



Chairperson,

Signal Distribution Committee

Email: signaldistribution@icasa.org.za

10 April 2024

Dear Chairperson

SUPPLEMENTARY DISCUSSION DOCUMENT ON THE SIGNAL DISTRIBUTION SERVICES MARKET ENQUIRY

1. INTRODUCTION

- 1.1 In Notice 2298, published in government Gazette number 50069 dated 2 February 2024 (the Notice), ICASA published its Supplementary Discussion Document on the Signal Distribution Services Market Enquiry (the Supplementary Discussion Document). Stakeholders were invited to make written submissions within 45 working days.
- 1.2 Primedia (Pty) Ltd (Primedia) is the licensee in respect of four commercial sound broadcasting services, namely CapeTalk (broadcasting on MW),702, KFM and 947 (all of which are broadcasting on FM) and makes use of the managed transmission services (MTS) provided by Sentech SOC Limited (Sentech) to distribute its station's signals to the public in the stations' respective coverage areas.
- 1.3 Primedia thanks ICASA for the opportunity of commenting on the Supplementary Discussion Document and requests an opportunity to make oral representations should any public hearings on the Supplementary Discussion Document be held.
- 1.4 In making these written submissions, Primedia does not address every aspect of the Supplementary Discussion Document but focuses on those issues/questions that are of particular concern to it. We trust that ICASA will find these helpful.

2. SUBMISSIONS

2.1 Ad paragraphs 3-6

2.1.1 With regard to all of the above paragraphs, Primedia agrees with all of the conclusions, findings and determinations made by ICASA for the reasons given by ICASA therein.

2.1.2 Primedia is pleased to have been able to be of assistance to ICASA, particularly on the issues of Sentech's control of and over the "High Sites" and to have drawn ICASA's attention to the lack of competition available for national and regional radio.

2.2 Ad paragraph 7

2.2.1 Primedia is concerned about the statement by ICASA that after the publication of the findings document, and therefore the conclusion of the inquiry, "the Authority **may** (our emphasis) commence the regulations making process to address significant market power in the relevant markets".

2.2.2 Primedia is of the view that ICASA would not have the discretion, given the findings already set out in the Supplementary Discussion Document, not to make the necessary regulations that it is statutorily required to make in terms of section 67(4) of the Electronic Communications Act, 2005 (the ECA). In this regard Section 67(4) is a *peremptory provision* (our emphasis):

2.2.2.1 as it imposes an *obligation* (our emphasis) upon ICASA to prescribe regulations and impose appropriate and sufficient pro-competitive licence conditions on licensees where there is ineffective competition, as is evidenced by the use of the word "must" in that section;

2.2.2.2 Further, section 67(4) imposes an *obligation* (our emphasis) upon ICASA, where it has made a finding that a licensee has SMP, to prescribe regulations which **must** (again a peremptory obligation), among other things:

(a) define relevant wholesale and retail markets or market segments;

(b) determine whether there is effective competition in those relevant markets and market segments;

(c) determine which, if any licensees have significant market power in those markets and market segments where there is ineffective competition;

(d) impose appropriate pro-competitive licence conditions on those licensees having significant market power to remedy the market failure;

(e) set out a schedule in terms of which the authority will undertake periodic review of the markets and market segments, taking into account subsection (9) and the determination in respect of the effectiveness of competition and application of pro-competitive measures in those markets; and

(f) provide for monitoring and investigation of anti-competitive behaviour in the relevant market and market segments.

2.2.3 It is clear from the text of the Supplementary Discussion Document that ICASA has found there is indeed ineffective competition in the television and national and regional radio broadcast signal distribution markets and that Sentech has SMP, is dominant and enjoys 100% of those markets. If these conclusions are carried forward into its findings document, then ICASA is under a statutory obligation to prescribe the regulations set out in section 67(4) of the ECA and has no discretion to decline to so prescribe the regulations.

2.2.4 Primedia submits that in developing its draft regulations in terms of section 67(4) of the ECA, it must impose pro-competitive conditions, including, in our respectful view:

2.2.4.1 determining Sentech's High Sites to be "essential facilities" to which competitors, including self-providers of broadcasting signal distribution, are to be given access;

2.2.4.2 prescribing price caps for signal distribution services provided by Sentech; and

2.2.4.3 requiring Sentech to agree to meaningful and effective penalty clauses for any failure on its part to provide contracted-for signal distribution services to broadcasters.



3. In conclusion Primedia thanks ICASA for the opportunity of making the submissions and looks forward to participating in the oral hearings, if they are to take place, or else to commenting on the draft s67(4) regulations when they are published for public notice and comment along with the findings document.

Yours Sincerely

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