



Independent Communications Authority of South Africa

350 Witch-Hazel Avenue
Eco Point Office Park
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South Africa

Cairo, 12th March 2019

Att.: Mr. Rubben MOHLALOGA,

Chairperson

Ms. Violet MOLETE

By letter and by email

(RMohlaloga@icasa.org.za

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RE: Draft Sports Broadcasting Services Amendment Regulations, 2018

Dear Mr. MOHLALOGA,

The Confédération Africaine de Football ("CAF") is hereby responding to the invitation of the Independent Communications Authority of South Africa ("ICASA") in the local Government Gazette number 42115 dated 14 December 2018, for interested parties to make written representations on the Draft Sports Broadcasting Services Amendment Regulations, 2018 (the "Draft Regulations").

The CAF's response is set out in two parts. The first of which is a summary of CAF's analysis of the sports media rights landscape in South Africa and CAF's perceived implications and consequences of the Draft Regulations were they to become legally enforceable. By way of brief summary, having considered the matter as a whole in the contextual framework of its industry experience, CAF does not agree that the proposed far-reaching amendments to the existing Sports Broadcasting Services Regulations (2010) will achieve the aims of ICASA in relation to the protection of the sports industry in South Africa and moreover, the interests of the public.

CAF respectfully submits that its views on the necessity and overall effectiveness of the Draft Regulations should be taken into consideration by ICASA. In the alternative, if ICASA is ultimately unwilling or unable to set aside the principle of implementing revised Draft Regulations, CAF is of the view that the drafting of the Draft Regulations needs to be revisited and clarified, and that a further opportunity of making representations be given. CAF set out its concerns and comments regarding the drafting in the second part of its response.

I- The Draft Regulations risk jeopardising the development, or in some cases, viability, of sporting federations in South Africa. The requirement to distribute certain listed events and codes live and on free-to-air will almost certainly prevent the substantial investment into sports that is currently made (by subscription broadcasters) such that the availability of sports to the

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viewing public will be reduced, thereby conflicting with CAF's understanding of ICASA's primary interest.

Furthermore, reduced investment in the industry will certainly lead to cuts in grassroots investment, the effect of which is to make sports more elitist and inaccessible to the many as well as creating a public health problem. The levels of investment cannot be replicated in a free-to-air environment.

This is all the more so since the coercive and mandatory characters of the Draft Regulations do not appear to be compatible with the current organization of the free-to-air market in South Africa and the applicable regulations.

It is worth to note that the current organization of the free-to-air market in South Africa is not adequate to deal with the supply of certain premium Confederation Sporting Events (as defined by the existing Sports Broadcasting Services Regulations, 2010), whether or not South African teams participate in such events. Thus, for example, since 2017, the Women Africa Cup of Nations, the CAF Champions League and the CAF Confederation Cup (ie three events concerned by the Draft Regulations) have not found takers in South Africa for Free-to-air broadcasting rights.

When a Free-to-air broadcasting services licensee is granted for South Africa with Free-to-air broadcasting rights of a Confederation Sporting Event, it is only able to broadcast very few parts of the event, as it has not enough channels to cover the event. This is the case in particular with South African Broadcasting Corporation which is granted with the Free-to-air broadcasting rights in South Africa for the whole Africa Cup of Nations (senior male competition), but is able to broadcast 13 matches only among 52 because the number of its channels.

Moreover, regulatory constraints oblige South African Broadcasting Corporation to broadcast specific programs at the time the matches are played, thus often preventing it to broadcast live the matches. Such constraints are inconsistent with the objective of full live coverage as provided by the Draft Regulations for the National Sporting Events listed in Clause 5.1, including the Africa Cup of Nations (male and female soccer).

The Draft Regulations appear to be somewhat unrealistic about the way the Pan-Africa TV channels operate internationally. Indeed, the subscription broadcasting services licensees' market, as well as the market of the broadcasting rights accessible through subscriptions, are global, or at least by large geographical areas in Africa. Then, the new constraints that the Draft Regulations intend to impose to subscription broadcasting services licensees regarding to their business and programming in South Africa specifically are inappropriate for Pan-Africa TV channels operating internationally from South Africa or elsewhere, as they would oblige to have for South Africa a specific programming and specific sorts of broadcasting rights which would lead to challenge the business model of such Pan-Africa TV channels and, therefore, the means by which the broadcasting rights are internationally marketed and acquired, causing serious distortions of competition at an international level.

Whether national or international subscription broadcasting service licensees, the Draft Regulations, should they be approved as they stand, would undoubtedly undermine their economic viability, which, consequently, would necessarily lead to an impoverishment of sports incomes and therefore sports institutions in South Africa, unless this gives pride of place to broadcastings operated on an exclusive basis from outside South Africa by means of Internet broadband and OTT services for instance. In any case, we do not believe that the changes that the Draft Regulations may introduce allow reaching the objective stated in s60(1) of the Electronic Communications Act, 2005.

