



SENTECH
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**Supplementary Discussion Document on Signal
Distribution Services Market Inquiry**



09 April 2024

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1. Introduction

- 1.1. SENTECH thanks the Independent Communications Authority of South Africa (ICASA) (“Authority”) for the opportunity to make a submission on the *Supplementary Discussion Document on Signal Distribution Services Market Inquiry* (“*Discussion Document*”) as published in Government Gazette No. 50069 on 02 February 2024.
- 1.2. SENTECH seeks the opportunity to make an oral presentation on the Discussion Document.
- 1.3. SENTECH trusts that its comments will be of assistance to the Authority in understanding the broadcasting market in general, and the various components of the market that form the subject of this discussion document. SENTECH furthermore trusts that its comments will assist the Authority in determining appropriate pro-competitive remedies if these are indeed required.

2. Request of further information from stakeholders with respect to the signal distribution services market inquiry

- 2.1. SENTECH respects the Authority’s independence to regulate the broadcasting industry as stated in Section 192 of The Constitution of the Republic of South Africa, 1996. SENTECH additionally, respects the Authority’s rights to undertake the proposed inquiry in terms of Section 4B of the Independent Communications Authority of South Africa Act 13 of 2000 (“ICASA Act”), to determine the need for regulatory intervention in terms of Section 67 of the ECA.
- 2.2. In reference to the correspondence between SENTECH and 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.
- 2.3. SENTECH still upholds the understanding that 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.
- 2.4. Further, as indicated in the correspondence between SENTECH and the Authority, the *Request for further information from stakeholders concerning the signal distribution services market inquiry* (“the Inquiry”), government gazette no. 49049 dated 28 July 2023, initiated a new process.

- 2.5. The additional information required in the Inquiry, dated July 2023, is for a different period than that indicated in the 2022 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.
- 2.6. In the *Request of Further Information from Stakeholders with Respect to the Signal Distribution Services Market Inquiry* dated 26 July 2023, the Authority indicated the following, namely subsection 1.10:
- ...the Authority is of the considered view that further engagements (including request for supplementary information, one-on-one meetings, oral hearings, etc.) with stakeholders are necessary before the Inquiry is concluded. These further engagements ensure that the Authority’s findings are evidence-based and include all the relevant information.*
- 2.7. The initial Inquiry process (questionnaire, discussion document, submissions, public hearings) was limited between 2010 – 2020, in terms of the procedure initiated in September 2021 the Authority can only initiate “*further engagements [to] ensure that the Authority’s findings are evidence-based and include all the relevant information*” in the period stated in the original questionnaire.
- 2.8. The view in 2.7 does not contradict SENTECH’s interpretation that the validity of the 2022 Discussion Document had elapsed. This Supplementary Discussion Document should not be considered as a waiver of SENTECH’s rights to contest the legal validity of the initial inquiry process. This Supplementary Discussion Document is intended to make representations and protect SENTECH’s interests as far as the new initiated market inquiry process is concerned.

3. Supplementary Discussion Document

- 3.1. As stated above, SENTECH is making submissions in relation to this inquiry to protect its rights. Any submissions previously made or correspondence exchanged between the Authority and SENTECH (albeit submissions that SENTECH has indicated was conducted by the Authority as a separate inquiry) are still applicable in relation to the relevant market inquiry. To the extent that SENTECH refers to previous submissions in this submission, it does so purely for convenience where answers to the Authority’s questions are similar to these previous submissions. SENTECH maintains the position that this inquiry is separate from the initial Inquiry.
- 3.2. As previously indicated the inquiry process had concluded once public hearings were held and that what was left for ICASA to do was to publish a findings document. SENTECH further

wants to inform ICASA that this protracted and open-ended process has created uncertainty and therefore is prejudicial to its business dealings.

4. Common Carrier Designate and Sentech's Universal Access Obligations

- 4.1. The Independent Broadcasting Authority Act initially provided for three (3) categories for signal distribution licensees, namely: “the common carrier, selective and preferential carrier and individual carrier”.
- 4.2. The SENTECH formation legislation and subsequent other relevant legislations, including the ECA, designated it as a common carrier designate¹.
- 4.3. SENTECH, as a common carrier designate, 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.
- 4.4. By law, SENTECH cannot become a selective and preferential carrier and individual carrier.
- 4.5. SENTECH argues that the Authority has ignored SENTECH's status as a common carrier designate.
- 4.6. 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 and enforce common carrier obligations to promote fair competition and ensure universal access to terrestrial signal distribution services for all consumers.
- 4.7. 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. This means that 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 preserved by the Authority.

¹ IBA Act, SENTECH Act, and ECA.

- 4.8. If the Authority seeks to impose unjustified regulations, this may hamper SENTECH's ability to comply with its universal service obligation or, if it results in increased costs for rendering these services, may result in SENTECH increasing its pricing downstream to recoup such increased costs. It would be a market failure if any regulations imposed by the Authority were to result in end-consumers in certain areas, particularly rural or underserved regions, to be left without adequate signal distribution coverage. This would result in unequal access to broadcasting services and limit consumer choice, leading to market inefficiencies.

5. Inquiry Question

Question 1: Do you agree with the Authority's responses to the above general issues? If not, please motivate your response by providing comprehensive reasoning thereof.

