



**Attention:** Ms Violet Molete

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15<sup>th</sup> March 2019

Dear Ms Molete

## **WRITTEN REPRESENTATIONS BY SANZAAR ON THE DRAFT SPORTS BROADCASTING SERVICES AMENDMENT REGULATIONS ,2018**

### **Introduction**

1. On the 18<sup>th</sup> December 2018, SANZAAR became aware that the Independent Communications Authority of South Africa ("ICASA") had published Draft Sports Broadcasting Services Amendment Regulations, whereby interested parties were invited to make written representations by the extended date of 15<sup>th</sup> March 2019.
2. SANZAAR would like to thank ICASA for allowing it to make submissions in regard to the proposed Draft Sports Broadcasting Services Amendment Regulations.
3. In 1996, the South African Rugby Football Union (**SARFU** as it was then known), or the South African Rugby Union ("SARU" as it is now known) the New Zealand Rugby Union (**NZRU**) and the Australian Rugby Union ("**ARU**" as it was then known) or Rugby Australia ("**RA**" as it is now known) came together as an unincorporated joint venture, known as SANZAR, to create and run two international professional rugby competitions. Those competitions were known at that time as Super 12 (a competition involving state or provincial teams) and the Tri-Nations Championship (a competition involving senior national teams from those countries). Those competitions have changed over time and today are known as **Super Rugby** and **the Rugby Championship**.

4. The right to enter grounds for the purpose of creating and transmitting audio visual signals of those matches around the world (**the Rights**) was first granted to News Corporation Limited and its various licensees in 1996. Since that time, various Pay TV operators have acquired the Rights to those competitions.
5. At each subsequent juncture of the Rights sales process from 1996, the South African Free to Air (FTA) Broadcasters have been offered these South African Rights, however they have declined to take up the offer in every instance.
6. In 2016, the Unión Argentina de Rugby (**UAR**) was added as a fourth member of the SANZAR joint venture, which is now known as **SANZAAR**.
7. The business model for these two competitions or leagues is built around the sale of the Rights in each of the core territories (New Zealand, Australia, South Africa and Argentina) together with the sale of broadcasting rights throughout the rest of the world (ROW). The rights that are sold in ROW territories are valuable, but the vast bulk of the Union's revenues from the matches that are owned by the joint venture relates to the Rights in each of those core territories. The Unions in the Joint Venture sell the Rights jointly, through SANZAAR, as will be explained below.
8. The financial viability and sustainability of Super Rugby and the Rugby Championship relies on maximising the value of the Rights in each of those core territories. Most of the value in the Rights derives from the exclusivity given to the Host Broadcasters in each of those territories to access the grounds for the matches although all of the current Host Broadcasters also either sub licence those rights or offer recordings of those matches on a delayed basis to Free-to-Air TV (FTA) operators.
9. SANZAAR has been made aware of the proposed changes to the Sports Broadcasting Regulations 2010 (**the Regulations**) under which the effect of the changes would be to list Super Rugby in its entirety in Group B, under the heading "National Sporting Events offered to a subscription broadcasting licensee on a non-exclusive basis under sub-licencing conditions". SANZAAR wishes to make a submission on what the likely impact of those changes to the Regulations would be if the Regulations are adopted in their current form.

## **Background and Overview**

10. In this part, we propose to give a high-level overview of the governance of rugby as it relates to the issues created by this review.
11. Each union that is a member of World Rugby (**WR** formerly the International Rugby Board (**IRB**)) is the body that is officially sanctioned to promote, foster and develop rugby within its territory. In the case of South Africa, this is SARU.

