

EMEDIA'S GENERAL SUBMISSIONS ACCOMPANYING ITS RESPONSE TO THE REQUEST FOR FURTHER INFORMATION AND FURTHER CONSULTATION WITH STAKEHOLDERS IN RESPECT OF THE INQUIRY INTO SIGNAL DISTRIBUTION SERVICES

Introduction

1. eMedia Investments (Pty) Ltd ("**eMedia**") thanks the Authority for the opportunity to participate in this Supplementary Discussion Document on Signal Distribution Services Market Inquiry ("**the Inquiry**") as published in GG50069 (Notice 2298 of 2024) on 2 February 2024 ("**the Notice**").
2. eMedia hereby requests the opportunity to participate in any oral hearings held should these be deemed necessary in view of what is set out below. eMedia requests that it be allocated a period of one and a half hours for this presentation and that, given what is set out herein, it be allocated the final slot.

Who we are

3. eMedia is the holding company of various interests in the broadcasting sector. In this regard, it is the holding company of :
 - 3.1 e.tv, a licensed free-to-air broadcaster;
 - 3.2 e.Sat, the holder of a subscription television licence;

- 3.3 Platco, which operates Openview as a free-to-air satellite broadcasting service;
- 3.4 eVOD, which is a video-on-demand service; and
- 3.5 YFM, a radio station broadcasting on the FM frequency.

The Authority's Dereliction of Duties and the Way Forward – Application to Set Aside the Current Process and Compel the Authority to Make a Final Decision in Relation to the Inquiry

- 4. At the outset, eMedia wishes to record its dismay at the manner in which the Authority has dealt with the Inquiry, given that the Authority started considering dominance in the transmission services market as early as 2010, some 14 years ago. In this regard, the Authority published a notice of its intention to embark on a section 4B inquiry on the wholesale transmission services market. This began in October 2010. As part of this process, the Authority published a questionnaire and held information gathering meetings in order to enhance the Authority's knowledge about the broadcasting transmission markets. The information it now seeks differs little to the information it originally sought some 14 years ago.
- 5. In view of the above, although the Inquiry is seemingly different to the process which commenced in 2010, this is not so. In reality, the Inquiry commenced almost 14 years ago. There is little difference between the process the Authority is now engaging in to the one it engaged in in 2010. There is no end in sight. Indeed, if the process the Authority now intends engaging in takes its course, it is likely that the Inquiry will not be finalised for some years to come. Following this

further Supplementary Discussion Document, it is likely that further hearings will be held and equally likely that the Authority will shirk its duties and legislative obligations by failing to make a finding on the subject matter of the Inquiry within 180 days from the conclusion of the Inquiry. eMedia says this given the Authority's past conduct in failing to conclude crucial inquiries without any justifiable reason for not doing so. This, in respect of an issue which is pivotal in the broadcasting environment.

6. There can be no rational reason for the Authority having to take what will likely be well more than 15 years to come to a meaningful decision and regulate a market that is, according to the Authority, not effectively competitive. The Authority already found in June 2011, in its Discussion Document, that it *"considers that Sentech has a Significant Market Power in this market. As a result of this [this] market has been found not to be effectively competitive"*.¹
7. Given its previous findings in relation to the dominance in the signal distribution services market, the Authority is requested to provide eMedia with full written reasons for its decision to proceed in the manner it has now chosen, and to provide eMedia with copies of minutes of all meeting reflecting any/all discussions on the action it has now taken together with any supporting documents considered in reaching such decision. eMedia also requests the Authority to provide it with the transcript of any discussions which took place at such meetings. All eMedia's rights in this regard remain reserved including to request such documents in terms of PAIA and to approach a court for appropriate relief.

¹ See p 49 in GG34371 of 15 June 2021.

8. One of the core objects of the Electronic Communications Act 36 of 2005 (“**ECA**”) is to promote competition within the ICT sector. The Authority, as the regulator, is obliged to promote the objects of the ECA and related legislation as well as to make decisions in relation to matters which have come before it. The Authority’s failure to make any decision in relation to the subject matter of the Inquiry, constitutes a gross dereliction of its duties. It smacks of the Authority favouring Sentech over broadcasters notwithstanding that it has been found that Sentech holds significant market power.
9. In this regard, as will be seen from what is set out more fully below, the Authority has, for a prolonged period of time, simply shirked its responsibilities in dealing with the Inquiry and making any final findings and accompanying regulations. This has been to the advantage of Sentech which, as stated, has already been found by the Authority to hold market dominance. This enables Sentech to impose rather than negotiate contractual terms.
10. eMedia believes it is time for the Authority’s conduct to be investigated. A similar dereliction of duties has been encountered in respect of attempts to deal with MultiChoice. The Authority has held MultiChoice is dominant in the subscription broadcasting market, yet has failed to take any meaningful steps to regulate it. There are other examples of the Authority simply failing to fulfil its duties by making decisions within the legislated time frames, or at all.
11. The endless and excessive delays in finalising the Inquiry, has allowed Sentech to continue acting in a dominant manner in the provision of its signal distribution services, primarily used by e.tv. The effect of this dominance means that Sentech

