

## Power Play in Television

In this dissertation, the focus is on the (evolving) configurations of power and control in broadcaster-to-distributor markets. Technological developments, as well as changes in the institutional framework, are in the process of fundamentally transforming legacy TV business models and have transferred power to 'gatekeepers' which derive a dominant position by controlling competitive bottlenecks. Since technology shocks might disrupt established power relationships in television, interactions between TV broadcasters and distributors incur tensions and conflicts of interests. It is argued that each party controls crucial platform resources and that the broadcaster-to-distributor market is marked by mutual dependency and bilateral bargaining power.

It is assumed in the thesis that the power relationships crucially depend on the politico-economic context of television broadcasting and distribution. Bargaining power tends to be context-specific and varies between local settings. Although existing models are still relevant for competitive analysis, the complexity of broadcasting and distribution, and the specialty of carriage negotiations demands for a more specific model to examine the power relationships between broadcasters and distributors. Based on interviews with media managers, a multidimensional and multi-level approach to bargaining power was developed. The model includes factors at different levels, and claims that ownership and control of strategic resources determine bargaining power.

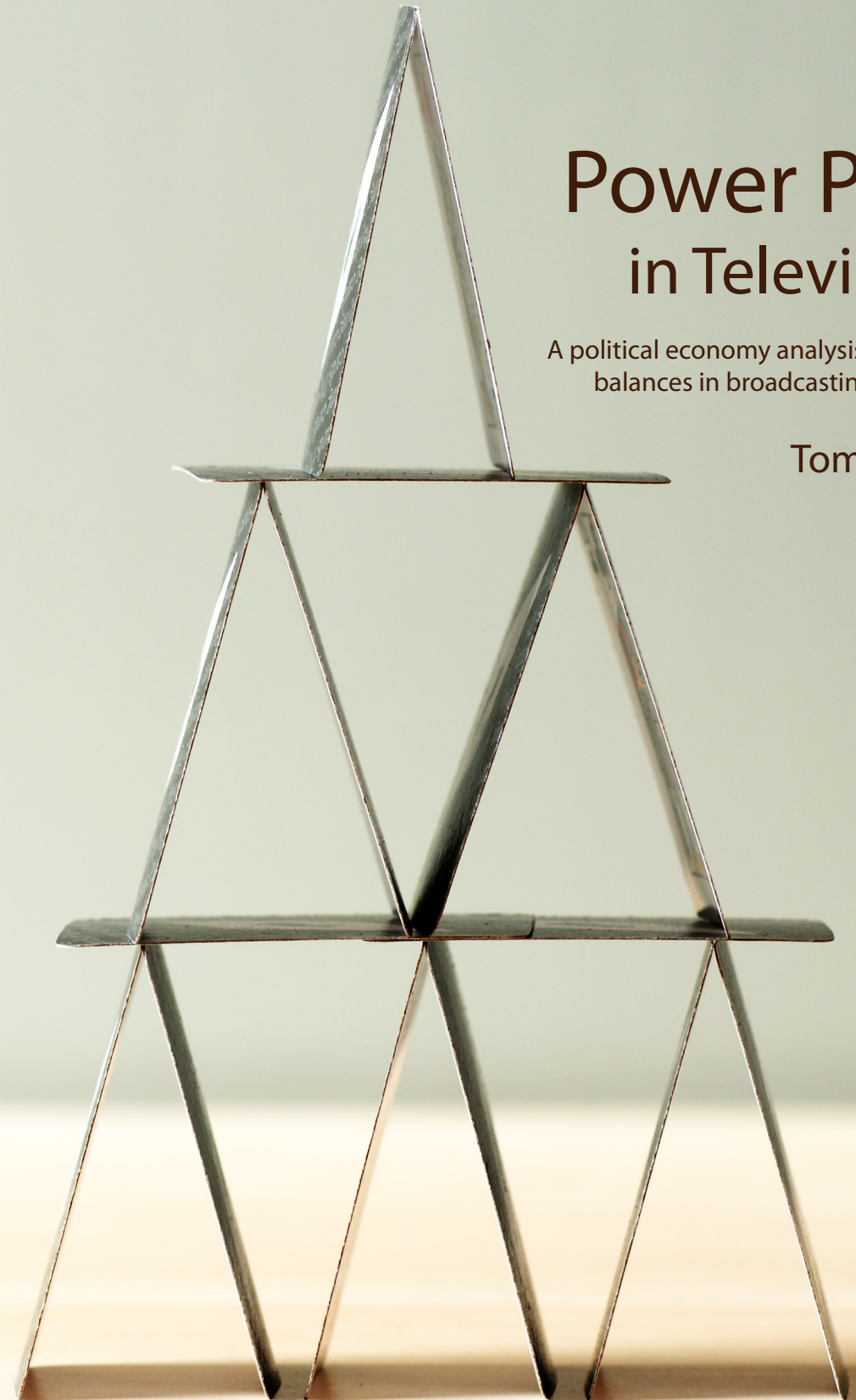
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Tom Evens

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A political economy analysis of power  
balances in broadcasting markets

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**Power play in television**

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Tom Evens

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# NEDERLANDSE SAMENVATTING

## (SUMMARY IN DUTCH)

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Dit proefschrift behandelt de verschuivende machts- en controlepatronen in de relaties tussen televisieomroepen en -distributeurs. Technologische ontwikkelingen, samen met veranderingen in de institutionele context, bedreigen de dominante bedrijfsmodellen in de televisie-industrie en hebben er toe geleid dat tussenpersonen ('poortwachters') een leidinggevende positie hebben verworven dankzij de controle van kritieke bottlenecks. Doordat technologische verandering de gevestigde relaties tussen televisieomroepen en distributeurs grondig overhoop gooit, worden deze machtsrelaties in toenemende mate gekenmerkt door spanning en conflicten. In dit proefschrift wordt beklemtoond dat elke betrokken partij kritieke ondernemingsbronnen bezit en dat omroepen en distributeurs zich beide als een convergerend platform positioneren teneinde onderhandelingsmacht te verwerven.

Eén van de basisassumpties van deze dissertatie is dat omroepen en distributeurs in belangrijke mate van elkaar afhankelijk zijn voor de uitoefening van hun activiteiten. Dit leidt tot de vaststelling dat de onderhandelingen tussen omroepen en distributeurs door bilaterale macht en dubbele marginalisatie gekenmerkt worden. Niettegenstaande beide partijen onderhandelingsmacht verwerven, sluit dit geenszins uit dat de commerciële relatie tussen een omroep en distributeur gekenmerkt wordt door machtsonevenwicht. Dit machtsonevenwicht kan zowel in het voordeel van de omroep als distributeur zijn. In het snel-veranderende televisie-ecosysteem zoeken zowel omroepen als distributeurs naar opportuniteiten om hun afhankelijkheid van de tegenpartij te verminderen, en een competitief voordeel tijdens onderhandelingen te creëren. In die hoedanigheid worden distributeurs vaak als prijszetters aanzien, omdat ze finaal zeggingsmacht hebben over de distributiemodaliteiten (positie, pakket en prijs) van de betrokken zenders.

Deze poortwachtersrol biedt distributeurs de optie lagere doorgiftevergoedingen aan de zenders te betalen. Daarenboven zetten distributeurs hun kanalen in die rechtstreeks concurreren met gevestigde zenders. Op dezelfde wijze gebruiken druk bekeken zenders en eigenaars van premiumrechten (zoals sport of films) hun populariteit en exclusiviteit om hogere doorgiftevergoedingen bij de distributeurs te bedingen. Terwijl de bestaande theoretische raamwerken er vanuit gaan dat een bedrijf competitief voordeel creëert via de positie die het in de waardeketen inneemt, wordt in dit proefschrift aangetoond dat verschillende bedrijven die een gelijkaardige functie in de waardeketen vervullen toch een verschillende hoeveelheid onderhandelingsmacht hebben. In tegenstelling tot holle, nietszeggende slogans als 'Content is King, Distributie is King Kong' wordt beklemtoond dat de verdeling van onderhandelingsmacht tussen verschillende partijen in belangrijke mate afhangt van de politiek-economische omgeving waarin televisieomroepen en distributeurs opereren.

Omdat onderhandelingsmacht tussen omroepen en distributeurs context-specifiek is en sterk verschilt tussen geografische televisiemarkten, is de conclusie dat de verdeling van macht beïnvloed wordt door de verdeling van schaarse middelen in de industrie, het individuele karakter van de commerciële relatie, en beleidskeuzes uit het verleden die een impact op de hedendaagse marktstructuur uitoefenen. De hoofddoelstelling van dit proefschrift is dan ook de competitieve interacties tussen omroepen en distributeurs te ontleden en op kwalitatieve wijze de omgevingsvariabelen te identificeren die invloed uitoefenen op de verdeling van onderhandelingsmacht in de markt. Niettegenstaande Porter's model zijn deugzaamheid bewezen heeft voor de analyse van de industriële omgeving, vraagt de complexiteit van het snel-veranderende televisielandschap en de specificiteit van doorgifteproblematiek een aangepast kader om de machtsconflicten tussen zenders en distributeurs te doorgronden. In die optiek worden eigendom van en controle over kritieke ondernemingsbronnen als belangrijke determinanten van onderhandelingsmacht in beschouwing genomen.

Op basis van literatuuroverzicht en diepte-interviews met 36 mediamanagers, werd een multi-dimensionele benadering van onderhandelingsmacht uitgewerkt en een reeks van machtsattributen (gereduceerd tot vijf clusters) die de competitieve positie van een onderhandelende onderneming beïnvloeden. Op het macroniveau wordt gewezen op de belangrijke impact van het wettelijke kader, met name het regulerend raamwerk voor

telecommunicatie, mededingingsrecht, mediaregelgeving en auteursbeschermingsrecht. Op het mesoniveau vormt de marktstructuur een belangrijke factor in de creatie van onderhandelingsmacht. Consolidatie, het aantal van zakenpartners, intrededrempels en de bedreiging van technologische verandering werden geïdentificeerd als kritieke parameters. Op microniveau moet de bedrijfsstructuur van de onderhandelende firma's worden bestudeerd. Bedrijfsspecifieke kenmerken omvatten ondernemingsgrootte, multimediale/verticale integratie, en financiële sterkte. Daarnaast wordt ook de nadruk gelegd op producteigenschappen zoals productdifferentiatie, exclusiviteit, bundeling en overstapkosten als bronnen van competitief voordeel. Tot slot werd vastgesteld dat interpersoonlijke, emotionele en psychologische factoren een toonaangevende rol spelen tijdens de onderhandelingen.





## ENGLISH SUMMARY

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In this dissertation, the focus is on the (evolving) configurations of power and control in broadcaster-to-distributor markets. Technological developments, as well as changes in the institutional framework, are in the process of fundamentally transforming legacy TV business models and have transferred power to 'gatekeepers' which derive a dominant position by controlling competitive bottlenecks. Since technology shocks might disrupt established power relationships in television, interactions between TV broadcasters and distributors incur tensions and conflicts of interests. It is argued that each party controls crucial platform resources and that the broadcaster-to-distributor market is organized around two converging TV platforms that unfold enveloping strategies and thus provoke power conflicts.

One of the major assumptions of this dissertation is the mutual dependency between broadcasters and distributors, which leads to the conclusion that the market is marked by bilateral bargaining power, and needs to deal with double-marginalisation problems. Although both parties may have bargaining power, relationships between broadcasters and distributors are often characterised by power asymmetries, either in favour of the broadcaster or distributor. In the ever-increasing complex TV ecosystem, broadcasters as well as distributors are looking for outside opportunities to lessen dependence on their counterparty, and build strategic advantage during carriage negotiations. However, pricing power usually remains with the distributors, which eventually decide about the possible carriage and the package (basic or upgraded), and the position of the channel in that package (or in the electronic programming guide).

A gatekeeping position allows distributors to pressure broadcasters to demand lower wholesale (input) prices. On top, distributors leverage bargaining power through the ownership of affiliated channels that directly compete access-seeking broadcasters. In a

similar vein, owners of premium rights or must-have channels leverage their popularity and exclusivity in order to bargain higher retransmission payments from distributors. Whereas existing frameworks hold that competitive advantage essentially rests on the activities a firm performs within the value chain, it is claimed here that a firm's position in the value chain does not adequately explain why different firms with similar activities have different levels of bargaining power. Rather than sticking to hollow aphorisms like 'Content is King, but Distribution is King Kong', it is assumed that the allocation of power between broadcasters and distributors crucially depends on the politico-economic context of broadcasting and its distribution, including the set of complex relationships between different parties in the business ecosystem.

Since bargaining power in the broadcaster-to-distributor market tends to be context-specific and varies between different local settings, it is determined by the allocation of scarce resources in the industry, the individual nature of the broadcaster-to-distributor relationship and potential path dependencies in media and telecommunication policies. Hence, the major research objective is to study the interactions between broadcasters and distributors, and identify, in a qualitative way, those contextual variables that define bargaining power in broadcaster-to-distributor relationships. Although Porter's model is still relevant for analysing the industry environment, the complexity of broadcasting and distribution markets and the speciality of carriage negotiations demands for a more specific framework to examine relationships and power conflicts between broadcasters and distribution. Following a resource-centric perspective, the ownership and control of strategic assets are considered determinants of bargaining power.

Based on a literature review and interviews with 36 media managers and experts, it was possible to come up with a multidimensional and multilevel approach to bargaining power and to construct a complex of interrelated power attributes (clustered in five dimensions) that influence a firm's competitive position in carriage negotiations. On the macro level, a number of legal provisions and regulatory requirements strongly affect the carriage negotiations. Reference is made to telecommunications rules, competition law, media-specific regulation and copyright law. On the meso level, the model suggests that the market structure forms an important factor in the creation of bargaining power. Industry concentration, number of business partners, entry barriers and the threat of technological progress are identified as critical parameters. On the micro level, the

structure of the negotiating firms needs to be taken into account to assess bargaining power. Hence, firm-specific characteristics of broadcasters and distributors involved in a carriage negotiation include relative firm size, conglomerateness, vertical integration and financial resilience. Next to firm characteristics, emphasis is put on product differentiation as a source of a bargaining power. Product characteristics are related to the market and industry structure, and predominantly refer to product differentiation, exclusivity, bundling and switching costs. On the individual level, psychological, emotional and interpersonal issues play a decisive role in carriage negotiations.



# INHOUDSOPGAVE

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# **1. INTRODUCING THE PROBLEM: POWER CONFLICTS IN BROADCASTER-TO-DISTRIBUTOR MARKETS**

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## **1.1. Context: conflicts between broadcasters and distributors**

In recent years, several incidents between broadcasters and distributors of television programming have occurred all over the world. Negotiating impasses have resulted in broadcasters refusing to deal with distributors, or distributors choosing not to carry certain television channels. The apparent recent increase in negotiating impasses appears to be the result of structural market changes that have come along with the digitisation of the television industry, and competitive entry in distribution. Competitive entry in television distribution has, ironically, resulted in higher programming expenses for pay-TV operators and, hence, higher costs that are passed on to subscribers (O'Reilly, 2008). Most of the incidents have appeared in the US, with high-profile disputes between Fox and Time Warner Cable (TWC), and between ABC and Cablevision, and between CBS and TWC. The battle between Fox and TWC first emerged late November 2009, and was settled 1<sup>st</sup> of January 2010, when News Corporation and TWC reached an agreement. The deal threatened to affect approximately 13 million TWC subscribers, among others in New York, Los Angeles, Detroit and Dallas, and was settled before any programming disruption occurred. While initially, TWC was said to have been willing to pay \$0.20 per subscriber per month and News Corp was seeking \$1, the two were thought to have settled at an initial fee around \$0.50. In the second high-profile dispute, 3.1 million Cablevision subscribers lost their ABC affiliate WABC when Cablevision's dispute with ABC resulted in a day-long blackout, ending 15 minutes into the Oscar Academy Awards. It was the first time since 2008 that a major cable operator had lost a

broadcast signal. More recently, in August 2013, TWC dropped CBS in eight large markets after the companies failed to agree on a new retransmission contract – accusing each other of grandstanding and punitive conduct. Meanwhile, TWC offered its customers free antennas to watch CBS. In September, CBS and TWC reached a new agreement. According to a report by SNL Kagan (2010), the amount of carriage disputes has multiplied since 2005 when competition in the multichannel marketplace took off and direct-broadcast satellite (DBS) services stepped up competition with local cable operators. The disputes, however, do not remain limited to the North American market, but also found their way to European television markets. In the last couple of years, carriage disputes also appeared in lots of European countries, including Belgium, the Netherlands, Germany, Hungary, Romania and the UK to name only a few.

According to an Oliver & Ohlbaum Associates analysis (2011), commissioned by the BBC, the UK has the least generous television retransmission terms for free-to-air broadcasters when compared to a wide range of comparable developed world markets such as Australia, France, Spain and the United States. The report reveals that, in contrast to the other markets studied in the report, UK free-to-air broadcasters – most of them with public service broadcasting (PSB) requirements – enjoy only limited copyright protection and need to pay significant access fees to platforms for retransmission. In October 2011, the BBC claimed that it could save £50 million over five years if leading pay-TV platform Sky would waive the costs of carrying the BBC's channels on its satellite platform. Sky justified its access charges by arguing that the company had to recoup the £1 billion investments costs in its satellite platform (Webster, 2011). As a result of the public controversy following the BBC's statement, Sky published a new rate card which brought in a reduction in platform contribution for more than a hundred channels, and announced it would reduce the costs over 50 per cent by 2014 – from £24.4 million to £11 million for the main UK free-to-air broadcasters. According to calculations by newspaper The Guardian, the BBC will see its Sky access charges reduced from £9.9 million a year to £4.4 million, ITV's charges will fall from £8.1million to £3.1million, Channel 4 will see its charges reduced from £5 million to £2.7 million, and Channel 5's costs will drop from £1.4 million to £800,000. The PSB's, however, also argued that Sky should actually pay them for the privilege of carrying their channels, as they are the most popular on the Sky platform. Based on comparisons with the US, the PSBs claimed that Sky should need to pay £120 million to

offer the channels to satellite TV customers. A study commissioned by the Department for Culture, Media and Sport estimated the impact on PSB's revenues between £190 and £220 million (Mediatique, 2012). Although Sky refuted the argument that it should pay PSBs for their channels, News Corporation, Sky's biggest shareholder, has successfully persuaded pay-TV operators to pay the Fox free-to-air network in the US (Sweney, 2012).

In Belgium, the first 'retransmission battle' originally dates back to the Coditel case in 1979. Coditel was sued by Ciné Vog Films, a movie distributor holding the exclusive distribution rights to 'Le Boucher', after the movie had been broadcast to a German channel that was distributed via Coditel's cable network. The Brussels Court of Appeal decided that Coditel had no permission to distribute the movie and violated copyright law. As a result, the cable company was imposed to compensate Ciné Vog Films. After the Coditel case, the practice of contractual arrangements between collective rights societies and cable companies became widely accepted. In September 1983, a global deal was reached between rights organisations SABAM, AGICOA, BELFITEL, a few national and international broadcasters, and the cable companies represented by trade association RTD. As a result, cable companies were allowed to distribute 16 channels including BRTN, RTBF, TF1, ARD, RTL-TVi, Rai Uno and BBC at an annual fee of €12.5 per subscriber (Valcke, 2008). Only since the introduction of digital television in 2005, conflicts between broadcasters and distributors have surfaced. Whereas Telenet was able to include the VMMA channels (VTM, Kanaal2 and JIM) in its basic package from its start, Belgacom and VMMA could initially not agree on the retransmission fee to be paid by Belgacom. After contracting with VMMA, SBS became upset about the retransmission fee paid by Belgacom and started to renegotiate its commercial terms with the telecom incumbent. A few days before the final episode of 'Lost', SBS decided to pull off its channels VT4 and Vijftv from the Belgacom platform to create leverage (De Ruyter, 2005). In recent years, carriage disputes between broadcasters and distributors have become prominent on the policy agenda and are widely covered in the newspapers.

In July 2009, then Telenet CEO Duco Sickinghe described his company in a Belgian newspaper as a platform that facilitates broadcasters in selling their products and services. Sickinghe compared television distributors with retail stores like Delhaize, and confirmed that even in the digital world, shelf space remains scarce (Henneman and Snoeck, 2009). Read between the lines, the Telenet chief suggested that his company – a

subsidiary of Liberty Global, owning the cable infrastructure in Flanders – would not hesitate to deny broadcasters access to its platform; nor would it hesitate to dictate the commercial terms of distribution to broadcasters that ask for carriage over Telenet's infrastructure. His explicit reference to supermarkets, even if shocking to some broadcasters, came as no surprise since Delhaize had been involved in a large dispute with Unilever, supplier of popular brands including Lipton, Becel, Axe and Knorr, a few months earlier. Basically, Sickinghe exemplified what is really at stake in the world of production, aggregation and distribution of audiovisual content, and how respective positions in the value chain produce relative bargaining power and might provoke channel conflicts between several market participants.

Before elaborating on the analogy with disputes between broadcasters and distributors of television programming, I would first like to consider the outcome of the conflict between Delhaize and Unilever, which was unseen in the international market of food distribution until then. Following tough price negotiations with Unilever, retailer Delhaize announced in February 2009 that it would stop providing about 250 Unilever products. Delhaize argued that the conditions asked for by Unilever (a 2.5 per cent average price increase according to Unilever, whereas Delhaize reported an average price increase of 30 per cent) were unacceptable. Therefore, it had decided to ban dozens of Unilever products from its stores. Additionally, Delhaize claimed it had been forced by Unilever to distribute also less popular products and brands for which it had no shelf space left. As a result, the retailer promoted cheaper house brands (private label products) as an alternative to consumers (Baltussen, 2009). Two months later the two parties announced that they had reached an agreement, ensuring Unilever products would remain available in all Delhaize stores.

Soon after Delhaize announced its Unilever ban, competing brands started to acquire the shelf space that remained unused by Unilever. Suppliers including Procter & Gamble and Henkel aggressively launched new promotions – *in casu* favourable purchase prices for retailers, vouchers for consumers – in order to boost sales and win market share. Simultaneously, competing retailers Colruyt and Carrefour announced remarkable price promotions for Unilever products. According to an online study performed by advertising agency Brandhome (2009), Colruyt came out as the big winner. Although one should be wary of the sometimes dubious methodology of online questionnaires (the methodology used by Brandhome was not made public), the results revealed that

no less than 31 per cent of regular Delhaize customers had switched to alternative retailers for purchasing their favourite Unilever products. This may suggest that leading brands indeed have some bargaining power, at least when switching between different retailers is easy and imposes no additional costs. Experts, on the contrary, nuanced the victory of Unilever in the press and clearly stated that Delhaize had won the battle. They pointed to the fact that Delhaize represents 20 to 30 per cent of Unilever's turnover in Belgium, whereas Unilever products only account for about 5 per cent of Delhaize's sales. The dispute, however, clearly damaged the reputation of Unilever as well as Delhaize's, and may have turned out as a lose-lose situation (Baumers, 2009).

The analogy between retail stores and television distributors on the one hand, and brand manufacturers and broadcasters on the other hand might be an interesting starting point for this dissertation, since the dispute between Delhaize and Unilever provides us with some initial insights into bargaining disputes and rivalries between broadcasters and distributors. More in particular, the abovementioned conflict illustrates the underlying mechanisms of channel conflicts in buyer-seller relationships, and shows similarities with one particular strategy regularly deployed by television distributors to build bargaining power. During the economic crisis at the end of the 1920s, retailers started private label brands with the aim to widen their gross margins and profits; research reveals that private labels have far higher gross margins than leading brands charging a 'reputation premium' though (Mills, 1995; Steiner, 2004, p. 107). Private labels allow retailers to control pricing over products, and reinforces a retailer's power to decide on the placement of national and own-label brands on store shelves and displays for everyday sale and during promotional periods. Since retailers usually position private labels at eye level, they have considerable power to influence the amount of sales of national brands and private label products. Similarly, distributors, especially in the US, have repeatedly built a portfolio of affiliated channels and brands that they tend to favour in terms of positioning and pricing (Chen and Waterman, 2007; Waterman and Weiss, 1996). Although private label brands cannot be necessarily equalled to affiliated channels – private brands are perceived as low-quality, low-priced products in stark contrast to premium-priced cable channels like HBO and Fox Sports – it should be acknowledged both serve similar purposes. First, they are used to increase the attractiveness of the franchise owner, as part of a differentiation strategy with alternative retailers and pay-TV platforms respectively. Second, retailers and

distributors with strong own-label programs have more leverage with manufacturers and suppliers. Indeed, ownership of affiliated brands is found to increase bargaining power, and allows retailers and pay-TV platforms to bargain for price concessions on external suppliers, even the most popular ones (Howe, 1998; Meza and Sudhir, 2010).

## **1.2. Scope: power and control in broadcaster-to-distributor markets**

### **1.2.1. Research objectives**

In this dissertation, the focus is on the (evolving) configurations of power and control in broadcaster-to-distributor markets. Technological developments, as well as changes in the institutional framework, are in the process of fundamentally transforming legacy television business models and have slightly transferred power to ‘gatekeepers’ who derive a dominant position by controlling competitive bottlenecks. As technology shocks challenge the established power relationships in television, channel interactions between broadcasters and distributors may incur tensions and conflicts of interest. Whereas distributors are somewhat moving towards commissioning and creating original content, broadcasters are bypassing traditional distributors to team up with over-the-top (OTT) services and create a direct customer relationship. Nevertheless, one main assumption of the thesis is the mutual dependency between broadcasters and distributors, which might lead us to conclude that broadcaster-to-distributor markets are characterised by bilateral bargaining power and control, and, hence, need to deal with double-marginalisation problems.

Furthermore, I tend to follow the widespread criticism that the Porterian approach to competitive strategy is way too static and simplified in today’s complex media ecosystems (e.g., Küng, 2008; Merchant, 2012). According to Porter (1996), competitive advantage essentially rests on the activities a firm performs within the value chain. Hence, respective positioning in the value chain is thought to produce bargaining power. However, strategic positioning in the value chain does not adequately explain why different firms performing similar activities and occupying similar positions in the value chain have different bargaining power regarding their suppliers and/or buyers. Although both function as a television distributor in Flanders, I suggest that cable company Telenet has substantially more bargaining power vis-à-vis broadcasters than

OTT operator Wee Pee TV. Similarly, VRT obviously has more bargaining power than regional broadcasters. Rather than sticking to hollow aphorisms like ‘content is King, but distribution is King Kong’, I assume that the allocation of power between broadcasters and distributors is not a linear process but depends on the politico-economic context of broadcasting and distribution, including the set of complex relationships between different parties in the business ecosystem. Hence, bargaining power in broadcaster-to-distributor markets is context-specific and may vary between different local settings as it is determined by the allocation of scarce resources in the industry, the individual nature of the broadcaster-to-distributor relationship and path dependency in media and telecommunications policies.

The major research objective is to study the competitive and cooperative interactions (mutual dependencies) between broadcasters and television distributors, and identify, in a qualitative manner, the factors that create bargaining power, such as market structure and firm characteristics, and that eventually determine the outcome of carriage negotiations. The strategies that broadcasters and distributors undertake to create bargaining power and derive most of the value from carriage deals will be described and analysed. Furthermore, these strategies are largely shaped and constrained by the institutional context, and more in particular the legislative framework (such as media ownership rules). Although we do not have the ambition to provide a lengthy overview of all regulations related to the research object, another goal is to interpret the impact of existing policies on the power balance in broadcaster-to-distributor markets. This leads us to the following research question: what contextual factors determine bargaining power in broadcaster-to-distributor markets? Although Porter’s framework is still relevant for analysing the industry environment, the complexity of TV broadcasting markets and the specialty of carriage negotiations demands for a broader and more specific model to investigate the power relationships in the broadcaster-to-distributor market. The development of such a model that maps the contextual factors that determine bargaining power is the ultimate goal of the work presented.

### **1.2.2. *Broadcaster-to-distributor market***

The examples from several markets illustrate the on-going battle for power and control between broadcasters and distributors. In this dissertation, ‘broadcasters’ are



understood as program companies that aggregate productions into channels. Programming can either be produced in-house, or bought (or syndicated) from independent producers. Notable examples of broadcasters are the BBC, VRT, Fox and RTL. Pay-TV operators either bundle these channels into different packages, or offer them à la carte to the viewers, and sell access to subscribing households. Since pay-TV operators are often vertically integrated with physical transmission infrastructure (cable, satellite, terrestrial networks or broadband), they are simply referred to as 'distributors', such as Sky, Telenet, Comcast and Boxer TV. With 'broadcaster-to-distributor markets', we refer to the markets in which broadcasters and television distributors (cable, satellite, OTT and similar service operators) negotiate about the carriage of particular video programming, the price to be paid for the exploitation of that programming, and (in some cases) the tier and position in the electronic programming guide (EPG) on which the programming is to be offered to the end customer (Bergman and Stennek, 2007).

Not overlooking the impact of bargaining skills and techniques of the individual negotiators, information availability, leadership style, corporate values and organisational culture, I suggest that the outcome of such negotiations is largely determined by the bargaining power negotiating parties have. Put simply: how far is a party prepared to go in order to negotiate the most favourable terms and conditions? As shown in the latest carriage disputes in the US, some parties are prepared to go far. Some US broadcasters have even pulled off their signal from distribution networks to raise pressure on cable operators in order to secure higher retransmission payments (Salop et al., 2010a). Such 'brinkmanship tactics', which may result in loss of advertising revenues (as the advertisers cannot reach their audience) and cable customers (as they switch to another distributor that carries the channel), have been used more frequently in the US, where carriage disputes have taken a much more aggressive form compared to those in Europe (remember WABC pulling off its signal a day before the start of the Academy Awards ceremony). However, also in Europe, broadcasters and distributors respectively have leveraged market power to get most value out of carriage deals and used their political connections to shape the regulatory framework in their favour. Following a resource-centric perspective, ownership and control of strategic assets are considered determinants of bargaining power. Now let me first explain what is understood with 'power' and 'control'.

### **1.2.3. Bottleneck control**

In order to get insight into the mechanisms underlying bargaining games, it is key to identify how broadcasters and distributors leverage bargaining power by the 'control' of scarce resources that are referred to as 'competitive bottlenecks' (Armstrong, 2006, p. 677). Because of the strategic importance of building and leveraging market power, owners of industry bottlenecks might have incentives to monopolise downstream or complementary markets. The allocation and organisational control of strategic resources may depend on how particular markets operate. In the case of natural and government-sponsored monopolies (or oligopolies), where the number of firms in the market is limited due to specific demand and supply conditions, incumbent firms enjoy considerable market power. Network externalities resulting from first-mover advantages or lock-in effects might create winner-take-all markets and establish de facto barriers to entry (Katz and Shapiro, 1985; Shapiro and Varian, 1999). However, industry bottlenecks do not necessarily result from incumbents' market power, but can also emerge from socio-cultural, economic and legal factors. Low market demand, or slow development of infrastructure and services, for example, could also be the result of an unfavourable regulatory regime that discourages risky investments to duplicate infrastructure (Poel and Hawkins, 2001).

In broadcasting, bottlenecks are no longer limited to essential facilities such as core network and local access infrastructure, but increasingly include end-user services such as access to set-top boxes, conditional access systems, subscriber management systems, premium programming and so on. Ownership of bottlenecks, combined with limited access for alternative operators, might create incentives and possibilities to leverage a dominant position in particular end-user markets (Evens et al., 2011; Helberger, 2007; Valcke, 2002). In principle, digitisation could eliminate bottlenecks in distribution by increasing capacity and functionality, and could allow for competitive entry in multichannel markets. Hence, broadcast markets all over the world have witnessed an increase of competitive rivalry thanks to the supply of digital services delivered over cable, satellite, terrestrial, Internet-protocol and even mobile networks (consider the impact of Belgacom TV on cable's market share in the Belgian market). Otherwise said, technological developments have helped changing, or could change in the future, the existing configurations of power and control in the television industry. This, however, might provoke incumbents to undertake defensive strategies for preventing new entry

and maintaining market power (for example, by throttling the Internet and protecting intellectual property).

#### **1.2.4. Market power**

Since the notion of 'power' in social sciences and related academic literature is seen as a minefield, with multiple connotations and part of so many research traditions (e.g., Couldry and Curran, 2003), a clear demarcation is needed. Hence, in the thesis the focus is on bargaining power, which is understood as a specific form of market power. A firm derives 'market power' by virtue of controlling a large portion of the market, with a monopoly (one seller, many buyers) and monopsony (many sellers, one buyer) as extreme cases, and when the firm is protected by high barriers to entry. The degree of market concentration, measured by the  $m$ -firm concentration ratio ( $C_m$ ) and the Herfindahl-Hirschman Index (HHI), is commonly used as an indicator of a firm's market power. In economic theory, market power is defined as a firm's ability to profitably raise the price of a good or service above the perfectly competitive level, i.e. marginal costs (Peitz and Belleflamme, 2010, p. 34). Hence, the difference between price and marginal costs, measured by the Lerner Index, is another and possibly more reliable way to measure market power and the intensity of competition (since firm size and market concentration are not necessarily inversely related with competition and innovation in the market).

Firms with pricing power – sometimes referred to as price makers – can unilaterally raise prices without losing customers to competitors and therefore face a low level of demand elasticity. The fact that Apple, in October 2012, was able to raise prices for its applications in the App Store, by surprise of millions of iOS developers, suggests that the firm has considerable power in this market. But also as a hardware manufacturer, Apple has the market power to dictate the sales prices to retailers of consumer electronics like Best Buy and Saturn. Empirical analysis of market power in manufacturer-retailer interactions has often addressed the impact of price-setting on the profits of manufacturers and retailers, predominantly based on a game-theoretic approach (Draganska et al., 2010; Kadiyali et al., 2000; Villas-Boas, 2007). The conventional wisdom is that market power lies with the retailer and has – largely thanks to the introduction of affiliated brands – increasingly shifted from manufacturers to retailers over time, but the extent of retailer profitability may vary by product markets (e.g.,

Hingley, 2005; Sriram and Kadiyali, 2009). In such channel interactions between manufacturers and retailers, a higher share of profit is usually associated with higher 'channel power'. The size and the direction of profits ('the pie') that are asymmetrically divided between manufacturers and retailers are largely determined by their respective bargaining power.

### **1.2.5. Bargaining power**

A critical factor in channel relationships between manufacturers and retailers is the relative 'bargaining power' of both parties. Bargaining is the process by which manufacturers and retailers negotiate the terms and conditions which make an agreement (in contrast to take-it-or-leave-it offers), and exists in distribution systems in a wide range of industries. Hence, bargaining power is considered a firm's relative ability to exert influence over other market participants, and represents the power of a firm to bargain for a larger share of the channel pie. Greater bargaining power thus helps contracting parties claiming a larger portion of the total surplus created. However, parties are not always better off with more bargaining power which might eventually lead to a complete breakdown of the channel. Iyer and Villas-Boas (2003, p. 81), for example, concluded that the presence of a powerful retailer might be beneficial to all channel members, but found that excess manufacturer power can increase double marginalisation and drives retailers to charge too high prices (double marginalisation occurs when a manufacturer and the retailer both have pricing power and set a double mark-up pricing). Most of the bargaining literature predicts that negotiating parties choose the outcome that maximises total surplus, producing a Nash equilibrium or Pareto efficient outcome. Under such regime, the two parties identify a fair share and accordingly split the surplus.

