

Highlights of the Commission's work on Communications & Digital Technologies

Presentation by Commissioner Doris Tshepe
11 February 2025

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Overview



Introduction

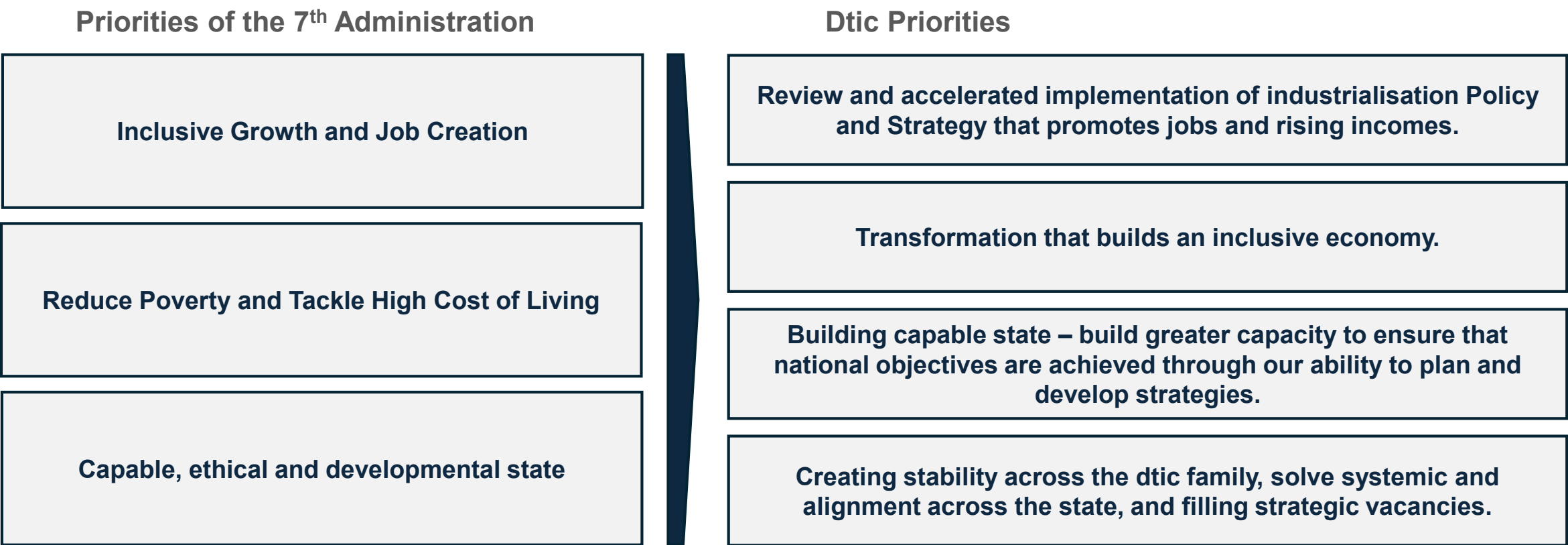
- The purpose of the Competition Act is to;
 - promote an efficient economy with competitive prices for consumers and participation in global markets,
 - promote employment and the economic welfare of all South Africans, in particular SMEs and HDPs that were excluded from the economy.

Introduction (Cont.)

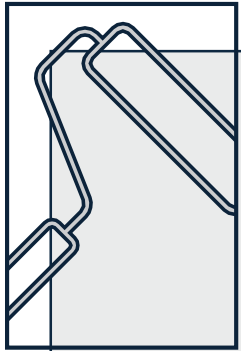
- The Competition Commission (Commission) is empowered to investigate and evaluate restrictive business practices (amongst other roles) in order to achieve an efficient and competitive economic environment, balancing the interest of workers, owners, and consumers, and focused development for all South Africans.
- This recognises that the economy we inherited is concentrated, which creates both a competition and an exclusion issue.
- Addressing exclusion is not only about addressing inequality, it is also about removing barriers to new businesses that can contribute to growth, employment and a more competitive economy.

