



National Soccer League t/a Premier Soccer League (PSL)

**Submissions to ICASA
Inquiry into Subscription Television
Broadcasting Services**

14 January 2021

PSL Panel



- Dr Irvin Khoza, PSL Chairman
- Mr Kaizer Motaung, Chairman of the PSL Finance Committee and EXCO Member
- Peter Mancer, Marketing Consultant
- Schalk Burger, Senior Counsel
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Outline of Presentation



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Introduction



- The PSL thanks ICASA for the opportunity to have discussions on the Draft Findings Document
- There are a number of reasons why the remedies proposed in the Draft Findings Document should not be implemented
- The PSL's primary concern with the proposed remedies relates to the substantial adverse impact that these are likely to have on the PSL and its stakeholders, including consumers of its content
- The PSL trusts that its written submission and the contents of today's presentations will be taken into account by ICASA

The impact on football in South Africa

The PSL and the Business of Football



- The PSL is the body in charge of professional football in this country
- Its operations are critical to the survival and continued development of football in South Africa
- Football under the PSL is a business, seeking to create quality content – although almost everyone other than the clubs make money out of the PSL
- The PSL is a private organisation. It receives no public funding and depends heavily on revenue from the sale of broadcasting rights and the sponsorships linked to that broadcasting in order to fund its activities and support its stakeholders

The PSL and the Business of Football



- The PSL plays an essential role in supporting its various stakeholders, including:
 - its 32 member clubs, including their various employees e.g. coaches, administrators, drivers, physiotherapists, biokineticists etc.
 - players (and the families that they support)
 - referees
 - South African soccer more broadly, including SAFA and the national teams
 - fans
 - other small vendors and entrepreneurs, whose businesses rely on the game of soccer in South Africa

The PSL and the Business of Football



- The PSL commercialises its content rights to promote and develop football in South Africa with limited commercial gain
- Income is distributed to clubs, who invest in developing and attracting football talent through paying better salaries, investing in academies, facilities and competent football management personnel
- Overall, these investments, together with those of our partners, improve the quality of the content, making it more attractive and generating greater viewership interest

The PSL and the Business of Football



- It is important to have an understanding of what it costs to stage a single game of football under the PSL
- Before a ball is kicked, clubs have to spend upward of R300 000 to stage a single home match under the mandatory legal requirements of the Safety at Sport and Recreational Events Act, 2010 (SASREA) and the PSL Compliance Manual. It can cost as much as R1M for a single match depending on its categorisation
- As the PSL is privately funded, it is critical to protect its current funding model, which has proven to be better than the previous situation, in order to prevent its clubs from going bankrupt
- Clubs do not make profits; they battle to break even and owners have to dig deep in their own resources to complement the grants received from the PSL

The PSL and the Business of Football



- The grants paid to clubs are derived from broadcasting rights
- If there are no grants, there is no PSL
- In determining the value of our broadcast rights, we asked the market to place a value on it
- Before then, the SABC, who had our rights exclusively, never saw the value of the PSL
- It is our product that determines the value; if our product is not attractive, we are out of business
- With poor quality content, there is no funding for the PSL

The current process for the sale of broadcasting rights is competitive



- The PSL's tender process involves offering content for sale on a competitive basis, structured on terms and for a duration determined by the PSL's commercial needs and imperatives. Significantly the process:
 - encourages all broadcasters and interested persons to participate; and
 - does not limit or prescribe which packages of rights broadcasters may bid to acquire, but rather offers multiple bundles comprising various different rights for which broadcasters may bid
- The PSL structures this process to achieve fair value for its rights, and balances the need for licensing revenue with exposure (which informs sponsorship revenue)

PSL rights were historically undervalued



- Our rights were historically undervalued, limiting our ability to invest in and sustain soccer
 - The PSL’s rights were previously acquired at sub-commercial prices
- Competition for the PSL rights has resulted in market forces correcting this historical problem
 - The more recent amounts paid for broadcasting rights more accurately reflect their commercial value
 - This has enabled the PSL to develop its content, contribute to the quality and standard of soccer in South Africa and support a multitude of stakeholders

Minimum criteria ensure a high-quality product

- In its tender process, the PSL sets minimum requirements
 - They ensure that the content meets minimum quality standards, which are in line with best practices
 - The PSL seeks to ensure the prospective broadcaster's ability to broadcast the content to a sufficient globally competitive standard, which in turn is key for securing viewer support and sponsorship revenue
 - The minimum requirements ensure consistency of quality across all matches and over time. This is good for the long-term viability of the product
 - Broadcasters benefit from having a high quality product
- Even our clubs have to comply with minimum criteria when they are part of the PSL. These requirements are about quality

