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DRAFT SPORTS BROADCASTING SERVICES AMENDMENT REGULATIONS, 2018

The Chairman/Ms Molete

We wish to take this opportunity presented by the Independent Communications Authority of South Africa (“ICASA”) to make written submissions on behalf of the South African Hockey Association (“SAHA”) and its Affiliates on the Draft Sports Broadcasting Services Amendment Regulations, 2010 (“Draft Regulations”) as published in the Government Gazette, dated 14 December 2018.

With the Premier Hockey League (“PHL”) of SAHA being listed in para 5.2 of the draft regulations under Group B as a “National Sporting Event(s) offered to a subscription broadcasting licensee on a non-exclusive basis under sub-licencing conditions”, we consider it imperative that our position on these draft regulations should be submitted to ICASA in writing. We also give notice that we would take the opportunity to make oral presentations (and if need be, further written representations) to ICASA at the appropriate time.

We have been made aware that prior to the publication of these draft regulations, ICASA had preliminary discussions and engagements with various sports bodies with regard to their views on the regulation of sports broadcasting. SAHA was not afforded this opportunity by ICASA and hence we do not understand on what basis ICASA determined to include the Premier Hockey League of SAHA in the draft regulations.

It is our view that in contemplating to include the PHL in the draft regulations, the least ICASA should have done was to engage us directly as ICASA had done with other sports bodies, to establish first-hand what the PHL is, what is the Vision and Objectives of SAHA with regard to the PHL and how it is organised and funded. Unfortunately, ICASA missed this opportunity and thus, in our view, ICASA acted from a totally uninformed position to include the PHL in the draft regulations.

The Electronic Communications Act (“ECA”)

We are aware that ICASA draws its mandate from, amongst other legislation, Section 60(1) and Section 60(2) of the Electronic Communications Act, 2005 (Act No 36 of 2005) (“ECA”) which states 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 from time to time, by the Authority, after consultation with the Minister of Communications and the Minister of Sport and in accordance with the regulations prescribed by the Authority.”

Section 60(2) states that “in the event of a dispute arising concerning subsection (1) any party may notify the Authority of the dispute in writing and such dispute must be resolved on an expedited basis by the Authority in accordance with the regulations prescribed by the Authority”. Later in our submission, we will again refer to these sections of the ECA but wish to point out that we believe that ICASA had erred in listing the PHL in the draft regulations as a national sporting event. Further comments of SAHA are set out below.

BACKGROUND OF THE SA HOCKEY ASSOCIATION

The SAHA was founded in 1992 at a time when South African society and sport was deeply divided owing to inherently discriminatory racial policies and practices. These policies and practices gave rise to deep-rooted disparities in all fields of endeavour, not least in sport and in Hockey.

SAHA was at the forefront of sport to ensure that as a country we move away from these injustices and hence adopted the following as our Founding Statement:

- Enshrine principles of equality, accountability, mutual respect and recognition;
- Embody democratic, non-racial and non-sexist policies and practices;
- Create opportunities for participation without distinction based on colour, race, creed, religion or gender;
- Redress historical disparities to allow all to participate and compete equally and specifically address the needs of historically disadvantaged communities through special programmes.

This Founding Statement was the driving force behind the establishment of the PHL, particularly with regard to non-racial, non-sexist practices, the creation of opportunities and addressing historical imbalances.

The main Objective of SAHA is to administer, develop, co-ordinate and promote Hockey for both men and women on a non-professional basis. SAHA is also a Member of the African Hockey Federation (AfHF) and the Federation Internationale de Hockey (FIH) and is affiliated to the South African Sports Confederation and Olympic Committee (SASCOC).

SAHA has 16 Member Associations from the country's nine provinces and four Affiliate Members including South African Schools Hockey. The governing structure of SAHA consists of its Council and an Executive Board which is accountable to its membership and is responsible for the implementation of the policies of the Association. Amongst the Aims & Objects of SAHA are:

- To promote, advance, administer, co-ordinate and generally encourage the game of Hockey in South Africa;
- To encourage participation, development and transformation and to actively implement sustainable programmes;
- To provide opportunities for players to improve their performance levels

Participation in Hockey

As the sole national controlling body for Hockey in South Africa, SAHA co-ordinates and administers a number of competitions, tournaments and events. These include the indoor senior men and women tournaments; field hockey competitions for under 21 men and women; senior men and women, the University Sport hockey competition, the SA Masters and various age-group schools' tournaments, the Inter-provincial championships and the Premier Hockey League (PHL).

