

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

INTRODUCTION

1. The National Soccer League trading as the Premier Soccer League (“PSL”) wish to thank the Independent Communications Authority of South Africa (“ICASA”) for the opportunity to respond to the Discussion Document with regard to ICASA’s Inquiry into Subscription Television Broadcasting Services as published in the Government Gazette, dated 25 August 2017.
2. We understand the primary objective of this Inquiry by ICASA is to solicit views on ICASA’s preliminary analysis into the subscription television broadcasting sector in the country.
3. In the event of ICASA deeming it necessary to hold public hearings on the discussion document as contemplated in paragraph 9.1.5, the NSL request the opportunity to make oral, and if need be, further written submissions, at such hearings.

THE NATIONAL SOCCER LEAGUE

4. The National Soccer League which was established in 1985 is a Special Member of the South African Football Association (“SAFA”). Since 1996 the NSL, trading as the PSL, is the only body in charge of professional soccer in the country. For the sake of convenience, the NSL and the PSL will be used interchangeably throughout the submission. The NSL has 16 professional clubs in the Premier Division and 16 professional clubs in the National First Division. The mandate and responsibility of the NSL is to ensure that South Africa has leagues and competitions to provide and cater for domestic professional soccer. The NSL derives its mandate from its Handbook. The main objectives of the NSL as prescribed in the Handbook are, inter alia:

- 4.1. To promote, organise, control and administer professional football;

- 4.2. To co-ordinate and facilitate the development of professional football;
 - 4.3. To promote the interests of the clubs;
 - 4.4. To foster friendly relations amongst officials, clubs, teams and players of the League;
 - 4.5. To concern itself with matters affecting professional football;
 - 4.6. To utilise its funds in the pursuit of its objectives
5. As alluded to earlier, the NSL administers the premier professional league in the country which is currently known as the ABSA Premiership; the National First Division which is the second tier of professional football as well as Cup Competitions known as the MTN8, the Nedbank Cup and the Telkom Knockout. Whilst the ABSA Premiership and the National First Division league competitions are played on a home and away basis, the various Cup Competitions have their own competition-specific rules and regulations. In recent years the PSL has been able to establish a National Reserve League (the Diski Challenge) which is tailored for youth development, is highly competitive and which enjoys a significant public following. The Diski Challenge, as it is known, has already produced a number of young players who are promoted and feature in the National Teams and Premier Division teams and are succeeding at this level.

SOCCER IN SOUTH AFRICA

6. According to the BMI Adult SportTrack 2016, soccer remains the most participated in sport amongst adults in South Africa with 3.2 million players. With regard to followers, soccer remains the top sport with 13.9 million adult followers. Of this, 13.4 million followers are black adults with the rest being white adults. The BMI Junior SportTrack 2016 states that amongst juniors (aged 13 to 18 years) soccer is the top participation sport with 1.66 million participants and 3.7 million junior spectators.
7. In keeping with the fact that soccer is the most loved and watched sport in South Africa, it is also the most affordable for spectators. The PSL has

managed to maintain gate fees to its league matches at R40 per adult, while children under the age of 12 are allowed free entry. The PSL is only able to maintain such affordable gate fees by ensuring that its other revenue streams, and in particular, the PSL's income from broadcasting rights, continue to grow. The PSL has also managed to take football to provinces and communities that would otherwise not have direct access to the sport at stadiums, e.g. provinces and communities in which no PSL team is based, now host PSL Reserve League matches with no gate charges for spectators. By hosting matches in these provinces and communities, the PSL generates attendance by soccer lovers throughout the country, increases local interest in soccer and contributes to the local economy. In this way, the opportunity for the man in the street to attend matches with his family is financially possible. It also makes soccer more accessible to the youth. This is in direct contrast to other countries where the cost of attending a live soccer match as a spectator in a stadium is prohibitively high.

