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GENERAL NOTICE

NOTICE 1356 OF 2002

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (ICASA)



NOTICE OF PUBLICATION OF THE DISCUSSION PAPER ON SPORTS BROADCASTING RIGHTS

The Independent Communications Authority of South Africa ("the Authority") hereby, in accordance with section 28 of the Independent Broadcasting Authority Act, as amended, 1993, publishes its Discussion Paper on Sports Broadcasting Rights.

Interested parties are invited to:

- (a) obtain from the Authority or from the Authority's website (www.icasa.org.za) a copy of the Discussion Paper, and
- (b) submit written representations by post, or fax, or e-mail or delivered by hand to:

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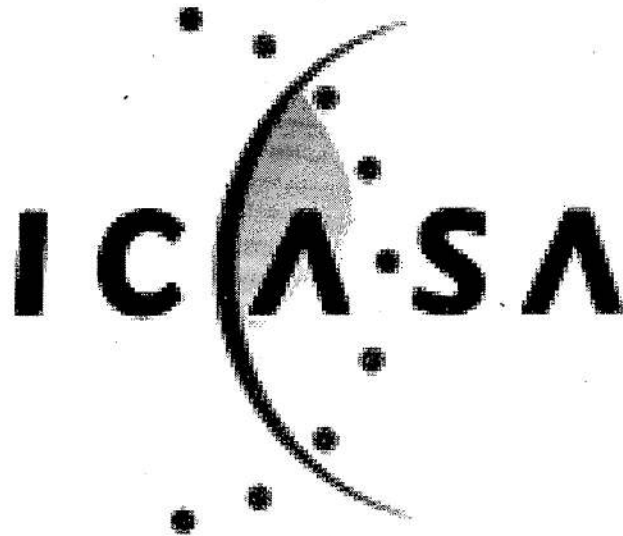
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Any interested person or organisation who submits written representations should indicate whether they require an opportunity to make oral presentation at the hearings.

The closing date for the receipt of representations is 04 October 2002, at 16h30.

Inquiry into Sports Broadcasting Rights



Independent
Communications
Authority
of
South Africa



Discussion Paper

8th August 2002

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A. Introduction

1. Aims of the Discussion Paper

"Subscription services may not acquire exclusive rights for the broadcast of national sporting events, as identified in the public interest from time to time by the Authority in consultation with the Minister and the Minister of Sport and in accordance with the regulations determined by the Authority through a public process." (Section 30(7) of the Broadcasting Act, 1999).

The purpose of this Discussion Paper is to generate comment from all stakeholders on issues surrounding broadcasting sports rights as required by section 30(7) of the Broadcasting Act.

The Discussion Paper's primary aims are to:

- solicit public participation and input in identifying "national sporting events"; and
- generate discussion on the appropriate framework for regulating the acquisition of sports rights by South African free-to-air and subscription broadcasting licensees to achieve the objects set out in the relevant section(s) of the legislation.

The Discussion Paper is structured in the form of questions supported by explanatory and contextual discussion. Questions posed are not necessarily all encompassing. The Independent Communications Authority of South Africa ("the Authority") would welcome any input on issues related to the regulation of sports rights that stakeholders feel the Authority may have neglected.

The Authority invites interested parties, stakeholders and the public to respond to the issues and questions raised in the Discussion Paper. Public hearings to further explore the issues raised are expected to be held later in 2002. The Authority will then publish a Position Paper and Regulations in 2003. The list of national sporting events will be published together with the regulations, following consultation with the Minister of Communications, and the Minister Sport and Recreation as required in terms of the Broadcasting Act.

Written submissions should be sent to:

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2. Background

Sports programmes, and the broadcasting of certain sports in particular, are a key programming genre for most broadcasters, and often drive the development of pay television. The importance of sports programming to broadcasters is demonstrated by the corresponding growth of competition for the acquisition of sports broadcasting rights.

Broadcasting is also critical to the sports industry which often relies on broadcasting coverage to promote particular sports. Television and radio have significant influences on sport, bringing sporting events into the living rooms and the clubs and pubs of South Africa.

The introduction of new broadcasting technology has led to broadcasting services going through continuous and rapid development in this area. Digital technology, for example, provides additional broadcasting capacity, and offers viewers increasing opportunities to view a growing number of sports, either on theme channels or on an event-by-event basis.

South Africa, similar to other countries, has developed a legislative framework to regulate the acquisition of sports rights in response to public concerns about the possible migration of 'major' television sports events from free-to-air television channels to pay-TV (both satellite and terrestrial). There is a public expectation that 'significant' sporting events should be broadcast on free-to-air television and radio. This is evidenced by the often emotional debate in the media about the absence of radio commentary for certain games and the non-screening of such events on free-to-air television.

Free to air broadcasts (both radio and television) are obviously available to a much wider audience than programmes broadcast on subscription services as consumers are not obliged to make additional payments for decoders, receiving equipment or cable subscription to listen to such stations or view such channels. In South Africa the difference in audience reach is particularly stark given the relatively low take up of subscription television and the continued reliance by many South Africans on radio. Concern has arisen, with the growth and development of pay-TV, that viewers are being denied free access to 'important national sports events' because subscription broadcasters have been buying up those rights to develop their own services. On the other hand, pay-TV take up is often driven by the holding of exclusivity live rights to popular sports events. Viewers subscribe in order to be able to

watch such events. This has led to a rise in the costs of sports rights both locally and internationally. It is also important to note that multi-channel subscription services can provide viewers with more in depth coverage of certain sporting events as they have more channel capacity than terrestrial free-to-air broadcasters.

The other important consideration with regards to the regulation of broadcasting sports rights, is the reliance by sports administrators on the income from selling such rights. Money generated from selling sports rights is often seen as critical to the survival of sports. This needs though to be balanced against the need to ensure mass audiences and support for particular sports.

This Inquiry is intended to contribute towards determining trends in sports rights acquisition in South Africa and considering the lessons that can be learnt from international precedents. It will also assist the Authority in finalising sports broadcasting regulations and a list of national sporting events that meet public expectations whilst also taking into account the need to encourage investment in the broadcasting industry and issues of concern to sports rights holders.

In the process of developing this Discussion Paper the Authority has held interviews with broadcasters, sports bodies, marketers, the Department of Sport and Recreation, and the Department of Communications to get their views on the regulation of sports rights. The Authority has also studied regulatory frameworks in several countries in order to get an understanding of these.

