



13 March 2019

To
H.E Mr Nguyen Manh Hung,
Minister of Information and Communications

Subject: Comments on the amendments to Draft (V5.0) Decree No. 06/2016/ND-CP

The Asia Internet Coalition ("AIC") appreciates the opportunity to share our views on amending and supplementing provisions to the Version 5.0 of Decree No. 06/2016/ND-CP ("Draft Decree") on management over, provision and use of, radio and television services. In continuity to our earlier submission on the Version 4.0 of the Draft Decree, we submit our comments to the amendments in Version 5.0.

AIC is an industry association comprised of leading internet and technology companies. AIC seeks to promote the understanding and resolution of Internet and ICT policy issues in the Asia region. Our members include AirBnB, Amazon, Apple, Expedia Group, Facebook, Google, LinkedIn, LINE, Rakuten, Twitter and Yahoo (Oath).

With the hope that Ministry of Information and Communications ("MIC") will find it helpful as they review the Draft Decree, we encourage the authorities to consider immense potential of Internet platforms and on-demand services in Vietnam. Importantly, the regulatory approach should be aligned with Vietnam's digital economy goals, which could translate into local growth opportunities and innovation.

The summary of issues and concerns regarding amendments on the Draft Decree have been prepared based on our industry expertise and international best practices. We note that in its approved master plan to 2020 on the development of radio and television services in Vietnam (under Decision 1448/QĐ-TTg as approved by the Prime Minister), Vietnam has recognised that a solution to improving its legal framework and mechanisms in this sector is to "[*formulate and amend*] the standards and regulations on radio and television services in conformity with Vietnam's development and international practices". Our summary has been prepared with this roadmap in mind, as we seek to provide our suggestions that will aid the Ministry in alignment with such international practices.

We are concerned that, if passed, in its current form, the Draft Decree might set precedent for other countries to impose reciprocal regulations on online services, and create regulatory barriers for Vietnamese businesses trying to expand beyond Vietnam's borders. We therefore request considering the potential consequences of the Draft Decree in order to prevent unexpected negative impact on the Vietnamese economy. As such, please find appended to this letter detailed comments and recommendations.

We are mindful that the Draft Decree is under review process, and we are thankful for this opportunity to share our concerns and feedback. Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact me directly at Secretariat@aicasia.org or (+65) 8739 1490 or at ly.do@ps-engage.com or (+84) 35 839 0988. We do appreciate if you could send us your feedback on our recommendations and information on workshop or document related to the Decree 06 in the coming time. Thank you for your time and consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeff Paine", written in a cursive style.

Jeff Paine
Managing Director,
Asia Internet Coalition

Cc:

- Mr. Hoang Vinh Bao, Deputy Minister of Ministry of Information and Communications
- Mr. Nguyen Thanh Lam, Director General, The Authority of Broadcasting and Electronic Information
- H.E Mai Tien Dzung, Minister, Chairman of Office of the Government (OOG)
- Mr. Dinh Dung Sy, Director General of Legal Department, Office of the Government (OOG)
- Mr. Chu Duc Nhuan, Director General of Department of Culture and Social Affairs, OOG



- Ms. Mai Thi Thu Van, Director General of Dept of General Economics, OOG
- Mr. Le Hong Lam, Director General of Dept of International Cooperation, OOG
- H.E Mr. Le Thanh Long, Minister of Justice (MOJ)
- Mr. Nguyen Thanh Tu, Director General of Civil and Economic Dept, MOJ
- Mr. Nguyen Hong Tuyen, Director General of Dept of General Affairs on Legislative Development, MOJ
- H.E Mr. Tran Tuan Anh, Minister of Industry and Trade (MOIT)
- Mr. Nguyen Van Binh, Politburo member and Head of the Party Central Committee's Economic Commission

Detailed Comments and Recommendations

1. Over-the-Top ("OTT") Service Providers should be distinguished from radio and television service providers

On definition of terms we understand from the Draft Decree that:

