

M-NET SUBMISSION

DRAFT SPORTS BROADCASTING SERVICES

AMENDMENT REGULATIONS

15 MARCH 2019

INTRODUCTION

- 1 M-Net thanks the Independent Communications Authority of South Africa ("the Authority") for the opportunity to comment on the draft Sports Broadcasting Services Amendment Regulations, 2018 ("the Draft Regulations"). As the holder of a subscription broadcasting service licence, M-Net has an interest in the Sports Broadcasting Services Regulations (the "Regulations").
- 2 In the interests of contributing to a sound and coherent regulatory framework for all broadcasting services, M-Net is pleased to make this short submission on the Draft Regulations. We also align ourselves with the more extensive submission made by our associate company, MultiChoice. We further request the opportunity to participate in any oral hearings which the Authority may hold.

BACKGROUND AND CONCERNS ON PROCESS FOLLOWED

- 3 The Regulations have been a feature of the South African broadcasting landscape since 2003. Over that time, sports bodies and broadcasters have become familiar with the mechanics of how to implement the rules. While some changes have been made over time, the basic approach and structure of the Regulations have remained broadly the same.

- 4 On each of those previous occasions when the Authority considered the Regulations, it published a Discussion Paper which ventilated the issues and explained why the Authority was proposing a particular approach.
- 5 Given the Authority's established practice, it is concerning to M-Net that on this occasion stakeholders have not had the benefit of a Discussion Paper to contextualise the proposed amendments. M-Net believes that the consultative process would have been enriched considerably if ICASA had first published a Discussion Paper and consulted on the underlying policy position and the Authority's reasons for the proposed amendments.
- 6 The Explanatory Memorandum which accompanied the Draft Regulations does not adequately explain the rationale for the proposed amendments. Our concerns are amplified by the fact that the changes proposed by the Authority are so far-reaching in a context where the system has worked relatively well until now. In these circumstances, the purpose of the proposed amendments is unclear and our ability to engage fully and meaningfully is constrained.

LIKELY IMPACT OF THE DRAFT REGULATIONS

- 7 ICASA is charged with regulating broadcasting services in the public interest. We have no doubt that ICASA wishes to see a thriving broadcasting industry with vibrant local sports events on television screens. But M-Net is deeply concerned that the Draft Regulations will have the opposite effect.

- 8 If the Draft Regulations were passed in their current form, they would be extremely negative for sports bodies, broadcasters and ultimately audiences and sports fans.
- 9 Section 60(1) of the ECA limits the extent to which subscription broadcasters can acquire exclusive rights for listed events if such acquisition "prevents or hinders the FTA broadcasting of such events". But the Draft Regulations stray beyond this by:
 - 9.1 Reserving certain rights for FTA only;
 - 9.2 Making it compulsory for FTA to broadcast certain listed events;
 - 9.3 Making it compulsory for FTA to broadcast certain listed events live and in full;
 - 9.4 Limiting pay TV to non-exclusive rights only;
 - 9.5 Expanding the list beyond what is reasonably understood as a national sporting event; and
 - 9.6 Including developmental and minority sports in the list.
- 10 M-Net is concerned that the effect of the Draft Regulations will be that:
 - 10.1 The revenue which sports bodies earn from selling sports rights exclusively and from having a range of broadcasters compete for these rights will be diminished;

- 10.2 The investment by sports bodies in the growth and development of their sports will consequently be reduced, with negative consequences for their sports;
 - 10.3 The amount and range of listed sport on television will reduce because –
 - 10.3.1 FTA broadcasters are unlikely to be able to comply with the compulsory requirement to broadcast live and in full, bearing in mind the realities of such a requirement, and taking into account their other public interest broadcasting obligations; and
 - 10.3.2 pay TV broadcasters are disincentivised to broadcast listed events and may choose to invest in other content (including foreign sports) if they are restricted to acquiring only non-exclusive rights; and
 - 10.4 OTT providers who are not licensed and therefore not constrained by the regulations will be advantaged in being able to access listed sports events.
- 11 Ultimately, if the Draft Regulations are finalised, less, rather than more South African sport is likely to be broadcast, and South African sports fans and television audiences will lose out.

CONCLUSION

- 12 ICASA has, to date, done a commendable job in balancing different interests in its approach to the Sports Broadcasting Services Regulations. ICASA has seen to it that the interests of the public are served without unduly constraining the activities of sports bodies and broadcasters.
- 13 M-Net therefore appeals to ICASA to revisit its approach and retain the 2010 Regulations only with minor updates.
- 14 M-Net thanks the Authority once more for the opportunity to make this submission. We look forward to participating further in this review, including making an oral presentation at the hearings in due course.