ASIA VIDEO INDUSTRY ASSOCIATION

2024 AVIA Regulating for Growth – Pay TV Matrix for South Korea

Questions	Pay TV	Foreshadowed changes?
1. How regulated? *Details of regulator/s*	- The regulatory scene has grown increasingly complex as pay TV has diversified. - Korea Communications Commission (KCC) is responsible for programming and content standards; broadcasting production and channel policies; oversight of investigatory productions; user protection and privacy, and regulation of broadcast frequencies. - KCC is also responsible for certain regulation of IPTV operators, including business approval for programme providers of news, general programming channels and compliance with fair trade and viewer rights provisions of the Internet Multimedia Broadcasting Business Act. - Ministry of Science and ICT (MSIT) is responsible for general communication policies, combined broadcasting communication policies and new media (cable broadcasting, satellite broadcasting, IPTV and OTT broadcasting), but must obtain KCC consent before regulating new media (cable broadcasting, satellite broadcasting) or revising new media approval procedures. - The Korea Communications Standards Commissions (KCSC) is an independent body that administers content standards in broadcast programmes, mobile communications and online.	- Currently, Pay TV operators must periodically renew their licences, but there are plans to abolish this renewal system and, in the long term, to ease the licensing and registration system to a registration and notification system [Media and Content Industry Convergence Development Plan (the Development Plan, p. 12]. - The re-approval system for news and general programming channels will be maintained, but the maximum validity period will be extended from 5 years to 7 years [Development Plan, p. 12].
2. Copyright protection?	- Copyright laws provide strong protection with significant penalties. - Online piracy is a major problem and competes with pay TV.	- Starting July 2024, Content Delivery Network (CDN) operators with annual sales of over 1 billion KRW will be responsible for preventing the distribution of illegal information, including copyright-infringing content[1].

[1] Korea Communications Standards Commission blocks access to 6,000 sites illegally distributing K-content - Chosun Biz (chosun.com)

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	- KCSC identifies copyright-infringing sites and blocks access to them - Based on the previous position of the Supreme Court regarding acts that violate copyright laws that include providing links to posts or websites containing copyright-infringing content, such acts could not be punished. However, the Supreme Court en banc has ruled that such acts can be seen as aiding and abetting copyright infringement (Supreme Court Decision. No. 2017Do19025, September 9, 2021). - Acrimonious disputes over "retransmission consent" of FTA channels have resulted in government intervention (e.g., Guidelines for Negotiations on Retransmission of Terrestrial Broadcasting, the Dispute Resolution System under the Broadcasting Act, and the System for Orders to Maintain or Resume Broadcasting).	- For habitual and commercial copyright infringement, the sentencing standard would be raised (from the current 1-3 years up to the statutory maximum of 5 years), and a punitive damages system would be introduced for intentional copyright infringement (up to three times the damages incurred by the rights holder) [Development Plan, p. 25]).
3. Convergence and new technologies	- Fully level playing field does not yet exist. - IPTV is regulated separately from cable and satellite. - Regulator treats terrestrial broadcasters differently than cable or IPTV.	
4. Licensing of foreign channels *Allowed, prohibited or unregulated?*	- Prior individual authorisation for each channel is required from the MSIT. - Retransmitted programming is capped at 20% of each operator's bouquet.[2] - No local ads or dubbing is allowed in foreign retransmitted channels. - In respect of the uplink/downlink policy, in principle, transmission facilities for joint-venture channels should be in Korea, but exceptions can be granted. - No restriction on location of facilities for foreign channels.	

[2] Broadcasting Act Enforcement Decree Article 61-3 Paragraph 2

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5. Licence fees and taxation	- Fee charged for obtaining, renewing, registering, and amending Cable TV or satellite TV licences. - Pay TV operators must contribute fees calculated by multiplying the fee rate designated and disclosed by the MSIT to not more than 6% of the operator's broadcasting and advertising revenues in the previous year.[3]	
6. Rate regulation *Including wholesale and retail rate regulation and whether there are any price controls on eg. basic tier*	- Former rate caps on retail rates have been eliminated. - However, Pay TV operators must report retail rates to the MSIT for any changes.[4] Furthermore, the lowest-tier channel product (the lowest-priced product among paid broadcasting services) and bundled products with telecommunications services must receive approval from the MSIT. - No wholesale rate regulation. - Conflicts over wholesale rates between terrestrial broadcasters, TV home-shopping operators, programme providers, and Pay TV operators have intensified, leading to government intervention (e.g., Guidelines for Negotiations on Retransmission of Terrestrial Broadcasting, Guidelines for Home Shopping Broadcast Channel Usage Contracts, Guidelines on Channel Provision and Programme Usage Fee Payments by Paid Broadcasting Service Providers in the Paid Broadcasting Market, Dispute Resolution System under the Broadcasting Act, and the System for Orders to Maintain or Resume Broadcasting, etc.)	
7. Programme packaging *Including tiering, bundling, any mandatory a la carte*	- Tiering and bundling are allowed and common. - Korean operators offer some premium channels a la carte, but except for the obligation to report the terms and conditions, there is no regulatory requirement.	