has been and continues to be in a position to impose its own terms on any signal distribution agreements concluded with little scope for negotiation by those who require Sentech's services.

12. It bears pointing out that when it commenced broadcasting in 1998, e.tv concluded an agreement with Sentech for signal distribution. It did this as there were simply no other options for the distribution of its signal. This agreement remains extant. However, due to the signal distribution fees increasing on a compounding basis over the years, e.tv is now paying exorbitant prices (no doubt which would greatly exceed anyone requesting these services today). This makes little sense, when considering that Sentech's equipment amortised many years ago. This benefit has not been passed on to e.tv.
13. Similar previous regulatory processes as the one now being undertaken in the Inquiry, have also not resulted in any definitive decisions and regulation within the signal distribution services market. In 2011, the Authority already released a Discussion Document in respect of the broadcasting transmission services market. Why again?
14. What makes the fact that the Authority has not yet completed its Inquiry and now seeks further information in the form of a Supplementary Discussion Document open for comment more startling, is the fact that in 2013, the inquiry into the signal transmission services market which commenced in 2010, had concluded. In its Findings Document resulting from this process, the Authority set out its views on the wholesale broadcasting transmission market. In the Findings Document the Authority concluded as follows:

“The Authority declares that Sentech Limited holds and will continue to hold significant market power in the two markets as defined and that these markets will remain ineffectively competitive, especially considering the introduction of digital terrestrial television”.

15. Having found this, the Authority proposed certain pro-competitive measures to address this ineffective competition as part of the **section 67** process that the Authority could follow in this regard. The Inquiry concluded with the Authority notifying stakeholders that it intended releasing draft regulations under **section 67(4)** of the Electronic Communications Act *“to ensure that pro-competitive conditions are imposed upon licensees having significant market power where the Authority has determined such markets or market segments to have ineffective competition.”*. Eleven years after making this undertaking to its licensees, it has still not released these draft regulations but rather again engaged in conduct wasting its own time and resources – as well as those of the fiscus. Nothing has changed in this market since the 2013 Finding Document.

16. Notwithstanding its obligation to protect its licensees from predatory conduct in the marketplace, the Authority has left Sentech’s predatory practices unabated for decades. This has caused direct and substantial prejudice to eMedia and its subsidiaries given that they are paying prices which have been solely determined by Sentech’s dominance and are exorbitant in the circumstances. The Authority has merely allowed Sentech’s market dominance to thrive. Of course, Sentech is wont to complain about its financial situation and cashflow. However, in November 2023, it was widely reported that the SABC was indebted to Sentech in an amount exceeding R700 million which, if paid, would drastically change this situation. The fact that Sentech cannot collect its debts does not give it licence

to overcharge any of its other customers. Further evidence of this dominance can be seen in the SABC filing a complaint with the Competition Commission in relation to Sentech's excessive pricing in 2021 after the Authority's continued failures to regulate the monopoly tariffs. The matter is currently before the Competition Tribunal.

17. It is time for this Inquiry to be finalised once and for all. In this regard, eMedia holds the view that any further investigation or information gathering is a waste of time, and taxpayers' money. In these circumstances, for the Authority to engage in the process as now envisaged in the Notice, would be unconscionable and an abuse. This, even more so, given that the information which the Authority now seeks to gather has been sought before and ought to be in its possession.
18. By reason of the aforesaid, eMedia is preparing a dossier which it will use to investigate the Authority's dereliction of duties.
19. In all these circumstances, eMedia hereby applies to the Authority that it takes urgent steps to finalise this Inquiry by acting as follows:
 - 19.1 The Authority immediately withdraws the Notice; and
 - 19.2 The Authority either (i) proceeds with releasing draft regulations under section 67(4) based on its findings in June 2013, or (ii) it completes the process in respect of which public hearings were already held in August 2022; and
 - 19.3 The Authority publishes its findings as contemplated above within 60 days of receiving this submission, given that it was, as a matter of law,

required to make a finding and publish it in the Government Gazette, with reasons therefor, within 180 days of the hearings having concluded in April 2022.

