



4 December 2017

Cllr Botlenyana Mokhele
Chairperson: Inquiry – Subscription Television Broadcasting Committee
ICASA
Pinmill Farm
164 Katherine Street
Sandton

Dear Cllr Mokhele

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA: INQUIRY INTO SUBSCRIPTION TELEVISION BROADCASTING SERVICES

1. Executive Summary

1.1 The South African Rugby Union ("SARU") appreciates the opportunity to make this submission to the Independent Communications Authority of South Africa ("ICASA") with respect to the Inquiry into Subscription Television Broadcasting Services.

1.2 For the detailed reasons that follow, SARU's position is, in summary, as follows:

1.2.1 SARU, as with most sporting bodies in South Africa, is almost entirely dependent on what it can generate through its own private revenue generation initiatives. Government funding currently represents only approximately 0.35% of its requirements which, incidentally, is less than that enjoyed by most of its foreign counterparts. The lack of government funding is all the more significant when one has regard to the fact that SARU, in its capacity as the custodian of rugby in South Africa, has extensive obligations, and bears an enormous responsibility to the South African public, with over ten million South African rugby supporters.

1.2.2 SARU's reliance on its private revenue generating initiatives is significant. Securing funding through these initiatives enables SARU to achieve a number of outcomes, which importantly includes making substantial investments in community rugby, grassroots development programmes, training, education, initiatives for the development of infrastructure as well as transforming and uplifting rugby, amongst others, in disadvantaged

areas. In this regard, it should be noted that SARU invests a significant sum, in the region of R105 million per annum in these initiatives.

- 1.2.3 In addition, this funding assists SARU in its responsibility to deliver globally competitive Springbok and Springbok Sevens teams. The international success of these teams since 1995 has acted as a powerful nation-building tool, which ability would be compromised should there be negative impacts on the sport's ability to self-fund.
- 1.2.4 SARU generated revenue of R1,212bn in its 2016 financial year. The sale of rugby's broadcasting rights represents approximately 53% of SARU's revenue, whilst sponsorships represent 28%. The remaining 19% of SARU's revenue is generated through test and event participation, grants, merchandising, and licensing royalties.
- 1.2.5 It should be borne in mind that the level of sponsorship enjoyed by SARU is largely a function of the level of exposure it is able to achieve, thanks to the extensive distribution of content both locally and internationally as a result of the exclusive sale of its broadcast rights.
- 1.2.6 The revenue derived from the exclusive sale of its rights has enabled SARU to deliver on its mandate and obligations to its various stakeholders including its partners in the Super Rugby Championships which includes South Africa, New Zealand, Argentina and Australia, jointly known as "SANZAAR".
- 1.2.7 This has further incentivised the necessary investments in broadcasting equipment and quality which has enabled SARU to meet the high production standards set by international markets.
- 1.2.8 For all the above reasons, SARU is best placed to balance its obligations, its funding requirements and the need to generate revenue from all its activities. This includes it being able to determine how best to package and sell its rights to broadcast the sport.
- 1.2.9 For reasons detailed hereunder, an attempt on the part of ICASA to regulate the sale of sports broadcasting rights in South Africa will inevitably have grievous financial consequences for sports federations such as SARU.

- 1.2.10 Those consequences would have a deleterious impact on SARU's ability to deliver on its main constitutional objective to promote, develop and support all levels of rugby in the Republic and field internationally competitive provincial and national teams to the detriment of all South Africans.

2. Introduction

- 2.1 Thank you for affording the South African Rugby Union ("SARU") the additional time to make written submissions to the Independent Communications Authority of South Africa ("ICASA") in respect to the Inquiry into Subscription Television Broadcasting Services. ICASA can be assured of SARU's on-going co-operation.

- 2.2 Before responding to the questions set out in the Discussion Document, we thought it may be of assistance if we provided an overview of why it is that sporting bodies have historically been and for the foreseeable future will remain primarily dependent on the income they receive from the sale of their broadcasting rights, and from sponsorships. In doing so, we will also of course touch on nuances more specific to SARU. As such, we have structured our response as follows:

- 2.2.1 SARU and its obligations (pages [4] to [5]);
- 2.2.2 the role of sporting bodies (page [5] to [6]);
- 2.2.3 SARU funding / sources of revenue (page [9]);
- 2.2.4 the sale of sports broadcasting rights (pages [7] to [9]);
- 2.2.5 benefits derived by SARU from exclusive sale of broadcasting rights (pages [9] to [10]);
- 2.2.6 ICASA's jurisdiction and the rights of 3rd parties (page [10])
- 2.2.7 responses to the questions in the Discussion Document (pages [11] to [12]);
and
- 2.2.8 conclusion (page [13]).

