

15 March 2019

Ms Violet Molete
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By hand and by email: vmolete@icasa.org.za; pcokie@icasa.org.za

Dear Ms Molete

RE: SUBMISSION BY MULTICHOICE ON THE DRAFT SPORTS BROADCASTING SERVICES AMENDMENT REGULATIONS, 2018 (THE “DRAFT REGULATIONS”)

1. Please find attached a submission from MultiChoice on the Draft Regulations. We hereby request an opportunity to address the Authority during oral hearings.
2. As you will appreciate from the size of the submission, we have provided a comprehensive response to the Draft Regulations. Our aim is to contribute as fully and constructively as possible. We trust that the depth of information will assist the Authority to adopt an evidence-based approach that meets the objects of the EC Act.
3. The Current Regulations have been in operation for some time and have generally worked reasonably well. We don't see a need for change, particularly the radical amendments proposed. In our assessment, the proposed amendments would not serve audiences well, and would almost certainly damage South African sport and sports broadcasting.
4. We propose that during the course of its consultations, the Authority ought to focus on one key question in particular, namely: **Are any changes to the Current Regulations in fact needed at this stage?**
5. We look forward to participating in this process and trust that our input will assist the Authority to answer this question.

Yours sincerely



KWEZI MTENGENYA
GENERAL MANAGER: REGULATORY AFFAIRS

MULTICHOICE SUBMISSION

**SPORTS BROADCASTING SERVICES
AMENDMENT REGULATIONS, 2018**

15 MARCH 2019

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EXECUTIVE SUMMARY

- 1 A South African weekend without soccer, rugby or cricket is unthinkable. But unfortunately, that would be the unintended consequence of the Draft Regulations if they are promulgated in their current form. And make no mistake – there are no winners here: sports bodies, sportspersons, fans, broadcasters and the audience at home are all going to suffer the consequences.
- 2 This should not be happening. ICASA began the process of reviewing the Current Regulations, indicating that it foresaw a 'technical' amendment, an updating of the existing framework which was last reviewed in 2010. ICASA had a single meeting with MultiChoice, where it indicated that it envisaged only minor changes and that there would be no need even for a Discussion Paper (usually standard practice) to explain its reasoning.
- 3 But the amendments which ICASA has proposed in the Draft Regulations are anything but minor. ICASA has completely up-ended its previous approach and, in doing so, ICASA has conducted a dangerous experiment which potentially threatens the livelihood of the South African sports industry.
- 4 Major national sporting events are inextricably linked to a country's vision of itself – a nation's victories on the field have the power to lift the national mood, while defeat can plunge millions into despair. The thinking behind special treatment for *national* sporting events, identified in the public interest, is that a few, select sporting events are so important to a country, so embedded in the national psyche, that their availability to the public should not be prevented. Rules are therefore formulated to make sure that all television audiences – whether they watch via subscription or free to air services – are able to watch these key national events and share in the national mood.
- 5 But national sports events do not exist in a vacuum. They live within a complex sports eco-system, and that eco-system is preoccupied with one chief concern: how to remain viable and sustainable. For regardless of any sport's popularity, sports bodies need sufficient funding to grow and develop.

- 6 Those challenges are even more pronounced in South Africa, where revenue from ticket sales for sports events is lower than in more developed markets, and financial assistance from Government for the major sporting codes is nominal relative to the overall needs of sports bodies.
- 7 For many sports bodies the route to viability – and often survival - is through selling their broadcasting rights. The sale of exclusive rights packages to broadcasters is a life-line for many. For sports bodies seeking a sustainable income, the sale of their rights on an exclusive basis is the best way of maximising their income from their sports events.
- 8 This is a key issue which regulators must take into account when they set out to regulate national sporting events. They are charged with promoting accessibility of national sporting events for television audiences. But in doing so, they cannot cut off the funding streams which keep those events (and the associated sports bodies and sporting codes) alive. To do so would obviously be counter-productive. If regulators get it wrong, it would financially compromise the sports body and threaten the continuation of the event itself and the survival of the relevant sporting code, which would not be in the public interest.
- 9 What is required of ICASA is a balancing of the competing sets of interests which would be affected by the application of s60(1). The public interest is not limited to public access to broadcasts of the widest possible range of *national sporting events*, but extends also to, among other things, the commercial viability of sports bodies, the development and sustainability of sporting codes, and the sustainability of broadcasting services.
- 10 Regulators must therefore proceed carefully, and regulate no more than necessary to achieve clearly defined policy objectives, allowing sports bodies (in offering and negotiating the sale of rights to their events) to strike the appropriate balance, at any particular time, between exposure for their sport and income for the sports body. That has been the approach in South Africa until now.

- 11 But with the publication of the Draft Regulations, fundamental changes have been proposed, seemingly without consideration of the adverse consequences that would follow.
- 12 First, ICASA has proposed dividing listed events into different groups, and within each group imposing rights, obligations and limitations on different broadcasters in respect of bidding for rights and broadcasting events. (Group A events, for example, are required to be broadcast free to air, live and in full).
 - 12.1 Not only would the proposed approach dramatically affect broadcasters, but it would curtail how sports bodies may monetise their rights.
 - 12.2 For the first time, it appears that ICASA seeks to preclude subscription broadcasters from acquiring exclusive broadcasting rights for any listed event, thereby encroaching materially on the commercial freedom of subscription broadcasters and sports bodies, and curtailing the dynamic rivalry and differentiation amongst broadcasters.
 - 12.3 Also for the first time, ICASA proposes obliging free to air broadcasters to bid for the rights to particular events listed in Group A, and to broadcast those events live and in full. ICASA has not explained why it proposes doing so. The Current Regulations allow for listed events to be broadcast on a delayed or a delayed-live basis and this has not been an impediment to attracting viewers. Free to air broadcasters are unlikely to be willing or able to afford the cost of acquiring the live rights to the very wide list of sports events now proposed to be listed under Group A.
- 13 Second, ICASA has proposed expanding the list of national sporting events considerably.
 - 13.1 The proposed list would include entire sporting codes and competitions, where no particular event, stages (or particular games, matches, races or fixtures within competitions which involve multiple

individual events), are identified, including sporting codes which are not currently listed.

- 13.2 If the Draft Regulations were promulgated, a significantly greater number of hours of live free to air broadcasting would be required. For example, the Summer Olympic Games (which ICASA proposes listing in its entirety and requires to be broadcast live and in full free to air) would amount to thousands of live broadcast hours and require over 20 dedicated channels. If the list is expanded as ICASA proposes, free to air broadcasters are unlikely to be able to acquire the rights and/or broadcast the events live and in full, in the light of their other public interest obligations, commercial imperatives, and capacity and budget constraints.
- 13.3 ICASA has also proposed including Minority and Developmental sports in the Regulations, with proposed new obligations on broadcasters to broadcast a minimum of two of these events annually.
- 14 The third major proposed change is that the Draft Regulations seek to regulate the process of bidding for broadcasting rights to listed events. Currently (and as they have always done) subscription broadcasters bid for rights along with free to air broadcasters in a competitive environment. Now ICASA proposes confining subscription broadcasters to being a second-tier bidder for Group A events, only permitted to bid if a free to air broadcaster informs it that it cannot acquire the rights, and even then permitted to acquire only non-exclusive rights.
- 15 Exclusivity is important for all broadcasters – especially subscription broadcasters – to differentiate their offering. This makes exclusive rights the most valuable for sports bodies and broadcasters.
- 16 The revenue from the sale of broadcasting rights is the largest source of revenue for all of the major sports bodies in South Africa, on which those sports bodies rely to carry out their wide-ranging functions and responsibilities.

- 17 The approach proposed by ICASA intrudes on the rights of sports bodies to trade freely and to monetise their property. Preventing sports bodies from selling an exclusive rights package for a listed event to a subscription broadcaster is likely to substantially depress the rights fees realised by sports bodies, and their overall revenue, impacting on the range of functions which they perform in developing and advancing their sporting codes.
- 18 These far-reaching changes are being proposed at a time of unprecedented change and challenge for the South African audio-visual industry.
- 19 Just a few years ago there were only a handful of television broadcasters. That world has changed irreversibly with the entry of unlicensed OTT players offering audio-visual entertainment services which compete with free to air and subscription broadcasters, including massive global players such as Netflix and Amazon Prime Video. The changing nature of the audio-visual sector has put pressure on the revenue available to traditional broadcasters as audiences are fragmented and advertisers increasingly divert ever-tightening budgets to digital platforms such as Google and Facebook. While the Regulations curtail subscription and free to air broadcasters, they place no restriction on new audio-visual players, such as global OTT services which fall outside the scope of the EC Act and these Regulations.
- 20 And as the broadcasters attempt to deal with these challenges, the ripple effects are felt by other players, including local sports bodies who depend for their income, in large part, on sports broadcast rights fees paid by broadcasters.
- 21 Regrettably, the Draft Regulations do not appear to take into account the current broadcasting environment or the adverse consequences for sports bodies and viewers. ICASA appears not to have taken stock of what has worked or not worked in the Current Regulations. The Draft Regulations appear to be premised on numerous misconceptions, which are not supported by fact, logic or law.
- 22 ICASA has not given an indication of any flaws in the Current Regulations or provided any reasons for its proposed changes. The Current Regulations have not given rise to any disputes, complaints or allegations of non-compliance. Nor

have any policy or legislative developments occurred which would support the radical changes proposed.

- 23 The regime in the Current Regulations has functioned effectively:
- 23.1 Investment in local sport has grown.
 - 23.2 Many local sporting codes have survived, even in tough economic conditions.
 - 23.3 Many more sporting events have been broadcast.
 - 23.4 Most listed events have been broadcast on free to air services.
 - 23.5 Viewership of sports programming and channels has grown.
- 24 The Draft Regulations would not have any positive consequences if promulgated in their current form. Quite the opposite: MultiChoice foresees a fatally harmful impact on sport and the broadcasting of national sporting events, and ultimately on the broader South African economy, which we do not believe ICASA intended:
- 24.1 The viability of both subscription and free to air broadcasters would be negatively impacted, and their ability to compete with the new audio-visual players would be severely curtailed.
 - 24.2 The financial security of sports bodies would be destroyed, severely curtailing their ability to pay sportspersons and invest in the administration, growth and development of their sports, from grassroots level up, with ultimate knock-on consequences for the youth, employment and the economy.
 - 24.3 The number and range of national sporting events which are broadcast on television and available to audiences in South Africa would decline or disappear completely, and so the cohesive benefits of national events would be lost. The viewing public would be worse off, and would end up having less sport on television, and lower quality sport to view.

- 25 We understand the desire for more sport to be shown on free to air television. But the Draft Regulations are likely to result in less – rather than more – sport being broadcast.
- 26 Given the extensive sporting events which free to air broadcasters already broadcast and their wide-ranging public interest mandates, they do not have the budget or the capacity to meet the increased, significant obligations proposed to be placed on them. There is a significant risk that free to air broadcasters would end up in the inevitable situation that they cannot acquire the rights, or would acquire the rights but not broadcast the events, or would cherry-pick profitable/popular events.
- 27 ICASA published the Draft Regulations for comment apparently without any preceding or accompanying international bench-marking based on measurable indicators, without conducting in-depth evidence based research, without conducting a regulatory/socio-economic impact assessment, and without consulting on the fundamental changes which it proposes making to the current policy and regulatory position.
- 28 The Current Regulations have worked reasonably well and are an appropriate compromise in the public interest. The status quo has been effective, while the Draft Regulations propose far-reaching adverse consequences. We appeal to ICASA to abandon the changes proposed in the Draft Regulations in the interests of certainty for, and protection of, all the interests at stake in the sports broadcasting value chain.

INTRODUCTION

- 29 MultiChoice thanks ICASA for the opportunity to comment on the Draft Regulations.
- 30 ICASA published the Draft Regulations at a time of unprecedented change and challenges in the South African audio-visual industry. Just a few years ago there were only a handful of television broadcasters. That world has changed

irreversibly with the entry of unlicensed OTT players offering audio-visual entertainment services which compete with free to air and subscription broadcasters, including massive global players such as Netflix and Amazon Prime Video. The changing nature of the audio-visual sector has put pressure on the revenue available to traditional broadcasters. Audiences are increasingly fragmented as advertisers divert ever-tightening budgets to digital platforms such as Google and Facebook, with traditional broadcasters having to sustain decreasing advertising revenue and higher content costs.

- 31 At the same time, existing terrestrial television broadcasters are also having to fast-track the long-delayed and expensive digital migration and extend their availability to online platforms.
- 32 As South Africa looks ahead to the goals laid out in the National Development Plan for 2030, the risks are significant, jobs and the economy are under threat, and money is tight. Traditional broadcasters are under threat and their future is uncertain.
- 33 All local broadcasters are feeling the pinch, but the revenue crunch appears to have been felt most acutely by the SABC, which was already struggling to put itself on a sound financial footing.
- 34 As broadcasters attempt to deal with these challenges, the ripple effects are felt by other South African players – for example, producers who depend on broadcaster commissions and, most relevant for this submission, sports bodies who depend for their income in large part on rights fees paid by broadcasters.
- 35 South African sport is on a knife-edge given prevailing economic conditions, with its continued viability precarious at best. If the Draft Regulations are promulgated, they would destroy local sport, pushing it off the edge into financial ruin.
- 36 MultiChoice is deeply concerned by the direction proposed in the Draft Regulations which, if passed in this form, would be to the detriment of all

roleplayers, including free to air and subscription broadcasters, sports bodies and viewers.

- 37 The Draft Regulations do not, however, demonstrate any consideration for the challenges faced by broadcasters and sports bodies, or the adverse consequences which the proposed amendments would bring about. Nor are they based upon any identification of shortcomings in the current regulatory regime, or any substantiated rationale for the proposed changes.
- 38 The 2010 Regulations represent the regulatory position which ICASA adopted in response to the outcome of thorough consultative processes. This regime has functioned smoothly, without a single dispute being referred for resolution in the past eight years. There have been no policy or legislative changes to support the radical changes proposed.
- 39 While the review of regulations is appropriate from time to time, it is of great concern that ICASA made proposals which depart so significantly from the Current Regulations, without full consultation and without setting out the issues, supporting evidence or ICASA's preliminary views in a discussion paper.
- 40 There is a significant prospect that the Draft Regulations, if promulgated, would be reviewed and set aside, at great cost to all concerned.

41 This review takes place at a difficult time, when broadcasters and sports bodies are grappling with challenges that threaten their very existence. The Draft Regulations propose fundamental changes, with devastating implications for all roleplayers in the sports broadcasting value chain, but appear to have been conceived without regard for the challenges faced by broadcasters and sports bodies, or the adverse consequences which the proposed amendments would bring about.

OVERVIEW OF THIS SUBMISSION

- 42 The issues raised by the Draft Regulations are complex and the potential ramifications are substantial.

- 43 If passed, they would have significant detrimental consequences for the entire sports broadcasting rights value chain. MultiChoice is concerned that the Draft Regulations, in key respects, are not in the public interest, and are irrational, unreasonable and disproportionate.
- 44 In the light of these broad concerns, our submission is structured as follows:
- 44.1 **Part A: The sports context and the interests at stake**: Part A deals with the sports context and the interests which are at stake in this review. We consider the interests of local sports bodies and sporting codes, against an outline of how sports broadcasting rights are sold, and the economic importance of the sale of exclusive rights to sporting events. Thereafter we consider the interests of broadcasters in the context of the local sports broadcasting industry.
- 44.2 **Part B: The regulatory context and ICASA's approach**: In Part B we begin with a brief analysis of s60(1) of the EC Act and the requirement for ICASA to list *national sporting events identified in the public interest*. We then consider ICASA's approach to the regulation of national sporting events over the past 15 years, describing the thorough processes which culminated in the Current Regulations (which steps have not been followed this time). We also benchmark the Current Regulations against international best practice and reflect on ICASA's approach to this review.
- 44.3 **Part C: Comment on the Draft Regulations**: After that we comment, in detail, on the substantive provisions of the Draft Regulations and canvass the implications of the Draft Regulations to demonstrate the disastrous consequences which the Draft Regulations, if promulgated, would have for sports, broadcasters and audiences.
- 44.4 **Part D: Concluding comments and way forward**: We conclude with our overarching comments on this review and make proposals as to how ICASA should proceed.

- 45 For ease of reference, we have defined terms in the glossary at the end of the submission.
- 46 We support evidence-based regulation in the public interest. We have therefore done extensive research and commissioned expert advice in an effort to grapple meaningfully with the issues at hand and to support our submission with relevant facts and analysis. Our submission includes the following annexures:
- 46.1 **Economic perspective:** MultiChoice requested Genesis Analytics, a leading economics-based consulting firm, to provide an economic perspective and consider the economic impact of the Draft Regulations. The Genesis Report is attached as Annexure A. It concludes, amongst other things, that the proposed amendments are impractical, seriously risk undermining the financial sustainability of sports bodies and the ability to host the sports events in the first place, and may result in a failure to achieve the benefits sought.
- 46.2 **International best practice:** It is regrettable that, apparently, no international benchmarking based on measurable indicators preceded or accompanied the publication of the Draft Regulations. We highlight international best practice in Annexure B and conclude that the Current Regulations compare well internationally, whereas the Draft Regulations do not.
- 46.3 **Australian perspective:** It appears that ICASA has drawn, to some extent, on the approach in Australia, which prevents a subscription television broadcasting licensee from acquiring a right to televise a listed event unless a free to air television broadcaster has a right. (This seemingly informs ICASA's proposed amendments to the regime governing "Group A" listed events.) But the Australian system is regarded as one of the most onerous in the world, has been severely criticised and has not worked well. MultiChoice requested Jon Marquard, an Australian expert, to provide an Australian perspective,

which we hope will assist ICASA to avoid the pitfalls of the Australian model. Mr Marquard's report is attached as Annexure C.

- 46.4 **MultiChoice's contribution to sport**: MultiChoice is the biggest contributor to the growth and development of sport in South Africa and a significant contributor on the rest of the Continent. In Annexure D we highlight some of our contributions to sport. We are not able to make these investments and contributions if the regulatory environment is not conducive to us doing so. Adversely impacting on subscription broadcasting services would have a ripple effect in this wider sports context.
- 46.5 **Other concerns about the Draft Regulations**: There are various other concerns about the Draft Regulations which, although having important legal consequences, should not detract from the focus on the significant structural and policy flaws in ICASA's proposals. These other concerns are described in Annexure E.
- 46.6 **Sports broadcast free to air**: There seems to be a misconception that South African sport is not broadcast on free to air television. In Annexure F we demonstrate that a substantial volume of sport is already broadcast on free to air television in South Africa and that any perception that sport is not accessible free to air is unfounded. Further regulatory intervention is not necessary or warranted, because market forces, together with the Current Regulations, are already achieving the Act's objectives.
- 47 We appreciate that our submission is long. Nevertheless, we believe that a comprehensive, reasoned, evidence-based submission is vital for us to convey the extent of MultiChoice's concerns with the Draft Regulations and the far-reaching consequences that would result if they were promulgated in their current form. We urge ICASA to apply its mind to our full submission, including the annexures.

PART A: THE SPORTS CONTEXT AND THE INTERESTS AT STAKE

Sports rights

48 We begin by explaining sports rights: who owns them, how they may be packaged, the process involved in selling them, to whom they are sold, and their value.

Sports bodies own sports rights

49 The broadcasting rights to a sports event are usually owned by the entity which organises the event. In most instances this is the governing body of the sport ("sports body") in the country hosting the event.

50 In competitions involving teams from many different countries, the organiser of the event is likely to be a multi-national/international entity, such as the IOC or FIFA, which would usually be the rights holder. Although a broadcaster may purchase these rights from the rights holder for a defined period, at the end of that period the rights always revert to the rights holder.

51 Examples of rights owners are the following:

51.1 CSA owns the rights to all cricket played in South Africa.

51.2 The ICC owns the rights to the ICC Cricket World Cup.

51.3 FIFA owns the rights to the FIFA World Cup.

51.4 Netball South Africa owns the rights to the National Premier League and all inbound international matches played in South Africa involving the senior national netball team.

51.5 The IOC owns the rights to the Summer and Winter Olympics.

A sports body only owns rights to its events played in its country

52 A sports body only owns the broadcasting rights to the events of that sport played in its own country. If the country is only the hosting country of a multinational

event, then the international body owns the rights (e.g. FIFA owns the rights to the FIFA World Cup, even when it is hosted in South Africa). For example:

- 52.1 If the English cricket team tours South Africa, CSA owns the rights to the matches played in South Africa. The England and Wales Cricket Board is not the rights holder, and does not control the sale of the rights.
- 52.2 If the Proteas tour England, the England and Wales Cricket Board owns the rights to the matches played in England. CSA is not the rights holder, and has no control over the sale of the rights.

Packaging of broadcasting rights involves many factors

- 53 It is up to the sports body, as the owner of the rights, to determine how to sell the broadcasting rights to its sports events.
- 54 These decisions are becoming increasingly complex with technological development and the globalisation of the communications and sports sectors. A sports body will typically consider –
 - 54.1 the duration of the agreement;
 - 54.2 the territory (e.g. are the rights being sold for the whole of Africa, sub-Saharan Africa, or South Africa?);
 - 54.3 the broadcasting payment model (e.g. are the rights being sold as free to air broadcasting rights or subscription broadcasting rights?);
 - 54.4 the broadcast medium (e.g. terrestrial, satellite, cable, ADSL, Internet, OTT);
 - 54.5 the nature of the broadcast (e.g. live, delayed-live, or delayed; in full or highlights packages, clip rights, or magazine programming);
 - 54.6 whether the rights acquired are exclusive or non-exclusive; and
 - 54.7 whether the rights are to be sold with or without sub-licensing rights/obligations.

- 55 Additional factors a sports body will consider when selling its broadcasting rights are the likelihood of attracting sponsorship income and the quality of the production, packaging and promotion of the broadcasting of the event. Higher quality production leads to increased interest / engagement from the fan base which also provides a better platform for securing sponsorships, which account for almost 30% of revenue for the largest South African sports codes.
- 56 Given the complexities, sports bodies are best placed to determine how best to package and sell the rights to broadcast their events with reference to their own peculiar circumstances at any point in time.

Sale of broadcasting rights is a competitive commercial process

- 57 The sale of broadcasting rights is a competitive commercial process. This may occur by way of a formal tender process or bilateral negotiations, at the sports body's discretion.
- 58 The rights holder to a sports event played in its country could sell the rights to that event to one or more broadcasters in its country. It could also appoint a sports rights agency to sell the rights on its behalf. For example, CSA sells its free to air broadcasting rights to the English cricket team's tour to South Africa to the SABC and the subscription broadcasting rights to SuperSport. As regards the rest of the world, CSA appoints a sports rights agency to represent it in respect of the sale of its broadcasting rights overseas.
- 59 The rights holder could make the first approach to one or more broadcasters and/or OTT services and/or a sports rights agency. Alternatively, one or more broadcasters, OTT services and sports rights agencies could take the initiative in relation to the rights holder.
- 60 The timing of the sale is significant. Sports bodies need to firm up their broadcasting rights deals well in advance of the event commencing, in order to secure revenue for their sport, budget and plan, engage sponsors, and attend to the many logistics associated with the event. Likewise, broadcasters need to firm up their rights deals well in advance, so that they can budget and plan,

market the event, sell advertising, and plan for the production, transmission and scheduling of the event.

- 61 What is significant, for present purposes, is that it is the rights holder's prerogative, as the owner of the rights, to decide how to package and sell its rights to maximise their value.

OTTs have revolutionised how sports bodies package and sell their rights

- 62 Sports bodies are engaging the new OTT services as bidders for their electronic audio-visual rights, including Internet giants such as Amazon, Google, Facebook and Twitter, as well as niche sports-focused OTT players.
- 63 This has increased competition for sports rights, facilitated by rights owners who have every incentive to get OTT services interested in their rights in order to maximise the overall value of their content. OTT players internationally (e.g. Facebook, Amazon, Twitter, YouTube, Verizon and Yahoo) ¹ and in South Africa (e.g. Cell C and Vodacom)² are successfully bidding for the electronic audio-visual rights to distribute sport, including live streaming sport.
- 64 Even where traditional broadcasters manage to acquire the rights to broadcast certain sports content exclusively over their traditional broadcasting platforms

¹ For example:

- Amazon, Facebook, Twitter, YouTube, Verizon and Yahoo have all acquired rights to different packages of live pro games, effectively streaming what is broadcast on traditional television (*Big Media, Silicon Valley Battle for Multibillion-Dollar Sports TV Rights*, Variety, <https://variety.com/2018/digital/features/olympics-rights-streaming-nbc-winter-games-1202680323/> (last visited 7 August 2018)). See also *The Power of Tech in the Modern Era*, July 2018, which stated "**Facebook, Amazon, Twitter ... the big tech giants are coming for live sports broadcasting and all indications are that they're just getting started**"
- In 2018 Facebook bid R8.4 billion for global Indian cricket rights and won the bid for the rights to screen La Liga matches across the Indian subcontinent

² For example:

- Cell C's Black offers a range of sports, including the delayed live streaming of football games played by Chelsea, Manchester United, Barcelona, and Real Madrid
- Vodacom has secured rights to live-stream all FA Cup football matches (a major sports property whose rights were previously exclusively acquired by SuperSport) stating: "*Without the obligation of a monthly pay-TV subscription, Vodacom customers will have access to live, delayed-live or catch-up to all their favourite teams in the FA Cup, including highlights and clips from as little as R35 a game from any device of their choice. Full season tournament passes are also available for customers who want to watch more than just one game*"

(e.g. subscription or free to air / DTT or satellite), they increasingly compete with simulcasts of the same content on OTT services. Some sports bodies are developing their own OTT offerings which side-step traditional broadcasters entirely.³

Exclusive rights are most valuable to sports bodies

- 65 The sale of broadcasting rights on an exclusive basis is the best way for a sports body to maximise the income from that event.
- 66 Exclusivity can generate significantly higher income than would have been paid for non-exclusive rights. This is known as the "exclusivity premium". One of the international experts who participated in the 2002/2003 inquiry estimated that the exclusivity premium is worth between 40% and 100% of the total value of the rights.⁴
- 67 In MultiChoice's experience, the value of broadcasting rights is likely to drop by approximately 80%, or more, when sold on a non-exclusive basis. For example,

³ For example:

- Formula One, UEFA and the EPL are launching their own OTT streaming platform dedicated to showing their content
- The English Football League ("EFL") launched its own OTT service, called iFollow, which allowed overseas supporters to live stream some club matches
- Eurosport recently launched a new channel called Eurosport 2 HD Xtra to broadcast 45 Bundesliga games (Eurosport: http://www.eurosport.de/eurosport/eurosport-1-eurosport-2-eurosport-2-hd-xtra-eurosport-player-das-komplette-angebot-im-uberblick_sto6281944/story.shtml)
- The NFL packaged a content deal involving the digital rights of Thursday Night Football for the 2017 season
- ESPN produces a live, digital-only "SportsCentre" after every NBA game, which provides commentary, highlights and analysis of the game, including the postgame conference (Digiday, 1 June 2017, ESPN to produce digital-only "SportsCenter" shows during the NBA Finals: <https://digiday.com/media/espn-to-produce-digital-only-sportscenter-shows-during-nba-finals/>)
- The Australian Football League ("AFL"), in partnership with Telstra, distributes AFL live matches and other content directly to consumers, for a weekly or monthly fee, with the same matches being simulcast by traditional broadcasters. Computerworld, 18 February 2013, Telstra kicks off AFL season with mobile, tablet app: <https://www.computerworld.com.au/article/454002/telstra-kicks-off-afl-season-mobile-tablet-app/>; Telstra: <https://www.telstra.com.au/tv-movies-music/sports-offer>

⁴ Gerry Boon, an expert from UK on the economics of sports broadcasting, stated: "The exclusivity premium is the proportion of income that exclusivity can generate over and above what would have been paid for non-exclusive rights. ... I would estimate that, in my view, the acquisition of exclusive rights is worth between 40% and 100% of the total value of the rights themselves"

SuperSport recently paid an amount for non-exclusive sports broadcasting rights, which was the equivalent of 14% of the price which it had paid for exclusive rights to the same sporting event six years earlier (i.e. R86 less per R100 for the same content, simply because it was not exclusive).

- 68 ICASA recognised the value and importance of exclusivity in the 2003 Position Paper, when it stated:

"For sports organisers, the sale of exclusive rights is a way of ensuring the maximum short-term profitability of the event being organised as the price paid for exclusivity by one broadcaster is generally higher than the sum of the amounts, which would be paid, by several broadcasters for non-exclusive rights."⁵

- 69 Exclusivity also brings other benefits to the sports body, over and above the significant financial investment in local sports. It incentivises the broadcaster acquiring the rights to invest more heavily in broadcast quality, including higher production standards, expert live commentary, and marketing and promotion. Where the rights are not exclusive, there is far less incentive to engage in such investments as other broadcasters can simply free-ride on these promotional efforts.

Exclusivity is an accepted commercial practice

- 70 As ICASA recognised in the 2003 Position Paper, "*the sale of exclusive rights to broadcast sports events is an accepted commercial practice*".⁶

- 71 Exclusivity has consistently been recognised as a "*necessary part of the normal functioning of the highly competitive broadcasting market*".⁷ The European Commission has stated that "*exclusive sports rights are a commercial commodity*

⁵ Pg 32 of the 2003 Position Paper

⁶ Pg 32 of the 2003 Position Paper

⁷ European Parliament, Resolution B4-0326/96, O.J. No. C166/109, 10 June 1996

that play an important role in developing both the TV market and the sports themselves. They are inherent to the economy of the broadcasting system".⁸

- 72 In the UK case concerning the sale of the English Premier League rights,⁹ the Restrictive Practices Court stated:

"Pay-TV companies can only attract subscribers, who have the option of free-to-air television, by significantly differentiating their services from those of rivals. The main method of doing this is to acquire exclusive rights to a defined category of material. Exclusive rights are the main competitive tool used by Pay-TV broadcasters and to some extent by all broadcasters. Pay-TV broadcasters need them to persuade viewers to invest in a set top box and to pay a subscription."

- 73 In another UK decision, the House of Lords stated:

"In order to persuade people to pay to watch television, it is necessary to offer them programmes which would not be available for free on ordinary public broadcasts."¹⁰

- 74 ICASA has also recognised this:

"The ability of subscription broadcasting services to acquire content on an exclusive basis is fundamental to the provision of these services. For subscription broadcasting services, exclusivity is the primary basis on which these services will attract and retain subscribers. Some forms of exclusive arrangements in the broadcasting industry are, therefore, both efficient and desirable."¹¹

- 75 Exclusivity does not equate to an absence of competition or a lack of contestability for rights. To the contrary – exclusivity is pro-competitive. Rights

⁸ *European Commission Press Release No. IP/97/85 of 5 February 1997, concerning its communication "Television Without Frontiers and Major (Sports) Events"*

⁹ *Director General of Fair Trading v FAPL* 28 July 1999

¹⁰ *Independent Television Commission, Ex Parte TV Danmark 1 Ltd v R* [2001] UKHL 42

¹¹ *Address by the Chairperson of the Independent Communications Authority of South Africa at the launch of the Position Paper on Subscription Broadcasting Services, 1 June 2005*

owners have the strongest possible incentive to draw in more bidders and increase competition for the rights in order to maximise rights values.

- 76 A listed events system must therefore strike a balance between the exclusive acquisition of broadcasting rights to national sporting events and the objective of affording the nation access to those events in the public interest.

- 77 Sports bodies own the broadcasting rights to their sports events held in South Africa.**
- 78 How they package and sell their rights is a complex issue, and requires the sports body to consider many factors, only one of which is whether or not they will sell the rights exclusively.**
- 79 The sale of broadcasting rights, including exclusive rights, is a highly contested, competitive commercial process.**
- 80 The sports broadcasting context has been revolutionised by OTT services, which are competing head on for sports broadcasting rights and distributing sports content online in parallel with, or sometimes instead of, broadcasters.**
- 81 Exclusive rights are the most valuable to sports bodies, because, as ICASA has recognised, exclusive rights are worth more than the total value a sports body could derive from all of its separate packages combined.**

Sports bodies

- 82 The main objective of a sports body is to ensure the current and long-term growth and development of its sport.

Sports bodies rely on broadcasting income to develop and administer their sport

- 83 To meet its obligations, a sports body needs, on the one hand, significant income and, on the other hand, to ensure the exposure of the sport.

- 84 The sources of income for South African sports bodies are limited. In descending order of importance, the sources are likely to be-

84.1 the sale of broadcasting rights;

84.2 sponsorship; and

84.3 ticket sales.

85 In the last 15 to 20 years, both in South Africa and internationally, income from the sale of broadcasting rights has become by far the biggest source of income for the sports bodies of the major sports. The 2003 Position Paper recognised this:

"The inquiry into sports broadcasting rights clearly demonstrated the strong reliance by sports federations on the income generated from selling sports rights. Money generated from selling sports broadcasting rights is now seen as critical to the development of sports."¹²

86 This was borne out repeatedly by the written submissions made by the sports bodies governing the major sports in respect of the 2008 Discussion Document and ICASA's Inquiry into Subscription Television Services, in which CSA, SA Rugby and the PSL indicated that income from the sale of broadcasting rights represented a critical portion of their total income:

Sports body	2008	2017
CSA	62% ¹³	59% ¹⁴
SA Rugby	52% ¹⁵	53% ¹⁶
PSL	60% ¹⁷	58/59% ¹⁸

¹² Pg 28 of the Position Paper. ICASA noted that broadcasting revenue accounted for 34.5%, 63% and 55% of the total revenue of the PSL, UCB and SA Rugby respectively

¹³ CSA submission on the 2008 Discussion Document, 7 November 2008, pg 3

¹⁴ CSA submission, ICASA Inquiry into Subscription Television Services, 4 December 2017, pg 3

¹⁵ Submissions by SA Rugby on the Discussion Document on the Sports Broadcasting Rights Regulations, 21 November 2008, pg 3

¹⁶ In 2008 SARU indicated that government funding represented only approximately 0.35% of its requirements (Submission by the South African Rugby Union: Independent Communications Authority of South Africa: Inquiry into Subscription Television Broadcasting Services, pg 2)

¹⁷ Joint submission by SAFA and the PSL on the 2008 Discussion Document, 21 November 2008, pg 6. (SAFA indicated that it derived a relatively small portion of its revenue from the sale of broadcast rights for national teams largely due to the low price paid by the SABC for SAFA's broadcasting rights, well below the actual value of the rights.)

¹⁸ Submission from the National Soccer League on the Discussion Document of the Independent Communications Authority of South Africa with regard to the Inquiry into Subscription Television Broadcasting Services, 4 December 2017, pg 3

87 Markets which are more mature than South Africa's differ in that the sources of income of sports bodies are not as limited. For example:

87.1 In the UK, public funding for sports can come from the DCMS, the National Lottery, the devolved administration of Wales, Scotland and Northern Ireland and local authorities. In 2016 – 2017 the DCMS alone provided £182 million of funding to sports (nearly R3,5 billion).

87.2 The Australian Federal Government has budgeted A\$230 million in sport and physical activity initiatives over five years (approximately R2,34 billion).

88 The UK Secretary of State has stated that an impact assessment should accompany the Major Event test –

"to consider the impact of listing an event upon the finances of a sporting body and any strategic direction that body has publicly expressed (across the range of activity it supports) as well as upon affected broadcasters and the wider broadcasting market".

89 He stressed the need to look at a wide range of *"inter-dependent and potentially conflicting factors"*, one of which ought to be the *"extent if any, to which the sport in question has received direct or indirect public funding ... to support its activities – for example the construction of stadia, funding of grassroots etc."*¹⁹

Sports development is an important priority in South Africa

90 South Africa's sports bodies are under particular pressure to realise the maximum value from their broadcasting rights in order to invest in sports development.

¹⁹https://webarchive.nationalarchives.gov.uk/+/http://www.culture.gov.uk/images/consultations/listed_events_review_cohttp://webarchive.nationalarchives.gov.uk/+/http://www.culture.gov.uk/reference_library/media_releases/6513.aspxnsultation.pdf

- 91 This is another reason why South African sports bodies are more dependent than many of their foreign counterparts on broadcasting income. This income contributes towards the maintenance and development of sports and sports infrastructure, employment and talent development.

Sports bodies need to balance their sport's income and exposure

- 92 ICASA recognised that a balance has to be struck between a sports body's need for income and its need for exposure. The 2003 Position Paper stated:

"The Authority is aware, however, that the reliance by sports bodies and clubs on money generated through the selling of sports broadcast rights needs to be balanced against the need to ensure mass audiences and support for 'national sporting events'."²⁰

- 93 Balancing these needs is a complex process. The sale of sports broadcasting rights on a non-exclusive basis and/or to free to air broadcasters only, may (although not necessarily) increase the exposure of the sport, but is likely to yield limited income. Conversely, the sale of sports broadcasting rights on an exclusive basis to a subscription broadcasting service is likely to maximise the sports body's income, but may (although not necessarily), limit the exposure of the sport. Sports bodies will take this into account when deciding how to package and sell their rights.
- 94 Sports bodies will also take into consideration other factors that increase the value of their rights. Broadcasters who acquire exclusive rights have an incentive to market the event and invest in the quality of the broadcasts in order to enhance their offering. This contributes to the value of the rights, the expansion of the support base and the sponsorship revenues that sports bodies are able to derive.
- 95 What is the right balance for a particular sport will differ at various points in time, and will differ from the right balance for another sport. Sports bodies are best

²⁰ Pg 28 of the 2003 Position Paper

placed to evaluate the balance which they require within their sporting code at any given time.

Sports bodies can create a win-win situation

96 It is possible for a sports body to meet apparently conflicting needs, and to create a win-win situation, so that:

96.1 The subscription broadcaster is able to differentiate its offering, which contributes to retaining existing subscribers and attracting new subscribers.

96.2 The free to air broadcasters, who probably have a more limited budget and channel capacity, are nevertheless able to broadcast some or all of the event, live, delayed or delayed live, thus meeting their mandate and addressing commercial imperatives.

96.3 The sports body maximises its income.

96.4 The sports body ensures the exposure of the event, not only to pay TV subscribers, but also to viewers of free to air television.

96.5 Viewers benefit, for the reasons stated in paragraph 96.4.

PSL deal is an example of a win-win situation struck by the sports body

97 The experience of the PSL is telling. Before 2007, only a small number of PSL matches were broadcast, and only by the SABC. In 2007 the PSL designed a competitive tender process where nine different packages were made available to bidders, including a composite package covering all of the broadcasting rights. Following the competitive tender process, SuperSport successfully acquired the composite package and was contractually obliged by the PSL to sub-license live free to air broadcasting rights to many of the PSL matches to the SABC. In September 2012, after another competitive tender process, SuperSport once again successfully acquired the composite package, including an obligation to sub-license various free to air rights. The PSL pre-approved the sub-licensing to the SABC. In this way, the PSL has maximised both the free to air and

subscription coverage of PSL matches, and maximised its income from the sale of its broadcasting rights.

Box 1: Benefits to the PSL from the exclusive contract with SuperSport

Benefits to the PSL. The increase in income from the sale of the PSL rights has resulted in the PSL being ranked in the commercial top 10 football leagues in the world in terms of revenue (prior to 2007 it was ranked below 30th). Pan-African interest in the content has also increased, particularly in Southern Africa.

SuperSport has increased the broadcast exposure of PSL matches²¹ and PSL-related content by broadcasting a variety of PSL content over its fully dedicated sports channels. Broadcasting is in HD and includes multiple magazine shows such as Extra Time, Love PSL and the NFD Show. SuperSport has also improved the production quality of the PSL matches using its production ability and experience.²² SuperSport has also invested in on-air, outdoor and the digital promotion of PSL content.

Benefits to the PSL clubs. Clubs now receive substantially higher revenues because of the PSL/SuperSport deal. The income from the sale of the rights constitutes more than 50% of the revenue received by the PSL. PSL clubs, prior to the deal, received grants of R400 000 per month. They now receive R2 million a month plus up to R10 million per annum in ex-gratia payments. First Division clubs were getting R50 000 per month. They now receive a monthly grant of R500 000 plus up to R3 million per annum in ex-gratia payments. This increase in revenue has the following benefits:

- There is higher player retention by clubs which are now financially able to hold on to their stars, resulting in a higher level of competitiveness amongst the clubs in the league.
- Currently the percentage of PSL clubs with sponsors is at an all-time high, with 11 out of the 16 clubs having sponsors. These sponsors are attracted to the PSL, since they can now get a better return on their investment through the additional broadcast exposure of PSL matches and magazine content.
- The League and Cup sponsorships and supplier values rose from under R110 million per annum in 2007 to the current values which are in excess of R350 million.
- Franchise values have risen from R6 – 8 million to a current market value of ± R50 million, attracting high profile owners.

Benefits to the sportspersons. Sportspersons now receive substantially higher incomes as a result of the PSL/SuperSport deal. Average wages for footballers have increased significantly, from R3 000 - R5 000 per month to R40 000 - R60 000 per month and the top footballers' income bracket has moved from R80 000 per month to over R400 000 per month.

Benefits for South African football and the South African national teams. The benefits stretch far beyond the clubs of the League and include:

- The League has spent over R15m on Training Programmes and Development Workshops for SAFA referees; assistant referees; fourth officials and match commissioners, and providing electronic headsets and communication devices to assist refereeing standards to be globally competitive. In conjunction with MultiChoice, the league has also set up a system which allows referees to have post-match access to recorded matches to assess referees' performances. Referees and match officials' fees have increased 400% since SuperSport acquired the PSL broadcast rights.

²¹ In addition, the SABC was contractually obliged to broadcast a minimum number of matches per season, which represented a significant increase in the number of matches historically broadcast by the SABC prior to 2007

²² Oral submissions by SAFA and PSL to ICASA on the Review of Sports Broadcasting Rights Regulations Discussion Document, 22 January 2009, slide 17

- The PSL Reserve League, known as the MultiChoice Diski Challenge, is the only competitive fully-national reserve league on the African continent and has introduced scores of fresh, young talent into the PSL and NFD ranks, and showcased those sportspersons throughout the continent by way of the broadcast of this product.
- Community TV is benefiting through broadcasting the MultiChoice Diski Challenge matches live or on a delayed basis, depending on their programming schedules and channel capacity. Community and regional radio stations also have access to the broadcasting of these matches.
- Through the MultiChoice Diski Challenge, the League has introduced an innovative concept of football festivals over weekends at smaller football venues in the townships, allowing tens of thousands of soccer lovers free access to matches to watch their favourite teams in action.

Benefits to soccer supporters. Soccer supporters have access to more PSL content than ever before due to SuperSport's broadcasting of the PSL matches and the sub-licensing agreement between SuperSport and the SABC, which has resulted in the highest number of PSL matches being broadcast on FTA TV in history. Previously (prior to the 2007 deal) there were approximately 80 PSL matches broadcast on FTA TV and 50 matches broadcast on Pay TV per season. Now there are more than 250 matches broadcast on TV.

SuperSport's production of PSL content has improved the visual experience for viewers by improving broadcast graphics, enhancing viewing angles, providing super "slo-mos", off-side lines, camera rails, reverse angles and free-kick graphics. There is also an improved build-up to PSL games and deeper pre-match and post-match analysis, as well as better commentary and statistical information for viewers.

PSL TV, which consists of various programmes related to South African football and the PSL in particular, offers broader coverage and unique insights into sportspersons' personalities and profiles, thereby improving the end product for the public.

Ticket prices have remained affordable for all PSL games at R40 and some clubs do not charge for entrance to certain matches, since clubs are less reliant on income from entrance fees due to the income received from the rights sale.

Sports bodies already ensure extensive sport is broadcast on free to air services

98 As evidenced by the PSL example, free to air broadcasters televise popular sports events that go beyond those which are listed. Free to air broadcasters benefit in terms of advertising revenues, whilst local sports bodies seek to ensure broad audience access to their sport. This has sports development and transformation objectives, but also commercial objectives of building and retaining the audience for the sport (including through match ticket and merchandise sales).

99 The SABC has access to a great deal more sports content than it is able to schedule.²³ It has to balance the volume of sport it broadcasts with its many varied public interest obligations, including educational, knowledge-building, entertainment, news, information, analysis, local content, local language, religious, documentary, children's and other programming, and various objectives such as universal access, diversity and others, within its capacity constraints and financial resources. We point out that:

99.1 s2(l) of the Broadcasting Act, which sets out the Act's objectives, appropriately refers to "*a strong and committed public broadcasting service which will service the needs of all South African society*".

99.2 The SABC has numerous public interest objectives, including to provide, in its public broadcasting services, programming that informs, educates and entertains.²⁴

99.3 The SABC's public service mandate extends to the provision of content in all the official languages, news, public affairs programming, educational programming, cultural heritage, local and independent productions (which specifically excludes sport) and the provision of a broad range of services targeting, particularly, children, women, the youth and the disabled.²⁵

99.4 The public service of the SABC must meet all of the requirements in s10 of the Broadcasting Act, only one of which refers to sports, namely the inclusion of national sports programming and developmental and minority sports.²⁶

²³ Taking the PSL matches as an example, in the year 1 October 2017 to 31 December 2018, 54 of the PSL matches broadcast by the SABC were on a delayed basis, even though it was entitled to broadcast them live. This was primarily due to capacity constraints on its three broadcasting channels (SABC 1, 2 and 3)

²⁴ s8(d) of the Broadcasting Act

²⁵ s10(1) of the Broadcasting Act

²⁶ s10(1)(i) of the Broadcasting Act

- 99.5 The SABC's obligation to "*include national sports programming*" in its public service is therefore only one of numerous public interest obligations making up the SABC's public mandate.
- 100 The SABC has articulated its concern that sports rights costs (which sports bodies set) are escalating by exorbitant amounts²⁷ and have become unsustainable for the SABC. But the SABC's funding difficulties are well documented and impact on the delivery of many of its public interest obligations, not just sport.²⁸
- 101 Notwithstanding the free to air broadcasters' capacity and other constraints, extensive sport is broadcast free to air in South Africa.
- 102 The SABC broadcasts a substantial range and volume of sports, including soccer, cricket and rugby. The schedule in Appendix F reflects the range and volume of sports events broadcast by the SABC from October 2016 to 31 December 2018.
- 102.1 A high proportion of PSL games – the SABC holds exclusive rights to 50 PSL matches and non-exclusive²⁹ rights to a further 90 PSL matches through a sub-licensing arrangement with SuperSport. These

²⁷ In South Africa and internationally, the cost of acquiring broadcasting rights to sports events has escalated dramatically over the past 10 to 20 years. This escalation in costs is occurring not only in relation to broadcasting rights acquired by subscription broadcasting services, but also in relation to broadcasting rights acquired by free-to-air broadcasting services and, more recently, OTT services. Moreover, this is not peculiar to South Africa – this is a global trend. For example, the global rights for the 1998 Soccer World Cup were 427 million US dollars, whilst the global rights for the 2010 Soccer World Cup were 3.4 billion US dollars. The television broadcast rights revenue for FIFA for the 2015 – 2018 cycle was 3 billion US dollars (<https://www.forbes.com/sites/kurtbadenhausen/2018/06/14/world-cup-2018-the-money-behind-the-biggest-event-in-sports/#24fb11ca6973>)

²⁸ The broadcasting of national sporting events by free to air broadcasters, including the SABC, should not be elevated over their many other public interest obligations. Nor should the public broadcaster's commercial interest in broadcasting national sporting events (as a way of generating commercial revenue) take precedence over the interests of all of the remaining stakeholders, including sports bodies. If ICASA is to take account of the SABC's poor financial position, then it should interrogate those claims more carefully to diagnose the issue properly, as, by the SABC's own admission, its financial difficulties cannot be attributed to sports rights costs alone

²⁹ These matches are usually broadcast simultaneously, but not always, as the SABC sometimes broadcasts matches on a delayed basis, even though it is entitled to broadcast them live

matches include the most popular matches, including all "derbies" played between the three most popular teams (Kaizer Chiefs, Orlando Pirates and Mamelodi Sundowns), semi-finals and finals of all Cup Competitions and promotion and relegation play-offs.

- 102.2 Until its recent impasse with SAFA, the SABC had rights to all Bafana home matches and still has rights to its away matches and all their matches played in the FIFA World Cup, the Africa Cup of Nations, the CAF Champions League, the CAF Confederations Cup and all of the other CAF tournaments, such as CHAN³⁰.
- 102.3 The SABC was the official broadcaster of the FIFA Confederations Cup in 2009 and the FIFA World Cup in 2010, and acquired the free to air rights to broadcast the 2014 and 2018 FIFA World Cups from FIFA.³¹
- 102.4 CSA has always carved out free to air from subscription broadcasting rights, and has had a partnership with the SABC dating back to 1991.
- 102.5 The SABC also broadcasts all international cricket tours (including all three formats of the game: test matches, one-day internationals and Twenty20 fixtures) played by the South African national team, the Proteas, in South Africa.

³⁰ The Total African Nations Championship

³¹ The 2013 COSAFA Cup FTA rights were sub-licensed by SuperSport to the SABC. The SABC had the rights to the 2014 FIFA World Cup and all other FIFA events between 2010 and 2014, and acquired the rights to the 2018 FIFA World Cup and all other FIFA events for the two years prior to this. The SABC acquired the free to air broadcasting rights to the 2016 EURO Championships through a sub-license agreement with SuperSport, which is not a listed event. SuperSport has also on occasion offered the FTA rights of the Spanish La Liga and Copa Del Rey as well as the UEFA Champions and Europa Leagues to the SABC. However, the SABC did not accept those offers, apparently primarily due to the capacity constraints which existed in an analogue terrestrial environment.

