



# INTRODUCING SABC PANEL AND REPRESENTATIVES

## **SABC Panel**

1. Nomsa Philiso - Acting Group CEO
2. Chris Maroleng – Group COO
3. Renee Williams – Acting GE : Television
4. Philly Moilwa – GM : Regulatory Affairs
5. Angie Hammond – GM :Market Intelligence
6. Marcia Mahlalela – Acting GE: Sport
7. Judy Monyela – Manager: Regulatory Affairs

## **Also present:**

- Bongumusa Makhithini (Chairperson, SABC Board)
- Michael Markovitz (SABC Board member)

# OUTLINE OF PRESENTATION

1. Introduction: SABC's Public Mandate and Scope of this Inquiry
2. Purpose of the submission
3. SABC's submission:
  - Amendment of Existing Regulations: Must Carry, Sports Rights and Digital Migration Regulations;
  - Amendment to Legislation: Section 60(4) of the ECA;
  - New regulations and licence conditions
3. Conclusion

# **INTRODUCTION: SABC'S PUBLIC MANDATE AND THE SCOPE OF THIS INQUIRY**

## INTRODUCTION: SABC'S PUBLIC MANDATE AND SCOPE OF THE INQUIRY

- ❑ The SABC welcomes ICASA's initiative to review competition in the subscription television market.
- ❑ The SABC has, in response to the Discussion Document by ICASA, made its written submission on 04 December 2017.
- ❑ This process is long overdue given how the entire television market has evolved over the past two decades.
- ❑ Unlike previous regulatory processes, the SABC hopes that this inquiry will lead to clear, defined measures that address the fundamental structural and market anomalies that impact the South African television market, including both Subscription Broadcasting Services (SBS) and Free to Air (FTA) broadcasters.

# SABC PUBLIC MANDATE

- ❑ The SABC delivers its mandate through its 18 radio services and 5 television services which provide for a wide range of audiences, languages, beliefs and diverse interests.
- ❑ The SABC's obligations in terms of section 8 of the Broadcasting Act include to:
  - make its services available throughout the Republic
  - provide programming for people with disabilities
  - collect news and information throughout the world
  - nurture South African talent, train people in production skills and carry out research and development for the benefit of audiences
  - develop and extend the services of the Corporation beyond the borders of South Africa
- ❑ Section 10 of the Broadcasting Act further imposes an obligation that the public service provided by the Corporation must be made available to South Africans in all the official languages.
- ❑ The public mandate is further extended by the requirement to broadcast sport of national interest and events of national importance.

## SABC PUBLIC MANDATE

- ❑ The SABC plays a unique constitutional role in South Africa as enshrined in legislation, regulations and licence conditions.
- ❑ There is no other South African broadcaster which has the SABC's comprehensive range of public mandate obligations while at the same time being exposed to such limited public funding.
- ❑ At the same time, the SABC does not enjoy the requisite regulatory protection as is required by section 2(t) of the Electronic Communications Act which enjoins the Authority to:

**”protect the integrity and viability of public broadcasting services”**

- ❑ It is our submission that the lack of competition in pay television, coupled with regulations passed over the last ten years, have threatened the the integrity and viability of the SABC.

## SABC PUBLIC MANDATE

- ❑ ICASA plays the lead role, supported by Parliament and the Shareholder, in protecting the integrity and viability of the SABC.
- ❑ The Authority's role to protect the SABC is statutorily mandated and is an obligation that should have been performed *ex ante*, that is performed proactively and not after the fact.
- ❑ Unfortunately, as the SABC will demonstrate today, several aspects of the Authority's regulations on Must Carry, Sports Rights and DTT have not met the objective set out in section 2(t) of the ECA.
- ❑ Therefore these regulations require review and amendment to bring them into alignment with the Authority's statutory obligations.

## SCOPE OF INQUIRY MUST BE BROADENED

- ❑ The SABC has submitted that the scope of the competition inquiry must be broadened to evaluate the entire South African television market.
- ❑ Ineffective competition in the pay-tv market has negatively impacted the entire television broadcasting industry, including the public broadcaster.
- ❑ The lack of competition in the subscription broadcasting market has seen one private sector player grow to control 44% of all television households in South Africa.
- ❑ Types of broadcasters cannot be neatly boxed into separate markets.
- ❑ Subscription broadcasters compete with public and private FTA TV broadcasters for audiences, advertising and sponsorship revenue, content and sports rights as well as the acquisition of top South African television content.
- ❑ The BRC Tams Snapshot demonstrates that DSTV has 44% TV household share with almost 6.2 million households out of a total of 14 million TV households in SA.

