

## BACKGROUND PAPER TO STIMULATE THE DISCUSSION, PREPARED BY THE PROGRAMME COMMITTEE OF THE ITU WORKSHOP ON "THE FUTURE OF TV FOR THE AMERICAS", 26 NOVEMBER 2018, BOGOTÁ, COLOMBIA

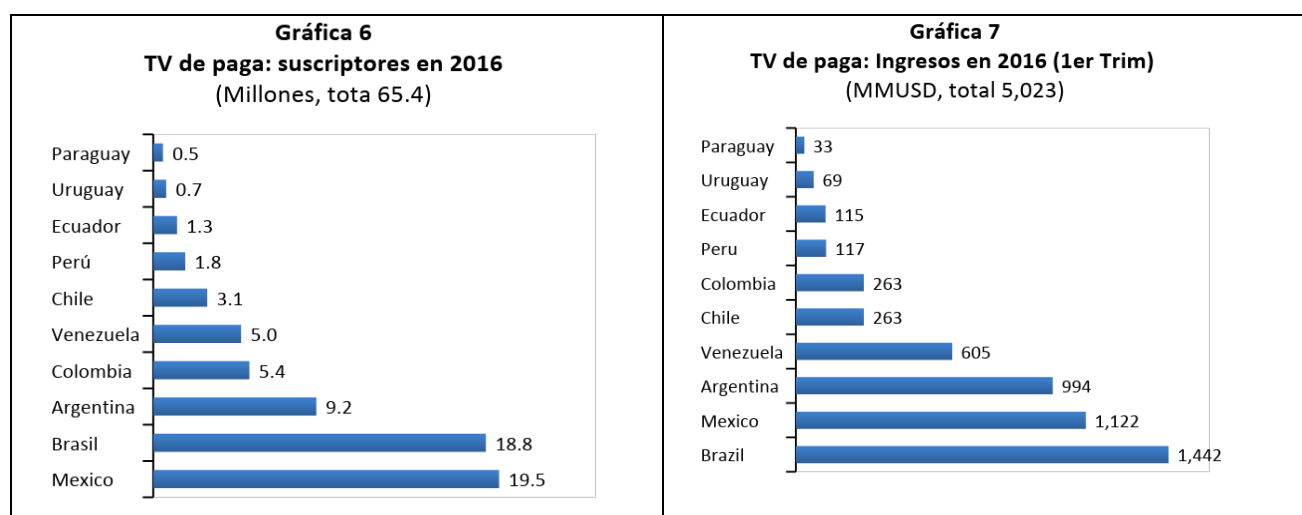
*NOTE 1: This background paper is based on the study conducted by ASIET on "Subscription TV in a converging environment", November 2018. It collects its main findings and recommendations in response to current trends in the region.*

*NOTE 2: The study had not yet been published at the time of preparation of this background paper. ASIET informed that the study would be published soon.*

### PAY TV TRENDS

The Report makes a comparable analysis of the regulatory framework and evolution of subscription television, and **Over The Top video services** in Argentina, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela. These 10 countries represent the 85.6% of the population of Latin America.<sup>1</sup>

In 2016, these countries recorded a total of **65.4 million** pay TV Subscribers<sup>2</sup> that generated an equivalent of **20.1 billion** of revenue dollars for operators; on the other hand, the subscribers of OTT Video OTT services reached **15.9 million** generating revenues for an equivalent of **1.2 billion** dollars.