20. The Authority is requested to advise eMedia in writing by 30 April 2024 of its decision regarding this application and provide it with full written reasons at the same time in the event that it refuses this application.

Chronology of eMedia's Concerns and ICASA's Failure to Make a Decision and Dereliction of Duties

21. In support of eMedia's application set out above, eMedia sets out a brief history of the Authority's attempts to regulate the signal distribution services market.
22. On 30 September 2010, in GG33599, the Authority gave notice of its intention to embark on a section 4B Inquiry on wholesale transmission services.
23. On 6 October 2010, pursuant to this, the Authority published and circulated a questionnaire and held meetings with stakeholders for the Authority to gain knowledge about the broadcasting transmission markets.
24. Thereafter, in GG34371 of 15 June 2011, the Authority published its Discussion Document into the regulatory framework for broadcasting transmission services for comment.
25. The Discussion Document dealt with a range of topics relating to the supply of signal distribution services. Many of the issues now raised in the Supplementary Discussion Document had already been raised in the 2011 Discussion

Document. This included issues such as market definition, an analysis of wholesale and retail markets, an assessment of market powers including an identification of licensees with significant market power, the consequences of market power and the Authority's initial views on pro-competitive remedies. This is precisely what the Authority wishes to look at, yet again.

26. Pursuant to various representations and submissions relating to the 2011 Discussion Document, the Authority published its Findings Document in terms of section 4(C)(6) of the Independent Communications Authority Act of South Africa, Act 13 of 2000 ("**ICASA Act**"), in the Government Gazette dated 7 June 2013 Notice 577 of 2013.

27. In this Findings Document, the Authority held as follows:

"Sentech is the dominant player in the provision of managed transmission services in both markets [i.e. radio and television]. In addition, the Authority declares that Sentech holds and will continue to hold significant market power in the two MTS markets as defined and that these markets will remain ineffectively competitive, especially considering the introduction of DTT."

28. Having reached this decision, the Authority proposed various pro-competitive measures to be considered as potential options to address the potential for anti-competitive behaviour as part of a regulation-making process in terms of section 10 of the ECA:

28.1 A transparency obligation including an obligation to publish;

28.2 A non-discrimination obligation, including non-discrimination of pricing;

- 28.3 A related price control obligation where charges for network access would be reasonably derived from the costs of provisions; and
- 28.4 A cost accounting obligation to support the price control obligation.
29. Having reached these findings, the Authority correctly notified the public of its intention to initiate a regulation-making process under section 67(4) of the ECA to ensure that pro-competitive conditions were imposed upon licensees having significant market power and in a market where there was ineffective competition.
30. Notwithstanding having come to the final stages of promulgating pro-competitive regulations, for reasons perhaps only known to the Authority, it did not conclude the process and promulgate the relevant regulations.
31. Some 11 years later, the market remains unregulated. Instead, it appears that the Authority is intent on dragging its feet by starting the process *de novo* notwithstanding its findings relating to Sentech's significant market power. This begs the question as to why the Authority continues to act in this manner, particularly as nothing whatsoever has changed since 2013. In fact, the views which the Authority has published in the current Discussion Document and the Supplementary Discussion Document do not differ materially to what was contained in the 2013 Findings Document.
32. Moreover Sentech, during the aforesaid processes, has:
- 32.1 Admitted that it has significant market power (although it subsequently did an about turn in this regard);

- 32.2 Welcomed the fact that ICASA had initiated the possible regulation for broadcasting transmission services;
- 32.3 Stated that it was committed to promoting principles of fair competition in the interests of the public and to abide by such principles;
- 32.4 Supported the need for regulations to protect consumers by ensuring transparent cost-orientated pricing and fair and open contracting practices;
- 32.5 Agreed its tariffs needed to be transparent and cost-orientated in line with the principles of fair competition and similar to those which would apply in a more competitive environment;
- 32.6 Stated that to fulfil its mandate, it needed to “*provide affordable and sustainable broadcasting ... infrastructure network services to the majority of South Africans*”;
- 32.7 Stated that it was committed to a new tariff methodology that was robust and transparent and would reflect the true costs and current value of its assets;
- 32.8 Stated that it was prepared to engage ICASA to prepare a tariff model taking into account its public service mandate; and
- 32.9 Agreed that its existing agreements needed to be amended in respect of price and that it was designing a new tariff model which would be “*fair, non-discriminatory, provide for accounting separation, be cost reflective and bench-marked to global standards*”.

