



ICASA's Supplementary Discussion Document

SABC's Submissions and Economic Assessment of the Preliminary Findings

10-11 July 2025

Everywhere for Everyone, Always



Introduction

- The **South African Broadcasting Corporation SOC Ltd** (the “**SABC**”) is the nation’s public broadcaster, mandated to serve the public interest through content diversity, language representation, and public service programming
- Operating under statutory obligations, the SABC faces structural and regulatory constraints distinct from those faced by commercial broadcasters and OTT platforms.
- This presentation sets out the SABC’s submissions in respect of the Supplementary Discussion Document published by ICASA on 6 January 2025 (the “**Discussion Document**”) and in particular in respect of the provisional findings set out therein (“**Provisional Findings**”)
- In doing so, it draws on:
 - The **SABC’s written submission**, highlighting how current market and regulatory dynamics are impairing public-interest broadcasting
 - An **independent economic assessment by RBB Economics**, evaluating whether ICASA’s conclusions are properly supported by the available evidence and competition economics

Overview of the presentation

This presentation consists of five main parts:

- **Part A – Background and context.** Context for the inquiry and the ICASA submissions made to date
- **Part B – RBB Economics' Assessment.** Presentation of independent expert economic analysis, evaluating whether ICASA's conclusions are supported by economic evidence and theory
- **Part C – The SABC's Submissions.** Focus on SABC's regulatory experience, structural disadvantages, and the harm to public interest resulting from ineffective competition in broadcasting markets
- **Part D – The SABC's Supplementary Submission.** The SABC's consideration and comments on the submissions of other stakeholders to the market inquiry – MultiChoice and Netflix
- **Part E – The SABC's Recommendations.** Set of proposed actions to address concerns raised, with a view to improving the competitive landscape and safeguarding public interest

Part A: Background and context

Background to the ICASA Inquiry

Concerns around the effectiveness of competition in broadcast markets

- The inquiry into subscription broadcasting services commenced in 2016, prompted by concerns about limited competition, high market concentration, content bottlenecks, barriers to entry, and reduced diversity in viewing options
- The first discussion document (2017) and the draft findings document (2019) indicated that competition in the market was likely ineffective due to MultiChoice's significant market power
- Subsequent public hearings (2021) highlighted major shifts in competitive dynamics - such as the rising popularity of OTT platforms, and technological changes, including digital migration and improved internet access
- The Discussion Document (2025) considers the implications of these shifts, reaching updated Provisional Findings regarding market definition and the effectiveness of competition therein

ICASA's Preliminary Findings

ICASA erroneously finds that competition is effective in the relevant broadcast markets

- In the Discussion Document, ICASA has set out its Provisional Findings and invited stakeholder comment on whether existing and new players face fair opportunities to compete, and whether current market dynamics serve the broader public interest
- ICASA's provisional view is that competition remains effective in each of the relevant upstream and downstream broadcasting markets.
- In particular, it posits that:
 - **OTT services** – MultiChoice is facing effective competition in the relevant upstream and downstream broadcasting markets given the rise in OTT platforms
 - **Importance of premium content** – Access to premium content rights (such as premium sports content) is not necessary for broadcasters to compete effectively in the relevant upstream markets
 - **Access to content** – There are low barriers to entry upstream given that the wide array of avenues to access content – acquire content rights, sub-licence from rights holders, or produce in-house
 - **Analogue switch-off** – The digital migration is likely to improve FTA broadcasters to compete against incumbents in the relevant downstream markets

The SABC's views

ICASA's Provisional Findings are misplaced

- **Competition in broadcasting markets** – The Discussion Document fails to consider how competition actually operates across the broadcasting supply chain, and that effective *downstream* competition is contingent on effective *upstream* competition for content rights
- **Three major factors that the SABC is of the view inhibit competition**
 - (1) MultiChoice's dominance and its abuse thereof;
 - (2) the impact of ICASA's Must Carry Regulations; and
 - (3) a lack of sufficient regulation for OTT providers
 - Moreover, MultiChoice's upcoming merger with Canal+ will only serve to entrench its already-insurmountable position
- **Regulatory interventions** – The SABC submission sets out the recommended regulatory interventions to address these market failures

Part B: Assessment by RBB Economics

Summary of key findings

Introduction & executive summary

Introduction

- The following slides summarise the findings of an independent expert economic report submitted by RBB Economics (**RBB**)
- RBB is a global economic consultancy firm specialising in the application of economics to competition and regulatory matters
- The expert report assesses, and this slide deck summarises, whether the Provisional Findings that competition is effective in each of the relevant broadcasting markets as defined by ICASA are supported by competition economics principles and the available evidence
- The slides cover the following topics:
 - **(1)** The relationship between upstream and downstream competition in broadcasting markets
 - **(2)** The (in)effectiveness of upstream competition in the acquisition of broadcast rights
 - **(3)** The (in)effectiveness of downstream competition the provision of broadcasting services

Introduction & executive summary

Executive summary (1)

- The Provisional Findings are that competition is effective in each of the relevant markets ICASA has defined and assessed
- In order to properly assess the effectiveness of competition in broadcast markets, it is important to first consider how competition operates in those markets
 - Of particular relevance in this context, it is important to assess **the relationship between upstream and downstream competition**
 - Given audiences heterogeneous content preferences, access to a wide portfolio of premium content plays a central role in drawing audiences and, in turn generating advertising and/or subscription revenue
 - Ineffective competition upstream means broadcasters will lack the ability to broadcast sufficiently wide portfolios of premium content, and hence lack the ability to compete effectively downstream
- RBB's view is that the Provisional Finding that competition is effective in the *upstream wholesale markets* for the acquisition of broadcast rights is not well-founded
 - Effective **access to premium content rights**, and in particular premium sports rights, **remains necessary to compete effectively** in both the relevant upstream and downstream markets
 - The mere existence of avenues to access premium content **does not equate to effective competition** for those rights