According to Crawford and Yurukoglu (2012), broadcasters and distributors meet bilaterally, and bargain à la Nash to determine whether to form a carriage agreement and agree upon the input costs. They assume that the surplus from bargaining is divided equally (i.e., 50%-50%) between a buyer and seller. In extreme cases, however, asymmetries in bargaining power might create 'pivotal power' with particular buyers and/or suppliers. This might occur when the manufacturer has an outside option and the flexibility to distribute through other retailers if the bargaining between the two parties breaks down. The owners of sports rights, or other premium rights, might have

the ability to play pay-TV operators off against each other and sell exclusively to the highest bidder. Likewise, pivotal retailers who are so large (for example, in terms of firms size and/or market position) that their commitment is key to the manufacturer's decision to produce might have significant power, and are able to extract large discounts from suppliers (Snyder, 1996, 1998; Tyagi, 2001). Monopolists in cable television could have a 'make-or-break' effect on a broadcaster's ability to successfully produce and distribute programming in a particular market, and obtain lower input costs for programming. Mergers and acquisitions (M&A) are therefore a popular way to increase firm size (Adilov and Alexander, 2006; Chipty and Snyder, 1999; Crawford and Yurukoglu, 2012). Whereas it is relatively easy to measure a company's market power – by means of concentration ratios – bargaining power is a much more subjective concept and harder to operationalize just because of the personal traits of the negotiators, and the relevance of the regulatory environment. This implies that firms with substantial market power not necessarily have high bargaining power and vice versa. The analysis of factors that create bargaining power therefore needs to take into account factors that go beyond the organisational structure of the negotiating parties.

### **1.3. Relevance: why study power relations in broadcaster-to-distributor markets?**

#### ***1.3.1. Academic relevance***

From an academic point of view, the dissertation sheds light on a topic that has received much attention in popular press, but remains underexplored by European scholars. Until now, newspapers have widely covered the juicy stories of carriage disputes, and have reported on broadcast networks' tactics to bargain higher deals with cable and satellite operators. Still, the recent conflicts in the broadcaster-to-distributor market, mainly due to its newness, remain a blank research field and are hardly acknowledged in literature (see Donders and Evens, 2010; Evens and Donders, 2013). In their report on the economics of television in a digital world, Barwise and Picard (2012), for example, overlook retransmission fees as a new income source for the BBC to sustain its public service activities – in stark contrast to the study commissioned by the BBC and performed by Oliver & Ohlbaum Associates (2011) that stresses the significance of retransmission fees and access charges for UK broadcasters. Inverse power relationships in broadcasting, in recent years, have been prominently studied in the

context of independent television production (Caves, 2005; Christophers, 2008; Doyle and Paterson, 2008; Lundin and Norbäck, 2009; North and Oliver, 2010; Nylund and Mildén, 2012; Saundry, 1998), television advertising (Bel and Domenech, 2009; Brown and Alexander, 2005; Compaine and Cunningham, 2009; Cunningham and Alexander, 2004; Hackner and Nyberg, 2008), international television format trading (Altmeppen et al., 2007; Chalaby, 2011, 2012; Moran, 2008; Moran and Keane, 2006; Sinclair et al., 1996) and film production (Christopherson, 2011; Collins et al., 2009; Moul, 2008; Scott, 2002; Wasko, 2011). Hence, the added value of the dissertation is that it brings forward a new research field, related to the broadcaster-to-distributor market, whose importance will only rise once television distribution and consumption have become fully digitised by the end of the decade, and disruptive OTT business models have reached a mature stage.

By focussing on the configurations of power and control in broadcaster-to-distributor markets, the dissertation also aims at triggering the academic debate in Europe. Whereas the vertical relationships between broadcasters and distributors mainly caught attention by scholars in the US, Canada and South-Korea so far, the dissertation aims at putting carriage disputes on the European research agenda. Therefore, an in-depth and systematic overview of the economic and political context of digital television markets across different countries (including players, roles, market shares, policy and regulations, etc.) would provide a valuable pool of research data and a solid basis for the further analysis of power relationships between broadcasters and distributors in and outside Europe. Comparative research would provide insight in the different configurations of power and control across the globe. Until now, most of the research in Belgium that has focused on broadcaster-to-distributor markets can be described as explorative, short-term, anecdotal and fragmentary, and has failed to provide a systematic and coherent portrait of the market and its policies over the long run. Such analysis, however, should not remain limited to contractual negotiations between broadcasters and distributors, and the juicy 'catfights' between their captains of industry, but should raise fundamental questions regarding the future economics and politics of the media industries. Following Donders and Pauwels (2012), conflicts between broadcasters and distributors of television content is part of a much broader conflict regarding the fair division of investments and profits between several parties along the value chain in all media and content industries. Due to technological progress

and the rising dominance of intermediary platforms, funding for creative production (including high-quality journalism) might run dry by absence of a fair compensation for the use and exploitation of that content by third parties.

Indeed, the implications of the research are possibly wider than the broadcaster-to-distributor market, to which the scope of the data acquisition and analysis of this thesis is limited. While carriage disputes between broadcasters and cable operators provided an impetus for this research, the analysis has much broader application to settings involving market and bargaining power in the presence of scale economies and network effects. In broadcasting, producers such as the BBC claim that they carry the bulk of investments in quality content whereas Sky, the owner of the distribution channels, takes a disproportional share of the pie, without significantly contributing to the financing and production of that content. Waterman and Han (2010) provide an empirical basis for such claims, arguing that distributors have been able to take far greater economic advantage of the digital transition than broadcasters. According to UK media regulator Ofcom (2012a), in 2010, UK public service broadcasters spent 27% of their revenues on domestic first-run originations (£1.868 billion) compared to only 2% for pay-TV operators (£215 million). This supports our assumption that respective positions in the value chain might produce relative bargaining power and provoke conflicts between several links in the value chain. Reference is also made to the digital media industries, where core elements such as search engines (Google), social media (Facebook and Twitter) and retail stores (Apple, Google and Amazon) benefit from economies of scale and network effects, and were able to build dominant positions. Concentration of such 'nodal points' might help to preserve market power in legacy media sectors (e.g., music, film and television), set the terms for the distribution of income to music and news publishers ('take-it-or-leave-it' profit-sharing rules), turn market power into moral authority by regulating what content is allowed or not (censorship), set the terms of ownership and use of user generated content ready to be sold to advertisers, and set corporate policy norms governing the collection, retention and disclosure of personal information to commercial parties (Fuchs, 2011, 2012; Van Couvering, 2011; van Dijck, 2013; Winseck, 2012).

Two examples might illustrate the high dependence of legacy media on gatekeepers such as Google and Apple. Both examples show the near-impossibility of particular market players to reject the terms of trade without risking severe revenue losses, and

suggest the sustainability of their business models has become extremely dependent on the goodwill of gatekeepers. A first example involves Google News, a free news aggregator, which is said to create value by indexing and displaying the lead paragraph from news sources all over the world. In several European countries, news publishers have complained about copyright infringement by Google News' activities and have claimed a fair payment for the news stories. Because of Google's status as the largest traffic generator for news websites, publishers have limited options but to obey the rules dictated by Google (Rebillard and Smyrniotis, 2010). Copiepresse, the association that unites the news publishers in the southern part of Belgium, even went one step further and filed a lawsuit against Google, arguing that the platform breached the Belgian copyright law. In 2007, a Belgian court imposed Google to stop aggregating extracts of French and German-language newspapers; the majority of Dutch-language press, in contrast, remains fully included in Google News (Voorhoof, 2007). A second example concerns the claims made by telecom operators that the increased data traffic from platforms including YouTube, Skype and BBC iPlayer is burdening wired and mobile networks without these platforms contributing to the establishment and maintenance of high-speed broadband networks. Since telecom operators all over the world are terrified about the long-term impact of third-party applications on the rents of their investments, some of them have started shaping Internet traffic to eventually impose upload charges to online service providers. Net neutrality proponents, however, warn that telecom operators seek to impose a tiered service model in order to control the pipeline, protect incumbent oligopolies, and oblige subscribers to buy their otherwise uncompetitive services (Gensollen et al., 2004; Marsden, 2007).

The academic value of the research not only stems from the underexplored topic and its ability to raise fundamental questions concerning the competitive imbalance in the audiovisual value chain, but also comes from the methodological contribution it makes. First, the dissertation draws upon a multi-disciplinary approach and builds further on theories, models and concepts from three highly complementary research traditions. More in particular, insights from media economics, media management and the political economy of communication are used to analyse competition and bargaining power, and to assess the need for policy and regulatory intervention in broadcaster-to-distributor markets (see Chapter 2). As traditional frameworks may face shortcomings, especially in dealing with the fast transition and high complexity of market economies, an integrated



framework has been constructed. Such 'best of' compilation might bring in complementary viewpoints and pluralist methodologies that may help us getting a deeper understanding of the channel conflicts between broadcasters and distributors in the television ecosystem (i.e. all firm and non-firm organisations and institutions). Such multi-paradigmatic approach will allow us to catch the interplay between the political and economic dimensions of the market, and, hence, provide an answer to the research questions. Whereas available frameworks such as Porter's (1980) 'Five Competitive Forces Model' mainly explain horizontal competition between companies in the same industry layer, Chapter 11 presents a model to assess vertical competition between broadcasters and distributors. Although horizontal and vertical competition reinforce each other (larger market shares in distribution add bargaining power vis-à-vis broadcasters), most competitive analyses of television broadcast markets have predominantly focused on models for horizontal competition so far (e.g., Dowling et al., 1998; Landers and Chan-Olmsted, 2004; Lin, 2012; McGrail and Roberts, 2005). The model builds further on Porter's competitive forces, adding policy/regulations and the psychological dimension as sources of bargaining power between negotiating parties. This model will allow comparative research of broadcaster-to-distributor markets and serves as a methodological tool both for industry stakeholders and policymakers.

### **1.3.2. Industrial relevance**

Additionally, the relevance of the research for the broadcasting and distribution industry is obvious. Against the background of the current conflicts in several markets, the dissertation is well-timed to provide a deeper insight into the competitive dynamics that characterise the vertical relationships between broadcasters and distributors, the tactics used by each party to bargain for the most valuable deal, and the regulations and policy framework that shape the individual broadcaster-distributor relationship. The development of a bargaining model will allow TV broadcasters and distributors – both newcomers and incumbents – to better analyse their position in the market, and assess the degree of bargaining power regarding their future suppliers and/or retailers. A quick scan of the newspapers and trade magazines shows this issue is a hot and widely debated one, both inside and outside Europe. In Belgium, for example, the main conflicts between broadcasters and distributors stem from the introduction of digital television in 2004 – although the first 'retransmission battle' originally dates back to the Coditel judgement in 1979. As discussed earlier in this section, broadcasters and distributors in

Belgium have negotiated (and disputed) the level of retransmission payments and access charges for the carriage of the linear television signal, and the terms for the provision of new value-added, interactive services including mobile offers (Yelo, TV Overal, WeePee TV, etc.) and the digital video recorder included in the set-top box. Over the years, the relationships between broadcasters and distributors, mainly Telenet, have become more cloudy, escalating into conflicts and lawsuits. Broadcasters as well as distributors are increasingly evolving into multi-sided platforms, and break into each other's territory, which produces further tensions. In August 2012, the three main broadcasters in Flanders announced the launch of Stievie, a linear and on-demand web TV platform that provides streaming content to mobile devices and that ensures broadcasters a direct gateway to the viewers. In return, Telenet committed to invest €30 million, spread over 4 years, in the creation and production of high-quality, domestic programming through the Mediafonds and/or Telenet's Stimulans voor Audiovisuele Producties (STAP). The rationale behind the strategic moves of both the broadcasters and Telenet are crystal clear. Whereas the broadcasters cooperate to increase their presence in the online world and lessen their dependence on the main distributors, teaming up with independent producers allows Telenet to expand its portfolio of affiliated content, build leverage vis-à-vis the broadcasters, and promote itself as an investor in original programming.

### ***1.3.3. Policy relevance***

Finally, conflicts between broadcasters and distributors have become high on the policy agenda these days. In the US, for example, broadcasters as well as distributors are involved in a 'hegemonic struggle' to convince public opinion, and are devoting considerable time advocating against each other, mainly through commercials. Broadcasters, demanding a fair compensation for their programming, have argued that programming costs account for a small proportion of cable operator's revenues, and that this proportion is falling (see Eisenach, 2009, 2010; Eisenach and Caves, 2010a, 2010b). MVPD's from their side have contended that blackouts harm consumers since escalating programming costs are eventually leading to higher prices for cable TV subscribers (see Salop et al., 2010a, 2010b). As this shows, the debate has been extremely polarised with both broadcasters and distributors trying to influence the FCC for adopting new regulations, or adapting existing ones, in their favour (this lobbying by both parties to introduce/abolish and relax/strengthen regulation is an issue that should be explored in

further research, but falls outside the scope of this dissertation). Recently, the D.C. Court of Appeals sided with US cable operator Comcast to overturn the MVPD ownership cap (a single MVPD is not allowed to serve over 30 per cent of all TV subscribers nationwide) which could make room for further industry consolidation (Eggerton, 2009). External, independent research is needed either to confirm or deny the arguments provided by broadcasters as well as distributors, and critically explore the claims made in the often commissioned and industry-sponsored reports. For policymakers, the relevance of carriage disputes goes beyond the volume and direction of money flows within the value network, but largely affects competitive balance between broadcasters and distributors in the market. Absence of such a balance might (but not necessarily will) have negative effects on consumers and citizens, in terms of the quantity, quality, diversity and pricing of original, domestic programming available. Consequently, power conflicts between broadcasters and distributors might confront policymakers with the effects of competition, access and diversity issues in the market that are the result of economic power play by television broadcasters and platforms.

On the European level, European Commission Vice-President Neelie Kroes, in 2011, established a group to reflect on the impact of digital media on the legacy media and content industries, the risks and opportunities for these industries, consumers and citizens, and the emerging business models. The *Media Futures Forum* had the ambition to issue recommendations on how best to incentivise quality content and journalism in a digital industry, and to establish a level-playing field. One of these recommendations focused on a fair compensation of content creation and the protection of intellectual property in the digital domain. Some forum members also pointed that third parties should not be allowed to make money by providing available content in a more convenient manner for end-consumers (for all recommendations, see *Media Futures Forum*, 2012). In Belgium, iMinds-MIX has undertaken a similar initiative, *Studio Media 2012*, and brought together representatives from the industry to discuss future models of content creation, advertising and copyright, and the role of policy in these areas. Since most of these debates largely occur in a vacuum, however, empirical evidence is needed to ground the arguments made and justify policy intervention in the market. Once again, a systematic overview of broadcaster-to-distributor and related markets would allow policymakers to monitor developments in the market, identify possible problems and define adequate answers based on the availability of reliable and valid research data.

## **1.4. Dissertation outline: structure and contents**

In contrast to the more classic ‘monograph’ dissertation, this thesis consists of a compilation of five academic papers, an introduction, four orientating sections and a concluding chapter. The academic papers thus form the core of the dissertation and all deal with the changing politico-economic context of television broadcasting. They reflect upon power relations between broadcasters and distributors, and investigate the different dimensions of bargaining power. In order to provide an adequate answer to the research question (i.e., Which contextual factors determine bargaining power in broadcaster-to-distributor markets?), conflicts and disputes between different players along the value chain, as well as a particular company’s bargaining power vis-à-vis suppliers and buyers, are discussed and applied to two domains: sports broadcasting rights and retransmission payments.

A first application domain deals with the market of premium programming rights, which became gradually controlled by pay-TV operators when the latter were looking to differentiate from competing platforms. More in particular, the market for sports broadcasting rights is studied more in detail. Over the years, the increasing competition on the demand side has inflated the prices of sports rights. In the last two decades, regulatory agencies have shaped the conditions for selling, buying and exploiting sports media rights to ensure competition both in upstream and downstream broadcast markets. Since sports organisations are considering launching dedicated sports channels such as NFL Network and NBA League Pass themselves, sports rights owners directly move to downstream broadcast markets and need to ally with distributors. Here, the relationship with distributors becomes a crucial asset, and makes or breaks the success of such channels. In the US, however, various sports networks have become involved in carriage disputes with US cable operators, linking the sports rights market with the issue of retransmission payments.

A second application domain zooms in on regular broadcast programming, which is needed to provide a basic service to pay-TV subscribers. Against the background of the carriage disputes that have occurred in the US and Europe recently, the analysis focuses on the power relationships between broadcasters and distributors. Because I assume the broadcaster-to-distributor market is characterised by bilateral bargaining power, both parties control and leverage bottlenecks that increase their share of the pie.

Acknowledging the many points of conflicts between broadcasters and distributors these days, the focus, however, is on the mechanisms that lie behind retransmission payments made by distributors. Differences might appear between the US and Europe, but also within Europe differences exist between various member states. Taking into account the specific conditions of local markets, the dissertation includes a comparative research to the market in Denmark and Flanders (North-Belgium) and, hence, provides a European perspective on a business conflict that originally emerged in the US.

Following this introduction, the *second* chapter presents multi-paradigmatic assumptions that underpin the analysis of broadcaster-to-distributor markets and that rely on concepts, models and theories from media economics, media management and political economy traditions, which are examined in more detail. Bringing together complementary viewpoints and pluralist methodologies allow for a deeper understanding of power relationships between broadcasters and distributors.

Chapter *three* includes a literature review of value creation theory, which prescribes that value is increasingly created and shared in business ecosystems. Hence, maintaining and managing inter-firm relationships is of utmost importance for creating competitive advantage. Interactions in broadcaster-to-distributor markets are seen as buyer-supplier relationships, characterised by mutual dependency. Finally, the review assesses the origins of power asymmetries between buyers and suppliers.

The *fourth* chapter discusses the methodological issues of the research design, and sheds light on the approach, methods and techniques for data collection. By lack of a valid theoretical framework tailored to broadcaster-to-distributor markets, the thesis builds upon inductive reasoning, and employs a qualitative methodology. Furthermore, a case study approach is adopted, combining multiple research methods to provide an intensive analysis of a specific phenomenon.

Chapter *five* presents the structure and organisation of the following paper section, and presents the main results found within the selected papers. Furthermore, it is argued how the papers relate to each other, and how they contribute to a deeper insight of the power conflicts between broadcasters and distributors. As already hinted above, two application domains are dealt with in the papers: the international television sports rights market, and the broadcaster-to-distributor market.

Chapters *six to ten* include the full version of the five papers as they were published in international peer review journals and/or edited volumes (including notes). All these papers relate to the research question and investigate power structures either in sports TV rights or broadcaster-to-distributor markets. The papers focus on market structure, firm structure and regulatory context.

Chapter *eleven* introduces the main dimensions of bargaining power in broadcaster-to-distributor markets, and discusses their impact on power asymmetries between the different parties in the audio-visual ecosystem. Based on a literature review and input from interviews with media managers, five clusters of power resources are identified in this dissertation.

The *final* chapter brings forward the main conclusions and provides an overview of the future directions for industry stakeholders, policymakers and scholars. The chapter discusses the digital transformation of the TV ecosystem, evaluates policy intervention, and sets the agenda for researchers interested in this field.

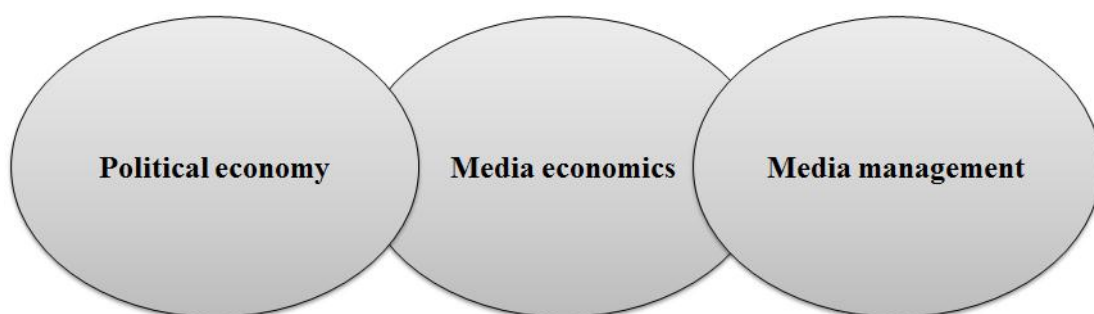


## 2. RESEARCH ORIENTATION: DEVELOPMENT OF A MULTI-PARADIGMATIC APPROACH

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The research included in the dissertation follows a multidisciplinary approach, applying and building further on central concepts, models and ideas from different but nevertheless highly complementary research paradigms and traditions. The work can be seen at the crossroads of three media-related research disciplines – some more mature than the other – that share a set of common theories and concepts, but crucially differ in how they study and approach the communications industries that are characterised by rapidly changing technologies, markets and institutions. Additionally, each of the paradigms takes a different approach to the interplay between private and public interests, markets and policies, consumers and citizens, or commerce and culture. Hence, the background of the dissertation lies at the intersection of the three fields, and touches upon media studies, economics, law, technology management, information sciences, political science, sociology and other interrelated disciplines. It is crucial to mention that some of these fields share common issues and forms of analysis, but differ in the fundamental research motivations and assumptions.

**Figure 1** Multi-paradigmatic research orientation





As mentioned, the circulation and balance of economic power in broadcaster-to-distributor markets will be studied from a multi-paradigmatic approach, grounded in mainstream economics, strategic management and political economy (Figure 1). The abovementioned disciplines, both in their individual forms or as a combination, are regularly used for making a macro-economic assessment looking at the broader and often global economic environment in which media and information are exchanged and consumed. In the context of the dissertation, however, the three paradigms will be applied to 'media businesses' as the primary unit of analysis. Although the wider strategic context in which media firms operate will be scrutinised throughout the basic text and articles, our main research interests comprise the parameters that allow media firms to build and leverage bargaining power, and the institutional structures along which the forces of supply and demand on the firm level play out (i.e. politico-economic context). Hence, concepts and ideas arising from the disciplines of media economics, media management and political economy of communication will be applied for analysing the dynamics of bargaining power and competition in the broadcaster-to-distributor market.

In the following sections, each of the disciplines is examined in more detail. The text reviews the growth and significance of the individual academic traditions, and highlights the major viewpoints and possible topics of debate within the fields. Particularly, the (often problematic) relationship of communications research with media economics, political economy and media management respectively is reviewed. Nevertheless, it is believed and stated here that the disciplines might provide added value to communications research since all of the three focus either on the economic or institutional foundations of the media. The final section of the chapter brings together each of the disciplines and constructs a multi-paradigmatic lens that underpins the remaining part of the thesis and the articles included.

## **2.1. Media economics**

Essentially, media economics applies neoclassical economic theory, concepts and principles to the media industry and is therefore considered a sub-branch of mainstream economic theory. Its basic intellectual roots are in the Chicago School, the leading neoclassical economy school of the 1950s, led by Nobel Prize winners George

Stigler, Milton Friedman and Ronald Coase. Without diving too deep in here, the Chicago School delivers support for economic (neo)liberalism and rejects economic regulations based on market-efficiency grounds. Neoclassical economics focuses on micro-economic theory to analyse the allocation of limited resources, profit-maximising firm behaviour and market mechanisms that establish prices between supply and demand (Lacy and Niebauer, 1995, p. 5). Hence, neoclassical economic theory describes and models the conditions for perfect competition in which no party holds market power. Rather than macro-economic issues, media economics relies upon micro-economic theories such as the Industrial Organizational paradigm, theories of the firm (e.g., transaction cost theory) and media concentration literature. Media economics generally refers to the business and financial activities of firms operating in various media industries, which are undertaken in the context of a given market configuration, policy environment and technological alternatives. According to Picard (1989), media economics focuses on 'how media operators meet the informational and entertainment wants and needs of audiences, advertisers and society with available resources' (p. 5). Alan Albarran (1996), another eminent media economist, defines it as 'the study of how media industries use scarce resources to produce content that is distributed among consumers in a society to satisfy various wants and needs' (p. 5). These definitions suggest that media economics is concerned with producer and consumer choices, and tries to establish optimal outcomes involving regulatory and policy options. Therefore, media economics tends to be based upon neoclassical economic theory (Picard, 2005).

Thanks to the rise of mass media, together with the increasing consolidation and concentration across the communications industries, media economics emerged as an important area of study. The interest in media economics research developed in tandem with the increasing economic power of the media. Steiner's (1952) classical analysis of competition in the US radio industry and Levin's (1958) study of the structure of the television market constitute foundational works in the field. Differences between US and European researchers were clearly influenced by the contexts in which the scholars carried out their research (Picard, 2006). Whereas US scholars came from a highly commercialized media environment in which the rise of cable television was changing video markets, European researchers acted within audiovisual media systems that were mainly protected and regulated by the state. Following the high involvement of the state

in European media, the critical approach, rooted in political economy and cultural studies, played a much stronger role in the development of the media economics field than in the US – resulting into a compelling body of literature discussing the role of public service broadcasting in competitive media systems. In the context of the worldwide consolidation of media businesses and the development of the global ICT markets, however, differences between US and EU media economics study and approach have become less obvious in recent years. Also several international mobilisation and exchange activities undertaken by leading scholars, and the establishment of global research networks have contributed to this trend.

In the 1970s, an increasing number of mainly US-based economics and business scholars began exploring media economic issues, but only in the 1980s communication scholars began to accord economic and financial power in media. Ever since, a growing body of literature addressing economic problems and financial issues of media firms has developed both in the US and Europe (Picard, 2011b, p. viii). The first organised recognition of media economics as an emerging field was the creation of the *Journal of Media Economics* in 1988 by Robert Picard, who also published the discipline's first textbook with *Media Economics: Concepts and Issues* (1989). The *World Media Economics and Management Conference*, the biennial meeting of the media business scholar community, was organised in 1994, for the first time, in Stockholm (with the most recent edition taking place in Thessaloniki, in 2012). In subsequent years, seminal works that consolidated the discipline were published, including but not limited to *Media Economics: Theory and Practice* (Alexander et al., 1993), *Media Economics: Understanding Markets, Industries and Concepts* (Albarran, 1996), *Understanding Media Economics* (Doyle, 2002), *The Economics and Financing of Media Companies* (Picard, 2002b), *Media Economics: Applying Economics to New and Traditional Media* (Hoskins et al., 2004) and *Handbook of Media Management and Economics* (Albarran et al., 2006). The problem with most of these textbooks, however, is that they provide rather basic understanding of the economic principles relevant to media businesses, and are more remarkable for their similarities rather than for their differences. In that sense, media economics urgently needs more innovative theory-building and has to team up with new developments in the ICT domain taking place outside the scope of traditional media economic research.

As a research discipline, media economics remains a very small and somewhat obscure specialisation within the economics field, with relatively few media-oriented articles published in conventional economics journals and books. In a similar vein, media economics is not widely established within traditional media and communications studies. Clearly, media economics suffer from a lack of integration with the field of mass communications and journalism. Largely due to its focus on economic concepts and the required background knowledge of how media corporations and markets are structured, the discipline is considered the odd man out within the communication scholarship community. Media economics has no specific section or division at the *International Communication Association* (ICA), *European Communication Research and Education Association* (ECREA) or *International Association for Media and Communication Research* (IAMCR) – although it has one at the US-based *Association for Education in Journalism and Mass Communication* (AEJMC). Within the Low Countries, more specifically, media economics is not (yet) represented as a separate division within the newly founded *Netherland-Flanders Communication Association* (NeFCa) whereas economic issues in media and entertainment industries hardly form a substantial part of the curricula within traditional media education programs. In contrast to journalism and mass communication programs, which promoted theoretical investigation into the effects of media on society, business schools have embraced a more applied tradition emphasising practical skills and knowledge for media business practitioners (Picard, 2006, p. 19).

## **2.2. Political economy of communication**

From the very beginning, political economists have been dealing with questions about how the production, distribution and consumption of resources should be organised as part of a more general philosophical inquiry into the constitution of the ‘good’ society (Murdock, 2011, p. 16). The interest in moral philosophy reflects a central concern of some of the founding figures in classical political economy. Adam Smith, in his famous book *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776), contended that, led by an ‘invisible hand’, society advances from self-interested individuals. Although he has been oversimplified by critics, particularly those who see his position as a defence of the unbridled market, Smith saw a clear role for the state in addressing

market limits. Similarly, other influential political economists like David Ricardo (international trade), John Stuart Mill (freedom of the individual) and Thomas Malthus (growth of population) have assessed the role of the state in important societal issues at the time (Mosco, 2009). Classical political economists were involved in studying the relationship between government and corporate power, keeping into account the wider arena of socio-cultural institutions and practices.

Gradually, the field of political economy became narrowed to the study of economics, putting more emphasis on the 'economy' and less on the 'political' dimension of society. Neoclassical economists began focussing on the industrial activities and claimed that state intervention would harm market efficiency. The elimination of the 'political' from 'political economy' would establish the dominant neoclassical paradigm and provide a model for mainstream economics, which predominantly concentrates on the optimal allocation of production factors like land, labour, raw materials and capital. Hence, Rothschild (2002) observed that 'power' in orthodox economic theory is 'restricted to specific and immediately market- and price-relevant power phenomena which can be easily endogenized into a theory of competitive markets as deviations from perfect competition' (p. 433). In contrast to heterodox economics, i.e. those economic theories that move beyond the abstract equilibrium approach and that see power as central to institutions for controlling markets, power phenomena reaching beyond the immediate price formation process are rare birds in economic theory. In response, Marxist, radical and some institutional theories have developed a powerful critique to the neoclassical position, forming a major source of inspiration for the contemporary political economy of communication.

The foundation for a political economy of communication was established in the Cold War period, with influential contributions from North-Americans Dallas Smythe (audience commodification) and Herbert Schiller (cultural imperialism) to situate communication studies in the wider politico-economic context. In Europe, core works by Garnham (1979), and Murdock and Golding (1979) helped setting the research agenda for the political economy of communication – nowadays well rooted in IAMCR, the first global academic society to support political economy research. Following Mosco (2009), 'political economy is the study of the social relations, particularly the power relations, that mutually constitute the production, distribution and consumption of resources,

including communication resources' (p. 24). Hence, political economists of communication take it as axiomatic that media commodities are studied in relation to the broader social, economic and political context in which they are produced, exchanged and consumed (Winseck, 2011, p. 11).

The political economy of communication approach is based essentially on four assumptions (Wasko et al., 2011, p. 2). First, media systems are studied in their totality, focusing on the relations between economic practices, political organisation, and the social and cultural life. Second, the goal is to understand historical transformation and change, rather than concentrating primarily on immediate events. Third, political economy is no 'value-free' but a rather 'normative' science as it is centrally concerned with the constitution of the good society grounded in social justice and democratic practice. Fourth, political economy rejects the traditional position that separates academic research from social intervention, and sees scholars as social activists. Regarding political economy of communication research, Winseck (2011, p. 3) distinguishes four influential schools of thought, and holds a plea for a multi-paradigmatic perspective on the study of media and information commodities within advanced capitalist systems. Hence, the notion of 'political economies' – in contrast to traditional media political economy scholars, who tend to view the political economies of communication as a single, unified field of inquiry (e.g., Hartley, 2009; McChesney, 2008; Mosco, 2009).

First, Neoclassical Political Economy that occupies a dominant position in contemporary thinking about the media ecology and that shows many similarities to traditional media economics, holds that all layers of the communications industry – content, distribution and reception – have become more fragmented and competitive than ever. According to Noam (2009), digital technology is creating stronger economies of scale, lower barriers to entry and blurred industry boundaries. He empirically shows that the advent of digital media has increased the diversity of delivery platforms and content available to users. As a result, competition in mass media markets has increased tremendously and markets have taken over the role formerly served by regulation. In his book *The Media Monopoly Myth* (2005), Compaine debunks numerous consolidation myths and waives away any need for government intervention to restrain the assumed power of private media. It is claimed that limits on media ownership, or any other kind

of market intervention, provides enormous advantages on ICT giants such as Apple, Google or Facebook that have capitalisation levels multiple times larger than traditional media firms and operate almost unregulated in the global marketplace. In a similar vein, regulating broadband networks is often said to discourage investments in next-generation infrastructure and technological innovation in general (De Bijl, 2011).

Second, Radical Political Economy aims to develop a critical encounter to the increasing monopolisation of capital, and the likely effects of corporate concentration on the media as 'public goods'. Media are considered subject to the interests of large corporations that fail in their mission of serving the citizens and uniting society. According to McChesney (1998), the conditions of 'competitive capitalism' are replaced by the logic of 'monopoly capitalism' leaving the liberal ideals of the free press and media access (p. 13-14). Building further on Marxian analysis, Bagdikian (2004) points to the growing size of giant media conglomerates and their increasing control of the most popular media outlets in the US. Despite the promises of new media, Schiller (1999) examines how the interaction of corporate interests, neoliberal policies and information technologies has shaped the development of the Internet and the capitalist system. Renewing the critique of the Frankfurt School, *Digital Capitalism* highlights the underlying continuity of capitalist principles and the inevitable colonisation of the online world by the market system. Curran et al. (2012) comprehensively illustrate how the Internet era is marked by the increasing market power of existing large corporations, and the overwhelming dominance of particular social networking sites, e-commerce platforms, search engines and app stores.

Third, Institutional Economics departs from orthodox economics by maintaining that the organisational structure of the economy, and not the market, is the major force in the production, distribution and consumption of goods and services. The analysis of organisational structures incorporates institutional history, sociology of bureaucratic activity, assessment of technological constraint and opportunity, and the influence of social custom, law and culture on the social construction of value (Mosco, 2009, p. 52). In his book *The Theory of Business Enterprise* (1904/1965), Thorstein Veblen looked at the growing corporate domination of culture and the economy, and claimed that business interests not always coincide with those of society. By contending that industrial output and technological advance are often restricted by business practices

and the creation of monopolies, Veblen documented how big businesses use their combined resources to control production and distribution, and dominate markets. Hence, institutional economists emphasise how institutional and technological dimensions enable corporations to leverage size and power to shape and control markets. After writing his influential essay *Why is Economics Not an Evolutionary Science* (1898), Veblen became seen as the precursor of contemporary Evolutionary Economics, on which Schumpeterian and Network Political Economies are fundamentally based. New Institutional Economics (NIE) form a significant neoclassical variant of institutionalism, thereby largely focusing on the notion of transaction costs and seeing markets as the most universal of all institutions (Coase, 1937; Williamson, 2000).