# SCOPE OF INQUIRY

## BRC TAMS SNAPSHOTS...



TOTAL TV HOUSEHOLDS H/H

**14 085 579**



FREE TO AIR (FTA)

**7 928 834**



DSTV

**6 156 745**



OVHD

**811 000**



TOTAL TV HOUSEHOLDS H/H

**14.09 MILLION**



No, of TV CHANNELS

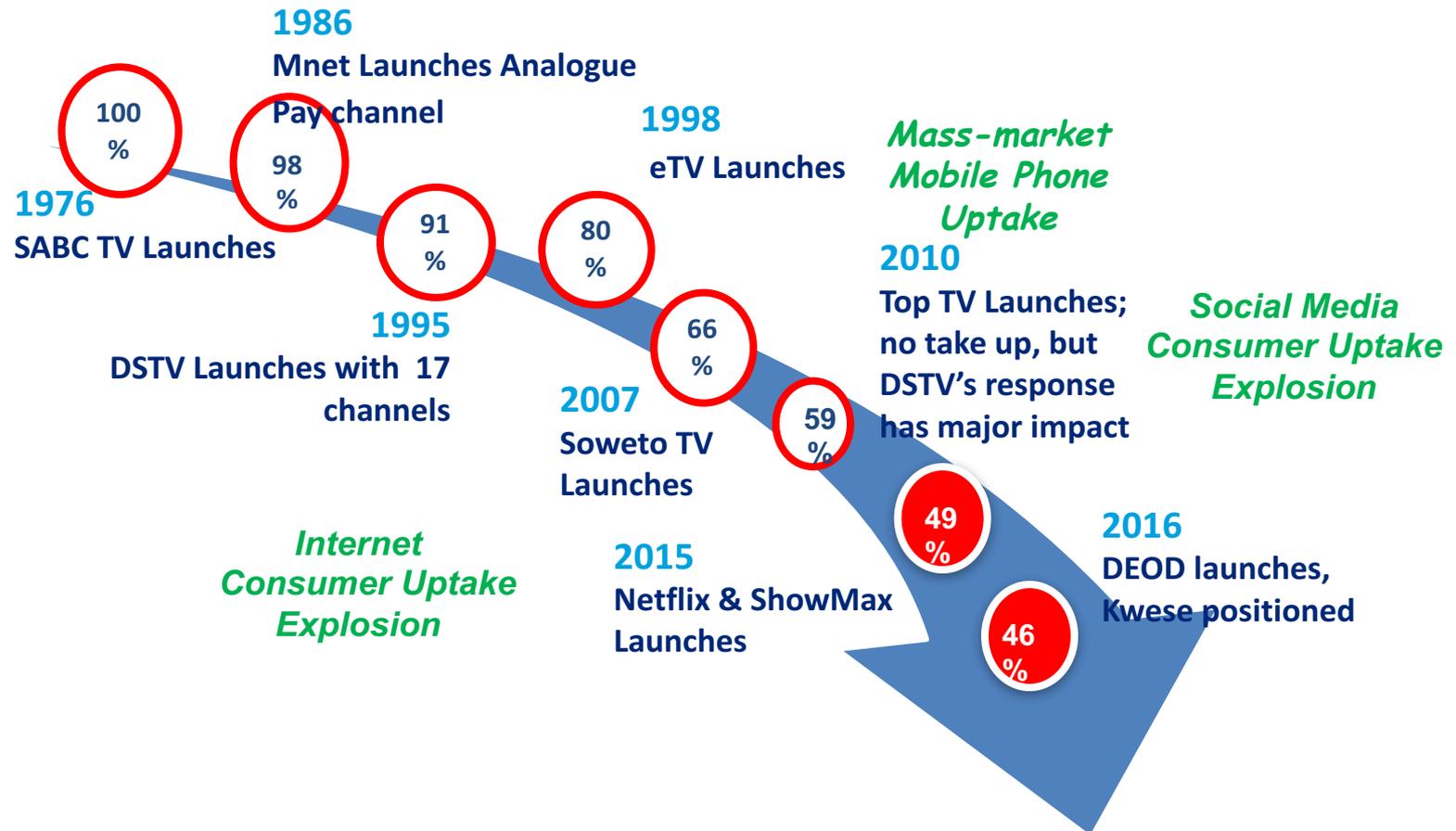
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## SCOPE OF INQUIRY MUST BE BROADENED

- ❑ In the Discussion Paper the Authority's defines markets for subscription content and subscription channel provision as well as for technical services and retail distribution of subscription TV channels.
- ❑ The SABC does not dispute the definition of these markets, but if the inquiry does not also focus on how ineffective competition in all these markets has negatively impacted the broad South African television market, including FTA broadcasters, it would be missing an opportunity to deal with competition and regulatory issues holistically.
- ❑ The strong interrelationship between the FTA broadcasting market and competition in the subscription television market should not be ignored.

