

**SUPPLEMENTARY SUBMISSION BY  
THE SOUTH AFRICAN BROADCAST CORPORATION**

**IN RE:**

**ICASA's Supplementary Discussion Document: Inquiry into Subscription  
Broadcasting Services**

- 1 Under a notice dated 6 January 2025, the Independent Communications Authority of South Africa (**ICASA**) issued a document titled "Supplementary Discussion Document: Inquiry into Subscription Broadcasting Services". It set out ICASA's preliminary views regarding the state of competition in the subscription television broadcasting market and invited stakeholders to submit written representations regarding ICASA's preliminary findings.
- 2 On 24 March 2024, the South African Broadcasting Corporation SOC Ltd (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 below. (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's Comments re: MultiChoice's Submission**

- 3 In its primary submission, the SABC explained how MultiChoice abuses its dominant market position by acquiring exclusive rights to premium content – particularly live sports and high-demand entertainment – and then either refusing to sub-license that content or only offering it on terms so restrictive that competitors cannot use it to meaningfully compete.
- 4 The restrictions imposed by MultiChoice include delayed broadcast requirements, limitations on platforms and channels, and late-stage sublicensing that impedes promotion and advertising revenue. This creates a self-reinforcing cycle in which MultiChoice's exclusive content attracts more subscribers and advertisers, generating the revenue needed to outbid rivals for future content. This perpetuates MultiChoice's dominance and forecloses effective competition in both the upstream and downstream broadcasting markets.
- 5 Despite having delivered a 64-page submission, nowhere does MultiChoice even 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.
- 6 To avoid having to address this issue, MultiChoice contends for a single relevant market consisting of free-to-air (**FTA**) broadcasters, subscription broadcasters and over-the-top (**OTT**) streaming services.

- 7 This proposed market definition is plainly overbroad. It collapses into one all manner of broadcasters with materially different business models, content offerings, access requirements and regulatory obligations. While the SABC and MultiChoice do compete in some contexts, both at the upstream and downstream level, 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 a free-to-air public broadcaster reliant on advertising revenue. Media Monitoring Africa highlights this point, arguing that treating subscription services and free-to-air 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.
- 8 The effect of this artificially expansive market definition is to understate MultiChoice's market power – particularly in relation to live sports and premium linear entertainment – and to obscure the real foreclosure risks posed by its entrenched dominance in these key segments. MultiChoice furthermore fails to address the fact that, even if all relevant forms of broadcasting are considered part of a broader market, competition is not effective, not least because barriers to entry, structural disadvantages, and content bottlenecks prevent rivals from effectively constraining MultiChoice.
- 9 In addition, 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.

- 10 In these respects, MultiChoice’s submission is conspicuously silent on the structural features of its business model that entrench its dominance and marginalise potential rivals. Rather than confront these concerns directly, MultiChoice simply adopts a theoretical view of market dynamics that bears little resemblance to the commercial and regulatory realities faced by the SABC.
- 11 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.

### **The SABC’s Comments re: Netflix’s Submission**

- 12 In its primary submission, the SABC explained how its ability to meaningfully compete is undermined by a skewed regulatory landscape in which 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 argued for regulatory parity.

- 13 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 but cautions against regulatory overreach, effectively arguing that it (Netflix) should remain largely unregulated.
- 14 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. For instance, it has provided no data regarding its South African subscriber base, viewing patterns, or local content investment.
- 15 In addition, Netflix expressly disclaims the ability to comment on market definition yet premises 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.
- 16 This overbroad market definition obfuscates the real competitive dynamics and undermines effective regulatory oversight.
- 17 It is also notable that 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 and reinforce the urgent need for ICASA to impose proportionate and platform-neutral obligations across all market participants.

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