# Government Gazette
# Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 719 8 May Mei 2025 No. 52622

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes

ISSN 1682-5845

9 771682 584003 52622

AIDS HELPLINE: 0800-0123-22 Prevention is the cure

**IMPORTANT NOTICE:**

**THE GOVERNMENT PRINTING WORKS WILL NOT BE HELD RESPONSIBLE FOR ANY ERRORS THAT MIGHT OCCUR DUE TO THE SUBMISSION OF INCOMPLETE / INCORRECT / ILLEGIBLE COPY.**

**NO FUTURE QUERIES WILL BE HANDLED IN CONNECTION WITH THE ABOVE.**

## Contents

| No. | | Gazette No. | Page No. |
|---|---|---|---|
| GENERAL NOTICES • ALGEMENE KENNISGEWINGS | | | |
| **Independent Communications Authority of South Africa / Onafhanklike Kommunikasie-owerheid van Suid-Afrika** | | | |
| 3185 | Electronic Communications Act, 2005 (Act No. 36 of 2005): Draft Signal Distribution Services Regulations, 2025 | 52622 | 3 |

# GENERAL NOTICES • ALGEMENE KENNISGEWINGS

## INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

## NOTICE 3185 OF 2025

**Independent Communications Authority of South Africa**
350 Witch-Hazel Avenue, Eco Point Office Park
Eco Park, Centurion
Private Bag X10, Highveld Park 0169
Telephone number: (012) 568 3000/1

## DRAFT SIGNAL DISTRIBUTION SERVICES REGULATIONS, 2025

1. The Independent Communications Authority of South Africa (the "Authority") hereby publishes the Draft Signal Distribution Services Regulations, 2025 ("the draft Regulations"), in terms of section 4 read with section 67(4) of the Electronic Communications Act, 2005 (Act No. 36 of 2005).

2. A copy of the draft Regulations will be made available on the Authority's website at http://www.icasa.org.za, or can be sent via email upon request by interested persons.

3. The Authority hereby invites interested persons to make written representations on the draft Regulations within thirty (30) working days from the date of publication, by e-mail to signaldistribution@icasa.org.za (in Microsoft Word or PDF), and marked specifically for the attention of:

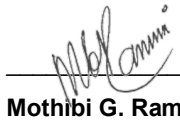
   **Chairperson: Signal Distribution Council Committee**
   **Independent Communications Authority of South Africa**
   **350 Witch- Hazel Avenue**
   **Centurion**
   **0157**

4. Non-confidential versions of written representations received by the Authority pursuant to this notice will be made available on the Authority's website and by inspection at the Authority's library at the following address:

   **Independent Communications Authority of South Africa**
   **Block C, 350 Witch-Hazel Avenue**
   **Centurion**
   **0157**

5. Stakeholders may request confidentiality, in terms of section 4D of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), on any information submitted to the Authority. Such request for confidentiality must be accompanied by a confidential and non-confidential version of the stakeholder's submission. The Authority hereby refers stakeholders to the Guidelines for Confidentiality Request, published on 17 August 2018 in Gazette No. 41839, in order to assist stakeholders when applying for confidentiality.

6. Persons submitting written representations are further invited to indicate, as part of their submissions, whether they require an opportunity to make oral representations on the draft Regulations, should the Authority elect to hold public hearings.



**Mothibi G. Ramusi**
**ICASA Chairperson**
**Date: 24/04/2025**



This gazette is also available free online at **www.gpwonline.co.za**

The Independent Communications Authority of South Africa has, under section of section 4 read with section 67(4) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), made the regulations in the Schedule.

**SCHEDULE**

**1. DEFINITIONS**

In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned, and the following words and expressions shall have the meaning set out below:

**"Act"** means the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended;

**"Reference Offer"** or **"RO"** means a document setting out the standard terms and conditions for terrestrial signal distribution broadcasting services agreements;

**"Sentech"** means Sentech SOC Limited, a State-Owned Enterprise responsible for providing broadcasting signal distribution services as a common carrier to broadcasting service licensees;

**"Significant Market Power" or "SMP"** means significant market power as defined in section 67(5) of the Act;

**"Terrestrial signal distribution television broadcasting services"** means a wholesale terrestrial signal distribution audio-visual service provided by Sentech to a broadcasting service licensee in the Republic;

**"Terrestrial signal distribution FM sound broadcasting services"** means a wholesale terrestrial signal distribution FM sound broadcasting service provided by Sentech to a broadcasting service licensee in the Republic;

**"Terrestrial signal distribution AM sound broadcasting services"** means a wholesale terrestrial signal distribution AM sound broadcasting service provided by Sentech to a broadcasting service licensee in the Republic;



