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GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

No. R. 275

7 April 2010

ELECTRONIC COMMUNICATION ACT, 2005**SPORT BROADCASTING SERVICES REGULATIONS, 2010**

I, Paris Mashile, Chairperson of the Independent Communications Authority of South Africa ("the Authority") hereby approve and publish the Sport Broadcasting Services Regulations set out in the Schedule and made by the Authority in terms of section 60(1) and (2), read with section 4(1) of the Electronic Communications Act, 2005 (Act No.36 of 2005).



**PARIS MASHILE
CHAIRPERSON**

SCHEDULE

1. DEFINITIONS

In these regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Electronic Communications Act, has the meaning so assigned.

“Act” means the Electronic Communications Act, 2005 (Act No.36 of 2005);

“CAF” means the Confederation of African Football;

“CCC” means the Complaints and Compliance Committee established by the Authority in terms of section 17A of the ICASA Act;

“Confederation sporting event” means an official sporting event arranged by a recognised international sport body that governs a particular sport which involves national federation as contemplated in terms of section 1 of the National Sport and Recreation Act, 1998 (Act No. 110 of 1998) and does not include friendly games;

“delayed” means broadcasting the full sporting event not more than two hours after the completion of the event;

“delayed live” means commencing broadcasting the full sporting event halfway through the completion of that event, after it has commenced;

“dispute” means a disagreement or difference that arises in connection with the entering into, renewing or interpretation of a commercial agreement entered into by broadcasting service licensees regarding the broadcast of a national sporting event and in respect of which mediation, arbitration or conciliation may be requested;

“FIFA” means the Federation of International Football Associations;

“free-to-air broadcasting service licensee” means a licensee who, at all times, provides a broadcasting service capable of being received without payment of a subscription fee;

“ICC” means the International Cricket Council;

“IRB” means the International Rugby Board;

“list” means the list of national sporting events as set out under regulation 5;

“live” means broadcasting the sporting event in full as it happens ;

“Ministers” means the Minister responsible for Communications and the Minister responsible for Sport and Recreation;

“national sporting event” means a listed sporting event as referred to in regulation 5;

“National team” means any senior South African team participating in a confederation sporting event;

2. OBJECT OF THE REGULATIONS

The object of these regulations is to:

- (a) Regulate the broadcasting of national sporting events in the Republic;
- (b) Determine the criteria to be used in the listing of national sporting events;
- (c) Identify and list national sporting events; and
- (d) Provide a dispute resolution mechanism.

3. SCOPE OF REGULATIONS

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

4. 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:

- (a) a confederation sporting event involving a national team or an individual;
- (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.

(2) Any new sporting event that falls within the criteria mentioned in regulation 4 (1) (a) - (c) above shall be considered for listing during the review period in terms of regulation 7.

5. LISTED NATIONAL SPORTING EVENTS

(1) Subject to the criteria provided in regulation 4 (1) (a)-(c) the following are listed national sporting events:

- (a) Summer Olympic Games;
- (b) Paralympics
- (c) Commonwealth Games
- (d) All Africa Games
- (e) FIFA World Cup
- (f) Africa Cup of Nations
- (g) IRB Rugby World Cup
- (h) ICC Cricket World Cup
- (i) ICC T20 Cricket World Championships
- (j) Comrades Marathon
- (k) Two Oceans Marathon
- (l) Super 14 Rugby

- (m) COSAFA Cup
- (n) CAF Champions League
- (o) CAF Confederations Cup
- (p) Telkom Charity Cup (Soccer)
- (q) MTN Supa 8 Cup (Soccer)
- (r) Telkom Knockout (Soccer)
- (s) Nedbank Cup (Soccer)
- (t) Currie Cup (Rugby)
- (u) MTN 40 (Cricket)
- (v) International Boxing Federations

- (2) These regulations will continue to apply to the listed national sporting events irrespective of any changes in the name of the competition or the sponsorship of the listed event.

6. BROADCASTING OF NATIONAL SPORTING EVENTS

- (1) Subscription broadcasters who have acquired rights in terms of regulation 5 must inform free-to-air broadcasting service licensees within five (5) days of acquiring such rights, of the opportunity to tender for same.
- (2) A listed national sporting event may be broadcast live, delayed live or delayed by a free-to-air broadcasting service licensee.
- (3) A broadcasting service licensee must under no circumstances prohibit another from advertising a national sporting event.
- (4) Consistent with regulation 6 (3) the actual time periods or scheduling of advertisements of national sporting events shall be determined by the parties in their commercial agreement.

7. REVIEW OF LISTED EVENTS

(1) A national sporting event may be removed from and added to the list subject to the following conditions:

- (a) To ensure predictability and certainty, the criteria used in the listing of national sporting events and consequently the list of national sporting events will be reviewed after every four years from the date of the publication of these regulations.
- (b) Any interested stakeholder can, within the four year review period, submit an application asking the Authority to add or remove a national sporting event;
- (c) Any application to add or remove a national sporting event shall be subjected to a public process.
- (d) Consistent with section 60 (1) of the Act, any changes to the criteria used in the listing of national sporting events and the list itself shall be effected after consultation with the Ministers;

8. DISPUTE RESOLUTION

(1) 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.

(2) The outcome of the Alternative Dispute Resolution mechanism shall bind the parties to the agreement.

- (3) Failure of the parties to include an Alternative Dispute Resolution in terms of regulation 8 (1) or to implement the outcome of the Alternative Dispute Resolution in terms of regulation 8 (2) shall constitute a lack of compliance by the parties.
- (4) The Authority shall refer any failure to comply with regulation 8 (1) to the Complaints and Compliance Committee (CCC) which shall hear the matter and make recommendations to the Authority on the action to be taken against the parties for their lack of compliance

9. MONITORING

- (1) A free-to-air broadcasting licensee and subscription broadcasting licensee, broadcasting national sporting events, must keep records of all national sporting events broadcast by such licensee. These records must include:
- (a) full particulars of all listed national sporting events broadcast during each quarter by the licensee;
 - (b) whether the listed sporting event was broadcast live, delayed live, or delayed; and
 - (c) where applicable, set out the circumstances which resulted in the failure to broadcast a national sporting event.
- (2) A broadcaster, who is involved in broadcasting national sporting events, shall file the records of its broadcasts one hundred and twenty (120) days from the date of the publication of these regulations and after every year from the date of the first filing.

10. PENALTIES

A broadcasting service licensee that contravenes or fails to comply with the provisions of these regulations, is liable to a fine not exceeding Five Hundred Thousand (R500 000) for the contravention of regulations 6 (1) - (3) or 8 (1) and (2) or 9 (1) and (2)

11. REPEAL OF EXISTING REGULATIONS

These Regulations repeal the Sport Broadcasting Rights Regulations, 2003 as promulgated in terms of the Broadcasting Act, 1999 (Act No. 4 of 1999).

10. SHORT TITLE AND COMMENCEMENT

These regulations are called the Sport Broadcasting Services Regulations, 2010 and shall come into force upon publication in the Government Gazette.

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