3. SARU and its Obligations

- 3.1 SARU, in its capacity as the custodian of rugby in South Africa, is responsible for and oversees all aspects of the game.
- 3.2 SARU makes substantial investments in community rugby, grassroots development programs, training, education, and initiatives for the development of infrastructure. This is in order to grow, transform and uplift rugby in disadvantaged areas.
- 3.3 SARU's obligations include, amongst others, the following:
 - 3.3.1 market and promote the sports of rugby and rugby events;
 - 3.3.2 ensure exciting competition in the sport;
 - 3.3.3 develop and maintain comprehensive grassroots programmes;
 - 3.3.4 implement development programmes to address past inequalities;
 - 3.3.5 develop national teams in various international tournaments and series;
 - 3.3.6 make extensive investments in international competitiveness,
 - 3.3.7 develop and attract top class players through coaching and paying competitive salaries associated with professional sport (which is necessary to avoid an exodus of talented players to other countries. This has become a growing problem for South Africa);
 - 3.3.8 develop and maintain stadia and facilities;
 - 3.3.9 host and organise attractive international and domestic events in South Africa;
 - 3.3.10 ensure that South African teams participate competitively in tournaments and events internationally; and
 - 3.3.11 ensure that rugby is accessible to wide audiences through affordable ticket pricing.
- 3.4 SARU is also responsible for the development and management of all national teams, brand building and intellectual property rights protection, licensing and

merchandising, broadcasting rights, sponsor procurement and servicing, the hosting and management of tournaments and tours, and the marketing of the game of rugby.

- 3.5 SARU has 14 provincial unions / structures for which it is responsible, namely the Blue Bulls, Boland Cavaliers, Border Bulldogs, Falcons, Free State Cheetahs, Golden Lions, Griffons, Griquas, Leopards, Pumas, The Sharks, Western Province, Eastern Province Kings, and the Eagles. As ICASA will appreciate, this responsibility alone requires substantial resources for the training and development programmes of these unions.
- 3.6 SARU is also vested with a number of responsibilities which are aimed at encouraging the development of the sport and ensuring its competitiveness on both national and international levels. In order to maintain the competitiveness of the sport, especially at international level, SARU is constantly faced with the challenge of ensuring that it pays top performing players, coaches and referees competitive global market-related salaries. SARU's players are regularly offered lucrative contracts by wealthy clubs participating in developed countries such as Japan, France and England. It is increasingly difficult to meet and compete with international salary standards, given the exchange rate challenges which South Africa faces.
- 3.7 SARU is constantly faced with the challenge of ensuring that South African rugby teams compete against the best and that they rank amongst the world's best rugby teams. Thanks to SARU's continued investment into the sport, the South African rugby men's team is currently ranked third in the World Rugby Rankings.¹

4. The Role of Sporting Bodies

- 4.1 Modern sporting organisations have a dual role. They continue to carry the traditional constitutional responsibility of promoting, developing and supporting the sport in all areas. But, in the modern sporting and entertainment landscape, they have essentially become media companies. Sporting bodies today produce content (matches, competitions, athlete-heroes) and sell that content to consumers (broadcasters, sponsors, supporters) through a number of mediums.

¹ As at November 2017.

The 'media' side of the business has become the critical engine to deliver the necessary revenue.

4.2 Sporting bodies (such as SARU) play a significant role in the grassroots development of sports which necessarily also entails the development of athletes. Sporting bodies are also tasked with ensuring that the sport for which they are responsible is made available to wide audiences at a standard which satisfies the demands of national and international audiences.

4.3 It will come as no surprise to ICASA that meeting these demands comes at a not inconsiderable cost to sporting bodies such as SARU. It follows from the above, that the ability to generate sufficient revenue is essential because without it sporting bodies (such as SARU) would not be able to fulfill their primary developmental obligations, nor would they be able to develop, attract and retain top class players, and generally engage in activities essential to maintaining the profile of the sports they represent.

4.4 Accordingly, sporting bodies need to secure revenue in various ways in order to remain sustainable. Globally, sporting bodies have relied upon, *inter alia*, the following sources of income:

4.4.1 the sale of broadcasting rights;

4.4.2 sponsorship;

4.4.3 ticket sales;

4.4.4 merchandising; and

4.4.5 government subsidies and grants.

4.5 Notwithstanding the various funding options, the sale of broadcasting rights remains the primary and most reliable source of income. SARU is in this regard no exception. Indeed, owing to the almost complete absence of governmental financial support, it is more dependent than most on the income derived from the sale of broadcasting rights. If the income from the sale of broadcasting rights were to be reduced, the financial viability of SARU, and most other sporting

bodies for that matter, would certainly be significantly threatened, and in the case of SARU it simply would not be able to meet its existing obligations.

