ASIA VIDEO INDUSTRY ASSOCIATION

2024 AVIA Regulating for Growth – Pay TV Matrix for Malaysia

Questions	Pay TV	Foreshadowed changes?
1. How regulated? *Details of regulator/s*	• The principal regulator is the Malaysian Communications and Multimedia Commission (MCMC), an agency under the Ministry of Communications. • The Malaysian Communications and Multimedia Content Forum (CMCF) is the designated industry body co-regulating content. • MCMC is independent and self-regulating but may not necessarily be politically independent as it comprises of members of the executive government. • The Minister may establish an Appeal Tribunal, which convenes on an ad hoc basis, to review any matter on appeal from a decision or direction of MCMC. • Judicial review is available in theory but never tested in practice.	N/A.
2. Copyright protection?	• The Malaysian Copyright Act of 1987 protects copyrighted work in broadcasts. • Complaints are lodged with the Ministry of Domestic Trade and Cost of Living, as copyright infringement is an offence under the Copyright Act 1987, which is enforced by the Ministry. • Enforcement measures have been taken including site blocking, take down policies and criminal actions. • In 2021, the Kuala Lumpur Intellectual Property High Court declared that the acts of selling, offering for sale, distributing and supplying streaming television boxes that could provide unauthorised access to copyrighted works would constitute copyright infringement, punishable under Section 36 of the Copyright Act 1987. • In 2022, the Copyright (Amendment) Act 2022 introduced Section 43AA (1)(c), which stipulates an offence relating to the sale of streaming technology that results in an infringement of copyright in a work. Anyone found guilty can be fined up to	N/A.

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	RM200,000, imprisoned up to 20 years, or both. Notably, the Ministry of Domestic Trade and Cost of Living has been proactive in enforcing this new provision.	
3. Convergence and new technologies	- N/A	N/A.
4. Licensing of foreign channels *Allowed, prohibited or unregulated?*	- A licence is required for satellite broadcasting, subscription broadcasting, terrestrial free-to-air TV, and terrestrial radio broadcasting, whether for local or foreign channels. - Pay TV platform operators must notify channels for carriage to MCMC prior to launch. - Content is subject to content review as required of local content.	N/A.
5. Licence fees and taxation	- Application fee of MYR 10,000 to obtain an individual licence for content application services and MYR 50,000 upon granting of the licence. - Pay TV services are subject to a 6% Sales & Services Tax (SST). Effective September 1, 2018, taxable services include any person providing content applications service who is registered under the Communications and Multimedia Act 1998 or licenced under the Communications and Multimedia (Licensing) Regulations 2000 (CMLR). - Based on the Guide on Television Broadcasting Services by the Royal Malaysian Customs Department, service tax will be charged depending upon the principal place of business of the service provider.	N/A.
6. Rate regulation *Including wholesale and retail rate regulation and whether there are any price controls on eg. basic tier*	- According to the Communications and Multimedia Act 1998, a service provider may set rates in accordance with market rates. - The established rates adhere to the following principles: (a) rates must be fair and not unreasonably discriminatory for similarly situated persons; (b) rates should be cost-oriented, generally eliminating cross-subsidies; (c) rates should not include discounts that unfairly prejudice the competitive	N/A.

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	opportunities of other providers; (d) rates should be structured and set at levels that attract investment into the communications and multimedia industry; and (e) rates should consider the regulations and recommendations of international organisations to which Malaysia belongs. - However, the Minister may intervene to set rates for good cause or as the public interest may require. This authority has not been much used.	
7. Programme packaging *Including tiering, bundling, any mandatory a la carte*	- No restrictions.	N/A.
8. Restrictions on advertising *Including localisation rules, revenue and minutage restrictions*	- Section 211 of the Communications and Multimedia Act 1998 prohibits content which is indecent, obscene, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass any person. A breach of this provision carries fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day or part of a day during which the offence is continued after conviction. - Advertisements must comply with the Content Code and Malaysian Code of Advertising Practice which outline the best practices and ethical standards for content distributed to audiences by service providers in Malaysia's communications and multimedia industry. - Advertisements must obtain a licence from the National Film Development Corporation of Malaysia (FINAS) before they can be produced, distributed, or exhibited. - Foreign advertisements are permitted up to only 30% of total advertising time; all other ads, even those in pass-through streams, must be replaced by ads meeting the "Made in Malaysia" requirements. Advertisements are subject to "Made in Malaysia" requirement, which stipulates that filming	N/A.

