

15 March 2019

Mr Rubben Mohlaloga  
Chairperson  
Independent Communications Authority of South Africa  
350 Witch-Hazel Avenue  
Eco Point Office Park, Centurion

By email: [RMohlaloga@icasa.org.za](mailto:RMohlaloga@icasa.org.za) / [chairperson@icasa.org.za](mailto:chairperson@icasa.org.za)

Dear Mr Mohlaloga

## 1. INTRODUCTION

- 1.1. The author of this submission, David Sidenberg is the CEO and a Director of BMi Sport Info (BMi), a company that specializes in Sport and sponsorship research and consulting in South Africa. Sidenberg is also the founding member and CEO of SS Networks (SSN) – a sponsorship and broadcast rights commercialisation agency which is credited with structuring some of the largest broadcast deals in the country on both subscription and in particular FTA broadcast platforms. Annexure A provides a more detailed Bio.
- 1.2. BMi was formally established in 1990 as the first and only independent research company in South Africa to focus exclusively on the sport and sponsorship market. For over a quarter of a century, BMi has conducted extensive research on quantifying and measuring local trends in a wide range of sporting codes, sponsorship properties and related topics. These include; participation and spectator growth trends, television viewing patterns, sponsorship quantification and valuation, broadcast and sponsorship industry trends and the commercialisation therein. BMi has further expanded into the fields of strategic advertising evaluation, digital & social media as well as consulting services in order to cover all aspects of communication, research and strategy
- 1.3. On 14 December 2018, the Independent Communications Authority of South Africa (“ICASA”) gave “notice of its intention to amend the Sports Broadcasting Services Regulations, 2010 in line with the provisions of section 4(3)(j) of the Independent Communications Authority of South Africa Act, Act No. 13 of 2000” (“the ICASA Act”), as amended and section 60(1) and (2) of the Electronic Communications Act No. 36 of 2005 (“The ECA”), as amended and invited parties to make written representations on the draft Sports Broadcasting Services Amendment Regulations, 2018. [“Draft Regulations”]



- 1.4. Over the course of this most recent process that began in June 2016 when ICASA announced its intention to review and further investigate the state of competition in the subscription television market, to date neither Sidenberg, BMi or SSN have made an independent submission.
- 1.5. Just prior to this latest round, BMi was however engaged directly by the Competitions Commission to provide an extensive 10-year historical background piece on the state of competition in the South African broadcast industry.
- 1.6. Subsequent to June 2016, SSN has also been commissioned by a number of stakeholders to actively participate and/or supply insights on the local sports broadcasting landscape and/or consultation on potential implications therein, which may result from the type of proposed changes contemplated by Authority in both the current draft Sport Broadcasting Services Regulations Amendments, 2018 and /or related Discussion Documents on the Inquiry Into Subscription Television Broadcasting Services which preceded it.
- 1.7. Further to above, SSN has recently acted on behalf of SAFA, where together with the President, Dr. Jordaan and acting CEO, Mr. Russell Paul, had the opportunity to meet and openly discuss same, directly with ICASA representatives during the final round of stakeholder hearings. In this regard we had a very constructive meeting where amongst others, we were afforded the opportunity to:
  - 1.7.1. Provide the Authority with a comprehensive review of the historical broadcast rights disadvantages faced by the federation, relative to other major codes,
  - 1.7.2. Emphasise the need for the Authority, in addition to addressing concerns over competition and access, to equally balance the commercial realities and dependencies of sports bodies and ensure that the market related revenue streams affected by any such Regulations would be compensated for, and
  - 1.7.3. Further showcased examples of current and /or potential future “unintended consequences” that must be considered and weighed carefully against the stated objectives which form the basis from which the draft Sports Broadcasting Services Amendment Regulations 2018 are intended to achieve.
- 1.8. I welcome the opportunity to make this written submission to ICASA, both in my personal capacity as well as on behalf of the companies I represent.
- 1.9. With over 25 years of independent research and data across all media channels, we have been regularly called upon to provide a fully integrated research & consulting offering to an impressive list of clients; the likes of which include the who’s who of Africa's major

sponsoring companies, tv networks, sport bodies, federations & teams, as well as the leading agencies involved in commercialisation and management of sport, music, arts, broadcast, reality programming and other sponsored causes.

**1.10.** BMI's independence equals objectivity, as we do not own or represent any properties. This coupled with our vast databases, experience and contacts in the industry puts the company in a unique position to provide a credible third-party fair market value for and on behalf of broadcasters, rights holders and sponsors alike. It is within this context we put forward this submission.

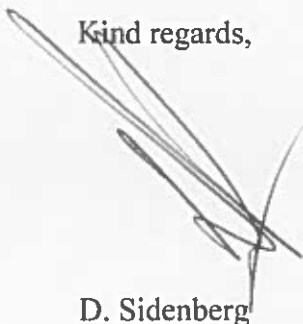
**1.11.** Further to above, we respectfully submit that it is essential that ICASA holds public hearings as part of the inquiry, and should ICASA do so, we request the opportunity to make oral representations in addition to making these written submissions.

1.11.1. With reference to the email correspondence with the Authority prior to this submission, in an effort to further allow us and other stakeholders to continue to contribute to this process in a meaningful and constructive manner, we again urge the Authority to also convene a stakeholder forum, together with the National broadcaster, to allow for greater engagement, ensure a full understanding of the practical implications of the draft Regulations, and test compliance issues therein.

The written submission to ICASA on the draft Sports Broadcasting Services Amendment Regulations, 2018 follows.

Please feel free to revert at your convenience with and queries or requests for additional inputs.

Kind regards,

A handwritten signature in black ink, appearing to read 'D. Sidenberg', is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke at the end.

D. Sidenberg

## **2. BACKGROUND - INDUSTRY LANDSCAPE**

### **2.1. The Sport Sponsorship Market in Review**

#### **BACKGROUND**

In many ways, sports mirrors the South African economy, and 2017 was a tough year for business. The impact of factors such as politics, the instability of the Rand, the costly last-minute cancellation of Cricket South Africa's T20 Global League and even the year-end collapse of Steinhoff with its tentacles reaching as far as South African sport, affects everything. 2018 provided some solutions, served up many of the same challenges, and in the end added some new ones; none bigger than perhaps the well documented financial free fall the public broadcaster currently finds itself in.

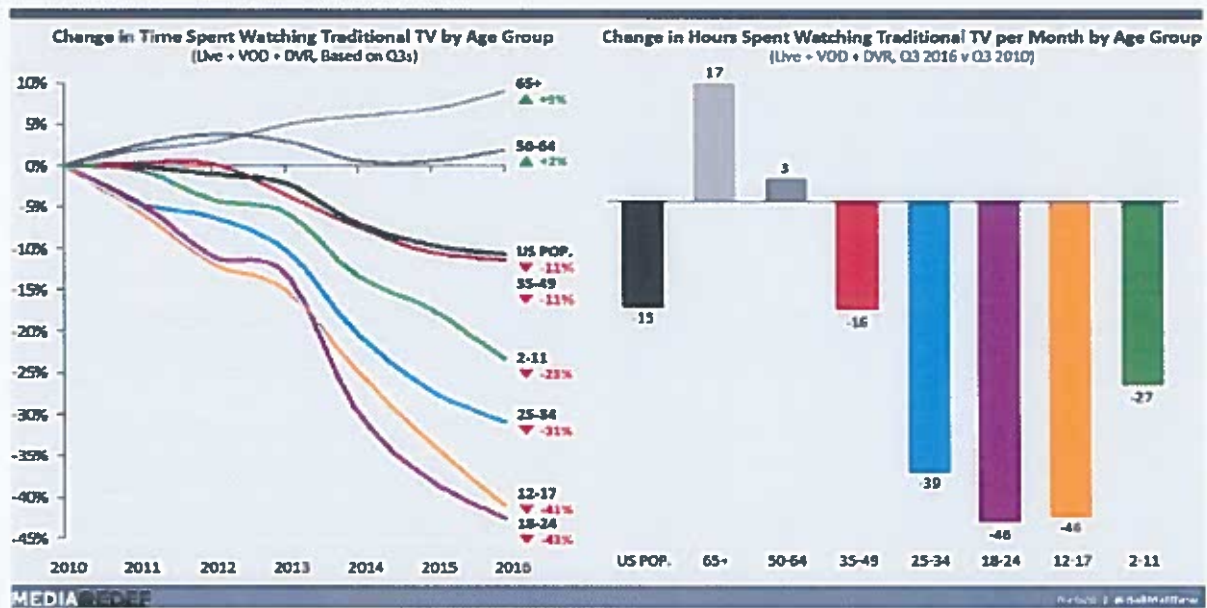
The sponsorship industry has long been built on rights owners providing rights and assets to build connections between brands and audiences. However, while technological advances and a shift in media consumption are empowering sports fans and raising their expectations, much of the sponsorship industry is largely doing as it has always done.

On the positive side, sports sponsorships remain an attractive and important marketing tool. But accelerating changes in technology, viewing preferences and social trends are making it harder to pick the winners and losers, placing downward pressure on some asset prices and increasing the risk to brands of entering into longer-term contracts. With the future tough to predict, properties will soon need to make their content available across multiple platforms.

Sports sponsorship is by association also in a state of flux. The top of the market remains relatively robust and as a result the big three codes, Soccer, Rugby and to a lesser degree Cricket, have continued to widen their grasp on the corporate purse strings & TV revenues.

Overall however traditional sport is under more pressure than ever. In certain key demographics up to 30% less people are watching TV – sport included. However, given that overall interest levels remain constant for most of the highly sought-after broadcast sports, this indicates rather that audiences are increasingly media fragmented as they consume the game differently via other channels.

**Figure 1: Change in Time spent Watching Traditional TV by Age Group**



Source: MediaRedef Analysis 2016

Sports remain a uniquely attractive proposition for broadcasters. In a world of mute millennials, in which viewers binge-watch boxsets at their own pace, live sport is one of few genuinely shared experiences. That makes it extraordinarily valuable to broadcasters and advertisers.

Millennials are almost single-handedly labelled responsible for the shift from traditional TV viewing towards online streaming and gaming. Among the social changes we are seeing are changes in the popularity of various sports.

The disruption has left sports rights holders scrambling to make the shift to digital viewing, to offer fans other ways to keep up with the action. As viewers become accustomed to watching sport in a variety of ways — on phones and tablets, in bite-size clips and over longer sittings — the TV and sport industry will have to become less reliant on millions paying to plug set-top boxes into their flat screens.

By the same token, while sport sponsors continue to generate considerable media return from their sponsorships, they are also beginning to question whether this is enough to meet their fastest growing objective; namely engaging with their target markets.

**Figure 2: Millennial Media Consumption Trends**



Audience remains at the heart of the sponsorship proposition. However, it is no longer just exposure, impressions generated or image transfer that drives and determines value. The sport and sponsorship industry is arguably leading the drive towards greater digital and social media activations, with numerous case studies and success stories already abound.

South African sponsors have also been quick to adapt. Unfortunately, while many a campaign has been world class, limited access and the still exorbitant costs of data have largely resulted in a trade-off between greater engagement at the cost of audience reach.

Locally, the delays in the migration to OTT have meant that to date this platform has not been available for entrants or for existing broadcasters to expand their services. This must be contrasted with developments in the rest of Africa, where the OTT platform has proved important in facilitating not only FTA TV growth, but also the rapid growth of Pay TV broadcasters offering affordable packages.

Despite lagging behind most global markets, the dynamics of our domestic audio-visual market are nevertheless still changing at an extraordinary pace.

Many of these developments have occurred in the last 2 years, For example-

1. Vodacom launched Vodacom Video Play in August 2015, in 2017 announced a new set of electronic audio-visual data bundles for video streaming and last year launched Vodacom ticket / & video play;
2. Netflix entered the South African (SA) market in January 2016;
3. Google Play Movies launched in SA in February 2016;
4. Since mid-2017 StarSat has started repositioning itself in SA;
5. Kwese Play launched in SA in September 2017 (Kwese Free Sports is now available CH 115 on OVHD platform);
6. Telkom launched Telkom LIT in September 2017;
7. Cell C launched "Black" in November 2017 and
8. Facebook Watch was made available in Aug 2018, a year after it launched in USA market.

It is hoped that the rapid growth of broadband infrastructure, increasing Internet speeds and declining data prices will have the effect of significantly reducing the cost of entry.

As we near the end of the first phase relationship between sport and social media, largely based on huge over claims of reach and relevance, we now need to take a closer look for evidence of deep fan engagement.

#### **WHAT HAS THIS MEANT FOR THE LOCAL SPORT SPONSORSHIP MARKET?**

According to the latest data released in the 2018 BMI SportTrack report, despite outperforming adspend by some considerable margin, sponsorship spend in 2017 was relatively flat for the second year in a row and we appear to be in a holding pattern.

The South African Sport sponsorship market as forecast by BMi Sport Info reached an estimated R5,891 billion in direct spend on rights fees in 2017. The net result was a better than expected 3.5% growth in comparison to 2016, for a market that could only be characterized as under pressure but still holding its head above water.

Marketers remain under increasing pressure to deliver tangible results with fewer and fewer Rands at their disposal. As illustrated in the following chart, on the surface activation budgets (leveraging) appears to have become even further constrained in 2017.

Year	MILLIONS OF RANDS		
	Rights Fees	Leveraging	Total
2016	5,703	2,759	8,462
2017	5,891	2,588	8,479

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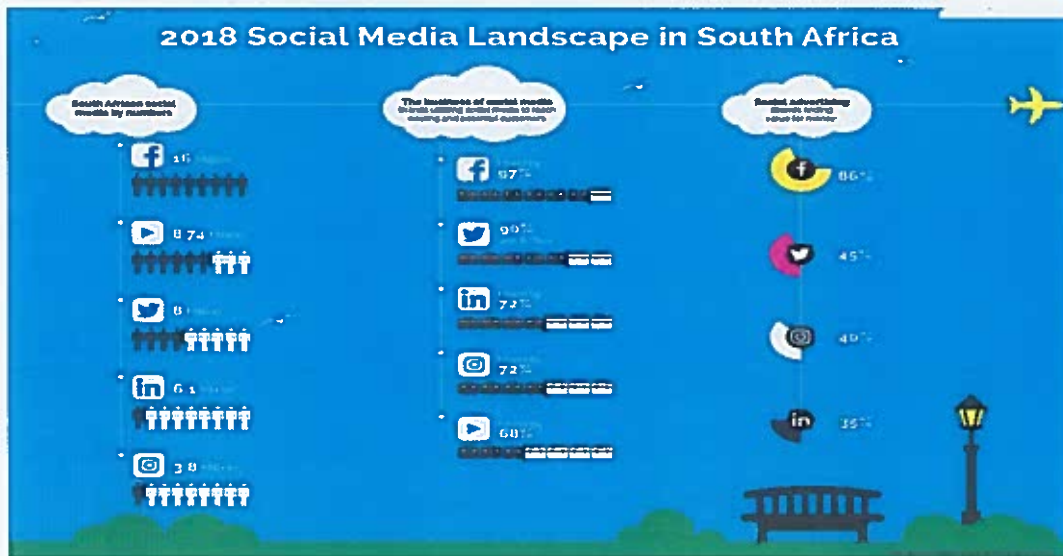
Brands have however made big changes in their traditional leverage spend which has been redirected towards digital activations and Apps – both of which are a lot harder to quantify and generally not accounted for in the above 6,2% decrease in leverage spend year on year.

Based on the above realities, the shift in activation spend away from traditional media appears to be the perfect fit. To date, it hasn't worked as well as many expected, with fan engagement levels tending to drop initially – despite the fact that that digital engagement is arguably preferential. Unfortunately, at the present time in South Africa these such shifts in spend ultimately still mean engaging with far fewer people due to high data costs and limited accessibility constraints.

While the growth in social and digital media platforms (as illustrated below) is impressive, full access to video content remains constrained do to the high cost of data. Unconfirmed stats throughout Sub-Saharan Africa estimate that as little as one in every four smart phones are actually enabled. Despite this it can equally be argued that more Africans have accessed the Internet and /or other digital and social media platforms via their mobile phone, than any other device.

According to World Wide Worx, the latest numbers on the South African Social media landscape in 2018 can be summarised as follows:

**Figure 3: 2018 Social Media Landscape in South Africa**



Source: World Wide Worx – 2017 Estimates

Amongst the South African population that can afford Pay TV subscriptions, the battle currently being waged in the household has shifted to whether one spends their R899 p/m on a Premium Pay TV subscription or replaces this with uncapped fibre to the home and a R99 p/m Netflix subscription. So, unless you are a die-hard Rugby fan (as there is still enough Soccer and Cricket on FTA) and willing to pay a premium for this luxury, at the very least you may be considering a downgrade to DStv Compact.

**Figure 4: The Changing Broadcast Landscape**



Source: MultiChoice / M-Net Representations in ICASA Subscription TV Inquiry – 11 May 2018 (slide 22)

In some ways, the local sports marketing industry has moved ahead of the actual market. As budgets continue to migrate to digital, it has both positive and negative implications. Data costs are still prohibitive, but accessibility is catching up. In the end, this should mean that the industry is nicely poised to take advantage of huge opportunities which technology can bring.