# SCOPE OF INQUIRY: HISTORICAL OVERVIEW OF TV IN SOUTH AFRICA



## SCOPE OF INQUIRY: HISTORICAL OVERVIEW

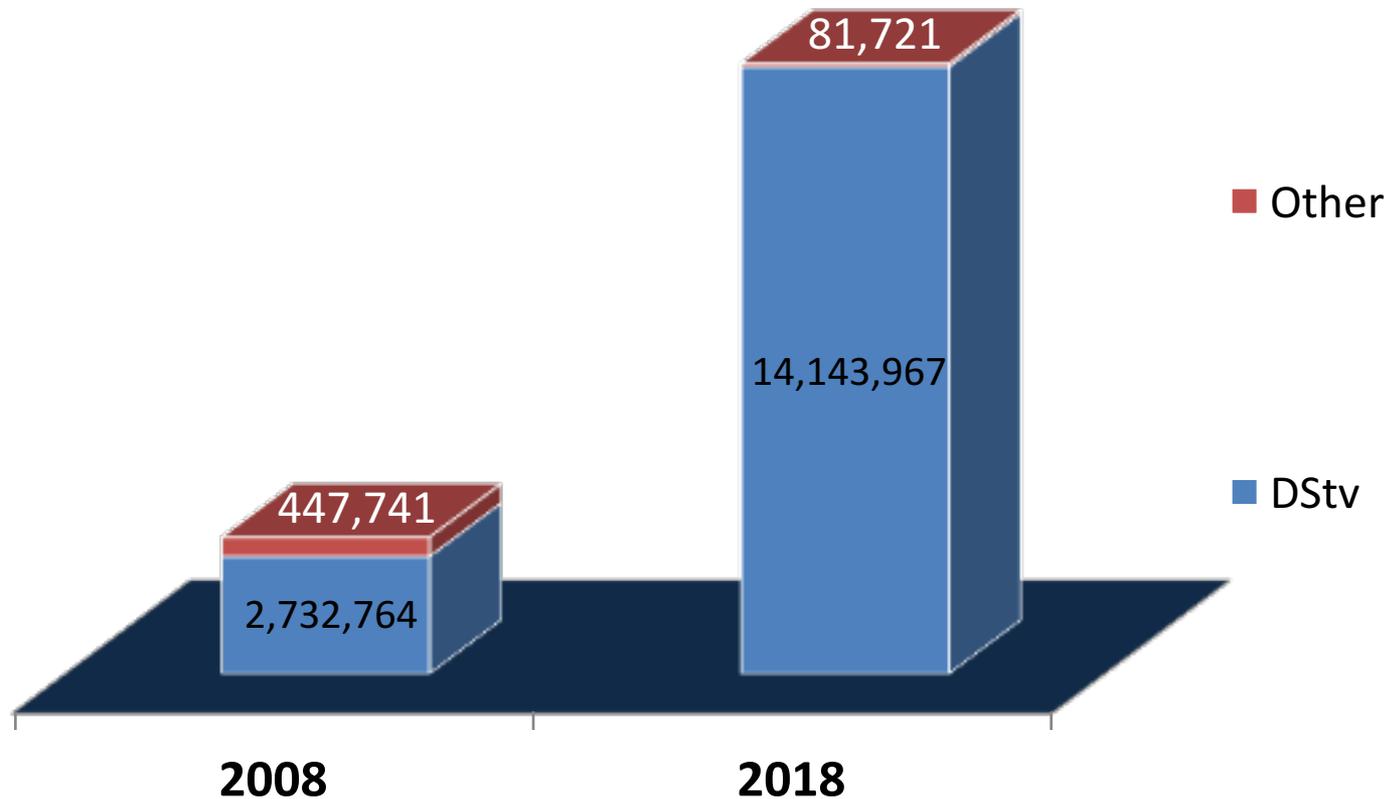
### De facto Protection of Pay-TV

- MNet had a first mover advantage in Pay TV over 30 years ago as part of an exclusive concession granted by the apartheid government, thus, it has made it difficult for other players to compete with MNet/DStv on the same footing.
- MNet had an open window for 21 years until closed by the Authority in 2007 but by that time it had accessed significant revenues and audiences from FTA broadcasters.
- Unlike FTA television broadcasters, SBS have had light-touch regulation.
- The de facto protection of the dominant Pay TV operator has distorted the market over the years as it now controls nearly half of all potential TV households and television advertising revenue in SA.

