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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE 2799 OF 2024

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FINDINGS DOCUMENT ON SIGNAL DISTRIBUTION MARKET INQUIRY

1. On 17 September 2021, the Independent Communications Authority of South Africa ("the Authority/ICASA") formally initiated the Inquiry, in terms of section 4B of the Independent Communications Authority of South Africa Act, 2000 (Act No. Act 13 of 2000) ("ICASA Act"), into signal distribution services ("the Inquiry") by publication of a notice in a Government Gazette[1] ("the Notice") and a questionnaire on its website[2].

2. The Authority has since:
   2.1. Received responses to the questionnaire;
   2.2. Published a Discussion Document in the Government *Gazette*[3];
   2.3. Received submissions on the Discussion Document;
   2.4. Held virtual public hearings on the Discussion Document;
   2.5. Published a notice requesting additional information[4];
   2.6. Published a Supplementary Discussion Document[5]; and
   2.7. Held public hearings on the Supplementary Discussion Document.

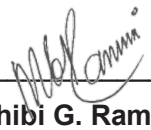
3. The Authority hereby publishes this notice regarding the conclusion of the Inquiry. The purpose of the Inquiry was to assess the state of competition and determine whether or not there are markets or market segments within the signal distribution services value chain which may warrant regulation in the context of a market review in terms of section 67(4) of the Electronic Communications Act, 2005 (Act No. 36 of 2005).

Summary of the Findings:

4. The Authority has found that Sentech has significant market power ("SMP") and that there is ineffective competition in the following markets:
   4.1. The market for the provision of terrestrial signal distribution services for television,
   4.2. The market for the provision of terrestrial signal distribution services for FM radio; and
   4.3. The market for the provision of terrestrial signal distribution services for AM radio.

[1] Government *Gazette* No. 45172 (Notice No. 873)
[2] https://www.icasa.org.za/legislation-and-regulations/signal-distribution-services-market-inquiry-questionnaire
[3] Government Gazette No. 46255 (Notice No 986)
[4] Government Gazette No. 49049 ((Notice No. 1932)
[5] Government Gazette No. 50069 (Notice No. 2298)

5. Following the publication of this document, the Authority will publish a notice outlining the process to develop pro-competitive regulations in line with section 67(4) read with section 4 of the ECA.



Mothibi G. Ramusi
Chairperson
Date: 21/10/2024

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List of Acronyms

AM	**Amplitude Modulation**
ASO	**Analogue Switch Off**
BDM	**Broadcasting Digital Migration Policy of 2008**
DAB	**Digital Audio Broadcasting**
DSB	**Digital Sound Broadcasting**
DTT	**Digital Terrestrial Television**
ECA	**Electronic Communications Act No 36 of 2005**
ECNS	**Electronic Communications Network Service**
FM	**Frequency Modulation**
FTA	**Free To Air**
HMT	**Hypothetical Monopolist Test**
HM	**Hypothetical Monopolist**
ICASA	**Independent Communications Authority of South Africa**
IP	**Internet Protocol**
MUX	**Multiplexer**
MW	**Medium Wave**
OTT	**Over-The-Top Services**
SABC	**South African Broadcasting Corporation**
SMP	**Significant Market Power**
SSNIP	**Small But Significant Non-Transitory Increase In Price**

1. An Outline of the Process Followed

1.1. On 17 September 2021, the Authority published a Notice indicating its intention to conduct an Inquiry ("the Inquiry") into signal distribution services in terms of section 4B(1)(a) of the ICASA Act".

1.2. The Inquiry was conducted in four Phases (i.e. Phase I – Commencement of the Market Inquiry, Phase II – Publication of the Discussion Document, Phase III – Public Hearings on the Discussion Document, and Phase IV – Publication of the Findings Document) in terms of the abovementioned notice:

Phase I:

1.2.1. On 17 September 2021 and as part of Phase I, the Authority published a questionnaire on its website requesting information and opinions from stakeholders (including the general public) to inform its market study.

1.2.2. The Authority received responses to Phase I (Market Study) from Radio Pulpit and the SABC on 02 November 2021 and 18 November 2021, respectively.

1.2.3. On 14 January 2022, the Authority sent a letter to Sentech to submit all the information requested by the Authority in terms of the questionnaire within seven (7) days of receipt of the letter.

1.2.4. On 01 February 2022, the Authority received a response from Sentech.

Phase II:

1.2.5. On 22 April 2022, the Authority published a Discussion Document for comments, including its preliminary views about the Inquiry for comments by the public.

1.2.6. The Authority received six (6) written submissions to the Discussion Document from eMedia Holdings Limited, MultiChoice (Pty) Ltd, Primedia Group, Radio Pulpit, SABC SOC Ltd and Sentech SOC Ltd before the closing date of 29 June 2022.

Phase III:

1.2.7. The Authority held virtual public hearings on the Discussion Document on 26 and 29 August 2022.

1.2.8. Subsequent to the public hearings, the Authority was of the considered view that further engagements (including request for supplementary information, one-on-one meetings, oral hearings, etc.) with stakeholders were necessary before the Inquiry can conclude. The further engagements were to ensure that the Authority's findings are evidence-based and include all the relevant information. Accordingly, on 28

July 2023, the Authority published a notice in the Government Gazette[6] requesting additional information.

1.2.9. The Authority received submissions from eMedia Holdings Limited, MultiChoice (Pty) Ltd, SABC SOC Ltd and Radio Pulpit before the published closing date of 02 October 2023.

1.2.10. On 02 February 2024, the Authority published the Supplementary Discussion Document in the Government *Gazette* for public comments[7].

1.2.11. The Authority received written submissions to the Supplementary Discussion Document from Sentech SOC Ltd, eMedia, Radio Pulpit and Primedia on 09 and 10 April 2024.

1.2.12. On 05 June 2024, the Authority held hybrid (online and in-person) public hearings on the written submissions relating to the Supplementary Discussion Document.

1.3. This document contains the Authority's findings and is structured in terms of the following sections:

1.3.1. **Section 2** – Legislative Framework.

1.3.2. **Section 3** – Responses to General Comments.

1.3.3. **Section 4** – Responses to Specific Comments.

1.3.4. **Section 5** – The Authority's Findings.

1.3.5. **Section 6** – Next Steps.