12. In each SANZAAR member union, the national union is a not-for-profit entity. NZRU, for instance, is an incorporated society that is incorporated for the purpose of promoting amateur rugby for the recreation and entertainment of the general public.
13. Each SANZAAR member union owns its own national competitions, hosts test matches involving its national teams and, in the case of South Africa, Australia and New Zealand, every 4 years hosts a British & Irish Lions Series. The SANZAAR member unions sell the Rights to these domestic matches (in most cases) jointly, but essentially each union keeps the Rights revenue to those matches and utilizes it to promote rugby within its region.
14. In the SANZAAR member unions, more than 50% of each union's revenues come from the Rights sales process. Those funds are then used in part to support the members who make up those entities and are running amateur rugby in their regions. Generally, at least 20% of all revenue for SANZAAR member unions is distributed to their members to promote amateur rugby, mass participation and development.

## **SANZAAR**

15. As mentioned in the introduction, the SANZAAR joint venture is an unincorporated joint venture that exists to:
  - a) determine the structure of the international competitions known as Super Rugby and the Rugby Championship and ensure that they are the best competitions in the world;
  - b) perform and comply with the obligations on the Unions under each Rights Agreement;
  - c) conduct the sales process for the Rights to the competitions; and
  - d) manage and administer the international competitions.
16. The three founding unions (RA, NZRU and SARU) were joined by UAR in 2016. The joint venture is governed by an Executive Committee comprising two representatives of each member and managed by an Australian based entity, SANZAR Pty Ltd (**SANZAR**). SANZAR provides a range of services to the joint venture, including coordinating the Rights sales process.
17. SANZAR co-ordinates the Rights sales process, but the Rights sales process requires unanimous agreement of all four SANZAAR member unions.

18. In selling its rights, SANZAR will seek to realise the fullest possible value from its rights, in addition to ensuring that production obligations to produce live signals around the world can be guaranteed.
19. If the combined value of the Rights is not acceptable to all four unions then no agreement is able to be reached and the future of SANZAAR is put at risk.
20. If the Rights value were to reduce, for example, as a result of the introduction of a regulatory change such as proposed by ICASA, in one territory and all of that reduction in revenue was to be attributed to the territory in which the value is diminished (e.g. South Africa), SANZAAR would not be able to continue in its current form because that union (in this case SARU) would in all likelihood not be financially viable to continue in SANZAAR.
21. To illustrate this point, and without breaching the confidentiality of the various Rights Agreements:
  - a) 27% of the value of Super Rugby under the current Rights Agreements is contributed by the host broadcaster in South Africa;
  - b) 32% of the value of the Rugby Championship under the current Rights Agreements is contributed by the host broadcaster in South Africa; and
  - c) 20% of the overall Rights fees for the SANZAAR competitions and matches (which excludes the Currie Cup and SARU domestic competitions) is contributed by the host broadcaster in South Africa.
22. SARU currently needs approximately 28% of the total Rights revenue from SANZAAR competitions and matches, plus whatever value it can derive from the domestic competitions, in order to remain a viable entity and continue its participation in those competitions.
23. SANZAAR has been advised that the proposed amendments to the Regulations are far-reaching and potentially catastrophic for SANZAAR.
24. The current Regulations impact the two SANZAAR competitions as follows:
  - a. Super Rugby. The final of this competition is listed in the event that a South African team plays in that final and same is hosted in South Africa. In this instance, the incumbent rights holder has offered the feed of such match to the SABC in the past.
  - b. The Rugby Championship. Test matches played by the Springboks in South Africa in this competition (and otherwise) are to be made available to a FTA broadcaster. This may be done on a live, delayed or delayed-live basis. This is adhered to by the current broadcaster.