B. Sports Broadcasting Regulation

In looking at developing a list of national sporting events and at developing regulations to implement this, it is useful to look at how other countries have approached this, and learn from their experience.

Countries like Australia, the United Kingdom, Germany, Italy and Denmark, amongst others, have identified sporting events that need to be aired by free-to-air television. In addition, Article 3(a) in the European Community's 'Television without Frontiers Directive' (1997) allows Member States to take measures to ensure that broadcasters within their jurisdiction do not broadcast events of "major importance for society on an exclusive basis, in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television".

Australian and UK's listed events and regulations are more comprehensive than the listed events and regulations of Germany, Italy and Denmark. This paper will, therefore, focus more on the Australian and UK systems.

3. Australia

Australia has anti-siphoning rules. Siphoning means the acquisition of the exclusive broadcasting rights by a pay-TV licensee, so that those events are not available on free-to-air television and would only be available to subscribers of the pay-TV service. The anti-siphoning regime is a mechanism by which the regulatory authority can formally list events that should be available on free-to-air television for viewing by the general public.

The Australian Explanatory Memorandum to the Broadcasting Services Bill, 1992, referred to the need to ensure that Australians continue to have free access to important sporting events. These are defined as events of national importance and cultural significance that have traditionally been televised by free-to-air broadcasters and received by the public free of charge. The Memorandum aimed to safeguard the interests of those without access to pay-TV by retaining traditional free-to-air coverage of sporting events.

The Australian anti-siphoning list is not a list of sporting events reserved solely for free-to-air television. It does not compel free-to-air broadcasters to acquire the rights to listed events nor to broadcast the listed events to which they hold rights. The list does not guarantee free-to-air broadcasters exclusive rights to such events, however, it does give them priority over pay-TV licensees for the acquisition of rights to listed events. Under the anti-siphoning rules the right to broadcast listed events can only be acquired by pay-TV licensees if live broadcast rights are held by commercial free-to-air television licensees or by a national television broadcaster. If live broadcast rights to a listed event are not held by a free-to-air broadcaster, a pay-TV licensee may request that the Minister for Communications, Information Technology and the Arts remove the event from the list. The inclusion, or removal, of an event on the Australian anti-siphoning list is a matter on which the Minister of Communications, Information Technology and the Arts has complete discretion.

As stated above, the broad criteria used in Australia on the anti-siphoning list are that the event must be of 'national importance' and/or 'cultural significance'. One of the other criteria for inclusion is that free-to-air television broadcasters must have 'consistently' broadcast the event over the previous five years.

The general principles used to judge whether an event could be said to have been 'consistently broadcast' over the previous five years are:

- the event or some matches in a multi-match event have been broadcast each time the event or tournament has been held;
- the extent of coverage has been substantially similar each year the event has been held (or increasing in amount); and
- coverage of an event need not have been live in full to be consistently broadcast, though highlights only coverage is excluded from the definition of consistently broadcast.

If a pay-TV licensee already has the right to broadcast an event, listing the event does not divest the licensee of that right. The licensee holds the right to broadcast the event until the contract expires. The Minister's notice does not operate retrospectively.

For rights holders and pay-TV broadcasters to negotiate agreements concerning the acquisition of events, they must be able to ascertain whether or not a specific match in an

event is on the list. In order to provide certainty to all parties affected by the inclusion of an event on the anti-siphoning list, the Minister has listed sporting events in extensive terms. The list covers all sports codes, matches and rounds.

The law in Australia allows the Minister to remove an event from the anti-siphoning list. Situations in which delisting is envisaged include:

- when free-to-air broadcasters have had a real opportunity to acquire the live rights to an event, but none of them has done so within a reasonable time; and
- a commercial television-broadcasting licensee has acquired the live right to televise an event, but has failed to do so or has televised only an unreasonably small proportion of the event.

In both circumstances, the Minister would delist an event if he/she is of the opinion that removing the event from the notice is likely to have the effect that it will be televised to a greater extent than it would be if it remained on the notice.

The usual practice for delisting occurs after free-to-air broadcasters have been given a genuine opportunity to acquire the live rights to an event but have declined to do so. A pay-TV licensee then makes an application to the Minister who asks the Australian Broadcasting Authority ("the ABA") for advice on the application.

The ABA plays an advisory and monitoring role. In particular, the ABA's role is:

- to advise on the creation and variation of the anti-siphoning list;
- to monitor and to report to the Minister at six-monthly intervals on the operation of the anti-siphoning list; and
- to report on:
 - ✓ the extent to which rights to televise events were made available and acquired by national and commercial broadcasting licensees;
 - ✓ the extent to which those events acquired were televised; and
 - ✓ whether there are any other grounds for the Minister to consider specifying other events for the list.

Australia also has anti-hoarding rules. In terms of these rules, Australian pay-TV licensees with live rights to designated events and tournaments who do not intend to televise a

substantial portion of such events or tournaments, are required to offer the unused rights for a nominal charge to the public broadcasting services, the ABC and the SBS. The ABC and the SBS must offer their unused rights to each other.

There are also rules governing the offer of unused rights. The minimum offer time is 30 days before the start of the event or series, unless the Minister is satisfied that it should be closer to the start. As the offer remains open for acceptance for a minimum period of seven days, the shortest offer period is one week.

The anti-hoarding scheme aims to improve the operation of the anti-siphoning scheme by increasing opportunities for large audiences to access full live coverage of major sports events.

4. The United Kingdom

The Broadcasting Act 1996, as amended by the Television Broadcasting Regulations 2000, requires the Independent Television Commission ("the ITC") to draw up, and from time to time review, a code giving guidance on certain matters relating to the televising of sports and other events of national interest which have been listed by the Secretary of State for Culture, Media and Sport. The Broadcasting Act contains provisions restricting the acquisition of exclusive rights to certain sporting events deemed culturally or socially significant by the Secretary of State for Culture, Media and Sport.

The UK sports rights scheme is premised on the notion of non-exclusivity of rights usage by television broadcasters unless the ITC grants prior permission. The UK has anti-siphoning rules based on two categories to reflect the social and cultural importance of the events. 'Group A' events are those events for which live rights must be made available for acquisition by free-to-air terrestrial television. 'Group B' includes events for which exclusive live coverage might be shown by a broadcaster (including a Pay-TV broadcaster) provided there are satisfactory arrangements for secondary coverage (such as by a free-to-air broadcaster).

