

ICASA & The Future of Sports Broadcasting in SA. What Next?

1. Introduction

This paper focuses on the 2020 Draft Sports Broadcasting Regulations, its key terms and conditions and their impact upon the future shape and direction of the sports broadcasting market in South Africa(SA) for its stakeholders, the sports federations, event owners, broadcasters, sponsors and consumers. To do this objectively it takes a look at their legislative background and the role regulators, the Independent Communications Authority of South Africa (ICASA), the Ministry of Communications and the Ministry of Sport have played in the way they have been drafted in the last fifteen years. It considers why there has been so little ‘joined up’ thinking between them in the way they have been implemented. It considers how this lack of planning and coordination has negatively affected the interests of different stakeholders and created a market that is uncompetitive and ill equipped to take on the challenges of “digitisation” in the new post Covid sporting world where the market value of tv and content rights have declined dramatically. To facilitate this approach the following pieces of legislation will be reviewed, the 2005 Electronic Communications Act, The 2010 Sports Broadcasting Regulations, the 2018 Draft Sports Broadcasting Regulations, the 2020 Draft Sports Broadcasting Regulations and the 2020 Audio, Audio Visual Content Services Regulations “A New Vision for South Africa 2020”. It will look at how their policies have been shaped by the market’s current framework and the changes that need to be made to them to create a new one capable of unlocking the world class potential of the country’s sports broadcasting and events sectors under “digitisation”

1.i The Sports Broadcasting Market in South Africa: Legislation & Regulations:

Figure 1:

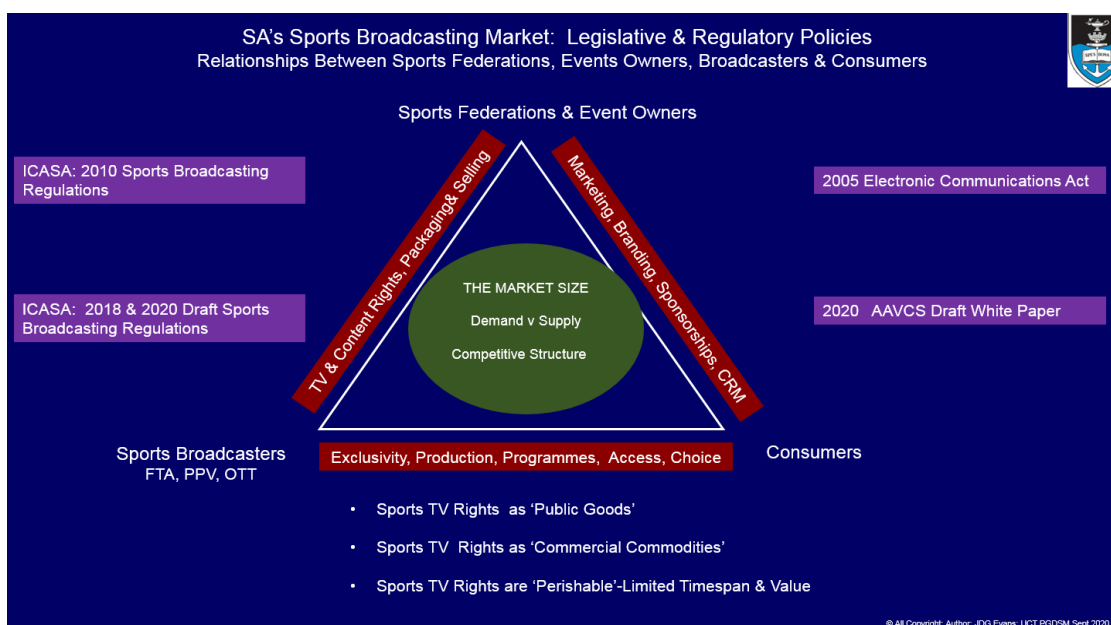


Figure 1 identifies the different legislative acts and policies that have shaped the market's environment in the last fifteen years and contributed to it becoming dominated by subscription broadcasters controlling the upstream and downstream supply of 'live' sporting events to viewers and a public sector broadcaster lacking the funding and technical capabilities to compete against them successfully because it is so reliant on Government bailouts to fulfil its public service mandate under the 1999 Broadcasting Act.

What this lack of competition means for sports federations and events owners who are the producers of the “tv and content rights” broadcasters want to buy from them is they are faced with the unenviable choice of either selling them to free to air broadcasters. Who have the audience size and reach but little money or to subscription broadcasters who have the money but a smaller number of viewers. Given the importance of these rights to their business models it is not surprising many of them elect to sell their “rights” to subscription rather than free to air broadcasters to maximise their value. What this means for

the country's 9.4 million viewers who only have free to air televisions is they are denied the opportunity of seeing these events live and forced to watch them as 'highlights' packages at a later time or date. A very unappealing prospect given the way sports broadcasting is evolving globally with the "live streaming" of events direct to viewers mobile phones and laptops.