THE NSL AND ITS RESPONSIBILITIES

8. 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 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. These benefits include:

Benefits to the PSL

8.1. The increase in income from the sale of PSL broadcast rights has resulted in the PSL being ranked in the commercial top 10 of football leagues in the world in terms of revenue (prior to 2007 it was ranked below 30th). Increased broadcast platforms have also attracted more sponsors to the PSL given the further visibility of the product. All competitions attained record-setting sponsorship deals with broadcasting being the key driver. The League and Cup sponsorships and supplier values rose from under R110m per annum in 2007 to the current values which are in excess of R350m. Global interest in the PSL is being generated as broadcasters from across the entire world, including for example ESPN, Fox and Sky have acquired rights to broadcast PSL matches. The PSL has also attracted a pan-African audience to its content, with it being particularly popular in Southern Africa.

Benefits to the 32 Clubs

8.2. Clubs now receive substantially higher revenues because of the ability of the PSL to have increased its revenue from broadcast rights. The income from broadcast rights constitutes 58 to 59 percent of revenue received by the PSL. In the past, PSL clubs, received grants of R400 000 per month but are now receiving R2m a month plus up to R10m per annum in service fees (in total R30m in 2017). First Division clubs were getting R50 000 per month and are now receiving a monthly grant of R500 000 plus up to R3m per annum in service fees (R8m in 2017). This increase in revenue has the following benefits:

8.2.1. Club values have risen from R6 - R8 million to a current market value of ± R50 million, attracting high profile owners.

8.2.2. There is higher player retention by clubs who are now financially able to hold on to their stars resulting in a higher level of competitiveness amongst the clubs in the League.

- 8.2.3. The PSL has more multiple League and Cup winners than any of the top Leagues in Europe and Africa where primarily 2 or 3 clubs dominate all the trophies. This is due to the improved monthly grants ensuring all PSL clubs are competitive.
- 8.2.4. The PSL can attract talented players across Africa as it is now comparable to leagues around the globe in quality and revenue.
- 8.2.5. 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 as they can now get a better return on investment through additional broadcast exposure of PSL matches.

Benefits to the players

- 8.3. Players now receive substantially higher incomes as a result of the PSL receiving significantly more for its broadcast rights. 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. This increase in incomes has the following benefits¹:
 - 8.3.1. Players have longer playing careers as older players are now affordable to clubs participating in the National First Division.
 - 8.3.2. Many foreign-based South African players have returned to South Africa, as they can now get competitive salaries. This contributes to raising the standard of football generally.
 - 8.3.3. The League contributes over R15m per season to the Players Medical Insurance Fund.
 - 8.3.4. More clubs have been able to offer medical aid cover to players and their families.

¹ PSL, *The advantages of self-regulation of soccer*, November 2012.

- 8.3.5. The South African Football Players Union has been given over R10m by the League as part of a Collective Bargaining Agreement, where previously they failed to get a recognition agreement signed.

Benefits for South African Football and the South African National Teams

- 8.4. The benefits stretch far beyond the clubs of the League and include:
 - 8.4.1. The SAFA development fund which has received R82m since 2007.
 - 8.4.2. The League has spent over R15m on Training Programmes and Development Workshops for SAFA referees; assistant referees; fourth officials and match commissioners including electronic headsets and communication devices to assist refereeing standards to be globally competitive. The League has also set up infrastructure which allows referees to have post-match access to recorded matches to assess referees' performances.
 - 8.4.3. Referees and match officials' fees have also increased 400 percent.
 - 8.4.4. The League has introduced Ground Maintenance Training Programmes for stadium and facility managers throughout the country.
 - 8.4.5. The League's self-regulating compliance processes including its Club Licensing Regulations, have been praised by CAF and FIFA as a role model for Africa.
 - 8.4.6. The PSL Reserve League catering for under 21/23 players, is the only competitive fully-national Reserve League on the African continent and has introduced scores of fresh, young talent into the National Teams, PSL and NFD ranks, showcasing players throughout the continent.