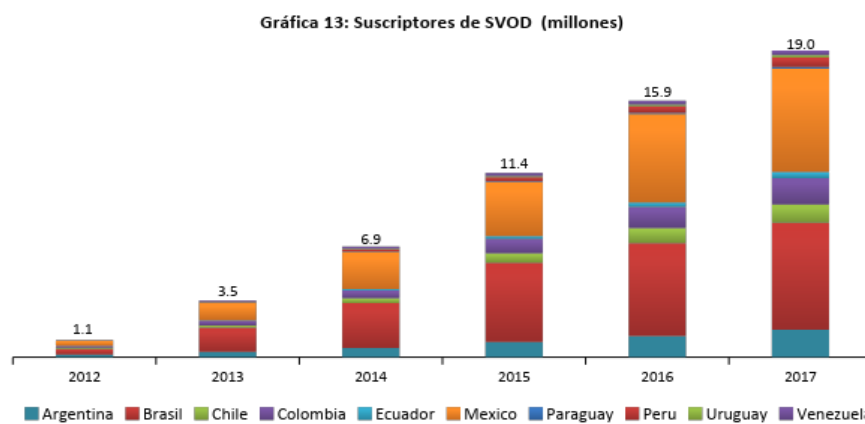
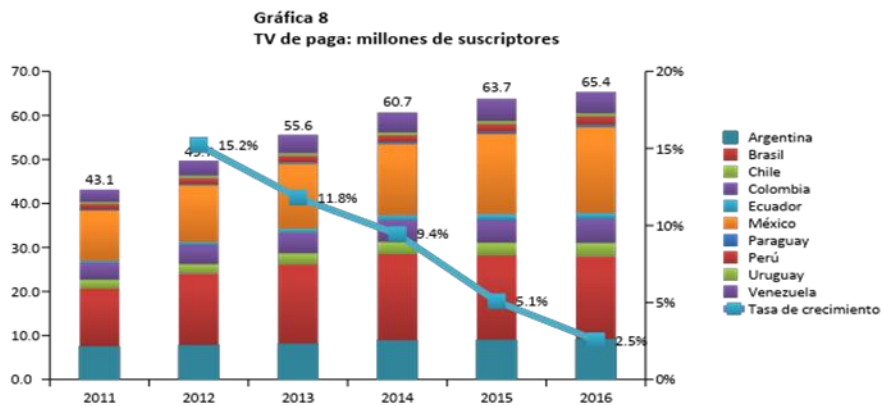
Although pay TV has a greater penetration than OTT Video services, the recent market dynamics, indicate that the relative importance of the latter will grow substantially. It is estimated that between 2016 and 2022 the subscriptions of **on demand video services (SVOD)**<sup>3</sup> will grow at an average annual rate of **10.9%**, while those of **Subscription TV** will do it at **1.7%**. As a result of the foregoing, in the 2022, SVOD's subscriptions would represent the 40.1% of the market.<sup>4</sup>

<sup>1</sup> Eclac *Demographic Observatory*, 2016. P. 29

<sup>2</sup> hereinafter, the terms "subscription television", "Subscription TV" and "pay TV" are used interchangeably.

<sup>3</sup> As discussed in more detail in sections II. 3 and V, the SVOD is one of the business models that has adopted the OTT Video service, and, in Latin America, is by far the most important in terms of income.

<sup>4</sup> The sources and details of these projections are addressed in section VII.



On one hand, the expansion of pay TV has slowed **down**, even in some countries it has stagnated. On the other, the penetration of the OTT Video services is being driven by innovation and technological development, as well as the increasing penetration and quality of the services of broadband, particularly the mobile broadband. The above, facilitates and improves the experience of users in the consumption of audiovisual content in their fixed and mobile devices connected to the Internet.

Dozens of companies and business models have generated consumers to see more audiovisual content over the Internet. Undoubtedly, the OTT Video is promoting improvements in the quality and variety of audiovisual content options for users and introducing greater competition.

At the same time, the disruption of OTTs in the provision of audiovisual content raises the question of whether the **traditional regulation** to pay TV **still fits** to promote an efficient and competitive market. In Latin America, pay TV, is subject to a strong sectoral regulatory burden on concessions, licenses, contents and publicity, retransmissions of content, protection of users' rights, registration and delivery of information, and penalties. On the other hand, the OTT Video services are not subject to any specific regulation, probably because of their Internet nature and the overall character of their operations.

This **Regulatory asymmetry** creates a distortion that deteriorates the competitiveness of traditional services, even if the existing regulation is considered to have had legitimate objectives such as protecting consumers or promoting competition. The OTT Video services will continue to grow, especially because of the ubiquity that they provide to the users in the access to audiovisual contents. However, it is necessary for this competition to be in its merits, without **regulatory disadvantages** that will impair the competitiveness of pay TV. Otherwise, their chances of competing and continuing to contribute to the development of telecommunications markets would be jeopardized.