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	must take place within Malaysia. If filming is conducted abroad, prior approval from FINAS is required.	
9. (a) Content regulation *Including local content quotas, content control and insertion of classification and other content labels into international feeds*	- Special condition for CASP licence application is to provide a certain percentage of local content. The percentage is not specified. - Strict content guidelines call for prohibition of indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person. Extensive guidelines on content moderation are available. - Pay TV operators are expected to conduct self-censorship of the content. - Content shown must contain indication of the classification of either U, P13 or 18. - "U" and "PG-13" programmes may be shown at any time of the day. "PG-18" programmes can be shown any time after 7:30PM and "18 & above" programmes can only be shown after 10:00PM. - Broadcasters are to ensure that clear and specific warnings shall be employed especially after 10.00 p.m. where there is the likelihood that some viewers may find the programme disturbing or offensive.	N/A.
9. (b) Content regulation *Including languages, dubbing/subtitling and captioning*	- According to the 2022 Content Code released by the Malaysia Content Forum, service providers must ensure that persons with disabilities have equal access to information, particularly in broadcast news programmes. They should make reasonable accommodations to deliver content and information intended for the general public in accessible formats and technologies suitable for persons with disabilities. This may include captions or an in-screen signer providing a sign language version of the audio. - Offensive languages such as crude references, hate speech or graphic languages that depicts sexual references are prohibited.	N/A.

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10. Programme supply restrictions *Including must provide rules and other restrictions on exclusivity and anti-siphoning rules*	- There are no must carry or must provide restrictions. - The Communications and Multimedia Act 1998 prohibits anticompetitive conduct, entering into collusive agreements, and tying or linking agreements.	N/A.
11. Restrictions on FDI *Including platforms and wholesale supply of programming and cross-media ownership restrictions*	- Licensees must be incorporated in Malaysia. - MCMC imposes shareholding restrictions on license holders based on the type of license. For instance, the Licensing Guidebook dated April 1, 2023 requires applicants for an individual license to provide content application services must have a Bumiputera shareholding of at least 30%. - No restrictions on cross-media ownership (e.g. TV-newspaper) but restrictions against cross-sectoral ownership (e.g TV-Telecoms). - The Communications and Multimedia Act 1998 prohibits any conduct which has the purpose of substantially lessening competition in a communications market, thereby restricting ownership structures to prevent monopolistic control across different sectors.	N/A.
12. Retransmission arrangements *Including must carry and remuneration*	N/A	N/A.
13. Consumer protection *Including cooling-off period, termination rights and payment mechanism*	- The General Consumer Code of Practice issued by the Communications and Multimedia Consumer Forum of Malaysia sets out acceptable standards applicable in the communications and multimedia industry. Compliance with the General Consumer Code is on a voluntary basis. - The General Consumer Code provides guidelines on termination and general procedures for customer's complaints. - Section 188 of the Communications and Multimedia Act 1998 requires service providers to deal reasonably with consumers	N/A.

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	and adequately address consumer complaints. Failure to do so amounts to an offence. - According to Section 17 of the Consumer Protection Act 1999, a “no refund and no cancellation” policy for future services contract is impermissible.	
14. Entering a new market: FAST TV	• The regulation does not make any distinction between regulation against Pay TV and FAST TV.	N/A.
15. Data handling	- The Personal Data Protection Act 2010 provides that the transfer of personal data out of the country may only be done to destinations that have been listed by the Minister or when subject to exceptions i.e. with consent of data subject. - The Act applies to any person established in Malaysia or who uses equipment in Malaysia to process personal data. - Further, a licensee under the Communications and Multimedia Act 1998 is required to be registered as data users under the Personal Data Protection Act 2010.	N/A.
Other country-specific information not already covered	N/A.	N/A.