2. Legislative Framework

2.1. The Inquiry was initiated in terms of section 4B of the ICASA Act read with section 67(4) of the ECA.

2.2. Section 4B (1) of the ICASA Act states that:

"(1) The Authority may conduct an inquiry into any matter with regard to-

(a) the achievement of the objects of this Act or the underlying statutes;

(b) regulations and guidelines made in terms of this Act and the underlying statutes;

(c) compliance by applicable persons with this Act or the underlying statutes;

(d) compliance with the terms and conditions of any licence by the holder of such licence issued pursuant to the underlying statutes; and

[6] Government Gazette No. 49049 (Notice No. 1932)
[7] Government Gazette No. 50069 (Notice No. 2298)

(e) the exercise and performance of its powers, functions and duties in terms of this Act or the underlying statutes."

2.3. Section 4C (6) of the ICASA Act states that "the Authority must, within 90 days from the date of conclusion of the inquiry-
(a) make a finding on the subject matter of the inquiry; and
(b) publish in the Gazette –
(i) a summary of its findings…"

2.4. Section 67(4) of the ECA provides as follows:
"(4) The Authority must, following an inquiry, prescribe regulations defining the relevant markets and market segments and impose appropriate and sufficient pro-competitive licence conditions on licensees where there is ineffective competition, and if any licensee has significant market power in such markets or market segments.
The regulations must, among other things-
(a) define relevant wholesale and retail markets or market segments;
(b) determine whether there is effective competition in those relevant markets and market segments;
(c) determine which, if any, licensees have significant market power in those markets and market segments where there is ineffective competition;
(d) impose appropriate pro-competitive licence conditions on those licensees having significant market power to remedy the market failure;
(e) set out a schedule in terms of which the Authority will undertake periodic review of the markets and market segments, taking into account subsection (9) and the determination in respect of the effectiveness of competition and application of pro-competitive measures in those markets; and
(f) provide for monitoring and investigation of anti-competitive behaviour in the relevant market and market segments."

3. Responses to General Comments

This section relates to general comments from stakeholders. The comments are summarised below, followed by the Authority's response. It should be noted that the focus is on including only the salient points made in the various submissions and not to respond to every point made.

3.1. Submissions Received:

3.1.1. Sentech

Sentech stated the following with regard to the Inquiry process:

- The Inquiry is limited to the period 2010 - 2020 as stated in the questionnaire published by the Authority.
- The 2022 Discussion Document published by the Authority expired in terms of section 4C(6) of the ICASA Act.
- The request for further information by the Authority outside the initial Inquiry period of 2010 - 2020 constitutes a new Inquiry process given the expiry of the 2022 Discussion Document.
- The Inquiry process was concluded after the public hearings on the 2022 Discussion Document and the Authority published a findings document within 90 days after the hearings.

Sentech raised a concern that the Authority did not consider its status as a common carrier designate when assessing competition, resulting in incorrect conclusions in respect of competition in the terrestrial signal distribution markets.

Sentech cautioned that any imposition of pro-competitive remedies may negatively impact on Sentech's universal service obligation or may result in the increase in pricing of signal distribution services to the detriment of broadcasters and reduced network coverage.

Sentech agrees with MultiChoice that the Internet service and other IP-based technologies are viable substitutes for terrestrial signal distribution and therefore, should be considered by the Authority when assessing the effectiveness of competition. Further, Sentech stated that the Authority should assess the future impact of the Internet on sustainability of signal distribution services.

Sentech stated that it uses a cost-based tariff methodology to ensure that its pricing is fair and supports its universal access methodology while still allowing Sentech to be financially sustainable.

Sentech disagreed with the Authority's view that it was not forthcoming with information that related to the 2022 Discussion Document. It further requests that the Authority acknowledge the impasse

on the validity of the 26 July 2023 Inquiry, particularly with regard to the analysis period thus, it does not agree with the Authority's approach in this regard.

3.1.2. eMedia

eMedia stated that OpenView does not provide signal distribution services. eMedia further stated that it utilises Sentech for its terrestrial analogue radio and television services through eMedia's subsidiaries. eMedia also utilises Sentech as its satellite broadcast signal distributor for OpenView.

eMedia is of the view that the provision of signal distribution via analogue and digital will remain relevant due to the significant portion of the population not being able to access Over-the-Top ("OTT") services and the Internet for watching content, owing to high data costs.

eMedia raised a concern about the delay in finalising the Inquiry and stated that there is little difference between the 2010 Inquiry and the current Inquiry.[8]

eMedia was therefore of the view that further information gathering, or investigation was not necessary as the Authority had previously made a finding about Sentech's dominance[9]. Further, eMedia stated that the Authority should have finalised the Inquiry as follows:

- Withdraw the notice to conduct the Inquiry and;
- Either publish draft regulations in terms of section 67(4) of the ECA based on June 2013 findings or publish a findings document based on the public hearings of August 2022.

3.1.3. Radio Pulpit

No comment by Radio Pulpit.[10]

3.1.4. Primedia

Primedia agreed with the Authority's preliminary findings and its conclusion regarding the market definition approach, retail market definition, wholesale market definition, geographic market, evaluation of the effectiveness of competition and, significant market power.[11]

[8] Sentech's response to the Supplementary Discussion Document, par. 5-17
[9] Paragraph 5.2 of the 2013 Findings Document published in Government *Gazette* No. 36537 (Notice No. 577 of 2013), which were subsequently withdrawn.
[10] Radio Pulpit's response to the Supplementary Discussion Document, paragraph 1.4, page 1
[11] Primedia response to the Supplementary Discussion Document, paragraph 1.4, page 1

Primedia noted that it was pleased to assist on the Authority with insights on issues relating to Sentech's control over the "High Sites" and the lack of competition available for national and regional radio.[12]

Primedia submits that ICASA would not have discretion, but rather an obligation to prescribe regulations where there is ineffective competition and SMP. Primedia suggests that the Authority consider determining Sentech High Sites as essential facilities, prescribing price caps for signal distribution services and requiring penalty clauses for failure to provide services.

3.2. The Authority's Response:

Validity of Notice No. 1932 of 28 July 2023 -

The Authority is of the considered view that the Inquiry period is not limited from 2010 – 2020 as alluded to by Sentech. It is the Authority's position that :

(a) The Inquiry did not conclude after the public hearings of 29 August 2022.;
(b) The request for additional information, subsequent to the public hearings, does not constitute a separate Inquiry process,
(c) The Inquiry can only be concluded once the Authority has obtained all the information which is reasonably necessary to enable it to make its findings; and
(d) The 90-day period prescribed in section 4C(6) of the ICASA Act commences once an Inquiry has been concluded.

Therefore, the Authority maintains its position that the Notice published in Government *Gazette* No. 49049 of 28 July 2023 forms part of the Inquiry that commenced on 17 September 2021.