Benefits to soccer supporters

- 8.5. Ticket prices have remained affordable for all PSL games at R40 and some clubs do not charge for entrance to certain matches, as clubs are less reliant on income from entrance fees due to the income received from broadcast rights sale. Since 2007, spectator attendance has increased by 20% year on year.
- 8.6. Further, soccer supporters in provinces and areas where there is no top flight football team are able to go to the stadiums and watch live football of the PSL Reserve League free of charge.

Other benefits

- 8.7. The League not only benefits key stakeholders and partners who are directly involved, but also other beneficiaries such as:
 - 8.7.1. Small entrepreneurs and the unemployed in communities surrounding stadiums and families who benefit both directly and indirectly from revenue and employment opportunities, including temporary jobs created by League clubs at matches. According to research conducted by Grant Thornton in 2014 on the economic impact of professional soccer in South Africa, the sport contributed towards the creation or sustainment of approximately 10 400 temporary and permanent jobs in the national economy. If the average income of these jobs were to be annualised, the payroll would amount to R956.9 million a year, according to Grant Thornton.
 - 8.7.2. Skilled young footballers who show the potential to become stars and their families from disadvantaged communities also benefit from soccer academies of the League's clubs.
 - 8.7.3. Many clubs also pay for the schooling, accommodation and training of young soccer players in their academies. This has

direct benefits to their families, especially those coming from poverty-stricken homes.

- 8.7.4. Small vendors depend on football, especially at major matches to generate an income through the sale of foodstuffs and drinks to feed their families.

NSL REVENUE AND EXPENSE

9. As a duly-constituted private association, the NSL is responsible for the administration, control and governance of all professional football in South Africa. The NSL meets these responsibilities through its Constitution and rules and regulations; its obligations within South African law and the mandatory prescripts of its various controlling bodies, being the Federation of International Football Associations (FIFA), the Confederation of African Football (CAF) and SAFA.
10. As part of meeting its obligations to these various controlling bodies, the NSL has embarked on an intensive process of significantly improving its corporate governance and bringing it in line with International best practice. This includes:
 - 10.1. The corporatisation of the NSL with the focus on improved transparency and accountability;
 - 10.2. Compliance Manual;
 - 10.3. Club Licensing Regulations;
 - 10.4. Developing a Club Safety and Security Manual
11. All these processes are costly to the NSL and its clubs and hence the imperative not only to have improved revenue streams but also revenue streams that are sustainable and certain. As an example, in order to comply with the Club Licensing Regulations, every club has to spend as much as R400 000.00 per month on its implementation. Failure to do so would result in a club losing its licence to operate as a professional club. The ability of the NSL to

generate sufficient revenue through the sale of its various rights is therefore critical.

12. In the 2017 financial year, the NSL generated revenue to the value of R884.3 million compared to revenue of R853 million in 2016. Of the revenue generated in the 2017 financial year, 59 percent was generated from broadcast rights; 35 percent from sponsorships with the balance of 6 percent made up from supplier contributions and competition gate takings. Sponsorship revenue is essentially driven by our ability to achieve a level of television exposure that will be attractive to our sponsors. These two revenue streams are thus closely interlinked and any interference with our ability to balance our need for exposure with our need for maximum revenue will put at risk the very future of professional football in our country. The need for this “balancing act” by the NSL is critical for our commercial and financial viability and hence, in much the same way as other sports federations, we are best-placed to make the determination in how to sell our rights.
13. In the 2017 financial year, the NSL distributed R576.9 million in grants to the Premier Division and National First Division Clubs. A further R156.3 million is attributed to competition expenditure with R133.8 million accounting for administration costs. This represents 98 percent of the total revenue of the NSL for 2017. The balance of the revenue covered development expenditure including grants to SAFA and the South African Football Players Union, workshops for club licensing, referees, security and marketing and media.
14. This clearly illustrates our dependence on broadcast rights revenue to enable us to meet our expenses. Without this support from the NSL most of our clubs would not be able to participate in professional football at all. They would certainly not be able to meet the financial burdens of running a professional club which includes the onerous and costly governance and compliance of the NSL and the mandatory requirements of South African law. This includes the Safety at Sport and Recreational Events Act, 2010 (Act No 2 of 2010), commonly referred to as SASREA, which amongst others, provide for measures to safeguard the physical well-being and safety of persons and property at sports events held at stadiums as well as to provide for accountability of event role-