2.0 The 2010 Sports Broadcasting Regulations:

In a conscious effort to create a better balance between free to air and subscription broadcasters over "live" access to national sporting events, ICASA in 2010 produced the following set of regulations. Its key aims and objectives are set out below;

1. *Regulate the broadcasting of national sporting events in the Republic*
2. *Determine the criteria to be used in the listing of national sporting events*
3. *Identify and list national sporting events*
4. *Provide a dispute resolution mechanism*

Each one is based around a central belief that sport is a 'public good' and a powerful mechanism for social unity and change and should be widely available on both free to air and subscription platforms for all viewers to access and enjoy. They believe it should be used to inspire new generations of sportsmen and women wanting to represent their country at the highest level and the opportunity to see live sporting events on their television sets is an important part of this process. This is a laudable point of view but one that does not fit easily with the financial realities of global sport today as set out in Figure 2. Where the annual value of tv rights to professional sports leagues like the NFL, NBA, MLB, NHL, MLS in America, the Premier League in the UK, the Champions League in Europe and the Indian Premier League have grown from \$31bn in 2013 to \$51bn in 2019 at an average rate of \$3bn per year for the last seven years until 2020 when Covid 19 decimated the market and sent their values plummeting. Despite this set back what they demonstrate is global sporting events and their tv rights are "commodities" with a fluctuating value and timeline driven by their size, scale and the number of people watching them live on their televisions, mobile phones and digital devices in different parts of the world. The massive financial returns they generate for their owners allows them to re-invest the revenues into their leagues, clubs, players, coaches, staff and stadia creating a continuous circle of success until a pandemic comes along and forces a major re-set of the market and their future value..

2.1.i. The Global Growth of Sports TV & Media Rights 2013-20:

Figure 2:



2.1.ii. The South African TV & Media Rights Market:

This upward trend in the global value of tv rights was mirrored in South Africa in 2018 when the Premier Soccer League (PSL) signed a four-year deal with SuperSport for R2.4bn (\$164m) for the “live access” to its league and cup competitions. Established in 1985, the League has 32 professional clubs and 14.3 million fans and until SuperSport became its partner sold all of the tv rights to its matches direct to SABC for a derisory R120m (\$8m) per year. A highly unsatisfactory situation for the League not only in terms of the revenues it was getting from SABC but the fact not all of the matches were shown live on its platform because of its limited capacity.

To create more competition in the market and balance its public interest requirement to show matches on SABC’s platform with its commercial interests to maximise their value. In 2007 it created an Invitation to Tender and when SABC did not respond to the tender it was opened up to the rest of the market. In 2008 SuperSport made an offer for the rights that was accepted by the League and formed the basis of their twelve year relationship culminating in the 2018/22 deal one of the biggest ever made by a broadcaster to a sports federation for “exclusive” access to their tv rights.

It’s relationship with SuperSport has allowed it to re-invest the money it receives from these deals into its clubs and their players resulting in a better quality product on the field of play for the viewers and fans to enjoy. The League’s 2018/19 financial accounts show a turnover of R1.02bn with R660m (60%) coming from the sale of its tv rights to SuperSport and SABC. Its long standing relationship with SuperSport was deepened a stage further in June 2020 when Dstv, a subsidiary of SuperSport’s parent company MultiChoice took on the title sponsorship to the League after Absa ended its thirteen-year agreement with football. The new agreement gives MultiChoice and SuperSport a considerable amount of “leverage” over the future sale of its tv and commercial rights. It also raises a number of interesting questions about the transparency of the bidding process for tv rights in the market and how they are packaged and sold by sports federations to broadcasters?

1.iii. The Broadcasting of National Sporting Events & Dual Access & Ownership of TV Rights:

Sections 3, 4, 7, 8, 9, of the 2010 regulations outlined the terms and conditions for: defining and listing national and international sporting events, how they should be broadcast on free to air and subscription platforms and the dispute process for resolving any issues that might occur between broadcasters (licensees) over the ownership and distribution of these rights.

Section 5 identified twenty-two global and domestic sporting events to be broadcast live, delayed live, or delayed on free to air and subscription platforms. It is based on the legal principle whoever buys the rights must not prevent other broadcasters from also showing them on their platforms. A concept known as ‘dual access’ and one that tries to balance the public interest in these events with the commercial interests of their owners, the sports federations and broadcasters.

2.1.iv. Dual Access & Section 60.i 2005 Electronic Communications Act & Sub-Licencing Agreements

Section 6 describes how this arrangement works from a legal standpoint by putting the onus of responsibility on subscription broadcasters to sub-licence their rights to other broadcasters in a fair and transparent manner.

