

PLAYING FAIR

Traditional audiovisual providers are increasingly concerned about the lack of a level playing field. Grupo Televisa's **JAVIER TEJADO-DONDÉ** gives his view

Over the past five decades, audiovisual content distribution services have evolved in many ways. In the 1970s, free-to-air TV was the main platform for content distribution and thereafter technological evolution allowed pay TV to go mainstream. However, it was not until the past decade that such providers started facing additional competition from a variety of sources and within a quite short time span.

Suddenly, higher broadband adoption and technical capabilities in both provision and consumption has allowed the internet to become an audiovisual content distribution platform that, given its nature, has introduced a great variety of relevant actors to the industry.

By banishing barriers to entry, the internet has made it possible for single users and companies alike to massively distribute audiovisual content at a very low cost. What started out as a new and clearly differentiated set of audiovisual content has rapidly morphed into first a complement and now a substitute to traditional content distribution platforms, as in the so-called 'cord-cutting' and 'cord-shaving' phenomena.

Additional competition is always a good thing – more diverse content from different sources means fulfilling previously unsatisfied consumer needs while making other providers offer innovative products and services. However, such a way to compete is inherently flawed if, as now is the case, the playing field is unbalanced or tilted towards one side, thus benefiting a set of players over the others.

Such unbalance comes from three main factors. First, traditional pay TV operators face a set of regulations concerning content distribution such as must-carry obligations that are currently not applicable to over the top (OTT) services and make the provision of their services costlier in many cases. Second, pay TV operators face, in many jurisdictions, special taxes and duty schemes which OTT services are not subject to – and even more dramatic is the fact that in most countries OTT services operated from abroad do not have to pay a single penny in taxes. The third factor comes from technological convergence, given that many pay TV operators are now broadband providers as well and must deal with the consequences of increased traffic coming from growing adoption of OTT services among their subscribers.

Understandably, given how quickly and recently OTT services came to be widely adopted, national regulators and legislators have, in most cases, not been up for the task of balancing the playing field

between subscription OTT services and pay TV providers. However, the former has grown so much in recent times that, in the case of the US or even Mexico, if counted along with pay TV subscriptions, OTT would account for one quarter of the total. Ignoring this reality is no longer an option.

To address these issues, national regulators, tax authorities and legislators must consider an array of available options. First and foremost, authorities must bear in mind that deregulation of pay TV operators is still an option that would allow them to compete on equal terms. Also, imposing equitable regulations and tax schemes on OTT providers may be a remedy for this situation, but one that would potentially mean, in contrast to the first option, higher prices for consumers. And additional to whichever of these approaches is chosen, regulations concerning co-responsibility in data traffic management must be considered to ensure sustainable provision of internet services.

To keep a healthy and competitive telecoms market it is important to level the playing field, especially in a constantly evolving ecosystem where many platforms based on the internet are introduced on a daily basis and will continue to grow with the spread of broadband. Not doing so will mean the end of many companies that not only distribute content but also invest in infrastructure and help reduce the connectivity gap.

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To illustrate the lack of a level playing field, I have set out below the current position of taxation of services and operations for audiovisual players in Mexico. Note that social security contributions depend on the payroll structure. Housing and pension/retirement funds are levied on workers' salaries.

Are there taxes on 'foreign' OTT players in the Americas? I have found several: in the US, at least three locations, Chicago, Pasadena and the state of Pennsylvania levy or are planning taxes on services such as Netflix, and other cities and states could follow; Colombia and Brazil have a special nationwide VAT rate; and Buenos Aires, Argentina, levies a special tax.

Cable/satellite television	Domestic OTT	Foreign OTT/ illegal services
Services		
Telecoms tax: 3%		NONE
VAT: 16%	VAT: 16%	
Operations		
Income tax: <=35%	Income tax: <=35%	
Payroll tax: 0.5-3%	Payroll tax: 0.5-3%	
Social security	Social security	
Housing fund: 5%	Housing fund: 5%	
Pension fund: 5.5%	Pension fund: 5.5%	