players. The costs to clubs to implement the regulations and requirements of SASREA amount to an estimated R300 000.00 per home match depending on the categorisation of the event. With clubs having 16 home league matches and additional cup competition home matches, the implementation of this Act is extremely costly to clubs. Any reduction in broadcast rights revenue would severely threaten our financial sustainability and viability and return us to the dark ages when football was regarded as the Financial Cinderella of the major codes of sport in the country despite the vast majority of its participants and followers being black South Africans, and the most impoverished sector of South African society.

THE SALE OF PSL BROADCAST RIGHTS

15. As ICASA will be aware, prior to 2007 the PSL was obliged to sell its content to the SABC. The SABC therefore had exclusive rights to all of the PSL's content. The SABC then sub-licensed some of those rights (approximately 30 games per season) to SuperSport International. Because of this, the PSL was obliged to accept a price from the SABC that was much lower than the commercial value of that content.²

16. The situation described above was wholly unsatisfactory for the PSL, which developed an Invitation to Tender for the broadcasting rights of its soccer matches, that it opened for bidding on 16 February 2007 (the "2007 ITT"). As ICASA will already be aware, prior to the 2007 ITT, PSL broadcast rights were open exclusively to the SABC as the holder of a right of first refusal to bid for the PSL broadcasting rights. The SABC also enjoyed the advantage of last matching rights. Upon failure by the SABC to bid in 2007 within the stipulated time periods, bidding was opened to all broadcasters, and the rights ultimately were awarded to SuperSport.³

² The SABC acquired exclusive rights to broadcasts PSL soccer matches for a total of R3,222,801.00 (three million two hundred and twenty two thousand rand eight hundred and one rand) for the five soccer seasons from the 2002/2003 season to the 2006/2007 season.

³ A copy of the 2007 ITT is attached to this submission as Annexure "A".

17. As is apparent from the 2007 ITT, bidders were invited to bid for broadcasting rights which were "bundled" into 20 different packages for broadcast on free-to-air television and subscription television respectively, as well as a separate bundle for radio broadcasting. Bidders were invited to bid for the broadcasting rights which were broadly categorised into Packages as follows:
 - 17.1. A Composite Package comprising the rights to broadcast all the matches across all platforms;
 - 17.2. Packages comprising a combination of games for live, near live and delayed live broadcast on Free to Air Terrestrial Television;
 - 17.3. Packages comprising the right to broadcast a combination of games for live, near live and delayed live broadcast on Subscription/Pay Broadcasting;
 - 17.4. Packages comprising the right to broadcast a combination of games for live, near live and delayed live broadcast on Pay Per View (including Cable);
 - 17.5. Packages comprising the right to broadcast Magazine Programmes and News Archive Highlights for each of Free to Air Terrestrial Television, Subscription/Pay Broadcasting and Pay Per View (including Cable);
 - 17.6. Packages comprising the right to broadcast Clips for each of Free to Air Terrestrial Television, Subscription/Pay Broadcasting, Pay Per View (including cable) and Radio. The detail of each of these Packages is set out in Annexure A hereto.
18. In addition, the 2007 ITT set out specific performance requirements to be met by successful bidders. These related, *inter alia*, to production and broadcast quality requirements and investment in the development and promotion of PSL brands and its competitions. SuperSport successfully tendered for all the rights, including free to air broadcasts commencing from the 2007/2008 season to the