## REGULATORY RECOMMENDATIONS FOR PAY TV IN A CONVERGING ENVIRONMENT

Regulators should evaluate markets with a prospective approach recognizing the increasing competitive pressure that OTT Video platforms put on pay TV, and ensure the viability of the new ecosystem, including the provision of quality services with the maximum coverage possible.

Currently, pay TV must face this competition along with a strong regulatory burden on the distribution of content which does not apply to such platforms. This situation generates an unbalanced sharing of the costs and benefits of the value chain, and can inhibit incentives to make the investments needed to maintain and expand the network infrastructure.

This situation exhibits the need to adopt a **flexible regulatory approach** to reduce the scope of regulation where possible in order to have **similar rules for similar services**. It is not about inhibiting innovation in OTT Video services through a regulatory burden similar to the pay TV, but Level "**Down**" the Regulation as evidence that both services are converging and play a similar role to meet the entertainment needs of users,<sup>5</sup> that is to say, to eliminate, as far as possible, the scope of the pay TV regulation.<sup>6</sup> This approach would adequately balance innovation, competition and investment incentives.

The only real constraint to this convergence in some segments of the population are the lags in Internet access seen in some countries, but innovation and development in broadband, particularly mobile, and in the different types of devices will allow to close these lags in the next years.

Therefore, it is proposed to initiate a levelling process as soon as possible by implementing at least the following measures:

1. *Eliminate specific levies on pay TV.*
2. *Lighten the information requirements to pay TV providers.*
3. *Lighten regulatory controls on contents and publicity.*
4. *Replace the pay TV concession scheme for a registration one.*
5. *Establish regulatory impact analysis.*

These measures are specified below in more detail:

### 1. **Remove specific levies<sup>7</sup>**

Pay TV-specific levies have a direct impact on the cost of the service for users, which deteriorates their competitiveness with respect to other services that are not subject to these taxes, particularly the OTT Video services who are competing in a growing way. The need to eliminate these levies is compelling in view of the increasing availability and penetration of the OTT Video services, as there is a risk of

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<sup>5</sup> OECD *The impact of substitute services on regulation*. DAFCOMP2006) 18. Available In: [Http://www.oecd.org/daf/competition/sectors/36997290.pdf](http://www.oecd.org/daf/competition/sectors/36997290.pdf)

<sup>6</sup> OECD (2006), *The impact of substitute services on regulation*. In this context, in May 2016 the European Commission proposed an update on the regulation of audiovisual content, highlighting the principle of establishing "similar rules for comparable digital services", and where possible, "to reduce the scope of Existing regulation".

<sup>7</sup> Refers to the existence of express measures to secure additional pay TV services to those belonging to the general scheme (income, value added) such as revenues to advertising, the number of subscribers or the concession and that do not comply For a specific purpose within the industry.

artificially discouraging the adoption or continuation of pay-TV services, especially regarding the more price sensitive users. At the same time, the expansion that the pay TV services have had in the last years has resulted in greater contributions from the suppliers of this service to the public treasury by taxes on the income and sales of the companies. Maintaining the collection of these levies is contrary to the principle of technological neutrality, disadvantages pay TV service and reduces incentives to improve their quality and coverage.<sup>8</sup>

## **2. *Lighten the information requirements to pay TV providers and request some information from Internet TV***

The market disruption associated with the entry and growth of the OTT Video platforms in Latin America in recent years, raises the urgency for sectoral regulators to adopt a prospective vision that recognizes the emergence and development of converging markets. The structure and future performance of the audiovisual content distribution markets depends to a large extent on the technological and competitive dynamics that are observed on Internet TV. Close monitoring of this dynamic is an imperative need for sectoral regulators to make informed and timely decisions that contribute to the appropriate development of the markets.

Thus, for example, regulators should have information that allows them to review from time to time the market definitions that are used for the design and implementation of regulatory measures, to ensure that they reflect the reality of markets.

At the same time, the clear trend towards converging markets indicates the benefit of lightening the information and registration requirements of pay-TV operators so that they are similar to those established for Internet TV. In this sense, pre-registration of packages and tariffs, or detailed formats of information on infrastructure, hedges, revenues, subscribers, packages and tariffs may be unnecessary.

