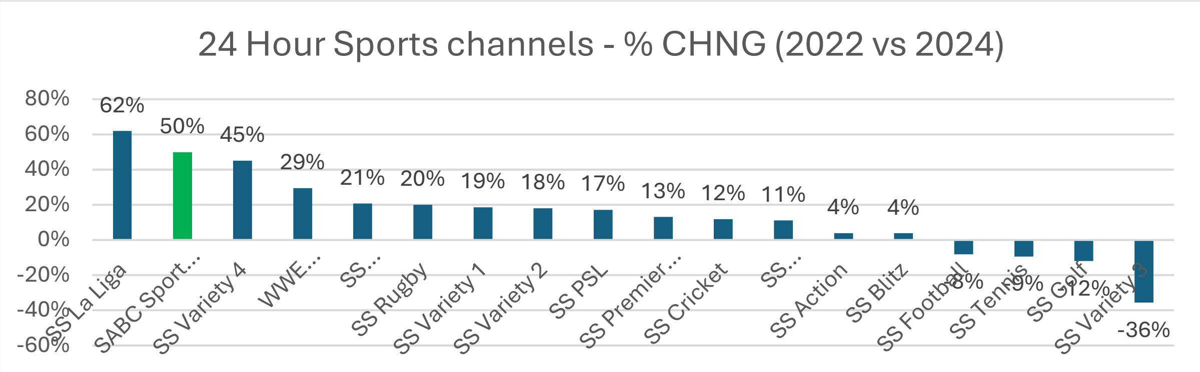




21. Supersport grew by 1% from 2022 to 2024 in AR000s and Average daily reach. SABC Group included sports broadcasting across all SABC Platforms including SABC1, 2 and 3.

24 Hr sports channels – 2022 vs 2024





22. The above tables reflect the % change between 2022 and 2024. SABC Sports channel achieved second place in terms of performance. SABC Sports channel grew by 46% and 50% (AR000s & average daily reach) in each of 2024 and 2025 respectively. SABC Sports channel was flanked by SS LaLiga & SS Football, whereas on average daily reach - SABC Sports channel was flanked by LaLiga and SS VAR4.

23. SuperSport group grew from 2023 to 2024 by 21% (AR000s) and 16% (average daily reach). SABC Group increased by 13.7% (AR000s) and 3.1% (average daily reach).

Supersport vs SABC Sport competition – SS content strategy

24. Despite SABC consistently outperforming SuperSport in average reach and audience volume (AR000s), **SuperSport retains exclusive control over high-**

value, premium sports content, such as live international tournaments, pay-per-view leagues, and elite local competitions.

25. MultiChoice leverages its exclusivity to enforce **upstream dominance**, creating a structural barrier that limits free-to-air competitors like SABC from accessing or broadcasting comparable premium content.

26. SuperSport's limited share and AR values in this dataset reflect **niche targeting**, possibly due to platform exclusivity (DStv Premium), but their **revenue per viewer and content value far exceed public broadcasters**.

27. The dataset reveals **public broadcaster underperformance not due to viewership but access limitations**, which is a direct result of MultiChoice's licensing and content aggregation strategies.

28. **SuperSport** consistently airs a significantly higher volume of **high-profile, premium sports events**—notably exclusive international fixtures, major leagues, and pay-tv events.

29. **SABC Sport**, while active across various codes, is largely limited to **delayed broadcasts, non-premium matches**, or selectively sublicensed events (e.g., national team games, select PSL matches).

30. SuperSport's content heavily concentrates around exclusive rights sports such as:
    30.1. EPL, La Liga, UEFA competitions;

    30.2. Rugby Union (e.g. Super Rugby, United Rugby Championship, Internationals);

    30.3. Cricket (all major tours and leagues); and

    30.4. Formula 1, UFC, and more.

31. SABC Sport’s catalogue is more generalist and **heavily under-represented** in these genres due to upstream exclusion.

32. Despite SABC's broader reach and penetration, its **AR% and Share% performance is stunted by lack of premium content**, not by poor execution or lack of demand.

33. The broadcast data demonstrates that **when premium content is made available**, SABC performs competitively—even outperforming SuperSport in absolute reach.