The tender process has resulted in successful commercialisation of the PSL



- The PSL has run its competitive tender process over several cycles
 - Inviting many potential participants to its process
 - Those with interest in our rights go on to submit bids
 - We also expect those who submit bids to offer a fair commercial value for our rights, because they benefit from our rights. They should not free-ride on the PSL, at its expense
- We also ensure wide access to our product by requiring some free-to-air access to a significant number matches and competitions
 - This serves every South African watching the PSL on television. Everyone can watch soccer on the SABC
- The number of matches broadcast has increased significantly following the implementation of the PSL's competitive tender process while making the PSL more sustainable and more competitive

Benefits of existing competitive process



- The tender process by which the PSL offers its rights for sale has:
 - enabled the PSL to increase support for various stakeholders through increased broadcasting and sponsorship revenue
 - improved the quality of the content that the PSL offers, as well as the breadth of coverage by broadcasters (which includes 140 matches per season sub-licensed by SuperSport to the SABC)
 - generated significant investment in soccer, the introduction of new competitions and the promotion of youth development

The proposed remedies will cause harm to on soccer in South Africa



- If certain of the remedies proposed in ICASA's Draft Findings Document are implemented, the PSL's principal revenue stream will come under threat
 - This will have knock-on effects on employment in the industry
 - It will make it more difficult to attract and keep top players in the country
 - And it will severely undermine the development of soccer in South Africa

**No legal or factual basis for regulatory
intervention**

Policy rationale for resisting intervention

- Regulatory interventions directed at promoting competition are counterproductive if they undermine the quality and availability of the product to the viewer
 - Consumers would be worse off as it would not be attractive or sustainable for broadcasters to broadcast this content
 - This risk must be assessed through the lens of the financial impact that the proposed remedies will have on the PSL and investment in the sport of soccer, as well as on consumers and broadcasters
- As has been discussed, the proposed remedies, if implemented, will have a substantial adverse impact on the revenue that the PSL is able to derive from the sale of its broadcasting rights, as well as the sponsorship deals that it is able to secure, and would jeopardise the positive outcomes that the PSL has been able to achieve over the past 12 years
- This result will be contrary to the objectives that ICASA is mandated to pursue, including to promote effective competition, investment and participation in the broadcasting sector in the public interest

No legal basis for regulatory intervention



- Under the ECA, as a pre-requisite to imposing any remedy, ICASA must identify ineffective competition in a properly defined market which requires regulatory intervention in order to address a clearly identified market failure. This has not been shown in respect of the PSL's content
 - The current tender process employed by the PSL is competitive and permits the realisation of the fair commercial value of the rights as determined by the market
 - The proposed remedies will have the perverse consequence of undermining competitive market dynamics and impeding the PSL's ability to obtain a fair commercial value for its rights
- ICASA has not established the requisite legal basis for regulatory intervention

Benefits of existing competitive rights sale process



- The PSL's current and historical rights sale process has already been discussed. It is clear from this that the current process for the sale of broadcasting rights by the PSL is competitive.
- Should the structure of this tender process be undermined, this will adversely impact the broadcasting revenue and sponsorship deals that the PSL is able to secure, and result in the outcomes already discussed – which are contrary to ICASA's stated objectives

Increases in prices do not mean there is a problem



- ICASA has criticised the extent to which competition for the rights to broadcast the PSL's content is said to have driven up prices and proven prohibitive for potential new entrants
 - This fails to recognise that the relevant price increases were a correction, through competitive market forces, of the historical undervaluation of the PSL's rights
 - The recent amounts paid for broadcasting rights more accurately reflect their commercial value and have enabled the PSL to develop its content, contribute to the quality and standard of soccer in South Africa and support a multitude of stakeholders

Minimum criteria for broadcasters



- ICASA has criticised the minimum requirements imposed on prospective bidders as establishing a barrier to entry which favours the incumbent
 - This is done without assessing whether there is justification for the minimum requirements and whether the requirements meet legitimate objectives
 - The legitimate reasons for these requirements have been provided
 - The PSL cannot be expected to undermine its own product by not having requirements that are necessary to create and enhance value in its product

