



**Attention: Ms Violet Molete**

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Dear Ms Molete,

On 12 April 2019, the Independent Communications Authority of South Africa (“**ICASA**”) published a draft findings document (the “**Draft Findings Document**”) on its “Inquiry Into Subscription Television Broadcasting Services” (the “**Inquiry**”). The Draft Findings Document expresses ICASA’s view and position on the issues raised pursuant to the Inquiry to date and was published to solicit comments and responses from stakeholders before a final findings document is published.

Interested stakeholders have been invited to make written representations on the Draft Findings Document.

World Rugby thanks ICASA for affording it the opportunity to make these submissions.

World Rugby is the global governing body for the sport of rugby union. Headquartered in Dublin, Ireland, it is comprised of 105 national member unions (each of whom are the national governing body for rugby union in their respective country), including the South African Rugby Union, 18 associated unions, and six regional associations (with responsibility for the game of rugby union in different regions of the world), including Rugby Africa / Rugby Afrique.

World Rugby’s mission is to continue growing the global rugby family and build a truly global mass-participation sport. One of World Rugby’s strategic objectives is to maintain a strong and engaged network of fans, broadcasters, sponsors, events, and partners and to leverage this network to grow interest and participation in the game.

World Rugby operates through a range of wholly owned subsidiaries, including Rugby World Cup Limited, which is responsible for the organization of the centerpiece of the sports international calendar, Rugby World Cup, which is staged every 4 years (and is ongoing in Japan as at the date of this letter), and World Rugby Tournaments Limited, which is responsible for the organization of a range of other tournaments, including the HSBC World Rugby Sevens Series (the “**Sevens Series**”), in which the best national adult elite sevens rugby teams across the world compete, across an annual series of tournaments held in different locations throughout the world (including an annual tournament in Cape Town).

World Rugby, through Rugby World Cup Limited and World Rugby Tournaments Limited respectively, owns the commercial rights in respect of Rugby World Cup and the Sevens Series, including the media rights.

As an international federation, World Rugby’s net revenues from its media sales are invested back into the game, meaning that broadcast and other revenues received by World Rugby are crucial for the development and promotion of the game of rugby union, including for example:

through funding investment in research and development (e.g. in relation to player welfare), tournament organization and high performance and grassroots development programs. For competitions other than Rugby World Cup, broadcast revenue is extremely important in contributing towards meeting World Rugby's budgetary commitments in relation to the organization of such competitions and ensuring that such competitions can continue to be staged on a financially sustainable basis.

World Rugby notes that the Draft Findings Document proposes a number of measures to address issues that have been provisionally identified with respect to competition in domestic South Africa broadcast markets. Such proposed measures include the imposition of broadcast licence terms and conditions that would, among other things:

- Reduce the duration of certain broadcast contracts to no more than three years;
  - Prohibit the automatic renewal of contracts without an open-market process;
  - Split content rights into packages to be sold to different distributors;
  - Unbundle rights by distribution method so rights can be held by different distributors across different distribution platforms; and
  - Impose compulsory wholesale-must-offer on broadcasters who acquire rights
- (together, the "**Proposed Measures**").

For the avoidance of doubt, World Rugby makes no comment on the findings made by ICASA in its Draft Findings Document with respect to competition in domestic South Africa broadcast markets, but seeks to draw ICASA's attention to the potential impact the Proposed Measures may, depending on the scope of their implementation, have on World Rugby and its rights. World Rugby also notes the reference within the Draft Findings Document to the Sevens Series as an example of "premium sports content" and wishes to provide some further information which may be relevant to this categorization and to the appropriateness of including the Sevens Series within the scope of the Proposed Measures (if such measures are implemented).

World Rugby is extremely concerned about the potential impact the implementation of the Proposed Measures may have for it from a range of different perspectives, as follows:

- a) as a sporting federation which licenses broadcast content in the South African market, the Proposed Measures have the potential to significantly reduce the revenues from the sale of sports broadcast rights in the South African market and to negatively impact World Rugby's ability to manage the balance between revenue maximisation, audience reach and securing promotional and coverage commitments from broadcast partners in that market;
- b) as an international sporting federation which is not based in South Africa and which owns a range of global and regional commercial and media rights (of which broadcast rights relating to the South African broadcast market form part), the Proposed Measures risk impinging on our rights in territories outside of South Africa, giving rise to extra-territorial effects which would be in excess of ICASA's jurisdiction; and
- c) as the owner of the commercial and media rights in Rugby World Cup and the Sevens Series, in addition to the above concerns, in the event that the Proposed Measures are implemented, World Rugby does not believe that it is appropriate, or within the territorial jurisdiction of ICASA, for these competitions to be included within scope of the Proposed Measures.