Aligning with the Priorities of the 7th Administration

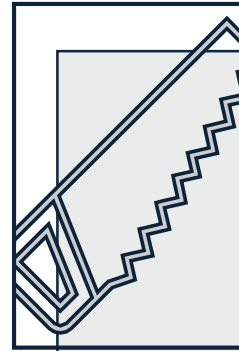
- The Commission is pursuing its Strategic Outcomes to respond to the priorities of the 7th Administration and the priorities of the Department of Trade Industry and Competition (dtic) as outlined below:



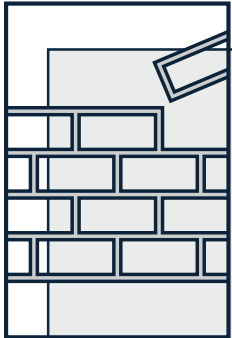
Toolbox of the Commission



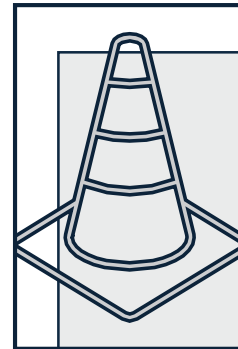
Market Inquiries



Conduct



Merger Regulation



Advocacy

Market Inquiries



Data Services Market Inquiry (2019)



Introduction to Market Inquiries - 1

- Market Inquiries are a pro-competitive and proactive tool designed to address any market feature that adversely affects competition in a market, including the market structure, outcomes or conduct of participants, suppliers, customers.
- The scope of an Inquiry is determined by the Terms of Reference.
- A market inquiry has powers to summons information and to hold public hearings enabling evidence-based findings.

Introduction to Market Inquiries - 2

- Since the 2019 Amendments, the Commission can impose binding remedies on market participants whereas previously it could only make recommendations.
- Remedies are subject to the right of appeal.
- The Commission can only make recommendations to government and not impose binding remedies.

Scope

- The DSMI was initiated following persistent concerns about the high level of data prices and the importance of data affordability for the South African economy and consumers.
- The DSMI was concluded in December 2019.

Findings - 1

- The DSMI found that:
 - mobile data prices were excessively high and anti-poor in structure;
 - whilst Openserve wholesale fibre prices were high.

Findings - 2

- More specifically the findings included:
 - High mobile data prices were primarily the result of inadequate mobile competition and excessive profitability of the two leading networks, typically far higher than other countries in which they operate.
 - The two leading networks have resilient market power because first-mover advantages enables a coverage and network quality advantage that limits the role of price competition, and challengers rely on wholesale roaming and facilities access at unregulated and inflated prices, inflating challenger costs.

Findings - 3

- Price structures are anti-poor with much higher R/GB costs for prepaid, particularly smaller bundles.
- Spectrum at the time was a constraint that raised costs, but providing spectrum would not reduce prices given the inadequate price competition.
- Fibre and public WiFi provide alternatives and impose competitive pressure on mobile data prices as users can offload but municipal wayleaves can inhibit last-mile rollout and there is limited free public WiFi available.

Remedies - 1

- Immediate relief on data prices.
- The Commission negotiated settlements with Vodacom/MTN to reduce monthly prepaid data prices by 50% and provide basic daily free data and zero-rate access to all educational and government services, and with Telkom Openserve to restructure and reduce the wholesale fibre prices.
- A recommendation for the immediate release of high demand spectrum with pro-competitive assignment and commitments.

Remedies – 2

- Intermediate programme to enhance price-based competition.
- Recommendations for amendments to the ECA to regulate cost-based access to facilities, roaming and MVNO agreements along with accounting separation for the wholesale divisions of Vodacom/MTN.
- Recommendations to incentivise fibre rollout, provide free public WiFi from government buildings, transport hubs and community spaces and regulatory changes to allow community network access to spectrum.

Impact - 1

- Immediate price relief
- The reductions in prices resulted in challenger networks responding with feedback to more decreases. The Commission estimated that low-income consumers saved over R4bn in the first year alone. Subsequent annual savings have been even greater due to second year price decreases.
- Along with additional zero-rating from the release of temporary spectrum in Covid, over 1100 sites were zero-rated with many remaining from the subsequent spectrum licensing.

Impact - 2

- Spectrum was released but did not result in lower prices, demonstrating the need for regulatory changes.
- The Commission, along with ICASA which made similar findings, has provided technical support to the DCDT on the ECA Amendment Bill which passed through cabinet and was published for public comment. The Amendments will enhance competition and lower the cost of data.
- The Commission will continue to support the progress of the Amendment Bill through parliament.