Perceived lack of potential buyers



- ICASA has inferred from the limited number of potential buyers that the tender process does not generate effective competition
 - Having fewer buyers does not mean that the rights selling process is not competitive
 - Those who find value in the rights bid for them
 - It is inappropriate to remedy a perceived lack of buyers by forcing the sale of content to parties who are not willing to bid for the rights and pay a fair price for the rights
 - The increased revenue that the PSL has been able to derive from successful acquirers of its rights reflects the strong (and increasing) competition for these rights

Premium content not an objective concept



- ICASA has failed to demonstrate that its proposed remedies are addressing ineffective competition in a properly defined market
- ICASA’s categorisation of PSL’s content as “premium content” is not based on objective criteria
 - Different people have different views
- ICASA fails to distinguish between the various competitions administered by the PSL
 - It is unclear whether the rights to broadcast all or only some of these competitions are considered “premium content”

No justification for regulatory intervention



- ICASA has failed, in respect of the PSL's content, to demonstrate that:
 - there exists ineffective competition in a properly defined market, or
 - there is any market failure to be remedied
- The remedies proposed by ICASA are not justified and, if implemented, would directly and indirectly subject the PSL to regulation

Unlawfulness of remedies: Absence of jurisdiction over sporting bodies



- Any attempt to regulate how the PSL's broadcasting rights may be structured and sold is beyond ICASA's statutory authority and, as such, *ultra vires*
- The PSL is a sporting body that owns the broadcasting rights to professional soccer in this country
- ICASA is empowered under the ECA and Broadcasting Act to regulate entities that operate in terms of licences issued under those acts. It has no jurisdiction over the sporting bodies that own the broadcasting rights to sporting events
- The remedies proposed by ICASA will have a direct effect on the manner in which the PSL's broadcasting rights may be structured and sold, and therefore the extent to which it can commercialise these rights

Unlawfulness of remedies: Deprivation of property



- ICASA's proposed remedies will constitute an unlawful deprivation of the PSL's right to broadcast the PSL matches that it organises, in contravention of s25 of the Constitution
 - The proposed remedies would restrict the manner in which the PSL can sell its property
 - There is no rational connection between preventing the PSL's rights from being sold to the highest bidder, and attaining the aim of increased competition for those rights and other pro-competitive outcomes

Impact of the proposed remedies: I



- Reducing contract duration
 - This would undermine efficiencies that incentivise investment and benefit various stakeholders and consumers
 - No economic analysis or objective evidence is presented for the conclusion that "competition becomes ineffective" when a licensee with significant market power has exclusive contracts for 5 years (or more), nor is there any justification provided for limiting the duration of exclusive contracts to 3 years
- Automatic renewals
 - This is not something that the PSL engages in

Impact of the proposed remedies: II



- Rights splitting and unbundling
 - It is not clear precisely what is contemplated by these proposed remedies or how they would be implemented
 - The PSL's current model allows it to realise the fair commercial value of its rights by encouraging competition for these rights. ICASA's proposed rights splitting remedy would distort this by:
 - inhibiting the PSL's ability to derive revenue from its content (e.g. if there is not more than one willing buyer that is able to offer a fair price for the various rights and also meet the PSL's minimum requirements to broadcast its content)
 - undermining a broadcaster's ability to secure exclusivity and therefore limiting the value that the PSL may derive from the sale of its rights
 - facilitating market allocation among bidders
 - reducing the number of potential bidders for each package

Impact of the proposed remedies: III



- Undermining exclusivity
 - The ability to sell sports rights on an exclusive basis attracts a substantially higher value. Once rights are offered on a non-exclusive basis only, their value to broadcasters immediately decreases
 - The proposed remedies, taken together, would substantially undermine the PSL's ability to offer rights on an exclusive basis and for a period that makes the necessary investment in these rights financially viable
 - Should this happen, it will have a significant adverse impact on the viability of the PSL and soccer in South Africa generally

Conclusion



- ICASA has failed to justify its intervention in the PSL's rights-sale process, which remains competitive and non-exclusionary
- If implemented, the proposed remedies would have an adverse impact on the PSL and, by extension, on soccer in South Africa, while failing to achieve the stated objectives of the Inquiry. The proposed remedies would jeopardise the viability and continued existence of the content that is sought to be more effectively distributed to broadcasters
- The remedies proposed by ICASA, if implemented, would be liable to be set aside on the basis that they:
 - are beyond the scope of ICASA's statutory powers (*ultra vires*)
 - constitute an arbitrary deprivation of property in contravention of s25 of the Constitution
- The Draft Findings accordingly require substantial revision



PREMIER SOCCER LEAGUE

THANK YOU

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