2024 AVIA Regulating for Growth – Pay TV Matrix for Philippines

Questions	Pay TV	Foreshadowed changes?
1. How regulated? *Details of regulator/s*	- The principal regulator for the operation and maintenance of broadcasting and telecommunication companies is the National Telecommunications Commission (NTC). Under Republic Act No. 10844 or the "Department of Information and Communications Technology Act of 2015", the Department of Information and Communications Technology (DICT) was created as the primary planning, coordinating, implementing and administrative agency under the Executive Branch tasked to plan, develop, and promote the national information and communications technology (ICT) development agenda. The NTC was attached to the DICT for purposes of policy and programme coordination. - Content is regulated by the Movie and Television Review and Classification Board (MTRCB), as a quasi-judicial agency responsible for the review and classification of television programmes, movies, and publicity materials. - The NTC and the MTRCB are required to publish all their administrative rules and regulations, and to file these with the Office of the National Administrative Register before they are considered effective. Judicial review of NTC and MTRCB decisions are available, but due to delays in the judicial process, this has at times stymied effective regulatory action. - The NTC and the Philippine Intellectual Property Office (IPOPHL) share jurisdiction over administrative cases concerning copyright matters against Radio/TV broadcast operators, including cable television (CATV) and direct broadcasting satellite (DBS) service operators. Per the Memorandum of Agreement dated 16 June 2006 [Joint NTC-IP Philippines	

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	Memorandum Circular No. 1 (2007), effective 19 April 2007], IP violations shall be directed to the IPOPHL while violations of NTC laws, rules and regulations, shall be referred to the NTC, regardless of where the case was initially filed.	
2. Copyright protection?	- Copyright protection is granted in the Philippines without need of prior registration. - Copyright infringement is the violation of the economic or moral rights of the copyright holder. One of the economic rights of the copyright holder is the right to communicate his/her work to the public. Under R.A. 10372 amending R.A. 8293 or the Philippine Intellectual Property Code (IP Code), communication to the public means any communication to the public, including broadcasting, rebroadcasting, retransmitting by cable, broadcasting and retransmitting by satellite, and includes the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them. Recently, in the case of *Philippine Home Cable Holdings, Inc. v. Filipino Society of Composers, Authors, and Publishers, Inc.*, G.R. No. 188933, 21 February 2023, the Supreme Court clarified that the transmission of a musical composition fixed in an audiovisual derivative work (ex. Laser discs) to a channel owned by a cable TV operator, is deemed "communication to the public" which is part of the copyright owner's exclusive economic rights. In the absence of an authorisation from the copyright owner, such communication is considered an infringement. - The use of short extracts of sports clips or any video material for news programming is considered fair use of the copyrighted work. But in *ABS-CBN Corporation v. Felipe Gozon, Gilberto*	Proposed amendments to R.A. 8293 allowing for specific regulatory site blocking provisions, passed the House of Representatives in 2023. Mirror legislation, SBN 2651 is now at the Hearing stage in the Senate and is expected to pass before the term of the current Congress ends.

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	Duavit, et al, G.R. No. 195956, 11 March 2015, the Philippine Supreme Court held that news footage is also copyrightable, particularly, news as expressed in video footage. The IP Code punishes: (i) direct infringement; (ii) knowingly benefitting from an infringing activity; and (iii) knowingly contributing to the infringing conduct of another. Penalties for administrative, criminal, and civil copyright infringement include injunction, payment of fines, seizure and impounding of prohibited materials, destruction of prohibited materials, and imprisonment (for criminal cases only). Most government efforts in updating laws/rules on copyright enforcement are targeted towards online infringement and addressing copyright issues on new technology platforms.	
3. Convergence and new technologies	The most recent technology development in the local Pay TV industry is the government-backed digital terrestrial television broadcasting (DTTB). The DICT has committed to the country's full migration from analogue TV to DTTB by 2023. Recent regulatory efforts are directed mostly towards: (i) the migration from analogue to DTTB; and (ii) inclusion of "value-added services" (VAS) over the internet under the purview of the NTC. According to Memorandum Circulars 02-05-2008 and 05-08-2005 of the NTC, the following services are classified as VAS: 1. Messaging Services; 2. Audio Conferencing; 3. Audio and video conferencing; 4. Voice Mail Service; 5. Electronic Mail Service;	