Further to the above, the Authority is of the considered view that further engagements (including the request for supplementary information, one-on-one meetings, oral hearings, etc.) with stakeholders were necessary to conclude the Inquiry. These further engagements ensure that the Authority's findings are evidence-based and include all the relevant information. The Authority is also satisfied that its decision to conduct further consultations is rational and lawful.

Consideration of Status as Common Carrier -

The Authority can confirm that it considered Sentech's status as a common carrier designate when assessing the state of competition in the relevant markets but concluded that Sentech does not face a competitive constraint at the wholesale level. It should be noted that the Authority would also consider, among others, Sentech's status as a common carrier designate during the next phase of the project when consulting stakeholders on the appropriate pro-competitive conditions.

[12] Primedia response to the Supplementary Discussion Document, paragraph 2.1.2, page 2.

Substitution of Services –

The Authority can confirm that it has considered the Internet and Satellite services as potential substitutes for the traditional terrestrial signal distribution services in the Supplementary Discussion Document.[13] This is discussed further in section 4.1 of this document.

The Authority has noted that OpenView is not engaged in terrestrial signal distribution, but rather Platco operates the OpenView satellite service on behalf of eMedia for which it purchases satellite signal distribution services.

With regard to analogue terrestrial signal distribution being part of the same market with DTT, the Authority is still of the view that analogue will not exist after the analogue switch-off ("ASO") date, which is 31 December 2024. However, whether analogue is included or not included as part of the analysis, the conclusions reached are the same. We discuss alternative signal distribution services such as satellite and IP-based delivery systems in section 4.1.

Confidentiality Granted to Sentech –

The Authority can confirm that it granted Sentech confidentiality in accordance with the provisions of section 4D of the ICASA Act.

4. Responses to Specific Comments

4.1. Market Definition Approach

4.1.1. Submission Received

4.1.1.1.Sentech

Sentech agrees with the Authority's proposed theoretical framework on market definition, but states that it disagrees with the Authority's response to Sentech's submission on the 2022 Discussion Document, which critiqued a range of statistical tests (diversion ratios, price correlation, price elasticity, critical loss) suggested by Sentech that the Authority argued were not relevant and that it in any case did not have sufficient data for.[14] Sentech argues that adopting the hypothetical

[13] Supplementary Discussion Document, par. 2.2
[14] Sentech's response to the Supplementary Discussion Document, par. 5.6

monopolist test by imposing a small, but significant non-transitory increase in price (SSNIP) to discover substitute products is a textbook theoretical approach to defining a market. Practically, if the SSNIP approach was imposed, there would rarely be sufficient granular data to draw significant conclusions on substitutes that consumers would consider. Sentech argues instead that where there is a lack of data, the views of customers should be considered.[15] In this instance, it argues that the views of MultiChoice regarding the Internet and satellite as substitutes for traditional signal distribution services should be considered.

Sentech disagreed with the SABC's view that there are no substitutes for terrestrial signal distribution, arguing that the SABC itself uses multiple platforms (including the Internet and satellite) to broadcast its content.

Sentech argues that IP-based delivery services as well as satellite distribution should be in the same market. Sentech urged the Authority to consider the effect of the Internet and satellite delivery modes on the traditional signal distribution sector on a forward-looking basis when proposing pro-competitive remedies if necessary.

4.1.1.2.eMedia

eMedia stated that the Inquiry should not include alternative services to signal distribution services. Further, eMedia argues that OTT streaming will co-exist with traditional broadcasting signal distribution and that the high data costs limit the extent to which people can switch to OTT services. eMedia is therefore of the view that most of the South African population will rely on traditional broadcasting services.[16]

During the public hearings, eMedia indicated that it expects a significant number of television viewers to be on analogue even after the ASO date. Further, eMedia stated that it does not anticipate DTT to grow significantly and therefore, it will not be financially feasible to discontinue analogue television service due to the potential loss of advertising revenue, particularly if analogue viewers are above one million.

4.1.1.3.Radio Pulpit

No comment by Radio Pulpit.[17]

[15] Sentech's response to the Supplementary Discussion Document, par. 5.8
[16] eMedia's response to the Supplementary Discussion Document, page 18
[17] Radio Pulpit's response to the Supplementary Discussion Document, page 1

4.1.1.4.Primedia

No comment by Primedia.[18]

4.1.2. The Authority's Response

In defining the relevant market, the Authority's market review guidelines require that it considers a range of factors in determining market definition including barriers to entry, demand-side substitution and supply-side substitution. In defining the market, the Authority carefully considered the likely alternatives available to customers based on stakeholders submissions[19], in the context of the existing market structure, current consumer constraints (for example, internet infrastructure) and the regulatory framework. After assessing the written and oral representations on the Discussion Document and Supplementary Discussion Document, the Authority is still of the considered view that the SSNIP or Hypothetical Monopolist Test ("HMT") was applied correctly as a conceptual test for demand-side substitution. The Authority considered whether a hypothetical monopoly provider of terrestrial broadcasting services would be able to sustain SSNIP and came to the conclusion that the provision of such services does not face competition at the wholesale level and indirectly at the retail level.

Contrary to Sentech's view, the Authority can confirm that it specifically sought and carefully considered the views of Sentech's existing customers such as eMedia and the SABC as well as MultiChoice with regard to the question of whether customers of traditional terrestrial signal distribution services would switch their consumption to other products such as the Internet and satellite services. As discussed in detail in the Supplementary Discussion document, customers provided varying responses. The SABC and eMedia are terrestrial customers of Sentech and provided a different conclusion to MultiChoice in response to questions relating to the ability to substitute. It can be noted that at present, SABC and eMedia utilise satellite and Internet in addition to terrestrial. As such, it is not a matter of switching per se, but rather switching its terrestrial customers to an alternative platform.

SABC and eMedia indicated that switching would not be possible at this stage and pointed to regulatory requirements such as coverage obligations that would limit their ability to switch their signal distribution away from terrestrial.

eMedia stated that it "*does not consider satellite to be a competitive alternative in respect of signal distribution required to reach terrestrial free-to-air users*."[20] Further, eMedia outlined its rationale,

[18] Primedia's response to the Supplementary Discussion Document, paragraph 2.1.1, page 2
[19] Multichoice, SABC and eMedia
[20] eMedia's response to Stakeholder Questionnaires, para 5-6

including (i) costs to end users of purchasing a satellite and decoder in light of challenges posed to roll out subsidised set-top boxes during the digital migration; (ii) it is obliged by its licence requirement to make e.tv available terrestrially and (iii) that internet streaming is not an alternative for a significant proportion of users due to the cost of data and lack of access to internet infrastructure required.