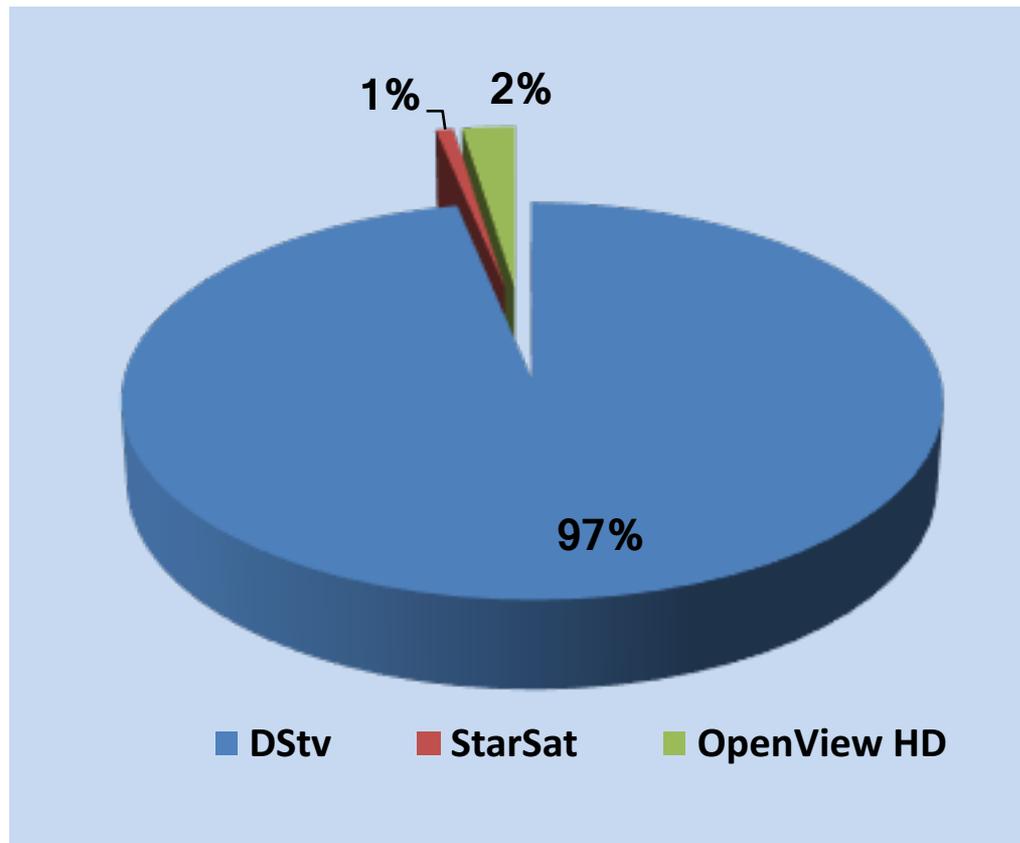
# DSTV vs OTHER PAY TV SERVICES

SAARF AND BRC TAMS UNIVERSE SIZING  
MAR 2008 VS MAR 2018

## Changes in the SA Pay TV Adult (15+) Universe over the Past Ten Years



## Share of Pay TV Subscriptions in SA



## PURPOSE OF SABC SUBMISSION

The purpose of the SABC's submission today is to:

- ❑ Illustrate to ICASA how ineffective competition in the subscription television market has impacted on the broader television market and consequently the sustainability of public broadcasting;
- ❑ Request ICASA to amend existing regulations to protect the integrity and viability of the SABC as contemplated in section 2 the Broadcasting Act;
- ❑ Request that ICASA recommend the amendment of legislation that undermines the viability of the public broadcaster;
- ❑ Demonstrate how Multichoice's dominance and market power on content acquisition such as sport can be detrimental to the SABC and FTA television players; and
- ❑ Support ICASA's proposed pro-competitive measures through regulation and licence conditions.

# **REVIEW AND AMENDMENT OF EXISTING ICASA REGULATIONS**

## REVIEW OF MUST CARRY REGULATIONS

- ❑ The Must Carry regulations must be amended to permit parties to negotiate commercial terms in line with the legislative provisions.
- ❑ The SABC supports the ‘must carry, must pay principle’ under the current legislative provisions as a bare minimum, however we also propose a complete review of the enabling must carry legislative provisions and regulations to relieve the SABC from Must Carry obligations completely.
- ❑ In our new multichannel universe, the SABC should not be compelled to offer its channels to any SBS that requests retransmission.
- ❑ The current regulations have yielded unintended, anticompetitive consequences in that they devalue the SABC’s television content and deny the SABC opportunity to negotiate commercial terms with SBS as required by the enabling legislation.
- ❑ The economics of the television landscape has also fundamentally changed since 2008. It is now internationally accepted that free to air broadcasters of all types make significant, additional revenue from retransmission of their channels on other platforms. The Must Carry regulations make it very difficult for the SABC to pursue this commercial objective and therefore threaten the sustainability of the SABC.

## REVIEW OF MUST CARRY REGULATIONS

- ❑ The SABC's investment in content, which is partly publicly funded, is accessed freely by SBS despite the SABC having conducted a tendering process for the acquisition of this content.
- ❑ The SABC channels (including free usage of our content for Catch-Up services) are used by SBS to promote the uptake of their bouquets and packages as a driver to get more subscribers – without any commercial benefit to the public broadcaster.
- ❑ SABC channels consistently appear in the top 10 most watched channels on DSTV thus increasing their subscription with no commercial value to the SABC as demonstrated in the graph below. 15 of the 20 most watched television programmes on DSTV are SABC programmes.
- ❑ The Must Carry regulations have also created distortions in the sports rights area. Multichoice benefits from the retransmission of national sporting events that the SABC has acquired rights and paid for.
- ❑ DStv is now directly targeting the SABC's free to air audiences by using SABC programming which it is not required to pay for.

# REVIEW OF MUST CARRY REGULATIONS

*Channels viewed in Pay TV homes - DStv/StarSat  
March 2018, 05h00-23h0: Adults (15+)*

	CHANNEL	SHR%	AR VIEWERS
1	SABC 1	11.6	357,377
2	Mzansi Magic	5.4	166,120
3	SABC 2	4.5	139,006
4	e.tv	4.3	131,973
5	Mzansi Bioskop	3.6	110,503
6	Africa Magic Epic	2.9	88,496
7	SABC 3	2.1	65,417
8	Channel O	2.1	64,273
9	Mzansi Wethu	1.9	58,801
10	Cartoon Network	1.9	58,531
SABC Share of Top Ten Ratings		45%	561,800

