13/01/2021

Inquiry into Subscription TV Broadcasting Services

Public Hearings

Sara Salvador – Head of Regulatory & Competition Law at LaLiga

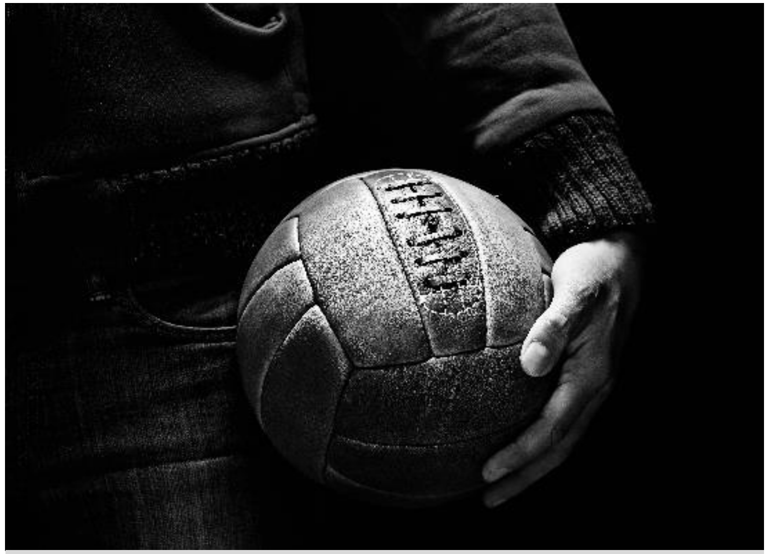
- Speaker – Sara Salvador
- Head of Regulatory and Competition Law at LaLiga; part of the Legal Team (15)
- Working in LaLiga since 2017
- Previous work experience: Linklaters and Hogan Lovells
- Education: LL.M at Georgetown University (USA); LL.M. in EU Competition Law at King’s College London (UK)

Legal Team at LaLiga

Agenda

1. LaLiga, audiovisual rights and international landscape
2. LaLiga in South Africa
3. Draft Findings Document
   a) Market definition - "Premium content"
   b) Effectiveness of competition
   c) Significant market power
   d) Regulatory intervention
4. Final conclusions

1. LaLiga, audiovisual rights and international landscape



Organising body – Spanish Professional Football League (1st & 2nd Division)

Marketing of LaLiga's matches (from 2015)

- Joint marketing of LaLiga's rights is mandatory, established by law on Royal Decree-law 5/2015
- Legal requirements applicable to ensure effective competition in the market, at national and international level
- LaLiga's new role in the sale of media rights transformed the Spanish football league (and therefore its clubs' revenues and recognition around the globe)

Significant expansion worldwide...

