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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)

LINK CENTRE, SCHOOL OF LITERATURE, LANGUAGE AND MEDIA (SLLM)

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

04 JUNE 2019

DECLARATION

I hereby declare that this research report titled “Effectiveness of the Regulatory Framework for Sports Rights in the South African Television Sector” is my own unaided work. It is submitted in partial fulfilment of the Degree of Master of Arts in the field of ICT Policy and Regulation (MA ICTPR). It has not been submitted before for any degree or examination in any other University.

……..

Ntombethemba Ethel Makwetu

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DEDICATION

To my family – my husband, my boys Nkosi and Chulu – thank you for your unwavering support throughout this process. You endured neglect during the period of my research and you never once complained. Mr Makwetu, you have been my number one cheerleader throughout; even at times when I wanted to give up, your words of encouragement kept me going. To my cousin sister Jean, whom I regard as my sister: you have also been my pillar of strength through this journey. My mum, you inspired me by asking that uncomfortable question, “Minkie, you are now studying with your kids?” Chulu, this is for you. I trust this will be a motivation for you to shoot for the stars, inspiring your little brother in the process.

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

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ACRONYMS AND ABBREVIATIONS

CCC	Complaints and Compliance Committee [of ICASA]
CCM	cross-carriage measure
CSA	Cricket South Africa
DTH	direct-to-home
DTT	digital terrestrial television
EBU	European Broadcasting Union
EC	European Commission
EU	European Union
FA	Football Association
FAPL	Football Association Premier League Limited
FTA	free-to-air
IBA	Independent Broadcasting Authority
ICASA	Independent Communications Authority of South Africa
NBA	National Basketball Association
NFL	National Football League
ODM	On Digital Media
OTT	over-the-top
PSL	Premier Soccer League
SABC	South African Broadcasting Corporation
SACF	South African Communications Forum
SARU	South African Rugby Union
SMP	significant market power

CHAPTER 1: INTRODUCTION: THE SPORTS TV RIGHTS ECOSYSTEM AND ITS REGULATORY DIMENSIONS

1.1 International Context

The symbiotic relationship between sport and television is evident in the large numbers of viewers, subscribers and advertisers, especially in the pay-tv markets. The incentive for the advertisers is the ability of the live nature of the televised sport to attract huge audiences (Blázquez, Cappello, Fontaine, & Valais, 2016). For sports clubs and associations, selling television sports rights is critical in accumulating revenue (Levefer & Van Rompuy, 2009, p. 4; Weeds, 2014, p. 1). Thus, the bidding process for securing sports rights has become an integral part of TV broadcasters' business survival (Hoehn & Lancefield, 2003, p. 554). In acquiring exclusive rights, TV broadcasters have multiple goals. Free-to-air (FTA) TV broadcasters derive value from the sale of advertising. For pay-TV broadcasters, the primary drive to secure rights to premium sports content stems from the reality that the inability to acquire the rights could lead to "limited prospects of becoming competitive" (Ratshisusu, 2013, p. 11). Furthermore, for pay-TV broadcasters, revenue is generated from subscription viewers who are willing to pay for access to certain premium sports content, and from advertising generated by broadcasting these sporting events (Noll, 2007, p. 6). Premium sports are the most popular competitions in the biggest sports around the globe: among others, the top soccer leagues in most continents, the respective regional soccer club competitions in each continent, American professional leagues in football, basketball, baseball, and the Indian Premier League in cricket. Therefore, securing sports rights is particularly important for new entrants in television broadcasting markets, as access to premium content leads to the attraction of a significant customer and advertiser base (Evens & Lefever, 2011;Evens, Valcke, Schuurman, & De Marez, 2011, p. 34;).

The value of sports TV rights has been increasing in many jurisdictions, in part influenced by the many competitors such as the subscription television companies, including broadband companies, challenging the status quo of many traditional television broadcasters. For instance, telecommunications companies in France have mounted competition against the traditional television broadcaster to acquire sports TV rights. Orange (telecommunications company) and beIN Sports (a global network of sports channels) have challenged Canal Plus (French subscription broadcaster), winning TV rights to France's Ligue1 soccer league. The interest from the two companies has influenced the increase in the value of TV rights (between 2016 and2020) by 20% per annum from €580.4 to €726.5 million (Smith, Evens, & Iosifidis, 2016).

In Germany, competition for TV rights to the Bundesliga soccer league has been just as intense. In 2012, Sky Deutschland outbid Deutsche Telekom and agreed live sports have become increasingly important for advertisers as viewers are watching non-live programmes on demand and, in the process, are avoiding advertising (*Financial Times*, 2015). The purchasing of exclusive rights and the limited availability of sports rights, leading to monopolisation in some instances, have contributed to the increase in costs of sports content on TV (Geradin, 2005, p. 2).

Telecommunication companies, seeking to defend their positions with the converged media environment, are increasingly venturing into broadcasting, and they are acquiring exclusive premium content to gain an advantage over competitors (Weeds, 2014, p. 3). The shift is evident in markets such the United Kingdom, particularly in the

selling of broadband packages to consumers with plans that include sports content (*Financial Times*, 2015). In the case of BT, this formerly telecommunications-only company has managed to edge out the traditional television companies, such as Sky, in securing sports rights. The demand created by telecommunications companies now in the media market has increased the value of sports TV rights in the UK markets to £1.7bn per season (*Financial Times*, 2015). The value has risen further with the recent combined payment of £4.464bn by Sky and BT for the English Premier League for the period 2019-22 (*The Guardian*, 2018).

Similar developments have been evident in South Africa, in the recent tender for sports rights issued by South Africa's Premier Soccer League (PSL) in which Vodacom, Telkom and Kwese Sports submitted applications (*Timeslive*, 2017). The Premier Soccer League (PSL) broadcasting rights cover TV, IPTV, internet and mobile transmissions for the league's competitions (*Timeslive*, 2017). Though not published in the PSL 2017 annual report, their deal with MultiChoice had been rumoured to be more than R2bn for 5 seasons from 2019/2020 (*SowetanLive*, 2017). MultiChoice noted in one of its statements on the cost of its deals in Europe, that it does not disclose the amounts spent on deals (*MyBroadband*, 2016)

In 2015 the global TV broadcasting value of premium sports rights was estimated to be $28 billion – an increase of 12% from 2014 (Deloitte, 2014, p. 11). Major sports around the globe have received significant cash investments as a result of massive television deals for sports rights. Below is an illustration of 10 global leaders in sports TV rights deals.

Table 1: Global Leaders in TV Sports Rights

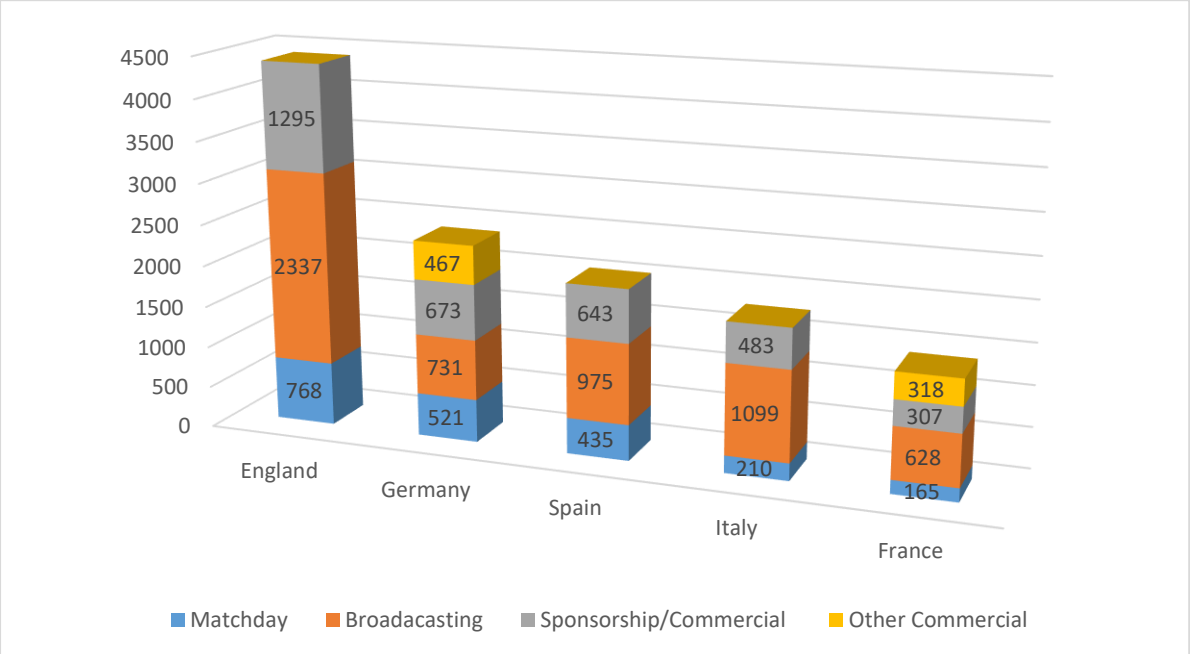
Global Standing	League	TV Deal	Yearly Average
1	US National Football League (NFL)	$39.6 billion (NFL signed a nine-year deal in 2011 with four US networks CBS, Fox, NBC and ESPN to share broadcasting rights of American Football in the US starting from 2014 to 2022.)	$4.5 billion (US)
2	US National Basketball Association (NBA)	$24 billion (NBA signed a deal in 2014 with ESPN and TNT, from 2016 to 2025.)	$2.6 billion (US)
3	UK Premier League (soccer)	£5.1 billion (In 2015, the Premier League signed a three-year deal with Sky and BT, from 2016 to 2019, with Sky to pay a total of £4.2 bn and BT £960 million.)	£1.8 billion
4	US Major League Baseball (MLB)	$12.4 billion (In 2012, MLB signed nine-year deal, from 2014 to 2022, with three US networks: Fox, TBS and ESPN.)	£1.3 billion
5	Italian Serie A (soccer)	€2.82 billion (In 2014, Serie A signed a three-year domestic TV deal with Sky Italia and Media Pro, from 2015 to 2018.)	€943 million
6	German Bundesliga (soccer)	€4.64 billion (In 2016, Sky Germany and Eurosport together won broadcasting rights for Bundesliga, in a four-year deal from the	€1.159 billion

		2017-18 season to the 2020-2021 season. Sky has 80% of the rights.)	
7	Spanish La Liga (soccer)	€2.65 billion (In 2016, Movistar and Mediapro together won a three-year domestic TV rights deal, sharing rights in Spain from 2016-2019.)	€883 million
8	US/Canadian National Hockey League (NHL) (ice hockey)	$5.232 billion (Canadian) (In 2013, the NHL signed a 12-year deal with Canadian network Rogers Sportsnet, from 2014 to 2026.)	$680 million (Canadian)
9	Indian Premier League (IPL) (cricket)	$2.6 billion (US) (In 2017, Star India signed a contract for the global TV and digital rights to the IPL for five years, 2018 to 2022.)	$8.5 million(US)
10	Australian Football League (AFL) (Australian rules football)	$2.508 billion (Australian) (In 2015, AFL signed a five-year TV deal, for 2017-2022, with Channel Seven, Foxtel and Telstra.)	$ 418 million a year(Australian)

Source: Adapted from *Total Sportek* (2017), *CNN Money Sport* (2017), *The Telegraph* (2017), *Australian Football League*, (2017).

In Europe, TV broadcast revenues across the "big five" soccer leagues (the Premier League, the Bundesliga, La Liga, Serie A and Ligue 1) increased by 8% in 2014/15, and at €5.8 billion represented 48% of the leagues' total revenues (Deloitte, 2016, p. 8). As demonstrated in the diagram below, European soccer leagues' revenues from television broadcasting supersedes all others, including match day takings (Deloitte, 2016)

Figure 1: European soccer leagues' revenues in Euros (millions) in 2016



Source: Adapted from Deloitte (2016)

In a bid to secure and sell sports rights, broadcasters and sports content owners respectively seek to enter into exclusive, long-term rights contracts and such contracts can hurt competition and consumer choice and lead to monopolisation (Evens, Valcke, Schuurman, & De Marez, 2011, p. 5). Access to premium sports content, and exclusivity, have become competition concerns, and create a "bottleneck" in the TV broadcasting sector, especially when there is monopolisation through exclusive contracts (Nicita & Rossi, 2008, p. 2; Ungerer, 2001, p. 15; Weeds, 2014, p. 1). Competition between the pay-TV operators (between StarSat and MultiChoice), and between the pay-TV operators and the FTA television broadcasters (SABC, e.tv), is weakened when sports rights are acquired on an exclusive basis, especially by pay-TV operators. Exclusive rights have the potential to foreclose competitors by increasing costs of purchasing sports premium content (Nicita & Ramello, 2005, p. 3). Long-term exclusive contracts, in particular, are anti-competitive and inhibiting to potential competitors in the upstream market (content rights holders) and result in the "shutting out" of new entrants at the downstream level (broadcasters to viewers) (Nicita & Ramello, 2005, p. 6). Acquisition of sports rights on an exclusive basis has resulted in disputes between television broadcasters and the regulatory authorities. For example, there have been investigations in the UK by Ofcom (UK communications regulator) over BSkyB's premium Sky Sports channels. In the end, this resulted in Ofcom compelling BSkyB to make available live feeds of its two sports channels (soccer) to its competitors at a regulated price (Weeds, 2014). In Europe the authorities realised the impact of exclusivity on television sports rights as being uncompetitive and resulting in market foreclose. Hence, the European Commission and competition authorities in member states dealt with the anti-competitive tendencies in the premium sports market by removing exclusivity clauses and requiring incumbents to provide access to sports TV rights, on non-discriminatory terms, to competitors (Nicita & Ramello, 2005).

One of the roles of regulators and policymakers in the monitoring and regulation of the acquisition and reselling of sports TV rights is to evaluate the impact of the exclusive agreements on downstream competition, and consumer welfare. Authorities are concerned about the quality and price of the service and for consumers to have a choice of service provider (Zamengo & Augusto, n.d., p. 5). For example, the UK's Department for Culture, Media and Sport, since re-named the Department for Digital, Culture, Media and Sport, viewed exclusive rights by subscription broadcasters to sports events of national interest as counterproductive in fostering cultural values such as social cohesion and nation-building (Government of United Kingdom, 2003).

Meanwhile, the Australian Broadcasting Services Act 1992 (BSA) provides a legislative framework for an anti-siphoning scheme. Established in 1994, the scheme regulates the acquisition of broadcast rights for sporting and other events of cultural significance or national importance, and seeks to ensure that they remain freely available to Australian viewers. The legislation provides the Minister of Communications with powers to list sports events to be made freely available to the public. The framework also provides for the automatic delisting of an event 12 weeks before the event to allow the subscription broadcaster to acquire rights in a case where the FTA has not shown interest. However, the Minister has the prerogative to prevent the delisting if it is believed that the FTA has not been given reasonable opportunity to the event (Government of the Commonwealth of Australia, 2017). The Department of Communications and Arts is in the process of amending the BSA. In the review, the anti-siphoning provision is likely to be changed in order to allow for the Act to be

dynamic and in order to align to the realities of sports TV rights with the proliferation of new platforms such as mobile platforms. The review is also seeking to ensure subscription broadcasters are given sufficient time to bid for the sports events in instances where FTAs have no interest (Government of the Commonwealth of Australia, 2017).

The Government of Ireland has a similar arrangement as Australia through the Ireland Broadcasting Act, where the Minister may, by order, designate events as being of major importance to society for which the right of a qualifying broadcaster to provide coverage on free television services should be provided in the public interest (Government of Ireland, 2009).

1.2 South African Context

Sports rights are also clearly of great value in the South African TV market, with 40% of South Africa's subscribers to MultiChoice's DStv pay-TV service reported as being attracted by the offering of sports content programming (*MyBroadband*, 2016). Siyaya Media, one of the recent subscription TV broadcasting licensees, is seeking to become a sports programming rival to MultiChoice (South Africa's near dominant subscription TV broadcaster). Siyaya bought broadcasting rights to the national soccer teams (Bafana Bafana and Banyana Banyana) in 2014 at a cost of R1 billion. The deal gave Siyaya TV the rights to broadcast all Bafana Bafana and Banyana Banyana matches, including friendlies, as well as games involving all the junior national teams, the ABC Motsepe League (First Division), Sasol Women's League, the South African Football Association (SAFA) Magazine Programme (SAFA TV) and the annual SAFA Awards. The deal was for six years, from 2014 to 2020 (*News24*, 2014). Another example of the value of sports TV rights is Cricket South Africa (CSA) securing a deal in 2011 with Taj TV and Willow TV International, at a value of R160 million for the 2012-2013 season, to cover the SA cricket team matches in Asia, the Middle East, Canada, the US and Mexico (PricewaterhouseCoopers, 2012, p. 10). At the beginning of 2016, MultiChoice's SuperSport paid £296 million (R5 billion) for the 2016–2019 English Premier League TV broadcast rights (*MyBroadband*, 2016). Even the South African sport bodies benefit immensely from selling TV broadcasting rights. In the 2017 ICASA Inquiry into Subscription Television Broadcasting Services, the South African Rugby Union (SARU) indicated that the Union derives 55% of its income from broadcasting rights,of the total revenue of R1.217 billion per annum (SA Rugby,2018).

1.2.1 South African Broadcasting Policy and Regulation

The Independent Broadcasting Authority Act (IBA Act) of 1993 pioneered and paved the way for the transformation of the broadcasting sector. The Act provided for diverse services to promote public, private and community broadcasting services. The Act also established the Independent Broadcasting Authority (IBA) to regulate broadcasting in the public interest (RSA, 1993).

Thereafter in 1999, the South African government enacted the Broadcasting Act of 1999, which remains one of the two main pieces of legislation governing the broadcasting sector. The Act was promulgated to achieve the following objectives: "to establish a strong and committed public broadcasting service which will service the needs of all South African society"; to "ensure fair competition in the broadcasting sector"; and to "safeguard, enrich and strengthen the cultural, political, social and economic fabric of South Africa" (RSA, 1999). In 2000, two regulators (the

telecommunications regulator SATRA and IBA) merged to form the Independent Communications Authority of South Africa (ICASA) to regulate both the telecommunications and broadcasting sectors (Lewis, 2007; RSA, 2000). ICASA and the Competition Commission have co-jurisdiction over competition issues in the South African telecommunications and broadcasting sector. The promulgation of the Electronic Communications Act of 2005 consolidated law and regulation for the information and communication technology (ICT) sector by focusing on telecommunication, broadcasting and postal services (RSA, 2005). Through a Presidential Proclamation in 2015, the Department of Communications was split into two: the Department of Communications and the Department of Telecommunications and Postal Services. In November 2018, the President announced the reintegration of the two departments, to be completed in the second half of 2019.

Listed national sporting events that are of public interest are contained in section 5 of the 2010 ICASA Sports Broadcasting Services Regulations and incude the Olympics, the Commonwealth Games, African continent soccer competions, the FIFA World Cup, the Rugby World Cup and related competitions, Southern African Development Community (SADC) soccer compeitions, the Africa Cup of Nations (soccer), the Cricket World Cup and related competitions, international marathons (Comrades and Two Oceans), national sponsored soccer cups (Telkom, MTN, Nedbank), and international boxing matches. The Regulations seek to regulate the broadcasting of national sporting events in South Africa, and to provide the criteria to determine which sports event must be included in the list (ICASA, 2010b)

1.2.2 South African TV Market

According to the South African General Household Survey of 2016, out of 16 million households in South Africa, 13 million owned television sets (Stats SA, 2016, p. 187). Of each R100 spent in a South African household, R4.60 was allocated for ICT products, of which R2.80 was spent on broadcasting and information supply services (e.g. pay-tv subscriptions, cell phone airtime and broadband) (Stats SA, 2016). The Household Survey revealed that 81.5% of South Africans owned television sets and this number stood at 71.0% for the rural population (Stats SA, 2016). About 65% of the 13 million homes with TV in SA relied exclusively on FTA broadcasting services (*ITWeb*, 2015).

The total revenue of television broadcasting flowing from sources including advertising, subscription and sponsorships was close to R29bn in the year 2015, illustrating the lucrative nature of the television broadcasting sector in South Africa (ICASA, 2016). The revenue of the South African television sector was expected to increase to R39.6 billon by 2018 from TV subscriptions and advertising, rising from R20.218 billion in 2009. (PwC, 2014, pp. 10-18). Consumers spent in 2011 was R12 billion with a projected increase to R21.8 billion in 2016 on television subscription (PwC, 2012, p. 43). Similarly in South Africa, sports advertising on television was projected to increase from R1.1 billion in 2016 to R2.6 billion in 2017 (PwC, 2012, p. 156). Media rights (fees paid for television broadcasting and other related media rights) in local sport were estimated to rise from R1.8 billion in 2011 to R3.4 billion in 2016 (PricewaterhouseCoopers, 2012, p. 155). The popular domestic premium sports content in South Africa is rugby, soccer and cricket, judging by the value of television and media rights to these sports (PwC, 2012, p. 156). International soccer, including

English, Italian, Spanish, German, and UEFA Champions leagues, is popular among South African viewers (Ratshisusu, 2013, p. 11).

South Africa issues three licence categories in television broadcasting: public, private commercial, and community (ICASA, 2016). In FTA, the SABC (public) and e.tv (private commercial) are the main players. In subscription TV, MultiChoice's DStv is the dominant player, while On Digital Media through StarSat (formerly known as TopTV) is its competitor (TechCentral, 2014). A major player in signal distribution is Sentech, providing a terrestrial broadcasting signal to most of the broadcasters except MultiChoice, which is on satellite. There are seven community television licensees (Republic of South Africa, 2015).

In the Broadcast Research Council of South Africa (BRCSA) audience report of January 2019, SABC channels, followed by e.tv had the biggest audiences. By January 2019, SABC 1 had an average of 9,090,243 viewers, SABC 2 had 6,034,121 viewers, and SABC 3 had 873,479 viewers per day respectively. DStv had an average of 1,592,199 while e.tv had an audience of 5,398,829. (BRCSA, 2019).

1.2.2.1 Free-to-Air TV

SABC is the only broadcaster with the public mandate for both television and radio. In television, the public broadcaster has three FTA channels on a terrestrial platform. SABC 1 and 2 are public channels and SABC 3 is a public commercial channel (RSA, 1999). The Broadcasting Act requires the SABC to inform, educate and entertain viewers and listeners. Furthermore, the SABC should include national sports programming as well as developmental and minority sports (RSA, 1999).