The Broadcasting Act contains provisions to protect the availability of live coverage of listed events on free-to-air television. A subscription or pay-per-view service is not permitted to broadcast live coverage of a Group A listed event unless rights are also made available to a

terrestrial free-to-air service (the BBC, ITV or Channel 4). Equally, and on the basis of reciprocity, a terrestrial service is not permitted to broadcast live coverage of a listed event unless rights are similarly made available to a subscription or pay-per-view service. The ITC's consent must be obtained for an event to be shown on a single channel.

In deciding whether to give its consent to single channel coverage the ITC needs to establish:

- that the availability of the rights was generally known; and
- no broadcaster in the other category had expressed an interest in their acquisition to the rights holder, or had bid for the rights.

The ITC should furthermore be satisfied that:

- broadcasters have had a genuine opportunity to acquire rights on fair and reasonable terms; and
- broadcasters have been given a reasonable time to acquire the rights.

The ITC takes into account some or all of the following, to be satisfied that broadcasters have had a genuine opportunity to acquire rights in fair and reasonable terms:

- any invitation to express interest, whether in the form of public advertisement or closed tender, for the acquisition of rights must have been communicated openly and simultaneously to broadcasters providing services in both categories;
- at the beginning of any negotiation the documentation and/or marketing literature must set out in all material respects the process for negotiating and acquiring rights and all material terms and conditions, including what rights were available. If the rights of the listed event were included in a package of rights, the package must not have been more attractive to broadcasters providing services on one of the two categories. Preferably, the rights should be capable of being purchased independently of other rights, eg, highlights, delayed transmissions, other events;
- the conditions or costs attached to the acquisition of the rights (for example, production costs) must have been clearly stated and must not be preferential to one category of service; and
- the price sought for the rights must have been fair, reasonable and non-discriminatory as between the two categories of programme service. The term fair price is

determined both by the nature of the rights being offered and the value of those rights to broadcasters.

The term 'reasonable' is interpreted according to the circumstances of each case, including:

- the complexity of the negotiations and the production and transmission of the programme surrounding the event; and
- the proximity of the events to the date on which the rights are offered. The time allowed should give all parties a realistic opportunity to negotiate and reach agreement.

For events listed in Group B the ITC will give its consent to exclusive live coverage of an event by a broadcaster in one category ("the first service") if "adequate" provision has been made for secondary coverage by a broadcaster in the other category ("the second service"). Secondary coverage is considered to be adequate where the second service has rights for the provision of edited highlights or delayed coverage amounting to at least 10% of the scheduled duration of the event, subject to a minimum of 30 minutes for an event lasting an hour or more, whichever is the greater. The second service must, in addition, have editorial control over the content and scheduling of the edited highlights or delayed coverage save for the possible restriction that the second service shall not begin broadcasting until a specified period has elapsed following the scheduled conclusion of the event. The maximum period which may be set is as follows:

For an event scheduled to finish:

After midnight and up to 8.00am

Between 8.00am and 8.30pm

Between 8.30pm and 10.00pm

Between 10.00pm and midnight

Maximum delay:

Edited highlights or delayed coverage to start not later than 10.00am.

Up to 2 hours

Edited highlights or delayed coverage to start not later than 10.30pm.

Up to 30 minutes.

In addition to the above, the right to provide live radio commentary on the event must have been acquired by a radio station with national coverage or an organisation providing a sports service to radio stations which form a national network. Where a second service is unable or unwilling to provide adequate or any secondary coverage, the ITC will consider whether to give its consent to exclusive live coverage without secondary coverage.

Section 104 of the Broadcasting Act requires the ITC to specify the circumstances in which the coverage of listed events generally, or of a particular listed event, is, or is not, to be treated as live. In considering this matter the ITC has taken the view that, as far as possible, viewers should be able to participate in any event as it happens. This suggests that live television coverage of most sports events, including those taking place in different time zones, should be defined as coverage which is simultaneous with the event.

- Q.4.a** *Should the South African system adapt to the regulatory systems of either Australia or the UK? If so, which system would best meet the needs of South Africans. Please motivate your response and detail what aspects of the chosen system would in your view be useful to South Africa.*
- Q.4.b** *Should the Authority have regulations that require broadcasters to sub-licence rights for listed events to other broadcasters on a deferred or highlight basis?*
- Q.4.c** *If so, should the Authority set time limits for such broadcasts and what should be the maximum time permissible for delay broadcast, secondary coverage or highlights?*
- Q.4.d** *How, if at all, should sub-licensing be regulated?*
- Q.4.e** *What should happen with regards to rights to listed events that subscription or free-to-air broadcasters already own prior to the determination of a list? Should the Authority allow such broadcasters to continue to have exclusive coverage until the current contracts expire, as with the Australian system? Or should the Authority follow the British system which ignores such existing rights and require both subscription and free-to-air broadcasters in this position to give secondary rights to broadcasters in the other category?*
- Q.4.f** *How often should the Authority release reports on compliance with the South African list? Should this include a review of the list?*

- Q.4.g** *Should the Authority have regulations, like the ITC's, allowing for a single channel coverage of listed events that deal with 'real opportunity' to acquire the live right to an event? If so, what should be regarded as 'real opportunity' to acquire the live right to an event?*
- Q.4.h** *What is 'reasonable period' to acquire the live right to an event?*
- Q.4.i** *Should the Authority have regulations determining whether broadcasters acquire rights in fair and reasonable terms? If so what criteria should be used?*
- Q.4.j** *Would a 'dual rights' or 'non-exclusive approach' satisfy the regulatory intentions in South Africa?*
- Q.4.k** *What mechanism should be put in place to ensure that free-to-air broadcasting licensees with rights to designated events or tournaments that they do not intend to utilise, are required to offer the unused rights to subscription broadcasters? What terms, if any, should be set for this?*
- Q.4.l** *How should live coverage of sports events be defined?*

5. The European Community

Article 3(a) in the 'Television without frontiers Directive' (1997) allows Member States of the European Community to take measures to ensure that broadcasters within their jurisdiction do not broadcast events of 'major importance for society on an exclusive basis, in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television'.