Introduction & executive summary

Executive summary (2)

- RBB is of the view that the Provisional Finding that competition is effective in the relevant *downstream broadcast markets* is not well founded
 - For competition in downstream broadcasting markets to be effective, **competition in upstream broadcast rights markets must also be effective**
 - Moreover, the Provisional Findings do not provide any reliable basis on which to conclude that **competition in these markets is effective in its own right**

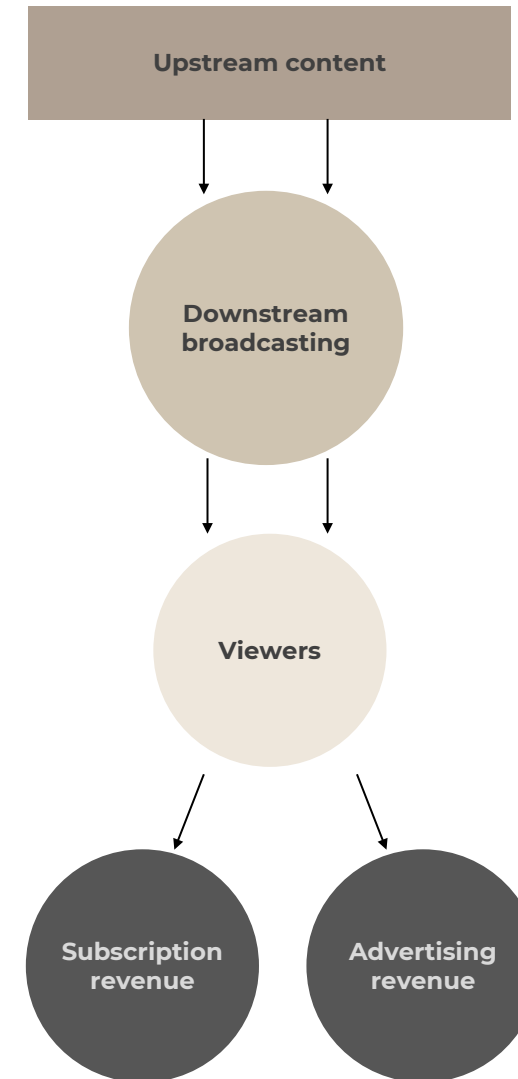
In short, RBB considers the Provisional Findings - that competition in the relevant upstream and downstream broadcast markets is effective - are not well founded. Indeed, in RBB's view, the available evidence suggests that competition is instead likely to be ineffective.



(1) Relationship between upstream & downstream competition

(1.1) The broadcast market supply chain

- To properly assess competition in broadcast markets, it is important to appreciate how competition operates in those markets
 - **Upstream level** – Broadcasters acquire broadcast rights for programmes / develop in-house
 - **Downstream level** – Broadcasters exploit these rights to compete for viewers (and in turn subscription/advertising revenue)
- Accordingly, broadcasters' ability to compete in the relevant downstream markets depends critically on its ability to compete effectively in the upstream markets for broadcasts rights that will draw viewers, and, where relevant, advertisers, to their platforms



(1.2) The nature of effective competition in broadcast markets (1)

Effective competition downstream relies, to a significant degree, on there being effective competition upstream

This is for the following reasons:

- **Access to a wide portfolio of premium content is important for broadcasters to be able to compete effectively**
 - Certain types of content (i.e., premium content) are capable of drawing larger audiences than other types of content (i.e., non-premium content).¹
 - Since viewer preferences are heterogeneous, access to a wide portfolio of premium content is therefore likely to play a central role in drawing wide audiences (and, in turn, advertising and/or subscription revenue)
- **A wide portfolio of premium content can give rise to wider-reaching benefits**
 - Positive spill-over effects – Increase the size of the potential audience (and thus the advertising/subscription revenue) that a platform can attract, including for other programming
 - Developing brand image - Ability for a broadcaster to consistently provide a wide coverage of premium content is likely to be important in developing brand image and strengthening viewer loyalty

¹ As noted in the Discussion Document para 2.3.5.1, page 17 (“[ICASA] recognized that the concept of premium content is a fluid concept that is dependent on the circumstances”)

(1.2) The nature of effective competition in broadcast markets (2)

Ineffective competition upstream has a **self-reinforcing effect**

- The ability to attract a wide audience through consistently broadcasting a wide range of premium content can have feedback effects on a broadcaster's ability to compete for premium content in future
- Increased viewership enhances broadcasters' ability to monetise content rights (i.e., through advertising/subscription revenue)
 - (i) Existing wide audience – A broadcaster with an existing wide portfolio of premium content is likely to have already attracted a wide audience, and thus a greater ability to monetise premium content in future
 - (ii) Additional content has greater value – As viewers prefer a wide(r) portfolio of content, adding an individual content right to an existing wide content portfolio is likely to attract more viewers than adding the same individual content right to a more limited content portfolio
- As a result, a broadcaster with an existing wide portfolio of premium content is **more likely to have the ability and incentive to bid higher prices for such premium content in future** (relative to broadcasters with a more limited portfolio of premium content)

