

ICASA Supplementary Discussion Document on Signal Distribution Services Market Inquiry 05 June 2024



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Request for further information

- As communicated with the Authority, SENTECH still advocates the view that the *Discussion Document on the Market Inquiry into Signal Distribution Services in South Africa* (“2022 Discussion Document”), Government Gazette no. 46255 dated 22 April 2022, is limited to a review period 2010 – 2020 as stated in the Signal Distribution Questionnaire.
- The validity of the 2022 *Discussion Document* had expired in terms of s4C(6) of the ICASA Act, read together with the *Notice of Intention to Conduct Market Inquiry into Signal Distribution Services in South Africa* published in Government Gazette no. 45172 dated 17 September 2021, in particular subsections 4.4.3 and 4.5.
- The additional information required for the Inquiry, dated July 2023, is for a different period than that indicated in the *Discussion Document*, April 2022. Therefore, SENTECH does not interpret the Inquiry as a “further engagement” opportunity but a new process, because it seeks information for a different period than that indicated in the 2022 *Discussion Document* and associated questionnaire.
- The Authority should have published a findings document after the conclusion of the public hearings and the responses contained herein. This protracted inquiry has created uncertainty in SENTECH's business and the Authority is implored to re-examine the process adopted, including in relation to any findings to be made.



Significant Market Power (SMP)

- Significant Market Power (SMP) in one or more markets does not inherently imply anti-competitive behaviour.
- The ECA empowers ICASA to develop a regulatory framework to monitor and address the risks associated with SMP to promote fair competition and protect consumer interests.
- SENTECH's concern is mainly about procedural fairness as the inquiry seems to concentrate on SENTECH as an entity and not the signal distribution services markets holistically.

*Following the conclusion of the Inquiry (i.e., after the publication of the findings document), the Authority **may** commence the regulations making process to address significant market power in the relevant markets.*

- The internet (and by implication other IP-based technologies) is a delivery mode which competes with and is substitutable with traditional signal distribution services.
- The inquiry fails to acknowledge the impact that while MFCN and traditional digital terrestrial signal distribution are distinct markets, they compete in the broader ecosystem of delivering visual and audio content to consumers. This competition is driven by consumer preferences, technological advancements, regulatory changes, and strategic content investments. Both types of services must continually innovate and adapt to changing consumer behaviour and market conditions to remain competitive.



Excessive Pricing

- SENTECH is a Schedule 3B entity required to remain financially sustainable despite the additional costs incurred while servicing its public mandate.
- SENTECH does not obtain state funding for its ordinary day-to-day operations and only receives funds from national on state-driven initiatives and on terms agreed by the government and the relevant minister, with the funds being ring-fenced.
- SENTECH arguments on derived reasonable profits in its operation is supported by the outcome of the Competition Commission investigation.
- The Competition Commission as a subject matter specialist Regulator took all reasonable steps to undertake a fair and comprehensive inquiry into the allegation of SENTECH's tariffs being “unfair and anticompetitive”. The decision not to refer the matter to the Tribunal speaks to SENTECH's tariffs not being excessive and should be indicative to the Authority that the company’s conduct in relation to pricing is not per se anti-competitive.
- SENTECH further acknowledges that the Authority is enabled to ‘share and compare notes’ with the Competition Commission.



Common Carrier Designate

- SENTECH is obliged to provide broadcasting signal distribution to broadcasting licensees upon their request on an equitable, reasonable, non-preferential and non-discriminatory basis subject to its technological capacity to do so.
- Not considering SENTECH's special role as a common carrier designate when assessing competition in terrestrial signal distribution markets can result in perceived negative impacts, including perceived market distortions, consumer welfare concerns and legal challenges. The Authority must carefully consider common carrier obligations to promote fair competition and ensure universal access to terrestrial signal distribution services for all consumers.
- SENTECH is under an obligation to extend its distribution network to include as many end-consumers as possible with the only permissible limitation being technology capability. SENTECH is required to service less-densely populated areas which would, in the ordinary course, be unprofitable and not economically feasible.
- SENTECH is required to invest in infrastructure and operational capabilities to provide services to both densely populated and remote areas. As a result, common carriers face higher sunk and replacement costs associated with infrastructure deployment and maintenance compared to new entrants that would only target high-density profitable areas. This universal access duty ensures that end-consumers have access to such signal distribution services, irrespective of their location. This duty must be seen as a public interest benefit that should be recognised by the Authority.