Hockey has approximately 206 000 adult participants, with 116 000 being black participants and 90 000 white participants. About 76% of the total adult participants are aged between 19-34 years, making Hockey a fairly youth-driven sport. Black participants constitute 56% of the total adult participants. Amongst the youth, Hockey has about 158 000 participants, aged between 13 and 18 years. Adult spectator interest in Hockey is estimated at 1.2M, with 774 000 being black adults.

These statistics of Hockey should be seen in light of the overall sports environment in the country. Hockey is only ranked 25th in the country for participant popularity, according to the *BMI Annual Sport Track for 2017*. It is obviously not as popular as other codes of sport such as soccer and netball but it serves as an important code of sport in schools and amongst the

youth, given that Hockey is an Olympic sport, participates in the Commonwealth Games and caters equitably for both genders

The Premier Hockey League (PHL)

Historically, Hockey's main senior competitions for men and women were the inter-provincial championship tournaments. Given the lack of sponsorship and media exposure, in particular television coverage, Hockey was never in a position to put in place a national competition of this nature for its members. It took a bold initiative by the former Minister of Sport and Recreation, Mr Fikile Mbalula, in 2016 to approach SuperSport with the idea of assisting Hockey to put in place a competition that would give both men and women Hockey players the opportunity to play in a high-performance competition.

The Objectives of the PHL include:

- To ensure the sustainability of the PHL;
- To reduce reliance on government funding;
- To create a strength vs strength event for both men and women;
- To develop an event that will be attractive to potential sponsors and other stakeholders;
- To create a festival of hockey that celebrates and showcases the sport

With the PHL only having completed its third season, we are already seeing the benefits of this partnership between SAHA, Sport & Recreation SA and SuperSport. Besides broadcasting PHL matches live across sub-Saharan Africa and the adjacent islands, SuperSport also provides funding for the competition. Without this support, the PHL would have remained a dream. It was thus a shock when we realised that ICASA has decided to include the PHL in its draft regulations. What has been carefully built up and nurtured over three years, now faces the prospect of going up in smoke and with that SAHA's Vision 2022 for the country.

Vision 2022

The introduction of the PHL in 2016 served as the launching pad for SAHA's Vision 2022. Through the PHL, SAHA could now identify young players (15-19 years) to form the core group of the senior national teams for the 2020 Summer Olympics and the 2022 Commonwealth Games. SAHA could now also build high performance structures that will contribute to competitive competition in future Olympic Games and Commonwealth Games.

SOURCES OF FUNDING

SAHA is partly funded by Government through Sport and Recreation SA. Membership Affiliation fees, Sponsorship arrangements and the sale of broadcasting rights are the other sources of revenue of SAHA.

SAHA is grateful to the Government of South Africa for the continued support that it has provided to Hockey and the development of the sport including in our efforts to professionalise the sport. In the 2017/2018 Government Financial Year, SAHA received R4m from the Government which funds were used for the implementation of sport programmes and projects. In the 2016/2017 Government Financial Year, SAHA received R12m from the Government with R10m of that specifically provided to improve and professionalise the operations of SA Hockey. This enabled SAHA to launch the PHL. In the 2014/2015 Government Financial Year, the Government provided SAHA with R2m for implementation of sport programmes and projects.

It must be noted that Government funds are limited as we face competing needs across sporting codes. As a result, there is not enough funding for each sporting code, its developmental needs and self-sufficiency in terms of funding that can be generated from the Government. Government funding alone, especially at current levels, is not enough to run the sport of Hockey. This means that and critically so, all sporting codes must generate income from other sources; including sponsorships and broadcasting rights.