- Definition on radio and television service (Article 3.1) has been revised as “Radio and television services are services that apply telecommunications to provide full programs of domestic channels, foreign channels, domestic programs, foreign programs and value-added content on the technical infrastructure to transmit radio and television signals to users. Radio and television services can be directly provided to users without using storing or slowing down equipment (online television service) or based on specific demands of subscribed service user (on demand service);”
- Definition on on-demand content service (supplement Clause 18 Article 3) has been removed and incorporated into the definition of “*On-demand service package*” (see below).
- Definition on radio and television service on the Internet (Clause 1 Article 4) has been revised as “Radio and television service on the Internet is a the type of radio and television service that uses Internet connection through the domain names of specific websites or an identified Internet address, including Internet applications to transmit to users.”
- Definition on broadcasting on-demand service on the Internet (Clause 1 Article 4) has been removed.

Comments: Although some of definition of terms have been revised or removed to harmonise definitions and remedy earlier inconsistencies, but concerns still remain. In the Draft Decree, the revised definition of terms could lead to a broad and vague scope of application.

“*Radio and television services*” include the transmission of programs on the request of the service users (on-demand service). Such transmission can be done over the Internet, in which “*radio and television service on the Internet*” is defined as a type of “radio and television service that uses Internet connection through domain names of specific websites or an identified Internet address, including Internet applications to transmit to users”.

“*On-demand content packages*” includes domestic and foreign program contents, and other legally copyright-protected visual, audio content that has been edited by the press agencies which are granted the radio, television operation licenses, which are provided to subscribers on demand (Clause 3 Article 14).

It appears that “*radio and television services on the Internet*” would effectively include Over-the-Top (“OTT”) services that stream video and audio.

While the Draft Decree has remedied certain drafting inconsistencies and ambiguities that were present in Version 4, the Ministry of Information and Communications (“MIC”) has maintained their intent to capture the broad scope of “on-demand services on the Internet” (“OTT Services”) as a “radio and television service” governed by Decree 06. The inclusion of the term “on-demand services” within the definition of “radio and television services” is not a new concept, as it has been present since Decree 06. We oppose the proposed expanded scope of “on-demand services” with a following view:

- The amended definition of “Internet radio and television service”, which now covers services for transmission by identified Internet addresses and Internet applications. The current Decree 06 definition limits such services to those transmitted via Internet addresses with domain names / URL

managed by the Socialist Republic of Vietnam. It also does not include the use of “Internet applications”.

- The supplemented scope of “on-demand content”, which covers domestic and foreign radio and television programs and other copyright-protected audio and visual content that has been edited by licensed press agencies in Vietnam

These provisions are not only overly vague and broad, they are also capable of capturing any provider of audio-visual content on the internet which is accessible by Vietnamese users. It follows that the regulators will also encounter difficulties in enforcing such provisions, which will create uncertainty among Vietnamese and foreign online content providers as to whether they are considered as a radio and television service provider.

We would note that the expansion of the scope of “*on-demand content*” is a major divergence from the category of content that Vietnam had envisaged at the time it was mapping out its regulatory regime for broadcasting services. For example, (i) in Vietnam’s WTO Commitments in the Schedule of Specific Commitments in Services, “*broadcasting*” has been defined to only cover “*TV and radio program signals*” and (ii) in Vietnam’s Standard Industrial Classification under Decision No. 27/2018/QĐ-TTg, the scope of “*programming and broadcasting activities*” under Class 60 only encompasses radio, television and other subscription programs. This is also consistent with the fact that Vietnam has enacted separate laws on specific content – e.g., the Law on Cinematography for cinematographic works.

As a precursor, in mapping out an appropriate scope for Decree 06, we note that MIC should have regard to the practices overseas as part of its roadmap to regulatory reform. Particularly, in Vietnam’s approved master plan to 2020 on the development of radio and television services in Vietnam (under Decision 1448/QĐ-TTg), as approved by the Prime Minister, the state has recognised that a solution to improving its legal framework and mechanism is to “[formulate and amend] the standards and regulations on radio and television services in conformity with Vietnam’s development and international practices.” (Decision 1448/QĐ-TTg, Section IV.2(b))

Further, the application of localisation and licensing requirements for a broad set of players will be costly – particularly to SMEs – which defeats the aim of establishing a “*competitive market*” for radio and television services. We note that facilitation of healthy competition has been consistent theme which has been emphasised in Vietnam’s approved master plan 2020 (approved by the Prime Minister under Decision 1448/QĐ-TTg, Section III.3).