Table 2: SABC TV Stations

Station	Type	Predominant languages
SABC 1	Public	isiZulu, isiXhosa, siSwati, isiNdebele, English
SABC 2	Public	Sesotho, Setswana, Sepedi, Afrikaans, Xitsonga, Tshivenda, English
SABC 3	Public Commercial	English, Afrikaans

Source: SABC (2016)

The SABC also launched SABC News Channel 404 in 2013, a 24-hour news channel carried by MultiChoice (SABC, 2018). Furthermore, SABC has an Encore Channel, also on the MultiChoice platform, (SABC, 2018).

e.tv is South Africa's first (and still only) national private FTA television channel, launched in October 1998. It is a commercial FTA television station, its revenue being derived from advertising and sponsorship. Since the launch, the broadcaster has grown and expanded operations to include a 24-hour news service carried on the MultiChoice platform. e.tv has also expanded its media footprint into Africa through its syndicated programmes in partnerships with local FTA terrestrial broadcasters in a number of African countries. e.tv programmes are broadcasted in Namibia, Zimbabwe, Mozambique, Botswana, Lesotho, Swaziland, Zambia and Malawi, Kenya, Nigeria, Tanzania, Uganda, Rwanda, Guinea, Burundi and the Central African Republic,

Nigeria, and Ghana (Howwemadeitinafrica, 2010). The group also owns an Open View HD platform which is a free to view direct broadcast satellite service. The channels on the platform cover the following genres: culture and lifestyle, entertainment and music, children and education, and include religion (*TechCentral*, 2016).

Fresh TV is a youth television station in Gauteng. Fresh TV operates on a "test licence" operating on the Sentech Freevision platform. Sentech has used Freevision as a gap-filler for the digital terrestrial television (DTT) network (*ITWeb*, 2013). Channels on Freevision are FTA channels (SABC, e.tv, six community television stations) and entertainment, news and current affairs, educational and special interest channels (*MyBroadband*, 2013).

1.2.3 Pay-TV

South Africa has 2 other subscription television broadcasters; Deukom[1] and StarSat, with StarSat being the only real competitor to MultiChoice in the satellite subscription broadcasting TV market. Siyaya was meant to be the competitor to MultiChoice but it now broadcasts as channel 157 on the DStv platform. Deukom commenced broadcasting in 1996 through MultiChoice and was granted a licence in 2012. Its target audience is the German speaking community living in South Africa (ICASA, 2017). On Digital Media is the owner of StarSat with 20% of the company owned by China's StarTimes. The company has grown its subscriber base to 200,000 in 2013 but by 2014 this number had reduced to 110 000 (MyBroadband, 2016). South Africa is dominated by MultiChoice, part of the Naspers Group, as the main subscription broadcaster. The company has a market share of over 95% in the pay-tv sector. It has expanded its offering to nearly 100 television channels from 17 in 1995. By March 2018 the company had 6.9 million subscribers in South Africa (MultiChoice, 2018). It has also expanded into other African countries such as Zambia, Kenya, Nigeria, Namibia and Uganda (Thothela, 2013, p. 15).

In 2007, ICASA awarded licences to five subscription television broadcasting licensees: Walking on Water, On Digital Media, Sabido e-SAT (granted but not issued), Telkom Media and MultiChoice Africa. This is despite the fact that MultiChoice had, in effect, been operating from 1986 as M-Net, a terrestrial pay-TV service, and since 1995 as a satellite pay-TV service (ICASA, 2007; *TechCentral*, 2017). In addition to these licences issued for commercial satellite and cable subscription broadcasting services in 2007, ICASA issued five additional licences in 2014 to Close-T Broadcast Network, Mindset Media Enterprises and Mobile TV, Kagiso TV and Siyaya Media Network, bringing the number of pay-TV licence holders to ten (Busines Day, 2018). Of the aspirant competitors, only one is on air, On Digital Media (now trading as StarSat), albeit struggling (ICASA, 2007).

Consequently, the near-monopoly of MultiChoice is a primary concern in the South African market. In 2013, the South African Competition Commission reported to an Organisation for Economic Co-operation and Development (OECD) event on competition and broadcasting that MultiChoice had a five-year exclusive deal with PSL, turning it into a "winner-takes-all". This was due to the fact that the PSL bidding process did not prevent one broadcaster from owning all the rights (OECD, 2013, p. 279). This then results in no real competition in the market with the winner dictating all the sub-licensing terms. In addition, the Competition Commission pointed out,

[1] Deukom is a subscription television service targeting German-speaking viewers.

MultiChoice had enjoyed extended periods of exclusive rights to SARU games (OECD, 2013a). The South African Competition Commission highlighted MultiChoice's dominance through its extensive library of premium content as one of the threats to competition in South Africa's TV broadcasting market (OECD, 2013, p. 5). ICASA has conceded that despite additional licences granted for subscription broadcasting, successful penetration of these new entrants is yet to be seen (ICASA, 2017). The regulator has also been requested to investigate the subscription broadcasting sector in comparison to the FTA broadcasters (ICASA, 2017). The status of these licensees is outlined below in Table 3.

Table 3: Pay-TV Licensees 2007-2014

	Licence	**Licensing Date**	**Status**
1.	MultiChoice	2007	On-air
2.	Sabido (e-Sat)	Granted in 2007 but never issued	Never launched
3	On Digital Media	2009	Started to broadcast in 2010 as TopTV, and relaunched as StarSat in 2013
4..	Walking on Water (a dedicated Christian service)	Granted in 2007 but never issued	Not in operation
5.	Telkom Media	Granted in 2007 but never issued	Not in operation
6.	Close-T Broadcast Network Holdings	Issued in 2014	Not in operation
7.	Siyaya TV	Issued in 2014	Operating as channel on DStv
8.	Mindset Media Enterprises	Issued in 2014	Available on DStv and StarSat
9.	Mobile TV	Issued in 2014	Not in operation
10.	Kagiso TV	Issued in 2014	Not in operation

Source: Researcher's compilation

1.2.4 Community TV

The IBA Act of 1993 accommodates the inclusion of community broadcasting as one of the three tiers of broadcasting (RSA, 1993). According to the Broadcasting Act of 1999, community broadcasting programming should be reflective of the needs of the community. Community broadcasting is expected to broadcast relevant content according to the language, culture, and the religion of its community (RSA, 1999).

At the time of finalisation of this Research Report in early 2019, there are seven licensed community TV stations in the country. On-air are 1KZN TV, Bay TV, Cape Town TV, Soweto TV, Trinity Broadcasting Network and Tshwane TV. A licence was awarded to Platinum TV in North West Province but it is not on air. (A regional television, GauTV, was launched in October 2016 and is not licensed but operates on the DStv platform (ICASA, 2017)).

Below is a presentation of the community stations that were on air at the end of 2018.

Table 4: Community TV Stations in 2018

	Station	Language	Coverage (province: city)
1.	1KZN TV	English, isiZulu	KwaZulu-Natal: Richards Bay
2.	Bay TV	Afrikaans, isiXhosa, English	Eastern Cape: Port Elizabeth
3.	Soweto TV	English, African languages	Gauteng: Soweto
4.	Cape Town TV	Afrikaans, isiXhosa, English	Western Cape: Cape Town
5.	Trinity Broadcasting Network	English	Eastern Cape: East London
6.	Tshwane TV	English, African languages	Gauteng: Pretoria

Source: Researcher's compilation

1.3 Research Problem

The research problem that was investigated had two main elements: (1) deficiencies in FTA operators' access to, and/or use of, TV rights for sports events of national interest; and (2) contribution of pay-TV market-entry and competition barriers linked to TV sports rights.

1.3.1 Deficiencies in FTA TV Operator Access to, and/or Use of, TV Rights for Sports Events of National Interest

The "listed events" approach in the 2010 ICASA South African Sports Broadcasting Services Regulations is meant to serve the national interest with regard to national teams.

The 2003, and also the 2010, version of the ICASA Sports Broadcasting Services Regulations were established to ensure that national sporting events are not exclusively acquired by subscription TV but are also carried by FTA TV broadcasters (ICASA, 2003; 2010b). The main addition to the 2010 version of the Regulations was the dispute-resolution mechanism. In essence, it dealt with the fact that parties should resolve their disputes over commercial agreements without the involvement of the regulator (ICASA, 2010b). But the dispute mechanism provision is silent on the role of the regulator should parties fail to agree; instead, it requires that parties identify an alternative dispute-resolution mechanism.

ICASA commenced with the process of reviewing the 2010 Sport Broadcasting Services Regulations with a presentation, in 2018, to the South African Parliamentary Portfolio Committee on Communications (PMG, 2018). ICASA has since published the 2018 Draft Sports Broadcasting Services Amendment Regulations. The new Regulations, as drafted, would overhaul the existing list with the introduction of three categories, Groups A, B and C. Group A is comprised of listed events to be broadcast with full coverage on FTA. The events include the Summer Olympic Games, the Paralympics, the FIFA World Cup, and the ICC

Cricket World Cup. Group B covers the national events offered to a subscription broadcasting licensee on a non-exclusive basis under sub-licencing conditions and some of the events. Under this category, the events include Super 14 Rugby, Council of Southern Africa Football Associations (COSAFA) Cup, Premier Soccer League, and Supa 8 Cup (soccer). Group C has "Minority and Developmental Sporting Events" to be broadcast by subscription and FTA broadcasters. The sports events in group C include ice hockey, tennis, indigenous games, varsity sports and squash. Groups A and B remove exclusivity in all the sports events listed in both categories. The introduction of these categories will impact negatively on sports bodies, FTA brodcasters as well as subscription broadcasters. In brief, the removal of exclusivity will decrease the value of sports on TV and reduce the profits for sports bodies. FTA TV broadcasters will also not be able to afford the costs of the sports rights , even though group A is designated for FTA broadcasters. The details of the 2018 draft Regulations and the impact thereof are discussed in detail in Chapter 4 of this research. The listing of designated events is the responsibility of ICASA. The listed events are provided for in the Electronic Communications Act (ECA) of 2005, section 60(1), whereby subscription broadcasters are prohibited from acquiring rights to national sports events on an exclusive basis.

The application of listed events in South Africa, under the sports of national interest, is that pay-tv broadcasters are only required, in the public interest, to notify FTA broadcasters five days after securing rights to national sporting events for sub-licensing purposes, (ICASA, 2010b).

1.3.2 Pay-TV Market-Entry and Competition Barriers Linked to Sports Rights

The challenges facing TV sports rights in South Africa are not only confined to the listed events in ensuring FTA TV broadcasters have access to sports rights. There are also challenges in obtaining access to broader premium sports content. The ICASA Sports Broadcasting Rights Regulations are confined to national sporting events that are in the public interest, in line with ICASA's mandate to regulate in the public interest. Therefore, premium sport content not included in the ICASA Regulations list of national sporting events falls outside this framework and currently there are no regulations for premium sports content (ICASA, 2017). Lack of regulations has resulted in disagreement with television broadcasters complaining of MultiChoice's monopoly over these sports rights.

There is, therefore, a need for government and ICASA to explore a broader set of regulatory options. ICASA has acknowledged the challenge facing subscription broadcasting by recently conducting, in 2017, an Inquiry into the Subscription Television Broadcasting Services (ICASA, 2017). These ICASA processes have drawn attention to the role of sports rights in creating barriers to market entry and competition in the South African subscription TV sub-sector.

In 2013, On Digital Media (ODM) lodged a complaint with the Competition Commission accusing MultiChoice of anti-competitive abuses. The complaint was about MultiChoice's refusal to grant the then TopTV access to its SuperSport 3 and 4 channels. Instead, MultiChoice offered ODM channels with fewer matches per week (MyBroadband, 2013). This is despite the fact that Chapter 10 of the

ECA provides ICASA with powers to promote competition in the broadcasting sector (RSA, 2005).

In 2015, Altech Node, a product by technology group Altron was marketed as a rival to MultiChoice. The Altech Node set-top box was unveiled in September 2014 and described as a fully converged home “gateway” console (*ITWeb*, 2015). The service was to offer movie entertainment, TV series, sports and business content, internet access and wireless smart home solutions. The failure of this new service was attributed to the inability to compete with MultiChoice. Martin Czernowalow, a broadcasting expert, argued that the failure of Altech Node was ICASA’s fault. He recommended that to foster competition, ICASA should focus on elements such as decoder interoperability and access to premium content to lower the barriers for entry for new pay-TV players (*ITWeb*, 2015).

With the advent of mobile operators venturing into the broadcasting space, mobile operator Cell C (a South African mobile operator) has, as recently as 2017, called on the Competition Commission to investigate SuperSport. Cell C complained that, “MultiChoice and SuperSport have tied up the broadcasting rights for popular sports in South Africa”. Cell C views the practice as anti-competitive. In November 2017, Cell C established a new video streaming service called Black which was offering packages ranging from R5 per day to R389 per month. Cell C, wanting to offer sport on the Black platform, argued that the current model does not serve sports fans and that a different model should be explored (MyBroadband, 2017).

1.4 Purpose of the Study

The purpose of the study was to assess the effectiveness of the South African regulatory framework for TV sports rights in addressing the two main challenges just outlined. The study also sought to identify possible new policy and regulatory interventions to address the challenges, namely (1) measures to enable better FTA TV operator access to TV sports rights for listed national sporting events; and (2) measures to limit the role of TV sports rights in barriers to entry and lack of effective competition in the pay-TV sector.

CHAPTER 2: THE POWER OF SPORT, OF SPORT ON TV, AND OF TV SPORTS RIGHTS

2.1 Sociocultural Dynamics of Sport and of Sport on TV

The sociocultural impact of sports on society is well documented. Sports contribute positively to addressing and lessening social ills, such as substance abuse and social exclusion, and to boosting individuals' confidence, among others. The importance of culture is also evident in the British Department of Culture policy paper, titled "Sports: Raising the game" of 1995 which refers to sport as a "central part of the then British Department of National Heritage", and the British government invested £300m per annum into sport (Houlihan, 1999, p. 7). Patriotism is apparent when nations rally behind a national team, thereby setting aside whatever differences there may be between them. Specifically, the role of national spectators participating in national sport brings a sense of emotional connection and a sense of a united community (Houlihan, 1999, p. 9). When national teams participate in global competitions, they bring with them symbols signifying their nationality through the national flag and the national anthem, among others (Houlihan, 1999). Hence, certain sports are associated with certain nations; for example, the origins of cricket are found in England. Therefore, sporting qualities such as fair play (the word "cricket" can be used to mean fair) are associated with the English team (Maguire, 2011, p. 4).

In 1996, the UK government introduced listed events in an effort to prevent BSkyB from taking away national sports events from terrestrial to satellite. This measure by the UK government illustrated the importance they placed on sport in UK culture (Boardman & Hargreaves-Heap, 1999).

The UK government introduced two categories of national sporting events, Group A and B. Group A events are designated sports events that cannot be broadcast on an exclusive basis and must be able to be viewed by 95% of the UK population. This group includes the FA Cup Final (soccer), the Grand National (national hunt horse race) and the Olympic Games. Group B events may have live coverage on subscription television if secondary coverage is offered to FTA broadcasters. This group includes the Six Nations rugby union tournament, the Ryder Cup (golf), and cricket test matches played in England (Woodhouse, 2018).

In South Africa, sport has played a role in unifying communities, i.e., the communities classified as Black, Indian, Coloured and White, who were segregated during the apartheid regime (Keim, 2005). The participation of the South African rugby team at the 1995 Rugby World Cup brought a sense of national identity. Those attending the games and those in living rooms watching TV or listening to the radio experienced this. Nelson Mandela (the first South African black President) was a symbol of national unity when supporting the national Springbok team (Keim, 2005). Mandela's support had the effect of causing the entire nation to identify themselves as South Africans at the time. Rugby was regarded as a white sport, but after the democratic dispensation, it became a symbol of unity, as seen with the Rugby World Cup referred to above (Labuschagne, 2008). A study done in Ireland on the role of sport in social cohesion revealed similar findings; that sport brought significant levels of social interaction not only among players and club members but also to supporters and society at large (Delaney & Fahey, 2005, p. 57).

A study focusing on the 2010 soccer World Cup in South Africa reflected similar sentiments of patriotism. Fifty-one percent of Cape Town residents were proud of South Africa hosting the World Cup, while 37% of the respondents felt a strong sense of national identity. The hosting of the World Cup also brought a sense of pride in 95% of the respondents to the study (Visser, 2015, p. 71). Overall, the finding of the study pointed to 84.3% who believed the event contributed to nation-building and national pride, and would leave behind a legacy (Visser, 2015, p. 80). Sport in other countries has also played a similar role in nation-building and social cohesion. The finding of a study focusing on the 2012 Olympic Games in London revealed their influence on national pride. The study found that sport was perceived as a unifier (Konstantaki, 2008).

A study conducted in rural Australia illustrated the role of sports in addressing social ills (Tonts, 2005). Eighty-two percent of the respondents viewed the greatest benefit from the sport as providing social interaction and “a local sense of community” (Tonts, 2005, p. 43). The overall conclusion of the study pointed to the fact that sport contributes to social capital and should be fostered through “social interactions and development of social relations" (Tonts, 2005, p. 53).

New Zealand rugby fans linked sport to national culture by objecting to a deal by Rupert Murdoch’s News Limited with the New Zealand national team. The fact that News Limited is not a New Zealand firm, and that Murdoch is an Australian, created a perception amongst New Zealand fans that News Limited would have control of the tradition, history and culture of the team (Jackson & Hokowhitu, 2002). Much of this sense of alienation stemmed from the unique New Zealand identity of the game as evidenced by the adoption of the Maori Haka at the beginning of matches (Jackson & Hokowhitu, 2002).

2.2 Economic Dynamics of Sport and of Sport on TV

Sport has been regarded as public in Europe and therefore the responsibility of government to fund. This notion evolved, over time, as sport became an industry in its own right and as it increasingly became professional (Barget & Gouguet, 2007, p. 2). From an economic point of view, the sports fraternity, broadcasters, advertisers and sponsors benefit from the commercial profits derived from sport. Competition among market players creates benefits for consumers in the form of lower prices and services (Diathesopoulos, 2010, p. 9).

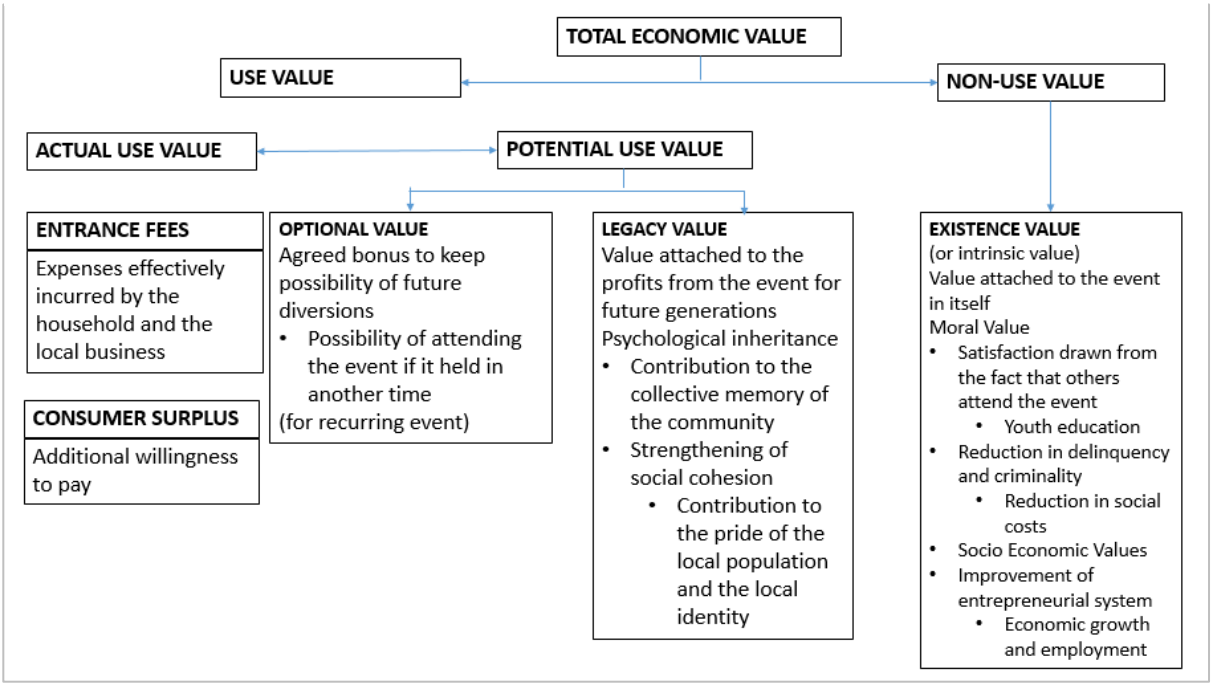
Despite the identification of sport as promoting social cohesion and national identity, commercial interests in the sports industry tend to outweigh national interests. The lack of a substitute sport results in the monopolisation of TV sport rights (Mason, 1999, p. 10; Cowie & Marsden, 1999). Specifically, the concept of non-substitutability posits that when a viewer wants to see a specific event then they will not be satisfied with coverage of another event (Schaub, 2002). For example, there is only one Premier League, one Wimbledon and one World Cup (Nolan, 1997). The scarcity of premium content further leads to high prices for new entrants, thus leading to barriers to entry (Geradin, 2005, p. 4).

At a regional level, the EU, through the 1989 Television Without Frontiers Directive, created a single market. According to the directive, member states are required to align their national legislation to the requirements of the directive. The main objective is to secure equal access for viewers in all member states (Jones, n.d.). In November 2018, the EU revised the Television Without Frontiers Directive

to create a single market for audio-visual and other digital media content. The directive introduces regulations governing the cross-border portability of online content services. The regulation on cross-border portability enables consumers to access their portable online content services when they travel in the EU in the same way as they access them at home. Sports events are included in those services. The implication of this directive on TV sports is huge in that TV sports rights regimes will need to be overhauled to focus on the application across jurisdictions in the EU (European Commission, 2018).

Gouguet and Barget (2007), in Figure 2, illustrate the total economic value of a sporting event with all its elements.

Figure 2: Total economic value of a sporting event



The first value is the consumer surplus demonstrating the willingness of the consumer to pay for the sports event in consideration of the value to be derived from watching the event. Consumer surplus is “defined as the difference between the total amount that consumers are willing and able to pay for a good or service (indicated by the demand curve) and the total amount that they actually do pay (i.e. the market price)” (Economics, n.d.).

The second value is the optional value for the fans and viewers on the future benefit of the sporting event. Legacy value is concerned with the continuity of the sports event for future generations, and which promotes a sense of sports culture as a heritage. Finally, the existence value is the value derived from the assurance that the sport is always available and consumers would be able to access the sports event at any time (Barget & Gouguet, 2007). The legacy value is an indication of the extent to which a society will invest in sporting events to ensure that the future generation benefits, and which ultimately contributes to the social cohesion of that community.

