

October 19, 2020

**Submission to the Ministry of Science and ICT
Proposals for a Decree to Implement Amendments
to the Telecommunications Business Act**

The Asia Video Industry Association is pleased to offer its views to the Ministry, in response to the Ministry's request for comments on the proposed Decree to implement recent amendments to the Telecommunications Business Act (TBA).

The Asia Video Industry Association is a multinational, non-profit trade association of 90 companies dedicated to the promotion of multi-channel television via cable, satellite, broadband and wireless video networks across the Asia-Pacific region. Our member companies operate and invest in 17 different Asian and Australasian markets. Many of them are substantial cross-border investors, creating and purchasing video content to meet rapidly-expanding consumer demands. The members of AVIA have extensive experience in building and creating television infrastructure and quality, curated programming to meet the needs of this region's more than 700 million multichannel TV households.

We have taken note of the Ministry's published suggestions for the Decree. Whilst those amendments created the unprecedented concept of responsibility by content services for the business operations of internet service providers, we commend the Ministry for its clear efforts to have the legislation implemented in a way that maintains harmony with Korea's international trade commitments, and that does not damage incentives for innovation and growth in the country's vibrant online curated content industry.

As a general matter, however, we would like to reiterate our view that the commercial relationships between video providers and the entire range of internet service providers (including ISPs and providers of other types of services) should be governed by commercial negotiations among the parties. Our member companies include some of the world's largest internet service companies as well as the best-known video service providers; they are unanimous in believing that the best way to set ground rules for their business interactions is through commercial negotiations. Proposals to create a system of government regulation of these commercial interactions have not been adopted anywhere else in the world, for the very good reason that such regulation will stifle both video providers and internet service providers, as well as creating long-run disadvantages for Korean consumers, in terms of higher prices for their content services, reduced variety of video content available, and constricted access to the wealth of services on the Internet.

With that as general background, we would like to offer the Ministry some suggestions on ways that the Decree could be further improved, so that it imposes few burdens on this developing industry, and maintains the policy objective of ensuring quality services for consumers. Our comments on specific paragraphs of the Decree follow:

Paragraph 1

The Ministry's draft sets the threshold for value-added service providers (VSPs) that must meet the requirements of the Decree as VSPs with more than a million average daily users and more than 1% of total Internet traffic in Korea. We support the concept of exempting new and smaller Internet businesses so as not to burden discourage their entry or burden them overly. We believe, however, that slightly higher limits will better serve this purpose and ask the Ministry to consider limits of 2 million users and 3% of Korea's Internet traffic. This will benefit both domestic Korean Internet content companies like Naver and Kakao as well as members of our Association – regional video content companies in Asia and global companies – that may in the future start new services in Korea.

Paragraph 2

The Ministry's draft states that a value-added service provider (VSP) "shall provide convenient and stable telecommunications service irrespective of the device used by the user or the facilities-based telecommunications service provider ("FSP") to which the user subscribes." This focuses on the consumer's interest in receiving the service to which he subscribes. However, we are concerned that it does not adequately reflect the reality of services provided over the internet, which is that the VSP is not alone able to guarantee convenient and stable telecommunications service to the consumer. Network operations are controlled by decisions and by environmental changes that are far beyond the ability of upstream network users (the VSPs) to manage. Content providers are at the mercy of exogenous shifts in consumer demand, in addition to the decisions of internet infrastructure operators, who do manage network conditions. No one, six months ago, could have predicted the sharp spike in consumer video consumption arising from the pandemic "stay at home" mandates.

Mentioning of "devices" in this paragraph adds yet another element beyond the control of VSPs, as they are not in a position to control the hardware and software provided with each individual device. It is quite conceivable that, even with the best of good faith and desire to serve customers, a VSP may be unable to secure a stable service (as might be the case, for example, in case of different software updates rolled out by device manufacturers to deal with sudden security threats.)

Therefore, we urge the Ministry to reflect this reality by providing that a VSP needs to take all reasonable efforts, specifically including measures that are under its direct control, to prevent unfair discrimination among consumers based on their device or FSP supplier.

Paragraph 3

The Ministry's draft specifies it is "relevant business operators including facilities-based telecommunications operators" with whom VSPs must consult to implement the measures described in the paragraph 3 of the draft Decree.

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A number of AVIA members when entering a new market with online video content services will work with 3rd party Content Delivery Network (CDN) operators and in turn, the CDN operators work with facilities-based telecom operators. Further, video content services will often deploy networks that include both direct relationships with one or more telcos and CDN operators. The Ministry we suspect understands the degree to which this is a normal practice for the Internet and that these CDNs operators are included in the Ministry's definition of "relevant business operator". For the avoidance of doubt, we ask that the Ministry consider defining "relevant business operators" to make clear it includes CDN operators.

In addition, the Ministry's draft defines a series of "necessary measures" to secure stability of service. VSPs are required to take all the measures "within the scope of its authority and responsibility."

This is a good approach, but we urge that these measures further be made subject to agreements between the VSPs and FSPs and other relevant business operators for specific connection points. As we stated above, we believe that the basis for commercial dealings between these different parties should be commercial agreements, and the Ministry's approach should be to facilitate such commercial agreements.

Sub-paragraph 3(3) provides an obligation for consultations in case reasons arise that may substantially impact the provision of stable service, but in the draft, this obligation is one-way only. We believe it would be far preferable to make it clear that all of the commercial parties have an obligation to consult with each other in case of unforeseen developments, but that the unifying obligation for all the parties is to provide strong and stable services to consumers (and not that the VSPs have any unilateral obligation to the FSPs and other relevant business operators). They must jointly provide high-quality consumer services.

Paragraph 4

In this paragraph the Ministry's draft proposes large and disproportionate reporting burdens to be levied on VSPs. The Draft would require VSPs to review and submit an annual implementation report on measures taken to secure stability of service, which would include, among others, materials on the adequacy of server capacity, network capacity, and traffic route management. These requirements would constitute a very substantial administrative burden on VSPs – even more for operators whose integrated networks are global in scope, and would have to report on global capacities and traffic route management. We do not believe this type of reporting requirement is necessary or desirable, and we suggest it be deleted from the draft.

In closing, we thank the Ministry for its commitment to continued openness and consultation with the international video industry, and we remain available for further consultations if desired.

About the Asia Video Industry Association (AVIA)

AVIA is the non-profit trade association for the video industry and ecosystem in the Asia-Pacific region. 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: AsiaSat, Astro, BBC Studios, Discovery Networks, Disney Media Distribution, NBCUniversal, Netflix, now TV, SES, Star India, TrueVisions, WarnerMediaGroup, TV5MONDE, Viacom International Media Networks, A&E Networks, Baker McKenzie, BARC, beIN Asia Pacific, Bloomberg Television, Blue Ant Media, Brightcove, Canal +, Cignal, CMS, Dolby, Eutelsat, France 24, Globecast, Globe Telecom, Irdeto, ITV Choice, Inmarsat, Intelsat, La Liga, Kantar Media, Mayer Brown, Measat, Media Kind, Media Partners Asia, Motion Picture Association, NAGRA, NBA, NHK World, Nielsen, Premier League, S&P Global Market Intelligence, Singtel, Skycable, Skyperfect JSAT, Sony Pictures Television, Starhub, Synamedia, Taiwan Broadband Communications, Tata Sky, Telstra Global, TMNet, TV18, TVBI, Verimatrix, Verisite, Viaccess, Viacom18, and Zee TV