As regard to Draft Decree removal of the Vietnam domain name / URL qualifier from the definition of “Internet radio and television service”, it is unreasonable for the MIC to extend its jurisdiction to impose Vietnamese licensing and content requirements on offshore service providers. We note that an attempt to broaden the state’s reach to such service providers would arguably run counter to the overall intent of Decree 06’s governing scope, which is to encompass service providers “in Vietnam” (Decree 06, Article 2).

Traditional broadcasting services and OTT services are functionally and technically distinct, and their respective frameworks are carefully calibrated to reflect such distinctions.

Traditional broadcasting regulations serve to facilitate fair access to scarce telecommunications resources (e.g., spectrum allocation) and along with granting rights for selected licensees to exploit a scarce resource, are bound to impose corresponding obligations on licensees and regulated entities to ensure the best possible uses of such scarce resources (and prevent interference with other service providers that are granted similar rights, which could undermine the benefit of the spectrum).

By contrast, OTT services are fundamentally different, because they do not depend on a scarce resource like spectrum, and are not subject to the same constraints. With this in mind, OTT service-related regulations do not need to focus on limiting the ecosystem of service providers to a chosen few in order to maximise the use of a scarce resource, or on enforcing limitations around the use of a scarce resource (e.g. via a closely controlled licensing regime) to prevent issues like interference. The growth of OTT services has led to innovative new services and service providers, greater diversity of content and more choice for the consumer. A key objective should be to ensure that regulation of OTT services does not act as a barrier to market entry and stifle innovation. Regulatory burdens could have a chilling effect on the content ecosystem to the detriment of service providers and local users alike. Best practice regimes for OTT services balance the need for easy access to the market, healthy competition and consumer protection, thus focusing on ensuring low barriers to entry.

It is important to note that traditional consumer behaviour around music and video has changed significantly, with users now employing the service-on-demand model, delivered via a download or streaming service. Compared to the traditional broadcast model, customers today have choice and control over when and how

they consume content, whether they purchase content individually (music services by downloading song or album, for example), or choose subscription-based services instead, none of which are possible through traditional broadcasting service. Consumer choice also allows for personalisation and on-demand delivery, which makes streaming fundamentally different to radio, with subscribers completely in control of content consumption. The reality of today's consumer behaviour and demand make it clear that trying to apply traditional broadcasting regulations and licensing requirements to online-based services, could be an obstacle to the efforts on modernizing Vietnam's regulatory environment.

Given the ever-rising popularity and influence of OTT services, the case in point of today's consumer behaviour and demand make it clear that Vietnam's regulatory environment should reflect such reality. Trying to apply traditional broadcasting regulations including licensing requirements to OTT services would be a big step backwards.

Therefore, we submit that broadcasting regulation is not appropriate for regulation of online services for reasons highlighted below:

Provided here are a few examples:

The Draft Decree would require online services to "propagate....nationwide", especially in remote areas, distant areas, the frontier, islands and extremely disadvantaged areas." (Clause 1 Article 9)

- Online service providers cannot be expected to comply with this requirement because they do not control the underlying broadband infrastructure and cannot provide service to a customer unless that customer already has Internet access.

The Draft Decree would specify that "the content of a free broadcasting service includes . . . National and local channels serving essential political propagation [and] Other Vietnamese channels." (Clause 1 Article 13)

- Such a limitation on the content available to online service providers would be unreasonable to providers and harmful to consumers. Allowing online service providers to transmit any lawful content encourages competition and diversification amongst providers, promotes content creation, and benefits consumers with a variety of content.

The Draft Decree would also provide that consumers "have the right to complain about the service quality" of online services to state regulatory authorities. (Clause 1 Article 8)

- Assuming that this requirement refers to strength of signal and technical quality of signal reception, we would note that online service providers do not own or control the networks over which their services are transmitted and do not control what network is chosen by the consumer. As a result, online services cannot provide any guarantees or remedy any issues regarding quality of service provided.

