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Lausanne, 30 June 2020

Re: Assessment of the Need to Update the List of Events of Major Importance for Society in Finland
("Major Events List") (the "Consultation") VN/11082/2020

Dear Ms. Virta,

I refer to your e-mail to Ms. Anne-Sophie Voumard of the International Olympic Committee ("IOC") dated 15 May 2020 regarding the participation of the IOC in the Consultation.

Thank you for the invitation to participate in this process. In this letter, we address the three specific questions included in the memo dated 15 April 2020 from the Ministry of Transport and Communications ("MTC") (the "15 April Memo") that was attached to your e-mail to Ms. Voumard referred above and have also provided additional comments on certain key matters relating to the update of the Major Events List.

Background Information on the IOC and the IOC's Media Policy

The IOC is a values-based, not-for-profit organisation dedicated to building a better world through sport. It does this through the Olympic Games, which are the only event that brings together the entire world in the spirit of peaceful competition. The IOC uses its revenues to support the long-term development of athletes and sport worldwide – from the grassroots to the top of the pyramid – and for the benefit of everyone playing sport: children, junior athletes, grass-roots athletes, amateur athletes, elite athletes, professional athletes and Paralympic athletes. They all benefit from it in one way or another.

The entire structure of the Olympic Movement is built on the model of solidarity in its widest possible sense, and is based on revenue-sharing. Ninety per cent of the IOC's revenues, USD 5 billion in the last Olympiad or the equivalent of USD 3.4 million per day, is redistributed. These investments go towards supporting the hosts of the Olympic Games (USD 2.5 billion in the last Olympiad) as well as the development of athletes and sport at all levels around the world. Through its model, the IOC directly supports 40 Olympic sports and their International Federations ("IFs") and other sports organisations around the globe, as well as 206 National Olympic Committees ("NOCs"), including the Finnish NOC, through which it disburses team grants and individual athlete scholarships. Now that the world is facing an unprecedented crisis, this model and the role of the IOC are more important than ever. IFs and NOCs are turning to the IOC for support. Without the financial security and independence of the IOC, it would not be in a position to support the survival of the stakeholders of the Olympic Movement and, through them, offer continuous support to the athletes.

The solidarity-based Olympic funding model is funded, in large part, from the sale of broadcast rights. The IOC is the owner of the global broadcast rights for the Olympic Games – including broadcasts on



television, radio, mobile and internet platforms – and is responsible for allocating broadcast rights to media companies throughout the world through the negotiation of rights agreements. The IOC bases its decision to allocate broadcast rights on a long-term broadcast strategy aimed at ensuring broadcast of the Olympic Games of the highest quality, maximizing exposure across all media platforms and securing the financial future of the Olympic Movement. The IOC's generates substantial revenue from the sale of these broadcast rights and this revenue constitutes a material proportion of the funding required to support the Olympic Movement.

The IOC's media policy is fundamentally based on the Olympic Charter, which states in its Rule 48: *"The IOC takes all necessary steps in order to ensure the fullest coverage by the different media and the widest possible audience in the world for the Olympic Games"*. Broadcast coverage is one of the principal means for the IOC to fulfil its mission of promoting Olympism throughout the world, but also for people around the world to experience the magic of the Olympic Games.

Question 1 - Should the list of events of major importance for society be updated with new sports or other events and, if so, on what grounds? What effects would the change have?

In the case of the IOC, the current Major Events List refers to *"the Summer and Winter Olympic Games organised by the International Olympic Committee"*. This means that all the sports in the programme of the relevant Summer Olympic Games and Olympic Winter Games are included in the Major Events List. As explained in further detail in Question 2 below, the IOC considers that including the entire Summer Olympic Games and Olympic Winter Games in the Major Events List is entirely disproportionate and submits that the scope should be limited to events of major importance to the Finnish viewing public as defined below.

In this regard, we note that the 15 April Memo makes a reference to the Paralympics. The IOC is not the owner and the organizer of the Paralympics, the International Paralympic Committee ("IPC") is. We suggest that you consult directly with the IPC with respect to the Consultation.

Question 2 - Should an event be removed from the current list and, if so, on what grounds? What effects would the change have?

Notwithstanding the requirements of the current Major Events List, the IOC already ensures that extensive coverage of the Olympic Games is made available via free-to-air television in Finland as it is a key condition of the broadcast policy of the IOC that its licensees must ensure comprehensive free-to-air coverage of the Olympic Games.