- 102.6 Over the years SuperSport has sought to sub-license to the SABC many of the free to air rights to ICC Cricket events, and in many instances the SABC has accepted those offers.³²
- 102.7 The SABC has acquired rights to broadcast the popular Extreme Fighting Championships (EFC) Mixed Martial Arts (MMA) sports content.
- 102.8 The SABC has concluded a sub-licensing agreement with Kwesé TV for NBA basketball events.
- 102.9 SuperSport sub-licenses the Paralympics to the SABC. The SABC independently acquires free to air rights to the Olympics and the Commonwealth Games.
- 102.10 The SABC also covers sports such as athletics, including the Comrades Marathon, Two Oceans Marathon and Soweto Marathon.
- 103 Contrary to what may be the perception, and as evidenced by Annexure F, a substantial volume of sport is already broadcast free to air in South Africa. Any contrary perception is unfounded.
- 104 We submit that this demonstrates that the sports bodies (supported by broadcasters) are ably managing the balance between the need for income and the need for exposure of their sports.

- 105 Sports bodies rely on the revenue from the sale of their broadcasting rights. Sports broadcasting revenue typically makes up about 60% of a sports body's income, followed by sponsorship revenue. Sponsorship revenue is directly linked to the broadcasting of events.**
- 106 As ICASA has previously recognised, sports bodies need to balance their need for income with the exposure of their sport. What is the right balance**

³² For example, SuperSport sub-licensed to the SABC all the FTA rights to all ICC events between 2008 and 2011. In subsequent years, the SABC declined the offer for the 2012 T20 World Championships, accepted the offer for the 2013 Champions Trophy, accepted an offer for 60% of the rights to the 2015 World Cup, accepted the offer for the 2016 T20 World Championships, and declined the offer for the 2017 Champions Trophy

for a sport will differ at various points in time, and from one sport to another.

- 107 Sports bodies are best placed to evaluate what is in the best interests of their sport, and to strike the right balance between income and exposure.
- 108 The PSL case study demonstrates how a sports body can maximise income and exposure, to the benefit of the sport, broadcasters, fans and viewers.
- 109 Contrary to what may be the perception, a substantial volume and range of sport is already broadcast free to air in South Africa. Any perception that sport is not broadcast free to air is unfounded.
- 110 Sports bodies rely on broadcasting income to develop and administer their sport and cannot survive without their broadcasting income.
- 111 Limited public funding is available to offset the reduction in revenue that would result from regulation.

PART B: THE REGULATORY CONTEXT AND ICASA'S APPROACH

112 Against this background, we consider the statutory and regulatory context regarding the broadcasting of national sporting events.

Why regulate the broadcasting of national sporting events?

113 The underlying rationale for regulating the broadcasting of particular sporting events in South Africa³³ and internationally³⁴ is to promote access to national sporting events in the public interest.

³³ ICASA's 2003 Position Paper recognised that "sports broadcasting rights regulations aim to broaden the audience and support base of the South African sports industry through exposing the majority of South Africans to 'national sporting events'" (2003 Position Paper, pgs 5 and 6). This was reiterated on page 39 of ICASA's 2010 Findings Document, which stated that the Sports Broadcasting Services Regulations, 2010 "seek to ensure the broadcasting of 'national sporting events', as identified by the Authority, on free-to-air television". See also pg 6 of the 2003 Position Paper

³⁴ Similarly, in the EU, the rationale is to ensure that broadcasters do not exclusively broadcast events of major importance for society in such a way as to deprive a substantial proportion of the public of the possibility of following those events on free to air television. EU member states may adopt measures to ensure that broadcasters under their jurisdiction do not broadcast a listed event exclusively in such a way as to deprive a substantial proportion of the public in that member state of the possibility of following that event on free to air television

114 The regulation of the broadcasting of national sporting events was first mooted in the Broadcasting Policy Green Paper, 1997, which raised the concern that –

"normally pay television operators and sport in general only reach a relatively **small proportion of the households in a market. ... But there are many people** who cannot afford pay TV subscriptions and are excluded from unifying sporting events and are deprived of the opportunity to experience those major sporting events directly."³⁵

115 It is this concern which led to the enactment of s30(7) of the Broadcasting Act, and subsequently s60(1) of the EC Act.

116 s60(1) seeks to ensure that the free to air broadcasting of listed national sporting events is not prevented or hindered by subscription broadcasters acquiring exclusive broadcasting rights which have that effect. It provides:

"Subscription broadcasting services may not acquire exclusive rights that prevent or hinder the free to air broadcasting of national sporting events, as identified in the public interest from time to time, by the Authority, after consultation with the Minister and the Minister of Sport and in accordance with the regulations prescribed by the Authority."

s60(1) provides for *national sporting events* to be identified *in the public interest*

117 Pivotal to the scope and exercise of ICASA's powers under s60(1) are –

117.1 the meaning of *national sporting events* (which is not defined in the EC Act); and

117.2 the considerations which ICASA must take into account to determine which national sporting events should, *in the public interest*, be subject to the provisions of s60(1) ("the s60 provision").

³⁵ *Broadcasting Policy Green Paper*, South African Government, 1997

118 As the UK's Department of Culture, Media and Sports has observed:

"There are many different sports and sporting events which people feel passionately about. Unfortunately the Government cannot list them all."³⁶

Only national sporting events may be listed

119 What must be identified by ICASA under s60(1) are, first, "sporting events".³⁷ The word "event" ordinarily means "*one of the races or competitions that are part of an organised occasion such as a sports meeting*" or "*any one contest in a programme of sporting or other contests*".³⁸

120 In order to be eligible for identification in terms of s60(1) of the EC Act, a sporting event must be a *national* one. The word "national" ordinarily means "*of involving, or relating to the nation as a whole*".³⁹

121 ICASA has consistently recognised that:

*"national sporting events should be confined to those sporting events that are national in character and not merely based on the popularity of a particular activity. The Authority is fully aware of the existing practice to confuse a national sporting event and a popular event...."*⁴⁰

³⁶ DCMS Broadcasting Policy Division, Coverage of Sport on Television, A DCMS Leaflet

³⁷ As ICASA indicated in the 2010 Findings Document, an event is "*a contest in a programme of sporting*" (Pg 41 of the 2010 Findings Document)

³⁸ In the Collins British English Dictionary "event" is defined as meaning **1. Anything that takes place or happens, esp something important; happening; incident... 2. The actual or final outcome; result... 3. Any one contest in a programme of sporting or other contests...**

³⁹ In the Collins British English Dictionary "national" is defined as meaning **1. Of, involving, or relating to a nation as a whole... 2. Of, relating to, or characteristic of a particular nation 3. Nationalistic or patriotic... 4. A citizen or subject... 5. A national newspaper**

⁴⁰ Pg 42 of the 2010 Findings Document. Also see pgs 35 and 36 of the 2010 Preliminary Findings Document, stating the same position

122 The practice of prescribing appropriate criteria for listing, as ICASA has done in the past, ensured that only events which are truly *national sporting events* are considered for listing.⁴¹

National sporting events must be identified *in the public interest*

123 ICASA must identify the national sporting events which are the subject of the Regulations. The purpose of a list is to ensure that there is clarity and certainty up front as to which exact events are to be listed. This gives clarity to the otherwise potentially nebulous concept of *national sporting events* and enables all stakeholders to arrange their future affairs in accordance with a clear list.

124 Not all sporting events which fall within the meaning of "national sporting events" fall to be identified under s60(1). The national sporting events which will be subject to the s60 provision must be identified *in the public interest*. s60(1) does not require ICASA to identify all national sporting events. It requires ICASA to make a selection of national sporting events in the public interest. It follows that some national sporting events must be listed and others not, and that ICASA must make this selection in the public interest.⁴²

125 Regulation in the public interest is not unbounded, and cannot be done in a manner that adversely and unlawfully impacts on those affected by it. When developing or reviewing regulations, ICASA must be cognizant of maintaining an appropriate balance between different components of the *public interest*. The interests which must be balanced include (a) the commercial interests of broadcasters; (b) the long-term viability of the three-tier broadcasting system; (c) viewers' interest in access to broadcasts of sporting events of national

⁴¹ In the UK an event has to meet the following criteria in order to be eligible to be listed: The event has a special national resonance, not simply a significance to those who ordinarily follow the sport concerned. It is an event which serves to unite the nation; a shared point in the national calendar. Such an event is likely to fall into one or both of the following categories: (i) It is a pre-eminent national or international event in the sport. (ii) It involves the national team or national representatives in the sport concerned

⁴² ICASA has a general Constitutional obligation to regulate broadcasting in the public interest in terms of s192 of the Constitution and a specific obligation to do so in terms of s60(1) of the EC Act

importance; and (d) the viability, and the public interest in the viability of sporting federations and sporting codes. The interests of any one group of stakeholders may not be negated, nor elevated over those of other stakeholders.

126 In the light of (a) the principle of interpretation which requires the least onerous interpretation of onerous statutory provisions;⁴³ (b) the express object of the EC Act "to refrain from undue interference in the commercial activities of licencees while taking into account the electronic communication needs of the public";⁴⁴ and (c) the abovementioned aspects of the public interest, s60(1) requires ICASA to identify the narrowest category of sporting events which will achieve the purpose of s60(1).

127 What is "*in the public interest*" (that is, promotes the general welfare or wellbeing of the public or society as a whole), must be distinguished from what is "*of interest to the public*" (that is, engaging, exciting, or holding the attention of the public)⁴⁵.

128 In identifying national sporting events, ICASA must consider not what is *interesting*⁴⁶ to the public, but rather what is *in the public interest* to list.

129 We submit that the public interest is best served when regulation balances the various affected interests and limits interventions to what is truly necessary. We therefore urge ICASA to continue to undertake this balancing act, as it sought to in its previous processes on this matter, namely to "*deal with the complex and competing needs of various stakeholders*"⁴⁷ and "*endeavour to meet the needs of all stakeholders, especially consumers, subscription television services, free-*

⁴³ *Fundstrust (Pty) Ltd (In Liquidation) v Van Deventer* 1997 (1) SA 710 (A) 735G

⁴⁴ s2(y) of the EC Act

⁴⁵ In the Collins British English Dictionary "interesting" is defined as meaning "*inspiring interest; absorbing*"

⁴⁶ See *Financial Mail (Pty) Ltd v Sage Holdings Ltd* 1993 2 SA 451 (A) 464C-D; *Prinsloo v RCP Media Ltd t/a Rapport* 2003 4 SA 456 (T) 472 to 473; and *Lion Laboratories Ltd v Evans & Others* [1984] All ER 417 at 536. In *Prinsloo* the court emphasized that the public interest must be at stake and not merely the curiosity of a bored or frustrated public. In *Jooste v National media Ltd* 1994 2 SA 647 (C) 646 the court stated that the public, in that case, did not have a legitimate interest to learn of the facts concerned, and that morbid interestedness does not create a legal claim

⁴⁷ Pg 7 of the 2010 Preliminary Findings Document

to-air television services and, equally important, the needs of the sporting codes, especially commercial sport".⁴⁸

- 130 The underlying rationale for regulating the broadcasting of listed sporting events is to promote access to *national sporting events* on free to air television.**
- 131 Subscription broadcasters may not acquire exclusive broadcasting rights that prevent or hinder the free to air broadcasting of listed events.**
- 132 In order to be listed, an event must be a *national sporting event*, i.e. an event must have a national character, and its listing must be *in the public interest* (rather than simply being a popular or interesting event).**
- 133 When considering what the public interest requires, ICASA must balance all of the potentially conflicting interests, including the commercial viability of sports federations, the development and sustainability of sporting codes and the sustainability of broadcasting services, and strike a balance *in the public interest*.**

ICASA's approach

The Current Regulations are informed by research and consultation

- 134 In 2002/2003 ICASA conducted an extensive public inquiry into the regulation of the broadcasting of listed events, commencing with the publication of the 2002 Discussion Paper for public comment.⁴⁹
- 135 The purpose of that initial inquiry was to develop a policy and a framework for the regulation of the broadcasting of listed national sporting events in terms of s30(7) of the Broadcasting Act, and flowing from that, to issue a Position Paper and to make regulations, which ICASA did on 25 July 2003.

⁴⁸ Paras 3.1.7 and 3.1.8 of the 2008 Discussion Document

⁴⁹ Numerous sports bodies (representing cricket, rugby, soccer, athletics, boxing, golf and the South African Sports Association for the Physically Disabled), made written and oral representations. So too did the two free-to-air television broadcasters (the SABC and e.tv), as well as subscription broadcasters. Local and international companies performing the role of intermediary between the sports bodies and the broadcasters (SAIL Group Ltd and Octagon) also participated in the process. In addition, a UK expert on the economics of broadcasting rights, and an expert on Australia's anti-siphoning provisions, gave written and oral evidence. The Authority also consulted with the Minister of Communications and the Minister of Sport

- 136 The 2003 Regulations set out the criteria for determining national sporting events; listed those events; set out the requirements concerning the broadcasting of those events; and dealt with related matters.⁵⁰
- 137 On 19 July 2006 the EC Act came into operation. It repealed s30(7) of the Broadcasting Act⁵¹ and replaced it with s60(1) and (2) of the EC Act, which remain in force, unchanged since 2006.
- 138 s60(2) was a new provision which required ICASA to provide for a dispute resolution process to deal with any disputes arising concerning s60(1). The addition of s60(2) necessitated amendments to the Prior Regulations in order to provide for a dispute resolution process.
- 139 As a consequence of that legislative amendment, on 2 October 2008 ICASA gazetted the 2008 Discussion Document for public comment.
- 140 Based on the written and oral submissions it received,⁵² ICASA published its 2010 Preliminary Findings Document for a further round of consultation, together with the 2010 Draft Regulations for public comment.⁵³
- 141 That far-reaching inquiry culminated in the publication of the Authority's 2010 Findings Document and the Current Regulations. The Current Regulations built on the existing framework established by the Prior Regulations, with the most substantive change being the inclusion of a dispute resolution process.

⁵⁰ They were amended in minor respects in June 2005 (Notice 1044, Government Gazette No. 27728, 28 June 2005). We will refer to those regulations, as amended in 2005, as "the Prior Regulations"

⁵¹ s60(1) of the EC Act is similar to s30(7) of the Broadcasting Act. One of the key changes was the insertion of the words "that prevent or hinder", which clarified that subscription broadcasting service licensees may acquire exclusive broadcasting rights to listed events, provided that they do not prevent or hinder the free to air broadcasting of the listed event

⁵² 12 stakeholders made written representations in that inquiry, including sports bodies (representing cricket, rugby and soccer), subscription broadcasters (M-Net, MultiChoice, ODM, Telkom Media and Wow TV), free-to-air broadcasters (e.tv and SABC), MTN and an individual in his personal capacity

⁵³ Once again, the Authority received comprehensive written representations from subscription broadcasters, free-to-air broadcasters and sports bodies. ICASA also consulted the Minister of Communications and the Minister of Sport and Recreation

142 What is important, for present purposes, is that:

142.1 ICASA has, on two occasions, conducted comprehensive public inquiries regarding the broadcasting of national sports events in the public interest.

142.2 All relevant stakeholders, including free to air broadcasters, subscription broadcasters, sports bodies, South African and international experts, and other corporations and individuals participated in those processes. ICASA also consulted the Ministers.

142.3 ICASA, taking into consideration all the input received, sought to weigh the various interests and strike an appropriate balance to ensure that the regulation is indeed in the public interest.

142.4 The Current Regulations successfully balance the competing interests and strike an appropriate compromise and can be said to be *in the public interest*.

143 The above regulatory history highlights the steps taken by ICASA in reaching the conclusions which resulted in the Current Regulations, in accordance with principles of good regulatory practice:

143.1 Step 1 - **Research** was conducted.

143.2 Step 2 – Research was used to draft a **Discussion Paper** that was published for public comment.

143.3 Step 3 - **Public hearings** were held on the Discussion Paper to allow for oral submissions to elaborate on written submissions and allow ICASA to ask questions of clarity.

143.4 Step 4 – ICASA made preliminary findings after analysis of oral and written submissions on the Discussion paper and **Draft Regulations** were published for public comment (including **consultation with the Minister of Communications and the Minister of Sport and Recreation**).

143.5 Step 5 - **Public Hearings** were held on the Draft Regulations.

143.6 Step 6 – ICASA published **Findings and Final Regulations**.

The Current Regulations compare well internationally

144 It is regrettable that, apparently, no international benchmarking based on measurable indicators preceded or accompanied the publication of the Draft Regulations.

145 Internationally, the regulation of the broadcasting of national sports events in the public interest ranges between two extremes. Many countries do not regulate listed events at all. At the other extreme is Australia, which has been criticised as the "most draconian in the world", "punitive" and "anti-competitive".⁵⁴ The EU has found a middle road. This is described in more detail in Annexures B and C.

146 We submit that the Current Regulations fall in the middle of these two extremes and largely accord with the balanced approach adopted in the EU. The Current Regulations compare well internationally.

ICASA's approach to this review is flawed

147 We appreciate that ICASA may review its regulations from time to time. However, in the absence of (a) a regulatory impact assessment to consider whether the Current Regulations have worked, (b) any policy and legislative changes and (c) disputes or complaints, ICASA's reasons for proposing such far-reaching changes to the Current Regulations are not apparent.

148 As has been ICASA's practice in the past, the starting point of the review ought to have been to identify the shortcomings in the existing framework. Good regulatory practice in a review of this nature would be to ask: Are the Current Regulations achieving their objective? What has worked and what hasn't? Why? What has been the impact of the Current Regulations? What are the shortcomings which need to be addressed? How has this been done

⁵⁴ ASTRA submission to the 2017 Budget, 11 January 2017

internationally? How should they be addressed? What are the interests at stake? What would the impact be of the new proposals?

149 These are the kinds of questions which ICASA considered when it made the Current Regulations.

ICASA's process in this review is not transparent or fair

150 In stark contrast to the steps ICASA took in the past, the "process" followed before ICASA published the Draft Regulations has not been transparent or fair.

151 The Draft Regulations do not contain mere technical amendments - they propose a dramatic change to ICASA's previous policy approach in respect of sports broadcasting rights (which is still in force) and put forward radical new provisions.

152 It is of great concern that ICASA has leapfrogged from **Step 1 – Research** to **Step 4 – Draft Regulations**.

153 In doing so, ICASA has not put interested stakeholders or the broader public in a position to engage with ICASA on what it perceives to be issues of concern or flaws in the Current Regulations, the perceived shortcomings which it seeks to address, or the preliminary views on which it has based the Draft Regulations.

154 As a result of the deficient process, stakeholders cannot comment effectively on the Draft Regulations. We are not in a position to understand ICASA's reasons for the proposed amendments, or, in particular, ICASA's reasons for deviating from its longstanding publicly stated positions. We must engage with the draft text alone, and are forced to speculate as to what has informed the proposed changes. These concerns are exacerbated by the unclear and ambiguous drafting of the text, which results in uncertainty regarding the purpose and the intended operation of the Draft Regulations.

155 In the past ICASA adopted the comprehensive approach described above because, in addition to it being good regulatory practice, ICASA recognised that sports broadcasting rights are a significant revenue stream for sports bodies and an important component of the offering of television broadcasting services.

ICASA reaffirmed its responsibility to ensure that any regulatory measures create an appropriate balance between the competing interests. As ICASA stated in the 2008 Discussion Document:

"In this undertaking, the Authority will endeavour to meet the needs of all stakeholders, especially consumers, subscription television services, free to air television services and, equally important, the needs of the sporting codes, **especially commercial sport.** ...

But, while the debates tend to be between subscription television services and free-to-air services, it is important that in the process the interest of sporting codes themselves are not negated. This is particularly important as sporting codes rely on sport rights for their financial and commercial viability."⁵⁵

ICASA should not fix that which is not broken

156 The Current Regulations, which were the result of extensive consultation and consideration by ICASA, including international benchmarking, achieve this balance and have been effective, successfully balancing the interests of the parties affected by them and striking an appropriate compromise which can be said to be in the public interest. The fact that not a single dispute has been lodged with ICASA in terms of the Current Regulations is testament to this.

157 We are of the view that the Current Regulations are not broken, and do not require to be fixed.

158 Moreover, we are concerned that the Draft Regulations would harm sport, the broadcasting of national sporting events, and ultimately the broader economy.

159 The Current Regulations are informed by comprehensive reviews comprising research, a discussion paper, public hearings, preliminary findings for consultation, written submissions, public hearings, a findings document/position paper and only then final regulations.

160 ICASA has skipped many of these key steps in this review, despite the fundamental changes proposed.

⁵⁵ Pg 10 of the 2008 Discussion Document

- 161 ICASA has not explained what it perceives to be issues of concern with the Current Regulations, the issues it seeks to address, preliminary views based on which it has proposed the Draft Regulations, or explained what the Draft Regulations mean.**
- 162 This has limited stakeholders' ability to effectively comment on the Draft Regulations.**
- 163 The Current Regulations, which were the result of extensive consultation and consideration, including international benchmarking, have been effective. The fact that not a single dispute has been lodged with ICASA is testament to this.**

This review is premature

- 164 The timing of the review is also premature. Major policy reviews are underway, including (a) the DOC's Review of Public Broadcasting which called for comments on, amongst others, "sports of national interest", and (b) Cabinet's approval of the publication of the draft White Paper on Audio and Audio-visual Content Services in December 2018, which is intended to address, amongst other things, the regulation of OTT services. Just last week, the Minister of Communications indicated that "we need a complete overhaul of the laws that we have", rather than a "piecemeal intervention".⁵⁶
- 165 In circumstances where the Current Regulations are effective, we urge ICASA to refrain from conducting a substantive review until such time as the policy and legislative amendments have been finalised. Moreover, any such review should be informed by a thorough impact assessment and other measures to ensure that the regulations are evidence-based and appropriate.

PART C: COMMENTS ON THE DRAFT REGULATIONS

- 166 We now turn to comment on specific provisions of the Draft Regulations. We do so to the best of our ability based on what we understand to be a proper interpretation of the Draft Regulations.

⁵⁶ Comms Minister says canned ECA Bill snubbed Industry 4.0, ITWeb, 7 March 2019

167 ICASA has proposed extensive changes to the Current Regulations, but in essence the Draft Regulations differ from the Current Regulations in these two main respects:

167.1 **The regulatory framework**: First, listed events have been divided into different groups, and there are separate obligations and limitations proposed in relation to each group. These proposed limitations and obligations affect which broadcasters either must or may not bid for rights, and the manner in which the events must be broadcast. (For instance, Group A events must be broadcast free-to air, live and in full, where previously such events could be broadcast on a delayed-live or delayed basis). Not only does the proposed new approach to listing dramatically affect broadcasters, but it proposes a severe curtailment on how sports bodies may sell their rights and would have a fundamental impact on the commercial value of such events. For the first time, it appears that subscription broadcasters would not be able to acquire exclusive broadcasting rights for any listed event.

167.2 **The list**: Second, ICASA has proposed expanding the list of national sporting events considerably, including to significantly lengthen the list and add sporting codes, and to include entire sporting codes and competitions (not just specific stages of competitions which involve multiple stages). Some of what is now proposed to be listed are not *events*, are not *national events*, and are not appropriate to list *in the public interest*. Minority and Developmental sports have also inexplicably been proposed to be included in the Draft Regulations, which propose that all broadcasters are to be obliged to broadcast a minimum of two of these events annually.

168 As detailed below, these proposed material changes radically alter the Current Regulations, without ICASA giving any indication of their intended purpose. If adopted, they would have a profoundly negative effect on the broadcasting of national sporting events in South Africa and on the development of sport.

169 We describe below our concerns with each of the new lists and the Draft Regulations which accompany them.

Group A: Compulsory listed national sporting events for a free to air licensee with full live coverage

170 It appears that the events in Group A are, for ICASA, the priority events which it believes are already broadcast free to air and believes must continue to be broadcast free to air.

171 The Draft Regulations propose reserving the acquisition of rights to the Group A events initially for free to air: It proposes that subscription broadcasters may only bid for these rights, on a non-exclusive basis, if the free to air licensees cannot acquire the rights. These Group A events "*must be broadcast on full live coverage on Free-to-air*"⁵⁷ – seemingly proposing that (one, some or all?) free to air broadcasters must broadcast Group A listed events live and in full.

172 In other words, we understand ICASA to be proposing that:

172.1 Free to air broadcasters would have the first opportunity to acquire the broadcasting rights to Group A listed events.

172.2 Subscription broadcasters would be precluded from bidding for the broadcasting rights to Group A listed events unless a free to air broadcaster cannot acquire the rights.

172.3 Subscription broadcasters would only be able to "bid for the rights on a non-exclusive basis".⁵⁸

172.4 Free to air broadcasters would be required to broadcast Group A listed events, and to do so live and in full.

⁵⁷ Reg. 5.1.1 of the Draft Regulations

⁵⁸ Reg. 5.1.2 of the Draft Regulations

- 172.5 There would be no obligation for free to air broadcasters who acquire exclusive rights to these events to sub-license them to subscription broadcasters.
- 173 This proposal seems to be based on ICASA's assumption that these broadcasting rights are held by free to air broadcasters and broadcast on free to air.⁵⁹
- 174 While it is correct that some of the Group A list are already broadcast free to air,⁶⁰ in many cases it is only portions of such tournaments which are listed. In addition, it is often at the behest of sports bodies, which impose contractual obligations on subscription broadcasters to sub-license part of this content to free to air broadcasters to ensure their free to air access.
- 175 The Draft Regulations propose doing away with the current sub-licensing framework for Group A events, meaning that, if the draft Regulations were adopted as is, the burden of investing in these events would rest on the free to air broadcasters alone. Free to air broadcasters would then have to pay for the broadcast rights, produce these events, and broadcast them live and in full. If adopted, the draft Regulations would have the following consequences:
- 175.1 The proposed expansion of listed events would exceed what is contemplated or permitted by the EC Act.
- 175.2 The reservation of certain events for free to air would be inconsistent with the EC Act.
- 175.3 The obligations on free to air broadcasters would be onerous and impractical, and inconsistent with how sports rights are sold in practice.

⁵⁹ The Explanatory Memorandum states that Group A comprises "*the events that the Authority deems to be accessible to most South Africans. These sporting rights to the events are already held by the Free-to-air and are therefore accessible to the public*" (Para 2.5 of the Explanatory Memorandum)

⁶⁰ Free to air broadcasters do not currently broadcast events of International Boxing Federations, National Netball or IAAF, which appear in Group A

- 175.4 The restrictions on subscription broadcasters acquiring rights either exclusively or at all would be *ultra vires* the EC Act and unduly interfere with the commercial activities of subscription broadcasters.
- 175.5 The Draft Regulations would intrude on the rights of sports bodies to monetise their property and arbitrarily deprive them of their property rights.
- 175.6 The Draft Regulations apparently seek to advantage free to air broadcasters by giving them the first right to bid for Group A rights, which is *ultra vires* the EC Act.

Expansion of the list beyond national events in the public interest

176 ICASA proposes expanding the list, amongst other things by including new events/sporting codes/federations in Group A, which ICASA has not listed previously.⁶¹ The proposed new additions are:

- 176.1 Africa Cup of Nations (female soccer);
- 176.2 National Netball; and
- 176.3 International Association of Athletics Federation (IAAF).

177 In respect of the inclusion of federations ("*International Boxing Federations*"⁶² and "*International Association of Athletics Federation*") these federations are clearly not *national events*. A federation is not an event. It is therefore difficult to understand why they have been proposed to be listed. Irrespective of the rationale, a consequence of their listing would be that a great number of new events (those events organised by the listed federations) may automatically be considered national sporting events.

⁶¹ The proposed Group A list is as follows: Summer Olympic Games; Paralympics; FIFA World Cup; Africa Cup of Nations (Male and Female Soccer); Rugby World Cup; ICC Cricket World Cup; ICC T20 Cricket World Championships; International Boxing Federations; National Netball; Commonwealth Games; and International Association of Athletics Federation (IAAF)

⁶² The 2010 list included "*International Boxing Federation*". But now ICASA has proposed changing this to "*International Boxing Federations*"

- 178 The vague listing of federations is unworkable and incapable of application. There are numerous boxing federations, of which the International Boxing Federation is but one. There are others such as the World Boxing Organisation. It is not clear if ICASA, by using the term "International Boxing Federations", is referring to all of these international organisations or to the single "International Boxing Federation". In any event, these federations govern numerous boxing tournaments contested in numerous weight divisions which are inappropriate and impossible to list. We doubt that it was ICASA's intention to suggest that each and every boxing tournament under the auspices of any and all international boxing federations are national sporting events which should be listed.
- 179 The International Association of Athletics Federation (IAAF) hosts numerous events on an annual basis. Here too it seems unlikely that ICASA would have intended to list every IAAF event.
- 180 The proposed expansion of the list in this manner fails to adequately consider the ethos of what makes something a *national sporting event*. MultiChoice respectfully submits that ICASA's proposal is impermissible in this regard.
- 181 ICASA's expansion of listed sporting events is exacerbated by the changes which have been made to the criteria for identifying national sporting events.⁶³
- 182 Whereas the current list is qualified and limited by various criteria specifying which events (i.e. matches within a tournament) must be broadcast, the proposed Group A appears to be subject to only one criterion, namely reg.

⁶³ To be listed, an event must be a *national sporting event* the free to air broadcasting of which *is in the public interest*. (Para 3.1 of the 2003 Position Paper) Accordingly, an event must meet certain criteria in order to be listed. ICASA's 2003 Position Paper made it clear that, in order to be eligible to be listed, the event –

- must involve the South African national senior team; or
- must be the final of a national knockout competition; or
- must be the final of an international knockout competition featuring a South African team; and
- must be appropriate to list, given its structure and duration; and
- must be played in South Africa (except for the FIFA World Cup, IRB Rugby World Cup, ICC Cricket World Cup, the African Cup of Nations, the Commonwealth Games, the Olympic Games, the All Africa Games, the CAF Champions League Final and Mandela Cup Final (if a South African team is involved) and the Rugby Super 12 final (if a South African team is involved). ICASA's approach in the 2003 Position Paper accords with international best practice in this regard and ought to be reinstated

4(1)(a), which refers to "*a confederation sporting event involving a national team or a national sporting representative*".

182.1 Reference to the other criteria in the current Regulations has been deleted, making the criteria in reg. 4(1)(b) and (c) redundant. While this may have been an error, it has significant ramifications.

182.2 Second, "Confederation sporting event" is problematically defined as meaning "*an official sporting event arranged by a recognised international sports body that governs a particular sport which involves national federation...*". Limiting a confederation sporting event to a particular sport (e.g. soccer/rugby), has the effect of excluding multi-disciplinary sporting events such as the Summer Olympic Games and the Commonwealth Games. This would lead to absurd results, which we do not believe ICASA intended.

183 The result of that proposed change is that the number of matches, and the hours of sport, which are listed would be greatly expanded. If an event is not a confederation sporting event, then the entire tournament is listed, including any event (match) within it (not just those involving the national team or a national sporting representative). This means, for example, that the Summer Olympic Games, Paralympics and Commonwealth Games are all now proposed to be listed in their entirety and required to be broadcast live and in full free to air. In 2016 the Summer Olympics were broadcast on SuperSport channels, with approximately 1425 live broadcast hours on eight dedicated channels. The 2020 Tokyo Olympics are likely to require thousands of live broadcast hours on over 20 dedicated channels.

184 Such tournaments are not in their entirety *national sporting events*. National sporting events are by their very nature, those few, important sporting events of a national character which have an iconic place in the minds and hearts of the nation as a whole (and not just the fans or followers of a particular club or sport). MultiChoice does not believe that the entirety of the Summer Olympic Games, Paralympics, Commonwealth Games, Africa Cup of Nations, International

Boxing Federations and International Association of Athletics Federation events merit being listed in full, requiring their full live broadcast, especially if there are no South Africans participating in many or most of the events.⁶⁴

185 The listing of "National Netball" is also confusing in that it is very widely framed. It could mean:

185.1 The national (Premier) netball league and / or;

185.2 Matches played by the senior national netball team (or even by senior age group national teams) and / or;

185.3 All netball matches organised by the national body at any level (from school netball up).

186 Furthermore as "National Netball" is not a confederation sporting event, the entirety of "National Netball" (whatever that means) is potentially proposed to be listed – meaning that the list would be expanded far beyond what has been covered before for other major sporting events. This would destroy netball, which is the most popular female participation sport in South Africa.

187 To our knowledge, the only country which lists netball is Australia, where only the semi-final and final of the Netball World Cup are listed if they involve the senior Australian representative team.

188 It is also noteworthy that (contrary to the broad assertion in the Explanatory Memorandum) Netball was not historically, and is not currently broadcast free to air. For several years, the SABC had acquired the exclusive broadcast rights from Netball SA, but its broadcasting was limited to a magazine programme

⁶⁴ We do not believe that ICASA intended to list such tournaments in full. However, because the regulations define a "confederation sporting event" with reference only to "a particular sport" (as opposed to a multi-disciplinary event), on a strict interpretation events such as the Summer Olympics are not a confederation sporting event, and therefore fall outside of the criteria in Reg. 4. This unintended error is in the Current Regulations, but is clarified by the 2010 Findings Document, where ICASA made it clear that "Confederation sporting activities taking the form of a tournament include: **(a) Summer Olympic Games; (b) Commonwealth Games; (c) All Africa Games...**" (Pg 41 of the 2010 Findings Document.) The Findings Document likewise made it clear that those events featuring a senior South African national team should be listed in addition to one semi-final and the finals (i.e. not the entire tournament)

broadcast once a week on a Sunday afternoon. The SABC never broadcast any netball matches, despite having acquired the rights. Even this limited broadcasting by the SABC ended in 2008, leaving netball without any broadcast partner. In 2012, MultiChoice stepped in to offer broadcast coverage to Netball SA after the SABC had declined to pay for netball rights. Since then, Netball SA and MultiChoice have had a symbiotic relationship which has given netball exposure and revenue, and helped the sport of netball in South Africa to grow significantly. ICASA now proposes listing "National Netball", putting its survival at risk.

189 In summary, in its proposed Group A, ICASA has vastly and, in our view, erroneously proposed expanding the list of sporting events considered to be of national importance. Taken together with the conditions and obligations which bind this expanded list, destructive consequences for South African sport and the entire sports broadcasting value chain would arise if the proposed amendments were adopted.

Reservation of rights for free to air is inconsistent with the EC Act

190 ICASA has proposed reserving the opportunity to bid for the broadcasting rights to Group A listed events to free to air broadcasting licensees. But there is no basis in s60(1) of the EC Act in terms of which ICASA can (a) determine who can bid for which rights or (b) oblige listed events to be broadcast free to air.

191 s60(1) sets a specific restriction on subscription broadcasters – they may not acquire exclusive broadcasting rights which prevent or hinder the free to air broadcasting of listed events.

191.1 The EC Act does not preclude subscription broadcasters from bidding for or acquiring broadcasting rights to listed events, provided that they do not acquire exclusive rights that prevent or hinder the free to air broadcast of those events.

191.2 The EC Act also does not require free to air broadcasters to actually acquire rights and / or broadcast listed events, either live or at all. After

all, decisions on programme content and scheduling must always be in the hands of the broadcaster. Nor does the EC Act empower ICASA to impose such obligations on the free to air broadcasters. Such obligations are impermissible.

192 Rather, what the EC Act requires of subscription broadcasters is that they take care when they acquire exclusive rights to listed events not to *prevent or hinder* the free to air broadcasting of such events. In practice, this means that where subscription broadcasters have acquired exclusive rights for a listed event, covering all platforms, they must give free to air broadcasters the opportunity to acquire the free to air rights for that listed event by offering to sub-license the rights to them. Should the free to air broadcaster not wish to sub-license the rights, that is their decision. Equally, if the free to air broadcaster believes they have been hindered or prevented from acquiring the rights then, in terms of the Current Regulations, they may lodge a dispute. The Current Regulations reflect this approach.

193 ICASA has, perhaps unwittingly, suggested a completely different approach to s60(1) of the EC Act, erroneously reading it to provide for a positive obligation on free to air broadcasters to broadcast listed national sporting events and proposing precluding subscription broadcasters from doing so unless a free to air broadcaster cannot.⁶⁵

194 In the absence of any legal basis under s60(1) of the EC Act, the purpose of the proposal and the objective sought to be achieved by ICASA are not clear. It is, however, well known that the SABC has argued in various fora that broadcasting rights in respect of listed events should first be offered to free to air broadcasters. For example, the SABC stated in its submission on the Review of Public Broadcasting Policy⁶⁶ that –

⁶⁵ The latter non-exclusivity requirement is also difficult to understand, because once free to air broadcasters have indicated that they cannot acquire the rights there is no legal basis for precluding subscription broadcasters from acquiring the exclusive rights, since they would not be preventing or hindering the free to air broadcast by acquiring rights which free to air broadcasters have already said that they cannot acquire

⁶⁶ 31 August 2018, para 23.3

"The SABC supports the Australian model which lists national sporting events that should first be made available to FTA broadcasters and only if these are not bought, the rights are then opened to bidding by subscription broadcasters."

195 Whether or not this is ICASA's intention, it is impermissibly proposing to secure an unfair bidding advantage for free to air broadcasters over subscription broadcasters, seemingly in an effort to make the rights more affordable for them, notwithstanding the absence of any basis in law or commerce for this proposal.

196 MultiChoice submits that proposed Regulation 5.1 falls outside the bounds of what is permitted by the EC Act and is liable to be set aside as unlawful.

Onerous obligation on free to air licensees

197 Broadcasting of the Group A list is formulated in the Draft Regulations as a proposed compulsory requirement for free to air licensees. But there are various free to air licensees. It is unclear how each (or one or all) of them must comply with a proposed "compulsory" requirement which is to be collectively applied to an entire licence category. Requiring all television broadcasters (SABC 1, SABC 2, SABC 3, e.tv and all community television licensees) to broadcast all listed events live and in full is unnecessary, impractical and illogical.

198 The requirement is also contradictory. If it is compulsory for a free to air service to broadcast Group A events live and in full, it is unclear why draft Regulation 5.1.2 provides for a free to air licensee to indicate that it "*cannot acquire*" the rights. This suggests that free to air broadcasters have a discretion on what to acquire⁶⁷ and broadcast, which makes the compulsory nature of Group A events for free to air broadcasters difficult to understand and implement.

199 Even if the obligations is applied only to a single free to air broadcaster, it is still problematic. The Draft Regulations seem to contemplate a situation where a free to air broadcaster would acquire all of the rights (i.e. both subscription and free

⁶⁷ It appears that compulsory broadcast of listed events means compulsory acquisition of the rights because a broadcaster cannot broadcast content for which it has not acquired the rights

to air rights). If not, then why preclude subscription broadcasters from bidding for the rights until a free to air licensee cannot? Free to air broadcasters are unlikely to be able to afford the subscription broadcasting rights, they would be unable to use these rights themselves, and they may well struggle to monetise them. Moreover, the Draft Regulations provide that subscription broadcasters (if the opportunity arises) can bid for the rights only *on a non-exclusive basis*, thereby rendering their commercial value significantly lower than if they were exclusive. International experience has shown that subscription broadcasters might opt not to acquire rights at all, rather than acquire them non-exclusively. This has been the position in the UK, for example, where the listed events system is intended to ensure that Group A listed events are broadcast both on free to air and subscription television, but, in practice, some events are not available on pay TV because Sky Sport and BT Sport – two of the major players in the UK pay TV market – opted for business models focussing on exclusive rights only, meaning that they do not typically bid for the rights.

200 Free to air broadcasters self-admittedly would not have sufficient capacity to broadcast all of the proposed Group A events live and in full, taking into account their limited transmission capacity and their extensive public interest broadcasting obligations. In addition, free to air broadcasters' costs would increase, not only because of having to acquire live free to air and subscription rights, but also because they would have to produce these sporting events for broadcast. The free to air broadcaster would have to acquire and dispatch OB vans (i.e. a production truck for processing, recording and transmitting broadcasts from a remote location) to produce sporting events, wherever they take place.

201 Against this background, it is unclear why ICASA is proposing live coverage on free to air. It does not always make sense for an event to be broadcast live, because, for example –

201.1 it might take place in another time zone resulting in the live broadcast occurring in the middle of the night SA time. For example, the 2020 Summer Olympics will take place in Tokyo, which is seven hours ahead

of South Africa. A live broadcast may not be desirable or practical in those circumstances, and would result in lower viewership;

201.2 numerous different sports events take place simultaneously (e.g. rugby and soccer matches on a Saturday, or multiple events in the Summer Olympics which take place at the same time). In respect of some events (for example the 2016 Rio Summer Olympic Games which comprised of 306 events from 34 sporting codes taking place over about 14 days) a free to air licensee would be unable to broadcast the entire event live and in full, let alone multiple such events;⁶⁸ and

201.3 other non-sporting events may be taking place (e.g. the State of the Nation Address) or other programming scheduled, which may or may not be of public importance.

202 It is the sports bodies which schedule the fixtures of their sports events. As ICASA has previously recognised, ICASA has no role in the scheduling of fixtures.⁶⁹

203 Free to air broadcasters are unlikely to be willing or able to afford the cost of acquiring the very wide list of sports events now proposed to be broadcast live and in full on free to air. In fact, it is likely that the proposed requirement for full live coverage would disincentivise free to air broadcasters from even bidding for Group A rights (even though it appears that ICASA proposes making it compulsory for them to do so).

204 The Current Regulations allow for listed events to be broadcast on a delayed / delayed live basis. This has not been an impediment to attracting free to air viewers. Listed sports events broadcast on a delayed basis on the SABC attract

⁶⁸ This is not unique to South Africa. In the UK free to air events review, the IOC submission stated that "BBC1 and BBC2, however, cannot broadcast 5,000+ hours of live Olympic Games content over 16 days: at least 26 free to air channels broadcasting 12 hours a day for 16 days would be needed for that (equivalent of 208 days of uninterrupted broadcast coverage)" (IOC submission, Free to Air Events Review, 20 May 2009, pg 2)

⁶⁹ ICASA previously recognised that "there is no legislative basis empowering it to participate in the scheduling of fixtures, some of which are set by international bodies, such as FIFA and CAF" (Pg 44 of the 2010 Reasons Document)

a significant audience (and in fact have grown over time) and at a fraction of the cost that the SABC would have paid for live rights.

- 205 The onerous obligation on free to air broadcasters is exacerbated by the proposed expansion of listed events in Group A, many of which are not subject to any criteria. Whereas it would arguably be achievable (although not lawful) to require compulsory free to air coverage if there were only a handful of events listed, Group A now contains many hours of listed events making the "compulsory coverage" extraordinarily burdensome on free to air broadcasters.
- 206 The proposed full live free to air broadcast of all Group A events is unrealistic, unworkable and out of line with international best practice, and sets free to air broadcasters up for inevitable non-compliance.

Ultra Vires restriction on subscription broadcasters' acquisition of rights

207 The EC Act does not preclude subscription broadcasters from acquiring exclusive rights to listed events, as long as free to air broadcasts are not prevented or hindered. It does not make subscription broadcasters subordinate to free to air broadcasters. ICASA has nonetheless now proposed an outright restriction on subscription broadcasters acquiring exclusive rights for Group A events. In terms of the proposed new Draft Regulation 5.1.2 -

207.1 subscription broadcasters could only bid for rights to Group A events if free to air broadcasters cannot acquire these rights; and

207.2 such rights could only be non-exclusive.

208 This would be a radical departure from the Current Regulations and, as outlined earlier, is far outside the bounds set by s60(1) of the EC Act.

209 ICASA's proposed new approach would penalise subscription broadcasters for no apparent reason, save perhaps for the ulterior purpose of conferring an undue competitive advantage on free to air broadcasters in bidding for the rights.

210 Currently, subscription broadcasters may choose when to bid for rights and, depending on how the rights package is structured, may decide which rights to pitch for.

211 ICASA proposes that going forward subscription broadcasters will have to wait until free to air broadcasters have decided whether (or not) to bid for the rights. Only once free to air broadcasters have informed subscription broadcasters that they "cannot acquire" (there is not even an obligation on free to air broadcasters to inform them within any particular period) may subscription broadcasters then make a bid, and then only for non-exclusive rights. This would leave subscription broadcasters at the mercy of free to air broadcasters.

212 The proposed draft would have the effect of unreasonably and unlawfully restricting the commercial activities of subscription broadcasters (which we do not believe could have been ICASA's intention).

212.1 Subscription broadcasters plan their rights acquisitions years ahead. It would be untenable for them to wait until free to air broadcasters "cannot acquire". It is not clear when and by whom this determination would be made. Does this include one free to air broadcaster or all of them? Can the free to air broadcasters take turns in trying to acquire these rights, with the subscription broadcasters waiting at the back of the queue? It is unreasonable for subscription broadcasters to have to wait until every free to air broadcaster has informed them that they "cannot acquire". What happens if this notification comes very late or never comes at all? The proposals also fail to recognise how sports bodies sell their rights in practice, where they are sold simultaneously and not sequentially, as ICASA's proposals would require. There are good reasons for this, including enhancing efficiency and competition in the bidding process. This proposal is simply not workable and we do not believe that ICASA could have intended these consequences.

212.2 If a free to air licensee can acquire the rights, then subscription broadcasters would not be allowed to bid for the rights at all.

- 212.3 Given that the Group A list is proposed to be vastly expanded to contain thousands of hours of programming, the draft Regulations would have the effect of shutting subscription broadcasters out of exclusive access to a whole raft of programming which they are currently able to offer, with potential adverse consequences for subscription broadcasting services.
- 212.4 Finally, leaving aside that the proposal would be *ultra vires* the EC Act, the proposed restriction on subscription broadcasting serves no apparent rational purpose. The proposed draft Regulation 5.1.2 is predicated on the situation where free to air broadcasters "cannot acquire". ICASA has not explained the intended purpose nor provided any justification for restricting subscription broadcasters to non-exclusive rights. The non-exclusive broadcast by subscription broadcasters would not assist free to air broadcasters (who would have already been in the position that they "cannot acquire") and would prejudice sports bodies, as the value of their rights would be reduced drastically if they were available to subscription broadcasters only on a non-exclusive basis, if at all. We doubt that this was ICASA's intention.

Intrusion on the rights of sports bodies to monetise their property

- 213 Whereas the Draft Regulations for Group A events would undoubtedly be damaging for subscription and free to air broadcasters, they are potentially catastrophic for sports bodies.
- 214 The Draft Regulations limit which broadcasters the sports bodies of listed events can sell to, even though sports bodies are not licensees and are not regulated by ICASA. Going forward, the Draft Regulations propose that sports bodies would initially be restricted to selling rights for Group A events to free to air broadcasters only, and may need to do so on a non-exclusive basis (since free to air broadcasters seemingly have a collective obligation to broadcast these events live and in full).

- 215 The draft Regulations propose that only after the free to air bidding process (and only if no free to air licensee has acquired the rights) may the sports body sell the rights to subscription service broadcasters. Crucially, it proposes that it may sell to subscription broadcasters only on a non-exclusive basis.
- 216 The approach proposed by ICASA would intrude on the rights of sports bodies to monetise their property in the most commercially viable manner. Preventing sports bodies from selling an exclusive rights package for a listed event to a subscription service broadcaster is likely to severely depress the rights fees realised by sports bodies and their clubs thereby having the unintended consequence of rendering them commercially unviable.⁷⁰
- 217 It is unclear what ICASA's rationale is for purporting to curtail sports bodies' rights to monetise their property. Exclusive rights have not precluded listed events being seen by free to air audiences. In FY2018, a number of listed events broadcast by MultiChoice were also broadcast on free to air television. We refer to Annexure F, which demonstrates that a substantial volume of sport is already broadcast free to air in South Africa. The objectives of s60(1) of the EC Act are fully achieved through the existing sub-licensing regime in the Current Regulations and the self-regulation of sports bodies' sale of broadcast rights.

- 218 Most of the Group A proposals are impermissible, unlawful, misguided and unworkable.**
- 219 ICASA may not expand the list of events beyond what is permitted by s60(1) – many of the Group A events are not even *events* (e.g. "International Boxing Federations"), are not *national* sporting events and/or are not subject to any criteria to ensure that only appropriate parts of a tournament are listed in the public interest.**
- 220 Nor may ICASA compel free to air broadcasters to broadcast Group A events live and in full – they in any event do not have the budget or capacity to do so given their other imperatives. How would this collective obligation work? Can the obligation simply be avoided by saying that a free to air broadcaster couldn't acquire the rights? Group A events would end up**

⁷⁰ In MultiChoice's experience, the value of the rights is likely to drop by approximately 80% when sold on a non-exclusive basis. The revenue of sports bodies would accordingly drop significantly with all the unintended adverse consequences that would flow therefrom.

costing free to air broadcasters more, because they would have to acquire all the rights, broadcast the wider list live and in full (which is more expensive) and incur the production, technical, travel and other costs of doing so.

221 ICASA also may not reserve events for free to air bidding for rights, by precluding subscription broadcasters from bidding. There is no apparent purpose for this, except, perhaps, to advantage free to air broadcasters. It is also unworkable, because subscription broadcasters plan their rights acquisitions years ahead.

222 It is also impermissible for ICASA to prevent subscription broadcasters from acquiring exclusive rights. The EC Act prohibits only the acquisition of exclusive rights that prevent or hinder free to air broadcasting. Subscription broadcasters have always acquired exclusive rights to listed events, subject to giving free to air broadcasters an opportunity to sub-license them.

223 Lastly, ICASA may not interfere with sports bodies' ability to monetise their property and arbitrarily deprive them of their property rights – ICASA may not dictate how and to whom sports bodies may sell their rights. Doing so, and particularly prohibiting exclusivity, would reduce the value of the broadcasting rights by about 80%.

Group B: National sporting events offered to subscription broadcasters on a non-exclusive basis under sub-licencing conditions

224 ICASA has offered little explanation for its approach to draft Regulation 5.2, which proposes listing Group B events. Its meaning and purpose is not clear. It appears that either:

224.1 free to air broadcasters must offer to sub-license the rights to Group B events to subscription broadcasters on a non-exclusive basis; or

224.2 sports bodies must offer the rights to Group B events to subscription broadcasters on a non-exclusive basis, meaning that subscription broadcasters may acquire only non-exclusive rights and must still offer to sub-license the free to air rights to a free to air broadcaster.

225 Irrespective of which interpretation is correct, Group B listed events differ from Group A in that there is no obligation on free to air broadcasters to broadcast these events.

226 But insofar as subscription broadcasters are concerned, once again, as in Group A, the Draft Regulations propose that subscription service broadcasters may acquire only non-exclusive rights to Group B events.