- 5.1. SENTECH agrees with the submissions made by MultiChoice where it stated that the internet (and by implication other IP based technologies) is a delivery mode which competes with and is substitutable with traditional signal distribution services provided by companies such as SENTECH. SENTECH therefore advises that the Authority take these distribution modes into account when assessing the competitiveness within signal distribution generally. SENTECH also urges the Authority, when it considers any pro-competitive remedies, to consider the impact that the growing popularity of internet distribution will have on the sustainability of traditional signal distribution services in the future.
- 5.2. SENTECH is also in agreement with Multichoice's view that StarTimes and Platco Digital are signal distributors. Platco Digital describes itself as "an independent distribution company offering digital carriage solutions on various platforms including direct to the home ("DTH") and Digital Terrestrial Television ("DTT")²". With respect to StarTimes, DTH is part of the managed transmission services as defined by the Authority and is a signal distribution service that needs to be considered by the Authority.
- 5.3. The internet and other IP-based technologies is a viable (and sometimes preferred) alternative for broadcasters. The possibility of broadcasters switching from the traditional signal distribution services provided by SENTECH to these alternatives acts as a competitive constraint that prevents SENTECH from not acting in a pro-competitive manner.
- 5.4. SENTECH also wishes to reiterate some of its submissions made in the main inquiry in its response to the *Discussion Document on the Market Inquiry into Signal Distribution Services in South Africa* dated 29 June 2022 ("2022 Response") which underlies the various

² <http://platco.co.za/>

competitive constraints which apply to SENTECH in conducting its signal distribution activities generally.

- 5.4.1. SENTECH is already subject to extensive regulation that requires it to act in a pro-competitive manner and to allow other companies the ability to lease Sentech infrastructure (among other obligations).³
- 5.4.2. Both FTA radio and television broadcasters have been receiving lower advertising revenues since the advent of streaming in 2016.⁴ As Sentech's main customer base, Sentech is aware of the need to provide these customers with a competitive service offering, innovative products and efficient service delivery, failing which, these customers will switch to the alternatives described above.
- 5.4.3. SENTECH has a mandate to act as a broadcast signal distributor common carrier in order to promote open, fair and non-discriminatory access to broadcasting services and facilities.⁵ Within this mandate SENTECH has to provide universal access in respect of as extensive population coverage as possible (currently it provides coverage to approximately 84% of the population). This means that it provides broadcasting infrastructure in uneconomical conditions to cater for low density populations that have an equal right to consume broadcasting content. These costs are, in solidarity, shared equally among customers in both economical and uneconomical areas for the public good.⁶ This is illustrated where 83% of SENTECH's transmitters are used to service approximately 13% of the population. SENTECH's public interest mandate and the principle of solidarity (ie. cost-sharing) should be a serious consideration of the Authority before it contemplates imposing any regulations which would increase SENTECH's cost base, reduce its rate of returns further and potentially lead to increased prices for broadcasters.
- 5.4.4. To serve this public interest mandate and to allow for universal access, SENTECH has used a cost based tariff methodology to ensure that customers are charged a fair price while still allowing SENTECH to be a financially sustainable company.⁷ In terms of the PFMA, SENTECH is a Schedule 3B entity meaning that, although state-owned, it is required to remain financially sustainable in spite of the additional costs incurred while servicing its public mandate.⁸

³ 2022 Response at 3.2.1 to 3.2.8.

⁴ 2022 Response at 2.2 to 2.7.

⁵ 2022 Response at 4.11 and 5.1.

⁶ 2022 Response at 5.5.2.

⁷ 2022 Response at 7.6.4 and 7.6.5.

⁸ 2022 Response at 10.9.

- 5.5. Sentech urges the Authority to recognise its unique position as a public interest actor while contemplating any pro-competitive regulations that it may wish to impose (if any).

Question 2: Do you agree with the Authority's market definition approach and the responses provided above? Motivate your response by providing reasons and any supporting evidence or data as far as possible.

- 5.6. SENTECH broadly agrees with the theoretical framework proposed by the Authority on how to define a market, however, it disagrees with the views expressed by the Authority in relation to SENTECH's 2022 Response.
- 5.7. Although utilising the hypothetical monopolist test by imposing a 'small, but significant non-transitory increase in price' ("SSNIP") to determine substitutable products is the traditional textbook theoretical approach to define a market, persons undertaking this analysis would very rarely have sufficient granular data to draw any meaningful conclusions as to substitutes that consumers would consider if a SSNIP was imposed.
- 5.8. Although SENTECH disagrees with the Authority's rejection of the elements that it should consider when applying the SSNIP test,⁹ it appears that the Authority does not have enough data to undertake the suggested critical loss, price correlation, price elasticity and diversion ratio analysis in any event. In SENTECH's experience, 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.
- 5.9. The Authority would be hard-pressed to ignore MultiChoice's views, as a large customer of signal distribution services, that the market should include the internet as a delivery system. Its statement of the pervasiveness of the internet delivery mechanism and the less reliance on traditional signal distribution services also suggests that many broadcasters have already switched to these IP based delivery systems. As will be discussed below, the Authority would also need to consider satellite distribution (as the main mode for television broadcast

⁹ 2022 Response at 9.3.1.

distribution used by end-consumers) as a substitutable with traditional signal distribution services.

- 5.10. Even though the SABC contended that there are no substitutes for the services provided by Sentech and that there are "regulatory impediments" to transmission via alternative platforms, the SABC itself also provides the same broadcasting content on multiple platforms including the IP based and satellite delivery systems mentioned above illustrating that these delivery methods should be included in the various market definitions. If the Authority comes to the view that such delivery systems should not be included in the market definition they should, at the very least, illustrate a serious competitive constraint that would prevent SENTECH from conducting itself in an anti-competitive manner. SENTECH also urges the Authority, when considering proposing any pro-competitive remedies (if any), that it takes into account the effect that these delivery modes will have on the signal distribution sector in the long-term and not simply look at the growing impact it has had during the period under review. The impact of these delivery modes on traditional signal distribution will be harder felt in the future when there is increased internet access, cheaper decoders and mobile devices as well as even more competing broadcast platforms.
- 5.11. SENTECH would also like to dispel the notion that it was not forthcoming with information relating to the 2022 Discussion Document. It is only fair, based on correspondence, that the Authority acknowledges that there is an impasse regarding the validity of the Inquiry of 26 July 2023, in particular, about the period of analysis. Therefore, SENTECH does not agree with the Authority's approach in this respect.
- 5.12. The additional information required in the Inquiry is for a different period than that indicated in the 2022 Discussion Document. 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 justification for "further engagements [to] ensure that the Authority's findings are evidence-based and include all the relevant information", does not explain the differing period of analysis. SENTECH struggles to reconcile how seeking additional information, 47 weeks after the public participation, for the 20/21 – 26/27 period will enable the Authority to provide an "evidence-based" conclusion on the 10/11 – 19/20 period.

