

## Commonwealth Games Federation Comments on Draft Sports Broadcasting Services Amendment Regulations 2018

### A. Introductory Comments

1. The Commonwealth Games Federation (“CGF”) 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 (“*Draft Regulations*”).
2. The CGF’s response, as a rightsholder, is set out below but in summary, the CGF 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.

### B. Part One

1. 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 viewing public will be reduced, thereby conflicting with the CGF’s understanding of ICASA’s primary interest.
2. Moreover, regulatory constraints oblige South African Broadcasting Corporation to broadcast specific programs at the time the events are taking place, thus often preventing it from broadcasting the events live. 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 Commonwealth Games.
3. Furthermore, naturally as a Rights Holder, the CGF are reluctant to sell broadcasting rights for below market value given the consequently effects that would undoubtedly have on the financial viability of the Commonwealth Games. If the CGF, or its partners, are not able to strike a deal with broadcasters in a particular territory, the Commonwealth Games might not be broadcast in that territory at all, which would have the effect of prejudicing the public at large and curtailing the CGF’s aims of spreading the Commonwealth Games message.

### C. Part Two

The CGF 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.

#### *Definitions*

'National Senior Team' – 'specific sporting age group' is not clear

Clause 4(1)(a) – The Commonwealth Games, are not arranged by 'a recognised international sport body that governs a *particular sport*' and as such does not comply with the criteria for 'a Confederation Sporting Event' as defined. Presumably, that is not the intention of the drafting?

Clause 5.1 –

How does 'full live coverage' apply in the context of the Commonwealth Games 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 – What is the significance of the Commonwealth Games being listed further down in the list?

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 from bidding 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 might it also apply between the subscription broadcasting services licensees?

'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 5.3 –

'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 should a minimum number of events be broadcast by subscription broadcasting services?

In other respects, presumably no minimum number of hours?

And does 'per annum' mean '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 should a Free-to-air broadcasting services licensee 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 broadcast live, delayed live or delayed, is the requirement of 'non-exclusive basis' met if a subscription broadcasting services licensee is granted exclusive broadcast live rights without preventing any Free-to-air broadcasting services licensee from broadcasting delayed coverage?

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?

Clause 8(1) – Throughout the regulations ‘national sporting event of public interest’ should be a defined term.

‘Alternative Dispute Resolution’ is not defined and could be interpreted very differently depending on the governing law.

Clause 8(3A) and 8(4) – what jurisdiction does the Authority and the CCC have over non-SA rightsholders?

#### D. Conclusion

The CGF, 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 the CGF 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, the CGF 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 who have made representations and, on the basis of such clarifications and responses thus made public, to give all the interested parties, including the CGF, a further opportunity to comment on the Draft Sports Broadcasting Services Amendment Regulations published on 14 December 2018.