25. The proposed Regulations envisage the following as far as these competitions are concerned:
  - a. Super Rugby. It is proposed that the entire competition be listed and that a subscription broadcaster may only acquire the rights to these matches on a non-exclusive basis subject to sub-licensing conditions. This means that the whole event may well not be broadcast if the FTAs involved are unable to afford a reasonable fee. If a subscription broadcaster does eventually acquire rights to the event on a non- exclusive basis, such non-exclusivity will reduce the fee payable by approximately 60%, in terms of the industry norm.
  - b. The Rugby Championship. It seems to be the suggestion that these matches can only be broadcast by FTA broadcasters, who must do so live and in full. This will also be disastrous, as it is widely known that the public broadcaster in South Africa is technically insolvent and the commercial FTA operator apparently displays no interest in broadcasting sport.
26. The effect of that (leaving aside the value of other Rights (e.g. Currie Cup) would be:
  - a. a 16% overall reduction in the total value of Super Rugby across all territories;
  - b. a 19% overall reduction in the total value of the Rugby Championship across all territories;
  - c. if all of the reduction in value was attributed to SARU, it would amount to in excess of a 43% reduction in SARU's share of Rights revenue; and
  - d. a 12% reduction in Rights revenue for each of the four members of SANZAAR if shared equally.
27. The consequence of these regulations will therefore be absolutely disastrous for SANZAAR.
28. SANZAAR has been advised that the listing of Super Rugby as being restricted to being offered to a subscription broadcasting licensee on a non-exclusive basis under sub-licensing conditions will result in a reduction of as much as 60% of the revenue for those matches.
29. Whichever way the reductions are shared, they would have potentially very serious, if not disastrous, consequences for all SANZAAR members and would, in

all likelihood, result in SANZAAR having to abandon Super Rugby and possibly the Rugby Championship.

30. This is not an exaggeration. It is the reality that would flow from the extent of the reduction in Rights value that would flow from the listing of Super Rugby and the Rugby Championship in the way proposed in the Regulations.

### **Impact on Community Rugby**

31. All SANZAAR member unions rely on broadcasting revenue to fund the community game and foster the playing of amateur rugby across each of their territories.
32. The percentage of total revenue spent by the SANZAAR members on the running of community rugby in each of the relevant provinces/regions varies but in general terms ranges between 20% to 30% depending on the territories.
33. The impact of listing Super Rugby and the Rugby Championship in South Africa could see in excess of USD \$80 million not being available to SANZAAR unions to fund their operations, which would inevitably have a serious impact on community rugby.

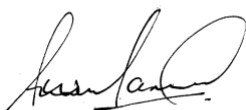
### **Ability to Produce Rugby Games to International Broadcast Standards**

34. The competitions owned and managed by SANZAAR and in turn sold to Broadcasters across the territories require each Host Broadcaster in each territory to produce these games for international distribution on the World Feed to other countries throughout the world.
35. Since its inception, SANZAAR has relied on the incumbent broadcaster to produce and make available for international distribution all matches played in South Africa.
36. SANZAAR has serious concerns around South African FTA Broadcasters' capability and capacity to produce such games and to the required standards, as currently all matches that are provided to the FTA in South Africa have always been produced by the incumbent broadcaster.
37. Should any other service provider not be able to produce an international feed to broadcast standards this will have a significant value erosion on the sports value and cause a series of breaches in all markets to which the feed is delivered.

## Conclusion

38. The listing of Super Rugby and the Rugby Championship as proposed by ICASA in the changes to the Regulations, are likely to have a catastrophic impact on rugby in South Africa which could include:
- a) a very significant reduction in Rights revenue available to SANZAAR members (and SARU in particular);
  - b) the end of Super Rugby comprising South African teams;
  - c) South Africa being avoided as a territory in which to host, play and, as a result, broadcast Rugby matches into by WR and the other SANZAAR members. (It is acknowledged that matches may well still be broadcast into South Africa, but they are unlikely to play matches in that territory);
  - d) a significant negative impact on resourcing the community rugby game in SANZAAR member territories;
  - e) threatened viability of some or all SANZAAR member unions; and
  - f) significant loss of revenue both direct and indirect as calculated in Economic Impact Assessments that are conducted following each major rugby event including and not limited to Super Rugby and The Rugby Championship and Internationals.
39. SANZAAR is available to answer questions on these submissions.

Yours sincerely,



Andy Marinos  
CEO SANZAAR  
15 March 2019