Question 3: In your opinion, is the approach adopted by the Authority not to define and analyze downstream broadcast markets separately and focus mainly on wholesale markets appropriate? Motivate your response by providing reasons and any supporting evidence or data as far as possible.

- 5.13. SENTECH disagrees with the Authority's approach to not define and analyse the downstream broadcast markets separately from the wholesale markets that SENTECH operates.
- 5.14. Understanding the competitive dynamics at the downstream retail level is essential to assessing the competitiveness of the upstream wholesale level of the value chain. In particular, the downstream retail level (especially in the provision of digital terrestrial television signal distribution services) is characterised by large customers who possess significant buyer power / monopsony power and act as a significant competitive constraint to SENTECH's activities. These customers have the ability to hold SENTECH accountable if tariff prices are perceived to be too high as the threat of these customers switching (either wholly or partially) to other distribution modes will discipline SENTECH and ensure it behaves in a pro-competitive manner. Because tariffs are set in an open-access and non-discriminatory manner, this competitive constraint also indirectly benefits smaller broadcasters who receive benefits, in lower tariffs, from these interactions. It is therefore essential for the Authority to formally define and consider the retail level of the value chain in order to determine the competitive constraints that SENTECH is subjected to.
- 5.15. As stated above, the views of companies at the downstream retail level are also essential to show substitutability of the modes of signal distribution upstream. We note again MultiChoice's views that there is a broad retail market for the provision of audio-visual services to end consumers because these retail companies compete for the same audiences and/or advertisers even though they are provided via different platforms including DTT, satellite and IP delivery systems. The further interrogation of the downstream retail level will also allow the Authority to, if regulations are required, meaningfully consider these downstream companies' strategies (if any) to migrate end-consumers to any other modes of signal distribution. For example, it is clear that MultiChoice views IP based delivery modes and over-the-top providers as being a real competitive constraint that may alter the manner in which it distributes its content in the future.
- 5.16. In not considering the downstream retail level, the Authority has also failed to meaningfully acknowledge the reality of how technology neutrality has influenced market definitions at various levels in the broadcasting value chain. The fact that many broadcasters in the retail level of the value chain broadcast the same content through various modes of delivery

illustrates that the Authority should be reluctant to arbitrarily exclude other technologies from its analysis without compelling reasons to do so. Defining 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. The consideration of this broader perspective leads to a more comprehensive understanding of the competitive landscape and helps prevent market definitions from becoming outdated as technologies evolve.

- 5.17. This is also supported by the ECA's technology neutral approach that allows various technologies to compete with one another to broadcast the same or similar content. It is therefore SENTECH's view that this technological neutrality requires the Authority to implement an approach that does not favour specific technologies or technology providers while acknowledging that these technologies are indeed competitors with one another as modes of distribution. Any future regulations should be designed to accommodate various technological solutions and innovations without showing bias toward any specific technology or vendor.
- 5.18. In the context of terrestrial broadcasting services, technology neutrality requires a regulatory framework that does not favour specific transmission technologies (such as analogue or digital broadcasting) or specific types of broadcasters (public, private, etc.). By adopting a technology-neutral regulatory framework, the Authority must encourage innovation and competition among broadcasters by allowing them to choose the most suitable and efficient technologies for their operations. This can lead to a more diverse and efficient broadcasting landscape with a variety of services catering to different audiences.
- 5.19. SENTECH finds it unusual that the Authority is not considering the downstream retail levels where the 2022 Discussion Document, for example, does consider the influence of downstream broadcast markets on 5G broadcast. This is important because the standard for 5G broadcast covers a range of stakeholders, such as mobile network operators ("MNOs"), traditional broadcast signal distributors and other relevant parties involved in content delivery over 5G networks. IMT 2020 (5G) and IEEE 802.11 (WiFi) are influenced by the same downstream markets, this was clear in the WRC23 as both technologies were competing for the same spectrum. Terrestrial broadcasting is affected by the same downstream markets.
- 5.20. 5G broadcast strives to expose, within the short to mid-term, the downstream terrestrial broadcast market to possibilities for new and enhanced services, such as ultra-high-definition video streaming, immersive media experiences (e.g., virtual reality) and interactive content. These offerings are meant to attract more viewers and advertisers, this is therefore of relevance to downstream broadcast market participants. This is in the context of downstream

terrestrial broadcasters competing on advertisement spending with MNOs, online content providers, etc. It is also important to note that 5G broadcast enables more precise audience targeting through data analytics and personalised advertising capabilities. This can result in more effective advertising campaigns and potentially higher revenues for broadcasters, impacting the advertising market within broadcasting.

- 5.21. The Authority must be aware that 5G broadcast blurs the lines between traditional broadcasting and online content delivery, as it allows broadcasters to seamlessly integrate broadcast and broadband services. This convergence can lead to new partnerships, content distribution models, and revenue streams, influencing how broadcasters compete in the broader media ecosystem.
- 5.22. The meaningful roll out of 5G is a potential market shock, and the influence it may have on current retail broadcasters and wholesale signal distributors, should be taken into account if any regulations are to be developed that make hamper the current "traditional" signal distribution modes from competing with these new technologies.
- 5.23. It is for all these reasons above that SENTECH requests that the Authority defines retail downstream markets and that it meaningfully engages with these stakeholders to understand the market dynamism downstream and how it may affect their decisions as to their mode of broadcasting distribution upstream.