The SABC in turn indicated that satellite distribution is currently cheaper than terrestrial, but that there are regulatory impediments to switching in the form of the DTT Regulations of 2012 and the BDM Policy of 2008.[21]

Whilst the Authority acknowledges the use of multiple platforms by broadcasters such as the SABC to deliver their content, the Authority is of the view that the Internet and satellite are complementary with different functionalities, purposes and quality of service, rather than potential substitutes. Also, it should be noted that spending on signal distribution by the SABC has not declined since the adoption of its multiple platforms strategy. The SABC spending on signal distribution and linking costs remained just above 10% of its total revenue despite its efforts to reduce the cost.[22] This is not consistent with satellite and the Internet providing a means of substitution.

In addition, during the public hearings, when probed on the role of terrestrial in comparison to IP-based technologies, Sentech stated that in its view the technologies were complementary and that affordability of data as well as limitations in coverage limit the ability to access IP-based options. [23] In addition, Sentech stated that terrestrial signal distribution was mature and that there would likely be co-existence of different distribution channels until the point at which coverage improved and data prices were reduced. Based on the above, while the Authority did consider Sentech's argument that the Internet, satellite and terrestrial signal distribution services should be included in the same market, it is of the view that a proposed 5-10% increase would not lead to broadcasters migrating terrestrial customers to satellite and Internet-based broadcasting. This is particularly as the providers of FTA broadcasts are currently incurring the costs of these platforms but are still paying for terrestrial signal distribution despite its higher costs suggesting it has a separate and complementary purpose. During the public hearings, Sentech confirmed that the Internet is not a substitute, but a complement to terrestrial signal distribution services due to the high cost of broadband.

[21] SABC Response to Stakeholder Questionnaires, para 5.
[22] SABC Annual Financial Statements for 2022
[23] Response by Mr Tebogo Leshope (Sentech's Acting CEO) to ICASA's question during the public hearings.

eMedia argued that alternative services to signal distribution services should not be considered by the Authority. The Authority notes that the exercise of defining markets involves identifying a particular product or service supplied by one or more suppliers (i.e., terrestrial signal distribution services) and evaluating whether the same or similar consumer-desired outcome may be achieved through the consumption of other products/services (i.e., the Internet and satellite). The Authority is therefore required to consider, among others, other products or services that may be substituted for the focal product or service.

The Authority notes that in the future, if there were regulatory changes or developments in the market for the Internet that enabled low-cost streaming, these conclusions may change. However, this is not likely to happen during the period under review as this is dependent on, among others, access to both devices and connectivity, cost and quality of the Internet. The Authority therefore maintains its conclusion that terrestrial signal distribution is in a separate market to satellite and Internet distribution at this stage.

A second issue, raised by eMedia concerns the inclusion of analogue. The Authority maintains its view that analogue television service would not be relevant on a forward-looking basis after the scheduled switch-off date of December 2024. It could be argued that digital and analogue are complements and are therefore in separate markets. In response to a 5-10% increase in the price of digital, broadcasters would not switch to analogue or vice-versa. However, if the switch-off did not occur, the dynamics would be the same for analogue as for DTT in terms of terrestrial signal distribution. This would apply regardless of whether we consider analogue and digital terrestrial to be in the same market or separate markets. For the purpose of this study, we therefore aggregate all terrestrial signal distribution.

4.2. Retail Market Definition

4.2.1. Submission Received

4.2.1.1.Sentech

Sentech disagrees with the Authority's approach to not define and analyse downstream broadcast markets separately from wholesale markets. Sentech argued that understanding downstream retail level competitive dynamics is crucial for assessing upstream wholesale level competitiveness.

Sentech argued that it is important for the Authority to understand competition dynamics at the retail level to correctly assess the level of competition in the wholesale markets. Sentech stated that the retail broadcasting market includes large customers with significant market power that have the ability to ensure that Sentech behaves in a pro-competitive manner if they perceive tariffs as being too high by threatening to switch to other distribution modes. Further, Sentech stated that it sets its tariffs in an open and non-discriminatory manner which benefit non-large broadcasters indirectly.

Sentech stated that the Authority should take into consideration technology neutrality (including 5G broadcast) when defining markets at various levels of the broadcasting value chain.

4.2.1.2.eMedia

eMedia agrees with the approach adopted by the Authority by mainly focusing on the wholesale markets and not defining the downstream retail markets. However, eMedia disagrees with the Authority's approach not to consider analogue, as it was of the view that analogue radio will still be relevant even after the introduction of digital radio.

4.2.1.3.Radio Pulpit

No comment by Radio Pulpit. [24]

4.2.1.4.Primedia

No comment by Primedia.[25]

4.2.2. The Authority's Response

The Authority does not agree with Sentech's view that a detailed analysis of the retail markets is necessary to assess the level of competition in the wholesale markets. The Authority is still of the considered view that such an exercise would not be necessary for this Inquiry given its focus on signal distribution. It should be noted that this is also not a requirement in terms of the ECA.

In its submission, Sentech appears to be implying that understanding competition in retail markets is important to assess the negotiating power (or what is typically in competition terms called countervailing power) of its buyers and that its customers are large with "significant market power".

[24] Radio Pulpit's response to the Supplementary Discussion Document, page 1
[25] Primedia's response to the Supplementary Discussion Document, paragraph 2.1.1, page 2

Typically, in a market study it is not necessary to engage in a full retail market analysis and conclude on issues such as SMP for customers to understand countervailing power. However, an assessment of countervailing power is an important factor to consider the extent to which a company has market power. In this instance, there are concentrated buyers in the form of SABC and eMedia for television, and Primedia for radio. However, during the hearings, eMedia, Primedia and Radio Pulpit confirmed that they do not have countervailing power that negates the market power held by Sentech. They indicated that they have been unable to negotiate on price or quality of service standards with Sentech and that the contract price was set at inception and subject to inflationary increases. This is because in practice they do not have any credible alternative. The lack of alternatives was confirmed by Sentech during the public hearings wherein it stated that the Internet is a complementary service due to the high cost of the Internet.

Further, Sentech has not provided any evidence to the contrary showing that it has dropped prices or agreed to additional terms as a result of pressure from its customers. As such, while noting that there are large buyers downstream, there is no evidence that they counter the SMP held by Sentech, and the evidence from these buyers has been that they have been unable to negotiate any terms.

The Authority considers the impact of retail indirectly (i.e., indirect constraints) in its consideration of wholesale markets. The Authority considered whether other content delivery mechanisms such as the Internet and satellite would indirectly constrain the price of terrestrial signal distribution service in the form of either higher retail prices or reduced quality of radio or television by retail broadcasters. The Authority does not consider this likely. There is no price response at retail customer level as terrestrial television and radio are free.