33. This was Sentech's position in relation to the 2011 Discussion Document. Between 2011 and 2022 (when the 2022 Discussion Document was published), nothing whatsoever changed in the market and Sentech continued to hold significant market power. Notwithstanding this, Sentech (having failed to live up to its undertakings and promises made in 2011), did an about-turn in 2022 and has sought to try and delay and avoid having to deal with the pertinent issues it conceded with its pricing and the market.
34. It appears that the aforesaid stratagem is working given the latest attempt by ICASA to solicit further information in the Supplementary Discussion Document, which information it already has. In fact, eMedia submits that the Authority is well placed to now publish draft regulations and conduct an Inquiry in terms of section 67 of the ECA. Not to do so would be a dereliction of its duties and a failure to meet its own mandate.
35. What exacerbates the above situation is that the Authority has already been forewarned of its obligations. At the hearings held in August 2022, eMedia in its presentation directed the Authority's attention to the relevant provisions in the ICASA Act obliging it to make and publish its decision relating to the Inquiry. It has not done so.
36. Given that it has not done so and without explanation published the Supplementary Discussion Document, eMedia submits that this is irregular and can only speculate as to the purpose of this further process. It is for this reason that eMedia has made the demands set out herein.

37. Further, and likely more concerning insofar as the Authority's ability to perform its functions is concerned, is that in the Supplementary Discussion Document at paragraph 1.10 on page 4, the Authority explains that on 28 July 2023, the Authority published a notice requesting additional information from identified stakeholders which included, amongst others, eMedia Holdings Limited. The aim of this request was to investigate certain areas in which there was insufficient evidence, which was needed before the Inquiry was concluded.

38. At paragraph 1.11, the following is stated:

"The Authority received the requested additional information from the above stakeholders (except Sentech) before the published closing date of 2 October 2023."

39. Accordingly, in this paragraph, the Authority acknowledges that it received eMedia Holdings representations. However, in the Supplementary Discussion Document in many instances, the Authority states that *"no comments were submitted by eMedia"*. The Authority is urgently required to advise eMedia why it did not consider its comments which were made within the prescribed period of time and whether they in fact still have them.

eMedia's Application resulting from the Authority's Dereliction of its Duties.

40. Section 8 of the ICASA Act provides that a Councillor (or Councillors) can be removed from office because of their inability to perform their duties efficiently. If ever there was a case in which those Councillors involved in the Inquiry failed to perform the duties of their office efficiently or at all, this is it. This relates to both

past Councillors and present Councillors who have elected to undertake the current proposed course of action and hence delay the finalisation of the Inquiry.

41. Rather than engaging in a process of regulations pursuant to its 2013 findings, the Authority sat on its laurels. However, it then had a re-awakening in 2021. It then took a period of 18 months between the hearings into the 2022 Discussion Document which took place in August 2022 and the publication of the Notice for the Authority to have its second re-awakening. There is clearly no end in sight and the Authority, no longer having the institutional memory relating to the issues already dealt with in the Discussion and Supplementary Discussion Documents, clearly does not have what it takes to finalise this Inquiry. The Authority is accordingly requested, by no later than 30 April 2024 to advise eMedia of the proposed timelines for the conclusion of this Inquiry should it go ahead.
42. For all the reasons enumerated above, ICASA has failed dismally in its mandate and in its legislative obligations. A delayed decision as this one is, is as good as no decision at all. Accordingly, in addition to the need to finalise this Inquiry once and for all, eMedia believes that it is time for the manner in which the Authority has conducted itself over the years and failed to regulate markets where it has recognised that dominance exists, to be investigated. A similar dereliction of duties has been encountered in respect of attempts to deal with the dominance of MultiChoice in the Subscription Broadcasting Market.
43. Accordingly, eMedia requests the Authority to urgently conduct an Inquiry into the exercise of the performance of its own powers, functions and duties as

provided for in section 4B(1)(a) of the ICASA Act. Any such inquiry will need to be regulated so that it is independent and fair.