Finally, the Cultural Industries School – building further on the ideas of the Frankfurt School – considers the cultural industries as a global concept of different and interwoven subsectors that have developed into a substantial economic activity. The well-established division between core (broadcasting, film, music, print and publishing, Internet and computer games) and peripheral (performing arts, live music, museums, fashion and design) cultural industries boils down to the fact that besides having a number of shared characteristics, cultural industries differ with respect to media dependency, technological benefits, levels of production, reproduction costs and marginal costs, reproduction potential and difficulties, increased productivity and capital intensity (Hesmondhalgh, 2007; Huijgh, 2007) – referring, among others, to the highly contested ‘cost disease’ live music and performing arts suffer from (Baumol and Bowen, 1966; Huijgh and Evens, 2013). Hence, the cultural industries school advanced the idea that cultural industries research should focus on the unique and specific attributes of the media economy and the persistent barriers that impede the wholesale commodification of culture (Garnham, 2005).

### **2.3. Media management**

Basically, media management is a specialised business management approach that applies general theories of strategy, leadership and management to the media industries. Wirtz (2011) conceptualises media management as ‘a business administration discipline that identifies and describes strategic and operational phenomena and problems in the leadership of media enterprises’ (p. 5). Hence, media



management is intended to build a bridge between the general discipline of strategic management and the specificities of the media industries and media organisations (Küng, 2008, p. 107). At the same time, it is an applied science intended to provide assistance to the business practice regarding the leadership of media firms, bridging the worlds of theory and practice. This way, media management takes on an often instrumental, goal-oriented character serving the overarching goals of a particular media branch. Several textbooks emerged, entirely devoted to the practical aspects of managing a media company. The development of practically-relevant research with a rather descriptive nature might partly explain why media management, as an emergent research discipline, is still under-theorised, with a bias towards empirical observation rather than theory-building. Nevertheless, Küng (2010) experiences that academic material often remains too abstract and too vague to be useful in practice, and is full of impenetrable vocabulary. She concludes that media management should focus on 'concepts they [senior media managers] can take away and use tomorrow. Anything that is steeped in jargon, not immediately applicable, or that could be delegated to consultants is wasting their time' (p. 56) (see Albarran, 2008 for a discussion on the future of media management as a practically-oriented research discipline).

Media management grew up in the shadow of media economics, which developed in the 1970s and acquired an established set of theoretical approaches and an extensive body of literature. In contrast to media economics, media management is a relatively young discipline and still in its infancy. Main scholarly journals the *International Journal on Media Management* (1998) and the *Journal of Media Business Studies* (2004) were founded only recently, and academic associations including the *European Media Management Association* (EMMA) and the *International Media Management Academic Association* (IMMAA) saw the light in 2003 and 2004 respectively. Along with the rise of global multimedia conglomerates and the complexity of the competitive landscape, the field of media management research has grown rapidly in recent years. In a sector characterised by rapidly changing technology, managing the complexity of the strategic environment and harnessing knowledge, creativity and innovation requires a strong ability to operate facilities and allocate resources in a cost-effective and profitable way. By means of a research database analysis of EBSCO, Wirtz (2011, pp. 7-11) empirically illustrates that studies on media business – combining media economics and media

management – have experienced exponential growth over the past decades. Today, the Internet forms the main focus of the about 8,500 peer-reviewed publications in media economics and management literature. Increasingly, the field of media management is broadening its scope beyond the traditional media industry boundaries established by classical media economics, and grasping the development of new media industries, as recent textbooks on social media management might illustrate (e.g., Albarran, 2013; Friedrichsen and Mühl-Benninghaus, 2013).

In general, there are three approaches or ‘schools’ in (media) management, which can be seen as sitting on a single continuum (Küng, 2008, pp. 107-120). First, the rationalist, or positivist, approach to strategy holds a deterministic view of organisational behaviour and highly depends on the Industrial Organisation paradigm. Rationalist approaches focus on strategic firm behaviour, market structures and their interactions. The school assumes that the external environment provides the starting point for strategy, and that uncertainty and complexity present in the strategic environment can be reduced by comprehensive analysis of that environment. Hence, industry and competitive analysis is regularly applied, using key concepts such as Porter’s five forces model (1979), Porter’s value chain (1985), resource-based view (RBV) of the firm (Wernerfelt, 1984), resource dependency theory (RDT) (Pfeffer and Salancik, 1978), and core competencies and dynamic capabilities (Prahalad and Hamel, 1980). Secondly, the adaptive, or incremental, school sees strategy as a continuous process of learning, not as a static given. Strategy does not involve in a series of one-off trade-offs, but forms the result of gradually monitoring the environment and adapting to its changes. Environmental change might erode the strategic value of a firm’s market position or distinctive resources and capabilities. Hence, the adaptive approach sees strategy as an iterative and evolutionary process where firms undertake a series of strategic readjustments to response to changes in the environment, most notably technological change. The approach shows similarities with the Schumpeterian view of creative destruction. In this context, literature refers to organisational ambidexterity, defined as an organisation’s dynamic capability to exploit existing products for enabling incremental innovation and to explore new opportunities for fostering more radical innovation (van Kranenburg and Ziggers, 2013). Similar concerns are found with Christensen’s bestselling *The Innovator’s Dilemma* (1997) addressing the question of

how ICT-firms can survive disruptive innovation. Thirdly, interpretative approaches focus on more subjective aspects of organisations, including belief systems, values, emotions or power, that play an often ignored role in strategic planning. Subjective elements might include organisational culture, leadership, creativity, ethics, etc. (e.g., Küng, 2007a; Küng, 2007c).

Clearly, most of the work done within media management research is to be situated within the rationalist approach. Research has resulted in a somewhat unbalanced scholarly output, where most studies display an overdependence on a handful of strategy approaches, most notably the Industrial Organization school. Hence, most emphasis is on the industry level and the strategic environment of the firm, rather than on internal processes within media organisations. Researchers' primary interests concern industry structures and business models, and the structural environmental factors that might explain change in the media industry. The dominance of rationalist approaches and the stress on industry structures should come as no surprise, given the large overlap between media management and media economics. Although the conceptual distinction between economic analysis and business administration is obvious, both disciplines are deeply interconnected and highly complementary. A deep understanding of how media organisations function within their competitive environment is only possible by analysing the specific characteristics of media markets, industries and organisations (Artero and Sánchez-Taberner, 2012). Additionally, a significant part of key authors in the field of media management have also made contributions to media economics, and vice versa. This might be explained by the fact that most scholars, except those from the political economy traditions, are devoted to both the economics and business management of the media – which might lead to an enduring dominance of the structuralist approach of media markets and industries.

#### **2.4. Multi-paradigmatic approach**

This section aims to present a multidisciplinary angle to investigate how economic agents in the broadcaster-to-distributor market build and leverage bargaining power to obtain the most favourable terms during carriage and rights negotiations. Therefore, it relies on concepts, models and assumptions arising from traditional media economics theory, media management literature and political economy traditions (see Table 1).

The rationale behind such a multidisciplinary approach is that each perspective, despite its apparent merits, tends to show substantial weaknesses and fails to provide an adequate and unbiased answer to the fast-changing developments in the contemporary ICT industry. Rationalist management approaches, including those used by Porter, have been highly criticised because they would lose validity in industries where structural boundaries break down (e.g., Fulmer, 2000) – although later negated by Porter (2008). Additionally, Flew (2011, p. 85) points that media economics has limited explanatory power, and tends to ignore the power of institutions to control markets. Since media economics and media management remain under-theorised with regard to ICTs and media convergence, the complexity of the television industry urges for a new model that is tailored to the specific economics and policies of that particular activity. Indeed, traditional frameworks regularly face shortcomings in dealing with the complicated processes of market transition and firm transformation due to, among others, technological innovation. Hence, an integrated framework combining the ‘best of all worlds’ might bring in complementary viewpoints and pluralist methodologies that allow for a more profound understanding of the multiple interests at play, and the inter-relationships between firm and non-firm stakeholders in the media ecosystem. Therefore, a multi-paradigmatic approach is taken, incorporating the ‘most likely’ assumptions to underpin the competitive analysis of the broadcaster-to-distributor market. These assumptions are discussed in the remaining part of the chapter and are used as ‘normative’ viewpoints to answer the research question.

**Table 1** Multi-paradigmatic approach

	Media economics	Political economy	Media management
<b>Roots</b>	Neoclassical economics	Classical economics	Business administration
<b>Foci of analysis</b>	Media firms and industries, consumers/audiences	Communication systems, government policies	Media firms and industries, consumers/audiences
<b>Issues studied</b>	Resource allocation Costs and revenues Supply and demand Equilibrium prices	Political systems Social institutions Policy and regulations Power and control	Competitive strategy Leadership and culture Technological change Resources/capabilities

Against the backdrop of the on-going concentration of ownership with the formation of global, powerful media and information conglomerates (see e.g., Winseck, 2011), the *monopolisation of industry structures* and corporate tendencies to have dominant control over markets form the first important element of the dissertation. Relying solely or predominantly on the rationalist approach, including industry and competitive analysis, the research orientation partly sticks to classical media economics and management literature, most notably stemming from the Industrial Organisation tradition. Throughout the text and articles, it is argued that exclusive licensing might produce monopolisation in multiple stages along the audio-visual value chain, eventually leading to bilateral bargaining power and double marginalisation problems (Abito and Wright, 2008). Collective selling allows sports organisations and associations to form a supply-side cartel with significant bargaining power, creating a steep increase in the economic value of sports broadcasting rights. Furthermore, exclusive dealing is regularly demanded by incumbent operators to raise rivals' costs and eliminate competitive dynamics, which might add to their market power on the upstream (input foreclosure) and downstream level (customer foreclosure) (e.g., Moss, 2008). Moreover, it is argued that numerous structural elements of the broadcaster-to-distributor market, such as the intensity of competition and the degree of corporate integration, might have an impact on the outcome of the negotiations for carriage payments. In this context, the ownership of premium content and affiliated channels might help distributors to squeeze independent producers and negotiate better deals.

Secondly, I consider a *dialectic relationship between industry structure and market power*. Whereas industry structures produce market power for particular firms, market power reinforces prevailing industry structures (e.g., Caves and Porter, 1978; Jacquemin, 1972). Neo-classicists depart from the assumption that no party has power because supply equals demand in perfectly competitive markets. Radical and institutional political economists from their side have put the notion of corporate power on the research agenda again. In contrast to more idealistic and techno-optimistic views of new media that emerged at the dawn of the 21<sup>st</sup> century – the 'digital discourse' to rephrase Fisher (2010, p. 30) – new media and ICT industries are not immune to forces of corporate power, monopolisation and market dominance – referring to multi-sided platforms that act as gatekeepers that compete for platform leadership to become and

control an ecosystem of innovation (Ballon, 2007; Gawer and Cusumano, 2002, 2008). Control of competitive bottlenecks – scarce and critical resources including essential network facilities and complementary end-user services – might enable firms to leverage market power *vis-à-vis* complementary innovators in particular markets (Poel and Hawkins, 2001). According to Mansell (1997), ‘incumbents historically have controlled the development of the communication infrastructure and have defined the architecture of new services’ as a way of controlling the “chokepoints” in communication infrastructure and service markets (p. 975). In strategic management theory, the idea that the exclusive control over competitive bottlenecks gives the owner of scarce resources a competitive advantage over a rivalling company refers to the resource-based theory of the firm (Barney, 1991, 1997). Without ignoring the disruptive impact of innovative technology and game changers in particular markets – especially in those industries where the delivery of information forms the core economic activity – I tend to follow the assumption that the ownership of critical assets might help incumbents in foreclosing markets to new entrants, even if the latter would have a potential technological superiority. This might also explain why certain ‘inferior’ technological formats have developed into industry standards (Teece, 1986; Wirtz, 1999). For that reason, we might expect, first, that traditional television operators, including broadcasters and distributors, will deploy strategies to leverage the rising popularity of Over-The-Top (OTT) services while they, at the same time and secondly, will counter online video initiatives of newcomers. In search of a favourable position in the OTT value network and control of the future television business ecosystem, all parties thus rely on the ownership of critical resources (D’Arma, 2011; Evens, 2013a).

Thirdly, the dissertation adopts an *institutional viewpoint* on technology that fundamentally contrasts the neoclassical approach to innovation, technological progress and economic growth. The latter sees technology as a given production factor that sets the industry structure and is considered exogenous, proceeding at a pace determined by external factors (Castellacci, 2008; Mulder et al., 2001). In stark contrast, technology is viewed here as an inherent dimension of the organisational environment, and highly institutionalised and shaped by social, economic and political forces alike – in the same process, technology systems shape human relations and societies. New technology might fuel a process of ‘creative destruction’, i.e. a phase during which radical innovations and

new technological combinations destroy 'old' structures and create 'new' ones (Schumpeter, 1942). According to the Schumpeterian approach, new pervasive technologies can provoke industrial transformations, bring economic growth to those companies and industries that adapt to them, and destroy those companies that resist technological change – moving from one monopoly to another (Melody, 2007). Incumbent firms are thus challenged by entrepreneurial and innovative entrants to adopt changes in the external environment through institutional innovation and avoid corporate failure, even if this strategy cannibalises their legacy and lucrative business model. The adaptability of incumbent firms, however, may not be underestimated since the impact of technological innovation can be accelerated or decelerated by pre-existing social formations and market structures. Hence, complex technological systems are subject to institutional design and deeply rooted in established structures of power (Koppenjan and Groenewegen, 2005). As the widespread diffusion and sustainable implementation of new technology largely depends on how this technology fits within legacy power structures, emerging information and communication technologies and services reproduce existing patterns of use and sustain prevailing power structures and relations (Williams, 2003). According to Winston's (1998) *'law of the suppression of radical potential'*, prevailing institutions and mechanisms, most notably regulatory intervention and strategic firm behaviour, have repeatedly suppressed the growth of particular communications technologies in order to prevent them from disrupting established economic interests (see below).

Following the institutional framework, we take a *dynamic rather than a static approach* towards a better understanding of the transformation of media industries. Neoclassical economics tends to overemphasise market equilibrium of supply and demand, and assumes that market structures are exogenously determined. In contrast, an institutional political economy approach calls for a more dynamic perspective on the evolving nature of media markets, structures and institutional relationships. Fransman (2010) regards the contemporary 'info-communications' industry as a 'restless ecosystem of interacting organisms [...] in a constant process of flux' (p. 50). Competitive rivalry is said to stimulate the incessant technological change that drives the ecosystem and that results from the symbiotic, cooperative relationships between two or more firms and non-firm institutions in the system. Therefore, technology and regulatory

change is considered inherent to contemporary ICT markets, possibly – but not necessarily – impacting on power relations in the industry. In this context, the proliferation of ICT promises a growing abundance of social and economic opportunities, but economic value, however, is created through market demand for scarce resources. Whereas technological abundance might widen access points, new opportunities are simultaneously constrained by regulatory and economic forces (Melody, 2011). Once settled, also successful entrants that benefited from technological abundance are, paradoxically, eager to create scarcity to preserve their stakes as well. The dialectic interplay between technological innovation leading to abundance and corporate strategies for keeping control by creating artificial scarcity is identified as a long-run trend towards new media markets (Mansell, 1999, 2011). By integrating satellite and cable businesses in the 1970s, which had the potential of re-allocating power and control within the US media industry, incumbent broadcasters and telecommunication firms absorbed these likely competitors in the established institutional structures. Although this period of transition caused great institutional instability, the integration enabled the US television business to reinvent its industrial practices for competing in the digital era (Lotz, 2007). Similarly, telecommunications operators have maintained hegemonic power over Internet protocol television (IPTV) systems as an aggressive attempt to counter the rise of cable television and develop appropriate business strategies (Kim, 2009). Hence, in the light of the development of broadband television services, Katz (2004) argues that technological bottlenecks have been replaced by commercial chokepoints due to monopolistic control. Such observations fully support our assumption of dynamic markets in which the relationship between broadcasters and distributors heavily interacts with the external environment. Carriage agreements that are concluded for multi-year periods are considered the result of a temporary Nash equilibrium between two bargaining parties (see Crawford and Yurukoglu, 2012), but may soon be soon under pressure in a market characterised by constant change, high volatility and institutional uncertainty. Consequently, the provocative notion of ‘circulation of power’ is preferred to the widely used concept of ‘distribution of power’. Since corporate power largely follows the money that circulates within the ecosystem, a change in the underlying economics of television production and distribution might heavily affect the prevailing power relationships. New technological opportunities, for example, might thus cloud existing relationships but the advent of a



common predator might, on the contrary, also lead to joint action and mutual support, referring to the logics of 'co-opetition' as first coined by Brandenburger and Nalebuff (1996).

Finally, the dissertation builds *a bridge between the fields of media economics and media policy*, thereby providing insight into the economic mechanisms behind the transformation of the broadcaster-to-distributor market, and hence allowing for a better understanding of the hotly debated carriage disputes in many markets around the world. Following Hendricks (1995, p. 74), one of the main tasks of media economics is to provide policymakers and media professionals with appropriate tools for revealing and analysing the economic factors underlying the production and distribution of media content. Although policymakers and market analysts at regulatory agencies are seldom specialist media economists by background – those who are regularly have an expertise in macroeconomics – a deep understanding of media economics and its applications to television has clearly had a substantial influence on broadcasting policy, as Barwise and Picard (2012, p. 8) note. Over the years, media economics, and industry analysis in particular, has gained importance as a tool to guide a wide array of regulation and policy decisions – eventually downplaying other relevant tools and perspectives and, consequently, to the detriment of effective policymaking (Napoli, 2004). Apart from its obvious merits in terms of a better understanding of media markets and products, the inroad of economic analysis into media policy, accompanied with a broader shift towards evidence-based policymaking, often tends to overlook the societal impact that is associated with media output. Economic analyses seldom take into consideration social goals, or may have difficulties in identifying and measuring social externalities such as the essential role public service broadcasting plays in democratic societies – aside from its possible market distorting effects (Michalis, 2012). Similarly, content regulation such as major events regulation (preserving live sports from migration from free-to-air television to subscription services) might safeguard citizen's rights to participate in cultural and social events and their rights to access quality information and entertainment, but is more and more seen as a hurdle for sports organisations to monetise media rights (Evens et al., 2013; Lefever, 2012). Increasingly, citizens are treated as consumers, and public institutions are seen and managed as commercial organisations (Harvey, 2010; Murdock, 2010). Hence, the economic agenda of market

regulation and the prominence of market-based arguments raise the concern that the citizen interest is becoming marginalised as the consumer discourse becomes more widespread (for a critical assessment, see Iosifidis, 2011; Livingstone et al., 2007; Lunt and Livingstone, 2012). In a similar vein, competition policy – based on extensive economic analysis assessing the presence of ‘significant market power’ (SMP) in particular markets – has emerged as the dominant approach in the European regulatory framework (Arino, 2004). However, as Hope (2007) remarks, ‘competition policy alone is insufficient to achieve media pluralism and therefore has to be supplemented with ownership regulation to secure diverse media ownership as a means to media pluralism’ (p. 321). Despite attempts to downgrade sector-specific regulation and replace it by competition law only, one of our assumptions is that both regulatory approaches deemed necessary to preserve a fair balance between the public and private interest in media and, hence, maximise total value in society. Consequently, it is believed that state intervention in broadcasting markets should not only deal with economic matters, but also pursue social and cultural policy goals, such as inclusiveness, diversity, pluralism etc. (Evens, Verdegem, et al., 2010). However, the likeliness to which governments establish, design, support and regulate media markets is largely cultural-dependent and stems from a long tradition of policy intervention in correcting market shortcomings (Hallin and Mancini, 2004; McQuail, 2005).

**Table 2** Normative assumptions versus research disciplines\*

	ME	PEC	MM
Monopolisation of media industries	X	X	X
Dialectics between structure and power	X	X	X
Institutional viewpoint on technology		X	X
Dynamic approach to media industries		X	X
Combining competition and media regulation		X	

\* Media economics (ME), political economy of communications (PEC) and media management (MM)

Each of these assumptions is related to one or more of the research disciplines that have been discussed in the chapter. Table 2 summarises our five normative viewpoints and links them to the three main disciplines upon which the framework builds further. The table suggests that our viewpoints mainly build on the political economy tradition, but that the framework is also related to the field of media management and to a lesser extent media economics.

# 3. POWER AND CONTROL: VALUE CONFIGURATION AND INTER-FIRM RELATIONSHIPS

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As mentioned in the previous chapters, the major focus of the thesis is on the competitive and cooperative interactions in broadcaster-to-distributor markets, and on the factors that create bargaining power in carriage negotiations. This chapter zooms in on value creation models and describes the interaction between TV broadcasters and distributors as those between buyers and suppliers. Indeed, broadcaster-to-distributor markets are predominantly conceived as a network of contractual relationships between buyers and suppliers of programming that are involved in a bargaining process by which means prices of goods and services are established. The essential purpose for a supplier and customer firm engaging in relationships is to cooperate in such a way that it creates value for each participating party (Walter et al., 2001). In today's information and knowledge economy, the production, distribution and consumption of information goods and services are identified as the central driving forces of growth and profit. However, an increasing share of these industries is shaped by forms of non-market and non-proprietary expression, referring to the 'social production of information' (Benkler, 2006). Alternative to established industry structures and institutions, the Internet provides the means for bottom-up systems of creation and exchange, including peer-to-peer sharing and crowdsourcing. In Murdock's (2011) terms, a gift is an 'account of non-exploitative reciprocity as basis of community' whose value lies 'in its ability to cement social connections and reaffirm prestige' (p. 23). Nevertheless, these 'gift economies' fall outside the scope of the thesis which exclusively focuses on the exchange of currency as a way to characterise market and inter-firm relationships.

Following Industrial Organisation (IO) theory, industry characteristics comprise a set of relatively stable elements that influence competitive rivalry among buyers and sellers that operate within particular markets – including the number of buyers and suppliers, entry barriers, exit barriers, product differentiation, control in vertical, horizontal or diagonal directions, and so on (Hendricks, 1995; Schmalensee, 1988). The specific configuration of these control parameters might help to explain how value is created and (unevenly) distributed among firms in certain markets and industries. In contrast to the neoclassical theory of perfect competition, which holds that markets comprise many buyers and sellers of homogenous products with equal access to information, the IO paradigm analyses determinants of market organisation and firm behaviour as between perfect competition and monopoly. The approach takes into account elements of market failure such as transaction costs, agency problems, asymmetrical information and entry barriers that are associated with imperfect competition (Wirth and Bloch, 1995). Such elements of market failure may eventually create competitive advantage for particular TV firms and lead to inequality of market and bargaining power between different agents. Media economists have repeatedly concluded that media markets may produce, allocate and distribute products and services inefficiently due to specific product and costs characteristics of media goods and services, such as demand uncertainty ('nobody knows'), high 'first copy' costs and low marginal costs (Doyle, 2002; Picard, 2002a).

Empirical analysis reveals tight concentration tendencies in the networked media industries enabling a handful of conglomerates to shape economic, political and cultural control of the new media landscape. A contested report by Analysis Group (2012) reveals that Canada stands out among G8 countries as the country with the highest (vertically) concentrated media sector, both in television broadcasting and distribution. Canada is the only G8 country where measurements of vertical integration at the broadcasting and distribution level exceed 40 per cent. The conglomerate dominance of Bell in the Canadian media sector is unrivalled in G8 countries. Telecom Italia is a distant runner up. Now that Bell has unveiled its plans to swallow competitor Astral in a \$3.38 billion deal, the rising concentration in the Canadian media market could produce perverse outcomes for citizens, consumers and the public in general (in terms of higher prices). As a result of economies of scale, and high entry barriers related to infrastructure costs and the purchase of premium programming, European pay-TV

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markets are organised as monopolies, with Sky, Canal+ and Mediaset as most notable examples (Nicita and Ramello, 2005; Ofcom, 2012b).

However, media markets are considered flexible systems that are structured and changed by institutions, technology, regulatory intervention and consumption patterns. This implies that power relationships are affected by environmental change, and that a seller's market may turn into a buyer's market (or vice versa). When BSkyB launched digital satellite in 1998 in the UK market, it was keen to get as many new channels and strong brands on board to persuade its analogue subscribers to switch and to attract new customers. Commercial PSBs were able to negotiate high carriage fees with the satellite operator. However, once the Sky platform had established itself and the supply of channels had increased, the tide reversed, fees dropped substantially and distribution costs went up (Brown, 2003). In addition, consolidation among the distributor's side – following the mergers between NTL and Telewest, and between the newly founded company NTL:Telewest and Virgin Media in 2006 – has moved bargaining power to the distributors. The UK market has become a buyer's market, with carriage fees offered by the distributors approaching or being nihil. Since the introduction of the Technical Platform Services (TPS) regime in 2003, most channels need to pay for carriage by satellite operator Sky – a payment not made in similar markets such as Germany, France, Spain, the Netherlands or Sweden. According to an Oliver & Ohlbaum Associates analysis (2011), adopting the US system of copyright payments from cable and satellite delivery, payment of broadcaster transmission costs and the payment of carriage fees would represent a difference of between £72 million and £96 million a year. Instead of paying out £16.5 million (in 2009) UK PSBs and associated content providers would be gaining £55 million to £80 million per year. Mediatique (2012) calculated that the introduction of the US-style retransmission consent system – under which both channels and platforms would have the right either to deny or to withhold carriage – is likely to transfer payments from platforms to PSBs and, hence, lead to an incremental expenditure on original content. Fearing regulatory intervention, Sky recently announced to revise its platform contribution charges (PCC) and has proposed a price reduction to more than hundred channels (Sweney, 2012).

Although the scope of the dissertation is limited to broadcaster-to-distributor markets, one-to-one relationships between broadcasters and distributors may have

widespread implications for other agents in the audio-visual industry. In addition, regulatory intervention or technological progress play an important role in shaping the pattern of industrial relations. Attempts made by cable operators to get rid of cable right payments might perfectly illustrate what is at stake in the television industry. Elimination of such payments may eventually prove detrimental to broadcasters and independent producers of domestic, original programming with likely negative effects on the diversity in supply of programmes and the sustainability of the national audio-visual industry (as discussed by Evens, 2013b). Similarly, a more stringent regulation of sports broadcasting contracts might affect power balance between sports rights holders and pay-TV operators, and increase competitive rivalry in the pay-TV business. Whereas exclusive licensing excludes alternative pay-TV operators from sports rights, introducing non-exclusive licensing schemes might change competitive dynamics in the industry and create room for alternative pay-TV operators (see Evens, Geey, et al., 2010a, 2010b; Evens et al., 2013). Furthermore, higher retransmission fees paid by distributors as a result of carriage disputes might be passed through to consumers in the form of higher subscription prices. Ford and Jackson (1997) found a pass-through rate of 50 per cent when US cable operators faced little competition (and up to 100 per cent with increased competition). A recent study by Mediatique (2012) found pay-TV subscribers may be expected to shoulder most of the payments to PSBs by platform operators – requiring to pay up £17 per year. Disputes might also affect viewers when leading to black-outs and depriving multichannel subscribers from television programming (Salop et al., 2010b). This implies that any change in the nature of relationships between two particular firms might drastically – either in a positive or negative way – affect the interests of other agents in the wider industry. Such claims support a combination of the analytic and more systemic approach to assessing industrial relationships. The analytic approach seeks to reduce complex systems to its elementary parts in order to study in detail and understand the types of interaction that exist between them. The systemic approach, on the contrary, holds that highly complex systems comprise a large diversity of elements that are linked together by strong interactions. The purpose of a systemic approach is to consider a system in its totality and map the dynamics between different kinds of interactions among its elements. However, both approaches are complementary rather than opposed (Bartlett, 2001).

### **3.1. Value configuration theory**

As a result of the evolving strategic context of broadcasting and its distribution, partly fuelled by the growth of the Internet and digital media, the way according to which television firms make money and yield profits in the digitised industry largely differs from the analogue era. The global diffusion of digital delivery and reception systems have brought together the previously separated worlds of media, telecommunications and computing, and drastically altered the market structure, business models and consumption patterns of television broadcasting. The Internet, for example, has emerged as a new distribution channel and enables content producers to bypass incumbent operators, but also empowers consumers to watch videos via OTT services (Netflix, YouTube, etc. ), and allows viewers to interact with programming by means of second screen applications. Despite the disruptive potential of digitisation, Küng (2008) notes that ‘these changes have been a force for revitalization, cleaning up out-of-date products and business models, and forcing sectors to reinvent themselves, enlarging income potential by allowing brands to be leveraged across more platforms’ (p. 83). Indeed, business models need to morph over time in order to comply with the changing markets, technologies and policies. Media firms will thus need to re-think business models and come up with value propositions that are compelling to customers, and that enable significant value capture by the company. Although it is impossible to accurately predict tomorrow’s business model for broadcasting and distribution, there is, however, no doubt that the future models for value creation (delivering products and services) and capture (extracting profits) in digital media will fundamentally differ from those applied in traditional manufacturing industries (Evens, 2010). In this respect, it is often claimed that TV’s dominant ‘flow’ model, which is advertising-driven and/or government-subsidised, has been extended through direct payment models of subscription services that are based on large catalogues of content rather than the scheduled flow of programs. The BBC iPlayer and video platform Hulu are nothing but variants to Apple’s iTunes model. As a result, the gradual shift to direct commodification reflects the growing centrality of telecoms, cable and Internet sectors in the production, distribution and display of TV programmes. Miège (2011) observes a particular rise in the position of hardware manufacturers, telecom and Internet firms, and software companies, a tendency responsible for the on-going mutation of the media industries



and the structural imbalance in power relationships between media and communication firms.

Value configuration theory comprises models and methods for analysing competitive strategy and competitive advantage, and builds further on Porter's initial works on the value chain. Whereas the industry is the arena for competitive strategy, activities and resources are the critical levers of competitive advantage (Stabell, 2001, p. 15). Hence, value configuration analysis (VCA) defines and inventories the activities and resources of a firm, which form the main focus to assess and understand the current and future competitive position of the firm. This way, value configuration analysis and industry analysis are closely linked. According to Porter (1980) 'the focus of the analysis of industry structure [...] is on identifying the basic, underlying characteristics of an industry rooted in its economics and technology that shape the arena in which competitive strategy must be set' (p. 6). In addition to industry structures, Porter identifies a firm's position within the industry (i.e. competitive strategy) as an important determinant of its profitability. Porter complemented industry analysis (Five Competitive Forces Model) with the value chain framework he developed five years later, which is actually nothing but the implementation of competitive strategy on the firm-level in order to achieve competitive advantage. As a result, the outlook of a given industry might change with the particular value configuration in that industry. Indeed, market structures evolve as value in the industry is reconfigured, and vice versa. Increased competition in the market, and especially the emergence of new technology, might urge firms to adopt new models of value creation, and reshuffle firm resources, activities and relations in a more effective and efficient manner. In television, OTT services and other new forms of digital distribution could transform and eventually disrupt traditional value chains. Since both broadcasters and distributors are migrating towards multi-screen strategies, television has increasingly become a more fluid concept with programming flowing over multiple platforms (Doyle, 2010).

The value chain remains the dominant framework for analysing value creation logics in firms. But together with the rise of the 'new' economy, it became clear that the value creation logic underlying manufacturing and other traditional industry sectors – the value chain framework – is less suitable to the analysis of activities in a number of service and information industries. Alternatives to traditional models of value creation can roughly be divided into two streams of literature. First, 'value configurations' focus on the internal arrangements of activities, and are therefore more in line with Porter's value chain framework (Fjeldstad and Haanæs, 2001; Fjeldstad and Ketels, 2006; Stabell, 2001; Stabell and Fjeldstad, 1998). Value configuration theory suggests that 'value chains' are only one of the three generic value configurations, and proposes 'value shops' and 'value networks' as alternative types of value configuration, in order to better capture the characteristics of the different types of network organisations. The 'package logic', as described by Johansson and Jonnson (2012), complements the chain and shop logics, and provides a better understanding of cost and value aspects of firms acting in industrial markets (like those firms involved in mass-customisation). Secondly, 'value constellations' also focus on a more iterative process of value creation, but stress the importance of co-production of value between external suppliers and customers as an alternative to the internally oriented value chain framework (Normann and Ramírez, 1993; Ramírez, 1999). Both strands of literature, however, are highly complementary since companies have internal as well as external value networks. Whereas in the past television broadcasters used to rely on proprietary production and distribution facilities, relationships with external content and infrastructure suppliers have become extremely important. In more recent years, value networks have evolved into complex business ecosystems and the establishment of multi-sided platforms that crucially depend on collaborative interactions with value-adding third parties. In the following sections, all these value creation models are discussed in more depth.

### **3.1.1. Value chains: sequential**

A first way of conceptualising value creation in broadcaster-to-distributor markets is by using the value chain framework, which has derived a dominant position in traditional industry analysis. First described and popularised by Porter (1985), the relatively simple concept has been widely applied for the strategic analysis of value creation and capture in traditional media and communications industries (e.g.,

Jarvenpaa and Loebbecke, 2009; Prario, 2007; Wirtz, 2001). The analytical approach maps the chain of activities a firm operating in a specific industry performs in order to deliver valuable products and services. Actually, it categorises the (primary and secondary) value-adding in-house activities of (manufacturing) companies. Products pass through activities of a chain in order, and at each stage the products gains some value. The value chain then serves as a functional instrument to identify those activities through which a firm creates competitive advantage and achieves superior performance. Central to the value chain concept is a strategy trade-off between differentiation (margin) and low cost (volume). Hence, the model implicitly assumes that economies of scale drive competitive advantage, implying that horizontal and vertical integration are the most effective ways to create and capture value (Küng, 2007b, p. 19).

Whereas Porter's value chain was initially conceived as a powerful analytical framework to identify sources of competitive advantage within the boundaries of single business units and firms, the value chain became more and more applied to map the value configuration process at industry level. From this perspective, an industry value chain is a system of organisations, people, technology, activities, information and resources involved in transforming raw materials from suppliers and distributing goods and services to end-customers. A firm's value chain then becomes embedded in the value chains of suppliers' (upstream) and buyers' (downstream) businesses. Such an industry's 'value system' – or 'vertical supply chain' – thus links individual value chains of different players within a sector into one system of activities stretching from the manufacturer to the consumer. Firms face a dilemma of whether to invest upstream or downstream in the value chain and, hence, increase their control of multiple activities along the value chain (Singer and Donoso, 2008). Upstream activities relate to the exploitation of natural resources and the input of raw materials (production) whereas downstream activities add value to the products through manufacturing or customisation (aggregation or distribution). Vertical integration occurs when firms in a specific productive cycle phase expand their activities to previous (backward integration) or following (forward integration) phases (e.g., Telenet and Belgacom combining the roles of network infrastructure and pay-TV operator). In this context, vertical integration secures access to production resources and distribution networks, and keeps transactions and profits within the same company. According to Picard

(2011b, p. 61), an important strategic choice of media companies is whether distribution should be handled internally or externally. Internal distribution increases a manufacturer's control over the logistics process and allows for a direct contact with consumers, but also increases the company's size, operational costs and management complexity. Firms that want to avoid investment costs required to establish a proprietary distribution system may opt for external distribution. This choice, however, might reduce corporate control and makes producers highly dependent on distributors and retailers. In the past, PSBs used to manage proprietary transmission infrastructure, but have sold these transmitters to (terrestrial) network operators in the last decade.