It has its origins in section 60.i of the 2005 Electronic Communications Act giving subscription broadcasters the exclusive right to buy the “tv rights” to these events but not to use their competitive strengths to prevent or hinder free to air broadcasters from also buying them and showing them on their platforms at the same time or at a later date.

“Subscription broadcasting services may not acquire exclusive rights that prevent or hinder the free-to-air broadcasting of national sporting events, as identified in the public interest from time to time, by the Authority, after consultation with the Minister and the Minister of Sport and in accordance with the regulations prescribed by the Authority

All of this sounds fine in theory but in practice it means they are going to try and recover their investments in these “rights” as quickly as possible by imposing stringent terms in their sub-licensing agreements with free to air broadcasters about when they can be shown on their platforms to mitigate any competition.

Free to air broadcasters like SABC and ETV believe these agreements puts them at a financial and commercial disadvantage because they not only restrict the times when the events can be broadcast. They also restrict their ability to sell valuable advertising and sponsorship slots in the “lead up times” to the events resulting in a significant loss of revenues and viewership numbers. Both of them were highlighted in SABC’s written submission (section 4.8.1p20) to ICASA at the May 2019 public hearings into the regulations.

“Currently the SABC often acquires these rights from subscription broadcasting services at a substantial cost. The licensor (rights holder) would typically impose severe restrictions with regard to advertising the event on the licensee (the SABC): for example, the SABC would be expected to advertise the event on the eve of the event. As a result, the SABC has often been deprived of the opportunity to fully exploit the sports property. This is one of the unreasonable sub licensing agreements that the SABC has had to absorb in the interest of its public service mandate”.

The above points raised by SABC about sub-licensing agreements over the secondary rights to an event, have to be balanced against section 67 of the 2005 Electronic Communications Act giving ICASA the power to intervene and stop a broadcaster (licence holder) from using its “market power” against a competitor in a discriminatory manner over the acquisition of the tv rights to an event and the times when they can be broadcast to their viewers.

“Where the Authority determines that the holder of a licence under this Act or a person providing a service pursuant to a licence exemption has engaged in an act or intends to engage in any act that is likely to substantially prevent or lessen competition by, among other things: (a) giving an undue preference to; (b) causing undue discrimination against, any other licensee or person providing a service pursuant to a licence exemption, the Authority may direct the licensee, by written notice, to cease or refrain from engaging in such act.”

The key question to ask here is why has ICASA never used its authority under section 67 of the Act to stop such unfair practices by subscription broadcasters towards their rivals? Perhaps the answer is to be found in the 2018 regulations?

3.0 The 2018 Draft Sports Broadcasting Regulations:

In a bold attempt to change the 2010 regulations and make the broadcasting of ‘live’ events more accessible to free to air viewers ICASA in December 2018 produced a new set of draft regulations whose core aims and objectives are set out in section 1.6 on page 2 of their Explanatory Memorandum:

“The Draft Regulations advance equality, human dignity through access to sport of National Interest to all citizens. This will further ensure that sports continue to promote social inclusion, equity, sustainability by ensuring that even minority sports are given prominence on broadcasting system to create opportunities provided by sports for the current generation as well as generations to come.”

What is apparent from this statement is its unwavering commitment to the ‘value’ of sport as a ‘public good’. A sentiment that runs through all of the changes it makes to the 2010 regulations and sustained by its determination to make the ‘live’ broadcasting of events available to as many viewers as possible.

The most notable changes to the 2010 regulations are set out below:

3.1 Amendment of Regulation 1: Definitions of National Sporting Events:(p3)

Section 2 broadens the definition describing national sporting events. The most striking of which is the inclusion of developmental sports for the first time to generate greater opportunities for the broadcasting of community sporting events traditionally excluded from the market by the bigger codes of football, rugby and cricket.

3.1.i Amendment of Regulation 2: Public Interest Test Section 60.i Electronic Communications Act: (p5)

Section 3 builds on this approach by broadening the scope of the public interest test in section 60.1 of the 2005 Electronic Communications Act by including the phrase “*to reach a wider audience and to strike a balance between audience and revenue.*” Its purpose is to try and find a more equitable balance between allowing subscription broadcasters to buy the “exclusive” rights to national sporting events and the stringent sub licensing terms they impose on free to air broadcasters wanting to show them on their platforms. It believes the proposed changes will allow them to show more ‘live’ events to their viewers than they are allowed to do under the current 2010 agreements.

3.1.ii. Amendment of Regulation 5: Listed Sporting Events & Codes; (p5-7)

Section 5 complements section 3 by increasing the number of listed events to be broadcast on free to air, subscription and community platforms from twenty two to **forty two**. It divides them into three separate groups, A, B, and C. Group A is made up of 11 domestic and international events to be broadcast exclusively on free to air platforms. Group B consists of 16 events to be broadcast on subscription platforms on a non exclusive basis. While Group C comprises of 15 sports that can be broadcast on both platforms. The new lists include events belonging to the South African Rugby Union, the Premier Soccer League, Netball South Africa, Premier League Hockey, Athletics South Africa and many others.