## **THE BATTLE FOR GLOBAL SPORT BROADCAST RIGHTS HEATS UP**

With digital giants (Facebook, Amazon, Apple, Netflix, Google, Tencent, etc.) further exploring the sports content space, the important story to watch in 2019 is the ongoing fragmentation of media rights and content. With continued consumer adoption of streaming and digital-first content products, it will be exciting to see how our market responds to live sports on open social media platforms.

Amazon's investment in broadcasting for example, is believed by many to be a game-changer for B2C sports sponsors and advertisers. This situation is often cited as a great example of old media rights models getting in the way of how fans want to consume live sports today. The fight is on to win the battle of the TV Homepage.

Thanks to the long duration of existing media contracts, these players are not yet replacing the Pay TV and traditional free-to-air broadcasters, but rather seem to be partnering with them and expanding the distribution of content.

On one hand, this should lead to universal access to all matches and events. For the major events, every move will soon be available 24/7 on our phones, whenever we want. On the other hand, there may also be less advertising to consumers, less promotional activities at the point of sale, less "win this" or "buy and get that," and for the global rights properties, more countries where some sponsors are not present. The fear of course is that these events may become another TV (or phone) show we watch but have no further interaction with.



Adam Silver – Commissioner of the NBA

“...I think you’re going to get to the point where somebody wants to watch the last five minutes of the game, and they go click, **they’ll pay a set price for five minutes as opposed to what they would pay for two hours of the game.**”

In the first half of 2017, more than 3,500 live sports matches were broadcast on Facebook, most of which were distributed by the broadcasters or leagues without Facebook being directly involved. “Sports are inherently social and have the power to bring people together, which is why we feel it is a perfect fit for Facebook,” says Jerry Newman, the social media giant’s head of sports partnerships in Europe, Africa and the Middle East. “We see ourselves as global, enhanced free-to air-distribution for the next generation

In 1936, the Olympic Games were beamed live throughout the world: the first televised sporting event. Ever since, watching live sport has been pretty simple. Fans just needed a TV set and, later, a cable or Pay TV subscription.

Today, this is in flux. Having already disrupted traditional TV with on-demand – so-called “over-the-top” (OTT) viewing – Silicon Valley’s tech giants now dream of doing the same to sport.<sup>1</sup>

A revolution is indeed coming to sports broadcasting. But it remains possible that it is one that traditional broadcasters are able to shape, rather than being submerged by.

<sup>1</sup> <https://inews.co.uk/sport/facebook-apple-twitter-amazon-line-snatch-sky-sports-coverage/>

## 2.2. Sport Sponsorship Versus Adspend – South Africa

In this section sport sponsorship spend is compared to expenditure on various other forms of communication:

*Figure 5: Comparison Of Sport Sponsorship Spend With Adspend*

YEAR	MILLIONS OF RANDS		SPORT PERCENTAGE OF ADSPEND
	SPORT SPONSORSHIPS	ADSPEND	
1985	63	807	7.8
2000	1,088	8,915	12.2
2010	4,294	28,869	14.9
2017	5,891	43,359 <sup>2</sup>	13.6

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Since 1985 the expenditure on sport sponsorships increased from R63 million to R5,891 million. Over the same period adspend increased from R807 million to over R43.4 billion. The net result is that while sport sponsorships was 7,8% as big as adspend in 1985, it has now increased to 13.6% as big in 2017. Despite the considerable offset from digital spend, the overall decline in adspend in 2017 was enough to reverse the previous two years trend and put sport sponsorship back on the growth trajectory as a percentage of adspend.

Globally however, over the last two years, although sponsorship is still seeing steady growth, the growing interest in digital media has to varying degrees suppressed growth in both the sponsorship industry as well as traditional advertising mediums. Despite this trend, marketers who are able capitalize on the pivotal role sponsorship plays in amplifying digital, social and mobile, will undoubtedly stand to benefit the most in the long run.

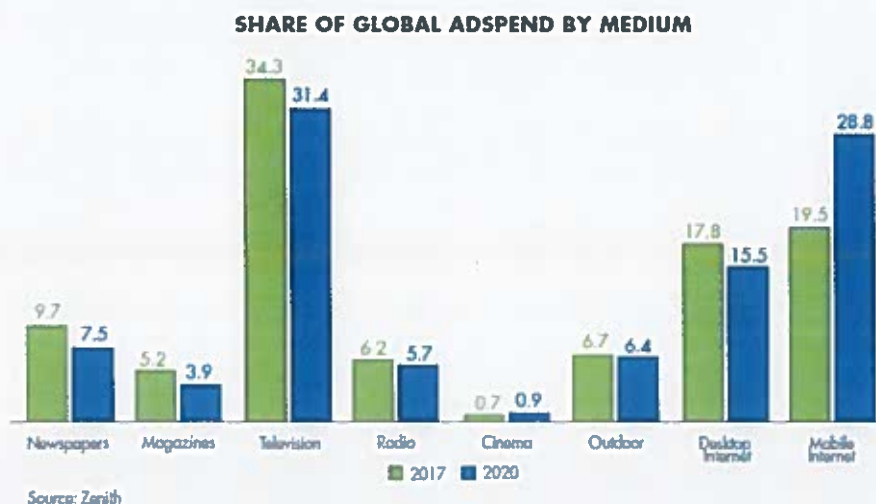
As aptly expressed by ESP senior vice president Jim Andrews on the release of their report - *“While we are bullish that sponsorship will see healthier spending growth this year compared to last, it is still important to note that the organizations that will succeed in claiming their share of that spending will be those that offer relevant benefits to their partners in this era of digital and social media and who demonstrate understanding of their partners’ business goals and objectives in forging partnerships that are win-win,”*

<sup>2</sup> Source: Nielsen’s Adex Data 2016-17 – reported spend. Adex Internet spend has however been replaced with more accurate figures as supplied by IAB Digital Trends and revised for preceding years where available.

### 2.3 Global Advertising Expenditure by Medium

Highlights from the Zenith Advertising Expenditure Forecast - December 2017 report indicate that internet advertising has overtaken advertising in traditional television to become the world's biggest advertising medium, accounting for 37.3% of total ad expenditure, and by 2020 this is expected to account for 44.3% of global Adspend. Television was the dominant advertising medium between 1996 (when it overtook newspapers with a 37% market share) and 2016 (when it attracted 35% of total advertising expenditure). This year, however, the internet overtook television to become the largest advertising medium. Television offers unparalleled capacity to build reach, while online video offers pinpoint targeting and the potential for personalisation of marketing messages. Both are powerful tools for establishing brand awareness and associations. If we consider audio-visual advertising as a whole – television plus online video – we see that it is in fact consolidating its dominant share of display advertising. Television offers unparalleled capacity to build reach, while online video offers pinpoint targeting and the potential for personalisation of marketing messages. Both are powerful tools for establishing brand awareness and associations<sup>3</sup>.

**Figure 6: Zenith Advertising Expenditure Forecast -Dec 2017**



### 2.4 Local Advertising Expenditure by Medium

While some traditional media continues to struggle, digital ad-spend in South Africa has however witnessed powerful growth. Internet advertising spend increased year on year by 13%

<sup>3</sup> <https://www.zenithmedia.com/product/advertising-expenditure-forecasts-december-2017/>

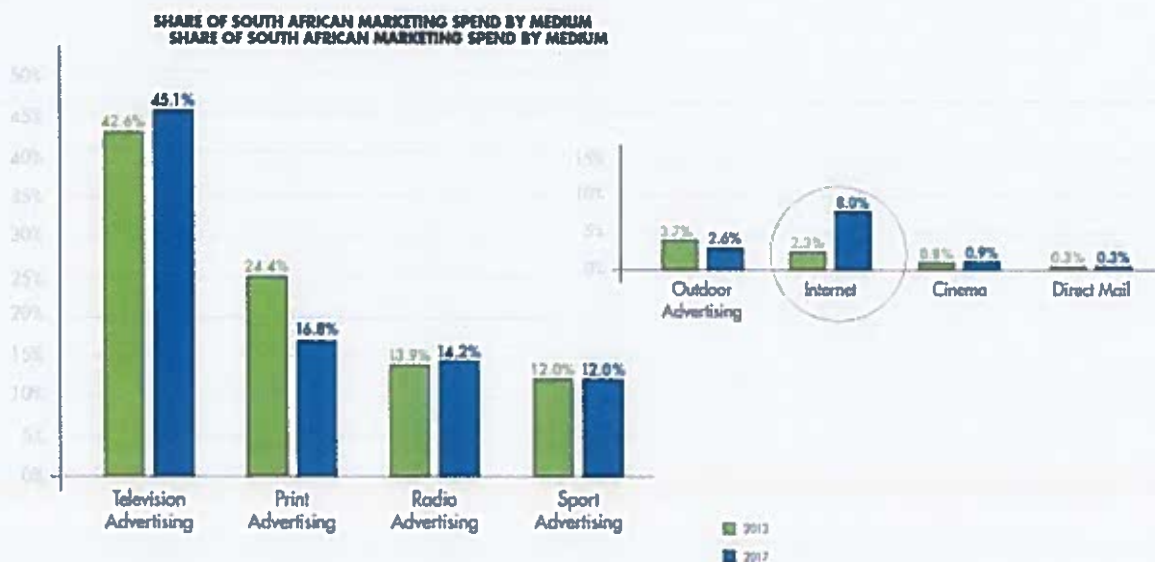
in 2016, according to Interactive Advertising Bureau (IAB) “Internet Advertising Revenue Report - South Africa”. In fact, Internet advertising spend is up significantly, from just under a billion rand to R3,95bn in just the past 5 years.

Online and mobile spend is underpinned by a shift to mobile spend, with social media gaining the largest share. Mobile and online Internet ad revenues combined increased by only 1.8%, but search was up 20.6% year on year, to total R2.8bn in 2016”. According to the report, search remains the most popular digital advertising format, and an estimated 98% of this spend is channelled through one company - Google. Paid search also rose 19% compared with 2015.

**Figure 7: South African Advertising Expenditure Forecast - Dec 2017**



**ESTIMATED CATEGORY COMPARISON FOR AD/PROMOTIONAL SPEND [SOUTH AFRICAN TRENDS 2013-2017]**



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The above analysis highlights the ongoing strength of Television despite shifts to digital. While digital and in particular mobile advertising spend remains small relative to global figures, look for this to continue to be the major area of growth in the years ahead.

Radio advertising continues to rebound nicely for the third consecutive year and appears to have made the transition to the digital world. Companies are also spending similar amounts on lifestyle sponsorships and social responsibility issues including music, the environment, welfare, arts, culture, housing, science programs, education, etc. Spend on music, arts and culture is estimated at about R567 million for 2017.

## 2.5 TV Hours – Access to Sport Content

**Figure 8: Total Hours of Sport Coverage on South African Television (Bmi)**

TELEVISED SPORT [2017]	TV HOURS	% OF TOTAL SPORT ON TV
Soccer	34 925,5	39%
Rugby	11 098,5	12%
Cricket	10 371,5	11%
Golf	5 546,5	6%
Tennis	5 234,5	6%
Cycling and Mountain Biking (combined)	3 256,0	4%
Motorsport (all formats)	3 172,5	4%
<b>TOP 5 TELEVISED SPORTS</b>	<b>67 167,5</b>	<b>74%</b>
<b>TOTAL TV HOURS FOR SPORT</b>	<b>90 313,0</b>	<b>100%</b>

Soccer remains the most sought-after sports broadcast property rights in the country. Even within the constraints of the local market forces, in 2017, just under 35,000 hours of coverage was dedicated to soccer alone. To put this in perspective with all other sporting codes:

- Soccer receives 39% of the total coverage given to all sport in South Africa,
- Isolating DSTv, over 38% of its total sports coverage also went to soccer alone,
- Isolating the SABC, over 60% of its total sports coverage went to soccer alone.
- Hockey (1,362 hours) received a significant boost in coverage in 2017, thanks to the introduction of its new league exclusively broadcast on SuperSport,
- Similarly, Netball (808 hours) continues to receive significant coverage of its respective league as well as the Proteas on SuperSport.

**Figure 9: Hours Of Sport Coverage on SA TV - By Channel**

SPORT	HOURS OF TELEVISION TIME ALLOCATED TO SPORT BROADCASTS - 2018						
	SABC1	SABC2	SABC3	TOTAL: SABC	SUPERSPORT [DSTV]	e-TV	TOTAL: ALL
Cricket	6	13	509	528	9,032	12	9.572
Rugby	6	31	7	43	10,387	9	10.439
Soccer	1,388	21	82	1,491	36,383	81	37.951
<i>Total Hours</i>	<b>1.432</b>	<b>315</b>	<b>717</b>	<b>2.494</b>	<b>85.063</b>	<b>119</b>	<b>87.675</b>
% of Total	1.6%	0.4%	0.9%	2.8%	97.0%	0.1%	100.0%

As illustrated above, SuperSport continues to invest and drive sport coverage in South Africa, representing 97% of all hours of coverage and in doing so is responsible for the vast majority of the commercial value attributed to sport and sport sponsorship industry media ROI.

## 2.6 Correlation between TV Hours and Sponsor Branded Media Exposure

As has been substantiated by many BMi reports, there is a direct correlation between hours of broadcast coverage and sponsorship funding. Soccer sponsors branded media returns have not surprisingly grown exponentially since the SuperSport deal with the Premier Soccer League in 2007. This in turn has led directly to greater media ROI and therefore has served to drive up the value and price of the associated sponsorship rights.

As illustrated in the below table, the branded media exposure for soccer sponsors in 2018 was higher than the big three codes combined in 2014. In 2018, Road Running (R385M) & Netball (R349M), rounded out the top 5 Sporting codes.

**Figure 10: Annual Sponsor Branded Media Exposure Per Sport**

Sport	2012 Totals	2014 Totals	2016 Totals	2017 Totals	2018 Totals
Soccer	R4,864,567,900	R 6,662,824,764	R 9,253,277,482	R 11,314,041,484	R 14,521,133,837
Rugby	R3,415,584,459	R 4,579,731,257	R 5,709,505,882	R 7,530,007,890	R 6,512,882,636
Cricket	R1,005,528,699	R 1,658,994,373	R 2,536,630,398	R 2,167,208,507	R 2,796,945,418

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## 2.7 Quantification of Sport Spectator Interest in South Africa

According to the latest annual BMi SportTrack report Adult spectator interest by sporting code can be summarised as follows:

**Figure 11: Adult Spectator Interest [19 years +]**

Ranking	Sport	Adult Spectator Interest [19+]
1	Soccer	14,140,222
2	Rugby	8,320,471
3	Cricket	7,924,540
4	Athletics/ Track & field	6,250,246
5	Swimming	4,117,355
6	Boxing	3,978,915
7	Road Running / Marathons	3,518,493
8	Professional Wrestling	3,489,390
9	Tennis	3,127,882
10	Netball	3,100,496
11	Women's Soccer	2,427,430
12	Golf	2,304,411
13	Motor Racing	2,219,095
14	Dance sport	1,830,316
15	Cycling	1,790,675

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The above interest levels can be further segmented as follows:

**Figure 12:10 Most Popular Adult Spectator Sports by Gender**

ALL MEN		ALL WOMEN		ALL ADULTS	
1	Soccer	1	Soccer	1	Soccer
2	Rugby	2	Rugby	2	Rugby
3	Cricket	3	Athletics	3	Cricket
4	Boxing	4	Netball	4	Athletics
5	Athletics	5	Cricket	5	Swimming
6	Professional Wrestling	6	Swimming	6	Boxing
7	Road Running	7	Road Running	7	Road Running
8	Swimming	8	Tennis	8	Professional Wrestling
9	Golf	9	Women's Soccer	9	Tennis
10	Motor Racing	10	Dance sport	10	Netball

**Figure13: 10 Most Popular Adult Spectator Sports by Population Group**

ALL BLACK ADULTS		ALL WHITE ADULTS	
1	Soccer	1	Rugby
2	Rugby	2	Cricket
3	Cricket	3	Athletics
4	Athletics	4	Swimming
5	Boxing	5	Tennis
6	Professional Wrestling	6	Motor Racing
7	Netball	7	Golf
8	Road Running	8	Road Running
9	Women's Soccer	9	Soccer
10	Swimming	10	Cycling

**Figure 14: Junior Spectator Interest [13-18 Years]**

RANKING	JUNIOR SPORT	ESTIMATED SPECTATOR FOLLOWING
1	Soccer	3 864 491
2	Rugby	2 394 756
3	Cricket	2 255 602
4	Athletics	2 180 529
5	Swimming	1 652 338
6	Netball	1 605 198

**Figure15: Most Popular Junior Spectator Sports by Population Group**

RANK	BLACK	WHITE	COLOURED	ASIAN
1	Soccer	Rugby	Soccer	Cricket
2	Rugby	Cricket	Rugby	Soccer
3	Cricket	Athletics	Athletics	Athletics
4	Athletics	Swimming	Cricket	Motor Racing
5	Netball	Soccer	Swimming	Wrestling

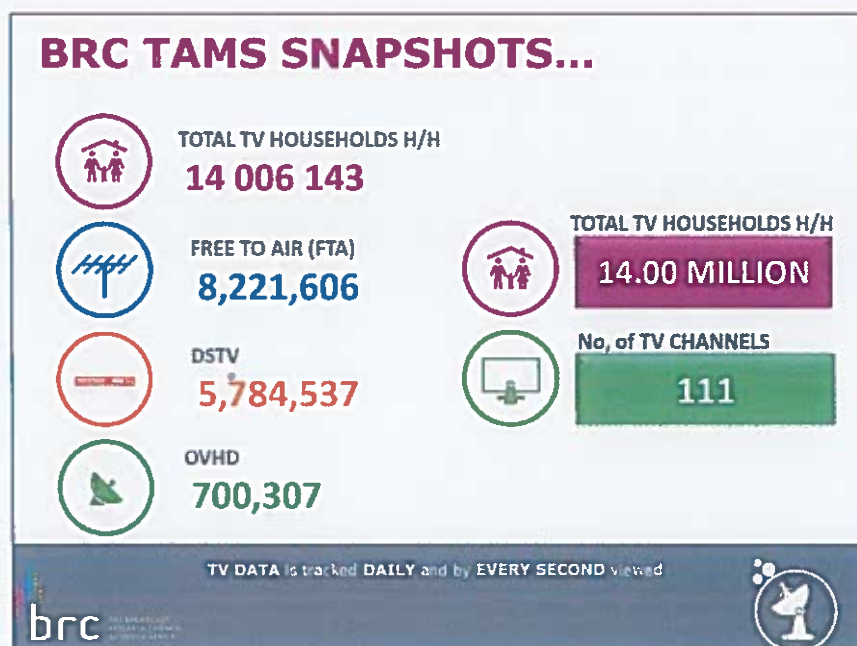
### 3. ICASA SPORTS BROADCASTING SERVICES REGULATIONS

3.1. A stated principle of the draft amendments around the proposed insertion - *“Reach a wider audience and to strike a balance between audience and revenue”* is to indicate the Authority’s aim in encouraging the financial sustainability of broadcasters whilst ensuring access to sports is provided to most of the South African population. We will consider each of these points below as they relate to sport industry stakeholders.