2011/2012 season.⁴ The SABC did not bid, because it believed that it already had the exclusive right to all the rights, and referred the matter to arbitration. The SABC was unsuccessful in the arbitration, but SuperSport subsequently agreed to enter into a tripartite agreement with the PSL and the SABC, pursuant to which SuperSport sub-licensed to the SABC the right to broadcast a number of FTA matches in South Africa. The result of this tender was that more matches were shown on free to air television and pay television per season than ever before. Whereas before, only approximately 130 matches had been shown over the two platforms, now more than 250 matches were shown. Increased broadcasting led to a significant increase in sponsorships because of greater visibility for the sponsors. In addition to the commercial benefits, the increased broadcasting revenues led to immeasurable improvements and benefits for spectators, soccer players, football clubs and the game as a whole as illustrated earlier. The quality of coverage also improved, in particular:

- 18.1. Broadcast graphics;
- 18.2. Numbers of cameras per match;
- 18.3. Better editing and presentation (for example, viewing angles and replays);
- 18.4. Better analysis before and during the games;
- 18.5. New content.

19. Given the unqualified success of the competitive bidding process conducted in 2007, the PSL issued another ITT for the acquisition of the rights to broadcast PSL content to commence on the first day of the 2012/2013 soccer season. This ITT comprised a total of 11 packages as opposed to 20 in the previous bidding process. The packages were in the same broad categories discussed above save for the exclusion of packages for Pay-Per-View broadcast, clips packages and packages for radio broadcast. Similarly, bidders were invited to

⁴ SuperSport acquired the right to broadcast PSL matches for substantially higher than the consideration paid by SABC for similar rights during the five years prior. PSL notes that it was able to realise the full value of its assets solely through an open and competitive bidding process.

bid for all of the packages, or a combination of any of the packages. The detailed breakdown of each of these Packages is set out in Annexure B hereto.

20. Successful bidders for any of the above rights were also entitled to broadcast the content on any platform of their choosing, including subscription/pay broadcasting, free-to-air broadcasting, mobile and over the internet. The 2012 ITT set out its own technical production and broadcast quality standards and requirements as well as certain requirements related to the promotion and development of PSL brands and those of its sponsors which would have to be met by successful bidders.
21. SuperSport was successful in the tender and concluded a set of Heads of Agreement with the PSL on or about 11 September 2012, which regulated the parties' relationship for the tender period.
22. In terms of the agreement, the PSL granted to SuperSport the exclusive broadcasting rights in relation to the PSL throughout Sub-Saharan Africa and adjacent islands⁵ for a period of five years commencing on the first day after the end of the 2011/12 season. SuperSport's rights include the right to broadcast free to air⁶ and "new media" rights (i.e. the right to broadcast on mobile devices and the internet), ending at the same time as the other rights.⁷ SuperSport has a right to sub-licence the rights, subject to obtaining prior written consent from the League, which consent shall not be unreasonably withheld.⁸ In fact, pre-approval was granted by the PSL for such sub-licensing to the SABC.⁹ The agreement also recognises that certain sporting events are listed as sports of public interest and must be broadcast on free to air television. There are also 33

⁵ Clause 4.1

⁶ See clause 2.1 read with schedule 1; although the bid document identified a number of different packages of rights for which firms could bid, SuperSport only bid for package 1, the composite package, including all the various rights identified in packages 2 – 11

⁷ Clause 5.2

⁸ Clause 9

⁹ Clause 9

matches that the PSL identified as major fixtures and which had to be made available on both free to air and subscription television.¹⁰

23. SuperSport, as a matter of fact, entered into a sub-licensing agreement with the SABC, in terms of which it agreed to sub-licence, per season, for the duration of the PSL agreement:

23.1. the 33 shared matches;

23.2. 36 PSL and Cup competition matches on a non-exclusive basis;

23.3. 50 PSL and Cup competition matches on an exclusive basis.

