

11 March 2019

To ICASA
Ms V Molete
Ms P Cokie

Per email : vmolete@icasa.org.za
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Dear Ms V Molete and Ms P Cokie

SAFA SUBMISSION TO ICASA ON SPORTS BROADCASTING REGULATIONS, 2010 AS PROPOSED TO BE AMENDED BY THE DRAFT SPORTS BROADCASTING SERVICES AMENDMENT REGULATIONS, 2018

SAFA wishes to thank ICASA for the opportunity to make a written submission to ICASA on the proposed amendments to the DRAFT SPORTS BROADCASTING SERVICES AMENDMENT REGULATIONS, 2018.

Notwithstanding this written submission, we also wish record that we want to take up the opportunity to make oral representation at the appropriate time.

Please find attached our submission, **ANNEX 1** and **ANNEX 2**

Please feel free to revert with any queries related hereto, and kindly acknowledge receipt hereof.

Yours faithfully

Russell Paul
Acting Chief Executive Officer

INTRODUCTION

The South African Football Association (SAFA) is the governing body of football in this country, as determined by the FIFA Statutes, Article 11 read in conjunction with Article 22, which reads:

ARTICLE 11

Any association which is responsible for organising and supervising football in all its forms in its country may become a member association. Consequently, it is recommended that all member associations involve all relevant stakeholders in football in their own structure. Subject to par.5 and par.6 below, only one association shall be recognised as a member association in each country

ARTICLE 22

Clubs, leagues or any other groups affiliated to a member association shall be subordinate to and recognised by that member association. The member associations statutes shall define the scope and authority and the rights and duties of these groups. The statutes and regulations of these groups shall be approved by the member association.

As the governing body of football in South Africa, part of our aims are:

2.1 to carry on the public benefit activity of administering, developing, coordinating and promoting the game of football in which the participants take part in accordance with the principles as laid down in the statutes of FIFA.

2.2 to improve the game of football constantly and promote, regulate and control it throughout the territory of South Africa in accordance with the principles of fair play and its unifying, educational, cultural and humanitarian values, particularly through youth and development programmes;

The underlying enabler that would allow for SAFA to fulfil its aims and in particular noting the aforementioned, is to secure funding in ways that would allow it to execute against these aims.

Noting this, SAFA (like most other sporting codes) engages with potential sponsors to fund various aspects of the game of football, but by and large the sponsors funding is committed to specific projects and does not cover all aspects of the game of football. In the light of this, SAFA (like most other sporting codes) develops products within its framework to further commercialise for additional revenue. In this case, one such avenue is the commercialization of its broadcast rights, which it endeavours to on sell to various broadcast licensee's

Broadcast revenue realised through this process, effectively funds grassroots and Women's football, whilst also dealing with the broader aspects of development of the game such as coaching and youth football. Without this revenue, football will find itself at crossroad of not being in the position to fulfil its aims and public mandate for access to the game.

The current situation for South African Football on membership is detailed as follows:

- 3 500 000 individual players (male and female)
- Over 40 000 clubs
- 343 Local Football Associations (aligned geographically in various municipalities)
- 52 Regional Football Associations (aligned geographically in the 9 provinces)
- 9 Associate members (throughout the country)
- 1 Special Member (National Soccer League, administering Professional Football)

UNPACKING SOME OF THE PROPOSED CHANGES TO THE ACT

DEFINITIONS

“delayed live” - this is a meaningless definition, given there is no such thing as delayed live – an activity is either live or delayed.

“Sports of National Interest” - what is the measurement for *“appeal to the majority of South African populace”*

“Subscription broadcasting service licensee” - the key words in the description here makes reference to *“upon payment of a fee”*, but this does not refer to a once off / monthly / annual fee, so where does likes of OPEN VIEW fall into?