Online Intermediation Platforms Market Inquiry (2023)



Scope

- The OIPMI was initiated in 2021 under the new Amendments.
- It was completed in July 2023.
- OIPMI was initiated to address known barriers to the expansion of SA platforms and apps against dominant global platforms and barriers to the expansion of SME/HDP businesses on these platforms in travel, classifieds, delivery, eCommerce, app stores and search.

Findings - 1

- The findings were:
 - Google search self-preferences its own travel and shopping units and otherwise favours global platforms through the ability to pay for position, hindering SA platforms that create jobs and pay taxes locally.
 - Apple and Google app stores charge excessive fees and hinder SA paid app expansion by pay for position.
 - Booking.com imposing price parity harms the expansion of SA travel sites and direct sales channels.

Findings - 2

- Takealot practices self-preference its own retail division over marketplace sellers with limited support for onboarding and promotion of HDP businesses, with Amazon global practices likely to do the same on entry.
- Mr D and Uber Eats fee structure discriminates against independent and HDP restaurants, whilst restaurant chains prevent their franchisees using township delivery services.
- Auto and property classified site fee structures discriminate against SME/HDP firms and promotion on the site.
- Venture capital funding fails to support HDP entrepreneurs due to a lack of wealth accumulation and networks.

Remedies - 1

- The OIPMI remedial actions addressed barriers to expansion with support for HDP firms in all platform areas.
- Google search to implement EU DMA remedies against self-preferencing, to provide SA badges and filters to promote SA platforms/apps and commit R330m to SME/HDP platform/app promotion and support.
- Google/Apple app stores to allow apps to link to direct sales channels and promote SA apps.

Remedies - 2

- Takealot to separate retail and marketplace divisions to ensure fair treatment, end price parity clauses and promote HDP onboarding and promotion. Recommended Amazon to enter on the same terms.
- Booking.com to end price parity and promote HDP accommodation and community tourism on the platform.

Impact - 1

- OIPMI remedies have been implemented by all parties other than Apple, Uber and Private Property on appeal.
- Preliminary estimates indicate total savings of ZAR1.16 billion to businesses in South Africa.
- More importantly, OIPMI has removed barriers to the expansion of SA platforms and app developers in the tech space, along with barriers to the onboarding and expansion of SME and HDP businesses on the intermediation platforms.
- Takealot Township Initiative with GDED will enable township businesses to reach a national customer base whilst Amazon Shop Mzansi will promote SA and HDP businesses on Amazon.

Impact - 2

- HDP restaurants are being promoted monthly on delivery platforms and independents paying lower fees whilst township delivery services like Delivery Ka Speed have been enabled to expand.
- Small and black-owned estate agents and auto dealers are now on an equal footing with national groups.
- SA platforms and apps are now actively promoted on Google search and Play Store making them more discoverable alongside Google active support for black tech entrepreneurs.
- Expansion of SA travel platforms and more exposure to tourism opportunities including in HDP communities.

Media and Digital Platforms Market Inquiry (ongoing)



Scope

- The MDPMI was launched in October 2023 and will publish its provisional report this quarter.
- The MDPMI is investigating whether conduct by search and social media platforms, AdTech intermediaries and AI Chatbots has an adverse effect on the news media in SA, including the diversity and plurality of the news media and the public broadcaster.
- This follows similar concerns globally and the Inquiry was endorsed by DCDDT as the best means to resolve it.

Issues - 1

- The public hearings have highlighted numerous issues, including:
 - The reduction in traditional ad revenue that is not compensated by digital ad revenues in the media.
 - The value that Google search derives from media content compared to what the media gets in referral traffic, along with the bias against community and vernacular media on search, and the low visibility of the SABC.
 - The low earnings of the SABC and other broadcasters on YouTube despite high subscriptions and views.

Issues - 2

- The deliberate deprecation of news content on Meta, undermining referral traffic.
- The levels of misinformation on social media and what is and is not being done about it.
- The dominance of Google in AdTech and that fees take c.35% of ad spend before reaching publishers.
- AI Chatbot use of news for training and the potential for a dramatic decline in referral traffic from summaries.

Conclusion - 1

- The Commission Market Inquiries, initiated with the support of DCDT, have made a considerable positive impact on Communications and Digital Technology markets and their development in SA. These interventions have:
 - Reduced the cost of mobile data to low-income consumers and improved access to essential digital services, whilst promoting competition to drive further reductions in future.