In RBB's view, the Discussion Document does not present robust evidence that competition in the upstream markets is effective, which, in turn, suggests downstream competition is also likely to be ineffective



(2) Upstream competition is ineffective

The wholesale markets for the acquisition of broadcast rights

(2.1) Upstream competition is ineffective

Provisional Findings

There is a Provisional Finding that competition is effective in the upstream wholesale markets for the acquisition of broadcast rights

- Access to premium content is not necessary for broadcasters to compete effectively downstream
- In any event, there are several ways through which broadcasters can access premium broadcast rights

RBB's view

The Discussion Document does not present robust evidence of whether firms are able to compete effectively against MultiChoice (as opposed to simply participating in the same market(s)). To the contrary, the available evidence suggests that upstream competition is likely to be ineffective

- Effective access to premium content (particularly premium sports rights) remains necessary to compete effectively
- The mere existence of avenues to access premium content other than competing directly for them does not equate to *effective* competition for those rights

(2.2) Access to a wide portfolio of premium content is necessary (1)

Provisional Findings

The Discussion Document states that some broadcasters are able to act as effective constraints to incumbents without needing to acquire premium content rights

- MultiChoice has lost subscribers to broadcasters (such as e.tv) that have not invested in premium content
- As a result, premium content is not strictly necessary to compete effectively against MultiChoice

RBB's view (1)

The Discussion Document has not shown that the growth of certain broadcasters is because of effective competition with incumbents

- Evidence would be required showing that customers actively switch from providers of premium content to those that provide no / significantly less premium content
- Otherwise, there may simply exist consumers who value both premium and non-premium content, and choose to use different services in order to access each type (i.e., multi-home)

(2.2) Access to a wide portfolio of premium content is necessary (2)

RBB's view (2)

The Discussion Document has not shown that new and existing broadcasters have grown as a consequence of viewer switching

- It has thus failed to demonstrate that premium content is necessary
- This is in contrast to its own findings of the importance of premium content as a **key differentiator** of offerings

In RBB's view, the Discussion Document does not provide a sufficient basis to conclude that access to a wide portfolio of premium content is not necessary to compete effectively

"[I]t would be a fallacy to assume that lovers of live soccer would all of a sudden be satisfied with watching a movie, drama series, a reality show or news, in the event that a broadcaster that airs such live matches is faced with a SSNIP and decides to purchase other content"

Discussion Document, para 2.8.22, page 64

(2.3) Ineffective competition to acquire premium sports rights (1)

Provisional Findings

The Discussion Document states that, while MultiChoice has held a substantial share of premium content rights on an exclusive basis for an elongated period of time, competition for those rights is effective because (some) rivals to MultiChoice could also compete for those rights if they wanted to

RBB's view (1)

The finding that competition for sports rights is effective is misplaced for two reasons:

- **Ability vs Incentive** – The notional ability (i.e., financial resources) to compete for premium sports content is not equivalent to the incentive (i.e., willingness) to do so. For example:
 - International OTTs (e.g., Netflix) may have the financial ability to compete for the broadcast rights to premium sports content in South Africa (e.g., PSL)
 - However, MultiChoice would not face effective competition if OTTs had no incentive to bid for such rights
- **Structural barriers to competition** – While local broadcasters may have an incentive to bid for premium sport rights, as the Discussion Document notes, that ability is materially impeded by structural barriers arising due to MultiChoice's conduct

(2.3) Ineffective competition to acquire premium sports rights (2)

RBB's view (2)

- While the SABC (and other local broadcasters) has sought to compete for premium sports rights, the available evidence suggests that it has been unable to compete effectively against MultiChoice to acquire these rights
 - **Exclusivity** – As noted by ICASA, MultiChoice (i.e., SuperSport) has held a substantial share of premium sports rights on a long-term, exclusive basis – this impedes local broadcasters' ability to compete
 - **FTA & Pay-tv rights** – SuperSport has often acquired broadcast rights for both pay-tv and FTA platforms (despite not providing any FTA broadcasts) – e.g., FA Cup football games (2021/22 – 2023/24 seasons)
- In this way, MultiChoice is likely to foreclose FTA broadcasters from being able to access premium sports rights.
 - **SABC Sport** – The SABC Sport channel, the first rival dedicated sports channel, has been unable to compete effectively against MultiChoice to acquire the rights to a portfolio of premium sports content that would enable it to compete effectively
 - **Local platforms** – Other local broadcasters have indicated that they faced similar challenges in seeking to compete effectively against MultiChoice for premium content rights (e.g., Kwese TV)

In RBB's view, the Discussion Document does not present sufficient evidence that MultiChoice is effectively constrained in the market for the acquisition of premium sports content

(2.4) Ineffective sublicensing for premium sports content (1)

Provisional Findings

The Discussion Document states that, in some instances, broadcasters are able to enter into sublicensing agreements for premium sports content in order to mitigate any potential anti-competitive effects

RBB's view (1)

The ability of local broadcasters to sublicense certain premium sports rights does not render competition in this market effective, nor does it mitigate the adverse spillover effects downstream

- **Bargaining power** – In practice where rights have been acquired on an exclusive basis, the original acquirer is likely to have significant bargaining power in any sublicensing negotiations. Namely, it can:
 - (i) restrict rival broadcasters' ability to sublicense that content at all, or
 - (ii) sublicense the content on restrictive terms that impede the ability of rival broadcasters to compete effectively for audiences and advertisers
- **Continued access** – The sublicensee of the rights also has no guarantee that the rights holder will continue to sublicense the rights to broadcast future games / seasons