The lucrative nature of sports rights was illustrated in the South African PSL's attempt to acquire a sports channel prior to the 2010 soccer World Cup. The move sought to gain independence from broadcasters regarding the scheduling of games for broadcast and to broadcast sports content from their own platform for commercial benefit (Shandu, 2008).

The value of TV sports rights was also illustrated through the FIFA and UEFA challenge of the UK and Belgium governments to include the World Cup and the European Championship tournaments on a list of "major events" due to the perceived dent in profits if these sports events were required to be offered to FTA broadcasters (Petros, Evens, Iosifidis, & Smith, 2015). FIFA and UEFA argued that the inclusion of these tournaments would constitute an infringement of the right to property. The argument focuses on the commercial value of intellectual property rights which enable FIFA and EUFA to finance major sports events, and the overall development of the sport in the long term (EU, 2013). UEFA and FIFA further pointed out that the inclusion of the events in the list would lead to a loss of income with regard to television as they are the exclusive owners. It also meant that the number of interested stakeholders in the TV sports rights would be significantly reduced (The European Union, 2013). However, the tribunal agreed with the earlier ruling of the European Commission that the UK and Belgium had not violated the Audio Visual Service Directive of 2010 (The European Union, 2013).

The EU's Audiovisual Media Services Directive (AVMSD) (Article 14) allows the member states to draw up a list of events of major importance (such as the Olympic Games) for their general public and take measures to ensure that these events are accessible through FTA channels (European Union, 2010). This clause has been kept in the revised AVMSD of November 2018.

Rowe laments the commodification of sport in television, the result of which, puts sport in the hands of a market controlled by media conglomerates (Rowe, 2004, p. 4). As a result, sport is no longer serving what Rowe calls its "politico-cultural" status on television. Making sport accessible only to certain sections of society, namely those that are able to afford the services of pay-TV, amounts to cultural exclusion (Rowe, 2004).

The economic value of sports rights is particularly heightened around big international events such as the soccer World Cup. This was evident in a study conducted among fans just before the World Cup 2006 hosted by Germany. The survey only covered 338 persons, but they were chosen at random and were representative. The researchers tested a comparison between how much the fans would pay for broadcasting in pay-tv if the German team were to lose in the first round and the willingness to pay if the team reached the quarter-finals and semi-finals. The fans were prepared to pay a total of €798 million if the team lost in the first round, whereas this figure increased by €189 million and €231 million if the team reached the quarter- and semi-finals (Brenke & Wagner, 2006, p. 8). The figure rose to €327 million should the German team reach the finals.

The profit to be made from sport is evidenced in the fact that FIFA, the soccer world's governing body, had almost $930 million in its reserves in 2017 (FIFA, 2017). The major part of the share was from the selling of FIFA World Cup TV rights to national broadcasters, such as the BBC and ITV in the UK, ZDF and ARD in Germany, and various pay-tv consortia across the world. The driving force

behind sports in the global industry is the sale and purchase of TV rights by sports bodies and broadcasters respectively.

2.2.1 Collective Selling

Collective selling is the practice by which sports clubs entrust the sale of their media rights to a domestic or international sports association (Lefever & Van Rompuy, 2009, p. 9). Evens and Lefever argue that central control of sports content, overseeing rights agreements and central marketing are fundamental in a collective selling approach. Further, collective selling seeks to guarantee a maximum profit for the sports associations and consequently for the clubs (Evens & Lefever, 2011, p. 6). In collective selling, profits are shared proportionally according to “merits, performance, and size” of the clubs distributed by sports leagues and sports associations (Evens & Lefever, 2011, p. 39). Revenue and profit sharing contribute to the development of players, and allow smaller clubs to market themselves better (Mondliwa & Paelo, p. 5; Lefever & Van Rompuy, 2009).

While sports associations and clubs derive benefits from collective selling, there are disadvantages. The sharing of profits could impact negatively on the performance of clubs. It might be perceived by more highly performing clubs that they are carrying the non-performing clubs. In some jurisdictions profits are shared equally for all clubs discouraging the best performing clubs (Evens & Lefever, 2011). Restrictions based on conditions such as the mode and the terms of broadcast coverage of the matches, could impact on the quality of broadcasting of the games. Leagues and sports bodies can limit the number of matches to be sold leading, fewer matches translate to fragmentation of audiences, leading to fewer viewers in turn negatively affecting advertisers (Parlasca, 2006, p. 741). The bundling of TV sports with other programmes deprives viewers of choice. (Parlasca, 2006).

The long duration of some exclusive contracts in collective selling has the potential to stifle competition by locking out other TV operators for long periods (Smith et al., 2015). In collective selling, individual clubs are not at lliberty to sell their products independently on the market (Lefever & Van Rompuy, 2009, p. 10; Peeters, 2011, p. 2). Collective selling has been criticised as anti-competitive and depriving consumers of access to games. Collective selling limits those clubs who receive lower revenues from attracting talent because they cannot afford to acquire good quality players. The effect of lower salaries is the lower standard of competitions (Szymanski & Késenne, 2004). In addition, broadcasters with existing market power can further strengthen their market power owing to their financial capacity to outbid competitors for the rights (Smith , Evens, & Iosifidis, 2015, p. 724).

For clubs not keen on collective selling, individual selling is an option. In some instances within collective selling, clubs are allowed to market and sell the TV rights for their own sports events (Noll, 2007). Noll recommends that allowing individual teams to negotiate directly with broadcasters increases competitiveness and chances of attracting higher rates for broadcast rights (Noll, 2007, p. 13). This was illustrated in a case brought before the EU involving UEFA. The Commission took a decision that clubs must be allowed to market and sell their rights individually (EC, 2003). Collective selling disadvantages smaller clubs as they don’t enjoy the benefits of bigger clubs such as huge sponsorships, possessing

talented players, and attract larger audiences at games (Cave & Crandall, 2001; Fort & Quirk, 2004).

2.2.2 Collective Buying

Collective (or joint) buying occurs when television broadcasters join forces to buy TV sports rights (Schaub, 2002, p. 8). Collective buying provides buying power to operators who would otherwise not be in a position to secure rights individually (Schaub, 2002, p. 8). However, at times, collective buying does raise competition-related issues, with concerns stemming from whether there is a willingness to share the rights with broadcasters outside the group (Lefever & Van Rompuy, 2009, p. 11). Collective buying is intended to limit the volume of demand and negotiate collective pricing.

A prominent case in point in the EU has been the European Broadcasting Union (EBU), comprising mainly FTA broadcasters and a few subscription television players (Parrish, 2002, p. 8). In the early 1980s, the EBU organised itself to embark on the collective buying of TV sports rights that would otherwise have been too expensive if bought on an individual basis (Parrish, 2002, p. 10). Even though collective buying is not deemed anti-competitive, there are concerns that broadcasters with significant market power could potentially abuse their dominance (Lefever & Van Rompuy, 2009, p. 11). For example, in the US market, concerns about the lack of competition between the broadcasters that had acquired rights led to the abolishing of the collective buying of TV sports rights (Evens & Lefever, 2011, p. 4).

The literature reflects that in the two approaches to acquiring rights, collective selling and collective buying – i.e. exclusivity is not necessarily anti-competitive. However, the application of fairness in acquiring of rights in both approaches is important. Disputes around TV sports rights in the EU have led the European Commission to deal with cases of selling and acquisition of TV sports rights. The rulings from the EC sought to prevent the acquisition of exclusive TV sports rights for long periods. Most of the cases were characterised by complaints around exclusivity (collective selling) by sports associations and leagues. For example, in the case of the UEFA Championships League, the EC allowed the awarding of TV sports rights to a greater number of broadcasters, and to other platforms such the internet and telecoms operators. Clubs were also allowed to sell their TV sports rights through an open tender process and the TV sports rights were limited to three years (European Commission, 2003).

In the case of the German Bundesliga soccer league, in 2005, with regard to the collective selling of sports rights and central marketing of rights, the EC observed, in its preliminary investigations, that the league might be uncompetitive, which contravened the EC competition regulations. However, the league made commitments and changes to their sports rights regime. For example, clubs were allowed to sell their home games to a FTA TV broadcaster, and the league rights were also offered in several packages. As a result of these changes, the EC decided against taking any action (EC, 2005). In the case of the English Premier League, following preliminary observations by the EC, some of its TV sports rights selling provisions were found not to be in line with the EC competition regulations. For instance, the league introduced into the marketing of the league's rights, the transparent and non-discriminatory sale procedure of rights, with no single buyer

approach. The EC decided not to take action against the English Premier League as a result of the changes (European Commission, 2006).

2.3 Regulating FTA Operator Access to, and Use of, TV Sports Rights for Events of National Interest

In the EU, sports broadcasting rights are recognised as an important means of ensuring that consumers have access to sport. For this reason, the EU has prompted member states to draw up listed events. Even the 2018 revised AVMSD EU has not done away with Article 14 which urges member states to ensure that broadcasters under their jurisdiction are not allowed to broadcast sports events on an exclusive basis. These are sports events that are regarded by member states as being of major importance to society, especially in cases where the majority of people are deprived of watching these games through coverage on free television. Therefore, member states are advised to draw up a list of designated events that are of national importance. The process must be done in a transparent manner where the events are shown, whole or in part, live on FTA television channels (EU, 2010).

The primary focus of the listed events regulation is to prevent pay-tv operators from exclusively broadcasting certain sports events (Solberg, 2002, p. 2). The application of the listed events regulation has been prevalent in jurisdictions such as the UK from as early as the 1990s (Solberg, 2002, p. 2). In the UK, the motivation behind shifting listed events to the FTA broadcasters is to ensure cultural promotion. Sport in the UK is regarded as promoting social cohesion and national identity, according to Rowe, Scherer, and Whitson as cited in Smith et al. (2015) and Asser International Sports Law Centre (2014, p. 2). Under South African jurisdiction, the listing of events of national interest, as defined in the South African Sports Broadcasting Regulations, seeks to provide viewers on the FTA platform with coverage of sports events.

The challenge in regulating sports rights in South Africa centers around the way various players are involved. The sports bodies account to the Minister of Sport and Recreation. At the same time, sports bodies are self-regulated based on their membership of international sports bodies. FTA and pay-TV broadcasters fall under the jurisdiction of the sectoral regulator ICASA. TV sports rights are regarded as a commercial commodity under the jurisdiction of the Competition Commission. A challenge arises in that TV sports rights are crucial for FTA broadcasters within the context of satisfying social cohesion, national identity and attracting advertisers, yet sports bodies are not under ICASA jurisdiction. Hence, it is complex to regulate a market that falls under a different jurisdiction - in this case, the TV sports rights market.

2.4 Regulating TV Sports Rights to Reduce Barriers to Entry, and Promote Competition, in Pay-TV Sectors

Regulation of sports bodies and the pay-TV operators is complex**.** The sports bodies do not fall under the authority of ICASA, unlike pay-TV broadcasters. Sports bodies are not even accountable to the Minister of Sport and Recreation in matters relating to TV sports rights, but are accountable only on general sporting matters. The Competition Act of 1998 and ECA of 2005 do, however, provide that the Commission and ICASA can work together to resolve issues of mutual interest

such as sports rights regulations (Republic of South Africa, 1998; Republic of South Africa, 2005).

2.4.1 No-Single-Buyer Regulation

In European jurisdictions, competition authorities have introduced measures to prevent a single television operator from acquiring all sports rights. For example in 2010, the UK regulator Ofcom investigated how the English Premier League sold live UK audio-visual media rights for English Premier League soccer matches. The investigation was triggered by Virgin Media Limited. Specifically, Virgin Media Limited complained about the number of league matches broadcast live compared to other leagues in the European region. Virgin Media Limited alleged that the few matches broadcast lead to consumers paying more for TV packages, and TV retailers paying more for channels.

In 2016, Ofcom concluded its investigation of the English Premier League. At the time of closing the investigation, the English Premier League had, in the next bidding round, committed itself to increasing the number of live broadcasts for soccer matches to a minimum of 190 per season from the start of the 2019/20 season. This was an increase of 22 matches per season over the number sold for live broadcast in the English Premier League's auction in 2015. In addition, the league's next bid will include a "no single buyer" rule, preventing one television broadcaster from being awarded all the TV sports rights (Ofcom, 2016). Only a year later, BT and Sky won the TV sports rights for the season 2019-22. They entered into an agreement in which they share rights on each other's platforms from the start of 2019 (Sportspromedia, 2017).

In Italy, the Decreto Legislativo regulates for audio-visual rights to be sold through public tenders and states the criteria for the offer of different packages. It also contains a "no single buyer" rule (Blázquez, Cappello, Fontained, & Sophies Valais, 2016). The German Soccer League, introduced a "no single buyer" rule to guarantee that TV rights were widely accessible. They decided that the rights be accessed by at least two operators. This has already become the practice in other European countries where soccer is a dominant culture and where rights are now shared between two broadcasters: in Italy, Sky and Mediaset Premium; in France, Canal and beIN Sports, and Telefonica and beIN Sports in Spain (Blázquez, Cappello, Fontained, & Sophies Valais, 2016).

2.4.2 Essential Facilities Regulation

An essential facility is defined as an "infrastructure or resource that cannot reasonably be duplicated and without access to which competitors cannot reasonably provide goods or services to their customers" (Department of Trade and Industry, 1998, p. 7). Essential facilities for TV sports rights are prevalent in markets with dominance by one or a few players, in a bid to discourage abuse of their position (Bergman, 2001, p. 403; Opi, 2000, p. 10). Principles of reasonable access, fairness and non-discrimination are the main elements in implementing essential facilities regulation (The European Union, 2010; OECD, 1996, p. 6). Levy (as cited in Smith et.al, 2015, p. 7) points out that essential facilities regulations form part of the EU competition framework for exclusive live sports programming. The availability of TV sports rights at the downstream level is crucial for broadcasters to be able to compete, and holding TV sports rights on an exclusive

basis for longer periods is uncompetitive. While essential facilities regulation can be a remedy for new entrants' access to TV sports rights, the rights are still usually provided at a considerable cost (Smith et. al., 2015, p. 7). Competition concerns in the pay-TV market can be addressed through wholesale-must-offer regulation to enable competitors to the dominant player to access sports premium content (Smith, Evens, & Iosifidis, 2015).

A wholesale-must-offer regulation is one form of essential facility regulation applied in the broadcasting sector. Wholesale-must-offer is defined as "the requirement for certain content providers (programme providers or aggregators) to provide their channels or channel packages to a network or platform operator or aggregator which is interested in distributing and marketing them" (Scheuer & Schweda, 2008, p. 3). The primary focus of wholesale-must-offer obligation in broadcasting is to share channels that promote the public interest and encourage competition (Scheuer & Schweda, 2008, p. 4). Wholesale-must-offer is one of the remedies introduced to address anti-competitive behaviour in the TV sports rights market, in that it requires the dominant incumbent to offer its premium sports content to its competitors in fair and non-discriminatory terms.

Another form of essential facilities regulation is the application of a content access regime. One of the submissions to the 2012 Australia's Convergence Review Final Report recommended that "a content access regime" (allowing content to be accessed by competitors of the incumbent) should be introduced to deal with the anti-competitive behaviour of bundling exclusive premium content (Australian Government, 2012, p. 30).

At least three EU cases in the broadcasting sector have implemented the must-offer obligation.

Under UK jurisdiction, the Communications Act requires the regulator Ofcom to ensure that broadcasting services are distributed to all networks. In 2010, after extensive consultation, Ofcom concluded that UK BSkyB has held the exclusive rights to broadcast first-run Hollywood movies and many of the most sought-after premium sports. Consequently Sky was regarded as having market power in the wholesale market (Ofcom, 2010). The concern from the regulator was the unwillingness of Sky to offer its premium channels on a wholesale basis to other operators. In an effort to provide choice for consumers and to address competition in the TV sports content, Ofcom enforced a wholesale-must-offer obligation (Smith, 2013, p. 12). The wholesale-must-offer imposed by Ofcom required that Sky Sports 1 and 2 be offered to retailers on platforms other than Sky's, at prices set by Ofcom (Ofcom, 2010). The price regulation set prices for standard-definition versions of Sky Sports 1 and 2 to allow a competitor to match Sky's retail prices (Ofcom, 2010).

The importance of wholesale-must-offer was also highlighted in the South African Integrated ICT Policy Review of 2014 and was recommended as a way of facilitating fair and non-discriminatory access to sports premium content (RSA, 2014, p. 43). In realising that there was sufficient competition in the UK market, Ofcom dropped the 2010 the wholesale-must offer regulation in 2015 (Ofcom, 2015).Effective implementation of wholesale-must-offer regulations must apply terms and conditions of access, such as pricing among others as was effected by

Ofcom for effective participation by new entrants (Geradin, 2005; Smith, 2013). Thus, the effectiveness of the wholesale-must-offer regulation is based, among other things, on integrating price regulation, such as was applied to the BSkyB wholesale must-offer (Smith, 2013, p. 13).

2.4.3 Regulating TV Rights Management by Sports Bodies

At the heart of TV sports rights is the behaviour of sports rights owners, specifically how sports rights owners sell TV sports rights to various television broadcasters. The approach of sports bodies has been self-regulation. Sports bodies have tended to be independent of the government (Mrkonjic & Geeraert, 2013). International sports organisations, such as FIFA, have quite stringent regulation on the interference of national governments in sport, and countries are ultimately expelled or suspended by these international bodies.

In South Africa, the broadcasting sector regulator ICASA has no jurisdiction over sports federations. It is only the Ministry of Sport and Recreation that can engage and negotiate with the sporting sector. As has been done before, the Competition Commission has a role to play when consumers are deprived of a commodity, in this case - sport. For instance, in 2015 Spain introduced the commercialisation of TV sports rights through collective selling of TV sports rights through a decree to be implemented by the Competition Commission. The decree also make provision for some games to be reserved for FTA broadcasters (Blázquez, Cappello, Fontaine, & Valais, 2016).

2.5 The Balancing Act of TV Sports Rights Regulation

Universal access of information to the public is a Constitutional right and therefore, regulation seeks to ensure that the public is not deprived as a result of the pursuit of commercial interests. The TV sports content market is a complicated balancing act for policymakers and regulators in maintaining, on the one hand, the viability of the broadcasting markets, and on the other, the interests of consumers and citizens, while ensuring that sport is developed.

Smith et al. (2015) present three approaches to regulating exclusive rights in TV sports rights content: (a) free market, (b) strong regulation, and (c) balanced regulation. In the free market approach, the broadcasting market is at the disposal of market forces with minimal involvement by the policymaker or regulator. Weak regulation characterises the free market approach with almost “hands-off” regulation, which can lead to a monopoly by the incumbents. With strong regulation, specific sports are reserved for FTA broadcasters. Smith et al. (2015) further argue that most countries fall in between the two regulatory extremes - (free market and strong regulations). Therefore, this research has adopted Smith et al.’s (2015) conceptual framework as the guiding framework in examining the effectiveness of TV sports rights regulation in South Africa, treating effectiveness as the degree to which SA regulation of TV sports rights has, to date, achieved the Smith et al.’s “balanced regulation” approach. A balanced approach seeks to create a balance between commercial and social imperatives by applying regulations in a manner that will ensure sports rights are not the preserve of the TV subscription broadcasters. For example, to introduce measures that will prohibit TV subscription broadcasters from owning TV sports rights exclusively for long periods. Further, to draw up a list of national sporting events which are first

offered to FTA television broadcasters to enable broader access to these sporting events.

CHAPTER 3: RESEARCH METHODOLOGY

3.1 Research Questions

The primary research question was: How effective is the regulation of TV sports rights in South Africa?

The secondary questions were those presented in Table 5, which have been excerpted from my interview protocol.

Table 5: Secondary Research Questions

What has been the influence of the current South African regulations on TV sports rights?	What is your understanding of the current system by which South African TV operators purchase TV sports rights, and what is the influence of this system on the South African TV sector? How does collective selling of TV sports rights affect the TV sports rights market? How does collective selling of TV sports rights affect the South African TV sector? What, if any, are the problems with the existing system of TV sports rights acquisitions by South African TV broadcasters, and why? What is your perception of the current state of TV sports rights regulation in South Africa? What has been the effect of the current South African regulatory dispensation in respect of TV sports rights, and why?
What should the objectives of South African regulation of TV sports rights be?	What should be the core objectives and principles behind TV sports rights regulation in South Africa? What benefits should South African TV sports rights regulation seek to achieve for the sports fraternity, for television broadcasters, for viewers? What sports events should be included in, or excluded from, the "listed" sports events?
What possible new policy and regulatory measures for TV sports rights could be implemented in South Africa?	What, if any, could be possible new, or revised, policy and legal interventions for TV sports rights in the South Africa TV sector, and why? What, if any, could be possible new, or revised, regulatory interventions for TV sports rights in the South African TV sector, why? Based on your experience, what policy, legal and regulatory interventions have worked in the other countries and should be tried in South Africa, and why? How should be the roles of South African regulatory authorities (e.g., the communications regulator, the competition regulator) with respect to TV sports rights?
	Are there other thoughts you would like to add regarding sale, acquisition and/or regulation of TV sports rights in South Africa?

Source: Researcher's interview protocol

The interviews were conducted according to an interview protocol (as excerpted above in **Error! Reference source not found.**). An interview protocol is a guide that directs the researcher's questioning during the interview process (Jacob & Furgerson, 2012, p. 2).

3.2 Research Design

This research utilised a qualitative methodology through document analysis and semi-structured interviews. The conventional approaches utilised in research are qualitative and quantitative methods. Qualitative research enables a researcher to validate theories and concepts with the data gathered from the field (Corbin & Strauss, 1998, p. 4). Qualitative research is an attempt to get a deeper understanding and interpretation of a phenomenon (Abawi, 2008, p. 5).

According to Corbin and Straus (1998, p. 10): “Qualitative methods can be used to explore substantive areas about which little is known or about which much is known to gain novel understandings.” According to Wagner, Kawulich and Garner (2012), “qualitative research strives to create a coherent story as it is seen through the eyes of those who are part of that story, to understand and represent their experiences and actions as they encounter, engage with, live through situations” (Wagner et al., 2012, p. 124).

This research employed qualitative research, as the research questions sought to understand the phenomenon of regulation in the TV sports rights market in South Africa (Strauss & Corbin, 1998). The advantage of qualitative research is that it enables one to sample subjects that cover several aspects of the study. It is easily adaptable to changes that take place in the course of the study, therefore allowing a level of flexibility with the questions when the need arises (Anderson, 2010). Hence, the qualitative method was more appropriate for this research, providing an opportunity to understand the interviewees’ experiences and expertise (Creswell, 2009, p. 4; Elliot & Timulak, 2005).