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II - CAF has commented on amendments to the Draft Regulations where it considers that clarification is required to create consistency of interpretation and allow for practical application.

- Clause 4(1)(a) – Are these criteria applied on an event-by-event basis? For example, is the Africa Cup of Nations a listed event because South Africa is *sometimes* featured or is it only a listed event when South Africa *is* featured?
- Clause 5.1 –

How does ‘full live coverage’ apply in the context of multisport events where multiple events taking place at the same time. Also, is live obligatory where the event is in an unaccommodating time zone?

‘full live coverage’ seems inconsistent with clause 6.2, as the latter gives option of broadcast live, delayed live or delayed.

- Clause 5.1.1(i) and (k) – which events do these include or is it criteria dependent?
- Clause 5.1.2 –

What is ‘cannot acquire’ intended to cover? Lack of resources/finance? Inability to agree terms? Inability to ‘broadcast on full live coverage on Free-to-air’ as requested in Clause 5.1.1?

‘must inform’ should cross reference Clause 6.

‘non-exclusive basis’ how does this apply in practice if there is only one interested party?

With regard to the objective stated in s60(1) of the Electronic Communications Act, 2005, we understand that such ‘non-exclusive basis’ is only between Free-to-air broadcasting services licensees and subscription broadcasting services licensees, and does not prevent a subscription broadcasting service licensee to bid for pay broadcasting rights on an exclusive basis. This should be specified.

- Clause 5.2 – ‘non-exclusive basis’ – how does this apply in practice if there is only one interested party? Moreover, is this only between free-to-air broadcasting services licensees and subscription broadcasting services licensees or may apply to the subscription broadcasting services licensees among each other?

‘sub-licensing conditions’ – what does this mean?

To the extent that there is no reference to the criteria defined in Clause 4., does that mean that all the events listed in Clause 5.2.1, in their entirety, are governed by Clause 5.2?

- Clause 5.2.1 – does ‘Domestic’ mean hosted domestically or only featuring domestic athletes/teams?
- Clause 5.2.1(d) – The CAF Champions League is an interclub competition and, as such, is not a “National Sporting Event” as defined in Clause 1. So, how the CAF Champions League may be part of the Group B events?
- Clause 5.2.1(d) – The CAF Confederation Cup is an interclub competition and, as such, is not a “National Sporting Event” as defined in Clause 1. So, how the CAF Confederation Cup may be part of the Group B events?
- Clause 5.3 –

‘broadcast by subscription and FTA broadcasters’ – Do they both have to broadcast or can either broadcast?

To the extent that there is no reference to the criteria defined in Clause 4., does that mean that all the events listed in Clause 5.3.1, in their entirety, are governed by Clause 5.3?

- Clause 5.3.2 –

With regard to the objective stated in s60(1) of the Electronic Communications Act, 2005, why a minimum number of events should be broadcasted by subscription broadcasting services?

In other respects, presumably no minimum number of hours?

And 'per annum' means 'per period of 12 months' or 'per calendar year'?

➤ Clause 6.1 –

'broadcasting service licensee' is not defined in Clause 1. Does it mean either a Free-to-air broadcasting services licensee or a subscription broadcasting services licensee?

In such a case, with regard to the objective stated in s60(1) of the Electronic Communications Act, 2005, why a Free-to-air broadcasting services licensee should inform subscription broadcasting services licensees?

How does this work in practice?

➤ Clause 6.2 – Seems inconsistent with clause 5.1, particularly reference to 'may' and the option of delayed live and delayed.

Also, does this only apply to national sporting events forming part of Groups A and B events?

As the national sporting events forming part of Groups A and B events may be broadcasted live, delayed live or delayed, is the request of 'non-exclusive basis' is met if a subscription broadcasting services licensee is granted with exclusive broadcast live rights without preventing any Free-to-air broadcasting services licensee to broadcast delayed?

➤ Clause 7(1)(a) – How does the public input element work in practice?

➤ Clause 7(1)(b) – Can we get an understanding of what sort of reasons might be accepted?

➤ Clauses 8(3A) and 8(4) – what jurisdiction does the Authority and the Complaints and Compliance Committee have over non-SA rightsholders?

In conclusion, CAF, as interested party to make representations on the Draft Sports Broadcasting Services Amendment Regulations published on 14 December 2018, thanks ICASA for taking into account the comments of CAF and providing the necessary clarifications and answers.

Since the current wording of the Draft Sports Broadcasting Services Amendment Regulations published on 14 December 2018 does not provide an accurate picture of its actual scope, CAF would be grateful if ICASA, with regard to the principle of equal treatment, could make public all the clarifications and responses that ICASA will provide to the interested parties having made representations and, on the basis of such clarifications and responses thus made public, to give again to all the interested parties, including CAF, the opportunity to comment again on the Draft Sports Broadcasting Services Amendment Regulations published on 14 December 2018.

We look forward to hearing your response.

Yours sincerely,

**CONFEDERATION AFRICAINE
DE FOOTBALL**



Essadik Alaoui
Deputy General Secretary