



15 March 2019

Attention: Ms Violet Molete

Independent Communications Authority of South Africa
Block B, 350 Witch-Hazel Avenue
Eco Point Office Park
Centurion

By email: vmolete@icasa.org.za / pcokie@icasa.org.za

**WRITTEN REPRESENTATIONS BY RUGBY WORLD CUP LIMITED ON DRAFT
SPORTS BROADCASTING SERVICES AMENDMENT REGULATIONS, 2018**

Dear Ms Molete,

On 14 December 2018, the Independent Communications Authority of South Africa ("ICASA") gazetted notice of its intention to amend the Sports Broadcasting Services Regulations, 2010 (the "**Regulations**") and invited interested parties to make written representations on the Draft Sports Broadcasting Services Amendment Regulations, 2018 (the "**Draft Regulations**") by 4 February 2019. This date was subsequently extended to 15 March 2019.

Rugby World Cup Limited ("**RWCL**") thanks ICASA for affording it the opportunity to make these submissions.

World Rugby is the global governing body for the sport of rugby union. Headquartered in Dublin, Ireland, it is comprised of 105 national member unions including the South African Rugby Union and 18 associated unions from the game's six regional Associations including Rugby Afrique/Africa. World Rugby's mission is to continue growing the global rugby family and build a truly global mass-participation sport. One of World Rugby's strategic objectives is that it maintains a strong and engaged network of fans, broadcasters, sponsors, events, and partners and leverages this to grow interest and participation in the game.

World Rugby's wholly-owned subsidiary Rugby World Cup Limited (**RWCL**) is responsible for the organisation of the centrepiece of the sport's international calendar, Rugby World Cup, which is staged every four years. Rugby World Cup is one of the top sporting events in the world and the next iteration will take place in Japan between 20 September 2019 and 2 November 2019. Twenty (20) teams will participate in Rugby World Cup 2019 including South Africa. In November 2017, World Rugby appointed France as the host of Rugby World Cup 2023.

RWCL owns the commercial rights in respect of Rugby World Cup including the media rights. Rugby World Cup generates in the region of 90% of World Rugby's revenue, through the sale of broadcast and commercial rights and the tournament fee it receives from the host country. As an international sports federation all of RWCL's profits are re-

invested back into the game. Therefore, the success of Rugby World Cup is vital to secure the revenue necessary for the development and promotion of the game of rugby union including funding World Rugby's investment in research and development, tournament organisation and high performance and grassroots development programmes.

RWCL has an interest in the Draft Regulations as they significantly affect the manner in which RWCL can license and monetise its media rights in South Africa. RWCL is also extremely concerned about the significant implications the Draft Regulations will have for our member union, the South African Rugby Union. The South African Rugby Union will submit its representations to ICASA separately.

The stated object of the 2010 Regulations is to (1) *Regulate the broadcasting of national sporting events in the Republic* (2) *Determine the criteria to be used in the listing of national sporting events* (3) *Identify and list national sporting events* and (4) *Provide a dispute resolution mechanism. The Draft Regulations intend adding the following object: "[r]each a wider audience and to strike a balance between audience and revenue".*

Clause 5.1.1(e) of the Draft Regulations lists Rugby World Cup as a listed national sporting event. Accordingly, the entire Rugby World Cup is now proposed to be listed (including all matches) whereas in terms of the current Regulations and subject to clause 4(1)(a) and (c), only those matches involving the South African national team (clause 4(1)(a)), the opening game, semi-final and final of the Rugby World Cup (clause 4(1)(c)) are listed.

Furthermore, the newly proposed Regulation 5.1 envisages that "*Compulsory Listed National Sporting Events*" of which the Rugby World Cup is one, "*must be broadcast on full live coverage on Free-to-air*". This means that the rights are not available to subscription broadcasters in the first instance.

Clause 5.1.2 of the Draft Regulations provides *if a free-to-air licensee cannot acquire the above sporting rights, the free-to-air licensee must inform subscription service broadcasters, to allow an opportunity for the latter to bid for the rights on a non-exclusive basis.*

RWCL respectfully submits that this clause is unclear as to the obligations or rights of the free-to-air broadcaster, the subscription broadcaster or indeed the rights holder. There is no timeframe outlined during which the free-to-air licensee must inform the subscription service broadcasters that it cannot acquire the sporting rights, no parameters around how the free-to-air broadcaster can acquire the rights, no clarity on the requirement of the free-to-air broadcaster to offer market value and no requirement for the free-to-air broadcaster to have the ability and/or scheduling capacity to broadcast the sporting rights it is trying to acquire.

Clause 5.1.2 will only ever permit a subscription service broadcaster to acquire the rights on a non-exclusive basis if a free to air broadcaster "cannot acquire the rights". Subscription services broadcasters will pay significantly less for Rugby World Cup Rights in South Africa if they cannot acquire the rights to broadcast on an exclusive basis with the supplemental obligation to sub licence rights to a free-to-air broadcast partner. This will significantly affect RWCL's ability to monetise its broadcast rights in South Africa resulting in significant financial consequences for RWCL and its investment into rugby union. It will also have a significant impact on the investment that

broadcasters will be prepared to make in producing content targeted to rugby fans. This will affect South African consumers of rugby union.