[3] The Framework Act on Broadcasting Communications Development, Art. 25(2)
[4] Article 77 of the Broadcasting Act

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8. Restrictions on advertising *Including localisation rules, revenue and minutage restrictions*	□ Advertising on domestic and joint-venture channels allowed. □ Foreign retransmitted channels may not include ads for the Korean market. □ From 1 July 2015, the “Advertisement Cap System” is in effect, imposing a maximum cap on the total duration of advertisements aired, regardless of the type of advertisement – advertisements lasting for 17% of programme duration on average may be aired, but no more than 20% of each programme’s duration. [5] □ In particular, in-programme advertising is limited to 1 minute of ads per airing of the programme (with the balance of advertising appearing prior to and following the programme), although the number of times a programme ad may be aired may vary according to the length of the programme. □ A self-regulatory system of advertisement review is administered by the Korea Advertising Review Board (KARB). □ Cable broadcasting operators are temporarily broadcasting regional channel commerce for 3 hours a day from 2021 to 2025.	□ It has been announced that the restriction on advertising time per programme (20%) will be relaxed. [Development Plan, p. 15] □ The government is considering amending the Broadcasting Act to permanently allow cable TV regional channel commerce broadcasts.
9. (a) Content regulation *Including local content quotas, content control and insertion of classification and other content labels into international feeds*	□ Mandatory local content quotas are applicable to domestic (not foreign) channels. □ Different quotas for different genres. Following the implementation of the US-Korea Free Trade Agreement, 20% for films and 30% for animations are required to be local programming.[6]	□ It has been announced that the scheduling caps, such as single-country scheduling regulations and entertainment programming regulations, will be abolished. [Development Plan, p. 14])

[5] The Broadcasting Act, Art. 73(2); The Enforcement Decree of the Broadcasting Act, Art. 59(2)(1)

[6] Article 71, Paragraph 1 of the Broadcasting Act, Article 57, Paragraph 2 of the Enforcement Decree of the same Act, and Article 3, Paragraphs 2 and 3 of the Notice on the Programming of Broadcast Programs, etc. (Korea Communications Commission Notice No. 2021-5)

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	☐ Entertainment programmes must be scheduled for no more than 60% of the total broadcast time per half-year period on the relevant channel.[7] ☐ Cable broadcasting operators and satellite broadcasting operators are subject to separate local content quotas (more than 40% but not more than 70% of the total broadcasting for each half of the year is to be local content, i.e., content produced in Korea).[8] ☐ Films, animations, and popular music produced in one country should not exceed 90% of the annual total foreign imported film, animation, and popular music broadcast time for each channel.[9] ☐ Self-regulatory approach to content regulation by pay TV operators, with supervision and standards-setting by the KCSC. ☐ Broadcasting operators must display the age rating for the programme as determined by the KCSC during the broadcast of the programme. Local pay TV providers are responsible for inserting age ratings into foreign programming.	
9. (b) Content regulation *Including languages, dubbing/subtitling and captioning*	☐ Dubbing is prohibited on foreign retransmitted channels but subtitling is allowed.[10] ☐ For domestic channels only, subtitling is subject to restrictions related to the timing and size of subtitling. ☐ Pay TV providers are required to utilise sign language, closed captioning, audio descriptions, etc. to assist disabled viewers. There are certain target percentages for disability assistance set for different types of broadcasting operators: i) for programme providers of general programming channels, 100%	

[7] Article 69, Paragraph 3 of the Broadcasting Act, Article 50, Paragraph 1, Item 1 of the Enforcement Decree of the same Act
[8] Article 71, Paragraph 1 of the Broadcasting Act, Article 57, Paragraph 1, Item 2 of the Enforcement Decree of the same Act
[9] Article 71, Paragraph 4 of the Broadcasting Act, Article 57, Paragraph 5 of the Enforcement Decree of the same Act
[10] Broadcasting Act Enforcement Decree Article 61-3 Paragraph 2 No. 2 (c)