ICASA believes the groups will:

- (i.) *better serve the needs of all viewers by making them more accessible on different broadcast platforms,*
- (ii.) *strike a better balance between ‘audience reach and revenues’ for the federations (rights holders) and the live broadcasting of their events,*
- (iii.) *go a long way to breaking up the dominance of subscription broadcasters by limiting the number of events where they can buy up all their rights.*

They will create more competition in the market among broadcasters and avoid situations like the 2019 Rugby World Cup in Japan. Where free to air viewers were unable to watch the Springboks progress through the different rounds of the tournament because its international rights were owned by a subscription broadcaster. Who was only prepared to sub-license them to free to air broadcasters at an exorbitant rate thereby depriving millions of rugby fans in the country from seeing the matches ‘live’ on their televisions. It was only after the Minister of Sport intervened in their negotiations that the impasse was resolved and the Final on 4th November was broadcast ‘live’ to the whole country on both platforms. This is one of several high-profile disputes to have taken place between them in recent months involving sub licensing agreements and coverage of the 2019 FIFA Women’s World Cup in France, the 2019 INF Netball World Championships and ICC Cricket World Cup in England. Each one highlighting the market’s failure to regulate the acquisition and distribution of their rights in a fair and transparent manner.

3.1.iii Dual Rights & Exclusivity:

What ICASA fails to understand by arbitrarily increasing the number of listed events to be broadcast “live” or “delayed live” on free to air platforms in this manner is how important the concept of ‘exclusivity’ is to the business models of subscription broadcasters and their relationships with sports federations, event owners, advertisers and viewers. They are a key part of their value chains. Where the acquisition of rights is the only way for them to satisfy the needs of their advertisers and viewers and ‘future proof’ their business models against the competitive threats of their free to air rivals and any new entrants to the market.

The clear message to emerge from their discussions with ICASA at the public hearings in May 2019 into the draft regulations was any attempt to widen the terms of the “public interest test” in section 60.1 of the 2005 Electronic Communications Act threatening their entitlement to buy the ‘exclusive’ rights to national sporting events is going to be vigorously challenged by them in the courts. They believe such a course of

action amounts to an act of “ultra vires” by ICASA on the basis it has exceeded its regulatory remit under the terms of the ICASA Act of 2000 and section 192 of the Constitution.

3.1.iv: Listed Events & Sports Federations:

By increasing the number of events to forty two, ICASA appears to have given very little thought to the damaging financial impact they are going to have on their future market value of their tv and content rights for their owners, the sports federations. Who will be forced to sell them at a reduced rate to free to air broadcasters before they can enter into separate negotiations with subscription broadcasters who may not want to buy them because they are available on other platforms. The knock-on effects of this sudden downturn in their value could be devastating for their sports at the elite and grass roots levels because they will not have the money to invest in their future development. According to market research data produced by Dave Sidenberg, Director of BMi Sport Info for the public hearings, fifty-five to sixty-five per cent (55-65%) of the federations annual revenues are generated directly from the sale of their tv and content rights to subscription broadcasters. If this opportunity is closed off to them by the 2018 regulations then the long-term consequences for them and the country’s sports, tourism and lifestyle events markets could be catastrophic especially as Government funding for sport and recreation in 2017/18 was less than 1% of GDP (R1.067 billion).

3.1.v: May 2019 Public Hearings into the 2018 Draft Regulations:

Of the 39 organisations and individuals who submitted written representations to ICASA on the draft regulations in February 2019 and spoke at the public hearings, ninety five per cent of them were opposed to their terms and conditions and the long term economic damage they would do to the market if they were not changed. The principal areas of concern were those in sections 2,3,5 involving;

- i. developmental sports,
- ii. increasing the number of listed events to forty two,
- iii. changes to the “public interest” test in section 60.i of the 2005 Electronic Communications Act.

There was also widespread concern about ICASA’s failure to undertake an economic impact assessment study into their likely effects on the market’s future development and how this might negatively affect the interests of all stakeholders from sports federations to event owners and the tourism and hospitality sectors.

4.0 The 2020 Draft Sports Broadcasting Regulations

4.1: The Competitive Balance Between “Public Interest” & Exclusivity” for Listed Events

What is clear from the Explanatory Memorandum of the 2020 draft regulations published by ICASA on 3 November is it had taken on board the concerns raised by sporting organisations at the May public hearings about the long term damage the 2018 regulations would do to their future commercial interests if they were not changed and a greater “competitive balance” found between the different platforms their events can be broadcast on.