Article 3(a) further provides that 'the Member State concerned shall also determine whether these events should be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage'. A Member State wishing to protect specific events from migrating to subscription television, constructs a list of designated events, whether national or international.

Germany, Italy and Denmark have drawn up their lists of designated events. The Netherlands, France, Belgium, and Austria have indicated to the European Commission that they intend to notify draft measures designating events in the near future.

5.1 Germany

Germany has listed events. Germany's listed events are, however, less comprehensive than the Australia's and UK's listed events. Listed events in Germany are:

- Olympic Games;
- All European Championship and World Cup matches games involving the German national football team, as well as the opening match, the semi-finals and finals, irrespective of whether the German team is involved;
- The semi-final and finals of the German FA Cup;
- The German national football team's home and away matches; and
- The final of any European club competition involving a German club.

5.2 Italy

The Italian Parliament passed a regulation, which prohibits a single broadcaster from controlling more than 70% of live matches. Italy also has anti-siphoning rules. A listed event in Italy must satisfy two of the following criteria:

- the event and its outcome are of widespread interest in Italy;
- the event enjoys widespread recognition by the general public and has particular cultural significance;
- the event involves a national team in a particular sporting discipline in a major international tournament; and
- the event has traditionally been broadcast on free-to-air television and has enjoyed high viewing figures in Italy.

5.3 Denmark

Denmark drew up a list of designated events which was accepted by the European Commission. Designated events in Denmark are:

- Winter and Summer Olympics;
- World and European football championships (men); all matches with Danish participation together with semi-finals and finals;
- World and European handball championships (men and women); all matches with Danish participation together with semi-finals and finals;

- Denmark's world and European championship qualifying matches in football (men); and
- Denmark's world and European championship qualifying matches in handball (women).

6. The United States of America

The Federal Communication Commission ("FCC") in the US reported on its 'Inquiry into Sports Programming' on 30 June 1994. Its main conclusion was that there was no significant migration of sporting events from free-to-air services to subscription television. The FCC's investigation revealed trends at that time which counter-indicated migration arguments. They noted that contracts between Major League Baseball and broadcaster ESPN amounted to an overall addition to output, rather than any lessening of coverage on free-to-air through migration or preclusive arrangements. However, the FCC did not draw conclusions in relation to less popular sports, since these would require further analysis of the factual situation. The FCC concluded that because of the magnitude of sporting events on broadcast television additional intervention is not warranted. The FCC noted that because cable and other multichannel media had become more widely available, access to the vast array of non-broadcast programming was not a problem for most households.

C. The South African Legal Framework

7. The Broadcasting Act, 1999

Section 30(7) of the Broadcasting Act, 1999, directs the Authority to develop two regulatory tools to regulate the acquisition of sports rights on television. Firstly, the Act requires the Authority to identify "national sporting events" in consultation with the Minister of Communications and the Minister of Sport and Recreation. Secondly, the legislation mandates the Authority to determine regulations to ensure that subscription services may not acquire exclusive rights for the broadcast of these national sporting events.

Although the Broadcasting Act does not preclude subscription services from acquiring broadcast rights for sporting events, it imposes a prohibition on the acquisition of exclusive rights for the broadcast of "national sporting events" as identified from time to time by the Authority.

The definition and identification of national sporting events will have to take into account public considerations as reflected in the objectives of both the Broadcasting Act and the Independent Broadcasting Authority Act, 1993, as amended ("the IBA Act"). These objectives include:

- the promotion of a diverse range of sound and television broadcasting services on a national, regional and local level which, when viewed collectively, cater for all language and cultural groups and provide entertainment, education and information;
- ensuring fair competition between broadcasting licensees;
- encouraging investment in the broadcasting industry; and
- promoting the stability of the broadcasting industry.

This definition of a "national sporting event" will guide the Authority's development of a list of events which must be broadcast by free-to-air broadcasting services. Divergent views emerged during the preliminary consultations on what criteria should be used to determine whether or not a particular sport or game is a "national sporting event". While some of those spoken to said that the intention of the Broadcasting Act is clearly to include all sports of

national interest, others suggested that the term be interpreted to mean only national sports rather than provincial or international events.

Q.7.a *How should the Authority interpret the term “national sporting events”? Please motivate your answer and provide the legal basis for your response where possible.*

Q.7.b *What criteria should be used to determine which events should be considered as national sporting events?*

Q.7.c *Should international sporting events be considered as national sporting events? Please motivate your answer.*

8. Developing Regulations

Whilst the Broadcasting Act does indicate that such national sporting events shall be “identified in the public interest from time to time” and thus provides for the review of any list, it does not specify the intervals of such review or the circumstances which would lead to any review. It has been suggested that this could result in uncertainty and would impact on the type, number, duration and price of contracts concluded in respect for exclusive rights. The Authority would, therefore, welcome comment on this and on whether or not the Authority should prescribe review periods and/or define the circumstances under which such review would take place.

Section 10(1)(i) of the Broadcasting Act obliges the public service wing of the South African Broadcasting Corporation (“the SABC”) to “include national sports programming as well as developmental and minority sports”. Whilst these obligations will be further explored during the process of restructuring the SABC, the Authority would welcome comments, if any, on whether the requirement that the SABC broadcast national sports programming impacts in any way on this inquiry.

Q.8.a *Should the Authority prescribe the review periods for identified or listed events? Make suggestions on how this can be regulated to ensure certainty whilst not limiting the necessary flexibility to review certain events on a case by case basis in response to industry or public demands.*

- Q.8.b** *How often should the Authority review identified or listed sporting events? Please motivate your answer and indicate the process which should be followed by the Authority to ensure both efficiency of decision making and public involvement in such decisions.*
- Q.8.c** *Should the Authority indicate in regulations the circumstances which would lead to an event being added to or removed from a list of national sporting events outside of the set review periods? If so, what circumstances would lead to such review on a case by case basis? What process should be followed by the Authority to ensure transparency of such decisions?*

D. Listing National Sporting Events

9. South Africa's Interim List

There has been an attempt by the SABC, e.tv and Supersport to reach consensus on a list ("the Interim List") of sporting events to be broadcast free to air. This agreement has been used by the three broadcasters to self-regulate the acquisition of broadcast sports rights. The three broadcasters have agreed to comply with the Interim List until the Authority has completed its inquiry and determined a list of national sport events in terms of section 30(7) of the Broadcasting Act. In the process of drawing up the Interim List, broadcasters have also identified areas of disagreement between themselves about what events should be included on any list.