5. Sources of Revenue for SARU

- 5.1 Unfortunately, unlike rugby bodies in many other rugby-playing jurisdictions, SARU receives a nominal sum from National Government, which represents 0.35% of total revenue. While this is understandable, given the obligations of the government in a developing and transforming society, this limits revenue options for SARU significantly.
- 5.2 SARU is thus left to essentially self-fund itself. In this regard, the sale of broadcasting rights is SARU's primary source of income, with sponsorship representing its second largest source of income. In its financial year ending 31 December 2016, SARU derived approximately 53% of its revenue from the sale of broadcasting rights, and approximately 28% from sponsorship.
- 5.3 The amount of sponsorship received by SARU is largely dependent on achieving high levels of exposure for all its rugby events.
- 5.4 SARU's revenue is invested back into the sport of rugby. Given SARU's extensive obligations (described above), SARU is heavily dependent on its broadcasting rights as its main source of income, which also feeds into its ability to attract sponsorship. Accordingly it is important for SARU to retain its ability to sell its broadcasting rights as it sees fit, in order to maximise the value of these rights and generate the highest revenue possible.

6. The sale of broadcasting rights

- 6.1 Sporting bodies (such as SARU) generally own the broadcasting rights to their sports events played in their country, for example, when England tours South Africa in 2018, SARU will own the broadcasting rights to these matches. Conversely, when the Springboks play in Australia and New Zealand, rights to

these matches will be owned by the Australian and New Zealand rugby unions respectively.²

- 6.2 Sports bodies (such as SARU), as the sellers of their rights, are best placed to decide how, and to whom, to sell these rights.
- 6.3 The sale of these rights requires sporting bodies to find a balance between the need for income, versus the desire to maximise the exposure of their sports to the general public.
- 6.4 A number of factors are taken into account by a sporting body when considering how and to whom to sell its rights, including, but not limited to, the following:
 - 6.4.1 the capacity of both local and international broadcasters to distribute all the rugby events played;
 - 6.4.2 the audience share or reach of a broadcaster;
 - 6.4.3 a broadcaster's production budget to make the necessary investments, and production expertise and experience, in order to ensure that the content they produce satisfies the national and international markets' standards;
 - 6.4.4 the ability of the broadcaster to pay for the broadcasting rights; and
 - 6.4.5 the ability of the broadcaster to market the rugby events and to advance the South African rugby brand.
- 6.5 There are a number of reasons why sports bodies like SARU sell their rights to distribute rugby events on an exclusive basis. The granting of exclusivity to the purchaser of the rights is a global practice, recognized by regulators and competition authorities, that delivers, *inter alia*, the following benefits:
 - 6.5.1 Maximisation of the revenue of sporting bodies. In this regard we note that an exclusive premium is generally worth between 40% and 100% of the total value of the rights.

² It bears mention that in respect of complex competitions involving teams from many different countries, World Rugby would generally own the broadcasting rights to those games. For example, World Rugby would own the broadcasting rights to the Rugby World Cup to be hosted in Tokyo in 2019.

- 6.5.2 Promotes investment in the quality of production of the sport, which increases the attractiveness of the sport to consumers and in turn to sponsors, thereby increasing the value of sponsorship revenue. Since sponsorship is the second largest revenue contributor, this is a significant consideration.
- 6.5.3 Enables broadcasters to differentiate their product offering, innovatively package the content and promote and market the content. This investment benefits viewers.
- 6.6 Sports bodies such as SARU have an interest in ensuring that the process involved in selling their rights is as competitive as possible to enable them to maximize their revenue.
- 6.7 It is, however, important to note, by virtue of the National Sporting Events of Public Interest Regulations, there is a significant amount of rugby events that are available on FTA television in South Africa, including the Rugby World Cup. In terms of these regulations, broadcasters holding the rights to distribute these events are required to sub-licence these rights to a FTA broadcaster. In addition to the reach attained by a pay-tv broadcaster, these regulations extend the audience reach to FTA television consumers.

7. Benefits derived by SARU from exclusive sale of broadcast rights

SARU has derived the following benefits from its ability to sell the rights to broadcast and distribute its content on an exclusive basis:

- 7.1 Extensive distribution of rugby matches per season (+/- 1 500 hours excluding match build-ups and reviews) including World Rugby Sevens Series matches, of

which SARU is not the rights holder. This is facilitated by the creation of a channel that is primarily dedicated to rugby.

