



**Sent in advance by email**

**Independent Communications Authority of South Africa**

Block B, 350 Witch-Hazel Avenue  
Eco Point Office Park  
Centurion  
South Africa

**For the attention of Ms Violet Molete**

03 October 2019

Dear Sir/Madam

**UEFA Submission in response to the Draft Findings Document: Inquiry into Subscription Television Broadcasting Services, April 2019 issued by the Independent Communications Authority of South Africa (ICASA) (the Provisional Findings)**

UEFA is the governing body of association football in Europe and, as such, owns, inter alia, the media rights to the various competitions it organises and/or stages including, for example, UEFA EURO 2020™ and the UEFA Champions League™.

We note that UEFA is relevant to the Provisional Findings in its capacity as a supplier to South African broadcasters of what ICASA has deemed to be "premium content", namely, live media rights to certain of our competitions. We take an interest in the Provisional Findings because, although UEFA itself is not the subject of the inquiry, our concern is that the remedies proposed by ICASA might jeopardise our current approach to media rights sales either because:

- they require a direct change to the method by which we sell our rights (which is, in itself, compliant with applicable competition/anti-trust law); and/or
- although not impacting directly upon UEFA specifically, a measure may have an indirect effect on UEFA,

in each case, with a consequential negative impact on the revenues generated and available for distribution within the sport and good causes associated with it.

**Benefits of Revenue Optimisation**

UEFA is a not-for-profit organisation. The income that UEFA generates is invested to provide improvements and benefits in relation to football, both at grassroots and professional level. These sums are redistributed across the territories of its 55 member associations.

Revenues deriving from media rights sales worldwide account for the vast majority of UEFA's revenue. In 2017/18, broadcasting revenues accounted for 81.1% of all of UEFA's revenues – this is set out in more detail in the latest UEFA Financial Report which can be found on the website of our organisation (UEFA.com).

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Broadcasting revenues are, therefore, the lifeblood for football at all levels of the game. The monies are invested back into the game (and associated projects) in a number of ways as set out in the following paragraphs.

UEFA distributes a considerable proportion of its income to Clubs and National Teams that have participated in the UEFA Club competitions and National Team competitions respectively. UEFA distributes these sums to the Clubs and National Teams so that they can invest in their infrastructure, training and medical facilities, staff, players and grassroots development. All of this ultimately adds up to improving the sport of football as a whole, both for those participating in it as well as fans who watch the matches at stadia and on television around the world.

In addition to the sums provided to Clubs and National Teams for qualifying and participating in the UEFA Competitions, UEFA also distributes solidarity payments to Clubs and to its member national associations irrespective of whether the relevant Clubs and/or National Team qualify for or participate in any of the UEFA competitions. These payments are intended to ensure that all Clubs and National Teams, not only the most successful and wealthy, receive financial investment and benefit from the revenue generated by UEFA.

UEFA also uses revenue generated from the EURO to fund, in whole or in part, a number of grassroots and wider community initiatives. UEFA's Hat Trick Programme provides financial support to its member associations to develop and foster grassroots football and development of youth football. In the four years from 2016-2020, a total of 600 million Euros will be so invested by UEFA in these projects.

UEFA's activities are not solely based within the countries of its member associations. In 2015, UEFA set up the UEFA Foundation for Children, a charitable organisation which is also supported by revenues generated by UEFA. The organisation uses sport to support humanitarian projects linked to children's rights in areas such as health, education and societal integration around the world.

This has included the following two projects in South Africa which are ongoing as at the date of this letter:

**The Bophelo Ke Kgwele (The game, the life!) Project**

<https://uefafoundation.org/action/bophelo-ke-kgwele-the-game-the-life/>

**The Girl Power at the Football Foundation Project**

<https://uefafoundation.org/action/girl-power-at-the-football-foundation/>

UEFA also established, in 2016, the ASSIST programme which aims to share knowledge and best practices and assist UEFA's five sister confederations and their member associations worldwide in their efforts to develop and strengthen football in their respective territories and described in more detail here:

[https://www.uefa.com/MultimediaFiles/Download/uefaorg/General/02/52/79/61/2527961\\_DOWNLOAD.pdf](https://www.uefa.com/MultimediaFiles/Download/uefaorg/General/02/52/79/61/2527961_DOWNLOAD.pdf)

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The current system by which UEFA sells and contracts rights in territories around the world serves to ensure that the funding needed to meet the above objectives is received by UEFA. This is described in more detail in the following paragraphs.

### **UEFA Media Rights Arrangements**

The key principles which underpin UEFA's approach to media rights sales around the world derive largely from those set out in the decision of the European Commission in the case COMP/C.2-37.398 (the **EC Decision**). Although this decision was applicable only within the European Union and the subject-matter differed to that described in the Provisional Findings (the EC Decision had, as its primary focus, the joint selling arrangements of UEFA in respect of the commercial rights to the UEFA Champions League):

- the measures/principles applicable to the conduct of UEFA media rights sales processes have, in practice, been adopted and applied in territories worldwide; and
- there is some "crossover" between the measures/remedies set out in the EC Decision and those mentioned in the Provisional Findings document given, to some extent, there exists a common goal of ensuring a fair, open, reasonable and non-discriminatory tender/contracting process is applied in each territory around the world.