Due to the policy and regulatory nature of the research, the research used semi-structured interviews to allow for more probing and in-depth discussion on the questions (Harrell & Bradley, 2009, p.35).). Semi-structured interviews are useful in cases where the researcher requires detail and understanding around the topic. However, I focused primarily on document analysis, and utilised interviews as a complementary means to confirm or dispute the document analysis.

3.3 Data Collection and Analysis

This research utilised qualitative analysis of two sources of primary data: (1) primary documents, and (2) semi-structured stakeholder interviews. I first analysed the documents and thereafter conducted interviews as a complement to the primary documents.

3.3.1 Primary Documents

The primary documents utilised in this research were chosen because they were: (1) legislation or policies with an impact on TV sports rights; or (2) documents connected to policy and regulatory processes in which TV sports rights arose as a central issue. Below is a list of the key primary documents utilised:

- Broadcasting Act 4 of 1999

- 26 June 2001: Meeting report by Parliamentary Monitoring Group: Sport and Recreation Portfolio Committee; Sorts Events of National Interest: Discussion with ICASA
- 2002: ICASA: Discussion Paper: Inquiry into Sports Broadcasting Rights
- 2003: ICASA :Sports Broadcasting Rights Regulations, 2003
- 2004: ICASA: Discussion Paper: Inquiry into Subscription Broadcasting
- 2005: ICASA: Subscription Broadcasting Services Position Paper
- Electronic Communications Act of 2005
- 2008: ICASA Review of Sports Broadcasting Rights Regulations Discussion Document
- 2010: ICASA: Preliminary Findings and Conclusions Document on the Regulation of Sports Broadcasting Rights
- 2010: ICASA: Findings and Reasons Document on the Regulation of Sport Broadcasting Rights
- 2010: ICASA: Sports Broadcasting Services Regulations
- 2011:ICASA: Issues Paper: A Review of the Broadcasting Regulatory Framework Towards a Digitally Converged Environment
- 2011 Department of Sport and Recreation: White Paper on Sport and Recreation Final Draft
- 2012: ICASA: Preliminary Report on Public Consultation Processes: The Review of Broadcasting Regulatory Framework Towards a Digitally Converged Environment
- 2013: Department of Sport and Recreation: The White Paper on Sport and Recreation for the Republic of South Africa
- 2013: ICASA: Final Report: The Review of Broadcasting Regulatory Framework Towards a Digitally Converged Environment in South Africa
- 2014: DTPS: National Integrated ICT Policy Discussion Paper: Options Paper
- 2017: ICASA: Discussion Document: Inquiry into Subscription Television Services
- 21 August 2018: SABC Presentation on Sports Rights, Non-Payment of Independent Producers, Union Concerns to the Portfolio Committee on Communications
- 23 October 2018: ICASA Briefing to Portfolio Committee on Communications on the pending Review of Sports Broadcasting Regulations
- 14 December 2018: ICASA: Draft Sports Broadcasting Services Amendment Regulations, 2018

Document analysis is defined as “a systematic procedure for reviewing or evaluating documents both printed and electronic (computer-based and internet-transmitted) material” (Bowen, 2009, p. 1). Key to document analysis is the ability to examine and interpret in order to deduce meaning to gain better understanding of the subject matter (Bowen, 2009).

The process of analysing documents is likened to a value-chain process of finding, interpreting, and synthesising data in the document (Bowen, 2009). The researcher can select excerpts, quotations or entire passages from documents such as reports, policy and official records, among others. Through the results of the document analysis, one is able to identify themes and categories and link them to the theoretical

framework (Ritchie & Spencer, 2002). In this research, the documents analysed were juxtaposed with the theoretical framework of the research (Smith et al., 2015), and in particular, to assess whether a specific regulation, policy or legislation achieved its intended objectives in relation to TV sports rights.

3.3.2 Semi-structured Stakeholder Interviews

I identified 19 stakeholders to be interviewed and managed to conduct 16 interviews. Two of the targeted interviewees could not commit to the interviews, and one did not honour the interview appointment. The three stakeholders who did not participate were: (1) a representative of a non-active subscription television licensee, (2) a government policymaker, and (3) a representative from a civil society entity. The interviewees were selected based on their involvement, knowledge and connection to the TV sports rights issues. Below in Table 6 is the list of the 16 interviewees conducted in 2017.

Table 6: Interviewees

Category	Organisation	Date	Interview format
Free-to-air TV operators	SABC (two interviewees)	18 April 2017	in-person on the premises of stakeholders
		3 June 2017	
	e.tv	18 July 2017	
Pay-TV operators	MultiChoice	16 March 2017	in-person at the premises of the stakeholders
	StarSat (formerly TopTV)	16 August 2017	
Prospective pay-TV entrant	Telkom Media	17 July 2017	in-person at stakeholder's premises
Sports federations	SARU	4 April 2017	SARU, PSL and CSA interviews in-person on premises of stakeholders; SAFA interview via telephone
	Premier Soccer League (PSL)	24 April 2017	
	Cricket South Africa (CSA)	12 July 2017	
	South African Football Association (SAFA)	18 July 2017	
Industry experts	independent consultant	21 April 2017	in-person in a public place
	independent consultant	17 July 2017	via email
Regulators	Competition Commission	31 May 2017	in-person at stakeholders' premises
	ICASA	6 June 2017	
		18 April 2017	

		3 June 2017 18 July 2017	in-person at stakeholders' premises
Civil society	Right to Know (R2K)	6 June 2017	in-person at stakeholder's premises
Policymaker	Department of Communications (DoC)	25 October 2017	in-person at stakeholder's premises

3.3.3 Purposive Sampling

Sampling refers to the process used to select a portion of the population for study. Sampling is mostly done to access the sources of the richest data to answer the research question (Ploeg, 1999). Types of sampling include purposive samples, snowball samples, quota samples and convenience samples.

Purposive sampling was identified as an appropriate method for this study, as I had certain perspectives in mind for examination and wanted to seek out research participants who covered that full range of perspectives (Blackstone, 2016). Purposive sampling was also justified by my familiarity with the sector through work experience, which enabled me to select the most suitable participants (Wagner et al., 2012, p. 93).

Purposive sampling is a method whereby the researcher has certain perspectives in mind for examination and seeks out research participants who cover that full range of perspectives (Blackstone, 2016).

The same questions were to be posed to all participants, so as to elicit comparable responses for data analysis. I conducted interviews with two subjects, in order to test the appropriateness and usefulness of the design. Feedback from the pilot interviews assisted with strengthening and tightening of the interview protocol.

3.3.4 Data Analysis

Qualitative research utilises various methods in the analysis of data. Data analysis involves constant comparison utilising a chosen method. I used thematic analysis (Thorne, 2000) to interpret the data. Mays, Pope, Ziebland and Alfred (2000) have identified five steps of analysing qualitative data. Familiarisation means getting to grips with the raw data by listening to recordings and going through notes. Identifying the thematic framework is the identification of key issues and themes, and prioritising issues according to the research questions, and this process assists with indexing of data. The next stage is arranging data according to the thematic framework to which they relate. The last stage is mapping and interpretation where concepts and their relationship between the themes are explained, leading to findings of the study (Mays, Pope, & Ziebland, 2000; Alford, 1998). The themes and content emerging from the study were compared back to the theoretical framework. I anchored the analysis in the regulatory approach of Smith et al. (2015) which seeks to find a balance between commercial imperatives "(of broadcasters and sports organisations)" and the public

interest based on sociocultural benefits for citizens through FTA television broadcasters.

3.3.5 Validity and Reliability

Qualitative research allows various sources to be used to contribute to validity and reliability. A single method of analysis of a phenomenon cannot adequately provide answers to a study (Cohen & Crabtee, 2006). Therefore, a triangulation approach combining document analysis and interviews was the basis for this study's analysis. Triangulation is approaching a phenomenon from different perspectives, angles, and viewpoints (Alford, 1998, p. 124). Triangulation results in a stronger research design, providing more valid and reliable findings (University of Glasgow, n.d.)

I first analysed the documents, and then conducted interviews as a complement to the documents.

3.4 Ethical Issues

The protection of subjects or participants in any research study is imperative. Awareness of ethical issues in conducting research is critical for both the researcher and the participants. In the course of this study, I had a responsibility to protect the research subjects (Orb, Eisenhauer, & Wynaden, 2000, p. 3).

I assigned codes to the participants as a way of maintaining anonymity and preserving confidentiality, and I was flexible on the location of the interviews. A digital recorder was used to record the interviews, subject to the consent and approval of the participants. At the inception of the interview process, letters were sent to all stakeholders to establish willingness to participate in the research. An information sheet outlining the study formed part of the invitation letter. A consent form was also prepared so that participants could confirm their willingness to participate. The form outlined issues such as how confidentiality would be guaranteed.

3.5 Research Limitations and Challenges

Among the identified limitations of qualitative research is its dependency on the skills of the researcher. Bias in qualitative research is a constraint that can be manifest in different ways (OccupyTheory, 2014). Among other things, the previous experience of a researcher can inadvertently influence the interviews through questions biased towards the interests of the researcher. In addition, the subjectivity of a researcher can influence the interpretation of the data (Nagappan, 2001). Unlike quantitative studies, rigorousness in qualitative research is much harder to prove.

In the interview process, the interviewer can sometimes have an effect on the subjects' responses to questions (OccupyTheory, 2014). The small sample of participants might also influence the outcome of the research. There is a possibility of participants pursuing their own interests. To mitigate against being influenced by the participants, I had to avoid "over-rapport" as this could compromise objectivity (Nagappan, 2001, p. 4).

In the course of doing this research, I was confronted with several challenges. One of the interviewees which is a critical stakeholder and policy maker despite numerous follows with the Department could not participate in the research. Also, a representative of an aspirant pay-TV operator did not honour an agreement to be

interviewed. In addition, only one stakeholder from civil society was interviewed in this research.

Also, 15 of the 16 interviewees raised strongly critical views on the monopoly of MultiChoice as a dominant subscription television broadcaster, and this could have influenced me in posing the questions to the stakeholders. Finally, many documents from the ICASA regulatory processes, especially those published before 2015, did not include the original stakeholder inputs and merely provided summaries from the consultation outcomes. This made it difficult to present quotations from the original submissions to the regulator.

3.6 Declaration of Interests

My position in government, working for the Department of Communications, involves working on policy matters in the sector. I therefore, had to be self-aware and practise reflexivity – “reflecting upon the ways our values, experiences, beliefs, interests, political commitments, wider aims in life and social identity have shaped research, how research may have affected and shaped us” as defined by Griffin (2002, p. 11). It was paramount to incorporate reflexivity into the execution of the study.

CHAPTER 4: RESEARCH FINDINGS: SOUTH AFRICAN REGULATION OF TV SPORTS RIGHTS

4.1 Influence of Current Regulatory Dispensation

4.1.1 Deficient FTA Operator Access to, and/or Use of, TV Rights for Sports Events of National Interest

4.1.1.1 Sub-Licensing Bottlenecks

In the 2013 ICASA Inquiry into Subscription Television Broadcasting Services, the SABC complained about MultiChoice's stringent sub-licensing conditions constraining the public broadcaster's ability to exploit the content of sport rights. The public broadcaster is faced with the predicament of balancing commercial viability with satisfying public interests. Three of the 16 interviewees in this research spoke of the dilemma faced by the FTA operators when choosing to air sports events over scheduled programming, which is a source of revenue. The shifting of scheduled programmes impacts negatively on the advertising revenues as viewers are forced to switch to other programmes.

Five of the 16 interviewees stated that there is a need to spread the sports rights between FTA TV and pay-TV broadcasters. One of the interviewees, a sector specialist, reflected it as follows:

> My sense is, the problem lies with subscription broadcasters with too much power. In SA, there is very little competition, DStv [owned by MultiChoice] has 98% market while StarSat has 2%. […]You need FTA to have access to sporting events. (interviewee 5)

The ICASA Subscription Television Broadcasting Position Papers of 2017 and 2004 both noted the importance of subscription broadcasters' exclusive access to TV sports content for their survival. As a result, in both the 2003 and 2010 versions of the ICASA Sports Broadcasting Service Regulations, the regulator attempted to accommodate the subscription broadcasters' need to access sport events of national interest (though not on an exclusive basis, seeking also to ensure FTA access to the TV sport rights) (ICASA, 2005, p. 72; ICASA, 2017). Lack of sub-licensing regulations, to govern licensing agreements between TV sport rights owners and sport rights buyers such as television broadcasters, has created challenges for the sports rights market. Four out of the 16 interviewees noted the bottlenecks created by the absence of a regulatory framework on sub-licensing of sports rights for television broadcasting. An interviewee from an FTA broadcaster reflected that, in the case of rugby, FTA television broadcasters are denied an opportunity to negotiate directly with the SARU due to the exclusive rights given to MultiChoice. The interviewee noted that the regulatory gap on sub-licensing also allows the subscription broadcaster to dictate the conditions of broadcasting the sports events when sub-licensing occurs. Such conditions – for instance, limits on how much the FTA can advertise the event, and specifications that the FTA broadcast must be delayed live or several hours later – undermine the ability of the FTA to recoup its investment.

An interviewee from an FTA broadcaster said the following on sub-licensing challenges in TV sports rights market:

> The public broadcaster is not given a space to speak or even to participate fairly. The SuperSport [owned by MultiChoice] then tell us [what] you can do, but at this price, or do it delayed because you are going to compete with our commercial interests. Over and above, if you want to do anything you have to wait for us. (interviewee 8)

Submissions to the 2008 ICASA Review of Sport Broadcasting Services Regulations raised the shortcomings of the sub-licensing provisions in the current regulations. The majority of the submissions recommended that ICASA explore a sub-licensing regime that will address disputes arising from commercial agreements (ICASA, 2010a). In this research, an interviewee, a sector expert, singled out the ineffective dispute-resolution mechanism as one of the factors negatively influencing access to sports rights. The expert pointed out that the dispute-resolution mechanism in the regulations is vague. In the 2008 review, Telkom Media suggested the development of a licensing framework that will ensure certainty and transparency in areas such as unbundled rights and packages, and that will ensure limited contractual obligations. M-Net recommended for a specific sub-licensing guided by section 60(2) of the ECA and that it could be a remedy to resolve disputes. Mobile operator MTN's submission was as follows:

> MTN submits that a sub-licensing regime by the Authority in terms of section 60(2) could indeed be one of a number of effective dispute resolution mechanisms i.e. a regulatory framework which first of all relies on commercial agreement to prevent a breach of section 60(1), and regulatory intervention only occurs if a dispute is referred to the Authority in terms of section 60(2). (ICASA, 2010a)

Accordingly, in terms of section 6(3) of the recently published ICASA Draft Sports Broadcasting Services Regulations of December 2018, a broadcaster is not allowed to prohibit another from advertising a national sporting event. Further, section 8(3A) requires that unresolved disputes be referred to the ICASA Complaints and Compliance Committee (CCC) (ICASA, 2018).

4.1.1.2 Absence of Dedicated FTA Sports Channels

In the review of the 2003 Sports Broadcasting Services Regulations in 2008 by ICASA, the PSL and SAFA raised a concern over lack of a dedicated SABC sports channel ICASA, 2010a). Four interviewees from sports bodies in this research complained about the lack of capacity by the SABC to broadcast sports events. The sports bodies were specifically concerned due to the negative impact on the sponsorship and advertising revenue as result of non-exposure of their sports events when broadcast by the SABC. An interviewee from a sports body expressed lack of capacity by the SABC as follows:

> You see the whole thing about launching a [24-hour sports channel], that's never happened. Had it happened, we will have a different conversation, as that conversation continued and continued, with three channels [that] have shown less and less sport. (interviewee 2)

In the 2013 ICASA Inquiry into Subscription Television Broadcasting Services, CSA lamented that South African FTA broadcasters lack dedicated sports channels and that this negatively affects CSA ability to broadcast all its matches. CSA further pointed out that having only three broadcasters in the pay-tv market (MultiChoice, StarSat and Deukom) also limited its reach to, and revenue streams from, advertisers. Thus, CSA said competition was essential to widen the market to offer its sports rights (CSA, 2017).

In the words of interviewee 11:

> The challenge that the SABC has, is that they have limited amount of channels. […] Cricket […] takes [a] long time, the whole day. It needs a dedicated channel. (Interviewee 11)

4.1.1.3 Delayed Regulatory Review

One interviewee pointed that, at the time of the interview in 2017, it had been seven years since the last review of the ICASA Sports Broadcasting Regulations, amounting to regulatory failure (since the Regulations are supposed to be reviewed every four years) and inadvertently strengthening the position of the incumbent (interviewee 7).

It was only in 2018, eight years after the 2010 Regulations came into effect, that ICASA began a new review. In October 2018, ICASA briefed the South African Parliament that it had commenced with the review of the Sports Broadcasting Services Regulation. In this briefing, the regulator outlined the stakeholders it had met so far. As a way of resolving sub-licencing disputes, the regulator proposed the following to the Portfolio Committee on Communications:

> A broadcasting service licensee entering into a commercial agreement in terms of these regulations may report any unresolved dispute and/or non-compliance with regulation 8(1) and 8(2) to the Authority. (PMG, 2018)

In December 2018, ICASA released Draft Sports Broadcasting Services Amendment Regulations. The amendments have introduced three categories of listed events: group A, B and C. In group A, ICASA has what is called “compulsory listed events, which include events that are covered in the current regulations. These events are designated for the FTA broadcasters, and only in instances where the FTA broadcasters cannot acquire the rights, the FTA broadcasters must inform the subscription broadcasters so that they have an opportunity to acquire the rights (only on a non-exclusive basis). The sporting events in group B include domestic, continental and international competitions. For example the list has Super Rugby 14, the All Africa Games, Premier Soccer League, and domestic cricket competitions, and these are to be offered to the subscription broadcasters only on a non-exclusive basis. The sporting events in group C are developmental and minority, with minority sports defined in the 2018 Draft Regulations as “as any sport that does not have the majority of the population’s following a sport having a less distinctive presence within a larger society. Developmental Sports are defined “as sports aimed at promoting social change social enlarging and population's choices and increasing opportunities to all members of the society” (ICASA, 2018). The developmental and minority sports events include basketball, martial arts, water polo, varsity sports, golf and motor sport among others. In this category both FTA and subscription broadcasters are required to broadcast at least two of the listed events in a calendar year (ICASA, 2018).

4.1.2 TV Sports Rights as Threat to Competition, and as Barrier to Entry in Pay-TV Sector

In the 2017 Discussion Document of the ICASA Inquiry into Subscription Television Services, the regulator noted that the regulation of sports rights is the responsibility of both the Competition Commission and ICASA. ICASA referred to the 2005 Subscription Broadcasting Services Position Paper, in which it had decided not to regulate the exclusive acquisition of premium sports content (i.e., content not considered sports events of national interest). It noted that competition concerns arising from the premium sports content could be dealt with under the competition framework. Below is how the regulator, in 2017, captured its understanding of the role of the Competition Commission:

> The Authority has also decided not to regulate programme packaging/tiering. Competition issues that arise may be dealt with by way of general competition law. (ICASA, 2017, p. 38)

In the statement released in 5 February 2019, the Competition Commission acknowledged that from 2012 to 2017 it received complaints on the abuse of dominance by MultiChoice and its sports channel Supersport. Upon its investigation the Commission came to a conclusion that there are slim chances of successful prosecution of MultiChoice through the Competition Tribunal. It noted that the abuse of dominance by MultiChoice can be address through regulatory intervention. The Commission has instead acknowledged ICASA Inquiry into Subscription Television Broadcasting Services as a viable option to address complaints (Competition Commission, 2019).

In the 2011 ICASA Issues Paper on a Review of the Broadcasting Regulatory Framework Towards a Digitally Converged Environment, one of the objectives of the paper was to assess how to balance consumer access to public interest content (e.g., sports of national interest) whilst fostering and promoting competition within the broadcast environment. The Issues Paper acknowledged that competition between broadcasters is influenced by the prices of TV sports rights, which in turn affect the consumers (ICASA, 2011, p. 48). Consequently, in many cases TV sports rights are unaffordable for the FTA broadcasters (ICASA, 2011, p. 50). The view of the regulator on the prices of TV sports is captured as follows:

> The competition by broadcasting service providers for the acquisition of transmission rights is affecting prices and access by the public. (ICASA, 2011, p. 48)

The report generated by the ICASA Review of the Broadcasting Regulatory Framework Towards a Digitally Converged Environment, released in 2012, states that stakeholders who gave input to the review highlighted the importance of access to TV sports rights by all TV broadcasters. According to the ICASA report, Kagiso Media pointed to the power of monopoly in South Africa in both pay-tv and FTA (presumably referring to the SABC) as contributing to market failure in respect of TV sports broadcasting rights. Specifically, the regulator was perceived as favouring the dominant subscription broadcaster, MultiChoice. As one remedy, Kagiso Media proposed an inquiry with the objective of assessing whether the current framework favours the dominant incumbent in pay-tv, MultiChoice (ICASA, 2013). The submission of Kagiso Media was summarised in ICASA's final report as follows:

> Market failure in the area of sports broadcasting and premium content rights is inevitable given the power of monopoly players, whether FTA or subscription. (ICASA, 2013, p.13)

The SOS: Support Public Broadcasting Coalition submitted that ICASA should initiate an inquiry with the intention of introducing pro-competitive measures that would look into acquisition, retention and use of sports broadcasting rights. The SOS noted a need to assess whether the current regulations are effective in balancing the interests of all TV market sub-sectors. ICASA summarised the SOS submission as follows:

> This enquiry should […] interrogate the effectiveness of the current sports broadcasting regime and in particular, whether the current regulatory regime unfairly favours the effective monopoly of the incumbent subscription broadcaster, to the detriment of free-to-air broadcasters, and particularly the public broadcaster which the public relies on for national sports coverage. (ICASA, 2013, p.14)

Due to the myriad of competition-related concerns in the premium content as raised by various stakeholders, the authority committed, in its 2013 Final Report on the Review of Broadcasting Regulatory Framework Towards a Digitally Converged

Environment in South Africa, to undertake a market study to investigate potential content-related competition issues to promote fair and effective competition in content markets. Accordingly, in 2017, ICASA began its Inquiry into Subscription Television Broadcasting Services to deal with competition concerns. At the time of finalisation of this research report in early 2019, the ICASA 2017) into Subscription Television Broadcasting Services in 2017had not been completed to be able to make an informed view on how ICASA will deal with competition concerns in the subscription television broadcasting.

