



DRAFT SIGNAL DISTRIBUTION SERVICES REGULATIONS, 2025

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The Team

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Introduction

- The inquiry into whether dominance exists in the signal distribution services market has been ongoing for many years.
- The Authority has recognised that Sentech is dominant in the market for the provision of terrestrial signal distribution for television broadcasting services.
- eMedia welcomes the Authority's findings and proposed Draft Regulations.

Overarching concerns

- Common carrier status of Sentech
- Timing
- Transparency
- Clarity

Common carrier status of Sentech

- The Regulations need to deal with Sentech as a common carrier
- Sentech's common carrier status must be aligned with all existing legislation and regulations

Timing

- There are two issues in relation to timing.
 - Timing in relation to the promulgation of the Final Regulations
 - Timing periods contained in the Regulations
- Both issues need to be clarified in order not to delay the promulgation and implementation of the Regulations
- It is necessary to ensure that the Reference Offer (“RO”) is adopted without delay and published on its website so that it becomes binding on Sentech as well as the parties to whom it supplies its services.
- Insofar as ICASA is concerned, it has delayed this process for many years and must now promulgate the Regulations within the necessary period provided for in section 4C(6)(a) and (b) of the ICASA Act -180 days.
- NB - the Authority must ensure that the RO is approved and published on the Sentech website within 12 months – i.e. not later than 31 August 2026.

Transparency

- The process in having the RO approved must be transparent.
- Without transparency it is impossible to assess whether the tariffs are reasonably derived from the cost of provision

Transparency – cost of provision

- Direct costs must be defined with precision and clarity
- Direct costs cannot include costs of servicing any debt through maladministration by Sentech, including the failure to collect its debts
- Third party broadcasters reliant on Sentech for their signal distribution cannot be expected to fund the growing indebtedness of the SABC to Sentech and the failure of Sentech to collect the excessive SABC outstanding amounts
- These issues pertain only to Sentech, the SABC and Government and must be resolved without impact on any other customer

Transparency and clarity

- Common costs related to the product in respect of which the RO pertains must be clearly defined.
- A clear distinction needs to be made in relation to direct costs and common costs
- Sentech needs to motivate why a cost is either a direct or common cost

Clarity is meaningless without transparency obligations

- Historically Sentech has not been forthcoming with how its tariffs in respect of eMedia's subsidiaries are calculated
- The tariffs were presented a *fait accompli* in evergreen agreements
- Evergreen agreements have been overly punitive resulting from the compound rate of interest
- The terms, including the costs have been non-negotiable

Without a transparency obligation, the manner in which direct costs and their recovery as well as the share of common costs and capital return are meaningless

The RO must be subject to a public process in which stakeholders are permitted to interrogate any proposals relating to tariffs including direct costs, common costs and the return on capital as well as the matters referred to in clause 8(b)

The RO is contractually binding on Sentech's customers who must be given a right to "negotiate" which will take the form of a public process involving submissions and hearings

Transparency obligation in terms of the RO

- Clause 9 deals with obligations Monitoring and Investigation by the Authority. It contains disclosure obligations but only at the request of the Authority.
- This is overly restrictive as it does not permit stakeholders any input on the RO
- This may create a similar situation as currently exists in which customers are presented with an RO and its terms without having any input or negotiating power and which they have to accept
- Having imposed, non negotiable terms must stop[. The only way to do this is to subject the RO to a public process

Information to be disclosed to stakeholders

1. List of direct costs with justification as to why they constitute direct costs
2. List of shared common costs with a motivation as to why they constitute common costs
3. Detailed information to substantiate the above
4. All information reasonably required by stakeholders to assess the tariffs including underlying assumptions
5. Mode of calculating a capital return commensurate with risk taken

6. Underlying assumptions as per clause 9(1)(a) - (e)
- Methodology used to allocate direct and shared costs
 - Methodology used for valuing assets
 - Assumptions regarding proposed return on investments
 - Cross-subsidisation with relevant justifications including full disclosure as to the parties being subsidised and the reasons therefor
 - All sources of data regarding all the above issues
 - Any further reasonable information which may be requested and required in relation to the above.

Further stakeholder input

- Clause 8(b) sets out the minimal terms to be included in the RO.
- As these terms contained in the RO will be contractual terms binding on Sentech's customers, all stakeholders/customers must be able to have input into the terms contained in the RO
- This must be subject to a public process – akin to negotiation under the watchful eye of the Authority

Time periods

- ICASA – no more than 180 days following hearings to publish Regulations
- Sentech to submit a draft RO to the Authority for public comment within 30 days of promulgation of Regulations
- ICASA to publish RO for public comment within 10 business days of receipt of the RO
- Submissions and hearings to be concluded within two months of the publication
- ICASA to determine RO terms within expedited period of two months to be published on Sentech's website binding immediately from the first of the month following their publication from which date existing agreements between broadcasters and Sentech will be deemed to be terminated
- This timeframe will enable the parties to achieve the envisaged August 2026 deadline so that the crippling impact of Sentech having market dominance since it was brought into existence is finally dealt with

Monitoring and investigation

If all stakeholders are part of the process suggested, then clause 9 dealing with monitoring and investigation is not needed and should be replaced with a clause termed “*Transparency Obligations*” containing the matters outlined above

Schedule for review markets

eMedia does not oppose a review of markets but it is necessary to include a clause that until the review is finalised the existing RO will continue to be binding on Sentech

eMedia Investments wishes to thank the Authority for the opportunity to make this presentation and would welcome any questions concerning the presentation

Thank you