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	6. Information Service; 7. Electronic Gambling Services; 8. Applications Service; 9. Content and Program Service; 10. Audiotext Service; 11. Facsimile Service; 12. Virtual Private Network Service; 13. Hosting Service; and 14. Voice Over Internet Protocol (VOIP). - The proliferation of VAS and the deregulation of its rates has caused consumers to lose interest in companies offering solely Pay TV services. To remedy this, companies providing solely Pay TV services have expanded the scope of their services to allow them to register as internet service providers with the NTC. - Under NTC Memorandum Circular No. 08-08-2018, CATV operators are encouraged to register as VAS providers as an incentive for the grant of a Certificate of Authority to operate. NTC Memorandum Circular No. 02-05-2008 classifies as VAS, "content and programme service" (includes all types of content delivered to/accessed by the users/subscribers such as music, ring tones, logos, video clips, and others of similar nature), which requires registration with the NTC. - Public telecommunications entities (PTEs) are required to offer leased line services to VAS providers at the same quantity and at a price not higher than the prevailing leased line prices offered to the public. While the rates of VAS services are deregulated, VAS providers must inform the NTC of the rates offered prior to offering the VAS to the public and rate increases may be disallowed by the NTC to protect consumers.	

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4. Licensing of foreign channels *Allowed, prohibited or unregulated?*	Allowed with no regulations.	
5. Licence fees and taxation	Under Section 119 of the National Internal Revenue Code (NIRC), CATV and direct broadcast satellite (DBS) operators whose annual gross receipts for the preceding year do not exceed P10 million have the option of paying 3% franchise tax on their gross receipts, or to irrevocably elect to pay 12% Value-Added Tax (VAT) on gross receipts from sales of their services pursuant to Section 108 of the NIRC, as amended by the Tax Reform for Acceleration and Inclusion (TRAIN). CATV and DBS operators with more than P10 million annual gross receipts are automatically subject to VAT. Under NTC Memorandum Circular No. 19-12-2000, licence fees for CATV operators are about P3,600.00, while DBS operators are charged with P20,000.00 for the first 40 channels and P250.00 for every channel succeeding the first 40 channels.	
6. Rate regulation *Including wholesale and retail rate regulation and whether there are any price controls on eg. basic tier*	There is no law or regulation specifically regulating the rates offered by CATV, DBS and other Pay TV service operators, and their respective Programme/Content Providers to end users in the Philippines. However, various laws and regulations on consumer protection and anti-competitive behavior may be transgressed if any of the following occurs: 1. The retail price imposed by local distributor becomes "unfair or unconscionable" to end users (Republic Act No. 7394 or the Consumer Act of the Philippines); 2. The agreement between the provider and its local distributors, which includes the licensing of copyright,	