In this regard, it is important to note from the outset that South Africa is not treated materially differently by UEFA to any other territory worldwide in our approach to media rights sales in this country.

Looking at that approach, UEFA does not, other than in very exceptional circumstances, sell media rights to any of its senior competitions other than by the fair, open, reasonable and non-discriminatory tender mentioned above.

Moreover, prior to launching any such tender, UEFA (or one of our media rights agencies mandated to sell the relevant rights on our behalf), will analyse the broadcast market in that territory and determine when the relevant rights should be offered to the market and what packaging (if any) should apply. This can be a complex exercise but the primary aim will be to construct an offer to the market which is likely to attract the most bidders and thereby maximise competition and revenues for the rights on offer. Other factors such as free-to-air exposure may also be taken into account.

In this regard, it is important to note that:

- UEFA has no arrangement with any broadcast partner worldwide which allows for any form of "renewal" or "first/last negotiation" of an existing contractual arrangement (whether optional or automatic), such an arrangement would simply be incompatible with the requirement to operate a fair, reasonable, open and non-discriminatory tender; and
- the market assessment described above is, therefore, conducted afresh for each and every new rights tender in a given territory – it is in our interests to ensure that we do this to ensure that all interested parties are taken into account.

UEFA's tender documentation clearly prescribes the rights on offer and the process which is to apply with all bidders being given ample time in which to ask questions and formulate possible

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bids. The tender documentation is sent to all entities who might have expressed an interest in the relevant rights irrespective of whether they are an established television broadcaster, an OTT operator or a new entrant to the market. Further, all of UEFA's media rights are offered for exploitation on a "platform neutral" basis. Taken together, this means that no prospective bidder is precluded from participating in our sales processes by reason of the distributions means used by them for making available content or as a result of their "standing" in a given market. The aim is always the same – to ensure that our sales process attracts the widest pool of interested prospective bidders.

Following the conclusion of each tender process, UEFA will award the relevant rights to the bidder that has submitted the most attractive bid. This is primarily a financial exercise (with level of rights fee and proposed financial security (for example, bank guarantees) being the most important factors) although other factors may also be taken into consideration (such as the extent to which a given content service reaches viewers in a particular territory).

For the principal competitions of UEFA, the applicable media rights agreements would then have a term of either 3 or 4 years depending on the competition. For the UEFA Champions League and the UEFA Europa League, a 3 season term applies (and was mandated by the EC Decision). For the National Team competitions, the term of each agreement simply reflects factually the nature of each competition. For example, our contracts relating to the European qualification competitions for the UEFA European Championship and the FIFA World Cup (as well as the UEFA Nations League) have a term of 4 years to cover those competitions in full in the run-up to the relevant final tournament.

Our media rights arrangements in respect of the UEFA European Championships (EURO) are different in that that these are obviously tournament-focussed meaning the term of primary exploitation is, in fact, only for a very short period of time during the tournament itself.

These periods allow successful bidders sufficient time in which to monetise their investment in our rights whilst ensuring that other interested parties are not unfairly precluded from bidding for, and acquiring, such rights on a reasonably regular basis (a conclusion similarly reached by other competition and regulatory authorities around the world).

Further and almost without exception, broadcasters require the relevant media rights to be licensed to them on an exclusive basis. This allows them to use UEFA content, as well as that provided by other suppliers, in order to differentiate their product and drive subscription and commercial airtime revenues (in the case of pay broadcasters) and commercial airtime revenues (in the case of free-to-air broadcasters).

Therefore, rights will usually (but not always) be awarded by UEFA on an exclusive basis and it is of critical importance that UEFA should continue to be given the flexibility to determine itself both the identity of its broadcast partners (based upon the tender processes described above) as well as the exclusivity (if any) to be awarded to each such partner. This ensures that UEFA is able to optimise the revenues flowing from its sales of media rights and ensures the positive benefits described above will follow.

### **Summary and Request**

As is evident from the above, UEFA's revenue is used to improve and benefit both professional and grassroots football as well as community projects around the world. This would not be

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possible without the revenues received by UEFA from the sale of audio-visual rights in respect of the UEFA competitions.

Accordingly, we would ask that serious consideration be given prior to any decision to adopt any measure which might negatively affect the approach to media rights sales and contracting set out in these representations.

Our view is that the existing approach to the sale of UEFA properties already ensures wide and effective competition for our rights via:

- the fair, open, reasonable and non-discriminatory tender processes described in this letter;
- the lack of any "renewal" (or similar) option in any of our media rights arrangements;
- the ability of all bidders to submit bids irrespective of the means of distribution used by them ("platform neutrality");
- the packaging of rights in a manner appropriate to the needs of each market; and
- ensuring that the term of any media rights is limited to 3 or 4 years (as applicable to the relevant competition).

Further, any measure which might restrict or dilute UEFA's ability to award rights on an exclusive basis may also jeopardise our ability to optimise the value of the relevant rights in a given market.

Taken together and to reiterate, the revenues deriving from media rights are the critical source of income for UEFA, the sport of football in Europe and the various good causes supported by the organisation. We would ask that this is recognised by ICASA and that no steps are taken which could detrimentally impact upon this.

Yours faithfully



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Simon Parry  
Head of Legal – Media Rights  
**For and on behalf of UEFA**