Response to Consultation Paper on Inputs for formulation of National Broadcasting Policy-2024

Note: This response to the consultation paper is a joint response from Indicc Associates and contains two sections. The first section entails TV Broadcast and the second section entails Online Gaming. The comments contain braoder and specific aspects in these two sectors to better inform policy formulation and are not necessarily clause by clause comments.

1   TV Boradcast

First, there is a **need to get the exact number of subscribers.** Surprisingly, no accurate figure is available for the number of TV subscribers in India, particularly in the cable TV sector. The Digital Addressable System or DAS – a process is declared complete on paper as of March 31st, 2017 was supposed to ensure this.

Consisting of Conditional Access System (CAS) and Subscriber Management System (SMS), implementation of DAS was supposed to ensure encryption of content in the digital form enabling enhanced channel capacity and choice while improving the viewing quality and delivery of secure content to the 'authorised consumer'. Experts suggest that DAS in the cable TV segment is only about 20% implemented while in the DTH space it is slightly upwards of 70%.

There are several reasons for this. For instance, there is prevalence of sub-standard CAS and SMS system in the television market. These systems are to be deployed by distributors of TV channels, also known as Distribution Platform Owners or DPOs, to ensure transparency in service and accounting. There needs to be strict accountability on DPOs to abide by due standards of CAS/SMS.

The result is under-declaration of subscriber count and piracy. Needless to say, this results in loss of revenue across the value chain, the entertainment industry in India, at large, and also for the exchequer.

More importantly, it leaves consumers unaware of their choices. Pertinent to mention here is the fact that digitalisation under DAS was to expand channel capacity to carry more programmes per channel, thus enhancing consumer choice. To put it simply, the entire system was to respond after the consumer had explicitly expressed his/her choice in a mandated form, also called the 'Consumer Application Form' or CAF. This is rarely done.

Second, it is important to note that components of content are very different from that of carriage, which is essentially a physical infrastructure. Lack of differentiation between content and carriage, therefore, leads to a pricing regime that is frequently contested. Moreover, in the absence of accurate subscriber count and choice, any attempt to determine pricing will be quite off the target on one hand while on the other hand, it distorts marketing spend. The policy must look to institutionalise transparency in setting tariff and pricing.

Third, A large part of the problem related to sub-standard CAS/SMS, inaccurate subscriber count and piracy results from the generic nature of these regulations and hence there is a need to prescribe more specific technical and process solutions. The policy must articulate a detailed process on deterrence.

Fourth, it needs to be understood that **regulations don't work on the ground because structures (political economy) on the ground don't allow so**, and this usually happens when rewards and risks are not proportionately distributed. It is therefore important that policy encourages all stakeholder discussions in a routine manner and help them revisit the expectations from each other.

Fifth, digital payments must be promoted as much as possible for TV consumers. This can result in better collections for the cable operators while also reducing transaction cost, and perhaps will also help to identify the 'actual' consumers to a certain extent.

Lastly, it needs to be remembered that these steps are not exhaustive but crucial for the health of the TV sector in India. The endeavour should be to provide a level playing field so that the sector can develop necessary resilience.

2   Online Gaming

2.1   Overview of Sector:

Online gaming is one of the fastest growing segments in India's M&E industry. According to an EY report, in FY 23 the online gaming sector overtook filmed entertainment, to become the fourth largest segment within M&E industry. This segment had a market size of INR 164 billion in FY 23, while also employing around 100,000 individuals with a potential to employ 250,000 by 2025. The online gaming sector has also attracted INR 23 billion worth of investments from both domestic and global sources. Further, there are 442 million online gamers in India, making India the second highest country in terms of user base, after China. Despite the huge user base and investment opportunities, India's online gaming segment constitutes a mere 1.1% of the global online gaming revenue.

2.2   Regulatory Architecture:

To provide regulatory stability to this sunrise sector and to increase India's contribution to the global online gaming revenue, the government constituted an Inter-Ministerial Task Force (IMTF) in 2022. This taskforce comprised of seven secretaries from various ministries, with the mandate to analyse and propose recommendations on the regulatory framework for online gaming. Following the submission of the IMTF report, the Cabinet Secretary made amendments to the Allocation of Business Rules, assigning the subject matter of online gaming to the The Ministry of Electronics and Information Technology (MeitY) and esports to the Ministry of Youth Affairs and Sports.

MeitY amended the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, (IT Rules) 2021 on 6 April 2023. The IT Rules created a self-regulatory mechanism for online gaming intermediaries (OGIs) and instituted guardrails to ensure autonomy and independence in the functioning of Self-Regulatory Bodies (SRBs). These SRBs are envisioned to encourage responsible gaming practices, register OGIs and address consumer grievances. They will also develop standards to protect users, especially children, from critical issues like addiction and user harm.

However, for all of this to come into effect the SRBs need to be operationalised at the earliest. The urgency also stems from the need to restrict the operation of illegal offshore gambling websites and incentivise a rule-abiding, indigenous gaming industry to prosper in India.

2.3   Alternate and Supplementary approaches to regulation:

MeitY could consider expanding the regulatory framework for online gaming in India beyond the current two-tier structure outlined in the Information Technology (Intermediary Guidelines and Digital

Media Ethics Code) Rules, 2021. One option is adopting a three-tier regulatory model similar to the one established for Online Curated Content Platforms under the IT Rules 2021.

An alternative option is to establish a single independent regulator exclusively focused on overseeing the online gaming sector. While this approach could provide centralized oversight and regulation enforcement, it's crucial to acknowledge potential downsides. Operating independently from industry involvement could impede innovation and hamper sector expansion. Therefore, finding the optimal balance between regulation and industry collaboration is essential to cultivate an environment conducive to innovation and growth in the online gaming industry.

Furthermore, MeitY considers operationalising the SRB framework it could also consider implementing a registration system in the interim to differentiate legal online gaming services from offshore betting and gambling platforms. This registration process could be voluntary, with industry collaboration in developing the criteria. For example, registered online gaming platforms and services would be required to provide consumer protection details, helping mitigate risks associated with unregulated services.