227 It is unclear how either of the approaches described above would work in practice.

228 Presuming that the provision means free to air broadcasters must offer to sub-license the rights to Group B events to subscription broadcasters on a non-exclusive basis, a number of practical difficulties would arise:

228.1 Free to air broadcasters would have to purchase, at some expense, not only the free to air rights but also the subscription broadcasting rights which they would then have to sub-license to subscription broadcasters. Sub-licensing rights are not automatic - they have to be acquired and paid for. Also, it is the norm in the sports broadcasting industry that the consent of sports bodies, as rights holders, is required in order for licensees to further sub-license those rights. Sports bodies need to be satisfied that their product is being carried by reputable broadcasters.

228.2 In order for a subscription broadcaster to acquire rights to Group B events, it would have to sub-license them from a free to air broadcaster or wait to be informed that a free to air broadcaster has not acquired the rights, after which the subscription broadcaster could tender for them.⁷¹ If neither the subscription broadcaster nor the free to air broadcaster acquires the rights, the event would then not be broadcast on either free to air or subscription broadcasting services. Given the breadth of the Group B list, this outcome would be likely for at least some of the Group B events.

228.3 Likewise, if subscription broadcasters decline to sub-license the rights from a free to air broadcaster, which they may well do, given that they

⁷¹ Draft Regulation 6(1)

may not wish to invest in non-exclusive content, then free to air broadcasters would be encumbered with expensive rights for which they have paid, but which they are unable to monetise.

229 The second interpretation would be equally unworkable: Assuming that the provision means that sports bodies would be required to offer the rights to Group B events to subscription broadcasters on a non-exclusive basis, and subscription broadcasters would be required, in turn, to offer to sub-license the rights to a free to air broadcaster:

229.1 ICASA would be seeking to explicitly regulate sporting bodies over whom it has no jurisdiction. It would be unable to ensure compliance by sporting bodies to offer rights in this manner.

229.2 Even if compliance could be enforced, subscription broadcasters would be confined to purchasing only non-exclusive rights, which they might not be willing to do. As a result, there is a significant (no doubt unintended) risk that the event may not be televised on either free to air or subscription broadcasting services.

229.3 A further disincentive to subscription broadcasters acquiring the rights would be that not only are they non-exclusive, but they would also be sub-licensed to another platform, thereby further diluting their value to the subscription broadcaster.

230 On either interpretation, Draft Regulation 5.2 is riddled with difficulties. In addition:

230.1 The proposed expansion of the list, and the extent of the events proposed to be listed, is beyond what is contemplated by the EC Act.

230.2 The proposed restrictions on subscription broadcasters purchasing rights exclusively would be *ultra vires* the EC Act and interfere with the commercial activities of subscription broadcasters.

230.3 The Draft Regulations would intrude on the rights of sports bodies to monetise their property and arbitrarily deprive them of their property rights.

Expansion of listed events

231 Draft Regulation 5.2 proposes expanding considerably the number of listed events.⁷² The new additions are:

231.1 Domestic Boxing Tournaments

231.2 Domestic Cricket Championships

231.3 Premier Hockey League

231.4 Soccer Championship Cup⁷³

231.5 Premier Soccer League

232 As with Group A, ICASA has proposed listing events and sporting codes and competitions (which are not events), many of which are not national in character, shifting from its long-held position that a national sporting event must not be confused with a popular event.⁷⁴

233 Each of the additions highlighted in paragraph 231 above are problematic.

⁷² The proposed Group B list is as follows: Super 14 Rugby; All Africa Games; COSAFA Cup; CAF Champions League; Charity Cup (soccer); Supa 8 Cup (soccer); Knockout (soccer); Soccer Championship Cup; Currie Cup (Rugby); Two Oceans Marathon; Comrades Marathon; Domestic Boxing Tournaments; Premier Soccer League; Domestic Cricket Championships; and Premier Hockey League

⁷³ It is not clear what this is intended to refer to

⁷⁴ ICASA Findings and Reasons Document on the Sport Broadcasting Services Regulations, 2010, published under notice number 298, Government Gazette number 33108, 12 April 2010 (2010 Reasons Document), pg 42

- 233.1 Domestic Boxing Tournaments and Domestic Cricket Championships. These are not an *event*. Nor could a domestic boxing tournament or a domestic cricket championship be a *national* event.
- 233.2 Premier Hockey League. The proposed listing of the PHL is difficult to understand. Still in its infancy, the PHL was introduced only in 2016 after the then Minister of Sport and Recreation approached SuperSport to assist in the funding and broadcasting of a national hockey league for both men and women. Being the first of its kind for hockey in the country, its primary objective is to improve the quality of the game and in this way contribute to the objectives of the respective men and women national teams of qualifying for the 2020 Olympics and the 2022 Commonwealth Games. If the proposed listing of the PHL were to go ahead as proposed by ICASA, it would return hockey for men and women to the time when the sport received no broadcast coverage. The unintended effect would be no national league, no broadcasting, and no platform for the national teams to qualify for international competitions.
- 233.3 Soccer Championship Cup. There is no such event, and it is not clear what ICASA envisages. This too, is incapable of application.
- 233.4 Premier Soccer League. There is no rational or legislative basis for listing the PSL, which is probably the greatest South African sports success story in recent years, having grown the game, maximised revenue for the PSL and its clubs, and maximised free to air and subscription broadcasting coverage. We refer in this regard to the case study at paragraph 97 above.

234 ICASA's policy position has been that "*A national sporting event remains so irrespective of the number of people who physically attend scheduled games*",⁷⁵

⁷⁵ Pgs 35 and 36 of the 2010 Preliminary Findings Document

and that internationally popular sports such as the English Premier League and the PSL are not treated as national sporting events.

235 Given that the English Premier League is not a national event, it is not listed in the UK (or anywhere else in the world). This was confirmed by the UK House of Lords, which stated:

"[EU] Member states are limited in the sporting or other events they may reserve for their public broadcasters. Only those of 'major importance for society' can qualify. Premier League football matches, for example, are subject to a free market."⁷⁶

236 In the UK, it is recognised that the EPL cannot be listed, because it does not have the "special national resonance" which is a prerequisite for listing, since football fans comprise supporters of different clubs, not a national team. To our knowledge, a league such as the EPL is not listed in full anywhere in the world.

237 Indeed, in 2010 ICASA stated:

"As an example, having more people attend the Kaizer Chiefs – Pirates derby than Bafana-Bafana games, does not make the former a national sporting event. A national sporting event remains so irrespective of the number of people who physically attend scheduled games."⁷⁷

238 In light of this, the proposed inclusion of a club league such as the PSL in the Group B list is of grave concern.

Ultra Vires restriction on subscription broadcasters' acquisition of rights

239 As with Group A, ICASA proposes in Draft Regulation 5.2 to prohibit subscription service broadcasters from acquiring exclusive rights to events listed in Group B, even though the EC Act does not support such a restriction.

⁷⁶ *Regina v Independent Television Commission (Appellants) Ex Parte TV Danmark 1 Limited*, 25 July 2001 [2001] UKHL 42

⁷⁷ Pgs 35 and 36 of the 2010 Preliminary Findings Document

240 Once again, this proposes a radical departure from the Current Regulations. This proposed approach would unreasonably and unlawfully handicap subscription broadcasters. Again, the limitation on subscription broadcasters is exacerbated by the listing of a sizeable number of events, and competitions which have not previously been listed. Moreover, the criteria in draft Regulation 4 are not applicable to Group B events, so each Group B event is presumably proposed to be listed in its entirety. Subscription broadcasters would therefore be shut-out of holding exclusive rights for a multitude of entire sports tournaments. For instance, subscription broadcasters would be prevented from holding exclusive rights to sports leagues such as the PSL.

241 It is unclear what the proposed restriction is designed to achieve: On either interpretation of the drafting it is clear that free to air and subscription broadcasters would share the rights with one of the parties sub-licensing. Why then does ICASA propose limiting subscription broadcasters to holding only non-exclusive rights? The Current Regulations provide for subscription broadcasters to acquire exclusive rights and sub-license the rights to listed events to free to air broadcasters. This is the basis on which most, if not all, of the listed events in the Current Regulations have been broadcast since 2010, including the Currie Cup Rugby, Super Rugby, FIFA World Cup, ICC Cricket World Cup, Rugby World Cup, Summer Olympics, Paralympics and Commonwealth Games.

Intrusion on the rights of sports bodies

242 As with Group A, it is apparent that, if listed in Group B, sports bodies would be allowed to sell only non-exclusive rights to subscription broadcasters. This would intrude on the rights of sports bodies to monetise their property and is likely to severely depress the rights fees realised by sports bodies and deprive sports bodies of their property rights.

243 Given the expansion of the list to include entire soccer and hockey leagues, the consequences for these sports would likely be disastrous.

- 244** The Draft Regulations propose an extensive Group B list which is not subject to any criteria to ensure that events are listed in the public interest.
- 245** The Group B list is too wide and includes events that are not events and/or that are not national in character and/or which are not appropriate to list. ICASA has not given reasons for contradicting its earlier finding that it is not appropriate to list the PSL.
- 246** All of the Group B events are, in the absence of any applicable criteria, proposed to be listed in full, although there is no obligation on free to air broadcasters to broadcast these events.
- 247** It is not clear what ICASA is proposing in relation to Group B: who must sub-license to whom, or why. Either way, it is unworkable.
- 248** If ICASA's proposal is that free to air broadcasters must sub-license to subscription broadcasters, the only route for subscription broadcasters to acquire the rights is from free to air broadcasters. But free to air broadcasters –

- 248.1** have no obligation to acquire the rights / broadcast the Group B events; and
- 248.2** do not have the budget or the capacity to acquire all of the rights to the extensive Group B list (including subscription broadcasting rights and sub-licensing rights).

- 249** Subscription broadcasters might decline to sub-license the rights from free to air broadcasters, because they might not wish to invest in non-exclusive content. And if they do, they won't see much value in the non-exclusive rights. Free to air broadcasters could find themselves with rights for which they have paid, but can't monetise.
- 250** If ICASA's proposal is that subscription broadcasters may acquire only non-exclusive rights and must still offer to sub-license the free to air rights to a free to air broadcaster, subscription broadcasters may well decline to acquire the rights.
- 251** It is also unclear what Group B is designed to achieve. Why must subscription broadcasters be limited to non-exclusive rights if they must also sub-license them?
- 252** Either way the Group B proposal exceeds ICASA's statutory powers by –

- 252.1** exceeding the bounds of listing contemplated in s60(1) of the EC Act;
- 252.2** impermissibly limiting subscription broadcasters to non-exclusive rights; and

252.3 intruding on the rights of sports bodies.

Group C: Minority and developmental sporting events to be broadcast by subscription and free to air broadcasters

- 253 The Group C list proposes a major departure from the Current Regulations. In essence, ICASA has proposed a list of sporting codes identified as "minority"⁷⁸ or "developmental"⁷⁹ sports, and free to air and subscription broadcasters would be required to broadcast events of at least two of the listed sporting codes per annum.⁸⁰
- 254 ICASA has made this proposal even though s60 of the EC Act does not mention minority or developmental sporting events, and notwithstanding ICASA's recognition that "*a clear distinction exists between the coverage and following of sports events listed in Group A and B with those sporting codes that the Authority has identified in Group C*".⁸¹
- 255 s60(1) is limited to *national sporting events*. We are not aware of any provision in the EC Act, the Broadcasting Act or the ICASA Act which permits ICASA to impose a positive obligation on free to air or subscription broadcasters to

⁷⁸ ICASA proposes defining "minority sports" as meaning "any sport that does not have majority of the population's following or a sport having a less distinctive presence within a larger society". The definition was apparently based on the ordinary meaning of the word minority and was proposed in line with the current environment where "*a clear distinction exists between the coverage and following of sports events listed in Group A and B with those sporting codes that the Authority has identified in Group C*" (Pg 15 of the Gazette)

⁷⁹ ICASA proposes defining "Developmental Sports" as meaning "sports aimed at promoting social change and enlarging the population's choices and increasing opportunities to all members of the society". The definition was apparently informed by the United Nations' definition of "development" in the context of Sport for Development and Peace. (Pg 15 of the Gazette). This is in fact a distortion of the UN's approach to *sport for development*, which states (not in a definition of developmental sport) that "Central to the United Nations notion of development is sustainable human development, which recognizes that development is more than economic growth. Development is a process of enlarging people's choices and increasing the opportunities available to all members of society" (See for example the UN Inter-Agency Task Force on Sport for Development and Peace: Sport as a Tool for Development and Peace: Towards Achieving the United Nations Millennium Development Goals, Final Report, 2005)

⁸⁰ The broadcasting obligation is also not clear. Must every free to air and subscription broadcaster do so or is it a collective obligation? Must they broadcast all or only some events in each of the listed sporting codes and, if so, how many of each? Or must they broadcast two events per annum, in one (or two) of the listed sporting codes? Draft Regulation 5.3.2 is unclear

⁸¹ Pg 15 of the Gazette

broadcast minority or developmental sporting events, let alone in any particular sporting codes identified by the Authority.

256 The Group C proposal also contradicts ICASA's stated understanding of a *national sporting event*; and its stated position that -

256.1 s10(1)(i) of the Broadcasting Act, which deals with "national sports programming," does so in relation to the nature of the public service to be provided by the SABC; and

256.2 *National sporting events* are a different concept to "national sports programming" which is "a *broad concept that refers to the broadcasting of sports in general and can include any sports, from the most popular sports to minority or developmental sports, on an amateur or a professional level*".⁸²

257 However well-intentioned the proposal is for the broadcast of minority and developmental sports, it has no place in Regulations dealing with the broadcasting of national sporting events in the public interest.

258 ICASA's Group C proposals have no place in these Regulations, however well-intentioned they may be.

259 Minority and developmental sporting events are a s10(1)(i) objective of the public broadcaster under the Broadcasting Act.

260 These Regulations may deal only with events which are properly designated as national sporting events identified in the public interest.

Likely impact of the Draft Regulations

261 For many years, ICASA has maintained a balanced approach to the complex subject of broadcast rights to national sporting events.

261.1 The importance and value of exclusivity have largely been preserved. The Current Regulations have allowed subscription broadcasters to acquire the rights for listed events and to do so on an exclusive basis,

⁸² Pg 29 of the 2010 Reasons Document

provided that free to air broadcasters are not prevented or hindered in broadcasting the rights for listed events, by having the opportunity to sub-license such rights.

261.2 Free to air broadcasters have not been obliged to bid for or broadcast all listed sports events or to carry listed sports events live and in full, but have the opportunity to do so.

261.3 Sports bodies have been able to structure their rights packages optimally and sell their intellectual property rights on a commercial basis.

262 The balanced approach has yielded positive results:

262.1 Investment in local sport has grown. New leagues have been created, and rights fees payable to sports bodies such as the PSL, CSA and SARU have increased. New sporting genres not previously televised, now have broadcast coverage, such as netball, basketball, volleyball and hockey. We refer in this regard to the extensive contribution made by SuperSport to sport in South Africa, described in Annexure D. It is indisputable that sport has benefitted, with knock-on benefits to fans, the economy and the country as a whole.

262.2 Local sporting codes have survived, even in tough economic conditions. Were it not for their broadcasting revenue, this might not have been the case.

262.3 More sporting events have been broadcast, including netball, basketball, hockey, volleyball and Varsity Sports.

262.4 Most listed events have been broadcast free to air.

263 By multiple measures, the effect of the current balanced approach has been reasonably positive. ICASA's proposal to up-end the regulatory framework without providing any substantiated, rational basis is perplexing.

264 The new proposals would not have any positive consequences. They would do quite the opposite: MultiChoice foresees a fatally damaging impact on sport and the broadcasting of national sporting events and ultimately on the broader South African economy, which we do not believe ICASA intended:

264.1 The viability of subscription and free to air broadcasters would be negatively impacted and their ability to compete with the new audio-visual players would be curtailed.

264.2 The financial security of sports bodies would be destroyed, severely curtailing their ability to pay sportspersons and invest in the administration, growth and development of their sports, from grassroots level up, with ultimate knock-on consequences for the youth, employment and the economy.

264.3 The number and range of national sporting events which are broadcast on television and available to audiences in South Africa would decline, and the cohesive benefits of national sporting events would be lost. The viewing public would be worse off, and would end up having less sport on television, and lower quality sport to view.

Access to national sporting events would be reduced

265 Currently audiences who wish to watch national sporting events on television are, in the vast majority of cases, able to choose between seeing them on free to air or subscription services.

266 If the Draft Regulations were adopted, it is likely that listed events would disappear completely off television schedules.

266.1 Due to the burdensome nature of the "full, live" coverage requirement for Group A events, free to air licensees are likely to be unwilling or unable to bid for all but a few of these events.

266.2 Even if they bid, if there is no separate free to air package, free to air broadcasters may be unsuccessful in acquiring the whole package of

rights made available by sports bodies. This would affect coverage of both Group A and Group B events.

- 266.3 Subscription services would be likely to decline to purchase Group A and B events if they were limited to acquiring these rights only non-exclusively. Access to exclusive content is important for subscription broadcasters to differentiate their offering and make it attractive to subscribers. The stipulation on non-exclusivity would make it more difficult for subscription broadcasting services to distinguish their offering. They are likely to instead choose to invest in content which they can offer exclusively. This may include local general entertainment content which frequently dwarfs the audience for listed sports events.
- 267 Subscription broadcasters may also have no choice but to redirect their investment away from local sport offshore to unregulated foreign sporting events.
- 268 The listing in South Africa under s60(1) of an event played outside South Africa would also have adverse consequences: a tour by a South African national team would not be financially attractive for the sports body's counterpart in the foreign country (because the South African sports body only owns the rights to its matches played in South Africa. Its counterpart in the foreign country owns the rights to its matches played in that other country. Listing therefore reduces the value of the foreign sports body's rights to the extent that the matches are broadcast in South Africa.) Other teams, whose matches in that country are not listed, would be more attractive. As a result, the South African national teams would be invited to participate in fewer international tours (e.g. netball). Fewer international tours would impact negatively on the South African national teams' international experience, and therefore on their ability to compete successfully abroad, and also have an adverse impact on revenue earned by the local sports body. It would also reduce the number of international teams that would visit South Africa, with less revenue for the local sports body, as well as less revenue from tourism in the local area.

269 In short, access to national sporting events on television would be likely to diminish greatly if the Draft Regulations were to come into effect, putting South African audiences in a worse position.

Lower prices would be obtained for broadcasting rights

270 Listing an event depresses the prices that can be obtained for the broadcasting rights to that event. Internationally, this phenomenon has been widely recognised. For example, the Australian Productivity Commission has recognised that:

"The anti-siphoning mechanism is likely to distort the relative prices of broadcast rights to listed and non-listed events ... **the price of listed events relative to non-listed events is reduced.**"⁸³

271 The proposal to restrict subscription broadcasters to acquiring only non-exclusive rights would automatically and very substantially decrease the value of the rights even more.

272 The value of a sports event to a subscription broadcaster drops dramatically if the event will also be broadcast by another broadcaster.

273 It is also for this reason that the prices which could be acquired for the broadcast rights to the event are depressed. This was recognised in the Premier League case by the Restrictive Practices Court:

"[W]e consider that, from a broadcaster's point of view, Premier League football would generally make attractive programming and would always be worth having, but its value on a non-exclusive basis, or on the basis of narrow exclusivity, would be substantially less because it would have lost its **differentiating power** ... It appears to us that diluting exclusivity for live matches would devalue their rights very substantially."

⁸³ *Broadcasting Inquiry Report*, 3 March 2000, page 438

- 274 If the opportunity to bid for Group A rights were to be reserved for free to air broadcasters, as ICASA proposes, the SABC (and potentially e.tv and community broadcasters, although they have historically had little interest in sport) would be in a position to offer sports body a lower price and less beneficial terms to acquire the rights, rather than the sports body being able to negotiate and sell the rights in the best interests of the sport, and to derive the maximum value therefrom.
- 275 This is borne out by SAFA's experience. SAFA currently derives a relatively small portion of its revenue from the sale of broadcasting rights for its national teams, due to the low price paid by the SABC for SAFA's broadcasting rights, well below the actual value of the rights.⁸⁴ SAFA was historically unable to derive the maximum value from its rights because e.tv had no interest in acquiring them and subscription broadcasting services would derive little interest in acquiring them on a non-exclusive basis. This left the SABC as the only party interested in acquiring the rights, enabling the SABC to negotiate for the acquisition of the rights on a take-it-or-leave-it basis.
- 276 This scenario continues to play out in the ongoing public spat between SAFA and the SABC on the acquisition of various football broadcasting rights. They have been unable to reach agreement: The SABC considers its offer "*a commercially viable offer that would enable it to deliver football matches to South African audiences on SABC platforms*"⁸⁵ and SAFA says that the SABC's "*offer is so miniscule that it amounts to an effective no offer*".⁸⁶
- 277 As a result, SAFA has indicated that it has written to the SABC and ICASA and informed the Ministry of Sport and Recreation and the Ministry of Communications that it wants the SABC to be relieved of its obligations towards sports of national interest (football in particular) which would consequently allow

⁸⁴ Joint submission from SAFA and the PSL on the Review of Sports Broadcasting Rights Discussion Document, 21 November 2008, pg 5

⁸⁵ SABC statement, 17 November 2018

⁸⁶ SAFA statement, 11 October 2018

SAFA to conclude an agreement with another broadcaster for the SAFA rights in line with the commercial value SAFA attributes to such rights.⁸⁷

- 278 In contrast, the PSL has previously told ICASA that it has been able to negotiate commercial agreements with the SABC and SuperSport (free from the constraints of regulation) resulting in the South African public having access to more televised soccer than ever before in the history of this country, and balancing revenue and exposure.⁸⁸
- 279 Listing has the inevitable effect of devaluing sports broadcasting rights even if a sport, or an event, is only partially listed. For example, if only certain matches in a league, such as the PSL, are listed, this would have a significant adverse impact on the league as a whole, and the value of the rights thereto. It is not only the listed events which are adversely affected, but the entire league and the sport as a whole.⁸⁹ This is particularly severe for events such as league matches, as the more successful teams in the league support and subsidise the other teams.
- 280 Sports bodies do not sell their rights piecemeal to certain matches, which can be cherry-picked. They generally sell their rights to the league as a whole, to avoid a situation where stronger clubs benefit from revenue and exposure, while smaller, less popular clubs are overlooked.
- 281 As indicated above, sports broadcasting rights are owned by, and are the lifeblood of, sports bodies. Free to air broadcasters should not be entitled to an effective "handout" of sports broadcasting rights at an artificially reduced fee, to the detriment of the sports concerned, which would be the effect of the Draft Regulations.

⁸⁷ SAFA statement, 11 October 2018

⁸⁸ PSL submission to ICASA, 5 March 2010, pg 10

⁸⁹ Sports bodies do not sell their rights on a piecemeal basis to certain matches, which can be cherry picked. They sell the rights in carefully designed packages, with a mix of teams and matches of varying calibre and popularity

Financial position of sports bodies would be damaged

282 If adopted, the Draft Regulations would have an unintended adverse knock-on effect on the sports bodies' ability to grow and develop their sport.

283 The UK's Restrictive Practices Court confirmed the adverse impact of removing a sports body's ability to sell its broadcasting rights in the Premier League case:⁹⁰

"The significant fall in the income of clubs which we expect to follow upon the **abrogation of ... the exclusivity clauses, would, in our view, substantially** impair the ability of the clubs to provide the same level of benefits as they **would provide if there were no such fall....**

If ... the exclusivity clauses were abrogated the ability of the Premier League to confer benefits on football outside the Premier League would be lost or seriously diminished.

If the exclusivity clauses were abrogated the necessary consequence would be that no broadcaster could be given exclusivity in Premier League football **on television Competition between broadcasters, which is beneficial to the public, would therefore be impeded, not encouraged It is to the benefit of the public that such competition should be vigorous. Its diminution would therefore deprive the public of a specific and substantial benefit."**

284 As a result, the sports bodies would be less able to meet their many obligations:

284.1 Grassroots and development programmes are likely to be cut.

284.2 The training of and salaries paid to sportspersons would be adversely affected, possibly resulting in an even greater exodus of South Africa's top sportspersons to other countries.

⁹⁰ In that case at issue was whether the collective selling of the broadcasting rights of all the Premier League matches on an exclusive basis to BSkyB contravened the UK's competition legislation

- 284.3 The development and maintenance of stadia and facilities, and the organisation and hosting of domestic and international events would suffer.
- 284.4 The salaries, training facilities and experience and expertise of sports persons would also suffer.
- 285 In the longer term, each sport and South African sports as a whole would suffer.
- 286 MultiChoice has noted media reports in which some of these sports bodies and others have expressed grave concerns about the potential impact of the Draft Regulations. For example:
- 286.1 The PSL said that *"Without adequate funding, this industry as we know it will collapse and will be back to what it was back in the 1980s. Clubs will cut support staff to the bone and our grant of R11m to SAFA will no longer be available. I hope this is an error from ICASA, but it is also a form of exclusion. They did not consult or try to understand our industry. We will defend ourselves rigorously. We will exhaust all options available to us. If it is not resolved, we will shut down the PSL."*⁹¹
- 286.2 SAFA said that *"SAFA, like most sporting federations in the country, cannot agree with the proposals being made by ICASA and will vehemently oppose them"*⁹² and that *"these regulations will seriously damage soccer and other sports in the country"*.⁹³ SAFA noted that *"One of the things we have indicated to ICASA is that they just don't seem to have a handle on what it takes in terms of numbers of hours of broadcast and trying to put that into a public broadcaster. If you consider how many times there is rugby, soccer and cricket all being*

⁹¹ *Irvin Khoza threatens to 'shut down' PSL amid ICASA regulations*, Sport 24, 30 January 2019

⁹² *Sporting Strife: Codes unite to kick TV plan into touch*, Sunday Times, 3 Feb 2019

⁹³ *Big plans to break MultiChoice's DStv monopoly on sport*, My Broadband, 6 January 2019

*played at the same time. Our current free to air broadcasters do not have the capacity to do that simultaneously."*⁹⁴

286.3 The Boxing SA Board *"noted that the draft regulations in their current configuration equally have some worrying conclusions which may lead to detrimental and unintended consequences for the boxing sector and therefore needs serious reconsideration"*.⁹⁵

286.4 SA Rugby said that *"changes to the status quo pose a critical threat to our sport and our players"*⁹⁶ and that *"without the ability to maximize income from broadcasting rights, it will put the body's financial future in jeopardy"*⁹⁷.

286.5 The South African Editors Form (SANEF) said that *"there are a lot of issues that need to be considered and balanced"*, and that *"the proposed regulations need to be debated and investigated, including a full economic impact assessment"*. SANEF continued: *"The subscription broadcasters need exclusivity for their business model to work. Also, the sporting codes rely on the money they receive from broadcast rights and generally hefty sums are paid for these rights. But also the public broadcaster needs to show matches of national importance and they can't afford huge fees."* SANEF added that *"ICASA needs to take into account the number of channels SABC offers and their capabilities"*, that *"it is important that the schedules are not changed too much because this creates problems with audiences and advertisers"*, and that SANEF *"was unsure whether ICASA had balanced these needs against each other when proposing the amendment"*.⁹⁸

⁹⁴ SAFA's unfinished business: Broadcast and refs deal, City Press, 24 January 2019

⁹⁵ Boxing adds voice to reject broadcast draft, Daily Dispatch, 11 February 2019

⁹⁶ Sporting Strife: Codes unite to kick TV plan into touch, Sunday Times, 3 Feb 2019

⁹⁷ Big plans to break MultiChoice's DStv monopoly on sport, My Broadband, 6 January 2019

⁹⁸ DStv v ICASA – The big SuperSport problem, My Broadband, 16 February 2019

Broadcasting licensees would be negatively impacted

287 The broadcasting industry makes an important contribution to the wider South African economy, through employment, skills development, expenditure on production and world class technologies, the development of export markets, and contributions to the GDP and the fiscus. The MultiChoice group in particular contributes towards sport in various ways and is the primary benefactor of sport and sports development in South Africa.

288 We refer in this regard to Annexure D, which highlights some of the contributions made by SuperSport to sport in South Africa.

289 Adversely impacting on these services would have a ripple effect in this wider economic context and on South African sport.

289.1 MultiChoice, in particular, has created, funded and broadcast events specifically for subscription television. If it were not for this, events such as the Netball Premier League, the Premier Hockey League and the Basketball National League would simply not exist.

289.2 MultiChoice broadcasts numerous events of less popular sports (e.g. cycling, golf, wheelchair basketball, volleyball, basketball, etc.) which other broadcasters do not broadcast at all, and which otherwise would receive very little funding or publicity.

289.3 MultiChoice's extensive sports programming provides employment, not only directly in the programming and production sector, but also indirectly in the sports sector as a whole.

289.4 All of this results in additional income and exposure for sports bodies which, in turn, attracts sponsors for these events. In some instances, but for this broadcast and resultant sponsorship, the event would not exist.

- 289.5 Sustaining all these events, and this exposure, is critical to the development of and transfer of life-skills to sports persons, particularly those from previously disadvantaged groups.
- 290 Adversely impacting on the commercial interests of broadcasters, such as MultiChoice, which invest in sports would discourage investment and create insecurity and instability in both the broadcasting and sports industries.

Implications for subscription broadcasting services

- 291 A person will only subscribe to a subscription broadcasting service if it offers the subscriber programming which viewers don't get elsewhere for free. Exclusivity is therefore an important tool for subscription broadcasters, in particular, to differentiate their offering.
- 292 Subscription broadcasters are more willing to invest in exclusive sports broadcasting rights, as they are able to benefit from the investment by attracting subscribers. Exclusivity prevents free-riding by others who did not make similar investments.
- 293 While exclusivity is an important tool for subscription broadcasters, their sports broadcasting rights budgets are not unlimited. A broadcaster which is bidding for specific sports rights will have an upper limit on what it is prepared to bid which reflects the value to it of alternative content (including alternative sports rights) which may be cheaper to acquire.
- 294 Broadcasters need to consider whether the additional cost of higher priced content provides a sufficient benefit, in terms of subscription and advertising revenues in excess of the amount that must be paid for the content, such that it is more profitable than acquiring alternative lower priced content rights or commissioning or producing alternative content themselves
- 295 If exclusive broadcasting rights to national sporting events were to become inaccessible to subscription broadcasters due to regulation, as ICASA has effectively proposed in the Current Regulations, broadcasters such as MultiChoice would be forced to explore alternative sports rights, which may be

(i) cheaper to acquire and (ii) available exclusively. This could force MultiChoice to invest in foreign, rather than local sport, forcing income away from local sport to foreign sports bodies.

296 Subscription broadcasters' contribution to the wider South African economy, should not be overlooked. If subscription broadcasting services are adversely affected by the regulation of the broadcasting of sports events, the continuation of all of the above contributions would be threatened. The losers would be sports bodies, sports persons, sports fans, followers and viewers of sport on television, sports as a whole, and employment in the production, marketing and sports sectors. The very people which the Draft Regulations are intended to benefit, would lose out. If sport is destroyed, so too would its ancillary activities and benefits.

297 As mentioned earlier, OTT audio-visual players fall outside the scope of these Regulations. To benefit these international OTT corporations that do not employ staff in South Africa or pay taxes to the fiscus, while prejudicing contributing South African businesses is an unintended consequence which is surely not what ICASA contemplated.

298 For instance while subscription broadcasters would be confined to only acquiring non-exclusive rights, no such restriction would pertain to Netflix, Amazon Prime, Kwesé Play, Cell C Black or Vodacom Video Play (to name just some of the new services which are active in South Africa). The draft Regulations would advantage these OTT players by preventing subscription broadcasters from acquiring exclusive rights, making the bidding environment uneven, and disadvantaging subscription broadcasters which contribute significantly to South African sport, unlike the global online players which do not make such contributions.

299 Whereas in terms of the Current Regulations, free to air broadcasters are given the opportunity to sub-license listed events from subscription broadcasters, there is no such sub-licensing obligation on the new audio-visual players. It is likely that the Draft Regulations would diminish free to air access to Group A events

by shutting out subscription broadcasters' bids and thereby helping the unregulated audio-visual players to tie-up exclusive rights which they need not sub-license to free to air broadcasters. This may therefore result in sporting events of national interest being acquired and shown by online operators on a strictly pay-per-view basis and on the Internet.

300 There is accordingly a significant risk that the Draft Regulations would be ineffective, hamstringing both free to air and subscription broadcasters, while enabling OTT players to pay sports bodies a lower amount for the rights, and make them available at cost to those consumers who have access to streaming services, once again defeating the very purpose of the Regulations.

301 The Current Regulations have generally worked well. Despite this, and even though it is the author of the balanced approach, ICASA now seeks to up-end the regulatory framework without providing any substantiated, rational basis.

302 If passed, the proposed amendments would have a fatally damaging impact on sport and the broadcasting of national sporting events.

302.1 Less sport would be broadcast on television and available to free to air audiences. Listed events might not be broadcast at all.

302.2 Sports bodies' income streams would be decimated. As the current SAFA / SABC spat evidences, sports bodies would receive much less for their rights, because they would lose their ability to commercialise them optimally. This loss of income would curtail their ability to pay sportspersons and administer, grow and develop their sport.

302.3 Free to air and subscription broadcasters would be negatively impacted. Free to air broadcasters would be set up for inevitable non-compliance, due to the imposition of unachievable and unworkable obligations which they cannot monetise. Subscription broadcasters would need to consider the value proposition of non-exclusive rights, and may end up not broadcasting the listed events at all.

302.4 Subscription broadcasters would have no incentive to invest in the development of listed sports and may have no choice but to redirect their sports rights investment offshore. The R2 billion which the MultiChoice group contributes to sports development annually would be put at risk.

303 Fans and audiences would ultimately lose out.

Legal concerns

304 We have significant legal concerns about the draft Regulations.

305 There is a significant prospect that the Draft Regulations, if promulgated, would be reviewed and set aside.

Draft Regulations exceed ICASA's powers in terms of s60(1) of the EC Act

306 In making regulations and identifying sporting events in terms of s60(1) of the EC Act, ICASA exercises a public power and engages in administrative action.

307 These functions must accordingly be carried out in accordance with (a) the constitutional principle of legality, which encompasses the requirements of lawfulness and rationality; and (b) s33 of the Constitution and s6 of PAJA, in terms of which administrative action must be lawful, reasonable, and procedurally fair.

308 Regulations made by ICASA in terms of s60(1) must -

308.1 fall within the scope of ICASA's statutory powers, failing which they will be reviewable on the ground that they are *ultra vires*;

308.2 be formulated with sufficient clarity to indicate with reasonable certainty to those subject to them what is required of them, failing which they will be reviewable on the ground of vagueness;

308.3 be rationally related to their objective, to the purpose for which the regulatory power was given to ICASA, and to the material before ICASA, failing which they will be reviewable for irrationality;

308.4 be reasonable, which encompasses the requirement that their effect must be proportionate to their objective;

308.5 comply with the Constitution, failing which they will be reviewable for unconstitutionality; and

308.6 comply with the procedural requirements of s4(4) and 4(5) of the ECA, and any further requirements which are, as a matter of fairness, required by s3(2)(b) or s4(1) of PAJA, failing which they will be reviewable for procedural unfairness.

309 ICASA's powers under s60(1) of the EC Act are limited to:

309.1 making regulations that prescribe the manner in which it will identify the national sporting events which will be subject to the provisions of s60(1); and

309.2 identifying the national sporting events which will be subject to the s60 provision, (a) in accordance with the regulations which it has made; (b) after consultation⁹⁹ with the Ministers of Communications and Sport; and (c) in the public interest.

What ICASA may **not** do in terms of s60(1) of the EC Act

310 s60(1) of the EC Act precludes the acquisition, by subscription broadcasters, of exclusive broadcast rights which prevent or hinder the free to air broadcasting of listed national sporting events.

311 Only *national sporting events* are eligible for listing by ICASA. ICASA may not list –

311.1 an activity, a federation, a category of sports, a sporting code or another concept which does not constitute an *event*; or

311.2 a sporting event which does not constitute a national sporting event (i.e. which is not of national character).

⁹⁹ s60(1) of the EC Act requires ICASA to identify national sporting events in the public interest "**after consultation with the Minister and the Minister of Sport**". This means that ICASA must consult with the Minister and the Minister of Sport, but it is not required to reach agreement with them. (See too *Premier, Western Cape v President of the Republic of South Africa* 1999 (3) A 657 (CC); *McDonald & Others v Minister of Energy & Others* 2007 (5) SA 642 (C); *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 1999 (4) SA 147 and *Freedom under the Law v National Director of Public Prosecutions & Others* 2014 (1) SA 84 (GNP))

312 ICASA must identify national sporting events *in the public interest*. ICASA may not –

312.1 list an event which is merely popular, or *interesting* to the public;

312.2 ignore any relevant component of the public interest or negate the interests of any constituency, being required to weigh up and seek to balance the various interests encompassed in the public interest; or

312.3 seek to confer any legal or commercial advantage on any stakeholder/group, such as free to air broadcasters.

313 Pertinently, s60(1) does not empower or authorise ICASA to regulate the manner in which broadcasting rights are acquired in respect of the national sporting events which are subject to the s60 provision. Nor may ICASA go beyond the s60 provision encompassed by the words "*exclusive rights that prevent or hinder the free to air broadcasting of national sporting events*".

314 ICASA's role is limited to the identification of the national sporting events to which the s60(1) provision applies. ICASA may not:

314.1 Compel or prohibit the acquisition of particular broadcasting rights in respect of listed national sporting events.

314.2 Compel or prohibit the broadcasting (free to air or subscription) of listed national sporting events.

314.3 Specify to sports bodies whether, when, how or to whom they may commercialise their rights (sports bodies not being subject to ICASA's jurisdiction and their broadcasting rights being their constitutionally protected property).

314.4 List an event in order to address any competition concerns (which must instead be addressed through the separate process contemplated in s67 of the EC Act).

315 As a creature of statute, ICASA must act within the ambit of its statutory powers.

316 s60(1) of the EC Act contains only one prohibition: Subscription broadcasters may not acquire exclusive rights to national sporting events which prevent or hinder the free to air broadcasting of those events.

317 ICASA must refrain from –

317.1 compelling anyone to sell/not sell, acquire/not acquire rights, broadcast/not broadcast events, or otherwise unduly interfering with parties' commercial activities;

317.2 listing events which fall short of the standard of a national sporting event, such as popular events, federations / activities / sporting codes which are not an event, minority / developmental sports events;

317.3 ignoring any relevant component of the public interest or negating the interests of any constituency; or

317.4 regulating for an ulterior purpose, such as trying to address competition concerns or advantage any group of persons.

Draft Regulations are irrational and unreasonable

318 We appreciate that the Draft Regulations are intended to "*ensure that sports continue to promote social inclusion, equity and sustainability by ensuring that even minority sports are given prominence on broadcasting system to create opportunities provided by sports for the current generation as well as generations to come*".¹⁰⁰

319 Whilst s60(1) of the EC Act is intended to broaden access to national sporting events, the Draft Regulations would have the converse (no doubt unintended) effect of reducing such access, with severe consequences for all roleplayers in the sports broadcasting value chain.

¹⁰⁰ Para 1.6 of the Explanatory Memorandum

320 The draft Regulations are liable to be set aside on the basis that they fail to meet the tests of rationality¹⁰¹ and reasonableness.¹⁰²

Other concerns

321 Given the magnitude of the problems with the Draft Regulations, we have focused on the most significant issues of concern.

322 There are, however, numerous other issues of concern with the draft Regulations. The draft Regulations are, with respect, poorly drafted and it is often not clear what they mean. They contain overlapping definitions and contradictory provisions, and give rise to a range of procedural and other concerns.

323 In order to avoid distracting the reader's attention from the bigger issues at hand, we have dealt with these other concerns in Annexure E.

PART D: CONCLUDING COMMENTS AND THE WAY FORWARD

Concluding Comments

The Current regulations are an appropriate compromise in the public interest

324 The Current Regulations contain a workable approach which is an appropriate compromise in the public interest:

324.1 There is a reasonable list, subject to appropriate criteria, to ensure that, by and large, events which can truly be said to be *national sporting events* are listed in the public interest.

¹⁰¹ Rationality in administrative law requires a link between the administrative decision taken and the purpose of the decision, the purpose of the empowering provision under which the action is taken, the information before the administrator and the reasons given for the decision (Administrative Justice in South Africa; An Introduction, Oxford University Press, 2015, pg 317 – 318)

¹⁰² Reasonableness tests the substantive fairness of administrative action on a scale between rationality at the one end and proportionality at the other (Administrative Justice in South Africa; An Introduction, Oxford University Press, 2015, pg 317 – 318)

- 324.2 Anyone can bid for and acquire exclusive rights to listed events.
- 324.3 If a subscription broadcaster acquires exclusive rights to listed events, it must give free to air broadcasters an opportunity to acquire the rights to broadcast the listed events free to air.
- 324.4 Free to air broadcasters may broadcast listed events live, delayed live or delayed.
- 324.5 Broadcasting licensees must provide for an alternative dispute resolution mechanism to govern any disputes between the parties, and any failure to comply may be referred to the CCC.
- 325 The current approach is generally working well:
- 325.1 A significant volume and range of sport is broadcast on pay TV, including many events (or parts of events) that would not otherwise be broadcast. SuperSport invests heavily in promoting and developing South African sport.
- 325.2 Free to air broadcasting coverage has been maximised. A substantial volume of sport is broadcast free to air. Whenever MultiChoice acquired exclusive rights to listed events, it offered to sub-license the rights, and most were screened by the SABC. South Africans are therefore able to view most listed events free to air, live, delayed-live or delayed.
- 325.3 Sports bodies have commercialised their rights optimally in the interests of their sport and maximised their revenue from their broadcasting rights, which has been the lifeline of sports bodies, used to administer and develop their sports from grassroots level up.
- 325.4 SuperSport's contribution to South African sport continues to grow, with invaluable benefits to sports fans and sportspersons, and the public as a whole.

The Draft Regulations would threaten the continued survival of South African sport

326 Despite this, ICASA has proposed radical changes, threatening the continued survival of South African sport. It has proposed:

326.1 Forcing subscription broadcasters out of the Group A bidding, in an apparent attempt to lower the prices to be paid by free to air broadcasters.

326.2 Prohibiting subscription broadcasters acquiring exclusive rights to Group A or B events, regardless of whether free to air broadcasters have acquired the rights.

326.3 Lengthening the list of events, including events which are not even events.

326.4 Listing events which are not *national sporting events*.

326.5 Listing events in their entirety, without criteria to ensure that it is listing a *national sporting event in the public interest*.

326.6 Compelling free to air broadcasters to broadcast Group A events live and in full, even though they don't have the capacity, the money, or sometimes the will to do so, and notwithstanding the myriad other public interest obligations to be met using their available resources.

327 It is no exaggeration to say that, if passed, the Draft Regulations would have devastating consequences for sports bodies, broadcasters and viewers, which we do not believe ICASA intended.

327.1 Less South African sport would be broadcast on pay TV.

327.2 Less South African sport would be broadcast on free to air.

327.3 The value of the rights would drop. Sports bodies would get less money for their rights, and therefore less money to fund their sport. Nobody is waiting in the wings to fund that deficit.

327.4 Sportspersons and coaches' salaries would drop. School and development programmes and academies would be cut. International rankings would fall. Heroes would become villains. Idols would be lost.

328 It is incomprehensible that ICASA would make these proposals without –

328.1 any **disputes / complaints / non-compliance** allegations having been made;

328.2 any apparent in-depth evidence based **research**;

328.3 international **benchmarking** based on measurable indicators;

328.4 a socio-economic **impact assessment**;

328.5 regard for its **implications**;

328.6 affording **due weight to submissions** made to it in the initial stage of this review;

328.7 explaining **what is wrong with the Current Regulations**, why ICASA thinks it should be changed or what ICASA seeks to achieve in doing so;

328.8 **consulting** on the fundamental changes it is proposing to the underlying policy and regulatory position;

328.9 considering whether its proposals will **achieve their intended objectives** (whatever they may be);

328.10 considering whether its proposals are **within its statutory remit**; or

328.11 explaining **what the Draft Regulations mean**.

329 It appears that ICASA may not have realised the full extent to which it has

proposed fundamental changes to the Current Regulations.¹⁰³ While we appreciate that these are Draft Regulations published for public comment, and welcome ICASA's invitation for all stakeholders to comment on its proposals, we are concerned that the Draft Regulations make far-reaching changes to the entire regulatory scheme, which would have many unintended negative consequences for South African sport and all broadcasters.

- 330 The Current Regulations are workable and an appropriate compromise in the public interest.**
- 331 ICASA has inexplicably proposed radical departures from the current position, which would have devastating unintended consequences.**
- 332 The Draft Regulations would not achieve the objectives which we believe ICASA seeks to achieve.**

The way forward

- 333 MultiChoice thanks ICASA for the opportunity to make this submission.
- 334 We have sought to demonstrate that the Current Regulations are (although not perfect) effective, whereas the proposed Draft Regulations would have devastating unintended consequences.
- 335 The Current Regulations successfully balance competing interests, strike an appropriate compromise, and can be said to be in the public interest. The existing mechanisms have worked fairly well to date and continue to do so. No disputes, complaints or allegations of non-compliance have been lodged with ICASA in terms of the Current Regulations.


¹⁰³ For example, ICASA made statements in the press to the effect that "*nothing has changed*" and it cannot understand what all the "*noise*" is about. EWN reported on 30 January 2019 that "*ICASA chairperson Rubben Mohlaloga says they do not understand the PSL's concerns about the proposed amendments to the regulations of free to air*" and that "*ICASA does not agree with PSL's notion that the proposed amendments want to 'kill' professional football in the country*". (ICASA questions PSL's concerns over proposed broadcasting regulations, EWN, 30 January 2019). This followed the 702 interview with the ICASA chairperson on 30 January 2019, in which the ICASA Chairperson said "*What I'm trying to understand is the noise around the regulations, essentially what the problem is...*" (<http://www.702.co.za/podcasts/180/the-best-of-the-xolani-gwala-show/180454/icasa-clarifies-new-regulations-regarding-psl-matches-and-free-to-air-broadcasters>)

- 336 No substantial amendments are required to be made to the Current Regulations. We respectfully submit that the Current Regulations should be retained subject to minor changes to update the list. If anything, the list should be shortened, (rather than expanded). We urge ICASA to do so, and to pursue a thorough consultation process and thereafter publish revised draft regulations for comment.
- 337 However, if ICASA is to persist with proposing substantive policy and regulatory changes (which we do not believe is necessary or appropriate), we submit that it is essential for ICASA to follow all of the steps in paragraphs 143 above, including first consulting on its policy position, and only thereafter to publish revised draft regulations for comment.
- 338 Either way, we request an opportunity to make an oral presentation at the hearings to be conducted by ICASA in due course.

GLOSSARY

2002 Discussion Paper	ICASA's Discussion Paper, Inquiry into Sports Broadcasting Rights, 8 August 2002
2003 Position Paper	ICASA' Sports Broadcasting Rights Position Paper published under notice number 2029, Government Gazette number 25249, 25 July 2003
2003 Regulations	Sports Broadcasting Rights Regulations, 2003, published under notice number 2029, Government Gazette number 25249, 25 July 2003
2008 Discussion Document	ICASA's Discussion Document on the Review of the Sport Broadcasting Rights Regulations, 2008, published under notice number 1238, Government Gazette number 31483, 2 October 2008
2010 Draft Regulations	Draft ICASA Sport Broadcasting Rights Regulations, 2009 published under notice number 125, Government Gazette number 32949, 12 February 2010
2010 Findings Document	ICASA's Findings and Reasons Document on the Sport Broadcasting Services Regulations, 2010, published under notice number 288, Government Gazette number 33108, 12 April 2010
2010 Preliminary Findings Document	ICASA's Preliminary Findings and Conclusions Document on the Regulation of Sports Broadcasting Rights, published under notice number 125, Government Gazette number 32949, 12 February 2010
ACMA	The Australian Communications and Media Authority
AVMS Directive	The Audiovisual Media Services Directive 2007 (2010/13/EU)
Broadcasting Act	The Broadcasting Act No. 4 of 1999
CCC	The Complaints and Compliance Committee established by the Authority in terms of section 17A of the ICASA Act
CSA	Cricket South Africa (Pty) Ltd
Current Regulations	Sports Broadcasting Services Regulations, 2010, published under notice number 275, Government Gazette number 33079, 7 April 2010
DCMS	The UK Department for Digital, Culture, Media and Sport

Draft Regulations	Draft Sports Broadcasting Services Amendment Regulations, 2018, published under notice number 1388, Government Gazette number 42115, 14 December 2018
EC Act	The Electronic Communications Act No. 36 of 2005
EU	The European Union
Explanatory Memorandum	Explanatory Memorandum on the Review of the Sport Broadcasting Services Regulations, 2010, which accompanied the Draft Regulations
FIFA	Federation Internationale de Football Association
IBA Act	The Independent Broadcasting Authority Act No. 53 of 1993
ICASA	The Independent Communications Authority of South Africa established in terms of s3 of the ICASA Act
ICASA Act	The Independent Communications Authority of South Africa Act No. 13 of 2000
ICC	The International Cricket Council
IOC	The International Olympics Committee
OECD	Organisation for Economic Co-operation and Development
OTT	Over the top (internet) audio-visual media services
PAJA	The Promotion of Administrative Justice Act No. 3 of 2000
PHL	Premier Hockey League
Prior Regulations	The 2003 Regulations, as amended in 2004/5
Proteas	The South African senior national cricket team
PSL	The Premier Soccer League
SABC	The South African Broadcasting Corporation
SARU or SA Rugby	The South African Rugby Union
UK	The United Kingdom



**An Economic Perspective on the ICASA
Review of Sport Broadcast Services
Regulations**

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EXECUTIVE SUMMARY

The Independent Communications Authority of South Africa (“**ICASA**”) has proposed significant amendments to the Sport Broadcasting Services Regulations. These are the regulations that give effect to section 60(1) and (2) of the Electronic Communications Act (“**ECA**”). Section 60(1) of the ECA stipulates that subscription broadcasters may not acquire exclusive rights to national sporting events listed in the public interest that may hinder or prevent the free-to-air (“**FTA**”) broadcast of such events. The intention of the ECA provision is to increase FTA availability of national sporting events to members of the public who do not have access to subscription services.