Evolution in the number of employees

Season 13/14

57 employees in Spain

Season 19/20

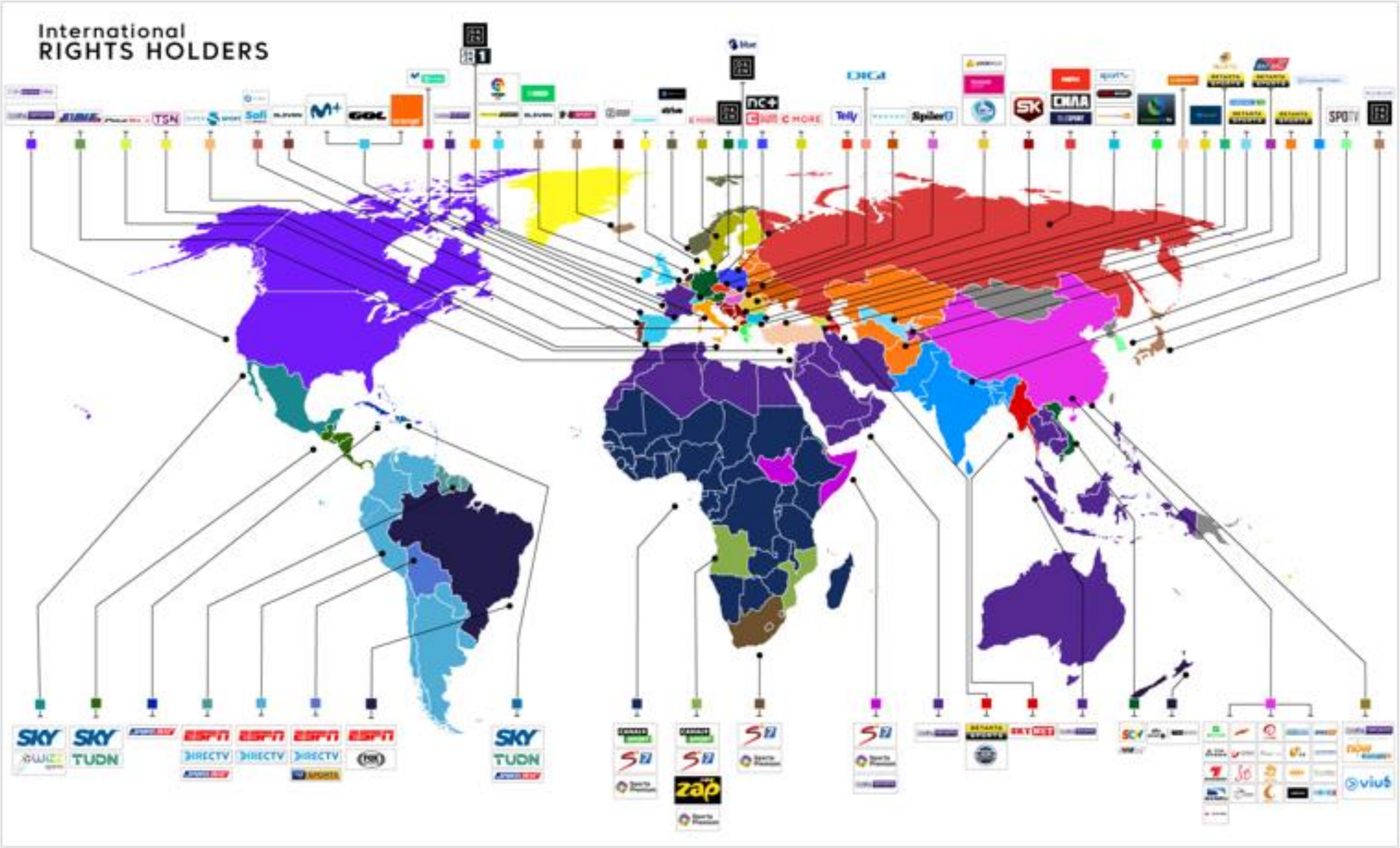
668 employees in 41 countries (11 offices and 44 Delegates)

+611 employees
x11,7

Headquarters · Offices · Global Network

You can watch LaLiga in all countries of the world...

Broadcasters 20/21 *(115 broadcasters)*



2. LaLiga in South Africa

Where can I watch LaLiga in South Africa?

Licencing LaLiga's audiovisual rights in South Africa since 2015/2016

Seasons 2015/2016 to 2019/2020

	Subscription TV	FTA TV
LaLiga	SuperSport	SABC
	Matches	Highlights 16/17, 17/18

Seasons 2020/2021 to 2023/2024

	Subscription TV	FTA TV
LaLiga	SuperSport StarTimes	YouTube Liga Smartbank e news & sport 1 match / round

Where can I watch LaLiga in South Africa? – SuperSport

- Seasons 2015/2016 to 2019/2020 (5 seasons)

LaLiga's matches available in different packages/bouquets:

- DSTV Compaq
- DSTV Compaq+
- DSTV Premium

- Seasons 2020/2021 to 2023/2024 (4 seasons)

LaLiga's matches available in different packages/bouquets (satellite):

-DSTV Family (LaLiga, Serie A, other sports, movies, kids, etc...)
-DSTV Compaq
-DSTV Compaq+
-DSTV Premium

Next challenges...

- New global players
- New technologies / new formats
- Dynamic environment

Key Points – Our experience in South Africa

- Decrease in the duration of licensing agreements (from 5 to 4 seasons)
- Sold to more broadcasters (not pure exclusive contracts)
- Sold in Subscription TV and FTA TV
- Sold in more packages/bouquets

Given this landscape... Is the need for regulation?

