



Independent Communications Authority of South Africa (ICASA)  
FAO: Adv. Dimakatso Qocha  
(Chairperson of the Digital Sound Broadcasting Council Committee)  
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South Africa

Brussels, 29 January 2021

Per e-mail: [subscriptioninquiry@icasa.org.za](mailto:subscriptioninquiry@icasa.org.za)

Dear Adv. Dimakatso Qocha,

Re: **INQUIRY INTO SUBSCRIPTION TELEVISION BROADCASTING SERVICES**

1. We refer to your letter of 12 January 2021 following SROC's oral submission ("**SROC Presentation**") to the ongoing inquiry into subscription broadcasting television services ("**the Inquiry**").
2. We have set out our answers to your two supplementary questions below. The information contained herein need not be treated as confidential in terms of section 4D of the ICASA Act.
3. You requested "*documents and/or information regarding any measures that have been implemented by SROC member organisations (rights holders) in their negotiations and subsequent agreements concluded with dominant or monopolist broadcast partners to ensure a balance is struck between consumer welfare and profit maximisation.*"
  - 3.1. As we explained in Slides 8-12 of the SROC presentation, SROC rights owners use their contractual freedom to respond to the demands of the market in their efforts to balance reach, viewership, sport growth and value in rights negotiations;
  - 3.2. As experts and specialists in their respective sports, SROC Members believe that they are best placed to make these judgements and to determine where their rights are placed;
  - 3.3. All sales processes, whether national or international, are conducted in accordance with the relevant competition law and follow objective, transparent and non-discriminatory procedures;

**SROC**  
SPORTS RIGHTS OWNERS COALITION

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- 3.4. In their respective sales processes, rights owners do not make assessments as to whether an individual broadcaster could be deemed dominant or monopolistic;
  - 3.5. Rights are usually bundled into coherent packages per territory or country, and tailored to the media landscape of individual markets, in order to drive both viewership and value;
  - 3.6. As we explained, the income derived from broadcast rights forms up to 80% of rights owners' total revenue;
  - 3.7. This income is therefore critical, not only to administer the individual competitions, but to reinvest in the development of the sport itself, particularly at grass roots level;
  - 3.8. The redistribution of this income to lower levels of the sports chain ensures the wider societal benefits that sport delivers, notably through its positive effects on social cohesion and inclusion, health, education and training;
  - 3.9. Any unnecessary disruption to the balance of this sporting ecosystem is likely to have negative consequences, not only for rights owners, but also for the welfare of the wider community who participate in and enjoy their chosen sports;
  - 3.10. Ill-conceived intervention is therefore more likely to undermine consumer welfare, particularly if the viability of the sport itself is undermined.
4. You requested "*underlying information or research that forms the basis of the assertion made in the SROC Presentation regarding "unintended consequences" of regulatory intervention.*"
    - 4.1. In 2006 the European Commission (EC) adopted a decision under EC Treaty competition rules regarding the sale of live football television rights of the *FA Premier League* in the UK (COMP/38.173)
      - 4.1.1. This decision made the commitment of the *FA Premier League*, that no single broadcaster would be allowed to buy all of the packages of its live match rights, legally binding (no single buyer rule);
      - 4.1.2. Although this decision was designed to drive more competition into national subscription television markets, it forced fans to take out multiple subscriptions with different operators, at a higher aggregate cost, in order to watch the same matches;
      - 4.1.3. This decision therefore had the unintended consequence of damaging consumers, making them pay more to access the same product.

4.2. As highlighted in slide 20 of the SROC Presentation, we see similar unintended consequences arising from obligations to “unbundle” live rights, forcing them to be offered to both subscription and Free-to-Air (FTA) broadcasters.

4.2.1. As we explained in Slide 13 of the SROC Presentation on Exclusivity, broadcasters require exclusivity from their licensors in order to build an audience or subscriber base;

4.2.2. Offering the same product to competing broadcasters on a non-exclusive basis therefore significantly undermines the value that a broadcaster can generate from the content and, by extension, the value returned to a rights owner, typically by around 80%;

4.2.3. If rights owners are unable to generate the market value of their product in a domestic broadcast market, they will necessarily look to other distribution channels for their products;

4.2.4. As discussed in the Inquiry, rights owners are increasingly licensing their content to aggregated Over The Top (OTT) providers or developing their own OTT services, thus bypassing any domestic regulations on the broadcasts of their products;

4.2.5. Domestic regulators therefore run the risk of unintentionally disadvantaging their own broadcasters to the benefit of unregulated foreign OTT operators.

5. SROC Members would like to thank the Independent Communications Authority of South Africa for the opportunity to make its written and oral submissions and trust that these have been both insightful and helpful to the Authority in conducting the Inquiry and its subsequent deliberations.

Yours sincerely,



Mark Lichtenhein  
**Chairperson of the Sports Rights Owners Coalition (SROC)**