Consequently, the vertical supply chain highlights the degree of vertical integration in the industry and identifies possible sources of market power (Doyle, 2013, pp. 19-22). Basically, no single stage in the value chain is more important than another: media content has no value unless it is distributed and consumed by an audience, and the value of transmission systems predominantly stems from the content that is distributed (here we debunk the 'Content is King, but Distribution is King Kong' myth). However, monopolisation of particular stages along the value chain might threaten the performance of every firm in the value system, and adds competitive advantage to the monopolist. When a given company gains control over all the substitute inputs at an upstream stage, or secures all facilities required for distribution, rivals are put at a considerable competitive disadvantage and become highly dependent on the owners of bottleneck facilities. The high concentration in the Flemish distribution market, with a share of over 80 per cent, transfers considerable market power to cable operator Telenet. Consequently, monopolists could be triggered to leverage or even abuse its market power to demand excessive access prices. The resource-based view of the firm claims that a firm may obtain sustained competitive advantage when it owns or directly controls critical resources (like distribution or premium programming). Resources that are valuable, rare, costly to imitate and without strategic substitutes may bestow firms with a sustained competitive advantage (Barney, 1991). Seen from this perspective, competitive strategy is primarily the art of manoeuvring a company on a favourable place in the value chain that maximises value creation and capture. This may encompass strategies for controlling and monopolising industry bottlenecks that raise serious barriers to entry for newcomers. Hence, the presence of horizontal market power in

bottleneck stages (either production or distribution) rather than vertical integration tendencies provokes monopolistic behaviour and represents the primary concern for today's policymakers (Waterman and Choi, 2011).

### ***3.1.2. Value networks: reciprocal***

The 'value chain' concept is mainly a very broad, generic framework that was designed to be applicable to all kinds of firms and industries. However, the value chain model focuses on manufacturing industries and seems hardly applicable to networked, intermediary and service settings. In contrast to manufacturing industries, network industries are not characterised by a transformation process, but create value through network relationships between different kinds of customers. Value configuration analysis of mobile telecommunications, for example, shows that the mobile services industry has evolved from a value chain into a value network (e.g., Basole, 2009; Basole and Karla, 2011; Funk, 2009; Li and Whalley, 2002; Pagani and Fine, 2008), and operates as a cluster of actors collaborating to deliver value to end consumers where each actor contributes to the success or failure of the network. Whereas the value chain framework puts importance on operational efficiency regarding the cost of performing particular activities for benchmarking purposes, the performance of value networks depends on how the whole system of activities contributes to customer value (Fjeldstad and Ketels, 2006). Hence, the value network approach focuses attention on the properties of the customer set, which increases the importance of activities that are concerned with identifying, attracting and retaining customers whose membership has a positive effect on the value of the network (network effects).

In essence, value networks can be understood as a collection of independent firms that generate value through business models and that involve a more complex, interconnected set of exchange relationships and activities among multiple players (Zott et al., 2011, p. 1032). Value networks comprise a set of relatively autonomous business units that are managed independently, but co-operate on the basis of common principles and service level agreements (Peppard and Rylander, 2006, p. 132). The reconfiguration of business activities from value chain organisation to the more fluid structure of the value network, and the continuous design and re-design of business systems to connect knowledge and manage relationships are currently identified as major strategic challenges for companies (Allee, 2008). Value is thus co-created by a series of

partnerships and relationships in a value network, in which different stakeholders – suppliers, partners, allies, coalitions and even consumers – join forces, innovate and co-produce value. Each party might contribute a particular percentage of the overall value created, but value capture crucially depends on participant's relative bargaining power. The profits and competitive advantage that result from each participant's investment reside within the value network, accumulating at those positions that create the greatest value, or leverage the biggest power for the network. As a consequence, the firms that hold gatekeeping positions have a great deal of control over how the network performs and how the benefits are redistributed over the network members (Rülke et al., 2003).

Owing to the complex nature of ICT services and the defragmentation of value chains, no single firm is capable of exploring and exploiting all competencies and components required for the provision of information services (Barnes, 2002). Hence, firms co-produce and collaborate in value networks in order to share knowledge and access resources that are made available to the network. In literature, collaboration is found to reduce financial risks, reduce time to market, decrease the cost of product development, and provides access to new markets and technologies (Fjeldstad et al., 2012; Horvath, 2001). Since digital technology has drastically reduced coordination and transaction costs, and enabled modular product design, specialised firms emerge to focus on 'developing certain components of the larger puzzle' (Gawer and Cusumano, 2002, p. 5). As a consequence, specialists in any layer of the industry only need to know how to connect their components to complementary modules with little in-depth knowledge of the activities in other modules. Companies thus specialise and build expertise in a limited number of nodes by leveraging distinctive competencies. Debate goes whether and to what extent such modularisation of skills and capabilities will ultimately result in a defragmentation of the ICT industry, with the formation of strategic alliances and partnerships as the dominant means of accessing resources and competences (Grove, 1996; Li and Whalley, 2002; Wirtz, 1999).

### **3.1.3. *Business ecosystems: layered***

The previous section might suggest that a firm's performance depends on a well-designed network of strategic partners and allies, but a firm's success is also derived from the collective healthiness of its surrounding environment, or 'business ecosystem'. Essentially, literature on business ecosystems acknowledges that many organisations –

firms and non-firm institutions – that directly contribute to the creation and delivery of products and services fall outside the scope of the traditional value network of suppliers and distributors, and are therefore overlooked in empirical analysis. A firm's business ecosystem not only includes outsourcing companies, technology suppliers, complementors, competitors and customers (Iansiti and Levien, 2004, p. 69); but is also shaped by competition and institutions, which include financial institutions, regulators and policymakers, standardisation bodies and research organisations that develop innovative capabilities (Fransman, 2010, p. 34). As a result, innovation does not stand alone; rather it depends on accompanying changes in the firm's environment for its own success. These external changes, fuelled by innovation on the part of other actors, embed the firm within an ecosystem of interdependent innovations (Adner, 2006; Adner and Kapoor, 2010).

Business ecosystems can be understood as complex, adaptive systems of inter-firm interactions and tend to continuously adapt and evolve to changes inside and outside the network. Hence, Iansiti and Levien (2004) have used biological systems as a powerful analogy for understanding business ecosystems. Indeed, ecosystems describe an environment in which numerous species co-exist, influence each other and are influenced by forces in the external environment. Natural ecosystems sometimes collapse when environmental conditions change too radically (think of the dinosaurs). As a result, the traditional distribution of power is shifted, and dominant species lose their leadership, placing often previously marginal species at the centre of the new ecosystem. In that context, Moore (1993) draws a clear parallel with current businesses. Mature business ecosystems can be threatened by rising new ecosystems that decide to attack the same territory. Changes in the environmental conditions, such as a new regulatory framework, shifting consumption patterns or economic downturn, might cause a Schumpeterian earthquake to existing ecosystems (think of Nokia and Eastman Kodak). According to Fransman (2010), ecosystems are driven and transformed by innovations that result from symbiotic relationships between different layers of the ecosystem. Consider social media, which have been made successful by the interaction between software developers, content providers and end-customers. Ecosystems that are successful over longer periods of time have thus institutionalised technological innovation, even at the risk of cannibalising legacy business models. Hence, ecosystems

compete through business models; firms that successfully innovate business models in order to adapt to changes in the external environment might be able to claim leadership and both create and capture value (Chesbrough, 2007). Microsoft's software packages have been successful over the last three decades, but the question is how the conglomerate will adapt to the evolution towards cloud computing.

Iansiti and Levien (2004) identify 'keystone organisations' that play a crucial role in the success of business ecosystems. Keystones are active leaders in the ecosystem and tend to improve the overall health of the ecosystem by providing a stable and predictable set of common assets. Through the creation of a platform, keystones provide an asset to stimulate innovation on complementary products and services. Gawer (2009) defines a platform as a 'building block, which can be a product, a technology, or a service, that acts as a foundation upon which other firms can develop complementary products, technologies or services' (p. 3-4). Hence, keystone organisations refer to 'platform leaders' whose common objective is to drive innovation in the industry and to ensure the integrity of the evolving platform (Gawer and Cusumano, 2002, 2008). Being a catalyst of innovation, keystones create and share value, and exercise power derived from their roles of 'hubs' in the network. The BBC obviously acts as a keystone organisation in the development of Connected TV services in the UK, with its iPlayer and YouView platform as most notable examples. In some cases, keystones might become dominators, or 'hub landlords', that exploit a critical position to either take over the value network or drain value from it. Dominators extract too much value from the network and leave little for complementors. The modus operandi of Sky can be described as such a dominance, extracting most value from free-to-air TV broadcasters, who act as complementors. In emerging ecosystems, such aggressive behaviour might ultimately prove destructive and limit innovation. Niche players often specialise in specific capabilities to differentiate themselves from others in the ecosystem. In the shadow of keystones, these firms represent the bulk of the value creation and innovation in the ecosystem (Iansiti and Levien, 2004). In order to guarantee a continuous supply of innovative complements around the platform, keystones search for 'rabbits' that are willing to take risks and become a leading proponent of a new technology or standard (Gawer and Cusumano, 2002, p. 70). Roles in an ecosystem are, however, not static and



might evolve over time. Dominators might become niche players, and niche players might eventually become keystones for their own ecosystems (think of Apple vs. Nokia).

#### **3.1.4. *Multi-sided platforms: interaction***

Increasingly, contemporary ICT markets are organised around multi-sided platforms, with eBay and Google as notable examples. Multi-sided platform literature stems from Industrial Organisation (IO) theory, and essentially focuses on the interdependencies between multiple market actors (Parker and Van Alstyne, 2005). Traditional media economics holds that media firms operate within two-sided markets, and that the demand for media products is largely influenced by its ambivalent nature, referring to the 'dual product' markets (e.g., Picard, 2011b). Media firms thus serve the needs of two distinct customer groups: advertisers and audiences. But these groups are defined and analysed separately in traditional media economics literature, without sufficiently acknowledging the interconnectedness between both of them. Multi-sided platform theory deepens, however, the IO paradigm and provides a more detailed approach for media markets through the direct connection between advertisers, producers and audiences (Budzinski and Satzer, 2011; Dewenter, 2006). In that context, a multi-sided platform 'facilitates the interactions (or transactions) among the two or more constituents (sides) that it serves, such that members of one side are more likely to get on board the multi-sided platform when more members of another side do so' (Hagiu, 2008, p. 3).

Multi-sided platform infrastructure regularly includes hardware, software and applications, and encompasses multiple distinct roles, including (1) demand-side users (end-consumers), (2) supply-side users (content providers), (3) platform operators (mediating customers' transactions), and (4) platform sponsors (supporting the platform's technology) (Eisenmann et al., 2010). Platforms often deploy one-sided and two-sided selling strategies at once. Hagiu (2007) identifies between two polar types of intermediation: one-sided merchants and two-sided platforms. In the merchant (wholesale) model, intermediaries acquire goods and services from sellers and resell them to buyers. Such model opposes to the platform model that allows affiliated sellers to sell directly to buyers, and regularly retain pricing power. The distinguishing feature is whether the seller is paid based on the success of the platform with the buying side (e.g., receiving a share of the total transactions value). Hagiu (2007) further remarks

that 'two-sidedness is not a 0-1 notion: rather, there is a continuum of forms of intermediation' (p. 118). The trade-off ultimately depends on the extent of control over buyer-seller interactions: a pure platform leaves control rights over strategic variables (such as pricing, advertising, bundling, etc.) to sellers whereas a pure merchant takes over full control (see the difference between eBay and Amazon). Nevertheless, most intermediaries appear in hybrid forms, combining merchant and platform features.

In multi-sided platform markets, two sets of agents interact through an intermediary or platform, and the decision of each set of agents affects the outcome of the other set of agents, typically through externalities (Rysman, 2009). The value created by a platform is thus the customer's ability to directly interact with one or more of the other types of customers. Typically, multi-sided platforms coordinate and cross-subsidise network externalities between the distinct markets through a common platform. Whereas value chain configurations enable firms to take advantage of economies of scale, platforms are driven by demand-side economies of scale (Henten and Godoe, 2010), or simply network economies (Varian et al., 2004). Hence, a consumer's demand for a product or service depends not only on its price, but also on the expected number of other customers. The literature distinguishes between two types of network externalities. In the case of same-side (direct) network externalities, customers benefit each time a similar customer joins the network (the more people that join Facebook, the more utile it becomes to join Facebook). Cross-side (indirect) network externalities arise when customers gain by the participation of other types of customers (the more users for YouTube, the better advertising deals YouTube can make). As a consequence, two-sided platforms must get both sides of the market on board to be successful and need to devote much attention to designing sustainable business models (Rochet and Tirole, 2003). Typically, one side of the platform is treated as the profit centre (subsidising) while the other is considered a loss leader (subsidised) – television's traditional free-to-air business model. The absence of one particular side might produce 'chicken and egg' problems: supply-side users are reluctant to produce content when a substantial customer base is uncertain; uncertainty about the supply hinders demand-side users to join the network (Evans and Schmalensee, 2009).

**Table 3** Relevance of value configurations

Value configuration	Relevance
Value chain	Vertical structure of the industry (vertical integration)
Value network	Defragmentation of the industry (relationships)
Business ecosystem	Layered structure of the industry (interactions)
Multi-sided platform	Gatekeeping roles in the industry (envelopment)

The concepts that have been described in the first part of this chapter prove useful for analysing power relationships between broadcasters and distributors (see Table 3). First, the value chain provides more insight in the vertical structure of the audio-visual industry, with upstream (production) and downstream (aggregation and distribution) activities, and shows the importance of vertical integration in the building of bargaining power. Second, value networks highlight the notion of cooperation, and emphasise that value is co-created by means of partnerships and relationships. Third, the business ecosystems approach learns that multiple organisations, institutions and regulations affect, and are affected by, firm behaviour. Such layered industry structure suggests the interactions between firm and non-firm players. Furthermore, literature deals with keystones and dominators, concepts that show highly relevant for analysing power relationships. Fourth, multi-sided platforms refer to the gatekeeping positions firms can occupy, and derive power from. Since broadcasters and distributors each operate as a multi-sided platform, this will eventually lead to tensions, frictions, conflicts and clashes.

### 3.2. Inter-firm relationships

As suggested in the previous sections, new value configurations imply that dyadic buyer-seller relationships in manufacturing industries have been replaced by many-to-many firm relationships in service industries. In current business ecosystems, value is created and delivered through a complex network of firms. Hence, maintaining and managing inter-firm relationships is of utmost importance for creating sustained competitive advantage (Day, 2000; Dyer, 1996; Dyer and Singh, 1998). Inter-firm relationships can take many forms, including alliances, partnerships, joint ventures, consortia, supply agreements, technology licenses, service level agreements, marketing agreements, and so on. Webster (1992) presents a model of the relationship continuum, illustrating the various forms of relationships organisations are involved in (see Table

4). Accordingly, inter-firm relationships vary between a continuum, from pure market transactions at the one end to fully integrated hierarchical firms at the other end. Basically, the level and extent of cooperation increases along the presented continuum, with a more competitive attitude towards the exchange. Similarly, firms use more administrative and bureaucratic control, and less market control in the pursuit of economic efficiency.

**Table 4** Range of marketing relationships (based on Webster, 1992)

Type of relationship	Description
<b>Market transactions</b>	One-time exchange of value between two parties Each transaction is independent from others Transaction is guided by price mechanism
<b>Repeated transactions</b>	Repeated, frequent purchase of goods and services Presence of product brands and customer loyalty Advertising and sales are key activities
<b>Long-term relationships</b>	Arm's-length and adversarial nature of relationship Rivalry among suppliers through competitive bidding Competition for an 'unfair' share of economic value
<b>Buyer-seller relationships</b>	Strategic partnership between suppliers and customers Long-term contractual commitment and mutual trust Price is result of negotiation, based on interdependence
<b>Strategic alliances</b>	Takes the form an entirely new entity or venture Commitment of capital and management resources Achieving strategic goals to improve competitive position
<b>Network organisations</b>	Complex, multifaceted organisation structures Hub of strategic alliances and partnerships Including divisions, subsidiaries, joint ventures, resellers, etc.
<b>Vertical integration</b>	Hierarchical organisational structures Concentration of ownership Economics of scale, efficiency comes with size

The idea that a firm is considered a 'nexus' of contracts, relationships and alliances largely stems from the transaction costs approach. The paradigm deals with the existence and boundaries of the firm, and discusses why firms emerge as viable institutions when perfect competition demonstrates profit-maximising quantities of outputs and inputs (Demsetz, 1988). According to Coase (1937), people start organising the production in firms when transaction costs – originally called 'marketing costs' – through market exchange outweigh management costs within the firm. Costly transactions may thus lead to greater reliance on longer-term contracts. Focusing on

transaction costs, Williamson (1985) has distinguished between repeated case-by-case bargaining and relationship-specific contracts, and found that the economics of relationship-specific dealings are very different from those of case-by-case bargaining. Although vertical integration is a complex and expensive strategy, it is said to protect against opportunistic and profit-maximising behaviour in the case of asset specificity. Vertical integration and opportunism often play a special part in a 'vertical market failure', when transactions are too risky and costly. The amount of buyers and sellers is the most critical variable in determining vertical market failure. In contrast to perfect competition, the terms of transactions, especially price, are determined by the balance of bargaining power between buyers and sellers. This is most common in case of a bilateral monopoly (one buyer, one seller) or bilateral oligopoly (few buyers, few sellers). Combined with high asset specificity and transaction frequency, a concentrated market structure might create incentives for firms to merge vertically and bring multiple stages of the value creation process under common ownership (Williamson, 1971).

Two economic theories compete with respect to the effects of vertical integration in distribution markets. Integration can produce profit either by increasing operational efficiency or reducing competition by foreclosing the market. First, advocates of vertical integration claim that vertical mergers improve efficiency in bilateral contracting while reducing transaction costs, protecting brand names, and safeguarding intellectual property from free-riding (Klein and Murphy, 1988). Additionally, vertical integration allows cable operators to create synergies in terms of scale and scope economies, and easily share information with producers about viewer tastes and preferences (Waterman, 1993). Furthermore, vertical integration is said to eliminate the double marginalisation problem that gives rise to excessive retail pricing (if not regulated). Double marginalisation occurs when upstream and downstream firms each have pricing power and, taken together, set a double mark-up price, ending up with inefficient allocation of resources. As a result, vertical mergers tend to increase profits and consumer surplus (Spengler, 1950). Suppose a sports league wants to sell its rights to the highest-bidding pay-TV operator on an exclusive basis. Then the vertical market structure consists of two monopolies: the sports league and the pay-TV operator which has the exclusive rights to the sports event. Since both have pricing power due to a lack of rivalry, prices (and profit margins) will increase. In that context, integrating with a

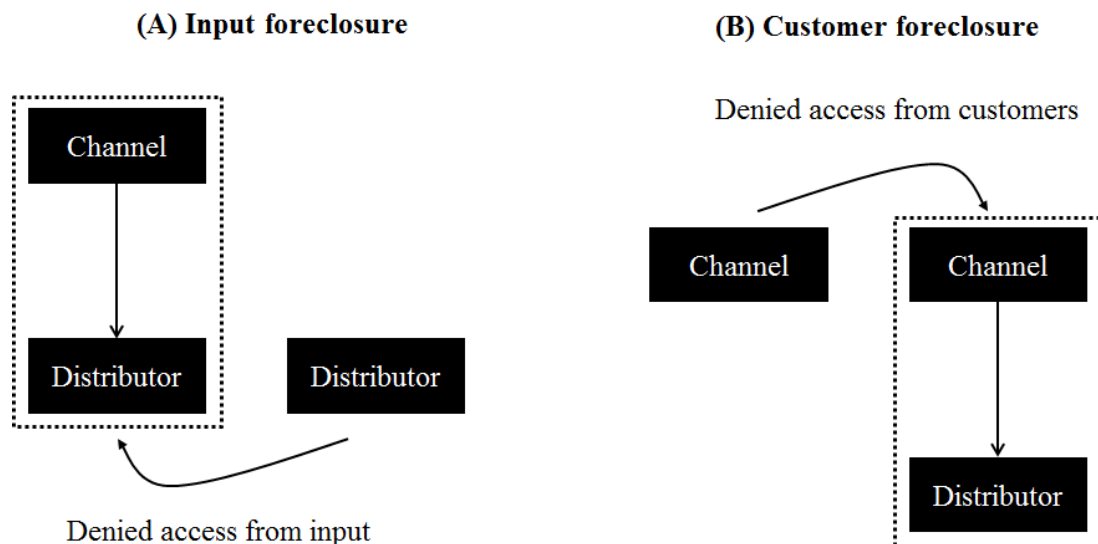
sports league allows a cable operator to eventually eliminate double marginalisation and internalise all profits (in 1999, Sky bid £625 million for Manchester United, a bid that was rejected by the UK Competition Authority). Several studies show a significant efficiency gain from vertical mergers between broadcasters and distributors, resulting into increased programme diversity, more subscribers and price decrease between merging firms (Ahn and Litman, 1997; Chipty, 2001; Ford and Jackson, 1997; Rogerson, 2013; Suzuki, 2006; Waterman and Weiss, 1996).

Secondly, vertical integration is said to create anticompetitive effects such as a raise in rival's costs, entry-deterrence and, therefore, market foreclosure for alternative networks and distributors (see Figure 2). Vertical integration not only allows firms in a weaker position to defend against powerful players from adjacent stages in the value chain, it is often strategically used to create or exploit market power by raising entry barriers or allowing price discrimination across different customer segments (Rey and Tirole, 2007; Riordan, 1998; Salinger, 1988). If the merging firm has market power on the upstream level, 'input foreclosure' might arise. Hence, backward integration may create incentives for the merged entity to foreclose its competitors on the downstream market. Exclusive dealing of sports rights forms an essential component of pre-emption strategies deployed by first-moving downstream operators (Doganoglu and Wright, 2010; Shapiro, 1999). In the case of the exclusive control of premium content and/or the ownership of affiliated networks, merged firms can stop supplying downstream rivals and deny completely the access to the (necessary) input (Harbord and Ottaviani, 2001). In the UK, Ofcom forced the leading pay-TV operator, BSkyB, to make available Sky Sports to competing platforms (like BT) at significantly reduced wholesale prices. Ofcom claimed that Sky was abusing its market power in the wholesale supply of its premium channels to limit distribution to rivalling platforms, thereby driving up access prices, limiting consumer choice and restricting platform innovation.

Conversely, 'customer foreclosure' occurs when downstream firms have exclusively access to input from upstream firms of the merged entity. Backward integration allows cable operators to deny unaffiliated networks access to their subscribers, and give carriage priority to affiliated channels. Suppose a broadcaster wants to launch a sports channel and asks a pay-TV operator to be distributed. The pay-TV operator, however, is vertically integrated with a sports league, or has secured exclusive rights to several

sports events. In such scenario, chances are likely that the distributor will decide not to carry the new channel because it is a competitor to its proprietary sports channels. The anticompetitive effects of vertical integration between programming and distribution in the cable television industry have been widely investigated. Research provides evidence that vertically integrated cable distributors are more likely to exclude rival cable programming networks and favour affiliated networks in terms of pricing and positioning. Vertically integrated operators could potentially raise a rival network's cost and its vulnerability to competition by excluding or disadvantaging the rival network (e.g., by demanding that the rival network pays the cable operator for carriage) (Chen and Waterman, 2007; Chipty, 2001; Hong et al., 2011; Singer and Sidak, 2007; Waterman, 1995; Waterman and Choi, 2011; Waterman and Weiss, 1996). Furthermore, studies reveal that vertically integrated cable operators are more likely to collude with other vertically integrated operators to carry each other's networks (reciprocal carriage) (Kang, 2005; Lee and Kim, 2011). However, the results do not imply that all non-integrated cable operators pay higher programming prices, nor are they systematically denied access to programming affiliated with competing cable operators.

**Figure 2** Foreclosure effects of vertical integration



For more than a century, bureaucratic hierarchical organisations were the engine of economic activity in the media and telecommunications industries. Mergers and acquisitions (M&A) have been a widespread strategy in the industry; deregulation and the emergence of the Internet since the 1990s have led to an increase in M&A activity for large media companies. Most acquisitions were driven by the belief that media firms

were subject to economies of scale and that corporate integration would create synergies (Chambers and Howard, 2006; Sullivan and Jiang, 2010). Hence, 'big is beautiful' was the reigning business motto during the heydays of industry consolidation, exemplified by the megalomaniac fusion between AOL and Time Warner in 2000. Convergence was said to create a need to fill 'new media' channels with content and eliminated any compelling reason to impede cross-industry concentration of media ownership. Hence, it became fashionable for a content company to vertically integrate with a carrier, and vice versa (Winseck, 2002). Despite the recent megamerger between Comcast and NBC in the US, vertical integration has become a small and declining factor in broadcasting. Whereas in 1994, 53 per cent of all US networks were owned by or affiliated with at least one cable or satellite operator, this percentage had fallen to 15 per cent in 2006 according to the FCC's *Video Competition Report* (2006).

In contemporary industries, new business organisational forms, including strategic partnerships and networks are replacing traditional bureaucratic hierarchical entities as well as simple market-based transactions. Jin (2011) sees de-convergence as the most significant business trend in the 21<sup>st</sup> century media industry, with firms focussing on core businesses through deconsolidation. Such form of vertical disintegration allows companies to establish spin-offs and split-offs that can be managed in a much more flexible manner (Landers, 2004). Hence, Jin (2013) claims that massive media behemoths will slightly evolve into specialised firms that focus on specific activities with strategic partners in the industry. In that respect, some have raised the concept of 'network organisations' to describe media firms as flexible and adaptable entities that operate within a network of interlinked entities (Arsenault, 2011; Arsenault and Castells, 2008; Colapinto, 2010). Others have studied the implementation of strategic alliances in the competitive strategy of large media corporations (Chan-Olmsted, 1998; Liu and Chan-Olmsted, 2003; Oba and Chan-Olmsted, 2007). Still, recent megamergers between Bell and Astral (Canada), Liberty Global and Virgin Media (UK), and Foxtel and Austar (Australia) clearly show that horizontal mergers and acquisitions remain prevalent in international TV broadcasting markets.

### ***3.2.1. Classification of buyer-supplier relationships***

The previous sections have made clear that in contemporary service industries, also in media and telecommunications, dyadic buyer-supplier relationships are increasingly



replaced by many-to-many relationships, and that value is created and delivered through a complex network of collaborating firms. Whereas business ecosystems are regarded a myriad of inter-firm relationships, interactions between two individual parties often take the form of a strategic partnership between suppliers and customers (i.e. buyer-supplier relationships). Hence, the interactions between broadcasters and distributors should be understood as dyadic buyer-supplier relationships and the commercial nature of such relationships forms the main analytical focus of the study of broadcaster-to-distributor markets. Following the classification by Webster (1992), collaborative partnerships between broadcasters and distributors involve long-term commitment and mutual trust. Furthermore, cooperative negotiations produce a fair level of payments between the channel participants (in either direction) and represent a win-win partnering. Instead of collaborative partnerships, however, conflicts between downstream and upstream firms, such as those between broadcasters and distributors, increasingly drive cooperative relationships towards adversarial arm's-length interactions, which normally end up in zero-sum games with one party capturing most of the value, or in lose-lose situations when negotiations fail (Lonsdale, 2004).

Whereas most of the research in marketing relationships treats buyer-seller relationships as one-time purchases, Dwyer et al. (1987, p. 11) point that buyer-seller relationships include a relational element, and are planned and administered instead of being conducted on an *ad hoc* basis. The relational view on buyer-seller relationships focuses on the reasons and conditions under which repeated patterns of interaction allow buyers and suppliers to enjoy improved relational and economic performance (Arndt, 1979; Dyer, 1996; Dyer and Singh, 1998; Zerbini and Castaldo, 2007). In that context, trust between the contracting parties has been identified as one of the most important predictors of successful buyer-supplier dyads: trustworthy actors are more attractive and generate positive economic consequences. Trustworthy suppliers (buyers) are confident that the buyer (supplier) will not act opportunistically, and can devote fewer resources to monitoring or enforcing contractual terms (Hald et al., 2009, p. 964). Trust is considered a necessary condition for organisations that depend on inter-firm relationships. Furthermore, trust is believed to facilitate informal cooperation, lower transaction and negotiation costs, and lead to superior information sharing between the dyad actors (Dyer and Chu, 2003). Moreover, the development of

cooperative norms – an agreed set of expectations as to how each party should behave in the relationship – may help contracting parties to deal with power conflicts, low profitability and opportunistic behaviour (Cox et al., 2003).

In addition to trust, mutual dependence between parties (interdependence) has been posited numerous times in motivating each party to develop successful and jointly beneficial exchange relationships (Ganesan, 1994; Hald et al., 2009). Dependence is defined as the degree to which a buyer (supplier) needs to maintain the relationship with a supplier (buyer) in order to achieve desired goals. Moreover, dependency is created through transaction-specific (idiosyncratic) assets; customers are locked in as they are more or less enforced to invest in transaction-specific assets (Anderson and Weitz, 1992; Anderson and Narus, 1990). Pfeffer and Salancik (1978, p. 40) focus on ‘outcome interdependence’ that exists whenever one actor does not entirely control all of the resources necessary for the achievement of an action or for obtaining the outcome desired from that action. Since interdependence causes uncertainty, one of the typical strategies to reduce the external control of organisations is increased coordination and mutual control over each other’s resources (through M&A’s, joint ventures, etc.). In order to defend against opportunistic behaviour and lessen dependence upon another organisation, firms regularly engage in collaborative, long-term relationships (see the past, exclusive partnership between Woestijnvis and VRT). However, the mere fact that firms create value by collaborating with suppliers and customers does not imply that competitive tensions with respect to the appropriation of margins are unlikely to emerge. Hence, collaborative efforts (*pie-expansion*) might co-exist with bargaining processes (*pie sharing*) (Jap, 1999, 2001). Business relationships that highlight such ambivalence of competition and cooperation illustrate situations of ‘co-opetition’ inherent in business ecosystems (Bengtsson and Kock, 2000; Brandenburger and Nalebuff, 1996; Stein, 2010).

Marketing literature provides plenty of buyer-supplier classifications, assessing issues of (mutual) trust and dependence. Campbell (1985) presents a classification of buyer-supplier relationships illustrating the interplay between buyer’s and supplier’s strategies. The model provides a deeper understanding of the nature of buyer-seller relationships, and gives insight in the conflicting strategies between buyers and sellers. Campbell distinguishes between three interaction strategies (competitive, co-operative

and command) that buyers and sellers use in relation to the counterpart. First, a 'competitive strategy' refers to a situation in which the relationship counterpart typically has several alternative buyers or sellers, and maximises benefits in the short term. Second, a 'co-operative strategy' is adopted by a seller or buyer when both are willing to establish a long-term relationship, to exchange information openly and trust each other. Third, a 'command strategy' is based on the power imbalance in the relationship and occurs when one dominant party is willing to exercise power over its counterparts. Depending on the interplay of interaction strategies, independent, dependent and interdependent buyer-seller relationships might arise (see Figure 3). Independence arises when either a buyer or seller plays the market and has plenty of potential counterparts. This occurs when buyer and seller strategies are competitive. Furthermore, independence also arises in a buyer's market, where there are many competitive sellers, and in a seller's market, with many competitive buyers. Interdependence occurs when buyers and sellers approach the relationship with a strategy of cooperation. Finally, a dependent relationships is formed when one party exerts power over the other.

**Figure 3** Classification of buyer-seller relationships (Campbell, 1985)

		Buyer's strategies		
		Competitive	Cooperative	Command
Seller's strategies	Competitive	<b>Independent</b> Perfect market	Mismatch	<b>Independent</b> Seller's market
	Cooperative	Mismatch	<b>Interdependent</b> Domesticated market	<b>Dependent</b> Captive market
	Command	<b>Independent</b> Buyer's market	<b>Dependent</b> Subcontract market	Mismatch

Based on data from the US and Japanese automotive industry, Bensaou (1999) provides a portfolio of buyer-seller relationships. Using a transaction costs approach, Bensaou separates the relationship types based on the specific investments made by each other to the relationship (2x2 matrix, see Figure 4). First, in a 'strategic partnership', buyers and sellers have put highly idiosyncratic assets into their

relationships. The complexity of the product, requiring high levels of customisation, demands for close interactions between the buyer and supplier. The model sees regular information exchange, frequent site visits from both partners, and a trusting and collaborative climate as general characteristics of strategic partnerships. Second, in case of 'market exchange', neither party makes special investments and has therefore no significant switching costs. The upstream market is highly competitive, with many alternatives available. Although the climate is not built on mutual trust and commitment, the relationship can last over long periods of time. Third, 'captive buyers' make a high level of specific investments, whereas supplier's investments are low. Since the suppliers are few in the market, strong bargaining power makes it difficult for buyers to switch to another supplier. Relationships between captive buyers and controlling suppliers are fragile due to the high levels of distrust. Finally, 'captive suppliers' make a high level of specific investments not returned by the buyer. As the buyer is dominant, suppliers need to spend effort in maintaining the relationship with the buyer. Nevertheless, there exists a high level of mutual trust in captive supplier relationships.

**Figure 4** Buyer-seller relationships portfolio (Bensaou, 1999)

High	<b>Captive buyer</b>	<b>Strategic partnership</b>
Buyer's specific investments	<b>Market exchange</b>	<b>Captive supplier</b>
Low	Low	High
	<b>Supplier's specific investments</b>	

According to Cox et al. (2003), buyer-seller relationships consist of two main dimensions. First, the model identifies a continuum of generic ways a buyer can interact with a supplier, with arm's-length and collaborative relationships style as the extremes. An arm's-length way of working involves a low level of contact between the buyer and supplier. In such kind of relationship, buyers and suppliers simply exchange contractual information that is required for the transaction to take place. In contrast, a collaborative relationship involves high contact and close communication, and is aimed at the creation of additional surplus value in the relationship. Second, the model assesses the division of the surplus value that is created by the relationship. Generally, the surplus value can be apportioned in three different ways. When the buyer takes the majority share, the

surplus value is largely taken as consumer surplus. In case the supplier takes appropriates the majority share, the surplus value is largely taken as producer surplus. If the surplus value is shared in an approximately even manner, there is an equal amount of consumer and producer surplus. Combing these two dimensions in a 2x3 matrix, six generic buyer-seller relationships are identified (see Figure 5). A dominant buyer (supplier) can choose whether or not to develop collaborative relationships with suppliers (buyers). The need for collaboration will depend on the nature of the transaction, such as asset specificity and uncertainty. Yet, whatever choice is made, dominant buyers and sellers normally capture most of the surplus value. In case of a buyer-supplier interdependence, both parties will negotiate the degree of collaborative activity. The relative strength of the two parties within the relationship will also provide them with the ability to equally share the surplus value.

