

## **ICASA 2018 Draft Broadcasting Regulations:**

### Introduction:

Set out below are my observations and comments about the Draft Sports Broadcasting Services Amendments Regulations that were put out for public consultation by ICASA on 14 December 2018.

#### 1. Schedule Two: Page 3: 2b:

##### *Definition of Confederation Sporting Event:*

The definition of what constitutes an international or national sporting event arranged by the federation's international body is not clear and open to ambiguity and misinterpretation. It needs to be properly explained and clarified within the context of the draft regulations.

#### 2. Schedule Two: Page 3: 2d:

##### *The meaning of Delayed Live:*

There needs to be a full and proper description of what the term delayed live means for free to air (fta) and pay per view (ppv) broadcasters to provide clarity for the television and media industry in SA and also sports federations and the owners of events, who are the content providers.

#### 3. Schedule Two: Page 4: 2e:

##### *The insertion of the term Minister:*

What is the relevance and meaning of the term Minister in this clause and how does it affect, influence or benefit the draft broadcasting regulations for minority sports in SA?

#### 4. Schedule Two: Page 4: 2g:2h:2i:

##### *National Sporting Events, Sports of National Interest & National Senior Teams*

Sections g, h and i and their different definitions for classifying national events, sports of national interest and national senior teams and their importance to fta and ppv broadcasters and viewers, appear to be vague and contradictory.

They need to be clear and concise and describe the socio-economic and political factors responsible for distinguishing a national sports event from sports of national interest or national senior teams.

There also needs to be clarity about how they affect the owners of popular sporting events like the Comrades Marathon, the Two Oceans, the Mid Mar Mile, the Cape Cycle Tour, the Absa Cape Epic. How are these events to be classified and broadcast under the proposed regulations?

#### 5. Schedule Two: Page 5: 3a: 3b:

##### *National Sporting Events & Public Interest:*

Greater clarification of what the term 'public interest' means in the context of the regulations is required and how it can be consistently applied by broadcasters and event owners to a national sports event or a sport of national interest or any other type of event?

##### *Striking a Balance between Audience & Revenue:*

There needs to be greater clarity on what the legal, technical and financial terms are that produce the 'right balance' between an audience watching a live event on tv and the revenue it generates for broadcasters and their commercial partners. How is the balance going to be achieved and what is the standard test for applying

it to broadcasters who want to acquire the rights to these events? Further clarification on these important legal, technical and financial terms is required under the proposed regulations.

6. Schedule Two: Page 5: 4.1a:

*A Confederation Sporting Event involving a National Team or National Sporting Event.*

*The Public Interest:*

A precise description of the what the term 'public interest' means in the context of the regulations is required to substantiate the classification criteria used by ICASA for the three different groups of events (A, B and C) it has outlined in the regulations. (5.1.1: 5.2.1: 5.3.1)

For example does a PSL league soccer match between Kaiser Chiefs and Orlando Pirates where there are likely to be 70-80,000 spectators inside a stadium and millions more watching it live on tv or listening to it on the radio qualify as being an event that is in the public interest, under the classification criteria set out in the regulations for a Group B Event?

7. Schedule Two: Page 6: 5.1.1: 5.1.2:

*Group A Events & Non Exclusive Basis*

If all of the global and international events set out in Category A are deemed to be in the public interest and to be available on fta television. What happens if a public sector broadcaster like SABC cannot afford to buy or broadcast the event on its tv channels? Does it then seek financial support from the Treasury to show the event on or can a ppv broadcaster like SuperSport or Kwese Sport step in and buy the rights and show it on their subscription channels to their viewers?

The presumption here is the public sector broadcaster is to be given first preference over a ppv or ott broadcaster for the rights to the event because it is deemed to be in the public interest and should be shown on a fta channel for the whole nation enjoy. But what happens if the public sector broadcaster does not have the money to buy the rights to the event and the ppv broadcaster does not want the rights to the event because they are not the preferred broadcaster? Further clarification on this important point is required by the regulations.

8. Schedule Two: Page 6: 5. 2. 1:

*On Exclusive Basis: Group B:*

National sporting events offered to a subscription broadcasting licensee on a non-exclusive basis under sub licensing arrangements.

What this clause means is that ppv broadcasters can bid against fta broadcasters to buy the rights to one or all of the 16 national or international events on this list. But what happens if they do not want to buy the rights to the event? Does the onus of responsibility for showing the event then fall back on to the fta broadcaster? Greater transparency and clarity on all of these points is required under the proposed regulations.