Question 4: Do you agree with the Authority's views on the product market definition for wholesale television services? Are there any factors that the Authority should have either included or excluded from the product market definition?

- 5.24. SENTECH disagrees with the conclusions reached by the Authority on product market definition for wholesale television services, in particular it disagrees that satellite and internet distribution should be excluded from the market definition. SENTECH will address any comments made in respect of radio services below.
- 5.25. Before addressing the question posed, SENTECH notes the confusion caused by the Authority's reasoning in coming to the conclusions it has on the wholesale market definitions. The Authority has, as per the reasoning for its conclusions to question 3, refused to analyse the broadcasting retail market and the effect it may have on SENTECH's conduct at the wholesale level but has, for this question, analysed the effect that possible switching may cause on the retail broadcasters' end consumer base. For the purpose of market definition, the Authority's focus should be on whether retail broadcasters would, when faced with a

SSNIP, be able to switch to alternatives such as satellite and internet. Given the market power that some of the retail broadcasters have in the retail broadcasting of audio-visual television content, it makes it more likely that they would be able to profitably switch, either wholly or partially, to these alternative delivery methods.

- 5.26. Before discussing the Authority's market definitions, SENTECH wishes to state that, for the reasons discussed in 5.4 above, it would not be able to profitably impose a SSNIP on the prices of any of its current service offering.
- 5.27. Not considering satellite and internet as modes of television signal distribution which fall within the wholesale market definition ignores the current realities of the business models of retail broadcasters. As MultiChoice has already stated, most of the retail television broadcasters utilise a multi-distribution strategy and distribute the same content via DTT, satellite and the internet. There is therefore little doubt that from a demand side perspective that these modes of distribution are substitutable with one another and any switching can be done without incurring significant costs as the relevant broadcasting infrastructure has already been set up and costs have already been incurred because most of the retail broadcasters already have utilised multi-distribution strategies.
- 5.28. As with the regulatory barriers to switching, retail broadcasters can cancel or apply for a variation of their licenses. Given the significant buyer power that many of these retail broadcasters have, if they were to negotiate for a variation of their licenses, in the event of a SSNIP being imposed, they would be able to react and reduce these tariff rates to competitive rates. These retail broadcasters could also partially make use of SENTECH's signal distribution network (30 transmitters making up approximately 70% of the population) and supplement the remainder of the population via satellite and internet modes of delivery. This process is already being undertaken by the SABC.¹⁰ As with the obligations imposed by the DMR, SENTECH notes that the SABC was able to negotiate a reduction in the percentage of coverage. There is accordingly no basis to believe that, if retail broadcasters were faced with anti-competitive conduct by SENTECH, that they would not be able to lobby for a further reduction. The Authority is unable to appreciate the buyer power of retail television broadcasters, despite acknowledging them as a possible constraint, because it has not analysed the retail level of the value chain.
- 5.29. As with the Authority's analysis of the effects that possible retail broadcaster distribution mode switching may have on end-consumers, the statistics provided by the Authority show that even when looking at the end-consumer base that these differing modes of distribution are substitutable with one another. According to the General Household survey

¹⁰ 2022 Response at 14.7.

approximately 71.6% of South Africans who have televisions make use of satellite television distribution modes while the remaining 28.4% of consumers make use of terrestrial television.¹¹ Given that the retail television broadcasters largely broadcast the same content through both of these modes it is difficult to argue that these modes of distribution are not within the same market at the wholesale level. The high level of television owners utilising a satellite distribution mode suggests that, even at the end-consumer level, that these modes of delivery are substitutable. Especially where there are natural experiments of broadcasters such as the SABC attempting to shift its distribution from purely the DTT network onto both satellite and the DTT network.

- 5.30. Although the Authority has set out the costs for end-consumers to move to watching television via satellite, it has failed to undertake an analysis as to which portion (if any) of the 30% of television owners viewing terrestrially won't be able to afford the switching costs identified and whether any reduction in end-users would render such a switch unprofitable for the retail broadcaster.¹² This also works off the assumption that there needs to be a complete switch to satellite as opposed to reconfiguring resources as per the multi-channel approach discussed above. The Authority also has not taken into account the effect of the digital migration process when the subsidised STBs are delivered to eligible households, a process which would hopefully be near completion by the time any proposed regulation is put in place.
- 5.31. As far as the Authority's comments on access to the internet is concerned, SENTECH believes that the technology called Further evolved Multimedia Broadcast & Multicast Service (FeMBMS) will allow SENTECH to enhance its offering by making use of its existing infrastructure to provide audio-visual content to mobile devices without data costs.¹³ This will allow for accessibility to content in a similar manner to the internet mode of signal delivery. This is a further illustration as to why the Authority's market definition should be technology agnostic. The Authority has also not engaged with the roll-out of 5G networks and the use of more affordable data service providers.
- 5.32. SENTECH agrees with the Authority's decision to exclude analogue transmission services given the ASO date.
- 5.33. SENTECH also agrees with the Authority's decision to analyse managed transmission services and facilities separately.

¹¹ These figures do not take into account those South Africans who consume television content via other devices such as cell phones, laptops and computers.

¹² Any cost saving attributable to a possible switch can be used to subsidise any costs to obtain a satellite and decoder.

¹³ 2022 Response at 11.8.3.

Question 5: Do you agree with the Authority's views on geographic market definition? Are there any factors that the Authority should have either included or excluded from the geographic market definition?

