

Hong Kong
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RE: Consultation Paper on Ministry of Information and Broadcasting (MIB) back reference on TRAI's Recommendations dated 19.11.2014 on "Regulatory Framework for Platform Services" and MIB reference on TRAI's Recommendations on "Platform Services offered by DTH Operators" dated 13.11.2019.

The Asia Video Industry Association (AVIA) welcomes the opportunity to comment on the above consultation regarding the Regulatory Framework for Platform Services. AVIA is the trade association for the video industry and ecosystem in Asia Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. AVIA is the interlocutor for the industry with governments across the region and leads the fight against video piracy, as well as publishing industry reports and hosting industry conferences. Its aim is to support a vibrant video industry for the benefit of all stakeholders.

AVIA was founded in 1991 and currently represents nearly 90 companies, located in 17 Asian countries and regions, providing television programming and curated over-the-top video content to over 700 million homes in Asia and Australasia. AVIA's members are major international investors in India's communications and creative industries. We have enjoyed a longstanding relationship with the both the TRAI and MIB, with mutually beneficial participation in dialogues on policy and regulatory frameworks for the Indian TV broadcasting sector – one of the most vibrant and dynamic in Asia-Pacific.

AVIA apologises for its late submission but, due to the holiday period, had to allow our members additional time for comments.

We would like to offer the following views to the TRAI in response to the specific areas raised in the consultation paper:

Issue 1: Legal Status of Distribution Platform Operators (DPOs) offering Platform Services (PS)

In line with the Government of India's stated principles of the ease of doing business, we are of the view that a blanket requirement for business who wish to offer platform services to incorporate as a company under the Indian Companies Act, 2013, would place an onerous burden on the industry. Notwithstanding, we do believe it would be worthwhile to ensure that any DPO providing PS should be required to register, including requirements to disclose relevant operating information such as ownership status, channel carrying capacity and compliance to relevant programming and advertising codes.

Issue 2: Limit on the number of PS channels that can be offered by DPOs

AVIA recommends that the number of PS should be objectively calculated, taking into account the subscriber base and channel carrying capacity of the DPO. Without this, there is the potential to undermine the DPOs distribution capacity for retransmission of MIB TV channels, on whose basis TRAI bases the economic regulation of the Pay TV industry. Without imposing a maximum number of PS channels, there is a risk that the DPO will have insufficient capacity to carry additional newly launched or existing channels, denying subscribers the option to subscribe. Given that the purpose of granting permission to DPOs is for the distribution of channels covered under the uplinking/downlinking guidelines, we recommend that the distribution capacity of the DPOs be used for such.

Issue 3: Security Clearance of MSOs and LCOs

Whilst AVIA does not disagree with the proposal to obtain security clearance, we note that any restriction on freedom of speech and expression should be covered by the eight listed grounds of Article 19.2 of the Constitution of India and that “public interest” is not listed as one of the grounds. We recommend therefore that only grounds included in Article 19.2 be permissible reasons for deciding security clearance.

Issue 4: Definition of Platform Services

All content on platform service channels is copyright protected, with access to it via commercial negotiations and relevant licensing. AVIA notes that the question of exclusivity of content on PS channels should be taken into account in any regulation of platform services and indeed should be decided by market forces, following principles recognized under the Copyright Act.

Issue 5: Restrictions on Programmes that can be transmitted on PS

As we have noted above and in previous submissions regarding the exclusivity of content, there is no basis to demand exclusivity of programmes and content. Other than the Copyright Act which provides for the licensing and sub-licensing of content, there is no law which gives either TRAI or MIB the ability to prescribe terms or conditions which impact the licensing of content. AVIA notes therefore that the only condition that may be included is that programmes which are available on PS follow the Programme Code in the Cable Television Network Act.

Issue 6: Activation/deactivation of PS offered by DPOs

AVIA agrees with MIB’s recommendation but wishes to draw attention to the fact that TRAI doesn’t have the legislative basis to bring PS under its regulatory umbrella. PS are not broadcasters’ registered TV channels that require downlinking permission from MIB, therefore, by extension, they cannot be subject to TRAI’s regulatory frameworks.

Issue 7: Separate categorisation of “Platform Services” in the EPG

Please see above comments.