Fifteen of the 16 interviewees in this research cited the prohibitively high costs of TV sports rights as an impediment to FTA coverage of sport events. In the words of an interviewee from the regulator:

> People go there with huge sums of money PSL, EPL sell for millions and billion[s]. You get those rights but before you get them you must have a big subscriber base, but before you do that those new incumbents cannot afford the rights. They can't afford to compete with the likes of DStv that is our biggest problem. (Interviewee 1)

Three out of the four FTA broadcaster interviewees complained about the absence of pricing regulation on TV sports rights owners (sports bodies). Another interviewee, a policymaker, stated that TV broadcasters seek to outbid each other (e.g., MultiChoice v. the SABC), thus pushing up the prices. Three of the interviewees linked the high prices for TV sports rights to MultiChoice, which they said is, as the dominant player, used as a barometer in determining the prices of rights – and MultiChoice is willing to pay high prices for exclusivity, because of the multiple-channel capacity high broadcast quality provided by MultiChoice's SuperSport channels. An interviewee, from the public broadcaster, articulated the frustration around lack of funding as follows:

> It does not make sense to prescribe the sports of national interest [while] being aware of exorbitant sports rights fees price, [and] being aware [that] the public broadcaster funding model is not necessarily working. You are obliged as [the public broadcaster] to broadcast certain events while there is no funding. (interviewee 4)

Interviewee 13, a sector expert, alluded to the management of costs of TV sports rights as follows:

> SABC and e.tv (among others) have both claimed these [ICASA 2010 Sports Broadcasting Regulations Services] are inadequate as they do not address for example the cost of access to rights to these sports or ensure that rights deals are finalised in sufficient time to allow the broadcaster to develop and implement effective advertising and sponsorship plans. In other countries (e.g. UK and Australia), provision is made to ensure costs are fair and that deals are finalised timeously.
>
> Interviewee 13 added that I also propose that this get extended beyond sports to events of national interest (in line with practice elsewhere) and also make provision for highlights to be aired on FTA news bulletins etc. at fair costs.

Interviewee 7, from a regulator, noted the importance of ensuring that broadcasters are able to recoup their investments from exploiting TV sports rights:

> From your side as a broadcast platform owner, you are thinking about the fact that when I pay a billion rands for these rights, how am I going to recoup this billion rands that I have invested? So I need to think about how wide my network of subscribers is, insofar as how much can I really charge them for subscription in return for accessing the content? (interviewee 7)

In its submission to the ICASA 2017 Inquiry into Subscription Television Broadcasting Services, e.tv submitted that in South Africa, access to sports content is still the

preserve of MultiChoice due to its ability to pay. The broadcaster emphasised that rights holders and subscription broadcasters have a mutual benefit in getting into exclusive contracts. The scarcity of sports content and the competition around it leads to unaffordable prices for FTA broadcasters. e.tv recommended the setting aside of TV sports rights for the FTA operators (e.tv, 2017). e.tv made a written submission in 2017 and was given an opportunity to do a presentation in 2018. The excerpt below is from the 2017 submission:

> e.tv submits that it will be necessary in the future to break the broadcast rights e.g. for sports into FTA and subscription rather than giving all the sports rights to one company. (e.tv, 2017, p.9,)

An interviewee, a sector specialist, noted that the Sports Broadcasting Services Regulations were not addressing the cost of access to sports rights. This weakness was expressed as follows:

> SABC and e.tv, among others, have both claimed these [regulations] are inadequate as they do not address, for example, the cost of access to rights to these sports, or ensure that rights deals are finalised in sufficient time to allow the broadcaster to develop and implement effective advertising and sponsorship plans. (interviewee 13)

In 2018, the Department of Communications published an *Issues Paper: A Comprehensive Review of the South African Broadcasting Policy*, based on the submissions made to the Department of Telecommunications and Postal Services (DTPS) 2014 Integrated ICT Policy before the split of the two departments. In the Issues Paper, the Department reiterated the SABC's concern about the unaffordability of the sports of national interest, despite their importance (Department of Communications, 2018).

Fifteen of the 16 interviewees were of the view that incumbency advantage by MultiChoice, with regard to long-term exclusive contracts with TV sports rights owners, has been a barrier for both existing broadcasters and aspirant pay-TV-sector entrants. The non-responsiveness of the regulator is perceived as perpetuating the monopoly. Interviewee 7, from a regulator, spoke of incumbency advantage as follows:

> […] because this guy has had an opportunity to run first, others will come in later, and what that means is that when they come in later, you've already determined the rules of the game and established yourself. But also here, relationships also come in, because you've already developed a reputation in the market […]. (interviewee 7)

Thirteen of the 16 interviewees, and some of the submissions in the DTPS Integrated ICT Policy Reviews of 2014, complained of regulatory failure, due to slow response to the challenges facing the TV sports rights market, leading to entrenching MultiChoice. One interviewee, from a regulator, expressed it as follows:

> So it does mean that for ICASA, they need from time-to-time to go to the market and check whether this regulatory framework is still sufficient, or do we need to think about other mechanisms? [The Sports Broadcasting Rights Regulations are from] 2010. This is 2017. This is the problem in this market. [...] There is an issue of regulatory failure in this market. (interviewee 7)

According to one of the stakeholders in the 2014 DTPS Integrated ICT Policy Review, as summarised in the National Integrated ICT Policy: Discussion Paper: Options Paper:

> Sumeer Mohanlall (owner of a media enterprise) said that ICASA "has been too hands-off" and proposed that SuperSport [MultiChoice subsidiary] be forced to resell some of

> its content to competitors in a fair, equal and non-discriminatory manner. (DTPS, 2014, p.191)

4.1.3 Free Rein for Sports Federations

Four of the 16 interviewees noted the lack of accountability on the part of TV sports rights owners, particularly sports bodies. Two of the interviewees noted that some South African sports bodies do not conduct bidding processes for their TV rights, and instead hold private negotiations. The agreements produced by these negotiations have terms and conditions that exclude potential competitors, such as overlapping agreements that extend over a number of years.

In the 2008 ICASA Review of the Sports Broadcasting Services Regulations, M-Net (MultiChoice subsidiary) suggested a self-regulation mechanism for sports bodies to make a determination on how to sell their TV rights. M-Net argued that the regulator has no jurisdiction over sports rights owners and cannot regulate the selling regime (ICASA, 2010a). CSA shared this sentiment: that ICASA has no regulatory jurisdiction over the sports bodies on TV sport rights. An FTA broadcaster interviewee complained about the lack of regulation of the rugby sports federation SARU in respect of TV rights:

> For some reason, SARU is comfortable to have given all their rights to SuperSport [MultiChoice sports channels], and allow SuperSport even the right to decide who they are going to trade with. For me that is problematic. (interviewee 4)

The interviewee from the Competition Commission argued that self-regulation by sports bodies prevents broadcasters from accessing TV sports rights in a fair and transparent manner, with the rights primarily allocated to MultiChoice. The Competition Commission interviewee emphasised that the effects of these arrangements have a direct impact on consumer welfare, forcing consumers to subscribe to packages that are bundled with other programmes they might not desire.

One of the interviewees from the SABC described the situation as follows:

> The rights holders are not regulated everywhere in the world. And their rights can be 100,000 rands this year [and] you go back to them next year, they can charge you 150,000 rands or 200,000 rands because they are the owners of that property and can charge you as they wish (interviewee 4).

4.1.4 Insufficent Funding of SABC's Sports Coverage Mandate

Securing TV sports rights has placed tremendous financial strain on the SABC as noted in its 2017/18 annual report that it receives only 3% of its budget from the government (SABC, 2018). In its 2017/18 report the SABC noted it collected R1,016,541,000 in TV licences fees, from the advertising it generated R4,711,772,000 and it received R 253,501,000 in government grants (SABC, 2018). Over and above broadcasting sport events, the SABC has to broadcast national events such as state funerals, foregoing crucial revenue that is lost when regularly scheduled programming is interrupted for live events. Most of the interviewees in this research, and participants in the many consultations by both the DTPS and the regulator, note the important role of the SABC in providing access to sports events for the masses in South Africa. In the ICASA 2017 Inquiry into Subscription Broadcasting Services, the SABC raised its concern of having to satisfy the public mandate without the necessary resources as follows:

> There is no other South African broadcaster which has the SABC's comprehensive range of public mandate obligations while at the same time being exposed to such limited public funding. (SABC, 2018, p. 7)

The civil society interviewee had the following suggestions:

> [For] public and community broadcasters, I think we should ensure that they are sufficiently funded to support the sporting associations, that is one alternative, the other would be our through the ministry of sport and all these departments directly fund the associations and the associations offer the public and community broadcasters [sports events rights for] free (interviewee 10)

Four of the interviewees – two sector experts, an FTA broadcaster representative, and the civil society representative – raised the difficulty in which the SABC finds itself when required to broadcast sports events of national interest, leading to loss of revenue. The shifting of the programmes leads to loss of audiences and by extension loss of advertising revenue. A sector expert alluded to the losses incurred by the public broadcaster during the 2017 AFCON (Africa Cup of Nations, officially CAN, also referred to as AFCON), the main international association soccer competition in Africa. It falls under the Confederation of African Football, and is listed in the Sports Broadcasting Services Regulations.

In August 2018, the SABC presented to the South African Parliament Portfolio Committee on Communications on the negative impact of the cost of sports rights (sports of national interest, and developmental and minority sports) to the public broadcaster, though not distinguishing between radio and TV. The public broadcaster highlighted its unfunded sports broadcasting mandate and all the fact that current sports right regulations did not protect the SABC (SABC, 2018). Below is the SABC presentation to the Portfolio Committee on Communications on the lack of funding for TV sports rights:

> Without any changes to Sports Rights Regulations, SABC would require additional funds to deliver on a number of events of [n]ational [i]nterest and [s]pecial events, which are mandatory sport events as well as events that are deemed as public interest (SABC, 2018)

In the SABC Annual Report of 2016–2017, it was stated that some programmes of the public broadcaster could not meet annual operational targets due to disruptions to accommodate listed sports events (SABC, 2017). As a result of the 2017 AFCON, the SABC lost 18.1 million viewers on some of the key programmes as they were shifted to other times or to other channels (Ferreira, 2017). The balancing act of the SABC, between the public mandate and its own revenue generation needs, came into sharp focus when the national union federation COSATU protested against the SABC for not broadcasting the national rugby team (the Springboks) 2017 match against the New Zealand national team (the All Blacks) (*Sport24*, 2017). This was a match under the Rugby Championship, which is a listed event. The statement from COSATU was a follows:

> National sports that must inspire the whole nation must be shown live on SABC, as it is a national sport of all the people. (as quoted by *Sport24*, 2017)

4.2 Objectives of South African TV Sports Rights Regulations

South African policy identifies sport as important for society. Embedded in the “Vision 2030” of the White Paper on Sport and Recreation, is a call for “increased levels of national unity and socially cohesive communities” (RSA, 2012, p. 24). In the White Paper, nation-building is defined as follows: “fostering a South African identity, national unity and promoting a common sense of belonging” (RSA, 2012, p. 7). In the 2001 ICASA Discussion Paper Inquiry into Sports Broadcasting Rights, the regulator made a reference to the public concern that major television sports events were moving from

FTA to pay-tv channels. Therefore, FTA viewers would be deprived of access to major sports of national interest (ICASA, 2002). The 2013 Sport and Recreation White Paper calls for maximum access to, development of, and excellence in, sport at all levels (Department of Sport and Recreation, 2013). The White Paper defines social cohesion in these terms:

> Use sport and recreation as a medium to enhance social interaction, better understanding and cooperation between the different cultural groups of South Africa. Sport and recreation also have the ability to contribute to social inclusion and to combat anti-social behaviour (Department of Sports and Recreation, 2012, p. 20).

One interviewee, from a prospective pay-TV entrant, encapsulated the view of the majority of interviewees in criticising the fact that rugby is only shown on the MultiChoice platform, creating a perception that rugby is an exclusive "white" sport, as it is not seen by viewers of FTA platforms, who are predominantly black South Africans.

Another interviewee, from a subscription broadcaster, expressed this view:

> You can't run a country [based on] what I call a "conscience", and that's what ICASA is trying to do. […] Sport can be a great tool for government to address a lot of social ills that we have. [But] government is not putting money into sport. Somebody must put [in the money]. A country cannot be run based on social conscience. (interviewee 15)

4.3 Possible New Policy and Regulatory Measures

4.3.1 Revised Approach to Listed "National Sporting Events"

In the DTPS 2014 Integrated ICT Policy Review, e.tv proposed the expansion of the list of public-interest national sporting events to include local soccer derbies, so as to increase opportunities for FTA TV broadcasters.

In the 2013 ICASA Review of Broadcasting Regulatory Framework Towards a Digitally Converged Environment, the SABC proposed that sporting events of national interest be spread among FTA broadcasters (though not clear whether on an exclusive basis). The SABC also proposed a larger government budget for SABC coverage of developmental and minority sports (ICASA, 2013). In this research, five of the interviewees (interviewees 5, 8, 9, 10 and 16) cited the role of the SABC in broadcasting developmental sports.

In the 2008 ICASA Review of Sports Broadcasting Services Regulations, stakeholders had varied views on whether the ICASA list of "national sporting events that are of public interest" required review. Academic Shaun Ryan suggested inclusion of the Vodacom Cup (rugby) final to promote development in rugby. (The Rugby Challenge replaced the Vodacom Cup in 2017). He further noted that the listed events lack indigenous South African sport.

The SABC recommended the revision of the list after every three years as popularity might change (ICASA, 2010a). (According to the current regulations, every four years there has to be revision of the regulations.) WOWtv proposed that listed sporting events include national cycling events and international boxing events (presumably, when a South African is fighting).

One interviewee from a sports body argued that being listed is a disadvantage, as federations do not have enough control over their TV sports rights when an event is

listed. Two interviewees felt that the list must include youth soccer, as a motivation to youth given that developmental soccer is a feeder for professional clubs.

An interviewee from a regulator pointed out that inclusion of the domestic professional soccer (PSL games) in the listed events could contribute to the sustainability of FTA coverage of listed events. MultiChoice's input on sports rights regulation to the DTPS 2014 Integrated ICT Policy Review was summarised as follows by the DTPS:

> Regulation of the broadcasting of national sporting events has significant consequences for all stakeholders and the wider economy, and […] existing regulations successfully balance the competing interests of parties affected by them and strike an appropriate compromise. […] existing mechanisms are "adequate and appropriate" and therefore no amendments are necessary. (DTPS, 2014, p. 212)

4.3.2 Competition-oriented Measures

In the 2008 ICASA Review of Sports Broadcasting Regulations, a number of stakeholders proposed ex-ante (i.e., pre-emptive) sector-specific market interventions that could limit anti-competitive behaviour in the TV sports rights market. Telkom Media proposed anti-hoarding regulations, i.e., for unused sports to be made available to other broadcasters. ODM agreed with Telkom that a principle of "use it or lose it" should apply. The SABC agreed with this approach, which would oblige a pay-TV operator that had acquired rights to listed events but did not intend to broadcast them to offer the rights to the FTA services.

Telkom Media also proposed the following additional ex-ante measures for TV rights for national sporting events: unbundled rights/packages across different platforms; public bidding processes with fair and transparent terms; and limited contract durations (a maximum of three years). The SABC agreed with Telkom on the unbundling of TV sports rights, with some to be reserved for the FTA broadcasters (ICASA, 2010a). ICASA summarised the SABC submission as follows:

> The SABC submits that the Authority should look at enforcing the law of unbundling the rights to free-to-air and should the pay TV broadcaster be the gate keeper, at least 50% of the rights must be available on the free to air space. (ICASA, 2010a, p. 23)

In its submission to the 2017 ICASA Inquiry into Subscription Television Broadcasting Services, the Competition Commission recommended shortening of contracts on TV sports rights and unbundling of the rights (Competition Commission, 2017). In the 2014 DTPS ICT Policy Review, mobile operators Vodacom and Cell C argued – as did several of the interviewees for this research – for the introduction of the wholesale-must-offer of rights to TV sports content both domestic and international (DTPS, 2014). The South African Communications Forum (SACF) proposed the development of wholesale content rights regulations. e.tv, SOS, SACF and Vodacom recommended a wholesale-must-offer regime for TV sports content rights and for focus on the length of exclusive rights contracts (DTPS, 2014).

For its part, MultiChoice told the 2014 DTPS ICT Policy Review that it opposed ex-ante remedies and instead favoured ex-post approaches that sought to address competition problems only once they had manifested themselves.

In the ICASA 2017 Discussion Document for its Inquiry into Subscription Broadcasting Television Services, ICASA recommends the following ex-ante pro-competitive measures: shortening of exclusive contracts, unbundling and splitting of rights, and imposition of wholesale-must-offer (a form of essential facilities regulation). In contrast, the Rugby SA submission was against the shortening of periods of exclusive contracts,

and the submissions from the sports bodies generally opposed the ICASA recommendations.

Telkom Media proposed for regulations to enforce significant monopoly power (SMP) to mandatory release sports content through sub-licensing on fair and reasonable terms.

4.3.3 Dispute Resolution

In the ICASA 2008 Review of Sports Broadcasting Services Regulations, sports rights owners were not in favour of dispute-resolution regulations. The SABC pointed out that in relation to commercial agreements the regulator should not interfere, but in cases of disputes, regulations governing disputes must be in place. The SABC further argued that the regulator must have the powers to appoint a mediator to resolve disputes (ICASA, 2010a).

SA Rugby suggested that a dispute mechanism be limited to national sporting events.

Almost all the interviewees in this research, except the sports bodies and one subscription broadcaster, recommended the wholesale-must-offer regulation and the breaking up of rights on the TV sports rights to open up for competition. In addition, the interviewees suggested a regulatory framework that would allow viewers to choose preferred programmes.

CHAPTER 5: ANALYSIS OF RESEARCH FINDINGS

5.1 Influence of Current Regulations

5.1.1 Insufficient ICASA Regulation of TV Sports Rights

Stakeholders correctly point to the fact that, apart from the ICASA Sports Broadcasting Services Regulations, which only pertain to TV sports rights for a limited number national sporting events, South Africa's TV sports rights market is unregulated.

As expressed by the interviewees in this research, even though the legislative and policy frameworks require subscription broadcasters to sub-license TV sports rights to FTA broadcasters for events of national interest, the South African TV sports 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 TV sports content rights.

The behaviour of sports bodies aggravates the situation because they tend to sell their rights via processes that lack transparency and fair, competitive bidding. In turn, MultiChoice, the dominant pay-TV incumbent and the sports bodies' preferred purchaser of rights, is largely at liberty to determine prices for sub-licensing of TV sports rights. The high costs of TV sports rights are also at the heart of the high rate of failure of the licensees in the pay-TV subscription-broadcasting sub-sector to launch their services. This scenario generates competition barriers for national FTA operators (SABC and e.tv) and for the non-dominant pay-TV operator (StarSat), as well as creating barriers to market entry for aspirant pay-TV operators.

The ICASA Draft Sports Broadcasting Services Regulations published in December 2018 will, if promulgated in their current or similar form, bring needed relief for the FTA broadcasters due to their provision for FTA-designated events (Group A national sporting events). Equally, the draft regulations would present challenges for the sports bodies.

At the same time, while the draft regulations have sports events designated for FTA broadcasters, lack of funding of the SABC will limit its ability to take advantage of the opportunities brought about by the regulations. In pursuit of access to TV sports rights by the FTA broadcasters, the regulator has adopted what some may view as an extreme approach, by including a non-exclusivity clause for all categories (A, B and C) of sporting events. In the ICASA 2002 Inquiry into Sports Broadcasting Rights, the regulator noted that exclusive ownership of TV sports rights by subscription broadcasting services is key to their ability to attract and retain customers. The 2018 Draft Sports Broadcasting Services Regulations are therefore contrary to this principle as none of the categories allows exclusivity of TV sports rights.

To balance social and commercial interests, the regulator should have followed the approach of some countries in the EU such as Germany, UK and Spain to limit the duration of exclusivity to allow subscription broadcasters to survive. Further, in the many enquiries of the regulator, sports bodies have illustrated the importance of TV sports broadcasting rights for survival. The draft regulations will therefore have negative impact on subscription television broadcasters and sports bodies. Once the TV sports rights lose exclusivity they are of no value to the subscription broadcasters and sports events lose their financial value. Equally, FTA broadcasters will not afford the TV sports rights. It seems that ICASA is attempting to curtail the abuse of

dominance by MultiChoice without considering the repercussions to all the stakeholders.

5.1.2 Uncertain FTA Operator Access to TV Rights for Listed National Sporting Events

As we saw in the findings in Chapter 4, the Broadcasting Act of 1999 places an emphasis on the public broadcaster to provide sports programming and developmental sports. The 2005 ECA, as amended in 2010, prohibits subscription broadcasters from exclusively owning broadcast rights to sports events of national interest. However, when ICASA developed regulations to effect the provisions in the ECA and to some extent the Broadcasting Act, the regulations fell short of putting in place checks and balances in safeguarding access by FTA broadcasters to TV sports rights for sports of national interest. The ICASA Draft Sports Broadcasting Services Amendment Regulations of 2018 attempt to a degree to address gaps in the 2010 Sports Broadcasting Services Regulations, but they also create challenges for subscription broadcasters and the sports bodies. The 2010 ICASA Sports Broadcasting Services Regulations allude to regulating sport for the “public interest”, but without being clear on how the public interest can be achieved in the context of the high cost of TV sports rights. In those 2010 ICASA Regulations, the subscription broadcasters are required to sub-license TV rights for sports events of national interest to the FTA broadcasters, but there is insufficient clarity in the regulations on sub-licensing. The 2018 Draft Regulations are still not clear on sub-licensing, simply referring disputes to the regulator.

5.1.3 Continued Incumbency Advantage

In the various ICASA inquiries, and in the interviews for this research, stakeholders have pointed to the dominance of MultiChoice as both a product, and perpetuator, of incumbency advantage. A persistent policy vacuum allowed M-Net to operate as a subscription broadcaster without a licence and without competition, beginning in 1986, and that allowed for the subsequent launch, by the same conglomerate (Naspers) that runs M-Net, of the MultiChoice DStv satellite pay-TV service in 1995, again without a licence and without competition.

The monopoly advantages gained by M-Net, and then inherited by MultiChoice, allowed MultiChoice to build a large customer base and to establish strong and lucrative relationships with all relevant stakeholders, including, in particular, advertisers and sports bodies. Sports bodies in this research have noted the ability of MultiChoice to broadcast sports events at the highest quality standards (infrastructure and commentary), via its ability to provide a dedicated channel capacity to broadcasting sports events (unlike the national FTA TV broadcasters SABC and e.tv, which do not yet have dedicated sports channels).