Questions	Pay TV	Foreshadowed changes?
	closed captioned, 10% audio description assistance, and 5% sign language assistance; ii) for satellite TV operators, 70% closed captioned, 7% audio description assistance, and 4% sign language assistance; iii) for IPTV operators and programme providers, 70% closed captioned, 5% audio description assistance, and 3% sign language assistance.[11]	
10. Programme supply restrictions *Including must provide rules and other restrictions on exclusivity and anti-siphoning rules*	☐ No regulation of exclusive carriage contracts for channels. ☐ Requirement to share designated broadcast public events of widespread popularity or great significance, as specified in the Broadcasting Act and related enforcement regulations. (Relevant specified sporting events include the Summer and Winter Olympics, the FIFA World Cup, the Asian Games, the World Baseball Classic and national team football matches.) ☐ Cable and satellite broadcasting (Direct-to-home (DTH)) operators must operate at least 70 channels.[12] ☐ Cable, IPTV and DTH platform operators are required to carry 2 terrestrial channels (KBS1, EBS), as well as more than (i) 2 news channels, (ii) 3 public channels, and (iii) 3 religious channels etc.	☐ It was announced that the obligation to operate at least 70 channels would be abolished, and operators would be required to autonomously comply with channel composition principles and publicly announce the results to enhance autonomy. [Development Plan, p. 14]
11. Restrictions on FDI *Including platforms and wholesale supply of programming and cross-media ownership restrictions*	☐ Foreign investment in pay TV platforms is limited to: - 49% in cable operators, DTH operators and IPTV operators content providers - 49% in programme providers, IPTV content providers (excluding general channels and news channels). However, entities where the U.S. government, organisations, or individuals (personal or corporate) own 50% or more (15% for IPTV content providers) of the shares are not subject to these	☐ It has been announced that the restrictions on foreign ownership of programme providers (excluding general channels and news channels) would be abolished. [Development Plan p. 13]

[11] Notice on Guaranteeing Broadcasting Access Rights for Persons with Disabilities, including Programming and Provision of Broadcasting for Persons with Disabilities (Korea Communications Commission Notice No. 2022-17) Articles 6 and 7

[12] Article 70, Paragraph 1 of the Broadcasting Act, Article 53, Paragraph 1, Item 2, Item A of the Enforcement Decree of the same Act

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	restrictions for program providers and IPTV content providers (excluding general channels, news channels, and home shopping channels). - 20% for general channels, which have no restrictions on the broadcast genres; - 10% for news channels. • There are also cross-media ownership restrictions. - The combined revenue of a broadcasting operator (excluding program providers) and its affiliates should not exceed 33% of the total revenue of all broadcasting operators.[13] - A terrestrial broadcasting operator cannot own more than 33% of the shares or equity of a specific cable operator or DTH operator. - A cable operator cannot own more than 33% of the shares or equity of a specific terrestrial broadcasting operator. - A terrestrial broadcasting operator cannot engage in or own 5% or more shares or equity of the total number of programme providers. - IPTV operators cannot operate a program providing business (referring to concurrent business or ownership of not less than 5% of the total number of stocks or equities) in excess of 1/5 of the respective number of business entities involved in a television programme providing business.	
12. Retransmission arrangements *Including must carry and remuneration*	• Acrimonious disputes over "retransmission consent" of FTA channels have resulted in government intervention. (e.g., Guidelines for Negotiations on Retransmission of Terrestrial Broadcasting, the Dispute Resolution System under the Broadcasting Act, and the System for Orders to Maintain or Resume Broadcasting)	

[13] Article 8, Paragraph 6 of the Broadcasting Act, Article 4, Paragraph 5, Item 1 of the Enforcement Decree of the same Act

Questions	Pay TV	Foreshadowed changes?
	- Compensation/disputes continue, as well as the retransmission on some cable networks.	
13. Consumer protection *Including cooling-off period, termination rights and payment mechanism*	- For traditional pay TV platforms, broadcasting business operators must supply their programmes at a fair and reasonable market cost, in order to ensure the general viewing rights of the public. For traditional pay TV platforms, pursuant to the Broadcasting Act, to ensure that the general public has equal access to content, the KCC designates certain events of national interest, and the holders of broadcasting rights for these events must supply such programmes at a reasonable cost. - For IPTV platforms, pursuant to the Internet Multimedia Broadcasting Business Act (IMBBA), that ensures the general public has equal access to content, the MSIT designates certain programmes as "key broadcasting programmes" and the provider must supply such programmes at a reasonable cost.	
14. Entering a new market: FAST TV	- A report to the MSIT as a value-added telecommunications business operator is required.	
15. Data handling	- There is no regulation on data localisation. - Pay TV operators must not misuse viewer information obtained in the course of providing broadcasting services. - The IMBBA stipulates that the IPTV service provider shall take the protective measures for securing the individual user's personal information that is obtained in the course of providing the IPTV service and shall not disclose such personal information to third parties.[14]	

[14] The Internet Multimedia Broadcasting Business Act, Art. 16(2)

Questions	Pay TV	Foreshadowed changes?
Other country-specific information not already covered	Cable and IPTV operators cannot provide services to more than one-third of all Pay TV subscribers.	• It was announced that the restriction on market share (no more than one-third of subscribers) would be completely abolished. [Development Plan, p. 13]