- 5.34. SENTECH provides access to its DTT network via a tariff methodology that applies uniformly across South Africa for distribution of television content. It therefore submits that the geographic market definition should be national in scope as far as television signal distribution is concerned.
- 5.35. SENTECH therefore does not agree with the Authority's views that each DTT site "constitutes a separate market".
- 5.36. In addition to the above submission, the Authority's views ignores the impact of its Terrestrial Broadcasting Frequency Plan (2013), as far as issues of single frequency networks ("SFN") and shared multiplex capacity are concerned. Based on the Authority's frequency plan, the content on a shared multiplex must be the same in a SFN. For example, in a provincial SFN, broadcasters in a shared multiplex cannot have different transmitter sites. Additionally, in the same SFN, if broadcasters collectively reduce the number of shared transmitter sites the remaining sites cannot be used. Therefore, the Authority's interpretation ignores 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.

Question 6: Do you agree with the Authority's views on market definition for signal distribution of radio services? Are there any factors that the Authority should have either included or excluded from the market definition?

- 5.37. SENTECH disagrees with the Authority's view on the wholesale market for signal distribution services as far as it does not include alternative modes of distribution such as internet or IP based technologies.
- 5.38. Firstly, the Authority yet again relies on end-consumer data to make a conclusion as to whether a retail broadcaster would switch when faced with a SSNIP imposed by a company at the wholesale level of the radio signal distribution value chain. The Authority has not analysed whether the increased costs would result in a retail broadcaster moving to alternate modes of delivery, either wholly or partially, as a result of a SSNIP.

- 5.39. SENTECH posits that ultimately, retail radio 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. Due to the prevalence, coverage and accessibility of internet in modern society, SENTECH is of the view that such modes of delivery need to be included in any market definition.
- 5.40. Should the Authority wish to impose regulations, SENTECH requests that the effect of the regulations on the competitiveness of traditional terrestrial broadcasting be considered. In particular, the greater access to the internet and the imminent rollout of digital radio broadcasting should be considered to ensure that the competitiveness of the traditional terrestrial broadcasting sector is not undermined.
- 5.41. However, even if SENTECH were to rely on the statistics quoted from the Broadcast Research Council of South Africa, the Authority still recognises that more than 20% of end-consumers consume the same radio content through non-DTT devices such as mobile phones and computers. The Competition Tribunal, which considers market definitions on a regular basis, relied on international precedent to hold that imports of competing products should be at least 15% in order to be included in a defined market as a competitive constraint in a domestic market.¹⁴ SENTECH is of the view that even if 20% of the content of retail broadcasters were distributed by alternate modes that this should be included as part of the defined market.
- 5.42. SENTECH agrees with the Authority's view that FM and AM analogue distribution should be considered together as a single product market.
- 5.43. SENTECH does not agree with Primedia's view that SENTECH has a "monopoly over the backbone signal distribution network". SENTECH's backbone is predominately based on satellite distribution and the company leases such infrastructure and does not own a satellite transponder. The company also lease lines from the telecommunications operators such as Telkom where necessary.
- 5.44. The issue of "historical cost advantages" should be addressed in the context of SENTECH being a common carrier designate and the obligations for universal access. It is SENTECH's view that the Facility's Regulations address these concerns.
- 5.45. 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

¹⁴ *Tiger Brands Ltd, Ashton Canning Company (Pty) Ltd & Newco / Langeberg Foods International Ashton Canning Company (Pty) Ltd* (CT Case no: 46/LM/May05) at para 49.

Regulations ("DSB"). It is also important to note that DMR provides for a framework for the inclusion on radio services on the DTT platform.

Question 7: Do you agree with the Authority's views on geographic market definition for radio services? Are there any factors that the Authority should have either included or excluded from the geographic market definition?

- 5.46. SENTECH largely agrees with the Authority's views on the geographic market definition for the wholesale provision of radio services. Retail radio broadcasters usually purchase frequency on a regional basis from SENTECH making regional geographic markets appropriate. SENTECH proposed that the geographic markets should be assessed in line with the licensing requirements dictated by the ECA, ranging between district and provincial in scope.¹⁵ It is also important to note that the Authority's argument on terrestrial radio geographic market being national in scope is not supported by the reality that there are only two (2) radio broadcasters considered national. However, it is important to note that end-consumers can access radio content outside of the geographic scopes of the terrestrial licenses through alternate modes of delivery such as the internet.
- 5.47. SENTECH yet again reiterates that digital audio broadcasting is still not provided within the South African market and is not relevant to the Authority's analysis.
- 5.48. SENTECH also wishes to highlight that 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.

¹⁵ 2022 Response at 9.1.2.

Question 8: Do you agree with the above-revised list of wholesale markets? Please provide separate reasoning for each market you propose to delete from and or add to the list.

- 5.49. Subject to all the comments above on relevant product and geographic markets, SENTECH disagrees that the identified wholesale markets should be limited to terrestrial wholesale distribution of television and radio content. These markets should include alternate modes of distribution including the Internet and IP-based technologies.
- 5.50. In particular, SENTECH does not agree with the Authority's view on the wholesale market for terrestrial television broadcasting. SENTECH believes that the Authority's assumptions and conclusions are not based on accurate information and do not consider the current technological developments and market dynamics. SENTECH argues that the market for terrestrial television broadcasting (which should include IP based delivery systems and satellite distribution) is more complex and competitive than the Authority suggests and that there are other factors to consider beyond market share and dominance. SENTECH also highlights the need for a more detailed study and analysis to properly assess the effectiveness of competition in the market. SENTECH also advances the view that the Authority has not considered the seven (7) multiplex plan for digital terrestrial television in introducing competition for multi-channel distribution of services like sub-regulation 5 of the DSB Regulations.

Question 9: Do you agree with the Authority's views on the effectiveness of competition in the relevant markets? Please provide reasons for your response.