BROADCASTING OF HOCKEY IN SOUTH AFRICA

Historically SAHA has had very limited broadcast or TV exposure through the free-to-air broadcasters. In fact, according to the *BMI Annual Sport Track for 2017*, between 2013 and 2017, the three SABC channels only broadcasted a total of 27 hours of Hockey over a period of five years. In 2017, the three SABC channels together allocated 3.5 hours of Hockey broadcast and e-tv only 1 hour. The introduction of the PHL has played a major role in changing the situation Hockey was facing. It was introduced in 2016 with six women's teams and six men's teams, drawing players from all nine provinces.

Through the partnership with SuperSport, in 2017, 1,357 hours were allocated to Hockey. In 2016 when the PHL was launched, SuperSport dedicated 914 hours to Hockey. This is a significant amount of coverage and broadcast that Hockey has been afforded by SuperSport and there is no comparison to be made with the extremely limited time on free-to-air television. SuperSport more than doubled its allocation of time to Hockey in 2016 and 2017 from the previous three years, making the PHL a major beneficiary.

LISTING OF HOCKEY

In the history of ICASA, Hockey has never been a listed sport. The ICASA Sports Broadcasting Rights Regulations of 2003 and the Sport Broadcasting Services Regulations of 2010 have never included Hockey as a listed sport. In fact, in terms of the criteria used in the Sport Broadcasting Regulations, 2010, to determine national sporting events that are of public interest, Hockey would not have been listed. These criteria are:

- A confederation sporting event involving a national team or an individual;
- A semi-final and final of a national knockout competition; or
- An opening game, semi-final and final of a confederation sporting event

Even if the PHL existed in 2010, it would never have been listed in terms of ICASA's own criteria. It thus raises the question what has changed in ICASA's thinking and approach to listing national sporting events in the public interest when ICASA decided to include the PHL in its draft regulations. As a newly-established League, the PHL will collapse whilst it is still being built if ICASA goes ahead with listing the PHL.

As Group B of the draft regulations only allows subscription broadcasters to have non-exclusive rights, broadcasters such as SuperSport will have no reason to continue broadcasting PHL matches or funding it.

We have also surveyed several countries, including in the EU and the United Kingdom, to see if there are any countries that list Hockey. Of the countries surveyed, Hockey is not listed anywhere, except in India where Hockey is a major sport unlike in South Africa. Even in India, the listing is limited and certainly does not include leagues such as the PHL. It is confined to the Indian National Teams only, in hockey-specific events such as the Hockey World Cup and the Champions Trophy where the India national team features.

We have not been able to see any countries where Hockey is listed in the manner that is contemplated by ICASA. The listing in India is much more limited than contemplated by ICASA. Even though India provides an example of potential listing of Hockey in some form, we would strongly recommend that ICASA considers the specific circumstances of the local sport and the impact that the listing will have on sport in South Africa.

IMPACT OF THE PROPOSED REGULATIONS

According to Group B of the draft regulations, The PHL must be "offered to a subscription broadcasting licensee on a non-exclusive basis under sub-licencing conditions". SAHA is not sure what ICASA means by this. Without attempting to unravel what ICASA means by this, it is such that subscription broadcasters would not be able to acquire exclusive broadcasting rights to Group B events. It is not clear how ICASA determined that the PHL is a "national

sporting event". The PHL is a league made up of six teams per gender drawn by a draft system. Nowhere in the world is an entire league of any sport and Hockey in particular, listed.

We do not believe that ICASA has the authority to regulate rights in the manner contemplated in Group B under Section 60(1). Even if ICASA had the authority to list the PHL (which authority we believe, ICASA does not have), we do not believe that Section 60(1) of the ECA stops a subscription broadcaster from securing exclusive rights to an event. It only prohibits subscription broadcasters from preventing or hindering free-to-air broadcasting of listed national sporting events.

We believe that ICASA has erred in adding the PHL to Group B of the draft regulations. We are therefore imploring ICASA to reconsider the position it has taken in these draft regulations.

In addition, the listing of the PHL by ICASA will kill its value and a growing league will wither and die. There is a real risk that free-to-air broadcasters will not broadcast the PHL at all as illustrated earlier with the limited number of hours allocated to Hockey over a five-year period. There will be no interest by any broadcaster – both pay and free-to-air. SAHA will have failed in its Vision of using the PHL to prepare young players for global events.