# REVIEW OF MUST CARRY REGULATIONS

DSTV MARKET					
				March 2008	
RANK	PROGRAMME TITLE	CHANNEL	SABC	AR VIEWER	SHR %
1	NIGHT AT THE MUSEUM	M-Net		473,172	36.7
2	MNET MOVIES	M-Net		439,702	36.0
3	CARTE BLANCHE	M-Net		409,856	31.7
4	SNAKES ON A PLANE	M-Net		378,697	30.0
5	VODACOM S14 BULLS VS SHARKS	SS 1		367,817	28.9
6	NOOT VIR NOOT	SABC 2		337,189	27.2
7	NUUS	SABC 2		306,881	26.7
8	EGOLI-PLACE OF GOLD	M-Net		293,180	30.5
9	VODACOM S14 CHEETAHS VS BLUES	SS 1		289,884	29.0
10	PRISON BREAK	M-Net		263,118	22.6
11	7DE LAAN	SABC 2		254,719	23.4
12	THE LAST KING OF SCOTLAND	M-Net		241,301	23.3
13	VODACOM S14 SHARKS VS BLUES	SS 1		230,059	25.1
14	VODACOM S14 LIONS VS SHARK	SS 1		229,816	24.8
15	GREY'S ANATOMY	M-Net		221,983	17.3
16	VODACOM S14 SHARKS VS REDS	SS 1		219,277	23.4
17	GENERATIONS	SABC 1		218,934	17.6
18	OUT OF REACH	e.tv		216,538	16.4
19	VODACOM S14 STORMERS VS REDS	SS 1		212,308	34.6
20	BINNELANDERS	M-Net		210,368	19.3

DSTV MARKET					
				March 2018	
RANK	PROGRAMME TITLE	CHANNEL	SABC	AR VIEWER	SHR %
1	UZALO	SABC 1		2,556,954	46.9
2	GENERATIONS THE LEGACY	SABC 1		2,484,716	45.7
3	SKEEM SAAM	SABC 1		1,963,640	41.4
4	SCANDAL	e.tv		1,392,298	26.1
5	MUVHANGO	SABC 2		1,248,116	25.0
6	ZULU NEWS	SABC 1		1,143,941	22.6
7	RHYTHM CITY	e.tv		1,111,908	21.8
8	XHOSA NEWS	SABC 1		1,104,444	22.0
9	THE QUEEN	Mzansi Magic		1,023,934	20.6
10	OUR PERFECT WEDDING (MAG)	Mzansi Magic		984,733	18.8
11	THE VODACOM SHOW	SABC 2		955,961	18.7
12	SELIMATHUNZI	SABC 1		900,216	16.5
13	NYAN NYAN	SABC 1		875,956	20.7
14	ISIBAYA	Mzansi Magic		792,065	14.5
15	ZAZIWA	SABC 1		763,449	14.2
16	THROWBACK THURSDAY	SABC 1		736,660	13.8
17	LIVE AMP	SABC 1		732,827	14.5
18	LESILO RULA	SABC 2		722,758	17.1
19	SINGLE GALZ	SABC 1		697,689	12.7
20	SAFTAS AWARDS	SABC 2		692,133	17.6

## REVIEW OF SPORTS RIGHTS REGULATIONS

- ❑ The regulations on national sporting events provide a list of sporting games or tournaments that are expected to be broadcast by the Free to Air broadcasters including the SABC.
- ❑ The regulations and public expectation exert pressure on the SABC to broadcast these events.
- ❑ Most of the rights of listed events are held by Multichoice and made available through very expensive sublicensing deals.
- ❑ However, the broadcast of these events have yielded negative financial returns relative to the high cost of the rights investment made.
- ❑ The bulk of the sports rights costs can be attributed to sublicensing of rights.
- ❑ The graphs below show the decline in both revenue and audience regarding football on SABC television, while the costs of rights and production have increased.

# SABC Football Investment

## 2012 - 2018

- CASH OUTLAY**

- CAF

Rights	R 269mill
Production	R 14 mill
Revenue	R 20.6 mill

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**Total Loss** **R 262.4 Mill**

- SAFA

Rights	R 462 mill
Production	R 65 mill
Revenue	R 48 mill

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**Total Loss** **R 469 mill**