In response to price increases, there are four possible responses. Firstly, prices could be passed through to customers. However, in this market price pass-through to consumers is not possible given that television and radio are free to end-users. Secondly, quality could be reduced. However, a reduction in the quality of broadcasting services is not practical as it would also affect the content delivered by retail broadcasters via the Internet and satellite, resulting in less viewers and or listeners and consequently less advertising revenue to the detriment of retail broadcasters. Thirdly, retail broadcasters could engage in a complete withdrawal from terrestrial signal distribution services. However, this would be impractical given that a significant portion of the population would not be able to access content, and this would be in breach of their licence conditions. Fourthly, retail broadcasters could absorb the increases at the expense of profitability and potentially sustainability.

In light of the above, the Authority finds that defining and analysing competitive dynamics in the retail broadcasting market in detail is out of the scope of this Inquiry. However, given the likely concentration in the market, the Authority has considered the level of countervailing power in assessing the effectiveness of competition. The Authority finds that retail broadcasters do not have countervailing power to the extent that they are able to indirectly influence the tariffs charged by Sentech given that they do not have a viable alternative to the terrestrial signal distribution service and have not been able to negotiate terms such as quality of service requirements in the past.

In terms of 5G, the Authority notes that this is not relevant to terrestrial signal distribution as it does not provide a current alternative, or one that is likely to change market dynamics in the near future.

The Authority maintains its conclusion that retail markets only need to be considered where they provide an indirect constraint on wholesale markets.

4.3. Wholesale Television Product Market Definition

4.3.1. Submission Received

4.3.1.1. Sentech

Sentech disagreed with the proposal to exclude satellite and Internet distribution from the wholesale product market definition in its written submission.

Sentech reiterated its concern regarding the Authority's limited analysis of the broadcasting retail market and the effect of possible switching behaviour of retail broadcasters on Sentech's conduct at the wholesale level. In its written submission, Sentech argued that retail audio-visual content broadcasters would be able to switch wholly or partially to alternative delivery modes such as satellite and the Internet without incurring significant costs when faced by 5-10% increase in terrestrial signal distribution tariffs. Further, Sentech stated that it is highly likely that retail audio-visual content broadcasters would switch to alternatives given that they currently use multi-distribution strategy by distributing content via DTT, satellite and the Internet. However, in the public hearings Sentech clarified that it considered the Internet to be complementary to terrestrial at this stage due to the cost of broadband and the lack of coverage.

Sentech stated that retail audio-visual content broadcasters have the ability to constrain the increase in signal distribution tariffs by cancelling or applying for variation of their broadcasting licenses in response to 5-10% increase in terrestrial signal distribution tariffs. Sentech indicated

that the variation of the broadcasting licence may include the reduction in population coverage using traditional signal distribution and use satellite and/or the Internet to supplement the remainder of the population. Sentech indicated that the SABC had undertaken this process, which demonstrates the buying power of retail broadcasters. Sentech indicated that substitution of the modes of distribution is also prevalent at the end-user (or household) level as highlighted in the recent General Household Survey published by Statistics South Africa.

Sentech raised a concern about the Authority's failure to undertake an analysis of the portion of television viewers who may not afford the cost of switching to satellite from terrestrial. In addition, Sentech argued that the Authority did not consider the subsidised set-top boxes provided to eligible households.

Sentech also stated that the Authority did not consider the Evolved Multimedia Broadcast & Multicast Service technology, which will enable Sentech to provide audio-visual content to mobile devices without data costs.

Sentech agreed with the proposal to exclude analogue transmission services and to analyse managed transmission services and facilities separately.

4.3.1.2.eMedia

eMedia submits that analogue is still an important platform for access to television in rural areas due to the delay in digital migration. Further, eMedia argued that the Authority should not consider the Internet services as they do not fall within the scope of this Inquiry. eMedia stated that the Internet services as well as satellite services will never replace or are not substitutes for the terrestrial signal distribution services provided by Sentech. eMedia argued that the cost of accessing television via satellite or Internet-based services are high and may therefore result in a significant number of viewers not being able to access television.

eMedia disagree with the Authority's view that it is not necessary to analyse the analogue transmission services given the impending analogue switch-off date

4.3.1.3.Primedia

No comment by Primedia. [26]

[26] Primedia's response to the Supplementary Discussion Document, paragraph 2.1.1, page 2

4.3.2. The Authority's Response

Contrary to Sentech's view, the Authority did consider as part of the wholesale television market definition the direct constraints at the wholesale level and indirect constraints at the retail level in the Supplementary Discussion Document. For the reasons already provided in the Supplementary Discussion Document, the Authority found that the Internet and satellite are not considered to be effective substitutes for terrestrial signal distribution services. The use of multi-distribution strategies by retail broadcasters is not an indication or sufficient evidence that broadcasters have the ability to switch from DTT to a different platform like the Internet and or satellite. This is particularly as all participants agreed that the channels were complementary and there was still a role for terrestrial in the near future. The Authority is of the considered view that broadcasters are unlikely to switch-off (let alone withdraw) or forcefully migrate their customers from terrestrial to either the Internet and/or satellite without incurring financial losses in the form of lost advertising revenue given that a significant portion of the population still rely on terrestrial to watch television, and importantly given the broadcasters (such as eMedia and the SABC) licence coverage obligations and the likely socio-political repercussions.

As indicated above, retail broadcasters use the Internet and satellite as a complement rather than a substitute for terrestrial as they attempt to reach the broadest audience possible. It should also be noted that a complete withdrawal from terrestrial by retail broadcasters is not practical given the licence requirements and switching costs. As noted in the Supplementary Discussion Document, all customers that have been provided a set-top box under digital migration would only be able to shift away from DTT if they had a subsidised satellite installation as well. This amounts to around 1.5 million households that have registered[27] and a total of 3.75 million eligible. As such, to argue that the Internet and satellite are part of the same market is not correct as broadcasters would not be able to switch to alternatives if terrestrial signal distribution prices increased. Furthermore, they would still need to provide the services regardless to ensure that households are served and given broadcasters' licence obligations. It is particularly notable that SABC has submitted it would save considerable sums of money if it migrated to satellite, but that this is not possible in terms of its licence requirements. This is not consistent with a single market in which switching in response to price increases is possible.

The Authority maintains its position that terrestrial signal distribution is not in the same market as distribution via satellite and the Internet.