OBJECT OF THE REGULATIONS

- (e) *Reach a wider audience and strike a balance between audience and revenue*

What balance is being inferred to here in respect of audience and revenue? Revenue to who

The effects on not wanting to allow sporting federations to negotiate contracts that offer exclusivity to a broadcaster is certainly not in the interest of rights holders and or broadcast licensees, in that the very essence of deriving greater revenue for the rights holder is exactly this offer of exclusivity. When broadcasters are offered exclusivity by the rights holder, they are able to pay the rights holder a higher fee, as they themselves (the broadcaster) is able to offer advertisers an opportunity of a bigger audience watching their adverts and as such charge these advertisers at a higher rate card. Advertisers see this opportunity of having a greater captive audience, and everyone is happy. When a product / event is available anywhere and everywhere, it loses its value and does not become commercially viable for the buyer of the rights to exploit in a manner which serves their business or for that matter to pay the value the rights holder attaches to their property.

SCOPE OF THE REGULATIONS

- (1) *These Regulations shall apply to Free-to-air and Subscription broadcasting service licensees*

The question arises here again, as to where the likes of OPEN VIEW fall into?

CRITERIA FOR IDENTIFYING NATIONAL SPORTING EVENTS OF PUBLIC INTEREST

- (1) *The Authority has used the following criteria in determining national sporting events that are of public interest:*
- (b) *a semi-final and final of a national knockout competition; or*
 - (c) *an opening game, semi-final and final of a confederation sporting event*

These clauses do not make reference to the fact that it must involve National Teams and is therefore very broad and by the wording “*confederation sporting event*” in the case of football, implies that any football match listed in (b) and (c) above read in conjunction with LISTED SPORTING EVENTS, “*must be broadcast on full live coverage on Free-to-air:*”

In any event, even if a National Team is participating in such an event listed in CRITERIA FOR IDENTIFYING NATIONAL SPORTING EVENTS OF PUBLIC INTEREST, it must be noted that the rights for such events are generally held by the likes of COSAFA / CAF / FIFA – who are the controlling bodies and rights holders for Regional / Continental / World events. SAFA as a member association has no authority to dictate to them who should get the rights. So if this is not clarified, but enforced through this clause, SAFA and South Africa may find itself not being considered as future hosts for Regional / Continental / World events – which would have a detrimental effect on our economy and the ability to raise additional jobs through such events and therefore decrease tourism and the inflow of foreign capital that contributes to the balance of payments for our country.

LISTED SPORTING EVENTS AND CODES

- (5.1.1) “*.....the following are listed national sporting events which must be broadcast on full live coverage on Free-to-air:*”
- (c) *FIFA World Cup*

In respect of this clause, and referencing 5.1.1 above, this implies all FIFA WORLD CUP involving all SAFA National teams, as they all play in FIFA WORLD CUP events. This therefore implies that every time one of the National Teams play in such matches, this *must be broadcast on full live coverage on Free-to-air*, as provide for in 5.1.1.

(d) *Africa Cup of Nations (Male and Female Soccer)*

In respect of this clause, and referencing 5.1.1 above, this implies all AFRICA CUP OF NATIONS involving all SAFA National teams, as they all play in AFRICA CUP OF NATIONS events. This therefore implies that every time one of the National Teams play in such matches, this *must be broadcast on full live coverage on Free-to-air*, as provide for in 5.1.1.

In this case, it is important to note that the SABC – who by and large has some capacity to cover these matches - will be obligated to broadcast these matches, even though in the past they have declined, citing that it incurs massive displacement costs for them, with no return on investment.

The above seem somewhat ambiguous and discriminatory, as they make reference in the definition of “*National Sporting Events*” of events that are “*deemed to be of national interest and include the South African National Senior Team*”. In the case of the AFCON, it specifies “*(Male and Female Soccer)*” yet in the FIFA WORLD CUP, there is no reference to male or female

(5.1.2) “*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.*”

On the one hand, as per 5.1.1, it states “*..... must be broadcast on full live coverage on Free-to-air:*” this one now states “*If a Free-to-air licensee cannot acquire the above sporting rights....*”. What then is the position and on what basis is it envisaged that they “*cannot acquire*”?

What also makes no sense, is the condition being imposed on the subscription services provider, which states “*.... 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.*” We cannot see the merits of this, in that when broadcasters are offered exclusivity by the rights holder, they are able to pay the rights holder a higher fee, as they themselves (the broadcaster) is able to offer advertisers an opportunity of a bigger audience watching their adverts and as such charge these advertisers at a higher rate card. Advertisers see this opportunity of having a greater captive audience, and everyone is happy. When a product / event is available anywhere and everywhere, it loses its value and does not become commercially viable for the buyer of the rights to exploit in a manner which serves their business or for that matter to pay the value the rights holder attaches to their property.