- PSL

Rights	R 1.6 Bill
Production	R 522 mill
Revenue	R 466 mill

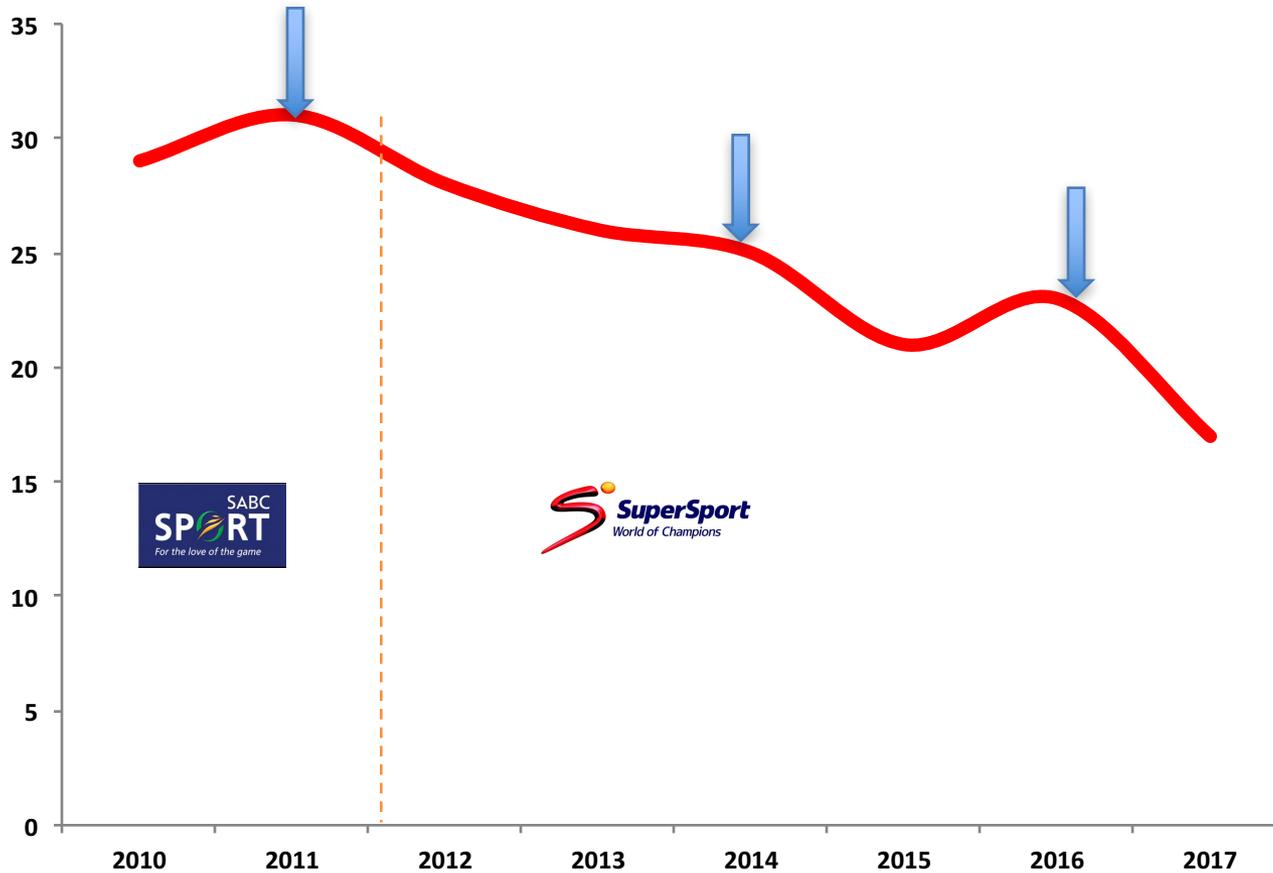
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**Total Loss** **R 1 656 Bill**

R535M  
Revenue

**R2 387.4 B  
LOSS**

## TV Audience Performance



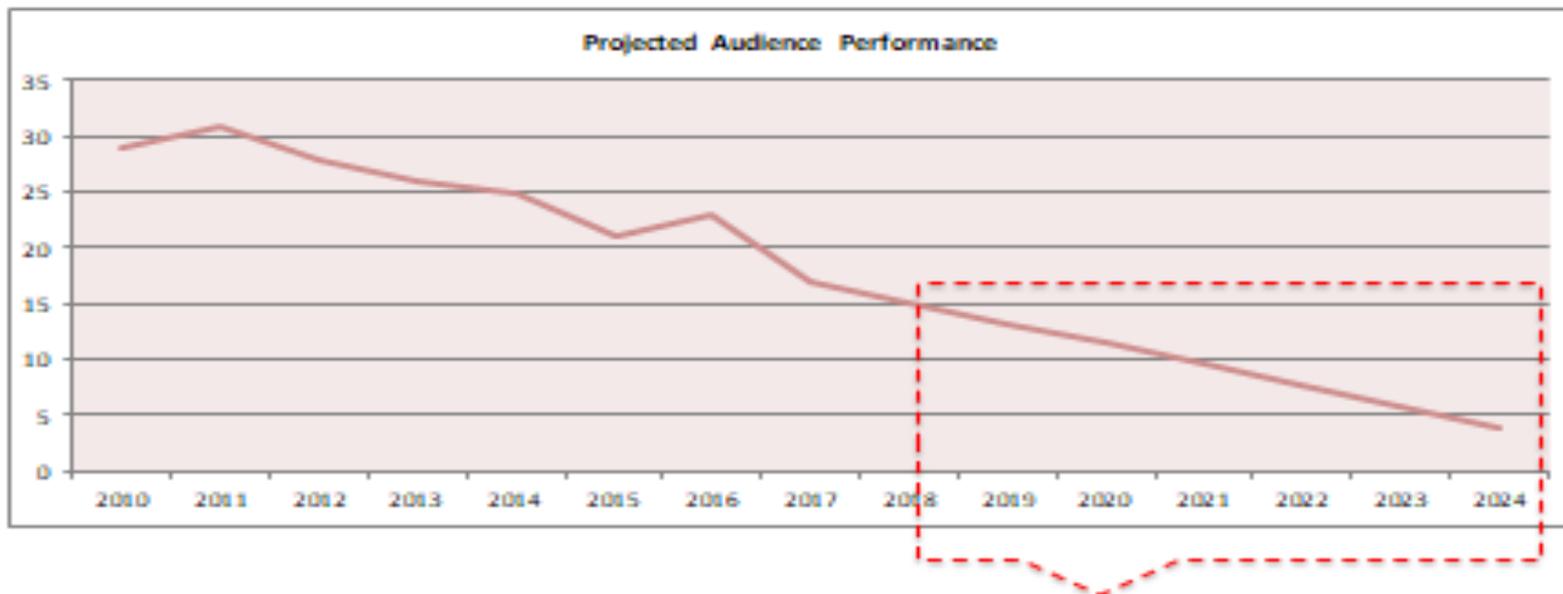
- Audience Performance has been declining ever since Supersport were awarded the TV rights gatekeeper rights status in 2011.
- The improper placement of this property + SS unreasonable discretion has contributed to the decline