- 5.51. SENTECH does not agree with the Authority's view on many aspects of its analysis on the effectiveness of competition in the relevant wholesale markets. Before addressing the comments made by retail broadcasters, SENTECH would like to make two general submissions in respect of television and radio signal distribution.
- 5.52. In respect of the provision of wholesale television distribution services, the Authority has, for the reasons discussed above, erroneously found that there are no alternative providers of these services. If the Authority were to consider the product market to include alternate modes of signal delivery beyond DTT, such as satellite and IP related technology, it would find that SENTECH does not have market power and would not have the ability to behave in

an anti-competitive manner without considering these viable alternatives for retail broadcasters. The inclusion of satellite services in the product market definition is supported by MultiChoice whose views should be given considerable weight given that DTT distribution is not its main mode of content delivery and, if any regulations were imposed, it would have the least to gain out of the telecommunication broadcasters who have made submissions.

5.53. In respect of the provision of wholesale radio distribution services, SENTECH agrees that it has market power, however, this does not mean that the market does not operate effectively enough to warrant the Authority considering imposing regulations. As will be seen below, community/regional radio broadcasters have the tendency of self-providing their broadcasting capacity while other radio broadcasters are large public and commercial broadcasters that are able to negotiate reasonable tariffs or, at the very least, competitively constrain SENTECH from acting in an anti-competitive manner.

5.53.1. The nature of the infrastructure required to provide radio broadcasting services to retail radio broadcasters lends itself to be a natural monopoly. This means that the nature of the market, due to large fixed costs and economies of scale, is better served by fewer players than many players as the replication of such infrastructure would not be economically feasible and would not be efficient.

5.53.2. In order to curb the harmful competitive effects that a company operating in a natural monopoly may cause, such companies are often regulated to ensure that there is universal access to such services at reasonable tariffs. SENTECH is such a company and for the reasons suggested in 5.4 above, it is heavily regulated, provides services on a universal access basis at cost-based tariff rates that are reasonable enough to ensure SENTECH's financial sustainability and to account for equal sharing of costs of unsustainable operations among retail broadcasters.

5.54. Submissions from retail broadcasters

5.54.1. In relation to Primedia's comments that it is unable to provide multi-channel television sound broadcasting because of SENTECH's ownership of its high sites, this concern is misplaced because in terms of the DSB Regulations, the Authority will issue an invitation to apply ("ITA") for an RF spectrum license in order to operate as a multi-channel distributor. The Authority has not issued its ITA and no digital sound broadcasting licenses have been issued as yet.¹⁶ Once this process has been undertaken Primedia can approach SENTECH in terms of the

¹⁶ 2022 Response at 16.6.

Facilities Leasing Regulations which, together with the ECA, has been described by the Authority as effectively catering for infrastructure sharing.¹⁷

- 5.54.2. SENTECH disagrees with SABC's contention that SENTECH's unwillingness to include a penalty clause in negotiated contracts amounts to "monopolistic tendencies". Penalty clauses of this nature are not standard practice and is in no way an indication of market power. As to SABC's contention that SENTECH's perceived unwillingness to reduce costs, SENTECH reminds the SABC of its cost-based tariff methodology and the need for it to recover sufficient revenue to be sustainable and to counter the non-commercial sites in pursuit of the public interest.
- 5.54.3. In respect of eMedia's submissions, as stated above, SENTECH is a Schedule 3B entity meaning that, although state-owned, it is required to remain financially sustainable in spite of the additional costs incurred while servicing its public mandate. It does not obtain state funding for its ordinary day-to-day operations and only receives funds from the state in respect of state-driven initiatives and on terms agreed by the state and the relevant minister, with the funds being ring fenced. SENTECH disagrees that the retail broadcasters do not have countervailing power, especially in relation to the provision of television broadcasting services. As discussed above, SENTECH has large customers who have the ability to exert countervailing power.
- 5.55. SENTECH posit that the company has derived reasonable profits, *Figure 1*, in its operation. The Authority can confirm *Figure 1*, as the company's Annual Reports are publicly available and yearly submitted to ICASA. It is on this basis that SENTECH is confident that 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". This finding that SENTECH's tariffs are not excessive should be indicative to the Authority that SENTECH's conduct in relation to price is not *per se* anti-competitive.

¹⁷ 2022 Response at 6.3 read with 6.1 and 6.2.