- We don’t think so and there are **solid arguments** to support this point of view
- The Draft Findings Document contains significant flaws – Wrong conclusions

3. Draft Findings Document

a) Market definition – “Premium content”
b) Effectiveness of competition
c) Significant market power
d) Regulatory intervention

Preliminary issues

- The Draft Findings Document introduces new references to LaLiga, not discussed at a previous stage
- No evidence, data or any kind of information to understand why LaLiga and other national football leagues are suddenly affected by the proposed ICASA's regulatory measures
- Disproportionate measures with no objective reasoning behind

a) Market definition – “Premium content”

The Draft Findings Document – Market definition

According to ICASA, two (2) relevant markets at wholesale level for content provision:

- Wholesale market for the supply and acquisition of **premium content** for distribution in South Africa
- Wholesale market for the supply and acquisition of **non-premium** content for distribution in South Africa

LaLiga does not accept such definition

- Outdated concept
- Not necessarily costly to acquire
- Any player in the market capable of developing it

However, even if maintained, LaLiga in South Africa does not qualify as premium content

The Draft Findings Document – Market definition

I) Conclusion - What “premium content” is in South Africa *(5.17.8)*

- *“(...)for the purposes of this inquiry the Authority considers the following to be premium content:*
  - *(a) Hollywood premium FSPTW movies and series;*
  - *(b) major live soccer matches including Bafana Bafana, FIFA World Cup, PSL, EPL, UEFA, La Liga, Bundesliga, Ligue 1 and Serie A live soccer matches;*
  - *(c) mayor live rugby matches (...); and*
  - *(d) live cricket matches (...)”*

The Draft Findings Document – Market definition

II) What is the definition of "premium content"? In the Draft Findings Document....

- "*Valuable content that is acquired on an exclusive basis and made **available on high end premium bouquets***" (5.6.3)

- "*In the South African context, premium does not necessarily imply that it is content that is available on the highest available subscription package/bouquet. It may also refer to content which will draw the **most viewers***" (5.7.2)

- Reference to the definition of premium content and examples of premium content in former case precedents (5.8.3)
  - "*Driver type content*" / "*Key sales driver*"
  - "*Must-have content*"
  - Rights' value

The Draft Findings Document – Market definition

III) What live sports are "premium content" in South Africa? In the Draft Findings Document....

- *"When it comes to live sport, a nation's culture, tastes and preferences determine that constitutes premium content. In South Africa live rugby, cricket and PSL soccer matches are regarded as the top three sporting codes with a large following and offered on exclusive basis on television. Therefore, the three sporting codes can be viewed as premium content"* (5.17.13)

- *"Non-premium content is usually bundled up with premium content in order to create a bouquet or package for retail offering"* (5.17.15)

The Draft Findings Document – Market definition – Premium Content

According to the Draft Findings Document of ICASA…

Main features of "premium content":

- Valuable content / Rights value
- Available on high end premium bouquets
- Content that will draw the most viewers
- Driver type content / Key sales driver
- Must-have content

Live sports in South Africa as premium content:

- Live rugby, cricket and PSL soccer matches (nation's culture, taste and preferences)
- Other live rugby, cricket and soccer matches (including LaLiga)

Only at a later stage in the market definition

LaLiga does not fit within the definition of premium content in South Africa

a) Market definition – “Premium content”

LaLiga’s observations

*"In the **Discussion Document** the Authority referred to a **number of cases** and **research** where premium content was defined and examples of premium content given. The Authority does not repeat the case precedent here, suffice it to indicate that the Authority maintains its position that there is a distinction between premium and non-premium content"* (5.8.3)

- **Cases** cited by the Authority lead to the conclusion that LaLiga's audiovisual content is **non-premium content.**

- **Empirical evidence** runs against the observations made in the Draft Findings Document.

I) Cases cited as relevant in the Discussion Document

- *Newscorp/Telepiu* (COMP/M.2876)

Discussion Document

5.7.14 The following cases and articles shed more light in defining premium content.

- In the Newscorp/Telepiu[34] case it was held that –

  "...premium films and most regular soccer events constitute the essential factor ("the drivers") that leads to consumers to subscribe to a particular pay-TV channel/platform. Although other types of contents are also important in order to complement the bouquet of a pay-tv operator, they are not necessarily "driver type" contents."