The stakeholders have pointed out that in many instances the bids from MultiChoice are used as a benchmark, because its FTA competitors, SABC and e.tv, or its sole pay-TV competitor StarSat cannot match their sports broadcasting standards.

ICASA’s 2017 Inquiry into Subscription Television Broadcasting Services seems as an attempt to remedy competition issues in the subscription TV sector, but the outcomes of that inquiry have, at the time of finalising this Research Report in early 2019, yet to be published. Stakeholders also correctly point to the need for the

Competition Commission to play a role in curbing MultiChoice's ongoing incumbency advantage, by investigating and addressing competition deficiencies in the TV sports rights market.

The fast-tracking of digital terrestrial television (DTT) would partially level the playing field for the FTAs, who would, via the multichannel capabilities of DTT, have the ability to broadcast dedicated sports channels to compete against MultiChoice's SuperSport channels.

In the ICASA 2017 Inquiry into Subscription Television Broadcasting Services, MultiChoice argued that there were no competition barriers in the subscription TV market, but this did not acknowledge the failure of the many new licensees. In the Inquiry into Subscription Television Broadcasting Services, Econet Media Kwese (the new OTT service), submitted that MultiChoice's advantage is facilitated by the long-standing relationships built over time, by MultiChoice, with sports content owners even beyond the borders of South Africa, through exclusive rights agreements. This is indicative of the frustration of MultiChoice competitors on the inaction of regulatory bodies for both competition and the broadcasting sector.

5.1.4 Lack of Funding of SABC TV's Sports Coverage Mandate

Most of the stakeholders interviewed in this research, and in other consultations by regulators and government, strongly emphasised the role of the SABC in providing access to sports events as part of its public service mandate across the three channels (SABC 1, 2 and 3).

As a result of SABC TV's audience numbers, government appears to have made the assumption that the SABC can attract advertising sufficient to self-sustain its public mandate to broadcast sports events. However, as noted by the stakeholders interviewed in this research, the public mandate expectation is a financial burden for the SABC. This is in part due to the legislated sports coverage obligation that has not been met with funding to fulfil this expectation.

To broadcast listed sports events, the SABC is forced to shift its regular programmes to make way for the sports events, losing audiences and advertising. Among the findings of this research are the SABC interviewees' convincing assertions that MultiChoice intentionally delays conclusion of sub-licensing agreements for broadcasting of sports of national interest, by adding stringent obligations that undermine the ability of the SABC to recoup, via advanced advertising sales, its investments in the sports rights. If there could be a broad clear regulatory framework on sub-licensing of TV sports rights, which is not confined to the listed events, it could address some of these challenges.

The funding challenges for sports events at the SABC also brings into sharp focus the undefined role of the Department of Sports, Arts and Recreation in engaging sports bodies on high cost of TV sports rights and the long term exclusive rights. In the course of 2018, there have been reports that the SABC was not able to broadcast some Bafana Bafana games, and will not be able to do so in the future, due to financial constraints.

5.2 Objectives of South African Regulation of TV Sports Rights

The ideals of promoting national identity and fostering social cohesion are contained in some of the principles of various pieces of legislation, policies and regulations within the television broadcasting sector. In the many reviews conducted by the regulator and also in the interviews for this research, stakeholders agree on the positive role of sport in addressing the myriad social ills that negatively affect society; to encourage and engender both participation in, and support of, sport and sports activities at all levels. Sport also has the capacity to unify a nation and foster a shared national vision. The main aim of the ICASA Sport Broadcasting Services Regulations is to ensure that sport is accessible to the people of South Africa.

The interviewee from MultiChoice, in this research, is the only one was opposed to the revision of TV sports regulation and preferred for the review of the regulations but the revision must be confined to the listed events. This assertion is based on the fact that should the regulation be revised, will impact will be on the aspects of sub-licensing potentially changing the status quo where MultiChoice is benefiting from absence of a clear sub-licensing regime. This is not surprising as MultiChoice relies on securing TV sports rights on an exclusive basis to grow its customer base and is therefore not concerned whether sports promote social cohesion.

Meanwhile, the sports bodies seem not to be sufficiently concerned about the role of sports in society. By its own admission, Rugby SA has said it does not broadcast rugby through the FTA broadcasters, accessed by the masses, due to the inability of the FTA broadcasters to afford its product. Consequently, the behaviour of Rugby SA defeats the objectives of promoting social cohesion.

Sports bodies in this research have pointed to a lack of capacity by the FTA broadcasters, especially the SABC, to broadcast their products. The South African television market only has four national players: two subscription broadcasters and two FTA broadcasters. The pressure from the advertisers and sponsors to reach as many audiences as possible pushes the sports bodies to offer sports rights to television operators with dedicated channels to sports and high-quality infrastructure, without considering the negative effect on the objectives of social cohesion.

Perhaps the obsession with dedicated channels and high-quality infrastructure from sports bodies is short sighted; given the wider reach of the FTA broadcasters, advertisers and sponsors can reach bigger audiences. Some sports bodies are against the listing of their events as “national sporting events” in terms of the ICASA regulations, citing devaluation of their products. The regulator might need to explore two types of regulations, the listed events and non-listed premium TV sports content, to balance the financial requirements of sports bodies and the needs of television broadcasters.

5.3 Possible New Policy and Regulatory Measures

5.3.1 Sub-licensing Dispute Resolution Regulation

The South African legislation, the ECA of 2005 as amended, stipulates that subscription broadcasters are prohibited from acquiring sports rights on sports of national interest on an exclusive basis. ICASA duly developed regulations as

mandated by the ECA to give effect to section 10 of the ECA. While this is an attempt by ICASA to “guarantee” that FTA broadcasters are afforded an opportunity to access sports rights, the majority of the submissions in various ICASA reviews and inquiries, including the DTPS Integrated ICT Policy Review and stakeholder interviews in this research, have all raised the weaknesses in the current ICASA 2010 Sports Broadcasting Services Regulations.

In the ICASA 2010 Sports Broadcasting Services Regulations, the onus is on parties to enter into commercial agreements in order to develop their own dispute-resolution mechanisms with no reference to the role of the regulator. Terms and conditions of the sub-licensing are left to the broadcasters to negotiate; therefore, the tendency is for the broadcasters in a position of authority (usually MultiChoice) to dictate to sub-licensors (who are in a weaker position) the terms and conditions of sub-licensing. Due to the absence of guidelines on the commercial agreements on sub-licensing, in the review of the 2003 Sports Broadcasting Services Regulations in 2008, stakeholders submitted recommendations on the sub-licencing regime, none of which were considered in the 2010 Sports Broadcasting Services Regulations. However, on October 23 2018, ICASA briefed the South African Parliament on its process of commencing with the review of the 2010 Sports Broadcasting Services Regulations and has subsequently published the Draft Sports Broadcasting Services Regulations in December 2018. In its presentation to Parliament, the regulator proposed that disputes (regarding commercial agreements on listed events and non-adherence to the agreements) would be referred to the regulator as opposed to current provisions in which parties have to develop their own mechanisms to resolve disputes. However, no clear regulation on sub-licensing, and merely referring disputes to the regulator, is not a very different approach to the 2010 regulations. The sub-licensing regulations could make provisions for comprehensive guidelines on the terms and conditions of sub-licensing and the pricing regime among others. The 2018, Draft Regulations Sports Broadcasting Services have attempted to address the sub-licencing adequately; disputes are now referred to the ICASA Complaints and Compliance Committee (CCC).The Draft Regulations are, however, not explicit on how sub-licensing will be dealt with by the CCC, whose process is not up to public scrutiny.

In February 2019, the Competition Commission released a media statement that stated it would not prosecute MultiChoice after completing its investigations into complaints lodged by various stakeholders citing that prospects of success were minimal. The decision by the Competition Commission is disheartening given that most of the stakeholders in many forums, and in the interviews for this research, have noted the importance of the Competition Commission in curbing the uncompetitive behaviour of MultiChoice. The option recommended by the Competition Commission is the regulatory measures putting its hope in the current ICASA Inquiry into Subscription Television Broadcasting Services. Given the fact that the powers of ICASA are confined to public broadcasters, remedies by ICASA will then be limited to the television broadcasting. Over above the broadcasters, sports bodies are not regulated on the TV sports rights and are contributing to competition inefficiencies in the TV sports rights market.

In the presentation made to Parliament on 23 October 2018, ICASA indicated that disputes into commercial agreements would be referred to the Complaints and Compliance Committee and if a broadcasting service licensee were to fail to adhere to the provisions of the CCC, if found guilty, they would be fined up to R500 000. In the published draft regulations, the fine has been omitted and non-compliance will only

be referred to the CCC. The 2018 Draft Regulations lacks clarity on the sub-licencing recourse even though this role will now be played by the CCC, for international investors this is a small comfort and would deter investments in the TV sports rights as the CCC sanctions are not public.

5.3.2 Competition Regulation

Linked to stakeholder frustration with the lack of regulation by the sector regulator ICASA are, correctly, frustrations with the lack of Competition Commission intervention. The Competition Commission has cross-sectoral regulatory powers, and one area of possible Commission intervention relates to the behaviour of South African sports bodies. The actions of the sports bodies, in respect of management of TV rights to their matches, have an impact on both FTA and subscription broadcasters.

Management of TV sports rights, by the sports federations and broadcasters, also have a clear impact on consumers, since the cost of TV sports rights will ultimately be passed on to the consumer. At a July 2018 UN Conference on Trade and Development (UNCTAD) session on “Competition issues in the sale of audio-visual rights for major sporting events”, the Competition Commission made clear that MultiChoice is dominant in the upstream market for the acquisition of premium sports rights from content rights holders. The Commission acknowledged the abuse of dominance of MultiChoice after so many years of investigating complaints, has deferred this responsibility to the ICASA 2017 Inquiry into Subscription Television Broadcasting Services. The Commission only noted that it will support the inquiry without committing to intervene in any way.

In this research, the interviewees have proposed that it should be mandatory to set aside certain premium TV sports rights (for popular sports events) for FTA broadcasters. Perhaps this call from stakeholders means there is a need to prioritise FTA broadcasters in the listed events. In addition, there is lucrative premium sports content that is currently not regulated, and should there be regulations, FTA broadcasters could also have an opportunity to access the premium sports content. Apparently in response to FTA broadcasters’ needs, the regulator has category A designated events for the FTA broadcasters in the Draft Sports Broadcasting Services Regulations published in December 2018.

In the 2017 ICASA Inquiry into Subscription Broadcasting Television Services Discussion Document, the regulator presented proposed remedies to encourage effective competition such as the shortening of exclusive agreements and the introduction of unbundling of TV sports rights, and to address input foreclosure among others. Sports bodies vehemently opposed the pro-competition measures proposed by the regulator cite various challenges with these remedies. The 2017 Inquiry into Subscription Television Broadcasting Services seems to attempt to address the concerns raised by the stakeholders in this research and in various other processes. Complaints from sports bodies are short-sighted though. They are meant to bring effective competition in the TV sports rights market but the proposed remedies are not clearly stated. These competition remedies could pave a way for more television operators and address an earlier complaint regarding the lack of adequate capacity for sports bodies to sell their products. The dilemma might be enforcement since sports bodies affected by these remedies do not fall under the authority of ICASA. Perhaps the MoU between ICASA and the Competition Commission requires

strengthening for the Competition Commission to investigate and put measures in place.

To address similar concerns in the South African TV sports rights market, the EU Competition authorities introduced pro-competition measures such as splitting of sports rights packages where no one buyer owns all sports rights packages. ICASA could learn from the Ofcom approach which imposes a wholesale-must-offer remedy with Sky on its sports channels to bring about effective competition measures. Both ICASA and the Competition Commission could jointly implement some of these competition measures with ICASA focusing on sector-specific ex-ante measures, and the Competition Commission dealing with ex-post pro-competitive remedies.

5.3.2.1 Regulation of Sports Bodies

The regulation of TV sports rights is confined to the ICASA Sports Broadcasting Services Regulations and outside this framework the South African sports bodies decide on their own regimes of bidding for TV sports rights and their accompanying terms and conditions. For instance, Rugby SA has no public bidding process for its TV sports rights. Now the irony of this independence is the reliance by sports bodies on government to financially support sports development. Other sports bodies such as Cricket SA do, however, try to reach a balance in offering TV sports rights to both FTA and subscription broadcasters, albeit not following a public tender process either.

The South African regulators could learn from the remedies implemented by Ofcom. For example, the regulator in the UK regulates TV sports rights packages by prohibiting a single broadcaster from owning all the sports rights packages. The other remedy is the shortening of exclusive rights to no more than three years.

If the behaviour of sports bodies is not regulated , the TV sports rights market runs the risk of MultiChoice perpetually securing all the TV sports rights, both listed and non-listed. In the 2012 ICASA Review of the Broadcasting Regulatory Framework towards a Digitally Converged Environment, even though the focus of the review was not on TV sports rights, stakeholders raised the challenges facing the TV sports rights market and proposed recommendations (shortening of the exclusivity periods and the unbundling and splitting of TV sports rights) to that effect. The regulator missed an opportunity to address the TV sports rights issues and instead deferred the matter to the next review of the sports rights regulations. If the regulator addresses competition issues in TV sports rights, the remedies will spill over to the sports federations as they will no longer be able to offer TV sports rights to a single television broadcaster.

Lack of cooperation between the Ministries of Sport and Recreation, and Communications, is also a contributing factor to the sports bodies' lack of contribution to social cohesion.

The self-regulatory nature of sports bodies in rugby, cricket and soccer creates difficulties for government in regulating the sporting fraternity. To a certain extent, the sports federations still rely on government for financial support when participating in international events. The attitude of sports federations reflects that they feel they are not bound by any government regulations even though government plays a role in national sports events. This is a result of government not exerting its authority with regard to its expectations of the sports bodies.

5.3.2.2 Essential Facilities Regulation via Wholesale-Must-Offer Rules

Implemention of a wholesale-must-offer regime is one of the international best practices in the regulation of TV sports rights. Specifically, wholesale-must-offer is regarded as an effective measure to balance competition between subscription and FTA broadcasters. Following the implementation in 2010 of wholesale-must-offer regulation, by the UK regulator Ofcom, on BSkyB abuse of its market power over premium sports content, the regulation brought about the needed competition. Once effective competition was achieved, Ofcom reviewed the wholesale-must-offer remedy and set it aside.

In the South African environment, the only competitor to MultiChoice is StarSat, which is struggling to secure a significant customer base. A wholesale-must-offer could be a viable remedy to facilitate StarSat's effective participation along with other minor but prospective entrants into the subscription television broadcasting market.

5.3.3 Clarification of Co-regulatory Responsibilities Between ICASA and the Competition Commission

Interviewees in this research raised the need for clarification regarding which authority to approach, ICASA or the Competition Commission, when pursuing the resolution of regulatory shortcomings in respect of TV sports rights. These concerns persist despite the MoU between ICASA and the Competition Commission that delineates the roles of the two regulators. The interviewees in this research have noted that the cooperation between the two entities is not effective. It is indeed not effective, especially given the statement from the Commission in February 2019 that it will not refer the complaints to the Competition Tribunal. The MOU between ICASA and the Competition Commission needs to clearly define the roles of the two regulators with respect to TV sports rights. This is crucial given the fact that ICASA's jurisdiction is confined to the broadcasting market whilst the Competition Commission has wide-ranging powers on competition across sectors. ICASA though has a role to play in commercial agreements pertaining to television broadcasters. These conflicting views on the roles of the two regulators are an indication that stakeholders feel that the co-regulatory mandate of these regulatory bodies is unclear and ineffective. The 2014 DTPS Integrated ICT Policy Review Discussion Document proposed for ICASA to regulate TV sports premium content through ex-ante regulatory measures. However, the difficulty with this recommendation is that it does not address the regulation of sports bodies.

5.4 Analysis in Terms of the Smith et al. (2015) Framework

In reflecting on policy, legislation and regulation in the South African TV sports rights market in terms of the Smith et al. (2015) framework of approaches, it is apparent that the South African policy, legislative, and regulatory framework with respect to TV sports rights has been very weak in dealing with the commercial interests of the both the sports bodies and the subscription broadcasters. It also clear that the policies and legislation across the relevant government ministries (Department of Communications, Department of Sport and Recreation and the Department of Trade and Industry), and by extension their regulatory entities, are not synchronised to ensure the objectives of social cohesion and national identity are balanced against commercial interests. This is within the context of government investment in developmental sports on behalf of society; society should then accrue benefits at

professional level of sports events. A balance will also have to be struck between safeguarding sports federation financial survival and giving back to society, while subscription broadcasters also need to have some level of exclusivity through regulation to guarantee their survival.

The current regulatory approach in the South African TV sports rights market is analysed based on the Smith et al. (2015) regulatory approach. Smith et al presents three regulatory approaches: a free market model, a strong regulation model and a balanced model. The South African approach has been based on both a free and a balanced model. However, the 2018 Draft Regulation on Sports Broadcasting Services has moved South Africa to a strong regulatory approach with the introduction of three categories of National Sporting Events. In all categories, listed events cannot be acquired on an exclusive basis. The draft regulations will impact sports bodies negatively in that the removal of exclusivity will reduce interest from the subscription television broadcasters and the sports bodies will receive less money for their TV sports rights which, by the way, is their biggest revenue. In an event where subscription broadcasters are no longer attracted to the TV sports rights, audiences will shift to other media companies that broadcast sports events that are of interest to them. Creating a balance between commercial and social imperatives seems to be an elusive target for ICASA, and draft regulations are already causing ructions in the sports industry, with sports bodies' bosses complaining about the dent in their revenues and the negative impact on sport in general.

Instead of introducing strong regulatory measures, ICASA and Competition should devise measures on addressing competition concerns in the TV sports rights markets to provide an even playing field. The recent (February 2019) statement from the Commission illustrates that it is does not intend to intervene in the abuse of dominance by MultiChoice (by shifting the responsibility to ICASA). This will allow the continued dominance of MultiChoice in the TV sports rights market.

The introduction of the regulatory approach through the ICASA D Draft Regulations of 2018 will effectively meet the requirements of the balancing act by Smith et. al (2015, as the measures are quite extreme. ICASA needs to implement ex-ante remedies in the premium TV sports rights market, with the Competition Commission providing support by investigating, and addressing with ex-post remedies, anti-competitive behaviour.

CHAPTER 6: RECOMMENDATIONS AND CONCLUSION

The main aim of this study was to assess the effectiveness of regulation of TV sports rights in South Africa. In analysing data from the primary documents and fieldwork interviews, I applied the Smith et al. (2015) framework, which calls for balance in regulating TV sports rights in the midst of competing priorities, meaning a balance between public and commercial interests. Based on the primary data analysed from the primary document analysis and interviews, it is clear that, for a very long period, ICASA and the Competition Commission have neglected regulation of TV sports rights.

In 2002, at the time when ICASA was first developing sports rights regulations, most of the submissions emphasised the important role of FTA TV broadcasters in providing access to sports events to the majority of South Africans. The importance of TV broadcasting of sports events of national interest to the widest possible number of South Africans was also noted by Parliament, the institution with the responsibility to protect the interests of all South Africans. At the same time, government has a responsibility to grow and stimulate the pay-TV market, and sports content is at the heart of sustaining pay-TV. It then becomes a question of growing the industry and bringing in more competitors, while at the same time contributing towards achieving social objectives. The need to balance commercial and public interests in sports TV broadcasting is not a uniquely South African phenomenon; other jurisdictions have been in the same dilemma. Specifically, the EU and the UK have had to deal with numerous disputes around TV sports rights, and have made efforts to find a balance in the distribution of sports rights between subscription and FTA broadcasters. Hence, South Africa could learn from the experiences of these jurisdictions in order to bring about a better balancing of competing objectives in the regulation of TV sports rights.

The following are my recommendations and a conclusion, grounded in the findings presented in Chapter 4 and the analysis presented in Chapter 5.

6.1 MultiChoice Dominance

Most of the sector stakeholders, in various policy and regulatory processes and in the interviews for this research, state that the dominance of MultiChoice enables it to outbid its competitors and to acquire TV sports rights exclusivity for long periods. This has a large impact, since MultiChoice's dominance is not only over StarSat and aspirant pay-TV operators, but also over the national FTA TV operators SABC and e.tv.

Therefore, a multipronged approach is required, one which will focus on the regulation of prices of sports rights and will also investigate the market structure of both the pay-TV and FTA TV sectors. Sports rights are an economic commodity, and thus far the Competition Commission has not imposed competition remedies on either the sports fraternity or the dominant pay-TV operator MultiChoice. The role of the Competition Commission is paramount in this instance, in determining the anti-competitive behaviour of the dominant player. This is the backdrop for the Commission's investigation of complaints about MultiChoice's anti-competitive behaviour. The Commission released a statement in February 2019 to the effect that complaints against MultiChoice's abuse of its dominance will not be referred to Competition Tribunal and that competition issues will be dealt with through the ICASA Inquiry into Subscription Television Broadcasting Services. This is not sufficient by any means.

The Commission must demonstrate a commitment to deal with competition challenges in the TV sports rights market over and above the MOU between itself and ICASA.

6.2 Insufficient Regulation

The MultiChoice incumbency advantage in South African TV sports rights is a by-product of the lack of regulation. A clear example of this insufficient regulation is the fact that, despite ten pay-TV broadcast service licences being granted since 2007, one operator is clearly dominating the market, with only one competitor. Almost all of the stakeholders who made inputs on sports rights to regulatory and policy processes, and all but one of the interviewees for this research, are of the view that that ineffective and insufficient regulations have contributed to the entrenchment of MultiChoice as a dominant incumbent. As pointed out in the ICASA 2017 Discussion Document on the Inquiry into Subscription Television Broadcasting Services, sports content is in the hands of only two subscription broadcasters, namely StarSat and MultiChoice, with MultiChoice holding 80% of these rights.

One of the contributing factors to the incumbency advantage is the commercial relationship created by the incumbent, over time, with sports rights owners. Pro-competitive measures such as ex-ante regulations as per Chapter 10 of the ECA, in order to break the stranglehold of the dominant incumbent, have become urgent for ICASA to conclude and implement. Ex-post remedies, developed by the Competition Commission to deal with anti-competitive behaviour by the incumbent, are also necessary. However, the disadvantage of ex-post measures is the long periods it takes to conclude and implement necessary sanctions, given the magnitude of challenges in the TV sports rights markets.