[27] Mzekendaba, S, Government Subsidised STB Installations Hit Milestone, ITWeb, 3 July 2021, available at https://www.itweb.co.za/article/government-subsidised-stb-installations-hit-milestone/DZQ58vV8Qb3MzXy2

Regarding eMedia's argument for the Authority to consider analogue broadcasting services despite the ASO date of 31 December 2024, the Authority would like to reiterate its position that it is not necessary to define the market for analogue terrestrial television services given that the service is not likely to exist post the planned switch off date of 31 December 2024 set by the Minister of the Department of Communications and Digital Technologies.[28] However, it should be noted that even if analogue broadcasting services were available after 31 December 2024, the Authority's conclusion is unlikely to change as Sentech would still be the sole provider of the analogue and digital terrestrial broadcasting services.

4.4. Wholesale Television Geographic Market Definition

4.4.1. Submission Received

4.4.1.1.Sentech

Sentech states that its tariff is uniform across the country and that each site does not comprise a separate market. Sentech therefore disagrees with the Authority's views that each DTT site comprises a separate market. Sentech notes that in a provincial single-frequency network, broadcasters in a shared multiplex cannot have different transmitter sites. Sentech also argues that on the geographic market definition, 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).

4.4.1.2.eMedia

eMedia agrees with the Authority's view that the market is national in scope given that DTT sites are subject to homogenous competitive constraints. However, eMedia highlighted that each of the seven DTT MUX makes use of a single frequency network in a province, which forces licensed community television broadcasters to expand coverage more than is necessary resulting in high signal distribution costs to community television broadcasters.

4.4.1.3.Radio Pulpit

No comment by Radio Pulpit. [29]

[28] Please refer to Broadcasting Digital Migration Policy: Announcement of date for Final Switch-off of the Analogue Signal and the End of Dual Illumination published in the Government *Gazette* No. 48793 (Notice No. 3554)
[29] Radio Pulpit's response to the Supplementary Discussion Document, page 1

4.4.1.4.Primedia

No comment by Primedia.[30]

4.4.2. The Authority's Response

The Authority notes that even though technically, each site could be regarded as a separate market, and for DTT, the geographic market is at the minimum provincial given that there is a single provincial frequency network. As a result, it is appropriate to group all sites together given that they are subject to homogenous competitive constraints at present. The Authority therefore considers that the geographic market for the provision of terrestrial television signal distribution services is national in scope.

Given the above product and geographic market definition analysis, the Authority revised the wholesale market for television as follows:

- Terrestrial signal distribution for the audio-visual services market, which is the market for the provision of wholesale terrestrial signal distribution for audio-visual services within the Republic of South Africa.

4.5. Wholesale Radio Services Product Market Definition

4.5.1. Submissions Received

4.5.1.1.Sentech

Sentech raised a concern that the Authority did not consider alternative modes of distribution, such as the Internet and the imminent rollout of radio broadcasting. Sentech reiterated its concern that the Authority did not analyse whether the increased cost to the retail broadcaster as a result of a 5-10% increase in signal distribution costs would result in the switch to alternative modes of delivery, either wholly or partially.

Sentech agrees with the Authority that FM and AM should be considered as a single market.

Sentech disagrees with Primedia's view that it has a monopoly over backbone signal distribution network as it leases the backbone infrastructure from other telecommunications operators.

[30] Primedia's response to the Supplementary Discussion Document, paragraph 2.1.1, page 2

Sentech indicated that the concern raised regarding historical cost advantages should be understood in the context of it being a common carrier as well as the universal access obligations. Further, Sentech stated that the Facilities Leasing Regulations address this concern.

4.5.1.2.eMedia

eMedia agrees with the Authority that Sentech has a monopoly over the provision of wholesale terrestrial services. Further, eMedia stated that the Internet or IP-based technologies do not compete effectively with terrestrial radio services.

eMedia stated that the use of analogue FM is dominant or pervasive due to good audio quality, portability and inexpensive or free FM-enabled devices compared to AM.

4.5.1.3.Radio Pulpit

Radio Pulpit notes that the Authority has acknowledged the technical difference between AM and FM. However, Radio Pulpit disagreed with the Authority's position that it aggregates the market for AM and FM because the competitive dynamics are similar. Radio Pulpit provided reasons detailing the technical and competitive differences between AM and FM and requested that the Authority reconsider its position on its position regarding AM and FM competition dynamics.[31]

Radio Pulpit disagrees with the Authority's view that FM and AM radio are in the same market due to the following differences:

- Technical requirements.
- High environment impact assessment on AM radio.
- Poor sound quality on AM radio.
- Consumer bias towards FM radio.

Radio Pulpit raised a concern that despite the abovementioned challenge the Authority has not allocated FM frequency to AM licensees as an alternative. During the hearings, Radio Pulpit stated that the move to FM will provide a temporary financial relief due to the high cost of AM technology.

During the public hearings, Radio Pulpit further indicated that Sentech may switch off MW given that the technology is being phased out.

[31] Radio Pulpit's response to the Supplementary Discussion Document, page 2

4.5.1.4. Primedia

During the public hearings, Primedia stated that there is no scope for negotiation on tariffs and service levels with Sentech. Further, Primedia raised a concern about the financial sustainability of community broadcasters due to the high cost of signal distribution.

4.5.2. The Authority's Response

Similar to the television market, the Authority considered the Internet and satellite as potential substitutes to analogue terrestrial signal distribution radio services at the wholesale level and indirect constraints at the retail level. The Authority found that a hypothetical monopoly provider of terrestrial analogue and DTT FM radio services is unlikely to be constrained by retail radio broadcasters given that many radio customers use analogue FM radio. The Authority does not expect digital radio to replace analogue radio during the period under review for the reasons stated in the Supplementary Discussion Document.

The Authority notes the technical differences and competition dynamics between FM analogue and AM analogue (and possibly DAB digital radio) as highlighted by Radio Pulpit and eMedia. There are therefore two markets in the provision of wholesale terrestrial radio services, namely (i) Wholesale Market for the Provision of Terrestrial Radio FM Services and (ii) Wholesale Market for the Provision of Terrestrial Radio AM Services.

4.6. Wholesale Radio Services Geographic Market Definition

4.6.1. Submissions Received

4.6.1.1. Sentech

Whilst Sentech largely agrees with the Authority's views on the geographic market definition of wholesale radio services, it stated that this should be assessed in line with the licence requirements of radio broadcasters. However, Sentech highlighted that consumers of radio can access radio services outside of the geographic scope of licensees through the Internet.

Sentech reiterated its view that digital audio broadcasting is not relevant as it was not provided in South Africa.