44. Should the Authority refuse to act as aforesaid, eMedia requests the Authority to provide it with full written reasons as to its decision so that eMedia can exercise whatever rights it deems may be appropriate in the circumstances. eMedia requests the Authority to provide its response and reasons within 15 days of the date of this submission.
45. Finally, eMedia attaches hereto its responses to the questionnaire directed at it to the extent that it deems such information necessary bearing in mind the Authority's previous Discussion Documents and findings and repetition of questions in this Supplementary Discussion Document. eMedia reserves the right to supplement this information in due course (either at or prior to any oral hearings which may be convened) should it deem this necessary. eMedia submits this further information without prejudice to its rights set out herein and on the basis that this not be construed as it willingly partaking in the current process. eMedia does so as should it fail to do so, it will likely not be given the opportunity to put certain updated information before the Authority.
46. eMedia urges the Authority to sit up and take action one way or another, once and for all, and to avoid shirking its responsibilities and obligations in making a decision.

47. Notwithstanding eMedia's frustrations regarding this process, it responds to the questions posed by the Supplementary Discussion Document in the annexure attached hereto.

eMedia Investments

10 April 2024

ATTACHMENT TO EMEDIA'S GENERAL SUBMISSIONS:

EMEDIA'S RESPONSE TO THE REQUEST FOR FURTHER INFORMATION AND FURTHER CONSULTATION WITH STAKEHOLDERS IN RESPECT OF THE INQUIRY INTO SIGNAL DISTRIBUTION SERVICES

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.

eMedia records that Openview is not a signal distributor. Sentech has been contracted by eMedia (through its subsidiaries) as its broadcast signal distributor for its terrestrial analogue radio and television services. eMedia in this case is clearly a licenced broadcaster requiring signal distribution services to enable it to provide a broadcasting service and not a broadcast signal distributor. Sentech has also been contracted by eMedia as its satellite broadcast signal distributor for Openview.

Given the fact that for many years to come, the vast portion of the population will be unable to afford the data costs required for OTT services and watching content via the internet, eMedia holds the view that providing signal distribution in the analogue and digital spaces will remain an essential need and the Inquiry needs to focus on the provision of these rather than OTT/Internet based services.

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.

This Inquiry should focus on broadcast signal distribution, and not alternative OTT services. eMedia is of the opinion that linear broadcast signal distribution will co-exist with OTT steaming services. Due to the high data cost in South Africa, only a small segment of South Africans will be able to afford the data costs required to view OTT services.

The majority of South Africans are and will remain reliant on linear broadcast services to access information, education and entertainment. The main purpose of this Inquiry should remain assessing the state of competition in broadcasting signal distribution market and determining whether or not there are markets or market segments within the signal distribution services value chain which may warrant regulation in terms of section 67(4) of the ECA.

Of course, as stated in the general comments accompanying this response, the Authority has already made a definitive finding in this regard. It has found that regulation is necessary and indicated an intention to proceed with preparing draft regulations in terms of Section 67(4) of the ECA. It remains concerning that the Authority states it needs to follow the necessary section 4B and section 67(4) processes before making a pronouncement on whether to intervene in the relevant markets. It has already made such a pronouncement and notified members of the

public of its intentions to engage in a section 67(4) process. As set out in the accompanying document, nothing has changed in the market since the Authority made this conclusive finding.

Question 3: In your opinion, is the approach adopted by the Authority not to define and analyse 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

This issue and Sentech's holding significant market power has already been definitively dealt with by the Authority. Since the Authority made its initial findings in this regard, nothing has changed in the market. The core of the Inquiry needs to again focus on the fact that Sentech is dominant in the provision of providing signal distribution services to the wholesale broadcasting market where those using Sentech's services have no other options and new entrants have such high barriers of entry that it is impossible (and will continue to be impossible) to compete with Sentech.

Moreover, it bears mentioning that while digital migration is focused on the migration of television from analogue to digital, eMedia disagrees with the approach the Authority has taken not to consider analogue, as analogue radio will remain even if digital radio services are introduced in South Africa.

As stated, competition from different platforms has no bearing on what is sought to be achieved in this Inquiry. eMedia also records that what makes it difficult, if not impossible, to respond to the Authority's finding and position is that for reasons unbeknown to it, much of Sentech's submission has been made on a confidential basis. It is impossible to respond to findings made and all eMedia's rights remain reserved in this regard. How an approach to retail market definition can all be confidential defies belief – an opinion cannot, as a matter of fact be confidential. Certain information underlying such opinion can be deemed to be confidential subject to an appropriate application justifying why such information is confidential. eMedia request the Authority to provide clarity as to why confidentiality was granted to Sentech.

Question 4: Do you agree with the Authority's views on 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.