(2.4) Ineffective sublicensing for premium sports content (2)

RBB's view (2)

In practice, MultiChoice has the ability to decide to not offer sublicences, or to impose restrictive conditions on the sublicences it does offer. For example:

- **Fully-delayed basis** – MultiChoice can require broadcasts to be on a fully-delayed basis (i.e., after final whistle) – e.g., the SABC sublicensing of the 2024 Currie Cup
 - This materially impacts the attractiveness of the events, as the uncertainty related to the outcome is removed
- **Platform limitation** – MultiChoice can place limitations on which platforms the content can be broadcast – e.g., the SABC sublicensing of the Springbok rugby events
 - Limits the audience reach of broadcasters
- **Inconsistent ability to sublicense** - firms are not always able to sublicense premium sports events from MultiChoice
 - This limits their ability to generate brand loyalty by acting as a “point of reference” for such content

In RBB's view, each of these factors likely serves to reduce the size of the audiences (and thus advertising revenue) that rival broadcasters can generate from the provision of sublicensed premium sports content



(3) Downstream competition is ineffective

The downstream markets for the provision of broadcasting services

(3.1) Downstream competition is ineffective

Provisional Findings

There is a Preliminary Finding that competition is effective in the relevant downstream broadcast markets

- MultiChoice is effectively constrained by OTTs and DTH broadcasters
- The analogue switch-off is likely to improve FTA broadcasters' ability to compete

RBB's view

In order for competition in downstream broadcasting markets to be effective, competition in upstream broadcast rights markets must also be effective. However, as outlined above, the available evidence suggests that competition upstream is ineffective

Moreover, in RBB's view, the evidence set out in the Discussion Document does not provide any reliable basis on which to conclude that competition in these markets is effective

- Entry of new and growth of existing broadcasters is more likely a result of viewers exhibiting multi-homing than competing viewers away from incumbents
- The analogue switch-off is unlikely to significantly enhance the ability of FTA broadcasters to compete effectively

(3.2) Entry and growth of broadcasters (1)

Provisional Findings

The Discussion Document states that there are several barriers to entry in the relevant downstream markets, but that these are not insurmountable for the following reasons

- **New entrants** – OTTs and newer local broadcasters have grown market share over time
- **Existing broadcasters** – the growth of OpenView shows switching costs are surmountable

RBB's view (1)

However, in RBB's view, evidence of entry and growth by new players on its own does not amount to reliable evidence that competition in these markets is likely to be effective

- **Entry alone is insufficient** – Entry by itself does not indicate effective competition in a market – it must be shown that new entrants are able to attract sufficient viewers away from incumbent broadcasters
- **Multi-homing may explain growth** – The growth of smaller and new broadcasters alone may not be a result of customers switching away from incumbents – instead, customers could be utilising multiple complementary services

(3.2) Entry and growth of broadcasters (2)

RBB's view (2)

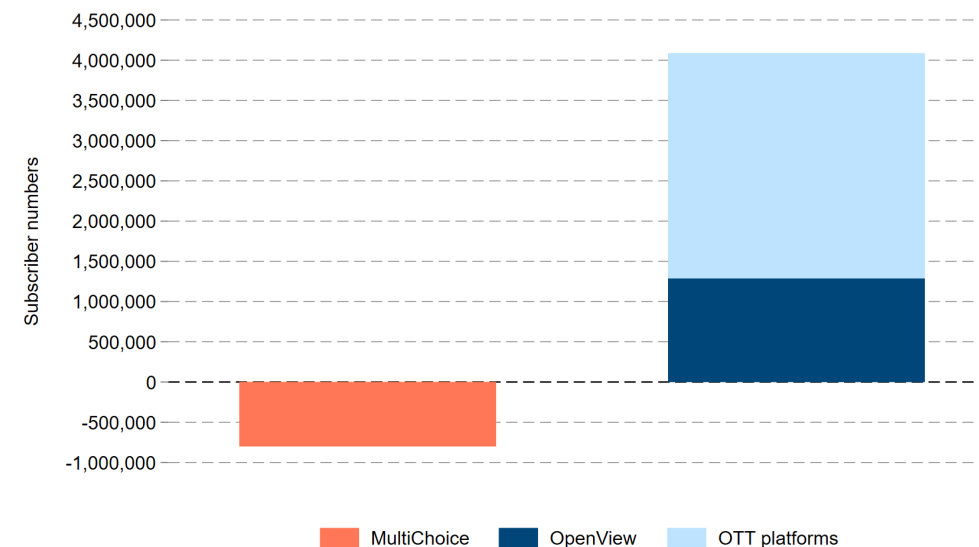
Available evidence on subscriber numbers suggests that OTT platforms and OpenView's growth is likely a result of new-to-market viewers and multi-homing, rather than successfully competing viewers away from MultiChoice

Namely, between 2019 and 2023:

- MultiChoice **lost** approximately **800,000** subscribers
- OpenView and OTT platforms **gained** approximately **1.3 million** and **2.8 million** subscribers, respectively (**4.1 million** in total)¹
- OpenView and OTT platforms were able to attract more than **five times** the subscribers that MultiChoice lost over the same period

In RBB's view, the Provisional Findings therefore provide no reliable evidence that new entry or growth indicates effective competition

Figure 1: Change in subscriber numbers by platform, 2019-2023



Source: MultiChoice Annual Reports; Discussion Document pages 28 & 74

¹ Please note that RBB have since updated the numbers included in its original submission to ICASA to more closely reflect calendar years, as opposed to financial years. This does not alter any of the conclusions drawn therefrom.