All three broadcasters have agreed that the following events should be on the Interim List and therefore broadcast free to air:

- Olympic Games;
- Commonwealth Games;
- **With regards to the Soccer World Cup, African Cup of Nations, Rugby World Cup, and Cricket World Cup:**
 - ✓ All South African team matches;
 - ✓ Opening match;
 - ✓ 2nd quarter finals;
 - ✓ 3rd and 4th position playoff if South Africa is involved;
 - ✓ one semi-final;
 - ✓ Final match; and
 - ✓ Opening and closing ceremonies.

Details will depend on the rules of the relevant sports bodies (ICC, IRB, FIFA, etc);

The SABC has suggested that a minimum of 50% of each of the above-mentioned World Cups, including the above events, should be shown on a free-to-air basis. Agreement has not been reached on this issue.

- **International events/matches:**

- ✓ Soccer: All International soccer matches played in South Africa involving Senior South Africa National team;
- ✓ Rugby: All International Test matches played in South Africa involving Senior South Africa National team;
- ✓ Cricket: All International Test matches played in South Africa involving Senior South Africa National team;

The SABC stated that the Senior South African National Team matches played outside of South Africa should also be included on the List. Agreement has not been reached on this issue.

- **South African National Cup/League/Event Finals on the basis that all these are made accessible to the public, which could include live or delayed broadcast:**

- ✓ PSL Cup
- ✓ Coca Cola Cup
- ✓ BP Top Eight
- ✓ Charity Cup
- ✓ Currie Cup
- ✓ VodaCup
- ✓ Supersport Series
- ✓ Standard Bank

The SABC has suggested that the run-up matches to each of the finals should be included on any list. Agreement has not been reached on this issue.

- **Athletics**

- ✓ The National Senior Championship; and
- ✓ Athletics South Africa organised International events held in South Africa that involve Senior National Teams.

The three broadcasters have not yet agreed on the Rugby Super 12.

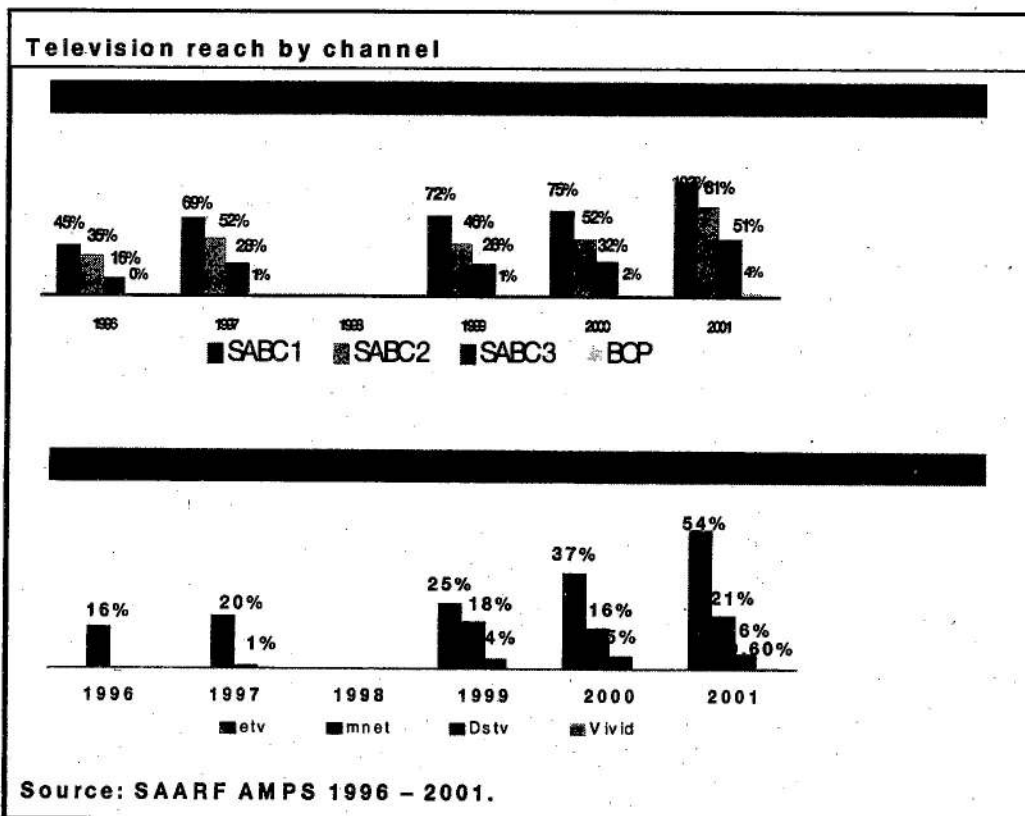
- Q.9.a** *The Authority would like comment from all interested parties on the Interim List. Should the Authority adopt the Interim List as agreed upon by the three broadcasters? Should there be any additions or items taken off the list? Please motivate your answer.*
- Q.9.b** *Broadcasters have identified areas of disagreement. The Authority would welcome comment from stakeholders on these areas and whether or not such events should be included on a List of National Sporting Events. Please motivate your response.*
- Q.9.c** *Should the list include other events? For example, should the list include tennis matches, Boxing, and/or netball? Please motivate your answer and provide details of which such events, if any, should be included on a list.*
- Q.9.d** *What about continental soccer games involving individual clubs, like the CAF Champions League and the Mandela Cup?*
- Q.9.e** *Should some of the Rugby Super 12 games be listed, and if so which games should be listed?*
- Q.9.f** *Under what conditions should an event be removed from the list?*
- Q.9.g** *Should radio rights and television rights be sold separately?*

E. The South African Broadcast Market

10. The South African Broadcast Market

Sports rights and their acquisition should be understood in the context of the television market and the ability of the market to sustain the demands of this programme genre. Sports broadcasting meets a specific need in the South African community. The number of available sporting codes is putting demand on broadcasters for platforms on which the sports events may be broadcast. Free-to-air broadcasters have time limitations with regards to the number of hours they can dedicate towards sports broadcasting per day. Subscription and multi-channel broadcasters do not face the same time constraints.