Further detail in relation to each of the above concerns is set out below.

#### **A. As a sporting federation which licences broadcast content in South Africa**

World Rugby licences the broadcast rights to its competitions (including Rugby World Cup and the Sevens Series) on a territory-by-territory basis, or, where appropriate, on a regional basis, and looks to strike a balance between maximum audience reach and revenue generation, also

taking into account factors such as the capacity of a broadcaster to transmit as much of the relevant competition as possible on a live basis and the marketing and promotional support offered by the relevant broadcaster, both for the competition in question and rugby in general.

This decision regarding the distribution of rugby broadcasting rights in a particular market is therefore based on a wide range of factors. World Rugby considers that it is best placed to make the decision about how to balance the various factors in the best interests of the sport in the relevant territory and more generally.

Therefore, World Rugby believes that the Proposed Measures have the potential to significantly affect World Rugby's ability to effectively manage and monetise its broadcast rights in South Africa, resulting in significant consequences for World Rugby, its investment in rugby union and the long term financial sustainability of some of its competitions. In forming this belief, World Rugby has had regard to the following:

- Imposing a three-year limitation on broadcast contracts will affect World Rugby's ability to align its broadcast arrangements with the four-year operating cycle of the international rugby calendar;
- While World Rugby does not agree to automatic rights to renew as a matter of course, there may be good reasons in the circumstances of a particular contract where it may agree to such a renewal right, or to an exclusive negotiation period in relation to renewal. World Rugby considers that measures prohibiting its ability to agree to such conditions in its contracts would constitute an interference with its freedom of contract;
- The imposition of rights splitting and bundling, and wholesale-must-offer obligations would cut across World Rugby's abilities to conclude exclusive deals in the South African market. Exclusivity is key to World Rugby's ability to effectively license its broadcast rights in each broadcast market. In World Rugby's experience, exclusivity is not only crucial from a revenue generation perspective, but also from the perspective of securing commitments from broadcasters to provide an enhanced level of coverage and promotion of the relevant competition; and
- In World Rugby's experience, while measures such as splitting, unbundling and "must-offer" obligations may result in enhanced competition in a domestic market, sporting federations (and therefore the members unions who are its stakeholders) often do not benefit from such measures as they reduce the amount that each individual broadcaster is willing to pay for available rights packages. Furthermore, end consumers usually do not benefit from such measures either as, in order to view the entirety of a relevant competition, they may be required to purchase more broadcast packages than they might otherwise have had to if the competition were available from a single broadcaster.

For the reasons stated above, World Rugby considers that the implementation of the Proposed Measures in the manner envisaged by the Draft Findings Document would constitute an interference with the rights of sporting federations operating in the South African market which would not be justified having regard to the issues identified in the Draft Findings Document.

## **B. As an international sporting federation**

World Rugby does not have an establishment in South Africa and the commercial and media rights of World Rugby are owned and managed on a global basis.

As mentioned above, as part of World Rugby's management of its broadcast rights, World Rugby may conclude regional broadcast agreements for certain competitions (as opposed to separate broadcast agreements in each territory within a region), if its analysis of the exposure, revenue generation and promotional opportunities within a relevant region suggest that a regional agreement will provide better outcomes for the competition and rugby within the region more generally.

In order to conclude regional deals, World Rugby must be able to contract with broadcasters who have the technical capacity to honor exposure and promotional commitments across the entirety of the relevant region.

With respect to the Sevens Series and other competitions, the South African broadcast market forms part of a broader regional market of Sub-Saharan Africa.

In this context, World Rugby is concerned that the potential impacts from the Proposed Measures on its management of its broadcast rights in the South African market are likely to extend to its management of its rights at a regional level, directly affecting World Rugby's rights in jurisdictions other than South Africa.

The Proposed Measures also risk taking the South African market out of line with World Rugby's global broadcast activities (e.g. if its contracts in the South African market can only last for three years, whereas the international rugby calendar is based on a four-year cycle), then its ability to manage its international sporting rights would be significantly affected.

World Rugby respectfully submits that these potential effects of the Proposed Measures would interfere with World Rugby's property rights in territories outside of South Africa and would therefore have extra-territorial effect in excess of ICASA's jurisdiction.