24. The 86 matches are selected by SuperSport after consultation with the SABC. The SABC has the right to broadcast the matches in South Africa. The SABC must produce all the matches it is entitled to broadcast on an exclusive basis and 32 of the matches it is entitled to broadcast on a non-exclusive basis. SuperSport was obliged to enter into some sort of sub-licensing agreement with an FTA broadcaster because it acquired the FTA packages and in terms of the Agreement those packages must be made available on terrestrial television and free to the public.¹¹

25. While the SABC is entitled to broadcast the select matches under its sub-licensing agreement with SuperSport, it has, similarly to the position prior to 2007, failed to broadcast many of these matches, with detrimental effect and devaluations of the PSL's broadcasting rights.¹²

26. In addition to the benefits derived by the various stakeholders set out above, the PSL's revenue generated from broadcasting revenue as at the end of its previous financial year has doubled as compared to the end of the 2012 financial year when the current agreement commenced. It is through this revenue that the PSL is able to distribute grants and service fees to its member

¹⁰ This is not dealt with in the heads of agreement, but appears in the summary of packages in the invitation to tender

¹¹ Clause 11.2

¹² During the 2016/17 season, the SABC failed to broadcast 38 of its allocated matches live despite having the right to do so.

clubs to keep them operating as efficient and profitable businesses which can also discharge their obligations to promote and develop soccer in South Africa.¹³ The PSL also directly expended a large proportion of its revenue towards a variety of development programmes including, for example, workshops related to match day security, referees as well as contributions to the South African Football Players Union.

ICASA’S PROPOSED REMEDIES AND THE PSL’S RIGHTS

ICASA’S identification of a separate market for “premium live soccer matches for retail television distribution in South Africa”

27. ICASA has identified a market for “*the acquisition of premium live soccer matches for retail television distribution in South Africa*”.¹⁴ ICASA appears to consider that the PSL is the only supplier of live soccer in the broadcasting market. This is not correct. The English Premier League and the Union of European Football Associations, to name just two, are both obviously also suppliers of live soccer matches.
28. In addition, the PSL points out that a consumer’s love for sport is not restricted to single sporting codes in that a soccer lover may also be a rugby and/or cricket supporter and vice versa. Further, all sporting codes compete for supporters and sponsors.
29. As such, the PSL does not agree with ICASA’s definition of the market into discrete sporting codes.
30. The PSL points out at the outset that, it at its sole discretion, determines the parameters of sale of its broadcasting rights including the terms and conditions. In the competitive environment of entertainment in which the PSL operates, it must be able to maximise its revenue streams through the products that it owns. This includes the PSL being best-placed to determine how to package any

¹³ The PSL paid service and ex gratia fees equal to approximately 65% of its total revenue during its preceding financial year. These PSL grants constitute the main source of income for the vast majority of PSL member clubs.

¹⁴ Paragraphs 1.3.4 and 5.9.18 of the Discussion Document

rights that it owns and how best to sell such rights to maximise revenue. Any regulatory impediment that prevents or curtails it from generating sufficient revenue that will ensure that the PSL retains and improves its global standing in football must be avoided at all costs.

ICASA’s failure to substantiate the need for remedies

31. ICASA states in paragraph 6.5.12 of the Discussion Document, in its conclusion as to the effectiveness of competition in relevant markets, that it has concluded that “*given the historical trends in this market, it is doubtful that competition law alone is adequate to deal with any competition concerns*”.
32. The only “*historical trends*” ICASA appears to be referring to are the number of subscription broadcasters that have commenced operations. The PSL submits that this analysis is wholly inadequate.
33. ICASA has also not identified any specific ineffectiveness in the market for the provision of “*premium live soccer matches*” or explained why any ineffectiveness of competition in any other market should lead to regulation in the market for soccer matches.
34. In particular, ICASA has not engaged at all with the manner in which the PSL sells its content, let alone why it considers that this method impedes competition between subscription broadcasters and whether or not there is a need for it to intervene in this regard.