Due to the exorbitant time this Inquiry has taken eMedia is of the opinion that analogue television is still an important platform for particularly the more rural television viewers to access television. This is due to the numerous delays South Africa has experienced over several years to complete the migration of television services from analogue to digital. The latest cut off date published by the Minister of Communications and Digital technologies stipulates the final completion date of 31 December 2024. This date is

reliant on government providing subsidised digital decoders to the remaining analogue television households that qualify.

It must also be noted that all television households in the DTT transmitter coverage area are also covered by the Sentech DTH satellite gap filler, and by the FTA Openview satellite coverage. Although the FTA broadcasters have terrestrial coverage obligations in their individual licences issued by the Authority, broadcasters do not have control of their viewers' choice of purchasing a DTT decoder or one or other DTH decoder.

As an illustration, the differing coverage areas of DTT Mux 1 and DTT Mux 2 determine the number of FTA television channels viewers can access via a DTT decoder. If citizens reside in the coverage area of DTT Mux 1, but outside the coverage area of the smaller footprint Mux 2 they can only receive the SABC channels and not the eMedia channels. On the other hand, if they have a Sentech DTH gap filler decoder or an Openview decoder they can receive the SABC channels and the eMedia channels. This has contributed to the skew towards satellite at the expense of DTT.

That said, eMedia holds the view that while there is a distinction between the provision of television and radio services, the identification of a single wholesale market for the provision of managed transmission of terrestrial television services is broad enough to cover both analogue and digital services. Issues as to whether the provision of internet services are in the same market does not fall within the scope of the Inquiry. In any event, in view of what is stated above, they are not. The provision of internet services

will never replace the provision of FTA terrestrial services in respect of which transmission services as those offered by Sentech, remain a necessary component. The provision of satellite services falls within the same ambit as the provision of services over the internet for purposes of this Inquiry and analysing the relevant market for the provision of signal distribution services.

It bears repeating that eMedia disagrees with the views that it is not necessary to analyse the analogue transmission services as these are expected to be superseded by DTT services. The history of ASO has shown that there is no certainty in this regard or that this process may take some time to complete. In any event, it makes no difference to the outcome of this Inquiry as to whether the provision of transmission services (and hence the market definition) is in respect of analogue or digital services. In either event the only supplier for terrestrial transmission services able to provide the necessary coverage for FTA broadcasters is Sentech and it holds significant market power in this market enabling it to impose its own terms for the provision of such digital services.

If Sentech were to increase its prices by 5 to 10% (or more for that fact) eMedia would have no other options available to it in order to continue providing its FTA services. There simply is no alternative substitute service and due to barriers of entry, none can be established. Satellite and internet based platforms are NOT substitutes for reasons already explained. In any event, the costs of satellite or internet based services would have the effect of denying a large number of viewers access to free television. The

issue of the licence obligations imposed on FTA broadcasters obliging them to provide services terrestrially remains in force.

Accordingly, eMedia agrees that the distribution of services through different technologies are in different competition markets but maintains that in the medium to long term future this will remain the position in view of issues relating to affordability – whether in relation to data or the provision of satellite services.

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.

The ICASA terrestrial broadcasting frequency plan makes provision for a 7 Mux DTT network plan. Each of these DTT Mux's is based on a provincial single frequency network in each of the nine South African provinces. Based on this eMedia supports the Authorities view that all DTT sites can be analysed together as they are subject to homogeneous competitive constraints. As each mux in each province makes use of a SFN in that province it forces the licenced community television broadcasters to expand their coverage area from a particular analogue transmitter site to each DTT site within that particular province. This comes with a high signal distribution cost to the community television broadcaster, as well as expanding their coverage area beyond what they are licenced for.

Irrespective of whether or not the geographic market for the provision of DTT services is regional (and eMedia holds the view that they are not), eMedia agrees that there needs to be a single composite analysis as the provision of such services are all subject to the same homogenous competitive constraints.

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?

Presently analogue FM is the dominant radio distribution platform consumed by the greatest number of South African citizens daily. AM still has a place in reaching more rural areas of the country but cannot be compared to the audio quality of FM reception. Fewer portable radio receivers have the capability of an AM tuner. As such FM due to its portability and relatively good audio quality will remain the dominant radio platform for many years to come. FM receivers are relatively inexpensive and freely available in retail. Most cars come factory fitted with an FM radio.