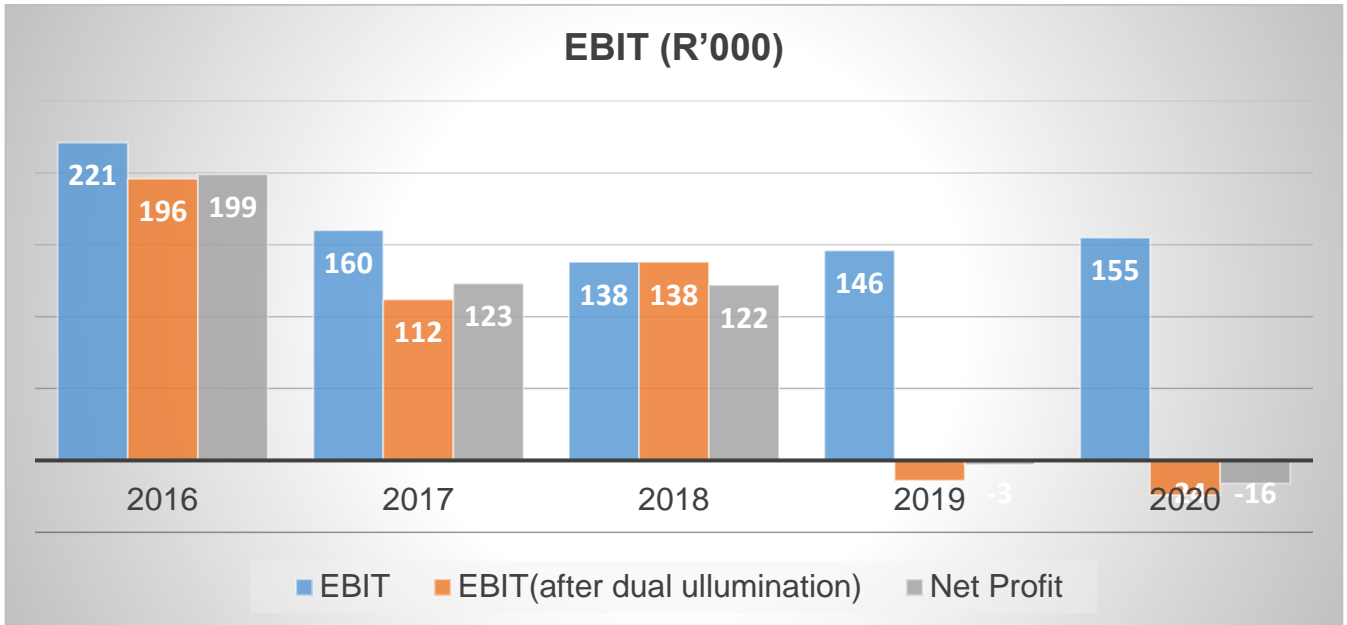


Figure 1: SENTECH Financial Analysis: Profitability.

5.56. Authority's views on effective competition

5.56.1. Current Competition

5.56.1.1. As stated above, as far as it relates to wholesale television distribution services there are other alternate delivery modes which are substitutable with the DTT network, these are internet and satellite distribution. It is important to note that the majority of end-consumers are currently serviced through satellite distribution.

5.56.1.2. As with wholesale radio distribution services, although there are alternate modes of delivery through IP technology, SENTECH notes that community radio stations regularly self-provide their distribution needs. According to the statistics quoted by the Authority it appears that approximately 50% of community radio stations provide their own distribution. The Authority seems to under-play the extent to which these small companies self-provide without the need for SENTECH infrastructure. Self-provision is clearly a viable alternative for these retail broadcasters and the ability to self-provide is a competitive restraint that would prevent SENTECH from acting in an anti-competitive manner as far as these retail broadcasters are concerned.

5.56.1.3. As with the remaining retail radio broadcasters, they are divided into public and commercial broadcasters who largely fall within the same group of companies, namely Primedia and the SABC. These customers make up a considerable portion of the revenue that SENTECH derives from its wholesale radio distribution services. These customers have considerable countervailing power and act as a competitive restraint that would prevent the Authority from engaging in anti-competitive conduct such as excessive pricing which SENTECH, for all the reasons mentioned above, cannot engage in in any event.

5.56.2. Potential Competition

5.56.2.1. SENTECH agrees that, due to the natural monopoly nature of the infrastructure it owns, it is unlikely that another firm will replicate the infrastructure established by SENTECH. However, SENTECH is adequately regulated to ensure that it provides universal access to the network at reasonable tariffs. However, as illustrated above, there are considerable alternative delivery modes for television distribution which does not make access to SENTECH's network essential to retail television broadcasters.

5.56.2.2. In relation to wholesale radio broadcasting services, community radio stations can, and do, self-provide their signal distribution needs within the framework of the Facilities Regulations. As with commercial and public retail radio broadcasters, many of them have an I-ECNS license that would allow it to self-provide in terms of the Facilities Leasing Regulations. Such license holders are welcome to engage with SENTECH to discuss the possibility of self-providing through the Facilities Leasing Regulations as well as the training of staff by SENTECH.

5.56.3. Countervailing Power

5.56.3.1. As discussed above, there are viable alternatives for the provision of wholesale television distribution services. Retail television broadcasters can easily partially or totally switch, or threaten to switch, to alternate modes of distribution which is substitutable with SENTECH's terrestrial network.

5.56.3.2. As with the wholesale provision of radio distribution services, retail community radio stations can self-provide while commercial and public radio stations comprise of large organisations that have considerable bargaining power.

5.56.3.3. The Authority recognises that SENTECH's customers for both radio and television broadcasting services are made up of large companies which provide significant revenue streams for SENTECH. SENTECH would be reluctant to behave in an anti-competitive manner where such customers have considerable bargaining power. As with the tariffs imposed by SENTECH, these tariffs are based on a cost methodology, as described in SENTECH's 2022 Response, in that they are generally as low as possible to ensure SENTECH's financial sustainability while simultaneously allowing it to fulfil its universal access mandate.

5.56.4. Market Dynamics

5.56.4.1. SENTECH agrees that there is unlikely to be another company that is able to replicate its infrastructure due to the economics of such infrastructure lending itself to a natural monopoly.

5.56.4.2. SENTECH does note that the Authority fails to take note of the technological market dynamics and innovation happening within the radio and television broadcasting sectors.

5.56.4.3. For television distribution services, reasonably old technological innovations such as satellite distribution has entered and overtook the traditional mode of terrestrial distribution by number of end-consumers. This phenomenon is further perpetuated by the emergence of OTT providers providing streaming services through IP technologies. These, and future, technological innovations have not been meaningfully recognised by the Authority.

5.56.4.4. For radio distribution services, the implementation of the DSB and the creation of multi-channel distributors was not recognised as well as the growing prevalence of IP based technology for streaming radio services.

Question 10: Do stakeholders agree with the Authority's preliminary view that Sentech has SMP? Are there any other licensee(s) or provider(s) with SMP that the Authority has (have) not identified? Please provide reasons for your response.

5.57. SENTECH wishes to reiterate that even if it were to have significant market power ("SMP") in one or more markets that this does not mean, in itself, that the relevant markets are not operating effectively or that SENTECH has conducted itself in an anti-competitive manner to warrant the imposition of regulations.