### Other factors:

- lower category matches broadcast live
- unpredictable match fixture
- constant fixture changes
- added host broadcaster obligations

→ FWC(2010/2014)/EUFA

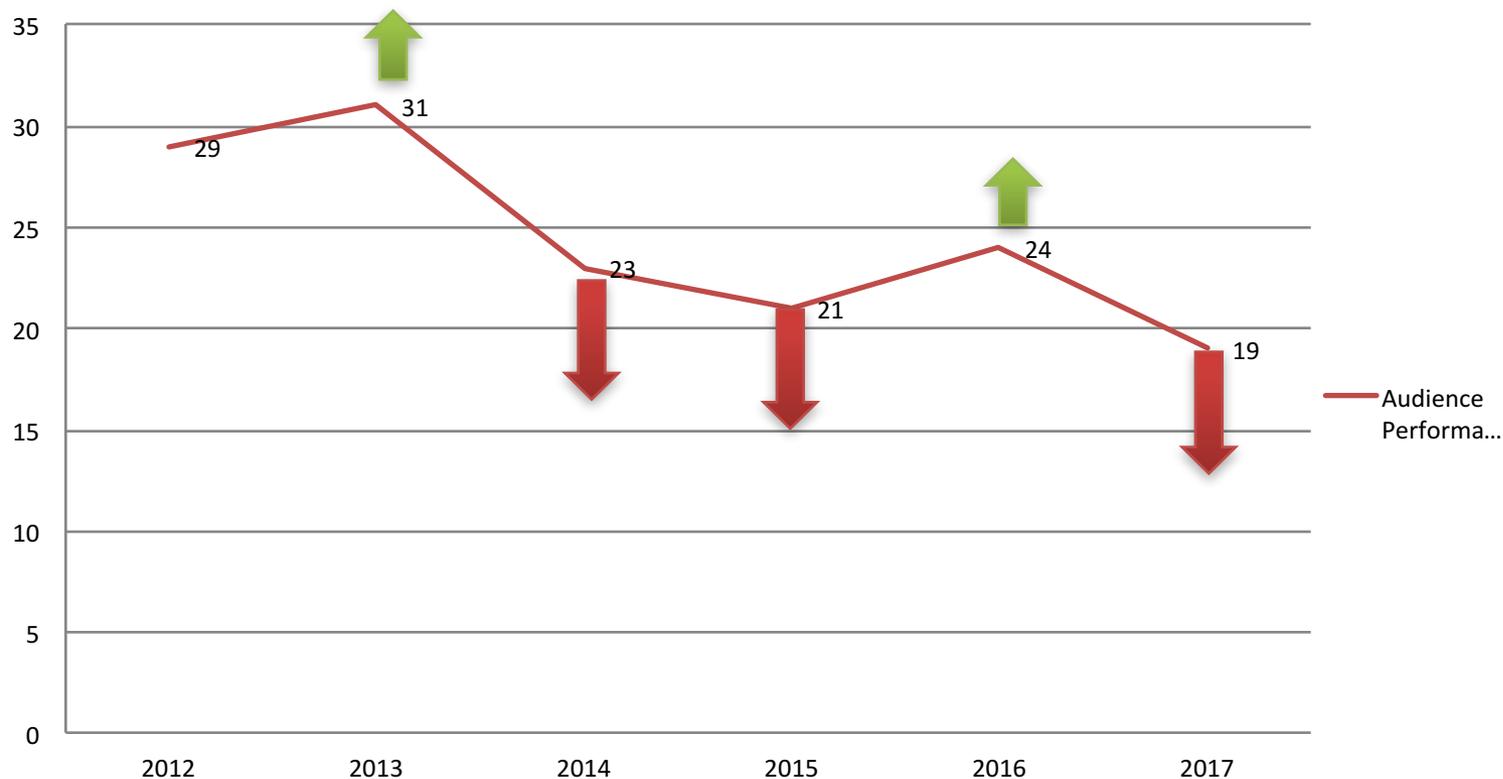
## Audience Forecast



- Ever since 2012, SABC has been steadily losing its market share at a rate of about 2% per season
- If current trend is not drastically arrested, further haemorrhaging is forecast, which is not sustainable for football and public service delivery
- As things stand, revenue is already declining, + with further audience decline forecast, PSL brand equity will be severely impacted that could yield unfavourable consequences

## Audience Performance

Audience Performance



- Team Performance is vital in driving audience, especially with Bafana Bafana
- Their performance further impact audiences viewing patterns in relation to other national teams.

## REVIEW OF SPORTS RIGHTS REGULATIONS

- ❑ There is a need for ICASA to review the list of national sporting events, including the sub-licensing conditions and the pricing of sports rights with a view to addressing anti-competitive concerns.
- ❑ Multichoice, as the primary rights holder of most premium sport content, gets to sublicense these rights to FTA broadcasting services at a high cost with stringent terms and conditions that do not guarantee a return on investment.
- ❑ ICASA has not made it clear in the regulations that the bidding process for subsidiary rights be open and transparent and neither has it specified that the process of determining the subsidiary rights be fair, or set criteria on which fairness would be judged.
- ❑ The regulations should forbid anti-hoarding rights - the regulations should cater for instances when the subscription broadcasting service does not intend to broadcast the event, or be a part of it, it should be required that the rights be offered to the public broadcaster at a nominal fee.