The Draft Decree require online services to ensure that contents are consistent with information content regulations "prescribed in laws on the press." (Clause 4 Article 9)

- Such regulations would be inappropriate for certain types of online services that do not exercise editorial control over the content that appears on their platform, such as platforms that host user-generated content. Such services cannot reasonably be held responsible for vetting and ensuring the compliance of all content that appears on their platforms. User-generated content should be treated separately.
- Meeting consumer demand for local as well as non-local content is essential to attracting consumers and sustaining the business case to provide them with the content they demand. The best way to meet this demand is to have multiple services to meet consumer demand. Competition for distribution on Video on Demand ("VOD") services creates incentive for video producers to create high-quality content. Content quotas distort this competition by creating artificial demand.

Below we share the characteristics of best practice regime for OTT services and recommend the ministry to take the same into consideration:

Characteristics of a best practice regime for over-the-top services		
1.	Low barriers to entry	The regime should encourage services to enter the market. Requirements to notify local regulators are valid, but pre-authorisation and/or requirements for a local presence are not conducive to a plurality of services and content in the market.
2.	An identifiable service provider	The service provider with editorial responsibility for the over-the-top services platform should be identified and contactable.
3.	Baseline standards	It is valid to have some baseline content standards to ensure adequate consumer protection (see para 5.5 below). Where specific issues of concern arise, regulators should deal with that by engaging with the service provider on a 'notice and takedown' basis.
4.	Limited to television-like content	Not all online content needs to be regulated. Regulation only needs to extend to content which competes with television and where the public would have a reasonable expectation of protection.

2. Requirement on granting license

Article 12.a on licensing of paid OTT TV services has been removed

Comments: While Draft Decree has removed Article 12.a (which envisaged a separate licensing regime for on-demand service providers), the result is now an absence of a clear distinction in the licensing regime as applied to traditional radio/television broadcasters and on-demand service providers. In the Draft Decree's current text, it appears the intention is for Article 12 to be applied for both paid TV services and paid OTT services, which will have severe consequences.

If this were the intention, this will adversely impact market access by foreign investors within the OTT field, thereby stifling competition. This is because the licensing conditions are overly onerous and, in our view, incapable of being feasibly implemented in practice – by both the subject enterprises and the licensing authorities.

Particularly, OTT service providers will be required to establish an enterprise in Vietnam to carry on their services (a pre-condition to obtain the requisite license for radio and television services). However, in order for a foreign investor to comply with this localisation requirement, it must first have its investment policy approved by the Prime Minister. This will result in the requirement for all overseas-based transmitters of “*on-demand content*” (within its broad definition) – regardless of their scale – to first obtain the Prime Minister's approval.

In addition, there are overlaps in the licensing regime between the Draft Decree and specialised regulations. For example, the Law on Cinematography regulates the permit requirements for the dissemination of cinematographic works (including over the Internet). It remains uncertain as to how the overlapping licensing regime will be harmonised.

The Ministry should provide clarification on this. (also refer to the comments in point 1: traditional broadcasting services and OTT services are functionally and technically distinct, and their respective frameworks are carefully calibrated to reflect such distinctions)

3. Requirement on advertisements

3.1. Adding Point dd to Clause 3 of Article 21: Advertising spots (if any) must be inserted in Vietnam and edited by the press agencies licensed to conduct radio, television activities in compliance with the legislation on advertising and the relevant laws;”

Comments: The Draft Decree allows enterprises to install the advertisement content to make it suitable for the viewers' trends. However, we view that the restrictions are neither practical nor necessary for “*radio and television services on the Internet*” as defined in Draft Decree. The Vietnamese government has already enacted a broad set of regulations to govern the management, provision and use of Internet services and online information (namely, Decree 72/2013/ND-CP and amending Decree 27/2018/ND-CP), which set out strict advertising prohibitions (*Decree 72/2013/ND-CP, Art. 5.1(dd)*) and mandates overall compliance with Vietnam’s Law on Advertising (*Decree 72/2013/ND-CP, Art. 21.1*). For the latter, the Law on Advertising prescribes specific content requirements for advertisements disseminated via online means. We would note that under this law, despite the breadth of audience, advertisements on websites are not subject to such onerous editing requirements by a press agency, and it is largely self-governing. Therefore, we do not view that OTT service providers should be subject to an entirely different set of standards.

