



International
Paralympic
Committee

Ms. Violet Molete
Independent Communications Authority of
South Africa
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By email: vmolete@icasa.org.za

Bonn, 15 March 2019

**Draft Sports Broadcasting Services Amendment Regulations, 2018 to amend the Sports
Broadcasting Regulations, 2010**

Dear Ms. Molete

I refer to the Draft Sports Broadcasting Services Amendment Regulations, 2018 (the “Draft Legislation”) to amend the Sports Broadcasting Regulations, 2010 (the “Existing Regulations”) and the request for written representations by interested parties made by your office dated 14 December 2018.

The International Paralympic Committee (“IPC”) is the world governing body of the Paralympic Movement. Its purpose is to organise the Paralympic Games and Paralympic Winter Games (collectively “the Games”) and, in that capacity, has responsibility for the distribution of media and broadcast coverage of the Games worldwide.

The “Paralympics” is named in the Existing Regulations as a “listed national sporting event” (a “Listed Event”) and is proposed to be included within the scope of “Group A: Compulsory Listed National Sporting Events for a Free-to-air licensee with “full live coverage” (“Group A Events”) pursuant to the Draft Legislation.

The IPC is therefore an interested party and sets out its representations below.

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Background

The IPC fulfils two primary roles:

1. it acts as the world governing body of the Paralympic Movement and is responsible for the delivery of the Games; and
2. it acts as the International Federation for ten Para sports and is responsible for the organisation of world championships and other regional competitions (collectively “Para Sport Events”).

In relation to both the Games and the Para Sport Events the IPC’s objective is to ensure the fullest coverage by different media and the widest possible audience globally by producing high quality content that will engage and excite the world. To achieve this ambition the IPC pursues three key primary goals:

1. to allocate the broadcast rights to the Games to a range of national rights holders so as to maximise coverage of the Games in all key markets, including South Africa;
2. to promote the Games around the world by producing high quality content that will generate excitement amongst potential viewers / fans; and
3. to generate revenue that can be reinvested so that the overall broadcast product meets the required standards and provides balanced coverage of all the sports that are included on the Paralympic programme. The IPC is reliant on the funds it can generate from the sale of broadcast rights and any profits it may make from such sales are entirely reinvested in production and distribution.

The IPC allocates the rights to broadcast the Games to a mixture of free to air and paid for broadcast services and seeks to balance the need for revenue against the desire for broad coverage. The IPC feels it can and does successfully achieve this balance without the need for regulatory intervention. The success of its strategy is evidenced by the increase in



worldwide viewing figures over recent years, which for the last Paralympic Games in Rio stood at 4.1 billion, including 4.8 million in South Africa.

The IPC's media strategy is a critical component of reaching the IPC's ultimate goal, which is to use the Games and the Paralympic Movement to change perceptions about people with a disability or impairment and thereby effect social change. The IPC considers the Draft Legislation can only frustrate this aim within South Africa, however unintentionally, for the reasons set out below.

Explanatory Memorandum on the review of the Existing Regulations, published by the Independent Communications Authority of South Africa ("the Authority")

Before commenting on the Draft Legislation there are three important statements to record with regard to the Explanatory Memorandum and the principles and understanding on which the Draft Legislation has been prepared by the Authority:

1. Paragraph 2.2: Regulation 3: Amendment of regulation 2 of the Existing Regulations (page 4)

The opening paragraph of Paragraph 2.2 clarifies that the Draft Legislation has been prepared to ensure that the broadcast of national sporting events is regulated in the *public interest*.

When considering the public interest it is important to assess whether broadcasting on a free to air platform will automatically lead to enhanced viewing figures and whether the free to air broadcaster will utilise the rights and broadcast the Listed Events. It is the IPC's actual experience that is not the case as for previous Games the South African Broadcasting Corporation ("SABC") elected not to broadcast any coverage even when the rights were offered free.