**Figure 5** Generic buyer-supplier relationships (Cox et al., 2003)

<b>Adversarial Arm's-length</b>	<b>Adversarial Collaborative</b>	Share of surplus value
Buyer dominance/ Independence	Buyer dominance	
<b>Non-adversarial Arm's-length</b>	<b>Non-adversarial Collaborative</b>	
Interdependence	Interdependence	Balanced
<b>Adversarial Arm's-length</b>	<b>Adversarial Collaborative</b>	Skewed (Supplier)
Supplier dominance	Supplier dominance	
<b>Arm's-length</b>	<b>Collaborative</b>	
<b>Way of working</b>		

### 3.2.2. *Power in buyer-supplier relationships*

Power is identified as a third essential component of buyer-supplier relationships and found inherent in exchange interactions between two or more business partners (Hingley, 2005). In his influential contribution, Emerson (1962) points that power is a property of the social relationship and not attributed to actors, implying that power is embedded in the social structure and dependent on the specific context of the relationship. He argues that power for a buyer in a relationship with a supplier is the

'resistance' from the supplier to acquiring value for money that can be overcome by the buyer. In a similar vein, the power of a supplier is judged by its ability to overcome any resistance from the buyer aimed at preventing it from earning above normal profits. Cox (2004) adds that a buyer (supplier) can overcome resistance from a supplier (buyer) by controlling and limiting access to 'power resources'. Consequently, to understand the power asymmetries in buyer-supplier relationships and assess mutual dependencies between the channel members, the respective power resources of both sides need to be identified and compared. Under each power regime, buyer-supplier relationships may take another form and lead to different outcomes. Despite the variety of approaches and dimensions considered, the portfolios of generic buyer-supplier relationships discussed above suggest the existence of four buyer-supplier power structures: buyer dominance, interdependence, independence and supplier dominance (see Figure 6). The view that resource dependence produces power asymmetry and that sees resources as a basis of power is completely in line with resource dependence theory (Pfeffer and Salancik, 1978).

**Figure 6** Attributes of buyer and supplier power (Cox, 2004, p. 352)

Attributes to Buyer Power Relative to Supplier		HIGH	<p style="text-align: center;"><b><u>BUYER DOMINANCE (&gt;)</u></b></p> <p>Few buyers/many suppliers Buyer has high % share of total market for supplier Supplier is highly dependent on buyer for revenue with few alternatives Supplier's switching costs are high Buyer's switching costs are low Buyer's account is attractive to supplier Supplier's offering is a standardized commodity Buyer's search costs are low Supplier has no information asymmetry advantages over buyer</p>	<p style="text-align: center;"><b><u>INTERDEPENDENCE (=)</u></b></p> <p>Few buyers/few suppliers Buyer has relatively high % share of total market for supplier Supplier is highly dependent on buyer for revenue with few alternatives Supplier's switching costs are high Buyer's switching costs are high Buyer's account is attractive to supplier Supplier's offering is relatively unique Buyer's search costs are relatively high Supplier has moderate information asymmetry advantages over buyer</p>
		LOW	<p style="text-align: center;"><b><u>INDEPENDENCE (0)</u></b></p> <p>Many buyers/many suppliers Buyer has relatively low % share of total market for supplier Supplier has little dependence on buyer for revenue and has many alternatives Supplier's switching costs are low Buyer's switching costs are low Buyer's account is not particularly attractive to supplier Supplier's offering is a standardized commodity Buyer's search costs are relatively low Supplier has very limited information asymmetry advantages over buyer</p>	<p style="text-align: center;"><b><u>SUPPLIER DOMINANCE (&lt;)</u></b></p> <p>Many buyers/few suppliers Buyer has low % share of total market for supplier Supplier has no dependence on buyer for revenue and has many alternatives Supplier's switching costs are low Buyer's switching costs are high Buyer's account is not particularly attractive to supplier Supplier's offering is relatively unique Buyer's search costs are very high Supplier has substantial information asymmetry advantages over buyer</p>
			LOW	HIGH
			Attributes to Supplier Power Relative to Buyer	

Issues of power and dependence in buyer-supplier relationships have received wide attention in channel marketing research, and have been predominantly viewed as alien to effective relationships and in a negative sense, negating cooperation as the antithesis of trust. Literature presumes that when power asymmetry exists the dominant party

will exploit the weaker party, the more dependent actor will be dissatisfied with the relationship. Hence, imbalanced dyadic relationships are found to be less cooperative, less stable and more conflictual (Benton and Maloni, 2005; Rokkan and Haugland, 2002). Whereas most authors emphasise the negative consequences power asymmetry and dependence generate, others tend to contest this viewpoint and reject the underlying assumption that imbalanced power positions automatically result in skewed business relationships. Dapiran and Hogarth-Scott (2003) rebut that cooperation opposes to power, and contend that power and dependence can be mechanisms for achieving coordination amongst channel members. According to Weitz and Jap (1995), the exercise of power in buyer-supplier relationships does not always generate negative consequences for the less powerful party. Powerful parties might undertake actions that improve coordination and result in benefits for both parties (pie-expansion), but the weaker party must rely on the dominant party to share the increased benefits fairly (pie sharing). Indeed, imbalanced relationships may generate trust and commitment, but only if the powerful party treats the weaker, and more vulnerable, party fairly (Kumar, 1996, 2005). Business partners experience equity in relationships when they perceive that the outcomes they receive from the relationship are proportional to their respective inputs. If distribution is equitable, parties are more likely to demonstrate trust and commitment (Scheer et al., 2003).

Economic theory provides an explanation for why larger buyers, relative to smaller buyer firms, bargain lower prices with suppliers, referring to the concept of 'pivotal power'. The phenomenon of input suppliers charging larger buyer firms lower prices is commonly explained in terms of a supplier's economies of scale, intense supplier competition for larger buyers and the larger bargaining power of large-sized buyers. Snyder (1998) points that input prices may decrease with buyer size in case suppliers produce homogeneous products at constant marginal and average costs. But, as Katz (1987) argues, the argument of bargaining power holds no water unless there is a credible threat that buyer firms are likely to either switch to another supplier or integrate backward – assuming the absence of substantial entry barriers. Hence, risks of being bypassed by large buyers may discipline prices charged by the supplier, and price discrimination between buyer firms may prevent from social inefficient backward integration. An alternative explanation is provided by Tyagi (2001), who shows that

even in the absence of supplier competition and buyer bargaining power, a supplier may differentially price in favour of a large buyer. The study suggests that differential pricing allows suppliers to reduce tacit collusion between downstream buyers and improves consumer welfare. However, Raskovich (2003) found that buyers not always benefit from firm size in a bargaining context, and that pivotal power may even worsen a large buyer's bargaining position vis-à-vis suppliers. The reason is that pivotal buyers can no longer credibly abdicate responsibility for covering a supplier's costs and often cross-subsidise consumption by smaller, non-pivotal buyers.

Neoclassical economics suggests that a large buyer firm, relative to small buyers, has an obvious advantage in obtaining price concessions from suppliers, and that size confers 'countervailing power' (Galbraith, 1952; Snyder, 1996, 2008). Consequently, research found evidence of countervailing power in most of the industries that are organised as oligopolies, rather than monopolies – including the retail, airport and cable television industry (Chen, 2003; Chipty, 1995; Dobson and Waterson, 1997; Geylani et al., 2007). In contrast to Nash bargaining that involves a static model, channel relationships undergo a continual balancing act where strategies undertaken by one party to gain a larger share of the benefits provoke reaction from other channel members to rebalance power (Dapiran and Hogarth-Scott, 2003). The fact that large buyers (or suppliers) might derive superior commercial terms from negotiations explains why weaker parties are more likely to form strategic alliances and/or undertake collective action to enhance their bargaining position vis-à-vis powerful retailers or manufacturers. A large body of Industrial Organisation literature has investigated why forming coalitions of buyers (or suppliers) through mergers or alliances leads to market power and can be advantageous when input prices are determined by bargaining (Bastl et al., 2013; Inderst and Wey, 2007; Li, 2012). With regard to the purchase of sports rights and advertising, collective bargaining is also prevalent in television broadcasting and cable markets, but strictly regulated under antitrust laws (Chae and Heidhues, 2004).

Meehan and Wright (2012) point that so far few buyer-supplier literature has addressed the origins of power positions in the supply chain. Although research suggests that the vast majority of manufacturer-retailer relationships are skewed in favour of large retail buyers (e.g., Dukes et al., 2006; Hald et al., 2009; Kumar, 1996;



Lang, 2003), the debate on which resources affect, influence and determine bargaining power in buyer-supplier relationships remains largely unsolved. According to Industrial Organisation theory, power is enhanced by the concentrated ownership of critical resources, the absence of substitutes for dominant buyers or suppliers, combined with the degree of product differentiation and the level of switching costs (Comanor and Rey, 2003; Lustgarten, 1975; Peitz and Belleflamme, 2010; Porter, 1980). The abovementioned studies emphasise that market structure and firm characteristics are the only dimensions of the origin of power. Others, however, support the proposition that power in buyer-supplier relationships is a pluralistic concept and present a multidimensional approach to power. Meehan and Wright (2012) distinguish between the organisational variables (market environment, commercial attractiveness), individual characteristics (knowledge, skills and profile) and relational interactions (relationship focus and outcome focus) to identify the underlying sources of power in particular buyer-supplier relationships. Campbell (1985) provides an integrated model of organisational buyer conduct and identifies product, industry, organisation and individual characteristics as power variables in buyer-supplier relationships. Hence, strong economic positions not always pay off in superior commercial outcomes as favourable deals could be leveraged through personal relationships, negotiation skills, high motivation and/or strong leadership (van Dijk and Vermunt, 2000). In contrast to all those studies that explore the attributes of either buyer or supplier power, the complexity and the bi-directional nature of the power construct imply that the respective power sources need to be assessed at both sides of the dyadic side.

**Figure 7** Power resources in broadcaster-to-distributor markets

<b>MICRO - PRODUCT</b>	<ul style="list-style-type: none"> <li>- Product Differentiation</li> <li>- Exclusivity</li> <li>- Bundling</li> <li>- Switching Costs</li> </ul>
<b>MICRO - COMPANY</b>	<ul style="list-style-type: none"> <li>- Relative Size</li> <li>- Conglomerateness</li> <li>- Vertical Integration</li> <li>- Financial Resilience</li> </ul>
<b>MESO - MARKET</b>	<ul style="list-style-type: none"> <li>- Industry Concentration</li> <li>- Number of Buyers/Sellers</li> <li>- Entry Barriers</li> <li>- Technological Change</li> </ul>
<b>MACRO - INSTITUTIONS</b>	<ul style="list-style-type: none"> <li>- Media-Specific Regulation</li> <li>- Telecommunications Policy</li> <li>- Competition Law</li> <li>- Copyright Law</li> </ul>

Based on findings from the literature reviewed above, a preliminary model identifying power resources in broadcaster-to-distributor markets is presented. Figure 7 summarises the four major clusters of power resources that determine bargaining power of TV broadcasters and distributors. Hence, I propose a multidimensional approach to bargaining power in TV broadcasting, building further on concepts from Industrial Organisation literature, and relying on insights from the political economy of communications. Basically, the model proposes that one needs to analyse the structure of the market, and firm characteristics to assess the level of bargaining power a company has. Furthermore, the nature of the products sold and offered to the customer may have a decisive impact on the level of bargaining power. Finally, a change in the policy and regulatory framework can affect and possibly rebalance asymmetric power relationships in the market. The main point I want to make is that the respective position in the chain does not adequately explain (relative) bargaining power, and that the allocation of power is context-specific and varies between different politico-economic settings. Since different geographical markets exhibit different configurations of power and control (compare UK and US), analysts should investigate the individual power attributes in broadcaster-to-distributor relationships. Based on empirical results (see next chapter), the model is further elaborated in the following parts of the text.



# 4. RESEARCH DESIGN: APPROACH, METHODS AND DATA COLLECTION

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As Doyle and Frith (2005, p. 554) claim, standard economic theories do not always provide an adequate framework for analysing media firms' strategic behaviour, or for dealing with the 'resource inefficiencies' related to the production and distribution of television. Indeed, the rationale for distinguishing media economics and management as specialised fields of inquiry builds upon the need for theory frameworks that are tailored to the specificities of the media and communications industries. Still, media management, and to a lesser extent media economics, are at an early stage of developing alternative analytical frameworks, and are therefore in some way under-theorised (Küng, 2008). Since carriage disputes have gained relatively little attention in academic literature, and no one-size-fits-all framework exists for understanding vertical competition between broadcasters and distributors, the main goal of this inquiry is the development of a conceptual framework that allows identifying the bargaining levers of broadcasters and distributors, and grasping the competitive dynamics in broadcaster-to-distributor markets all over the world. Consequently, the focus of the research is both descriptive (How has power in television markets evolved over the last decades?) as well as interpretative (What contextual levers impact on the power relationships between broadcasters and distributors?) in nature.

By lack of a valid theory framework, this dissertation builds upon inductive reasoning that constructs generalised propositions that are derived from concrete cases. Our research design was thus guided by the general intent to understand the power relationships in the broadcaster-to-distributor market rather than by testing specific hypotheses deduced from theory. Whereas deductive analysis aims at testing prior

assumptions, theories or hypotheses, inductive reasoning refers to approaches that primarily use detailed readings of 'raw' data to derive concepts, themes, patterns or a model through interpretations made from the raw data by the researcher (Thomas, 2006). As the focus of inductive reasoning is not on empirical observation per se, its primary purpose is to develop a framework of the underlying structure that is evident from the data analysis. The inductive approach is most similar to grounded theory, which entails an iterative process of simultaneous data collection and analysis, and where analysis informs the next cycle of data collection (Strauss and Corbin, 1998). Such a cyclical research design involves comparative analysis of new and available information, and requires theoretical (purposeful) sampling of fresh, information-rich cases to confirm or falsify temporary hypotheses. The inductive and grounded theory approach is typical of a qualitative research design.

#### **4.1. Qualitative approach**

Whereas quantitative research has been the dominant form of inquiry in media economics (e.g., econometrics), the qualitative approach has been most popular among media management scholars (Beam, 2005). Especially since 2000 and the launch of the *International Journal on Media Management* and the *Journal of Media Business Studies*, qualitative techniques are on the rise in the literature, and increasing emphasis has been put on the organisational and management aspects of decision-making in contemporary media firms. Doyle and Frith (2005) state that 'qualitative research is well-suited to investigating work practices and managerial styles, and carrying out organisational research' (p. 562). The reason is that qualitative methods put emphasis on individuals' interpretations of their environments, and allow nuances and contexts to be taken into account. Hence, qualitative methods provide the most appropriate research tools to understand what is going on within organisations from the perspective of the practitioner, and allow the researcher to assess the impact of the strategic and institutional context in which executives behave (Bryman, 1995).

Moreover, qualitative methods are central to the work done by scholars working at the crossroads of media business and media policy, as Hollifield and Coffey (2005, p. 573) note. Indeed, communication policy research has seen an exponential growth in the use of qualitative methods, which are helpful in exploring and understanding a diversity

of social and public policy issues, either as an independent research strategy or in combination with some form of statistical inquiry (Ritchie and Spencer, 2002). In addition, qualitative techniques are used in communication policy research for studying how power structures and asymmetrical relationships emerge within the media ecosystem and how they impact on regulation processes (Löblich and Pfaff-Rüdiger, 2012). Using the negotiations for a new management contract of the Flemish PSB as an example, Van den Bulck (2012) elaborates on how stakeholder analysis helps in grasping the formal structures and process of decision-making, and understanding the final outcome of the resulting policy process.

As it is a fundamental principle that the choice of a particular research method should be driven by the research question, this dissertation relies on a qualitative approach, including interviews and document analysis as data collection techniques. As mentioned earlier, our study focuses on how broadcasters and distributors build bargaining leverage during carriage negotiations, and which institutional structures impact on the power relationships in television markets. The specified and exploratory nature of the research, which seeks to identify and assess the variables that are at stake in broadcaster-to-distributor markets, urge for a more qualitative approach. Compared to quantitative techniques, which normally use predefined and categorised responses, qualitative methods provide a more flexible framework for data collection and allow media executives to share their own experiences, explanations and interpretations of events happening in the market or taking place around the negotiating table. Hence, the development of a detailed picture of how bargaining power is built and leveraged in broadcaster-to-distributor markets needs a qualitative research design, using multiple methods of data collection.

By virtue of available data, research to broadcaster-to-distributor markets also allows for a quantitative approach, measuring the relationships between structure, conduct and business performance of broadcasters and distributors operating in the market, and assessing the impact of organisational and environmental variables on the financial outcome of carriage negotiations (dependent variable). This way, the leverage of vertically integrated cable operators, or providers of exclusive programming, on the level of carriage fees paid (or received) can be analysed by means of basic correlations and regression techniques, or modelled through more complex and explanatory

statistics including structural equation modelling (e.g., Chen and Waterman, 2007). By testing hypotheses in a statistical way, firm conclusions can be made about the impact of the respective bargaining levers, and mainly those related to objectively measurable market and organisational variables, such as firm size, industry consolidation and financial resilience. Research efforts can then focus on comparing national market structures and policies, and eventually assess differences between small, medium and large domestic markets.

However, one major barrier to quantitative modelling is the availability of reliable data on the outcome of carriage negotiations. Despite the exposure of particular retransmission fees in daily press, trade magazines and analyst reports, the specifics of the carriage deals between broadcasters and distributors are not made public as they are subject to confidential contracts. Analyst and research firms specialised in media economics, such as SNL Kagan and Screen Digest, cover broadcaster-to-distributor markets, and publish data-rich reports on carriage agreements from the most important markets. Unfortunately, detailed figures are typically reserved for paying clients, subject to expensive subscription modules. Furthermore, the reports focus on the largest markets in- and outside Europe, and generally overlook smaller markets such as Belgium. Hence, this lack of access to a company's privileged data (including commercial information, customer data or financial reports), which has been identified as one of the most important problems in media business research (Doyle and Frith, 2005), induced us to adopt a more qualitative approach.

## **4.2. Case study approach**

Due to the complexity of organisational phenomena, the use of case study analysis is widespread in the field of media management and economics. Case study research implies a thorough and in-depth examination of a given phenomenon, taking into account the complexities of context. Case studies are frequently used either to identify potential concepts and variables for later research, or as a method to illustrate an example of a particular phenomenon (Bryman, 2012). Furthermore, case study analysis is valuable in 'conducting exploratory research, when the aim is to gain insights about, say, areas of organisational activity that are not yet well documented or understood and that can only be teased out through prolonged, detailed, and multi-layered scrutiny'

(Doyle and Frith, 2005, p. 565). Because case study research is said to be particularly well-suited to the study of emerging and complex phenomena, this is considered to be a valid proposition for the analysis of power relationships in broadcaster-to-distributor markets. Case study analysis is predominantly explorative and descriptive in nature, and therefore does not provide a sufficient basis for scientific generalisation. However, including more cases in the research design allows for more far-going conclusions about the phenomenon of analysis (Vennesson, 2008).

Essentially, case studies are 'single unit' analyses and deal with a spatially bound phenomenon, observed at a single point in time or for a limited period of time (Yin, 2008). The central weakness of a single case study approach (i.e., external validity) is addressed by comparative case study analysis that incorporates multiple units into the research design. Consequently, comparative case studies allow revealing patterns and structures that would not be evident in a single case study, and improve the validity by extrapolating (or contrasting) findings to other cases with similar (or different) conditions (Bryman, 2012). However, understanding in depth how an industry works does not necessarily mean that a large number of cases needs to be included. The more cases that are added to the study, the more complex the research design grows and the fewer details the researcher will be able to gather about each case. As a result, a multiple case study approach tends to be more focused on specific variables than is single case study research (Hollifield and Coffey, 2005). Some of the papers bundled in the dissertation are built upon a case study approach, including either single or multiple cases. Irrespective the number of cases incorporated, the goal was to allow a deeper understanding of a particular phenomenon (e.g., the sports rights market) or to study a phenomenon in separate contexts (e.g., the broadcaster-to-distributor market).

Relevant case selection is of utmost importance within case study research to capture the richness of a case's details. In contrast to quantitative survey research that benefits from random sampling, a case study approach is best served by information-oriented sampling strategies. Patton (1990) suggests that in order to increase the quality of the research design, the selection of cases needs to be driven by the issues of appropriateness and adequacy. Appropriateness is related to demonstrating a fit between the research purpose and the phenomenon of inquiry, whereas adequacy is concerned with the sufficiency and quality of the data obtained (Kuzel, 1999). Seawright



and Gerring (2008) prescribe that selection techniques require in-depth familiarity of each case, and that case selection and case analysis are intertwined. Scholars lean primarily on pragmatic considerations such as time, budget, expertise and access. In addition, case selection may also be influenced by the theoretical prominence of a given case, and how well that case is situated along the dimensions within the population of interest. In our comparative analysis of two broadcaster-to-distributor markets (see Evens and Donders, 2013), pragmatism – depending on the preferences of the client – led us to select Flanders and Denmark as cases. Moreover, both were considered two most similar cases and allowed for a comparative case study analysis.

### **4.3. Data collection methods**

Case studies are often methodologically complex, employing multiple research methods and typically generating large volumes of detailed information. Quantitative methods may be used, but case study research generally includes qualitative data collection techniques.

#### **4.3.1. Primary data: interviews**

For the most part, our research draws upon in-depth, semi-structured expert interviews conducted with representatives of media organisations along the television broadcasting value chain. In-depth interviews allow personal contact between the researcher and the interviewee for longer periods of time – generally one or more hours (Bryman, 2012). Interviews can take a structured, semi-structured or unstructured form. A structured interview includes a predetermined list of questions from which the interviewer does not vary. Semi-structured interviews contain preset questions, but provide more flexibility to follow up topics of inquiry that may be raised by the respondent. An open, unstructured interview is free-flowing, where the interviewer hardly intervenes (Creswell, 2007). Expert interviews are a popular method among researchers involved in media business and policy studies because media executives and policymakers are more likely to consent to such conversational style that allows them more control of the direction of the interview. Additionally, in-depth interviews have the advantage that researchers gain (sometimes off-the-record) background information about the problem under examination and the various perceptions in the decision-making process (Löblich and Pfaff-Rüdiger, 2012).

Gaining access to specialist respondents is of utmost importance in expert interview research. One of the challenges lies in identifying and contacting the right individuals in the organisations of interest. Generally, the amount of experts available for an interview is quite limited because only few people within media organisations are in the position to explain the corporate strategy; others may be rather reluctant to commit the time and patience required for an interview. Additionally, some experts may be rather suspicious about the aims of the researcher, and hence unwilling to share their knowledge and perceptions, especially when it concerns proprietary company information (like in this case). One way of overcoming this problem is by guaranteeing full confidentiality and/or anonymity to the interviewee (Hollifield and Coffey, 2005). Since respondents often tend to represent themselves (or their organisations) in a more favourable way – over-reporting ‘good’ or under-reporting ‘bad’ behaviour – rather than to provide completely accurate information, the authenticity of the information is further ensured by cross-checking with different stakeholders. In this context, triangulation of data – using multiple data sources – evaluates interviewee statements from other points of view and assess the validity of findings, interpretations and conclusions (Thomas, 2006).

Despite the explosive and confidential nature of carriage disputes, thirty-six experts – representatives from broadcasters and distributors, regulators, or academics specialised in the field, both national and international – accepted our invitation to a semi-structured interview (in some cases via telephone or e-mail). Industry respondents were all (senior) managers and/or decision-makers, hence responsible for the operational and some wider strategic issues of distribution. More specifically, most interviewees have been intensively involved or have a special insight into the bargaining game between broadcasters and distributors, particularly in Flanders. All respondents were invited to express their perceptions and experiences with regard to carriage negotiations, and with particular regard to the issues of power and dependency in broadcaster-to-distributor markets. Interview questions were organised around a number of topics in order to ensure that all power variables were discussed. Because of confidentiality reasons, however, the data obtained from the interviews were primarily used as background information, and no quotations are made in order to ensure that the statements made by particular interviewees could not be identified. For similar reasons, most interviews were not recorded and transcribed, although notes were made by the

interviewer. During subsequent interviews, respondents were asked to verify interpretations and findings gathered in earlier interviews. Hence, the validity of the inquiry was increased by cross-checking data with other interviewees.

In addition to the expert interviews carried out (see Table 5 for an overview), the research benefited from informal talks with peers, colleagues and industry stakeholders at various conferences, seminars, committees and workshops. Most notably, discussions with my promoter Lieven De Marez, co-promoter Pieter Ballon and iMinds-Digital Society colleagues Erik Dejonghe, Karen Donders, Jan Loisen, Caroline Pauwels, Eric Van Heesvelde and Pieter Verdegem (in alphabetical order) were extremely helpful and informative, and gave me confidence that I was grasping the essence of the research problem.

**Table 5:** List of interviewees<sup>¥</sup>

	Name and affiliation	Date	Place
1	Bert Wilborg	25 August 2010	Telephone
	Viasat/TV3 (B-D)		
2	Christian Edelvold Berg	30 August 2010	Copenhagen
	Copenhagen Business School (U)		
3	Lykke Nordblom	30 August 2010	Copenhagen
	Danish Radio and Television Board (RTB) (R)		
4	Anders Henten	30 August 2010	Copenhagen
	Aalborg University (CMI) (U)		
5	Reza Tadayoni	30 August 2010	Copenhagen
	Aalborg University (CMI) (U)		
6	Steen Lassen	31 August 2010	Copenhagen
	Lassen Ricard (on behalf of DR) (B)		
7	Thomas Maagaard Dyekjær	31 August 2010	Copenhagen
	Yousee (TDC) (D)		
8	Kim Falkenhard	1 September 2010	Copenhagen
	SBS Denmark (B)		
9	Pernille Nielsen	1 September 2010	Copenhagen
	Boxer TV (D)		
10	Amit Schejter	7 September 2010	E-mail
	University of Pennsylvania (U)		

11	Ernst Bujok	16 September 2010	Antwerp
	Acht, Concentra (B)		
12	Ben Appel	20 September 2010	Brussels
	VMMa (B)		
13	Phil Napoli	21 September 2010	E-mail
	Fordham University (U)		
14	Thierry Tacheney	22 September 2010	Zaventem
	SBS Belgium (B)		
15	Stefan De Keyser	22 September 2010	Zaventem
	SBS Belgium (B)		
16	Ross Biggam	23 September 2010	Brussels
	Association of Commercial Television (B)		
17	Yvette Mignolet	28 September 2010	Vilvoorde
	Vitaya (B)		
18	Ilse Hendrix	28 September 2010	Vilvoorde
	Vitaya (B)		
19	Lut Verduyck	29 September 2010	Brussels
	VRT (B)		
20	Thomas Roukens	30 September 2010	Mechelen
	Telenet (D)		
21	Vicky Giannakis	26 October 2010	Brussels
	Belgacom (D)		
22	David Waterman	25 October 2012	Brussels
	Indiana University (U)		
23	Sergio Gil Trullen	25 October 2012	Brussels
	Telefónica (D)		
24	Viveca Still	25 October 2012	Brussels + e-mail
	Finnish Ministry of Education and Culture (R)		
25	Stefan De Keyser	28 March 2013	Leuven
	Ambition (O)		
26	Koenraad Deridder	3 April 2013	Brussels
	Dekoder (B)		
27	Wim Vanseveren	16 April 2013	Ghent
	Uitzichten (O)		
28	Magnus Brooke	19 April 2013	Brussels + e-mail
	ITV (B)		

29	Dirk Wauters	19 April 2013	Brussels + e-mail
	Jala (O)		
30	Ingrid Kools	23 April 2013	Brussels
	Vlaamse Regulator voor de Media (VRM) (R)		
31	Ann Caluwaerts	24 April 2013	Mechelen
	Telenet – Cable Europe (D)		
32	Amanda Walsch	24 April 2013	E-mail
	Australian Broadcasting Corporation (B)		
33	Ben Appel	29 April 2013	Vilvoorde
	VMMa (B)		
34	Jan Bruyneel	8 May 2013	Brussels
	VRT (B)		
35	Piero Cavaliere	14 May 2013	Antwerp
	Viacom International (B)		
36	Ronny Verhelst	17 May 2013	Kortrijk
	Tele Columbus (D)		

¥ Some interviews were conducted with the help of Karen Donders in the context of the SBS 3.0 study

\* The position of each of the organisations is explained, ranging from broadcaster (B), distributor (D), regulator (R) university (U), and other (O).

#### **4.3.2. Secondary data: document analysis**

Expert interviews were complemented by document analysis, using official, secondary data sources as research material. Documents were used as a basis for the interviews, but also to cross-check findings from the interviews. In contrast to most media and communications research which usually considers document analysis only in a fragmentary way and predominantly focuses on textual analysis, document analysis as a research method has gained popularity in media management and communications policy research over the years. Nevertheless, Karpinnen and Moe (2012) state that ‘document analysis as distinctive research method remains, if not under-developed, at least under-communicated in much of the communication policy research’ (p. 179). According to Altheide (1996), document analysis refers to an ‘integrated and conceptually informed method, procedure and technique for locating, identifying, retrieving and analysing documents for their relevance, significance and meaning’ (p. 2). Documents can have a simply descriptive function, providing (comparative) information of the issues under examination, and treated explicitly as texts or social products. In literature, ‘documents’ are distinguished from scholarly literature, hence not produced

or generated by researchers. Hence, documents are said to be non-reactive and objective, and produced under 'natural' conditions in the sense that the researcher has not affected the collected material. However, borders between documents and academic literature are inevitably blurred because of the interaction between researchers and documentary materials (Karpinnen and Moe, 2012).

During the course of our research, secondary data derived from documents available in the public domain have been an extremely valuable resource. Financial data related to the broadcaster-to-distributor market has been found in variety of industry documents, most obviously annual reports, press releases, analyst reports, investor reports, strategic plans, trade magazines and newspaper articles. Large media and telecommunications firms, especially those that are publicly listed on stock exchanges, publish documents that convey abundant information about their activities and market segments. Relevant economic data was also found in official inquiries by competition and other regulatory authorities, although such privileged data has, in some cases, been kept from public view. Moreover, policy documents, including white and green papers, have helped in understanding the dynamics of the regulatory processes regarding television broadcasters and distributors. Communication from stakeholders in relevant political and industry forums enabled to get a detailed insight in the viewpoints of the respective actors. Finally, communications law and legal rulings proved very helpful material in assessing the wider institutional context in which carriage negotiations take place.



# 5. COLLECTION OF PAPERS: STRUCTURE, ORGANISATION AND SUMMARY

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Instead of submitting a classic, and often voluminous dissertation, this thesis builds upon a selection of 5 peer-reviewed papers published in international journals (included in the Social Sciences Citation Index) and/or edited volumes (publishers included in VABB-SHW), contextualized and discussed within a theoretical and methodological framework. Consequently, all papers went through a rigorous peer-review process and target a broad and international readership. Admittedly, there was no ‘grand design’ guiding the writing and publishing process of each of the papers; neither was there a dedicated research project in which these papers fitted. One could even argue most were written ‘by accident’ or, at least, without being part of a well-planned trajectory in order to create a coherent collection of papers. Despite the absence of such a plan, however, the jigsaw pieces fell into place and a common denominator (i.e. power relationships in television broadcasting) was found. Hence, the thesis should be regarded as the ultimate result of pragmatism, caused by practical constraints of both time and budget.

Although all the papers can stand as individual readings, and are therefore regarded as separate units that address a specific dimension of the research question, they have in common that they deal with the changing politico-economic context of TV broadcasting, and reflect upon power relationships between several stakeholders in the ecosystem, most notably between TV broadcasters (or rights holders) and distributors. Conflicts and carriage disputes, as well as a party’s bargaining power vis-à-vis its competitors, are discussed within the context of sports television rights and retransmission payments. The collection of papers portrays an industry in transition, challenged by institutional transformation and media convergence. The ever-evolving strategic context, fuelled by



disruptive technology, ground-breaking policy and regulatory measures and innovative business models, in which television firms operate affects power balances between all the parties in the ecosystem and might demand for appropriate management strategies and policies.

Obviously, the collection of papers is marked by some degree of eclecticism, and the papers show a wide diversity of topics, approaches and scope. Whereas some papers are more general in nature describing major trends in the industry, others more specifically report on particular issues and have a narrower scope. Some papers have a rather descriptive focus, others are more analytical and tend to be more normative or even provocative. Some papers are theory-based, others have a more empirical focus and provide market-based information, either primary or secondary data. Some papers look behind and analyse past policy, regulatory and industry developments, others set future perspectives. Finally, the geographical scope of the papers reflects a global orientation, discussing developments in Belgium, Europe and the rest of the world. By transcending geographical (and emotional) borders, the thesis provides a much broader perspective on the problem, and allows for a deeper understanding of the competitive dynamics that exceed 'local events' in the broadcaster-to-distributor market.

**Table 6** Normative assumptions versus papers (P1-P5)

	P1	P2	P3	P4	P5
Monopolisation of media industries	X	X	X	X	X
Dialectics between structure and power	X	X	X	X	X
Institutional viewpoint on technology	X	X	X	X	
Dynamic approach to media industries	X	X	X	X	X
Combining competition and media regulation	X	X	X	X	

Table 6 links each of the papers to the normative assumptions that were provided in Chapter 2. The table shows that all of the papers depart from a more dynamic approach to TV industries, where new technology and changing regulations can affect the existing power relations in the market. Furthermore, they assume that a commercial relationship between two entities, suppose a broadcaster and a distributor, might affect other agents (viewers, independent producers) in the ecosystem. In addition, most papers account on an institutional viewpoint, and consider the importance of combining competition law with a media-specific framework for regulating power (asymmetries) in the market for

TV broadcasting and distribution. All papers discuss how media firms try to monopolise upstream and downstream aspects of TV broadcasting, and illustrate how these market structures affect power positions and vice versa.

Basically, most of the papers discuss the impact of industrial organisation and policies on the power positions in the TV ecosystem. It is further argued that power positions are related to the control of critical ‘power resources’, often resulting from concentration of ownership in a horizontal, vertical and/or diagonal direction. In terms of the model presented at the end of Chapter 3, Table 7 maps the papers on the four power variables that were identified based on a literature overview. The table below suggests, first, that all four clusters of power resources are covered by at least one paper, and, second, that the first three papers on the sports rights market deal with all power resources, whereas the last two papers on retransmission payments focus either on policy and regulation, or on the industrial organisation of broadcaster-to-distributor markets.

**Table 7** Power resources versus papers (P1-P5)

	P1	P2	P3	P4	P5
Market structure	X	X	X		X
Firm structure	X	X	X		X
Product features	X	X	X		X
Policy and regulation	X	X	X	X	

This chapter briefly introduces the papers and summarises their results. An overview of the papers (see Chapters 6 to 10) is provided in Table 8 (at the end of the chapter). The papers are introduced in order of appearance.

## 5.1. Paper 1

The first paper<sup>1</sup>, published in a special issue of *Telematics and Informatics* on ‘Mobile Service Architecture and Middleware’ (edited by Pieter Ballon, Anders Henten and Reza Tadayoni), discusses a variety of issues relating to premium content, especially live sports, on mobile service platforms. It is claimed that the issue of programming has been mostly overlooked in the many discussions regarding the very slow development of mobile television in Europe (which is, however, reviving in the form of ‘TV Everywhere’ services). Whereas most attention has centred on technical aspects, the ‘content issue’ is

a major one to tackle while designing sustainable business models. The availability of appealing content, such as live sports, is regarded as an essential part in the customer value proposition of mobile service platforms. Access to content plays a decisive role in the uptake of technology solutions, as shown in former 'standard battles' for VCR and DVD. However, access to sports programming has been identified a huge bottleneck in the mobile service industry due to market and regulatory reasons.