South Africa has a comparatively low penetration with regards to pay television. There is only one licensed terrestrial analogue operator, M-Net, and two direct-to-home digital satellite operators, Multichoice and Vivid. Subscription fees are relatively high compared to other markets. Pay-TV penetration stands at 18% of total TV households compared to 45% in the UK.



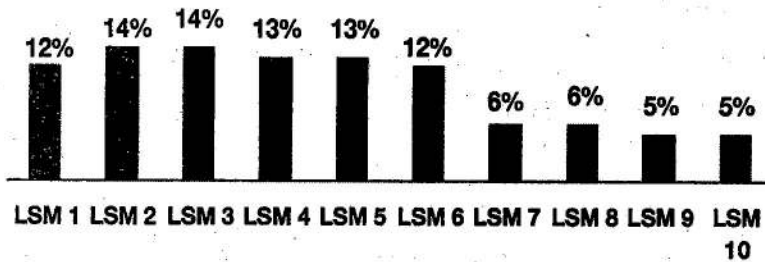
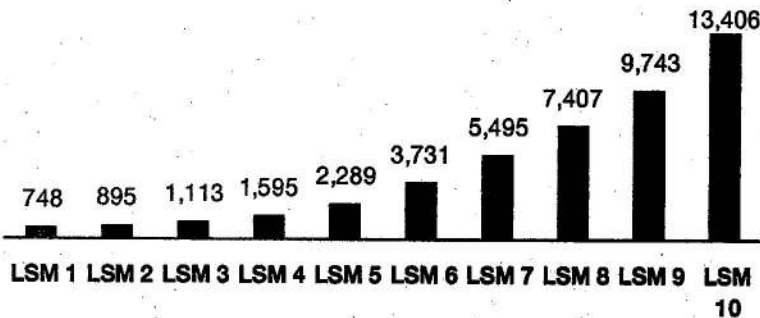
Factors that have contributed to the growth in audience reach are:

- growth in television households;
- the introduction of the private commercial free-to-air television, e.tv, in 1998;
- growth in the total pay-TV take up; and
- increased coverage: SABC1 and SABC2 have grown by 130%, SABC3 by 220%, M-Net by 30%, and e.tv increased its coverage from 64% to 77% in 2001.

This increase is primarily due to the number of households with access to television. A steady growth in television households presents an opportunity for more sports viewers. This growth also presents an opportunity for growth in advertising and sponsorship revenue.

11. Population Distribution by Living Standard Measure (LSM)

According to the South African Advertising Research Foundation's All Media and Products Survey (AMPS 2001), LSMs 7 and upwards have access to disposable income to spend on pay-TV. For the purpose of analysing the impact of regulations on different population groups, it is important to consider population distribution by LSM. A study of income for the 10 LSMs is quite instructive. It should be noted that the LSM measure was expanded by SAARF from a range of LSM1-8 to LSM 1-10.

Population distribution and average income by LSM*Distribution of the Population by LSM**Average Income By LSM*

In the income levels for LSM 1 to 10, people from LSM 7 and upwards can afford the pay television subscription fees. Only 39% of households in LSM 1 to 4 have television sets and the majority rely on radio. 83% of households in LSM 1 to 4 have radio sets.

F. Regulating Sports Rights

12. Sports Rights

Broadcast rights of sporting events are owned by the sport governing body or the sports rights trader or the club itself. Owners of broadcasting rights to sports events sell the rights to broadcasters or to sports rights agencies. The rights can be divided into television rights and radio rights. The rights can be exclusive or non-exclusive, for live or deferred transmission, or for highlights. Broadcasters and/or advertising agencies sell advertising time or sponsorship to companies that want exposure on radio and television during sports programmes.

The recent trend internationally has been for clubs to cede their rights to the national sporting body, which sells the broadcast rights collectively. In this way certain sporting codes such as soccer have been able to obtain significantly larger amounts of money through the selling of broadcast rights. In the case of South Africa, the owners of sports broadcast right are mainly sports governing bodies. The selling of broadcast rights on an exclusive basis to the highest bidder increases the revenue generated from the sale of broadcast rights.

12.1 Collective selling by sports bodies

Collective selling of broadcast rights entails providing a bundle of rights. The product may, therefore, be different to a product supplied by a single rights holder. Collective selling gives a high degree of market power to the collective seller. A collective seller is likely to favour the sale of rights to a single broadcaster. Where pay-TV platforms compete for the rights, this can lead to vastly inflated prices because of the 'winner takes all' nature of the collective sales process. The winning operator has no competition once the rights are secured.

12.2 Individual Selling

Individual selling is normally used to exploit increased broadcast market competition in order to generate revenues for the clubs. Individual selling can, however, negatively impact on some stakeholders, especially smaller clubs. Smaller clubs may struggle to sell their rights,

thus increasing the gap between rich and poor clubs. Individual selling can also harm solidarity between clubs.

12.3 Acquisition of rights by a third party associated with a television licensee

A company associated with (but separated by a corporate chain from) a television licensee may acquire sports rights and offer the rights to television licensees. Concerns have been expressed elsewhere that where the rights holder is also an associate of a television licensee, it is possible that the rights holder will only offer non-exclusive rights, or an unattractive package of rights to other broadcasters in the knowledge that this will be unacceptable to them. If the company is associated with a pay-TV licensee, the pay-TV station and the company might use the strategy to pursue the delisting of the event from the list of identified sporting events since the offer of non-exclusive rights will continuously be rejected by free-to-air broadcasters.

If rights are acquired by a third party that is an associate of a television licensee a question arises whether the related television licensee has in fact acquired the right to broadcast the event before the offer was made to other broadcasters.

Q.12.a Should the Authority have regulations preventing the acquisition of sports rights by a television licensee from a company/agency associated with the station or should this be regulated by a body such as the Competition Commission?

12.4 Exclusivity

The sale of exclusive rights to broadcast sports events is an accepted commercial practice. For sports organisers, the sale of exclusive rights is a way of ensuring the maximum short-term profitability of the event organised as the price paid for exclusivity by one broadcaster is generally higher than the sum of the amounts, which would be paid, by several broadcasters for non-exclusive rights.