To achieve the underlying objective of Section 60(1), the Sport Broadcasting Services Regulations provide a list of national sports events identified in the public interest and also specify rules that govern the broadcasting of these events. Subscription broadcasters that have acquired rights to listed sporting events must inform FTA broadcasters so they may tender for them. In practice, this has meant that where subscription broadcasters acquire exclusive broadcasting rights to listed events, these are then offered to FTA broadcasters on a sub-licensing basis.

The list of events in the current regulations has typically been restricted to confederation sporting events involving the national team for specific sporting codes and domestic knock-out tournaments and marathons. A similar approach of limiting the list of national sporting events has been adopted in other jurisdictions. There are good economic reasons for this as regulators have sought to strike a balance between promoting exposure to national sport events in the public interest and ensuring that the sporting code is able to properly fund its events to the benefit of the fan base and to ensure that sports bodies are viable entities. The balancing consideration is necessary as the listing of events automatically reduces the value of the rights to the rights holder.

A periodic review of regulations is not uncommon to assess whether the regulations remain relevant and necessary, or whether there are problems with the regulations. The current regulations do achieve the objective as set out in section 60(1) of the ECA, namely to ensure that subscription broadcasters do not acquire exclusive rights which prevent or hinder FTA broadcasting of the national sporting events listed in the regulations. FTA broadcasters have been given the opportunity to acquire rights to broadcast all listed events, and most have in fact been broadcast. We are also not aware of any disputes raised before ICASA in respect of the regulations, which implies that the regulations are functioning well on this aspect. A review of the regulations should also fully consider the costs of the regulations on all relevant stakeholders, which should inform any changes to the regulations, if required. The SABC has publicly expressed concerns that the current regulations impose a substantial cost on it as a public broadcaster.

The Draft Sports Broadcasting Amendment Regulations (“**draft regulations**”) propose significant amendments to the current regulations, both in terms of the list of events and the rules that govern their broadcast.

- The draft regulations impose a requirement for full live FTA broadcast of the list of sporting events included under Group A of the draft regulations. It also effectively reserves such sports events for FTA broadcast unless they fail to secure the rights. If a FTA broadcaster fails to acquire rights to such events, the draft envisages a subscription

broadcaster only being able to acquire rights to events in this Group on a non-exclusive basis.

- The Group B regulations relate to an extensive list of events, including confederation events, sports leagues and knock-out tournaments for the main domestic sports as well as other events, like domestic marathons. All of the matches in the leagues and tournaments listed under the Group B are covered by the regulations. The rules governing the broadcast of these events as currently formulated are ambiguous. One plausible interpretation is that the draft regulations would seek to reserve bidding in the first place to FTA broadcasters, but permit sub-licensing of such rights to subscription broadcasters on a non-exclusive basis. Another plausible interpretation is that events can be acquired by a subscription broadcaster on a non-exclusive basis, provided they offer to sub-licence the listed events to FTA broadcasters. The draft therefore envisages a subscription broadcaster only being able to acquire rights to events in this Group on a non-exclusive basis.
- Group C events comprises of minority and development sporting events to be broadcast by subscription and FTA broadcasters.

These amendments would seem to be in pursuit of an objective unrelated to simply removing a potential prevention or hindrance to FTA broadcast as a result of exclusive rights being acquired by subscription broadcasters, as is required by Section 60(1) of the ECA. Rather, it would appear to be informed by attempts to broaden the audience for certain events whilst at the same time trying to make such broadcast more financially viable for FTA operators.

The problem with pursuing objectives that go beyond simply removing the prevention and hindrances to the FTA broadcast of a select list of national sporting events, is that it will result in unintended financial costs for sports bodies, with other unintended detrimental effects on the listed sports. The draft regulations have the effect of reducing competition for rights and eliminating exclusivity of rights for subscription broadcasters for all the important events of the most prominent national sports bodies. As a consequence, there is a real cost to the regulations of substantially reducing the revenue-earning potential of the sports bodies, and these costs in fact also diminish the public benefits that are central to the legitimate objectives of regulating sports events in the public interest.

- The sports bodies are responsible for every aspect of the administration and development of the sport, where the revenue earned is required for the sports to be sustained. Higher revenues support facilities, better coaching and training, and better players/athletes. The development of the sport is also improved through providing financial resources for improving the development of the sport at the grassroots level and to make the sport accessible to those potential sportspersons and communities that would otherwise not afford to participate.
- In the South African context, broadcasting rights are the predominant source of revenue for the major sports bodies, contributing around 60% of their revenue directly, and around 30% indirectly through their impact on sponsorship. As a result of this dependency, a material adverse impact on broadcasting rights revenue will have a material adverse effect on sports bodies' revenue and their ability to fund the sport.

Apart from introducing this new risk to sports bodies through the draft regulations, the amendments would also exacerbate rather than address the concerns raised by the public

broadcaster. This is as the amendments are likely to raise the costs to the SABC and at the same time may reduce the revenues generated by the SABC from the events.

Finally, the amendments are in many instances impractical and risk unintended outcomes, which collectively may result in a failure to achieve the benefits sought. This is in part because the design of the regulations fails to properly account for how sports rights are licensed by rights holders, but also because they fail to account for the enforcement limitations of ICASA. For instance, ICASA does not have jurisdiction over OTT providers. The draft regulations would have unintended consequences if they were to prevent licensed subscription broadcasters from bidding for rights. In this case, it would disadvantage licensed operators from competing with OTT operators for such rights who would not be similarly restricted. It also increases the risks of OTT operators securing rights and not sub-licensing to FTA operators.

1. INTRODUCTION

1. The Independent Communications Authority of South Africa (“**ICASA**”) has notified its intention to amend the Sport Broadcasting Services Regulations, 2010¹ (“**Listed Sports Regulations**”). The Listed Sports Regulations give effect to section 60(1) and (2) of the Electronic Communications Act (“**ECA**”) which seeks to ensure that subscription broadcasters do not acquire rights to national sporting events listed in the public interest that may prevent or hinder the free-to-air (“**FTA**”) broadcast of such events. To this end, ICASA published Draft Sports Broadcasting Services Amendment Regulations (“**draft regulations**”) on 14 December 2018 for public comment.²
2. Genesis Analytics (“**Genesis**”) has been retained by MultiChoice South Africa to provide an economic assessment of the draft regulations, and in so doing to also apply the regulatory impact assessment (“**RIA**”) framework which is best practice for reviews of regulation. Genesis is an economics-based consultancy and the Competition and Regulatory Economics (CRE) practice specialises in competition law and economic regulatory matters, providing independent expert economic assessments for competition authorities, sector regulators (including ICASA) and private firms.
3. The RIA is an obligatory tool to be used in the review of regulations in South Africa and provides a useful framework to the regulatory decision-making process by assisting policy makers and/or regulators to evaluate the impact of regulatory interventions imposed in pursuit of policy objectives³. The RIA process includes determining the policy objectives, identifying various interventions available to achieve those objectives as well as comparing the impact of those interventions.
 - 3.1. The assessment of the impact includes a consideration of the benefits of regulatory intervention, which are assessed in terms of the specific objective that the regulation is intended to achieve.
 - 3.2. In addition to the benefits, a RIA also considers the costs of interventions and the potential unintended consequences or risks associated with the intervention. This recognises that regulatory interventions designed to achieve a certain objective may often have unintended consequences that also have to be included in the assessment of the costs of any proposed intervention.
 - 3.3. The primary purpose of RIA is to ensure that when an intervention is undertaken, its benefits exceed the costs that it imposes.
 - 3.4. Where an existing regulation is being reviewed, one may also review whether the regulation has been effective historically in achieving the objective, and the relative cost and benefit outcomes. This may inform what revisions may seek to address.
4. It is relevant to note that in February 2015 Cabinet approved the use of Socio-Economic Impact Assessment System (“**SEIAS**”) to replace RIA in assisting the formulation of

¹ Government Gazette No. 33079, 7 April 2010

² Government Gazette No. 42115, 14 December 2018

³ The South African Presidency (2012) - Guidelines for the Implementation of the Regulatory Impact Analysis/Assessment (RIA) Process in South Africa

policies, legislations and regulations⁴. SEIAS contains many of the same considerations as RIA such as the analysis of costs and benefits of regulations. However, in addition to the elements of RIA, SEIAS builds on RIA by also evaluating the proposed interventions based on their alignment with the National Development Plan and support for national priorities. Specifically, interventions need to be evaluated based on their impact on⁵: social cohesion and security; economic inclusion; economic growth; and environmental sustainability. As outlined in the next section, it would seem that the objective of social cohesion may be the one SEIAS factor of relevance to the Listed Sports Regulations and their review.

5. This report is structured based on the RIA framework and deals with the specific aspects that should be considered when conducting a review of the regulations. Specifically:
 - 5.1. We first discuss the objectives of the regulations and the obligations placed on broadcasters by the regulations in their current form.
 - 5.2. Following this we discuss some of the important economic principles that have typically informed such regulations in other jurisdictions as well as the current ICASA regulations. This includes the fact that sporting codes are particularly reliant on broadcast rights revenue for their development and that exclusivity is an important aspect to maximizing such revenue and an accepted differentiation principle globally. As such, regulations would ordinarily seek to strike a balance between a public mandate listing and the sustainability of sports, which itself is in the public interest.
 - 5.3. We then set out how the draft regulations differ to the current Listed Sports Regulations, including the significant changes to the listed sports events.
 - 5.4. We then proceed to assess the draft regulations in terms of the RIA and economic principles that should inform such an exercise. We find that the draft regulations seek to impose objectives on the regulations other than those contained in the legislation, are likely to result in harm to sports bodies and risk unintended consequences that may undermine achieving their legitimate objectives.

⁴ Department of Planning, Monitoring and Evaluation (2015), Presentation on Socio-Economic Impact Assessment System (SEIAS), Available: <https://www.dpme.gov.za/keyfocusareas/Socio%20Economic%20Impact%20Assessment%20System/SEIAS%20Documents/Presentation%20on%20SEIAS-%20Nov%202015.pdf>.

Also see Parliamentary Monitoring Group (2017), Socio-Economic Impact Assessment System: Department of Planning, Monitoring and Evaluation briefing, 22 February 2017, Available: <https://pmg.org.za/committee-meeting/24010/>.

⁵ Department of Planning, Monitoring and Evaluation (2015), Socio-Economic Impact Assessment System (SEIAS) Guidelines. p. 6.

2. LISTED SPORTS REGULATIONS AND THEIR OBJECTIVE

6. This section briefly outlines the objective rationale for the current ICASA Listed Sports Regulations and the essential features of the regulations. It is this objective against which the benefits of regulations must be assessed and against which the costs should be weighed. We also briefly touch on what are perceived to be the concerns in respect of the performance of the current regulations that may have prompted the review.

2.1. THE POLICY OBJECTIVES ADDRESSED BY SPORTS REGULATIONS

7. The essential objective of the Listed Sports Regulations is to give effect to the legislative requirements of the ECA that pay TV acquisition of rights for listed events does not prevent or hinder the broadcasting of the events by the FTA broadcasters. In particular, the regulations are made in terms of sections 60(1) and (2) of the ECA, with section 60(1) stating:

"60 (1) Subscription broadcasting services may not acquire exclusive rights that prevent or hinder the free-to-air broadcasting of national sporting events, as identified in the public interest from time to time, by the Authority, after consultation with the Minister and the Minister of Sport and in accordance with the regulations prescribed by the Authority."

8. Importantly, the focus of the regulations is on national sporting events listed as being in the public interest. As ICASA itself recognised in developing the regulations, it is important to differentiate between events that are of national character from popular sporting events, as the focus of the regulations is on the former and not the latter. ICASA identified that an alternative regulatory paradigm would apply to the latter.

*"With regard to the list of national sporting events, the Authority is of the view that national sporting events should be confined to those sporting events that are national in character and not merely based on the popularity of a particular activity. The Authority is fully aware of the existing practice to confuse a national sporting event and a popular event, which should possibly fall under the category of premium sport, which fall under a separate competition regulatory paradigm."*⁶

2.2. THE CURRENT SPORTS REGULATIONS

9. The Listed Sports Regulations contain two main sets of provisions, namely the criteria used for and actual list of national sports events, and the provisions in respect of the broadcasting of such events.
10. **Criteria for listing.** Section 4 of the Listed Sports Regulations provide the following criteria for sporting events to be listed in the public interest:

10.1. A confederation sporting event which involves a national team or individual;

⁶ ICASA, Findings and Reasons Document on the Sports Broadcasting Services, 2010, p. 42

- 10.2. A semi-final and final of a national knock-out competition; or
- 10.3. An opening game, semi-final and final of a confederation sporting event.
11. It is important to note that the specification in the criteria of particular games within a tournament means that although the tournament may be listed, not all the games in the tournament are classified as a national sports event.
- 11.1. In the case of a domestic knock-out tournament such as the Nedbank Cup, only one semi-final and the final of the tournament would be subject to the regulations.
- 11.2. Similarly, for a confederation sports tournament such as the FIFA World Cup, only the opening game, one semi-final and the final of the tournament would be subject to the regulations. This would seem to apply only where such an event did not involve the national team or an individual representative, as section 4(1)(a) does not contain such a restriction and section 4(1)(c) does, but similarly fails to mention the national team or representatives.
12. **Listed sports events.** The sports events listed in the 2010 regulations include those provided in the table below, which are organized by sporting codes. The only sports codes identified as in the public interest were multi-sport events (like the Olympics), marathons, soccer, rugby, cricket and boxing. The events are typically confederation events or domestic knock-out tournaments, although events like marathons have also been included. Importantly, domestic sports leagues are not included as they fall outside of the criteria. Section 7 of the Listed Sports Regulations provides for a review of this list every four years, in which an event may be added or removed from the list following a public process.

Table 1: Listed sports events by sporting code (2010)

Multi-sport events	Soccer
Summer Olympic Games	FIFA World Cup
Paralympics	Africa Cup of Nations
Commonwealth Games	COSAFA Cup
All Africa Games	CAF Champions League
Marathon	CAF Confederations Cup
Comrades Marathon	Telkom Charity Cup
Two Oceans Marathon	MTN Supa 8 Cup
Rugby	Telkom Knockout
World Rugby World Cup	Nedbank Cup
Super 14 Rugby	Cricket
Currie Cup	ICC Cricket World Cup
Boxing	ICC T20 Cricket World Championship
International Boxing Federations	MTN 40

Source: Section 5 of the 2010 Listed Sports Regulations

13. **Broadcasting of national sports events.** Section 6 of the Listed Sports Regulations provides for rules in respect of the broadcasting of national listed sports events. Given that the ECA provides that subscription broadcasters may not acquire exclusive rights to listed sports events that prevent or hinder the FTA broadcasting of such events, the regulations begin from this premise and further regulate the commercial interactions in respect of the events. In particular, section 6 requires that:

- 13.1. Subscription broadcasters that have acquired rights to listed sporting events must inform FTA broadcasters within five days of acquiring these rights so they may tender for them;
- 13.2. FTA broadcasters may broadcast the listed sporting events live, delayed live or delayed;
- 13.3. Any commercial agreement between broadcasters for the event may not prevent advertising a listed sports event.
14. Importantly, the regulations do not require an FTA licensee to broadcast the listed sports events, but only the opportunity to do so through the removal of a hindrance. Furthermore, the FTA broadcaster would be permitted to receive the commercial benefits of doing so by being able to sell its own advertising in respect of that event.
15. Section 8 provides for a dispute resolution process between the broadcasters in the event that a dispute arises. This provision simply requires that an alternative dispute mechanism is in place which will govern any dispute, and any outcome of that mechanism shall bind the parties.
16. **Monitoring and penalties.** Sections 9 and 10 of the Listed Sports Regulations provide for the monitoring of compliance with these regulations and penalties for non-compliance respectively.

3. ECONOMIC PRINCIPLES UNDERLYING THE APPROACH TO LISTED SPORTS REGULATIONS

18. As outlined above, the key objective of Listed Sports Regulations is to give effect to a public interest mandate to promote access to certain national sporting events in the public interest. This would seem to serve the objective of social cohesion as listed in the SEIAS, as it permits all citizens to watch the events of national importance. In South Africa this list has typically been restricted to confederation events involving the national team for specific sporting codes and domestic knock-out tournaments in those same sporting codes, as well as marathons. A similar approach has been adopted in other jurisdictions, whereby the list is typically limited in nature.
19. There are good economic reasons why jurisdictions tend to limit the list to events that are genuinely in the public interest.
 - 19.1. This is because once a sports match or event is listed, subscription broadcasters may not acquire rights for the listed events in a manner that prevents or hinders the FTA broadcasting of the events. In South Africa, the practice is for subscription broadcasters to sub-licence the listed events to FTA broadcasters in instances where rights are not sold directly to FTA broadcasters. Therefore, while there is no restriction on the acquisition of the listed rights on an exclusive basis, these need to be made available to FTA broadcasters and are therefore less valuable to subscription broadcasters. Restricting exclusivity reduces its value to the sporting code that holds the rights to that match or event. That reduction in value imposes a cost on the sporting code, which cost is greater, the more matches or events that are listed for that sporting code.
 - 19.2. The reduction in value is particularly relevant as sporting codes are reliant on television rights sales for a high proportion of its revenues. The loss of revenue will then impact on the ability to fund teams and events, which in turn impacts on the quality of the sporting code itself.
 - 19.3. A reduced quality or performance, in turn reduces the public benefit of having access to that match or event as lower spectator value is provided. Ironically then, listing too many matches or events under a public interest mandate may actually reduce the public benefit.
 - 19.4. For this reason, regulators globally have sought to strike a balance between providing access to sports matches or events in the public interest and ensuring that the sporting code is able to properly fund its events and development to the benefit of the fan base, and to ensure that sports bodies are viable entities.
 - 19.5. This balance also informs the pricing of such rights when they are sub-licensed by a subscription broadcaster, namely that they are still sold on commercial terms. This mirrors the pricing that would occur if the FTA broadcaster purchased directly from the sports body, but also reflects the cost of a loss of exclusivity for the specific events or matches.
20. We proceed to discuss in more detail these aspects with a particular focus on sporting bodies within South Africa.

3.1. RELIANCE OF SA SPORTS CODES ON BROADCAST RIGHTS

21. The revenue from the sale of broadcasting rights is especially important in South Africa given the low levels of alternative revenue sources, such as government funding, income from ticket sales and merchandise. The sporting bodies and their respective affiliates, for example clubs, are therefore reliant on such revenue for the development of the sport, investment in affiliates and the quality of the spectacle provided to the fan base.
22. This point was recognised by ICASA in its initial position paper on Listed Sports Regulations in 2003:

“The inquiry into sports broadcasting rights clearly demonstrated the strong reliance by sports bodies on the income generated from selling sports rights. Money generated from selling sports broadcasting rights is now seen as critical to the development of sports.”⁷

23. ICASA proceeded to note in the 2003 position paper that for this reason, the interests of the sports bodies needed to be considered in determining the listed sports events and not just the interests of the broadcasters.

“But, while the debates tend to be between subscription television services and free-to-air services, it is important that in the process the interest of sporting codes themselves are not negated. This is particularly important as sporting codes rely on sport rights for their financial and commercial viability. The quality of sport and its competitiveness depends on the ability to generate revenues through, inter alia, sport broadcasting rights. The Authority has an obligation to ensure that its decisions do not compromise the need for different sports codes to use sport rights to increase their revenue streams.”⁸

24. Nothing has changed materially subsequent to that initial inquiry, as the sporting codes in South Africa remain dependent on the sale of broadcast rights for the bulk of their revenue. In fact, the reliance on the revenue from the sale of broadcast rights to support the quality of the sporting code was recently highlighted by all three of the main sports bodies in the Subscription Broadcasting Inquiry. In each case the sale of broadcast rights accounted for close to 60% of revenues and is regarded as essential for their viability. The second largest source is sponsorship, but this is in turn dependent on the quality of the team/league performance (which is linked to the primary broadcasting revenue stream) as well as the broadcast quality and exposure.

- 24.1. The Premier Soccer League (“**PSL**” alternatively the National Soccer League or “**NSL**”), which has not previously been listed by ICASA, relies extensively on broadcasting revenue in South Africa as there is no interest in its broadcasting rights elsewhere in the world.

“In the pursuit of its Objectives, the NSL has to generate sufficient revenue for the benefit of football in South Africa. This revenue is essentially secured through the sale of the right to broadcast its content which is the soccer matches played in its various competitions (“the rights”). The revenue the NSL derives from the sale of its rights is critical to the continued existence of the NSL; providing through its competitions, both directly and through its 32 clubs, a source of livelihood for professional players and their families. It is also an important source of entertainment

⁷ ICASA, Sports Broadcasting Rights and Position Paper and Regulations, 2003, p. 28.

⁸ ICASA, Review of Sport Broadcasting Rights Regulations Discussion Document (September 2008), p. 10

for millions of spectators. Without the revenue from its sale of rights, or even a reduction in it, the viability of the PSL and of professional soccer in South Africa will be compromised or face the significant threat of collapse. With broadcasting rights accounting for 58 percent and 59 percent respectively of its revenue in the 2016 and 2017 financial years, the PSL is in a position to provide significant benefits to a wide range of beneficiaries that would not have been possible if it could not generate vastly improved income from the sale of its broadcast rights.”⁹

24.2. According to the South African Rugby Union (“**SARU**”):

“SARU generated revenue of R1,212bn in its 2016 financial year. The sale of rugby's broadcasting rights represents approximately 53% of SARU's revenue, whilst sponsorships represent 28%. The remaining 19% of SARU's revenue is generated through test and event participation, grants, merchandising, and licensing royalties.

It should be borne in mind that the level of sponsorship enjoyed by SARU is largely a function of the level of exposure it is able to achieve, thanks to the extensive distribution of content both locally and internationally as a result of the exclusive sale of its broadcast rights.

The revenue derived from the exclusive sale of its rights has enabled SARU to deliver on its mandate and obligations to its various stakeholders including its partners in the Super Rugby Championships which includes South Africa, New Zealand, Argentina and Australia, jointly known as "SANZAAR". This has further incentivised the necessary investments in broadcasting equipment and quality which has enabled SARU to meet the high production standards set by international markets.

For all the above reasons, SARU is best placed to balance obligations, its funding requirements and the need to generate revenue from all its activities. This includes it being able to determine how best to package and sell its rights to broadcast the sport.”¹⁰

24.3. According to Cricket South Africa (“**CSA**”):

“CSA's main economic drivers are the sale of broadcasting rights and sponsorships, the aforementioned amounting to R210 million and R191 million for the current financial year, accounting for 59% of CSA's total revenues.”¹¹

3.2. EXCLUSIVITY IMPORTANT IN MAXIMISING RIGHTS REVENUES

25. The acquisition of exclusive rights is a common feature in broadcasting and is not only limited to sporting events, but most entertainment content. Among other things, acquiring exclusive rights allows broadcasting services to distinguish themselves from competitors which provides a basis for acquiring and retaining subscribers. This was recognised by ICASA itself in its Subscription Broadcasting Services Position Paper (2005).

⁹ PSL submission on the subscription broadcasting inquiry, 2017, para. 8.

¹⁰ SARU submission on the subscription broadcasting inquiry, 2017, para. 2.4 – 1.2.8.

¹¹ CSA submission on the subscription broadcasting inquiry, 2017, para. 2.5.

“The ability of subscription broadcasting services to acquire content on an exclusive basis is fundamental to the provision of these services. For subscription broadcasting services, exclusivity is the primary basis on which these services will attract and retain subscribers. Some forms of exclusive arrangements in the broadcasting industry are, therefore, both efficient and desirable.”¹²

26. Given that broadcasters value exclusivity, sports bodies are able to exploit this by generating competition for the rights amongst broadcasters, which in turn drives up the value of the rights and maximises revenues. If rights were simply sold on a non-exclusive basis, there would be little incentive for broadcasters to tender high amounts for the rights as they would be able to obtain the broadcast rights without having to engage in competitive bidding.
27. In maximising revenue, sports bodies and club owners are able to increase their own investment in their clubs, leagues and tournaments to the benefit of the sport's development and ultimately to the fan base of the sporting code. The sports bodies are responsible for every aspect of the administration and development of the sport, which the revenue earned is required to cover in order for the sports to be sustained. Such responsibilities include:
 - 27.1. Developing and maintaining facilities and stadia, as well as referees and administrators;
 - 27.2. Paying players competitive wages and thus retaining talented players;
 - 27.3. Financial support for lower leagues to provide a means to develop players of the future; and
 - 27.4. Sustaining development and outreach programmes to extend the reach of the sporting code and support grassroots development.
28. As an example, SAFA noted the following objectives for the development of the sports in its submission to ICASA in 2008:

“9. Furthermore, the following objectives are imperative to the development of the game-

- 9.1. increasing the number of registered players at both junior and senior levels;*
- 9.2. increasing the number of registered football clubs;*
- 9.3. increasing the number of football facilities to be utilised;*
- 9.4. improving the quality of existing football facilities;*
- 9.5. increasing the number of SAFA certified coaches;*
- 9.6. increasing the number of SAFA certified referees; and*
- 9.7. increasing the number of skilled administrators.”¹³*

¹² Subscription Broadcasting Services Position Paper, ICASA, 1 June 2005, p. 72.

¹³ Joint Submission from SAFA and PSL on Review of Sport Broadcasting Rights Regulations Discussion Document (21 November 2008), p. 3

29. Ultimately, the investments in sports by the sports bodies and their affiliates (e.g. clubs) benefit the fans because any improvement in the performance and quality of the teams or individuals enhances the benefits and enjoyment of the fan base.

30. Again, the fact that exclusivity increases revenues is something that was expressly recognized by ICASA in its initial position paper in respect of Listed Sports Regulations, stating in that paper the following:

“The Authority understands that the sale of exclusive rights to broadcast sports events is an accepted commercial practice. For sports organisers, the sale of exclusive rights is a way of ensuring the maximum short-term profitability of the event being organised as the price paid for exclusivity by one broadcaster is generally higher than the sum of the amounts, which would be paid, by several broadcasters for non-exclusive rights.”¹⁴

31. Exclusivity has benefits to the sports bodies other than simply revenue levels. In particular:

31.1. Exclusivity also incentivises the broadcaster acquiring the rights to invest more heavily in the broadcast aspect of the sporting rights acquired. This includes the quality of production, the quality of live commentary, complementary magazine programming including pre- and post-match reviews, and the marketing and promotion of the sport which extends its exposure to the public.

31.2. The reason for this is that the broadcaster reaps the full benefits of such promotion as it has exclusive rights to broadcast the content. Where the rights are not exclusive, there is far less incentive to engage in such investments as other broadcasters can simply free-ride on these promotional efforts.

31.3. The sports body and their affiliates benefit because more effort is put into promoting and developing their sporting code and producing it in the most attractive manner for the fan base. This in turn complements its own efforts to promote the sport and generate interest from a fan base. Higher quality production and increased interest / engagement from the fan base also provide a better platform for securing sponsorships, which account for almost 30% of revenue for the largest SA sports codes (as reflected in the quotes above).

32. It is maybe only when a sports body fails to secure interest from broadcasters in its rights that the impact of a lack of competition for rights that exclusivity can generate becomes most evident. Whilst not entirely analogous, the historic and current woes of the South African Football Association (“**SAFA**”) provides a case of how low revenue generation has hindered the development of the national team and its participation in events.

32.1. In its joint submission with the PSL in 2008, SAFA pointed to the lower revenue it had received from the SABC for its broadcast rights for national teams as a result of a lack of interest from other broadcasters.

“SAFA currently derives a relatively small portion of its revenue from the sale of broadcast rights for national teams. This is due wholly to the low price paid by the SABC for SAFA’s broadcasting rights. The price is well below the actual value of the rights, i.e. the SABC only pays approximately R1 000 000 (one million rand) per game to SAFA. In addition, SAFA bears the broadcasting production costs, which amount to between approximately R500 000 (five hundred thousand rand) and R600

¹⁴ ICASA, Sports Broadcasting Rights and Position Paper and Regulations, 2003, p.32.

000 (six hundred thousand rand) per game. The net result is that SAFA receives only between approximately R400 000 (four hundred thousand rand) and R500 000 (five hundred thousand rand) per game from the SABC. It is no wonder that SAFA is struggling to meet its mandate... To assist SAFA in meeting its obligations, the PSL, for the first time this season, contributed about R9 000 000 (nine million rand). This contribution was only possible because of the increase in revenue that the PSL obtained due to the sale of its broadcasting rights to SuperSport International (Pty) Ltd.”¹⁵

- 32.2. The situation has deteriorated further for SAFA, which has publicly questioned the SABC's low offer of R10 million for SAFA rights, which would include all Bafana Bafana, Banyana Banyana, under-20, under-23 and national competitions.¹⁶ The figure is significantly less than the R110m a year that the SABC has previously paid. SAFA has stated that the offer is not commercially viable, particularly where the cost of staging a single Bafana Bafana match is more than R4m. As a result of the dispute, SAFA pulled the matches off the public broadcaster, which means the sports body would earn no broadcasting revenue from the matches, the public are denied the opportunity to view SAFA matches altogether, and the SABC itself foregoes any commercial benefit it could have derived from having the rights.

3.3. STRIKING A BALANCE BETWEEN REVENUE AND REACH

33. Whilst exclusivity will in all likelihood maximise revenue for the sports body, it may not always provide the widest audience reach. For a sports body, audience reach may also be important to build the fan base of the sport which has longer term benefits for the sport too. This applies as much to confederation bodies (such as the International Olympic Committee (“IOC”) or FIFA) as it does to domestic sports bodies.
34. For this reason, sports bodies will take into account a number of factors when deciding whether to sell their broadcasting rights on a purely exclusive basis, exclusive with sub-licensing obligations or a non-exclusive basis, including the extent of rights sold non-exclusively. The non-exclusive aspect may take the form of selling an FTA package which encompasses some, but not all the matches or schedule within a sporting event. These factors include:
- 34.1. Whether the wider distribution of the sports content in the short-term would better serve the interests of the sports body in the long-term by building a broader fan base for the sport;
- 34.2. Whether the sale of the rights on an exclusive basis (for some or all of the rights) will generate a premium sufficient to make up for the loss of advertising and sponsorship revenue which potentially wider carriage on FTA TV may provide; and
- 34.3. Whether the sports rights have a sufficiently high value such that a meaningful exclusivity premium can be extracted.
35. However, it is the sports bodies themselves that are best placed to determine these trade-offs given their more intimate knowledge of the state of development of the sport and the

¹⁵ Joint submission from SAFA and PSL on the review of sports broadcasting regulations discussion documents, 2008, p. 5.

¹⁶ See <https://www.safa.net/2018/10/11/issues-regarding-bafana-banyana-matches-sabc/> and <https://ewn.co.za/2018/10/12/sabc-offered-r10m-for-bafana-banyana-matches-safa-reveals>

challenges it faces at different points in time. The sports bodies will also be in a better position to judge the gain in audience reach from sub-licensing obligations or from non-exclusivity and the likely revenue foregone, key elements to determining the trade-offs involved.

35.1. The practical reality is that many of the domestic and international sports bodies also ensure that a FTA package is made available, either directly or as a contractual obligation imposed on the subscription broadcaster acquiring the rights to those leagues. This has been the case with the PSL for instance, even though it is not listed. The formulation and extent of the FTA package is determined by the sports bodies who take into account the balance between exposure and revenue that they are seeking to achieve.

35.2. Furthermore, for several of the current listed sports events, the rights for part or all of the events are typically sold directly to a FTA broadcaster in South Africa. This means that there is no need to invoke the regulations in respect of ensuring a subscription broadcaster makes the content available to FTA broadcasters. This is reflected in the table below where the red highlighted events that form part of the listed sports events reflect those where the FTA broadcasters have dealt directly with the sports body (or their agent) hosting those events for broadcast rights.¹⁷

Table 2: Listed sports events by sporting code (red highlights indicate where FTA broadcasters deal directly with sports body)

Multi-sport events	Soccer
Summer Olympic Games	FIFA World Cup
Paralympics	Africa Cup of Nations
Commonwealth Games	COSAFA Cup
All Africa Games	CAF Champions League
Marathon	CAF Confederations Cup
Comrades Marathon	Telkom Charity Cup
Two Oceans Marathon	MTN Supa 8 Cup
Rugby	Telkom Knockout
World Rugby World Cup	Nedbank Cup
Super 14 Rugby	Cricket
Currie Cup	ICC Cricket World Cup
Boxing	ICC T20 Cricket World Championship
International Boxing Federations	MTN 40

36. Given that the sports bodies are best placed to determine these trade-offs, the Listed Sports Regulations should only identify those matches or events with a genuine public interest component lest they apply the regulations too broadly and undermine the balance sought by the sports bodies and the revenue-generating potential of the sports bodies involved. Indeed, undermining the revenue-generating potential in turn may result in undermining the public interest itself.

36.1. This is because without adequate funding to develop and nurture the sporting code, the quality of the sports events and performance of the national team is likely to decline, in turn resulting in less interest, not more. The interest is not just in seeing

¹⁷ In respect of ICC Cricket events, we understand that the SABC has previously dealt with the sports body directly, although this is not the case currently.

the national team or individuals, but also being entertained and proud of its/their performance.

- 36.2. Furthermore, this is likely to have knock-on effects on the national teams' performances at international events, where poor performance may see the failure to qualify for the event or reach the later stages within those events. There is little point in listing such events if the national team is not represented in them and it would not achieve the objective of social cohesion.
37. Once more, the original ICASA position paper on sports broadcasting rights recognized that some sort of balance had to be achieved, in the process stating the following:
- "The Authority is aware, however, that the reliance by sports bodies and clubs on money generated through the selling of sports broadcast rights needs to be balanced against the need to ensure mass audiences and support for 'national sporting events'".*¹⁸
38. Consistent with the balancing of sports bodies' income with the public interest, there is a further balancing of content broadcast on FTA channels.
- 38.1. An excessive volume of listed sports events will necessarily crowd out other content on FTA broadcasters, including that of the public broadcaster. This is not only in respect of broadcast time, but also budget for the commissioning and acquisition of content. This is particularly in the light of the extensive public service mandate imposed on the SABC in terms of section 10 of the Broadcasting Act, where the inclusion of national sports programming is just one of the obligations. Other aspects of the extensive mandate include, for example, educational programming, news and public affairs, and programming that reflects the diversity of South Africa, including cultures and languages.
- 38.2. Given that other content also has public interest benefit, in addition to pure entertainment value, crowding out other broadcast content may undermine other objectives, such as those promoted through the local content regulations.
- 38.3. As with the sports bodies, the FTA broadcasters are themselves the best judge of the healthy mix of content on their channels at different times of the day in order to maximise revenue, comply with existing regulations (such as local content regulations) and achieve a broader set of public interest objectives in the case of the public broadcaster.

3.4. PRICING OF LISTED SPORTS EVENTS ON COMMERCIAL TERMS

39. Even where broadcast rights are sold non-exclusively or in the form of a FTA package, sports bodies will still seek to ensure fair commercial value for such rights either through facilitating competitive tendering or negotiation sometimes based on a minimum reserve price. This is for a few reasons:
- 39.1. First, the sports body still needs to achieve a minimum value for the rights in order to meet its sports development obligations. If it is unable to do so, then the trade-off

¹⁸ ICASA, Sports Broadcasting Rights and Position Paper and Regulations, 2003, p. 28

of the gain in audience reach for the loss of exclusivity becomes too great, incentivizing the sports body to rather pursue an exclusivity strategy.

- 39.2. Second, the broadcast rights also have a value to the FTA broadcaster which is able to monetise the rights through the sale of advertising and broadcast sponsorship, as well as a value when sold exclusively. The sports body correctly needs to capture a material proportion of this value as it owns the sporting event and develops the sporting code to ensure its popularity.
40. For these reasons, sports bodies will have a reasonable estimate of what is fair commercial value for the broadcast rights and what the minimum reserve price is that they will accept. In general, this fair value price will be a reflection of some or all of the following factors.
 - 40.1. Previous fees paid as a benchmark against which to assess current bids (incl. exclusive and non-exclusive rights bids);
 - 40.2. The revenue potential from advertising and broadcast sponsorship for an efficient FTA broadcaster that has invested in promoting the event. This may be assessed based on previous audience figures for the sporting event and/or the time of day of the sports event, and competing events at the same time;
 - 40.3. The costs incurred by the sports body to produce the event (including producing the broadcast feed in some cases);
 - 40.4. The time period for the rights and the number of matches or events contained within the rights package.
41. Illustrative of a sports body's concern with fair commercial value is the current dispute between SAFA and the SABC discussed above, as well as the historic concern of SAFA that broadcast rights paid by the SABC barely covered its costs of production. This dispute and the resulting non-broadcast of Bafana Bafana matches on the SABC demonstrates the possible outcome in instances when FTA broadcasters are unwilling or unable to offer what is considered by the rights holder to be the commercial value of the rights.
42. Listed Sports Regulations typically do not seek to interfere in the setting of fees for listed sports events by the FTA broadcasters, allowing the sports bodies (or subscription broadcasters that have acquired the rights) to receive a fair commercial value for such rights through competitive tendering or negotiation. This is for good reasons.
 - 42.1. The Listed Sports Regulations already impose a cost on the sports body whose event is listed, as it foregoes the financial benefit of the exclusivity premium in the sale of its broadcast rights for the specific listed events.
 - 42.2. To then impose a non-commercial price for such rights on the sports body would unduly burden it, especially in the context where such rights have broadcast value to the FTA broadcaster. To do so would effectively just transfer value from the sports body to the FTA broadcaster, to the cost of the sports body (a further loss of revenue) and benefit of the FTA broadcaster (an abnormal profit from acquiring rights at an artificially low price and selling advertising at a high price).
 - 42.3. From a RIA perspective, such an approach would be unfair and damaging as it imposes a cost on an affected party. However, more importantly, from an overall public benefit mandate perspective, such an approach would also undermine the

funding of the sporting code resulting in a likely decline in the performance of that code, to the detriment of the public in the long run. As a result, such an approach would likely be counter to the very objective it is trying to achieve. After all, the objective is not to provide indirect funding support for public broadcasting but rather to provide the public with the benefit of sports events in the public interest. Attempts to assist the public broadcasting in a manner that results in artificially low prices for rights is likely to cause more damage than the perceived benefits.

43. A further reason why such interference is also considered inappropriate is that regulators are not in a position to impose such obligations on rights holders, including foreign rights holders like the confederations whose events typically dominate the listed sports events. It would therefore be unfair to impose such obligations on domestic sports bodies only, especially in the context where such bodies require and depend on broadcast rights revenue in order to fund their participation in the confederation events in the first place.
44. This also typically extends to scenarios where the event has been purchased by a subscription broadcaster and the relevant listed sports matches need to be sub-licensed to an FTA broadcaster. This is so for much the same reasons.
 - 44.1. A non-commercial fee for the rights would simply transfer the costs to the subscription broadcaster that purchased the rights in the first place, whilst conferring undue benefits to the FTA broadcaster which is able to monetise the sports event through advertising. These costs include the loss of exclusivity which undermines the value of the rights to the subscription broadcaster relative to the sum paid for the rights in the first place.
45. Furthermore, ultimately it will be the sports body that will incur this cost as subscription broadcasters reduce the price they are willing to pay for the broadcast rights to events that are listed, in the knowledge that they will not be able to recoup the loss of exclusivity as a result of adverse regulations.

3.5. REVIEW CONTEXT

46. A periodic review of regulations is not uncommon and in fact the current regulations provide for the period review every four years. This may be simply to assess whether the regulations remain relevant and necessary, or whether there are perceived or real problems with the regulations. This may be in terms of either not achieving the objective for which they are designed, or offering reduced benefits and/or higher costs. We briefly examine these aspects in relation to the current regulations.
47. **Achieving the objective.** The current regulations do achieve the objective as set out in s60(1) of the ECA, namely to ensure that subscription broadcasters do not prevent or hinder FTA broadcasting of the national sporting events listed in the regulations.
 - 47.1. As we understand it, FTA broadcasters (and in particular the public broadcaster) have had the opportunity to acquire rights to broadcast all listed events, and most have been broadcast. This is also confirmed by ICASA in its explanatory memorandum for the draft regulations in respect of the confederation events, where it states in relation to Group A events that "*these sporting rights to the events are already held by the Free-to-air and are therefore accessible to the public*". This suggests that the current regulations are achieving the objective as the FTA broadcasters have not been hindered or prevented from broadcasting the listed

events as a result of the exclusive acquisition of rights by the subscription broadcasters and most of the listed events have in fact been broadcast.

- 47.2. Of course, achieving this objective is also contingent upon the sporting event list capturing those national sporting events in the public interest. As a result, the list of events should probably be reviewed in order to determine if the currently listed events remain in the public interest, or if other events not listed should be added. However, this would still need to be within the context of clear criteria for determining public interest.
48. In terms of section 60(2), we are not aware of any disputes raised before ICASA in respect of the regulations and this appears to be confirmed by ICASA.¹⁹ This implies that the regulations are functioning well on this aspect as either there are no disputes, or if there have been any, these have not been disputes that have required ICASA to resolve. We are not aware that any parties have indicated difficulties with the dispute resolution mechanism.
49. **Costs of the regulations.** A review of the regulations should also fully consider the costs of the regulations on all relevant stakeholders.
50. The SABC has publicly expressed concerns that the current regulations impose a substantial cost on it as a public broadcaster. In particular, the SABC alleges the following:
- 50.1. The regulations and public expectation exert pressure on the SABC to broadcast all the listed events²⁰, which comes at a cost to the SABC. It would also appear that the SABC's perceives this to be the case because sports broadcasting is currently not core to e.tv's content strategy.
- 50.2. The high cost of sub-licensed rights and poor audience performance which has resulted in negative financial returns to sports rights investments²¹.
- 50.2.1. However, it is not clear the extent to which this is directly related to the current regulations per se. This is because the SABC illustrate the point in respect of the PSL in particular, but also CAF & SAFA rights. However, the PSL is not a listed sports event and therefore lie outside the scope of regulatory costs. For CAF/SAFA the regulations only stipulate a few select games where the national side is not participating and potentially some more where it is. As such, the costs for all matches and all events would also seem well beyond the current scope of the regulations.
- 50.2.2. A proper assessment of costs must also consider the escalation in the costs of acquiring sports rights more generally. This is occurring not only in South Africa but also globally as competition for rights increases, including from OTT operators.
- 50.2.3. The other aspect raised is poor team performance which reduces the attractiveness of the content for advertisers, reducing the revenue potential for the SABC. They also allege this is compounded by some games only being available on a delayed basis, even though the SABC would pay a

¹⁹ ICASA (23 October 2018) Review of Sports Broadcasting Services Regulations Portfolio Committee on Communications, slide 9 where it is stated that stakeholders are not using the dispute resolution mechanism.

²⁰ SABC Presentation on the ICASA Discussion Document Inquiry into Subscription Television Broadcasting Services (8 May 2018), slide 22

²¹ Ibid

lower price for a delayed match than they would for live games and would still attract advertising revenue from such events. It is also clear that the SABC expects a commercial return to arise from the broadcast of sports content including national sporting events.

50.2.4. The SABC proceeds to indicate what it believes should be done to resolve these issues, some of which would seem to go beyond the scope of the objective the regulations set out to achieve.

51. As discussed in the preceding section, the regulations also impose a cost on the sports bodies, largely in the form of the reduced value of rights, which is greater the more matches or events that are listed. It is noted, for example, that in light of SAFA's recent experience with the SABC, SAFA has indicated that it has requested of ICASA that the SABC be relieved of its obligations in terms of the listings of soccer events to enable it to extract the commercial value of the rights from other broadcasters.²² A review would therefore need to consider the impact of the regulations on sports bodies and in so doing, this should inform an appropriate regulatory response (if any).

²² <https://www.safa.net/2018/10/11/issues-regarding-bafana-banyana-matches-sabc/>

4. KEY PROPOSED AMENDMENTS

52. The draft regulations gazetted by ICASA include significant amendments to the Listed Sports Regulations. This section outlines the key amendments proposed by ICASA and our interpretation thereof. In several instances, there is some ambiguity regarding the interpretation of the amendments, which is also highlighted in this section.
53. **Objectives of the regulations.** Section 2, that deals with the “Object of the regulations” is amended to specify that the object is to regulate broadcasting of national sporting events “in the public interest”. This simply aligns the regulations with the ECA. In addition, a further object (section 2 (e)) has been added to the draft regulations as follows:
- “(e) *Reach a wider audience and to strike a balance between audience and revenue.*”
54. The purpose of this amendment, as indicated by ICASA, is to encourage the financial stability of broadcasters while also ensuring access to sports to most South Africans²³.
55. **Criteria for listing.** The criteria for identifying national sporting events, as provided for in Section 4, has not been amended significantly²⁴. However, the application of the criteria to the listed sports events of section 5 has been amended. More specifically, whereas all three criteria in sub-regulations 4(1)(a) to (c) are applied to the listed events in the current Listed Sports Regulations, the draft regulations only reference sub-regulation 4(1)(a) and in relation to Group A only. This means that under the current formulation of the draft regulations, the criteria provided for in 4(1)(b) and (c) serve no function and the events under Groups B and C are not informed by the criteria at all.
56. **Listed sports events.** The Listed Sporting Events, as specified in Section 5, has been amended significantly in the draft regulations by expanding the list of events and grouping events into three separate lists. According to ICASA, the groupings are “*according to the level of public interest warranted by each sporting event or code*”.²⁵ The groups are specified as follows:
- 56.1. Group A comprises of “*listed national sporting events which must be broadcast on full live coverage on Free-to-air*” (amended subsection 5.1.1).
- 56.2. Group B comprises of “*National Sporting Events offered to a subscription broadcasting licensee on a non-exclusive basis under sub-licencing conditions*” (amended subsection 5.2.1).
- 56.3. Group C comprises of “*Minority and Development Sporting Events to be broadcast by subscription and Free-to-air broadcasters*” (amended subsection 5.3.1).
57. The table below provides the list of events under each category, where the red highlighted events indicate the additional events that have been added with the draft regulations.

²³ Explanatory memorandum on the review of the “Sport broadcasting services regulations, 2010”, section 2.2

²⁴ A minor amendment is proposed in the draft regulations for section 4(1)(a), where individual is replaced with national sporting representative.

²⁵ Explanatory memorandum on the review of the “Sport broadcasting services regulations, 2010”, section 2.5

Table 3: Listed sports events provided in the draft regulations

Group A	Group B	Group C
Summer Olympic Games	Super 14 Rugby	Ice Hockey
Paralympics	All Africa Games	Tennis
FIFA World Cup	COSAFA Cup	Water Polo
Africa Cup of Nations (Male and Female Soccer)	CAF Champions League	Dance
Rugby World Cup	CAF Confederations Cup	Martial Arts
ICC Cricket World Cup	Charity Cup (Soccer)	Wrestling
ICC T20 Cricket World Championships	Supa 8 Cup (Soccer)	Indigenous Games
International Boxing Federations	Knockout (Soccer)	Basketball
National Netball	Soccer Championship Cup	Volleyball
Commonwealth Games	Currie Cup (Rugby)	Squash
International Association of Athletics Federation	Two Oceans Marathon	Chess
	Comrades Marathon	Gymnastics
	Domestic Boxing Tournaments	Varsity Sports
	Premier Soccer League	Golf
	Domestic Cricket Championships	Motor sport
	Premier Hockey League	

Source: Section 5 of the draft regulations (Government Gazette No. 42115, 14 December 2018)

58. Group C events cover an entirely new category of sports events, not covered previously by the Listed Sports Regulations. For Groups A and B, in addition to the changes to the actual list of sporting events, the draft regulations impose additional obligations and restrictions on the acquisition of sports rights, which involves a departure from the current Listed Sports Regulations in a number of material ways discussed below.

58.1. **Group A: National sporting events which must be broadcast on full live coverage on FTA.** According to ICASA, these are events that are already held by FTA broadcasters and are therefore accessible to the public²⁶. The regulations further state that where a FTA licensee cannot acquire the rights to the events listed under A, the FTA licensee must “*inform subscription service broadcasters, to allow an opportunity for the latter to bid for the rights on a non-exclusive basis*” (amended subsection 5.1.2). The amendments propose several key changes to the requirements for the events listed under Group A:

58.1.1. Under the current Listed Sports Regulations, the FTA licensee is not obliged to broadcast any of the listed events, and is rather given the opportunity to broadcast the events either on a live, delayed live or delayed basis. The draft regulations propose to amend this, by obliging the FTA licensees to broadcast the events and to do so on a live basis only and in full.

58.1.2. Subsection 4(1)(c), which limits the listing of confederation sports tournaments to the opening game, one semi-final and the final of the tournament, is no longer applied in the draft regulations. Since subsection 4(1)(a) applies to Group A, this suggests that only confederation events

²⁶ Explanatory memorandum on the review of the “Sport broadcasting services regulations, 2010”, section 2.5

involving a national team of sporting representative would be required to be covered live and in full. However, where the sports listed under Group A are not confederation sporting events (presumably, for example, national netball or the Summer Olympics), it is assumed that all of the matches under each event would need to be broadcast in full and live by the FTA broadcasters.

58.1.3. The inclusion of amended subsection 5.1.2, which allows a subscription broadcaster to bid for the rights only on a non-exclusive basis in the event that a FTA licensee does not acquire the rights, suggests that only FTA licensees are permitted to bid for the rights in Group A. In effect, all Group A listed events would be reserved for FTA broadcasters and subscription broadcasters can only access these events in the instance where FTA licensees cannot acquire these rights. Further, in the instances where a subscription broadcaster is allowed to bid for the Group A rights, it would seem from the wording that these cannot be acquired exclusively by the subscription broadcasters.