Upstream Market Control: MultiChoice and Premium Sports Content

34. The **upstream market** in broadcasting refers to the acquisition, aggregation, and control of broadcasting rights — particularly **content acquisition and licensing** from sporting federations, leagues, and event organizers. This market is foundational because access to high-demand content (e.g., live sports) enables broadcasters to attract audiences and secure advertising or subscription revenue.

MultiChoice’s Dominant Position

35. MultiChoice, through its **SuperSport division**, has entrenched itself as the dominant player in the upstream sports content market in South Africa and much of Sub-Saharan Africa. This dominance is expressed in multiple dimensions, including:

    35.1. Exclusive Content Rights – MultiChoice routinely secures **exclusive multi-year broadcasting rights** to major international and local sporting events. These include the FIFA World Cup, the English Premier League, the UEFA Champions League, the Rugby Championship, the Cricket World Cups and international tours, the Olympic Games (sub-licensing limited), the PSL.

These rights are often locked in via **long-term agreements**, which effectively block other broadcasters from accessing the same content.

35.2. Aggregation of Power - SuperSport operates as a **super-aggregator of premium sports content**, controlling not just isolated events but **entire leagues and seasons** across multiple sports codes (football, rugby, cricket, tennis, athletics, motorsports). This centralization of rights across properties consolidates negotiating power and creates a dependency where event organizers prefer MultiChoice due to reach and monetization.

35.3. Vertical Integration and Market Leverage - MultiChoice's control spans both the **upstream** (content acquisition) and **downstream** (platform distribution via DStv) markets. As a result, it can bundle content exclusively for its subscribers, reinforcing DStv’s lock-in effects and raising barriers for free-to-air broadcasters (like SABC) and OTT entrants. It also limits opportunities for **content sharing or sub-licensing**, except under regulated mandates, which are often minimal.

35.4. Price Insulation and Limited Competition – Because MultiChoice is not compelled to license content broadly, it **sets market pricing unilaterally**, making the cost of sublicensing prohibitive for competitors. In regulatory filings and market studies (e.g., ICASA, Competition Commission), this behavior has been flagged as **restrictive to diversity and competition**, especially in a media landscape meant to serve a broader public mandate.

Impact on Public Broadcasters and Free-to-Air Competition

36. The SABC’s performance in the downstream market, as shown in the audience data (2022–2025), consistently shows high reach and viewership when allowed access.

37. However, due to **exclusion from upstream access**, the SABC can only broadcast:

37.1. Non-premium, delayed, or highlight content; and/or

37.2. Low-tier or once-off sublicensed events under specific commercial conditions

38. This perpetuates **content inequality**, where mass audiences are underserved despite demand, while premium content remains paywalled.

39. MultiChoice’s control of premium sports rights exemplifies **extremely high concentration in the upstream content market**, leading to limited content diversity in the free-to-air space; entrenched market power for DStv; barriers to entry for new players or digital platforms; and a growing digital divide in access to national sporting moments

Question 2.4: Given that the definition of “premium content” is fluid, how should the Authority define it to ensure uniformity?

40. The SABC acknowledges that the term “premium content” is inherently fluid and shaped by market dynamics, audience preferences, and technological shifts. However, for the purposes of this Inquiry and broader regulatory enforcement, the term must be given a clear, functional definition that can be applied consistently across platforms and services.

A. Proposed Definition

41. The SABC proposes the following definition:

> *“Premium content refers to audio-visual programming that, due to its production quality, exclusivity, market timing, audience pull, and/or viewing experience, commands high audience demand and commercial value relative to other content in a given market.”*

42. To guide consistent application, ICASA should consider content as premium where it possesses at least three of the following five attributes:

42.1. **High Production Value:** Content with significant creative or technical investment, typically reflecting a budget that is aligned to the complexity or ambition of the production.

42.2. **First-to-Market or First-Run:** Content that is new, exclusive, or debuting for the first time in South Africa, and has a strong “audience pull factor” (e.g. debut seasons, premiere films, live events).