Small, but significant non-transitory increase in price' ("SSNIP")

- Although SENTECH disagrees with the Authority's rejection of the elements that it should consider when applying the SSNIP test, the Authority does not have enough data to undertake the suggested critical loss, price correlation, price elasticity and diversion ratio analysis in any event.
- A lack of data in defining a market can be overcome by considering the views of customers who consume the products under analysis. The views of these customers are fundamentally important as they represent real case studies and a natural experiment of the SSNIP test in practice. These customers have actually contemplated switching between different products in response to various economic factors and will provide useful insights as to which products should fall within a defined market.
- SENTECH argues for the inclusion of the IP-based transmission delivery methods when conducting a regulatory Small but Significant and Non-transitory Increase in Price (SSNIP) competition inquiry for digital terrestrial broadcasting signal distribution.
- Acknowledging the impact of MFCN is crucial in an SSNIP competition inquiry for digital terrestrial broadcasting signal distribution. MFCN services significantly influence market dynamics, consumer behaviour, and competitive pressures, which are essential for accurately defining the market, assessing competitive constraints, and understanding the potential impact of price changes on consumer welfare.



Small, but significant non-transitory increase in price' ("SSNIP") (cont...)

- Impact of alternative IP-based transmission and delivery methods:
 - ❖ Substitute services and consumer behaviours.
 - ❖ Competition pressure: market dynamics and pricing strategies market.
 - ❖ Spectrum allocation and market regulations, etc.
- The SSNIP analysis must include
 - ❖ Market Definition: Define the relevant market considering both traditional terrestrial broadcasting and IP-based services delivered via MFCN. The prevalence, coverage and accessibility of the Internet in modern society, justifies why that such modes of delivery need to be considered in any market definition.
 - ❖ Substitution Analysis: Conduct a thorough substitution analysis to understand the elasticity of demand and how consumers might switch between terrestrial broadcasting and MFCN-based services.
 - ❖ Competitive Effects: Assess how MFCN influences competitive dynamics, pricing strategies, and the ability of terrestrial broadcasters to exert market power.
 - ❖ Consumer Surveys: Use consumer surveys and empirical data to gauge consumer preferences and switching behaviour in response to price change