58.1.4. This represents a major departure from the current regulations which allow subscription broadcasters to bid for rights to listed events (and to do so exclusively), which are then made available to FTA licensees so that they are not hindered/prevented from broadcasting such events. Even where the rights form part or all of the events that are sold directly to a FTA broadcaster in South Africa, these are not typically held exclusively by FTA broadcasters. No rationale has been provided for this change which has significant consequence for rights holders (sports bodies and their respective affiliates) and for broadcasting. It is unclear what ICASA is seeking to achieve with these restrictions and it is not apparent why subscription broadcasters are limited to non-exclusive rights in the case where the rights are effectively reserved for FTA broadcasters and therefore, FTA broadcasters would not have been prevented or hindered from acquiring these rights.

58.2. **Group B: Events offered to a subscription licensee on a non-exclusive basis under sub-licencing conditions.** The draft regulations, as currently worded for Group B, are unclear as they do not specify which entity would be sub-licensing the content or to whom the non-exclusivity applies.

58.2.1. One interpretation is that FTA licensees would have the first opportunity to acquire rights to events on the list which could then be sub-licensed by them, non-exclusively, to subscription licensees. This is a plausible interpretation but would represent a significant departure from the current regulations.

58.2.2. A second possible interpretation is that events can be acquired on a non-exclusive basis by a subscription broadcaster, and then sub-licensed to FTA broadcasters.

58.3. In addition, there is no specification of which criteria in terms of section 4 have been applied to the events of Group B in the draft regulations, and on a plain reading it would seem that section 4 has not actually been applied.

- 58.3.1. Domestic sports leagues, like the Premier Soccer League, which were previously excluded as they fell outside of the criteria, are now included as part of the list. The same would seem to apply to the leagues of other sports codes cited.
- 58.3.2. Furthermore, the limitation of the listing to specific games for each event no longer applies in the draft regulations and therefore all games for each Group B event would be covered.
- 58.3.3. This too is a significant departure from the current framework and would imply that subscription broadcasters are not permitted to acquire exclusive rights for the leagues as well as knock-out tournaments, and in respect of all of the matches included under Group B. ICASA has not provided any rationale for these significant shifts in the amendments which is particularly relevant in the context where the current framework has not been faulted and the potentially negative consequences these changes will have, particularly for sports bodies and their affiliates.
59. **Group C: Minority and Development Sporting Events**²⁷. Group C is a new category of events that are included to promote these sports by ensuring that they are broadcast by both FTA and subscription licensees²⁸. For the events listed under C, FTA and subscription service broadcasters “*must broadcast events of at least two (2) of the listed sporting codes per annum*” (amended subsection 5.3.2).
- 59.1. The draft regulations do not specify which events under the two sporting codes must be broadcast, namely whether it is all or just some events. It is likely that the intention is that some of the events under each sporting code must be broadcast by each of the FTA and subscription service broadcasters.
- 59.2. The draft regulations also do not specify that Group C events should be local/national in nature (and some events are unlikely to be domestic, such as ice-hockey, for example). This implies that even international events would potentially be covered by Group C and can be broadcast rather than domestic events.
- 59.3. There appears to be no consideration of the financial impact of these requirements on broadcasters. This is particularly relevant as it cannot be assumed that broadcasters have the financial resources to fulfil these requirements, particularly given the well-publicised financial position of the SABC.

²⁷ Minority sports is defined as “any sport that does not have majority of the population’s following or a sport having a less distinctive presence within a larger society”. Developmental Sports is defined to mean “sports aimed at promoting social change and enlarging the population’s choices and increasing opportunities to all members of the society” (amended section 1).

²⁸ Explanatory memorandum on the review of the “Sport broadcasting services regulations, 2010”, para. 1.6

5. ASSESSMENT OF THE PROPOSED AMENDMENTS

60. The draft amendments represent a significant shift in how the Listed Sports Regulations would operate and the impact of such regulations on sports bodies and broadcasters. In the context of the material changes to the current regulations, it is particularly important to analyse the new regulations within a RIA/SEIAS framework, as this provides the appropriate means to determine if the draft regulations are the optimal approach to achieving the stated objective. This includes whether the regulations relate to the achievement of the stated objective, whether the benefits outweigh the costs, the incidence of such costs, whether or not there are unintended consequences and whether alternative forms of regulation are more optimal. ICASA does not appear to have performed such an exercise (or any), nor has it provided a rationale for the significant departure in the context where the current regulations do appear to achieve the objective as set out in s60(1) of the ECA and no disputes have been raised before ICASA in respect of the regulations.
61. When assessed within this framework, alongside the economic principles typically applied to understanding the effects of national sports listing regulations, the following is apparent:
- 61.1. Firstly, the draft regulations deviate from the underlying objectives that they are intended to achieve, seeking instead to achieve alternative objectives for which there is no legislative mandate. ICASA's proposed changes attempt to tip the economic landscape in favour of some broadcasters at the expense of the sports bodies, the affiliates that underpin them and other broadcasters;
- 61.2. Secondly, in the process, the draft regulations risk imposing substantial costs on the national sports bodies of the country's major sports which seriously risks undermining their financial sustainability, and hence performance to the detriment of the public interest. Furthermore, it does little to actually address concerns raised by the SABC, and in fact is likely to exacerbate them; and
- 61.3. Thirdly, the draft regulations are in a number of instances impractical and risk unintended outcomes, which collectively may result in a failure to achieve the benefits sought.
62. We expand on these themes in the sub-sections that follow.

5.1. DEVIATION FROM THE UNDERLYING OBJECTIVE

63. As outlined in the introduction, the RIA/SEIAS tool is used to assist policy makers and/or regulators to evaluate the impact of regulatory interventions imposed in pursuit of specific policy objectives. An important aspect of the framework is precisely to determine what the policy or regulatory objectives are, and evaluate the proposed regulatory intervention (the benefits as well as costs) as against achieving that objective.
64. As also outlined earlier, the Listed Sports Regulations are specifically made to give effect to sections 60(1) and (2) of the ECA, as is in fact cited in the preamble to both the current and draft regulations.²⁹

²⁹ Government Gazette No. 33079 (7 April 2010) and No. 42115 (14 December 2018), p. 1

64.1. Section 60(1) has a very specific objective, which is to ensure that “subscription broadcasting services may not acquire exclusive rights that prevent or hinder the free-to-air broadcasting of national sporting events, as identified in the public interest...”³⁰ In other words:

64.1.1. The objectives relate to national sporting events identified in the public interest only, and not any sporting event. One of the objectives is to identify such sporting events in the public interest;

64.1.2. In respect of these events, the objectives relate to ensuring that FTA broadcast is not prevented or hindered by exclusive rights held by subscription broadcasters specifically, and not as a result of other factors outside of such exclusivity.

64.2. Section 60(2) has an even narrower objective, which is simply to ensure that in the event of a dispute arising in respect of section 60(1) that “such dispute must be resolved on an expedited basis by the Authority...”. In other words:

64.2.1. The objective is in relation to disputes between broadcasting licensees around the acquisition of exclusive rights which prevent or hinder the FTA broadcast of national sporting events only; and

64.2.2. The objective is regulations which ensure the timely resolution of such complaints.

65. It is against these objectives that the draft regulations need to be assessed in respect of a RIA/SEIAS framework. However, as outlined in detail below, there are a number of instances where the draft regulations seem to bear no relation to these objectives and rather seek to achieve other objectives. In addition, in doing so the regulations would also seem to have lost sight of the original objectives of identifying a selection of rights to national sporting events that can truly qualify as being in the public interest. We discuss these in more detail below.

5.1.1. **New objectives written into the regulations (section 2)**

66. The first instance of such a deviation is that the draft regulations seek to explicitly add an additional objective to those contained in section 60(1) and (2), and broadly reiterated in section 2(a) to (d) of the current regulations.

66.1. Specifically, a new subsection 2(e) has been added which is to “*Reach a wider audience and to strike a balance between audience and revenue*”.

66.2. The explanatory memorandum (par 2.2.) also indicates that the underlying purpose of this insertion is “*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*”.

67. **Deviation from section 60(1) objective.** This new objective appears to seek to address a concern regarding the financial sustainability of the public broadcaster. While ICASA should consider the impact of the regulations on the sustainability of broadcasters, the objective of

³⁰ Section 60(2) merely deals with dispute resolution in respect of the objective and regulations made in respect of section 60(1) and therefore does not extend the objective of the regulations.

regulating national sport events should not be to improve the sustainability of any one broadcaster. However, even if ICASA could permissibly add objectives through regulation, it would have to both diagnose the issue properly and in so doing inform an appropriate regulatory response (if any).

67.1. For instance, and as discussed above, the public submissions made by the SABC in respect of how listed sports events are unprofitable for the public broadcaster are not specific to listed sports, but rather reflect the total cost of all sport acquired by the broadcaster that go beyond listed events.³¹ This is therefore not relevant for determining the impact of national sports listings on the public broadcaster. It is also a matter of public record that their financial woes also stem from factors other than listed sports.³²

67.2. There are also other regulatory solutions to such concerns, which may include reducing the number of national sporting events earmarked for public interest regulation. This would reduce the absolute cost of broadcasting such events. Instead, the draft regulations have sought to expand the list and make it compulsory to broadcast some events live and in full, but at the same time seek to artificially reduce the pricing of each one. As we note later in this section, this is likely to have the effect of substantially increasing the SABC costs and the gap to advertising revenues, worsening and not improving its financial position. Worse, sport could end up not being broadcast at all (for example, the situation with SAFA).

68. **Imposing objectives on sports bodies.** A further concern with this particular objective is that it effectively seeks to impose ICASA's assessment of the correct balance of audience and revenue on the sports bodies.

68.1. As outlined in the discussion on the sale of sports rights, it is precisely this balance which the sports bodies continually assess at each stage of selling their broadcast rights.

68.2. Furthermore, as that section indicated, sports bodies are specifically the best placed to make that decision given their depth of knowledge of their sport, but also because they are incentivized to ensure a correct balance. That decision also self-evidently differs over time for the same sports body, and between bodies, as reflected in the choices of national sports bodies.

5.1.2. Group A sports events (section 5.1)

69. Section 5.1.1. of the regulations imposes a requirement for full live FTA broadcast of the list of sporting events included under Group A, which are cited as national sporting events identified in the public interest based on section 4(1)(a). Whilst many of the events fall within the criteria and are currently on the national list, this does go much further than simply removing an impediment to FTA broadcast by now mandating broadcast, and specifically live full FTA coverage.

70. Section 5.1.2 also goes much further than the objectives of section 60(1) of the ECA as it would seem to effectively reserve such sports events for FTA broadcast (unless they fail to

³¹ SABC Presentation on the ICASA Discussion Document: Inquiry into Subscription Television Broadcasting Services (8 May 2018), p. 23

³² SABC presentation of its FY2018/2019 Corporate Plan and Budget to the Portfolio Committee on Communications, Slide 16

secure the rights) as discussed in the previous section. Again, these changes would seem to be in pursuit of an objective unrelated to simply removing a potential hindrance to FTA broadcast as a result of exclusive rights being acquired by subscription broadcasters. Rather, it would appear to be a somewhat misguided attempt to pursue the new objective inserted by ICASA, namely broadening the audience for certain events whilst at the same time trying to artificially make such broadcast more financially viable for the FTA broadcaster.

70.1. First, as ICASA notes these events are largely already on FTA in any event³³, it would seem that ICASA is not seeking to remove an impediment to the broadcast of the event, but rather is pursuing other objectives such as a belief that full live coverage is necessary or desirable to achieve the purpose of the enabling legislation.

70.2. Second, by reserving these for FTA broadcasters only, it would seem that ICASA is trying to a) reduce competition for sports rights acquisition by excluding competitive bidding by subscription broadcasters, and b) also removing competition for the actual broadcast of the event which would direct more viewers, and hence advertising revenue, to the FTA broadcasters without having paid an exclusivity premium for that benefit.

71. It is misguided because, as we note later in this section, it may exacerbate the financial commitments on the SABC and undermine funding to sports bodies, but also risks unintended consequences whereby much of the content may not end up on FTA or any television platform, at all.

72. Section 5.1.2 also imposes a non-exclusivity requirement for subscription broadcasters in the event that they do acquire the rights. This too goes further than the objectives of section 60(1) of the ECA as it would effectively prohibit the exclusive acquisition of Group A listed rights by subscription broadcasters, whereas section 60(1) is only concerned with whether exclusivity will prevent or hinder the FTA broadcasting of national sporting events.

5.1.3. Group B sports events (section 5.2)

73. The Group B regulations relate to an extensive list of events, including confederation events, sports leagues and knock-out tournaments for the main domestic sports as well as other events, like domestic marathons. As discussed above, there would appear to be more than one plausible interpretation of the provision.

73.1. One plausible interpretation is that the draft regulations would seek to reserve bidding in the first place to FTA broadcasters, but unlike Group A events, permits sub-licensing of such rights to subscription broadcasters on a non-exclusive basis only. It is unclear whether, in circumstances when an FTA broadcaster fails to secure the rights (and therefore presumably is not in a position to sub-licence to pay TV) a subscription broadcaster may acquire the rights directly from the rights holder (as per the amended section 6.1).

73.2. Another interpretation is that events can be acquired by a subscription broadcaster on a non-exclusive basis, provided they offer to sub-licence the listed events to FTA broadcasters.

³³ Government Gazette No. 42115 (14 December 2018), explanatory memorandum para 2.5

74. Under either interpretation, the draft regulations in respect of Group B would appear to have lost track of an important aspect to the original objective of the regulations which is to isolate the focus on national sporting events in the public interest.
- 74.1. Section 5.2 of the draft regulations does not indicate that these are even national sporting events that fall to be identified in the public interest. Unlike Group A events, there is no reference to which criteria within section 4 of the draft regulations were used for their selection. Nor can there be as the inclusion of full leagues for the major sports which have no knock-out component such as the PSL would not fall within any of the criteria listed under section 4. It would seem that ICASA has made the mistake it warned of in the original regulation setting process, which is to conflate events that are of national character with popular sports events.
- 74.2. For example, by including all of the events under Super 14 Rugby which is included under Group B, matches that do not involve teams from South Africa, but rather local teams from the other participating countries (e.g. New Zealand and Australia), would be covered by the regulations, even though these simply could not be considered to be national sporting events in South Africa.
75. To the extent that the limitation of exclusivity is intended to address competition concerns, this is also unrelated to the objectives of section 60(1) which is only concerned with how exclusivity may impact the FTA broadcast of national sporting events. It would seem that the Subscription Broadcasting Inquiry is the relevant forum to address any competition concerns. This is because the pursuit of such outcomes needs to be based on a proper investigation of that issue as required by section 67 of the ECA. Section 67 exists precisely because of the recognition that regulatory action needs to be properly justified and related to specific theories of harm lest it otherwise interfere with the proper functioning of a market.
76. In the event that the first interpretation is correct, then this would be clearly pursuing objectives well beyond what was intended in section 60(1) of the ECA as is the case for Group A. In both instances, the regulations would then be misguided attempts to try to improve the financial position of FTA broadcasters.
- 76.1. Group B regulations would then similarly try to reduce competition for sports rights acquisition by excluding competitive bidding for exclusive rights by licensed subscription broadcasters; and
- 76.2. It would also place the FTA broadcasters in a stronger negotiating position with subscription broadcasters in terms of extracting high prices for the sub-licensing of the rights by dint of the fact that the subscription broadcasters cannot themselves bid directly.

5.1.4. Group C sports events (section 5.3)

77. Group C regulations concern the requirement for subscription and FTA broadcasters to broadcast events of at least two minority or developmental sports listed under section 5.3 of the draft regulations. It would appear from the explanatory memorandum that the objective of this regulation is to ensure that "*even minority sports are given prominence on broadcasting system to create opportunities provided by sports...*"³⁴

³⁴ Government Gazette No. 42115 (14 December 2018), Explanatory Memorandum, para 1.6

78. Whilst there may be some real or perceived social benefits to promoting the broadcasting of minority and development sports, such promotion does not form part of the objectives of section 60(1) or (2) of the ECA. Specifically:
- 78.1. Minority or development sports are not national listed sports, nor even claimed to be in terms of section 4 of the draft regulations which define national listed sports events of public interest.
 - 78.2. The draft regulations do not deal with hindrances to FTA broadcast of these sports as a result of exclusivity by subscription broadcasters. They seek to impose an obligation on subscription and FTA broadcasters rather than remove a hindrance.
79. It is not clear under what statutory provision ICASA has proposed the Group C regulations. Even if promoting the broadcasting of minority and development sports is considered a legitimate objective within the regulatory context, then a proper RIA/SEIAS framework would still require the following exercise to be done in order to determine if the draft regulations are appropriate or not.
- 79.1. Determine the extent to which minority/development sports are being broadcast or not already, and therefore whether there is even a need for regulation;
 - 79.2. Determine what the benefits are to ensuring the broadcast of minority/development sports, to the sports themselves or members of the public. What the benefits are and how they are derived is of particular relevance given the current regulations do not require broadcast of national events for these minority/developmental sports. As such, it is unclear if ICASA perceive the benefits as accruing from simply being able to view minority/developmental sports even if the events are not national, or this is meant to provide exposure to national / international events in support of these sports domestically;
 - 79.3. If there are benefits and a need, determine what the impediment is to such broadcast and hence what the appropriate regulatory action may be to achieve the benefits; and
 - 79.4. Determine the costs of such regulation to broadcasters, and whether the benefits outweigh the costs.
80. On the current gazetted regulations and explanatory memorandum there is no evidence that such work has actually been done in order to make an informed assessment of the regulations.

5.2. RISK OF MATERIAL COSTS TO SPORTS BODIES

81. In pursuit of alternative objectives to that of simply removing hindrances to the FTA broadcast of a select list of national sporting events of public interest, the draft regulations seem highly likely to impose a material cost on national sports bodies. They do so through measures which individually and collectively have the likely effect of reducing the revenue that sports bodies will receive for their rights.
- 81.1. First, the draft regulations have the effect of eliminating exclusivity of rights for subscription broadcasters for all of the domestic events of the most prominent national sports bodies.

- 81.1.1. Unlike the current Listed Sports Regulations, the draft regulations do not seek to limit the application of the Group B regulations to specific events, and also specific matches within those events, namely a semi-final and final of a national knock-out event as per section 4(1)(b). Rather, the draft regulations take a far more expansive view (not premised on public interest) which includes not only leagues as well as knock-out tournaments, but also all matches in the leagues and tournaments. This is the case for all of South Africa's largest sports i.e. soccer, cricket and rugby as well as boxing and hockey.
- 81.1.2. In this context, on any interpretation of the regulations, the FTA broadcaster would seem to be able to contract directly or sub-license from a subscription broadcaster the entire event. This would effectively render the event non-exclusive for subscription broadcasters. Whilst no FTA broadcaster may seek the full rights, this is not guaranteed and especially not at the point of bidding for the rights. Even if no FTA broadcaster were to request the rights, they are still rendered non-exclusive as subscription broadcasters may not hold content included under Group B exclusively.
- 81.1.3. As outlined in the earlier section, exclusivity typically achieves a premium to the price for sports rights as it permits the successful broadcaster to differentiate its product offering from that of competitors. This means that the value of exclusive rights would typically be worth more than the sum of its parts had the rights been sold to more than one broadcaster on a non-exclusive basis. As a result, sports bodies will frequently look to sell at least some of their rights on an exclusive basis, which additional revenue not only permits the development of the sport but also the ability to bear the cost of other rights being broadcast at a lower fee on FTA to achieve other objectives such as extended reach and public interest. Again, economic logic indicates that the removal of exclusivity will reduce the revenues sports bodies receive for the rights. This is confirmed by the fact that the affected national sports bodies currently sell many rights exclusively or exclusively with certain sub-licensing arrangements, which implies that this is revenue-maximising for them.

81.2. Second, the draft regulations have the effect of reducing competition for the rights.

- 81.2.1. This is because for Group A events it would seem that subscription broadcasters may only bid if an FTA broadcaster has failed to secure the rights. This implies that only FTA broadcasters may be bidding initially. For Group B events, one plausible interpretation is that FTA broadcasters must first bid and can then sub-license the rights. This would have the same effect as Group A events, namely limiting the initial bidders to FTA broadcasters only.
- 81.2.2. As outlined in the earlier section, in seeking to achieve the maximum revenue for their rights in order to develop the sport, sports bodies specifically seek to enhance the competitive bidding for rights by bringing in more competitors for the rights. It follows logically that by eliminating bidders for the rights, the remaining bidders are able to lower their bids as they face fewer competitors which will result in a lower price (if any) achieved for the rights by the sports body. This is especially the case given that historically

the subscription broadcasters have often been the highest bidders for such rights, which means eliminating their bids in particular will result in lower broadcast revenues for rights holders.

81.2.3. Whilst this aspect of the draft regulations would appear to seek to derive a benefit to the FTA broadcasters, all it achieves is a transfer of that cost to the sports bodies. In so doing the regulations do not achieve a net benefit to society, but rather simply achieve a redistribution of costs.

82. As outlined in the earlier sections, there is a real cost to regulations that have the effect of reducing the revenue-earning potential of the sports bodies, and these costs in fact also diminish the public benefits that are central to the legitimate objectives of regulating national sporting events. As discussed in full above:

82.1. The quality and development of sports within a country are directly related to the revenue that sport has at its disposal. Higher revenues support facilities (for matches and training), better coaching and training (incl. sports science), and better players/athletes (both attracting talent and developing it). The development of the sport is also improved through providing financial resources for improving the non-professional and school stages of the sport which are not able to attract funding independently, and also to engage in specific sports development programmes designed to make the sport accessible to those potential players and communities that would otherwise not afford to participate.

82.2. Whilst sports bodies do not only seek to maximise broadcasting revenue, and may also seek to achieve a broader audience reach for the sport, the sports body is best placed to determine this balance given its intimate knowledge of its sport but also the trade-offs that are likely. In so doing, the sports body will frequently seek to provide a FTA package in any event in South Africa which incorporates some of the key matches whilst ensuring sufficient exclusivity to support their revenue requirements.

82.3. In the South African context, broadcasting rights are the predominant source of revenue for the major sports bodies, contributing around 60% of their revenue directly, and around 30% indirectly through their impact on sponsorship. As a result of this dependency, a material adverse impact on broadcasting rights revenue will have a material adverse effect on sports body revenue overall. This can only undermine the quality and development of the sport. It also means that the sports events may not be broadcast, as the SAFA experience has demonstrated.

82.4. Spectators and the public do derive greater benefits and enjoyment from viewing better quality domestic sports leagues and tournaments. This is evident from how the popularity of certain leagues such as the PSL have grown with its improved quality of performance as well as broadcast. As outlined previously, exclusivity also provides incentives to broadcasters to improve their broadcast, marketing and production of the sporting event, including complementary programming.

82.5. Furthermore, spectators and the public also derive greater benefit and have greater interest in national sports teams and individuals where such teams and individuals perform better in confederation (and other) sporting events. This is evident from the large drop-offs in interest in a confederation event once the national team has exited, or the large increase in interest where a national representative is performing well in

a confederation event. Undermining the revenue to support the national team as well as the domestic sports leagues and tournaments that underpin national team performance will also then reduce the public benefit which the regulations are meant to further.

5.3. REGULATIONS EXACERBATE SABC CONCERNS

83. Apart from introducing this new risk to sports bodies through the draft amendments, the draft amendments also would seem to exacerbate rather than address the concerns raised by the SABC, regardless of the merits of those concerns.

83.1. First, for the list of events under Group A, the broadcast will need to be live and in full too. As a result, even if the regulations illegitimately succeed in reducing the price of rights, the absolute costs for the SABC are likely to escalate rather than decline. This is also in the context where currently a FTA broadcast is mandatory for Group A rather than being voluntary, and pressure will continue to persist on the SABC to broadcast such an event if no other FTA broadcasters express interest therein. It is not clear that FTAs are required to acquire and broadcast Group B events. To the extent that this is the intention, then this will also increase the costs for FTA broadcasters if they were to in fact acquire the rights and are required to produce the matches which adds additional production costs.

83.2. Second, in expanding the list and requiring full coverage of events, the SABC will be placed in a position whereby it will be broadcasting more events and games of marginal interest to its audience. As a result, it will not earn reasonable advertising revenue against the broadcast of those events, likely increasing the gap between cost and revenues which will escalate losses on sports events and make the SABC even more financially unviable.

83.3. Third, if the regulations succeed in reducing the revenues to the main sporting bodies in South Africa, this will undermine their national team or league performances which in turn will also reduce audience numbers for the SABC. As the SABC has already noted, audience is related to performance and advertising revenues in turn are related to audience. As a result, even if the regulations reduce the costs of each event to the SABC, it is also likely to reduce the revenues that the SABC can generate from that event. This in turn implies that reducing rights costs will not necessarily make the SABC financially better off, and could in fact worsen its financial position.

5.4. UNINTENDED CONSEQUENCES AND THREATS TO LEGITIMATE OBJECTIVES

84. An important part of the RIA/SEIAS process is to consider whether the proposed regulations are likely to achieve their objectives and whether there are potential unintended (negative) consequences emanating from their design.

85. Regulations are intended to change firm behaviour by preventing what would be the logical behavioural choice given the dynamics in the market, or changing the incentives to make an alternative behavioural choice more attractive. Unintended consequences are possible where regulations do not fully appreciate the context within which they will operate and hence how such actions may redirect firm behaviour. For instance, there may be more than

one other course of behaviour that firms could adopt should a particular choice be prevented by regulation. Similarly, if the regulations change the incentives of firms that are not regulated, then their reaction could itself create unforeseen consequences and/or impact on how regulated firms respond or the market outcomes generally.

86. In considering the natural strategic response of firms to the draft regulations, it is apparent that there is substantial risk of unintended consequences. This is in part because the regulatory design fails to properly account for how sports rights are licensed by rights holders, but also because they fail to account for the enforcement limitations of ICASA. It is precisely these aspects which informed how the current Listed Sports Regulations were designed and why that design is common across many jurisdictions (given that they experience similar market dynamics). We discuss these below in more detail.

5.4.1. FTA coordination and enforcement problem

87. Group A regulations now require that the listed sports events must be broadcast in full and live on FTA. However, given there are currently two licensed FTA broadcasters (and potentially more in future³⁵) and a range of community broadcasters, this requirement presents very real coordination problems which ultimately are likely to make it unenforceable. In particular:

87.1. There is no requirement that a particular FTA licensee (such as the public broadcaster) must broadcast specific listed sports events, only that such events must be broadcast on FTA.

87.2. As such, any particular FTA licensee may legitimately seek not to secure the rights to broadcast a particular event listed in Group A. If the other licensee independently also does not seek to secure the rights to that event, then the event will not be broadcast.

87.3. The penalty provision in section 10 of the regulations would be ineffective in ensuring such an event was broadcast on FTA, as neither FTA licensee would have individually contravened or failed to comply with the regulations. Rather it is a collective failure.

87.4. Furthermore, the FTA broadcasters would not be permitted to coordinate the purchase of rights between them as this would be considered market division, a *per se* offence under the Competition Act for which exemption would be required if it were to be condoned. Such exemption would also not necessarily be given in the context where such coordination would likely result in a suppression of prices to sports bodies for the rights.

88. Given the coordination and enforcement problems, the draft regulations in respect of Group A listed sports events, risk not achieving the envisaged objectives. There remains a question as to whether the requirement for certain sports to be broadcast in full and live rather than optionally is a preferred objective or not, and whether or not this disincentivises FTA licensees from bidding for these rights at all.

89. There are also further coordination and timing issues for Group A. The draft regulations require the FTA licensee to inform subscription broadcasters in the event that it cannot

³⁵ ICASA is in the process of considering applications for FTA broadcast licenses.

acquire the rights. There is no time limit on this, which itself raises practical difficulties for both the rights holders and broadcasters. The requirement also suggests that as long as the FTA does not inform subscription broadcasters, the subscription broadcaster cannot bid for the rights which has the potential to stall the rights acquisition process.

90. A similar problem potentially arises in respect of Group B sports events. As outlined in the previous section, it is a plausible interpretation that the intention is for these rights to be acquired by FTA broadcasters which may sub-license on a non-exclusive basis. If this is the intent, then the same coordination and enforcement problems arise as there is no guarantee that any single FTA licensee will acquire the rights, and there is no means of enforcing the requirement to do so on an individual FTA licensee.

5.4.2. Sequencing problems in rights acquisition

91. Section 5.1.2 and section 6 (in respect of section 5.2) anticipate that a FTA broadcaster that fails to acquire the rights to a listed event in Group A and potentially Group B inform other (subscription) broadcasters such that they may then seek to tender for the rights. These draft regulations effectively envisage a rights acquisition process whereby individual licensees sequentially approach a sports body in order to acquire the rights. Specifically, it envisages that sports bodies will first engage FTA broadcasters for the full set of rights and if that is unsuccessful then engage in a licensing process with subscription broadcasters. However, this is at odds with how rights are practically sold by all sports bodies, both domestic and international.
92. **Simultaneous not sequential bidding.** For many of these sports rights, the sale process is a single simultaneous event, not a sequential one, precisely because it is designed to enhance the competitive process of bidding for rights in order to maximise revenue.
- 92.1. Where there is no distinct FTA package sold separately to a subscription package, FTA broadcasters bid against subscription broadcasters for the rights. There is a simultaneous tendering process precisely because simultaneous bidding enhances the competitive process and maximises revenue for the rights holder.
- 92.1.1. This is because under a simultaneous process the rights holder can play every competitor off against each other. For individual bidders, they need to put in their best bid given the set of likely competitors. As soon as bidders are aware that certain bidders are no longer competing (the sequential model), then that may influence how much they bid for the rights.
- 92.1.2. Sequential negotiation is also impractical because the rights holder is not in a position to make an informed decision on whether to accept or reject the first bid until they know whether it is higher or lower than what other bidders may put forward in the future.
- 92.1.3. This is why a rights holder, even if negotiating rights acquisitions outside of a formal tender process, will seek to first see if other broadcasters are interested in tendering for the rights and start simultaneous negotiations with various broadcasters.
- 92.2. Even in instances where the sports body may seek to provide a FTA package, it may still engage in a simultaneous tender process in order to extract the highest price by having subscription and FTA broadcasters compete against each other.

- 92.2.1. For instance, the PSL tender is a single process whereby the rights are split into 9 different packages which include a comprehensive package alongside separate packages (including separate subscription and FTA broadcasting packages). This process permits a licensee to bid for individual packages as well as the comprehensive package. It is designed in this manner precisely to enhance the competitive process and ensure the best bids are put in for individual packages and the comprehensive packages. This is because the bidders are aware that the PSL will then determine how the revenue from a collection of individual package bids compares to bids for the comprehensive package in order to decide the tender award. If a comprehensive package tender wins, then they will need to provide a FTA package but that price would be affected by the overall competitive bidding process and the price for the comprehensive package.
- 92.2.2. In other cases, the FTA package itself may not be fixed and a simultaneous tender process is used to determine what optimal mix of FTA and subscription rights will maximise the revenue and reach for the sports body. For instance, if a FTA broadcaster is willing to pay a substantial fee given its advertising revenue potential for the event, the rights holder may be willing to limit the exclusive subscription package. Alternatively, if the exclusivity premium is considerable, the rights holder may limit the FTA package more.

5.4.3. Enforcement problems and unintended consequences

93. **Over-the-top operators.** We understand that ICASA does not have jurisdiction over over-the-top (“OTT”) streaming and subscription video-on-demand (“SVOD”) service providers as they are not currently licensed within the ECA. Whilst the lack of jurisdiction is also an issue for the current Listed Sports Regulations, the draft regulations threaten to cause more severe unintended consequences.
- 93.1. The lack of jurisdiction means that ICASA has no powers to prevent an OTT operator from securing the exclusive rights to listed sports events and not sub-licensing to FTA broadcasters as is currently required of subscription broadcasters in the Listed Sports Regulations.
- 93.2. The draft regulations threaten other unintended consequences too. This is because if the regulations were to prevent licensed subscription broadcasters bidding for rights in the first round against FTA broadcasters, then it may disadvantage licensed operators from competing with OTT operators for such rights who are not similarly restricted. This increases the risks of OTT operators securing rights and not sub-licensing to FTA operators and would lead to an outcome in direct contrast to that intended by the draft regulations, with listed sports events not being available to the public on FTA.
94. **Sports bodies.** We also understand that ICASA only has jurisdiction over licensees which means it is likely to face challenges trying to change the manner in which rights are sold by sports bodies in order to overcome the type of practical difficulties identified above. However, even if ICASA could somehow alter the manner in which rights are sold, or prevent subscription broadcasters from bidding for rights if they are to be sold in a single

process, then there is a distinct risk of unintended consequences resulting from rational behavior by a rights holder.

95. As outlined above, the regulations have the effect of reducing competition for rights in order to reduce the costs of sports events for FTA broadcasters. Given that sports bodies will not wish to see revenues fall and may not be prepared to accept a price that is below their commercial valuation of the rights, the draft regulations may result in a worse outcome than no regulation or the current regulations.

95.1. For instance, even if ICASA could enforce sequential negotiation, a pragmatic response from rights holders could be to reject any initial FTA bid in order to enable price discovery negotiations with subscription broadcasters and OTT operators to see if their bids will be higher. If their bids are not higher, nothing would prevent the rights holder reverting to the FTA bidder in the future. Even if there is some risk that the FTA bid is revised downwards, the risk is likely to be small (given the history of higher subscription broadcasting bids) and therefore worth engaging in further price discovery. In such a case, there is a distinct risk of either not realising the intended benefits. If FTA bids are routinely rejected in order to facilitate competitive bidding from subscription broadcasters, then the objective under section 60(1) of not "*hindering or preventing the free-to-air broadcasting of national sports events, as identified in the public interest*" and associated benefits of such broadcasts would not be achieved.

6. CONCLUSION

96. The draft regulations represent a significant shift in the Listed Sports Regulations. They have the effect of reducing competition for rights and eliminating exclusivity of rights for subscription broadcasters for all of the domestic events of the most prominent national sports bodies. This is the case for all of South Africa's largest sports, such as soccer, cricket and rugby as well as boxing, athletics and netball, for example.
97. The application of the RIA framework and the economic principles set out in this report demonstrate that the proposed regulatory interventions are likely to result in material harm to sports bodies and are unlikely to achieve the legitimate objectives of section 60(1) of the ECA.
- 97.1. The draft regulations target objectives that go well beyond section 60(1) of the ECA. In doing so, the draft regulations risk imposing substantial costs on sports bodies, which seriously risks undermining their financial sustainability and the ability to host the sports events in the first place.
- 97.2. The draft regulations would also seem to exacerbate the concerns raised by the public broadcaster, instead of address them. This is as the amendments are likely to raise the costs to the SABC and at the same time may reduce the revenues generated by the SABC from the events.
98. The amendments to the regulations therefore represent a significant shift in the balance between providing exposure to national sporting events and ensuring sufficient funding for the sporting codes. There is a real cost to the regulations of substantially reducing the revenue-earning potential of the sports bodies, and these costs in fact also diminish the public benefits that are central to the legitimate objectives of regulating national sporting events in the public interest. This is in the context where the current regulations do appear to already achieve the objective as set out in s60(1) of the ECA and no major disputes have been raised before ICASA in respect of the regulations.
99. In addition, the amendments are in many instances fraught with problems of application and enforcement. This is in part because the design of the regulations which fail to properly account for how sports rights are licensed by rights holders, but also because they fail to account for the enforcement limitations of ICASA. As a result, there is a distinct risk of not realising the intended benefits of the regulation, but also risking unintended consequences. Importantly, ICASA does not have jurisdiction over OTT service providers as they are not currently licensed within the ECA. If the regulations were to prevent licensed subscription broadcasters bidding for rights against FTA broadcasters, or acquiring rights on an exclusive basis, this would disadvantage licensed operators from competing with OTT operators for such rights which OTT operators would not be similarly restricted. This also increases the risks of OTT operators securing rights and not sub-licensing to FTA operators.

ANNEXURE B: INTERNATIONAL BEST PRACTICE

1 Internationally, the regulation of the broadcasting of national sports events in the public interest ranges between two extremes. Many countries do not regulate listed events at all. At the other extreme is Australia, which has been criticised as the "most draconian in the world", "punitive" and "anti-competitive".¹⁰⁴ The EU has found a middle road.

Many countries do not regulate listed events

2 At the one end of the regulatory spectrum are countries such as the USA and Canada, which have found it unnecessary to regulate the broadcasting of national sporting events in the public interest.

3 Many EU Member States have also found it unnecessary to adopt measures in accordance with the AVMSD (which permits, but does not require EU member states to regulate listed events).¹⁰⁵

4 Denmark initially implemented listed events legislation, but subsequently repealed it because it was unsuccessful. The Danish Ministry of Culture decided that broadcasters should be able to decide freely about the buying and selling of transmission rights. Denmark accordingly repealed its listed events legislation with effect from 1 January 2002. The public-service terrestrial broadcasters DR and TV2, the supposed main beneficiaries of the law, applauded the abolition of the legislation. They too did not believe that the legislation had worked. TV2 stated that the law had led to its paying more for transmission rights than it would otherwise have paid, as it felt obliged to bid for the rights, and had to bid over the market rate on some occasions in order to be successful. The legislation had never given the public broadcasters a competitive advantage, as they had to pay the market rate to acquire the rights. Broadcasters had found the process

¹⁰⁴ ASTRA submission to the 2017 Budget, 11 January 2017

¹⁰⁵ The Television Without Frontiers Directive was amended and renamed the Audiovisual Media Services Directive with effect from 19 December 2007

complicated and cumbersome, and extremely difficult to uphold. The withdrawal of the listed events legislation was therefore welcomed in Denmark.

- 5 The Organisation for Economic Co-operation and Development ("the OECD") has criticised the regulation of the broadcasting of events of national importance because it distorts competition, and it may damage the long-term interests of rights holders (e.g. sports bodies).¹⁰⁶

EU has adopted a balanced approach to listed events regulation

- 6 In the centre of the regulatory spectrum are jurisdictions such as the EU, which have adopted reasonable and appropriate listed events systems to promote widespread television access to national sporting events, including about nine EU Member States who have adopted light-touch measures to regulate the broadcasting of listed events¹⁰⁷ in order to ensure that broadcasters do not broadcast on an exclusive basis events which are regarded by that member state as being of major importance for society in such a way as to deprive a substantial portion of the public in that member state of the possibility of following such events on free to air television.¹⁰⁸
- 7 The European Parliament stated that the issue was "*one of striking the right balance between public interest considerations and the legitimate concern of pay-TV operators and sports federations (amongst others) to maximise revenues.*"¹⁰⁹ It further recognised that "*the right of access of the public to information has to be balanced with other fundamental principles such as contractual freedom and property rights. In particular, it is necessary to avoid an excessive interference with the property rights of the owner of the premises*

¹⁰⁶ *Regulation and competition issues in broadcasting in the light of convergence*, OECD Report DAFPE/CLP (99) 1, 26 April 1999

¹⁰⁷ The EU member states which notified the European Commission of their proposed measures are Austria, Belgium, Denmark (which subsequently repealed its listed events measures), Finland, France, Germany, Italy, Ireland and the United Kingdom

¹⁰⁸ Art 14(1) of the AVMSD

¹⁰⁹ *Exclusive Rights for TV Broadcasting of Major (Sports) Events*, Communication from Mr. Oreja to the Commission, 3 February 1997, para 2

where the major events take place, of the organiser of the major event and of the holder of exclusive rights".¹¹⁰

- 8 In order for an event to be considered to be of major importance to society, it must meet specified criteria. The AVMSD does not restrict the acquisition of rights, but rather their exercise, such that a subscription broadcaster which acquires the rights must offer to sub-license them to a free to air broadcaster.
- 9 As indicated above, the AVMSD does not make it obligatory for EU members states to regulate listed events. Those EU Member States which have adopted measures to regulate the broadcasting of listed events have generally sought to strike a balance between the various competing interests. Most countries which have adopted listed events systems have kept them narrow and subject to stringent criteria.
- 10 The EU recognises that exclusivity is an accepted commercial practice. The European Parliament has sought to keep the restrictive measures to a minimum and to what is absolutely necessary to avoid putting European companies at a competitive disadvantage in the global rights market.
- 11 A good example of the balanced approach in the EU is Germany. It has many similarities with the approach adopted in the Current Regulations in South Africa.
- 12 According to s4(1) German Interstate Broadcasting Treaty (IBT – *Rundfunkstaatsvertrag*), events of major importance for society ("major events") may only be broadcast in encrypted form and against special payment if the broadcaster or a third party (in particular the rights owner for a specific major event) allows for the event to be broadcast at appropriate terms via at least one FTA television service which is generally accessible in Germany by way of live coverage or, if individual events running in parallel make this impossible, by way of deferred coverage. Only television services which can actually be received by

¹¹⁰*Exclusive Rights for TV Broadcasting of Major (Sports) Events*, Communication from Mr. Oreja to the Commission, 3 February 1997, para 5

more than two thirds of households shall be deemed to be "generally accessible" in this sense.

- 13 Thus, if a subscription broadcaster in Germany has acquired rights to a major event it generally has to sublicense those rights to a free to air broadcaster under appropriate conditions. If the parties fail to reach agreement on appropriate conditions, they should go into arbitration in good time prior to the event. If no arbitration procedure can be agreed upon (for reasons which must be justified by the television broadcaster or the third party), the broadcast shall be deemed as not made possible under appropriate conditions.
- 14 For Germany, the listed major events are:
 - 14.1 the Summer and Winter Olympic Games;
 - 14.2 all European Championship and World Cup matches involving the German national football team as well as the opening matches, the semi-finals and the finals, irrespective of any participation of the German team;
 - 14.3 the semi-finals and finals of the German Football Association Cup;
 - 14.4 the home and away matches of the German national football team; and
 - 14.5 the final of any European football club competition (UEFA Champions League, UEFA Europa League) with German participation.

Australia has adopted an imbalanced and much criticised regime

- 15 At the other end of the regulatory spectrum is Australia, which has adopted a highly regulated approach. The Australian measures are overbroad and completely disproportionate to the objectives of the legislation, and they also have led to absurd results which do not advance the interests of the public. The Australian so-called "anti-siphoning system"¹¹¹ has attracted widespread and

¹¹¹ The "anti-siphoning system" is the term used to describe the listed events regulatory scheme in Australia

ongoing criticism by Australian viewers, sports bodies, subscription broadcasting services, the advertising industry, the Australian Productivity Commission, and the Australian Competition and Consumer Commission. As one legal commentator stated:

"The anti-siphoning provisions of the BSA have prevented pay TV operators from acquiring exclusive rights to listed events, and, conversely, have allowed **free to air operators to continue to acquire rights to those listed events.** ... The cost of this success has, however, been felt most acutely by pay TV operators (who are beholden to free to air broadcasters for rights to listed events), events organisers (who miss out on profits from the sale of rights to pay TV operators) and consumers (who are denied more extensive coverage of listed events)."¹¹²

- 16 In its comments on the Broadcasting Legislation Amendment (Media Reform Bill) 2016, ASTRA submitted that the anti-siphoning regime is "*protectionist*" of FTA broadcasters and -

"operates well beyond its original public policy intentions to the detriment of sports bodies, competitors of FTA broadcasters and, ultimately, to the general public, who are denied the full potential for innovation and choice that would flow from improved competition for sports broadcast rights."¹¹³

- 17 The Productivity Commission noted that:

"The anti-siphoning provisions reduce competition in the negotiation of rights to listed events, affecting the price and nature of broadcast rights. Sporting bodies selling these rights are obliged to deal with the free-to-air broadcasters, who then negotiate with subscription television operators. Given that subscription content providers are prevented from competing in an already

¹¹²Brendan Moylan, "Media Policy and Anti-siphoning", *Communications Law Bulletin*, 1997, Vol 16 No 3, pg 16

¹¹³ASTRA submission on the Broadcasting Legislation Amendment (Media Reform Bill) 2016, 21 March 2016

limited market, this reduction in competition is substantial. The provisions reinforce the market power of the small number of free-to-air broadcasters when they deal with event organisers for broadcast rights inhibiting competition and reducing the potential benefits for these sporting bodies of exclusive rights."¹¹⁴

- 18 The anti-competitive nature of the anti-siphoning scheme was further highlighted by the Australian Competition and Consumer Commission which commented:

"The Commission has previously expressed some concerns about the current anti-siphoning regulations. It is concerned that by giving FTA broadcasters almost exclusive rights to the listed programming, the anti-siphoning list has substantial anti-competitive effects and is more intrusive than is necessary to achieve the policy objective of ensuring key sporting events are available to viewers on FTA television. Therefore, there is a need to assess whether the public benefits derived from the current anti-siphoning regime outweigh the anti-competitive effects of that regime."¹¹⁵

- 19 As regards the devaluation of the broadcast rights, the Productivity Commission stated:

"The anti-siphoning mechanism is likely to distort the relative prices of broadcast rights to listed and non-listed events. Free to air networks face limited competition when bidding for rights to listed events, with subscription operators excluded from negotiations. Thus prices for these rights could be less than those for non-listed events, where both types of broadcasters bid competitively; that is the price of listed events relative to non-listed events is reduced."¹¹⁶

¹¹⁴Productivity Commission, *Broadcasting Inquiry Report*, 3 March 2000, pgs 435-436

¹¹⁵Australian Competition and Consumer Commission, *Emerging market structures in the communications sector: A report to Senator Alston, Minister for Communications, Information Technology and the Arts*, June 2003, pg 72

¹¹⁶Productivity Commission, *Broadcasting Inquiry Report*, 3 March 2000, pg 438

ICASA should not follow the Australian approach

- 20 It appears that notwithstanding the extensive criticism of the Australian approach, ICASA has drawn, to some extent, on the approach in Australia, which prevents a subscription television broadcasting licensee from acquiring a right to televise a listed event unless a free to air television broadcaster has a right. This seemingly informed aspects of the Group A proposals in the Draft Regulations. MultiChoice therefore requested Mr Jon Marquard, an Australian expert, to provide an Australian perspective, which is attached as Annexure C. Mr Marquard has cautioned against the approach in the Draft Regulations, given the serious negative consequences experienced in Australia.
- 21 It is noteworthy that the Draft Regulations proposed by ICASA are even more onerous than the Australian system. The ACMA has confirmed that "*the anti-siphoning scheme does not:*
- 21.1 *reserve the broadcast rights to listed events solely for free to air broadcasters;*
 - 21.2 *oblige free to air broadcasters to buy the rights to events on the list;*
 - 21.3 *guarantee free to air broadcasters exclusive rights to events on the list;*
 - 21.4 *compel free to air broadcasters that acquire the rights to listed events to broadcast the events live, in full or at all.*"¹¹⁷
- 22 A further significant consideration is that there is extensive direct and indirect public funding of sport in Australia, as a result of which Australian sport is, in general, better resourced.
- 22.1 Sports funding is separately administered at the Federal and State levels of government in Australia.

¹¹⁷Sport anti-siphoning, ACMA, last updated 16 April 2018 (<https://www.acma.gov.au/Industry/Broadcast/Television/TV-content-regulation/sport-anti-siphoning-tv-content-regulation-acma>)

- 22.2 The Australian Federal Government has budgeted A\$230 million (approximately R2,34 billion) in sport and physical activity initiatives over five years. Federal Government funding is principally through funding of the Australian Sports Commission, which in turn funds sporting organisations, athletes, schools and other physical activity organisations. Accordingly, this funding is not directed towards national sporting events or the sporting bodies that control major sporting events, instead it is concentrated on elite athletes and grassroots and feeder and disadvantaged sporting bodies.
- 22.3 In addition, State Government one-off funding support is provided from time to time for particular sporting events such as the last Commonwealth Games (Queensland Government) and Motor Grand Prix (Victoria), with this funding generally justified on the basis of tourist revenue to be derived by businesses in that State from visitors attracted to the State in which the event will be held. The NSW Government last year contributed A\$500,000 "to fund the richest dog race in the world" - the "Million Dollar Chase", staged at Wentworth Park in October 2018. The money came from NSW's Community Development Fund (CDV) — which is made up from unclaimed gaming cash. There is also significant State Government funding support of some horse racing events, justified again on the basis of boost to tourism and also Government returns from taxes on gaming revenue.
- 22.4 There is significant indirect funding support through State Government funding of building of major stadia used to host national sporting events. Almost all major stadia in Australia have been built with significant Government funding support. These venues are then operated by public trusts and hired out for events at rates which reflect and recover operating costs but which do not recover costs of capital in building the venue. Typically, stadia focus on one or two sports, which in Australia may see the facility used for around 50 days per year. The net effect is substantial hidden subsidy from Government to the sporting bodies that are the principal users of big sporting venues,

through below cost hiring of the venue for sporting events hosted by those sporting bodies, most notably Australian Rules Football (ARL), Australian Rugby League (ARL), the Australian Rugby Union (ARU) and Cricket Australia.

- 23 In contrast, South African sports bodies are heavily reliant on the revenue they derive from the sale of their sports broadcasting rights. The South African government is not in a position to step in to offset any funding gaps that would arise from inappropriate regulation. As a result, the consequences of disproportionate regulation of sports broadcasting rights would be felt more severely by sports bodies in South Africa.

ICASA's Current Regulations accord with international best practice

- 24 We are of the view that the Current Regulations fall in the middle of the two extremes outlined above and largely accord with the balanced approach adopted in the EU.



**ICASA SPORTS BROADCASTING SERVICES AMENDMENT
REGULATIONS: AUSTRALIAN PERSPECTIVES AND
EXPERIENCE WITH LISTED SPORTING EVENTS**

March 2019

Introduction and Summary

Australia has an ongoing listed events scheme which has been operating for more than 25 years. That scheme has been regarded as the most severe in the world. In the light of ICASA publishing draft proposed regulations (the **Draft Regulations**) to apply to an amended scheme in South Africa, this report has been commissioned to provide insight into some of the perverse and unforeseen consequences that are likely to occur if the Draft Regulations are implemented.

This report details how the Australian scheme operates, the many structural problems inherent in the Australian system, and summarises how it has been amended over time to redress some of the arbitrary and inequitable outcomes resulting from the operation of the Australian system. It draws on the author's experience as a senior media executive in free television, pay television, digital and online media, and as a buyer and seller of broadcast television sports rights, to outline some fundamental concerns and issues with the Draft Regulations as currently proposed. Finally it explains why the Australian Scheme is not a model that South Africa should follow.