Conclusion - 2

- Enabled domestic platforms to compete with global counterparts on a level playing field, industrialise in the digital space and to domestic skills, jobs and value-add, with the ability to export such services regionally or globally.
- Greater inclusive growth of digital markets to ensure the participation of SME and black businesses, with the potential for township and rural businesses to access a national or global market.

Regulation of Mergers and Acquisitions



Regulation of Mergers and Acquisitions

- Highlights on Regulation of Mergers and Acquisitions:

	2022/23	2023/24	2024/25 YTD
Total cases in ICT sector (incl. Media, Film)	15	13	10
Unconditional	13	4	6
Conditional	2	8	4
Prohibited	0	1 (Vodacom/ Maziv)	0

Market Conduct Investigations



Relevant Market Conduct Cases (1)

- **Sohan Singh V Multichoice (2020apr0055) And Thato Maunye V Multichoice**
 - Mr. Singh alleges that MultiChoice charges “exorbitant subscription fees” for its Pay TV service - DStv. The Complainant indicated that he does “not even watch all of the channels that [MultiChoice] provide[s]”. Further, the Complainant stated that “the other packages do not have some of the channels that [he] does watch so there does not seem to be any win there”. The Complainant proposes that MultiChoice “lower their fees or allow viewers to choose the particular channels that they would like to have”.

Relevant Market Conduct Cases (1)

- **Sohan Singh V Multichoice (2020apr0055) And Thato Maunye V Multichoice**
 - The Commission is also investigating a related complaint received from Mr. Thato Maunye alleging that MultiChoice has a monopoly over the broadcasting of local and international sports resulting DStv's monthly subscription fees being exorbitant. As a result, Mr Maunye submitted that he cancelled his subscription and he has not been able to find suitable alternatives to MultiChoice's sports offering as the latter has a monopoly on sport broadcasting rights in South Africa.

Relevant Market Conduct Cases (2)

- **South African Broadcasting Corporation V Supersport International, South African Rugby Union, National Soccer League and Soccer Clubs Affiliated With The National Soccer League (2022JUL0006)**
 - The SABC alleges, in this complaint, that SuperSport has exclusive license of broadcasting rights for South Africa's PSL for the period 2019 to 2024 and Springbok rugby matches played in South Africa for the period 2020 to 2025. SuperSport has continuously held the exclusive license to the PSL broadcast rights since 2007 and the exclusive broadcast rights in respect of all Springbok rugby matches has been in place for approximately 20 years. The SABC, as a public broadcaster, has a public interest duty to broadcast Springbok rugby to the masses of South Africa.

Relevant Market Conduct Cases (2)

- **South African Broadcasting Corporation V Supersport International, South African Rugby Union, National Soccer League and Soccer Clubs Affiliated With The National Soccer League**
 - The alleged conduct has the likely effect of foreclosing SuperSport's rivals, including the SABC, from being able to compete effectively in the downstream market for the broadcast of premium sports events, particularly in relation to rugby and soccer events.
 - The Commission assessed the complaint in terms of sections 5(1) and 8(1)(d)(ii), alternatively 8(1)(c) of the Act.
 - The Commission is considering these complaints, i.e. the excessive pricing holistically and the exclusive acquisition of sports rights by MultiChoice. The Commission is currently engaging with MultiChoice to explore ways to make sub-licensing viable in acquisition of sport rights and further address the issue of pricing.

Relevant Market Conduct Cases (3)

- **eMedia Investments and Platco Digital V Multichoice SA Holdings, Multichoice Proprietary, Supersport International and The South African Broadcasting Corporation**
 - EMedia alleges, in this complaint, that MultiChoice includes a restriction in various sub-licensing agreements concluded between itself and the SABC in relation to the broadcasting of certain sporting events. This is referred to as “the alleged restriction”. According to eMedia, the alleged restriction provides that the SABC may not transmit or make available the sub-licensed programmes, which are mainly sporting events, on third-party owned or operated platforms. The alleged restriction has the likely effect of precluding the SABC from transmitting the original versions of its SABC channels on the eMedia-owned Openview platform, especially during the broadcasting of the relevant sporting content.

Relevant Market Conduct Cases (3)

- **eMedia Investments and Platco Digital V Multichoice SA Holdings, Multichoice Proprietary, Supersport International And The South African Broadcasting Corporation**
 - The Commission investigated the conduct as a likely contravention of sections 8(1)(c), 8(1)(d)(i), 8(1)(d)(iii), 5(1) and 4(1)(b)(i) of the Act. While in the process of the investigation, on 13 September 2024, the Commission received a Notice of Withdrawal from eMedia to withdraw its complaint against MultiChoice. The Commission inquired from eMedia the reasons for the withdrawal of the complaint to decide whether to initiate a similar complaint against MultiChoice or not. The Commission is satisfied that the settlement agreement reached between eMedia and MultiChoice addresses eMedia's complaints.