This is indeed required under our current agreement for Europe, granted in June 2015 to Discovery Corporate Services Limited (owner of Eurosport SAS) ("**Discovery**"). Discovery acquired the exclusive media rights for the 2018-2024 Olympic Games across all platforms, including free-to-air television, subscription/pay television, internet and mobile phone in all languages across fifty countries and territories on the European continent (including Finland). In accordance with our media policy, Discovery has the obligation to make available a minimum of 200 hours in total of the Summer Olympic Games and a minimum of 100 hours in total of the Olympic Winter Games (in each case of high viewer interest events) on a "free" basis. Discovery has sublicensed extensive free-to-air television rights to YLE in Finland for the PyeongChang Games in 2018, Tokyo Games in 2021, Beijing Games in 2022 and Paris Games in 2024. In addition, Discovery's Kanal 5 (which has 96% penetration of television households in Finland) shall also be providing free-to-air coverage of certain events of these Olympic Games. Further, Discovery shall also provide extensive coverage on pay television. Accordingly, the IOC has ensured that Finnish viewers have extensive access to coverage of the Olympic Games available via free-to-air television, while those who can view Discovery services also benefit from the extra choice afforded by their comprehensive offering. This approach strikes an appropriate balance between access to the Olympic Games while protecting the critical revenue stream from the sale of broadcast rights which supports the wider Olympic Movement.

Considering the above, the IOC does not believe it is necessary to maintain the Olympic Games within the Major Events List. However, if the MTC determines that it is absolutely necessary to keep the



Olympic Games in the Major Events List, the IOC considers that referring to the entire Olympic Games in the Major Events List is entirely disproportionate. The IOC urges the MTC to ensure that the requirements of the Major Events List do no more than is necessary to achieve their stated objectives, are not unduly and contrary to the principle of proportionality, and do not unfairly or unnecessarily interfere with the operation of the sports broadcasting rights market and the competitive process for the selling and buying of rights to sporting events.

As stated in the 15 April Memo:

“The aim is to keep the list of individual events included in the Government decree short and to only include those events that can be justifiably considered to be of major importance for society in Finland.

Limiting the exercise of exclusive rights related to television broadcasts can be expected to have effects on the relationships between television broadcasters, so the matter also involves competition policy aspects. A limitation on the exercise of exclusive rights may affect the income from television rights of the organisers of various events – in practice, major sports events.”

Indeed, including the entirety of each Summer Olympic Games and each Olympic Winter Games on the Major Events List unreasonably encroaches upon the IOC’s ability to grant any form of exclusive broadcast rights and is not proportionate to the need to ensure access by the public to broadcast coverage of events of major importance. In this regard, we note the measures taken with respect to other events included in the current Major Events Lists, that are not in their entirety but limited to those more relevant for the Finnish population (e.g. *“The opening match, quarter-finals, semi-finals and final of the Football World Cup, organised by FIFA (the Fédération Internationale de Football Association), and the matches of the Finnish team”*).

Furthermore, including the entirety of the Summer Olympic Games and of the Olympic Winter Games on the Major Events List creates an entirely impractical situation given the capacity limitations of broadcast television channels. For example, for the Tokyo Olympic Games the IOC expects that in excess of 5,000 hours of live broadcasting content will be produced. This means that, in order to broadcast all of this content for the 16 days of the Olympic Games, 26 television channels would have to broadcast live Olympic content 12 hours a day, assuming such content was available 12 hours a day. This is clearly an unrealistic situation.

With respect to the inclusion of sporting events in their entirety on a list of events of major importance, the IOC notes that the European Court of Justice held that (when considering the inclusion of the entire final stage of the UEFA European Championship within the United Kingdom list) an authority is expected to show that *“all of the matches [of the relevant sports event] had special general resonance at national level and were also of specific interest for those who do not generally follow [the relevant sport], that there would undoubtedly be a large number of television viewers and that all those matches were traditionally broadcasted direct on free television channels”*.¹

Accordingly, if the MTC determines that it is necessary to keep the Summer Olympic Games and the Olympic Winter Games in the Major Events List, the IOC believes that the best approach would be to establish a minimum number of hours which must be made available via free to air broadcast (e.g. 200 hours for the Summer Olympic Games and 100 hours for the Olympic Winter Games) with such content made available on a non-exclusive basis where a “pay” television provider has been licensed Olympic Games broadcast rights. It should be noted that for the Summer Olympic Games 200 hours of television across the 16 days of the Olympic Games equates to over 12 hours per day and for the Olympic Winter Games 100 hours of television across the 16 days of the Olympic Games equates to over 6 hours per day.