The ICASA Draft Sports Broadcasting Services Regulations of 2018 are a case of potentially solving certain problems (e.g., FTA TV access to group A events), but at the same time creating additional problems (e.g., doing away with the possibility of exclusivity across too wide a range of events). ICASA could explore the approach assumed in the EU jurisdiction, through which balance is achieved in ensuring that the FTA broadcasters have access to TV sports rights and for the subscription broadcasters to serve their commercial interests. ICASA could also work closely with the Competition Commission to devise measures to regulate treatment of TV rights for premium sports content.

6.2.1 Lack of Funding of SABC TV's Sports Coverage Mandate

Lack of funding for the SABC has to some extent crippled the public broadcaster's capacity to secure rights from the sports federations. The broadcaster is relegated to negotiating sub-licensing agreements from a vulnerable position. This is despite it being mandated to include national sports events as part of its programming, by the Broadcasting Act of 1999. Engagement between the Ministries of Sports and Recreation and Communications, as per section 60 of the ECA, is paramount to finding a lasting solution to funding SABC TV's sports mandate. Among other things, the Minister of Sports and Recreation, with a responsibility to promote social cohesion and national identity through sports events, must find a way to engage the sporting bodies in order to facilitate FTA TV operator access to sports rights, for events of national interest, at affordable rates – so as to enable broader societal access to these events.

However, the legislation is silent on the role of the Minister of Sports and Recreation in contributing to the provision of sports events on the SABC platforms.

The SABC only receives 3% of its budget in government funding to deliver on all public interest obligations. South Africa has a high evasion rate in the payment of TV licences, resulting in only 14% of SABC budget being covered by this income in 20172018 (SABC, 2018)This reduced revenue also contributes to funding problems at the SABC. In the SABC 2017/18 report, the public broadcaster reported a deficit of more than R25 billion on TV licenses evasions over the past three years. Government could create special funding to broadcast national sports events on FTA TV channels.

6.3 Social Cohesion and National Identity

The majority of the stakeholders, in submissions to policy and regulatory processes and in the interviews for this research, agree on the importance of sports of national interest in promoting social cohesion and national identity, yet government and ICASA are not adequately prioritising these critical objectives in respect of TV sports rights. This is despite the fact that these principles are embedded in various policy documents from the Department of Sports and Recreation and the ICASA Sports Broadcasting Regulations.

Sport in South Africa is very important, as it has been used as a social glue in the post-apartheid era to pull together the communities that have lived apart for so many years. For example, the exclusive relationship of Rugby SA with MultiChoice is a missed opportunity to once again unite the country, as was evident during the 1995 Rugby World Cup. ICASA and the Competition Commission could compel SA Rugby to open its bidding process to advance broader South African goals of social cohesion and national identity.

Another relevant example was the 2018 Social Cohesion Games, an initiative of the Gauteng Provincial Government aimed at promoting social cohesion, nation-building and mobilising citizens and communities against racism and xenophobia in Gauteng. The games could have greatly contributed towards uniting the country, but sadly they were not broadcast on TV.

FTA TV broadcasting is the widest platform to expose sports events, and funding is key to enabling FTA broadcasters to display such events. If FTA broadcasters are mandated to promote social cohesion and national identity, this must be matched with appropriate funding. The complaint by some of the stakeholders interviewed in this research that indigenous games such as Morabaraba (a traditional board game played in South Africa, Botswana and Lesotho) are missing from ICASA's listed events is misguided. These sports events can be accommodated as non-listed events and be offered free to any television broadcasters to carry.

6.4 FTA TV Operators' Carriage of National Sporting Events

The majority of the stakeholders interviewed complained about the lack of dedicated sports channels amongst FTA TV broadcasters, particularly the SABC. Delays in the FTA TV operators' migration to digital, multichannel transmission platforms have contributed to this problem of the lack of dedicated FTA sports channels.

6.5 Regulation of Sub-licensing

Regulation of the sub-licensing framework requires strengthening to include terms and conditions, such as timeframes on the finalisation of agreements, and to provide the sub-licensee sufficient time to exploit the rights and recoup costs from advertising and sponsorship long before the actual sports event. Similarly, in cases where the sub-licensor seeks unreasonably to delay conclusion of the agreements, the sub-licensee should be afforded protection. Price regulation should form part of the sub-licensing regulations, with transparency and non-discriminatory principles. In dispute resolution, the role of the regulator should be enhanced to shield weaker and vulnerable competitors against market dominance.

The ICASA 2017 Inquiry into Subscription Television Broadcasting Services will have to consider a strong sub-licensing framework for TV rights to non-listed sports events. Equally, in the finalisation of the Draft Sport Broadcasting Services Regulations of 2018, it is necessary to provide clear sub-licensing and dispute-resolution mechanisms, as the regulator pledged to do in its presentation to Parliament.

6.6 Regulation of Sports Bodies

The self-regulation of sports bodies has created an assumption that they are not accountable to anyone but to themselves. When national teams compete there is some level of direct government responsibility and these can be opportunities for government to put into effect its own obligations to sports bodies in ways that could ensure access to national sporting events for the majority of citizens, and in a manner that ensures sustainability of the sports bodies. This is particularly important because government contributes to sports development, and, accordingly, society should benefit from sports at a professional level. The Minister of Sports and Recreation has a responsibility, as a custodian of sports events in South Africa, to intervene in addressing access to sports TV content for the public. The intervention from Sports and Recreation might not warrant regulation, particularly given the opposition from international sport bodies to government interference. The remedy could be in the form of the state negotiating with the sports rights owners: the sports bodies.

6.7 Competition Regulation

Interview respondents and document analysis point to the fact that the licensing and sub-licensing framework for TV sports rights simply strengthen the position of the incumbent to the detriment of competitors. It is thus recommended that sub-licensing conditions of the other non-dominant players should be the same as those of the affiliates and entities of the dominant player. The sub-licensing regulations should stipulate the timeframes for the conclusion of agreements for securing the rights and sub-licensing. This will enable sub-licensees to develop and implement effective advertising and sponsorship plans.

In relation to exclusive contracts, the regulation of exclusivity periods is quite critical. To remedy this situation, regulation could consider the shortening of exclusive contracts and prevention of continuous renewal of contracts with the same broadcaster over long periods of time.

In addition, regulated splitting of rights would generate multiple packages that would allow more companies to access rights. In addition, it would enable new entrants to

build a customer base through a bidding process for rights that they could afford. Splitting of rights would also ensure healthy competition within the sports rights market.

The 2017 Inquiry into Subscription Television Broadcasting Services promises to introduce such remedies. Their effective implementation, however, will depend on support from the Competition Commission to investigate uncompetitive behaviour of all the stakeholders (subscription television operators, FTA broadcasters, and sports bodies and possibly online players). The South African regulators could learn from the remedies implemented by the EC competition authorities in the UK jurisdiction following a complaint against the UK Premier League. The Premier League committed to sell TV sports rights to more than one buyer and to split rights into different packages. In addition, these Premier League exclusive rights agreements will not last more than three years.

6.7.1 Essential Facilities Regulation, via Wholesale-Must-Offer and Cross-Carriage Measure (CCM)

Essential facilities regulation could be among the remedies imposed by ICASA. For example the UK regulator, Ofcom, imposed an essential facilities regulation through the Wholesale-Must offer remedy, allowing rivals of the dominant subscription broadcaster, Sky, to offer its sports channels (Sky Sports 1 and Sky Sports 2) at a price determined by the regulator. In Spain, in instances where companies had merged, they were obliged to offer 50% of sports content to rival companies. For the effective application of this remedy, terms of access have to be based on a pricing guideline, and fair non-discriminatory conditions of access to prevent companies such as MultiChoice, with vertical integration, from providing access only to their subsidiaries at lower prices, while overcharging rivals.

The introduction of wholesale-must-offer remedy (obligating a dominant media firm to offer its channels to other operators at wholesale prices) could be critical given the difficulty of penetrating the South African TV sports rights market. The UK has successfully implemented this remedy to achieve effective competition

In addition to the wholesale-must-offer, the regulator could consider the cross-carriage measure (CCM), as implemented in Singapore. CCM stipulates that in cases where a pay-TV operator acquires content on exclusive basis, that it must, in certain cases, be made available to other qualifying pay-TV operators at a fair price.

6.8 Conclusion

In the course of this research, I came to appreciate the complexity of managing and regulating TV sports rights and competing interests (1) among subscription TV operators, (2) between subscription and FTA TV operators, and (3) between commercial and public service TV operators, while at the same time promoting and preserving social cohesion and national identity. What is clear is that, in order to make certain TV sports rights serve both commercial and social interests, complementary measures from both ICASA and the Competition Commission are critical. This will require ICASA to implement ex-ante regulations while the Commission applies ex-post remedies. At the same time, government – via the Departments of Sports and Recreation, and Communications – has to play its part in encouraging and compelling the sporting fraternity to embrace preferential FTA TV access to sports rights, so as to

provide broader benefit to society in recognition of the benefits derived from government’s investments in developmental sport.

REFERENCES

Abawi, K. (2008). Qualitative and quantitative research: *Reproductive health research methodology training,* Retrieved from http://www.gfmer.ch/Medical_education_En/Afghanistan_2008/pdf/Qualitative_quantitative_research_Abawi_Afghanistan_2008.pdf

Alford, R. R. (1998). *The craft of inquiry: Theories, methods, evidence*. New York: Oxford University Press.

Anderson, C. (2010). Presenting and evaluating qualitative research. *American Journal of Pharmaceutical Education, 74*(8), 1–7. https://doi.org/10.5688/aj7408141

Asser International Sports Law Centre (2014). *Study on sports organisers' rights in the European Union*. Amsterdam: University of Amsterdam. Retrieved from http://www.asser.nl/media/2624/final-report_sor-2014.pdf

Australian Football League (2017, August 18). AFL signs new six-year, $2.5 billion broadcast rights deal. Retrieved from https://www.afl.com.au/news/2015-08-18/afl-on-the-verge-of-signing-new-tv-deal

Barget, E., & Gouget, J.J. (2007). The total economic value of sporting events theory and practice. *Journal of Sports Economics, 8*(2), 165–182. doi:10.1177/1527002505279349

Bergman, A. M. (2001). The role of the essential facilities doctrine. *Antitrust Bulletin, 46*(2), 403-434. https://doi.org/10.1177/0003603x0104600206B

Berg, B. L. (2001). *Qualitative research methods for the social sciences*. Retrieved from http://repository.umpwr.ac.id:8080/bitstream/handle/123456789/3723/qualitative_research_methods_for_the_social_sciences.pdf?sequence=1

Blackstone, A. (2016). *Principles of sociological inquiry: Qualitative and quantitative methods*. Boston: Saylor Foundation. Retrieved from http://catalog.flatworldknowledge.com/bookhub/reader/3585?e=blackstone_1.0-ch07_s02

Blázquez Cabrera F.J., Cappello M., Fontaine G., & Valais, S. (2016). *Audiovisual sports rights – between exclusivity and right to information.* Strasbourg: European Audiovisual Observatory. Retrieved https://rm.coe.int/0900001680788a5d

Boardman, A. E., & Hargreaves-Heap, S. (1999). Network externalities and government restrictions on satellite broadcasting of key sporting events. *Journal of Cultural Economics, 23*(3), 167–181. doi.org/10.1023/A:1007594418031

Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research Journal, 9*(2), 27-40. doi:10.3316/qrj0902027

Brenke, K., & Wagner, G. G. (2006). The Soccer World Cup in Germany: Major sporting and cultural event - but without notable business cycle effects. *Weekly Report, 2*(3), 23-21. Retrieved from https://www.econstor.eu/bitstream/10419/151015/1/diw_wr_2006-03.pdf

Business Day (2018, July 03). Icasa presses on with plans to open up pay TV. Retrieved from https://www.businesslive.co.za/bd/national/2018-07-03-icasa-presses-on-with-plans-to-open-up-pay-tv/

Broadcast Research Council of South Africa (BRCSA) (2019). *January 2019 Top TV programs.*Retrieved from https://brcsa.org.za/january-2019-top-tv-programs/

Cave, M., & Crandall, R. W. (2001). Sports rights and broadcasting industry. *The Economic Journal, 111*(469), 4-26.

Channel24 (2016, August 27). Internet TV in SA: What you need to know. Retrieved from https://www.channel24.co.za/ShowMax/internet-tv-in-sa-what-you-need-to-know-20160826

CNN Money Sport (2017, September 4). Murdoch makes $2.6 billion bet on Indian cricket. Retrieved from http://money.cnn.com/2017/09/04/media/india-cricket-murdoch-tv-rights/index.html

Cohen, D.,Crabtree,B. (2006). Qualitative research guidelines project. Retrieved from http://www.qualres.org/HomeTria-3692.html

Competition Commission (2017, December 19). Competition Commission comments on the discussion document for the inquiry into subscription television broadcasting services. Retrieved from https://www.icasa.org.za/legislation-and-regulations/inquiries/subscription-broadcasting-services-market-inquiry

Competition Commission (2019, February 5). Commission decides not to prosecute MultiChoice and SuperSport. Retrieved from http://www.compcom.co.za/wp-content/uploads/2019/01/COMMISSION-DECIDES-NOT-TO-PROSECUTE-MULTICHOICE-003.pdf

Corbin, J., & Strauss, A. (2008).*Basics of qualitative research (3rd ed.): Techniques and procedures for developing grounded theory*. Thousand Oaks, CA: SAGE Publications, Inc. doi: 10.4135/9781452230153

Cowie, C., & Marsden, C. T. (1999). Convergence: Navigating bottlenecks in digital pay-TV. *info, 1*(1), 53-67. doi:10.1108/14636699910800909

Creswell, J. (2009). *Research design: Qualitative, quantitative and mixed methods.* London: Sage. doi:10.7748/nr.12.1.82.s2

Cricket South Africa (CSA) (2017, December 4). CSA submission to the discussion document: Inquiry into subscription television broadcasting services. Retrieved from https://www.icasa.org.za/LegislationRegulations/PolicyResearchandAnalysis/MarketsCompetitionAnalysis/MarketsReviews/tabid/453/ctl/ItemDetails/mid/1432/ItemID/16191/Default.aspx

Delaney, L., & Fahey, T. (2005). *Social and economic value of sport in Ireland*. Retrieved from https://core.ac.uk/download/pdf/16337978.pdf

Deloitte (2014). *Television's business model: Fit for a digital world.* Retrieved from http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Technology-Media-Telecommunications/gx-tmt-ibc-report-2014.pdf

Deloitte (2016). *Reboot: Annual review of football.* Retrieved from https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/sports-business-group/deloitte-uk-annual-review-of-football-finance-2016.pdf

Diathesopoulos, M. D. (2010). *Essential facilities doctrine in relation to incentives to invest*. Retrieved from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1732152

Economics (n.d.). Explaining consumer surplus. Retrieved from https://www.tutor2u.net/economics/reference/consumer-surplus

eMedia Holdings (2016). *eMedia Holdings integrated annual report 2016*. Retrieved from http://www.emediaholdings.co.za/wp-content/themes/emedia/iar/2016iar/pdf/overview/company-reports.pdf

e.tv (2017, May 17). Discussion document: Inquiry into subscription television broadcasting services comments by E.TV. Retrieved from

https://www.icasa.org.za/legislation-and-regulations/inquiries/subscription-broadcasting-services-market-inquiry
European Commission (EC) (2003). Commission clears UEFA's new policy regarding the sale of the media rights to the Champions League. Retrieved from http://europa.eu/rapid/press-release_IP-03-1105_en.htm?locale=en
EC (2005). *Case COMP/C-2/37.214 - Joint selling of the media rights to the German Bundesliga.* Retrieved from http://ec.europa.eu/competition/antitrust/cases/dec_docs/37214/37214_90_1.pdf
EC (2006). *Case COMP/38.173 - Joint selling of the media rights to the FA Premier League.* Retrieved from http://ec.europa.eu/competition/antitrust/cases/dec_docs/38173/38173_134_9.pdf
EC (2018). *Audiovisual Media Services Directive*. Retrieved from https://ec.europa.eu/digital-single-market/en/revision-audiovisual-media-services-directive-avmsd
Elliott, R., & Timulak, L. (2005). Descriptive and interpretive approaches to qualitative research. *A Handbook of Research Methods for Clinical and Health Psychology*, *1*(7), 147-159. Retrieved from http://nideffer.net/classes/GCT_RPI_S14/readings/interpretive.pdf
European Union (EU) (2010, March 10). *Directive2010/13/EU of the European Parliament and of the Council*. Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0013&from=EN
EU (2013, July 18). *Reports of Cases: Judgement of the Court (Third Chamber).* Retrieved from http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62011CJ0201&from=EN
Evens, T., & Lefever, K. (2011). Watching the football game: Broadcasting rights for the European digital market. *Journal of Sport and Social Issues, 35*(1), 33-49. doi:10.1177/0193723510396665
Evens, T., Lefever, K., Valcke, P., Schuurman, D., & De Marez, L. (2011). Access to premium content on mobile television platforms: The case of mobile sports. *Telematics and Informatics*, *28*(1), 32-39. doi:10.1016/j.tele.2010.05.004
Fédération Internationale de Football Association (FIFA). (2017). *FIFA financial report 2017*. Retrieved from https://resources.fifa.com/image/upload/fifa-financial-report-2017.pdf?cloudid=nyjyxr0d7fuwlyz2dokw
Financial Times (2015, February 13). TV sports rights: Show them the money. Retrieved from https://www.ft.com/content/91570e92-b369-11e4-9449-00144feab7de
Fort, R., & Quirk, J. (2004). Owner objectives and competitive balance. *Journal of Sports Economics*, *5*(1), 20-32. doi :10.1177/1527002503261275
Geradin, D. (2005). Access to content by new media platforms: A review of the competition law problems. *The Global Competition Law Centre Working Papers Series*, *30*, 1-29. Retrieved from https://www.coleurope.eu/system/files_force/research-paper/gclc_working_paper_01-04.pdf
Garner, M., Wagner, C., & Kawulich, B. (Eds.) (2009). Teaching research methods in the social sciences. *Journal of Community Practice*, 19(3), 332-334. doi:10.1080/10705422.2011.595366

Government of Commonwealth of Australia (2012). *Convergence review: Final report*. Retrieved from http://www.abc.net.au/mediawatch/transcripts/1339_convergence.pdf
Government of Ireland (2009). *Broadcasting Act 2009.* (Number 18 of 2009). Retrieved from http://revisedacts.lawreform.ie/eli/2009/act/18/revised/en/pdf?annotations=true
Government of the United Kingdom (UK) (2003). C*ommunications Act of 2003.* Retrieved from https://www.legislation.gov.uk/ukpga/2003/21/pdfs/ukpga_20030021_en.pdf
Government of the United Kingdom (UK) (n.d.) Coverage *of sport on television.* Retrieved from http://webarchive.nationalarchives.gov.uk/+/http:/www.culture.gov.uk/PDF/sport_on_television.pdf
Griffin, C. (2004). The advantages and limitations of qualitative research in psychology and education. *Scientific Annals of the Psychological Society of Northern Greece,* 2(1), 3-15. Retrieved from http://www.pseve.org/Annals_el/UPLOAD/griffin2.pdf
Harrell, M. C., & Bradley, M. A. (2018). Data Collection Methods Semi-Structured Interviews and Focus Groups. Santa Monica, CA: RAND Corporation; 2009. Retrieved http://www.rand.org/content/dam/rand/pubs/technical_reports/2009/RAND_TR718.pdf
Hoehn, T., & Lancefield, D. (2003). Broadcasting and sport. *Oxford Review of Economic Policy, 19*(4), 552-568. https://doi.org/10.1093/oxrep/19.4.552
Houlihan, B. (1999). Sport, national identity and public policy. *Nations and Nationalism*, *3*(1), 113-137. https://doi.org/10.1111/j.1354-5078.1997.00113.x
Howwemadeitinafrica (2010, April 13). e.tv Africa launched in 12 countries. Retrieved from https://www.howwemadeitinafrica.com/e-tv-africa-launched-in-12-african-countries/
Independent Communications Authority of South Africa (ICASA) (2002). *Inquiry into sports broadcasting rights: Discussion paper. Government Gazette*. (Vol. 466, No.23713). Retrieved from www.gov.za
ICASA (2002). *Discussion Paper: Inquiry into sports broadcasting rights*. *Government Gazette*. (Vol. 446, No.23713). Retrieved from www.gov.za
ICASA (2003). *ICASA sports broadcasting rights regulations. Government Gazette (*Vol. 460, No. 27728).
ICASA (2004). *Discussion paper: Inquiry into subscription broadcasting. Government Gazette* (Vol. 466, No. 26289). Retrieved from www.gov.za
ICASA (2007, September 12*).* Announcement of individual commercial satellite and cable subscription broadcasting licences. Retrieved from http://www.gov.za/independent-communications-authority-icasa-individual-commercial-satellite-and-cable-subscription
ICASA (2008). *Review of sport broadcasting rights regulations: Discussion document. Government Gazette.* (Vol.520, No 31483). Retrieved from https://www.icasa.org.za/LegislationRegulations/FinalRegulations/BroadcastingRegulations/SportsBroadcastingRights/Draft/tabid/246/ctl/ItemDetails/mid/888/ItemID/77/Default.aspx
ICASA (2010a). *Findings and reasons document on the sport broadcasting services regulations, 2010. Government Gazette*, (Vol. 538, No. 33108). Retrieved from

http://thornton.co.za/resources/Findings%20and%20Reasons%20Document%20on%20the%20Sport%20Broadcasting%20Services%20Regulations%2033108.pdf
ICASA (2010b). *Sports broadcasting services regulations*. *Government Gazette*, (Vol. 538, No.33079). Retrieved from https://www.icasa.org.za/LegislationRegulations/FinalRegulations/BroadcastingRegulations/SportsBroadcastingRights/tabid/245/ctl/ItemDetails/mid/1310/ItemID/281/Default.aspx
ICASA (2011). *Issues paper: A review of the broadcasting regulatory framework towards a digitally converged environment*. Retrieved from www.icasa.org.za
ICASA (2013). *ICASA final report: The review of broadcasting regulatory framework towards a digital converged environment in South Africa*. Retrieved from www.icasa.org.za
ICASA (2015). *Findings document: Review of regulation on South African local content: Television and radio: 2015*. *Government Gazette,* (Vol. 598, No. 38700). Retrieved from https://www.icasa.org.za/LegislationRegulations/FinalRegulations/BroadcastingRegulations/LocalContent/tabid/550/ctl/ItemDetails/mid/2144/ItemID/8324/Default.aspx
ICASA (2016). *Report on the state of the ICT sector in South Africa*. Retrieved from http://www.ellipsis.co.za/wp-content/uploads/2015/10/ICASA-Report-on-State-of-SA-ICT-Sector-2016.pdf
ICASA (2017, August 25). *Discussion document: Inquiry into subscription television broadcasting services*. *Government Gazette* (Vol, 626, No.41070). Retrieved from https://www.icasa.org.za/LegislationRegulations/PolicyResearchandAnalysis/MarketsCompetitionAnalysis/MarketsReviews/tabid/453/ctl/ItemDetails/mid/1432/ItemID/16108/Default.aspx
ICASA (2017, March 3). *Discussion document: Regulatory framework for community broadcasting services.* Retrieved from https://www.icasa.org.za/LegislationRegulations/RegulationsUnderway/CommunityBroadcastingRegulatoryFramework/tabid/2791/ctl/ItemDetails/mid/4847/ItemID/13946/Default.aspx
ICASA (2018, December 14). *Draft sports broadcasting services amendment regulations, 2018. Government Gazette.* (Vol.642, No.42115). Retrieved from https://www.icasa.org.za
International Telecommunication Union (ITU). (2011). *Telecommunications regulation handbook.* Retrieved from http://www.itu.int/pub/D-PREF-TRH.1-2011
ITWeb (2013, September 30). Sentech unveils free satellite TV. Retrieved from http://www.itweb.co.za/index.php?option=com_content&view=article&id=67729
ITWeb (2015, July 27). ICASA blamed for pay-tv monopoly. Retrieved from http://www.itweb.co.za/index.php?option=com_content&view=article&id=144985
ITWeb (2015, November 11). SA leads Africa's pay-tv market. Retrieved from http://www.itweb.co.za/index.php?option=com_content&view=article&id=147712
Jackson, S. J., & Hokowhitu, B. (2002). Sport, tribes and technology: The New Zealand All Blacks Haka and the politics of identity. *Journal of Sport & Social Issues, 26*(2), 125-139.