#### Access to A Wider Audience

- 3.2. None of South Africa’s Free to Air (FTA) broadcasters currently have a dedicated sports channel amongst them, it being noted that the lack of a dedicated sporting channel coupled with capacity constraints on the side of FTA broadcasters drastically limits the ability to ensure compliance of the draft Regulations, without further burdening the broadcasters, for which these regulations are intended to help.
- 3.3. Further to this point the FTA broadcasters are noticeably silent on the Authorities amendments and /or their willingness / capacity to even entertain them.
- 3.4. As referenced in the below “BRC TAMS SNAPSHOT, it is relevant to this discussion to note that over recent years subscription broadcasters (and DStv in particular) have been able to significantly close the gap in overall reach once held exclusively by their FTA counterparts. [Source: Broadcast Research Council (BRC) TAMS Update October 2017]

Figure16: BRC TAMS – Total Tv Households by Licensee Category

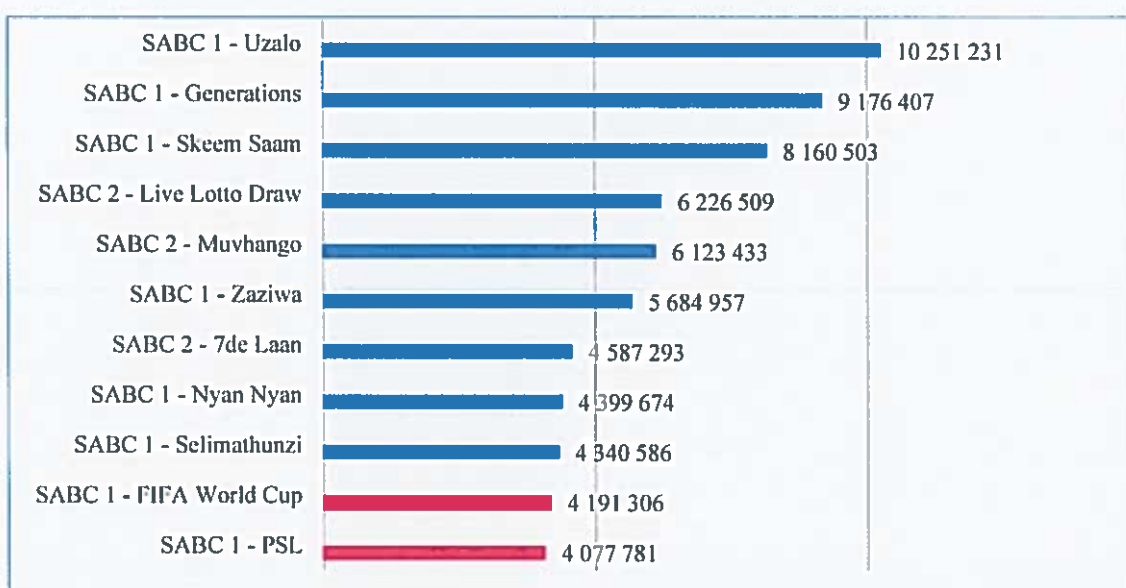


3.5. *“Sports of National Interest”*, as defined in the 2018 Sport Broadcasting Services Regulations Amendments 2018, means an event that does not necessarily involve a Senior National Team but appeals to the **majority** of the South African populace.

3.5.1. As illustrated in 2.5.1 and 2.5.2 above, this definition is problematic as no sport enjoys spectator interest levels (appeal) with the majority (+50%) of the South African population.

3.5.2. This is further confirmed by the below BRC TAMS Audience Rating (AR) for the most watched TV programs viewed on SABC in 2018.

**Figure 17: Top SABC Audiences For 2018 (Most Viewed Episode)**



### Funding of Sport

3.6. The finances of sport have been transformed over the last two decades, propelled directly and indirectly by television, which has provided both a mechanism to deliver direct revenue and the exposure required to drive other key revenue streams.

3.7. Although wider access to major sporting events is seen as a positive development, sporting bodies have nevertheless universally raised concerns about the financial impact such regulations can have.

3.8. MultiChoice currently pays very high fees to sporting bodies and unions for exclusive broadcasting rights of their events. MultiChoice is by far the biggest investor in South African sport, and reportedly spends in the region of R2 billion per year on sports broadcasting rights.

3.9. Conversely, eMedia and SABC are in various stages of financial distress and have limited resources, and limited capacity in terms of available broadcast hours.

3.10. It has been repeatedly noted and accepted as fact that sports federations and /or events rights holders rely heavily ( $\pm 60\%$ ) on revenues from broadcast rights fees. (*Source: PSL, SARU, CSA – Discussion Document Submissions – Inquiry into Subscription TV Broadcasting Services – Dec 2017*)

3.10.1. With reference to the CSA Annual Integrated Report 2016/2017, CSA has an operating revenue of R823 million and R675 million respectively. “CSA’s main economic drivers are the sale of broadcasting rights and sponsorships, the aforementioned amounting to R210 million and R191 million for the current financial year, accounting for 59% of CSA’s total revenues.”

3.10.2. SARU generated R1,212bn in its 2016 financial year. The sale of rugby’s broadcasting rights represents approximately 53% of SARU’s revenue, while sponsorship represents 28%. It must be further noted that the level of sponsorship enjoyed by SARU is largely a function of the level of exposure it is able to achieve, thanks to the extensive distribution of content both locally and internationally as a result of the exclusive sale of its broadcast rights. SA Rugby CEO Jurie Roux further **told Rapport** that “55% (R669 million) of their total income in the last year came from broadcasting rights. Roux said without the ability to maximize income from broadcasting rights, it will put the body’s financial future in jeopardy<sup>4</sup>.”

3.10.3. With rights comes responsibilities. Should Federations be mandated to give away their most valued content to FTA broadcasters without any promise to pay market related fees, our major federations will face serious financial constraints which will impact on all aspects of their operations.

3.10.4. SAFA interim CEO Russell Paul echoed these views, and those of PSL Chairman Dr Khosa, publicly stating that these regulations will “seriously damage soccer and other sports in the country. Paul vowed to fight the regulations as it will threaten its ability to financially support 3.5 million players and effectively develop soccer in South Africa”.

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<sup>4</sup> <https://www.netwerk24.com/Nuus/Algemeen/wet-kan-rugby-knak-20190105>

## Broader Objectives of Sports Federations

- 3.11. Modern sporting organisations have a dual role. They continue to carry the traditional constitutional responsibility of promoting, developing and supporting their sporting code in all areas. But in the modern sporting and entertainment landscape they have essentially been forced to become media companies.
- 3.12. Sporting bodies today produce content (matches, competitions, magazine shows, athlete-heroes) and sell that content to consumers (broadcasters, sponsors, supporters) through a growing number of traditional as well as digital and social mediums. The media side of the business has become the critical engine to deliver the necessary revenue to fund all other activities and responsibilities.
- 3.13. Most sporting bodies in South Africa, are almost entirely dependent on what it can generate through its own private revenue generation initiatives. Government funding currently represents less than 1% of its requirements, which by comparison is significantly less than that enjoyed by most of its foreign counterparts.

## Government Funding

- 3.14. As per the Minister of Sport, Thulas Nxesi, budget vote delivered in the National Assembly on 26 May 2017, the total budget for the 2017/18 financial year allocated to Sports and Recreation is R1.067 billion.

### **SABC wants R6.8bn, but Tito Mboweni suggests it stay away from Treasury**

The finance minister wants the SABC to restructure its operations, merge 'duplicated' radio stations and sell off some of its assets

On Wednesday, finance minister Tito Mboweni suggested that the cash strapped SABC should seriously consider restructuring its operations, including merging radio stations and selling off some of its assets.

The minister said deploying a chief restructuring officer was akin to placing the institution under curatorship. **"My advice to the SABC is to stay far away from National Treasury. But we will find a way to help them,"** said Mboweni.

*<https://www.businesslive.co.za/bd/national/2019-02-20-sabc-wants-r68bn-but-tito-mboweni-suggests-it-stay-away-from-treasury/>*

- 3.15. Due to our countries various needs, chiefly the alleviation of poverty, it is easily identifiable from the national Sports and Recreation Budget that sport is relatively underfunded in our country.
- 3.16. Accordingly, this necessitates sporting bodies such as CSA, SARU, SAFA, ASA, Netball SA and others to secure its income, largely from the private sector, therein making National Federations and other sporting bodies / rights holders an organisation which is largely funded by way of the commercialisation of its sports offerings.
- 3.17. As the funding gap continues to widen, the question being asked more and more is whether either Treasury, or the Department of Sport, Recreation Arts and Culture is prepared to step in and make up the shortfall? Will for example Treasury, as has been speculated in some media circles, provide gap funding for certain events or codes who agree to move their events to the Public broadcaster? If so why has it not stepped in on the SAFA stalemate with the SABC— arguably the sport of greatest National Interest – noting that the SABC has been in deadlock with SAFA for close on one year, and in the process the SABC and “wider audience” have missed out altogether on some of this country’s most recent notable football success stories, including; Bafana Bafana AFCON qualifiers (Home) inclusive of our National teams historic away victory over Nigeria, Banyana Banyana Afcon success and in the process qualification for the 2018 World Cup in Paris and more recently the U20 Amajita qualification for the U20 Fifa World Cup.

### **Issue of Capacity**

- 3.18. While opening up the competitive landscape is the objective, which in principal is supported by the majority of stakeholders, any attempt to regulate in this area must simultaneously address the issue of capacity & scale. A competitive market which leads to less coverage is in no-one’s interest.
- 3.19. The only FTA broadcaster which regularly shows any sport in SA is the public broadcaster, SABC (eTV does not seem to have the capacity or interest in sport presently).

## Case Study: SABC

- 3.20. The SABC is currently seeking financial rescue and publicly claims to be unable to afford any fees for sports rights. It is evident from the SABC's submission that the Public broadcaster is incurring huge financial losses, running into the billions, which by their own account is as a result of them being compelled to broadcast listed sport events.
- 3.21. Appearing before Parliament's communications portfolio committee in August 2018, the SABC board and executive have pleaded for regulations on sports broadcasting rights, specifically, regulations requiring the public broadcaster to air certain sporting codes be relaxed. Chris Maroleng told the MPs that the broadcaster urgently required assistance for the public broadcaster to meet its mandate. "ICASA's regulations, requiring the SABC to broadcast 22 designated sporting codes was onerous on the corporation and it faced a fine of R500 000 for failing to comply". ... "This is very important to note because the failure to protect the public broadcaster essentially means that the SABC has now to absorb these costs, from our inability to broadcast these sports," said Maroleng.

**Figure 18: SABC Football Investment – Cash Outlay**



Source: PSL Presentation on ICASA'S Inquiry into Subscription Television- 11 May 2018

- 3.22. The SABC has lost R2.3 billion in paying and acquiring sports rights [by] not properly working at monetising it through broadcast with proper selling of advertising and

acquiring sponsorships, Bongumusa Makhathini, SABC chairperson, told the Sunday Times.<sup>5</sup> The SABC failed to work at securing sponsors and advertisers to make back the money and more it paid for sports rights the past 6 years.

3.23. The SABC's reliance on an outdated Advertising revenue model, coupled with its failure to fully exploit potential revenues associated with premium sport content are systematic of the broader challenges facing the Public broadcaster. It would be naïve to believe changes to the Sports Broadcasting Services Regulations and / or the associated handful of listed Sport events of national interest will make any noticeable change to the overall bottom line business of the SABC – as confirmed in the following SABC Revenue breakdown<sup>6</sup>:

The current mixed funding model has shown the following mix over the last five years:

*The general funding model of the SABC is evident from the graph below:*

SABC REVENUE BREAKDOWN					
	FY 2017	FY 2016	FY 2015	FY 2014	FY 2013
Advertising Revenue	4,677,421	4,949,857	4,685,473	4,352,414	4,078,100
Sponsorship Revenue	339,422	405,819	388,940	452,615	369,670
Trade Exchanges	78,412	111,839	135,535	110,800	137,798
Licence Fees	915,090	986,361	988,016	990,160	913,838
Government Grants	253,501	212,122	203,874	121,395	210,188
Revenue: Content & Commercial Exploitation	97,862	129,537	37,875	36,330	32,288
Revenue Websites	7,697	6,776	6,277	4,726	2,134
Other Revenue	186,963	174,528	181,867	109,137	87,447
<b>Revenue</b>	<b>6,536,368</b>	<b>6,976,641</b>	<b>6,585,857</b>	<b>6,177,577</b>	<b>5,831,460</b>
Other Income	34,944	113,384	44,967	179,258	97,988
<b>Revenue &amp; Other Income</b>	<b>6,571,313</b>	<b>7,090,025</b>	<b>6,630,823</b>	<b>6,356,835</b>	<b>5,929,447</b>

Source: SABC Finance Division

3.24. In contrast to local and global spend trends, sponsorship revenues have remained largely unchanged at the SABC since 2013, remaining at just 6% of the above total revenues.


3.25. While the alleged R2,3bn associated with football rights referenced above remain largely unsubstantiated and have in fact been disputed outright by the various rights holders for which commercial contracts have been signed, it is in any event hard to understand how any model or broadcast regulation would be able to impact the above bottom line, in such a scenario where the broadcaster claiming to lose such significant amounts on the rights

<sup>5</sup> <http://teeveetee.blogspot.com/2018/11/in-just-four-years-sabc-lost-r23.html>

<sup>6</sup> The SABC's Submission On The Review Of Public Broadcasting Policy (page 27) -31 Aug 2018

fees paid, would choose not to exploit the full rights granted to them. Yet as illustrated below, this is exactly what has transpired over each season.

**Figure 19: PSL Submission – SABC Broadcast Coverage Shortfall<sup>7</sup>**



**How the SABC has used its rights under 2012 ITT**

- The SABC has failed to produce and broadcast a significant number of these matches live
  - 2013/14 season, the SABC broadcasted 53 live matches and 44 delayed
  - 2014/15 season, the SABC broadcasted 54 live matches and 40 delayed
  - 2015/16 season, the SABC broadcasted 59 live matches and 32 delayed
  - 2016/17 season, the SABC broadcasted 48 live matches and 38 delayed
  - In the current season, the SABC has already broadcasted 39 matches on a delayed basis
  - **All this despite having the right to do live broadcasts**
- This has not been ideal and has had the effect of devaluing the PSL's broadcast rights
  - SABC's submission reflects that they haven't moved from their unwillingness to pay a price that reflects the commercial value of rights since pre-2007
  - They appear to want to gain the commercial benefit from PSL rights whilst being unwilling to pay a fair value for those rights
- These issues have to be seen in the context of claims made by the SABC about
  - What football content it has at its disposal?
  - Why it has failed to broadcast all the content it has?

27

3.26. Despite having contractual rights which the public broadcaster claims are a financial burden, they have failed every year since 2007 to fulfill the contractual obligations and broadcast the minimum number of matches granted.

3.27. Presumably, a lack of capacity (available airtime) is the only logical explanation for not broadcasting such premium rights Live, for which a cash value of this magnitude has already been committed.

### **Case Study 2 – Comrades & Two Oceans Marathons**

3.28. SABC has missed at least two deadlines we are aware of to express an interest and/or make an offer to retain the broadcast rights to the Comrades & Two Oceans Marathons.

3.29. Both listed events since 2010, they have arguably enjoyed the exclusive Live coverage they have received over the past number of years on SABC. With existing contractual obligations expiring however in 2018, the renewal has proven to be more challenging

<sup>7</sup> Presentation to ICASA's Inquiry into Subscription Television, 11 Mya 2018 – slide 27

than one would expect from such iconic events deemed by the Authority to be of national interest.

