

Independent Communications Authority of South Africa
Block B
350 Witch-Hazel Ave
Eco-Park Estate
Centurion
0169

10 July 2025

Dear Sirs

**RE: EMEDIA'S SUBMISSION ON THE DRAFT SIGNAL DISTRIBUTION SERVICES
REGULATIONS, 2025**

1. eMedia Investments (Pty) Ltd ("**eMedia**") thanks for the opportunity to make submissions in relation to the Draft Signal Distribution Services Regulations, 2025 published in GG52622 on 8 May 2025 ("**the Regulations**").
2. eMedia requests the opportunity to participate in any oral hearings held in relation to the Regulations.
3. eMedia is the holding company of various interests in the broadcasting sector including:
 - 3.1 e.tv, a licensed free-to-air terrestrial television broadcaster reliant on Sentech for its terrestrial signal distribution; and
 - 3.2 YFM, a radio station broadcasting utilising the FM frequency reliant on Sentech for its terrestrial signal distribution of its sound broadcasting service.
4. eMedia welcomes the publication of the Regulations which are long overdue in a market which has always been ineffectively competitive and in which Sentech has always had significant market power resulting in market failure. In view of Sentech's SMP, agreements with Sentech have been difficult to negotiate resulting in one-sided agreements.

5. This has been made worse by Sentech's lack of transparency in determining (rather than negotiating) tariffs – a key element dealt with more fully below. Such lack of transparency has likely resulted in discriminatory tariffs.
6. Before commenting on and specific clauses in the Regulations, eMedia points out that the Regulations fail to deal with Sentech as a common carrier. It is essential that the Regulations do so and create an absolute obligation on Sentech to provide its services to all broadcasters in the identified markets.
7. eMedia has no comments on sections 1 to 7 of the Regulations as these summarise the Authority's position and findings relating to the ineffective competition and market failure in the relevant markets resulting in the promulgation of the Regulations.
8. The focus in these submissions is on sections 8 and 9 of the Regulations which deal with the Authority's proposals as to how to regulate the relevant markets in circumstances in which barriers to entry are such that it is unlikely that a nation-wide competitor will be able to enter the market. In such circumstances Failure to introduce regulations into markets where there is no competition will enable Sentech to continue to unilaterally determine tariffs, implement discriminatory tariffs, do so without any form of transparency and tie-in those reliant on its services into punitive evergreen agreements. To this end, the introduction of a Reference Offer is essential creating not only parity between tariffs being charged for the same services, but transparency in view of the obligation to publish such Reference offer on its website.
9. The impact on e.tv because of Sentech's having SMP resulting in the conclusion of an evergreen agreement with little scope for negotiation or assessing the imposed upon tariffs, has been that the tariffs contained in the agreement are likely overinflated and out of synch with Sentech's direct and common costs. The cause of this has been the annual increase provision which entitles Sentech to an annual increase irrespective of any cost's determination. The compound effect of such increases, where the agreement is evergreen denying e.tv the opportunity to substantially renegotiate its terms and tariffs, has been that the amount paid by e.tv for signal distribution services has become increasingly exorbitant and is one of e. tv's biggest costs.
10. As an overriding principle in relation to costs, the Regulations need to prohibit Sentech taking into account any bad debt in assessing costs. No broadcaster should be required to finance the services provided by Sentech to other broadcasters who cannot or do not pay for their services.

A case in point – the SABC. Its current debt to Sentech exceeds R1.5 billion. This has put strain on Sentech's cash balances year on year. The Regulations should prohibit any cost arising from its failure to take steps to rectify the situation in Sentech determining its tariffs.

11. e.tv welcomes the provisions contained in clause 8(a) to the effect that all signal distribution services tariffs should be reasonably derived from the costs of provision allowing for the recovery of direct costs, an appropriate share of common costs, a return on capital commensurate with the risk taken (but excluding costs related to other services and products). However, as it stands, this clause is decidedly vague and hence open to interpretation which could well result in disputes and delays in having tariffs approved by the Authority. Bearing in mind that, over years, institutional memory is lost, clarity should be given into the meaning and determination or assessment of costs.
12. By defining terminology greater transparency as to how Sentech's tariffs are calculated will exist. Disclosure of information used for determining tariffs (whether in documentary form, use of formulae or methodology must be obligatory. Without this and transparency relating to the methodology used, it will be impossible for broadcasters to determine whether the tariffs are reasonable, non-discriminatory and based on actual information which can be justified and supported by relevant documents relating to the calculation of direct costs and common costs.
13. While clause 9 dealing with monitoring and investigation provides that the Authority can request detailed information and assumptions supporting the tariffs, including the methodologies used to allocate direct and shared costs to different services and for valuing assets, this information should equally be made available to broadcasters. This underpins the transparency obligation. Broadcasters need to participate in assessing the terms of any Reference Offer relating not only to tariffs, but all those items listed in clause 8(b)(i) to (viii). A mechanism needs to be created as to how this should take place with strict time limits in relation to each step being imposed in terms of the Regulations. Without any time-periods, the regulations will have no teeth and determining the RO and having this approved, could take years during which time market failure will remain.
14. The following is suggested:
 - 14.1 Within 30 business days of the publication of the Regulations, Sentech submit a draft RO to the Authority which is immediately published for public comment.

- 14.2 Following such public comment and any hearings (both of which should be expedited), the Authority must make a determination of the RO terms. Again this should be expedited to a period of two months following the public comment or hearings.
- 14.3 This should immediately be published on Sentech's website and be binding on broadcasters and Semtech from the first of the month following the publication of the RO from which date all agreements between any broadcaster and Sentech will be deemed to have terminated.
15. In all these circumstances, greater clarity is required to the various provisions contained in the relevant clauses which must be accompanied by an obligatory duty to disclose. Hence the Regulations should:
- 15.1 define the meaning of "direct costs";
- 15.2 define whether the costs of provision referred to in clause 8(a) is calculated only with reference to the provisions contained in clauses 8(a)(i) to (iii);
- 15.3 define what is meant by common costs related to the product;
- 15.4 define what is meant by the product;
- 15.5 provide clarity as to how a return on capital employed that is "commensurate with the risk taken" is calculated, specifying how risk taken is assessed accompanied with a definition in this regard;
- 15.6 oblige Sentech to publish its assumptions and methodology relating to the suggested tariffs as well as the sources of data used by it;
- 15.7 clarify what is meant by cross-subsidisation and what cross-subsidisation is permissible; and
- 15.8 Provide content to the meaning of the "pricing remedy" which the Authority can impose in terms of clause 9(2) of the Regulations.

16. eMedia thanks the Authority for the opportunity to comment on the Regulations and look forward to participating in the next stage of the process.

Yours faithfully,

Philippa Rafferty
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