If, subject to this minimum number of hours of Olympic Games coverage which must be made available via free-to-air television, the MTC nevertheless wishes to also ensure the broadcast on free-to-air television of certain specific events, the IOC notes that not all events (and rounds within events) can possibly be of major importance to the Finnish viewing public. There is no evidence and it is extremely

¹ Case C-205/11 P *FIFA v Commission*, Judgment of July 18, 2013, ECLI:EU:C:2013:478, para. 50.



unlikely that the Finish viewing public would demand access to the voluminous qualifying or group rounds that are part of most Olympic events.

As a result, the IOC believes that the MTC should consider listing: (a) medal rounds involving Finish athletes; and (b) any other event, to be specifically named well in advance of the Olympic Games, that has traditionally been among, or is likely to attract, the highest viewer interest within Finland, together with the opening and closing ceremonies (with such content made available on a non-exclusive basis where a “pay” television provider has been licensed Olympic Games broadcast rights). Once again though, the IOC already contractually requires that such “high viewer interest events” must be available via free-to-air television as part of the broader commitment to ensure comprehensive coverage as referred to above and thus, the IOC does not consider it necessary for a provision of this nature to be included in the Major Events List. As previously mentioned, this approach will be consistent with the measures taken with respect to other events included in the current Major Events Lists, that are not in their entirety but limited to those more relevant for the Finnish population (e.g. Football World Cup, organised by FIFA and the European Football Championships, organised by UEFA).

Question 3 - How do the potential proposals meet the aforementioned criteria set out by the Commission?

We believe that the IOC’s media policy described in our response to Question 2 above already meets the requirements of Article 14 of Directive 2010/13/EU (the “AVMSD”) since it ensures that a substantial proportion of the public in the relevant state (including in Finland) is not deprived of the possibility of following the Olympic Games on free television. Also, to the extent the MTC determines that it is necessary to keep the Olympic Games in the Major Events List, we believe that the alternative approach that we are proposing in our response to Question 2 above would more accurately fulfil the aforementioned criteria set out by the Commission.

As a final general observation, we would like to provide some thoughts on the definition of “free television” (as such term is used in Article 14 of the AVMSD). The IOC believes that given the pace at which the media landscape is developing, in terms of methods of content distribution, the trends regarding the consumption of video (including by younger viewers) and the underlying business models of media operators, the MTC should ensure that, when determining the criteria for broadcasters delivering coverage of events on the Major Events List, the scope of eligible services is appropriately wide. In particular: (a) television services available as part of “basic tier” cable, satellite or IPTV subscription fee services should be considered as “free” television (in line with the definition of “free television” in Recital 53 of the AVMSD); and (b) it should contemplate all forms of content delivery, including, specifically, “OTT” operators (i.e. those delivering the content via IP or “streaming” media and generally available across the territory to connected devices and with the ability to “cast” any such OTT content accessed via advanced smartphone devices to connected/smart televisions, if so desired)), as contemplated in Recital 27 of the AVMSD. Indeed, the definition of “television broadcasting” in the AVMSD is technologically neutral, being simply “*an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule.*”

The review of the Major Events List and any related legislation may have a significant impact on the IOC’s valuable media rights for Finland and future negotiations for the sale of those rights, depending on the specific requirements of the Major Events List with respect to broadcasts of the Olympic Games. Accordingly, the IOC requests that it be kept informed of any developments moving forward.



To conclude, the IOC would be happy to discuss this submission further with you or respond to any further questions you may have as part of the Consultation.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'M. Mahdavi'.

Mariam Mahdavi
Director
Legal Affairs Department

cc: Mr. Timo LUMME, Director, IOC TMS SA
Ms. Anne-Sophie VOUMARD, VP Broadcast and Media Rights, IOC TMS SA
Ms. Pilar Rivière, Senior Broadcast Counsel, Legal & Business Affairs, IOC TMS SA