- 3.30. In the current environment, subscription broadcasters are hard pressed to make any new commitment without at least the promise of exclusive rights, given the financial commitment required to offset the associated production costs and market related rights fees. The proposed amendments would as we understand it prevent the possibility of exclusivity.
- 3.31. The Public broadcaster, who has jealously held exclusive rights to both these events for years has yet to renew and at the time of writing this submission, with reportedly little to offer but airtime. Complicating matters further, historically the SABC have retained all commercial rights (Advertising and broadcast sponsorship) which will place added pressure on the Event sponsors to protect their investment from an ambush marketer who can “own” the broadcast rights at a fraction of the cost to sponsor it.
- 3.32. With the quality of production already under scrutiny and little protection offered by the broadcaster to event sponsors, the challenges to retain existing partners will intensify.
- 3.33. It is public knowledge that Old Mutual have already pulled their main sponsorship of the Comrades Marathon and further advised Two Oceans Marathon organisers that the upcoming 50<sup>th</sup> anniversary will be their last one as Title partner.
- 3.34. In short, the above scenario is unsustainable and unless addressed, iconic events such as our major marathons will cease to exist – or at best simply cease to be broadcast Live on Television - available only for those with access to fibre and /or can afford the data required to stream them on demand.

### **Case Study 3 - Channel Capacity [Vodacom Super Rugby]**

- 3.35. Vodacom Super Rugby is the largest and pre-eminent professional men's rugby union football competition in the Southern Hemisphere.
- 3.35.1. The 2018 format featured 18 teams from 5 countries (4 South Africa, 5 New Zealand, 4 Australia, 1 Argentina and 1 Japan).
- 3.35.2. 127 Games were broadcast live to viewers across the globe.
- 3.35.3. 34 games were hosted in 4 cities in South Africa.

- 3.36. In addition to covering every match Live, SuperSport also provides numerous repeats per match, as well as 30-minute game highlights, 10-minute catch-up service and numerous pre and post-game magazine shows.
- 3.37. Branded media coverage for the South African Naming rights partner Vodacom has more than doubled since 2010. This has led directly to greater media ROI and therefore has served to sustain the value and price of the associated sponsorship rights. *[Source: BMI SponsorTrack - Rugby Report]*.
- 3.38. At present, given the number of matches and scheduling, no FTA broadcaster in South Africa has the capacity to offer similar coverage.
- 3.39. The 2019 Super Rugby campaign was launched on 3 February to tremendous fanfare - the first ever #SuperHeroSunday double-header, featuring all four Super Rugby franchise teams on the same day at one venue. The event was broadcast Live and in full on Supersport to near capacity crowds in attendance. This would not be possible on FTA.
- 3.40. South Africa's top players wearing their new jerseys inspired by Marvel's Spider-Man, Thor, Black Panther and Captain America ran out at Cape Town Stadium on #SuperHeroSunday, for the first public appearance of the Marvel makeover of SA's Super Rugby teams.
- 3.41. The activation and season long campaign could not have been possible without the support and collaboration of SuperSport, Marvel, event & team sponsors, SARU and SANZAR.



#### 4. SPORT BROADCASTING REGULATIONS – 2010 [OUTCOMES]

- 4.1. A cursory review of the Sports Broadcasting Services Regulations, 2010 will confirm that many of the “listed events” have to date not been broadcast on FTA.
- 4.2. A summary of the respective average hours of coverage by broadcaster for the 22 listed events follows:

**Figure 20: Sports Broadcasting Services Regulation, 2010 - 22 Listed Events**

COMPARATIVE AVERAGE ANNUAL HOURS BROADCAST OVER A 4 YEAR CYCLE – [2015-2018]

2010 REGULATIONS - 22 LISTED EVENTS	SUPERSPORT	SABC	VARIANCE
Summer Olympics Games 2016	2,275	303	-1,972
Paralympics 2016	117	22	-95
FIFA World Cup 2018	3,203	220	-2,983
Africa Cup of Nations (Avg. 3 years)	599	82	-517
Afcon (Female - 2018)	128.0	0	-128
IRB Rugby World Cup 2015	523	140	-383
ICC Cricket World Cup 2015	1,603	240	-1,363
ICC T20 Cricket World Championship 2016	581	69	-512
International Boxing Federations (avg. per/year)	342	0	-342
Commonwealth Games 2018	535	0	-535
<b>(Total proposed Category A - Amendments 2018)</b>	<b>9,906</b>	<b>1076</b>	<b>-8,830</b>

2010 REGULATIONS - 22 LISTED EVENTS	SUPERSPORT	SABC	VARIANCE
Super 14 Rugby	1,206	0	-1,206
All Africa Games -2015	3	0	-3
COSAFA Cup	229	0	-229
CAF Champions League	637	16.1	-621
CAF Confederation League	289	25.0	-264
Nedbank Cup (Soccer)	499	42	-457
MTN Super 8 Cup (Soccer)	300	28	-272
Telkom Knockout (soccer)	341	33	-309
Telkom Charity Cup (Soccer)	0	0.0	0
Currie Cup (Rugby)	606	2	-604
Two Oceans Marathon	0	9	9
Comrades Marathon	0	14	14
MTN 40 (Cricket)	309	0	-309
Mzansi Super League -T20 (2018)	0	127	127
<b>(Total proposed Category B - Amendments 2018)</b>	<b>4,419</b>	<b>295</b>	<b>-4,124</b>

<b>Total - "22" Listed Events + National Teams</b>	<b>14,325</b>	<b>1,371</b>	<b>-12,954</b>
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ISOLATING SENIOR NATIONAL TEAMS – AS PER DEFINITION.

SENIOR NATIONAL TEAMS (AVG HOURS)	SUPERSPORT	SABC	VARIANCE
Bafana	57	22	-34
Banyana	9	4	-5
Proteas	1,290	281	-1,010
Proteas Women	27	0	-27
Springbok Games	322	16	-306
Proteas Netball - Women	233	0	-233
<b>Sub Total Senior National Teams</b>	<b>1,938</b>	<b>323</b>	<b>-1,615</b>

- 4.3. A review of the above hours of coverage attributed to each broadcaster indicates that the passing of the 2010 Regulations appears to have had little or no impact on market forces, and further reveals multiple examples of non-compliance.
- 4.4. It is however our understanding that since the regulations came into effect, there has been no record of any dispute lodged or fine levied against a broadcaster for non-compliance with the said Regulation.
- 4.5. It must therefore be concluded that ICASA has been either unable or unwilling to enforce its Regulations since introduced in 2010; and by its own admission has no mandate to enforce or demand any commercial terms with respect to broadcast rights and their acquisition or payment therein concluded between contracting parties.
- 4.6. It is clear from above results that the ICASA Sports Broadcasting Amendment Regulations – 2018 will require a level of buy-in and co-operation between stakeholders, which arguably to date has not been forthcoming.
- 4.7. This will further require a very delicate balance between the intention to create greater access and competition vs. the commercial realities facing sporting federations and events in South Africa. As a starting point it will necessitate at least a commitment by the SABC of its willingness to cover any or all of the listed events.
- 4.8. As in other countries, events where no interest exist should be removed timeously.
- 4.9. Often overlooked is the fact that while premium international content will always be important, broadcasters must equally invest in their own local content, continually work at improving it, believe in it, and it too can become premium content.
- 4.10. As the following case study will demonstrate, one need only take another look at how the SuperSport - Premier Soccer League partnership changed the fortunes of the rights holder (inclusive of its football stakeholders), the broadcasters (Subscription & FTA) as well as the South African football loving public since 2007.

## Case Study 4 – PSL (NSL)

4.11. PSL Broadcast rights have played a profound role since 2007 and many would argue have often prompted and /or shaped the subsequent, Discussion Documents, Inquiries and Regulations which have followed since Supersport wrestled away the exclusive broadcast rights from the SABC. Notice 1238 of 2008 – ICASA Review of Sports Broadcasting Rights Regulations - Discussion Document, Paragraph 3 serves as a useful reference in this regard:

### **3. REGULATING SPORTS BROADCASTING RIGHTS**

#### **3.1 OVERVIEW**

**3.1.1** The publication of this consultation document coincides with ongoing robust discussion related to the acquisition of the Premier Soccer League (PSL) rights by Multichoice (through Supersport). The Authority notes that recent developments in sport rights discourse point to the centrality of sport rights in facilitating competition between broadcasting services licensees, especially between commercial subscriptions and free to air television services.

- 4.12. It is interesting to note that the one sporting event of “National Interest” which has received the greatest attention by Regulators and media alike, has arguably also proven to be one of the most compelling arguments against the draft regulations in its entirety.
- 4.13. Prior to 2007 the PSL was obliged to sell its content to the SABC. The SABC therefore had exclusive rights to all PSL’s content. The SABC then sub-licensed some of those rights (approximately 30 games per season) to SuperSport.
- 4.14. The net result of this was that the PSL was obliged to accept a price from the SABC that was considered by market analysts to be significantly below its commercial market value.
- 4.15. The situation described above was wholly unsatisfactory for the PSL, which when left unaddressed, eventually resulted into an Invitation to Tender (ITT) for broadcasting rights of its soccer matches, that it officially opened for bidding on 16 Feb 2007 (The 2007 ITT). Upon failure by the SABC to bid in 2007 within the stipulated time periods, bidding was opened to all broadcasters, and the rights ultimately were awarded to SuperSport.
- 4.16. As illustrated below, the results of this one act significantly reshaped the fortunes of the NSL from this day forward.

PSL BROADCAST REVENUE PER SEASON [R MILLIONS]									
Season	2007/08	2008/09	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
R Value	R72m	R285m	R285m	R285M	R372m	R406m	R493m	R503m	R5m22

Source: PSL Annual Financial Reports

- 4.17. In the 2017 financial year, the NSL generated revenue to the value of R884.3 million. Of the revenue generated in the 2017 financial year, 59 percent was generated from broadcast rights; 35 percent from sponsorships with the balance of 6 percent made up from supplier contributions and competition gate takings.
- 4.18. The increased broadcast exposure has had a direct impact on commercial partnership revenues and as a result, League and Cup sponsorships and supplier values rose from under R110m per annum in 2007 to the current values which are in excess of R350m.
- 4.19. According to NSL’s submission to ICASA – “Sponsorship revenue is essentially driven by our ability to achieve a level of television exposure that will be attractive to our sponsors. These two revenue streams are thus closely interlinked and any interference with our ability to balance our need for exposure with our need for maximum revenue will put at risk the very future of professional football in our country. The need for this “balancing act” by the NSL is critical for our commercial and financial viability and hence, in much the same way as other sports federations, we are best-placed to make the determination in how to sell our rights”.
- 4.20. In addition to a massive financial turnaround for the PSL, the nation was equally the beneficiary of this opening of the broadcast rights. Whereas before, only approximately 130 matches had been shown over the two platforms, now more than 250 matches are shown.
- 4.21. This is further confirmed by BMI Annual SportTrack Reports (2006-2018) which as illustrated below summarise the exponential growth in broadcast hours for football post 2007, on both SuperSport & SABC.

**Figure 21: Hours of Soccer Coverage Per Year – Supersport & SABC**

SOCCER	HOURS OF COVERAGE PER CODE ON SABC CHANNELS OVER TIME					
	2006	2007	2014	2015	2016	2017
SABC	384	422	929	1 037	1 128	1 252
SuperSport	7 586	12 566	20 140	23 245	29 993	33 596

Source: BMI SportTrack 2006-2018

- 4.22. Ironically, the SABC has provided more coverage of soccer each year, since losing the exclusive broadcast rights to the PSL.
- 4.23. Further to above, over the past 10 years, the PSL has successfully managed to strike a balance between realising the maximum value of its assets, while ensuring that its products reach the widest possible audience. It has achieved this balance between income and exposure without any regulation as to how it may exploit its broadcasting rights and therefore serves to underscore that any regulation in this respect may be undue, and disproportionate.
- 4.24. It is also worth noting that the sale of the PSL's content through a tender process accords with FIFA's longstanding policy on the sale of football TV rights. This is simply another example of one of the many interests that SAFA & PSL must take into account when determining the most appropriate way in which to sell its content.
- 4.25. In addition to the commercial benefits, as illustrated in the recent PSL submission and post Presentation on ICASA'S Inquiry into Subscription Television - 11 May 2018, the benefits to all stakeholders following the acquisition of the Premier Soccer League (PSL) rights by Multichoice are impossible to ignore.
- 4.25.1. The increase in income from the sale of PSL broadcast rights has resulted in the PSL being ranked in the commercial top 10 of football leagues in the world in terms of revenue (prior to 2007 it was ranked below 30th).
- 4.25.2. Clubs now receive substantially higher revenues because of the ability of the PSL to have increased its revenue from broadcast rights.
- 4.25.3. In the past, PSL clubs, received grants of R400 000 per month but are now receiving R2m a month plus up to R10m per annum in service fees (in total R30m in 2017).
- 4.25.4. First Division clubs were getting R50 000 per month and are now receiving a monthly grant of R500 000 plus up to R3m per annum in service fees (R8m in 2017)
- 4.25.5. Average wages for footballers have increased significantly, from R3 000 - R5 000 per month to R40 000 - R60 000 per month and the top footballers' income bracket has moved from R80 000 per month to over R400 000 per month
- 4.25.6. The fans now receive far more games, more choice, multiple repeats, highlights, catch-up and magazine shows, and both broadcasters benefitted from increased ad revenue - DSTV from increased subscriptions (DSTV Compact) and SABC benefited from reduced production costs.

4.26. More recently strides have also been made locally to launch semi-professional leagues for three more sporting codes. In partnership with SuperSport, and in collaboration with the office of the Minister of Sport, the following new leagues are now in existence in South Africa, namely:

4.26.1. The Women's Netball Premier League (NPL), which launched in 2014 and has now completed its 4<sup>th</sup> season,

4.26.2. The Men's Basketball Premier League, (BPL) also launched in 2014 with four seasons under its belt, and

4.26.3. The Premier Hockey League, (PHL) which launched its inaugural season for men and women in August 2016.

4.27. The associated case studies for Netball SA and Hockey SA follow:

#### **Case Study: Netball South Africa & the Netball Premier League (NPL)**

4.28. Following its exclusive broadcast rights and long-term partnership with Multichoice SA, Netball SA (NSA) cemented its growing reputation with the launch of the Brutal Fruit Netball Premier League in 2014, its first tentative steps to creating a fully professional women's league.

4.29. Netball is leading a resurgence of commercial interest in women's sport and was recently ranked by leading sponsor decision makers in fourth position overall on the list of most sought-after sporting codes; behind only soccer, rugby and cricket. [*Source: BMi Top 100 Sponsorship Decision Makers Survey*]

4.30. Netball has more than two million active players which now makes it the fourth most popular sport in South Africa for adults and third most popular sport for juniors. Netball has solidified its position as the #1 participation sport amongst females (Girls & Women) in South Africa;

4.31. Netball is also the 3rd most participated in "school sport" in the country; and is also ranked among the top five sports played across all population groups.

4.32. In 2014, NSA, together with SuperSport launched the Brutal Fruit Netball Premier League. The League was further expanded in 2016 with matches played across three cities, with all 10 teams competing in a single round robin format, as opposed to a two-tier system.

4.33. With NSA currently hosting the Spar Test Series', the Brutal Fruit NPL, the Quad Series, the Spar Championships as well as SuperSport producing the magazine show Everything Netball, there really is a plethora of content being created for fans throughout the year. The following tables underscores the exponential growth in broadcast coverage now enjoyed by Netball since its partnership with SuperSport.

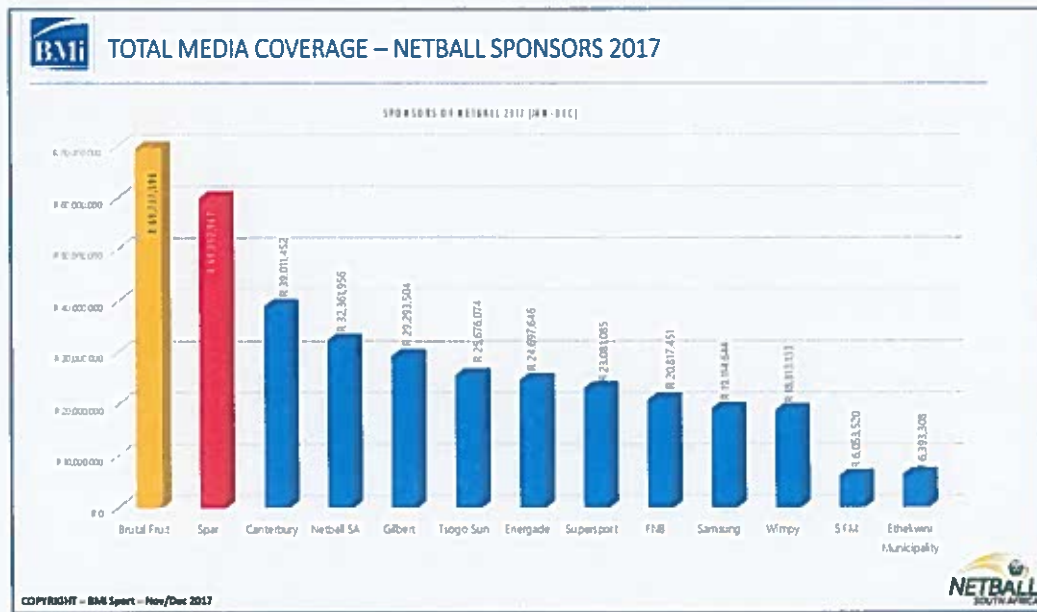
**Figure 22: Hours of Television Coverage - Netball [2010-2018]**

Netball	HOURS OF TELEVISION TIME								
	2010	2011	2012	2013	2014	2015	2016	2017	2018
SuperSport	14.5	22.5	78.5	112.5	485.0	522.0	742.0	800.5	661.0
Sabc	29.5	24	17	11.5	9.5	12.5	8.8	6.0	3.0

4.34. According to Netball CEO Blanche De Le Guerre, “Renewing our contract with SuperSport has always been so key for us in terms of developing our players, they are the most professional broadcaster and allow our players exposure, brilliant coverage as well as the opportunity to learn to deal with the high-pressure environment of playing on live TV”.