### **C. As the owner of the commercial and media rights in Rugby World Cup and the Sevens Series**

Notwithstanding the above, should ICASA decide that measures such as the Proposed Measures are required to address the issues it cites in the Draft Findings Document in the domestic South African broadcast market, World Rugby believes that ICASA should carefully consider the scope of such measures, in order to ensure that broadcast content is only included within the scope of such measures where it is necessary and appropriate to do so in order to achieve the pro-competitive objectives identified pursuant to the Inquiry and that the manner and extent to which content is included within the scope of such measures is proportionate to those objectives. ICASA must also ensure the property rights of third parties, especially parties not established or resident in South Africa are not affected by the scope of such measures in a way that would exceed the territorial jurisdiction of ICASA (or the South African legislation from which ICASA derives its powers).

With respect to the scope of any such measures, World Rugby makes the following observations in relation to Rugby World Cup and the Sevens Series:

- Sporting events which occur on an occasional basis, such as the Rugby World Cup, do not have a bearing on day-to-day competition between different broadcast operators (and in any event free-to-air broadcast of Rugby World Cup is already the subject of regulation in South Africa), as such events are not relevant to a customer's day to day decision in relation to which broadcast service to use. Therefore, including occasional events such as Rugby World Cup, within the scope of such measures would not be necessary or effective in addressing the competition issues identified in the Draft Findings Document.
- We note that the Sevens Series is specifically cited as "premium sporting content" in the Draft Findings Document and, therefore, presumably one of the competitions which ICASA may propose to include within the scope of the Proposed Measures. In that light, World Rugby makes the following comments in relation to the Sevens Series:
  - As of 2019 onwards, World Rugby Tournaments Limited bears the cost of the entire broadcast production of each tournament in the series (whereas, until now, broadcast production had been the responsibility of the local host of each tournament). Given the global nature of the Sevens Series and the geographically diverse locations in which each tournament is held, broadcast production costs for the Sevens Series are significant and being able to distribute broadcast content on a consistent basis globally is critical to World Rugby in enabling it to meet all its costs with respect to the Sevens Series and ensure the financial viability of the Sevens Series in the short, medium and long-term, so that elite national adult sevens competitions can continue to be available on an annual basis;
  - The broadcast rights to the Sevens Series are owned and distributed by World Rugby Tournaments on a global basis. In a South African context, as with other

regions, World Rugby distributes the broadcast rights to the Sevens Series on a regional basis, as demand is not as strong as other competitions on a territory-by-territory basis. Inclusion of the Sevens Series within the scope of such proposed measures would constitute an interference with the rights of World Rugby in territories outside of South Africa (e.g. other territories within sub-Saharan Africa);

- The Sevens Series consists of 12 individual tournaments held across 8 or 9 months and 12 different locations globally. As the cadence of tournaments in the Sevens Series is not frequent, it is not possible to package the broadcast rights to the Sevens Series into different saleable packages without significantly hindering the total revenues World Rugby could earn;
- The Sevens Series is organized and promoted on a four-year cycle basis (and commercial, technical, production and other arrangements are contracted on a four-year basis). Limiting World Rugby's ability to enter into a four-year broadcast contract in the South African market would take South Africa out of line with World Rugby's global and regional broadcast operations for the Sevens Series, and create significant administrative overheads for World Rugby as a result of the clash with the four-year operating cycle of the Sevens Series; and
- Including the Sevens Series within the scope of any such measures would only serve to prevent World Rugby from entering into licensed broadcaster arrangements on an exclusive basis with a broadcaster in South Africa who can provide the best equilibrium between maximizing audience reach and broadcast revenues for the Sevens Series, not only in South Africa itself, but throughout the Sub-Saharan region.

Having regard to the above factors, World Rugby believes that, to the extent that ICASA decides to implement the Proposed Measures in whole or in part, it is neither appropriate nor is it within the power of ICASA to include the Sevens Series within the scope of such measures.

In summary, World Rugby believes that implementation of the Proposed Measures in the manner suggested in the Draft Findings Document could significantly affect the rights of sporting federations operating in the South African broadcast market and infringe the rights of international sporting federations in jurisdictions outside of South Africa. Furthermore, for the reasons stated above, to the extent that ICASA decides to implement the Proposed Measures in whole or in part, it is neither appropriate nor is it within the power of ICASA to include World Rugby's commercial and media rights (including with respect to Rugby World Cup and the Sevens Series) within the scope of such measures

Please do feel free to let me know if you have any questions.

Yours sincerely,



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