“Nevertheless, the Authority is keenly aware that the sports industry relies on the sale of sports broadcasting rights as the biggest source of their revenue. Sporting bodies that submitted representations contended that the best commercial offers for their rights were often made by subscription broadcasters. This situation contributes to the majority of South Africans being denied access to sports of national interest”

In light of the above considerations, the Authority has in the amended Draft Regulations sought to give effect to the provisions of section 60 of the ECA whilst considering the competing concerns of the financial sustainability of broadcasters and ensuring increased access to national sporting events is provided to most of the South African population.

In a conscious effort to find the right balance between them. It reduced the number of events in the 2018 regulations down from forty two to **twenty one** by removing the B and C lists covering sports like Tennis, Motor Racing, Ice Hockey, Netball, the PSL, Premier League Hockey, Two Oceans Marathon, Comrades Marathon, Indigenous Games, Volleyball and Squash. Those that remained are to be broadcast in the form of “live, delayed live or delayed” programmes on free to air platforms by any broadcaster holding the appropriate licence. The proposed changes represent a more pragmatic approach by ICASA from its requirements in section 5.1 of the 2018 regulations stating all listed events had to be broadcast “live and in full” on free to air platforms.

4.1.i: Section 3: The Public Interest Test: Amendment of Regulation 3 of the 2018 Draft Regulations:

Section 3 of the 2020 draft regulations relating to *“the broadcasting of national sporting events within the Republic as classified in the public interest”* are designed to extend the scope of ICASA’s powers across all areas of the market over the listing of any type of event it considers to be in the “public interest”. Unfortunately, there is no explanation in its Memorandum as to the assessment criteria it will be using to classify an event as being in the “public interest” and who will be involved in making such a decision. Is it the Minister of Communications, the Minister of Sport or ICASA and will they make the decision individually or collectively? There needs to be much greater clarity on this important point because if an event is suddenly listed without any form of prior consultation with its owners, they are going to negatively affect the future sales value of its “tv and content rights”.

4.1.ii. Section 6: Sub-Licensing: Amendment of Regulation 6 of the 2010 Draft Regulations:

“6.(4) Consistent with regulations 6 (3), the actual time periods or scheduling of advertisements to national sporting events shall be determined by the parties in their commercial agreement on fair, open and non-discriminatory terms”

It is designed to protect free to air broadcasters acquiring the secondary rights to an event under Section 60.1 of the 2005 Electronic Communications Act from being unfairly penalised in their negotiations with subscription broadcasters over their cost and the times and dates when they can be advertised and shown on their platforms. It has the potential to play an important role in resolving many of the disputes described on page 4 (paragraph 2.1.iv) by making sure they are conducted in a fair, transparent and timely manner with final recourse to the Complaints & Compliance Committee. How effective they are going to be when faced with the ‘competitive realities’ of the market-place is open to considerable speculation.

4.2: Summary of the 2010, 2018 & 2020 Draft Regulations

The reduction in the number of listed events in the 2020 draft regulations to be broadcast on free to air platforms from forty two to twenty one is a welcome change because it creates more opportunities for their owners to sell their tv rights to any broadcaster of their choice rather than being coerced into selling them only to free to air broadcasters.

The changes in section 6 of the 2020 regulations to the sublicensing agreements protecting free to air broadcasters in their negotiations with subscription broadcasters over the secondary rights to listed events is also another welcome change to the 2010/18 regulations but will not be enough to circumvent section 60.i of the 2005 Electronic Communications Act giving subscription broadcasters the legal right to buy the tv rights to national sporting events. This is the paradox at the centre of the 2010, 2018, and 2020 regulations and one ICASA, the Ministry of Communications and Ministry of Sport have consistently failed to resolve in the last ten years through their inability to develop a new framework with the scope and vision to adapt to the technological innovations transforming consumers viewing habits in the market. It is an extraordinary act of omission on their part given the powerful set of legal and regulatory tools available to them under the 2005 Act and one that is going to permanently block the market’s future growth until it is properly resolved.

Another striking omission from the 2010, 2018 and 2020 regulations is their lack of provision for the impact “digitisation” is having on the commercial values of tv rights for listed and non-listed events among consumers particularly the 18-30 age group. They are the cohort at the forefront of this technological revolution who consume the majority of their information through their mobile phones and lap-tops and are going to play a central role in re-shaping the market’s future over the way ‘live sport events’ are streamed direct to their devices. This important point was highlighted by Dave Sidenberg, Director of BMi Sport Info

on page 7 of his written submission to ICASA at the 2019 panel hearings into the 2018 regulations where he said:

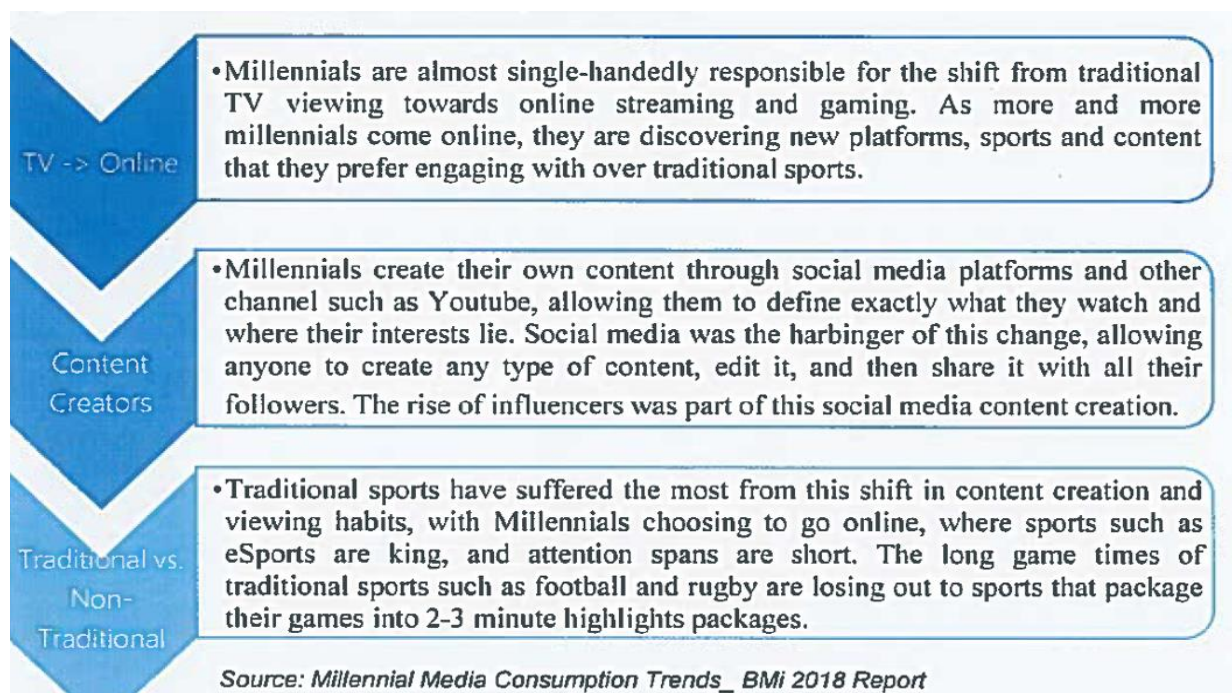


Figure 3 below illustrates the way their viewing habits have moved in parallel with the different technological changes transforming the live broadcasting of sports events in SA in the last twenty-five years. The planned switchover from analogue to digital television in 2022 is only going to accelerate this process and make the current regulations less relevant to the market's future than they currently are. By concentrating only on the free to air and subscription sectors of the market it is almost as if ICASA, the Ministry of Communications and Ministry of Sport have consciously ignored the arrival of the fourth industrial revolution (4IR) in the country spearheaded by the internet, faster broadband speeds, falling data prices and the way consumers are now accessing and watching live sporting events on their mobile phones. This is an extraordinary oversight on their part and one that needs to be urgently resolved by them before the 2020 regulations are approved by Parliament in 2021.

Figure 3:



5. 0. Digitisation:

Audio & Audio Visual Content Services (AAVCS) Policy Framework: Draft Paper: “A New Vision for South Africa 2020”

“Today the whole media system is experiencing a digital revolution and is in perpetual transition. The driving force behind this revolution is the internet. The change it is bringing is not merely more content and more content providers, it is the overthrowing of the current broadcasting distribution ecosystem and a change in the way that viewers consume audio and audio visual content and creating a new audio visual value chain”

There is an ironic twist to the above statement taken from section 2.2.3 on page 39 of the draft white paper on audio and audio visual services produced by the Ministry of Communications on 3 September 2020 describing how the “digital revolution” is going to transform the future of broadcasting in the country and its complete omission from ICASA’s 2020 draft paper on sports broadcasting published two months later in November. It further underlines the lack of coordination between them in working together to develop a new robust and innovative framework for the future of sports broadcasting and live streaming of events on digital platforms.

5.1.The Public Interest & National Sporting Events:

Section 4.3.1 (p89) of the white paper declares its intention to boost the role of SABC in the broadcasting of audio and audio-visual content rights on its free to air platform. This is a strategic move by the Ministry to position SABC, as the dominant player in this section of the market where digital events considered to be in the “public interest” are made available to all viewers on free to air platforms.

Sections 5.9.10 to 5.9.16 (pp110-113) extends this policy further by setting out new criteria for classifying national sporting events considered to be in the ‘public interest’ and how they are to be broadcast on all platforms to maximise the number of viewers having access to them.