42.3. **Mass Audience Appeal or Cultural Following**: Content that draws a broad and diverse audience, including events with strong social, cultural, or national resonance (e.g. sporting finals, elections, national holidays, top-rated dramas).

42.4. **Platform Exclusivity:** Content that is not available on competing platforms, especially where exclusivity is contractually enforced through licensing or syndication agreements.

42.5. **Uninterrupted Viewing Experience:** Content that is presented without commercial interruption, often a feature of premium subscription or VOD platforms, which enhances audience immersion and perceived value.

43. This definition aligns with the RBB Economic Assessment submission which emphasises that:

43.1. Premium content is a key differentiator that attracts large audiences and drives advertising or subscription revenue (RBB, para 5);

43.2. Certain types of content (e.g. live sports) have non-substitutable characteristics and generate unique spillover benefits (RBB, paras 16–18);

43.3. Access to premium content is essential for broadcasters to compete effectively downstream (RBB, para 19), and its long-term accumulation reinforces market dominance through exclusivity cycles.

B. Contextual Sensitivity

44. The SABC further submits that ICASA's definition of "premium content" should remain platform-agnostic, but context-sensitive, in that:

44.1. For FTA broadcasters like the SABC, locally resonant dramas, live national events, or educational programming in indigenous languages may constitute "premium content" even if lower-budget;

44.2. For subscription or OTT services, exclusivity, viewing experience, and early access tend to define premium status.

45. Therefore, "premium" status should be evaluated relative to audience impact and strategic value, not just budget or origin.

46. To ensure uniformity and regulatory clarity, the SABC proposes that ICASA: (i) Adopt the five-factor definition above, with at least three criteria required, (ii) Apply the definition flexibly in specific market inquiries or licensing contexts, and (iii) Review and update the definition periodically to reflect market evolution and technological convergence.

47. A consistent and transparent definition of premium content is critical to understanding competitive dynamics, ensuring fair access to audiences, and upholding public interest objectives. The five-factor approach proposed by the SABC allows for uniformity in application while accommodating the diversity of platforms, business models, and audience needs in South Africa.

Question 2.5: What challenges are faced by SABC in acquiring premium content other than sports content?

48. The SABC faces structural and systemic barriers in accessing premium non-sports content. These challenges are rooted in both market concentration and regulatory asymmetry, and they severely limit the SABC's ability to compete for high-value programming, meet audience expectations, and fulfil its public mandate in a digital-first content economy.

49. **Exclusion through Pricing and Output Deals**

    49.1. Premium content is often acquired at disproportionately high prices by dominant subscription broadcasters, particularly MultiChoice (DStv). These prices are often set outside of the general rate card frameworks typically used in African or South African markets, effectively locking out FTA broadcasters such as the SABC.

    49.2. In addition, major international studios with strong, audience-attracting content are bound by long-term output or volume deals with DStv. These agreements create structural exclusion, as only independent distributors (who typically sublicense older library content) remain accessible to the SABC.

50. **Acquisition Holdbacks on Public Interest Content**

    50.1. Where MultiChoice secures first-window rights, it imposes comprehensive holdbacks, including on FTA platforms, for the entire duration of its licence term.

    50.2. This applies even to content with high public interest value. Recent examples include: The Senzo Meyiwa Story, Thabo Bester, Shaka Zulu, and Rosemary's Hitlist, which were entirely withheld from FTA audiences during peak national discourse.

50.3. This practice deprives the public of access to timely and culturally significant content and undermines the SABC's public service function.

51. **Delays from Public Procurement and Approval Protocols**

51.1. As a public broadcaster, the SABC must follow stringent internal procurement, editorial, and governance procedures for content acquisition. These processes (though necessary for accountability) are far lengthier than those of private broadcasters.

51.2. By the time individual programme-level approvals are granted, many suppliers have already entered agreements with competitors, particularly those offering upfront deals or volume-based commitments.

51.3. This timing disadvantage severely reduces the SABC's competitiveness in the acquisition market.

52. **High-Format Budget Lockouts**

52.1. MultiChoice's practice of offering high production budgets for premium global formats (such as The Real Housewives, Survivor, and Idols) effectively locks competitors out of the format licensing market.