ICASA’s failure to substantiate its proposed remedies

35. ICASA proposes to impose the first four remedies (shorten exclusive contracts, introduce unbundling, impose rights splitting and impose wholesale must offer) which directly or indirectly impact the PSL’s rights. It has, however, not explained why any of its proposed remedies would be effective in dealing with any perceived ineffective competition in any of the relevant markets it has identified.
36. In the circumstances, the PSL is unable to comment further on them at this stage, save to point out that all of the first four proposed remedies would

constitute a serious infringement of its property rights. That, in the PSL's submission, would be unreasonable and disproportionate.

37. In amplification of this, the PSL points out that it has structured its tenders in the manner that it considers will secure it the most revenue for those rights. Key to the value the PSL obtains is the exclusivity it offers to the winning bidder. Any remedy imposed by ICASA that would remove this exclusivity would materially reduce the revenue that the PSL could obtain for its content. That revenue amounts to the PSL's property, and any reduction of it would be a violation of the PSL's right under s25 of the Constitution of the Republic of South Africa not to be deprived of its property arbitrarily.
38. Restricting the manner in which the PSL sells its football matches also infringes the rights of the PSL (and also its clubs and players) under s16 of the Constitution to freedom of expression, including freedom to receive and impart information and ideas.
39. ICASA has not set out any basis for these infringements of the PSL's rights.

ICASA's failure to take into account the PSL's right and ability to self-regulate

40. The PSL has consistently explained to ICASA that it, and other content right owners, should be permitted to regulate themselves and determine their own processes for the sale of the rights to broadcast their sport content. The PSL refers in this regard to its comprehensive submissions made to ICASA in 2008, 2009 and 2010. The PSL's position was echoed and supported by other sports bodies including Cricket South Africa and the South African Rugby Union.¹⁵
41. This advocacy for a deregulated market stems primarily from the multiple competing interests that the PSL must balance in order to discharge all its commercial and developmental obligations. The revenue required in order to discharge these obligations is currently disproportionately sourced from

¹⁵ See SA Rugby's Submissions on the ICASA Discussion Document on the Sport Broadcasting Rights Regulations dated 21 November 2008, as well as the "Representation of Cricket South Africa in regard to a Discussion Document of ICASA relating to regulations in respect of the Sport Broadcasting Rights Published in the Government Gazette" dated 7 November 2008.

broadcasting, which makes it imperative that the PSL is able to extract the maximum value from the sale of this asset.

42. As has been highlighted above, over the past 10 years, the PSL has successfully managed to strike a balance between realising the maximum value of its assets, while ensuring that its products reach the widest possible audience. It has achieved this balance between income and exposure without any regulation as to how it may exploit its broadcasting rights and therefore submits that any regulation in this respect may be undue, and disproportionate.
43. Lastly, the PSL wishes to point out that the sale of its content through a tender process accords with FIFA's longstanding policy on the sale of football TV rights, as the PSL explained to ICASA in its 2009 submissions. This is simply another example of one of the many interests that the PSL must take into account when determining the most appropriate way in which to sell its content.

CONCLUDING COMMENTS

47. As illustrated above, the right to broadcast PSL matches are sold at regular intervals in an open competitive process that any interested broadcaster can contest. There are no barriers to contest these rights. The commercial arrangement that the PSL has in place with regard to the sale of its content is a winning formula for all, namely, the PSL, its clubs, the fans, the game itself and the broadcasters. It also strikes the appropriate balance between the PSL's need for exposure of the game and the generation of revenue to meet its obligations. Any regulatory remedies that ICASA might want to consider will have unintended consequences that will have an undoubted negative impact on the revenue streams of the PSL as well as on the South African economy. In research conducted by Grant Thornton in 2014, the direct contribution to the economy of South Africa as a result of professional soccer at the time was projected at R2.35 Billion with an additional R2.84 Billion projected to have been generated through indirect and induced impacts. Thus professional soccer resulted in a total contribution to the national economy of R5.19 Billion in 2013/14. Any regulations by ICASA which infringes on the right of the PSL to maximise its revenue from its property rights will have a

commensurate impact on the national economy in respect of a loss of jobs, a decline in contribution to the gross domestic product and taxation, as any reduction in income to the majority of the clubs would result in them being unable to participate in professional soccer at all.