Complete wording

54. Consequently, this type of expensive contents cannot usually be viewed on free TV. In particular, rights to recent premium films and most regular football events where national teams participate (namely the Italian league) tend to be acquired on an exclusive basis by pay-TV operators and constitute the essential factor (the "drivers") that leads consumers to subscribe to a particular pay-TV channel / platform. Although other types of contents are also important in order to complement the bouquet of a pay-TV, they are not necessarily "driver-type" contents.

Football events - National teams only → Drivers to subscribe to Pay TV

PREMIUM CONTENT

Other content complementing bouquet

Newscorp/Telepiu (COMP/M.2876)

b) Rights to Football events

66. For the purpose of this case, the affected market is that of the acquisition of exclusive broadcasting rights for *football events played every year where national teams participate* (the national league, primarily first division and cups, the UEFA Champions League and the UEFA Cup). The market investigation has clearly confirmed that this type of football contents constitutes a stand-alone "driver" content for pay-TV operators. Moreover, in view of the characteristics of this type of contents and the pricing terms (which are clearly higher than for other regular sport events where national teams participate), the acquisition of exclusive broadcasting rights for these regular football events where national teams participate can be considered as a separate product market, clearly distinguishable from other contents acquisition markets.

Stand-alone driver

↓

Pricing terms

↓

PREMIUM CONTENT

British Interactive Broadcasting/Open (IV/36.539)

Discussion Document

- In *British Interactive Broadcasting*[35] the European Commission (EC) observed that

  "Experience has shown that, to be successful as a pay-television operator, it is essential to include film and sports channels as part of the service. BSkyB has itself identified "movies and sports as key sales drivers".....Pay-television channels composed of recently released films and live exclusive coverage of attractive sports events attract the largest viewing figures. The subscriptions to such channels are the most expensive: while thematic or general interest pay-television channels are supplied to customers as part of a package, film and sports channels are charged on an individual basis. For pay-television, the fact that sports and films programmes achieve very high viewing rates is crucial as it is a reflection of viewer's willingness to pay more for sports and films channels."

Sports key sales drivers

Attract the largest viewing figures

Willingness to pay a TV subscription

PREMIUM CONTENT

- OECD Paper and *Liberty/Ziggo* (M.7000)

"The success of entry into television broadcasting in determined by the ability of new broadcasters to gain access to the content that consumers demand"

Consumers' demand

Must-have content

PREMIUM CONTENT

CONCLUSION

Looking at the cases cited...

1. Largest viewing figures

2. Key sales driver

Must-have content

PREMIUM CONTENT

3. Willingness to pay for Subscription TV services

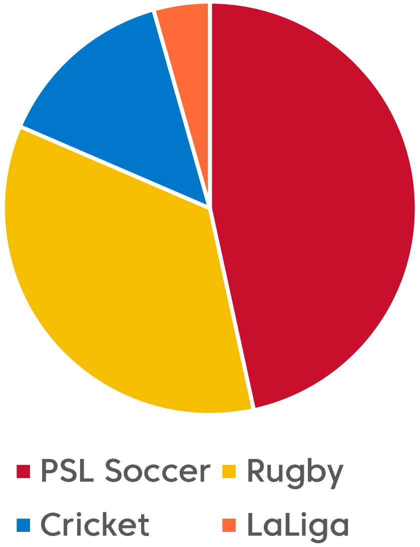
4. Higher rights' value

II) Empirical evidence that shows why LaLiga is not "premium content" in South Africa