For broadcasters exclusivity represents:

- an important way to guarantee the value of a given sports programme. This value might be increased even more if it has the right to sub-licence the event/s to competitors;
- a way to build up audience, in the short term as well as in the long term;

- a potential substantial increase in advertising or sponsorship revenue as sports programmes are a means of targeting a specific audience, often in large numbers;
- a degree of prestige in being the only broadcaster showing a particular popular sport; and
- a means for pay-TV channels to attract new subscriber. This is especially true for sports theme channels. Persuading viewers with specialised tastes to pay for specialised channels is the only way that many such channels can ensure sufficient financing. This is particularly true given limitations on advertising for subscription services. *"Subscription broadcasting services may draw their revenues from subscriptions, advertising and sponsorships. In no case may advertising or sponsorships, or a combination thereof, be the largest source of revenue"*. (Section 30(6) of the Broadcasting Act, 1999).

Exclusivity can apply to the live broadcasting of an entire event, to a deferred transmission of an entire event or both, and/or for access to use short clips for use in sports programmes. Exclusivity, for both television and radio rights, allows a single operator to determine the broadcast of the event. The broadcaster can either use some of the rights and withdraw the remainder from the market or can sub-licence some of the rights to other broadcasters. Broadcasters can buy exclusivity for a once off event (like the Soccer World Cup) or for a series of matches for a longer period.

12.5 Collective purchasing by broadcasters

Broadcasters sometimes join together to acquire the right to broadcast sports events. Whether such arrangements are anti-competitive depend, inter alia, on whether the parties are found to be important competitors with a strong position in the relevant market, and the scope and duration of the exclusive rights purchased.

Collective purchasing by broadcasters can have effects on both the up-stream market for the acquisition of sports rights and the down-stream market for the exploitation of the acquired rights. The concern is whether the collectively acquired rights unduly enhance the position of broadcasters in relation to their clients or consumers, i.e advertising agencies and pay-TV subscribers, or whether the position of competing broadcasters in relation to these consumers or clients is weakened.

On the other hand, collective purchasing has in some cases provided the means for public broadcasters to compete against pay-TV channels for the acquisition of rights. Members of the European Broadcasting Union ("the EBU") have clubbed together to compete with the big four European commercial broadcasters, British Sky Broadcasting, Canal Plus, Bertelsmann and Kirch, on the market for the procurement of broadcasting rights, or events of major national importance, such as the Olympic games.

13. The South African Sports Industry

13.1 Soccer

A large number of soccer events (Premier Soccer League games and cup competitions) was sold to the SABC in the 2001/2002 season by the Premier Soccer League ("the PSL"). Twenty five of the PSL league games were, however, sold to M-Net's Supersport by the PSL. Only two clubs appear to be viable in the Premier Soccer League - Orlando Pirates and Kaizer Chiefs. This is due to the support the two teams command and the number of sponsors each has. The majority of the teams survive on stipends from the Premier Soccer League (PSL).

The South African Football Association ("SAFA") has sold the broadcasting rights of most Bafana Bafana games to the SABC. The costs of organising an international soccer event are enormous. Transport costs form a major part of match expenses, as the majority of Bafana Bafana players are internationally based. This puts financial strain on SAFA. For that reason, concerns may be raised regarding the restrictions on sale of football rights exclusively to free-to-air television licensees unless revenue from rights exceeds expenses. This has to be weighed up against the need to ensure continued support for any game - often attributed to the availability of these games on free-to-air television and radio.

13.2 Rugby

In 1996 the South African Rugby Football Union ("SARFU"), New Zealand Rugby Union and the Australian Rugby Union formed an unincorporated joint venture called SANZAR. All three unions ceded their radio and television broadcast rights to SANZAR, which in turn sold them to NewsCorp for a ten-year period. Subsequently, Supersport bought Rugby rights from NewsCorp in 1996. This deal expires in 2006. Whilst M-Net's Supersport channel has been criticised for buying up rights for such a long time, Supersport argues that it has at least ensured that the matches are available in South Africa.

13.3 Cricket

The most attractive cricket rights to broadcasters are the one-day international (limited overs) matches as opposed to test matches. Domestic cricket rights have been sold to the SABC. The rights owners sell international matches played outside the country to M-Net's Supersport, probably because it is willing to pay more than the SABC. It is also difficult for terrestrial free-to-air broadcasters to air whole cricket games because of lack of channel space.

13.4 Athletics

Athletics South Africa ("ASA") sold athletics rights to the SABC in 2000 for three years. The ABSA series, the Engen series and a number of significant events such as the Comrades Marathon and the Two Oceans Marathon all form part of the rights package sold to the SABC. Many of the athletics events traditionally take place on Friday evenings. This has led to SABC TV not broadcasting them live but rather as delayed broadcasts or packaged as highlights the following day. For this reason ASA faces some challenges with regard to sponsorship of its events and might in future be keen to sell rights to pay-TV. Without television revenue, ASA cannot survive.

13.5 Boxing

Boxing rights are not sold by Boxing South Africa ("BSA"). Boxing rights are sold by individual promoters who hold rights to tournaments they organise. International promoters sell television rights to maximise their revenue. South African promoters depend largely on

television revenue to engage in their trade and they appear desperately in need of broadcasters' assistance to air their events.

13.6 Motorsport

Motorsport South Africa ("MSA") holds broadcast rights for all motorsport in South Africa, and all South African broadcasters have been advised that any transmissions of South African motorsport must be negotiated via or sanctioned by MSA. M-Net's Supersport has a channel on DSTV (Supersport2) dedicated to motorsport. Motorsport rights have been sold to Supersport as follows:

- national Championship Circuit Racing has been sold for three years (2002 – 2004). This comprises a highlights package and delayed live broadcasts;
- national Championship Rallying has been ceded, at no cost, via the producer of "TopCar" for one year (2002). This comprises delayed broadcasts;
- all motorcycle sports, excluding National Championship Circuit racing, have been ceded via the producer of "Two Wheels" for one year (2002). This comprises highlight packages; and
- national Challenge Circuit Racing has been ceded via the producer of "High Octane Motorsport" for one year (2002). This also comprises highlights packages.

13.7 Netball

Netball South Africa ("NSA") holds the broadcast rights for all netball matches in South Africa. NSA signed a five-year contract with the SABC in 2001. The rights have been sold on an exclusive basis. The contract does not oblige the SABC to broadcast all matches but only those which the SABC choose to broadcast. The contract gives the SABC the right to compile highlight packages available for sale by means of video, DVD or any other audiovisual carrier at market related prices. The contract also gives the SABC the right to broadcast matches on the Internet whether by way of video streaming, web casting or otherwise, anywhere in the world.