(5.2) **“Group B: National Sporting Events offered to a subscription broadcasting licensee on a non-exclusive basis under sub-licencing conditions;”**

(5.2.1) **“The following sporting events fall within this group:”**

- (b) All Africa Games
- (c) COSAFA Cup
- (d) CAF Champions League
- (e) CAF Confederations Cup
- (i) Soccer Championship Cup

Our same argument as above holds true for this. We cannot see the merits of this, in that when broadcasters are offered exclusivity by the rights holder, they are able to pay the rights holder a higher fee, as they themselves (the broadcaster) is able to offer advertisers an opportunity of a bigger audience watching their adverts and as such charge these advertisers at a higher rate card. Advertisers see this opportunity of having a greater captive audience, and everyone is happy. When a product / event is available anywhere and everywhere, it loses its value and does not become commercially viable for the buyer of the rights to exploit in a manner which serves their business or for that matter to pay the value the rights holder attaches to their property.

In addition, it must be noted that the rights for such events are generally held by the likes of COSAFA / CAF / FIFA – who are the controlling bodies and rights holders for Regional / Continental / World events. SAFA as a member association has no authority to dictate to them who should get the rights. So if this is not clarified, but enforced through this clause, SAFA and South Africa may find itself not being considered as future hosts for Regional / Continental / World events – which would have a detrimental effect on our economy and the ability to raise additional jobs through such events and therefore decrease tourism and the inflow of foreign capital that contributes to the balance of payments for our country.

(5.3) **“Group C: Minority and Developmental Sporting Events to be broadcast by subscription and Free-to-air broadcasters.”**

(5.3.1) **“In respect of the sporting codes listed in Group C, Free-to-air and subscription service broadcasters must broadcast events of at least two (2) of the listed sporting codes per annum”**

Whilst football is not listed herein, we support the opportunity to provide exposure to the parties listed, however – we trust that this will be done on the basis that they receive the appropriate commercial value they attach to their rights.

In addition, if accepted by the listed parties, this regulation should be specific to indicate that it is *2 events of each of the listed sporting codes per annum*.

BROADCASTING OF NATIONAL SPORTING EVENTS

- (6.1) *“A broadcasting service licensee who has acquired rights or failed to acquire rights in terms of regulation 5.2 must inform other broadcasting service licensees within five (5) days of acquiring such rights or failure to do so, for the opportunity by other broadcasters to tender for same if the rights are not acquired.”*

If this regulation is read in line with 5.1.2 as inferred in the proposed regulations, who exactly will the subscription service broadcaster be informing, in terms of *“... must inform other broadcasting service licensees...”* given that the original decline was from the Free to Air Service provider (see 5.1.2) who then offered it to the subscription service broadcaster on a non-exclusive basis....so who else is left?

REVIEW OF THE LISTED EVENTS

- (1) *“A national sporting event may be removed from or added to the list subject to the following conditions:”*
- (c) *“The application to add or remove a national sporting event shall be subjected to a public process.”*

What exactly is envisaged with a “public process”, as in any event, it is contradicted by (b) below

- (b) *“When a stakeholder applies to the Authority to add or remove a national sporting event and provides reasons for such application.”*

DISPUTE RESOLUTION

“Broadcasting service licensees entering into a commercial agreement regarding the broadcast of a national sporting event of public interest must include an Alternative Dispute Resolution mechanism which shall govern any dispute between the parties.”

Whilst it appears a provision is being made to resolve matters relative to a commercial agreement between a national federation and a broadcasting services licensee, the entire proposed regulation is devoid about placing an obligation on the broadcasting service licensees (and more importantly in our case the Free To Air broadcast licensee) to pay a fair historically established commercial value for the rights.

It is clear that the proposed regulations force the national federations to comply, and whilst there is an obligation on the broadcasting service licensees (and more importantly in our case the Free to Air broadcast licensee) to broadcast the “event”, they have no obligation to enter into a commercial agreement with the national federation to acquire these rights.