- 7.2 Production of high quality rugby content which meets international standards. This content, which is also distributed by international broadcasters, is a very significant contributor of revenue to SARU.
- 7.3 High levels of exposure and brand recognition for South African rugby, thereby attracting sponsors and significant additional revenue.
- 7.4 Generation of revenue which has enabled the professionalisation of the sport, the ability of franchises and SARU to remunerate players, coaches and referees competitively and thus our ability to attract and retain talent. This has enabled South Africa to maintain top rankings, currently third as at November 2017, in the World Rugby Rankings.
- 7.5 Investment in ensuring sustainable domestic rugby competitions through the 14 provincial unions.
- 7.6 Promotion of the sport of rugby and investment in rolling out grassroots training and development of the sport in local communities, schools and clubs.
- 7.7 In sum, SARU has and is able to invest significant amounts, in the region of R105 million per annum in achieving its objectives.

8. ICASA's Jurisdiction and the Rights of 3rd Parties

- 8.1 SARU understands that ICASA has jurisdiction in terms of section 67(4) of the Electronic Communications Act, No. 36 of 2005 (as amended), to impose appropriate and sufficient pro-competitive licensing conditions on licensees that have been found to possess significant market power in the relevant market(s), where there is ineffective competition.
- 8.2 To the extent that ICASA intends to implement measures that could have an adverse and material impact on the rights of 3rd parties such as SARU, it bears emphasis that SARU expects to be afforded a reasonable opportunity to engage with ICASA. It should be borne in mind that should ICASA interfere with SARU's contractual rights (*over and above the potentially devastating impact on SARU*)

this will in turn inevitably have a prejudicial impact on parties with whom SARU has already contracted.

9. Response to Request

9.1 We now turn to make written representations in respect of the ICASA Discussion Document. SARU has limited itself to putting up a brief response to question 25, being the question to which it can provide meaningful input.

9.2 **Ad question 25** - Kindly comment on each of the following remedies and indicate their possible applicability in the South African context: **Shortening of exclusive contracts, bundling, rights splitting and wholesale must offer**. The comments that follow (*except where the context expressly indicates the contrary*) are directed at all four of the proposed remedies,

As a general point, ICASA, in considering remedies, should be mindful to avoid the imposition of remedies that undermine the incentives of broadcasters to bid for and consequently invest in the acquisition of rights and associated activities as this will have significant adverse consequences for sporting bodies such as SARU.

9.2.2 Shortening of the exclusive contracts

9.2.2.1 SARU entered in a joint venture arrangement with the New Zealand and Australian Rugby Unions in 1996 to create SANZAR. It was constructed to create content and sell media rights at the time that the sport of rugby turned professional for the first time and began to formally pay players to perform. Since that time the broadcast rights to southern hemisphere rugby have been bundled together to maximise value. Those rights have been negotiated and sold in five-year tranches to maximise value by providing the rights holder with longevity and a platform which would encourage capital and other investment into the broadcast commercial relationship. The shortening of the rights period would jeopardise the rights value and the existence of the JV threatening, as it would, the synchronicity of the arrangement and the *raison d'être* for the JV.

9.2.2.2 As indicated above, there are significant commitments that broadcasters have to adhere to in terms of investment in quality production and

marketing. As such, there is a need for a reasonable time period to allow broadcasters to recoup the associated costs and earn a reasonable return.

9.2.2.3 Further, agreements for the sale of rights are complex and as such, involve significant transaction costs in terms of time, money and effort. Allowing a reasonable period between transactions enables both sports bodies such as SARU and broadcasters to minimise these costs.

9.2.2.4 The shortening of the rights-holding period would have a material negative impact on the quantum of the rights fee, the investment by the broadcaster in the product, and consequently the experience of the viewer.

9.2.3 Introduce unbundling and rights splitting

9.2.3.1 As explained above, SARU has significant obligations arising out of its mandate and to its international partners. In order to achieve this, SARU requires and has the incentives to package its rights in a manner that enables it to achieve the widest coverage of the sport and to derive the highest possible revenue. This may even include creating packages of rights as it assesses market conditions. As such, SARU is best placed to determine how best to monetise its rights at any given point in time.

9.2.3.2 Further, the rights to broadcast rugby events are sold at regular intervals in an open competitive process that any interested broadcaster can contest. There are no barriers to contest for these rights.

9.2.3.3 A requirement, through regulation, that it unbundles its rights may have the unintended consequence of cherry-picking on the part of broadcasters, leaving large swathes of rugby un-distributed. This is undesirable and would compromise SARU's ability to meet its objectives.

9.2.3.4 In addition, unbundling and rights splitting will increase transaction costs as sports bodies would have to enter into and manage multiple agreements and contractual arrangements.

9.2.3.5 In light of the above, in contemplating the imposition of remedies, ICASA must be cautious of the impact of such intervention given the fact that the bulk of SARU's revenue is derived from the sale of its broadcast rights.

10. Conclusion

We trust that our responses will be of assistance. We look forward to providing any further clarity requested and participating in the oral hearings, if required.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Jurie Roux', written over a horizontal line.

Jurie Roux
CEO SA RUGBY