Looking at viewers' figures in South Africa…

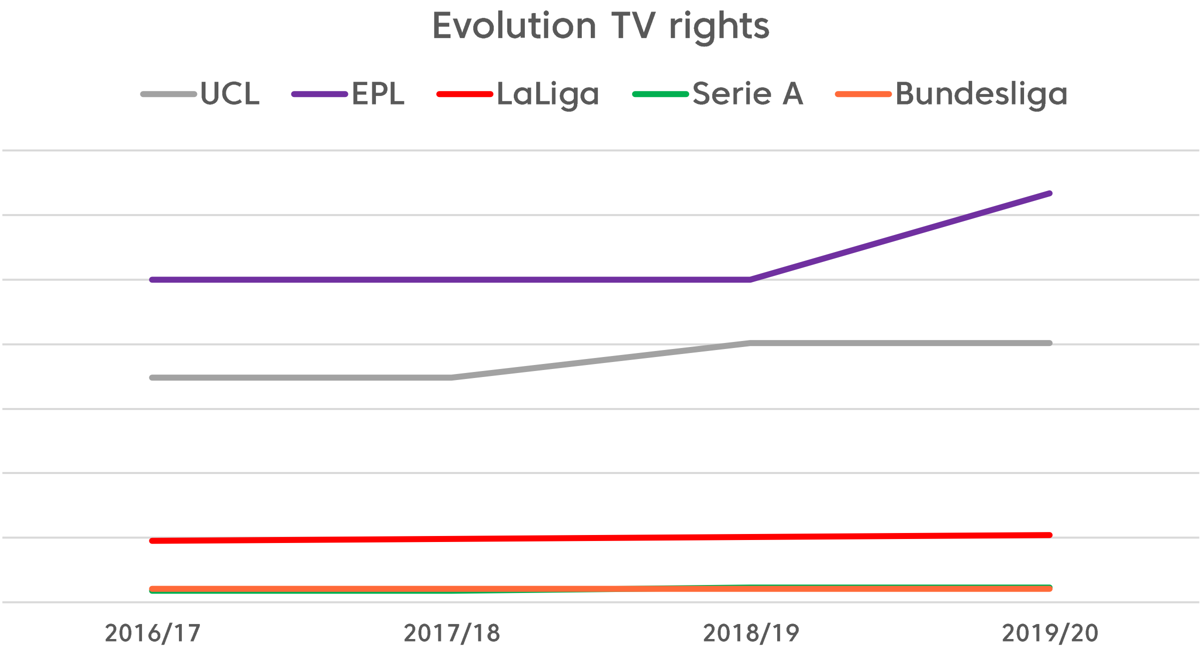
Some sports competitions in South Africa	Average Viewership Per Match (2018/2019)
PSL Soccer	464,517
Rugby Championship	347,805
South Africa vs Sri Lanka Cricket	140,711
LaLiga	43,900

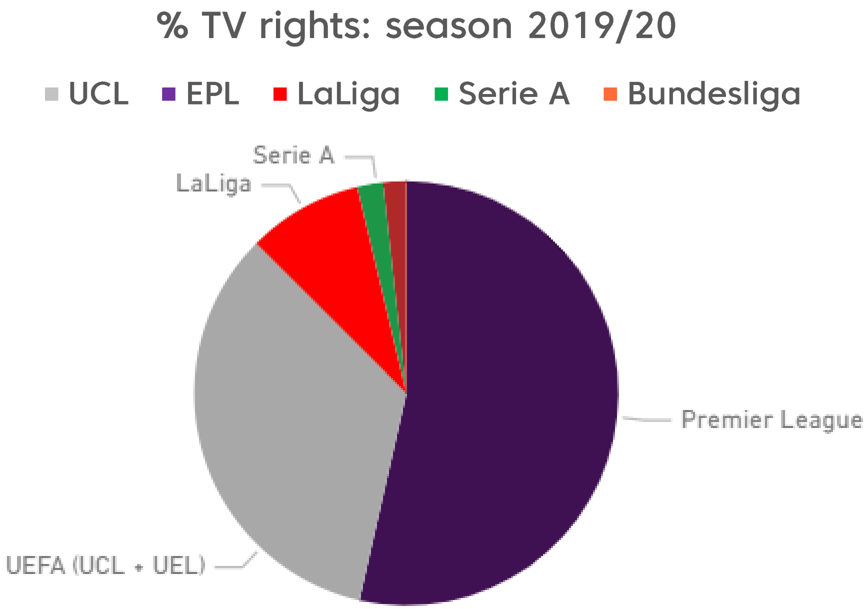
Source: Internal information & Nielsen Sports



II) Empirical evidence that shows why LaLiga is not "premium content" in South Africa

Looking at football rights' value in South Africa…





Source: Internal & public information, pro rata w/ population

From 2021/2022 to 2023/2024… LaLiga's rights have decreased in value in Africa

CONCLUSION

- Features of "premium content", such as high viewers' figures and high rights' value does not apply to LaLiga
- The Draft Findings Document **has incorrectly included** LaLiga's matches within the wholesale market for the supply and acquisition of premium content

b) Effectiveness of competition

Focusing on the **wholesale level** where LaLiga is present...