Annexure A: 2007 ITT

44. Detailed breakdown of each package included in the 2007 ITT was as follows:

- 44.1. Package 1, the Composite Package (comprised of packages 2 to 20);
- 44.2. Package 2, Free to Air Terrestrial Television (live) (approximately 141 PSL matches for live FTA broadcast);
- 44.3. Package 3, Free to Air Terrestrial Television (near live) (approximately 138 matches for FTA broadcast 30 minutes after the live broadcast);
- 44.4. Package 4, Free to Air Terrestrial Television (delay live) (approximately 138 matches for FTA broadcast 24 hours after the live broadcast);
- 44.5. Package 5, Subscription/Pay Broadcasting (live) (approximately 126 PSL matches for live subscription broadcast);
- 44.6. Package 6, Subscription/Pay Broadcasting (near live) (approximately 126 PSL matches for subscription broadcast 30 minutes after the live broadcast);
- 44.7. Package 7, Subscription/Pay Broadcasting (delay live) (approximately 126 PSL matches for subscription broadcast 24 hours after the live broadcast);
- 44.8. Package 8, Pay Per View (including cable) (live) (approximately 300 PSL matches for Pay-Per-View live broadcast);
- 44.9. Package 9, Pay Per View (including cable) (near live) (approximately 300 PSL matches for Pay-Per-View broadcast 30 minutes after the live broadcast);
- 44.10. Package 10, Pay Per View (including cable) (delay live) (approximately 300 PSL matches for Pay-Per-View broadcast 24 hours after the live broadcast);
- 44.11. Package 11, Free to Air Terrestrial Television Magazine Programme;

- 44.12. Package 12, Free to Air Terrestrial Television News Archive Highlights;
- 44.13. Package 13, Subscription/Pay Broadcasting Magazine Programme;
- 44.14. Package 14, Subscription/Pay Broadcasting News Archive Highlights;
- 44.15. Package 15, Pay Per View (including cable) Magazine Programme;
- 44.16. Package 16, Pay Per View (including cable) News Archive Highlights;
- 44.17. Package 17, Clips Free to Air Terrestrial Television;
- 44.18. Package 18, Clips Subscription/Pay Broadcasting;
- 44.19. Package 19, Clips Pay Per View (including cable);
- 44.20. Package 20, Radio.

Annexure B: 2012 ITT

45. The packages were set out as follows:

- 45.1. Package 1, the Composite Package (Packages 2 to 11);
- 45.2. Package 2, Free to Air Terrestrial Television (live), (147 PSL matches for live FTA broadcast);
- 45.3. Package 3, Free to Air Terrestrial Television (near live) (147 PSL matches for FTA broadcast 30 minutes after the live broadcast);
- 45.4. Package 4, Free to Air Terrestrial Television (delay live) (147 PSL matches for FTA broadcast 24 hours after the live broadcast);
- 45.5. Package 5, Subscription/Pay Broadcasting (live), (211 PSL matches for live subscription broadcast);
- 45.6. Package 6, Subscription/Pay Broadcasting (near live) (213 PSL matches for subscription broadcast 30 minutes after the live broadcast);
- 45.7. Package 7, Subscription/Pay Broadcasting (delay live) (213 PSL matches for subscription broadcast 24 hours after the live broadcast);
- 45.8. Package 8, Free to Air Terrestrial Television Magazine Programme;
- 45.9. Package 9, Free to Air Terrestrial Television News Archive Programme;
- 45.10. Package 10, Subscription/Pay Broadcasting Magazine Programme; and
- 45.11. Package 11, Subscription/Pay Broadcasting News Archive Highlights