## **3. *Lightening regulatory controls on content and publicity<sup>9</sup>***

The regulatory controls on subscription TV content and advertising in Latin America generally aim to promote the diversity and plurality of audiovisual content, and, in general, to protect the rights of audiences, especially minors. This is determined among other reasons, because subscription TV operators generally have the character of authorized concessionaires or in some way received an enabling qualification granted by the regulators of each country, so it is relevant the conclusion of certain obligations related to the protection of the public interest such as the regulatory control of certain contents and in some cases of publicity.

The expansion of Internet TV is multiplying the variety and volume of audiovisual content available to consumers without the controls that apply to traditional television, which is creating a regulatory asymmetry and reducing the practical relevance of the application and monitoring of controls on traditional TV. On the other hand, this content expansion has been paralleled with the development

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<sup>8</sup> OECD (2017), *OECD study on Telecommunications and broadcasting in Mexico 2017*, recommends eliminating the special tax on products and services that applies to pay-TV and telephony services in Mexico because it considers that it distorts the proper development of the sector and can particularly harm the poorest population. For further details of these specific taxes see annex II.

<sup>9</sup> The proposals that are developed in this section are consistent with those raised in the legislative proposal to update the Audiovisual Communication Services Directive adopted by the European Commission on 25 May 2016. Available [Here](#).

of innovative tools to implement and monitor content rules more effectively and to empower consumers.

This situation implies a rethinking of the regulatory instruments and the classification of transgressions to the rights of the audience, in order to adequately balance the competitiveness of the services and the protection of the rights of the users and those of the content creators and owners.

**Firstly**, if there is a justification for maintaining certain restrictions on pay TV and not on Internet-demand video services, they should be applied more flexibly and as far as possible through instruments of self-regulation.<sup>10</sup>

**Secondly**, there are restrictions that are likely to be justified, but they are independent of the platforms through which audiovisual content is transmitted so that differentiation is not justified. This is the case of obligations on minimum offers of cultural content, independent, national or general interest. Although it may be considered the exemption of newly-entered, small or thematic platforms.

**Finally**, when it comes to the protection of minors, regulatory constraints must be applied in a transversal manner to all means of transmission.<sup>11</sup> In this area, the effectiveness of the dissemination of information to users on potentially harmful content to minors should be emphasized, and the use of parental control instruments such as encryption and password systems, or dedicated profiles and platforms to minors as already used by several providers with favorable results. That is, leveraging the advances in information technologies to engage and empower consumers.

These measures can be developed in conjunction with the adoption of international best practices in the areas of self-regulation and co-regulation Aimed at protecting both the rights of audiences and the right to freedom of expression.

#### **4. Replace the pay TV allowance scheme for a pre-registration online**

The increasing penetration of Internet TV without specific regulation is increasingly contributing to the achievement of public policy objectives of expanding the options for access to audiovisual content of the population and intensifying the environment of competition. This evolution raises the question of whether the onerous licensing, verification and renewal of concessions are still justified to provide the prevalent pay TV service in Latin America.

As discussed in the previous section, some content and publicity obligations are likely to be maintained, but their compliance may be appropriately provided under a pre-online registration regime of service providers who take full advantage of the Information technology and be more agile and flexible.

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<sup>10</sup> For a review of the effectiveness and best practices of Self-regulation And Co-regulation In the area of audiovisual content in European countries, it is suggested to see: European Commission (2016B). Effectiveness of self-regulation and co-regulation in the context of implementing the AVMS Directive. Available at: <https://ec.europa.eu/digital-single-market/en/news/audiovisual-and-media-services-directive-self-and-co-regulation-study>

<sup>11</sup> For a review of the effectiveness and best practices for the protection of minors in the field of audiovisual content in European countries, it is suggested to see. Commission European (2016). Audiovisual and Media Services Directive-Study on Protection of minors. Available at: <https://ec.europa.eu/digital-single-market/en/news/audiovisual-and-media-services-directive-study-protection-minors>

## **5. Establish Regulatory Impact Analysis (RIA) 12**

Regulatory Impact analysis is a systematic process that identifies and quantifies the potential costs and benefits of regulatory (and non-regulatory) alternatives. RIA improves transparency, justification and credibility to regulatory measures, and ensures that they only issue regulations with substantial net benefits for the markets. In general, pay TV regulators in Latin America still do not implement the RIA,<sup>13</sup> therefore it is necessary to make effort to introduce it and to avoid the emission of regulations that only distort the competitive dynamics.