13.8 Basketball

Basketball South Africa was offered television coverage via their sponsor Engen Petroleum (Pty) Ltd on e.tv for the 18 and under age category.

Q.13.a What mechanism, if any can be put in place to ensure that sports rights holders accrue sufficient market related revenue from the sale of rights whilst ensuring that "national sporting events" are accessible to the majority?

Q.13.b How, if at all, can regulations facilitate the growth of sport codes and soccer in particular?

Q.13.c Should the Authority regulate the outcome of rugby deals concluded with foreign companies such as the rugby deal? If so, how can the Authority ensure such sports are broadcast free to air?

Q.13.d How should rugby rights be regulated in the public interest, and to ensure the development of the sport?

Q.13.e What cricket matches are important – given the limited channel space available to free-to-air broadcasters?

Q.13.f How should the Authority deal with the broadcasting of Athletics?

14. Challenges Faced by South African Sports Governing Bodies

All sporting codes are experiencing a decline in attendance of their events. Compared to some of the other codes, soccer derives relatively small income from gate takings even though soccer has the largest following than other sports codes. The difference in income from gate takings is largely due to the variable cost of tickets per sporting code (±R25 for soccer and ±R500 for rugby) and the non-attendance of spectators at soccer games.

Other sporting codes such as tennis and boxing have their unique challenges. The major revenue stream for all sports codes is derived from the sale of sports rights.

Conclusion

The Authority seeks to engage in an informative discussion with interested parties, stakeholders and the public at large. This is to ensure sports fans can view their favourite sports on television and listen to radio commentary while at the same time ensuring the commercial viability of sports federations, clubs and broadcasters. This is to be done through the development of a regulated framework that will take sports broadcasting to greater heights without inhibiting or impinging on its economic growth. This process will assist in developing a regulatory framework that is in line with the South African environment.

Listed Sporting Events

Australia

The list below generally covers the period up until 31 December 2004 and contains sporting events within 11 categories. (The numbers in the list below relate to those on the Minister's notice, as published in the Commonwealth of Australia Gazette).

1. Horse racing

- 1.1 each running of the Melbourne Cup.

2. Australian rules football

- 1.1 each match in the Australian Football league Premiership competition.
- 1.2 each match in the Finals Series of the Australian Football League Premiership competition.
- 1.3 each Australian Football League State of Origin match.

3. Rugby League

- 3.1 each match in the National Rugby League Premiership competition.
- 3.2 each match in the National Rugby League Premiership Finals competition.
- 3.3 each match in the Rugby League State of Origin Series.
- 3.4 each international rugby league match involving the senior Australian representative team whether played in Australia or overseas.

4. Rugby union

- 4.1 each international rugby union 'test' match involving the senior Australian representative team whether played in Australia or overseas.
- 4.2 each match in the Rugby World Cup tournament.
- 4.3 each match in the Hong Kong Sevens tournament.

5. Cricket

- 5.1 each 'test' cricket match involving the senior Australian representative team whether played in Australia or overseas.
- 5.2 each one-day cricket match (including World Series Cricket matches) involving the senior Australian representative team whether played in Australia or overseas.
- 5.3 each World Cup one-day cricket match.

6. Soccer

- 6.1 each finals match in the National Soccer League organized by the Australian Soccer Federation.
- 6.2 the English Football Association Cup Final
- 6.3 each match in the Federation Internationale de Football Association World Cup Tournament (until 2006 World Cup).

7. Tennis

- 7.1 each match in the Australian Open tennis tournament.
- 7.2 each match in the Wimbledon tennis tournament.
- 7.3 each match in the French Open tennis tournament.
- 7.4 each match in the United States Open tennis tournament.
- 7.5 each match in the Australian Men's Hardcourt Championship (now known as the AAPT Championships held in Adelaide)
- 7.6 each match in the Australian Women's Hardcourt Championships (now known as the Thalgo Australian Women's Hardcourt Championships) held in Brisbane.
- 7.7 each match in the Adidas International Tennis Tournament (formerly the Peters International tennis Tournament).
- 7.8 each match in each tie in the Davis Cup tennis tournament when an Australian representative team is involved.

8. Netball

- 8.1 each international netball match involving the Senior Australian representative team whether played in Australia or overseas.

9. Basketball

- 9.1 each match in the Australian National Basketball League playoffs.

10. Golf

- 10.1 each round of the Australian Masters.
10.2 each round of the Australian Open.
10.3 each round of the United States Masters.
10.4 each round of the United States Open.
10.5 each round of the United States Professional Golf Association Championship.
10.6 each round of the British Open.

11. Motor sports

- 11.1 each race in the Federation Internationale de l'Automobile Formula 1 World Championship (Grand Prix)
11.2 each race in the International Federation of Motorcycling World 500cc Motorcycle Championship.
11.3 each race in the Australian Touring Car Championship.
11.4 each Bathurst 1 000 race.
11.5 each race in the Australian IndyCar Grand Prix.

United Kingdom**Group A**

The Olympic Games;
The FIFA World Cup Finals Tournament;
The FA Cup Final;
The Scottish FA Cup Final;
The Grand National;
The Derby;
The Wimbledon Tennis Final;
The European Football Championship Finals Tournament;
The Rugby League Challenge Cup Final; and
The Rugby World Cup Final.

Group B

Cricket Test matches played in England;
Non-Finals play in the Wimbledon Tournament;
All other Matches in the Rugby World Cup Finals Tournament;
Six Nations Rugby Tournament Matches Involving Home Countries;
The Commonwealth Games;
The World Athletics Championship;
The Cricket World Cup – the final, semi-finals and Matches Involving Home Nations' Teams;
The Ryder Cup; and
The Open Golf Championship.

Italy

Summer and Winter Olympic Games;

The final and all matches involving the national team in the football World Cup;

The final and all matches involving the national team in the football European Championship;

All official matches of the national football team;

The final and semi-final of the Champions League and UEFA Cup when Italian teams are involved;

The Tour of Italy;

F1 Italian Grand Prix; and

The Italian Music Festival of Sanremo.

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