(3.3) Analogue switch-off will likely harm competition (1)

Provisional Findings

The Discussion Document indicates that the analogue switch-off (“**ASO**”) will result in an improved ability for FTA providers to compete against incumbent DTH broadcasters

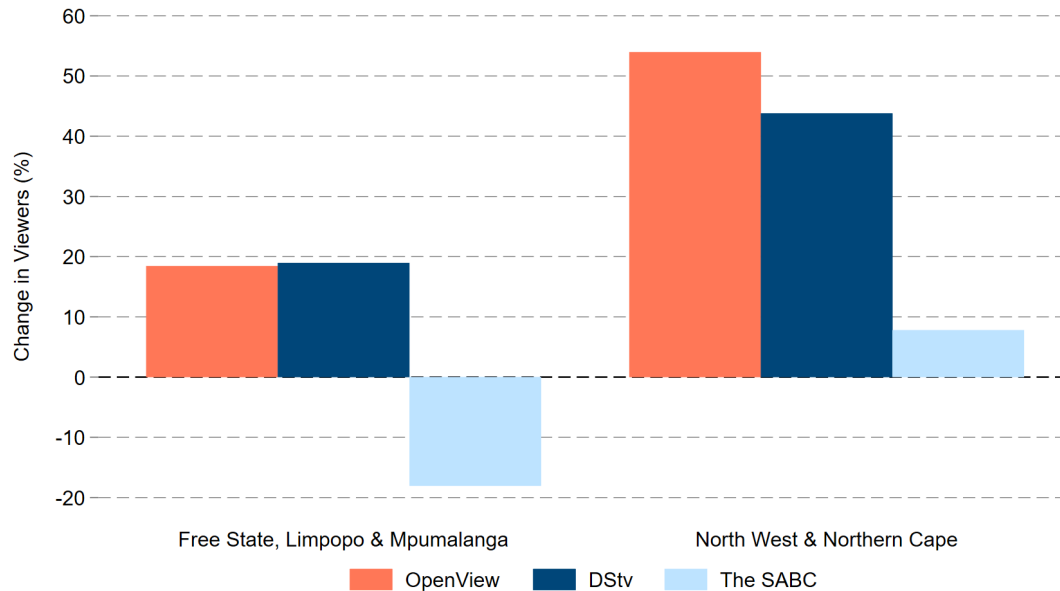
RBB’s view (1)

The Discussion Document is misguided in this assumption, and the ASO may result in FTA broadcasters reaching fewer viewers, and some viewers switching to DTH providers

- **Set-top Boxes** - Access to DTT/DTH broadcasts typically requires viewers to purchase a Set-top Box, resulting in a switching cost to remain an FTA viewer
- **Lower incremental DTH switching cost** – As FTA viewers will likely be required to incur a sunk cost to remain an FTA viewer, the incremental switching cost to that viewer of moving to a DTH platform instead will be reduced following the ASO
- DTH providers offer a number of low-cost subscription packages, which give viewers access to a materially wider range of channels, compared to what is available through other broadcast technologies
- There is therefore a high likelihood that some proportion of viewers currently using analogue FTA services will switch to basic-tier and non-FTA providers following the ASO

(3.3) Analogue switch-off will likely harm competition (2)

Figure 2: Viewer/Subscriber gain/loss following the analogue switch-off, 2021-2024



Source: BRC TAMS Jan-Dec 2021; Jan-Dec 2024

RBB's view (2)

Following the ASO in five provinces in early 2022, the SABC lost viewers in comparison to DTH services

- In three provinces, OpenView and DStv gained **18%** and **19%** more subscribers on average, respectively, whereas the SABC lost **18%** of its viewers on average
- In two provinces, whilst the SABC gained **8%** more viewers, OpenView and DStv gained **54%** and **44%** more subscribers on average, respectively

In RBB's view, the Provisional Findings that the ASO will improve FTA broadcasters' ability to compete is therefore misguided

Conclusion

Provisional Findings

The Provisional Findings are that competition is effective in each of the relevant broadcasting markets defined by ICASA

- The downstream markets are subject to effective competition from international OTTs and will likely be improved following the impending ASO
- The upstream wholesale markets are subject to effective competition as a result of the increased availability and inferred decreasing importance of premium content

RBB's view

RBB considers the Provisional Findings that competition in both the relevant upstream and downstream broadcast markets is effective are misguided. Indeed, the available evidence suggests that competition is instead likely to be ineffective

- **Upstream** – The available evidence indicates that competition in upstream broadcast rights markets is likely to be ineffective as the Discussion Document does not present robust evidence of whether firms are able to compete effectively against MultiChoice
- **Downstream** – Given that competition in upstream content rights markets is likely ineffective, there are strong grounds on which to expect that downstream competition is ineffective. Moreover, there is no robust direct evidence that competition in the relevant downstream markets is effective

Part C: The SABC's Submissions



Major factors inhibiting effective competition

Introduction

Core Concerns previously raised by the SABC

- The SABC has actively participated in this Inquiry since inception, including by making submissions regarding ICASA's earlier draft findings
- It has submitted that competition in the subscription broadcasting sector remains weighted in favour of MultiChoice, and limits fair participation by FTA broadcasters and emerging competitors
- The SABC respectfully submit that the following key factors inhibit effective competition in the relevant broadcasting markets
 - MultiChoice is abusing its dominant position
 - Must Carry Regulations skew the playing field in favour of MultiChoice
 - There is an asymmetrical landscape in respect of OTTs and local broadcasters
- The SABC's Supplementary Submission and its proposed remedies to follow in subsequent sections