It is also necessary to establish an Ex post evaluation process of the regulations in place to ensure that they remain necessary, relevant and useful. This type of evaluation is practically non-existent in Latin America, which implies the risk of maintaining regulations that become obsolete due to changes in consumer preferences or technological progress.

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<sup>12</sup> OECD (2016). "Analysis of Regulatory Impact", in Panorama of the public administrations: Latin America and the Caribbean 2017. Available at: <https://publications.iadb.org/bitstream/handle/11319/7979/Panorama-de-las-Administraciones-Publicas-America-Latina-y-el-Caribe-2017.pdf>

<sup>13</sup> One exception is the case of Mexico where the Federal Institute of Telecommunications has established a formal AIR process.

## ANNEX

### POSSIBLE QUESTIONS TO FEED THE DISCUSSION AT THE ITU WORKSHOP "THE FUTURE OF TV FOR THE AMERICAS", 26 NOVEMBER 2018, BOGOTÁ, COLOMBIA

#### SESSION 1 - MARKET TRENDS AND BUSINESS MODELS

*Objectives: This session will focus on emerging trends in TV from a business perspective, discussing industry challenges and opportunities in various regions of the world, including both developed and developing countries.*

#### POSSIBLE QUESTIONS

Considering the following factors:

- the high level of competition of cable operators;
  - the advent of digital TV (DTT);
  - the triumphant entry of OTTs into the market;
  - the technological development around television devices;
  - the satellite platform every day more efficient in the management of video communities;
  - the potential of fiber networks and FTTH, and
  - the arrival of the IoT,
1. How market strategies should be modeled to take full advantage of technological development, taking into consideration that within the business models related to television, it should not be forgotten that the content each day becomes more crucial, more than the infrastructure itself?
  2. How critical is the offer of integrated services, on multiple platforms for the survival of the TV industry in the mid and long term?
  3. Will linear television be a key element in the offering of these services, thinking that Video-On Demand services can also be successfully developed?
  4. Non-linear television is dominant among adolescents; could it be expected that they will take that video consumption pattern towards their adulthood, or on the contrary at that stage of their life, will they prefer entertainment based on professionally produced linear TV content?
  5. In other words, is linear television dead in any of its modalities or will it continue its existence? And if so, with what percentage of the entire video consumer market?
  6. How far can we estimate that what we call free to air television or pay TV, terrestrial or by satellite, will be able to remain competitive in the video consumption market, taking into account that DTT is just entering the Latin America markets and the benefits of free digital television, especially for the rural and sub urban sectors, are just beginning to be observed?

#### SESSION 2 - POLICY SUPPORT FOR MARKET GROWTH AND INNOVATION

*Objectives: Presenting regional case studies and regulatory approaches, this session will focus on the key enablers for successful and impactful TV services and applications. The aim of the session is to provide a picture of the TV roll out in the Americas and the supporting role played by regulatory frameworks, including piracy and copyrights considerations.*

#### POSSIBLE QUESTIONS

Recognizing the role that the National Regulatory Entities (NRAs) play in the telecommunications ecosystem and particularly in the Television sector in any of its formats, together with the regulatory bodies and other international organizations, such as the ITU among others:

7. In what way these bodies can help the television sector to face the challenges that the industry itself and the galloping technological development imposes on its markets, by making use of regulatory frameworks, licensing, establishment of standards and rates, taking into consideration the limitations of each state?
8. What role should regulatory bodies adopt regarding anti-competitive practices to lock customers into Pay TV ecosystems?
9. Given the astronomical tendency especially by the owners of the contents and channels denominated Premium, regarding the exploitation of their platforms for the monetization of the commercial guideline; what actions can be

taken either individually or regionally, to balance the exploitation of customers of free to air TV channels and cable TV subscribers, those who the premium content companies already call their customers.