RWCL already ensures extensive free to air coverage of the Rugby World Cup details of which are set out below. To only allow a subscription broadcaster non-exclusive rights to Rugby World Cup and only if a free-to-air broadcaster cannot acquire the rights will significantly devalue RWCL's media rights in South Africa and result in RWCL's revenue being substantially reduced. This will vastly curtail the ability of World Rugby to implement its strategic goal of implementing development plans in order that rugby can be a truly global sport.

RWCL licences the right to broadcast Rugby World Cup on a territory by territory basis and strikes a balance between maximum audience reach and revenue generation. Some of the key considerations for RWCL when choosing a broadcast partner in a particular territory include:

- (1) The broadcaster's audience share and reach - ensuring the tournament is made available to the widest possible audience is fundamental to World Rugby in achieving its strategic objective of growing the game and maintaining a strong and engaged network of fans. RWCL requires a potential broadcaster to specify how many matches the broadcaster proposes to transmit via free-to-air coverage (including in particular the nationally important matches) and makes clear that the amount of live coverage of the tournament to customers on free-to-air will be an important factor for RWCL when assessing offers to secure the broadcast rights for Rugby World Cup;
- (2) The capacity of the broadcaster to transmit all of the matches of the Rugby World Cup tournament on a live basis – the scheduling capacity of a broadcaster is important. Typically, subscription based services have greater capacity to not only schedule all of the matches from Rugby World Cup but also other rugby content to bring the tournament to life;
- (3) The level of the financial offer from the broadcaster to acquire the rights because World Rugby relies heavily on the revenue generated from the license of Rugby World Cup media rights to fund investments to further World Rugby's strategic objectives and to grow the game of rugby union globally; and
- (4) The marketing and promotional support offered by the Broadcaster for the Tournament and rugby in general because this investment ensures Rugby World Cup is promoted and marketed to the largest possible audience. Furthermore, it is important that broadcasters invest in producing content targeted at its audience in the relevant territory which has a direct benefit on rugby fans and consumers.

In order to achieve the objective of reaching the greatest possible audience RWCL contractually regulates a broadcasters' free-to-air coverage obligation. RWCL has entered into Licensed Broadcaster Agreements with Supersport in respect of the media rights for Rugby World Cup 2019 and Rugby World Cup 2023. Under the terms of the Licensed Broadcaster Agreements, Supersport undertakes to RWCL that it will enter into sub-licence arrangements on terms approved in writing in advance by RWCL, granting free-to-air television rights in South Africa to a national free-to-air broadcaster or network providing coverage throughout South Africa the right to broadcast live transmissions in relation to:

- (1) At least twenty-four (24) matches (on the basis that the Tournaments shall consist of a total of forty-eight (48) matches) which must include:
 - (i) all matches involving the South African national team;
 - (ii) the Opening match;
 - (iii) two (2) Quarter Final matches;
 - (iv) one (1) Semi-Final match; and
 - (v) the Final match.
- (2) Rugby World Cup highlights programming.

Supersport was RWCL's broadcasting partner for Rugby World Cup 2015 and Rugby World Cup can confirm that Supersport entered into a sub-licensing arrangement with SABC. SABC broadcast 30 Rugby World Cup 2015 matches live in South Africa to a cumulative audience of 49.4 million.

RWCL believes that it already fully complies with the relevant intentions expressed in Section 60 of the Electronic Communications Act 2005 and ensures wide-ranging coverage of Rugby World Cup, as mentioned above.

RWCL believes this proposed amendment to the 2010 Regulations is unnecessary because the 2010 Regulations along with the Electronic Communications Act 2015 achieves the balance sought to be achieved by the Draft Regulations. Regulation 6(1) of the 2010 Regulations requires subscription broadcasters who have acquired broadcasting rights to inform free-to-air broadcasting service licensees within 5 days of acquiring the rights, of the opportunity to tender for such rights. Broadcasters who have secured the rights to transmit the events sub-licence the rights to free-to-air broadcasters thereby securing audience reach to free-to-air television customers as required by section 60(1) of the Electronic Communications Act 2005.

RWCL fully supports the position that all South Africans should have free-to-air access to Rugby World Cup matches of national importance. The legislative framework already achieves this. The Draft Regulations would only serve to prevent RWCL from entering into licensed broadcaster arrangements on an exclusive basis with a broadcaster in South Africa who can provide the best equilibrium between maximising audience reach and broadcast revenues. This will significantly affect RWCL's ability to effectively monetise its broadcast rights in South Africa and its ability to maximise audience reach for Rugby World Cup. The Draft Regulations will deprive the sport of rugby union of much needed funds without any clear benefit to consumers in South Africa.

Please do feel free to let me know if you have any questions.

Yours sincerely



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