52.2. These exclusive format deals not only limit the SABC's access to compelling content, but also reduce the local production ecosystem's ability to partner with public broadcasters on premium projects.

53. **Financial Constraints and Lack of Subscription Revenue**

53.1. The SABC operates in a dual commercial-public environment but lacks the dual revenue streams available to subscription broadcasters. With ~80% of revenue dependent on advertising and minimal public funding, it cannot match the financial flexibility required for high-cost acquisitions; particularly for first-run, high-production-value dramas, films, and international entertainment formats.

54. **Market Power of Streamers and Pay-Tv Operators**

54.1. Global streaming platforms and vertically integrated broadcasters have changed the content landscape. They often pre-buy rights during production stages, engage in aggressive bidding, and offer platform exclusivity in ways that national public broadcasters cannot match, both financially and contractually.

55. **Quota Rigidity and Commercial Disincentives**

55.1. The SABC’s channel-specific content quotas limit its ability to allocate slots dynamically to attract or retain premium content across platforms.

55.2. Further, under the current must-carry regulations, any premium content acquired or commissioned by the SABC is made freely available to subscription platforms (i.e. without compensation), thereby destroying any potential economic upside from such investment.

56. The SABC is caught in a vicious cycle: it lacks the commercial leverage, budget flexibility, and market access necessary to acquire premium content, yet it is expected to compete with well-resourced broadcasters that dominate both the acquisition and advertising markets.

57. Without intervention, including regulatory rebalancing and strengthened public broadcasting protections, the SABC will remain structurally excluded from providing its audiences with premium entertainment, drama, and culturally resonant stories at the heart of public discourse.

Question 3: Please provide any other relevant information emanating from the discussion during the public hearings that might add value to the work of this committee.

Question 3.1: Must Carry Regulations: MCA claimed that SABC gains up to 1 billion Rands advertising revenue from must carry channels.

58. It is correct that the SABC earns advertising revenue from its Must Carry channels and that a portion of this revenue may be attributable to the share of the SABC's audience that accesses its channels via the DStv platform. However, it is important to note that the SABC does not sell advertising or sponsorship packages on a platform-specific basis. Advertisers purchase access to the SABC's overall audience, irrespective of the platform through which that audience accesses SABC content. Accordingly, it is not possible to quantify the exact value of advertising revenue that the SABC derives specifically from carriage on DStv. Moreover, any such estimate would be highly sensitive to assumptions, for reasons set out further below.

59. More fundamentally, the fact that the SABC earns some advertising revenue from viewers who access its content via DStv does not in itself demonstrate that the Must Carry obligation confers a benefit to the SABC that exceeds the value that MCSA derives from broadcasting the SABC channels. On the contrary, MCSA's claim that the SABC earns substantial advertising revenue from DStv audiences effectively acknowledges that the SABC's channels are among the most popular and valuable on the DStv platform.

60. This is a critical point: value flows in both directions. While the SABC benefits from the additional audience reach afforded by DStv carriage, MCSA likewise derives substantial direct and indirect value from hosting the SABC channels on its platform.

61. As set out in the SABC's prior submissions:

61.1. The SABC's channels consistently rank among the most-watched on the DStv platform, accounting for between 20% and 26% of DStv's total average audience in 2022.

61.2. Each of the SABC channels individually outperforms the vast majority of other channels on the platform. For example, the SABC 1 channel alone attracts an average audience approximately 24 times larger than the average for non-SABC DStv channels.

61.3. In terms of programme-level viewership, SABC content dominates audience rankings: 7 of the top 10 most-watched programmes on DStv are broadcast by the SABC, along with more than 75% of the top 50 programmes and approximately 70% of the top 100, across all subscription tiers.

62. This popularity translates into value for MCSA in two principal ways:

62.1. **Direct value**: The inclusion of highly popular SABC channels enhances the overall appeal of the DStv platform, helping to attract and retain subscribers. Audiences that want to watch SABC content are more inclined to subscribe to or maintain their DStv subscriptions if such content is accessible via the platform.