Indeed, alternative operators experience major difficulties in finding access to such content due to the legacy business models of incumbent operators, which are based on the exclusive acquisition of sports rights, leaving no opportunity for other interested parties to bid for rights packages. In addition to the bundled and tied sale of sports rights, which helps incumbents to deploy entry-deterrent strategies, legal barriers, both competition and media regulations, might foreclose effective competition among mobile service platforms. First, the paper highlights that rights packages for mobile services were unequally treated by the European Commission, creating competitive imbalance in the market. Instead of carving up sports rights for different platforms, platform-neutral packages carved out by time-window seem to be the future model. Second, major events regulation demands that a substantial proportion of the public has access to events of major importance to society. Since new media platforms have only limited penetration, the mechanism fails to provide a fair opportunity for new media providers. Once again, a level-playing field for broadcasters and platform operators would intensify competition in the sports rights market.

The major contribution of the paper is that it stresses the importance of live sports in the development of robust business models for (mobile) TV services, which puts sports rights owners and sports broadcasters in a powerful bargaining position vis-à-vis pay-TV operators. The main conclusion is that prevailing industry structures and especially European regulations, which have not taken mobile television (delivered over DVB-H) into consideration, constrain the development of sustainable business models for alternative operators. Rather than legacy business models, the regulatory framework (used to) disfavour(s) alternative operators and create(s) competitive imbalance. The impact on the ecosystem is obvious. Not only have they impeded the successful roll-out of new media platforms, reducing competition on the demand side devaluates sports rights and allows incumbents to grasp TV rights packages for relatively cheap prices.

Furthermore, the paper sets future perspectives for a multi-sided sports platform model, which leaves more power with the rights holder and avoid the hold-up problem for new entrants when contracting with content sellers before selling to the customers. It is in such a context that the launch of league-owned sports networks, such as NFL Network or Eredivisie Live (now FOX Sports Eredivisie), should be evaluated.

## **5.2. Paper 2**

Paper number two<sup>2</sup> reflects on the duality of sports, first, as a global, multibillion dollar business that generates significant economic activity, and, secondly, as a cultural and social activity loved and practiced by millions, if not billions, of people. The role of the media, and television in particular, in the development of sports as a cultural sphere and commercial venture is discussed. It is claimed that sports and television have built a synergetic relationship, one that allows both institutions to reap the fruits from the complementariness of their economic interests. Along with the expanding footprint of capitalism, the transformation of sports into a media spectacle (sports as entertainment) has been highly instrumental for pay-TV operators to take a share of the lucrative sports market. However, free-to-air television coverage of sports events, most notably by PSBs and commercial networks, has helped in creating a public sphere and contributed to the formation of national identity and promotion of cultural citizenship in many countries around the globe. Coverage of major sporting events was seen as a major argument to legitimise PSBs, and has been of high symbolic value to its explicit cultural mission.

Hence, the paper investigates how these contrasting perspectives on television and sports are reflected in the regulation of sports broadcasting. The contrasting views on sports and television are each embodied in an extensive policy framework that regulates the economic and social impact of sports broadcasting, referring to competition law and media-specific regulation respectively. The sale, buying and exploitation of sports rights have raised a few policy questions concerning both competition and content regulation. As the relationship between sports organisations and TV broadcasters has increasingly evolved following the introduction of technology in sports media, the broadcasting rights marketplace has tremendously altered during the last three decades. Indeed, the intensified competition for live sports broadcasting with the rise of pay television and digital TV platforms has induced inflated prices for these rights and revolutionised the

supply of sports programming. Consequently, power configurations are changing, both in the upstream (sports rights market) and downstream (sports programming) market. The focus is then on the intertwined relationship between the economic and regulatory aspects of the sports broadcasting rights marketplace.

The main contribution of the paper is that it combines an economic and regulatory perspective on sports broadcasting, and, hence, provides a better understanding of the different forces at stake in the sports rights market. Since exclusive agreements between sports leagues and pay-TV operators might foreclose the market and deprive the public access to major sport coverage, the regulatory impact of both competition and media-specific regulation on the conditions for selling, buying and exploiting sports rights is assessed. The paper not only illustrates the impact of new technology on the positions of power in the market, but clearly shows the impact of regulations on power relationships between sports rights owners, TV broadcasters and distributors. Based on the analysis, it should be clear that both the competition and media-specific regulatory framework needs to be taken into account while studying (and governing) the power relationships between (sports) TV broadcasters and distributors.

### **5.3. Paper 3**

The third paper was published as a chapter in *Digital Media sports: Technology, Power and Culture in the Network Society*, edited by Brett Hutchins and David Rowe.<sup>3</sup> The paper analyses intersecting issues of technological change, regulation and market power that shape the contemporary global sports broadcasting landscape. Increased competition on the demand side has fundamentally changed the political economy of professional sport (high dependency on income from broadcast deals), particularly in European football. Furthermore, the structure of media markets and traditional broadcast business models evolved significantly following the introduction of digital technology, enabling pay-TV (cable or satellite) and digital TV platforms. The paper sees sports as a site of struggle between different corporate forces operating in sports broadcasting, eventually falling into a battle to become the leading sports media outlet. Increasingly, sports rights have been treated as a valuable strategic weapon for claiming leadership, and exerting power and control in sports broadcasting. Consequently, the ownership of sports rights needs to enhance the overall value of the platform in order to drive uptake of bundled services

(including pay-TV, telephony, Internet) and forms a by-product of competitive strategies of telecommunication and technology firms that want to expand their footprint in the global multimedia market.

Whereas PSBs pioneered live coverage, they were outbid by private TV companies after liberalising the European TV markets. The prospect of cable and satellite television, however, prompted policymakers to introduce a listed events policy in order to avoid 'bidding wars' and safeguard the 'crown jewels' on free-to-air (FTA) channels. Pay-TV operators, most notably BSkyB, were able to enter the market by exclusive purchasing live sports rights, ending up in an explosion of the fees paid. Consequently, live sports coverage migrated from FTA to subscription platforms, and opened the way for the full commercialisation of sports. The battle to control premium rights further intensified with the emergence of digital TV platforms, operated by cable and later IPTV operators. Most of these players transformed into vertically integrated companies, exploiting the network infrastructure, selling (conditional) access to television packages and operating channels themselves. The convergence between broadcast and broadband, giving rise to OTT platforms, might trigger off renewed competition from new media platforms such as YouTube, Netflix and/or Facebook, and thus affect power positions.

The relevance of the paper within the dissertation is its discussion of the European sports rights market, and its subsequent power shift from broadcasters to distribution platforms (or, from FTA to pay-TV). The explosion of sports rights prices tends to be the result of the entrance of digital technology, the impact of competition and broadcasting policy, and the specific nature of sports rights whose ownership is creating sustainable competitive advantage in the distribution market. Since sports have proven their value as a 'battering ram' for opening as well as consolidating technology markets, the battle to control rights ownership has led to a struggle for platform leadership to dominate the sports rights ecosystem. This not only shows that sports is a must-have component for successful platforms, but also suggests that bargaining power is with the sports rights holders if they can play out the distributors against each other. Given the popularity of new media platforms like YouTube and Netflix, who are desperate to penetrate local markets, especially in Europe, sports leagues can take advantage and drive up rights fees even more.

## 5.4. Paper 4

The fourth paper<sup>4</sup> was published as a chapter in *Private Television in Western Europe: Contents, Markets, Policies*, edited by Karen Donders, Caroline Pauwels and Jan Loisen, and raises conflicts between broadcasters and distributors as one of the key issues in media policy and business for the future. The paper argues that some, especially private, TV companies are extremely dependent on advertising income, and hence vulnerable to economy-wide fluctuations. A decline of the TV advertising market directly affects the bottom-line of TV companies, with possible effects on the commissioning of original, and often domestic, programming. As the industry is slightly shifting towards a subscription-based model, TV companies are casting covetous eyes on comfortable profit margins of TV distributors and have started to demand a fair share of the profits platforms make by re-selling TV programming. Broadcasters claim that they carry the bulk of investments in quality content whereas distributors take a disproportional share of the pie, without significantly contributing to the financing and production of that content. Such a hybrid business model, relying on income from advertising and distribution, would allow TV broadcasters to keep up investments in programming, and ensure localness of the TV output.

The paper focuses on the political economy of retransmission fees in the broadcaster-to-distributor market, and critically assesses the (contested) payment of cable rights in a growing amount of European countries. It is claimed that platforms paying broadcasters has become common practice in the US market, and will become in European markets. It is further argued that retransmission fees can save the FTA business, compensating the decline in advertising income. Moreover, retransmission fees might change the power relationships in the ecosystem by leveling broadcasters' bargaining position vis-à-vis TV distributors. However, this power position largely depends on the available regulatory framework, which shapes the level of competitive balance between TV broadcasters and distributors. Furthermore, the paper claims that developments with regard to digital TV transmission erode the cable rights regime, which imply that distributors stop paying collective rights associations for 'retransmitting' original audio-visual works. Hence, it is questioned that what extent TV distributors will recoup higher expenses to broadcasters by eliminating cable rights payments (e.g., ecosystem approach).

The paper is highly relevant for the thesis, in that it obviously illustrates the impact of a commercial relationship between two companies on other agents in the TV ecosystem. Disputes between external producers, TV broadcasters and distributors might illustrate the increasing competition for scarce resources, and the on-going battle for power and control in the market. Reference is made to the 'circulation of power', indicating that the allocation of power is not a given, but changes in function of the institutional context as well as technological developments. First, the paper shows that different media systems, and different policy regimes, heavily affect power relationships between broadcasters and distributors (compare, for example, US and UK). Secondly, developments related to the digitisation of television, the emergence of digital TV platforms and the rise of OTT services are challenging power relationships in the audio-visual ecosystem. Not only has the distribution bottleneck eroded and have new competitors emerged, broadcasters are now able to bypass distributors and directly connect with the viewer.

## **5.5. Paper 5**

The last paper<sup>5</sup> includes a case study of two European regions Denmark and Flanders, and discusses the power balance in media industries, most notably TV broadcasting and distribution. By scrutinising two comparable markets, the paper shows how competitive positions in a bargaining game crucially depend on contextual factors, including market concentration, vertical integration and product differentiation. Such parameters largely influence which party gains control over the financial streams, including retransmission fees, and dominates the TV ecosystem. Hence, the paper supports the key message of the dissertation, arguing that the allocation of bargaining power in the ecosystem is in large parts determined by the ownership of critical resources and influenced by the structural characteristics of the market and firm. Therefore, competitive industry analysis involves the unravelling of the complex relationships between broadcasters and distributors, and identify those sources that add bargaining power to the market players.

In that respect, the paper says that each party controls crucial platform functionalities and that the broadcaster-to-distributor market is organised around two converging TV platforms, either controlled by broadcasters or distributors, that may unfold enveloping strategies and thus may provoke power conflicts. Consequently, the market is marked by bilateral bargaining power although there might be power asymmetries, depending on



the setting (market and regulatory aspects) in favour of TV broadcasters or distributors. In the ever-increasing complexity of the ecosystem, broadcasters as well as distributors are looking for outside opportunities in order to lessen dependence on their bargaining party, and build strategic advantage during carriage negotiations. Nevertheless, pricing power remains with the distributors, who eventually decide about the possible carriage and the package (basic or upgraded), and the position of the channel in that package or in the electronic programming guide. Hence, a gatekeeping position allows distributors to pressure broadcasters to demand lower wholesale (input) prices. On top, distributors can leverage bargaining power through the ownership of affiliated programming that directly competes access-seeking broadcasters.

The importance of the paper is that it particularly deals with multiple dimensions of the competitive position of broadcasters and distributors and, hence, discusses several aspects of the bargaining power each of these players derive from that position (related to the market structure, firm structure and product features). The paper clearly shows how market concentration both in broadcasting and distribution needs to be assessed as a decisive criterion for determining bargaining power. Apart from market concentration, one needs to study how the broadcasting and distribution market respectively function, referring to the presence of housing associations in countries like Denmark, Sweden and Germany which erode the power of the distributors. Secondly, the paper suggests that vertical integration, in the form of the ownership of channels, allows TV distributors to leverage power with regard to broadcasters. Thirdly, product differentiation, in the form of must-have programming, has been confirmed as an important power source for TV broadcasters. The more distributors invest in original programming, the more this adds to their bargaining position.

**Table 8** Overview of research focus, purpose, method, data and contribution of papers

	Paper 1	Paper 2	Paper 3	Paper 4	Paper 5
<b>Title</b>	Access to premium content on mobile television platforms: the case of mobile sports	Watching the football game: broadcasting rights for the European digital television market	The struggle for platform leadership in the European sports broadcasting market	The political economy of retransmission payments and cable rights: implications for private television companies	Broadcast market structures and retransmission payments: a European perspective
<b>Research focus</b>	Sports rights, mobile television, business models, access to content, regulation	Sports rights, digital television, upstream and downstream, access to content regulation	Sports rights, digital television, upstream and downstream, technology, power and control, leadership	Retransmission fees, broadcasters versus distributors, revenue streams, regulation	Retransmission fees, broadcasters versus distributors, market structures, bargaining power
<b>Research purpose</b>	Assess implications of bundling strategies and regulations on the viability of emerging mobile TV platforms	Study the impact of regulations on the sale, buying and exploitation of TV sports rights	Illustrate the shift in market power from broadcasters to pay-TV operators, and distributors in sports	Assess the continuous interplay between policymaking and economic power in TV broadcasting market	Identify and assess power resources in the TV ecosystem in Denmark and Flanders
<b>Method</b>	Document analysis	Document analysis	Document analysis	Document analysis	In-depth interviews
<b>Data</b>	Secondary	Secondary	Secondary	Secondary	Primary, secondary
<b>Contribution</b>	Stresses the strategic importance of live sports in development of robust business models for mobile TV services	Highlights the impact of competition law and media-specific regulations on the power relationships between sports rights holders, broadcasters and pay-TV operators	Discusses the shift in power in sports media as a result of changing technology, regulation and market structures	Shows the impact of media regulations on power relationships, and illustrates the interconnectedness of the different agents in the TV ecosystem	Illustrates how the competitive positions in a bargaining game depends on contextual factors (market, firm and product)



## Notes

- <sup>1</sup> See Evens, T., Lefever, K., Valcke, P., Schuurman, D., and De Marez, L. (2011). Access to premium content on mobile television platforms: The case of mobile sports. *Telematics and Informatics*, 28(1), 32-39. An earlier version of the paper 'Sports content on the move: regulating access to sports events on mobile platforms' was presented at the 24<sup>th</sup> European Communications Policy Research Conference (EuroCPR), 29-31 March, 2009, Seville, Spain.
- <sup>2</sup> See Evens, T., and Lefever, K. (2011). Watching the football game: broadcasting rights for the European digital television market. *Journal of Sport & Social Issues*, 35(1), 33-49. A preliminary version of the paper 'All sports for free! A difficult match? Right to information in the digital broadcasting era' was presented by Katrien Lefever at the Sport & EU 'Sport and the European Union: Looking back, thinking ahead' Conference, 22-23 June, 2009, Stirling, Scotland.
- <sup>3</sup> Evens, T., and Lefever, K. (2013). The struggle for platform leadership in the sports broadcasting market. In B. Hutchins, and D. Rowe (Eds.), *Digital Media Sport: Technology, Power and Identity in the Network Society* (pp. 66-80). New York: Routledge.
- <sup>4</sup> Evens, T. (2013). The political economy of retransmission payments and cable rights fees: implications for private television companies. In K. Donders, C. Pauwels, and J. Loisen (Eds.), *Private Television in Western Europe: Content, Markets, Policies* (pp. 182-196). Basingstoke: Palgrave Macmillan.
- <sup>5</sup> See Evens, T., and Donders, K. (2013). Broadcast market structures and retransmission payments: a European perspective. *Media, Culture & Society*, 35(4), 415 - 432. Earlier versions of this paper, under various titles, were presented at several occasions, including the 26<sup>th</sup> European Communications Policy Research Conference (EuroCPR), 27-29 March, 2011, Ghent, Belgium; Private Television in Europe: 20 Years of Television Without Frontiers and Beyond (PTEU), 28-29 April, 2011, Brussels, Belgium; European Media Management Association (EMMA) 'Restructuring and Reorientation: Global and Local Media After the Recession', 10-11 June, 2011, Moscow, Russia; Private Television in Europe: Connecting to the Future (PTEU), 19 April, 2013, Brussels, Belgium; European Media Management Association (EMMA) 'Digital Transformations and Transactions in Media Industries', 13-15 June, 2013, Bournemouth, United Kingdom; International Association for Media and Communication Research (IAMCR) 'Crises, Creative Destruction and the Global Power and Communication Orders', 25-29 June, 2013, Dublin, Ireland.



# 6. ACCESS TO PREMIUM CONTENT ON MOBILE TELEVISION PLATFORMS: THE CASE OF MOBILE SPORTS

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## 6.1. Mobile television in the convergence spiral

Bringing together two powerful socio-technological developments – enhanced end-user mobility and new kinds of access to media content – mobile digital television is probably among the most prominent technologies that ended up in the convergence spiral of today's ICT environment (Ahonen and O'Reilly, 2007). Since mobile network operators are facing decreasing average revenue per user due to intensified competition, the entrance of low-usage consumers and regulatory interventions (e.g. termination tariffs and roaming fees restrictions), mobile service providers are seeking revenue opportunities in mobile television propositions (Andersson et al., 2005; Gruber, 2005; Orgad, 2006; van den Dam, 2006). These developments may affect traditional viewing practices towards a more personalised user experience including the consumption of on-demand mobile content. Moreover, mobile broadcasting technologies challenge established business models by providing an innovative distribution mechanism for content delivery. Consequently, new audiences can be reached while the traditional evening peak time audience can be targeted at other times of the day, or locations (Feldmann, 2005; Södergård, 2003; Urban, 2007).

Mobile consumer services have not only been granted a crucial role in the further development of the information society (e.g., eEurope 2005 and i2010 action plans), the

European Commission also considers mobile broadcasting as a tremendous opportunity to expand Europe's leadership in mobile technology and to strengthen the internal market for audio-visual services (CEC, 2007a). In order to establish a vibrant ecosystem for mobile television services, the European e-Communications policy has identified three key factors for the industry's successful market development: (1) technical aspects such as network interoperability and common transmission standards, (2) a favourable regulatory environment conducive to innovation and investment in mobile broadcasting services, and (3) radio spectrum capacity supporting qualitative mobile infrastructure. In addition, the Commission (CEC, 2007a) has recognised that 'the successful deployment and uptake of Mobile TV depends crucially on content availability' (p. 8). As content has proven to be 'king' for many new media technologies in the past, it is assumed that premium content, in particular sportscasting, will drive mobile television services (Carlsson and Walden, 2007; Goldhammer, 2006; Orgad, 2009; Shin, 2006). The appeal of sports lies in its unexpected outcome and live experience that can be shared amongst viewers, which is especially the case with major sports events. However, the affordances of mobile television are not limited to major sports; mobile technologies also provide long tail opportunities for niche sports content through the establishment of premium niche sports channels. Furthermore, thanks to the integration of close-ups, player cams and multi-camera perspectives, viewers should be able to personalise their own mobile viewing experience. Finally, sports content provides opportunities for mobile betting revenues while watching sports games on the mobile (Schoorman et al., 2009).

Consequently, experts had considered the 2008 sports summer, including the Beijing Olympics and the European Football Championships, as a crucial milestone for consumer uptake of mobile television services. Although these events granted a unique opportunity for raising consumer awareness, the predicted massive adoption of mobile television devices has not occurred (yet). Although the Commission has decided to set DVB-H as the mobile broadcasting standard and radio spectrum – released by switching off analogue terrestrial television signals – has been allocated to telecommunications companies for the roll-out of mobile television networks (e.g., in Finland and Italy), entry barriers for access to premium content may partly hamper mobile television's

further breakthrough. In addition to the bundled and tied sale of broadcasting rights, which helps incumbents to deploy effective entry-deterrent strategies, legal barriers (competition and media regulations) might foreclose effective competition in mobile television markets. Hence, this cross-disciplinary article will stress the strategic importance of content in the development of sustainable business models for mobile broadcasting services and will discuss the implications of bundling strategies and regulations for the viability of these emerging platforms.

## **6.2. Content issues in designing business models**

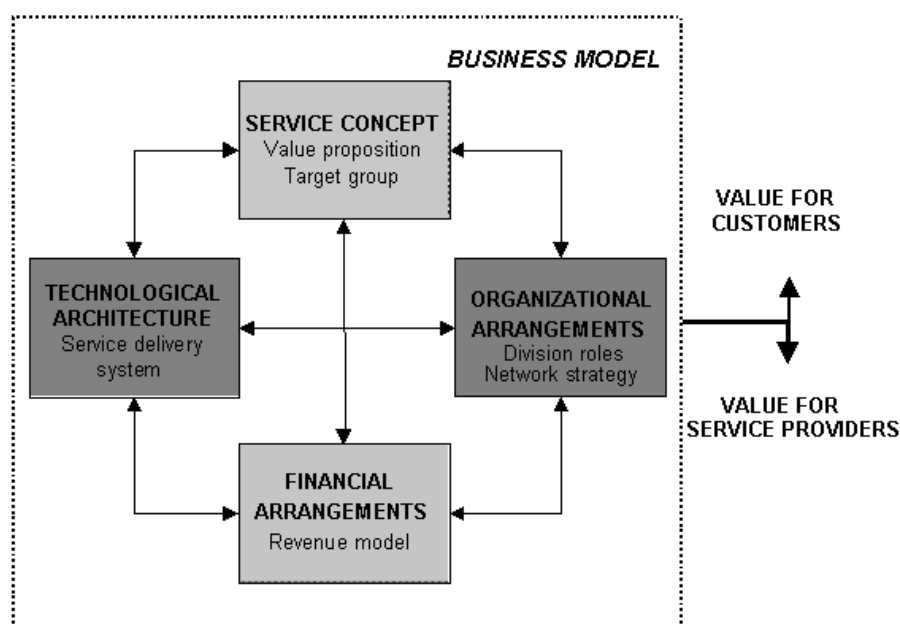
Although the emergence of digital technology has revolutionised the broadcasting ecosystem, the success of new consumer applications such as mobile television services will depend on multiple factors, which go far beyond the technological issues. As Braet and Ballon (2008) argue, the main design choices for framing mobile television business models to be addressed are not predominantly technological in nature, but rather related to the cross-impact of strategic cooperation and competition issues, market expectations and legacy situations. While these critical success factors seem confined to the macro level of supplier related issues, user-centred factors on the micro level are of the utmost importance. Failures of recent technologies such as WAP, DAB or CD-I and the 'battle of standards' for VCR (VHS versus Betamax) or the newest DVD-generation (HD-DVD versus Blu-ray) show that the availability of attractive content possibly becomes one of the most crucial factors that determine the success of a new technology (see Bouwman and Christoffersen, 1992; Bouwman et al., 1994; Imberti Dosi and Prario, 2005; Von Löhneysen and Wolff, 2004; Wallace, 1999). The adage 'content is king' thus still prevails, especially in an essentially top-down industry as television.

Since mobile network operators have established mobile television platforms, the content issue is a major one to tackle while designing appropriate business models. Platforms can be regarded as central elements within the mobile industry architecture. Contrary to the merchant mode, in which intermediaries acquire (digital) goods from sellers and resell them to buyers, multi-sided platforms allow affiliated sellers to sell directly to buyers (Hagiu, 2007; Hagiu and Lee, 2011). While the technical outlook of



platforms refers to a hardware configuration, an operating system and a software framework on which a number of services run, business models in platform markets aim to balance interests of all stakeholders to assess 'a strategic fit' (Ballon, 2007). The content issue is typically at stake in multi-sided platform markets, characterised by the presence of distinct markets whose overall performance is derived from the coordination and subsidisation across these markets through a common platform. Consequently, platform owners mediating between content providers and consumers should address the celebrated 'chicken-or-egg problem' (Parker and Van Alstyne, 2005). Content producers are reluctant to invest in often expensive new content and applications when a substantial consumer base is not certain yet. Consumers on the other hand hesitate to adopt the new technology owing to the uncertainty about the availability of compelling content. If these two processes co-exist, content suppliers and consumers get stuck in a vicious circle leading to absence of network externalities and incentives for the further development of these platforms (Evans and Schmalensee, 2009). Hence, platform owners should devote much attention to business model design to break this circle by matching the expectations of all relevant stakeholders in order to make money (Rochet and Tirole, 2003).

**Figure 8** Business model domains (Bouwman et al., 2008, p. 36)



Although service design was often overlooked in earlier business model frameworks focussing on organisational and financial issues (e.g., Timmers, 1998), the strategic importance of content issues in business model design has been recognised by more recent conceptual frameworks. In particular, the STOF business model (see Figure 8) discusses four interrelated design domains of business models for mobile services, i.e. the service, technology, organisation and finance domains (Bouwman et al., 2008; de Reuver and Haaker, 2009). Within the STOF model, the service domain describes the specific characteristics of the developed end-user services. The service design dimension serves as a reference to the other domains since the authors believe that a business model design should start with the demand side of a service offering and that customer value of the service should be considered the most relevant aspect of the mobile supply: 'Although technology is basically a driver for new innovative services and business models (push-model), from a customer perspective technology is only an enabler. In the latter case technology pull plays a central role, one that [...] requires an understanding and elaboration of user requirements' (Bouwman et al., 2008, p. 37). This fits our previous assumption that user-centred research plays a crucial role in developing new services, designing business models and deploying commercial strategies for platform launch (Schuurman et al., 2009). Together with pricing, content bundling is regarded as an essential part in the value proposition of mobile service platforms (Prario, 2007). Therefore, content acquisition and bundling should be considered a critical asset for business models.

In order to capture value from multi-play services, telecommunications companies and mobile network operators have invested a vast amount of money in 3G licenses since the beginning of the century (Gruber, 2005). More recently, public authorities have started auctioning DVB-H licenses for mobile broadcasting services. For new entrants in these broadcasting markets, rights ownership of premium content functions as a significant competitive advantage for attracting a substantial consumer base and for resolving the chicken-or-egg problem. Since sports content remains a key asset for building audiences to mobile multimedia services, acquiring sports rights has become instrumental to secure a strategic market position and to establish a basis for the sustainable development of mobile multimedia platforms (Boumans, 2005; Boyle,

2004). Owing to the intensified struggle for market share amongst platform owners, however, exclusive live sports rights fees have heavily inflated. In addition, mobile network operators have to compete with deeper-pocketed pay-television providers for the acquisition of live sports rights. Although obtaining live sports rights is a tough challenge from a financial viewpoint, the real challenge for mobile television providers is in overcoming the entry barriers for getting access to value-added content bundles (Geradin, 2005).

In addition to the regulatory barriers, which will be discussed later, existing business models of incumbents are hampering new entrants' access to content. Traditional broadcasters seem somehow reluctant to repurpose content on mobile and Internet-based platforms, which are viewed as a threat for their proven business models. Since incumbents fear for a cannibalisation of their businesses by these platforms, they tend to protect their primary markets from new competitors by acquiring all broadcasting rights in the market, even for platforms in which they have no interest to enter themselves. Owing to the strong asymmetry of value between traditional and mobile broadcasting rights and the bundled offer of those rights across different platforms, mobile network operators are facing significant entry barriers to their access to premium content such as live sports (CEC, 2005b; OECD, 2005). Because established broadcasters tend to warehouse the rights acquired, market distortions can appear harming other interested parties being unable to bid for rights packages. This tradition of holding back broadcasting rights from new media platforms considerably reduced the amount of rights available to new market entrants, thus hindering them from rolling out their own platforms. This supports earlier findings that bundling denies rivals scale and serves as an effective entry-deterrent strategy in order to preserve market power and to leverage monopolies (Carlton and Waldman, 2002; Nalebuff, 2004; Whinston, 1990).

Broadcasters and telecommunications companies are dealing with this situation by increasingly acquiring equity interests in sporting organisations. This way, they aim to secure closer access to and control of broadcasting and merchandising rights (Law et al., 2002). However, this on-going evolution towards a vertically entwined media sports

business is likely to have a pernicious effect on the competition for sports rights and the access to sports content. This belief that broadcasters' ownership of sports clubs might be anti-competitive relies upon the so-called 'toehold effect' (Bulow et al., 1999; Burkart, 1995), which claims that companies can confer a huge competitive advantage in an auction when acquiring a toehold (such as an ownership stake in the object being sold). Eventually, this triggers off less competition, lower sale prices for sports rights and less choice for consumers. Previously, competition authorities have blocked BSkyB's bid for Manchester United to preserve the fair competition for broadcasting rights (Harbord and Binmore, 2000). Besides these bundling and vertical integration strategies for acquiring sports rights, mobile network operators are also facing more regulatory barriers regarding to the exploitation of sports rights (see Hoehn and Lancefield, 2003).

### **6.3. Regulatory barriers for access to sports content**

Thanks to its growing economic importance, sports became subject to the rules of European Union regulation in 1974. As a consequence, European competition regulations have shaped the conditions for selling and exploiting sports media rights in the upstream broadcasting market while sector-specific media regulations have further imposed restrictions on the exploitation of these rights in the downstream market. Whereas competition regulations aim for establishing open and effectively competitive markets, media regulations envisage securing public access to information.

#### **6.3.1. Competition regulations**

In the sports industries, the joint selling of exclusive broadcasting rights is a widespread practice. According to this principle, all broadcasting rights to sporting events are sold centrally by the organiser of the event or by the league to one single broadcaster in each territory for a relatively long period, covering all exploitation modes (Toft, 2003). By reducing quantity and competition on the supply-side, leagues establish a monopoly in order to maximise joint profits (Cave and Crandall, 2001). Although the exclusive exploitation of media rights in itself does not breach Article 81 of the EC Treaty (safeguarding free competition) as it aims to guarantee the commercial

value of the programme, the individual circumstances of selling exclusive rights could trigger reservations regarding compatibility with EU competition regulation (Scheuer and Strothmann, 2004a). In particular, competition questions arise when broadcasters acquire exclusive sports rights for a long period of time and when those rights are bundled in a joint selling agreement leaving no opportunity for other interested parties to cover major sports events (Aghion and Bolton, 1987).

The joint sale of sports rights not always parallels general interests since these bundling strategies are considered as price fixing and exclusive access mechanisms limiting sports content choices to consumers and broadcasters. As these exclusivity deals are blamed to impede competition by favouring the incumbent broadcasters and to allow foreclosure of new media providers from competition, this issue has caught attention from competition and public policy authorities, which have defined a number of criteria that should be considered when pooling broadcasting rights. European Commission case law such as the UEFA Champions League decision has accepted the collective sale of sports rights under a number of conditions: (1) broadcasting rights contracts should be concluded for a period not exceeding three years; (2) sports rights should be traded through open and transparent tender procedures giving all interested parties equal opportunities; (3) individual clubs should be granted the possibility of selling individually the rights that the league was not able to sell jointly; and (4) broadcasting rights should be marketed into different packages (television, Internet, mobile...) to allow several competitors to acquire sports content (CEC, 2003a, 2005a, 2006). This last condition is extremely important since the emergence of mobile platforms and the fragmentation of the demand-side urges for unbundling broadcasting rights in separate windows. This windowing should enable fans to enjoy a wider array of content formats across a diversity of delivery technologies and should allow individual clubs to exploit certain rights themselves. In addition, unbundling enables rights holders and media outlets to benefit from new revenue streams from subscription and pay-per-view services across several access networks (Boyle and Haynes, 2004).

These unbundling remedies have resulted in opening the sports rights marketplace for new media operators enabling them to provide appealing content to media consumers. Given that all the broadcasting rights are no longer supplied to a single operator, new media rights are split up in different packages. This should enhance the possibility for more media companies, including those interested in mobile media services, to bid for such content rights. In the UEFA Champions League case for example, it was decided that both the UEFA (in respect to all matches) and the clubs (in respect to matches in which they participate) should have a right to make available Internet and mobile (for UMTS services) rights in different packages (CEC, 2005a).

Although this process of unbundling media rights allows new media providers to supply sports content via mobile phones, not all obstacles were removed because it seems that the separate packages are still unequally treated by the Commission. In the case of the UEFA Champions League for instance, the Commission has noted that the content could only be broadcast to mobile devices at least five minutes “after the action has taken place” (CEC, 2005a). However, what is actually meant by the notion ‘action’ remains unclear. Assuming this refers to single game extracts such as a goal or a penalty, our interpretation implies that full matches are excluded from (live) mobile coverage.

It is often argued that the length of mobile sports coverage is limited to highlights or single actions because of technical constraints faced by mobile access networks or handsets, and because of concerns about the transmission quality and viewing experience. In contrast, others have stressed that these length restrictions are not related to technical factors but instead driven by the rights holders’ desire to maintain rights value. If the latter is true, for those length restrictions to be justified, it is necessary to prove that mobile rights adversely affect the value of traditional broadcasting rights. As the Commission’s sector inquiry into the provision of sports content over third generation mobile networks (CEC, 2005b) has concluded, user experience of mobile sports content fundamentally differs from traditional television coverage owing to usage costs, personalisation of the viewing experience and the length of time that consumers are willing to spend watching the content. Moreover, previous

research has demonstrated that mobile television will be used by people having no access to fixed traditional television services while being on the move. Obviously, mobile television should be considered as a complement rather than as a substitute for traditional broadcasting services (e.g., Carlsson and Walden, 2007; Evens et al., 2008). As there is little evidence of direct substitution between traditional and mobile content services, the licensing of mobile sports rights (even for the whole match) would only have a limited effect on the value of other broadcasting rights. Technical concerns about inferior 'quality of experience' are also applied to impose an embargo on broadcasting over the World Wide Web. For example, UEFA and the clubs may only provide online video content one hour and a half after the match has finished because live streaming on the Internet would not permit the maintenance of a satisfactorily high quality. However, this technical argument is highly contestable as other major sports events are becoming streamed live without loss of quality and with a delay of no longer than a few seconds. In any case, the uniqueness of sports events makes this embargo less valuable as sports should be experienced live. Therefore, the unequal treatment of innovative exploitation forms makes these new media services less attractive, which may undermine market development and user take-up.

Furthermore, both the UEFA and the football clubs have only the right to provide audio and video content via 3G services, which may hold back the provision of sports content over DVB-H networks. Although it is reasonable to assume that no reference was made to DVB-H because this technology was still not widely applied at that time, it should be preferable to formulate the different packages in a technology-neutral manner in order to create the possibility to include UMTS as well as DVB-H coverage in the mobile rights package. As the boundaries between previously distinct technologies – television, Internet, mobile etc. – are rapidly blurring and media companies are implementing cross-media strategies, the way of selling sports rights is likely to change in the near future. Instead of carving up their rights for different platforms, the future trend will be selling rights on a platform-neutral basis with packages carved out by time window (live, near-live, highlights and clip rights). The winners of each package then can exploit these packages across various platforms (Pickles, 2007). This implies that an embargo is imposed neither for online unicasting nor for mobile broadcasting. As a

result, users can enjoy sports content on all platforms and at any time and place they want.