This gazette is also available free online at **www.gpwonline.co.za**

## 2. PURPOSE OF THE REGULATIONS

The purpose of these Regulations is to:

(a) define the relevant wholesale markets for the provision of terrestrial signal distribution services;
(b) determine whether there is effective competition in the defined markets;
(c) determine which, if any, licensees have significant market power in those markets where there is ineffective competition;
(d) determine whether there is any market failure;
(e) impose appropriate pro-competitive licence conditions on licensees with significant market power to remedy the market failure;
(f) set out a schedule in terms of which the Authority will undertake periodic review of the markets, taking into account regulation (8) and the determination in respect of the effectiveness of competition and application of pro-competitive measures in those markets; and
(g) provide for monitoring and investigation of anti-competitive behaviour in the defined markets.

## 3. MARKET DEFINITION

Markets are categorised according to the type of service provided and are defined as follows:

(a) Terrestrial signal distribution for television broadcasting services market – the market for the provision of wholesale terrestrial signal distribution television broadcasting services within the Republic.
(b) Terrestrial signal distribution for FM sound broadcasting services market – the market for the provision of wholesale terrestrial signal distribution FM sound broadcasting services within the Republic.
(c) Terrestrial signal distribution for AM sound broadcasting services market – the market for the provision of wholesale terrestrial signal distribution AM sound broadcasting services within the Republic.

## 4. METHODOLOGY

In determining the effectiveness of competition in the markets defined in regulation 3 above, the Authority applied the following methodology:

(a) the identification of relevant markets and their definition according to the principles of the Hypothetical Monopolist Test, taking into account the non-transitory (structural, legal, or



This gazette is also available free online at www.gpwonline.co.za

regulatory) entry barriers to the relevant markets and the dynamic character and functioning of the relevant markets;

(b) the assessment of licensees' market shares in the relevant markets; and

(c) the assessment on a forward-looking basis of the level of competition and market power in the relevant markets.

**5. EFFECTIVENESS OF COMPETITION**

Pursuant to regulation 4, the Authority has determined that competition in the terrestrial signal distribution for television broadcasting services market, the terrestrial signal distribution for the FM sound broadcasting services market and the terrestrial signal distribution for the AM sound broadcasting services market as defined in regulation 3, are ineffectively competitive.

**6. SIGNIFICANT MARKET POWER**

The Authority has determined that Sentech is dominant in the following markets:

(a) Terrestrial signal distribution for the television broadcasting services market.

(b) Terrestrial signal distribution for the FM sound broadcasting services market.

(c) Terrestrial signal distribution for AM sound broadcasting services market.

**7. MARKET FAILURE**

The Authority has determined that the following market failures exist:

(a) Natural Monopoly: Barriers to entry (such as high sunk costs of infrastructure) limit potential entry and therefore, competition on price and quality of service. With a near-monopoly provider, prices and quality of service are unlikely to be maintained at a competitive level without regulatory intervention.

(b) Lack of transparency: Broadcasting service licensees are unable to obtain sufficient information on whether the prices and the quality provided bear relation to a competitive environment.



This gazette is also available free online at **www.gpwonline.co.za**

## 8. PRO-COMPETITIVE TERMS AND CONDITIONS

To address the market failures identified in regulation 7 above, Sentech must comply with the following pro-competitive terms and conditions:

(a) Ensure that all tariffs for terrestrial signal distribution services are reasonably derived from the costs of provision, allowing for:
  (i) the recovery of direct costs;
  (ii) an appropriate share of common costs related to the product;
  (iii) a return on capital employed that is commensurate with the risk taken; and
  (iv) costs related to other services and products provided by the SMP operator (such as satellite) should not be included in the cost base for the determination of terrestrial signal distribution tariffs.

(b) Submit a Reference Offer ("RO") in relation to network access and provision of terrestrial signal distribution services for approval by the Authority. The RO must include at least the following:
  (i) Definitions and interpretations;
  (ii) Terms and conditions;
  (iii) Customer obligations and restrictions;
  (iv) Clear description of services to be provided;
  (v) Schedule of the relevant charges, terms of payment and billing procedures;
  (vi) Measurable quality of service and service level guarantees;
  (vii) Dispute resolution procedures; and
  (viii) Any other legal and procedural issues.

(c) Publish the approved RO on its website within fourteen (14) days from the date of receipt of the approval.

## 9. MONITORING AND INVESTIGATION

(1) Upon request by the Authority Sentech must submit detailed information and assumptions supporting the tariffs, including but not limited to:

(a) the methodology used for the allocation of direct and shared costs to different services,

(b) the methodology used for valuing assets (for example, historical cost or replacement cost),

(c) any assumptions regarding the return on investment,

(d) any cross-subsidisation necessary for Sentech to fulfil its role as a common carrier and to provide for universal services obligations should be explicit and,

(e) sources of data.