Sentech stated that that managed transmission services are shared regardless of the category of broadcaster, provincial and district municipality/local municipal scope. Also, Sentech stated that there are several sites where different broadcasters have the same or similar levels of transmitter power.

4.6.1.2. eMedia

eMedia is of the view that even if self-provision and site sharing were feasible, Sentech's pricing is likely to render them infeasible.

4.6.1.3. Radio Pulpit

Radio Pulpit is of the view that the Authority has ignored that community sound broadcasters on AM are not able to self-provide and that self-provision of radio stations with a localised reach is only occurring on FM.

4.6.1.4. Primedia

No comment by Primedia.

4.6.2. The Authority's Response

The Authority is still of the view that the geographic scope of wholesale services market is related to the radio broadcasters' area of coverage in line with the license requirements. The Authority notes that while self-supply is an option for certain localised coverage, this only applies to FM and not necessarily to the AM. However, in response to questioning during the hearings, Sentech indicated that self-provision by AM broadcasters is feasible as it was aware of self-providing AM broadcasters.

Given the above product and geographic market definition analysis, the Authority revised the wholesale markets for radio as follows:

- Terrestrial signal distribution for Frequency Modulation ("FM") radio services market – the market for the provision of wholesale terrestrial signal distribution for radio services within the Republic of South Africa.
- Terrestrial signal distribution for Amplitude Modulation ("AM") radio services market – the market for the provision of wholesale terrestrial signal distribution for AM radio services within the Republic of South Africa.

4.7. Effectiveness of Competition

4.7.1. Submission received

4.7.1.1.Sentech

Sentech disagreed with the Authority's view about the lack of competition in the market for the provision of wholesale television distribution services. Sentech raised a concern that the Authority did not take into consideration alternative modes of distribution of television services available to retail broadcasters beyond DTT such as the Internet and satellite services. Therefore, Sentech argued that it does not have market power and the ability to behave in an anti-competitive manner.

From a wholesale radio distribution services perspective, Sentech agrees with the Authority that it has market power. However, Sentech argued that this does not necessarily translate into an ineffectively competitive market. Sentech highlighted that the market is competitive as community/regional radio broadcasters self-provide their broadcasting capacity and other radio broadcasters are large public and commercial broadcasters that are able to negotiate reasonable tariffs in a manner that competitively constrain Sentech from acting in an anti-competitive manner.

Sentech stated that as a natural monopoly with universal access obligation it is subjected to heavy regulations and charges cost-based tariffs that are reasonable and ensure its future financial sustainability.

Sentech disagreed with Primedia that it is unable to provide multi-channel television sound broadcasting because of Sentech's ownership of its high sites. Sentech stated that Primedia can approach it in terms of the Facilities Leasing Regulations for infrastructure sharing/facilities leasing once the Authority had issued an invitation to apply in terms of the DSB Regulations.

Sentech disagreed with the SABC that its unwillingness to negotiate a penalty clause is an indicator of market power. Sentech argued that it uses a cost-based tariff methodology, which ensures its financial sustainability and fulfils its universal access mandate. Sentech also disagrees with eMedia's submission that retail broadcasters do not have countervailing power.

Sentech further argues that they are currently not profitable and that the Competition Commission had found that its tariffs are not excessive in the case lodged against Sentech by the SABC. In terms of market dynamics, Sentech does agree that it is unlikely that its infrastructure can be replicated. However, it highlighted the competition constraint imposed by the Internet and satellite.

From the current competition perspective regarding the provision of wholesale television distribution services, Sentech reiterated its view that there are alternative delivery modes such as the Internet and satellite, which can be substituted for DTT network. In terms of wholesale radio distribution services, Sentech stated that there are also alternative modes of delivery such as the internet and that community radio stations can and do provide their own distribution without the need for Sentech. Sentech argued that self-provision by retail radio broadcasters constrain Sentech from engaging in an anti-competitive manner. In addition, Sentech argued that the remaining retail radio broadcasters (i.e., the SABC and Primedia) who contribute a significant portion of the revenue that Sentech derives from wholesale radio distribution services have considerable countervailing power.

From a potential competition perspective, Sentech agrees with the Authority that it is unlikely that another firm will be able to replicate Sentech's infrastructure due to the natural monopoly nature of its infrastructure. Sentech argued that it is adequately regulated and that there are alternative delivery modes (i.e., internet and satellite) for television distribution. In terms of radio services, Sentech argued that community radio stations self-provide and other retail radio broadcasters who hold I-ECNS licensees can also self-provide in terms of the Facilities Leasing Regulations.

Sentech argued that retail television and radio broadcasters have considerable bargaining power. Sentech reiterated its view that retail television broadcasters have the ability to switch or threaten to switch from Sentech's terrestrial network to satellite and the Internet. Sentech also stated that community radio stations self-provide whilst the other radio broadcasters have the ability to influence the tariffs charged by Sentech due to their size.

Whilst Sentech agrees with the Authority that entry on a national scale is unlikely to occur, it argued that the Authority failed to take into consideration technological developments and innovation such at satellite, OTT providers, DSB Regulations, muti-channel distributors, etc. in the markets for the provision of television and radio distribution services.

4.7.1.2.eMedia

eMedia stated that nothing has changed about the Authority's previous finding regarding the ineffectiveness of competition in the market for signal distribution services. Further, eMedia stated that Sentech is the only supplier that has 100% of the market and that they are unable to negotiate a better pricing structure. eMedia further argue that there is no competition and that Sentech engages in anti-competitive behaviour due to:

- Uneven bargaining position between Sentech and its customers.
- eMedia's inability to negotiate realistic and affordable signal distribution pricing structure with Sentech.
- Sentech determines pricing in a non-transparent manner due to its significant market power.

eMedia stated that there are no means of replicating Sentech's sites and that even facilities leasing is not a viable option due to the high cost of rolling out new infrastructure. eMedia stated that they are unable to self-provide and that it would take a substantial amount of time for a new competitor to enter the market. Further, eMedia stated that a new competitor would need to co-locate on Sentech sites. Thus, they do not believe that there is any potential competition. They also state that there is no countervailing power or alternatives. eMedia notes that the market is prone to monopoly.

4.7.1.3.Radio Pulpit

No comment by Radio Pulpit.

4.7.1.4.Primedia

No comment by Primedia.[32]

4.7.2. The Authority's Response

The Authority reiterates its view that there is ineffective competition in the market for terrestrial signal distribution based on relative market shares, a lack of actual or potential competitors, control of essential facilities, a lack of countervailing power, economies of scale and scope and barriers to entry.