Major factors inhibiting effective competition

MultiChoice abusing its dominance (1)

- The SABC respectfully submits that one of the major inhibitors to proper competition in the television broadcasting market in South Africa is MultiChoice's dominant position and the manner in which it (ab)uses that dominance.
- MultiChoice has a long-standing strategy of acquiring premium content on an exclusive basis, and for platforms on which it does not need such broadcast rights (e.g., FTA), and then either simply refusing to sub-license it at all or only sub-licencing it on terms that ensure that the sub-licensee cannot use that content to seriously challenge MultiChoice's position
 - This creates a **self-reinforcing cycle of foreclosure**
 - This cycle operates to the **detriment of millions of South Africans**, particularly in the sporting context
- The fact that MultiChoice's market power is not being corrected by market forces can be seen in its enduring market shares.
 - Multichoice controls an **incredibly high share of the upstream market** in respect of premium sporting content, and in non-sporting content
 - This enduring position of dominance **demonstrates the market failures** in subscription television broadcasting in South Africa

Major factors inhibiting effective competition

MultiChoice abusing its dominance (2)

- Regulators worldwide have recognised – and sought to address – competition concerns arising from the concentration of content rights amongst a small number of broadcasters
- It is respectfully submitted that similar regulatory interventions ought to be considered by ICASA – which must in any event seek to level the playing field which has been skewed by its own Regulations. By way of example
 - The **European Commission** mandates content unbundling in sports broadcasting, ensuring multiple broadcasters can acquire live rights
 - The **UK Competition and Markets Authority** imposes a **no-single-buyer rule** for the English Premier League broadcasting rights (By contrast, SuperSport has had the right to broadcast every single English Premier League)
 - The **Swiss competition authorities** have held that exclusive long-term agreements in the broadcasting market substantially impede competition and consumer access
- Not only is MultiChoice's market power not being corrected by market forces, but MultiChoice's market power is likely to be materially enhanced in the near future through the pending merger between MultiChoice and Canal+, a French-based behemoth in the global media landscape

Major factors inhibiting effective competition

The Must Carry Regulations (1)

- A further feature of the regulatory landscape that materially skews the playing field in favour of MultiChoice is the Must Carry Regulations
 - The SABC must make available all of its FTA content to MultiChoice, without necessarily being able to obtain any compensation for doing so, despite MultiChoice being able to attract thousands of viewers by promoting their DStv packages using such FTA content and by airing it; whereas MultiChoice has no corresponding obligations
 - The SABC's duty to make its FTA content available to subscription broadcasters, potentially at no cost, arises from the SABC's channels having been designated as "*Must Carry Channels*" under regulation 4 of the ICASA Must Carry Regulations, 2008 (as amended in March 2022)
- The Must Carry Regulations require that the Public Broadcasting Service ("**PBS**") Licensee (the SABC) must offer its television programmes to the Subscription Broadcasting Service ("**SBS**") Licensee (being MultiChoice) on "*commercially negotiable terms*"
 - MultiChoice has no incentive to conclude an agreement with the SABC, and continue to benefit from the Must Carry Regulations

Major factors inhibiting effective competition

The Must Carry Regulations (2)

- As the SABC has discovered to its detriment, however, there is currently no mechanism to compel MultiChoice to reach agreement on the commercial terms, or even to negotiate in good faith
 - The stark reality is that, despite a concerted effort on the part of the SABC, it has not been able even to come close to agreeing commercial terms with MultiChoice
 - There is also no mechanism to resolve this impasse
- To put this prejudice into perspective, the SABC channels are amongst the most popular channels on the DStv platform, **accounting for between 20% and 26% of the total average audiences DStv in 2022**
 - **Each SABC channel individually is also among the most popular channels on DStv** – for example the SABC 1 channel generates an average audience of 24 times larger than the other DStv channels
 - In particular, the **SABC's channels account for 7 of the top 10 most popular programmes on DStv**, and more than 75% of the top 50 (and 70% of the top 100) most popular programmes, across all subscription packages
 - The SABC submits that the fair value to MultiChoice of having access to all the SABC's content is therefore, at minimum, in the millions of Rand per annum

Major factors inhibiting effective competition

An asymmetrical regulatory landscape (1)

- A further difficulty facing the SABC is that OTT streaming services and search engines do not have to adhere to the same strict Regulations to which the SABC is subject
 - The SABC is the PBS in South Africa - its objectives, as well as its content and its business practices are set out and tightly regulated through legislation (including the Charter in Chapter IV of the Broadcasting Act, 4 of 1999 and the ECA), and licence conditions and Regulations issued by ICASA
 - By contrast, **OTT streaming services and search engines remain unregulated**, despite competing directly with licensed broadcasters for audiences and advertising revenue
 - As a consequence of this disparity, OTT streaming services and search engines can, unlike the SABC, enter the market without the following:
 - a licence,
 - local content quotas/obligations,
 - obligations to promote all languages and to source content from underserved provinces (50% of the SABC's annual budget for produced programmes is spent on African languages and/or programmes commissioned from underserved areas),
 - any obligation to cover listed national sporting events, and
 - any obligation to serve minority interests and carry unprofitable content

Major factors inhibiting effective competition

An asymmetrical regulatory landscape (2)