“The draft white paper proposes that the listing of national sporting events which are in the public interest apply in legislation not just to broadcasting, but also to the broader AAVCS market to ensure the public continues to enjoy free to air and free to view access to listed events” (Section 5.2.9.15)

For a sporting event to be ‘listed’ in this manner it must satisfy the following criteria;

- *The event must be in a major sport, taking into consideration the number of South African’s who play it and /or watch it at a venue or on television or listen to it on the radio.*
- *The event must be of major importance to South African society, and not just to those who ordinarily follow the sport.*
- *The event must be appropriate to list given its structure and duration.*
- *The event takes place in South Africa. The only events which take place outside South Africa which should be eligible for listing are international confederation sporting events such as a World Cup or Olympic event in which a South African team or individual is representing the Republic.*

They have been designed to be as wide as possible to cover all types of sporting events. This is because the Ministry sees them as ‘public goods’ beneficial to the whole of society and wants to guarantee their ‘digital’ coverage on SABC’s platforms. A political point of view consistent with the core aims and objectives of the 2010, 2018 and 2020 sports broadcasting regulations. For this to happen SABC needs to be properly funded by the Government and any digital rights it acquires to these events should be done on the basis of a “use them or lose them ” to make sure all of its viewers get to see them live on their televisions and digital devices rather than having to watch them at a later time as highlights packages.

5.1.i: The Public Interest & Listing of National Sporting Events

Section 5.2.9.10 (pp109/110) of the white paper describes how their “public interest test” was arrived at by the Ministry of Communications. They are based on the UK’s Department of Culture Media & Sport October 2018 House of Commons Briefing Paper on Listed Sporting Events.

“In the United Kingdom (UK), an event must contain “an element which serves to unite the nation, a shared point on the national calendar, not solely of interest to those who follow the sport in question.

An event must have a special national resonance and not simply a significance to those who ordinarily follow the sport concerned. Such an event is likely to fall into the following categories:

It is a pre-eminent national or international event in sport;

It involves the national team or national representatives in the sport concerned.

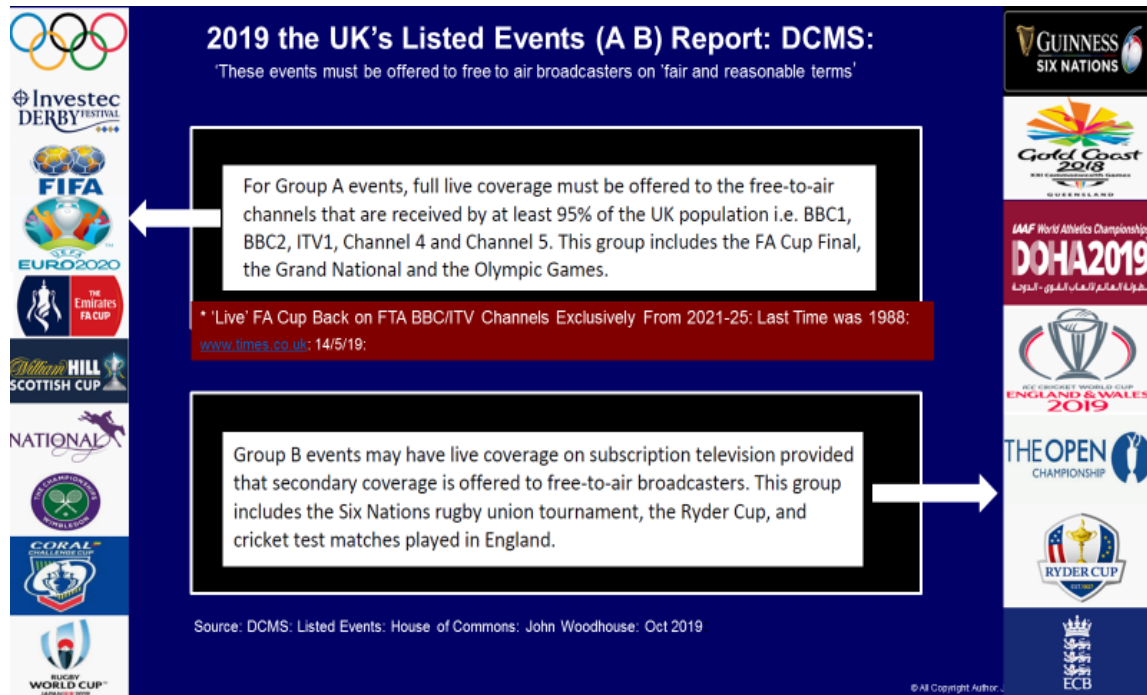
It should also be likely to command a large television audience.”