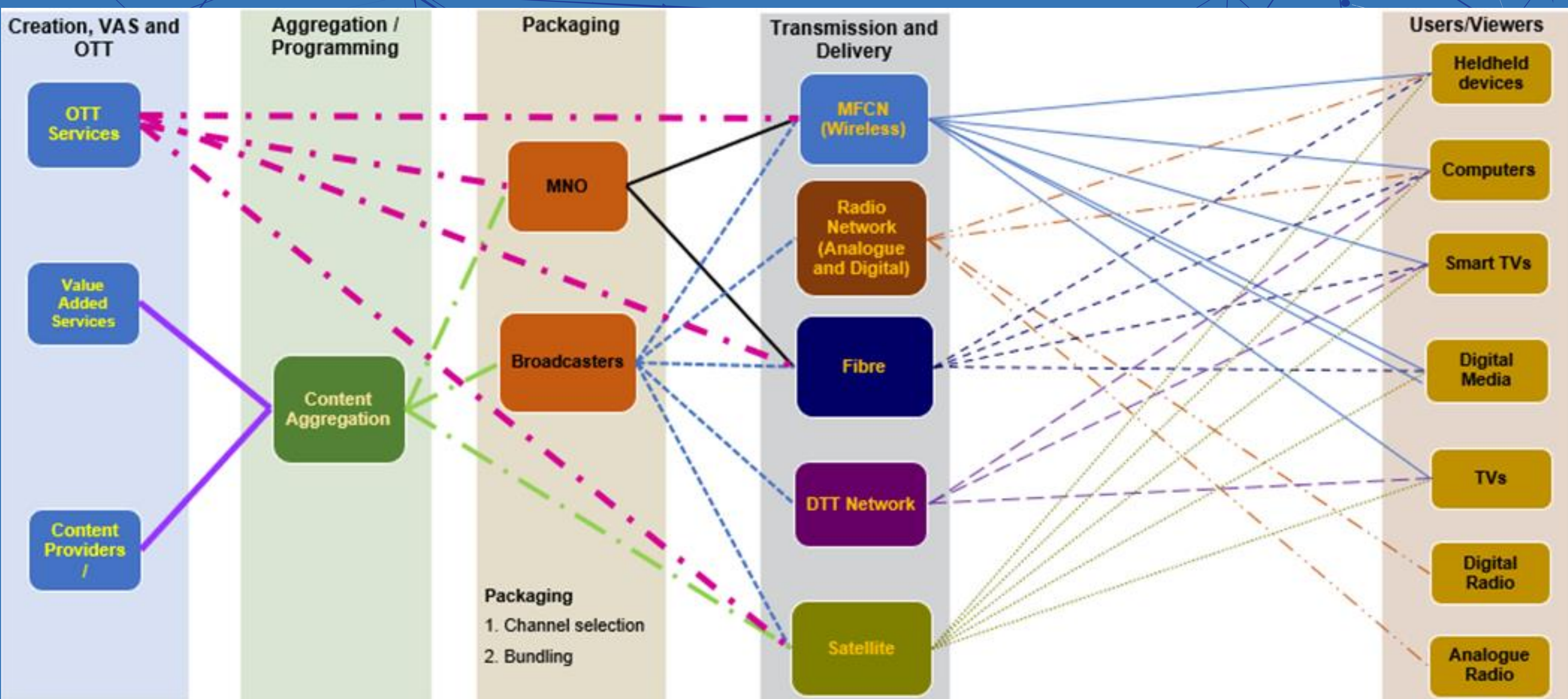
Transmission and Delivery

- SENTECH is aware that consumer trends have a profound impact on the transmission and delivery of visual and audio services across various platforms such as Mobile/Fixed Communication Networks (MFCN), radio and television networks, fiber, and satellite.
 - ❖ MFCN
 - Increased data consumption, demand for ubiquitous connectivity; and quality & speed experience;
 - ❖ Radio and television networks
 - Shift to digital broadcasting, hybrid broadcast-broadband (HbbTV), OTT integration;
 - ❖ Satellite networks
 - Remote & rural coverage, direct-to-home (DTH) services, emerging satellite broadband;
- The impact on consumer trends includes, amongst others: personalisation and on-demand content, multi-device usage, and interactive & immersive experiences.
- Consumer trends significantly influence the evolution and enhancement of transmission and delivery methods for visual and audio services. As demand for high-quality, on-demand, and immersive content continues to grow, providers across MFCN, radio and television networks, fiber, and satellite must adapt their infrastructures to meet these expectations, ensuring robust, high-speed, and reliable service delivery.;



Transmission and Delivery (cont...)

- Retail broadcasters aim to reach their target audience effectively and efficiently, leveraging the transmission technologies and platforms that offer the widest reach and best reception quality for listeners.
- In the context of “technical requirements and barriers to entry”, the discussion must also include digital sound broadcasting as discussed in the Digital Sound Broadcasting Services Regulations ("DSB"). It is important to note that DMR provides a framework accommodating the inclusion of radio services on the DTT platform.



Downstream Broadcast Market

- The Authority must formally define and consider the retail level of the value chain to determine the competitive constraints that SENTECH is subjected to.
- The views of companies at the downstream retail level are also essential to show the substitutability of the modes of signal distribution upstream.
- SENTECH agrees with the view that IP-based delivery modes and over-the-top providers are a real competitive constraint that may alter how broadcasters distribute their content in the future.
- It is important for the Authority to consider the downstream retail level to meaningfully acknowledge the reality of how technology neutrality has influenced market definitions at various levels in the broadcasting value chain.
- Markets based solely on specific transmission technologies (such as analogue or digital broadcasting), ignores the fact that technology-neutrality encourages a variety of delivery methods and platforms, including traditional broadcast, cable, satellite and online streaming services.



Geographic Market Definition

- The geographic market definition should be national in scope regarding television signal distribution is concerned and DTT sites cannot constitute separate markets.
- In addition to the above submission, the Authority's views ignore the impact of its Terrestrial Broadcasting Frequency Plan (2013), as far as issues of single frequency networks ("SFN") and shared multiplex capacity are concerned.
- In a provincial SFN, broadcasters in a shared multiplex cannot have different transmitter sites.
- In the same SFN, if one broadcaster reduces the number of shared transmitter sites, the remaining sites cannot be used.
- The Authority's interpretation does not appreciate the impact of the Terrestrial Broadcasting Frequency Plan (2013), Digital Migration Regulations (2012), and the Promotion of Diversity and Competition on Digital Terrestrial Television Regulations (2013), on the geographic market definition.



Geographic Market Definition for Radio Services

- Managed transmission services are shared regardless of the category of broadcaster, provincial and district municipality/local municipal scope.
- The difference between provincial and district municipality/local municipal scope is the number of spectrum licences assigned and subsequently the number of transmitters, including the number of provinces the broadcaster is licensed to operate in.
- There are several sites where public, commercial and community radio services have the same or similar level of transmitter power.



Facilities leasing regulations

- The Authority did not consider the impact of facility leasing on the composition of the value chain, in as far as signal distribution is concerned.
- SENTECH has noted that in the Submission Document, the Authority has still not acknowledged the role of these facilities' regulations.
- Facilities Leasing Regulations when “assess[ing] the state of competition in the provision of signal distribution services” the Authority should have considered the Findings Document On The Regulatory Framework On Electronic Communications Infrastructure Sharing (Government Gazette 30 No. 39870 of 30 March 2016), especially concerning infrastructure incorrectly identified as a barrier to entry. This document falls within the period of the Inquiry.

6.3. Based on the submissions of the stakeholders the Authority concludes that the ECA and the Facilities Leasing Regulations effectively cater for infrastructure sharing. In this regard, the Authority intends to actively monitor and enforce implementation of the Facilities Leasing Regulations and applicable provisions of the ECA to promote and facilitate infrastructure sharing.



Thank You



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