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Effectiveness of the regulatory framework for sports rights in the South African television sector

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RESEARCH REPORT

FOR PARTIAL FULFILLMENT OF THE DEGREE OF MASTER OF ARTS IN ICT POLICY AND REGULATION (MA ICTPR)

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ABSTRACT

The research problem that was investigated had two main elements: (1) deficiencies in South African free-to air (FTA) TV operators' access to, and/or use of, TV rights for sports events of national interest; and (2) South African pay-TV market-entry and competition barriers linked TV sports rights. The study found that the South African TV sports rights market is effectively operating on a free market model, due to: (1) lack of regulation of sub-licensing of rights to listed national events; and (2) lack of regulation of non-listed premium sports TV content rights.

The only regulatory framework for TV sports rights in South Africa is the 2010 ICASA Sports Broadcasting Services Regulations. These regulations are meant to regulate in the public interest, but are undermined by the fact that FTA TV broadcasters have insufficient resources to secure TV sports rights, in contrast to the buying power of dominant pay-TV operator MultiChoice. Further, the Regulations have no sub-licensing framework to ensure that FTA broadcasters have access to TV sports rights acquired by a pay-TV operator. The ICASA Draft Sports Broadcasting Services Regulations published in December 2018 will, if promulgated in their current or similar form, bring necessary relief to the FTA TV broadcasters due to their provision for FTA-designated events (Group A - national sporting events). However, the 2018 Draft Regulations will likely present challenges for the sports bodies because they are still insufficiently on sub-licensing and simply refer disputes to the regulator.

The study findings also underscored the dominance by MultiChoice in the South African TV sports rights market, and the lack of implementation of competition regulation remedies to address inefficiencies in allocation of TV sports rights. The fact that sports bodies are not properly regulated also contributes to the lack of access by rivals to MultiChoice (FTA TV broadcasters and aspirant pay-TV entrants) to sports TV rights, as the sports bodies unilaterally decide on pricing.

The study thus found that the South African legislative, policy and regulatory framework with respect to TV sports rights has been too weak in dealing with the commercial interests of both the sports bodies and the dominant pay-TV broadcaster MultiChoice. It was also found that the policies and legislation across the relevant government departments (Department of Communications, Department of Sport and Recreation, and the Department of Trade and Industry), and by extension their

regulatory entities, lack the synchronisation necessary to ensure that the objectives of social cohesion and national identity are balanced against commercial interests in respect of South African TV sports rights. All these findings are within the context of government investment in developmental sports on behalf of society, whereby society should be able to accrue benefits from sports events at professional level.

The study found that certain difficult policy-regulatory balances need to be more effectively pursued: a balance between safeguarding sports federations' financial survival and ensuring they give back to society; a balance between the premium content needs of the pay-TV sector and the need for citizen access to listed national sports events on free-to-air channels; and a balance between the imperatives of the pay-TV incumbent MultiChoice and the imperatives of its aspirant competitors