62.2. **Indirect value**: SABC content draws viewers to the DStv platform, which increases the likelihood that those viewers will also engage with other DStv channels before or after watching SABC programming. This cross-channel engagement contributes to audience numbers and associated advertising revenue across the broader bouquet. The indirect value is particularly significant for high-audience programmes, which are more likely to generate incremental viewing - that is, to prompt people to watch television when they otherwise would not, and thereby increase the probability of exposure to other DStv channels during the same viewing session.

63. As regards the R1 billion estimate cited by MCSA, it is not clear how this figure was calculated. If the estimate is based on multiplying the SABC's total advertising

revenue by its audience share on DStv, it overstates the benefit to the SABC. Such an approach incorrectly assumes that all viewers who currently access SABC content via DStv would no longer do so if the channels were removed from that platform. In reality, many such viewers may continue watching the SABC via other means (e.g., terrestrial broadcast or online platforms).

64. While it is acknowledged that carriage on DStv provides some value to the SABC, the assumption that the full advertising value attributable to DStv audiences should be treated as a net benefit from Must Carry obligations is not justified. A material portion of the audience (and corresponding advertising revenue) would likely be retained by the SABC even if its channels were no longer available on DStv.

65. In contrast, the benefits to MCSA of carrying the SABC channels are both substantial and multifaceted - encompassing increased platform attractiveness, greater subscriber retention, and higher advertising revenue across the bouquet. This supports the SABC's position that the value of the Must Carry channels is at least as great to MCSA as it is to the SABC, and likely greater.

Question 3.2: Composite sports Rights: MCA said that the SABC has acquired pay-tv rights previously; subsequently, MCA acquired these rights from SABC. Thus, this practice is not exclusive to MCA.

66. The SABC respectfully submits that this isolated instance does not reflect a consistent or systemic practice, nor does it negate the broader market dynamics that currently exclude FTA broadcasters from meaningful access to premium sports rights. The following points clarify and contextualise the issue.

67. Exception, Not the Norm

67.1. While the SABC may, in rare circumstances, have held composite rights to certain events, and subsequently licensed portions of those rights to MCA, this occurred under exceptional conditions and does not represent a market norm. In contrast, MultiChoice has consistently acquired exclusive composite rights across major sports properties, including football, rugby, cricket, and the Olympics.

68. Market Power Enables Exclusivity

68.1. MultiChoice's significant market power and dual revenue model (advertising and subscriptions) gives it a competitive edge in acquiring premium, multi-platform rights, often locking out FTA broadcasters through long-term, exclusive agreements. This is acknowledged in the RBB Economic Assessment (paras 59–71), which details how exclusivity in sports rights serves as a key barrier to entry and restricts consumer choice.

69. Sublicensing from the SABC is Rare; From MCA is Constrained

69.1. When the SABC has sublicensed to MCA, it has not imposed the same terrestrial-only, time-delayed, or restrictive commercial terms that it itself is routinely subjected to by MCA. Moreover, the scale, value, and frequency of rights sublicensed by the SABC to MCA is negligible in comparison to MCA's control of the premium sports ecosystem.

70. Public Interest vs Commercial Strategy

70.1. The SABC, as a public service broadcaster, approaches sports rights acquisition with the aim of maximising national access, including to historically marginalised communities. By contrast, MCA's strategic use of composite rights (and subsequent refusal to offer meaningful sublicensing on FRAND terms) serves a commercial retention model - which often prioritises exclusivity over accessibility.

71. Structural Asymmetry Remains

71.1. Even if occasional rights have flowed from the SABC to MCA, this does not alter the underlying structural asymmetry: the SABC is typically priced out of initial acquisition rounds, lacks bargaining power in sublicensing negotiations, and is subject to conditions that undercut its ability to fulfil its mandate.

72. The SABC submits that isolated historical examples should not be used to obscure entrenched market realities. MultiChoice's dominant acquisition of composite sports rights and its limited, delayed, and restrictive sublicensing practices remain a key barrier to fair competition and universal access to content of national importance.

73. To address this imbalance, the SABC again urges ICASA to consider implementing a pro-competitive sublicensing framework requiring rights holders to offer sublicenses on fair, reasonable, and non-discriminatory (FRAND) terms, particularly for national sporting events that are central to the public interest.