Just when SAHA is starting to build its properties into some tangible value, ICASA appears to come with one fell-swoop and wipe this out. The value of our rights for the PHL will plunge to virtually nothing. There is no free-to-air broadcaster who has shown any interest in broadcasting Hockey. The most immediate and direct impact of the draft regulations is on the income generated by SAHA. The listing of Hockey under conditions of non-exclusivity and sub-licensing mean that the revenue that SAHA will generate from the sale of its rights will be reduced. SAHA generates additional revenue from selling its broadcast rights exclusively to broadcasters. This added revenue will be lost under the draft regulations.

It is important to highlight to ICASA that SAHA has the Vision of becoming a fully professional sport in the future that can realise commercial value from investments in the sport. Experience shows that commercialisation can only be fully realised if the sport enjoys investment and is professionalised. The draft regulations are going to significantly undermine this.

It is also important to highlight to ICASA that even sponsorship revenue is related to broadcast arrangements. As we have shown above, prior to the current arrangements with SuperSport, South African Hockey was hardly broadcast on television in South Africa. Through the arrangement with SuperSport, the number of hours of broadcast of Hockey has increased significantly, thereby widening exposure without undermining investment. We are seriously concerned that the draft regulations are going to negatively affect the sport of Hockey and set it back irreparably.

We wish to reiterate that SAHA will lose a significant source of revenue and this will impact our ability to become less-dependent on government funding. Interest in Hockey will wither

and young players will look elsewhere as there will be no incentive for them to strive to reach national teams. There is a real risk that Hockey will return to the days when it received no or very limited exposure. Potential sponsors will be lost, and the gains Hockey has made internationally will collapse.

CONCERNS ABOUT THE PROCESS FOLLOWED BY ICASA IN DEVELOPING THE DRAFT REGULATIONS

SAHA was surprised to learn from the Government Gazette that it had been listed as a national sporting event that was to be acquired and broadcast on a non-exclusive basis under sub-licensing. This raises great concerns for SAHA. We understand that in previous processes, ICASA has followed a detailed consultative process which culminated in a Discussion Document which was then published for public comment before any regulations were drafted. SAHA is of the view that such processes reflect good practice that allows those potentially affected by the regulations to make the necessary inputs. It also enables ICASA to develop regulations that appropriately balance the needs and interests of various stakeholders.

In the current approach, SAHA was not consulted by ICASA and as such never had an opportunity to make representations on whether there was any need to list Hockey and if so, on the impact of such listing on South African Hockey. This in turn was a missed opportunity for ICASA to hear and consider SAHA's views and concerns prior to developing and publishing the draft regulations.

SAHA is also concerned that the draft regulations do not reflect an appreciation by ICASA of the impact that the draft regulations, if passed, will have on sporting bodies, their codes and the people who derive a livelihood from sport. SAHA depends on income generated from the sale of its rights to fund its developmental goals and to professionalise the sport. As it stands, SAHA is playing a major lead role in developing the sport in South Africa at the grassroots level and promoting the sport on the African continent where it is ranked first.

Without proper funding, these initiatives will not be realised. The most immediate and direct impact of the draft regulations is on revenue earned by SAHA. There are also other indirect and follow-on effects of the draft regulations which include, impact on sponsorship, sports development, broadcasting, etc. The draft regulations are also likely to leave smaller sports such as Hockey without broadcasting as broadcasters will cherry-pick the larger, more established sporting codes. This has negative consequences for the sport. Considering the draft regulations and the memorandum that accompanied them, we do not believe that ICASA properly considered these impacts.

CONCLUSION

The SAHA is the rights holder of the Intellectual Property that is the Premier Hockey League. SAHA has invested in the conceptualisation of the PHL and developed the PHL content. As the rights holder of this IP, SAHA should have the liberty to trade such IP within reason and to ensure the sustainability of the PHL.

There is no compelling argument for the PHL to be listed as proposed in the draft regulations. The public interest will not be served by listing the PHL. On the contrary, the public interest will suffer as a result of the proposed listing of the PHL. We urge ICASA not to go ahead with the draft regulations in its current form, nor to list Hockey (including the PHL) in any future reviews.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'M Langeni'.

Marissa Langeni

Chief Executive Officer

South African Hockey Association