1. Outline of the Australian Broadcasting Sector

- 1.1. The Australian broadcasting sector is made up of a number of different participants across free-to-air television, pay TV and online and OTT operators. Australia has historically had a strong and vibrant television industry and it is one which continues to attract significant viewership from the Australian public. Each of the participants are summarised below.
- 1.2. The free-to-air broadcasters (the "**FTA TV Broadcasters**") have been operating for more than 60 years and comprise two distinct types of operators:
 - The three commercial TV networks (the Seven, Nine and Ten networks) which derive their main source of funding from commercial advertising. In the most recent full year, the networks announced broadcast advertising revenue of A\$2.86 billion¹ (USD2 billion) with \$92 million of revenue for broadcast video on demand advertising.

¹ <https://thinktv.com.au/news/media-releases/total-tv-ad-revenue-grows-june-half-full-year-2017-18/>

- The two public broadcasters (the ABC and SBS) which derive almost all of their funding from government grants. These are typically allocated on three year cycles. In the current environment, the ABC will receive approximately AUS\$3.1 billion (USD2.2 billion) in the three years to 2018/19 to fund its operations.² Separately, SBS is due to receive approximately A\$272 million in 2018/19 for its services.³ Both the ABC and SBS also receive additional individual grants totalling millions of dollars each year to assist with a range of other services they provide such as local news and current affairs, and to maintain the quality and delivery of their television, radio and online services.⁴
- 1.3. The pay TV operators, which include Foxtel and FetchTV. Pay TV started in Australia in the mid 1990s. Pay TV derives most of its revenue from subscription services but also takes advertising. Pay TV invests a significant amount into Australian screen content, reporting that in 2016–17 the subscription television industry invested a record A\$918 million in Australian screen content (including drama and other genres).⁵ In the same year, Fox Sports reported that it had invested more than A\$400m into the acquisition, production and transmission of sporting content.⁶ Pay TV penetration is approximately 28% of Australian households.⁷ This figure has been largely static for approximately 10 years.
 - 1.4. Subscription Video On Demand (SVOD) services, such as Netflix and Stan. The SVOD operators have been particularly successful since their launch in 2015, with Netflix estimated to have more than 4m subscribers⁸ and Stan reporting more than 1.5m subscribers.⁹
 - 1.5. Telecommunications companies that have broadened their services in recent years to acquire rights to audio-visual content and distribute that content to both their own customers and non-customers. Australia's largest telco Telstra has acquired mobile and online TV rights to a range of sports and has created specific sports apps which offer live streaming, and VOD content. Telstra has also expanded into the distribution business,

² Australian Government, *Budget measures: budget paper no. 2: 2016–17 p70*

³ *ibid*

⁴ *Portfolio budget statements 2016–17, Communications and Arts Portfolio*, p. 323,

⁵ Foxtel and Fox Sports Response to the Australian Competition and Consumer Commission's Digital Platforms Inquiry Issues Paper April 2018.

⁶ *ibid*

⁷ Newscorp Quarterly Release Earnings Feb 2019, Janez Media Research

⁸ Janez Media Research, Venture Consulting, Media Reports

⁹ NEC Quarterly Results, Feb 2019

providing a bundled TV service called Telstra TV accessed through a media streaming player. Australia's second largest telco, Optus offers both a pay TV service through Fetch TV and also produces and distributes an OTT service Optus Sport,¹⁰ offering live football including the UEFA Champions League, FIFA football events, the English Premier League and UEFA national team matches.

- 1.6. It is important to note that the television ecosystem in Australia is supported and sustained on an ongoing basis by both non-government funding (subscription and advertising) but also government support through:
- 1.6.A. Triennial grants to the ABC and SBS as outlined above, together with one-off payments to those entities from time to time for specific initiatives.
 - 1.6.B. government rollback of licence fees payable by the commercial TV Broadcasters. From 2010 to 2016, there were a number of reductions in these fees. The argument put forward by the broadcasters for reducing fees was that it would help counter 'the significant financial pressures faced by commercial television stations as a result of emerging and convergent technology' and an 'increasingly challenging operating environment'.¹¹
 - 1.6.C. The government subsequently totally abolishing licence fees payable by the FTA TV Broadcasters in 2017, and replacing it with a fixed spectrum licensing fee. In total this change resulted in a windfall for the commercial FTA TV Broadcasters who together had to pay a fee of approximately A\$40m p.a. instead of \$130m which they had previously been paying.¹²
 - 1.6.D. Government payments to support the televising of women's and underserved sport. In 2017 the government announced that it would pay Fox Sports a fee of A\$30m over four years to support the production and broadcast of these sports.¹³
- 1.7. As can be seen from these measures, the Australian government not only provides significant direct financial measures to support and enable the continued investment of Australian broadcasters in a range of content areas, it also has taken active steps to improve the operating environment of broadcasters. Each of these areas cannot be viewed in isolation, but should be considered interdependent of each other, including the way in which the Australian Scheme operates and how broadcasters acquire rights to and produce

¹⁰ <https://sport.optus.com.au/>

¹¹ [Explanatory Memorandum](#), Television Licence Fees Amendment Bill 2013

¹² https://www.communications.gov.au/sites/g/files/net301/f/factsheet_broadcasting_-_moving_to_more_efficient_broadcasting_fees.pdf

¹³ <https://www.communications.gov.au/what-we-do/television/broadcast-and-content-reform-package>

events which are listed. A significant change in one area can have flow on effects throughout the whole Australian broadcast ecosystem.

- 1.8. Equally as relevant, Australia's sporting federations are relatively well funded, through a variety of sources including sponsorship, government support made through a range of direct and indirect measures, as well as broadcasting revenue. This creates an environment which ensures that sporting federations in Australia can continue to thrive and grow, even though they stand to lose out on significant financial upside if their events are included in the Australia anti-siphoning scheme.

On the other side of the coin, as the sections above illustrate, Australian broadcasters have the ability to make long term investment decisions in the areas of sports and can also meet any contractual obligations they make. My understanding is that this is not necessarily the case in South Africa at the current time, where FTA TV Broadcasters do not have the resources or free capital available to make long-term and financially expensive investments in sports content and broadcasting. In particular, I am aware that the SABC is currently under significant financial strain¹⁴. Imposing a regime such as that contemplated by the Draft Regulations in this context would appear to be incredibly risky and would probably cause third party sporting bodies to require the SABC to provide bank guarantees or other forms of financial security before concluding licence agreements, which could further imperil its ability to meet its contractual obligations.

- 1.9. All these matters are finely balanced though, and the Australian government is very conscious that if it were to change the Australian scheme to further penalise a sport, say by adding events to the list, that it will have serious financial impacts for that sport and its participants and stakeholders. For this reason, the government is now very wary about adding events to the list in Australia, and the trend is to remove events from the list rather than add events to the list.

2. History and Overview of the Australian Listed Event Scheme to Date

- 2.1. The Australian anti-siphoning scheme (the **Australian Scheme**) has been a feature of the Australian broadcasting industry for 25 years. Originally established in 1994, the scheme protects FTA TV Broadcasters in the way that they can acquire rights to a long list of

¹⁴ <https://mg.co.za/article/2019-03-12-sabc-risks-factual-insolvency-by-end-of-march-parliament-hears>

specified sporting events, thereby skewing the market in their favour in how those rights are acquired and ultimately broadcast.

- 2.2. The Australian Scheme was devised at a time when pay TV was not actually operating in Australia and the FTA TV Broadcasters were the only significant voices in the policy debate that took place to consider how it should operate.
- 2.3. At the time the Australian Scheme was being considered there was some public concern in Australia that events which had traditionally been shown on free-to-air television (**FTA TV**) would migrate to pay TV when pay TV started. This fear was used by the FTA TV Broadcasters to argue for a very extensive and one-sided regime to be implemented in Australia. Each of the FTA TV Broadcasters and their industry lobby group used their power and position to influence the government and the public to ensure that the Australian Scheme was implemented in a way which maintained the FTAs' own dominant position at that time, and ensured that pay TV would have significant hurdles to overcome in order to attract and maintain subscribers.
- 2.4. The primary argument advanced by FTA TV Broadcasters was (and continues to be) that siphoning disadvantages the viewing public and that people should not have to pay in the future for sporting events they already view for free.
- 2.5. The commercial FTA TV Broadcasters proposed an extremely broad list of events they suggested should be on the list, and included on it a number of events which the FTA TV Broadcasters had never actually broadcast regularly or in full.¹⁵ The government of the day did not properly analyse that list or the potential impact that gazetting such a broad list would have, and that resulted in the Government approving a very broad list, one which has regularly been described as the longest and most draconian in the world. It included (and still includes) a number of key domestic events which have never been broadcast by the FTA TV broadcasters, and also a whole range of international events which were not similarly regulated even in their host country.
- 2.6. The broad nature of the list and the competitive distortions it afforded to the FTA TV Broadcasters soon attracted significant criticism from the public, sports bodies, and regulatory bodies, all for different reasons. Some of those criticisms are outlined in Section 2.8 and following below.
- 2.7. The original Australian List shows the danger of “overreach” in legislative instruments in this area. The original list included:

¹⁵ Australian Broadcasting Authority (ABA), *Pay TV 'siphoning' investigation: report to the Minister for Communications and the Arts*, May 1994

- 2.7.A. events which had never been shown on Australian television- for example outer court or early round matches at major international tennis tournaments
 - 2.7.B. events which only received occasional coverage on Australian television because no free-to-air broadcaster acquired the rights- for example the Hong Kong Sevens rugby tournament and every match played during the United States Open tennis tournament. For other events, the competition itself was not held, as was the case with the Australian Masters golf tournament, yet it was still listed.
 - 2.7.C. events which did not involve Australian participants and therefore could not reasonably be said to be events of national interest, for example the FA Cup
 - 2.7.D. events which were actually created for and by Pay TV, or with their primary financial support- for example the rugby league Super League competition.
- 2.8. Australian domestic sports bodies have consistently opposed the Australian Scheme and have objected to their sports being included on the List on the basis that the Scheme restricts the way they can approach partnership relationships with broadcasters and noting that they are best positioned to determine the appropriate outcome for their sport, including ensuring widespread exposure through FTA television where practicable.¹⁶
- 2.9. The pay TV sector has been strident in its opposition to the way in which the Australian Scheme operates and has repeatedly pointed out the distortions that result from the way it has to acquire rights, as well as the way the rules only apply to it and are not technologically neutral.¹⁷
- 2.10. In addition, several inquiries have commented on the anti-competitive nature of the Australian Scheme. As far back as 2000, the Productivity Commission (**the Commission**) considered the scheme in detail, as part of a report to advise the government on practical courses of action to improve competition, efficiency and the interests of consumers in broadcasting services.¹⁸ The Commission was required to focus particular attention on balancing the social, cultural and economic dimensions of the public interest and categorised the Australian Scheme as giving free-to-air broadcasters ‘a competitive advantage’ over pay TV broadcasters and increasing their revenue. Additionally, it disadvantaged sport organisations by decreasing their negotiating power in marketing their products.

¹⁶ A concise summary of sporting bodies positions is contained in Productivity Commission Annual Review of Regulatory Burdens on Business Social and Economic Infrastructure Services (2009) @ page 128

¹⁷ See for example ASTRA, FOXTEL and Fox Sports submissions to various inquiries 2000-2009

¹⁸ Productivity Commission Inquiry Report into Broadcasting March 2000

- 2.11. The Commission was also disturbed that there were no transparent criteria under which sports were chosen for inclusion on the anti-siphoning list. For instance, some sports which at the time attracted strong viewer interest on television, such as swimming and athletics, were not on the list, while overseas events such as the Hong Kong Rugby Union Sevens, which attracted little viewer interest, were listed.¹⁹
- 2.12. The Commission noted with great prescience that “There is some evidence that the anti-siphoning rules can have perverse effects, reducing rather than increasing total consumer access to broadcast sport. They harm sporting organisations and impose a significant competitive disadvantage on subscription broadcasters. Further, the provisions will become less effective as the boundaries between media break down and convergence proceeds.”²⁰
- 2.13. The Commission also found other provisions within the Scheme were also problematic and felt, correctly, that if the list were shorter, the problem of hoarding, by which FTA TV Broadcasters were not showing events they acquired, would consequently diminish.
- 2.14. The Commission again reviewed the Scheme in its annual review of regulatory burdens on business in 2009 and was even more critical.²¹ It saw anti siphoning as “a blunt, burdensome instrument that is unnecessary to meet the objective of ensuring wide community access to sporting broadcasts”. The Commission again considered anti - siphoning “inherently anti-competitive”. It found that the Scheme also had negative impacts on sporting bodies, because it reduced the bargaining power of these organisations and probably distorted the relative price of broadcast rights of listed events relative to that of non-listed events, thereby potentially reducing the price received by sporting organisations if their events were listed.
- 2.15. It believed that shortening the list would alleviate some of the problems it had identified and added that the option to abolish the list should also be explored.
- 2.16. The Australian Competition and Consumer Commission (the **ACCC**) which is the Australian competition regulator, has also considered the Australian Scheme on a number of occasions and reached similar conclusions. Its position was first fully articulated in a report looking at future technological opportunities in 2002 when it came to the view that “the anti-siphoning list has substantial anti-competitive effects and is more intrusive than is necessary to achieve the policy objective of ensuring key sporting events are available

¹⁹ Ibid Chapter 12

²⁰ Ibid page 29

²¹ Productivity Commission 2009 report op.cit section 4.6

to viewers on FTA television.” It recommended a thorough review of the scheme and the way it operated. The ACCC has raised similar concerns in a number of inquiries since that time, and has not changed its view that the scheme has substantial anti-competitive effects.

- 2.17. A few years ago, in late 2010, the Australian government announced that it would look to re-shape the Australian Scheme in a much more meaningful way. The complexity of what it proposed meant that it took until 2012 before those changes were included in draft legislation.²² Those amendments included:
- 2.17.A. Splitting the listed events into two separate Tier A and Tier B lists. Tier A was to include what were termed “nationally iconic events” such as the Melbourne Cup and the finals matches only of major international and domestic competitions. Tier B of the list would include regionally iconic and nationally significant events (such as the round and preliminary matches of international and domestic competitions).
 - 2.17.B. Imposing different coverage obligations on the FTA TV Broadcasters dependent on whether the event was listed as Tier A or Tier B. Tier A events would need to be shown live and in full by the FTA TV Broadcasters while “Tier B” events would have to be shown in full, on no more than a four hour delay.
 - 2.17.C. some additions and some deletions to the actual events listed;
 - 2.17.D. a proposed increase of the automatic delisting provisions; and
 - 2.17.E. the introduction of “must offer” obligations to other broadcasters for listed events if events were not going to be shown live or in full.
- 2.18. These proposed changes in the Bill attracted immediate and sustained criticism from all parties:
- 2.18.A. Pay TV providers argued that the rules would impose further uncertainty and pointed out that the Bill also contained 19 separate discretionary powers for the Minister and that each of those had the potential to substantively alter the scope and effect of the anti-siphoning scheme.²³ The Foxtel submission was particularly strident noting that the Bill would create significant uncertainty for the industry in relation to the acquisition of sports rights and that “the regulatory uncertainty created by the Bill has the inevitable effect of reducing the value of

²² <https://www.legislation.gov.au/Details/C2012B00058>

²³ ASTRA Submission to the Senate Environment and Communications Legislation Committee, *Inquiry into Broadcasting Services Amendment (Anti-siphoning) Bill 2012*, 4 April 2012

sports rights. This has flow-on effects, ultimately including to the grass-roots sporting codes which support Australian communities”.²⁴

2.18.B. Sports organisations also had a range of concerns with some such as the IOC declaring that parts of the Bill could be “unworkable”, while the AFL, NRL and Cricket Australia all stated that they had serious reservations with various aspects of the Bill²⁵.

2.18.C. The FTA TV Broadcasters were troubled too by a number of aspects in the Bill, including the interaction of the proposed live broadcast obligations and the must offer regime.²⁶ As FreeTV pointed out in its submission “Overall, the provisions do not reflect commercial and industry practice and are overly prescriptive. As such, they do not provide for a process that could actually be followed in practice, meaning that this is not a real and possible alternative for broadcasters”

2.19. Ultimately the way in which the changes were proposed, and the uncertainty attached to them, meant that no-one was going to be satisfied. Despite the government keeping the Bill alive for some time, nothing came of it and after being in limbo for almost two years, the government shelved the Bill, and the requirement for an FTA must broadcast “live and in full” regime never went ahead and has not been proposed as a remedy since that time.

2.20. During the past 25 years, the government has periodically amended the Scheme, by removing or adding some events and by progressively increasing the automatic delisting period. It is fair to summarise the changes that have been made as only being incremental and irregular, with the government only taking action to alter the scheme on a few occasions, although it has had to make one-off changes to delist specific events on numerous occasions in the past.

2.21. The most recent changes occurred in 2017 with the three main reasons for these changes being:

²⁴ Foxtel Submission to the Senate Environment and Communications Legislation Committee, *Inquiry into Broadcasting Services Amendment (Anti-siphoning) Bill 2012*, 4 April 2012

²⁵ Sports Bodies submissions to the Senate Environment and Communications Legislation Committee, *Inquiry into Broadcasting Services Amendment (Anti-siphoning) Bill 2012*, 4 April 2012

²⁶ FreeTV Submission to the Senate Environment and Communications Legislation Committee, *Inquiry into Broadcasting Services Amendment (Anti-siphoning) Bill 2012*, 4 April 2012

- 2.21.A. The government accepting that some aspects of its operation were outdated and were adding to the regulatory burden on business, without providing any particular benefit to the Australian public.
 - 2.21.B. The list being too long and covering too many events, some of which were not iconic or nationally significant
 - 2.21.C. To remedy the reality that the FTA TV Broadcasters were not actually broadcasting all events on the list and that the way the scheme operated was actually impeding the broadcast of those events.²⁷
- 2.22. Despite these changes, the Australian Scheme still essentially operates in a similar way as it has always done, and the list itself is still incredibly long by international standards. The biggest policy issue is still that a number of listed events are not being shown. For example, in 2018/19 despite being listed, the following events were not shown on FTA Television:
- 2.22.A. All ODI cricket matches played in Australia between Australia and India
 - 2.22.B. All T20 international cricket matches played in Australia between Australia and India
 - 2.22.C. 4 games each round of the 2018 NRL premiership
 - 2.22.D. 5 games each round of the 2018 AFL premiership
 - 2.22.E. The majority of matches played during the Australian Open tennis tournament.

3. Practicalities: How the Australian Scheme Operates and other mechanisms that have been introduced or considered for reform in Australia

- 3.1. The Australian Scheme operates by attaching a licence condition to a pay TV operator preventing that operator from acquiring the rights to sporting events on the anti-siphoning list until those events are acquired by a free-to-air broadcaster, or are removed from the list.
- 3.2. The current list is made up of 11 different types of sports and comprises more than 1700 actual “individual” events.²⁸ Not all events or tournaments are held each year and the list therefore comprises around 1000-1400 events in any year depending on what tournaments are being held. Simple maths shows that if one assumes that each event is one hour long

²⁷ Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 Explanatory Memorandum

²⁸ Janez Media Analysis 2019. At various times, different figures have been quoted on actual number of events, all ranging from around 1000 to 1800, and depend on which year is being analysed.

(which would be conservative as a football match broadcast is two hours, a test cricket match significantly longer etc) the FTA TV Broadcasters would together have to devote 10,000 -14000 hours a year to broadcast every event live and in full. Needless to say, given the other programming they transmit, they do not come close to that quota.

- 3.3. Under the current arrangements, most of the events are held in Australia (for example the Australian Open tennis tournament) or are events played by an Australian senior representative team (for example rugby union test matches played by Australian in Australia or New Zealand). The current list has been in place since 2017 and has been included in full as Schedule B. As outlined above, earlier iterations of the list included more events from overseas or full tournaments rather than just the finals.
- 3.4. The key element to understand about the Australian scheme is also the most misunderstood. Most people believe that the Australian Scheme reserves events for exclusive acquisition by FTA TV Broadcasters and then ensures that those events are shown live and in full. In fact, the Australian Scheme does neither of those things- it merely operates to ensure that FTA TV Broadcasters must be given a **reasonable opportunity to acquire** broadcast rights, and then if those rights are acquired, they **may be, but do not have to be**, exclusive. These elements play out in a number of different ways, particularly in how events end up being broadcast on Australian television but demonstrate a critical point- that is not **because** events are listed on the scheme that they end up being broadcast on FTA Television, but ultimately because the relevant sports organisation and the FTA TV Broadcaster both want that event to be broadcast on FTA Television in a particular way and reach commercial agreement on that outcome.

Automatic Delisting

- 3.5. One very important component of the Australian Scheme which has been introduced over time is the “automatic delisting” mechanism which enables events to be removed if they are not acquired by FTA TV Broadcasters. When the Australian Scheme was first introduced it did not contain any automatic delisting regime. This led to repeated calls that the FTA TV Broadcasters were “gaming” the system and were using the list and the scheme to inhibit the growth of pay television even when they did not intend to acquire the rights or were not able to do so.
- 3.6. While the Australian Scheme has been amended to rectify this, first to provide for an automatic delisting period, and then to lengthen the period before the event when that

occurs (initially 6 weeks, then from 6 to 12 weeks and most recently in 2017 from 12 weeks to 26 weeks), it still appears that the automatic delisting period is too short.

- 3.7. The practical reasons for introducing automatic delisting are due to the realities of broadcasting, firstly that rights are typically bought and sold well in advance of the event, secondly that broadcasters and sports bodies require certainty as far as possible in advance of the date an event is played, and thirdly that broadcasters separately need to plan for the production, transmission and marketing of the event which takes significant time and resources.
- 3.8. There is strong industry based evidence that the majority of sports rights contracts are settled between 12 and 24 months prior to the event taking place. As outlined in Table A below most events are acquired in that period.

TABLE A – LISTED EVENT ACQUISITION PERIOD²⁹

Sport/Event	Deal Completion Date	Period of deal	Live Rightsholder(s)
AFL Premiership	August 2015	2017-2022	Free-to-Air-Seven- 4 games each round Pay TV-Fox Sport 9 games each round
Commonwealth Games	August 2014	2018	Free-to-Air-Seven
Cricket Australia- Tests, ODI, T20 in Australia	April 2018	Nov 2018-2024	Free-to-Air- Seven Tests Pay TV – Fox Tests, ODI T20
Cricket- Tests in UK	November 2013	2015 and 2019	Free-To-Air Nine
Cricket ICC ODI World Cup	Pre 2018	2020	Free-to-Air Nine, Pay TV Fox
Cricket ICC T20 World Cup	Pre 2018	May 2019	Free-to-Air Nine, Pay TV Fox
F1 Melbourne	2017	2018-2022	Free-to-Air- Ten Pay TV- Fox
FIFA World Cup	August 2013	2018, 2022	Free-to-Air- SBS Pay TV- Optus
Football Federation of Australia- Socceroos WCCQ	2012 early rounds 2016- 3 rd round on 2017	2016 2016-2017 2017	Free-to-Air- SBS, Pay TV Fox Free-to-Air Nine, Pay TV Fox One game exclusive to Fox
Melbourne Cup	2018	2019-2022	Free-to-Air- Ten
MotoGP	Oct 2018	Oct 2019-2021	Free-to-Air- Ten, Pay Fox
Netball Australia- World Cup	Nov 2014	August 2015	Free-to-Air Ten, Pay Fox
NRL Premiership	Nov 2015	2018-2022	Free-to-Air Nine 4 games each round, Pay TV Fox 8 games each round
Olympics	August 2014	2016-18-20	Free-to-Air- Seven
Rugby League World Cup	April 2016	Oct 2017	Free-to-Air Seven

²⁹ Janez Media Research

Rugby League State of Origin	Nov 2015	2018-2022	Free-to-Air Nine, Pay TV Fox
Rugby Union Tests in Australia & NZ	Dec 2014	2016-2020	Free-to-Air - Ten, Pay TV Fox
Rugby World Cup	2008 March 2019	2011 + 2015 Sept- Nov 2019	Free-to-Air -Nine 2011 Pay TV Fox Sports 11+15 Free-To-Air Ten, Pay TV Fox
Tennis Australia	April 2018	2020-2024	Free-to-Air Nine
Tennis Davis Cup	April 2018	2020-2024	Free-to-Air Nine
V8	2013	2015-2020	Free-to-Air Ten Pay TV Fox

- 3.9. As Table A illustrates, in Australia, like most parts of the world, sporting rights are generally acquired by a broadcaster well ahead of time. Typically, too, except for one-off events held every few years like a Commonwealth Games, are usually entered into for multiple years, for example an agreement for tennis rights struck in 2019, may be for a period from 2020 to 2024. This means that in some cases rights for events held at the tail end of an agreement are acquired even further in advance. The table above provides good evidentiary support for the automatic delisting period being extended from a 26 week period to a period between 39 weeks and 52 weeks prior to the event taking place.
- 3.10. The automatic delisting provisions operate as an effective informal end-date for negotiations, because both buyers and sellers know that the automatic delisting date is there and could be invoked. While there is a provision for the Minister to re-list or prevent automatic de-listing, in practice, in my experience sellers will always test the waters well before then to see if there is any real interest in their rights by as many buyers as possible and to ensure that FTA TV Broadcasters have had a reasonable opportunity to acquire the rights, so will meet the threshold test. This “backstop” of re-listing an event has not been invoked since it was promulgated in the current form.
- 3.11. Based on my experience, the lack of a well thought through automatic delisting mechanism in the draft Regulations is a strong reason for ICASA to reconsider the Regulations in their entirety. I consider an automatic delisting mechanism to be an essential part of any anti-siphoning scheme. An automatic delisting process also needs to be coupled with other measures to minimise the distortion that a Scheme can cause. Some of those recommended solutions are discussed in section 4 below.

4. Learnings for South Africa from the Australian Experience with its Listed Events Scheme

- 4.1. Both South Africa and Australia have operated listed events schemes for a number of years. The Australian experience can hopefully provide some guidance and insight for South African stakeholders to ensure that the mistakes made in Australia are not repeated. In particular no changes should be made if there is a chance that they will have unintended consequences or impacts that could distort the way in which the television sector operates.
- 4.2. The Australian Scheme has undoubtedly impacted the way sports rights are bought and sold in Australia, and in some cases, as outlined above, have resulted in sports being acquired but then not shown by FTA television, thereby having the opposite effect of one of the underlying bases of the rules, which is to maximise the amount of sport shown on FTA television.³⁰
- 4.3. It is axiomatic that sports bodies need the revenue that broadcasting rights provide. It is also equally true that they have to be equally conscious of overall broad exposure on television, of fan engagement, sponsor needs, and their own desires and charters to grow and enhance the game they are entrusted to lead. This means they will always take into account factors such as the trade-off between revenue and exposure. The Australian Scheme ignores this natural process and acts as a blunt tool to limit the ways that sporting bodies and broadcasters can achieve the best and most balanced outcome for their sport. In my view, South Africa should be extremely cautious about extending the South African scheme in any way which could harm the ability of sporting bodies, and especially local sporting bodies, to make the best decision relating to their particular sport. The observation that sports bodies will consider a range of factors has also been recognised by the Australian competition regulator the ACCC when it has periodically criticised the failings of the Australian Scheme. For example, in 2016 it concluded that it had “found that sporting bodies, when negotiating the sale of sports viewing rights, seek to optimise the overall returns they obtain by balancing audience reach and revenue considerations.... Sporting bodies also aim to balance short-term with longer-term considerations. In the short-term, sporting bodies may forgo some revenue (by selling games or events to a FTA network rather than exclusively to [pay tv]) in order to expand the reach of their sport and

³⁰ See also ASTRA Submission to Review of the Anti-siphoning scheme in 2009 which included a detailed schedule of examples of events not being shown on FTA Television.

thereby build (or maintain) the broad popularity of the sport over time. Over the longer-term, greater popularity will lead to higher ratings and future revenues for their rights.”³¹

- 4.4. One of the most fundamental things that South Africa should do is to be conscious of not making amendments to the list that make the list too long. Australia’s list is already disproportionately long and over time the list has had a net reduction of events included on it rather than being expanded. There are good public policy reasons to ensure the list is not too long and there are also practical considerations to take into account too. The Australian experience shows that the mere inclusion of an event on the list creates a public expectation that the event will be shown live and in full on FTA television, irrespective of whether it can or will actually be acquired by a FTA TV Broadcaster, and then actually programmed live and in full by that broadcaster. In those circumstances, public anger turns not only towards the FTA TV Broadcaster, but also towards the government and the regulator, and criticism of the latter two will undoubtedly increase because the public will regard them at fault as much as the FTA TV Broadcaster. This is another reason to ensure the list in South Africa should only be as long as is strictly necessary.
- 4.5. Flexibility- enable a regulatory environment which can evolve and adapt to industry change over time.
- 4.6. As outlined in section 3.10 above, ensure that any change includes an automatic delisting mechanism with an appropriate specified time period. That will provide some business certainty for all parties- buyers and sellers, the public, the government and broadcasters.
- 4.7. Implement a system that avoids or minimises broadcasters having to seek exemptions from the rules as this does not promote transparency, public faith that the system is working, or provide business certainty. To illustrate this point, from 2006 the government in Australia added extra complexity into the Australian Scheme by permitting the Australian FTA TV Broadcasters to seek exemptions from the way they were required to broadcast listed events on their digital multi-channels.³² Between 2010 and 2016 it was reported that events were delisted on at least 90 occasions, each occasion requiring a submission having to be made and a formal exemption having to be issued by the government.³³

³¹ ACCC Public Competition Assessment 2 March 2016 Foxtel Management Pty Ltd and Ten Network Holdings Ltd - proposed acquisitions

³² The multi-channeling restrictions were introduced into the Australian Scheme in 2006 to prevent consumers who had yet to make the switch to digital television, or for which digital television had yet to be rolled out in their area, from being disenfranchised by listed events being televised on digital-only channels

³³ Regulation Impact Statement Reform of the Anti-Siphoning Regime 16th November 2017 Department of Communications and the Arts

5. Specific Matters raised by the draft Regulations in light of the Australian experience

- 5.1. Given my experience in the sports TV market in both Australia and other jurisdictions and during the past 25 years, and the challenges that have occurred with the Australian Scheme, I am of the strong view that the draft Regulations need to be urgently reconsidered and significant amendments made to them.
- 5.2. The way in which the Draft Regulations are drafted appears to significantly increase the number of events that are listed. Although it is possible the drafters did not intend to, it appears that a fundamental change has occurred and that every match of each of the tournaments or series would be captured rather than those described in existing regulation 4. As demonstrated above from the Australian Scheme, increasing the list size to include events which have not traditionally received FTA Television coverage is something that should be avoided. Put another way, using the example of the Africa Cup of Nations there is undoubtedly a difference in appeal and characterisation of a match involving Bafana Bafana as opposed to a match played between Liberia and Togo. Under the Draft Regulation it now appears that both matches would be included.
- 5.3. The Draft Regulations seek to impose obligations on a FTA TV Broadcaster to transmit Group A events live and in full. As referenced above, this is not part of the Australian Scheme. It was once considered but was then rejected because of the problems that such a requirement would introduce.
- 5.4. The Australian Scheme ensures there is some flexibility to have regard to the overall programming interests of the FTA TV Broadcaster rather than imposing an element of compulsion. While broadcasters in Australia are generally interested in acquiring sports rights because they are inherently popular, this is not open-ended and they need to have regard to other factors, such as other forms of programming, public demand, changing business and socio-economic environment, and levels of support for the sport over time. As an example, in Australia, swimming was once very popular on FTA Television and in fact the Australian Swimming Championship was the highest rating programme outside of the Olympic Games in 2000. Yet, in the past 20 years interest in swimming has waned considerably, and the event now barely registers on the Australian public's consciousness. When the event was popular it was broadcast on FTA television despite it **not** being listed under the Scheme and it is still televised by the Seven network on FTA television. The

point is that being listed does not ensure an event is broadcast, and neither does a lack of being listed mean that it will not be broadcast on FTA television.

- 5.5. Imposing a “must broadcast” approach and a reference to compulsory and “full live” broadcast in Draft Regulation 5.1 regime would simply not work in Australia because it would not be something that the government would have an ability to practically enforce and would also place all the FTA TV Broadcasters in an untenable position with rightsholders who could openly manipulate the system. Rightsholders would be aware that a requirement was in place and could hold the broadcaster to ransom knowing they would be in breach of their licence condition if they did not acquire the rights. In any event, from a policy perspective, the Australian government never seeks to codify exactly what programming is broadcast, it merely sets a policy framework which includes minimum levels or expenditure on things such as Australian content, news, drama and children’s programming, but does not seek to specify what that content is. Such a regime would be rejected in Australia as undue government interference and could lead to claims that the government is interfering with the freedom of the media.
- 5.6. Moreover the Draft Regulations do not appear to distinguish between individual FTA TV Broadcasters and the obligations on them. It is not clear how the Regulations would operate in practice. Would all FTAs be obliged to broadcast all listed events (i.e. would it be a collective obligation) or would the regulations (if adopted) be satisfied if one FTA TV Broadcaster broadcasts the event? The Draft Regulations are silent on this matter
- 5.7. The Draft Regulations also do not provide for any certainty in relation to the obligations to notify pay TV when they do not acquire an event. To illustrate this, proposed Regulation 5.1.2 does not adequately answer any of the following matters:
 - 5.7.A. When is notification to occur? Draft Regulation 6.1 only applies to Group B events but is flawed in any event because it states that notification must occur within 5 days of acquiring or failing to acquire rights. In practical terms, there is rarely a particular date when that occurs and, in many cases, negotiations can taper off without ever being closed out definitively.
 - 5.7.B. How certain does a FTA TV Broadcaster have to be that an event is not going to be acquired and what dictates that approach?
 - 5.7.C. In some cases, it is possible that a notification will not be made due to a dispute on pricing or other elements with a rightsholder or a different interpretation between seller and buyer. Who is at fault here and how would ICASA envisage this working?
 - 5.7.D. To whom and how is the notification requirement to be made?

- 5.7.E. Is a notification irrevocable?
- 5.7.F. What does non-exclusive mean in 5.1.2?

All these elements create uncertainty and difficulties in implementation. The Regulations could have the opposite impact of what they are intended to have.

- 5.8. One element of the Australian broadcasting environment to note is that the FTA TV Broadcasters are relatively well funded as outlined in section 1.2 and are financially able to commit to acquire and broadcast sports events. It appears to me that the Draft Regulations do not address how South African FTA TV Broadcasters will be able to “resource up” to broadcast these sporting events when they are not doing so today. Sports federations typically require significant investments from broadcasters before they will license their rights, and this is most definitely the case with international federations. I believe there is a strong chance that those rights holders will not automatically license those rights for FTA television broadcast if the Draft Regulations are enacted in current form
- 5.9. I also have significant concerns with the way new section 5.2 Group B section is drafted and how events are to be offered to a subscription broadcasting licensee. Elements that create uncertainty and need to be thought through include:
 - 5.9.A. Is it intended that a free-to-air licensee must acquire the rights first?
 - 5.9.B. If so, does that not mean that there are a whole range of back-to-back conditions that will have to be incorporated. For example, IP protection, indemnities, signal security. Will the FTA licensee ultimately be responsible for a breach by pay TV? Will a sports body accept that their property can be transferred in this way? Based on my experience, sports bodies are extremely unwilling to permit licensees to deal with their rights in this way.
 - 5.9.C. If not, what does sub-licensing conditions actually mean- what are the differentials in licensing approach that could be adopted?
 - 5.9.D. What is non-exclusive in this context? Non-exclusive against who and are there any other elements to be incorporated?
 - 5.9.E. Is a single offer sufficient?
 - 5.9.F. What if no subscription broadcasting licensee takes up the offer? What happens to the rights then?
- 5.10. As a separate point, I query whether events in Group B are too generically identified. For example does “Domestic Boxing Tournaments” include every domestic boxing bout, even at junior levels? Does it include a single bout?

- 5.11. There needs to be some objective criteria to assess whether specific events are deemed to be “National Sporting Events” and therefore included in Group A and Group B. Absent those criteria, there will be subjective debate about the relative popularity of events and whether appeal to the majority of the population. Put another way what is the basis for including all the additional sports in Group B and how is it they are given similar equal rankings? Regulation 7 merely says that a stakeholder can apply to the Authority and provide reasons to add or remove a national sporting event.
- 5.12. The Regulations do not appear to factor in the way sports federations who do not operate in South Africa will look at the Regulations and how they will respond. For example, what is to stop an internationally -based organisation deciding not to license their event at all in South Africa or making it available only on a global OTT service, which is only available to the public at a cost. From an international perspective, a licence to OTT will provide far greater certainty than that afforded by the Draft Regulations, and may tip an international sports provider over to doing a regional or territory specific deal as a proof-of-concept. That will have exactly the opposite result that ICASA intends and the sport will reach a much smaller audience than it currently does under the existing framework.
- 5.13. Finally, what is to stop an international sports organisation from demanding a huge premium from SABC or eTV knowing they have a “must broadcast live and in full” obligation. Again, this is not what is intended but could be the result if the Draft Regulations are enacted in current form.

6. Conclusion

The broadcasting operating environments in both South Africa and Australia are changing rapidly.

Historically, there has been a significant amount of focus on the role of FTA television and pay television within each country and the debate has been bounded by territorial limitations. However, in the context of listed event schemes, both countries now operate in an increasingly global market with sports bodies strategically thinking about their sports on a global and pan-regional basis rather than territory by territory.

This has coincided with substantial growth in internet focused businesses such as SVOD players like Netflix and Amazon Prime, and digital platforms such as Google and Facebook. The increasing role these businesses play has significant ongoing implications for domestic based media content creators, advertisers and consumers as well as regulators.

Changes to listed events schemes need to be considered in this context- there are important questions to be asked about the potential long-term impacts that any changes could have and whether they will inadvertently up-end the entire broadcasting system on which they are based and indeed, the sports industry.

Changes to the Australian Scheme over the past 25 years have been infrequent and incremental. Pay TV participants continue to argue that the Australian Scheme unfairly impedes them and protects FTA Television, while FTA TV Broadcasters consistently claim that the system is both necessary and works efficiently.

While this lack of regular change has led to ongoing criticism, it has also meant that market participants (sports bodies, FTA TV and pay TV) have all had to forge an ongoing working solution to operate within its confines. Pay TV in Australia continues to be the major financial contributor to sports bodies in Australia, acquiring a range of exclusive rights, and rights that are shared with FreeTV. FreeTV also invests significantly in its own right, and not only acquires rights to listed events, but also to sports events that are not listed. Importantly though, both pay TV and Free TV are willing to pay an exclusivity premium for exclusive rights, which benefits federations significantly, as the money paid by broadcasters flows through to their stakeholders and is inevitably reinvested in the sport.

From an outsider's perspective it is therefore alarming to perceive how the Draft Regulations could potentially impact on both the pay TV operating environment and entire South African sports ecosystem.

Applying similar principles to those operating in Australia, by significantly expanding the length of the List and preventing pay TV from acquiring exclusive rights, pay TV will lose its incentive to invest in local sport and will therefore need to radically change its business model.

However, in my experience that will not automatically mean that those events will then be shown on FTA Television. In fact, it is far more likely that many international and domestic events will not be shown at all, and many domestic sports would have to curtail their operations dramatically as they would lose their major source of revenue. Conversely, international based events are likely to be acquired by overseas based OTT services or other new entrants who would have to scale up to achieve the distribution currently enjoyed by pay TV and FTA TV licensees.

For these reasons, I believe that the Draft Regulations should urgently be withdrawn, to enable ICASA to revisit the proposed approach and come up with reforms that are less likely to unintentionally up-end the current operating environment

I would be happy to discuss any of the elements included in this report or my recommendations directly with ICASA members, to answer any questions about the Australian Scheme and to demonstrate how the Australian experience can assist ICASA with its ongoing deliberations and review

Jon Marquard
CEO and Director
Janez Media
March 2019

Appendix A- Jon Marquard and Janez Media

Jon Marquard currently leads an independent media and digital advisory and consultancy practice called Janez Media which has been operating since 2013.

Janez Media's practice incorporates media and digital consultancy and advisory projects working closely with CEOs and senior executives, board members and other specialists in the content, digital, technology, media and telecommunications sectors.

Janez Media's expertise extends across Free-to-air television, pay television, international and domestic sporting bodies, OTT networks and SVOD platforms, telcos and international media organisations.

Janez acts or has acted for a range of Australian and Asian Free-to-air television networks, international sporting bodies including SANZAAR (comprised of South African Rugby Union, New Zealand Rugby, Rugby Australia and Rugby Argentina), MLB, telecommunications companies in the Middle East and Asian regions, pay TV aggregators and pay TV networks.

Janez Media is intimately and directly involved in the acquisition of premium sports rights so is at the forefront of ongoing trends and strategic thinking in relation to these matters.

Prior to establishing Janez Media, Jon was the Chief Operating Officer of the Ten Network in Australia. In that capacity Jon oversaw a number of business units, including the sports department, was responsible for the acquisition of all sports rights for the network, and also was the board representative on the Australian industry bodies, FreeTV (which represented the commercial networks regulatory and policy interests with oversight of the Australian Scheme), FreeView (which had all five FTA networks as its members) and the Interactive Advertising Bureau (IAB) which represents media advertising funded bodies.

Jon has also held the position of Chief Operating Officer at Fox Sports, which is Australia's largest sports pay TV aggregator and distributor, from 2003-2011. In Jon's role there, he oversaw all legal, policy and regulatory matters, and negotiated sports rights for a variety of listed sports event with a number of sports rights bodies and the FTA TV networks. At Fox Sports Jon was also a board member of ASTRA, the pay TV industry body responsible for the industry's policy and regulatory affairs, including full oversight of the Australian Scheme.

Schedule B – Current Australian Anti-Siphoning List operating March 2019

Broadcasting Services (Events) Notice (No. 1) 2010.

The events specified in the Schedule are events, or events of a kind, the televising of which should, in my opinion, be available free to the general public.

Schedule**1 Olympic Games**

- (1) Each event held as part of the Summer Olympic Games, including the Opening Ceremony and the Closing Ceremony.
- (2) Each event held as part of the Winter Olympic Games, including the Opening Ceremony and the Closing Ceremony.

2 Commonwealth Games

Each event held as part of the Commonwealth Games, including the Opening Ceremony and the Closing Ceremony.

3 Horse racing

Each running of the Melbourne Cup organised by the Victoria Racing Club.

4 Australian rules football

Each match in the Australian Football League Premiership competition (including the Finals Series).

5 Rugby league football

- (1) Each match in the National Rugby League Premiership competition (including the Finals Series).
- (2) Each match in the National Rugby League State of Origin Series.
- (3) Each international rugby league test match that:
 - (a) involves the senior Australian representative team; and
 - (b) is played in Australia or New Zealand.
- (4) Each match of the Rugby League World Cup that:
 - (a) involves the senior Australian representative team; and
 - (b) is played in Australia, New Zealand or Papua New Guinea.

6 Rugby union football

- (1) Each international test match that:
 - (a) involves the senior Australian representative team selected by the Australian Rugby Union; and
 - (b) is played in Australia or New Zealand.
- (2) Each match of the Rugby World Cup tournament that involves the senior Australian representative team selected by the Australian Rugby Union.
- (3) The final of the Rugby World Cup tournament.

7 Cricket

- (1) Each test match that:
 - (a) involves the senior Australian representative team selected by Cricket Australia; and
 - (b) is played in Australia.
- (2) Each test match that:
 - (a) involves both:
 - (i) the senior Australian representative team selected by Cricket Australia; and
 - (ii) the senior English representative team; and
 - (b) is played in the United Kingdom.
- (3) Each one day cricket match that:
 - (a) involves the senior Australian representative team selected by Cricket Australia; and
 - (b) is played in Australia.
- (4) Each Twenty20 cricket match that:
 - (a) involves the senior Australian representative team selected by Cricket Australia; and
 - (b) is played in Australia.

- (5) Each match of the International Cricket Council One Day International World Cup that:
 - (a) involves the senior Australian representative team selected by Cricket Australia; and
 - (b) is played in Australia or New Zealand.
- (6) The final of the International Cricket Council One Day International World Cup if the final is played in Australia or New Zealand.
- (7) Each match of the International Cricket Council World Twenty20 tournament that:
 - (a) involves the senior Australian representative team selected by Cricket Australia; and
 - (b) is played in Australia or New Zealand.
- (8) The final of the International Cricket Council World Twenty20 tournament if the final is played in Australia or New Zealand.

8 Soccer

- (1) Each match of the Fédération Internationale de Football Association World Cup tournament that involves the senior Australian representative team selected by the Football Federation Australia.
- (2) The final of the Fédération Internationale de Football Association World Cup tournament.
- (3) Each match in the Fédération Internationale de Football Association World Cup Qualification tournament that:
 - (a) involves the senior Australian representative team selected by the Football Federation Australia; and
 - (b) is played in Australia.

9 Tennis

- (1) Each match in the Australian Open tennis tournament.
- (2) Each match in each tie of the International Tennis Federation Davis Cup World Group tennis tournament that:
 - (a) involves an Australian representative team; and
 - (b) is played in Australia.
- (3) The final of the International Tennis Federation Davis Cup World Group tennis tournament if the final involves an Australian representative team.

10 Netball

- (1) A semi-final of the Netball World Cup if the semi-final involves the senior Australian representative team selected by the All Australian Netball Association.
- (2) The final of the Netball World Cup if the final involves the senior Australian representative team selected by the All Australian Netball Association.

11 Motor sports

- (1) Each race in the Fédération Internationale de l'Automobile Formula One World Championship (Grand Prix) held in Australia.
- (2) Each race in the Fédération Internationale de Motocyclisme Moto-GP held in Australia.
- (3) Each Bathurst 1000 race in the V8 Supercars Championship Series.

ANNEXURE D: SUPERSPORT'S CONTRIBUTION TO SPORT

THE NUMBER ONE SPORTS BENEFACTOR

- 1 SuperSport is a wholly-owned subsidiary of MultiChoice and the vehicle through which MultiChoice makes its unrivalled contribution to sport in South Africa.
- 2 MultiChoice makes a significant investment in sport (estimated to be approximately R2 billion per annum) making it the biggest investor in, and contributor to the growth and development of sport in South Africa and a major contributor on the rest of the continent.
- 3 SuperSport is an integral part of South Africa's sporting fabric. It contributes to sport in various ways.

A TRUE BROADCAST PARTNER

- 4 SuperSport has offered the nation a sporting voice. SuperSport lives for sport and strives for sporting excellence.
- 5 SuperSport believes in creating a true partnership between the sports body and the broadcast partner. When SuperSport acquires broadcast rights from a sports body, it not only produces all of its sporting events and ensures that they are televised on one of the SuperSport channels, but also commits to develop and promote the sport.
- 6 Its sports production is world class, and it adds value in numerous ways, including magazine programming and expert commentators. Once SuperSport becomes involved, it usually increases the number of cameras it uses at each match and improves the production quality. These endeavours not only increase the exposure of the sport and benefit viewers, but also benefit the sports body. SuperSport pays fair value for the rights and invests heavily in promoting and marketing the sport's various events, attracting eyeballs and popularising it.
- 7 In 2013 SuperSport made a conscious decision to invest in less popular sporting codes that had struggled to attract corporate funding, broadcast airtime and sponsorships. Netball, basketball, hockey and volleyball have been the major

beneficiaries of this initiative. Aside from the direct financial investment by SuperSport, these sporting codes now enjoy the unprecedented benefits of live broadcasts of their national leagues.

- 8 The results are plain to see. Before SuperSport stepped in to partner with these sports bodies, they had severe financial constraints, no or minimal exposure on television, and little prospect of building successful national teams.
- 9 For example, for many years Netball was not broadcast free to air. The SABC had acquired the exclusive broadcast rights from Netball SA, but its broadcasting was limited to a magazine programme broadcast once a week on a Sunday afternoon. The SABC did not broadcast netball matches, despite having acquired the rights. Even this limited broadcasting by the SABC ended in 2008, leaving netball without any broadcast partner.
- 10 When the former Minister of Sport and Recreation, Fikile Mbalula, in 2012 requested SuperSport to consider partnering his Department and Netball South Africa, it was the dawn of a new era for the sport. The Minister's vision was to give netball the prominence that it had craved, but had been denied over many years, despite its free to air rights deal. The Netball Premier League was born after Netball SA concluded a five-year broadcasting deal with SuperSport. The game of netball has never looked back. South Africa is today rated number one in Africa and fifth in the world. It, has become competitive with netball powerhouses such as New Zealand, Australia and Jamaica – a tremendous achievement for a code of sport that historically played second fiddle to larger sporting codes such as rugby, soccer and cricket.
- 11 Netball SA now boasts over 2 000 accredited coaches and over the last five years, netball has enjoyed a 50 percent growth in its black umpire base. Its technical officials receive regular international exposure since its deal with SuperSport and the League also attracted sponsorship. With its matches broadcast throughout sub-Saharan Africa, the international profile of South African players has been boosted and currently eight Proteas players earn a living from netball in countries such as New Zealand, Australia and England,

giving South African netball players much-needed international exposure and experience.