- The SABC is further disadvantaged vis-à-vis the OTT streaming services and search engines in that the SABC is subject to the following regulations to which OTTs services are not subject:
 - Must provide content in various official languages;
 - The content must always be accessible for free, in line with the SABC's universal service and access obligation;
 - Must consider including a low bandwidth format of the content that is usable on data zero-rated platforms, as well as utilising low bandwidth multimedia distribution platforms (whereas OTT streaming services and search engines have no such constraints); and
 - Be judicious in the advertisements it associates with its content, being careful that the advertisements do not harm the SABC's status as the PBS, thereby limiting its potential sources of advertising revenue (a crucial component of the SABC's income).
- Moreover, OTT streaming services and search engines can use existing broadband infrastructure to distribute their services whilst the SABC has to pay the high cost of signal distribution to deliver its services to all (with an annual cost of around R711.7 million)
- We should add that the fact that the SABC is obliged to provide content for free is particularly disadvantageous given consumers' shift from traditional to digital media, and the resultant migration of advertisers away from traditional media to digital media

Part D: The SABC's Supplementary Submission

The SABC's comments on submissions of other stakeholders

Introduction

The SABC's Comments on Stakeholders' Submissions

- As outlined above, the SABC delivered written submissions setting out its views regarding ICASA's Preliminary Findings
- The SABC has since considered the submissions of other stakeholders and sets out its comments thereon in the following slides
 - The SABC stands by what was set out in its primary submissions and confines this submission to commenting on certain noteworthy aspects of the submissions of other stakeholders
- The SABC are of the view that MultiChoice's and Netflix's Submissions do not adequately represent how the broadcasting market functions
 - **MultiChoice's Submission** – MultiChoice does not seek to address the concerns related to its dominant position and contends for an overly broad market definition, seeking to obscure its market power
 - **Netflix's Submission** – Netflix argues that it competes with the likes of the SABC, yet counterintuitively seeks to remain unburdened by any regulations to which the SABC are subject

In the circumstances, the SABC maintains that the remedies proposed in its primary submission are appropriate

MultiChoice's Submission

The SABC's Comments on MultiChoice's Submission (1)

- The SABC has explained how MultiChoice abuses its dominant market position by acquiring exclusive rights to premium and then either refuses to sub-license that content or only offers it on terms so restrictive that competitors cannot use it to meaningfully compete
 - These restrictions include: (i) delayed broadcast requirements, (ii) limitations on platforms and channels and (iii) late-stage sublicensing that impedes promotion and advertising revenue
 - This creates a **self-reinforcing cycle**, which perpetuates MultiChoice's dominance and forecloses effective competition in the relevant broadcasting markets
- Nowhere in MultiChoice Submission does it seek to address its historic practice of locking in much of the premium content via long-term, exclusive incensing agreements and then (mis)using that exclusivity to distort downstream competition

MultiChoice's Submission

The SABC's Comments on MultiChoice's Submission (2)

- To avoid having to address this issue, MultiChoice contends for a single relevant market consisting of FTA broadcasters, subscription broadcasters and OTT streaming services
 - This proposed market definition is **plainly overbroad**, collapsing broadcasters with materially different business models, content offerings, access requirements and regulatory obligations
 - While the SABC and MultiChoice do compete in some contexts (upstream and downstream), a subscription broadcaster such as MultiChoice, with exclusive live sports rights, bundled premium content, and a vertically integrated distribution network, does not always operate in the same market as an FTA public broadcaster reliant on advertising revenue
 - **Media Monitoring Africa** highlights this point - treating subscription services and FTA as being perfectly interchangeable overlooks vastly different funding models, regulatory obligations and coverage
 - MultiChoice never even seeks to engage with those material differences, and instead simply argues for an overly broad market

The effect of this market definition is to understate MultiChoice's market power and to obscure the real foreclosure risks posed by its entrenched dominance in these key segments

MultiChoice's Submission

The SABC's Comments on MultiChoice's Submission (3)

- MultiChoice's market definition fails to account for barriers to switching and affordability constraints, particularly in lower-income households – which account for the vast majority of households in South Africa
- Nor does it engage with the competitive harm arising from its vertical integration, which enables it to leverage upstream content exclusivity into downstream distribution advantages
 - MultiChoice's submission is conspicuously silent on these structural features of its business model that entrench its dominance and marginalise potential rivals
 - Rather than confront these, it simply adopts a theoretical view of market dynamics that bears little resemblance to the commercial and regulatory realities faced by the SABC
 - **Premium content** – on which MultiChoice focuses, and in respect of which it is dominant – **is a key differentiator** in the broadcasting industry
 - The ability to consistently broadcast sought-after content attracts viewers, builds brand loyalty, and generates crucial revenue from both advertising and subscriptions

Netflix's Submission

The SABC's Comments on Netflix's Submission (1)

- As outlined above, the SABC has explained how its ability to meaningfully compete is undermined by a skewed regulatory landscape
 - Providers of OTT services are effectively unregulated whereas the SABC is subject to stringent and costly regulation as well as universal service obligations
 - **The SABC argues for regulatory parity**
- Netflix's position on this score is internally inconsistent and self-serving
 - Netflix admits that it competes, head-on, against FTA providers such as the SABC
 - However, it cautions against regulatory overreach, effectively arguing that it should remain largely unregulated
 - These views are inconsistent

Netflix's Submission

The SABC's Comments on Netflix's Submission (2)