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	involves the transfer of systematic knowledge (Republic Act 8293 or the Intellectual Property Code of the Philippines); 3. The conduct amounts to abuse of dominant position (Republic Act No. 10667 or the Philippine Competition Act); or 4. The agreement with local distributors amounts to an exclusive right to broadcast the provider's channels and/or programming services to the exclusion of other pay TV service operators (NTC Memorandum Circular No. 10-10-2003). (See programme supply restrictions below)	
7. Programme packaging *Including tiering, bundling, any mandatory a la carte*	No regulations on programme packaging exist. Tiering is common practice in the market.	
8. Restrictions on advertising *Including localisation rules, revenue and minutage restrictions*	There are generally no minutage caps for advertising content except for campaign advertisements during election period, pursuant to the Fair Elections Act. The Philippine Broadcasters' Association (KBP) covers only broadcast stations with franchise to operate and broadcast entities or announcers and personalities who regularly go on the air on member stations (Announcers, Anchors, Presenters, DJs (Disc Jockeys), Newscasters, News Reporters, Commentators, etc.). However, on 08 February 2024, the KBP announced that they will allow non-franchise holders to become part of the organization as affiliate members. In this regard, if a CATV provider becomes an affiliate member of the KBP, we opine that it will be subjected to the following commercial guidelines: i. While minutage caps are not imposed on the commercials themselves, the KBP Television Code limits the total airtime of commercials to 18 minutes per	

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	programme hour in foreign or local programmes, inclusive of break spots, for television in Metro Manila. The limit is increased to 20 minutes per programme hour for provincial television. ii. The airtime limit for commercials shown adjacent to the broadcasting of international sports events may be increased on a case-by-case basis upon approval of the KBP Standards Authority. In no case shall the total time for commercials exceed 20 minutes per hour. - Under the Broadcast Code of 2007, advertisements of certain products and services (e.g. lotteries, horse races, cock fights) may only be aired within the safe harbour period and not during breaks preceding or following religious, educational, and children's programmes. - No direct or indirect advertising or marketing of cigarettes or tobacco products is allowed pursuant to Republic Act No. 9211. Advertising materials shall only be at the point-of-sale/purchase in accordance with DTI-Inter-Agency Committee/Tobacco Memorandum Circular No. 01, s. 2004.	
9. (a) Content regulation *Including local content quotas, content control and insertion of classification and other content labels into international feeds*	- No local content quotas. - A self-regulatory system is administered by the KBP in coordination with MTRCB. Non-KBP members are subject to regulation by the NTC. - Foreign television content must also bear the appropriate classification rating of the MTRCB when aired in the Philippines, pursuant to P.D. 1986. However, this can be done on the end of local affiliates that can apply for the MTRCB classification rating.	

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9. (b) Content regulation *Including languages, dubbing/subtitling and captioning*	Unless otherwise exempted under Section 2(b) of Republic Act No. 10905 enacted in 2016, all franchise holders or operators of television stations and producers of television programmes are required to provide a closed caption option in the broadcast of their programmes including newscast, news programmes and pre-scripted programmes. However, under MTRCB Memorandum Circular No. 04-2016 effective early 2017, all non-exempt television stations must fully comply with the closed captioning requirement on the fifth (5^{th}) year of effectivity of the Memorandum Circular. At present, closed caption services are required to be incorporated on at least 25% of non-exempt programmes of non-exempt television stations.	
10. Programme supply restrictions *Including must provide rules and other restrictions on exclusivity and anti-siphoning rules*	In principle, under NTC Memorandum Circular No. 10-10-2003, exclusive contracts between CATV/DBS operators and programme/content providers, and/or any behaviour that is tantamount to exclusivity, including but not limited to discrimination in the supply of programmes or content, are presumed to be anti-competitive and not allowed. Exceptions may be granted by the NTC upon petition if it is shown that: i. All parties to the contract have agreed to submit any dispute pertaining thereto to the jurisdiction of competent Philippine authorities; and ii. All foreign and local programme/content providers have registered with the NTC and in the case of a foreign programme/content provider, it shall not only register with the NTC but has appointed a local agent to whom notices, and other official correspondence may be sent. In practice, exclusivity is common, with local broadcasters guarding their exclusive content.	Currently, House Bill No. 915 seeks to require broadcast media to allocate at least two (2) minutes per hour of broadcast for public service announcements to enable government to reach out to the people, educate and increase their awareness, and disseminate information on matters of public concern.
11. Restrictions on FDI	Under E.O. 205, s. 1987, the operation of CATV system in the Philippines shall be open to citizens of the Philippines, or to	Currently, pending Senate Bill No. 539, which seeks to provide improvements in the CATV and