Therefore, we consider it superfluous to impose an additional layer of content editing as envisaged under Draft Decree for those organisations that are already subject to Decree 72/2013/ND-CP and the Law on Advertising.

In addition, the Draft Decree’s advertising restrictions requirements could be considered a restriction of advertisement from overseas and may violate Vietnam’s WTO commitments. Pursuant to Vietnam’s WTO Services Schedule, Vietnam commits to allow foreign investors to provide advertising services (CPC 871, excluding advertising for cigarettes) on a cross-border basis (Mode 1) to Vietnam-domiciled customers without any limitation. In other words, Vietnam does not reserve for the adoption or maintenance of any market access limitation with regard to cross-border supply of advertising services (noted that the customers must be Vietnam-based). Advertising services under CPC 871 comprise, among other things, CPC 8711- “sale or leasing services of advertising space or time”, i.e., services provided in soliciting advertising space or time for newspapers, other periodicals, and television stations.

Furthermore, Vietnam’s domestic advertising laws envisage the permissibility for foreign organisations to engage in cross-border advertising (Law on Advertising, Article 23.3; Decree 181/2013/ND-CP, Chapter 3). There already exist mechanisms for content control of advertisements, as Decree 181/2013/ND-CP requires offshore advertisers to comply with the laws governing the management, provision and use of Internet services and online information (Decree 181/2013/ND-CP, Article 14.1).

With regard to the Advertising Requirement under the Draft Decree, for advertisements provided for onshore customers, such activities would be under the scope of Vietnam’s WTO commitments. In that light, it is arguable that the Advertising Requirement is not in line with the WTO commitment of Vietnam on “advertising services”. Specifically, by requiring that foreign channels shown on OTT services must not contain overseas built-in advertisements and advertisements on foreign channels shown on OTT services in Vietnam must be installed by a Vietnamese licensed press agency, the Advertising Requirement may de-facto limit the ability of foreign advertising providers from providing advertising services to its customers in Vietnam (if any) on a cross-border basis. Therefore, the adoption and maintenance of the Advertising Requirement might arguably be inconsistent with Vietnam’s commitments under the WTO.

3.2. Amending and supplementing Clause 6 of Article 17 as follows: Contents of advertising spots pre-inserted in foreign countries shall not be allowed. Contents of advertising spots (if any) must be inserted in Vietnam. Press agencies licensed to edit [contents] shall act as the key agencies for insertion of advertising spots and be responsible for the duration and contents of such advertising spots in compliance with the laws on advertisement as required for paid television channels.”

Article 17 of the Draft Decree (as amended) requires that foreign channel programs on pay radio and television services must not have overseas built-in advertisements. Rather, advertisements (if any) must be installed in Vietnam. A press agency who is licensed to edit content will be in charge of the instalment of advertisements and will be responsible for the duration and content of such advertisement.

Advertising is an essential revenue stream for creating and distributing video content. The existing and proposed restrictions on advertising (in Article 14: Clause 6 and Article 17 Clauses 6 a and b) will continue to inhibit the development of Vietnam's media market and prevent industry from meeting consumer demand. We recommend removing or revising advertising restrictions (Article 14: Clause 6 and Article 17: Clause 6 a, b).

The Vietnamese media industry is under increased pressure from new competitors and illegal services. With low monthly Average Revenue Per User (ARPU), pay TV players and paid video services are increasingly relying on advertising revenues. As a result, any ban or overly strict regulations on advertising will reduce the incentives for foreign companies to invest in Vietnamese content, reduce consumer choice and will prevent Vietnamese companies from growing and competing.