What this description fails to understand is the criteria outlined here are **not the only reasons** why the Department of Digital, Culture, Media and Sport (DCMS)) in partnership with the Office of Communications (OFCOM) insist a sporting event is broadcast on a free to air channel as opposed to a pay tv or digital one. They are also concerned about it having direct access to **95%** of all UK viewers on the following free to air channels, BBC1, BBC2, BBC Four, CBBC, CBeebies, BBC News, BBC Parliament, Channel 3 Network (broadcast as ITV, STV and UTV), ITV2, ITV3, ITV4, Channel 4, More 4, Film 4 and Channel 5. It is fair to say direct access to the event carry’s the same weight in their decision making processes as does its size, scale and audience reach when deciding what types of events can be broadcast on different platforms. To simplify the process, they divide them into separate groups. Group A is for events requiring full live coverage on free to air channels and Group B events is for events on pay tv, subscription, cable and digital channels.

Figure 4 on page 11 identifies the two groups and the criteria used to decide which platforms they can be broadcast on. They were drawn up by DCMS in 1998/9 and have been the cornerstones of a dynamic and successful sports broadcasting industry in the UK for the last twenty-two years. Where the market value for events and their content rights has grown exponentially. The key to its success is to be found in the regulatory framework that underpins them. It has a clear set of guidelines for balancing the public’s interest in watching an event live on their televisions and digital devices with the commercial interests of sports federations wanting to sell those rights to different groups of broadcasters. It is one of the foundational principles at the centre of the way tv rights to national events have been bought, sold and distributed between sports federations and broadcasters under the terms and conditions of 1996 Broadcasting Act, thirty four years ago. Where the Secretary of State for Digital Culture Media & Sport has the power to add new events to the two lists or remove them if they transgress. It is a clear and coherent system that encourages, competition, innovation and investment across all sectors of the market and is the ideal model for ICASA, the Ministry of Communications and Ministry of Sport to follow before they come to any final consultations about how they intend to “classify and list” national sporting events and the value of their tv and content rights in the new digital age of sports broadcasting.

2019 DCMS: Group A (FTA Events) & Group B (Pay TV) Events:

Figure 4:



6.0 Conclusions:

The core aims and objectives of the 2020 AAVCS draft white paper are impressive in their ambition and vision for the future of the audio and audio visual sectors of the broadcasting industry in the country but they need to be properly researched and aligned with the existing legislative and regulatory frameworks controlling free to air and subscription broadcasting. The current system has too many gaps and loopholes that have been ruthlessly exploited by subscription broadcasters at the expense of their free to air rivals over the acquisition and distribution of tv and content rights resulting in a market environment that has become uncompetitive and limits the viewing choices of consumers. ICASA in collaboration with the Ministry of Communications and the Ministry of Sport needs to design a completely new set of regulations that takes account of the competing interests of sports federations, broadcasters and consumers in the new digital era of sports broadcasting and where traditional contracts relating to the ownership, acquisition and distribution of tv and content rights and their market values have been turned upside down by the pandemic.

They also need to recognise the paradox of section 60.i of the 2005 Electronic Communications Act allowing subscription broadcasters to buy the exclusive rights to events and how it distorts the market's competitive balance by putting free to air broadcasters and new entrants at a commercial disadvantage over the acquisition of rights. They need to put in place a series of checks and balances relating to their ownership and the way they are 'bundled' together to allow other broadcasters and new entrants to bid for them in a fair, transparent and accountable manner. It is only by opening the market up to more competition across all of these sectors that it is going to unlock its future potential. A key part of the "change process" for the future of sports broadcasting is a vibrant and properly funded SABC because it has the viewership numbers to increase the market's size and scale and this benefits all of its stakeholders from a social and economic perspective.

The new system once it has been designed needs to be benchmarked against the best practices of the UK's model for the listing and broadcasting of events to make sure it is fit for purpose and capable of meeting the twin challenges of the digital revolution and the pandemic because they are going to

permanently change the market's competitive balance and the future value of its tv rights. To implement these changes, it is essential ICASA, the Ministry of Communications and Ministry of Sport work together in a planned and coordinated manner to close any legal loopholes in the new regulations that can be exploited by established players or new entrants to the market.

JDG Evans: School of Applied Management: UCT: 28/12/20:



References:

AAVCS Draft White Paper: Executive Summary p11:
 AAVCS Draft White Paper: Section 1.2.9 pp 28/29:
 AAVCS Draft White Paper. Sections 8,9,10, 1999 Broadcasting Act of South Africa:
 AAVCS Draft White Paper: Section 2.2.3 p28
 Section 60.i 2005 Electronic Communications Act
 ICASA's 2010 Sports Broadcasting Regulations
 ICASA's 2018 Draft Sports Broadcasting Regulations
 ICASA's 2020 Draft Sports Broadcasting Regulations
 D. Sidenberg: BMi Sport Info: March 2019 Submission Paper: 2018 Draft Sports Broadcasting Regulations
 SABC's Submission on the Sports Broadcasting Services Amendments Regulations 2018: March 2019:
 UK's House of Commons: DCMS Listed Sporting Events: Briefing Paper: 802, October 2019: pp 3-9:
 Sections 6-9: 1999 UK Broadcasting Act