While arguments have been made that there is competition if the market is defined as one that encompasses satellite and the Internet, as shown in the market definition section, the Authority is of the view that this is suitable and the Internet and satellite services are not effective substitutes that constrain, but rather are complements.

The Authority has not been presented with evidence that the Internet and satellite are indirectly constraining terrestrial signal distribution services at retail level. As discussed previously, Sentech's customers currently make use of internet, satellite and terrestrial. However, despite this they have

[32] Primedia's response to the Supplementary Discussion Document, paragraph 2.1.1, page 2

all chosen to continue with provision on terrestrial despite concerns over both price and quality due to the fact that it reaches a significant portion of their customer base and is required by their licence conditions. As such, including the internet and satellite providers as alternative is not appropriate. The conclusions on barriers to entry, a lack of countervailing power and a lack of suitable alternatives therefore still hold.

It should be noted that a significant portion of the population still rely on DTT and analogue radio due to the high cost of the Internet and the cost associated with satellite (i.e., once-off cost of satellite and set-top box as well as insurance) as agreed by Sentech during the public hearings. The Authority cannot, therefore, rely on the Internet and satellite to provide a constraint on Sentech's significant market power in the provision of wholesale terrestrial services.

As already noted in the Supplementary Discussion Document, it is unlikely that any retail broadcaster or new entrant will be able to replicate the coverage of Sentech's national network. While the Authority recognises the entry of alternative suppliers albeit with limited coverage, such as BluLemon (Pty) Ltd, this is unlikely to drive effective competition.

The Authority does not agree with Sentech's view that large public and commercial broadcasters have bargaining strength relative to it. Buyer power can only occur in an environment where large retail broadcasters are able to obtain similar services from alternative suppliers, self-provide and or switch to appropriate substitutes. Whilst self-provision by large broadcasters may be feasible under certain conditions, this is unlikely to be an attractive option in a mature market and would also require extensive network build as well as access to high sites, which are already occupied by Sentech. Further, Sentech is the sole supplier of national terrestrial signal distribution services and therefore retail broadcasters have no choice, but to purchase the service from Sentech. Written submissions as well as responses during the public hearings indicate that there is limited bargaining power from broadcasters and that broadcasters such as eMedia are still utilising the initial contract with inflationary price increases.

Although the Authority acknowledges that retail broadcasters can use the Facilities Leasing Regulations for the purposes of infrastructure sharing/ facilities leasing, the Authority is of the view that this imposes a limited constraint on Sentech given that currently the Authority does not regulate the cost of infrastructure sharing/ facilities leasing and the fact that customers have submitted that they do not have the experience and staff complement to engage in self-provision and would be hesitant to do so given Sentech's control of pricing.

In light of the above, the Authority sees no need to change its initial position that the relevant wholesale markets would not be characterised by a structure which shows signs of moving towards an effective competition to the benefit of retail consumers.

4.8. Significant Market Power

4.8.1. Submission received

4.8.1.1.Sentech

Sentech states that even if it had SMP this does not necessarily mean that it engages in anti-competitive behaviour. However, it states that it would not have SMP in wholesale television broadcasting if the market encompassed satellite and IP-based technologies. Sentech agrees that it has SMP in wholesale radio broadcasting but does not agree with the Authority's view that the market is uncompetitive given the constraint posed by broadcasters' ability to self-provide.

Sentech disagrees with the Authority's view that it has a 100% market share for the wholesale provision of radio broadcasting services on a national or regional level as the Authority did not take into consideration the alternative distribution modes in its analysis.

4.8.1.2.eMedia

eMedia reiterated its view that Sentech has SMP given that it owns, manages, and controls all the essential high transmitter site facilities, which enables Sentech to engage in anti-competitive pricing to the detriment of broadcasters.

4.8.1.3.Radio Pulpit

No comment by Radio Pulpit.[33]

4.8.1.4.Primedia

No comment by Primedia. [34]

[33] Radio Pulpit's response to the Supplementary Discussion Document, page 1

[34] Primedia's response to the Supplementary Discussion Document, paragraph 2.1.1, page 2

4.8.2. The Authority's Response

The Authority is of the view that Sentech has a very high market share of the market for terrestrial broadcasting signal distribution for television and radio on both FM and AM. From the radio perspective, the Authority considered all potential alternative distribution modes under the market definition section and didn't find any effective substitute for terrestrial signal distribution. Sentech also has control of essential facilities for signal distribution (such as broadcasting masts, which cannot be feasibly duplicated). Therefore, the Authority declares that Sentech has SMP given its dominance in the provision of wholesale services for terrestrial television and radio broadcasting transmission services as well as control of essential facilities. It should however be noted that Sentech is not vertically integrated. The Authority notes that a declaration of SMP does not mean that Sentech has engaged in anti-competitive behaviour but that it has the ability to and as such pro-competitive remedies are required in line with ex-ante regulatory practice (as opposed to ex-post regulation, which would prosecute anti-competitive behaviour under the Competition Act).

5. The Authority's Findings

After taking into consideration all the representations made to the Inquiry, the Authority's finding is that Sentech has significant market power and that there is ineffective competition in the following markets.:

5.1 Market for the provision of terrestrial signal distribution services for television,
5.2 Market for the provision of terrestrial signal distribution services for FM radio; and
5.3 Market for the provision of terrestrial signal distribution services for AM radio.

The market failure is due to the fact that the market has high sunk costs and barriers to entry, which gives the industry the characteristics of a natural monopoly and makes entry unlikely. This results in only one operator with a lack of competition to constrain pricing and incentivise higher levels of quality as would occur in a competitive market where broadcasters would have the option of switching or negotiating a better contract.

Given the various concerns raised relating to pricing and quality of service, the Authority finds that Sentech should be subject to various conditions aimed at incentivising the behaviour that would naturally occur in a competitive market.

The Authority is of the considered view that improving transparency and the ability to monitor the market are necessary. The Authority believes that transparent information and contracting will

incentivise behaviour that better mimics a competitive market. To this end, the Authority will embark on a consultation process to develop pro-competitive regulations to address the market failure.

6. The Next Steps

Following the publication of this document, the Authority will commence a public consultation process to develop pro-competitive regulations to address the market failure in terms of section 67(4) read with section 4 of the ECA.

The process to develop regulations will, at minimum, include the following phases:

- Phase 1 – Publication of the draft regulations for 30 working days for public comment.
- Phase 2 – Public hearings on the draft regulations, if necessary.
- Phase 3 – Publication of final regulations.

In addition to the above, but prior to the publication of the final regulations, the Authority may hold one-on-one meetings with the relevant stakeholders or an industry workshop as part of the consultation process before finalising the regulations.

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