Barring services that require a subscription fee from advertising, or forcing certain services to carry local ads only, is also inconsistent with international standards and limits platform flexibility to deliver the highest quality content to consumers at the lowest possible price. The media and entertainment industry and the Government are no doubt aligned on wanting to locally relevant advertising for viewers. A better way to achieve the shared goal of more local ads is therefore to permit business model flexibility in order to provide sufficient revenue that supports the delivery of the full range of advertising relevant to consumers. We recommend the implementation of a reliable audience measurement infrastructure (such as the Nielsen measurement metric) for local ads to be sustainable.

4. Editing/translation requirements

Amending and supplementing Article 19:

4.1. Amending and supplementing Clause 1 of Article 19: The editing of foreign programs and program channels shall be carried out as follows:

- a. The editing and control of contents must not be inconsistent with Vietnam's laws on press, advertisement and other relevant laws;
- b. The editing of, and giving warnings on, contents must comply with the laws on [protection of] children, cinema and other relevant laws."

4.2. Amending and supplementing Clause 2 of Article 19: Translation shall be done specifically as follows for foreign programs and program channels based on their types:

- a. Translation shall be done for 100% of story films and animation films, except live event reportage;
- b. Translation shall be done for 100% of reportage programs, story films, documentary films, animation films, reality television and television games on other channels and programs on on-demand service package, except live event reportage."

Comments: Editing/translation requirements would create more burden than necessary. With on-demand services providing more choices for consumers, a significant increase in the volume of content will continue to become available on the Internet. Taking into account the volume of content to be introduced by OTT services, Article 19 may create more burdens than necessary to ensure the quality and/or compliance of on-demand services on the Internet. For example, the pool of accredited and licensed editing organizations in Vietnam is limited. An oligopoly of editing organizations might be established, which could result in unhealthy competition conditions and consequently unreasonably high costs of editing and translating foreign program contents.

In addition, it is likely that all contents provided via OTT Service (including films, music, reality shows) would be subject to the editing and translation requirements. It is practical for editing and providing Vietnamese translation (i.e., through subtitles) for a films or reality shows, but it remains unclear how such requirement can be enforced against music.

We believe editing/translation requirements will result in unhealthy competition conditions and consequently unreasonably high costs of editing and translating foreign programme content. Enforcement wise, it will be impossible for the government to meet the high demand for approvals under the revised decree.

If the objective of these requirements is to protect the local market from sensitive content, Vietnam may consider achieving such objective by way of other solutions. For example, utilizing the existing Vietnamese age-rating system and content restrictions could serve the basis of an efficient and economical alternative solution. To elaborate - film production companies would be responsible for editing and rating films to be distributed via OTT services in accordance with said age-rating system and content restrictions (and relevantly, we understand the Law on Cinematography already sets forth a comprehensive review system prior to issuance of a permit for dissemination of films). This alternative solution would ensure compliance with

local content restrictions while allowing film production companies to be wholly responsible for the editing and rating prior to marketing the films in Vietnam, rather than imposing requirements on OTT service providers.

5. Foreign content quota

Adding Point d to Clause 3 of Article 21: The percentage of domestic programs to the total number of programs provided on on-demand services on the Internet shall not be less than 30%.

Comments: Requiring OTTs to include at least 30% domestic programs can be a blocker for market entry in disguise. We therefore seek further clarification on the justification on 30% benchmark and suggest removal of the clause. Further, previous comments on 30 % quota for domestic programs remains valid, but it is unclear if the quota is related to foreign channels.

We would like to reiterate that foreign content quota is not realistic in the Vietnamese market. Imposing such a requirement in Vietnam, where the digital content market is not as developed and vast as jurisdictions such as the European Union ("EU"), is burdensome and unrealistic. If the objective of this requirement is to achieve and maintain cultural specificities, alternative options are available, e.g. support the local cinema industry; work with international film production companies and support the translation of video content and provision of subtitles in Vietnamese language.

We stress that applying quotas to on-demand internet services is an inefficient way to promote the creation of locally relevant content, as it restricts the ability of content creators to freely participate in an increasingly competitive and global media market. Delivering locally relevant content to consumers is a shared goal between on -demand service providers and the government but expanding quota requirements to new platforms will limit the ability of the industry, and specifically the local content market, to meet this goal.