5.58. SENTECH agrees with the Authority's conclusion that analogue wholesale television distribution services is moot considering the impending ASO.

- 5.59. As with the provision of wholesale television broadcasting distribution services and on further reflection after considering submissions by MultiChoice, SENTECH is of the view that if the Authority were to adequately consider the scope of the product market to, at the very least, include both terrestrial and satellite distribution, SENTECH would unlikely have SMP for managed transmission services or facilities. For all the reasons suggested above, SENTECH is of the view that this is the correct market definition.
- 5.60. As with the wholesale radio broadcasting distribution services, SENTECH agrees that it has SMP as it is likely to be dominant, however, it disagrees that the market is uncompetitive or that SENTECH has behaved in an anti-competitive manner to warrant the imposition of any regulations. As far as the Authority's acknowledgement that ECNS licensees have the potential to self-provide but "have chosen not to do so", SENTECH is of the view that the ability to self-provide in reaction to any perceived anti-competitive conduct is a competitive constraint that the Authority should consider if it wishes to impose any regulations.
- 5.61. SENTECH disagrees with the Authority's views concerning the lack of evidence that "there are licensees with resources and skills to provide whole broadcasting transmission services". This statement is contradicted by the inclusion of sub-regulation (5) in the DSB Regulations (2021). The introduction of an invitation to apply framework for multi-channel distributors was supported by several submissions during the public participation process for the DSB Regulations, including inputs from BS and ECNS licensees. Therefore, the introduction of a DSB invitation to apply process by the Authority indicates that there are feasible options for managed transmission services.
- 5.62. SENTECH also disagrees that it has a 100% market share for the wholesale provision of radio broadcasting services on a national or regional level as distribution through non-terrestrial devices need to be included in this analysis. There are also currently at least 68 sites from which broadcasters are self-providing terrestrial analogue services. These sites are spread as follows: Eastern Cape (2); Free State (4); Gauteng (26); Limpopo (9); Mpumalanga (8); Northern Cape (5); Kwa-Zulu Natal (1); North West (6) and Western Cape (7).

Question 11: Please provide us with any other comment relating to the Inquiry.

- 5.63. SENTECH wishes to make oral representations at any public hearings held in accordance with this new Inquiry.
- 5.64. The Authority indicated that “[f]ollowing 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”. This statement gives the impression of a non-objective perception. What the Authority intends on doing after the conclusion of the Inquiry has historically been included in the contents of the Findings Document. It gives the impression that the Discussion Document was primarily about SENTECH and not about the Signal Distribution Services Market holistically.
- 5.65. In its previous submission, SENTECH indicated its concern that the Authority did not consider the impact of facilities 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. SENTECH subscribes to Kerron Edmunson’s presentation on the purpose of facility leasing which states as follows:
- 1) For the lessor: the sharing is a source of annuity income which is not regulated; a competitive advantage; a capital asset that generates revenue.
 - 2) For the lessee: the sharing represents a reduction in capex; the appearance to the consumer of national, provincial or municipal coverage; flexibility in choice of technology.
 - 3) For the State: the sharing represents a reduction in environmental harm, an increase in competition at the service level, a reduction in costs to produce services leading to a reduction in charges to consumers.¹⁸
- 5.66. In addition to the 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.

¹⁸ [Facilities-leasing - Electronic communications equipment & facilities \(golegal.co.za\)](http://golegal.co.za)

5.67. The Authority should have noted and acknowledged the conclusion and way forward from the Findings Document On The Regulatory Framework On Electronic Communications Infrastructure Sharing:

6.1. The Authority embarked on the consultative process on the Regulatory Framework on infrastructure sharing with a view that the sharing of electronic communications infrastructure will result in the realisation of the above-mentioned objectives, in particular, that the practice will encourage service-based competition in the downstream retail markets as it will result in the reduction of input costs for incumbents and new entrants.

6.2. Stakeholders went to great lengths to address infrastructure sharing matters, including how the Authority could improve the regulation of the practi[c]e, inter alia, by strengthening the existing Facilities Leasing Regulations.

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. The Authority will also assess whether there is a need to review and or augment the current Facilities Leasing Regulations to deal with, inter alia, local loop unbundling.

5.68. The importance of this relates to the significance of the Facilities Leasing Regulations, an aspect the Discussion Document does not acknowledge.

5.69. SENTECH acknowledges that ICASA is responsible for regulating the communications and broadcasting sectors in South Africa, ensuring fair competition, promoting investment, and protecting consumers' interests. On the other hand, the Competition Commission is responsible for enforcing competition law and promoting fair competition across all sectors of the economy, including telecommunications.

5.70. SENTECH is also aware of the formal agreement, MOU, between ICASA and Competition Commission, allowing the regulatory bodies to collaborate and share information on matters that intersect their respective jurisdictions, especially concerning competition issues in industries like telecommunications.

5.71. It is important for ICASA to note that in August 2021 the Competition Commission received a complaint against SENTECH from the SABC. Having completed its investigation, or the time has expired for referring the complaint to the Tribunal in terms of section 50(2) of the Competition Act 89 of 1998, the Competition Commission gave notice it will not refer any part of the complaint to the Competition Tribunal.

5.72. SENTECH is confident that 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". This finding that SENTECH's tariffs are not excessive should be indicative to the Authority that SENTECH's conduct in relation to price is not *per se* anti-competitive.

6. Conclusion

6.1. As documented above, SENTECH has previously noted its objection to the Authority in relation to the irregularities associated with procedure that has been adopted by the Authority in conducting this Inquiry. SENTECH reiterates to the Authority that for the inquiry process to be reasonable, the Authority should have published a findings document after the conclusion of the public hearings and the responses contained herein shall in no way constitute an acceptance of any irregularity in the process applied by the Authority and/or a waiver of the rights of SENTECH. 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.