CONCLUDING REMARKS

We remain unclear as to the source of requiring the current regulations to be amended with these proposed regulations, given too that we were a party that was “consulted” and provided great details to the challenges with the existing regulations, only to find the existing ones to have amendments proposed that would make it impossible for SAFA as the rights holder to realise fair historical commercial value for its properties.

It must be further noted, that the intellectual property (IP) of the sporting federations is the very sport that it manages, and to be forced to hand this over to a broadcast licensee without the opportunity to trade the IP in a free market, is somewhat tantamount to being in contradiction with the Competitions Commission would usually prevent.

SAFA herewith takes the opportunity to formally and officially **reject** and **object** to the *SPORTS BROADCASTING REGULATIONS, 2010 AS PROPOSED TO BE AMENDED BY THE DRAFT SPORTS BROADCASTING SERVICES AMENDMENT REGULATIONS, 2018*, and calls for these draft proposals to be scrapped and we call for a process of proper consultation to take place with all affected parties.

For further overview on SAFA’s challenges with the current proposed amendments, see **ANNEX 2** as attached.

Over and above all of the aforementioned technicalities, the SAFA position holistically, is as follows:

SAFA has taken note of the ICASA proposed amendments to the broadcasting regulations, and like most sporting federations in the country, cannot agree with the proposals being made by ICASA, and will vehemently oppose them in the current format.

It is common knowledge that sporting federations in South Africa and the world at large, rely on the sale of their broadcast rights to broadcasters, to help sustain their development programs and unfunded projects for the growth of the sport - and SAFA is no different in this respect.

Commercial partners funding is aimed at specific projects, so as an example like SASOL funds BANYANA BANYANA, all such funds have to be used for BANYANA BANYANA.

SAFA has 9 national teams, 10 interprovincial tournaments, 4 regional leagues across 52 regions and 9 provinces, that it is responsible for. In addition, critical SAFA supporting elements to the development of the game includes Referee, Coaching and Administrative structures. SAFA also recently announced the yet to be launched National Women's League, set to commence in August this year. The breakdown of operations are as follows;

NATIONAL TEAMS

- Bafana Bafana, partly funded by SAA and CASTLE
- Banyana Banyana, partly funded by SASOL
- u23 Men's National Team, unfunded
- u20 Men's National Team, partly funded by Burger King
- u20 Women's National Team, unfunded
- u17 Men's National Team, unfunded
- u17 Women's National Team, unfunded

INTERPROVINCIAL TOURNAMENTS

- u13 boys and girls Interprovincial tournaments, unfunded
- u15 boys and girls Interprovincial tournaments, unfunded
- u17 boys and girls Interprovincial tournaments, unfunded
- u19 boys Interprovincial tournament, funded by Burger King
- u19 girls Interprovincial tournament, unfunded
- Futsal Interprovincial tournament, unfunded
- Beach Soccer Interprovincial tournament, unfunded

REGIONAL LEAGUES

- ABC Motsepe League, partly funded by MOTSEPE Foundation
- SASOL Women's League, funded by SASOL
- SAB League, funded by SA Breweries
- u19 Women's Regional League, unfunded

CRITICAL SUPPORTING ELEMENTS

- Referees development, partly funded by OUTsurance
- Coaching development, unfunded
- Administration development, unfunded

NATIONAL LEAGUES

- Women's National League, unfunded

It is therefore patently clear from the above, that out of the 25 critical operational elements that SAFA has to manage daily that effectively constitutes "football" as we know it, only 8 have funding committed to it (albeit partial), by commercial partners - with the remaining 17 needing funding to come from somewhere else. In SAFA's case, this funding by and large (probably as close as 80%) comes directly from revenue generated in the sale of broadcast rights. This summary does not even venture into dealing with Schools Football, a very critical element of development of the game at grassroots level and the hospital development of our youth at an early age.

It is therefore very easy to see that the effects of the proposed ICASA regulations will have a devastating effect on the development and growth of football in this country, if SAFA is prohibited from securing the appropriate market related value associated with broadcast rights, from prospective broadcasting partners.