- LaLiga media rights' **value** are facing more competition - it has decreased in the last cycle
- More **availability** to broadcasters/other market players and to subscribers (availability in additional bouquets/packages)

- LaLiga has a **competitive process** for the acquisition of LaLiga's matches
- **Tender process**: broadcasters, intermediaries any entity willing to broadcast LaLiga's rights can participate on equal terms
- Each cycle "less exclusive", "more inclusive": availability on subscription TV, FTA TV, different formats to reach more fans
- Evolution trends in the market indicates not only more competition from existing OTTs but **new business models** and on their way....

CONCLUSION

There is effective competition at wholesale level in South Africa and there is no need for regulatory intervention

c) Significant market power

According to the Draft Findings Document, Multichoice would have significant **market power** in the following markets:

Retail

- Distribution of basic-tier subscription TV services and satellite based FTA TV services in South Africa
- Distribution of premium subscription TV services in South Africa

Wholesale

- Supply and acquisition of premium content for distribution in South Africa

The Authority's approach...

- Based on **market shares' presumption** of the dominant player at **retail level**

  What market shares? How have they been calculated? What year?

  Only market shares?

  Other players' market shares?

- Includes **LaLiga's content** as part of the wholesale market for supply and acquisition of **premium content** for distribution in South Africa

  LaLiga's matches are non-premium content in South Africa

  Market shares? Only quantity of rights owned without reference to its value

  Vertical integration do not make sense with the majority of premium content

CONCLUSION

- Significant flaws in the Draft Findings Document
- No proper/accurate analysis of “significant market power”

d) Regulatory intervention

- The Draft Findings Document identifies several **licence conditions** to remedy market failure
- According to LaLiga such conditions/remedies should not be implemented, at least at whole sale level → **effective competition**

Focusing on certain conditions...

- Limit to **exclusive contracts duration** should not apply to LaLiga's contracts → **Non-premium content**
- Proposal to limit duration to three (3) years
  - Longer duration is needed to **make content interesting to national bidders** (different taste and culture) – Foreign sports content otherwise will not be available in the country – final consumers worse off
  - Longer duration **allows entry**: smaller entrants can recover their investment more easily
  - It is **not proportionate** for a non-premium content, foreign football league

Some examples...

Spain

- National and EU countries: Until 2020, 3 seasons at national level; from 2020, according to competition law rules (no limit, depending on the context)
- Outside the EU: No limit duration

France

- At national level: 4 years
- Internationally: Sold to one broadcaster for 6 years (2018/19 to 23/24)

Germany

- At national level: 4 years
- Internationally: Variable duration up to 5 years; E.g. 5 years in Thailand

UK

- At national level: 4 years
- Internationally: Variable duration up to 6 years; E.g. Nordic countries 6 years

- LaLiga's licensing agreements should not be part of any regulatory intervention
- International sports content (regular national league from another country) is not an attractive product unless **costs are covered in a longer period time**
- Longer duration contracts facilitates **new entry** to new players in the market
- There is a **global trend** towards contracts longer than three (3) years even at national level
- On similar terms, any remedy focusing on **splitting rights** at wholesale or retail level will devaluate the rights' value significantly and will be **on the detriment of football fans (more expensive, less available options)**

4. Final conclusions

In accordance with ICASA's own definition of "premium content" in its draft Findings Document...

1. The Draft Findings Document has suddenly included LaLiga's matches as part of its Inquiry
2. It does so without any reasoning or data/empirical evidence as support
3. LaLiga's matches can only be categorised as "non-premium" content
   - In accordance with the definition of "premium content" in case precedents
   - In accordance with empirical evidence
4. There is effective competition at wholesale level in South Africa
   - LaLiga's matches are currently more accessible; wider audience, more formats
   - LaLiga has experienced a recent trend worldwide, encountering more players
5. Remedies such as limiting contract duration will only be in detriment of new entrants and LaLiga's fans in South Africa.

Any questions?

Thank you