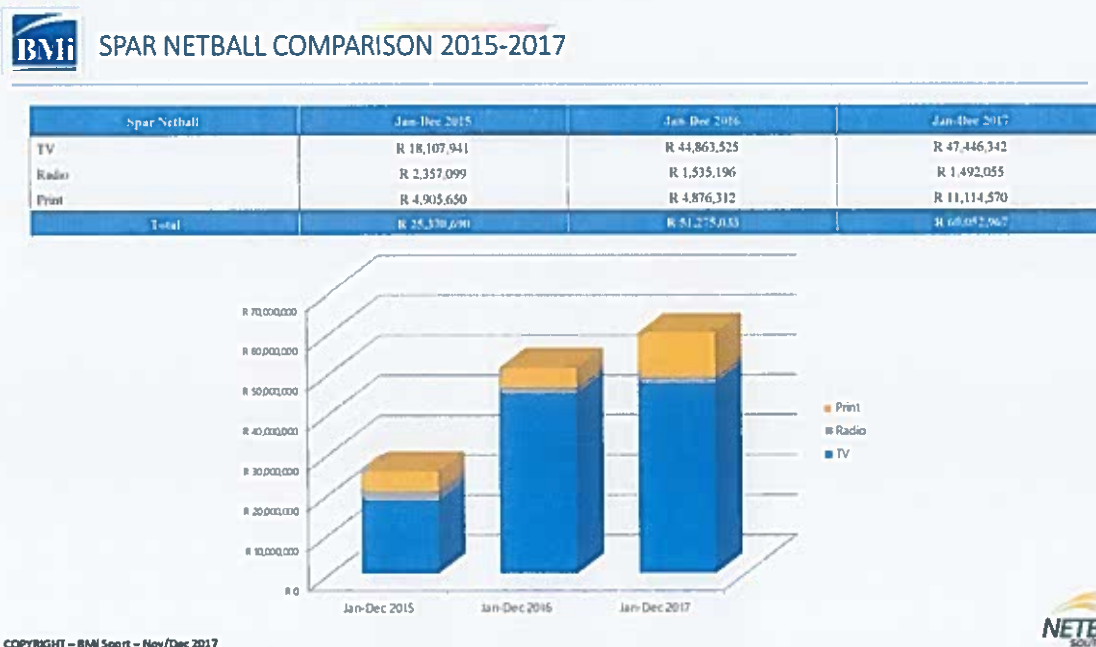
4.35. In 2017 alone, sponsor / partners associated with Netball in South Africa generated just under R350 million in branded media exposure – ranking the code 4th overall now in sponsor branded media ROI exposure. As illustrated in the figure below, this has enabled the Federation to attract sponsorship funding and further deliver the requisite media ROI required in this market to both retain and grow this source of revenue going forward.

**Figure 23: Netball Sponsors Total Branded Media Exposure Trends**



4.36. Isolating Spar, the Proteas National Team Sponsor, it is further evident how the additional broadcast coverage and rights benefits associated with the launch of the NPL also contributed to their media return on investment.

**Figure 24: Spar Netball Media Exposure 2015-2017**



4.37. The above highlights how both the Federation as well as its long-standing commercial partner have gone from strength to strength directly as a result of NSA’s ability to negotiate an exclusive broadcast rights deals with SuperSport.

- 4.37.1. The Proteas, Netball SA's senior national team can now compete with the best in the world as a result of the funding the federation has received to stage the Brutal Fruit Netball Premier League and other competitions.
- 4.37.2. It is also no coincidence that the 2023 Netball World Cup will now be hosted in South Africa for the first time, largely off the back of its proven success in staging both the NPL as well as a number of other International Protea Test matches and events such as the South African leg of the Quad series and Fast 5 events that have been added to the rights package. Again, a direct result one could argue as a result of their partnership with DStv.
- 4.37.3. Careful consideration must be given by Authority to ensure Netball SA will be able to meet the stringent host broadcast obligations required of them by their mother body and the World Cup organising committee.

#### **Case Study: SA Premier Hockey League**

- 4.38. SA Hockey have similarly benefitted from the exclusive broadcast partnership with SuperSport, which led to the launch of the sports first domestic League for Men & Women.
- 4.39. The PHL forms a key part of the South African Hockey Association's (SAHA) high performance pipeline which is aimed at better equipping our national men's and women's teams for international competition. The annual event will consist of both a men's and women's competition and will run over four weekends. The annual event consists of six men's teams and six women's teams, respectively, playing in two gender-based competitions. These teams are all franchise teams that are 100% owned by SAHA. The team identities have been inspired by famous tourist areas in South Africa and are representative of all nine Provinces.
- 4.40. The team names are as follows: Men: Addo Elephants, Drakensburg Dragons, Garden Route Gazelles, Golden Gate Gladiators, Mapungubwe Mambas and the Maropeng Cavemen. Women: Blyde River Bunters, Madikwe Rangers, Namaqualand Daisies, Orange River Rafter, St Lucia Lakers and the Wineland Wings

4.41. Two of the twelve participating teams permanently dedicated to the SA U21 Men's and SA U21 Women's National teams, respectively. This is to prepare the national age group teams for future international tournaments.

4.42. SuperSport has invested in growing the league, providing both full production capabilities and the airtime required to attract other commercial partners and public interest. The below tables from BMI confirms the growth in TV hours provided to Hockey by the broadcaster.

**Figure 25: Hours of Hockey Coverage by Broadcaster – 2012-2018**

Hockey	HOURS OF TELEVISION TIME - HOCKEY						
	2012	2013	2014	2015	2016	2017	2018
SuperSport	175.0	182.0	312.0	422.0	914.0	1 357.0	1 382.5
SABC	9	6	3	7.5	7	3.5	3.0

#### Case Study: SAFA Broadcast Rights – Unintended Consequences

4.43. According to the most recent 2018 BMI SportTrack™ report, soccer is the #1 participation & spectator sport in South Africa and has been since we began tracking interest levels back in sport back in 1987.

4.44. Soccer is also the #1 participation & spectator sport amongst Juniors (aged 13-18 years) in South Africa, as well as the top ranked school sport.

4.45. Together there are now just under 5 million individuals playing and more than 17,3 million followers 13 years and older for the sport. To put this into commercial perspective this is more the combined total following of rugby and cricket.

4.46. Not surprisingly the aforementioned interest levels are mirrored by all relevant audience measures. As illustrated below, Bafana Bafana consistently delivers the highest audience ratings across broadcast platforms utilised:

**Figure 25: SABC Sport Top 5 Audiences – 2017 and 2016**

RANK	TOP 5 SABC TV AUDIENCES - 2017 ALL SPORT	% SHARE	TOTAL ADULT AUDIENCE
1	2018 FIFA World Cup Qualifier – South Africa vs. Senegal	43.9	4,965,384
2	International Friendly – South Africa vs. Zambia	39.9	4,567,091
3	International Friendly – South Africa vs. Angola	38.5	4,203,805
4	ABSA PSL 17/18 – Kaizer Chiefs vs. Orlando Pirates	49.6	4,103,672
5	Carling Black Label Cup 2017 – Kaizer Chiefs vs. Orlando Pirates	51.2	3,942,548

RANK	TOP 5 SABC TV AUDIENCES - 2016 ALL SPORT	% SHARE	TOTAL ADULT AUDIENCE
1	Nelson Mandela Challenge – South Africa vs. Egypt	43.1	5,091,225
2	AFCON 2017 Qualifier – South Africa vs. Cameroon	40.8	4,586,565
3	International Friendly – South Africa vs. Ghana	39.8	4,549,883
4	ABSA PSL – Orlando Pirates vs. Mamelodi Sundowns	42.6	4,400,683
5	International Friendly – Mozambique vs. South Africa	37.7	4,318,874

4.47. With the possible exception of a Kaizer Chiefs vs. Orlando Pirates derby, no other property comes close to matching Bafana Bafana audience ratings on SABC. Although we would have to go back as far as 2013 for a comparable look at when Bafana Bafana home matches under SAFA’s jurisdiction were last broadcast non-exclusively on SuperSport, the audience numbers were nevertheless equally as impressive.

*Figure 26: Bafana Bafana Audiences – SuperSport 2013*

RANK	TOP 5 SUPERSPORT BROADCAST AUDIENCES 2013 ALL SPORTS	% SHARE	# OF VIEWERS
1	AFCON 2013 SA vs Mali	44.0	1,771,965
2	AFCON 2013 SA vs Morocco	32.4	1,610,670
3	International Friendly SA vs Spain	34.8	1,499,309
4	AFCON 2013 SA vs Cape Verde	29.1	1,458,720
5	AFCON 2013 Nigeria vs Burkina Faso (FINAL)	31.4	1,436,445

4.48. Section 6(2) of the National Sports and Recreation Act No.110 of 1998 reads as follows:

4.49. (a) “National federations must actively participate in and support programmes and services of Sport and Recreation South Africa and the Sports Confederation, in so far as high-performance sport is concerned”

4.50. In terms of s60(2) of the Electronic Communications Act 36 of 2005 read with s30(7) of the Broadcasting Act 4 of 1999, subscription broadcasters may not acquire exclusive rights that prevent free-to-air broadcasting of national sporting events, as identified in the public interest.

4.51. As further illustrated in the table below, the historical imbalance in broadcast rights revenue for Football in South Africa, relative to Rugby and Cricket not only remains to this day, but has in fact only widened in recent years as such rights continue to grow exponentially in value and demand.

**Figure 27: Comparative Broadcast Revenue Per Season**

BROADCAST REVENUE PER SEASON [R MILLIONS]									
Sport Body	2008/09	2011	2012	2013	2014	2015	2106	2017	TOTAL 2011-2017
SARU	182	273	307	341	317	331	642	670	2 881
CSA	47	372	277	159	431	238	414	210	1 477
SAFA	-	27	51	59	74	110	110	110	511

- 4.52. SAFA’s adherence to full Live coverage of its senior national teams on SABC has come at a heavy price and unlike the PSL remains reliant on the SABC for its broadcast revenues. As illustrated above, this has significantly impacted on its ability to obtain anywhere close to market related values received by the other comparable National Sport bodies, who are largely free to act in their best interest. Despite this SAFA and SABC have been in a protracted rights negotiation stalemate since its last contract expired in April 2018.
- 4.53. For SAFA the above shortfall is further exasperated by the ongoing focus on breaking SuperSport’s perceived uncompetitive control of sport broadcasting rights.
- 4.54. This has served to all but eliminate SuperSport (the only other competitor to SABC for SA football rights) from even attempting to acquire any remaining football rights from SAFA, given the mounting pressure it currently finds itself under.
- 4.55. Thus, despite having the most attractive sports content (local or international) available for the domestic broadcast market, SAFA’s ability to generate market related revenues for its broadcast rights remain severely and uniquely compromised.
- 4.56. As reported on extensively and further raised again at the Parliamentary Committee on Sports Hearings, SAFA were only offered approximately 10% of the current value of their annual broadcast rights fee by the SABC. An amount not sufficient to pay for the hosting of Bafana’s remaining two home & away FIFA WC qualifiers, and well short on the funds required to send either Banyana or the Amajitas to their respective FIFA World Cup competitions this year. Despite this, the Authority remains silent on the matter.
- 4.57. This coupled with the lack of government funding is all the more significant when one has regard for the fact that SAFA, in its capacity as the custodian of football in South Africa, has extensive obligations to its members and further bears an enormous responsibility to the South African public, as the most supported code in the country.

## Supporting Women's Football

4.58. Further to the above commercial realities, the sporting & social benefits delivered through SAFA structures are equally impressive. The exponential growth in female football participation rates following Sasol's backing of both Banyana Banyana and the Sasol League in 2007 – not only confirm the key role of sponsorship, but further underline the necessity for media partnerships which can enable and sustain the level of funding required to sustain this potential growth trajectory.

FEMALE SPORT PARTICIPATION TRENDS [x 1000] * BMi SportTrack					
SOCCER	2007	2011	2015	2016	2017
Junior Participants - Girls (13-18)	75	120	170	200	280
Adult Participants - Women 19+	186	285	371	435	436
<b>Total Female Participation - 19 +</b>	<b>261</b>	<b>405</b>	<b>541</b>	<b>635</b>	<b>716</b>
% Female of Total Soccer Participants	7.3%	9.7%	11.4%	13.0%	15.1%

4.59. Despite being celebrated as African Team of the year and our National pride of 2018, the SABC again turned down FREE rights to both Banyana Banyana home friendlies and the Sasol Women's League football championship final in Dec 2018.

## CSA – Mzansi League

4.60. Cricket South Africa launched the maiden edition of its New T20 League with SABC as its host broadcast partner. The MSL T20 is proposed as a local tournament with an international appeal. T20 is the most exciting format of cricket and as such it is envisaged that a tournament in this format shall:

- Increase interest in the sport amongst non-traditional local audiences,
- Create opportunities for global exposure for local cricketers,
- Create an earning opportunity for local cricketers,
- Create employment opportunities for various service providers to the league,
- Increase global interest in the local game, and
- Improve cross demographic social cohesion.

4.61. With six teams playing across six different venues around the country, sixteen players and thirty-two matches, the entire event will be broadcast exclusively live by the South African Broadcasting Corporation (SABC) on its television and radio platforms. For the

purpose of bringing the game to the widest possible audience in the country, Cricket South Africa has enlisted the SABC as its host broadcast partner.

- 4.62. CSA accepted the above non-financial / non-cash offer from the SABC due to the serious financial challenges the SABC currently faces and CSA's willingness to support the SABC to become financially sustainable by providing it with world class sporting content.
- 4.63. The SABC further retained all commercial rights (Advertising and broadcast sponsorship) which will place added pressure on the CSA as well as the event sponsors to protect their investment from ambush marketers who can "own" the broadcast rights at a fraction of the cost to sponsor it.
- 4.64. Unfortunately, the SABC is not in a fiscally feasible position to pay the costs required of a broadcast partner. This notwithstanding, Cricket South Africa was determined to partner with the public broadcaster for the wide-ranging benefits it brings besides the obvious financial one.
- 4.65. The above case study directly addresses the need to balance Audience with Revenue, from a rights holder's perspective. While the willingness to grow the game and extend the reach to a wider audience is admirable – it was done at the calculated risk of walking away from guaranteed revenues offered by SuperSport – the CSA 's long standing broadcast partner.
- 4.66. The net cost to CSA has been estimated, in varying reports to be close to R100 million for the broadcast rights fee and production costs alone. The above figure excludes a significant offer that was put on the table by the subscription broadcaster to become a JV partner with CSA on the new league.
- 4.67. The revenue from the broadcasting rights would be used to defray the costs of logistics, venue hire, player salaries, local coaches and most importantly, their development initiatives. Additionally, marketing and promotions, cricket operations, accommodation, equipment and personnel hire and consumables all come out of that broadcast kitty.
- 4.68. Domestic cricket brings in no revenue for CSA. In fact, Moroe told the Parliamentary committee on sport that the T20 Challenge had cost CSA between R20 and R25 million per year for the past few years. Throw in the fact that this season's Mzansi Super League was forecast to make a loss of over R40m (on top of the R200m lost when the Global T20 League didn't happen) and CSA's financial woes appear to be extreme.

- 4.69. With Cricket SA's broadcast deals [with SuperSport] coming to an end in 2020, there is greater urgency to get around the negotiating table.<sup>8</sup>
- 4.70. "We need to determine what products they can share with the public broadcaster knowing the problems the public broadcaster is going through." Moroe was referring to the Mzansi Super League, which the SABC broadcast earlier this season and will continue over the next two seasons. Moroe would like SuperSport to get involved, but as with most things concerning the SABC, it is complicated. "*We would like to have our products on the public broadcaster but not where it is to the detriment of the business,*" he said.
- 4.71. When trying to benchmark our sport broadcasting Regulations policy against other leading nations, one must equally be cognoscente of the varying landscape and relative strength of the broadcasting environment that each play within. The recent 2018 Cricket Australia broadcast rights negotiations serve as an excellent case in point.
- 4.72. Cricket Australia [14 April 2018] announced a joint broadcast deal with free-to-air broadcaster Seven West Media and subscription service Fox Sports worth A\$1.182bn over 6 years. The deal will see greater cumulative hours of men's and women's international cricket broadcast free on Seven but has drawn public ire with the move to broadcast men's ODI and T20 internationals exclusively on Fox Sports.
- 4.73. Australia's federal communications minister has moved to clarify the rules around the country's anti-siphoning broadcast list after it was announced that men's limited-overs internationals will be shown exclusively on subscription television for the next six years<sup>9</sup>.
- 4.74. Seven will broadcast Test cricket – with India and Sri Lanka both visiting in the 2018-19 summer – as well as 43 games of an expanded men's Big Bash League season, including the finals. Fox Sports will simulcast the Test and BBL cricket on its platforms, while an additional 16 BBL games will be exclusive to the pay-tv network.
- 4.75. The Ten Network screened 43 games of the BBL last summer, with BBL|08 expanded to be a full home-and-away season.
- 4.76. Both broadcasters will stream 23 matches of Women's Big Bash League cricket, with the non-televised matches to be streamed in broadcast quality on cricket.com.au and the CA Live app.