The primary reason why the IPC now allocates the rights to the Games to SuperSport International (Pty), for distribution on linear and non-linear TV, is to ensure that there is coverage available to the South African public. With technology evolving so fast and new opportunities developing to reach a wider audience engagement from broadcasters is all the



more important, and subscription broadcasters like SuperSport are well placed to support the IPC's digital medial strategy in order to enable live streaming of content and distribution of clips via social media during the Games. Consequently, this makes the Games freely accessible to the South African audience, which is complimented by the IPC's own distribution channels (which are freely available in South Africa). The Draft Legislation will inhibit investment in new and emerging technologies.

2. Paragraph 2.2: Regulation 3: Amendment of regulation 2 of the Existing Regulations (page 4)

In this section of the Explanatory Memorandum it is stated that the proposed changes are designed 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*”.

In addition to these two aims it is vital that the Authority recognises that the financial sustainability of the international and national sports federations is of paramount importance as well and ensures that the Draft Legislations enables those federations to offer broadcast rights at fair market prices. Those broadcast fees are fundamental to and support the investment required to produce events like the Games, and without such investment there would be poorer quality coverage or no coverage of the Games at all.

3. Paragraph 2.5 – Regulation 5: Amendment of regulation 5 of the Existing Regulations

The Authority notes that the “*sporting rights to the events [Listed in Group A] are already held by the Free-to-Air [broadcasters]*”. In the case of the Paralympics the primary rights holder is in fact SuperSport, with options granted to SABC for free to air coverage.

The Draft Legislation

The IPC welcomes the inclusion of the Games as a separate Listed Event, together with the desire to focus on developmental sports (defined as sports aimed at promoting social change, enlarging the population's choices and increasing opportunities to all members of society).



However, the IPC has three primary objections to the Draft Legislation:

1. unjustifiable and inappropriate restriction on the freedom to contract. The Draft Legislation appears to stipulate that as a Group A Event the IPC would only be entitled to allocate broadcast rights to the “Paralympics” to a subscription broadcaster in the event that a free to air licensee cannot acquire the rights. The IPC’s discretion to negotiate and enter a contract for the sale of its own broadcast rights will be unjustifiably fettered.
2. lack of capacity of SABC to fulfil the legislative requirement. The Draft Legislation requires SABC to provide “full live coverage” of all Group A Events including the Games. Considering the substantial amount of content available it is clearly unrealistic to expect one broadcaster to meet this requirement. The end result will be poorer quality production, a reduction in the breadth of content available (breadth both in terms of the amount of coverage and the number of sports within the Paralympics that may be broadcast live or distributed via new technologies) and a degradation in the overall product. SABC has failed to meet the current legislative requirements placed on it and the Draft Legislation imposes even greater obligations on SABC.

3. no Para sports included in Developmental Sports. One stated purpose of the Draft Legislation is to promote social change by ensuring a wider range of developmental sports are broadcast. Para Sport Events should be included in this list.

The IPC also politely requests that the reference to “Paralympics” be change so as to refer to the Paralympic Games, which is its proper name.

Conclusion

The impact of the proposed Draft Legislation, whilst unintended, will be significant and counterproductive to the Authority’s stated aim, namely to increase the breadth, quantity and quality of Paralympic and Para sport that is made available to the South African general



public. The IPC considers this will not only have a detrimental impact on South African Paralympians and Para sport more generally, but also on the wider society of disabled people.

The IPC would also stress that with the support of SuperSport, Free to Air (FTA) rights have been made available to FTA broadcasters in South Africa. It is therefore the IPC's opinion and experience that it is not the Existing Regulations that result in less coverage on FTA channels (e.g. SABC) in South Africa but rather the lack of engagement on the side of the FTA channels which cannot be and is not addressed in the Draft Legislation.

Accordingly, the IPC expresses serious reservations about the adopted approach and respectfully requests the Authority to reconsider.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Alexis Schäfer', is written over the typed name.

Alexis Schäfer
Commercial & Marketing Director
International Paralympic Committee