Digital radio has been adopted by many countries worldwide, and is the future for radio. The price of a digital radio is reducing worldwide due to the uptake of digital radio in these countries. Other than Norway, who switched off FM, FM and digital radio co-exist. In countries such as the UK most new cars come factory fitted with an FM and digital radio as standard. It is estimated that digital radio will be commercially launched in South Africa in the next 5 years, or sooner. Digital radio will be transmitted from the present radio high transmitter sites owned and run by Sentech.

That said, eMedia agrees that the monopolist provider of terrestrial radio services (whether analogue or digital) at the wholesale level is not constrained by other platforms such as internet or IP based technologies. The number of listeners who do not access radio via analogue is insignificant.

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.

It is eMedia's view that unless regulation is imposed by the Authority, Sentech will remain the major provider of broadcast signal distribution in South Africa with little or no competitor, due to their ownership of the high site transmitter infrastructure. Even if broadcasters want to self-provide their broadcast signal distribution, and could look at site sharing at Sentech high sites, Sentech would most likely attempt to charge an exorbitant site sharing rate, that would most likely end the feasibility of self-providing.

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 or add to the list.

eMedia agrees with the Authorities revised list of wholesale broadcast signal distribution markets.

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.

Current competition

eMedia agrees that Sentech is currently the only supplier of terrestrial TV and radio broadcasting transmission services at national level, and has 100% of the market for terrestrial broadcasting signal distribution. This is exactly the reason eMedia has repeatedly stated that Sentech engages in anti-competitive pricing due to the uneven bargaining position between Sentech and its customers. Due to Sentech's significant market power eMedia has been unable to negotiate a more realistic and affordable pricing signal distribution structure with Sentech. This has resulted in Sentech being in a position in terms of which it can determine its own prices and can do so in a non-transparent manner. In fact, the SABC has referred the issue of Sentech's excessive pricing to the Competition Tribunal – a matter which eMedia supports.

As stated, the Authority has already found that there is ineffective competition in the relevant market. Nothing has changed since this finding and there is no plausible reason for the Authority to change its views in this regard or for it to delay in proceeding with preparing draft regulations as it has already said it would do.

Currently, there is simply no competition and due to the barriers of entry there will likely never be any such competition. Hence, the urgent and overdue need for regulation.

Failure to regulate the market will merely entrench the existing countervailing market power in respect of which those requiring Sentech's services have to take them on terms dictated by Sentech. Broadcasters, including those within the eMedia stable simply have no other option. This 'take it or leave it' approach directly impacts members of the public, particularly those solely reliant on terrestrial FTA television. Given the overreaching by Sentech - the amounts paid for signal distribution being eMedia's third largest cost item - eMedia has less money to spend on content. This directly impacts advertising revenue being the only source of revenue for e.tv as a commercial FTA broadcaster.

Sentech presently has 181 television high sites and 192 FM radio high sites. Even if a new competitor to Sentech had the financial means to replicate the Sentech transmission sites, obtaining environmental approval to do so is highly unlikely now due to strict environmental requirements. The majority of the Sentech high sites were established long before these strict environmental requirements came into force. The only option would be for the new competitor to collocate their services at these Sentech sites by means of site sharing agreements with Sentech. Facilities leasing is also not an option as even with such arrangements, the costs of establishing a new infrastructure to provide competitive transmission services is unaffordable. The barriers of entry are simply too high. The establishment costs for Sentech were paid for by the government and cannot be replicated.

eMedia disagrees with MultiChoice's statement that StarSat and Platco (Openview) need to be considered in an assessment of competition. The provision of a satellite

service (which MultiChoice also does) does not constitute competition within the relevant market as defined. Sentech is not involved in the provision of satellite transmission services in any material respect insofar as may be relevant for the purposes of this Inquiry which has established itself as focussing on wholesale markets for, inter alia, the provision of managed transmission services of terrestrial television and radio services.

eMedia does not intend repeating any of its previous submissions, however, for the sake of completion, it repeats the Authority's summary of eMedia's position as set out in paragraph 5.1.5 of the Notice.

Potential competition

eMedia has previously stipulated the challenges for it to self-provide its broadcast signal distribution. Even if it were financially viable for a new competitor to establish an infrastructure such that a competitive service could be offered, to establish such an infrastructure would take a substantial amount of time. During this time, Sentech would continue to have significant market power. Further, to transition to a competitor would require existing customers of Sentech to terminate their contractual relationship with Sentech. Due to Sentech's having significant market power, in many instances it has concluded evergreen agreements which are not easily terminated.