One only has to listen to the Chairperson of the National Soccer League to appreciate the effects it will have on their segment of the game, and when you consider the impact he speaks of and the effects it will have on participants of around 2000 (players), all generally living well above the bread line. So, if the impact on the National Soccer League will be so great, just imagine the effects on SAFA, whose 3 000 000 plus members by and large are either living just on the breadline or generally below the breadline.

It is clear that ICASA have not considered the effects / impacts of this on sporting federations, let alone the broadcaster (and in this case as they wish to dictate the free to air broadcaster). Neither does it seem they have considered the practicality of what they propose, or for that matter the actual role players.

Let's just consider the current landscape of free to air broadcasters in South Africa. There is the SABC and eTV (who in this case does not even have a sports footprint, so one is limited to the SABC by and large).

It is clear that if the SABC was mandated to ensure the live broadcast of the events that ICASA wishes them to broadcast, they would not have sufficient airtime/ TV hours to do all of this as and when they occur (despite having 3 channels), as you can only imagine as happens in our country many times over, that Rugby, Cricket and Football National teams can play at the same time on the same day. Where will the SABC get the necessary infrastructure (camera's, OB units, vehicles etc) and Human Resources (cameramen/women etc) to produce - just the aforementioned events- live). And if they do acquire these, it would increase their operational expenses more than 3 fold.

It would therefore appear that the free to air broadcaster would have to approach the sporting federations to play matches at times which they are not accustomed to, and this then has a further knock on effect. Fans wanting to attend these events live would be inconvenienced and as such not be able to attend, thus further affecting commercial revenue for the federations as well as atmosphere at events. Costs for event staging would go up, as facilities would be required to operate on times / days that they usually do not. Furthermore, and quite importantly too, advertising revenue to the broadcaster will be affected, as the TV audience and timing of the event may not be as they have wanted (ie the whole question of prime time viewing and rate card would be affected).

The effects on not wanting to allow sporting federations to negotiate contracts that offer exclusivity to a broadcaster is certainly not in the interest of rights holders and or broadcast licensees, in that the very essence of deriving greater revenue for the rights holder is exactly this offer of exclusivity. When broadcasters are offered exclusivity by the rights holder, they are able to pay the rights holder a higher fee, as they themselves (the broadcaster) is able to offer advertisers an opportunity of a bigger audience watching their adverts and as such charge these advertisers at a higher rate card. Advertisers see this opportunity of having a greater captive audience, and everyone is happy. When a product / event is available anywhere and everywhere, it loses its value and does not become commercially viable for the buyer of the rights to exploit in a manner which serves their business or for that matter to pay the value the rights holder attaches to their property.

It is quite significant through all these debates on the proposed ICASA regulations, that the SABC itself has been quite silent on this matter and not expressed a view, much the same for the other free to air broadcaster eTV, but eTV is probably understandable given their non-existent sports footprint and moreover because they do not have channel / airtime capacity as matters stand.

It's also interesting to note that ICASA lists the IAAF in their proposed regulations, so given that the IAAF is not a federation in South Africa, how do they plan to regulate them? Another example of ICASA not having thought these proposed regulations through.

The fact that ICASA, in the case of Football, have listed CAF and FIFA matches down, without clarity of which matches these are, also shows ignorance to the sport. If for example they remain as broad as it reads now, this would have a negative impact on the very people they wish to support, as the rights would not be of any value in South Africa, as prospective broadcast buyers of these rights from CAF and or FIFA would not have exclusivity and as such not capitalize on viewership / advertisers and therefore not be in a position to mitigate their rights costs. There would thus be a strong possibility of these matches / world class events not being shown in South Africa. I am sure that this would be the same in the case of the other sporting federations major international world events.

SAFA has over the years been very diligent on compliance with what ICASA had regulated before, ensuring that the masses of our country were able to have access to all of the National Teams and Tournaments. We remain committed to the objective to ensure that the masses will always have access to their national teams as well, but we alone cannot be doing so at the expense of our members, the development of the game and or its growth.

The proposed regulations in its current format will thus have a drastic effect on sports federations, and SAFA in particular will find itself hard pressed to deliver on its social mandate of growing the game and providing opportunities for the ordinary South African to achieve sporting excellence on the football field, and or more importantly, it will not be in a position to provide career / employment opportunities that football offers through becoming professional football players, coaching, refereeing, administration of clubs etc

END