Jacob, S. A., & Furgerson, S. P. (2012). Writing interview protocols and conducting interviews: Tips for students new to the field of qualitative research. *The qualitative report*, *17*(42), 1-10. Retrieved from https://nsuworks.nova.edu/tqr/vol17/iss42/3

Jones, C. A. (n.d.). *European Union: Television policy*. Retrieved from http://www.museum.tv/eotv/europeanunio.htm

Keim, M. (2006). Sport as Opportunity for Community Development and Peace Building in South Africa. In development in Vanauweele et al (Eds) *Sport and Development* , pp.97-106).Retrieved from http://www.saferspaces.org.za/resources/entry/sport-as-opportunity-for-community-development-and-peace-building-in-sa

Késenne, S. (2005). Revenue sharing and competitive balance: Does the invariance proposition hold? *Journal of Sports Economics*, *6*(1), 98-106. doi:10.1177/1527002503259334

Koch, N. (2013). Sport and soft authoritarian nation-building. *Political Geography*, *32*, 42-51. http://dx.doi.org/10.1016/j.polgeo.2012.11.006

Konstantaki, M. (2009). Social and cultural impact of the London 2012 Olympic Games: A lecturers' and students' perspective. Retrieved from http://collections.crest.ac.uk/9814/1/Konstantaki,%20M%20%20ITC%20%202008%20SOCIAL%20AND%20CULTURAL%20IMPACT%20OF%20THE%20LONDON%202012%20OLYMPIC%20GAMES.pdf

Labuschagne, P. (2008). The impact of sport on nation building: A critical analysis of South Africa. *Africa Insight, 38*(3), 3-14. doi:10.4314/ai.v38i3.51207

Evens, T., & Lefever, K. (2011). Watching the football game: Broadcasting rights for the European digital television market. *Journal of Sport and Social Issues*, *35*(1), 33-49. doi:10.1177/0193723510396665

Lefever, K., & Van Rompuy, B. (2009). Ensuring access to sports content: 10 years of EU intervention. Time to celebrate? *Journal of Media Law*, *1*(2), 243-268.268. Retrieved from http://0-web.b.ebscohost.com.innopac.wits.ac.za/ehost/pdfviewer/pdfviewer?sid=a19d2a0d-feff-4c5c-86b1-224837b62ccf%40sessionmgr102&vid=2&hid=129

Lewis, C. (2007). South Africa. In K. Banks, R. Bissio, W. Currie, A. Esterhuysen, G. C. Ramilo, & M. Sigillito, (Eds.), *Global information society watch 2007* (pp. 198-206). Retrieved from http://www.giswatch.org/sites/default/files/gisw_2007.pdf

Maguire, J. A. (2011). Globalization, sport and national identities. *Sport in Society, 14*(7-8), 978-993. doi: 10.1080/17430437.2011.603553

Mason, S., D. (1999). What is the sports product and who buys it? The marketing of professional sports leagues. *European Journal of Marketing*, *33*(3/4), 402-419. doi:10.1.1.392.3095&rep=rep1&type=pdf

Mays, N., Pope, C., & Ziebland, S. (2000). Qualitative research in health care: Analysing qualitative data. Retrieved from http://www.brown.uk.com/teaching/HEST5001/pope.pdf

Mondliwa, P., & Paelo, A. (2014) . *Exclusive agreements in pay-tv*. Retrieved from http://www.competition.org.za/review/2014/11/7/exclusive-agreements-in-pay-tvf

Mrkonjic, M., & Geeraert, A. (2013). Sports organisations, autonomy and good governance. In J. Alm (Eds.), *Action for good governance in international sports organisations*. Retrieved from

https://scholar.google.co.za/scholar?hl=en&as_sdt=0%2C5&q=Sports+organisations%2C+autonomy+and+good+governance&btnG=
MultiChoice (2016, March 31). *Annual results announcement*. Retrieved from https://www.multichoice.co.za/wp-content/uploads/2016/06/MultiChoice-South-Africa-Holdings-annual-results-announcement-31-March-2016.pdf
MultiChoice (2018, March 3). *Integrated annual report 2018.* Retrieved from http://multichoice-reports.co.za/ar-2018/pdf/pn1-2018-hires.pdf
MultiChoice (n.d.) *Sports investments*. Retrieved from http://www.multichoice.co.za/#sport-investment
MyBroadband (2014, July 16). DStv exclusive sports, film rights under fire. Retrieved from http://mybroadband.co.za/news/broadcasting/106343-DStv-exclusive-sports-film-rights-under-fire.html
MyBroadband (2013, May 13). DStv accused of anti-competitive behaviour: Report. Retrieved from https://mybroadband.co.za/news/broadcasting/78659-DStv-accused-of-anti-competitive-behaviour-report.html
MyBroadband (2013, November 30). DStv sport monopoly a problem: Icasa CEO. Retrieved from http://mybroadband.co.za/news/government/92535-DStv-sport-monopoly-a-problem-icasa-ceo.html
MyBroadband (2013, September 30). Freevision channel list. Retrieved from https://mybroadband.co.za/news/broadcasting/87901-freevision-channel-list.html
MyBroadband (2016, January 8). Here's how much SuperSport paid for English Premier League rights. Retrieved from http://mybroadband.co.za/news/broadcasting/150883-heres-how-much-supersport-paid-for-english-premier-league-rights.html
MyBroadband (2016, January 23). The impact of Netflix on MultiChoice and the South African TV market. Retrieved from http://mybroadband.co.za/news/broadcasting/152433-the-impact-of-netflix-on-multichoice-and-the-south-african-tv-market.html
MyBroadband (2016, August 21). StarSat leaves business rescue, but troubles not over. Retrieved from https://mybroadband.co.za/news/broadcasting/176581-starsat-leaves-business-rescue-but-troubles-not-over.html
MyBroadband (2017, November 8). SuperSport must be investigated by Competition Commission – Cell C. Retrieved from https://mybroadband.co.za/news/broadcasting/236698-supersport-must-be-investigated-by-competition-commission-cell-c.html
Rajendran, N. S. (2001, October). Dealing with biases in qualitative research: A balancing act for researchers. In *Qualitative Research Convention* (pp. 1-15). Retrieved from http://nsrajendran.tripod.com/Papers/Qualconfe2001.pdf
News24 (2013, June 02). DStv's grip on sports under scrutiny. Retrieved from http://www.news24.com/Archives/City-Press/DStvs-grip-on-sports-under-scrutiny-20150430
News24 (2014, August 3). Safa sells Bafana for R1 billion. Retrieved from http://www.news24.com/Archives/City-Press/Safa-sells-Bafana-for-R1-billion-20150429
Nicita, A., & Ramello 1, G. B. (2005). Exclusivity and antitrust in media markets: The case of pay-tv in Europe. *International Journal of the Economics of Business*, *12*(3), 371-387. doi:10.2139/ssrn.830665
Nicita, A., & Rossi, M. A. (2008). Access to audio-visual contents, exclusivity and anticommons in new media markets. *Communications & Strategies,* 71, 79-

99. Retrieved from https://www.researchgate.net/profile/Maria_Alessandra_Rossi/publication/46532696_Access_to_Audio-visual_Contents_Exclusivity_and_Anticommons_in_New_Media_Markets/links/0a85e52f8dc8b831a5000000.pdf

Nolan, D. (1997). Bottlenecks in pay-TV: Impact on market development in Europe. *Telecommunications Policy, 21*(7), 597-610. doi:10.1016/s0308-5961(97)00037-2

Noll, R. G. (2007). Broadcasting and team sports. *Scottish Journal of Political Economy*, *54*(3), 400-421. doi:10.1111/j.1467-9485.2007.00422.x

OccupyTheory (2014, April 21). *Advantages and disadvantages of qualitative research*. Retrieved from http://occupytheory.org/advantages-and-disadvantages-of-qualitative-research/

Ofcom (2010). *Ofcom pay TV statement.* Retrieved from https://www.ofcom.org.uk/data/assets/pdf_file/0021/55470/paytv_statement.pdf

Ofcom (2015 November 15*).* Ofcom removes 'wholesale must-offer' for Sky Sports 1 and 2*.* Retrieved from https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2015/wmo-statement

Ofcom (2016, August 8). Ofcom closes investigation into Premier League football rights. Retrieved from https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2016/premier-league-football-rights

Opi, S. B. (2000). The application of the essential facilities doctrine to intellectual property licensing in the European Union and the United States: Are intellectual property rights till sacrosanct. *The Fordham Intellectual Property, Media and Entertainment Law Journal*, *11*, 409. Retrieved from https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=https://scholar.google.co.za/&httpsredir=1&article=1214&context=iplj

Orb, A., Eisenhauer, L., & Wynaden, D. (2000). Ethics in qualitative research. *Journal of Nursing Scholarship, 33*(1), 93-96. doi:10.1111/j.1547-5069.2001.00093.x

Organisation for Economic Co-operation and Development (OECD) (1996). *OECD Policy roundtables: The essential facilities concept*. Retrieved from http://www.oecd.org/competition/abuse/1920021.pdf

OECD (2013). *Competition issues in television and broadcasting*. Retrieved from http://www.oecd.org/daf/competition/TV-and-broadcasting2013.pdf

Parlasca, S. (2006). 79 *Collective selling of broadcast rights in team sports.* In S. S. Wladimir Andref (Eds.), Handbook in the economics of sport (pp. 719-729). doi:10.4337/9781847204073.00092

Parliamentary Monitoring Group (PMG) (2001, June 26). *Sports events of national interest: discussion with ICASA.* Retrieved from https://pmg.org.za/committee-meeting/640/

Parliamentary Monitoring Group (PMG) (2018, August 21). *SABC Presentation on Sports Rights to the Portfolio Committee on Communications*. Retrieved from https://pmg.org.za/committee-meeting/26865/

Parrish, R. (2002). Football's place in the single European market. *Soccer & Society*, *3*(1), 1-21. doi: 10.1080/714004867

Peeters, T. (2011). Broadcast rights and competitive balance in European soccer. *International Journal of Sport Finance, 6*(1), 23-40. Retrieved from www.ua.ac.be/tew

Petros, P., Evens, T., Iosifidis, P., & Smith, P. (2015). *FIFA mega sporting events and sports rights*. Retrieved from http://blogs.lse.ac.uk/mediapolicyproject/2015/06/12/fifa-mega-sporting-events-and-sports-rights/

Ploeg, J. (1999). Identifying the best research design to fit the question. Part 2: qualitative designs. *Evidence-Based Nursing*, *2*(2), 36-37. http://dx.doi.org/10.1136/ebn.2.2.36

PricewaterhouseCoopers (PwC) (2012). *South African entertainment and media outlook: 2012-2016.* Retrieved from https://www.pwc.co.za/en/assets/pdf/entertainment_and_media_outlook_2012_2016.pdf

PwC (2014). *Entertainment and media outlook 2014-2018 South Africa-Nigeria-Kenya.* Retrieved from https://www.pwc.co.za/en/assets/pdf/entertainment-and-media-outlook-2014-2018.pdf

Ratshisusu, H. (2013). Preconditions of a competitive Pay-TV Market: The case of South Africa. Retrieved from http://dx.doi.org/10.2139/ssrn.2237851

Republic of South Africa (RSA) (1993). *Independent Broadcasting Authority Act (IBA Act)* No. 153 of 1993.Retrieved from https://www.icasa.org.za/uploads/files/Independent-Broadcasting-Authority-Act-153-of-1993.pdf

RSA (1998). *Competition Act of 1998. Government Gazette (Vol.400, No.* 19412). Retrieved from https://www.gov.za/sites/default/files/gcis_document/201409/a89-98.pdf

RSA. (1999). *Broadcasting Act of 1999*. *Government Gazette (Vol.407, No.* 20042). *Retrieved* from https://www.gov.za/sites/default/files/gcis_document/201409/20042gon584.pdf

RSA (2000). *Independent Communications Authority of South Africa Act No. 13 of 2000.*(Retrieved from https://www.icasa.org.za/uploads/files/Independent-Communications-Authority-of-South-Africa-Act-2000.pdf

RSA (2005). *Electronic Communications Act (ECA). Government Gazette (Vol.36, No.364).* Retrieved from http://www.saflii.org/za/legis/consol_act/eca2005270/

Department of Sport and Recreation. (2009). *A case for sport and recreation: The social and economic value of sport.* Retrieved from http://www.srsa.gov.za/pebble.asp?relid=149

Department of Sport and Recreation. (2013). *White paper on sports and recreation*. Retrieved from https://www.srsa.gov.za/sites/default/files/Whitepaper-inners.pdf

Department of Telecommunications and Postal Services. 2014). *National integrated ICT Policy discussion paper: Options paper.* Retrieved from http://www.dtps.gov.za/documents-publications/category/45-discussion-paper.htmla

Treasury.(2015). *Budget 2015 estimates of national expenditure vote 40: Sports and recreation South Africa*. Retrieved from http://www.treasury.gov.za/documents/national%20budget/2015/enebooklets/Vote%2040%20Sport%20and%20Recreation%20South%20Africa.pdf

Department of Communications (2018). Department Communications invites comments regarding written proposals on review of public broadcasting. Retrieved from https://www.doc.gov.za/newsroom/media-

releases/communications-invites-comments-regarding-written-proposals-review-public
Ritchie, J., & Spencer, L. (2002). Qualitative data analysis for applied policy research. *The Qualitative Researcher's Companion*, *573*(2002), 305-29. http://dx.doi.org/10.4135/9781412986274.n12
Rowe, D. (2004). Watching brief: Cultural citizenship and viewing rights. *Sport in Society*, *7*(3), 385-402. doi:10.1080/1743043042000291703
SARU. (2018, May 11). *SARU Presentation on the Inquiry into Subscription TV.* Retrieved from https://www.icasa.org.za/uploads/files/saru-Inquiry-into-Subscription-TV-Presentation.pdf
Schaub, A. (2002). *Sports and competition: Broadcasting rights of sports events*. Retrieved from http://ec.europa.eu/competition/speeches/text/sp2002_008_en.pdf
Scheuer, A., & Schweda, S. (2008). Progress in the must-offer debate? Exclusivity in media and communication. *IRIS plus, European Audiovisual Observatory*, *10*(5). Retrieved from http://www.obs.coe.int
Shandu, K. (2008). The business of soccer and television-what's in it? *Journal of Marketing*, *2008*(2), 36-37. Retrieved from http://journals.co.za/docserver/fulltext/mfsa1/2008/02/mfsa1_feb_2008_a20.pdf?expires=1488633138&id=id&accname=guest&checksum=E37A84BA0F24A8440A1B6CA880BF6E77
Smith, P., Evens, T., & Iosifidis, P. (2015). The regulation of television sports broadcasting: a comparative analysis. *Media, Culture & Society*, *37*(5), 720-736. doi:10.1177/0163443715577244
Smith, P. (2013). Too Much or Not Enough? Competition Law and Television Broadcasting Regulation in the United Kingdom. *Westminster Papers in Communication and Culture,* 9(3), 143. doi:10.16997/wpcc.177
Smith, P., Evens, T., & Iosifidis, P. (2016). The next big match: Convergence, competition and sports media rights. *European Journal of Communication*, *31*(5), 536-550.doi:10.1177/0267323116666479
Solberg, H. A. (2002). Cultural Prescription: The European Commission's Listed Events Regulation-Over Reaction? *Sport in Society*, *5*(2), 1-28. doi: 10.1080/713999857
South African Broadcasting Corporation (SABC) (2018, May, 8). *SABC presentation on the ICASA Discussion Document: Inquiry into Subscription Television Broadcasting Services.* Retrieved from www.icasa.org.za
SABC (2015/16). R*eports*. Retrieved from http://www.sabc.co.za/wps/portal/SABC/SABCDOCSREPORTS
SABC (2016). *Annual Report 2016.* Retrieved from http://www.sabc.co.za
SABC (2018, August, 21). *SABC presentation to the Portfolio Committee on Communications*. Retrieved from https://pmg.org.za/committee-meeting/26865/
SABC (2018, August, 31). *100 years of living legacy: Annual report 2018.* Retrieved from http://www.sabc.co.za/sabc/wp-content/uploads/2018/09/SABCAR30Aug2018email-1.pdf
Sowetanlive (2017, December 06). SuperSport win bid to renew PSL media rights for Sub-Saharan Africa. *Retrieved from* https://www.sowetanlive.co.za/sport/soccer/2017-12-06-supersport-win-bid-to-renew-psl-media-rights-for-sub-saharan-africa/

Sportspromedia (2017, December 20). Sharing content: Why BT and Sky agreed their new pay-TV partnership. Retrieved from http://www.sportspromedia.com/quick_fire_questions/sharing-content-why-bt-and-sky-agreed-their-new-pay-tv-partnership

Sports24 (2017, October 7).Cosatu threatens to picket Boks v All Blacks test. Retrieved from http://www.sport24.co.za/Rugby/RugbyChampionship/cosatu-threatens-to-picket-bok-all-black-game-20171003

Statistics South Africa (Stats SA) (2016). *General household survey 2015.* Retrieved from http://www.statssa.gov.za/publications/P0318/P03182015.pdf

Stats SA. (2015, March 31). *How much do South Africans spend on ICT?* Retrieved from http://www.statssa.gov.za/?p=4414

Stats SA (2016, May 31). *General Household Survey 2016.* Retrieved from http://www.statssa.gov.za/publications/P0318/P03182016.pdf

Szymanski, S., & Kesenne, S. (2004). Competitive balance and gate revenue sharing in team sports. *The Journal of Industrial Economics*, *52*(1), 165-177. doi:10.1111/j.0022-1821.2004.00220.x

TechCentral (2014, February 10). StarSat will be a 'serious competitor'. Retrieved from https://www.techcentral.co.za/starsat-will-be-a-serious-competitor/46334/

TechCentral (2016, August 18*).* New OpenView HD channel list. *Retrieved from https://techcentral.co.za/new-openview-hd-channel-list/67770/*

TechCentral (2017, November 29). MultiChoice reports 10% SA subscriber growth. Retrieved from https://techcentral.co.za/multichoice-reports-10-sa-subscriber-growth/78426/

The Guardian (2018, February 23). Sky and BT Sport retain grip on Premier League rights but TV frenzy cools. Retrieved from https://www.theguardian.com/football/2018/feb/13/sky-bt-sport-premier-league-tv-rights

The Telegraph (2017, September 04). IPL rivals Premier League after global television rights sold for nearly £2bn. Retrieved from http://www.telegraph.co.uk/cricket/2017/09/04/ipl-rivals-premier-league-global-television-rights-sold-nearly/

Thorne, S. (2000). Data analysis in qualitative research. *Evidence-based nursing*, *3*(3), 68-70. doi:10.1136/ebn.3.3.68

Thothela, M. O. (2014). *The influence of regulatory approach on competition in the South African pay-TV market* (Doctoral dissertation). Retrieved from http://wiredspace.wits.ac.za/bitstream/handle/10539/13634/MMICTPR_RESEARCH_REPORT_FINAL.pdf?sequence=1

Timeslive (2017, November 15). *SABC requests PSL to extend bidding process for league's media rights*. Retrieved from https://www.timeslive.co.za/sport/soccer/2017-11-15-sabc-requests-psl-to-extend-tender-process-for-leagues-media-rights/

Tonts, M. (2005). Competitive sport and social capital in rural Australia. *Journal of rural studies*, *21*(2), 137-149. doi:10.1016/j.jrurstud.2005.03.001

*Total Sportek (*2017, January 19). Top 10 biggest tv rights deals in sports. Retrieved from http://www.totalsportek.com/money/biggest-tv-deals-sports/

Ungerer, H. (2001). Introduction of competition in the communications market: The European experience. In European Commission (eds), second international seminar*. (pp1-17). Plano Editorial, Rio de Janeiro*, Brazil. . Retrieved from http://ec.europa.eu/competition/speeches/text/sp2001_039_en.pdf

University of Glasgow (n.d.). *Complementary research methods.* Retrieved from http://www.gla.ac.uk/t4/education/files/scre/methods.pdf

Visser, S. D. (2015). *The socio-cultural impact of 2010 FIFA world in Cape Town residents.* Retrieved from http://digitalknowledge.cput.ac.za/jspui/bitstream/11189/3202/1/208127992_visser_sd_mtech_sport_bus_2015.pdf

Wagner, C., Kawulich, B., & Garner, M. (Eds.). (2012). *Doing social research: A global context*. New York: McGraw-Hill Higher Education.

Weeds, H. (2015). TV wars: Exclusive content and platform competition in pay TV. *The Economic Journal*, *126*(594), 1600-1633. doi:10.1111/ecoj.12195

Woodhouse, J. (2018, October 03 08). *Listed sporting events. Briefing Paper*. Retrieved from http://researchbriefings.files.parliament.uk/documents/SN00802/SN00802.pdf

Zamengo, L., & Augusto, P. (n.d.). *The role of exclusivity in premium content distribution: Economic efficiency and social welfare.* Retrieved from http://www.siecon.org/online/wp-content/uploads/2014/10/Preta-Zamengo-151.pdf