Some likely (unintended) consequences of applying quotas are that on-demand services will obtain low quality content to meet the requirement or just reduce the amount of non-local content to achieve the prescribed ratio. Both outcomes could lead to poor consumer experiences and represent an artificial distortion in the market that would otherwise be responding to consumer demand. On a technical front, quotas are inefficient mechanism for online services which do not have a restricted 24-hour window for broadcasting, not to mention the fact that online service have unlimited shelf space. We instead urge the government to focus on supporting and developing local content creators, so that talented Vietnamese can create engaging content, not just for the local audiences, but for sharing with a global audience, thereby enabling outreach to millions of users with Internet access.

6. Other comments:

6.1. *Aligning with global industry views and practices should be the key*

More generally, imposing prescriptive requirements undermines the incentive for Internet companies to continue to innovate and distinguish themselves amongst their competitors as 'best in practice', risking a degradation in quality that would negatively impact consumers.

We encourage considering opportunities for deregulation of the existing broadcasting sector. Globally, many policymakers recommend a cautious approach to extension of existing regulation to new services that also considers opportunities for deregulation of traditional services.

- For example, in a joint letter to the European Commission (EC) regarding reform of the European Union's telecoms framework, the governments of 10 European countries cautioned against "automatically extending" regulation to online services, urging the EC to "consider deregulation of traditional telecoms services." See Joint Letter from Belgium, Czech Republic, Denmark, Estonia, Ireland, Finland, Lithuania, Poland, Sweden, United Kingdom to Vice-President Ansip and Commissioner Oettinger, European Commission, at pp. 1-2 (2016), [available here](#).
- Similarly, the Nordic National Regulatory Authorities recommended "a cautious approach to regulation" of online services and that "possibilities to simplify, modernize and lighten existing regulation should be pursued." Nordic NRAs, The EU telecommunications legislation for the Digital Single Market, The Nordic NRAs' viewpoints (July 4, 2016), [available here](#).

Regulators and lawmakers are also actively reconsidering existing broadcast regulatory frameworks in light of changes in the marketplace. For example, Hong Kong's Commerce and Economic Development Bureau



(CEDB) has initiated a review of its broadcasting regulatory framework “with the aim of relaxing obsolete statutory requirements.” (See Hong Kong Commerce and Economic Development Bureau, Review of Television and Sound Broadcasting Regulatory Regimes, Consultation Paper, at 15 (Feb. 2018). The CEDB did not propose to extend existing obligations for traditional audio visual services to OTT services in part because “[t]hrough OTT and other Internet TV and radio programme services are gaining their prominence, traditional media . . . are still highly pervasive and accessible to all in the family, young and old.” Id. at 46.

If passed and other countries then impose similar regulations, it may be difficult or impossible for Vietnamese digital content and information technology providers to export or expand internationally. The net outcome of such regulations would harm both businesses, which would face prohibitive costs and regulatory and administrative burdens and be deterred from offering their services in Vietnam, and consumers, who would as a result not have access to the same innovative services and diverse array of digital content offered elsewhere in the world.

7. Summary

OTT services, including video streaming, are an essential—and increasingly important—element of the broadband value chain. Innovation in OTTs has led to a rich and diverse Internet, and has stimulated consumer demand for broadband Internet access, which in turn is a key driver for network operators to upgrade and expand their networks. Any attempts to impose additional regulation on OTTs would create business uncertainty and lower economic growth and investment.

We therefore encourage the Ministry to consider the immense potential of important technological developments in Internet platforms and on-demand services, and the role these will play in Vietnam's economic transformation journey. Accordingly, the ideal regulatory approach taken in this realm should be aligned with Vietnam's development and aspirations of successfully transitioning into the digital economy era. In turn, this will translate into local growth and opportunity, innovation, investment, and jobs.

We recommend considering the issues/concerns raised above and reconsider how the radio and television services is classified to include OTT services under the Draft Decree.

- *End of submission*