- 12 With the launch of the Netball Premier League in 2013, the former Minister of Sport and Recreation, Fikile Mbalula, was quoted as stating: "Never before have we had such television coverage and never before have we had a sustainable professional league. Now, we have both."
- 13 In recognition of its achievements as a well-administered and competitive sports body, Netball SA has recently been awarded the rights to host the 2023 Netball World Cup in South Africa, ahead of various other strong bids.
- 14 Netball was the fuse that lit the spark for others. In quick succession, national leagues followed in basketball, men's and women's hockey and volleyball; all funded and broadcast by SuperSport. They all enjoy broadcast rights agreements with SuperSport, taking their respective sports to unprecedented levels with exposure across sub-Saharan Africa.
- 15 SuperSport also partners with a number of young, promising boxing promoters, most of whom are from historically disadvantaged backgrounds, in hosting boxing tournaments. Through these partnerships SuperSport pays the promoters a fee to cover some of the costs of hosting the tournaments and televises the tournaments. Local boxing tournaments in communities in the Eastern Cape and Gauteng are broadcast - the only real exposure they enjoy, since free to air broadcasters have not shown any real interest in broadcasting local boxing in recent years. This also serves as a platform for young and upcoming boxers to gain invaluable experience as they strive to become SA and World champions. Without this support from SuperSport, local boxing would struggle (and possibly fail altogether).
- 16 **SuperSport has also invested in women's golf since 2017. In partnership with the Southern Africa PGA Tour, SuperSport is the host broadcaster of the "SuperSport Ladies Challenge" and makes an annual cash contribution to the Sunshine Ladies Tour which is a series of golf tournaments staged annually.**

CORPORATE SOCIAL INVESTMENT

- 17 SuperSport is committed to being a responsible corporate citizen that contributes to building a stronger South Africa. Through its various corporate social investment (CSI) initiatives, it engages and inspires communities through sport. SuperSport focuses on the importance of sport in the development of our youth; on building sporting heroes and creating sporting opportunities for children and young people throughout the country.
- 18 SuperSport's CSI initiatives are not simply about writing out a cheque. Its programmes are aimed at carefully selecting communities who will derive maximum benefit from its initiatives. SuperSport continues to build on its corporate reputation by taking the lead in sports development and making a real difference in communities.
- 19 SuperSport's investments in sport have spanned many years and include major investments in the SuperSport United Football Club Youth Academy, the MultiChoice Diski Challenge, the SuperSport Rugby Challenge, the Premier Netball League, the Basketball National League, the Premier Hockey League, the Volleyball Premier League, an Executive Management Programme, Wheelchair Basketball, the Sports Trust, the SA Caddies Trust, Enterprise Development and many others.
- 20 While inspiring and engaging people around the importance of sport, it is in the development of our youth and young children that we place much emphasis. We invest heavily in a wide variety of corporate social projects. Some of the key initiatives are described below.

Let's Play – SuperSport's Flagship CSI Initiative

- 21 Now in its second decade, SuperSport's flagship CSI initiative, "Let's Play", has a multi-pronged strategy to encourage young people to be physically active and participate in sport. Through a sustainable and robust approach, Let's Play is aimed at making a significant difference to the well-being of our youth, with a focus on the health, social and psychological benefits that participation in sport

inevitably brings. Through sponsored sports facilities and equipment as well as coaching clinics, competitions and training, SuperSport encourages young people to take part in healthy activities. Let's Play initiatives reach schools and communities across the country. Let's Play is positioned as an implementation partner of the Department of Basic Education and has aligned its programmes to the strategic objectives of Sport and Recreation South Africa (SRSA). The success of Let's Play is due to numerous factors, not least the support of donors and sponsors, endorsements from Government and a vibrant working relationship with UNICEF. The programme now reaches over one million children annually and is the winner of various awards, including a Sports Industry Award in 2011.

22 Amongst the programmes of Let's Play are:

22.1 The **Let's Play Physical Education Challenge**, a custom-designed programme to reinforce the instruction of curriculum-oriented physical education in primary schools throughout the country, aimed at promoting an active, healthy lifestyle from an early age and developing a passion for playing sport. It is one of the biggest schools sports initiatives of its kind, having reached 1 947 primary schools, engaging over 1.5 million learners and provided physical education training to about 4 000 educators.¹¹⁸

22.2 The **Let's Play Playing Fields Project**, which together with our partners¹¹⁹, donates and constructs basic sports playing fields at schools in some of South Africa's most disadvantaged communities.¹²⁰ Thus far 22 schools have received playing fields with 105 schools

¹¹⁸ The Challenge contributes towards improved fitness levels, physical skills, improved body image, confidence, self-esteem and the development of social skills. In recognition of the success of the programme, Let's Play won the "Youth Development Category" award of the Mail & Guardian Investing in the Future awards in 2015

¹¹⁹ The Department of Basic Education's Schools Infrastructure Project, together with our partners such as The Sports Trust, Hitachi Construction Machinery and Builders Warehouse

¹²⁰ The project seeks to use sport as a vehicle to transform schools and school communities into child-friendly environments; offering a unique opportunity to mitigate violence in schools, while increasing opportunities to play and enhance productivity. The project was a shortlisted nominee for the Sports Industry Awards in 2014

within the respective communities sharing these facilities. Close to 100 000 children participate in weekly sports programmes at these facilities with 315 educators trained in physical education.

- 22.3 The **Let's Play Schools Rugby Project**, which is aimed at creating a sustainable rugby culture by sharing the fun of the game with as many under nine age-group boys and girls as possible. It encourages clusters of schools to host their own leagues. More than 2 000 primary schools across South Africa have been involved in this project reaching more than 60 000 boys and girls with various formats of the game. More than 4 000 educators have been trained in Boksmart / Bokmedic programmes and mini-rugby.¹²¹

The SA Caddies Trust

- 23 The SA Caddies Education Trust enables the children of golf caddies and the caddies themselves to apply for financial assistance to further their education. SuperSport contributes financially towards the Caddies Trust and serves on its board of trustees. The first education grants were awarded in 2008 with funds used to pay for education, school uniforms, stationery and textbooks. Since then, more than 200 persons have received funding for their education at various levels from primary, secondary to tertiary education. More than R4.5 million has been paid out over the years. A total of 14 beneficiaries have successfully completed tertiary diplomas and three have obtained degrees with Aubrey Mkhwanazi attaining his LLB degree in 2018 and Malakiya Nkhumeleni already having three distinctions under his belt towards his Bachelor of Earth Sciences in Hydrology.

The MultiChoice Diski Challenge - laying football foundations

- 24 The MultiChoice Diski Challenge, launched in September 2014, is SuperSport's multi-faceted CSI programme aimed at supporting development in both football and broadcasting. It includes a football competition for the Premier Soccer League (PSL) reserve teams; life-skills training for players; broadcast

¹²¹ The programme was short-listed for the 2015 Discovery Sports Industry Awards

internships; leadership training for coaches and the opportunity for community TV channels on DStv to air the matches for free. More than 150 matches have been broadcast on SuperSport channels and community TV stations (who also receive this content free of charge).

- 25 Over a period of four years, the Diski Challenge created work opportunities for more than 50 broadcast interns; over 100 players were promoted to senior PSL teams; more than 100 of the Diski Challenge players were taken up into various age-group national teams and the Bafana squad and matches attracted on average 7 000 spectators to venues in townships. Stars such as Percy Tau, Lebohang Maboe and Sphesihle Ndlovu are graduates of the Diski Challenge.
- 26 The tournament has steadily grown into an important component of the SA football calendar. It is regarded as an important platform for development by PSL teams, the media and the public. It is innovative in its approach besides being a critical contributor to the success of SA national youth teams and a pipeline for the development of SuperSport's production talent.
- 27 The South African Police Service uses the Diski Challenge as a platform to engage youth on crime prevention with the Minister of Police taking this anti-crime initiative to communities across the country where Diski Challenge matches are played.
- 28 The winning team is taken on an all-expenses tour to Europe to further hone their skills and to benefit from international exposure. Even the fans benefit from this, with two lucky fans joining the winning team on its international trip.
- 29 The MultiChoice Diski Shield launched last year, is an exciting new knockout competition added to the Diski programme and is also aimed at enhancing football and broadcasting skills. It has caught the imagination of the public in much the same way as the Diski Challenge, adding to the opportunities created for young people.

SuperSport Rugby Challenge

- 30 The SuperSport Rugby Challenge is a tournament that aims to re-establish the vital link between club and provincial rugby. It is positioned to support South Africa's traditional domestic rugby competition, the Currie Cup, and features all 14 provincial unions, as well as Namibia's Welwitschias.
- 31 The programme aims to support the development of SA rugby talent through SuperSport's broadcasting capability. The tournament takes the game to communities and gives both amateurs and professionals the chance to advance their game. A high number of the games is part of Rugby Festivals held at local clubs in areas such as Port Elizabeth, Rustenburg, East London, Oudtshoorn and the Cape Flats. With free entry to the games, fans from all walks of life get to see their heroes in action. It is not uncommon to find upwards of 14 000 spectators at some of the venues.
- 32 The competition's mission is to shine the spotlight on the rugby heartlands of SA. By taking professional rugby to communities and broadcasting from club grounds, the Rugby Challenge provides exposure for local club and provincial heroes; stokes the passion of fans and offers on-the-job training for broadcast interns and graduates.
- 33 The broadcast rights are made available free of charge to six community TV stations and are also available on all DStv packages. Through SuperSport's internship programme, interns produce live TV matches and magazine shows, adding to the pool of broadcasting expertise available to the industry.

The SuperSport Wheelchair Basketball Series

- 34 SuperSport's commitment to making a difference to the local sporting scene goes much further than supporting mainstream sport such as rugby, cricket and football. For more than two decades, SuperSport has sponsored the Wheelchair Basketball Series, probably the world's only televised domestic wheelchair basketball series.

- 35 Through television coverage and cash investment, the sport has attracted additional funding and secured a sustainable future for players, coaches, referees and administrators. As the series tagline states: "It's not just a game, it's a way of life!"
- 36 Andy Scott, a paraplegic, a paralympian, sports administrator and commentator had the following to say about those early years of wheelchair basketball when interviewed in 2017: "After South Africa's success at the 1996 Paralympics, I got chatting to SuperSport and threw down the gauntlet in terms of exposure for sport for people with disabilities. I was invited to submit a proposal and chose wheelchair basketball. I love team sport and this is so fiercely competitive that I knew it would be TV-friendly. That was 21 year ago; the rest is wonderful history. Players have become household names and role models in their communities. The standard of the game has improved dramatically – there are opportunities to play for the country and travel to world competitions. It has made a huge difference".
- 37 Not only does this series provide an opportunity to participate in a sport for someone in a wheelchair, but this coverage also shows the viewing public that people in wheelchairs can still play sport – this both empowers persons with disabilities and educates the public.
- 38 In a submission made to ICASA in response to the publication of its Discussion Paper titled "Inquiry into Sports Broadcasting Rights" on 8 August 2002, Wheelchair Basketball SA stated that "although wheelchair basketball is unlikely to be regarded as a 'national sporting event' to be listed in the public interest, the inquiry into sports broadcasting is important to wheelchair basketball because of the ripple effect that regulation will have on wheelchair basketball..... SuperSport's coverage and sponsorship of wheelchair basketball are vital to the development and success of wheelchair basketball. We are aware that wheelchair basketball would not receive television coverage without SuperSport's support..... **We urge the Authority** to regulate only to the minimal extent necessary in the public interest, without jeopardising current benefits to

minority sports such as wheelchair basketball which depend on parties like SuperSport for their development and existence."

The Sports Trust

- 39 The year 1994 was an incredible one for South Africa, with Nelson Mandela as the country's newly-elected President. Transformation, social cohesion and positive change were high on the agenda. After discussions between the former President and the then- Minister of Sport and Recreation, Steve Tshwete, The Sports Trust was established in the same year. The primary aim of the Trust is to provide sporting infrastructure, kit and equipment and programmes that develop the skills of young South Africans.
- 40 SuperSport is proud to be one of the founding members and trustees of the Trust. For more than 20 years we have successfully helped to implement sports development projects in disadvantaged communities across the country. This partnership includes Let's Play and focuses on schools and clubs in previously disadvantaged communities, providing them with sporting kit and equipment as well as installing and upgrading facilities such as multi-purpose sports courts.
- 41 Since its inception, SuperSport has contributed close to R 20 million to The Sports Trust. In addition, SuperSport commits 12 hours of on-air coverage every month, giving the Trust a media platform to promote its activities.

The SuperSport Executive Management Programme

- 42 First introduced in 2006, SuperSport in partnership with the Wits Business School, pioneered the Executive Management Programme which provided sports executives and administrators a cutting-edge advantage in raising the standards of business and administrative acumen in sports management within a global context.
- 43 Over a period of seven years, more than 180 sports administrators completed the course, fully-funded by SuperSport, equipped to both lead and inspire athletes.

The SuperSport United Football Club Youth Academy

- 44 The SuperSport United Academy is a leading youth soccer development programme that houses over 30 fulltime players who receive full board and lodging, world class coaching under the auspices of its International Dutch Technical Director, high school and tertiary education, full scientific support and medical attention as well as life-skills and media training. These stars of the future are fast-tracked through preparation for professional football.
- 45 To date, over 70 players have graduated from the Academy and gone on to play for PSL and NFD clubs in the National Soccer League. Currently, 10 former academy players are part of the SuperSport United senior squad in the PSL and many of the Academy players play in various national age-group teams.
- 46 Teboho Mokoena who played in the 2017 CAF Under 20 Africa Cup of Nations tournament is now a star player in the PSL. Bafana Bafana and SuperSport United goalkeeper, Ronwen Williams, joined the Academy at the age of 12 after being spotted by Godfrey Mosoetsa in his hometown in Port Elizabeth and is today ranked amongst the top goalkeepers in the country. Luke Le Roux recently scored the winning goal to send the South African Under 20 team to the FIFA Under 20 World Cup for just the second time in our history. It also boasts current Brentford captain, Kamohelo Mokotjo, as an early graduate of the Academy after joining at the age 11 and transferring to the Netherlands as an 18 year old.
- 47 One of the exciting spin-offs of the Academy is the introduction of the SuperSport United Soccer Schools, operating throughout the country. The Soccer Schools provide coaching to over 8 000 young players every week, of which 2 000 are fully sponsored by the Club. The club currently has an 83% retention of top talent from its Soccer Schools within its Youth and Junior Academy structures which has proved to be a fantastic drawcard for top young talent in the country. The Soccer Schools are also a business opportunity for former players and young entrepreneurs with a passion for soccer.

Empowering young people – MultiChoice Enterprise Development Trust

- 48 SuperSport takes its commitment to broad-based black economic empowerment very seriously. For this reason, with the support of and involvement in the MultiChoice Enterprise Development Trust founded in 2012, SuperSport helps drive transformation in South Africa.
- 49 The Trust develops and supports new and previously disadvantaged businesses in the film, television and media industries. The Trust supports emerging entrepreneurs by providing grants, interest-free loans as well as funding, training and mentorship to emerging SMMEs to get skills and assets needed to deliver high-quality services.
- 50 The loans made available through the Trust have generally been unsecured and interest-free.
- 51 The Trust also focuses on skills development and training, with a focus on mentorship and skills development for start-ups and established companies. The success of the Trust can be measured by the beneficiaries' achievements – some have grown into formidable businesses with the knock-on effect of job-creation and personal growth. SuperSport's aim is to assist these businesses to the point where they don't need its support and can help others.
- 52 Amongst the beneficiaries of the Trust are Vision View, Gela Productions owned by Sandile Magoso, Tick-A-Target headed by Lizzy Kilani and Storyboard Productions which is also a wholly female-owned company.
- 53 By March 2018, the Trust had spent in excess of R 130 million on grants and loans with 16 businesses approved for loans.

ANNEXURE E: OTHER CONCERNS

- 1 We have various other concerns about the Draft Regulations, which we deal with in this annexure. Some of these are errors which are carried over from the Current Regulations, while others are new proposals introduced by the Draft Regulations.

1. Definitions

- 2 As indicated in paragraph 182.2 of our main submission, "Confederation sporting event" is problematically defined as meaning "an official sporting event arranged by a recognised international sports body that *governs a particular sport* which **involves national federation...**".
- 3 By limiting a confederation sporting event to a particular sport (e.g. soccer/rugby), ICASA has excluded multi-disciplinary sporting events such as the Summer Olympic Games and the Commonwealth Games. This leads to absurd results, which we do not believe ICASA intended.
- 4 ICASA's 2010 Findings Document made it clear that "Confederation sporting activities taking the form of a tournament include: (a) Summer Olympic Games; (b) Commonwealth Games; (c) **All Africa Games...**".¹²²
- 5 ICASA did not intend to list such tournaments in full. However, because the regulations define a "confederation sporting event" with reference only to "a particular sport" (as opposed to a multi-disciplinary event), on a strict interpretation events such as the Summer Olympics are not a confederation sporting event, and therefore fall outside of the criteria in Reg. 4. This unintended error is in the Current Regulations, but is clarified by the 2010 Findings Document and has been applied this way in practice. However, this confusion should not be perpetuated going forward.

¹²² Pg 41 of the 2010 Findings Document. The Findings Document likewise made it clear that those events featuring a senior South African national team should be listed in addition to the one semi-final and finals etc. (i.e. not the entire tournament)

- 6 The words "a particular sport" in the definition of "confederation sporting event" should therefore be replaced with "one or more sports or multidisciplinary sports events".
- 7 National Senior Team is defined as meaning "the highest-ranking team in a specific sporting age group" – i.e. multiple senior teams in multiple age groups (e.g. the Under 11 A team). This is nonsensical in the context of national sporting events. It should refer to the senior South African national team (e.g. the Springboks). There are also overlaps between this definition and the existing definition of "National team".
- 8 A new definition of "National Sporting Events" has been inserted, even though the term "national sporting event" is already defined and not deleted.
- 9 A new definition of "Sports of National Interest" is inserted even though the term is not used in either the EC Act or the Draft Regulations.
- 10 It is not necessary to insert a definition of "subscription broadcasting service licensee", because the term is already defined in the EC Act and incorporated in the opening line of the definitions.
- 11 In addition, the proposed amendments are clumsily worded in the Draft Regulations, giving rise to confusion. For example, clause 2(f) of the Draft Regulations inserts the definition of "National Sporting Events" "*after* the definition of National Sporting Events" (which does not appear in the Current Regulations). The same error is made in clauses 2(h) and (i).

Object of the Regulations

- 12 ICASA has proposed inserting a new object, namely to "reach a wider audience and to strike a balance between audience and revenue". While we appreciate the underlying sentiment, what this proposal fails to appreciate, is that it is the prerogative of the sports bodies, not ICASA, to determine how to strike this balance.

13 As the UK Government has stated:

"Rather than being told by government what to show and what not to show on free to air television, it is for [National Sports Governing Bodies] and other rights holders to strike the right balance between reaching a wide audience and using their rights to generate as much revenue as possible."¹²³

4. Criteria for identifying national sporting events

14 Draft Reg. 4(1) provides that the Authority has used the following criteria in determining national sporting events that are of public interest.

14.1 First, the phrase "of public interest" is inappropriate. As indicated in our main submission, ICASA must regulate "in the public interest", not list what is interesting / of public interest.

14.2 Although there are three criteria (in items 4(1)(a), (b) and (c), the Draft Regulations reference only regulation 4(1)(a) (i.e. 4(1)(b) and (c) have fallen off), and then only in relation to Group A. Both Group A and B (if retained, which we do not support) should be subject to the criteria in Regulation 4(1)(a), (b) and (c).

15 Moreover, the "criteria" in reg. 4(1) are not truly criteria, as they do not explain the requirements that ICASA considered had to be met in order for an event to be listed, but rather specify which parts of the event are listed.

16 As indicated in the footnote in paragraph 181 of our main submission, ICASA's 2003 Position Paper made it clear that, in order to be eligible to be listed, the event –

16.1 must involve the South African national senior team; or

16.2 must be the final of a national knockout competition; or

¹²³ Her Majesty's Government, Sporting Future: A New Strategy for an Active Nation, December 2015, pg 41

- 16.3 must be the final of an international knockout competition featuring a South African team; and
- 16.4 must be appropriate to list, given its structure and duration; and
- 16.5 must be played in South Africa (except for the FIFA World Cup, IRB Rugby World Cup, ICC Cricket World Cup, the African Cup of Nations, the Commonwealth Games, the Olympic Games, the All Africa Games, the CAF Champions League Final and Mandela Cup Final (if a South African team is involved) and the Rugby Super 12 final (if a South African team is involved).¹²⁴
- 17 That approach accords with international best practice and ought to be reinstated with the necessary changes.

5. Listed national sporting events and codes

- 18 For the reasons set out in detail in our main submission, the proposed Group A, and B frameworks are fundamentally flawed, *ultra vires* and would destroy South African sport. Draft Regulations 5.1 and 5.2 are, in addition, so unclear as to be incoherent. We refer to our comments in our main submission in this regard.
- 19 We also reiterate that Group C has no place in these regulations.

6. Broadcasting of national sporting events

- 20 Regulation 6.1 perpetuates the confusion in Regulations 5.1 and 5.2 about who must sub-license to whom.
- 21 We urge ICASA to revert to the position in the Current Regulations, in terms of which a subscription broadcaster which acquires exclusive rights to a listed event must inform a free to air broadcaster of the opportunity to sub-license the rights.

¹²⁴ Para 3.1 of the 2003 Position Paper

- 22 We support the retention of Reg. 6(2) as is, but reiterate that this approach should apply to all listed events (not only Group B).

7. Review of the Listed Events

- 23 Draft regulation 7 implies that the list could be amended without reviewing the regulations and without a consultation process – e.g. when a stakeholder applies to the Authority to add or remove a national sporting event and provides reasons for such application".
- 24 Any review of the list must be preceded by a consultation process.
- 25 The reference to the Minister of Telecommunications and Postal Services is outdated.

8. Dispute Resolution

- 26 Reg. 8(3A) suggests that ICASA may adjudicate "any unresolved dispute" regarding a commercial agreement concluded by a broadcasting service licensee, potentially including disputes outside ICASA's jurisdiction, which would be impermissible.

**ANNEXURE F: SPORTS EVENTS BROADCAST ON FREE TO AIR FROM
OCTOBER 2016 TO 31 DECEMBER 2018**

Month	Event	Broadcaster
October-16	FIFA U17 Women's World Cup, Brazil v England	SABC
	FIFA U17 Women's World Cup: Venezuela v Germany	SABC
	FIFA U17 Women's World Cup: Jordan v Spain	SABC
	FIFA U17 Women's World Cup: Ghana v Japan	SABC
	FIFA U17 Women's World Cup: USA v Paraguay	SABC
	FIFA U17 Women's World Cup: Venezuela v Cameroon	SABC
	FIFA U17 Women's World Cup: Germany v Canada	SABC
	FIFA U17 Women's World Cup, Jordan v Mexico	SABC
	FIFA U17 Women's World Cup: Nigeria v England	SABC
	FIFA U17 Women's World Cup: USA v Ghana	SABC
	FIFA U17 Women's World Cup: Brazil v Korea DPR	SABC
	FIFA U17 Women's World Cup: New Zealand v Jordan	SABC
	FIFA U17 Women's World Cup: Spain v Mexico	SABC
	FIFA U17 Women's World Cup: Germany v Cameroon	SABC
	FIFA U17 Women's World Cup: Korea DPR v Nigeria	SABC
	FIFA U17 Women's World Cup: Japan v USA	SABC
	FIFA U17 Women's World Cup: QF1: Mexico v Venezuela	SABC
	FIFA U17 Women's World Cup: QF2: Germany v Spain	SABC
	FIFA U17 Women's World Cup: Paraguay v Ghana	SABC
	FIFA Women's World Cup QF3: Korea DPR v Ghana	SABC
	FIFA Women's World Cup QF4: Japan v England	SABC
	FIFA Women's World Cup SF1: Venezuela v Korea DPR	SABC
	FIFA U17 Women's World Cup SF2: Spain v Japan	SABC
	FIFA U17 Women's World Cup Final: Korea DPR v Japan (Live)	SABC
	MTN8 Final: Bidvest Wits v Mamelodi Sundowns (Live)	SABC
	FIFA Futsal World Cup Final: Russia v Argentina	SABC
	2018 World Cup Qualifier: Burkina Faso v Bafana Bafana (Live)	SABC
	Macufe Cup: Bloem Celtic v Kaizer Chiefs (Live)	SABC
	International Friendly: Bafana Bafana v Ghana (Live)	SABC
	CAF Champions League Final 1st Leg: Mamelodi Sundowns v Zamalek (Live)	SABC
	CAF Champions League Final 2nd Leg: Zamalek v Mamelodi Sundowns (Live)	SABC
	PSL: Cape Town City v Baroka FC (Live)	SABC
	PSL: SuperSport United v Highlands Park (Live)	SABC
	PSL: Orlando Pirates v Kaizer Chiefs (Live)	SABC
	PSL: Ajax Cape Town v SuperSport United (Live)	SABC
	PSL: Baroka FC v Polokwane FC (Live)	SABC
	Telkom Knockout Last 16: Free State Stars v Bidvest Wits (Live)	SABC
	Telkom Knockout Last 16: SuperSport United v Ajax Cape Town (Live)	SABC
	Telkom Knockout Last 16: Baroka FC v Platinum Stars (Live)	SABC
	Telkom Knockout Last 16: Cape Town City v Bloemfontein Celtic	SABC
	International Friendly: Banyana Banyana v Egypt (repeat)	SABC
	NFD: Milano United v Real Kings	SABC
	NFD: Magesi FC v Santos	SABC
	2017 AFCON Draw	SABC
	Castle Lager Rugby Championship: South Africa v Australia	SABC
	Castle Lager Rugby Championship: South Africa v New Zealand	SABC
	Currie Cup Final: Free State Cheetahs v Blue Bulls	SABC
	South Africa v Australia 2nd ODI (Live)	SABC

	South Africa v Australia 3rd ODI (Live)	SABC
	South Africa v Australia 4th ODI (Live)	SABC
	South Africa v Australia 5th ODI (Live)	SABC
	The TKO (The Fight Night) Main Bout – JR Middle Weight SA Title: Nkululeko Mhlongo v Frans Ramabolu (Live)	SABC
	WWE Main Event	e.tv
	WWE Total Divas	e.tv
	WWE Smackdown	e.tv
	WWE Raw	e.tv
	WWE Superstars	e.tv
	WWE Experience	e.tv
	WWE NXT	e.tv
	WWE Specials: Clash of Champions	e.tv
	WWE Specials: No Mercy	e.tv
	EFC 54 at Sun City. Andrew van Zyl faces Elvis Moyo for the EFC heavyweight title. Plus, JP Buys challenges Baldwin Mdlalose for the EFC flyweight title.	e.tv
November-16	CAF Confederations Cup: Mouloudia v TP Mazembe	SABC
	CAF Confederations Cup: TP Mazembe v Mouloudia	SABC
	PSL: Mamelodi Sundowns v Kaizer Chiefs (Live)	SABC
	PSL: Platinum Stars v Bidvest Wits (Live)	SABC
	PSL: Bloemfontein Celtic v Polokwane City (Live)	SABC
	PSL: Golden Arrows v Platinum Stars	SABC
	PSL: Orlando Pirates v Kaizer Chiefs (repeat)	SABC
	PSL: Free State Stars v Platinum Stars (only delayed in December)	SABC
	Telkom Knockout QF: Baroka FC v Cape Town City (Live)	SABC
	Telkom Knockout QF: Orlando Pirates v Highlands Park (Live)	SABC
	Telkom Knockout QF: Kaizer Chiefs v Free State Stars (Live)	SABC
	Telkom Knockout SF1: Cape Town City v Free State Stars (Live)	SABC
	Telkom Knockout SF2: SuperSport United v Orlando Pirates (Live)	SABC
	NFD: Thanda Royal Zulu v Jomo Cosmos (Live)	SABC
	NFD: Real Kings v Amazulu	SABC
	2018 World Cup Qualifier: Bafana Bafana v Senegal (Live)	SABC
	International Friendly: Mozambique v Bafana Bafana (Live)	SABC
	International Friendly: Banyana v Egypt (repeat from October)	SABC
	FIFA U20 Women's World Cup: Japan v Nigeria	SABC
	FIFA U20 Women's World Cup: PNG v Brazil	SABC
	FIFA U20 Women's World Cup: Spain v Canada	SABC
	FIFA U20 Women's World Cup: Japan v Nigeria	SABC
	FIFA U20 Women's World Cup: France v USA	SABC
	FIFA U20 Women's World Cup: Ghana v New Zealand	SABC
	FIFA U20 Women's World Cup: Germany v Venezuela	SABC
	FIFA U20 Women's World Cup: PNG v Sweden	SABC
	FIFA U20 Women's World Cup: Korea DPR v Brazil	SABC
	FIFA U20 Women's World Cup: Spain v Japan	SABC
	FIFA U20 Women's World Cup: Nigeria v Canada	SABC
	FIFA U20 Women's World Cup: France v Ghana	SABC
	FIFA U20 Women's World Cup: New Zealand v USA	SABC
	FIFA U20 Women's World Cup: Korea DPR v PNG	SABC
	FIFA U20 Women's World Cup: Brazil v Sweden	SABC
	FIFA U20 Women's World Cup: Nigeria v Spain	SABC
	FIFA U20 Women's World Cup: New Zealand v France	SABC
	FIFA U20 Women's World Cup: USA v Ghana	SABC

	FIFA U20 Women's World Cup: Korea Republic v Germany	SABC
	FIFA U20 Women's World Cup: QF1	SABC
	FIFA U20 Women's World Cup: QF2	SABC
	FIFA U20 Women's World Cup: QF3	SABC
	FIFA U20 Women's World Cup: QF3	SABC
	FIFA U20 Women's World Cup: SF1	SABC
	FIFA U20 Women's World Cup: SF2	SABC
	Soweto Marathon (Live)	SABC
	The TKO (The Fight Night) (Live)	SABC
	SA Sports Awards (Live)	SABC
	WWE Main Event	e.tv
	WWE Total Divas	e.tv
	WWE Smackdown	e.tv
	WWE Raw	e.tv
	WWE Superstars	e.tv
	WWE Experience	e.tv
	WWE NXT	e.tv
	WWE Specials: Hell In A Cell	e.tv
	WWE Specials: Survivor Series	e.tv
	EFC, GrandWest, CT. The most dominant EFC champion, Angola's Demarte Pena, faces the interim champ, SA's Irshaad Sayed, to unify the bantamweight title	e.tv
December-16	PSL: Platinum Stars v Polokwane City (Live)	SABC
	PSL: Orlando Pirates v Highlands Park (Live)	SABC
	PSL: Baroka FC v Maritzburg United (Live)	SABC
	PSL: Platinum Stars v Maritzburg United (Live)	SABC
	PSL: Bidvest Wits v Free State Stars (not live – SATMA Awards)	SABC
	PSL: Platinum Stars v Bloemfontein Celtic	SABC
	PSL: Bidvest Wits v Highlands Park	SABC
	PSL: Free State Stars v Platinum Stars	SABC
	PSL: Maritzburg United v Chippa United	SABC
	PSL: Platinum Stars v Ajax Cape Town	SABC
	PSL: Ajax Cape Town v Golden Arrows	SABC
	PSL: Golden Arrows v Bidvest Wits	SABC
	PSL: Cape Town City v Platinum Stars	SABC
	PSL: Golden Arrows v Kaizer Chiefs	SABC
	PSL: Highlands Park v Platinum Stars	SABC
	PSL: Baroka FC v Golden Arrows	SABC
	FIFA U20 3rd Place	SABC
	FIFA U20 Final: Korea DPR v France	SABC
	Telkom Knockout Final: SuperSport United v Cape Town City (Live)	SABC
	FIFA Club World Cup: Kashima Antlers v Mamelodi Sundowns (Live)	SABC
	FIFA Club World Cup: Mamelodi Sundowns v Jeonbuk FC	SABC
	FIFA Club World Cup: Atletico Nacional v Kashima Antlers	SABC
	FIFA Club World Club: Club America v Real Madrid (Live)	SABC
	FIFA Club World Cup 3rd Place: Atletico Nacional v Club America (Live)	SABC
	FIFA Club World Cup Final: Real Madrid v Kashima Antlers (Live)	SABC
	U19 Final at Cape Town (Live)	SABC
	Sasol League Final at Mossel Bay (Live)	SABC
	Sasol League: Bloemfontein Celtic FC v Janine van Wyk FC (Repeat)	SABC
	South Africa v Sri Lanka 1st Test Day 1 (Live)	SABC
	South Africa v Sri Lanka 1st Test Day 2 (Live)	SABC

	South Africa v Sri Lanka 1st Test Day 3 (Live)	SABC
	South Africa v Sri Lanka 1st Test Day 4 (Live)	SABC
	South Africa v Sri Lanka 1st Test Day 5 (Live)	SABC
	The TKO (The Fight) at NZ (Live)	SABC
	WWE Main Event	e.tv
	WWE Total Divas	e.tv
	WWE Smackdown	e.tv
	WWE Raw	e.tv
	WWE Superstars	e.tv
	WWE Experience	e.tv
	WWE NXT	e.tv
	WWE Specials: Tables, Ladders and Chairs and Stairs	e.tv
	WWE Specials: Roadblock: End of the Line	e.tv
	EFC. Welterweight champion SA's Dricus du Plessis faces Poland's top middleweight Rafal Haratyk. Plus UK's Yannick Bahati vs SA's David Buirski for the middleweight title.	e.tv
January-17	AFCON Opening Ceremony (Live)	SABC
	AFCON: Gabon v Guinea (Live)	SABC
	AFCON: Burkina Faso v Cameroon (Live)	SABC
	AFCON: Algeria v Zimbabwe (Live)	SABC
	AFCON: Tunisia v Senegal (Live)	SABC
	AFCON: Ivory Coast v Togo (Live)	SABC
	AFCON: DR Congo v Morocco (Live)	SABC
	AFCON: Ghana v Uganda (Live)	SABC
	AFCON: Mali v Egypt (Live)	SABC
	AFCON: Gabon v Burkina Faso (Live)	SABC
	AFCON: Cameroon v Guinea Bissau (Live)	SABC
	AFCON: Algeria v Tunisia (Live)	SABC
	AFCON: Senegal v Zimbabwe (Live)	SABC
	AFCON: Cote d'Ivoire v DRC Congo (Live)	SABC
	AFCON: Morocco v Tonga (Live)	SABC
	AFCON: Ghana v Mali (Live)	SABC
	AFCON: Egypt v Uganda (Live)	SABC
	AFCON: Cameroon v Gabon (Live)	SABC
	AFCON: Zimbabwe v Tunisia (Live)	SABC
	AFCON: Morocco v Cote d'Ivoire (Live)	SABC
	AFCON: Egypt v Ghana (Live)	SABC
	AFCON QF1: Burkina Faso v Tunisia (Live)	SABC
	AFCON QF2: Senegal v Cameroon (Live)	SABC
	AFCON QF3: DR Congo v Ghana (Live)	SABC
	AFCON QF4: Egypt v Morocco (Live)	SABC
	AFCON: Guinea Bissau v Burkina Faso	SABC
	AFCON: Senegal v Algeria	SABC
	AFCON: Togo v DRC Congo	SABC
	AFCON: Uganda v Mali	SABC
	AFCON: Senegal v Algeria (repeat)	SABC
	AFCON: Morocco v Cote d'Ivoire (repeat)	SABC
	Telkom Knockout SF1: Cape Town City v Free State Stars (repeat)	SABC
	Telkom Knockout SF2: SuperSport United v Orlando Pirates (repeat)	SABC
	Telkom Knockout Final: SuperSport United v Cape Town City (repeat)	SABC
	PSL: Golden Arrows v Kaizer Chiefs (repeat)	SABC
	PSL: Bidvest Wits v Free State Stars (repeat)	SABC
	PSL: Baroka FC v Golden Arrows (repeat)	SABC

	Boxing South Africa Awards (Live)	SABC
	South Africa v Sri Lanka 2nd Test Day 1 (Live)	SABC
	South Africa v Sri Lanka 2nd Test Day 2 (Live)	SABC
	South Africa v Sri Lanka 2nd Test Day 3 (Live)	SABC
	South Africa v Sri Lanka 2nd Test Day 4 (Live)	SABC
	South Africa v Sri Lanka 3rd Test Day 1 (Live)	SABC
	South Africa v Sri Lanka 3rd Test Day 2 (Live)	SABC
	South Africa v Sri Lanka 3rd Test Day 3 (Live)	SABC
	South Africa v Sri Lanka 1st T20 (Live)	SABC
	South Africa v Sri Lanka 2nd T20 (Live)	SABC
	South Africa v Sri Lanka 3rd T20 (Live)	SABC
	South Africa v Sri Lanka 1st ODI (Live)	SABC
	SA Women Open Golf Highlights	SABC
	WWE Main Event	e.tv
	WWE Total Divas	e.tv
	WWE Smackdown	e.tv
	WWE Raw	e.tv
	WWE Experience	e.tv
	WWE NXT	e.tv
February-17	AFCON SF1: Burkina Faso v Egypt (Live)	SABC
	AFCON SF2: Cameroon v Ghana (Live)	SABC
	AFCON 3rd/4th Place: Burkina Faso v Ghana (Live)	SABC
	AFCON Final: Egypt v Cameroon (Live)	SABC
	CAF Super Cup, Mamelodi Sundowns v TP Mazembe (Live)	SABC
	PSL: Mamelodi Sundowns v Orlando Pirates (Live)	SABC
	PSL: Ajax Cape Town v Cape Town City (Live)	SABC
	PSL: Highlands Park v Polokwane City (Live)	SABC
	PSL: Golden Arrows v Free State Stars (Live)	SABC
	PSL: Bloemfontein Celtic v Chippa United (Live)	SABC
	PSL: Bloemfontein Celtic v Platinum Stars (Live)	SABC
	PSL: Baroka FC v Cape Town City (Live)	SABC
	PSL: SuperSport United v Golden Arrows	SABC
	PSL: Cape Town City v Highlands Park	SABC
	PSL: Baroka FC v Platinum Stars	SABC
	PSL: Bidvest Wits v Baroka FC	SABC
	The TKO (Live)	SABC
	South Africa v Sri Lanka 2nd ODI (Live)	SABC
	South Africa v Sri Lanka 3rd ODI (Live)	SABC
	South Africa v Sri Lanka 4th ODI (Live)	SABC
	South Africa v Sri Lanka 5th ODI (Live)	SABC
	ASA Speed Series 1 at Durban Highlights	SABC
	WWE Main Event	e.tv
	WWE Total Divas	e.tv
	WWE Smackdown	e.tv
	WWE Raw	e.tv
	WWE Experience	e.tv
	WWE NXT	e.tv
	WWE Specials: Royal Rumble	e.tv
	WWE Specials: Elimination Chamber	e.tv
March-17	PSL: Kaizer Chiefs v Orlando Pirates (Live)	SABC
	PSL: SuperSport United v Ajax Cape Town (Live)	SABC
	PSL: Free State Stars v Highlands Park (Live)	SABC
	PSL: Baroka FC v Kaizer Chiefs (Live)	SABC
	PSL: Highlands Park v Maritzburg United (Live)	SABC

	PSL: Highlands Park v SuperSport United	SABC
	PSL: Bloemfontein Celtic v Platinum Stars (repeat)	SABC
	PSL: Baroka FC v Cape Town City (repeat)	SABC
	PSL: Chippa United v Bidvest Wits	SABC
	PSL: Mamelodi Sundowns v Polokwane City	SABC
	Nedbank Last 32: Jomo Cosmos v United Rovers (Live)	SABC
	Nedbank Last 32: Free State Stars v Highlands Park (Live)	SABC
	Nedbank Last 32: Golden Arrows v Maritzburg United (Live)	SABC
	Nedbank Last 32: Polokwane City v Africa All Stars	SABC
	Nedbank Last 32: Cape Town All Stars v Bidvest Wits	SABC
	NFD: Milano United v Thanda Royal Zulu (Live)	SABC
	International Friendly: Bafana Bafana v Guinea Bissau (Live)	SABC
	International Friendly: Bafana Bafana v Angola (Live)	SABC
	The TKO (Live)	SABC
	EFC 57 (Live)	SABC
	Athletics Alive (ASA Speed Series 2) Highlights	SABC
	Athletics Alive (ASA Speed Series 3) Highlights	SABC
	Athletics Alive (ASA Speed Series 4) Highlights	SABC
	WWE Main Event	e.tv
	WWE Total Divas	e.tv
	WWE Smackdown	e.tv
	WWE Raw	e.tv
	WWE Experience	e.tv
	WWE NXT	e.tv
	WWE Specials: Fast Lane	e.tv
April-17	PSL: SuperSport United v Baroka FC (Live)	SABC
	PSL: Kaizer Chiefs v Mamelodi Sundowns (Live)	SABC
	PSL: Polokwane City v Bloemfontein Celtic (Live)	SABC
	PSL: Golden Arrows v Ajax Cape Town (Live)	SABC
	PSL: Highlands Park v Orlando Pirates (Live)	SABC
	PSL: Free State Stars v Mamelodi Sundowns (Live)	SABC
	PSL: Free State Stars v Polokwane City (Live)	SABC
	PSL: Orlando Pirates v Chippa United (Live)	SABC
	PSL: Baroka v Bloemfontein Celtic (Live)	SABC
	PSL: Mamelodi Sundowns v Bloemfontein Celtic	SABC
	PSL: Ajax Cape Town v Highlands Park	SABC
	PSL: Polokwane City v Platinum Stars	SABC
	PSL: Cape Town City v Kaizer Chiefs	SABC
	PSL: Bidvest Wits v SuperSport United	SABC
	PSL: Platinum Stars v Free State Stars	SABC
	Nedbank Last 16: Bloemfontein Celtic v Mbombela United (Live)	SABC
	Nedbank QF: Golden Arrows v Platinum Stars (Live)	SABC
	Nedbank QF: Orlando Pirates v Bloemfontein Celtic (Live)	SABC
	NFD: Amazulu v Cape Town All Stars (Live)	SABC
	Nedbank Last 16: Kwadukuza United v SuperSport United	SABC
	Nedbank Last 16: Free State Stars v Orlando Pirates (Live)	SABC
	Nedbank Last 16: Chippa United v Polokwane City (Live)	SABC
	NFD: Amazulu v Magesi FC	SABC
	The TKO (Live)	SABC
	EFC 58 (Live)	SABC
	Two Oceans Marathon (Live)	SABC
	ASA Youth and Junior Champs Highlights	SABC
	SA Senior Champs Highlights	SABC
	Cape Town Spar Ladies Race Highlights	SABC
	WWE Main Event	e.tv

	WWE Smackdown	e.tv
	WWE Raw	e.tv
	WWE Experience	e.tv
	WWE NXT	e.tv
	WWE Specials: WrestleMania	e.tv
May-17	FIFA Beach Soccer World Cup: Bahamas v Ecuador (Live)	SABC
	FIFA Beach Soccer World Cup: Paraguay v Panama (not live)	SABC
	FIFA Beach Soccer World Cup: Brazil v Japan (not Live)	SABC
	FIFA Beach Soccer World Cup: UAE v Portugal (Live)	SABC
	FIFA Beach Soccer World Cup: Bahamas v Switzerland	SABC
	FIFA Beach Soccer World Cup: Poland v Brazil	SABC
	FIFA Beach Soccer World Cup: Senegal v Bahamas	SABC
	FIFA Beach Soccer World Cup: Brazil v Tahiti	SABC
	FIFA Beach Soccer World Cup: Italy v Mexico	SABC
	FIFA Beach Soccer World Cup: Switzerland v Senegal	SABC
	FIFA Beach Soccer World Cup: Nigeria v Iran	SABC
	FIFA Beach Soccer World Cup QF1: Paraguay v Tahiti	SABC
	FIFA Beach Soccer World Cup QF2: Brazil v Portugal	SABC
	FIFA Beach Soccer World Cup QF3: Switzerland v Iran	SABC
	FIFA Beach Soccer World Cup QF4: Italy v Senegal	SABC
	FIFA Beach Soccer World Cup SF1: Iran v Tahiti	SABC
	FIFA Beach Soccer World Cup SF2: Italy v Brazil	SABC
	FIFA Beach Soccer World Cup Final: Italy v Senegal	SABC
	PSL: Chippa United v Ajax Cape Town (Live)	SABC
	PSL: Kaizer Chiefs v Golden Arrows (Live)	SABC
	PSL: Orlando Pirates v Mamelodi Sundowns (Live)	SABC
	PSL: Golden Arrows v Baroka (Live)	SABC
	PSL: Ajax Cape Town v Bloemfontein Celtic (Live)	SABC
	PSL: Kaizer Chiefs v Bidvest Wits (Live)	SABC
	PSL: SuperSport United v Bloemfontein Celtic	SABC
	PSL: Free State Stars v Bidvest Wits	SABC
	PSL: Bidvest Wits v Polokwane City	SABC
	PSL: Mamelodi Sundowns v Maritzburg United	SABC
	PSL: Baroka FC v Highlands Park	SABC
	PSL: Platinum Stars v Kaizer Chiefs	SABC
	PSL: Orlando Pirates v Ajax Cape Town	SABC
	PSL: Ajax Cape Town v Baroka	SABC
	NFD: Real Kings v Thanda Royal Zulu FC (Live)	SABC
	Nedbank Cup SF1: Chippa United v SuperSport United (Live)	SABC
	Nedbank Cup SF2: Golden Arrows v Orlando Pirates (Live)	SABC
	CAF Confederations Cup: Supersport United v Horoya AC	SABC
	CAF Confederations Cup: Platinum Stars v MC Alger	SABC
	CAF Champions League: Mamelodi Sundowns v Saint George	SABC
	FIFA U20 World Cup: Korea Republic v Republic of Guinea	SABC
	FIFA U20 World Cup: South Africa v Japan	SABC
	FIFA U20 World Cup: Italy v Uruguay	SABC
	FIFA U20 World Cup: England v Republic of Guinea	SABC
	FIFA U20 World Cup: Korea Republic v Argentina	SABC
	FIFA U20 World Cup: Mexico v Germany	SABC
	FIFA U20 World Cup: South Africa v Italy	SABC
	FIFA U20 World Cup: Uruguay v Japan	SABC
	FIFA U20 World Cup: Costa Rica v Portugal	SABC
	FIFA U20 World Cup: Uruguay v South Africa	SABC
	FIFA U20 World Cup: Japan v Italy	SABC
	FIFA U20 World Cup: New Zealand v France	SABC

	FIFA U20 World Cup: USA v Saudi Arabia	SABC
	FIFA U20 World Cup: Senegal v Ecuador	SABC
	FIFA U20 World Cup Last 16	SABC
	FIFA U20 World Cup Last 16	SABC
	FIFA U20 World Cup Last 16: Uruguay v Saudi Arabia	SABC
	The TKO (Live)	SABC
	EFC at Carnival City (Live)	SABC
	Cricket Awards Highlights	SABC
	Spar Race PE Highlights	SABC
	WWE Main Event	e.tv
	WWE Smackdown	e.tv
	WWE Raw	e.tv
	WWE Experience	e.tv
	WWE NXT	e.tv
	WWE Specials: Payback	e.tv
	WWE Specials: Backlash	e.tv
June-17	FIFA U20 World Cup Last 16: England v Costa Rica	SABC
	FIFA U20 World Cup Last 16: Zambia v Germany	SABC
	FIFA U20 World Cup QF: Venezuela v USA	SABC
	FIFA U20 World Cup QF: Portugal v Uruguay	SABC
	FIFA U20 World Cup SF1: Uruguay v Venezuela (Live)	SABC
	FIFA U20 World Cup SF2: Italy v England (Live)	SABC
	FIFA U20 World Cup Final: Venezuela v England (Live)	SABC
	FIFA U20 World Cup QF3: Italy v Zambia	SABC
	FIFA U20 World Cup QF4: Mexico v England	SABC
	NFD: Black Leopards v Stellenbosch (Live)	SABC
	NFD: Baroka v Stellenbosch (Live)	SABC
	NFD: Baroka FC v Black Leopards	SABC
	NFD Playoff: Stellenbosch v Black Leopards	SABC
	NFD Play Off: Black Leopards v Baroka	SABC
	AFCON Qualifier: Bafana Bafana v Zambia (Live)	SABC
	AFCON Qualifier: Nigeria v Bafana Bafana	SABC
	FIFA Confederations Cup: Russia v New Zealand (Live)	SABC
	FIFA Confederations Cup: Portugal v Mexico	SABC
	FIFA Confederations Cup: Cameroon v Chile	SABC
	FIFA Confederations Cup: Australia v Germany	SABC
	FIFA Confederations Cup: Russia v Portugal	SABC
	FIFA Confederations Cup: Mexico v New Zealand	SABC
	FIFA Confederations Cup: Germany v Chile	SABC
	FIFA Confederations Cup: Cameroon v Australia	SABC
	FIFA Confederations Cup: Mexico v Russia	SABC
	FIFA Confederations Cup: New Zealand v Portugal	SABC
	FIFA Confederations Cup: Germany v Cameroon	SABC
	FIFA Confederations Cup: Chile v Australia	SABC
	FIFA Confederations Cup: SF1, Portugal v Chile	SABC
	Nedbank Cup Final: SuperSport United v Orlando Pirates (Live)	SABC
	ABC Motsepe Cup Final: Uthonagathi FC v Free State Super Eagles (Live)	SABC
	CAF Champions League: Mamelodi Sundowns v EST	SABC
	PSL: Golden Arrows v Orlando Pirates	SABC
	CAF Confederations Cup: SuperSport United v TP Mazembe	SABC
	CAF Confederations Cup: Platinum Stars v Club Sportif Sfaxien	SABC
	Castle Lager Incoming Series: South Africa v France 1st Test	SABC
	Castle Lager Incoming Series: South Africa v France 2nd Test	SABC
	Castle Lager Incoming Series: South Africa v France 3rd Test	SABC