## REVIEW OF SPORTS RIGHTS REGULATIONS

- ❑ Subscription broadcasters with market power should not be allowed to “lock-up” rights for years because this arrangement substantially lessens competition in the broadcasting television market.
- ❑ Subscription broadcasters with market power should be required to conclude agreements for the on-selling of rights at least 3 to 6 months before the broadcast of events to enable the sub-licensor to be able to sell advertising space around such events.
- ❑ In other cases, subscription broadcasters sub-licence the rights to big games but then only allow the broadcasts to be used on a delayed basis.
- ❑ This arrangement makes the event less attractive and it inhibits the sub-licensor from generating revenue as advertisers are reluctant to advertise when there is a delayed broadcast.
- ❑ The regulations should therefore be reviewed to provide for unbundling of rights and providing for a fairer and stricter sublicensing framework of national sporting events.

## REVIEW OF DTT REGULATIONS

- ❑ The current DTT regulations should be reviewed in instances where they are anti-competitive and impact on the sustainability and viability of the public broadcaster.
- ❑ The purported *use it or lose it* principle regarding spectrum should be removed from the regulations to accommodate the smooth transition of the public broadcaster to a DTT environment.
- ❑ Regulation 6(3) read with Regulations 7(7) and (5) of the ICASA Digital Migration Regulations, 2012, prescribe a lengthy channel authorization process for channels that fall within the public service division of the SABC whilst commercial broadcasters are allowed a quick administrative process for channel authorization.
- ❑ Such lengthy processes may have unintended consequences for the SABC's quick launch of channels to compete in the television market.
- ❑ The SABC is also concerned that the Authority is preparing to licence additional TV competitors before the public broadcaster has migrated FTA TV households to DTT.

# **AMENDMENT OF SECTION 60(4) OF THE ECA: “THE PAY-TV ADVERTISING CAP”**

## THE PAY-TV ADVERTISING CAP

Section 60(4) of the ECA provides that:

*Subscription broadcasting services may draw their revenues from subscriptions, advertising and sponsorships, however, in no event may advertising or sponsorship, or a combination thereof, be the largest source of annual revenue.*

## THE PAY-TV ADVERTISING CAP

- ❑ SABC submits that the Authority should recommend to Parliament that section 60(4) of the ECA be amended.
- ❑ This section has failed to cap advertising revenue by subscription broadcasters, as originally intended by the legislature.
- ❑ Subscription Broadcasting Regulations of 2006 were also ineffective as a result of the loophole in the enabling legislation. Comparing the gross subscription revenue now enjoyed by DSTV (said to be over R20bn), with the total South African ad revenue pie, it is impossible for DSTV's advertising and sponsorship revenue to ever exceed subscription revenue and therefore there is no ad revenue cap for DSTV.
- ❑ DStv now commands 46% of the television advertising revenue in South Africa.
- ❑ The public broadcaster does not have access to subscription revenue. Licence fees contribute only 15% of the revenue base and it therefore follows that advertising and sponsorship revenue is the SABC's primary source of revenue.

## THE PAY-TV ADVERTISING CAP

- ❑ The SABC not only has to compete with other FTA broadcasters for an ever shrinking pot of advertising revenue but also with the dominant subscription broadcaster which can also draw on over R20bn in subscription revenue.
- ❑ This is clearly not what was intended by the legislature.
- ❑ The current provision no longer provides a solution to the problem it sought to originally solve.
- ❑ An amendment to section 60(4) of the ECA should allow the Authority to prescribe a much more effective approach to capping advertising and sponsorship revenue for subscription broadcasters.

# Television Advertising Revenue Share: Mar 2017 – Feb 2018

<b>Media Owner</b>	<b>Revenue</b>	<b>SOV</b>
ETV	3,872,382,314	17.4%
Multichoice Africa	10,263,461,313	46.2%
SABC	8,065,428,012	36.3%
<b>Grand Total</b>	<b>22,201,271,639</b>	<b>100%</b>

# NEW REGULATIONS AND LICENCE CONDITIONS

## NEW REGULATIONS AND LICENCE CONDITIONS

The SABC supports the Authority's proposed pro-competitive measures to be imposed through regulation and licence conditions. These include:

- The shortening of exclusive contracts;
- Introduction of unbundling of sports rights;
- Imposition of rights splitting;
- Opening up a dominant firm's network and declaration of a STB as an essential facility;
- The enforcement of an advertising revenue cap; and
- The introduction of set top box interoperability.

# CONCLUSION

- ❑ The SABC appreciates the opportunity to present its concerns to the Authority.
- ❑ The SABC further submits that the Authority should ensure that it protects the integrity and viability of the public broadcaster as it reviews the state of competition in the Pay-Tv sector.
- ❑ In the main the SABC submits the Authority should urgently consider the following 3 regulatory interventions:
  1. Amending anti-competitive regulations which impact on the viability of the public broadcaster, including the Must Carry regulations, Sports Broadcasting Regulations and Digital Migration Regulations;
  2. Recommending that Parliament amend section 60(4) of the ECA in order to cap advertising revenue by subscription services as originally intended by the legislature; and
  3. Imposing new, pro-competitive regulations and licence conditions in terms of section 67(4) of the ECA).

**THANK YOU**