



COMPETITION AND CONSUMER PROTECTION COMMISSION



MARKET INQUIRY ON PAY TELEVISION IN ZAMBIA

Nov 2022

INTRODUCTION

The Competition and Consumer Protection Commission (“the Commission”) will conduct a market inquiry into the market for pay television services in Zambia (“the Pay Television Market Inquiry”) covering all relevant players in the value chain who contribute to or influence the market of pay television in Zambia.

The purpose of this market inquiry is to review the trading practices pursued by enterprises in pay television in Zambia and to examine whether any feature, or combination of features, of each relevant sector or sub sector and each type of agreement or aspect of the market has the effect of preventing, restricting or distorting competition or has elements of unfair trading in connection with the supply or acquisition of any goods or services in the pay television in Zambia.

These Terms of Reference (“ToR”) are published pursuant to Regulation 5(1) and 5(2) of the Competition and Consumer Protection (General) Regulations 97 of 2011 (Regulations). Regulation 5(1) and 5(2), mandates the Commission to inform the public about the market inquiry through the placement of the Notice on the Commission website or in a daily newspaper of general circulation in Zambia. Regulation 5(2) requires that the Notice indicate the scope of or the terms of reference for the market inquiry and request all interested parties to make submissions to the Commission.

LEGAL BASIS FOR MARKET INQUIRY

The Pay Television Market Inquiry is initiated in terms of Part V of the Competition and Consumer Protection Act No. 24 of 2010 (“The Act”) and Part III of the Regulations and in keeping with the purpose and functions of the Commission as set out in objectives of the Act and in section 2 and the Act.

Pursuant to Regulation 4(1) (a-e), the Commission may initiate a market inquiry based on a complaint(s) made to it by enterprises, consumers or representative bodies, studies conducted by any relevant bodies on a particular sector, its own research, its experience in regulating restrictive business and anti-competitive trade or representations made to it by the Government regarding a particular sector or type of agreement.

The Pay Television Market Inquiry is being conducted in response to numerous consumers complaints. Specifically,
The concerns of the consumers relate to;

- (i) Availability and quality of content
- (ii) Pricing of pay television
- (iii) Access to content from the Public Broadcaster, the Zambia National Broadcasting Corporation (ZNBC)

Having considered the concerns from consumers, the Commission is conducting a market inquiry because it has reason to believe that there are features of the sector that prevent, distort, or restrict competition within the sector, and/or has elements of unfair trading that hinder achievement of the purposes of the Act.

Section 2 of the Act calls on the Commission to, inter alia, “*review the trading practices pursued by enterprises doing business in Zambia, act as a primary advocate for competition and effective consumer protection in Zambia*” and to “*advise Government on laws affecting competition and consumer protection*” as well as “*do all such acts and things as are necessary, incidental or conducive to the better carrying of its functions under this Act*”.

This market inquiry is thus a general investigation into the state, nature, and form of trading in the pay television market, rather than a narrow investigation of specific conduct by any firm.

Although the ToR delimits the scope of the market inquiry as currently envisaged, additional, and related matters not identified herein may arise during the conduct of the inquiry. If the Commission believes that the ToR should be amended in any way, either through the addition of new matters or exclusion of matters currently identified herein, the ToR may be amended as required.

SCOPE AND PURPOSE OF THE INQUIRY

The purpose of the inquiry is to understand what factors or features of the market(s) and value chain may cause or lead to non-availability and quality of content, unfair pricing of pay television and non-access to content from the Public Broadcaster, the Zambia National Broadcasting Corporation (ZNBC)

This inquiry will cover all market participants involved at any point in the value chain for any form of pay television services that are provided to customers such as government, businesses, and end-consumers in Zambia.

Objectives

The main objective of this market inquiry is to:

1. Obtain a clear understanding of the pay television services value chain, including the interaction and commercial relationships between different levels of the value chain, and the relationship with other parts of the pay television industry and the broader economy.
2. Assess the state of competition and levels of consumer protection in the market at every stage of the value chain for the provision of pay television services to identify areas of market power where customers or consumers may be exploited or excluded by firms and to identify any other structural,

behavioural, or regulatory factors that may influence competition or pricing, or matters related to consumer protection.

The assessment would include but not be limited to:

- Market structure;
- The general adequacy and impact of the current regulatory regime;
- Strategic behaviour by pay television providers;
- The adequacy of regulation to promote new entrants,
- Benchmark Zambian pay television pricing against those of other countries.
- Establish whether pay television services quality and coverage is adequate by international standards and the country's developmental needs.

The outcome of the market inquiry will be to take certain action or make recommendations on any matter covered in this ToR, including the following:

1. In so far as practices identified by the inquiry are capable of being addressed as matters falling within section 8, sub section 1 of section 9, sub section 1 of section 10 or sub section 1 of section 16, deal with them in accordance with the provisions of the Act relating to such matters.
2. In so far as the adverse effects for competition cannot be remedied under this Act, or are the result of other applicable laws, make recommendations to the Minister for such further action, including amendments to applicable laws as is required to provide an effective remedy.

MARKET INQUIRY TIMELINES AND PROCESS

The inquiry will be carried out primarily by a team of the Commission or any inspector appointed pursuant to Regulation 5(3) of the Regulations. The Executive Director, where the Commission decides to institute an inquiry will appoint a member of staff of the Commission or an inspector as an inquiry manager who will oversee the market inquiry.

Pursuant to Section 40 of the Act, the Commission may invite interested parties to submit information to it and may exercise, in relation to any enterprise that it considers to be involved in the matters covered by the inquiry, its powers of investigation under this Act. The Commission's powers of investigations pursuant to Section 55(4) include by notice in writing served on any person, requiring that person to

- a. furnish to the Commission, in a statement signed by that person or, in the case of a body corporate, by a director or member or other competent officer, employee or agent of the body corporate, within the time and in the manner specified in the notice, any information pertaining to any matter specified in the notice which the Commission considers relevant to the investigation;

- b. produce to the Commission, or to a person specified in the notice, any document or article, as specified in the notice, which relates to any matter which the Commission considers relevant to the investigation; or
- c. appear before the Commission, or before a person specified in the notice, at a time and place specified in the notice, to give evidence or to produce any document or article specified in the notice.

It is a criminal offence to disregard the Commissions requests and any person who, or an enterprise which, contravenes subsection 55(4) of the Act commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both

The participants in this market inquiry will include firms directly or indirectly involved in the pay television services value chain, as well as those that have an impact on competition in the sector. The inquiry will also include participation by business and trade associations, government departments, public entities, regulatory authorities, consumers and consumer groups, and any other stakeholder that may be able to provide information relevant to the market inquiry. Members of the public are encouraged to participate fully in the inquiry process.

At the Conclusion of the inquiry pursuant to Section 41(1) of the Act, the Commission will publish its findings in a daily newspaper of general circulation in Zambia.

The Commission is committed to the principles of fairness, transparency and integrity and will conduct the inquiry in accordance with these principles. The Commission will allow stakeholders fair and reasonable opportunity to provide input into the inquiry process and its outcomes. For this reason, the Commission may release interim reports throughout the market inquiry for public consideration and comment at its discretion.