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<sup>8</sup> <https://www.businesslive.co.za/bd/sport/cricket/2019-01-17-hosting-world-cup-would-sway-tv-deal/>

<sup>9</sup> <https://www.cricketaustralia.com.au/news/cricket-australia-odi-t20-anti-siphon-list-explained-fox-sports-broadcast-deal/2018-04-14>

## 5. SPORTS BROADCASTING SERVICES AMENDMENT REGULATIONS 2018

### General Observations

Further to the email correspondence exchanged between the author of this submission and the Authority in January 2019, a request was made for the scheduling of public hearings prior to the submission deadline. The request was rejected, with the caveat that the public hearing are being scheduled for the week of the 24<sup>th</sup> of April.

With reference to our reply email of 16 January, “the primary objective of this request was to seek further clarity on the draft amendments prior to our submissions, to both facilitate and expedite the process. To do so only after the submissions deadline risks further delays to which the industry can ill afford”.

As a point of departure, we will begin by addressing our general concerns.

Respectfully, the draft Amendment Regulations - 2018, in their present form lack the degree of clarity required for such an important document. It fails to demonstrate an adequate commercial understanding required to conclude a related commercial rights broadcast agreement for sport content (local or international) to which, in the authors opinion, there has not been given proper consideration either regarding the practicality of same or thought behind the possible varying interpretations of the draft regulations.

The language / wording used tend to be vague and leave much open for interpretation which in turn creates ambiguity and confusion. This will further impede the Authority’s ability to enforce the said Regulations and/or will result in lengthy court battles should it attempt to.

Due to the serious potential constraints the amendments may impose, they have already had severe impacts on industry stakeholder’s ability / willingness to conclude any new (renewals included) commercial broadcast rights deals in 2019. In short, the market is at a standstill – The SABC has no income and now chooses to interpret the Amendments as the preverbally monopoly “get out of jail free card” – where all premium sports rights must be first offered to them, for which there is no obligation to pay and equally no requirement for them to broadcast the events either. Given the uncertainty surrounding the Amendments and the general perceived lack of clarity, Multichoice and other subscription broadcasters are not surprisingly ill advised to conclude any new rights deals during this period of uncertainty. With the possible

future exception of the Telcom industry, and perhaps other international OTT operators, there are no other players with the capacity or funding to enter the market. Irrespective, the Amendment Regulations are completely silent on their inclusion.

The following summary attempts to chronologically list specific references to the more pressing drafting concerns contained within the Sports Broadcasting Services Amendment Regulations, 2018.

**5.1 1. Definitions** – In these “the Regulations” means the Sport Broadcasting Services Regulations, 2010 as published under Government Notice No R275 in Government Gazette No. 33079 of 7 April 2010.

- Above definition provided as a point of reference only.

**5.2 2. Amendment of regulation 1 of the Regulations**

- 2(b) ‘*Confederation Sporting Event*’ – This definition of what constitutes an international or national sporting event arranged by the federation's international body is not clear and open to ambiguity and mis-interpretation. Hosted events are largely “arranged by the local National Federation. The term “friendly games” is further problematic without inclusion of a definition – It may for example only refer to a local event entitled – the “Friendly Games” or equally the reference often used to describe the Commonwealth Games.
- *Delayed-Live* [no change] - There needs to be a proper description of what the term delayed live means for broadcasters in SA to provide clarity for sports federations and event owners
- 2(d) – *inclusion of “Developmental Sports” – means sports aimed at promoting social change and enlarging the population’s choices and increasing opportunities to all members of the society.* - This definition is vague, open to interpretation and arguably not congruent with the sports listed in group C. There is in fact no measurement or basis provided for which the sports listed in group C have been chosen or an indication of how they could satisfy the stated aim. A cursory review of the listed sport codes contained in 5.3.1 includes a range of codes including some ranked in in the top 10 overall by BMI in terms of spectator interest as well as those for which the vast majority of South Africans have limited or no exposure to.

- 2(e) – **“minority sports” means any sport that does not have the majority of the population’s following or a sport having a less distinctive presence within a larger society.** It is unclear what relevance this term means for the proposed draft regulations. Respectfully, this definition is wholly inadequate as it opens itself up to multiple interpretations i.e. Rugby World Cup, Cricket World Cup, International Boxing, National Netball if viewed in the grander scheme of our population demographic should all be considered minority sports as the majority of the population do not necessarily follow or have an interest in them. As referenced in 2.5.1 of this submission, technically there is no sport code in this country which has the following of the majority (+50%) of the population – with Soccer being the only code which comes close to this mark. While some may have a greater or “less distinctive presence with a larger society”, this is largely in itself dependent on the media exposure and “Live” broadcast exposure it receives in the first instance. It is problematic to compare the ideological western sports that are viewed by European and American countries as being the same all around the world. American Football (NFL & Superbowl) and Baseball (MLB), are major sports in the USA, but in Africa they do not feature. The categorisation of sports must be viewed in light of the country’s population and geographical demographic.
- 2(f) – **“national sporting representative”** - this definition is linked to the definition of “confederation sporting event” and does not include “friendly games” nor does it include a sporting event NOT organised by an international sporting body. Some sporting codes i.e. boxing can have international bodies which may or may not be recognised. There are multiple instances of national sporting representatives playing only friendly’s [no definition for friendly] outside of competitions and depending on one’s interpretation may not considered national sporting representatives. Furthermore, not all national sporting events are arranged and organised by their respective international governing bodies, so they fall outside the definition.
- 2(g) – **“national sporting event” – means the broadcasting of sporting events that are deemed to be of national interest and include the South African national team** –Sections (g) national sporting events, (h) sports of national interest and (i) national senior team and their associated definitions for classifying their respective importance and interest to FTA and Subscription TV audiences appear to be vague and in some instance’s contradictory. The regulations need to identify precisely what the sporting,

socio economic and political factors that distinguish a national sports event from sports of national interest are.

- 2(h) – **“sports of national interest”** – means an event that does not necessarily involved a senior national team but appeal to the majority of the South African populace. As referenced above in 2(e) comments, the use of the word majority is problematic as this can only be interpreted as meaning > 50% of population and therefore by definition eliminates all sports and /or listed events that aren't viewed by more than 50% of South Africans.
- 2(i) – **“national senior team”** – means the highest-ranking team in a specific sporting age group – This definition appears to be confusing two separate matters. A national senior team (usually referred to as the “Senior National Team”) is chosen by the national federation in conjunction with national selectors. The team may include youth-based players as well as others who can be 30 years and over. There are also National Age based teams i.e. u17, u20, u23 which are by virtue of selection are the highest-ranking team in their age category. The definition is problematic and widely open to interpretation. What specifically is the authority's position on the Senior National Women's Team - .i.e. Banyana Banyana, Proteas (Netball and Cricket) – are they included in this definition and under what conditions or events - The same must be clarified for the Youth based teams – i.e. is SAFA u17 Women's Team (Bantwana) or SAFA u20 (Amajita) who recently qualified for the FIFA World Cup included?

### 5.3 Object of Draft Regulations- Amendment of Regulation 2

- 2(a) **inclusion of public interest** – Greater clarification of what the term 'public interest' actually means and how it is to be applied to a national sports event and a sport of national interest or any other type of event is required.
- 2(d) – **insertion of “reach a wider audience and to strike a balance between audience and revenue”** – What are the technical terms and conditions that produce the 'right balance' between an audience watching an event live on tv and the revenue it generates for broadcasters and /or their commercial partners. How is it going to be achieved and is there a standard test or benchmark that can be consistently applied to every set of circumstances to provide clarity and certainty for all parties? Further clarification of what 'balance' means in this context is required. The use of the word revenue is equally open to interpretation – who's revenue, the broadcasters or the Rights

holder? Revenue is integral to the sporting market and without it there would be no event for an audience to follow.

**5.4 Scope of Regulations – [No Change to Regulation 3].** The scope remains unchanged despite the degree of media disruption the industry is currently facing. Specifically, we note that there is no inclusion or reference to the onslaught of largely unregulated OTT players, or the Telecom's which are now also entering the industry through varying broadcast and mobile offerings.

**5.5 Criteria for identifying national sporting events of public interest – Amendment of Regulation 4.**

- 4.1(a) is amended to change 'individual' to 'national sporting representative' - This in and of itself is fine however the overall regulation 4 is at loggerheads with itself and makes no sense when broken down. Regulation 4 is used in the broader context as a basis in determining "national sporting events that are of public interest". A precise description of what the 'public interest' means in this context is required to support the way ICASA has classified the events that fall into the new three categories A, B, C under the new draft regulations. A Group A listed event such as the Olympics - "which must be broadcast on full live coverage on Free-to-Air", will for example be represented by any number of qualifying National Sporting Representatives, on behalf of Team South Africa. It must be noted that there were over 7,000 hours of Live coverage available for broadcast during the 2016 Summer Olympic Games. What specifically is then required of an FTA broadcaster in this context, (noting the obvious scheduling difficulties) and how would this differ for a National Team, playing for example in a confederation event of public interest which is not a Listed Sporting Event or Code?
- Regulation 4.1(c) – the opening game of a confederation sporting event may not necessarily include a South African National team or National Sporting Representative. It may not have an opening ceremony – and it is further unclear whether this too must be broadcast. Not all confederation sporting events have this form of Tournament structure. What is the requirement for Category A: International Boxing for example and how does this differ in the eyes of the Authority from the coverage requirement (excluding Live obligations) with a Category B: Local Boxing event?

## **5.6 Listed Sporting Events and Codes – Amendment of Regulation 5 “Listed Sporting Events and Codes”**

Globally, as well as in South Africa, sport is a popular cultural output that has the ability to deliver socio- cultural benefits, such as nation building, social cohesion and community development. In order to maximise these socio- cultural deliverables, sport needs to be available and affordable to as large a percentage of the population as possible, both from a participation as well as spectator point of view. The proposed amendments to the Sports Broadcasting Services Regulations - 2010, aim to address a perceived imbalance in the broadcast landscape.

### **Balance Between Audience & Revenue**

The sport industry in South Africa unilaterally supports healthy competition in the broadcast space. The commercial value of sports rights and /or broadcast content is in the end determined largely on the basis of supply and demand. It is therefore in no Federation or Rights holders interest to only be able to negotiate with just one subscription broadcaster or equally just one FTA broadcaster.

Audience and reach are equally important. A sport cannot hope to grow its following, if exposure is limited to a select few. Without an audience there is no-one to sell to. Demand is largely a factor of overall interest.

It is an “accepted principle by regulators globally that Pay TV broadcasters require exclusivity to differentiate themselves from competitors”. Their ability to acquire exclusive must-see premium sports content which loyal and passionate fans are be prepared to pay for, has been arguably an underlying success factor of DStv (SuperSport).

While it is also an equally accepted principal that FTA broadcasters worldwide will always battle to compete in terms of available budgets to acquire killer content, they have the ability to offer scale – in the context of larger audiences. The so-called balance between Audience and Revenue is without doubt the most important decision every sporting code / National Federation must make in an effort to fund its overall sport and associated programs. Access to a wider audience can bring more fans, fill stadiums, sell merchandise and ultimately grow the game. The trade-off between Audiences (mass market vs niche targeted audiences) and

Revenue from the sale of broadcast rights (at the expense of wider reach) is a decision arguably best left to those entrusted with the responsibility of running their respective sports (businesses). Ultimately any changes to the regulation must equally be in the interest of sport in South Africa and must therefore also consider all other interested parties in the industry and not just the broadcasters.

In this regard we draw the Authority's attention to ICASA General Notice 1238 of 2008 "ICASA Review of Sports Broadcasting Rights Regulations – Discussion Document (September 2008)". Where it states:

s1.5: In this undertaking, the Authority will endeavor to meet the needs of all stakeholders, especially consumers, subscription television services, free-to-air television services and, equally important, the needs of the sporting codes, especially commercial sport.

s3.1.7 But, while the debates tend to be between subscription television services and Free-to-air services, it is important that in the process the interest of sporting codes themselves are not negated. This is particularly important as sporting codes rely on sport rights for their financial and commercial viability, and

s3.1.8 The quality of sport and its competitiveness depend on the ability to generate revenues through, inter alia, sport broadcasting rights. The Authority has an obligation to ensure that its decisions do not compromise the need for different sports codes to use sport rights to increase their revenue streams.

With reference to sports, the [Competitions] Commission<sup>10</sup> is of the view that there are five features that are critical in defining those aspects of sports content that render it as premium as opposed to non-premium. These, inter alia, include that the sports event(s) (i) be of a high-quality production; (ii) must be broadcast live; (iii) with sufficient regularity; (iv) popularity; and (v) costs of acquiring the content rights.

The South African experience has shown that there are a limited number of buyers (i.e. broadcasters) in South Africa to which sports federations can sell their broadcasting rights. ... **This, in the view of the [Competition] Commission, significantly limits the sports**

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<sup>10</sup> Competition Commission comments on the discussion document for the inquiry into subscription television broadcasting services, 19 December 2017 – 6.4 & 8.4

federations' bargaining power as there are only a few number of potential buyers to whom content rights owners could sell to. This is further exacerbated by the fact that even on other considerations such as the capacity to broadcast live matches, expertise and production quality standards, subscriber base and the ability to pay the required amounts for rights, there are limitations which rule out other buyers. These limitations include the capacity and technical expertise to broadcast sports events at the required level of quality of production, for example. This effectively narrows down the number of suitable buyers even further, thus limiting the alternatives available to content rights owners<sup>11</sup>.

As demonstrated in earlier sections of this submission, the amendments are in some instances ambiguous, contradictory and are written in such a way as to be open to variable interpretation. The aspect of greatest contention in the proposed amendments is that of exclusivity.

***Sub-Regulation 5.1 - Group A: Compulsory Listed National Events for a Free-to Air licensee with full live coverage.***

- Group A: Compulsory listed national events are understood to be the most important national sporting events in the eyes of the Authority that **must be** broadcast free-to-air in order to afford all South Africans the opportunity to view such sporting events. The broadcasting rights for full live coverage of such events must, in the eyes of the authority and the purported amended regulations be afforded, on a preferential basis, to a free-to-air (FTA) licensee.
- This category forms the crux of the amendments. The rationale behind this is that these important national sporting events are events of public interest which are currently subject to a purported near monopoly condition, controlled by the “big player” subscription service broadcasters who can actually afford to bid for such events. These events are considered to be of public interest. And therefore, must be broadcast to the majority of the public.
- Despite the more obvious major impracticalities that such an amended regulation will bring with it there is ambiguity around the use of the words **Compulsory**, together with the obligation of “**full live coverage**”. This amendment lacks any adequate / sufficient

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<sup>11</sup> Competition Commission comments on the discussion document for the inquiry into subscription television broadcasting services, 19 December 2017 –8.4

definition insofar as to what extent of live coverage is expected in order for there to be compliance.

- With reference to previous section 4.2 of this submission, our analysis on the average annual hours of historical broadcast coverage of the proposed Category A listed events reveals a massive variance of more than 8800 hours between SuperSport and SABC for just the listed events in this category. The 2016 Summer Olympics Games reveals that SuperSport, despite a commitment to an estimated 2,275 hours of coverage across multiple channels, only actually covered a selection of the more than 7000 hours of available content on offer. By comparison, the SABC who acquired the Exclusive FTA rights for South Africa only manage to carry a little over 300 hours and of greater significance missed a number of Live medal winning performance by our National Sporting Representatives.
- As illustrated in the next table, even if it Authority could mandate the SABC, they would certainly not have the capacity to deliver on an estimated minimum 3000 hours on average per year required to adequately fulfil this mandate.