Question 3.3: MCA claimed that SABC did not speak to the acquired Cricket SA FTA rights which the SABC could not fund. As a result, SABC is frustrating the developmental plans of Cricket SA.

74. Cricket SA has unbundled their rights for Inbound tours, there's FTA and Pay TV package and at the end of 2023 the SABC could not secure the rights due to financial constraints. The SABC was negotiating with CSA but could not reach an agreement due to unaffordability. SABC Sport is not certain why is MCA raising this point.

Concluding Remarks

75. The SABC appreciates the opportunity to participate in the public hearings and commends ICASA for creating a platform for meaningful engagement on the future of subscription broadcasting and its impact on the broader broadcasting ecosystem.

76. Several important themes emerged during the public hearings, which, in the SABC's view, should shape the Committee's work going forward:

76.1. **Recognition of the Unique Role of the SABC**: Multiple stakeholders acknowledged that the SABC holds a unique place in the South African broadcasting landscape, as a public service broadcaster mandated to deliver universal access, language diversity, educational content, and national cohesion. The SABC reiterates that this role is constitutionally and legislatively protected, and must be explicitly considered in all regulatory frameworks, in accordance with section 2(t) of the ECA, which directs ICASA to "protect the integrity and viability of public broadcasting services."

76.2. **Public Interest and Access to Premium Content:** There was broad consensus that premium content: particularly live national sporting events, documentaries of public interest, and local high-impact drama; should not be confined to paywalls or withheld from the broader public. SABC's submission underscored growing concern about the systematic exclusion of the SABC from access to such content, due to restrictive sublicensing practices, holdbacks, and unaffordable acquisition terms. These practices undermine the right to access information, diminish the SABC's competitiveness, and erode the public's ability to participate in national discourse.

76.3. **The Must Carry Regulations: Value Destruction**: The SABC drew attention to the "value destruction" caused by the current must-carry regime. Under the present model, the SABC is required to make its channels available to subscription broadcasters at no cost, even when such content (e.g. live sports, breaking news) drives significant viewership and advertising revenue for those platforms. This results in a net transfer of value from public to private broadcasters, which contradicts the public interest mandate and requires urgent review.

76.4. **Regulatory Asymmetry and Competitive Disadvantage:** SABC's submission also highlighted regulatory imbalances that disproportionately affect the SABC, including: unequal channel authorisation requirements under the DTT framework; stringent compliance obligations despite limited public funding; lack of tariff regulation in Sentech's signal distribution pricing; and ineffective enforcement of advertising caps for subscription broadcasters. These asymmetries entrench existing market power and prevent the SABC from innovating or scaling, despite ICASA's stated intention to promote competition and diversity.

76.5. **Need for a Holistic Market Inquiry into TV Advertising**: The SABC reiterates its support for calls for a targeted inquiry into the television and online advertising markets, as contemplated in the Audio and Audiovisual Media Services Draft White Paper. Advertising revenue remains the SABC's primary source of income (~80%), and the current market is dominated by a small number of players who benefit from bundled sales, cross-platform leverage, and digital displacement, often at the expense of FTA broadcasters.

76.6. **Support for a FRAND-Based Sublicensing Regime**: there is an urgent need for a fair, reasonable, and non-discriminatory (FRAND) sublicensing regime for premium content, especially sports. The current absence of a regulated framework enables dominant broadcasters to define the terms of sublicensing unilaterally, reinforcing exclusion and impeding access to content of national importance.

76.7. **Audience Behaviour and Platform Choice**: the SABC submits that it has successfully challenged the assumption that OTT and OpenView platforms are effectively eroding MultiChoice's market power. The evidence presented shows that multihoming behaviour is common, with most households adding platforms rather than substituting DStv — suggesting that MultiChoice's market dominance remains entrenched, especially in the premium content space.

77. The hearings confirmed that the current regulatory framework does not sufficiently promote competition, public interest access, or sustainability for the public broadcaster. ICASA must urgently take action to address these imbalances.

78. The SABC stands ready to support ICASA in developing a more equitable, future-fit regulatory framework that ensures the public's access to high-quality content while safeguarding the viability of public service broadcasting in South Africa.