Relevant Market Conduct Cases (4)

- **S.O.S Support Public Broadcasting Coalition and others Vs South African Broadcasting Corporation (Soc) Limited (“SABC”) and others**
 - The matter originates from the conclusion of a commercial agreement entitled the “Commercial and Master Channel Distribution Agreement” concluded between the SABC and MultiChoice on 3 July 2013.
 - The matter was originally brought before the Tribunal directly by Caxton, who argued that the Agreement constituted an intermediate merger in terms of section 12(1) of the Act, and ought to have been notified. The Tribunal held that, on the evidence before it, there was no merger.
 - On appeal to the CAC, it was likewise found that, on the evidence before it they could not conclude that the agreement gave rise to a notifiable merger.

Relevant Market Conduct Cases (4)

- **S.O.S Support Public Broadcasting Coalition and others Vs South African Broadcasting Corporation (Soc) Limited (“SABC”) and others (Cont.)**
 - However, since this case concerns a public broadcaster and is a matter of public interest, a less formalistic and more substantive approach to the case was required, and granted Caxton’s alternate relief that the Commission is to investigate, and file a report with the Tribunal recommending whether or not the agreement gives rise to a notifiable change of control. In the event that the Commission found that it did, the CT must rehear the matter.
 - During the course of this investigation an interlocutory application, stemming from a dispute on the CC’s investigatory powers, arose. Culminating in both appeals to the CAC and the ConCourt.

Relevant Market Conduct Cases (4)

- **S.O.S Support Public Broadcasting Coalition, and others Vs South African Broadcasting Corporation (Soc) Limited (“SBC”) and others (Cont.)**
 - The CC’s investigation revealed that pursuant to the Agreement, MultiChoice acquired the ability to materially influence the SABC’s strategic policy in a way that “materially impacted the structure of the market in that it protected MultiChoice’s dominance and monopoly in the PayTV market” the Commission filed an affidavit with the Tribunal seeking an order confirming that MultiChoice acquired control over the SABC in terms of section 12(2)(g).
 - Post the conclusion of the Agreement the CC’s case is that SABC’s position had morphed from that of opposition to that of support for the encryption as a result of the agreement.

Relevant Market Conduct Cases (4)

- **S.O.S Support Public Broadcasting Coalition and others Vs South African Broadcasting Corporation (Soc) Limited (“SABC”) and others (Cont.)**
 - The CC’s affidavit therefore concludes that MultiChoice exercised influence over the SABC’s strategic or policy decision regarding conditional access and encryption. This eventually resulted in the SABC not implementing its DTT strategy plan.
 - The CC in its affidavit pleaded that the Agreement falls under 12(2)(g), and that it meets all of the four elements of the Novus material influence test and that: materially influenced the policy of the SABC in relation to encryption; Agreement had lasting impact on the structure of the market.
 - The exception was heard on 26 November 2024 and the Commission is currently awaiting the Tribunal’s decision.

Cartel Investigations



Commission v MultiChoice and Altech

- The allegations are that MultiChoice and Altech concluded a Master Supply and Support Agreement (“the Master Supply Agreement”) in terms of which the Altech Group would not enter the market for the provision PayTv in competition with the MultiChoice Group for as long as the Altech Group supplied Multichoice with set top boxes. The investigation is ongoing.

Commission v Supersport and IMG Media Limited

- The allegations are that Supersport and IMG Media agreed to fix prices and tender collusively when responding to tenders for media and commercial rights relating to sports events issued by sports federations and other right holders. The investigation is ongoing.

Conclusion



Conclusion

- The Commission remains committed to contributing to the realisation of the priorities of the 7th Administration in general and the dtic in particular;
- Our focus is on dealing with market structure issues and ensuring that we improve the participation of Small and Medium Enterprises and firms owned by Historically Disadvantaged Persons;
- Our key focus going forward will be on becoming a more capable, more agile and more responsive regulator that contributes to the realisation of MTDP and the Industrial Policy of the government.
- We appreciate the opportunity to engage on our work.

Thank you