	EFC 60 (Live)	SABC
	Comrades Marathon (Live)	SABC
	Spar Race PTA Highlights	SABC
	WWE Main Event	e.tv
	WWE Smackdown	e.tv
	WWE Raw	e.tv
	WWE Experience	e.tv
	WWE NXT	e.tv
	WWE Specials: Extreme Rules	e.tv
	WWE Specials: Money in the Bank	e.tv
July-17	FIFA Confederations Cup 3rd/4th Place: Portugal v Mexico (Live)	SABC
	FIFA Confederations Cup Final: Chile v Germany (Live)	SABC
	FIFA Confederations Cup SF1: Portugal v Chile (repeat)	SABC
	FIFA Confederations Cup SF2: Germany v Mexico	SABC
	2018 CHAN Qualifier: Bafana Bafana v Botswana (Live)	SABC
	SAB U21 Final at Nike Centre (Live)	SABC
	Carling Cup Final: Kaizer Chiefs v Orlando Pirates (Live)	SABC
	Nedbank Cup Final: SuperSport United v Pirates	SABC
	PSL: Highlands Park v Mamelodi Sundowns	SABC
	PSL: Chippa United v Free State Stars	SABC
	PSL: Cape Town City v Polokwane City	SABC
	NFD: Real Kings v Thanda Royal Zulu	SABC
	NFD: FC Cape Town v Amazulu	SABC
	CAF Confederations Cup: SuperSport United v Horoya AC (repeat May)	SABC
	CAF Confederations Cup: Platinum Stars v MC Alger (record May)	SABC
	CAF Confederations Cup: CF Mounana v SuperSport United (Live)	SABC
	CAF Confederations Cup: Mbabane Swallows v Platinum Stars	SABC
	CAF Champions League: Mamelodi Sundowns v Saint George (repeat May)	SABC
	CAF Champions League: AS Vita v Mamelodi Sundowns	SABC
	PSL Awards, Sandton (Live)	SABC
	Durban July (Live)	SABC
	2016 MTN Final: Bidvest Wits v Mamelodi Sundowns	SABC
	2016 Telkom Knockout Final: SuperSport United v Cape Town City	SABC
	2016 MTN 8 Final: Wits v Sundowns	SABC
	2016 Carling Cup Final	SABC
	WWE Main Event	e.tv
	WWE Smackdown	e.tv
	WWE Raw	e.tv
	WWE Experience	e.tv
	WWE NXT	e.tv
	WWE Specials: Great Ball of Fire	e.tv
	WWE Specials: Battleground	e.tv
August-17	Inaugural Premier Cup: Chippa United v Kaizer Chiefs (Live)	SABC
	MTN 8 QF: Cape Town City v Polokwane City (Live)	SABC
	MTN 8 QF: Mamelodi Sundowns v Maritzburg United (Live)	SABC
	MTN 8 SF 1st Leg: SuperSport United v Maritzburg United (Live)	SABC
	MTN 8 SF 1st Leg: Cape Town City v Bidvest Wits (Live)	SABC
	PSL: SuperSport United v Mamelodi Sundowns (Live)	SABC
	PSL: Ajax Cape Town v Golden Arrows (Live)	SABC
	PSL: Platinum Stars v Maritzburg United (Live)	SABC

	PSL: Cape Town City v Platinum Stars	SABC
	PSL: Chippa United v Amazulu	SABC
	2018 CHAN Qualifier: Bafana Bafana v Zambia (Live)	SABC
	NFD: Stellenbosch FC v Uthongathi FC (Live)	SABC
	NFD Playoff: Baroka v Stellenbosch (record June)	SABC
	NFD Playoff: Stellenbosch v Black Leopards (record June)	SABC
	NFD Playoff: Black Leopards v Baroka (record June)	SABC
	2018 CHAN Qualifier: Bafana Bafana v Botswana (record June)	SABC
	NBA Africa Games: All Stars World v The All Stars Africa (Live)	SABC
	Castle Lager Rugby Champs: South Africa v Argentina	SABC
	The TKO (Live)	SABC
	EFC 61 (Live)	SABC
	Nelson Mandela Marathon at Pietermaritzburg (Live)	SABC
	SuperSport Final: Lions v Crusaders (Live)	SABC
	G-Sport Awards at Melrose Arch	SABC
	WWE Main Event	e.tv
	WWE Smackdown	e.tv
	WWE Raw	e.tv
	WWE Experience	e.tv
	WWE NXT	e.tv
	WWE Total Divas (x2)	e.tv
	WWE Specials: SummerSlam (27 Aug – last event)	e.tv
September-17	2018 World Cup Qualifier: Cape Verde v Bafana Bafana (Live)	SABC
	2018 World Cup Qualifier: Bafana Bafana v Cape Verde (Live)	SABC
	Nedbank Ke Yona Final: Ke Yona Team v SuperSport United (Live)	SABC
	NFD: University of Pretoria v Highlands Park (Live)	SABC
	MTN 8 SF 2nd Leg: Maritzburg United v SuperSport United (Live)	SABC
	MTN 8 SF 2nd Leg: Bidvest Wits v Cape Town City (Live)	SABC
	PSL: Baroka v Free State Stars (Live)	SABC
	PSL: Platinum Stars v Chippa United (Live)	SABC
	PSL: Baroka v Ajax Cape Town (Live)	SABC
	PSL: Amazulu v Platinum Stars (Live)	SABC
	PSL: Ajax Cape Town v Cape Town City (Live)	SABC
	PSL: Polokwane City v Orlando Pirates (Live)	SABC
	PSL: SuperSport United v Platinum Stars	SABC
	PSL: Amazulu v Maritzburg United	SABC
	PSL: SuperSport United v Chippa United	SABC
	PSL: Chippa United v Bloemfontein Celtic (Live)	SABC
	PSL: Polokwane City v Free State Stars	SABC
	CAF Champions League QF: Mamelodi Sundowns v WAC (Morocco) (Live)	SABC
	CAF Confederations Cup QF 1st Leg: SuperSport United v Zesco United	SABC
	Castle Lager Rugby Champs: South Africa v Australia	SABC
	South Africa v Bangladesh 1st Test Day 1 (Live)	SABC
	South Africa v Bangladesh 1st Test Day 2 (Live)	SABC
	South Africa v Bangladesh 1st Test Day 3 (Live)	SABC
	The TKO (Live)	SABC
	Cape Town Marathon (Live)	SABC
	Spar Race Pietermaritzburg Highlights	SABC
	2016 Nedbank Ke Yona Final: Ke Yona Team v SuperSport United	SABC
	Nedbank Ke Yona Final: Ke Yona Team v SuperSport United	SABC
	U20: South Africa v Namibia	SABC

October-17	PSL: Golden Arrows v AmaZulu	SABC

October-17	PSL: Bloemfontein Celtic vs Bidvest Wits (Live)	SABC1
	PSL: Baroka FC vs Ajax Cape Town	SABC
	PSL: AmaZulu vs Platinum Stars	SABC
	PSL: Chippa United vs Maritzburg United	SABC
	PSL: Kaizer Chiefs vs Orlando Pirates (Live)	SABC
	PSL: Free State Stars vs Platinum Stars (Live)	SABC
	PSL: Baroka FC vs Bidvest Wits (Delayed)	SABC
	PSL: Cape Town City vs Bloemfontein Celtic (Delayed)	SABC
	PSL: Mamelodi Sundowns vs Kaizer Chiefs (Delayed)	SABC
	PSL: Bloemfontein Celtic vs Maritzburg United (Delayed)	SABC
	MTN8 2017 Final: SuperSport United vs Cape Town City (Live)	SABC
	Telkom Knockout Cup, Last 16: Golden Arrows vs Orlando Pirates (Live)	SABC
	Telkom Knockout Cup, Last 16: Bidvest Wits vs Free State Stars (Live)	SABC
	Telkom Knockout Cup, Last 16: Baroka FC vs Cape Town City FC (Live)	SABC
	Telkom Knockout Cup, Last 16: Polokwane City vs Ajax Cape Town (Delayed)	SABC
	International Friendly: South Africa vs Burkina Faso (Live)	SABC
	Gauteng Sports Awards 2017	SABC
	Women's U20 World Cup Qualifier: SA v Namibia	SABC
	FIFA U17 World Cup 2017, India vs USA	SABC
	FIFA U17 World Cup 2017, Chile vs England	SABC
	FIFA U17 World Cup 2017, Chana vs USA	SABC
	FIFA U17 World Cup 2017, Turkey vs Mali	SABC
	FIFA U17 World Cup 2017, Costa Rica vs Guinea HL	SABC
	FIFA U17 World Cup 2017, Spain vs Nigeria	SABC
	FIFA U17 World Cup 2017, North Korea vs Brazil	SABC
	FIFA U17 World Cup 2017, Brazil vs Spain	SABC
	FIFA U17 World Cup 2017, Guinea vs Germany	SABC
	FIFA U17 World Cup 2017, USA vs Colombia	SABC
	FIFA U17 World Cup 2017, Nigeria vs Brazil	SABC
	FIFA U17 World Cup 2017, Spain vs North Korea	SABC
	FIFA U17 World Cup 2017, Ghana vs India	SABC
	FIFA U17 World Cup 2017, USA vs Colombia	SABC
	FIFA U17 World Cup 2017, Spain vs DPR	SABC
	FIFA U17 World Cup 2017, Japan vs NCL	SABC
	FIFA U17 World Cup 2017, England vs Iraq	SABC
	FIFA U17 World Cup 2017, Colombia vs Germany	SABC
	FIFA U17 World Cup 2017, France vs Spain	SABC
	FIFA U17 World Cup 2017, Iran vs Mexico	SABC
	FIFA U17 World Cup 2017, Quarter-final 1	SABC
	FIFA U17 World Cup 2017, Quarter-final 2	SABC
	FIFA U17 World Cup 2017, Semi-final 1: Brazil vs England (Live)	SABC
	FIFA U17 World Cup 2017, Semi-final 2: Mali vs Spain (Live)	SABC
	FIFA U17 World Cup 2017 India	SABC
	FIFA World Cup Qualifiers: South Africa vs Burkina Faso (Live)	SABC
	Gauteng Champion of Champions, Semi-finals & Final	SABC
	MACUFE Cup: Bloemfontein Celtic vs Kaizer Chiefs (Live)	SABC
	Boxing Live (6 Oct & 21:30 – 2006)	SABC2

	Rugby: Castle Rugby Championship, South Africa vs New Zealand	SABC
	Rugby: Currie Cup Final, Sharks vs Western Province	SABC
	OR Tambo Marathon	SABC
	Cricket: Sunfoil Test Series, South Africa vs Bangladesh 1st Test Day 4 & 5 (Live)	SABC3
	Cricket: Sunfoil Test Series, South Africa vs Bangladesh 2nd Test Day 1 - 3 (Live)	SABC
	Cricket: Momentum ODI, South Africa vs Bangladesh 1st ODI (Live)	SABC
	Cricket: Momentum ODI, South Africa vs Bangladesh 2nd ODI (Live)	SABC
	Cricket: Momentum ODI, South Africa vs Bangladesh 3rd ODI (Live)	SABC
	Cricket: KFC T20 International, South Africa vs Bangladesh 1st T20 (Live)	SABC
	Cricket: KFC T20 International, South Africa vs Bangladesh 2nd T20 (Live)	SABC
	EFC 64: Hawkey vs Cucciniello (Live)	SABC
	EFC 60: Premium Fights - The Extreme Fighting Championship. Stephen De La Rey vs Warren Richards, Yusuf Hassan vs Jesse Fleming, Marino Cutendana vs Martin de Beer.	SABC
	EFC 60: Premium Fights - Dansheel Moodley vs Roewan de Beer, Martin van Staden vs Leon Mynhardt.	SABC
	EFC 65: Countdown - Dalcha vs Stuart Austin. Boyd Allen vs Calum Murrie.	SABC
	FIFA U17 World Cup 2017, Brazil vs England HL	SABC
	FIFA U17 World Cup 2017 Final, England vs Spain (Live)	SABC
November-17	PSL: Kaizer Chiefs vs Orlando Pirates	SABC1
	PSL: Orlando Pirates vs Mamelodi Sundowns (Delayed)	SABC
	PSL: Cape Town City vs Free State Stars (Delayed)	SABC
	PSL: Baroka FC vs Bidvest Wits	SABC
	PSL: Polokwane City vs Maritzburg United (Delayed)	SABC
	PSL: Cape Town City vs Baroka FC (Delayed)	SABC
	PSL: Chippa United vs Mamelodi Sundowns (Live)	SABC
	PSL: Baroka FC vs Platinum Stars (Live)	SABC
	PSL: Ajax Cape Town vs AmaZulu FC (Delayed)	SABC
	Telkom Knockout Cup, Last 16: Baroka FC vs Cape Town FC	SABC
	Telkom Knockout Cup, QF1: Platinum Stars vs Bloemfontein Celtic (Live)	SABC
	Telkom Knockout Cup, QF2: Bidvest Wits vs Baroka FC (Live)	SABC
	Telkom Knockout Cup, QF4: Chippa United vs Kaizer Chiefs (Live)	SABC
	Telkom Knockout Cup, SF1: Bidvest Wits vs Kaizer Chiefs (Live)	SABC
	Telkom Knockout Cup, SF2: Polokwane City vs Bloemfontein Celtic (Live)	SABC
	FIFA World Cup Qualifier (CAF): South Africa vs Senegal	SABC
	FIFA World Cup Qualifier (CAF): Senegal vs South Africa	SABC
	FIFA U20 World Cup Qualifier, South Africa vs Burundi	SABC
	FIFA U17 World Cup 2017, Brazil vs England	SABC
	FIFA U17 World Cup 2017, Mali vs Spain	SABC
	FIFA U17 World Cup 2017, England vs Spain	SABC
	CAF Confederation Cup Final 2nd Leg: SuperSport United vs TP Mazembe	SABC
	Soweto Marathon (Live)	SABC2
	SA Sports Awards (12 November @ 20:00) Live	SABC

	Boxing (Live)	SABC
	EFC 65: Dalcha vs Austin (Live).	SABC3
	EFC (Repeat) - Sizwe Mnikathi vs Sindile Manengela, Gordon Roodman vs Cameron Meintjes.	SABC
December-17	FIFA 2018 World Cup Draw (Live)	SABC1
	Telkom 2016 Final: SuperSport United vs Cape Town City	SABC
	Telkom Knockout Final: Bidvest Wits vs Bloemfontein Celtic (Live)	SABC
	PSL: Cape Town City vs Maritzburg United (Delayed)	SABC
	PSL: Free State Stars vs Golden Arrows (Delayed)	SABC
	PSL: Golden Arrows vs AmaZulu FC	SABC
	PSL: Ajax Cape Town vs Chippa United (Live)	SABC
	PSL: Bloemfontein Celtic vs Free State Stars (Live)	SABC
	PSL: Free State Stars vs SuperSport United (Delayed)	SABC
	PSL: Polokwane City vs Bidvest Wits (Delayed)	SABC
	PSL: Chippa United vs Polokwane City (Live)	SABC
	PSL: Bidvest Wits vs Platinum Stars (Live)	SABC
	PSL: Golden Arrows vs Maritzburg (Live)	SABC
	PSL: Bidvest Wits vs Platinum Stars	SABC
	Soccer: Sasol League National Championship Final (Live)	SABC
	FIFA U20 Women's World Cup Qualifier: South Africa vs Botswana	SABC
	Boxing (Live)	SABC2
	EFC (Repeat) - Nico Yamdjie vs Thabani Mndebela, Amanda Lino vs Jacqueline Trosee.	SABC3
	EFC (Repeat) - Sizwe Mnikathi vs Sindile Manengela, Gordon Roodman vs Cameron Meintjes.	SABC
	Demarte Pena vs Irshaad Sayed, Andrew Van Zyl prepares to put his heavyweight title on the line.	SABC
	EFC 66: The Fighter Finale (Live) Plus, Demarte Pena vs Irshaad Sayed. Van Zyl vs Vanderaa.	SABC
	EFC 61 Premium Fights - Pietie Coxen vs Tresor Boluwa, Elvis Moyo vs Stuart Austin.	SABC
	EFC 61 Premium Fights - Josemar Octavio vs Radely de Vries, Warren Allison vs Roelof Scheepers, Oumpie Sebeko vs Regis Muyambo, Champion Dalcha vs Alan Baudot.	SABC
	Extreme Fighting Championship weekly program x2	SABC
	Cricket: Sunfoil Test Series, South Africa vs Zimbabwe Test Day 1 - 4 (Live)	SABC
January-18	PSL: Polokwane City vs Mamelodi Sundowns (Live)	SABC1
	PSL: Platinum Stars vs Cape Town City (Live)	SABC
	PSL: AmaZulu FC vs Chippa United (Live)	SABC
	PSL: Bidvest Wits vs SuperSport United (Delayed)	SABC
	PSL: Platinum Stars vs Cape Town City	SABC
	PSL: Mamelodi Sundowns vs Orlando Pirates (Live)	SABC
	PSL: Free State Stars vs Cape Town City (Live)	SABC
	PSL: Baroka FC vs AmaZulu FC (Live)	SABC
	PSL: Maritzburg United vs SuperSport United (Delayed)	SABC
	PSL: Free State Stars vs Maritzburg (Live)	SABC
	PSL: AmaZulu FC vs SuperSport United (Live)	SABC
	PSL: Chippa United vs Golden Arrows (Delayed)	SABC
	PSL: AmaZulu FC vs Bloemfontein Celtic (Delayed)	SABC
	PSL: Platinum Stars vs Orlando Pirates (Live)	SABC
	PSL: Kaizer Chiefs vs Mamelodi Sundowns (Live)	SABC
	PSL: Bloemfontein Celtic vs Cape Town City (Live)	SABC
	PSL: SuperSport United vs AmaZulu (Delayed)	SABC

	PSL: Ajax Cape Town vs Free State Stars (Delayed)	SABC
	FIFA U20 World Cup Qualifier, South Africa vs Nigeria (Delayed)	SABC
	International Friendly (Women): South Africa vs Sweden (Live)	SABC
	Boxing (Live)	SABC2
	EFC 61 Premium Fights - Pietie Coxen vs Tresor Boluwa, Elvis Moyo vs Stuart Austin.	SABC3
	EFC 61 Premium Fights - Josemar Octavio vs Radely de Vries, Warren Allison vs Roelof Scheepers, Oumpie Sebeko vs Regis Muyambo, Champion Dalcha vs Alan Baudot.	SABC
	EFC 61 Premium Fights - Rodrigue Kena vs Tshilumba Mikixi, Andrew van Zyl vs Wessel Mostert.	SABC
	EFC 62 Premium Fights - Steven Goncalves vs Claude Ntumba, Igeu Kabesa vs Pierre Botha.	SABC
	EFC 62 Premium Fights - Sifiso Ngcobo vs JP van Rooyen, Gareth Buirski vs Cal Ellenor.	SABC
	EFC 62 Premium Fights - Trezegeut Kanyinda vs Stephen de la Rey, Sindile Manengela vs Barend Nienaber.	SABC
	EFC 62 Premium Fights - Bunmi Ojewole vs Rizlen Zouak, Nkazimulo Zulu vs Sylvester Chipfumbu.	SABC
	EFC 62 Premium Fights - Ricky Misholas vs Nico Yamdje, Yannick Bahati vs Dricus du Plessis.	SABC
	Extreme Fighting Championship weekly program x2	SABC
	Cricket: Sunfoil Test Series, South Africa vs India 1st Test Day 1 – 4 (Live)	SABC
	Cricket: Sunfoil Test Series, South Africa vs India 2nd Test Day 1 – 5 (Live)	SABC
	Cricket: Sunfoil Test Series, South Africa vs India 3rd Test Day 1 – 4 (Live)	SABC
February-18	PSL: Free State Stars vs Baroka FC (Live)	SABC1
	PSL: AmaZulu FC vs Golden Arrows (Live)	SABC
	PSL: Chippa United vs Platinum Stars (Live)	SABC
	PSL: Baroka FC vs Chippa United (Live)	SABC
	PSL: Kaizer Chiefs vs Cape Town City (Live)	SABC
	PSL: Platinum Stars vs SuperSport United (Delayed)	SABC
	PSL: Baroka FC vs Polokwane City (Live)	SABC
	PSL: Free State Stars vs AmaZulu (Live)	SABC
	PSL: Golden Arrows vs Ajax Cape Town (Live)	SABC
	PSL: Baroka FC vs Cape Town City (Delayed)	SABC
	Nedbank Cup: AmaZulu vs Mthatha Bucks (Delayed)	SABC
	Nedbank Cup: Phiva Young Stars vs Chippa United (Live)	SABC
	Nedbank Cup: Orlando Pirates vs Ajax Cape Town (Live)	SABC
	Nedbank Cup: Bloemfontein Celtic vs SuperSport United (Live)	SABC
	Nedbank Cup: Stellenbosch vs Highlands Park (Delayed)	SABC
	NFD: Super Eagles vs Witbank Spurs (Live)	SABC
	Road to Russia (magazine show)	SABC
	Boxing Awards (2 February @ 22:30)	SABC2
	Winter Olympics (2 hour show each night)	SABC
	Live Boxing (23 February @ 21:30)	SABC
	Cricket: Momentum ODI, South Africa vs India 1st ODI (Live)	SABC3
	Cricket: Momentum ODI, South Africa vs India 2nd ODI (Live)	SABC
	Cricket: Momentum ODI, South Africa vs India 3rd ODI (Live)	SABC
	Cricket: Momentum ODI, South Africa vs India 4th ODI (Live)	SABC
	Cricket: Momentum ODI, South Africa vs India 5th ODI (Live)	SABC
	Cricket: Momentum ODI, South Africa vs India 6th ODI (Live)	SABC
	Cricket: KFC T20 International, South Africa vs India 1st T20 (Live)	SABC

	Cricket: KFC T20 International, South Africa vs India 3rd T20 (Live)	SABC
	EFC 63 Premium Fights - Nerik Simoes vs Faez Jacobs, Gunther Kalunda vs Armand Scheepers, Jose da Rocha vs Cameron Pritchard.	SABC
	EFC 63 Premium Fights - Sizwe Mnikathi vs Deon Bruning, Themba Gorimbo vs Dave Mazany.	SABC
	Extreme Fighting Championship weekly program x5	SABC
March-18	PSL: Baroka FC vs Polokwane FC	SABC1
	PSL: Golden Arrows vs Ajax Cape Town	SABC
	PSL: Orlando Pirates vs Kaizer Chiefs (Live)	SABC
	PSL: Platinum Stars vs Free State Stars (Live)	SABC
	PSL: Bloemfontein Celtic vs Ajax Cape Town (Live)	SABC
	PSL: Baroka FC vs Cape Town City	SABC
	PSL: Bloemfontein Celtic vs Polokwane City (Delayed)	SABC
	PSL: Chippa United vs Free State Stars (Live)	SABC
	PSL: Golden Arrows vs Orlando Pirates (Live)	SABC
	PSL: Bloemfontein Celtic vs Platinum Stars (Live)	SABC
	Laduma: Live Saturday 24 March 14:00 – 17:30 / FIFA Week	SABC
	Laduma: Live Sunday 25 March 15:00 – 17:30 / FIFA Week	SABC
	Nedbank Cup: Baroka FC vs Steenberg United (Live)	SABC
	Nedbank Cup: Kaizer Chiefs vs Stellenbosch FC (Live)	SABC
	Nedbank Cup: Bloemfontein Celtic vs Richards Bay (Live)	SABC
	Nedbank Cup QF: Ubuntu Cape Town vs Free State Stars (Live)	SABC
	Road to Russia (magazine show)	SABC
	Summer Series – (magazine show)	SABC2
	ASA Track and Field Events – ASA Grand Prix (magazines)	SABC
	Two Oceans Marathon (Live)	SABC
	Cricket: Sunfoil Test Series, South Africa vs Australia 1st Test Day 1 – 5 (Live)	SABC3
	Cricket: Sunfoil Test Series, South Africa vs Australia 2nd Test Day 1 – 5 (Live)	SABC
	Cricket: Sunfoil Test Series, South Africa vs Australia 3rd Test Day 1 – 4 (Live)	SABC
	Cricket: Sunfoil Test Series, South Africa vs Australia 4th Test Day 1 – 2 (Live)	SABC
	EFC 67 Countdown - Igeu Kabesa vs Boyd Allen, Danella Eliasov vs Chiara Penco.	SABC
	EFC 65 Premium Fights - Regis Muyambo vs Sindile Manengela, Magno Alves vs Bokang Masunyane.	SABC
	EFC 67: Eliasov vs Penco (Live) - Igeu Kabesa, vs Paulo Silva.	SABC
	EFC 65 Premium Fights - Serge Kasanda vs Francois Cundari, Rodrique Kena vs Luke Michael, Nico Yamdje vs Elvis Moyo.	SABC
	EFC 68 Build up Gavin Hughes	SABC
	EFC 65 Premium Fights - Wade Kerspuy vs Guy Mongambi, Calum Murrie vs Boyd Allen.	SABC
	EFC 65 Premium Fights - Wade Kerspuy vs Guy Mongambi, Calum Murrie vs Boyd Allen.	SABC
	EFC 68 Build up Gavin Hughes	SABC
	EFC 68 Countdown: Van Staden vs Hughes, Dave Mazany vs Chris Bright.	SABC
	EFC 67 Eliasov vs Penco - Danella Eliasov vs Chiara Penco, Igeu Kabesa vs Paulo Silva.	SABC
	Extreme Fighting Championship weekly program	SABC
April-18	PSL: Bidvest Wits vs Maritzburg United (Delayed)	SABC1

	PSL: Polokwane City vs SuperSport United (Delayed)	SABC
	PSL: Golden Arrows vs Free State Stars (Live)	SABC
	PSL: Platinum Stars vs Polokwane City (Live)	SABC
	PSL: Bloemfontein Celtic vs AmaZulu (Live)	SABC
	PSL: Ajax Cape Town vs Bidvest Wits (Delayed)	SABC
	PSL: Cape Town City vs SuperSport United (Live)	SABC
	PSL: Mamelodi Sundowns vs Bidvest Wits (Live)	SABC
	PSL: Baroka FC vs Maritzburg United (Live)	SABC
	PSL: SuperSport United vs Free State Stars (Delayed)	SABC
	PSL: Bloemfontein Celtic vs Chippa United (Delayed)	SABC
	PSL: Mamelodi Sundowns vs Ajax Cape Town (Live)	SABC
	PSL: Bidvest Wits vs AmaZulu (Delayed)	SABC
	PSL: Cape Town City vs Orlando Pirates (Delayed)	SABC
	PSL: Kaizer Chiefs vs Maritzburg United (Delayed)	SABC
	PSL: Golden Arrows vs Platinum Stars (Delayed)	SABC
	PSL: Chippa United vs SuperSport United (Delayed)	SABC
	PSL: Free State Stars vs Polokwane City (Delayed)	SABC
	Nedbank Cup QF4: Cape Town City vs Sundowns (Live)	SABC
	Nedbank Cup SF: Kaizer Chiefs vs Free State Stars (Live)	SABC
	Nedbank Cup SF: Maritzburg United vs Mamelodi Sundowns (Live)	SABC
	NFD: Real Kings vs University of Pretoria (Live)	SABC
	NFD: Jomo Cosmos vs Super Eagles (Live)	SABC
	FIFA Magazine	SABC
	Road to Russia	SABC
	ASA Youth and Junior T&F Championship.	SABC2
	Two Oceans Marathon	SABC
	Live Boxing (27 April @ 21:30) ***no further detail***	SABC
	Cricket: Sunfoil Test Series, South Africa vs Australia 4th Test Day 3 – 5 (Live)	SABC3
	EFC 65 Premium Fights - Wade Kerspuy vs Guy Mongambi, Calum Murrie vs Boyd Allen.	SABC
	EFC 69 Build up Philippe Rouch - Philippe Rouch vs JP Buys.	SABC
	EFC 65 Premium Fights - Pierre Botha vs Sibusiso Mdoko, Stuart Austin vs Champion Dalcha.	SABC
	EFC 69 Build up Nkazimulo Zulu.	SABC
	EFC 66 Premium Fights - Colin Hume vs Khulekani Hlongwa, Conrad Seabi vs Gunther Kalunda, Gordon Roodman vs Will Fleury.	SABC
	EFC 69 Countdown Buys vs Rouch.	SABC
	EFC 68 Van Staden vs Hughes, Dave Mazany vs Chris Bright.	SABC
	EFC 69 Buys vs Round (Live). Nkazimulo Zulu vs Marino Cutendana.	SABC
	EFC 66 Premium Fights - Ricky Misholas vs Kevin Koekemoer, Gareth Buirski vs Phillippe Rouch.	SABC
	EFC 70 Build up Amanda Lino	SABC
		SABC1
May-18	PSL: SuperSport United vs Free State Stars	SABC
	PSL: Maritzburg United vs Mamelodi Sundowns	SABC
	PSL: Bloemfontein Celtic vs Mamelodi Sundowns (Live)	SABC
	PSL: Ajax Cape Town vs Kaizer Chiefs (Delayed)	SABC
	PSL: Polokwane City vs Chippa United (Delayed)	SABC
	PSL: Orlando Pirates vs Free State Stars (Delayed)	SABC
	PSL: SuperSport United vs Baroka FC (Delayed)	SABC
	PSL: AmaZulu vs Cape Town City (Delayed)	SABC
	NFD Play-off 2: Jomo Cosmos vs Black Leopards (Live)	SABC

	NFD, Play-off 4: Black Leopards vs Jomo Cosmos (Delayed)	SABC
	NFD: Platinum Stars vs Black Leopards (Live)	SABC
	NFD: Black Leopards vs Platinum Stars (Delayed)	SABC
	NFD: Platinum Stars vs Jomo Cosmos (Delayed)	SABC
	Nelson Mandela Centenary Charity Invitational: Sundowns vs Barcelona (Live) (also live on SABC3)	SABC
	Nedbank Cup Final: Maritzburg United vs Free State Stars (Live)	SABC
	PSL Awards (Live)	SABC
	FIFA Magazine	SABC
	Road to Russia	SABC
	EFC 66 Premium Fights - Stefan Pretorius vs Tresor Boluwa, Nerik Simoes vs Steven Goncalves, Jose Da Rocha vs Pupanga Tresor.	SABC3
	EFC 70 Build up Rizlen Zouak	SABC
	EFC 70 Build cup Bunmi Ojewole	SABC
	EFC 70 Countdown Lino vs Zouak	SABC
	EFC 69 Buys vs Rouch.	SABC
	EFC 70 Lino vs Zouak (Live)	SABC
	EFC 66 Premium Fights - Jacqueline Trosee vs Rizlen Zouak, Andrew van Zyl vs Jared Vanderaa.	SABC
	EFC 71 Build up Andrew van Zyl	SABC
June-18	NFD Play-off: Jomo Cosmos vs Platinum Stars (Live)	SABC1
	NFD: Black Leopards vs Jomo Cosmos	SABC
	FIFA World Cup: Opening Ceremony (Live)	SABC
	FIFA World Cup: Russia vs Saudi Arabia (Live)	SABC
	FIFA World Cup: Egypt vs Uruguay (Live)	SABC
	FIFA World Cup: Portugal vs Spain (Live)	SABC
	FIFA World Cup: Argentina vs Iceland (Live)	SABC
	FIFA World Cup: Croatia vs Nigeria (Live)	SABC
	FIFA World Cup: Germany vs Mexico (Live)	SABC
	FIFA World Cup: Brazil vs Switzerland (Live)	SABC
	FIFA World Cup: Belgium vs Panama (Live)	SABC
	FIFA World Cup: Tunisia vs England (Live)	SABC
	FIFA World Cup: Poland vs Senegal (Live)	SABC
	FIFA World Cup: Russia vs Egypt (Live)	SABC
	FIFA World Cup: Portugal vs Morocco (Live)	SABC
	FIFA World Cup: Iran vs Spain (Live)	SABC
	FIFA World Cup: France vs Peru (Live)	SABC
	FIFA World Cup: Argentina vs Croatia (Live)	SABC
	FIFA World Cup: Brazil vs Costa Rica (Live)	SABC
	FIFA World Cup: Nigeria vs Iceland (Live)	SABC
	FIFA World Cup: Belgium vs Tunisia (Live)	SABC
	FIFA World Cup: Germany vs Sweden (Live)	SABC
	FIFA World Cup: England vs Panama (Live)	SABC
	FIFA World Cup: Japan vs Senegal (Live)	SABC
	FIFA World Cup: Uruguay vs Russia (Live)	SABC
	FIFA World Cup: Spain vs Morocco (Live)	SABC
	FIFA World Cup: Denmark vs France (Live)	SABC
	FIFA World Cup: Nigeria vs Argentina (Live)	SABC
	FIFA World Cup: Serbia vs Brazil (Live)	SABC
	FIFA World Cup: Senegal vs Colombia (Live)	SABC
	FIFA World Cup: England vs Belgium (Live)	SABC
	FIFA World Cup: France vs Argentina (Live)	SABC
	FIFA World Cup: Uruguay vs Portugal (Live)	SABC
	International Women Friendly: South Africa vs Lesotho	SABC

	COSAFA Cup Blitz Highlights QF3: South Africa vs Madagascar	SABC
	FIFA World Cup Highlights	SABC
	FIFA World Cup Magazine	SABC
	Road to Russia	SABC
	Rugby Inbound Test: South Africa vs England 1st Test	SABC2
	Rugby Inbound Test: South Africa vs England 2nd Test	SABC
	Rugby Inbound Test: South Africa vs England 3rd Test	SABC
	Live Boxing (29 June @ 21:30)	SABC
	Comrades Marathon (Live)	SABC
	EFC 66 Premium Fights - Quaid Openshaw vs Mark Kamba, Demarte Pena vs Irshaad Sayed.	SABC3
	EFC 71 Build up Champion Dalcha.	SABC
	EFC 67 Premium Fights - Rodrique Kena vs Serge Kasanda, Khulekani Hlongwa vs Quinton Rossouw, Gordon Roodman vs Mzwandile Hlongwa, Reinier de Ridder vs Warren Allison.	SABC
	EFC 71 Build up K Masunyane.	SABC
	EFC 71 Countdown Van Zl vs Dalcha.	SABC
	EFC 70 Lino vs Zouak – (Repeat)	SABC
	EFC 71 Van Zyl vs Dalcha (Live).	SABC
	EFC 67 Premium Fights - Devon Cronje vs Amisi Kabeya, Steven Gancalves vs Trezegeut Kanyinda, Coner Hignett vs Bokang Masunyane.	SABC
	EFC 72 Build up Dave Mazany.	SABC
July-18	FIFA World Cup: Spain vs Russia (Live)	SABC1
	FIFA World Cup: Croatia vs Denmark (Live)	SABC
	FIFA World Cup: Brazil vs Mexico (Live)	SABC
	FIFA World Cup: Belgium vs Japan (Live)	SABC
	FIFA World Cup: Sweden vs Switzerland (Live)	SABC
	FIFA World Cup: Colombia vs England (Live)	SABC
	FIFA World Cup: Uruguay vs France (Live)	SABC
	FIFA World Cup: Brazil vs Belgium (Live)	SABC
	FIFA World Cup: Sweden vs England (Live)	SABC
	FIFA World Cup: Russia vs Croatia (Live)	SABC
	FIFA World Cup: France vs Belgium (Live)	SABC
	FIFA World Cup: Croatia vs England (Live)	SABC
	FIFA World Cup: Belgium vs England (Live)	SABC
	FIFA World Cup: France vs Croatia (Live)	SABC
	MTN8 Review 2017	SABC
	MTN8 2017 Final: Cape Town City vs SuperSport United	SABC
	Shell Helix: Mamelodi Sundowns vs Kaizer Chiefs (Live)	SABC
	FIFA World Cup Highlights	SABC
	FIFA Magazine	SABC
	PSL Champions (29 July)	SABC
	Nelson Mandela Challenge: Mamelodi Sundowns vs Barcelona FC	SABC
	Live Boxing (27 July @ 21:30)	SABC2
	EFC 67 Premium Fights - TC Khusu vs Roewan de Beer, Igeu Kabesa vs Paulo Silva.	SABC3
	EFC 72 Build up Martin van Staden	SABC
	EFC 67 Premium Fights - Rodrique Kena vs Serge Kasanda, Khulekani Hlongwa vs Quinton Rossouw, Gordon Roodman vs Mzwandile Hlongwa, Reinier de Ridder vs Warren Allison.	SABC
	EFC 72 Build up Martin van Staden.	SABC
	EFC Best Fights of 2017.	SABC
	EFC 72 Build up Dave Mazany.	SABC
	EFC Best Fights of 2017.	SABC

	EFC 72 Build up Luke Michael.	SABC
	EFC Best Submissions 2017.	SABC
	EFC 72 Build up Martin van.	SABC
August-18	PSL: Mamelodi Sundowns vs Kaizer Chiefs (Live)	SABC1
	PSL: AmaZulu vs Baroka (Live)	SABC
	PSL: Bloemfontein Celtic vs Chippa United (Live)	SABC
	PSL: SuperSport United vs AmaZulu (Delayed)	SABC
	PSL: Orlando Pirates vs Bidvest Wits (Delayed)	SABC
	PSL: Polokwane City vs Baroka FC (Live)	SABC
	PSL: Chippa United vs Black Leopards (Live)	SABC
	PSL: AmaZulu FC vs Free State Stars (Live)	SABC
	PSL: Mamelodi Sundowns vs Highlands Park (Delayed)	SABC
	PSL: SuperSport United vs Chippa United (Delayed)	SABC
	PSL: Bidvest Wits vs AmaZulu (Delayed)	SABC
	MTN8 QF1: Mamelodi Sundowns vs Golden Arrows (Live)	SABC
	MTN8 QF4: Maritzburg United vs Cape Town City (Live)	SABC
	MTN8 SF1 – 1st Leg: Cape Town City vs Mamelodi Sundowns (Live)	SABC
	MTN8 SF2 – 1st Leg: SuperSport United vs Kaizer Chiefs (Live)	SABC
	FIFA U20: France vs Ghana (Live) 5 August @ 19:30	SABC2
	Castle Lager Rugby Champs: South Africa vs Argentina	SABC
	FIFA U20 Womens World Cup: Spain vs Japan	SABC
	Mandela Day Marathon (Live)	SABC
	Live Boxing (31 August @ 21:30)	SABC
	EFC 72 Countdown Van Staden vs Mazany	SABC3
	EFC 71 Van Zyl vs Dalcha – (Repeat).	SABC
	EFC 72 Van Staden vs Mazany (Live). Plus Gideon Drotschie vs Jenaid Ebanks.	SABC
	EFC Best Knockouts 2017.	SABC
	EFC 73 Build up Gunther Kalunda	SABC
	EFC 68 Premium Fights - Juan Bezuidenhout vs Matunga Djikasa, Gary Joshua vs Martin de Beer, Faez Jacobs vs Cal Ellenor.	SABC
	Premier League: Arsenal vs West Ham United (Live)	SABC
September-18	PSL: Cape Town City vs Kaizer Chiefs (Live)	SABC1
	PSL: Polokwane City vs Free State Stars (Live)	SABC
	PSL: Black Leopards vs Bloemfontein Celtic (Live)	SABC
	PSL: Golden Arrows vs Mamelodi Sundowns (Delayed)	SABC
	PSL: Golden Arrows vs Chippa United (Live)	SABC
	PSL: Free State Stars vs Highlands Park (Live)	SABC
	PSL: Bloemfontein Celtic vs Maritzburg United (Live)	SABC
	PSL: Baroka FC vs Free State Stars (Delayed)	SABC
	MTN8 SF2 – 2nd Leg: Kaizer Chiefs vs SuperSport United (Live)	SABC
	MTN8 SF1 – 2nd Leg: Mamelodi Sundowns vs Cape Town City (Live)	SABC
	MTN8 Final: SuperSport United vs Cape Town City (Live)	SABC
	NFD: Maccabi FC vs Moya United (Live)	SABC
	NFD: University of Pretoria vs Maccabi FC (Live)	SABC
	AFCON Qualifier: South Africa vs Libya (Live)	SABC
	Nedbank Ke Yona: Free State Stars vs Nedbank Ke Yona Team (Live)	SABC
	Spar Women's Race (5 & 10km race) HL	SABC2
	Cape Town City Marathon (Live)	SABC
	Castle Lager Rugby Champs: South Africa vs Australia	SABC
	Cricket: South Africa vs Zimbabwe 1st ODI (Live)	SABC3

	Premier League: Burnley vs Manchester United (Repeat / 30 mins.)	SABC
	Premier League: Chelsea vs Bournemouth (Live)	SABC
	Premier League: Manchester City vs Fulham (Live)	SABC
	Premier League: Liverpool vs Southampton (Live)	SABC
	Premier League Review Show	SABC
	EFC 73 Kalunda vs Da Rocha (Live) Plus Elvis Moyo vs Jared Vanderaa.	SABC
	EFC 68 Premium Fights - Caleb Ridley vs August Kayambala, Bruno Mukulu vs Torbjørn Madsen, Dave Mazany vs Chris Bright.	SABC
	EFC 74 Build up Igeu Kabesa.	SABC
	EFC 68 Premium Fights - Robo Ambamba vs Justin Smith, Luke Michael vs Francois Cundari, Martin van Staden vs Gavin Hughes.	SABC
	EFC 74 Build up Igeu Kabesa.	SABC
	EFC weekly	
October-18	PSL: Black Leopards vs Baroka FC (Delayed)	SABC1
	PSL: AmaZulu vs Maritzburg United (Delayed)	SABC
	PSL: Polokwane City vs SuperSport United (Delayed)	SABC
	PSL: Free State Stars vs Bloemfontein Celtic (Live)	SABC
	PSL: Highlands Park vs Chippa United (Live)	SABC
	PSL: Baroka FC vs SuperSport United (Live)	SABC
	PSL: Free State Stars vs Golden Arrows (Delayed)	SABC
	PSL: Orlando Pirates vs Kaizer Chiefs (Live)	SABC
	PSL: Cape Town City vs AmaZulu FC (Live)	SABC
	PSL: SuperSport United vs Golden Arrows (Live)	SABC
	MTN8 Semi-final: Mamelodi Sundowns vs Cape Town City	SABC
	MTN8: SuperSport United Cape Town City	SABC
	Telkom Knockout: Baroka FC vs Golden Arrows (Live)	SABC
	Telkom Knockout: Polokwane City vs SuperSport United (Live)	SABC
	Telkom Knockout: AmaZulu FC vs Cape Town City (Delayed)	SABC
	Telkom Knockout: Maritzburg United vs Highlands Park (Delayed)	SABC
	AFCON Qualifier: Seychelles vs South Africa (Live)	
	Cricket: Momentum ODI: South Africa vs Zimbabwe 3rd ODI (Live)	SABC2
	Rugby: Castle Lager Rugby Champs: South Africa vs New Zealand (Delayed)	SABC
	Rugby: Currie Cup Final, DHL Western Province vs Cell C Sharks (Delayed)	SABC
	Youth Olympic Games Highlights	SABC
	Live Boxing (26 Oct)	SABC
	Premier League Review (Magazine)	SABC3
	Premier League Preview (Magazine)	SABC
	Premier League: Everton vs Leicester (Live)	SABC
	Premier League: West Ham United vs Tottenham Hotspur (Live)	SABC
	Premier League: Liverpool vs Cardiff City (Live)	SABC
	Cricket: Momentum ODI: South Africa vs Zimbabwe 2nd ODI (Live)	SABC
	Cricket: KFC T20 International: South Africa vs Zimbabwe 1st T20 (Live)	SABC
	Cricket: KFC T20 International: South Africa vs Zimbabwe 2nd T20 (Live)	SABC
	Cricket: KFC T20 International: South Africa vs Zimbabwe 3rd T20 (Live)	SABC
	EFC Weekly Magazine	SABC
	EFC: Kabesa vs Murrie (Live).	SABC
	EFC Weekly broadcasts	SABC

November-18	PSL: Kaizer Chiefs vs Black Leopards (Delayed)	SABC1
	PSL: Mamelodi Sundowns vs Orlando Pirates (Live)	SABC
	PSL: Free State Stars vs SuperSport United (Live)	SABC
	PSL: AmaZulu FC vs Polokwane City (Live)	SABC
	PSL: Highlands Park vs AmaZulu FC (Delayed)	SABC
	PSL: Bloemfontein Celtic vs SuperSport United (Delayed)	SABC
	Telkom Knockout: Baroka FC vs Mamelodi Sundowns (Live)	SABC
	Telkom Knockout: Maritzburg United vs Bidvest Wits (Live)	SABC
	Telkom Knockout: Kaizer Chiefs vs SuperSport United (Live)	SABC
	Telkom Knockout SF1: Kaizer Chiefs vs Orlando Pirates (Live)	SABC
	Telkom Knockout SF2: Baroka FC vs Bidvest Wits (Live)	SABC
	FIFA U17 Women's World Cup: Mexico vs South Africa (Delayed)	SABC
	FIFA U17 Women's World Cup: Uruguay vs South Africa (Delayed)	SABC
	FIFA U17 Women's World Cup: USA vs Cameroon (Delayed)	SABC
	FIFA U17 Women's World Cup: Korea DPR vs Spain (Delayed)	SABC
	FIFA U17 Women's World Cup: Canada vs Columbia (Delayed)	SABC
	FIFA U17 Women's World Cup: Japan vs South Africa (Delayed)	SABC
	FIFA U17 Women's World Cup: Mexico vs Brazil (Delayed)	SABC
	FIFA U17 Women's World Cup: Korea Republic vs Canada (Delayed)	SABC
	FIFA U17 Women's World Cup: South Africa vs Brazil (Delayed)	SABC
	FIFA U17 Women's World Cup: Spain vs Canada (Delayed)	SABC
	FIFA U17 Women's World Cup: Germany vs USA (Delayed)	SABC
	FIFA U17 Women's World Cup: Cameroon vs Korea DPR (Delayed)	SABC
	FIFA U17 Women's World Cup: Mexico vs Canada (Delayed)	SABC
	FIFA U17 Women's World Cup: New Zealand vs Spain (Delayed)	SABC
	Soweto Marathon (Live)	SABC2
	Live Boxing (30 Nov)	SABC
	Premier League: West Ham United vs Burnley (Live)	SABC3
	Premier League: Newcastle United vs AFC Bournemouth (Live)	SABC
	Premier League: Manchester United vs Crystal Palace (Live)	SABC
	Premier League Review (Magazine)	SABC
	Premier League Preview (Magazine)	SABC
	Mzansi Super League: Cape Town Blitz vs Tshwane Spartans (Live)	SABC
	Mzansi Super League: Jozi Stars vs Nelson Mandela Bay Giants (Live)	SABC
	Mzansi Super League: Durban Heat vs Cape Town Blitz (Live)	SABC
	Mzansi Super League: Paarl Rocks vs Tshwane Spartans (Live)	SABC
	Mzansi Super League: Paarl Rocks vs Jozi Stars (Live)	SABC
	Mzansi Super League: Durban Heat vs Tshwane Spartans (Live)	SABC
	Mzansi Super League: Cape Town Blitz vs Nelson Mandela Bay Giants (Live)	SABC
	Mzansi Super League: Nelson Mandela Bay Giants vs Durban Heat (Live)	SABC
	Mzansi Super League: Jozi Stars vs Cape Town Blitz (Live)	SABC
	Mzansi Super League: Tshwane Spartans vs Nelson Mandela Bay Giants (Live)	SABC
	Mzansi Super League: Paarl Rocks vs Cape Town Blitz (Live)	SABC
	Mzansi Super League: Nelson Mandela Bay Giants vs Cape Town Blitz (Live)	SABC
	Mzansi Super League: Jozi Stars vs Tshwane Spartans (Live)	SABC
	Mzansi Super League: Durban Heat vs Paarl Rocks (Live)	SABC

	Mzansi Super League: Nelson Mandela Bay Giants vs Paarl Rocks (Live)	SABC
	Mzansi Super League: Jozi Stars vs Durban Heat (Live)	SABC
	EFC 75: Zulu vs Joshua (Live).	SABC
	EFC Weekly broadcasts.	SABC
	EFC Premium Fights.	SABC
December-18	PSL: Black Leopards vs Bidvest Wits (Live)	SABC1
	PSL: SuperSport United vs Mamelodi Sundowns (Repeat – Live on SABC2)	SABC
	PSL: Cape Town City vs Chippa United (Delayed)	SABC
	PSL: Bidvest Wits vs Golden Arrows (Delayed)	SABC
	PSL: Black Leopards vs AmaZulu FC (Live)	SABC
	PSL: Baroka FC vs Bidvest Wits (Live)	SABC
	PSL: AmaZulu FC vs Golden Arrows (Live)	SABC
	PSL: Maritzburg United vs Baroka FC (Live)	SABC
	PSL: Highlands Park vs SuperSport United (Live)	SABC
	NFD: TS Galaxy vs Stellenbosch FC (Live)	SABC
	Telkom Knockout Final: Baroka FC vs Orlando Pirates (Live)	SABC
	FIFA U17 Women's World Cup: Spain vs Mexico (Delayed)	SABC
	FIFA U17 Women's World Cup: New Zealand vs Canada (Delayed)	SABC
	PSL: SuperSport United vs Mamelodi Sundowns (Live)	SABC2
	Premier League Review (Magazine)	SABC
	Premier League Preview (Magazine)	SABC
	Premier League: Manchester City vs Bournemouth (Live)	SABC
	Premier League: Arsenal vs Huddersfield (Live)	SABC
	Premier League: Tottenham Hotspur vs Burnley FC (Live)	SABC
	Premier League: Chelsea vs Leicester (Live)	SABC
	Premier League: Tottenham Hotspur vs Wolverhampton Wanderers (Live)	SABC
	Mzansi Super League: Tshwane Spartans vs Cape Town Blitz (Live)	SABC
	Mzansi Super League: Paarl Rocks vs Durban Heat (Live)	SABC
	Mzansi Super League: Nelson Mandela Bay Giants vs Jozi Stars (Live)	SABC
	Mzansi Super League: Cape Town Blitz vs Jozi Stars (Live)	SABC
	Mzansi Super League: Tshwane Spartans vs Paarl Rocks (Live)	SABC
	Mzansi Super League: Durban Heat vs Nelson Mandela Bay Giants (Live)	SABC
	Mzansi Super League: Durban Heat vs Jozi Stars (Live)	SABC
	Mzansi Super League: Cape Town Blitz vs Paarl Rocks (Live)	SABC
	Mzansi Super League: Nelson Mandela Bay Giants vs Tshwane Spartans (Live)	SABC
	Mzansi Super League: Jozi Stars vs Paarl Rocks (Live)	SABC
	Mzansi Super League: Cape Town Blitz vs Durban Heat (Live)	SABC
	Mzansi Super League: Jozi Stars vs Tshwane Spartans (Live)	SABC
	Mzansi Super League: Paarl Rocks vs Nelson Mandela Bay Giants (Live)	SABC
	Mzansi Super League: Tshwane Spartans vs Durban Heat (Live)	SABC
	Mzansi Super League Play-off: Jozi Stars vs Paarl Rocks (Live) ***no play due to rain***	SABC
	Mzansi Super League Final: Cape Town Blitz vs Jozi Stars (Live)	SABC
	Cricket: South Africa vs Pakistan 1st Test Day 1-5 (Live)	SABC
	EFC Weekly broadcasts.	SABC