**Figure 28: Comparative TV Hours For Sport By Broadcaster [201-2017]**

SPORT CODE	HOURS OF TELEVISION TIME- TOTAL SPORT COVERAGE BY BROADCASTER						
	2010	2011	2012	2014	2015	2016	2017
Supersport	47,890	46,365	50,727	62,387	69,720	83,418	87,866
<b>SABC</b>	<b>1,998</b>	<b>1,755</b>	<b>1,760</b>	<b>1,432</b>	<b>1,565</b>	<b>2,171</b>	<b>1,991</b>
eTV	800	859	842	845	824	658	457
<b>Total Hours Sport</b>	<b>50,689</b>	<b>48,979</b>	<b>52,487</b>	<b>64,664</b>	<b>72,109</b>	<b>86,247</b>	<b>90,314</b>
Major Events	Fifa WC CWG	AFCON RWC	Olympics	Fifa WC CWG	Afeon/ RWC/CWG	Olympics ICC- T20	AFCON/ Confed Cup

### ***Sub-Regulation 5.1.1- Category A listed National Sporting Events***

*The following are Category A listed national Sporting Events which must be broadcast on full live coverage on Free-to-air:*

- (a -c) All previous listed in 2010 Regulations and were carried by SABC – but not compulsory on FTA with full live coverage.
- (c) - No mention of the FIFA Women’s World Cup or Age denominated (u17, u23) World Cups [i.e. 2(i) – “National Senior Team” means the highest-ranking team in a specific sporting age group]
- (d) – **African Cup of Nations (Male & Female)** – This is the only mention of Female, which by implication presumes Women’s sport / Senior National Teams are not listed unless stated [i.e. Banyana - 2018 FIFA WC, Proteas Senior National Team -Netball/ Cricket, Women’s Rugby WC are currently excluded].
- (e -g) – No mention of the women’s or youth world cups in these sports events.
- (h) – **International Boxing** - This was listed in the 2010 Regulations any has never been enforced. Since 2010, on average a minimum of 10 International Boxing Tournaments featuring a National Sporting Representative fighting for a World Title Belt have been held but not broadcast on FTA channels – without cause. Listing International Boxing is incorrect – it is not specific to any event, or recognized International (Confederation) body (IBF, WBC, WBA, WBO...). It is not clear on what must actually be broadcast – The entire Fight card, just the bout featuring a South African, other? It has not been enforced in 9 years and should be removed from the list
- Incorrect numbering goes - (h) to (k) then (j) then (k) again
- (k) – National Netball – This is not an event. Not clear what this actually refers to.
- (j) Commonwealth Games. This was listed in 2010 but has not been covered by a FTA broadcaster and therefore should be removed. Also referred to as the “Friendly Games”.
- (k) IAAF – This is international governing body not an event. Further problematic with inclusion of definitions under Amendment regulations featuring a National Sporting Representative.
- Further to above list, it is unclear if a single FTA broadcaster will be permitted to acquire exclusive Live broadcast rights (FTA and /or all including subscription) and whether or not they are entitled to broadcast their FTA rights across multiple channels / platforms. (i.e.: Website, Mobile, Facebook, etc.)

**Sub Regulation 5.1.2 - states: If a Free-to-Air licensee cannot acquire the above sporting rights (i.e.: those listed in 5.1.1), the FTA Licensee must inform the subscription service broadcaster, to allow an opportunity for the latter to bid for the rights on a non-exclusive basis.**

- Sub Regulation 5.1.2 is in direct contradiction to 5.1.1 in which the compulsory Category A listed national Sporting Events “must be broadcast on full live coverage on Free-to-air”.
- This is problematic and contrary to the spirit of the Regulations and or requirement for the Category A classification in the first instance.
- This can be interpreted by the FTA broadcasters that they are in fact under no obligation to acquire any of the Category A listed events. Additionally, even in the event where they do acquire such events, it can be argued that they are under no obligation to broadcast them – Live or in full.
- Other International Regulations have in fact conceded that it is not possible for any government to mandate that a FTA broadcaster must purchase or broadcast such listed events. Regulators can merely help level the playing field by providing the FTA broadcasters the opportunity (or where appropriate) first rights to negotiate.
- In 2017 the Australian Government moved to clarify rules around the countries Anti-Siphoning broadcast rules. Similarly, the anti-siphoning scheme aims to ensure that sporting events of cultural or national significance remain freely available to all Australian viewers.
- It does this by preventing subscription broadcasters from acquiring the rights to sporting or cultural events placed on the anti-siphoning list **until the events are acquired by a free-to-air broadcaster or are automatically removed from the list 26 weeks before they commence.**
- As part of the reforms to the broadcasting sector, the Government has now amended the anti-siphoning scheme to remove outdated and redundant provisions and streamline the anti-siphoning list.
- These changes enable the scheme to operate more effectively in a digital media environment while ensuring that broadcast rights to events of national and cultural significance continue to be available to free-to-air television before subscription television.

**Sub Sub-Regulation 5.2 – Group / Category B: National Sporting Events Offered to a Subscription Broadcasting Licensee on a Non-Exclusive Basis Under Sub-Licensing Conditions**

- The following chart compares the initial 22 events as Listed in 2010 Regulations, with the 2018 draft Amendment list, and further segments these by Category A & B.

**2010 Listed National Sporting Events vs. 2018 Draft List**

<u>2010 Listed Events</u>	<u>Matched 2018 Draft</u>	<u>Additional Event</u>
A Summer Olympics Games	A Summer Olympic Games	<div style="text-align: center;">Group A</div> K National Netball K International Association of Athletics Federation (IAAF) <div style="text-align: center;">Group B</div> M Domestic Boxing Tournaments N Premier Soccer League D Domestic Cricket Chapiionships P Premier Hockey League
B Paralympics	B Paralympics	
C Commonwealth Games	J Commonwealth Games	
D All Africa Games	B All Africa Games	
E FIFA World Cup	C FIFA World Cup	
F Africa Cup of Nations	D Africa Cup of Nations (Male and Female Soccer)	
G IRB Rugby World Cup	E Rugby World Cup	
H ICC Cricket World Cup	F ICC Cricket World Cup	
I ICC T20 Cricket World Championship	G ICC T20 Cricket World Championship	
J Comrades Marathon	L Comrades Marathon	
K Two Oceans Marathon	K Two Oceans Marathon	
L Super 14 Rugby	A Super 14 Rugby	
M COSAFA Cup	C COSAFA CUP	
N CAF Champions League	D CAF Champions League	
O CAF Confederation League	E CAF Confederations Cup	
P Telkom Charity Cup (Soccer)	F Charity Cup (Soccer)	
Q MTN Super 8 Cup (Soccer)	G Super 8 Cup (Soccer)	
R Telkom Knockout (soccer)	H Knockout (Soccer)	
S Nedbank Cup (Soccer)	I Soccer Championship Cup	
T Currie Cup (Rugby)	J Currie Cup (Rugby)	
U MTN 40 (Cricket)	<b>Domestic Cricket Competition ?</b>	
V International Boxing Federations	H International Boxing Federations	

- Of minor note, there are further problems with the naming conventions applied to some events on the list.
- Additionally, there is ambiguity around the use of sub licensing conditions, which appear to be cumbersome, largely unnecessary, extremely difficult to monitor or regulate and for the most part not practical for the industry.
- The duties to FTA licensees appear to be somewhat clearer. In terms of sub-regulation 6.1 which states that “a broadcasting service licensee who has acquired rights or failed to acquire rights in terms of (sub-) regulation 5.2 must inform other broadcasting service licensees within five (5) days of acquiring such rights or failure to do so, for the opportunity by other broadcasters to tender for same if the rights are not acquired”.
- Beyond this the actual rights and duties don’t appear to be plainly stated which, again could leave this open to interpretation and thus, possible confusion.

- Further to the listed events in Category A & B, the Regulations are unclear what is required where a “Senior National Team” or “National Sporting Representative” is participating in a Confederation Event which is not a specifically listed sporting code, or event of national interest. What for example are the requirements where a National Sporting Representative is playing in the final of a Grand slam event or the Davis Cup (Tennis) or is featuring in one of the 4 Major Golf Tournaments /Presidents Cup etc.
- While there are some noticeable additions to the list (which will be addressed below) the underlying principal for both Category A and Category B is that the National Sporting Events may not be acquired on an exclusive basis by a subscription broadcaster.
- This presumably is framed within the context of section 60 of the ECA, - i.e. “subscription broadcasting services may not acquire exclusive rights that prevent or hinder the free-to-air broadcasting of national sporting events.”
- It is however an “accepted principle by regulators globally that Pay TV broadcasters require exclusivity to differentiate themselves from competitors”. If DStv is prohibited from purchasing exclusive sporting rights on high-profile events, it will spend far less on non-exclusive sports broadcasting.
- It is a well reported fact that the national broadcaster is technically bankrupt and does not have money to spend on sports broadcasting rights<sup>12</sup>. While it would be ideal to broadcast all sport of national interest on the SABC’s FTA channels, the reality is that the SABC cannot afford to purchase these rights, nor has capacity to broadcast them.
- The SABC, in an effort to reduce costs has further begun to refrain altogether from normal host broadcaster practices, leaving the obligation of producing the sport rights acquired to the rights holder – Case in point the inaugural season of the 2018 Mzansi Super League, to which they held exclusive South African rights.
- National sporting federations derive the majority of their revenue from selling broadcast rights to their properties. Federations also rely on broadcast coverage of their teams, leagues and events in order to deliver value for their sponsors and grow their profiles, in a very competitive landscape. Sporting federations can also not afford to decrease the value of their broadcast right, as this would lead to severe budget deficits, and hamper their operations drastically.

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<sup>12</sup> <https://www.iol.co.za/news/south-africa/ceo-says-sabc-technically-insolvent-17719345>

***Sub-Regulation 5.3 - Group C: Minority and Developmental Sporting Events to be Broadcast by Subscription and Free-to-Air Broadcasters***

***a. All broadcasters – FTA and subscription service broadcasters must carry events of at least two (2) of the listed (a-o) events per year.***

- In principal this is a good initiative. All broadcast Licensee's should in our opinion be required to broadcast a minimum level of sport content - deemed to be in the public interest. In this regards the inclusion of Category C aims to obligate FTA broadcasters to carry "events" for a minimum of two of development / minority sports per year.
- Both DStv and SABC are not surprising compliant. While it is unlikely to be a burden for other licensees, it is uncertain how the Authority will monitor this across new entrants, i.e. OTT platforms or if it will be able to mandate such, particularly on niche players with a specific mandate – (Music or religion only channel).
- This category is however far too vague - there is no indication of whether this is concerning national athletes or national teams playing the sport or the does it refer to the whole sport in general regardless of who is competing? Can it be news or highlights / magazine shows? There is no clarity on what constitutes an "event" or any minimum requirement in terms of hours / duration of coverage.
- Far too much is left to the Licensee to determine if the amendment was intended for whole competitions to be broadcast or whether the broadcast of matches is necessary at all in order for there to be compliance.
- Greater clarity will be required to have any level of certainty regarding both the number and the exact nature of the events which will need to be shown if there is to be compliance, or any actual benefit to the intended stakeholders.
- The selection of Sports listed appears to be random, with no specific measurement or requirement to qualify as a Minority or Development Sport.
- While all sports listed in Group C arguably are in need to FTA coverage of their local leagues, teams, competition and athletes, the general usage of a term such as "minority" or "development" sport attached to Top 10 ranked spectator codes such as Motor Sports, Tennis and Golf is problematic.
- The above point however should not however be confused with a real need to support grassroots sport. In Soccer alone for example we have a number of leagues at varying levels from the NFD, ABC Motsepe, SAB Regional, Sasol Women's League, youth leagues, etc., all in desperate need of coverage. In Rugby we have Craven Week,

Cricket, Khaya Majola & Mini-Cricket and any number of school and Varsity Sports available. Many have of these have in fact been offered to SABC at no fee, but are deemed unworthy to allocate commercial airtime

- If Category C aims to be truly inclusive by providing for Minority / Development sports, we must question why it is again silent on the promotion of Women in Sport, Youth and Development. In this regard we draw attention to the **Explanatory Background - the Amendment Regulations 2018 – s1.6:**

*“ The Draft Regulations advance equality, human dignity through access to Sport of National interest to all citizens. This will further ensure that sports continue promote social inclusion, equity, and sustainability by ensuring that even minority sports are given prominence on broadcasting systems to create opportunities provided by sports for the current generation as well as generations to come”.*

- We do not however envisage that in its current format, that the amendment will “advance equality and human dignity through access to sport of national interest to all citizens”, as intended by ICASA, and will in the long run lead to the further erosion of value, and ultimately less available content to those it is intended to serve.
- Notwithstanding the above concern, Category C could be the ideal place to address such ideals.
- According to Paul Smith, a sports media expert from De Montfort University, the BBC is in no position to outbid Pay TV for live Premier League football, per say, but it could establish itself as an online hub for minority sports. This “will be beneficial for the sports themselves – who, via the BBC, will be able to extend the reach of their sport – as well as sports fans and the BBC”.
- The greatest barrier to any real progress locally remains the obvious constraint of capacity. Over and above the lack of available budget to produce such content, the FTA Licensees simply do not have the available airtime to broadcast it. Case in point the PSL – where despite the investment, matches are still not broadcast.
- On this last point we have argued for years that the most effective way to enact real change in sports broadcast coverage (which all parties could adopt) would be to **Amend the ICASA Local Content Regulations - which excludes sport from list of content that qualifies.** Noting that ±65% of all content must contain local content, by amending this Regulation to include provision for only a specified list of Minority and Development / youth Sports would do more for the promotion of sport and inclusion than the entire 2010 & 2018 Regulations combined.

## **5.7 Amendment to Regulation 6 -Broadcasting of national sporting events Category B**

- 6.1 -This has been addressed in 5.2:
- 6.2 – A listed national sporting event may be broadcast live, delayed live or delayed - The use of delayed -live vs delayed has largely fallen away. Contractual terms should stipulate what is an acceptable maximum period for which an Event of National Interest may be delayed or alternatively what is a minimum period that it must be delayed so as to preserve the value of Exclusive Live rights.
- 6.3 – It is unclear what this clause is attempting to regulate or what is specifically meant by advertising a national sporting event. Surely contractual rights agreements between broadcaster and rights holder will be sufficient in this regard.

## **5.8 Amendment to Regulation 7: Review of the Listed Events**

- 7.1(a) – public input every three years does not account for rate of change the broadcast industry in general and sport in particular is currently facing.
- New competitions and sports are being brought forward every year and provisions to include them should be made freely.
- Lessons can also be learned from the Australian Government Amendments, 2017 which automatically removes listed events which are not acquired by FTA broadcasters from the list 26 weeks before they commence.
- Additionally, performance targets should be in place which informs the Authority on related trends, interest levels and measures compliance of the Regulations by all stakeholders on a regular basis.

## **5.9 Amendment of Regulation 8 - Dispute resolution**

- In terms of sub-regulation (a) – the intended amendment is confusing in the sense that it implies that a dispute may be unresolved. This could be problematic as it is in conflict with the above principles of legal certainty. This could result in embroiling the courts in litigation in this regard, thus nullifying the purpose of (Alternate) Dispute Resolution. Therefore, the words “unresolved dispute” should be struck out from the intended amendment.
- In terms of sub-regulation (b) – the intended amendment is necessary as it would include non-compliance with the binding nature (finality) of the outcome of the

decision-maker. However, one should also bear in mind that section 34 of the Constitution will always allow a party to ventilate a dispute to the fullest extent in the courts, i.e. through appeal or review mechanisms. The courts have pronounced on this but it is only to the extent that the decision-maker arrives at an outcome that is appealable or reviewable in nature.

- The reliance on Dispute resolution and removal of Penalties is however of consequence and not supported – See Amendment Regulation 10.

#### **5.10 Monitoring – no amendment**

- There has been no change or Amendment to this clause from the 2010 Regulations.
- We seek confirmation from the Authority that adherence to said requirements of 9.1 and 9.2 have been met by the broadcasters and that this is in fact a matter of record.
- It is our understanding that this would be a matter of public record – and request either copies of such or at the very least proof of receipt that such records were filed and kept by the Authority.
- We note that such records would go a long way in quantifying broadcast hours (capacity) required to fulfil the Amendment Regulations and further provide a benchmark for compliance with the 2010 Regulations.

#### **5.11 Amendment of Regulation 10: Penalties**

- Despite numerous examples, a number of which have been raised throughout this submission, we are not aware of any instance where the Authority has in fact fined a broadcaster for non-compliance.
- We further note that the SABC has made regular reference to the imposition of the R500,000 fine in a number of its recent ICASA submission, which in itself raises questions as to why it would be removed as part of the proposed amendments if it is deemed to be such a deterrent.
- We note our objection to the exclusion of penalties as proposed in the Amendment of Regulation 10, as this will only serve to make it easier for non-compliance - which we anticipate will only result further such occurrences in the future.

- The powers of the authority to penalise broadcasters where provisions of the regulations are not met is vested in the Complaints and Compliance Committee (CCC). This body is empowered to make decisions on the basis of non-compliance with the Regulations.
- It is unclear whether certain elements of the agreement between the two parties in question may result in lack of compliance with the provisions and accordingly it is doubtful that the CCC will have authority to penalise broadcasters for not meeting on deliverables required of them in the agreement. This would be a breach of contract dispute that must be resolved using the alternative dispute resolution mechanisms. The process is unclear and the authority of the CCC in relation to the commercial agreements between broadcasters needs to be more clearly defined.
- The CCC is required to investigate, and hear if appropriate, and make a finding on:
  - All matters referred to it by ICASA
  - Complaints received by the committee
  - Allegations of non-compliance with the ICASA Act or underlying statutes
- The committee may make any recommendation to ICASA if necessary or incidental to:
  - The performance of the functions of ICASA in terms of the Act or underlying statutes
  - Achieving the objects of the Act and the underlying statutes
- The scope of the CCC is therefore limited to non-compliance with the Regulations.

## **6. OTT – COMPETITION FROM NEW ENTRANTS**

Globally, there has in fact already been a shift from television viewing to over-the-top viewing, with audiences opting for the convenience of watching whatever they like, whenever they like without the distraction of adverts.