- Netflix's submission reveals several material weaknesses that underscore the need for urgent regulatory parity
 - Despite purporting to participate constructively in the inquiry, **Netflix consistently avoids providing any meaningful data or analysis** (e.g., it has provided no data regarding its South African subscriber base, viewing patterns, or local content investment)
 - Netflix expressly disclaims the ability to comment on market definition, yet bases its entire submission on an **implausibly broad definition of the market**, encompassing FTA television, pay-TV, SVOD, YouTube, social media, and even gaming.
 - Netflix simultaneously refuses to define the market yet, in substance, argues strenuously for an unreasonably broad market, obfuscating the real competitive dynamics and undermining effective regulatory oversight

Netflix's Submission

The SABC's Comments on Netflix's Submission (3)

- Nowhere does Netflix engage with ICASA's public interest mandate or the burdens borne by licensed broadcasters such as the SABC
 - In doing so, Netflix seeks to preserve for itself a regulatory vacuum from which it benefits commercially, **while contributing nothing** towards local content obligations, universal service, or the sustainability of the domestic broadcasting sector
 - These omissions and evasions highlight a major asymmetry at the heart of the current regulatory framework
 - This reinforces the urgent need for ICASA to impose proportionate and platform-neutral obligations across all market participants

In the circumstances, the SABC maintains that the remedies proposed in its primary submission are appropriate

Part E: The SABC's Proposed Remedies



Conclusions & appropriate remedies

Conclusion and appropriate remedies

- South Africa's subscription broadcasting market suffers from significant market failures, primarily driven by MultiChoice's entrenched dominance and its abuse thereof
 - MultiChoice's unrivalled position has been largely unchanged for decades
 - Moreover, its financial position and market reach is only likely to strengthen further as a result of the pending merger with Canal+, there is no reasonable prospect of these market failures self-correcting
 - **Regulatory intervention is plainly necessary**
- The SABC draws ICASA's attention to the provisional report of the Competition Commission's Media and Digital Platforms Market Inquiry ("**MDPMI**") the remedies recommended in the MDPMI Provisional Report
- Regarding MultiChoice's misuse of its dominance
 - Limitations ought to be placed on exclusive licensing
 - Limitations should be imposed on the duration of licensing agreements
 - In those instances where exclusive licensing agreements are concluded, the exclusive licensee ought to be required to sub-license on terms that are fair, reasonable and non-discriminatory
 - An outright prohibition on broadcasters licensing content they are not licensed to broadcast

Conclusion and appropriate remedies

- **Regarding the Must Carry Regulations**

- The amended Must Carry Regulations need to be further amended to remove the disadvantages to the SABC and the benefits to MultiChoice inherent in the current framework
- Must include an effective mechanism for resolving deadlocks between negotiating parties
- The Must Carry Regulations should also contain adequate measures for dealing with delays in agreeing commercial terms on which the Must Carry Channels are to be provided

- **Regarding the asymmetrical regulatory framework**

- ICASA should consider regulating OTT streaming services and search engines
- ICASA must also take cognisance of section 2(t) of the ECA, which enjoins ICASA to protect the integrity and viability of public broadcasting services
- Enable the SABC to reduce its high signal distribution costs, which further undermines its competitive position

Conclusion and appropriate remedies

❑ Regarding Sports regulations

- The SABC would like the Authority to review the Sports Broadcasting Services Amendment Regulations of 2021 to give effect to these proposals:
 1. **The unbundling of sports rights** : ICASA should unbundle Free -To - Air ("FTA") from the Pay-tv Media Rights ("Rights"). This would assist Pay-tv and FTA Broadcasters not to compete for the Rights that are not in their respective terrain. Thus, it is the SABC'S submission that ICASA could create a conducive competitive broadcast landscape by regulating for the Pay-tv broadcasters to compete for the Pay-Tv Rights only and for the FTA Broadcaster to only compete for the FTA Rights.
 2. **Universal access of listed national sporting events**: Foster accessibility of sports rights by FTA broadcasters for the benefit of all South Africans irrespective of their economic status.
 3. **Access to national teams**: National teams are national assets, and their games/matches should be able accessible to the public on FTA platforms.
 4. **Sub-licensing regulatory framework** : Regulations should promote fair and transparent sub-licensing framework
- ❑ These proposals are important for creating a conducive and enabling regulatory framework for sports rights regulation.

Conclusion and appropriate remedies

- Further remedies to address the competitive imbalances and the SABC's inherent disadvantages
 - **Technology neutrality** – The SABC submits that ICASA's current regulation of the DTT-DTH network split, and its stipulation of the percentages for DTT and DTH, need to be revisited, in line with the technology neutrality principle as enshrined in the ECA
 - **Licensing framework** – In 2011, during ICASA's DTT Regulations development process, the SABC proposed a framework that provides for holistic quotas for television rather than channel-based quotas. In terms thereof, television as a whole would still be obliged to deliver on its mandate across channels, merely not be constrained to doing so on a particular channel
 - **Use it or lose it principle** – There are high costs involved in the implementation of a broadcasting network. The stipulation of the time period for the use of the licence capacity in the Multiplex places undue commercial pressure on the SABC as the PBS licensee
 - **Channel authorisation** – Regulation 6(6) of ICASA's Digital Migration Regulations provides that there could be public hearings for the SABC public service channels. This could result in the channel authorization process for the SABC alone being lengthened, as no broadcaster other than the SABC will be subjected to public hearing
- The SABC draws ICASA's attention to the Draft DTT Regulations (gazetted July 2025) which, the SABC respectfully submits, should aim to address these competitive imbalances