10. What role should the TV industry and regulators adopt regarding the entry of unregulated OTTs, without state control over their revenues, without paying taxes and using broadband networks free of charge?
11. What actions are necessary by regulators to preserve and safeguard free to air television stations, especially after the heavy investment in digital conversion, given the importance of local content that is part of the culture of each country and the benefits that its format will bring to the most marginalized social layers in terms of digital literacy and bridging the digital divide?
12. Taking into account the actions against piracy carried out in other regions. What could be the regulatory measures to take at the regional level? Do you think that a change in regulation that prevents illegal decoding of signals and online piracy can be effective, even in the long term? What do you consider could be success factors?
13. Regarding copyright (intellectual Property) content on subscription TV. What are the challenges in this area? How should measures be addressed to ensure that the rights of protected works are respected? What role should public policies and regulation play?

### **SESSION 3 - EVOLVING TV TECHNOLOGY**

*Objectives: This session will showcase the latest technological innovations for content delivery over integrated broadband, broadcast and cable TV networks. The session includes new types of smart terminals able to provide integrated and innovative services, including advanced user interfaces. Discussions will explore how new advanced services could best enable and complement current broadband, broadcast and cable TV offerings in the Americas.*

#### **POSSIBLE QUESTIONS**

Thinking about the reality of many of the countries still developing in Latin America:

14. How could we visualize which technologies will prevail in the television environment, both digital terrestrial television and through fiber or wireless networks, considering the entry of OTTs and offerings of mobile video services, by market players, others than the traditional telecommunications industry and broadcasting or pay television services' operators?
15. Do Cable TV operators need to replace their coaxial local networks with optical fiber, given the forecasted demand for more bandwidth for high-format digital content such as HDTV and UHD TV and to become part of the IoT ecosystem?
16. Given that the adoption of standards for DTT in Latin America is not so standard, what incidences can impact from country to country, especially in regions where territories are extremely small, as in the case of Central America? Should this be a matter of regulatory considerations and regional standardization?
17. Considering the statistical figures of penetration of OTTs in the region, should independent regulatory measures be taken at the country level, or should this be one of the issues that need to be considered within the regional standardization strategies?
18. Generating video streaming is becoming less expensive every day; its regulation is practically impossible with current models and therefore it is becoming a serious competitor for the entire television industry. Is this an augmented reality or one that should be seen seriously, given the fact that generating and streaming video over broadband internet networks at the expense of users, poses a good competition to free-to-air analog or digital TV channels that use spectrum, the same as to the operators of cable TV networks, given the high difference in costs?.

### **SESSION 4 - STANDARDIZATION STRATEGY**

*Objectives: This session will focus on regional and international standardization in the field of broadband, broadcast and cable TV. The aim is to identify standardization gaps and discuss standardization strategies to address these gaps most effectively.*

#### **POSSIBLE QUESTIONS**

19. What are the hot topics happening in each region that haven't yet to be shared or standardized in the global-based standardization organization?
20. What will be required or expected to international standardization organizations for further growth of television-related business?
21. What should be standardized to facilitate the cooperative business among different areas of entities such as network providers, television broadcasters, pay TV service providers, OTT video providers, equipment vendors, and so on? (note that in most cases cable television operator plays a role of a network provider as well as a pay TV service provider)
22. What kind of network infrastructure advancement (particularly of cable television network under the scope of SG9) will be necessary to be implemented and standardized in view of the increasing convergence of television broadcasting and OTT video?



23. What kind of functionalities and interfaces to deal with OTTs are necessary in the cable television headend in order to efficiently provide OTT videos to users together with the existing television services?
  24. From the user equipment point of view, what will be the requirements to customer premises equipment (CPE), i.e., cable modem, ONU/ONT, home router, set-top boxes, smart TV, mobile devices, etc., for the advanced services where television broadcasting and OTT videos coexist?
  25. How standardization can facilitate the development of effective user interfaces to allow everyone, including persons with disabilities to benefit of TV services?
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