As a result of technological convergence, the exclusive licensing strategy and the subsequent grant of broadcasting rights to the highest bidder is proving to not necessarily be the most optimal strategy either for the rights holders or for the broadcasters. Technological convergence is blurring the modes of transmission and expanding the range of devices for viewing audio-visual content. This is evident particularly in Europe and the US, where many federations are exploring the potential benefits of shared access and non-exclusive contracting with different multimedia platforms.

The high cost of data in South Africa as well as the wide demographic disparity of the South African population means that the adoption of alternate platforms has been far slower than in the rest of the world and does not offer the same financial benefits to rights holders.

### **THE SHIFT TO OTT - DEVELOPED MARKETS**

The notion that live sport could help cable TV enjoy inexorable growth – the orthodoxy ever since Rupert Murdoch used sport as a “battering ram” to lure subscribers to Sky in the early 1990s – has been at least partially shattered. In the US, ESPN has shed 13 million subscribers since 2011. In the UK, Sky has suffered declining profits and average viewing figures for Premier League matches.

Sports media marketing, and advertising, has undergone major changes in the past decade. Through the growth of broadband, WiFi, and new digital and social networks, technology has created vast new opportunities for communication and has evolved touch points for fans of every sport, creating new levels of audience engagement.

New research from Ovum and Intel has predicted that within the next decade, media and entertainment companies will be competing for wireless revenue opportunities worth \$1.3 trillion, thanks to the introduction of 5G networks.

With download speeds of up to 20GB (more than 1000 faster than a typical 4G connection today), the report predicts that by 2025, the majority of global mobile media revenues will be generated by the ultra-fast 5G network. So how will the realm of sports media marketing look in this landscape is the question occupying most sports stakeholders' minds. Sadly, the Amendments are silent on this matter.

*“We envisage anybody, really, being able to come along and bid for those rights. We would need some distribution criteria and to make sure it was readily available across platforms and everything else, but as long as it was widely available and distributed properly, we wouldn't rule those out.”* – [Source - Richard Scudamore, Premier League executive chairman, speaking on the eve of the 2017-18 season].

Amazon and Facebook have already shown their cards, while Apple and Google/YouTube are topping the media analysts' 'ones to watch' lists. Then there are the new players, the likes of DAZN, Eleven Sports and Sportsfix operating in territories worldwide. [Source: OTT Killed the Linear star- 20 Oct 2017]

Consumers today expect viewing experiences to be available on any network, on any screen, and at any time. Contributing factors include; the ever-changing media rights landscape, the proliferation of digital media, and the emergence of new technology which can be leveraged to create unprecedented levels of engagement.

Sport's content is however still very relevant to traditional TV. Although social networks like Facebook and Twitter have started signing deals to bring live sports to their platforms, the majority of your traditional live sports still happen on Pay television.

This is because sport is best consumed live – to watch after the game when you can find results on every possible platform, is to miss the joy of live sport.

Sports teams and federations have started offering dedicated OTT channels in their own capacity which allows them to carve out greater values from their rights, create new commercial inventory, capture more first-hand consumer data and better serve their respective audiences.

With all of this differentiation in the market, it makes it difficult for consumers to find a single service that serves all their needs, keeping the sector some way off from consolidation.

A key takeaway however from the 2018 Fifa World Cup, “is that the power of linear TV to reach millions of people with live events still can’t be matched by Netflix and other streaming services,” said François Godard at Enders Analysis.

With the ability to capture so many eyeballs, sports remain indispensable for national broadcasters like the BBC, TF1 and ZDF, even though the rights have become so expensive, said Enders Analysis’ Godard.

*“Advertising revenues don’t finance sports events in most cases,” he said. “But it’s an expense that broadcasters can’t spare, because the live experience is the only weapon they have against streaming services like Netflix and the only opportunity they have to bring in millennials who never watch TV.”*

New digital players are taking a growing interest in sports content – live and non-live – but, to date, most deals have been non-exclusive and/or small scale.

The sports broadcasting picture is likely to remain a pretty messy one, according to Paul Smith, a sports media expert from De Montfort University. “Rather than OTT replacing traditional sports broadcasting, the two are likely to operate alongside one another for the foreseeable future.”

## 7. THE BALANCING ACT

Opposition to major events legislation stems from an underlying commitment to free market principles. The opposition of many sports organisations to the listing of their sports is based on the belief that they are best placed to judge how to further the interests of their own sport, and in particular how to balance the potentially increased revenue to be gained via pay-tv with the benefits (not least commercial via increased sponsorship revenue) of greater exposure through free-to-air broadcasting.

However, the key argument in support of major events legislation is not that policy makers and regulators know better than individual sports organisations how to promote the best interests of a sport. Rather, it is, as discussed above, that the wider public interest in the form of cultural citizenship is served by the availability of a sporting events on free-to-air television.

For the most part, the additional sports programming provided by pay-tv broadcasters over the last couple of decades has consisted of either more extensive coverage of sports that were previously shown by free-to-air broadcasters, or coverage of sports and sporting events that previously received little, if any, airtime on free-to-air television.

The growth of pay-tv has provided significant benefits for both viewers and sport. As illustrated in the case studies presented, locally, sports such as Netball, Basketball & Hockey have recently received a lifeline from SuperSport which enabled them to launch leagues off the back of guaranteed 3-year broadcast deals. The PSL is perhaps the most definitive case study in the South African market. Safa on the other hand reminds us of the unintended consequences sports broadcasting Regulations can impose on a sporting code.

Sports has long been the mainstay for traditional TV networks – best viewed live, in high definition, and drawing huge audiences – by its nature it has been best suited to broadcast, and largely immune to the pressures afflicting other genres of broadcast content.

BMI Sport Info findings that sports fans and viewers are under indexing amongst young Millennials, signals an alarming warning that sports broadcasters could already be facing a demographic challenge. Young millennial identification with strong sentiment is lower for sport than it is for other forms of content.

This is consistent with other global studies. According to a 2016/17 Ampere report 'Are Millennials moving the goalposts for premium sports?', conducted in the US and UK markets - just 14% of consumers professing to 'love sport' are in the 18-24 age bracket, compared to 22% of those indicating that they 'love TV shows.'

By comparison, US and UK research from 2004-2005 further indicates that historically the 18-24 group was a proportionally more important component of popular league fan bases. Failure to engage younger consumers in sport means being trapped in an unsustainable scenario of escalating rights costs against a backdrop of a declining or stagnating audience base," Broughton concluded. "Building fan bases internationally has been a core part of league growth strategies to date – but securing domestic audiences will be crucial to future security."

The added competition, particularly in Europe between Pay TV companies and telecoms groups, is another major twist that suggests we may still have some way to go yet. Sky and BT both sell television and broadband packages to consumers and will soon add mobile phone contracts. Sports programming is a loss-leader for those other products.

Yet despite all the doom and gloom, more than 80% of the top-rated US TV shows in the last three years were live sports.

The bidders also have deeper pockets. BT, which makes substantial profits on broadband, can pay more for sport content than Sky's previous rivals for the Premier League rights — Setanta and ESPN — which only had subscription and advertising revenues.

Since BT entered the market three years ago, the UK rights for Premier League games have nearly tripled to £1.7bn per season. Other European telecoms groups have yet to be as aggressive as BT, although Spain's Telefónica and Germany's Deutsche Telekom have shown interest in sports content.

There can be little doubt that sports content equals long-term security to media companies in an uncertain world. Sky has agreed 90 per cent of its sports rights until 2020. US broadcasters have also been seeking to lock in their costs through long-term deals. That could make it harder for tech companies — such as Netflix, Google or Apple — to buy into the market.

## **8. POTENTIAL ADVERSE CONSEQUENCES OF DRAFT REGULATIONS – 2018 AMENDMENTS**

Throughout the world, the ownership of exclusive live premium sports rights has become a key source of market power within contemporary broadcasting. One way to address this issue might be to simply impose a ban on exclusive deals for live sports rights (Harbord and Szymanski, 2004). However, such a move could well fatally undermine the sports programming market. Broadcasters are unlikely to be willing to invest significant sums to provide coverage of sporting events also available elsewhere.

The following adverse consequences (i.e. "costs") are likely to flow from the conditions contemplated by ICASA. They are likely to -

1. Devalue content rights, with adverse consequences for rights owners, namely sports federations and content providers (and hence SA's local content industry). This will not only lessen rights owners' incentives to produce innovative and high-quality content, but for sports federations will hamper the development of sport given the lack of alternative funding;
2. Disincentivise electronic audio-visual service providers from putting effort into developing or searching for new and different quality content and marketing that content as a means of differentiating themselves from their competitors to the benefit of consumers;
3. Lessen the incentives of electronic audio-visual service providers to invest in and improve their distribution infrastructure, including STBs;
4. Lessen competition at the retail level between electronic audio-visual service providers;
5. Lessen competition at the wholesale upstream level as regards the acquisition of electronic audio-visual content; and
6. Lessen competition at the wholesale upstream level as regards distribution technologies.

## 9. IMPLICATIONS OF ICASA REGULATIONS

1. A stated goal of the Authority is to create a competitive landscape for broadcast industry. Ironically if approved the Amendments **will only serve to eliminate any possibility of the entry of a viable Subscription TV (Pay TV) competitor now or in the near future**. Simply stated, without even the possibility of exclusive broadcasting rights to the proposed Listed events – the chance of growing / capturing subscribers are near impossible.
2. A cursory review of the 2010 Regulations will confirm that many of the “listed events” were to date not broadcast on FTA. The regulations had in fact little or no impact on the market forces. It must be noted that ICASA has:
  - i. been unable to enforce its Regulations since introduced in 2010;
  - ii. has failed to fine broadcasters for non-compliance; and
  - iii. by its own admission has no mandate to enforce or demand any commercial terms with respect to broadcast rights and their acquisition or payment therein.
3. With rights comes responsibilities. It has been repeatedly noted and accepted as fact that sports federations and /or events rights holders rely heavily ( $\pm 70\%$ ) on revenues from broadcast rights fees.
  - i. Where exclusivity - the main bargaining chip in determining the ultimate value to a Subscription TV Licensee - has been removed, the corresponding rights fee offer have been reduced on average to less than 20% of the initial value.
  - ii. Should Federations / Event owners then be mandated to further give away their most valued content to FTA broadcasters, without any promise to pay market related rights fees, the impacts to sport will be felt throughout their structures.
  - iii. Development programs will become unsustainable and will be the first to go.
  - iv. One by one events which at the very least are not self-funded will be scaled back and eventually pulled from the calendar.
  - v. Production budgets will be cut to highlights packages, the short clips and eventually just social media posts.
  - vi. Attracting international events, will become more and more challenging – and some such as the recently awarded rights to host the Netball Women’s World Cup – 2023 may fail to meet International hosting requirements and subsequently be withdrawn.

## 10. RECOMMENDATION / CONCLUDING REMARKS

The efforts by ICASA to bring sports coverage to more South Africans is commendable, however the dire financial state of the SABC, the disinclination of e.tv to spend on sports rights are major issues that are not going to be rectified overnight. The introduction of digital terrestrial television (DTT) could level the playing field more as additional channels for broadcasters could bring more platforms and money to cover sport.

Ultimately any changes to the regulation must equally be in the interest of sport in South Africa and must therefore also consider all other interested parties in the industry and not just the Public broadcaster at the expense of all others.

**On the balance of the evidence provided, we wish to register our outright objection of the draft Sports Broadcasting Amendment Regulations, 2018 in their present form.**

We would also urge the Authority, to **revisit the current Regulations on South African Local Content: TV & Radio**, where serious consideration should be given to the inclusion of local sport, under specified guidelines (Development & Minority Sport) to be added to the list. It is only through initiatives such as this that capacity can be built within the confines of the Public Broadcasters mandate, which can enable change and build support for future discussions on Regulations such as the Amendments currently under review.

We would further encourage the Authority to revisit the narrow focus on FTA and subscription broadcasters and broaden their scope to include OTT players and other potential new entrants. Without doing so would relegate the sport broadcast industry to the past, rather than future proofing it for the most exciting yet disruptive period in the history of broadcast media to date.

## CALL FOR A PUBLIC FORUM

Further to our commitment to the oral presentations, we respectfully remind the Authority of our proposal for an addition open stakeholder forum (Q&A session) where ICASA, other key government stakeholders, the FTA licensed broadcasters, and in particular the SABC will be present to amongst others discuss:

1. Insights from the ICASA findings which resulted in the proposed 2018 Regulations Draft amendments,
2. Indicate how adherence to Regulations will be measured (independently) post adoption,
3. Clarify language and /or interpretations of various terms and or listed Events (i.e.: National Netball, IAAF etc),
4. Discuss issues around capacity of FTA channels and /or gauge their level of support for the obligations imposed by the listed Category A compulsory Live and in full events, as well as Category B listed events.
5. Seek a greater understanding as to why so few of the 2010 Regulation listed events were carried by the National broadcaster,
6. The commercial impact to the sport & sponsorship Industry and what measures will/ can be put in place to address key concerns raised by all major sporting Federations in their initial submissions,
7. Local Content Regulations and the inclusion of Sport,
8. Provide a platform for sports bodies to voice their concerns, and
9. Open the discussion on issues such as the entry of FTA satellite players (OVHD), and or the potential glut of unregulated OTT and DTH players entering the market on regular basis.

## **ANNEX A: DAVID SIDENBERG BIO**

CEO – BMI Sport Info

Founding Member & CEO – SS Network

**Education:** MBL, UNISA South Africa / BA Economics & Finance, University of Western Ontario, Canada

**Experience:** Following a successful career with one of the leading Sport Sponsorship agencies, Sidenberg launched Sponsor Value Research Services, the strategic arm of BMI Sport-Info. Spanning areas such as strategic fit assessment, rights packaging & commercialisation, target market penetration, sponsorship audits and fee analysis, broadcast & new media rights, he has provided analysis & consultation for Commercial Partners such as; Vodacom, Telkom, Coca-Cola, BP, Liberty Life, Discovery Health, Nike, ABSA and Sasol, - for Sporting Federations such as; Swimming SA, Boxing SA, SAFA, FIFA, 2010 LOC, SASCOC, PBL, TSA, CSA, SARU, CTCTT as well as for government, sponsorship agencies and all major broadcasters.

David is credited with breaking the 18-month stalemate between SABC and SAFA resulting in the widely reported 3-year +R100 million broadcast rights deal. In doing so he further paved the way for our National Football teams to gain access, and the associated benefits from Satellite TV for the first time.

David is unquestionably one of the sponsorship industry's most influential thought leaders. As CEO of the BMi Group, David has access to over 25 years of data, tools and services across media channels including analytics, digital, social and broadcast to provide a fully integrated research & consulting offering to clients.

### **Committees / Advisory Boards:**

- SAFA Commercial Marketing & TV Advisory Board, Media Strategic Studies Committee – Special Member – 2012-2018
- Steering Committee and member of the drafting team for the 2013 National Boxing Indaba,
- Commercial Model for the launch of the Netball Premier League on behalf of the DG of Sport (2013)
- Steering Committee member, representing business for the delivery of South Africa's first National Sport & Recreation Plan (NSRP), launched in late 2011
- Chairperson for the NSRP Funding Framework Task Team (2011)
- South African White Paper on Sport, 2011 – Author of the revised Sport Sponsorship & Broadcast inputs
- AUB / UNESCO Feasibility study on the proposed launch of an African Audiovisual Observatory
- SASCOC National Federations Audit (2010.)

In addition to offering all of the services listed above, David has been called upon as a keynote speaker at numerous conferences and sporting code conventions, to discuss worldwide trends and best practices on topics spanning from, overall rights issues to sports tourism and the commercialisation and sponsorship of sport. He has also written for numerous publications including Sport Business International.

#### **BMI Published Studies:**

- *Gauteng Future Champions (2013-2018) Socio-Economic Impact Report*
- *Arnold Classic Africa (2016-2018) Socio-Economic Impact Report*
- *Esport South Africa 2016 & 2018 – South African Landscape Reports*
- *BMI Adult & Junior SportTrack Report (1997- 2018) – Annual Tracking study on trends amongst Participants and Spectators per sporting code*
- *BMI SponsorTrack Report (Quantitative media monitoring on the commercial value & effectiveness of sponsorship rights in South Africa)*
- *BMI MediaTrack - Tracking of media exposure of all companies involved in sponsorships*
- *Annual Quantification of sport sponsorship spend in South Africa since 1990*
- *BASA – Music & Artstrack Surveys - [2003-2019] Tracking study quantifying music in Music Arts and Culture of South Africans*
- *Continuous research into the value derived from sports advertising and sponsorship on behalf of major sponsoring companies in South Africa.*
- *BMI “SportScope” – The status of individual Sport codes[2004- ]*
- *SABC Sport & Programme Sponsorship Policy [2010- present]*
- *GEDA & GSRAC – “2009 SoccerEx Socio- Economic Impact Report”, 2010*
- *Supreme Council for Sport in Africa Zone 6 – “A Case for Sport”; 2007*
- *Sponsorship SA – An Investor’s Guide [2008]*
- *A Review of Sports Broadcasting Rights, Policies & The Proliferation of New Media Platforms; Telkom Media Broadcast Content Rights Acquisition Strategy Inputs*
- *Gauteng Sport Recreation Arts & Culture - “Home of Competitive Sport” Strategy*
- *Study establishing the impact of sport on the SA economy.*
- *Strategic framework for SA Sport.*