### **6.3.2. Media regulations**

Given the democratic, integrative and social functions of sports (CEC, 2007b; Maguire, 2005; Sewpaul, 2009) as well as the right of the public to (sports) information, media regulations were introduced to guarantee viewers access to events of major importance for society via free-to-air television (Valcke et al., 2009). At the European level, regulations of the audio-visual sector occur by the Television Without Frontiers Directive (TWF Directive) and later the Audiovisual Media Services Directive (AVMS Directive). This directive abandons the idea of regulating different platforms separately instead of a platform-neutral framework. Hence, not the distribution technology but the nature of the service should determine the kind of regulation that is applicable. According to this framework, it is irrelevant whether audio-visual content is spread over cable, satellite, Internet or mobile networks.

Since the growth of the digital premium content marketplace, concerns have arisen about the consequences of exploiting exclusive broadcasting rights for sports events. Although viewers clearly benefit from these digital applications leading to an increase of channel quantity and consumer choice, analogue households could be denied access to major sports events since these extra services require an additional subscription payment (Aubry, 2000). In the past, viewers were able to watch major sports events on free-to-air television. However, owing to the acquisition of exclusive sports rights by pay-television providers, major sports events might be excluded from free-to-air coverage. This may lead to the so-called 'siphoning effect' that occurs when subscription-based platforms carry events that previously were available for free (Noll, 2007). As a result, households unwilling or unable to pay an extra subscription fee could be deprived access to these events. Although a proportion of households will be likely to switch to pay-television platforms owing to the inelastic demand for sports, exclusivity of sports rights may endanger people's right to information and cultural citizenship (Jeanrenaud and Kesenne, 2006).



However, as some sports events are seen as being of heritage importance, i.e. creating a sense of national identity and collective experience, public authorities consider it justified to prevent these events from 'disappearing behind a decoder'. Therefore, to safeguard the important social role of sport, to prevent the migration of sports events to pay-television and to guarantee the public's right to information, the major events list mechanism was introduced in the TWF Directive (now AVMS Directive) in 1997. This mechanism allows member states to draw up a list with events, being of major importance for society that can only be broadcast on "free-to-air television" in order to ensure that a "substantial proportion" of the public would not be deprived of the possibility of following such events. In the context of mobile television services, however, certain crucial questions remain unanswered. Should mobile television be considered free-to-air television? And does mobile television reach a substantial proportion of the public?

According to the AVMS Directive, free-to-air television does not require an additional payment on top of the basic cable fee or the purchase of a decoder. Whether mobile television should be qualified as free-to-air television thus largely depends upon the applied business model scenario of the particular mobile television service. A first business scenario allows users to watch mobile television content without paying a subscription fee. According to this advertising-supported service, people are able to watch content freely in exchange of receiving commercial messages. A second scenario could be that mobile content services are included in the regular fixed subscription price formulas allowing users to watch mobile content beside making phone calls or sending text messages. Just as in the first scenario, it can be argued that mobile television can here be considered a free-to-air service. The opposite is true in a third scenario in which users have to pay an additional subscription fee to watch mobile content on top of their regular subscription for voice and messaging services. In this last case, the basic subscription fee can be compared with the basic cable payment. Hence, mobile television should in principle not be seen as free-to-air. However, when comparing the mobile content subscription fee with the basic cable payment and assuming viewers have to pay an extra fee for premium content such as sports events, only the latter should be qualified as pay-television. To make things more complex,

according to Danish regulation, a considerable low payment for mobile content equals a free-to-air service (Castendyk et al., 2008). To conclude, it is difficult to qualify mobile television as a free-to-air or pay-television service nowadays because of the lack of proven business models.

Moreover, free-to-air broadcasters need to ensure that a substantial proportion of the public has access to events considered of major importance for society. However, as the AVMS Directive does not contain a definition of the term 'substantial proportion', every member state has its own interpretation of this concept. In Austria for example, this means that 70 per cent of the viewers should be reached, in Belgium 90 per cent and in the UK 95 per cent of the households. Virtually, the entire population, or at least a considerable section of it, should have access to the broadcasting of those events. In brief, only broadcasters that reach the specified penetration percentage are allowed to broadcast the listed-events (Scheuer and Strothmann, 2004b).

Due to the fact that access to listed-events remains a privilege for "broadcasters, i.e. linear services that reach a substantial proportion of the public", the current mechanism fails to provide a fair opportunity to all audio-visual media providers. It is apparent that new media operators such as mobile and Internet service providers have a limited penetration and therefore do not fulfil the substantial proportion requirement. UEFA and FIFA have challenged the listed-events mechanism before the European Court of Justice stating that the Belgian and UK lists are not compatible with Community law. As the principle results in a restriction of the way in which the applicants may market their broadcasting rights, the two most important football federations state that those lists of major events infringe their property rights. Moreover, the list of major events mechanism is claimed to restrict the freedom of establishment by preventing new market entrants wishing to acquire exclusive broadcasting rights to major events in order to put themselves on the consumer map.

Finally, the scope of the AVMS Directive is limited to broadcasters, thus, excluding mobile network operators of the possibility to broadcast listed-events exclusively on their platform. This does, however, not imply that they are not allowed to bid for packages for those major sports events. After all, the exclusive rights may be attributed

to the highest bidder, being a free-to-air broadcaster, a pay-television operator or even a mobile network operator. The only requisite is that the broadcasters, not fulfilling the two criteria 'free-to-air television' and 'reaching a substantial proportion of the public', cannot broadcast those events exclusively and/or sublicense these rights to free-to-air broadcasters. After all, the different packages should be open for all stakeholders in the communications industry with broadcasters and network operators equally treated. As the relationship between new media, sport clubs and sports rights is likely to intensify over the next decades, it is argued that the success of mobile network services requires open competition for key content such as sports (Boyle, 2004).

#### **6.4. Discussion**

Until recently, mobile phones were primarily used for voice calls and text messaging. As data services including ringtones, games and video content are expected to become a major revenue source for mobile operators, the mobile industry is betting on mobile broadcasting as an opportunity to capture consumer value. Although mobile television's success has been taken for granted, competing standards, high data costs, absence of insight into consumer demands and bargaining stakeholder power are carried as explanations for the slow market development of mobile television in Western Europe. The often overlooked strategic importance of content for designing viable business models has been shown in this article, which is cross-disciplinary in nature. Content bundling forms a critical part of the value proposition to consumers, but access to compelling content is seen as a bottleneck for the development of mobile service platforms.

Mobile network operators, aiming to enter the rights market for mobile broadcasting, are facing substantial barriers for acquiring access to content. Since incumbents are protecting their established business models by warehousing rights acquired for mobile services, entry-deterrent strategies have been deployed to foreclose effective competition in mobile television markets. Since business strategies typically bundle exclusive rights that are tied to separate media windows, these restrictions favour interests of incumbents, which prevent new market entrants from purchasing premium

content by warehousing content rights. In addition to these business strategies, regulatory provisions are raising barriers for entering the mobile market. While competition regulations address bundling remedies, separate packages are still treated unequally. Furthermore, some rights for new platforms such as DVB-H are still not available because rights agreements fail to consider future transmission technologies. Consequently, these practices limit content availability to mobile platforms, devalue the appeal of mobile multimedia portals and impede the successful roll-out of these services. Since media regulations exclude mobile service providers the possibility to broadcast listed-events exclusively on their mobile platform, mobile service providers face the classical chicken-or-egg problem of the platform creation business: to gain market shares they need premium content, but to gain access to this content, significant market shares are required.

The European Commission has tried to encounter some of these problematic issues, but getting access to premium content, in particular sports, remains a huge challenge for platform owners willing to break into the mobile television market. As technological convergence is blurring the boundaries between previously distinct technologies, platform-neutrality, with packages carved out by time window (live, near-live, highlights and clip rights), is generally assumed to establish fair, open and non-discriminatory access to the sports rights market. The winners of each package can then utilise these rights across whatever platform(s) they own. However, this approach still does not rule out the possibility that an incumbent acquires all packages and dominates all sports content platforms. Platform-neutrality therefore does not necessarily provide an adequate answer to the bundling strategies used by established market players.

Rather than carving out sports broadcasting rights by time window, which reflects the classical one-sided merchant mode, rights sellers should make their business model fit the networked economics of two-sided platforms. In this mode, platform owners leave full control of the rights entirely to the rights sellers and simply determine buyer and seller affiliation with a common marketplace. This way, platform owners allow content owners, who retain full control over the value proposition including pricing, to establish a direct channel to interact with consumers. As in the outright selling scenario

the economic benefits for obtaining exclusivity are quite high, high-quality content should be available across multiple platforms in the future (multi-homing) because foreclosing a portion of the market by being exclusive will be too costly for the content seller. Similarly, sports rights owners should affiliate to multiple platforms to create more value and extract more profits from consumers. By leaving control over pricing, bundling, advertising etc., platform owners avoid the inherent hold-up problem when contracting with sellers before selling to consumers. Finally, the public's right to information benefits as consumers get a wider and non-exclusive choice between several platforms for watching their favourite sports content.

# 7. WATCHING THE FOOTBALL GAME: BROADCASTING RIGHTS FOR THE EUROPEAN DIGITAL TELEVISION MARKET

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## 7.1. Introduction

Although the exhilarating ambience, suspense, and enjoyment of a sport is best experienced through live attendance, the increasing importance and popularity of mediated sports can hardly be undervalued. The economic impact of sports media on society is reflected in the substantial audience ratings for sports programming, the explosion of sports media outlets, and the multibillion dollar value of sports broadcasting rights contracts and sponsor deals. Sport has become a global business and now increasingly functions as a specialized division of the entertainment industry. One of the most striking features of the modern sports business is its high dependency on cable and broadcasting revenues. Sports and the media, in particular television, have developed a self-interested relationship, allowing them to gain benefits from their complementary interests (Bolotny and Bourg, 2006). While sports act as a pool for content and audience for television, the latter serves as a revenue source and a marketing means for sports. This relationship between sports organizations and broadcasters has increasingly evolved following the introduction of technology in sport. The intensified competition for live sports broadcasting rights with the rise of pay television and digital broadcasting has induced inflated acquisition prices for these rights and has revolutionized the supply of sports programming (Turner, 2007).

Owing to major developments in the global television market, the broadcasting rights marketplace has been fundamentally altered during the last three decades. Therefore, the sale and exploitation of sports broadcasting rights have raised a few policy questions concerning both competition and content issues. Exclusivity agreements may foreclose new media markets and may deprive the public access to major sports coverage. Consequently, public policy authorities have shaped the conditions for selling, buying, and exploiting sports media rights in broadcasting markets. In this context, a distinction should be made between upstream and downstream broadcasting markets. While the former brings into play sports organizations selling their rights to media companies, broadcasters and service providers compete for consumers' attention in the downstream market by packaging sports content (Szymanski, 2006a).

In this article, the methodological focus will be on the entwined relationship between economic and regulatory aspects of the sports broadcasting rights marketplace. From an economic stance, the article will deal with the evolving relationship between sports organizations and media companies, and the mechanisms for selling and exploiting sports broadcasting rights. From a regulatory perspective, the outcome of these selling and exploitation mechanisms on fair market competition and the general public's access to sports information will be profoundly analyzed. Since both perspectives are not independent from each other, the combination of these two research fields into an interdisciplinary approach may provide a value-added contribution to the study of sports broadcasting markets.

Although the authors are aware that issues concerning the sale and exploitation of sports broadcasting rights may be relevant within a global perspective, the scope of this article remains limited to Europe. The article does not aim to compare different broadcasting systems but rather to provide a detailed discussion of major economic and regulatory issues within the European sports broadcasting marketplace. As will be demonstrated in the next section, the European broadcasting system has a set of particularities that makes it quite distinctive from the North American model. According to Hoehn and Lancefield (2003), major differences across Europe and the United States, related to the market structure and the broadcasters' conduct, may be largely explained

by diverging views on policy interventions. After defining the specificity of the European sports broadcasting system, this article discusses the evolving relationship between sports organizations and broadcasting companies. Next, pending issues in the respective European upstream and downstream sports broadcasting markets are critically explored. Finally, the discussion section questions the future viability of the sports broadcasting rights markets and the impact of recent developments on sports rights value.

## **7.2. Specificity of European sports broadcasting markets**

Although it can be argued that the European sports broadcasting system has gradually adopted some features of the US model over the past years, major differences between both continents continue to exist. This section provides an overview of structural trends within the European broadcasting industry structure and policies that may illustrate the specificity of the European sports broadcasting compared with the US sports situation. However, Europe can hardly be seen as one homogeneous broadcasting market—albeit national media markets show many similarities (e.g., mixed public private broadcasting system, more interventionist media policy on ground of public interest, role played by the European Union (EU) institutions in regulating access, diversity, harmonization, etc.)—that differentiates it from the US system (Kelly et al., 2004). Owing to the fragmented market conditions and public policies, the price developments, the profitability of rights deals and the distribution of rights among channels across member states may vary (Solberg, 2002b). However, even if European media markets cannot be adequately reduced to one single broadcasting model, differences in sports broadcasting between the United States and Europe are more fundamental than those within Europe.

Perhaps the most important difference between Europe and the United States is the role of public service broadcasting (PSB). In the United States, PSB channels occupy only a marginal position in the market and have therefore not been involved in sports broadcasting, whereas public broadcasting plays a major role in the European sports media landscape. Historically, state-funded PSB played a foundational role in sports



broadcasting, since sports were considered important as part of the national culture. From the 1990s onward, however, there has been a quasi-full migration from free-to-air PSBs to pay television channels, as service providers such as BSkyB and Canal+ succeeded in acquiring expensive domestic football rights and promoted live premium sports as their unique selling proposition. The dominance of pay television in Europe sharply contrasts with the US model where advertising channels have always played the first fiddle in US sports rights market and pay channels are a supplement rather than a competitor to ad-based television (Solberg, 2002b). Unlike its European counterpart, the large US market allows television networks (both free-to-air and cable) to benefit from economies of scale, while network externalities from maximizing audience reach may provide sports leagues with higher sponsorship revenues (Dietl and Hasan, 2007; Szymanski, 2006b). Consequently, live sports broadcasting rights are acquired by US national free-to-air and cable networks, whereas in European sports broadcasting, pay television outclassed free-to-air channels to become the dominant force.

In European sports broadcasting, football (i.e., soccer) is by far the dominant sport in terms of viewer ratings; whereas in the United States, several sports act as revenue and audience generator (Hoehn and Lancefield, 2003). In the United States, soccer is exceeded in popularity by football (NFL), baseball (MLB), basketball (NBA), stock car racing (NASCAR), and hockey (NHL). The existence of several major sports leagues in the United States leads to more conservative pricing and to a higher amount of broadcasted sports (Dietl and Hasan, 2007). Both in Europe and the United States, television sports are extremely popular. Super Bowl XLIV became the most watched American television program in history, drawing an average audience of 106.5 million. While the Super Bowl's audience is mainly domestic, the 2010 UEFA Champions League final did even better with an average audience of 109 million with a more global distribution. Only the quadrennial 2008 Summer Olympics and 2010 FIFA World Cup were able to exceed these viewing ratings in recent years.

From a regulatory point of view, cooperation on the demand side (joint bids) has been banned in the United States partly for fear that the reduced competition between broadcasters would depress the value of sports broadcasting rights. At the EU level, on

the contrary, the market for international events was characterized by one supplier and one buyer of rights (bilateral monopoly) since the 1950s onward. The European Broadcasting Union (EBU) was created by national, monopolistic public broadcasters as a response to the growing cartelization of sporting supply (e.g., IOC, FIFA etc.) in order to use collective bargaining power for obtaining lower rights fees. This demand-side cartel has been threatened since the liberalization of European audio-visual markets and the emergence of networks and agencies that are not EBU members. For the first time in history, not the EBU but SPORTFIVE, one of the largest sports agencies worldwide, was awarded with the Olympic broadcast rights (2014–2016) and can now exploit these rights across forty countries in Europe. As non-member private parties find the EBU membership conditions discriminatory and as competition intensifies, the bilateral monopoly is increasingly replaced by free market competition on the demand side (Bolotny and Bourg, 2006).

On account of its growing economic importance, sports, insofar as it constitutes an economic activity, became subject to the rules of the EU in 1974 (see Walrave and Koch v. Union Cycliste Internationale). As a consequence, European competition regulations have shaped the conditions for selling, buying, and exploiting sports media rights in order to establish an open and effectively competitive market (cf. *infra*). In the United States, where professional sport is accepted as a business, the case for a sporting exception is surprisingly better articulated than in the EU. The US Congress enacted the Sports Broadcasting Act (1961), which gave an antitrust exemption to the joint sale of broadcasting rights for ‘sponsored telecasts’ (i.e., free-to-air broadcasters) and entitled the leagues to jointly sell their rights to national networks (US Congress, 1961).

As sport is increasingly covered by pay television providers in Europe, the listed events mechanism was introduced to guarantee the public’s right to information with regard to sports events of major importance for society. This mechanism allows member states to draw up a list with events that could only be broadcast in an exclusive way on free-to-air television (cf. *infra*). In the United States, the list of major events regime was found unconstitutional in the *Home Box Office* (HBO) case in 1977. According to the Court, the rules violated cable television operators’ First Amendment

because the regime did not further a substantial government interest and the restriction on freedom of speech was broader than necessary to further that interest. In addition, the need for such a regime is less urgent in the United States, as sports have not significantly migrated to pay television channels. Therefore, there are still no anti-siphoning provisions in the United States (P. Cox, 1995; Saltzman, 2000).

### **7.3. The modern sports media complex**

For decades, sports and the media have been building solid synergies aimed at establishing a deeply entwined relationship with both industries as mutual beneficiaries. At the heart of this sports media complex is the universal appeal of sports, which is monetized both by sports organizations (through rights selling and sponsorship) and media companies (through advertising and subscription fees) (Boyle and Haynes, 2009; Maguire, 1999). Today, a major part of European club football income stems from cable and broadcasting revenues, but media's interference in sports did not initially receive a warm welcome. As gate receipts represented the major revenue source for football clubs, the introduction of televised sports was originally feared to cause depletion in stadium attendance. However, live matches proved to be a fan builder and a financial engine for sports clubs as well (Buraimo, 2008). During the early days, PSB channels pioneered sports coverage on grounds of nation-building and cultural citizenship. Sports programming was perceived as a major argument to legitimize the establishment of PSB and part of its explicit cultural mission (Scherer and Whitson, 2009). In so doing, public broadcasters have created the sports broadcasting market prior to the appearance of commercial channels, which paved the way for pay television. Rowe (2004) regards this pioneering role as a form of market or research development with PSB taking the risk and building up a business that was exploited, first, by commercial free-to-air channels, and later by subscription-based platforms.

The rise of pay-television and digital access platforms has drastically reshaped the political economy of European football. In the digital universe, free-to-air television has lost its status as the primary vehicle for live sports in favor of digital premium platforms, for which live sports became a crucial weapon in the strategy to drive

subscription uptake and gain market share (Boyle and Haynes, 2004). As a result of the intensified struggle for subscribers among platform operators, live rights for exclusive sports coverage were drastically inflated. Because of these developments, football economics were radically reshaped with clubs becoming highly dependent on this lucrative revenue stream. On average, top clubs rely for approximately one-third of their total income on broadcast rights with Italian clubs peaking over sixty percent (Deloitte, 2010). These figures might illustrate that the economic model underlying the sports business is no longer built on ticket sale but has shifted to the MCMMG (Media-Corporations-Merchandising-Markets-Global) financing model that primarily relies on the exploitation of media rights (Andreff and Staudohar, 2000).

Sports clubs have been profiting from the opportunities of media technology to capture value and establish B2C and B2B relationships through the wide-scale exploitation of dedicated club channels, personalized mobile content, or online sports portals (Boyle, 2004). By producing their own content, sports clubs have become 'media clubs' as a resistance to media's dominance in order to have their own voice in the global sports market (Ginesta and Sopena, 2008). Not only have sports clubs become media entities themselves but media companies have also acquired stakes in sports organizations for using sport in their business strategy. This vertical integration, or the 'Foxification' of sports (Andrews, 2004), is likely to decrease competition, eliminate third parties, and depress sports broadcasting rights fees. This increasing convergence between sports clubs and media conglomerates is driving the sports media complex to a new dimension, allowing media companies to have exclusive access and closer control of broadcasting and merchandising rights, which may raise important issues both on upstream and downstream broadcasting markets.

#### **7.4. Upstream broadcasting market: collective and exclusive selling of rights**

As broadcasting income has become one of the major economic resources for football clubs, selling sports broadcasting rights directly affects sports business' financial healthiness and fair competitiveness.<sup>1</sup> As Rowe (1999) notes, sports media are not as

vital as food and clothing but are paradoxically highly priced thanks to their importance for sports clubs, broadcasters, and fans. Revolutionary developments in the European broadcasting system (e.g., digitization and liberalization) have fundamentally changed the sale and exploitation of sports broadcasting rights. While in the past, public broadcast institutions carried sports events and, as monopolists, paid relatively small rights fees, the proliferation of commercial free-to-air and pay television channels has substantially increased the demand and fees for these rights (Noll, 2007). Although these contracts seemed seldom profitable in the past, broadcasters remain extremely interested in sports rights because of their promotional opportunities, branding power, and audience building effects (Horne, 2006).

With regard to the sale of sports broadcasting rights in the upstream market, two opposite but therefore not mutually exclusive approaches emerge, namely the joint selling of broadcasting rights versus individual team trades (Szymanski, 2006a). In the case of a league-wide sale of rights, supply-side cartels organize a monopoly in order to maximize joint profits by reducing supply quantity. Owing to the increased competition on the demand side with several media groups tendering, sports leagues are taking full advantage of this pooling strategy to increase sports rights fees. Consistently, this broadcasting income is allocated to all league members via distribution systems based on merits, performance, or market size (Boyle and Haynes, 2004). This solitary principle of pooling broadcasting rights is the dominant model in the European sports market. However, this principle is put under pressure since opportunism-driven major football clubs aim for negotiating broadcasting rights individually to avoid income sharing with inferior clubs and to boost revenues from these rights. Nonetheless, both approaches can be applied simultaneously as exemplified by some major sports leagues in Europe and the United States (Cave and Crandall, 2001).

As did the Bosman ruling,<sup>2</sup> the exponential growth in broadcasting coverage and inflation of rights fees is assumed to have exacerbated material inequalities between football clubs (Miller et al., 2001). Therefore, the effects of both selling approaches—collective approach and individual approach—on competitive balance have been widely debated. Sports broadcasting rights fees have been exploding due to increased

competition and claim for exclusivity on the demand side. Although some contend that centralization of rights does not automatically maximize the league's total income (Forrest et al., 2004), rights pooling is said to cause higher rates compared to club-to-club negotiations. Therefore, league-wide negotiations are considered more effective than individual strategies and have had positive consequences for financing and developing professional sports structures (Andreff and Bourg, 2006; Bolotny and Bourg, 2006; Sage, 2000). Moreover, the collective sale of broadcasting rights is commonly assumed to encourage competitive balance, as it provides financial support to smaller teams through the distribution of broadcasting revenues. Individual rights negotiations, on the other hand, allow elite clubs to capitalize their national or even global appeal and reinforce existing structural inequalities between top and weaker teams. However, it is claimed that united strategies do not necessarily improve competitive balance, since unequal income distribution preserves historical competitive inequality, and they do not eliminate the advantages of large-market teams in securing live gates, sponsorship deals, or talent recruitment (Cave and Crandall, 2001; Fort and Quirk, 1995). On the contrary, individual negotiations are regarded as a means to contribute to competitive balance, as it gives weaker teams incentives for improving team quality and, as a result, stipulating higher rights fees (Noll, 2007).

In any case, the joint sale of sports broadcasting rights does not always parallel general interests, since pooling strategies are considered price fixing and exclusive access mechanisms that limit sports content choice to consumers and broadcasters (CEC, 2003a). Although they are accepted as commercial practices within the industry, exclusivity agreements were blamed to foreclose new media markets by denying competing broadcasters access to sports content (Boardman and Hargreaves-Heap, 1999; Hutchins and Rowe, 2009; Nicita and Rossi, 2008). Moreover, major clubs were hindered from the opportunity to monetize their appeal by selling some of the rights individually. In Europe, these negative consequences and especially the excessive duration of exclusive joint selling agreements have captured the attention of competition and public policy authorities, which have defined a number of criteria that need to be considered when pooling broadcasting rights. The European Commission case law such as the UEFA Champions League decision has accepted the collective sale

of sports rights under a number of conditions, as follows: (1) broadcasting rights contracts should be concluded for a period not exceeding three years; (2) sports rights should be traded through open and transparent tender procedures giving all interested parties equal opportunities; (3) individual clubs should be granted the possibility of selling individually the rights that the league was not able to sell jointly; and (4) broadcasting rights should be marketed into different packages (television, Internet, mobile...) to allow several competitors to acquire sports content (CEC, 2003a, 2003b, 2005a, 2006). This is extremely important since the emergence of new media applications and the fragmentation of the demand side have pressed for the unbundling of broadcasting rights in separate windows. This windowing should enable fans to enjoy a wider array of content formats across a diversity of delivery platforms and allows individual clubs to exploit certain rights themselves. Furthermore, unbundling allows rights holders and media outlets to benefit from new revenue streams from subscription and pay-per-view services across several access networks (Evens et al., 2011). Contrary to exclusivity, where rights are held by a single agent in the market, the outcome of the unbundling process may be the fragmentation of rights as different players in the market should access different rights packages. Consequently, consumers need to subscribe to multiple platforms in order to consume the desired bundle of premium contents (Nicita & Rossi, 2008). Therefore, rights holders in the sports business are increasingly exploring the shared access to premium contents and are providing multimedia platforms with non-exclusive access to content that can be viewed by means of extra payments. The Dutch football league, for example, managed to establish its own branded Eredivisie channel and agreed upon distribution deals with all operators. This channel aims to reach as many viewers as possible and therefore is not exclusive for a single operator (Evens, Geey, et al., 2010a, 2010b).

Nevertheless, the on-going evolution toward a vertically and horizontally integrated communications business is likely to foreclose media markets, reduce the number of potential buyers, and decrease demand for sports broadcasting rights. Whether this lessening of competition will have pernicious effects on sports rights fees is still to be seen; however, the belief that broadcasters' ownership of sports clubs might be anti-competitive relies upon the so-called toehold effect (Bulow et al., 1999; Burkart, 1995).

According to this effect, companies can confer a huge competitive advantage on a bidder in an auction when acquiring a toehold, such as an ownership stake in the object being sold. In a standard auctions procedure, bidders with a toehold are virtually guaranteed to win the auction, and at a lower price than they otherwise would have paid. Because a part of their bid can be recouped by virtue of their ownership stake, bidders with a toehold are willing to bid more aggressively. This interacts with the winner's curse, causing other bidders without a toehold to reduce their bids for fear that they would overbid in the contest. Eventually, this fear for overpaying would trigger off less competition, lower sale prices for sports rights, and less choice for consumers. In the past, the British Competition Commission has blocked BSkyB's bid for Manchester United to preserve this fair competition for broadcasting rights (Harbord and Binmore, 2000). This toehold effect can be substantially reduced by a sealed bid auction, in which the winner's curse plays a less important role. Some European television operators still have partial ownership of football clubs; most groups (such as BSkyB, NTL, and Canal+) have sold their stakes in recent years. Except for the English and Welsh Premier League, who declared that no media company is allowed to own over a 10 per cent stake in a football club, neither the European nor other national football leagues have established cross-ownership rules for media and sports.

### **7.5. Downstream broadcasting market: securing cultural citizenship**

Owing to recent developments, live sports coverage has shifted from analogue free-to-air to (digital) subscription-based (premium) platforms. These platforms are assumed to increase consumer choice in terms of sports content, enrich fans' viewing experience, and stimulate full participation to the game through enhanced interactive features (such as player cams, replay possibilities, statistics...). Moreover, daily practice shows that fans are likely to pay for high-quality, exclusive live sports and other value-added multimedia services. Although viewers may benefit from this subscription supply when this abundance leads to an increase of channel quantity and consumer choice, FTA households could be denied access to major sports events since these extra services require a supplementary subscription payment. In the past, people were able to watch



major sports events on free-to-air television. However, due to the acquisition of exclusive sports rights by pay-television operators and later subscription-based digital platforms, coverage of major sports events is increasingly excluded from free-to-air coverage. This may lead to the so-called 'siphoning effect' that occurs when subscription-based platforms carry events that previously were freely available (Noll, 2007). Consequently, households unwilling or unable to pay an extra subscription fee could be deprived access to these events. Although a proportion of households will then be eager to switch to premium platforms due to the inelastic demand for live sports, this exclusivity of sports rights may endanger people's right to information and cultural citizenship (Jeanrenaud and Kesenne, 2006). In this context, Padovani (2007) argues that digital television continues to produce a polarized and dual market where high-quality content (first release movies and popular sports events) gravitates toward subscription channels and less valuable content is being distributed on free platforms. Those concerned with the social divide and the exclusion that a pay television environment may generate plead for a reinvigorated role of PSB as a provider of high-quality programs that are freely and universally available. Rowe (2004) therefore defends that 'public broadcasters should make a significant, reforming, and progressive contribution to sports culture through innovation, critique, and diversification.' Instead of leaving sports to the market, PSB guarantees citizens' rights to participate in cultural and social events and their rights to access quality information and entertainment.

Sports play a major societal role while making an important contribution to solidarity and prosperity. Beside enhancing public health, fighting racism, and promoting active citizenship, sports act as an important cultural arena through which collective identities are being articulated (Blain et al., 1993; Sewpaul, 2009). Sports can bring people together, provide them with a sense of belonging, and possess the ability to unite the nation. Moreover, televised sports make an important contribution to social inclusion by developing shared national rituals and values (Donnelly and Young, 2001; Maguire, 2005).<sup>3</sup> In order to participate fully in the cultural sphere, people should be granted universal access to those events that are claimed to be of national importance. Hence, to guarantee the public's right to information and to safeguard the social role of sports, the European legislator introduced the list of major events mechanism in 1997

in the Television Without Frontiers Directive. After a fundamental revision of this Directive, this provision was renumbered to Article 14 of the Audiovisual Media Service Directive (AVMS, 2010). This mechanism allows every member state to draw up a list of events that are of major interest for society. According to Article 14 of the AVMS Directive, these events should be broadcast on 'free-to-air' television ensuring that a 'substantial proportion of the public' has the ability to watch those major events. It should be clear that this consumer surplus, at least to some extent, is gained at the expense of right holders and pay television providers. The European Commission claims that the listed events mechanism is working satisfactorily (CEC, 2003c); however, at least some critical assessments should be made.

First, the principle of the listed major events states that the events should be preserved for free-to-air television. According to Recital 53 of the AVMS Directive, listed major events should be accessible to people 'without payment in addition to the modes of funding of broadcasting that are widely prevailing in each member state (such as license fee and/or the basic tier subscription fee to a cable network).' Although it might be obvious that pay television does not fall within the scope due to the extra subscription fee and decoder purchase to decrypt the broadcasting signal at first, the Directive is rather vague in what should be understood as free-to-air television. The Danish Government, for example, considered (when the Danish list was still in force) so-called low pay television broadcasters charging low fees (up to 25 DKK per month, approximately 3.4 EUR or 4.3 USD) also as free-to-air (Castendyk et al., 2008). Although public broadcasters are mainly funded by public license fees and taxes, they are the prime example of free-to-air television.

Furthermore, this raises the question whether encrypted broadcasting should automatically be opposed to free-to-air. Although in the digital era, most broadcasting channels are encrypted, many television households still lack the necessary reception equipment to convert analogue into digital signals. Consequently, these households would be excluded from accessing the events of major importance to society. Obviously, migrating to digital television services results in extra consumer costs. But should these switching costs be interpreted as an additional payment? As consumers still have the

choice between analogue and digital services, an extra subscription fee or decoder purchase should be qualified as additional. However, once the digital switchover is completed (for analogue terrestrial at last by 2012), the payment of digital television services should be considered as a further technological evolution within the broadcasting field and should then no longer be seen as additional. However, as analogue cable distribution mainly remains dominant in various European countries, this could create a digital divide and lead to social exclusion (Evens, Verdegem, et al., 2010).

According to the AVMS Directive, free-to-air should ensure that a substantial proportion of the public will not be deprived access to events of major importance to society. Since the Directive does not contain a clear definition of 'substantial proportion', all member states have their own interpretation of this concept. In Austria, for example, this means that 70 per cent of the population should be reached, while in Belgium and the United Kingdom, 90 per cent and 95 per cent of all households, respectively, should be covered free-to-air. Virtually, the entire population, or at least a considerable proportion, should have access to the broadcasting of those events (Scheuer and Strothmann, 2004b). Broadcasters that do not reach these requirements are still able to acquire the rights of listed events, but will have to share coverage of these events with broadcasters that meet the required penetration or grant sublicenses to rivaling broadcasters to reach the minimal penetration (Solberg, 2002a). However, this requirement implicates that the listed events mechanism fails to provide a fair treatment of all audio-visual media providers. It is apparent that new media operators such as mobile and Internet service providers have limited penetration and therefore are unable to exploit exclusive sports rights. In addition, the listed major events mechanism is only applicable to linear audio-visual services fulfilling the requested penetration level. Despite the growing importance of interactive and on-demand services in today's media economy, new media companies are denied exclusive access to listed major sports events rights. Nevertheless, as can be learned from insights in drivers and barriers for the uptake of previous media technologies, premium content including sports was a crucial element in attracting new customers and in driving the successful deployment of these mobile technologies (Goldhammer, 2006).

Finally, it should be mentioned that the AVMS Directive foresees no objective definition of the term 'events of major importance for society' or provides no single list of criteria to define whether an event is of national interest. Hence, it comes as no surprise that there is a wide variation concerning events that one would supposed to be of more or less equally great interest (Weatherhill, 2007). Although all national lists contain the Olympic Games, social and cultural factors were considered when drawing up the inventory of events. Next to the dominance of football in most European countries, large differences amongst member states can be witnessed. This variety reflects the popularity of a particular sport in each country. The Cyclo-Cross World Championships for example is only mentioned on the Belgian list, while only the Finnish list reckons the ice hockey World Championships as a major sports event. The UK list distinguishes between Group A events, which should be broadcast live on an exclusive basis on free-to-air, from Group B events, which may be broadcast on pay television unless adequate provision has been made for secondary coverage.<sup>4</sup> However, to make things more complex, member states are not obliged to draw up a list of major events so that only eight member states have formally notified their list to the European Commission to date. Although in some countries, the listed events mechanism has had a significant impact on major sports coverage for FTA, the question is raised whether the public's rights to information is fully guaranteed by the provision due to its vague definitions and its optional nature.

