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Consultation Paper on Review of Regulatory Framework For Broadcasting and Cable services

AVIA welcomes the opportunity to comment on the Telecom Regulatory Authority (TRAI) of India's consultation on **"Review of the Regulatory Framework for Broadcasting and Cable 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. Our membership consists of a combination of local, regional and multi-national companies, many of which are substantial cross-border investors; creating and purchasing video content to meet rapidly expanding consumer demands and investing in India's communications and creative industries.

AVIA applauds the TRAI's wish to reexamine and review the regulatory framework for broadcasting and cable services. It is important that regulatory authorities in all countries re-examine their structures for regulation of entertainment content supply from time to time, to ensure the structures continue to be fit for purpose.

We do not believe, however, that the instant consultation paper undertakes enough of a "root and branch" review. Beyond tinkering with established regulatory mechanisms, TRAI and the Indian government need a broader and deeper review, to see whether the strictures of the current framework remain necessary, useful, and supportive of India's economic and social development. As background, we note that India as of today maintains the most detailed, comprehensive and constraining set of regulations on supply of cable and satellite TV content of any market economy in the Asia-Pacific region.

Therefore, we would like to urge the TRAI to go beyond the current consultation exercise, and re-examine the scope and purpose of the entire regulatory framework. Such a review would be a return to TRAI's own first principles: When TRAI first began regulating the pricing of cable TV content 20 years ago, it did so with the justification that there was insufficient competition in the supply of content to consumers. Said TRAI at that time¹: "It must be emphasized that the regulation of prices as outlined above is only intended to be temporary and till such time as there is effective competition. The best regulation of prices is done through competition. Therefore, as soon as there is evidence that effective competition exists in a particular area price regulation will be withdrawn. TRAI will conduct periodic reviews of the extent of competition and the need for price regulation in consultation with all stakeholders."

¹ "Recommendations on Issues relating to Broadcasting and Distribution of TV channels", TRAI, October 1 2004.

Since that time, cable distribution has been supplemented by huge investments, which have created multiple satellite DTH distribution operators, as well as much more capable mobile phone/data networks that have become the go-to option for many consumers' video consumption. And of course, hundreds of millions of Indians have turned to the Internet as a means to receive video content from novel as well as traditional content suppliers. In sum, there has been a many-fold increase in the competitive options available to Indian consumers. Despite this, the deadweight of regulation has only ever increased, and never decreased.

With that perspective in mind, we suggest that the TRAI should keep in mind the following general points:

- The energy of India's media and entertainment industry, its ability to invest and produce the content that India's consumers desire and deserve, and its ability to serve as an economic bulwark of Indian development in the digital age would all be greatly enhanced by a process aiming at de-regulation rather than enhanced regulation. TRAI should return to its original belief that "the best regulation of prices is done through competition," and it should conduct a review that will consider positively the advantages of returning to a system of forbearance from regulation of content prices.
- At the wholesale level, it would greatly benefit the prospects for industry growth if buyers and sellers of content were freed of pricing mandates and empowered to conduct market-based negotiations. These would, of course, take place in the knowledge by all players that there are many alternative options for content supply in the real-world environment today, and that existence of many sources of supply must necessarily constrain pricing. The era of limited competition cited by TRAI in 2004 has well and truly disappeared.
- This does not mean there will be no regulation; against a backdrop of general regulatory forbearance, we acknowledge that there will be instances where regulatory intervention will be necessary and appropriate. These should be confined to instances where there is genuine evidence of market failure.
- As a general rule, we would propose that TRAI should consider in detail the impact on the industry of each regulatory initiative it proposes. There are well-established global guidelines for Regulatory Impact Assessments², which are designed to create a framework for governments to assess whether and how to regulate; we would suggest that TRAI incorporate these internationally-validated approaches into its standard practices.
- More specifically, we note that many of TRAI's proposals for increased or tightened regulation are the result of reported malpractices by one or two industry actors who engage in "pushing the envelope." However, the reactive tightened regulation imposes costs and damages on the entire industry. Given the size and heterogeneity of India's M&E industry, the resultant costs can significantly outweigh the desired benefits of reigning in the malpractices. A Regulatory Impact Assessment approach could help find the lowest-cost, lowest-impact method of achieving TRAI's goals.
- Of course, a key part – though not the only part – of TRAI's mandate is promotion of consumer interests. However, there ought to be a broader vision of consumer interests beyond the simple belief that lower prices are better. We submit that consumers have amply demonstrated their interest in being able to access a broad variety of innovative, high-quality video content from local as well as international producers; the regulatory framework needs to take account of that very real interest and of the fact that holding prices to the bare minimum by regulatory constraint incentivizes production of cheap content, not

² <https://www.oecd.org/gov/regulatory-policy/regulatory-impact-assessment-7a9638cb-en.htm>

good content. India, which has ambitions to play a major role in global content supply to other countries, needs approaches that provide incentives for production of high-quality, globally-appealing content, and not lowest-price, tried-and-true productions.

AVIA therefore recommends that TRAI reconsider the approach to this Consultation and stands ready to provide further guidance as appropriate.

About the Asia Video Industry Association (AVIA)

AVIA is the non-profit 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, leads the fight against video piracy and provides insight into the video industry to support a vibrant industry ecosystem. AVIA evolved from CASBAA in 2018.

AVIA's leading members include: Amazon, AsiaSat, Astro, BBC Studios, Discovery Networks, The Walt Disney Company, Warner Bros. Discovery, NBCUniversal, Netflix, now TV, Star India/Hotstar, TrueVisions, TV5MONDE, ViacomCBS Networks International, A&E Networks, Akamai, Baker McKenzie, beIN Asia Pacific, Bharucha & Partners, Bloomberg Television, Brightcove, Byteplus, Canal +, Cignal, Dolby, Endeavor Streaming, Eutelsat, France 24, Globe Telecom, Index Exchange, Intelsat, Invidi, Irdeto, Intelsat, KC Global Media, Limelight, Magnite, Motion Picture Association, NAGRA, NBA, NHK World, Nielsen, Paramount, Planetcast, Pubmatic, Premier League, SES, Singtel, Skyperfect JSAT, Sony Pictures Television, Starhub, Synamedia, TMNet, TV18, TVBI, The Trade Desk, Vidio, Viaccess, Viacom18, White Bullet and Zee TV