9. Schedule Two: Page 7: 6.1:

*Broadcasting of national sporting events under Group B*

Not sure what this clause means in terms of a broadcasting service licensee acquiring or not acquiring exclusive rights to Group B events. If an fta or ppv broadcaster fails in their attempts to buy the rights their failure will be immediate and obvious to everyone else in the market. If this is the case why should they then have to inform other parties within five days of making the failed bid for the event? Greater clarification on what the main purpose of the clause is and how it will affect other competitors in the market is required.

#### 10. Schedule Two: Page 7: 6.2:

*A listed national sporting event may be broadcast live, delayed live or delayed by an fta service broadcast licensee.*

The aim of this clause is to provide fta broadcasters like SABC with a number of different options to compete effectively against the financial superiority of a dominant ppv broadcaster like SuperSport. While its intention may be very laudable in seeking to provide fta broadcasters with greater opportunities in the market place for showing Group B events over their wealthier rivals. It nevertheless needs to provide greater clarity as to what the technical terms 'delayed live' or 'delayed' mean. For example, does it mean an fta broadcaster can start showing the event ten minutes after it has started or one hour later or twenty four hours later? There needs to be greater clarity on this point to assist both fta and ppv broadcasters

#### 11. Schedule Two: Page 8: 7.1b:

*What is a Stakeholder?*

What does the term stakeholder mean in the context of the proposed regulation? No definition about what constitutes a stakeholder exists in the preamble to the regulations. Can the stakeholder be a tv broadcaster, a federation, an event owner, a rights holders, sponsor, advertiser, a community or a combination of all of them? Additional clarification of this important point is required to provide certainty and guidance to all parties involved with sports broadcasting in SA.

#### 12. Background & Current Regulatory Framework: Page 14: 1.6:

*Access to Sports of National Interest to all Citizens;*

*"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 and 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."*

The aims and objectives set out in this section relating to the significance of sport as a focal point for national unity and pride in SA are very worthy and highly commendable. But will they result in creating a more balanced and better regulated market for the future benefit of the sports federations, broadcasters, sponsors, advertisers and the viewing public? All it appear to be doing is stating the obvious and offers no clear guidance on the way sport and the broadcast media should evolve together in the future under the proposed regulations.

#### **13. Conclusions:**

##### 13 a: Competitive Balance:

The dominance of Multichoice (1984-2019) and its subsidiary SuperSport is now so firmly entrenched with ppv viewers in SA and across the rest of Africa. That the changes set out in the draft regulations do nothing to open up the market to more competition by providing easier access for new entrants or to satisfy the needs of viewers wanting to see more live sport on fta channels

To bring about any relevant changes to the market's competitive balance there needs to be a levelling up of the number of commercial contracts SuperSport is allowed to hold among sporting federations and event owners at any one time in SA. The two slides below highlights SuperSport's financial dominance of the ppv market through the number of national and international contracts it holds with different sporting federations in SA and the rest of the world.

Slide 1: SuperSport's National & International Sporting Contracts 2015-2021:



Slide 2: SuperSport's Financial Dominance of Sports Rights TV Market in SA & Globally: 2018/19:



The purpose of the two slides is not to denigrate the phenomenal success of SuperSport as a world class broadcaster of ppv sport in SA and Africa but to illustrate the scale of the challenge facing ICASA and its draft broadcast regulations in trying to create a better regulated and balanced market for free to air and pay per view viewers by creating more choice and opportunity for them to enjoy live sport.

SuperSport through a combination of its technological innovation, programme quality and financial investment in sports franchises has become a global player in sports broadcasting and a major success story for corporate South Africa. Its achievements are to be applauded by every corner of the industry. By contrast SABC although it holds the public service mandate for the broadcasting of live sport on its fta channels and radio stations. It does not have the level of funding or technical capabilities to provide any real competitive threat to SuperSport's dominance or to deal with the ever growing threat to its market position from ott and multi-channel broadcasters like Kwese Sport or Star Times.

### 13. b The Challenge:

The challenge for ICASA's as its reviews the plethora of recommendations flooding into it from interested parties and stakeholders in SA and the rest of the world about its draft regulations in the next few weeks. Is to retain an open mind about the scale and depth of the changes it needs to make to them, if it really wants to create a level playing field for the future success of sports broadcasting in SA.

To achieve this goal it needs to adopt a completely new regulatory framework and set of guidelines for managing the technological revolution in sports broadcasting and viewers' choices that is radically changing the nature of the industry and the value of sports rights in SA on a daily basis.

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