This gazette is also available free online at **www.gpwonline.co.za**

(2) A pricing remedy will be imposed if the information submitted, in terms of sub-regulation 1, shows that prices are higher than costs without a justifiable reason.

**10. SCHEDULE FOR REVIEW OF MARKETS**

The Authority, when it deems it necessary but not later than three (3) years from the publication of these Regulations, will review:

(a) the markets for signal distribution services, to which these Regulations apply;
(b) the effectiveness of competition; and
(c) the application of pro-competitive terms and conditions in those markets.

**11. CONTRAVENTIONS AND PENALTIES**

The contravention of regulations 8 of these Regulations is subject to a fine not exceeding five million Rand (R5 000 000.00).

**12. SHORT TITLE AND COMMENCEMENT**

These Regulations are called the "Signal Distribution Services Regulations, 2025" and will come into force upon publication in the Government Gazette.



This gazette is also available free online at **www.gpwonline.co.za**

## EXPLANATORY MEMORANDUM

## DRAFT SIGNAL DISTRIBUTION SERVICES REGULATIONS, 2025

After considering written submissions on the Supplementary Discussion Document and the public presentations, the Authority found that Sentech has significant market power and that there is ineffective competition in the markets for the provision of terrestrial signal distribution services for television and radio.

The Authority is of the view that pro-competitive terms and conditions are relevant given that the Electronic Communications Act, 2005 (No. 36 of 2005, as amended, ("ECA") requires the Authority to impose *ex-ante* regulations where there is no effective competition as section 67(4) of the ECA states:

"*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.*"

In developing the pro-competitive remedies, the Authority considered Sentech's role as a common carrier and its ability to maintain its universal service obligations.

The market failure that is to be remedied is the lack of competition due to the market having high sunk costs and barriers to entry, which gives the industry the characteristics of a natural monopoly and makes new 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 monitoring it and incentivising the behaviour that would naturally occur in a competitive market.

Sentech has submitted to the Authority that its pricing is cost-based. In its response to the Supplementary Discussion Document Sentech states: "*To serve this public interest mandate and to allow for universal access, SENTECH has used a cost-based tariff methodology to ensure that*



This gazette is also available free online at **www.gpwonline.co.za**

*customers are charged a fair price while still allowing SENTECH to be a financially sustainable company."*

The Authority agrees that cost-based pricing is a suitable methodology to balance fair pricing for customers and financial sustainability by Sentech. As such, this will be formalised in the regulations.

The Authority is of the considered view that improving transparency and the ability to properly monitor the market are necessary to ensure that market failures are addressed. The Authority believes that transparent information and contracting will incentivise behaviour that better mimics a competitive market.

Effective monitoring requires that the Authority has access to suitable information. This includes sufficient information on the methodology utilised, assumptions made, underlying data sources and allocation methods.

Given the above, the Authority has designed a monitoring remedy to be able to fully monitor and engage with Sentech's cost-based tariff methodology. As such, regulation (2)(a) provides a directive that tariffs will be reasonably derived from costs. However, to ensure that Sentech is able to remain sustainable and fulfil its universal service mandate it specifies that it should allow for a recovery of direct costs, an appropriate share of common costs, a return on capital employed.

In an entity such as Sentech, there are various products and services provided. Furthermore, some are in more competitive segments (such as satellite) while others such as signal distribution are segments in which there is only one operator. As such, it is important to ensure that any cross-subsidisation across segments is explicit and that pricing is only reflective of the costs of signal distribution. As such, the regulations also require that costs related to other products and services are not included in the cost base.

Regulation 9 lists in more detail, information that the Authority requires in order to facilitate effective monitoring. The information requirement should be seen in the context of incentivising lower prices in line with what would occur in a competitive market where broadcasters have the option to switch to an alternative provider.

In addition to the information requirement, Sentech is required to publish, after approval by the Authority, a Reference Offer . The Reference Offer will serve two purposes. Firstly, to ensure that there is transparency on the costs and terms of different services. Secondly, to incentivise Sentech to provide a good quality of service. This is because, in a competitive market, broadcasters have the option of moving their services to a competitor if their quality of service is poor. However, due



This gazette is also available free online at **www.gpwonline.co.za**

to the high barriers to entry and sunk costs in this market that competitive constraint does not, and likely will not, exist. Providing transparency of quality of service indicators therefore replicates the constraints that competition would have provided.



This gazette is also available free online at www.gpwonline.co.za

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065

This gazette is also available free online at **www.gpwonline.co.za**