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Including platforms and wholesale supply of programming and cross-media ownership restrictions	corporations, cooperatives or associations wholly owned and managed by such citizens under a Certificate of Authority granted by the NTC. Memorandum Circular No. 4-08-88 placed the CATV industry under broadcast media insofar as public interest requires that monopolies in commercial mass media shall be regulated or prohibited. Furthermore, entities engaged in DBS Service, otherwise known as direct-to-home platforms, are licensed by the NTC and are considered to be engaged in mass media broadcasting. Notably, Sec. 11, Art. XIV of the Philippine Constitution limits the ownership and management of mass media to citizens of the Philippines, or to corporations, cooperatives or associations, wholly owned and managed by such citizens. In 2001, then pending Senate Bill No. 2112, which sought to allow foreign investments in local cable television industry, was rejected by the Philippine Congress due to oppositions from the relevant sector which argued that cable television is a form of mass media and must therefore remain 100% Filipino owned. - Republic Act No. 7925 or the Public Telecommunications Policy Act of the Philippines prohibits the use of telecommunication franchises to engage in broadcasting by airwaves or by cable, and vice versa. However, a telecommunications franchise holder may separately apply for a franchise to engage in broadcasting, subject to the foreign ownership restrictions for mass media under the Philippine Constitution. - However, if CATV services are clearly categorised as telecommunications, 100% FDI would be allowed. Under Republic Act No. 11659 which amended Commonwealth Act No. 146 or the Public Service Act, telecommunications are now categorised as public service, which can have 100% foreign ownership.	DTH industries, categorically provides that CATV and DTH services are not to be construed as mass media, telecommunications, or broadcast services. Should the bill mature into law, the current investment restrictions under the Philippine Constitution and the Public Service Act will be inapplicable to CATV and DTH services. Effectively, and unless clarified in another law or rules, corporations providing CATV and DTH services may be wholly owned by foreign corporations.

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	No specific restrictions on content providers for wholesale provision of programming.	
12. Retransmission arrangements *Including must carry and remuneration*	CATV and Direct-to-Home (DTH) operators are required to carry all terrestrial Ultra High Frequency (UHF) and Very High Frequency (VHF) channels within their locality. This rule does not apply to Internet Protocol Television (IPTV) and Over-The-Top (OTT) TV. NTC Memorandum Circular No. 4-08-88 provides a "must-carry" obligation for CATV companies operating within certain field intensity contours of an authorised television broadcasting station to carry the signals of these stations. The signal must be carried without degradation of quality and in accordance with technical standards. The Philippine Supreme Court has held that cable retransmission pursuant to MC No. 4-08-88 is a legitimate limitation on copyright. CATV operators must also include a free access channel for government, health, educational, cultural and civic purposes. In theory, this requirement should also apply to DTH operators, but the NTC has not expressly ruled on this.	
13. Consumer protection *Including cooling-off period, termination rights and payment mechanism*	The NTC has issued regulations to ensure the protection of consumer rights. Broadcast, CATV and content providers, among others, are required to charge consumers only for uninterrupted service. Notice requirements are also imposed when the need to change or amend the service agreement arises. Mechanisms for filing complaints are also available.	
14. Entering a new market: FAST TV	Since 2022, some media corporations have introduced FAST-oriented streaming services. The NTC and MTRCB have yet to	However, since FAST TV services is analogous to cable, satellite, or traditional TV albeit streamed

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	issue guidelines in relation to FAST TV and content regulation thereon.	online, it will likely be regulated similar to other CATV/DTH providers.
15. Data handling	- No data localisation requirements. - The standard data protection requirements under Republic Act 10173 or the Data Privacy Act of 2012 should apply. The DPA was mandated to protect citizens' private data when they engage with communication and information companies.	
Other country-specific information not already covered		