All this is compounded by the fact that any new potential broadcast signal distributor which has the capital to invest would have to enter into a site sharing agreement with Sentech. If their transmitter sites are not co-located with Sentech towers, viewers would all have to redirect their receiver antennas to align with these new transmitter sites, a practically difficult task. Additionally, in order for a new competitor to establish new high sites such competitor would be required to obtain environmental approval for each new transmitter site. This, in itself, could present an insurmountable challenge.

eMedia is therefore of the opinion that it would be impossible for a new competitor to be established.

Countervailing Buying Power

eMedia agrees with the Authority that broadcasters do not have countervailing power, as Sentech is the sole supplier of national terrestrial broadcasting transmission services and there is a lack of viable alternatives to the terrestrial signal distribution services provided by Sentech.

eMedia agrees with the Authority's views that broadcasters have no alternatives (or potential alternatives) to Sentech and that the impossibility of creating a viable competitor is circumscribed by the costly network build this would involve as well as issues relating to accessibility of high sites which are currently occupied by Sentech.

Market Dynamics

The only sector of the ICT industry that has not been liberalised is broadcast signal distribution. The Authority has never issued an invitation to apply for a competitor to be licenced by the Authority. In the event that a new broadcast signal distributor is licensed it is important that universal service commitments are included in order to ensure that this new entity does not cherry pick the more lucrative major cities and not provide coverage in the more rural areas of South Africa.

In any event, the Authority acknowledges that any new entrant is unlikely and that the markets in which Sentech operate are prone to natural monopoly. This therefore begs for urgent regulation. eMedia accordingly agrees with the Authority's views on Market Definition.

General

eMedia is, yet again, concerned that in relation to this crucial discussion dealing with the effectiveness of competition, Sentech has chosen to submit its response confidentially and the Authority has inexplicably permitted it to do so. It is inconceivable that the whole section contained commercially sensitive information and nothing else. Of course, in this regard, it bears mentioning that as an SOE, a substantial portion of information related to Sentech and its operations is in the public domain. Not only is its annual report and annual financial statements made public, but it is required to deal

with many issues raised therein and its business operations in open sessions of Parliament. The Authority is again invited to state the nature of the information in respect of which Sentech seeks confidentiality and provide its reasons for granting such request. Many of the questions raised, have, in any event, been openly dealt with by Sentech when it has admitted it has significant market power and that openness is needed in relation to its pricing. Why Sentech now chooses to operate in a shroud of secrecy, itself raises suspicion. This, particularly given its nature as a SOE. Reference is again made to eMedia's general submission accompanying the answers to the questions posed by the Authority. A view on effectiveness of competition cannot, by its very nature, be confidential in its entirety. Sentech's operating in this cloud of mystery and failure to deal with the issues at hand makes it impossible to have a meaningful assessment of their position in relation to the effectiveness of competition in a market which they dominate.

Equally disturbing, is that the Authority's findings do not differ to its previous findings made over a 14 year period. This begs the question as to why this process needs to be dragged out any further and serves to justify the position taken (and requests/demands) made by eMedia in its general submission.

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.

eMedia has always been certain of the fact that Sentech has SMP and that they are a dominant player in the broadcast signal distribution industry. Sentech owns, manages, and controls all of the essential high transmitter site facilities. In fact, at most of their transmitter sites they also own the access roads to these sites. eMedia previously stated that the Authority's failure to declare Sentech as dominant has allowed it to engage in anti-competitive pricing to the detriment of broadcasters. The Authority has always (over the last 14 years) maintained the same position and seen the need for urgent regulation – despite which no attempt has been made to proceed with a Section 67(4) inquiry.

Yet again, Sentech's responses to the issues raised in these questions are provided confidentially. eMedia repeats what is set out above relating to confidentiality. What makes matters worse is that the Authority's views set out in paragraph 6.3 reference Sentech's comments regarding the future of analogue television. These simply cannot be confidential. The granting of confidentiality in this regard, makes a mockery of this Inquiry and only places into suspicion the intentions of Sentech and need to maintain its dominant position and holding of significant market power.

Finally, the Authority concludes that its analysis “*shows that Sentech is dominant in the market for digital terrestrial signal distribution in television with 100% market share*”. Again, it bears repeating that this finding is no different to the Authority’s findings made over ten years ago. Why then the need for the Inquiry? Why not immediately prepare draft regulations and proceed with a Section 67(4) inquiry? This too makes a mockery of the current process and the manner in which the Authority has dealt with this matter.

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

eMedia encourages the Authority to finalise regulations regarding Sentech’s dominance and practices in the broadcast signal distribution market.