## **7.6. Discussion**

Owing to the recent emergence of digital technology and the proliferation of mobile multimedia handsets, the possibilities of enjoying sports content have multiplied. The expansion of new media markets has driven the sports media complex to a new dimension with sports clubs evolving to media entities. By exploiting new media content packages, sporting organizations endeavour to defend their stakes in this globalised complex and to maximize commercial revenues. These packages create a series of innovative use cases for sports fans allowing a more interactive, personalized, and cross-media sports experience. A number of sports clubs have started to implement a 360° approach to come up with new media services in order to enrich the sports

experience. Through the supply of sports content across several platforms and devices, fans can be permanently engaged with their sport. However, these developments pose the question whether dedicated club channels, personalized mobile content, and online news portals keep their promise as new profit centres for sports clubs, since revenues generated from these services are still disappointing. One could ask whether the overrated demand for these innovative services will devalue the economic importance of new media rights in the near future and whether mobile operators are still willing to invest heavily in these services because of their low consumer uptake and profitability.<sup>6</sup>

Furthermore, sports broadcasting rights fees are also likely to decrease because of the increasing cross-ownership between media and sports corporations. By acquiring stakes in sporting organizations, the media is keen to dominate the sports media complex. Although the marketing of digital television platforms has induced a strong demand for sports content, it can be expected that the on-going consolidation on the demand side will have pernicious financial effects for sports clubs and leagues. As the communications industries are evolving toward an oligopolistic market structure, this cartelization is likely to decrease rivalry for sports content and depress the value of sports rights. Moreover, since European public broadcasters have been criticized for spending millions of public money to cover major sports competitions such as the UEFA Champions League and the Formula One World Championships, they are less eager to play the sports game in the future (Solberg, 2007, 2008). As they are faced with significant budget cuts due to the economic crisis, it is uncertain whether public broadcasters will play an important role in the future sports rights markets. Consequently, competition in the upstream market is further reduced. Finally, sports content has pushed the development of digital television markets, whose demand for content was a driver itself for inflated rights fees. However, questions can be raised about the evolution of these fees, as digital television markets will be fully established once the digital switchover will be completed. One can expect that platform operators will become more reluctant to invest huge sums to acquire broadcasting sports rights, since sports' importance as a catcher for new subscribers is likely to drop.

Finally, content aggregators face challenges in the downstream market as well, since exclusive rights agreements are assumed to potentially harm the people's right to information. As live sports coverage has shifted from analogue toward digital platforms, this could lead to a siphoning effect excluding analogue households from major sports events. However, to guarantee the public's right to information and to safeguard sports' social and cultural importance, the European legislator has introduced the list of major events mechanism. However, as member states are not obliged to implement this mechanism, the public's right to information and cultural citizenship is not fully guaranteed. As a consequence, the authors would like to plead for a more stringent fulfilment of the listed events mechanism by means of crystal clear definitions and criteria. A concise regulatory framework is required to grant fair access to sports media and ensure sports' important role in society. This involves finding a new balance between the economic, cultural, and social interests of sports, between the interests of all stakeholders involved in the game—media providers, sporting organizations—and, last but not least, the public.

## Notes

- <sup>1</sup> In Germany, for example, the government had to set up a €200m financial guarantee fund for professional football clubs to ensure that they could continue operating after the collapse of Kirch Media in 2002, which had a £315m television deal to broadcast Bundesliga matches.
- <sup>2</sup> The Bosman ruling is a 1995 European Court of Justice decision. The case was an important decision on the free movement of labor and had a profound effect on the mobility of football players within the European Union. The case banned restrictions of foreign EU members within the national leagues and allowed professional football players in the EU to move freely to another club at the end of their term of contract with their present team (free agent) (*Union Royale Belge des Sociétés de Football Association ASLB v. Jean Marc Bosman*, 1995).
- <sup>3</sup> The importance of sports has also been recognized in various EU policy documents including the 2007 *White Paper on Sport* (CEC, 2007b).
- <sup>4</sup> The UK list is currently revised by the Independent Advisory Panel, which has argued that the division between Group A events and Group B events is no longer up to date. Highlights or delayed coverage are no longer perceived as sufficient substitutes for live coverage, as broadcasters have the ability to use their digital portfolio to maximize coverage of sports. Consequently, the panel has recommended a single list of live events protected for free-to-air.
- <sup>5</sup> In total, the European Union consists of twenty-seven member states.
- <sup>6</sup> Since the beginning of the 21<sup>st</sup> century, European telecommunications operators have heavily invested in rolling out 3G networks for exploiting mobile data services such as mobile television, however, without realizing significant return on investment.



# 8. THE STRUGGLE FOR PLATFORM LEADERSHIP IN THE EUROPEAN SPORTS BROADCASTING MARKET

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## 8.1. Introduction

The beginning of the courtship between sports and the media goes back to the 1890s when newspapers began to cover sporting events. This coverage clearly meant a win-win situation for both parties as they advanced in parallel to become mass phenomena. While sporting organisations gained benefits from the extra media publicity, that drove up stadium attendance, newspapers attracted new readers through the insertion of sports sections and even launched magazines that were totally devoted to sports coverage (Helland, 2007). A prime example of this win-win situation is undoubtedly the start of the Tour de France, which began as a small six-day race in 1903 but has become one of the most watched sports events (over 2 billion viewers worldwide) and probably the most prestigious cycling race in the world. In an attempt to compete with its successful rival 'Le Vélo', the French sports newspaper 'l'Auto' founded 'La Grande Boucle' to increase the sales of the floundering newspaper (Dauncey and Hare, 2003).

With the breakthrough of television as a mass medium after World War II, television broadcasting started to take over the role as the leading sports medium. Since ticket sales represented the major revenue source for sporting organisations at that time, the rise of televised sports was originally feared to cause depletion in stadium attendance because people could watch the events directly from the living room. For sports clubs,



however, live televised sports soon proved to be a fan-builder and, later with the advent of pay television, a spectacular financial engine (Buraimo, 2008). Whereas public service broadcasters pioneered sports coverage on grounds of nation-building and cultural citizenship, commercial broadcasters also saw opportunities in achieving dense audience ratings and selling these 'eyeballs' to advertisers. As technological innovation progressed over the years, pay-television services and later vertically integrated digital television operators started to play a major role in live sports. Rather than being a cultural expression or social artefact, sports became a strategic means in the commercial battle for market share in the digitised television industry (Evens and Lefever, 2011).

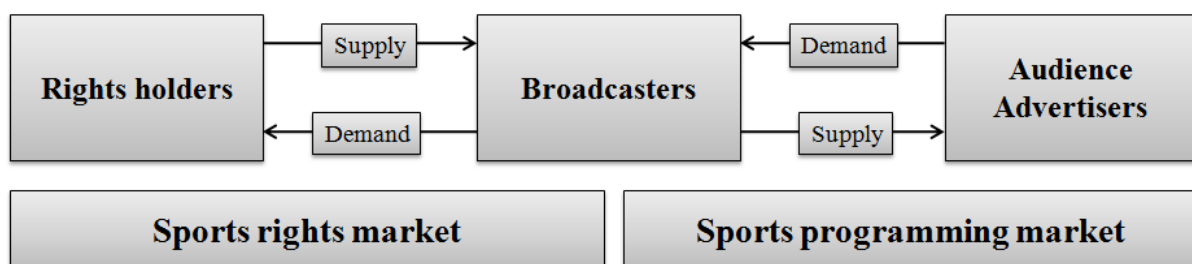
This chapter discusses the abovementioned transition of power in the sports broadcasting rights marketplace. This 'struggle' for platform leadership will be discussed within a broader European perspective and illustrated by means of the Belgian football case. Almost everywhere in Europe, free-to-air (FTA) broadcasters have lost their leading position as main providers of football games. Instead, pay-television operators and telecommunications carriers came into play and started to claim leadership in this global market. Here the chapter highlights an interesting paradox. This battle for strategic control was fuelled by the de-regulation and marketization of sports, and mainly served commercial goals. Hence, it has not always been in the public interest. Therefore, the sports broadcasting market has become increasingly re-regulated to preserve the social capital of sports, and guarantee fair competition in the market (Lefever, 2012).

## **8.2. Sports as a site of struggle**

This section highlights sports as a site of struggle between the different corporate forces that are operating in the sports broadcasting rights market. Due to the commercial and strategic importance of popular sports media rights, a struggle for platform leadership is taking place. In this upstream market, sports rights holders – usually represented by leagues or federations – and broadcasters negotiate over the economic terms for selling and buying sports rights. Typically, this secondary market is

characterised by intense competition for the acquisition of premium rights, which eventually produces inflated rights fees (Szymanski, 2006a). To illustrate this enduring growth in live rights prices, the amount of money US broadcast network, NBC-Universal, paid for acquiring the Summer Olympic television rights tripled from \$456 million (in 1996) to \$1.418 billion (in 2020). This inflation has been largely caused by the drastically increased competition in the sports programming market, where free-to-air broadcasters compete for audiences that can be sold to advertisers (Gaustad, 2000). For pay-television and related service providers, programming live sports is also considered a successful strategy to build up a subscriber base and create market share. As Boyle and Haynes (2004) note, 'football [is regarded] as a cash cow of the new media sport economy and driven by the rollout of cable, satellite and digital television' (p. 4). Hence, television operators are increasingly involved in a struggle for live sports rights for opening and simultaneously foreclosing markets, and achieving platform leadership. By controlling premium sports rights, their ambition is to play a prominent role in the sports broadcasting market and provide the most compelling content in order to extract value from a range of services and gain the highest economic benefit. Sports markets thus have a multi-sided character and internalize the network externalities that are generated both by and between the supply and demand side of sports broadcasting (see Figure 9) (Budzinski and Satzer, 2011).

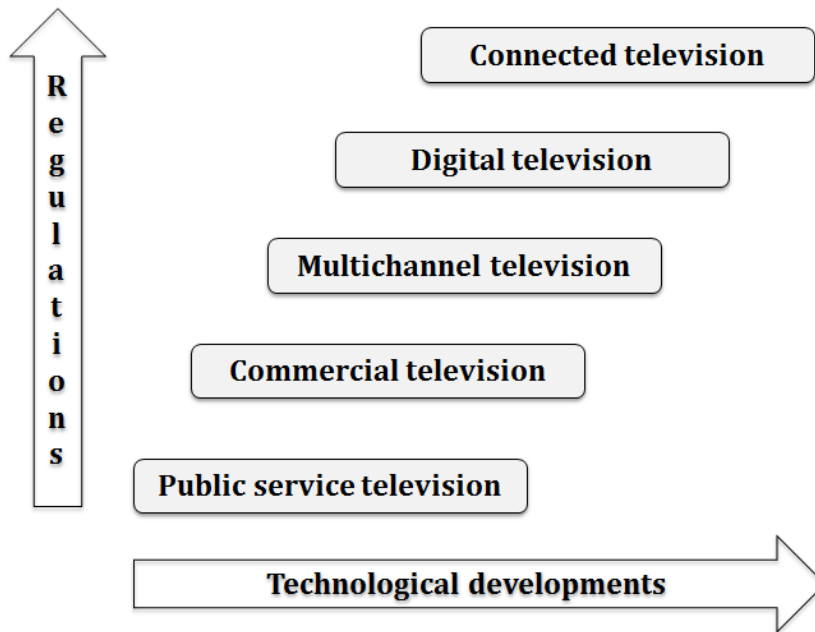
**Figure 9** Sports broadcasting market



This dependent relationship between sports organizations and media has evolved significantly following the introduction of broadcast technology in sport. Firstly, the increased competition on the demand side has fundamentally changed the political economy of sports and reshaped the economics of professional sports and, in particular European club football. Television not only gained an increasing influence over the rules

of the game itself, but largely produced the current market structure of European football that sees clubs excessively dependent on lucrative television income. On average, top clubs rely on broadcast rights for approximately 35 per cent of their total income with Italian clubs peaking at over 60 per cent (Deloitte, 2012). These figures may suggest that the economic model underlying the sports business is no longer built on ticket sales but has shifted to a financing model that relies on the exploitation of media rights and merchandising (Andreff and Staudohar, 2000).

Secondly, the structure of media markets and traditional broadcast business models have been altered by the introduction of new technology. The current struggle for platform leadership has been fuelled by technological developments, first, with the entrance of multichannel, later digital and now connected television, which have fundamentally affected the supply and exploitation of sports programming (Turner, 2007). As Hutchins and Rowe (2009) argue, the Internet could push the 'long-established broadcast model characterized by scarcity, with high barriers of access and cost restricting the number of media companies and sports organization able to create, control and distribute quality, popular sports content' to a networked model of 'digital plenitude' (p. 354). In this context, sports rights are becoming a valuable strategic weapon for exerting power and control in the online environment, as well as becoming a possible acquisition target for leading new media platforms like Facebook, Netflix or YouTube.

**Figure 10** Struggle for platform leadership

Against the background of these rapid technological developments, which could not have taken place without liberalisation and de-regulation of media and telecommunication markets, the battle for controlling sports rights is paradoxically characterised by increased re-regulation (see Figure 10). Whereas de-regulation and technological innovation have spurred convergence and contributed to an abundance of distribution channels and consumer technologies, access to premium sports remains scarce and may eventually result into supply-side monopolies. This eventually could hurt not only the business of sports but also the social capital sports generate. A tighter regulatory framework has been implemented in the European Union to preserve fair competition in the market and to guarantee the social and cultural role of sports. This increased regulation of media sports markets, however, has been heavily opposed by commercial media companies, which argue for dismantling these regulations in favour of more corporate control over the conditions for selling and exploiting of sports rights, and by sports federations, which fear a devaluation of their sports rights packages.

### **8.2.1. The battle for control**

Most public service broadcasters started to cover major sports events soon after World War II. In contrast to the United States, where public service television occupies a rather marginal position in the market, state-funded television played a foundational

role in sports broadcasting in Europe (Hoehn and Lancefield, 2003). Public service broadcasters pioneered the live coverage of major sports events and thus the mediatised promotion of sports. In so doing, one could argue that public service broadcasters have created the sports broadcasting market prior to the appearance of commercial television, which paved the way for pay television. Rowe (2004) regards this pioneering role as a form of market research development. Public broadcasting accepted the risk and built up a business that was exploited, first, by commercial free-to-air channels, and later by subscription-based platforms. With the liberalisation of the audio-visual markets in Europe, private television companies were eager to acquire live sports rights and outbid public broadcasters in many countries. Despite uneven levels of profitability, live sports coverage created 'spill-over' effects in terms of network branding, prestige and a stronger position to negotiate advertising rates across year-round programming (Rowe, 1999).

Fear that more wealthy commercial channels would outbid public broadcasters, and deprive viewers of events they expected to see on 'national' service saw the BBC propose a listed events policy in order to avoid 'bidding wars' and to protect the 'crown jewels'. In 1954, the UK government listed events of national interest, which neither the BBC nor the commercial channels could broadcast on an exclusive basis. The regulation remained largely unchanged for many years, when the prospect of cable television prompted a reassessment (Smith, 2010). During the 1990s, this listed events mechanism moved back to the centre of UK television policy. The commercial strategy of the new wealthy satellite pay-television provider, BSkyB, was based on the exclusive acquisition of premium sports rights. By programming live sports, BSkyB successfully broke into this burgeoning market and built up a substantial subscriber base. Similar strategies were applied by other leading pay-television companies Canal+ and Mediaset. Following the migration of live sports coverage from free-to-air to subscription-based platforms, a harmonised listed events regulation was introduced at the European level (Evens and Lefever, 2011). To guarantee that the public would have access to events of 'major importance for society', the list of major events mechanism, as part of the Television Without Frontiers Directive, was introduced in 1997.<sup>1</sup>

Following the above mentioned commercial strategy, multichannel and later digital television operators were keen to acquire live sports for positioning themselves in the market and achieve a comfortable market position. Typically, most of these players transformed into vertically integrated operators, exploiting both the network infrastructure and managing subscription-based television services. In this context, live sports have become a strategic weapon in the battle for market share as the acquisition of exclusive rights secured a substantial competitive advantage over rivals. Such exclusive dealing, however, may deter efficient entry and therefore foreclose markets (Doganoglu and Wright, 2010). Hence, both national and European competition authorities keep a close eye on this widespread practice and strictly regulate this access to premium content, such as live sports. This situation partly explains the growing force of antitrust and competition policy in European sports broadcasting markets.

In the European markets, the battle for premium rights has been fought largely between cable and satellite operators. Leandros and Tsourvakas (2005) illustrate how this intense competition for premium rights has resulted in monopolistic pay-television market structures and financial crisis as pay-television operators overpaid for rights and overestimated consumer demand. Another well-known example is the collapse of the German media conglomerate Kirch Group. The group went into administration due to debts associated with a €315 million television deal to broadcast Bundesliga matches. As a result, the German government had to provide a €200 million financial guarantee fund for professional football clubs to ensure that they could continue operating after the collapse of Kirch Media in 2002. Since the mid-2000s, satellite operators began facing heavy competition from 'convergent media' players including cable and telephony operators. In Europe, cable companies Telenet (Belgium) and ZON (Portugal) play an important role in sports broadcasting, whereas Orange (France), BT (UK), Belgacom (Belgium), Deutsche Telekom (Germany) and Versatel/Tele2 (the Netherlands) use sports rights as part of their IPTV offerings. By attracting subscribers, these companies are able to cross-sell bundled telecommunications services and increase the average revenue per user (ARPU). In these markets, ownership of premium content rights is considered an important competitive advantage and allows operators to lock-in subscribers.

The integration of traditional broadcast content with broadband delivery platforms creates opportunities for 'over-the-top' services that bypass traditional network gatekeepers and access providers. Such services refer to online platforms operated by third parties like Netflix, Hulu or YouTube that can be accessed through Internet-connected devices including PCs, tablets, set-top boxes or gaming consoles. Technological innovation could trigger off a new era for selling and exploiting sports media rights, and may pose heavy competition for the established providers of televised sports. After Google's YouTube already streamed Indian Premier League Cricket games, and the 2008 Beijing and 2012 London Summer Olympics, both Google and Apple announced that they are 'in talks' with some major sports leagues including the NBA, NHL and multiple European soccer leagues such as the FA Premier League to have access to compelling content and show live games on their television services. Constant progress in information technology and the notion of 'media convergence' could drastically alter the economic value of sports broadcasts if delivered by multiple service platforms and consumed over different devices. To date, online and mobile rights have been considered a by-product of the traditional 'broadcasting' rights, but this could change in the future. If the omnipresence of the Internet in our daily lives is reproduced in the business of sports media, chances are likely that local, traditional television companies suffer global competition and lose the battle. The expected evolution to web-based and multiscreen viewing, especially amongst younger generations, might intensify the struggle for sports rights and produce a global market structure dominated by transnational conglomerates, most notably those active in technology sectors.

### **8.2.2. *The European sports rights markets***

Sports rights represent an important economic dimension of the total sports market. Media rights make up about 20 per cent of the global sports market, which was valued \$118.7 billion in 2011 (PricewaterhouseCooper, 2010). On a global scale, the market for sports rights is worth an estimated \$23.1 billion. This value is, however, unequally distributed among the different continents and also within countries. Large variation in the value and growth of sports rights market are apparent. North America, for example, comprises about 76 per cent of the global sports market and generates 38 per cent of the value of sports rights. In Europe, 88 per cent of the football rights value is generated

by the five major European leagues (United Kingdom, Italy, France, Spain and Germany). With a total value of €1.3 billion, the Premier League clearly generates the highest broadcast value, about three times more than the German Bundesliga, which is valued €440 million (for the 2009/2010 season).<sup>2</sup> The value of the broadcast deals in the top five European football competitions clearly outweighs those existing in the rest of Europe. Satellite provider Digiturk, for example, paid €260.3m per year as part of a four year-long deal with the Turkish Süper Lig, whereas the Polish League generates €33.8 million annually.<sup>3</sup> Although much depends on the size of the respective pay-television markets, this unequal distribution creates competitive imbalance and may lead to a two-tiered European football landscape. Hence, discussions on financial fair play and competitive balance have been started up by the European Football Association UEFA.

The value of these sports rights markets is likely to expand in the coming years as a result of accelerating technological developments, although the impact of piracy is an unknown factor. As new players will come into these markets, established sports broadcasters may eventually be pushed out of the market. Table 9 presents an overview of selected broadcast deals for the major European football leagues and shows that, for the most prestigious competitions, a full migration from free-to-air (FTA) to pay television has taken place. In case of the UEFA Champions League, FIFA World Cup and the national championships, subscription platforms have outbid public service and commercial broadcasters, closing these matches behind pay walls. The overview also shows the European footprint of the leading pay-television consortia Canal+ and Sky. Sky is affiliated to satellite provider BSkyB, which not only provides television access, but also sells broadband and phone services. The same arrangement exists for the French telecommunication company Orange, which also provides the French football league on mobile. However, this dominance of Canal+ and Orange in the French market is now threatened by the aggressive moves of the Qatar-based satellite channel Al Jazeera, which is eager to expand its territory in the European sports broadcasting market.



**Table 9** Broadcasting rights in major European markets

	National championships	National cup	National team	Champions League	FIFA World Cup
<b>France</b>	<b>Live</b> Canal+ Orange	<b>FTA</b> France 2 Eurosport	<b>FTA</b> TF1	<b>Pay-TV</b> Canal+	<b>Pay-TV</b> Canal+
	<b>Highlights</b> France 2			<b>FTA</b> TF1	<b>FTA</b> TF1 France 2
<b>Germany</b>	<b>Live</b> Sky	<b>Pay-TV</b> Sky	<b>FTA</b> ARD/ZDF	<b>Pay-TV</b> Sky	<b>Pay-TV</b> Sky
	<b>Highlights</b> ARD Sport 1	<b>FTA</b> ARD/ZDF		<b>FTA</b> Sat.1	<b>FTA</b> ARD/ZDF RTL
<b>Italy</b>	<b>Live</b> Sky	<b>FTA</b> RAI	<b>FTA</b> RAI	<b>Pay-TV</b> Sky	<b>Pay-TV</b> Sky
	<b>Highlights</b> RAI			<b>FTA</b> Mediaset	<b>FTA</b> RAI
<b>Spain</b>	<b>Live</b> Canal+ Gol TV	<b>Pay-TV</b> Canal+ Gol TV	<b>FTA</b> TVE	<b>Pay-TV</b> Gol TV	<b>Pay-TV</b> Canal+
	<b>Highlights</b> Cuatro TVE	<b>FTA</b> TVE TV3		<b>FTA</b> TVE FORTA	<b>FTA</b> Telecinco Cuatro
<b>UK</b>	<b>Live</b> Sky ESPN/BT	<b>FTA</b> ITV	<b>FTA</b> ITV	<b>Pay-TV</b> Sky	<b>Pay-TV</b> Eurosport ESPN/BT
	<b>Highlights</b> BBC			<b>FTA</b> ITV	<b>FTA</b> BBC ITV

Although live sports have migrated to pay-television providers, public service broadcasters and, to a lesser extent, commercial channels still play an important role in providing the highlights of major sports competitions. In the case of the national cup and the national football team, FTA television remains an essential factor in the market. Thanks to the listed events regulation, the abovementioned events have to be broadcast on FTA television and therefore fall outside the scope of pay-television providers. The regulatory settings explain why FTA and public service broadcasters offer live

broadcasts of matches and competitions. All over Europe, however, the role of public service broadcasting in the sports market is increasingly contested. Firstly, private television has claimed that state-funded public broadcasters distort the market, and that they should spend public money to producing programmes that complement those provided by their commercial counterweights (like culture and documentaries). Secondly, economic crises prompt public service broadcasters to deploy cost-cutting and efficiency measures. Several public service broadcasters have announced they will no longer bid for expensive live rights, including the UEFA Champions League and the FIFA World Cup. The BBC now shares the broadcasting rights for the Formula One World Championship with Sky Sports. Thanks to the EBU, most European public service broadcasters could cover the 2012 Olympics in London, although this could change in the future.<sup>4</sup> Since the International Olympic Committee (IOC) has rejected the EBU's bid and awarded the rights for the 2014 and 2016 Olympics to sports rights marketing agency Sportfive, the Olympics may move to private television for the first time ever in western Europe.<sup>5</sup>

### **8.3. Football rights in Belgium**

Competition policies and sector-specific media regulations have greatly influenced the sale, acquisition and exploitation of sports broadcasting rights in Europe. In this European context, Belgium acts as a 'text-book' illustration of regulation and economic development in the sports broadcasting rights market. Not only has the Belgian Competition Council been busy with shaping the conditions under which the Belgian Jupiler Pro League sells and exploits the media rights for the national football league, the major events list mechanism also guarantees free-to-air access to important sports events such as the Olympic Games and the FIFA World Cup.<sup>6</sup> In this section, we look closely at the structural transition of the Belgian sports broadcasting market and discuss how intervention by the competition authority has affected the operations of this market sector. The detailed case study illustrates that, despite their opposition to regulatory intervention, sports associations have benefited from the increasing level of competition in the Belgian sports broadcasting market that produced more lucrative rights deals and expanded the amount of sports coverage.

### **8.3.1. Analogue era (1984-2004)**

Similar to other countries, the mechanisms for the sale of media rights developed roughly parallel to the structural evolution of the television landscape in Belgium. Being by far the most popular sport, television coverage of the football league and Belgian Football Cup remained limited to highlights in news programmes or in specific sports magazines in the early days. Only the matches of the Red Devils, the national football team, and some Belgian clubs in the European leagues were broadcast live. In 1984, the Belgian Football Federation started to sell the rights to cover the national football competition for the first time. Since the public service broadcasters VRT (Flemish Community) and RTBF (French Community) enjoyed a *de jure* monopoly position at that time, they were granted the rights to broadcast the highlights of all matches. Due to a lack of competition in the market, the first contract (for the 1984-1987 period) was valued about €0.5 million per year. That amount almost doubled to more than €1 million annually for the period 1986-1991.

Beginning from 1987, the regional governments that were responsible for media policy began liberalising the broadcasting market in the northern and southern part of the country. Only a few years later, the Flemish private channel VTM had gained some 40 per cent market share and became a leading broadcaster. In 1994, the company managed to convince RTBF, the public service broadcaster in South-Belgium, to jointly bid for the football rights (value: €5.12 million per year). Hence, the commercial broadcaster was able to acquire the highlights rights and became the leading sports outlet for many years. After paying €6.7 million per year, the joint arrangement between VTM and RTBF was renewed for the period 1997-2002. In exchange for this money, both channels were granted the right to show the highlights (for no longer than one hour per match day), as well as the live coverage of the Cup Final and the matches of the national team. Partly as a result of this enduring market leadership of commercial television, and to prevent live sports migrating to pay television, Belgium implemented the listed events mechanism.

In the beginning of the 1990s, pay-television channel FilmNet made its entrance into the Belgian market, launching the 24/7 sports channel SuperSport. In 1996, the

company was sold to the French Canal+ Group, one of the leading pay-television operators in Europe. For weekly covering several live matches of the first division, Canal+ bid about €5.5 million. The amount of money remained relatively stable over the following years.

Since 2002, the Pro League, the organization that defends the interests of all professional football clubs in Belgium, is in charge of selling and exploiting the broadcasting rights. For the 2002-2005 seasons, the league entered into agreement with Canal+, which paid €9.8 million for live coverage of a limited number of games. VTM and RTBF each paid €2.8 million for the highlights. This valued the new Belgian broadcasting contract at €15.4 million (see Table 10). Due to the rather disappointing consumer interest in pay-television, however, subscriber revenues did not cover these significant investments in rights acquisition. As a result, Canal+ Belgium was split, and sold to cable operator Telenet in the Northern part and BeTV (later purchased by cable company VOO) in South-Belgium. Business analysts expected that only some 60,000 households had subscribed to Canal+ at the time.

**Table 10** Evolution of football rights valuation in Belgium (paid per season)<sup>7</sup>

	2002-2005	2005-2008	2009-2011	2011-2014
<b>Live</b>	Canal+ €9.800.000	Belgacom €36.000.000 <sup>¥</sup>	Belgacom €43.000.000	Telenet (3 matches) €52.100.000 Sublicense VOO  Belgacom (5 matches) €1.000.000
<b>Highlights Magazine</b>	VTM/RTBF €5.600.000	Sublicense VRT/RTBF	Sublicense VRT/RTBF	Sublicense VTM/RTBF (Weekly magazine VRT)
<b>Internet</b>				
<b>Mobile</b>				
<b>Total</b>	<b>€15.400.000</b>	<b>€36.000.000</b>	<b>€43.000.000</b>	<b>€53.100.000*</b>

¥ Including €200,000 for the highlights of the second football division

\* From the 2012-2013 season onwards, Telenet will cover all matches. In return, the consortium annually pays an additional €1 million

### **8.3.2. Digital era (2005-2008)**

The year 2005 was a milestone in the history of Belgian sports broadcasting. For the first time, a company outside the television business was awarded the live rights for the Belgian football championship. Incumbent telecommunication operator Belgacom surprisingly outbid cable operator Telenet and acquired the exclusive rights for a record amount of €36 million. In order to position itself as an IPTV provider in the emerging digital television market, the company clearly needed appealing content. This purchase saw Belgacom expand from a pure telecommunications company to a multimedia firm operating a digital television platform and a premium television channel covering live football. The rights had moved from a traditional broadcaster to a telecommunications company for the first time, which also saw competition policy come into play.

Whilst launching the tender process, the Pro League claimed it had considered the recommendations of the European Commission in the context of three competition cases. These cases, which concerned the selling of broadcasting rights in the UEFA Champions League, the Premier League and the German Bundesliga, all dealt with the issue of joint selling. In such a scenario, the league collectively sells the rights to interested broadcasters on behalf of all its members. However, this joint selling practice attracted the attention of the European Commission in its role as the European competition authority. The European Commission acknowledged the potential foreclosing effects of a joint-sale mechanism, but instead granted a conditional exemption. Four main amendments were stated: (1) broadcasting rights should be concluded for a period no longer than three years; (2) sports rights should be traded through open and transparent tender procedures giving all interested parties equal opportunities; (3) individual clubs should be granted the possibility of selling individually rights that the league was not able to sell; and (4) broadcasting rights should be marketed in different packages to allow several competitors to acquire sports content. In the case of the Premier League, additional commitments were agreed upon: (1) no single party should be able to acquire all the packages offered in the auction; (2) the selling and awarding of the exclusive rights shall be overseen by a trustee; (3) the joint selling body can only accept unconditional bids per package.

These conditions were accepted as a template by the Belgian Competition Council when ruling the assignment of the broadcasting rights to Belgacom. For the 2005-2008 period, Belgacom made the highest bid for four of the six packages that were offered, whereas the Telenet and RTBF submitted the highest offer for the two remaining packages. RTBF proposed a number of amendments to the contractual proposal, sent to interested broadcasters before the tendering procedure. Given these amendments would fundamentally alter the principles included in the tender, the Pro League decided not to take its tender into account and awarded all rights to Belgacom.<sup>8</sup>

Telenet, supported by pay-television BeTV, filed a complaint against this Pro League decision claiming that the league violated competition rules when granting all rights to Belgacom. According to Telenet, the league was prohibited for granting all rights to one single party (even when that party made the highest bid on every package), and at least two parties should be granted access to rights packages. The Belgian Competition Council, however, stated that there was no objection to the selling of all packages to one actor. Furthermore, the claimants also indicated that each package should be awarded to the highest bidder and that an exclusivity bonus, as offered by Belgacom, could not be accepted. The payment of such bonuses for obtaining multiple or all packages were not, however, considered an infringement of competition law.

### ***8.3.3. Play-offs (2008-2011)***

As mentioned earlier, the main cable company Telenet became dominant operator by swallowing the pay-television branch of Canal+ in 2003. In order to give alternative pay-television channels and alternative infrastructures a chance to enter the market, the Competition Council imposed conditions upon Telenet. Of most importance here is that the company should offer Canal+ access to alternative infrastructure operators on a fair, reasonable and non-discriminatory basis. In practice, such must-offer obligations require vertically integrated companies to offer, either on a wholesale or retail basis, particular premium content (such as live sports) to its competitors. Despite this obligation imposed upon Telenet, no alternative operator has ever asked for access to Telenet's premium programming since 2005. The reason for this may be already evident since IPTV provider Belgacom exclusively acquired all the rights.

With the tender procedure for the broadcasting rights for the 2008-2011 period in mind, Telenet wanted to be freed from this must-offer obligation because it hindered the company's participation in the bidding process. In 2007, Telenet asked the Competition Council to lift the must-offer obligation. Because none of the alternative operators had ever used this obligation, the Council granted this request. Freed from this obligation to share exclusive rights, Telenet could now participate in the tender procedure for the 2008-2011 broadcasting rights. Belgacom, however, appealed to this decision.<sup>9</sup> Consequently, as there would be confusion whether or not Telenet would be bidding for exclusive rights, the cable company decided to withdraw from the race for the live broadcasting rights. Hence, Belgacom maintained its leadership in the live football sports market and paid €135 million spread over three seasons. In order to boost the value of the contract, the Pro League decided to extend the regular competition with play-off matches between the six best ranked clubs from the 2009-2010 season onwards.

Instead of carving up the broadcasting rights for different platforms, the newest trend was that sports organizations, such as UEFA, decided to sell their broadcasting rights on a platform-neutral basis with packages carved out by time window: live, near-live or deferred, highlight and clip rights. The idea here is that winners of each package can exploit these rights across various platforms, including Internet and mobile media. Although the Belgian Pro League agreed to sell its rights on a platform-neutral basis, the Competition Council did not allow the joint selling of all live rights in a single package. The online and mobile rights were sold in separate packages and non-exclusively so that multiple companies could supply live sports on online and mobile platforms. The key outcome here was that no company was interested in these non-exclusive packages.

There was an unexpected twist in this already complex sequence of events. Two teams had finished on equal points at the end of the 2008-2009 season. Two test matches were staged to decide the new champion. Since no one had ever planned for this dramatic outcome, the existing broadcasting contract with Belgacom did not include the live rights for these games. Although Belgacom had a first right of refusal for these matches, pay-television BeTV outbid Belgacom and won the battle to show the

games. Belgacom, which had invested several millions in the football contract, was obviously upset by this situation. Awarding the nationwide rights to BeTV was also widely debated in the Flemish Parliament, as the French-language broadcaster BeTV was not carried by Flemish cable company Telenet. Given that more than the half of the Belgian football fans were unable to watch the two important matches on a Flemish television channel, it was suggested that the Pro League should sell their broadcasting rights to companies in each part of the country separately in the future. However, this could have negative effects on the value of the future broadcasting contracts and increase transaction costs for all negotiating parties.

#### ***8.3.4. Non-exclusive rights (2011-2014)***

For the 2011-2014 seasons, and to every industry observer's surprise, no company was able to acquire all live rights for the Belgian football competition. For the first time, the Pro League provided the opportunity to acquire the rights either on an exclusive basis or on a shared basis. However, Belgacom was unable to outbid Telenet for all live rights, so both operators each took a different rights package. Telenet outbid Belgacom for the three most attractive matches and now has first choice of three live matches each match day. Belgacom, on the contrary, purchased the rights to live broadcast the other five remaining matches. Whereas Belgacom offers its television services across the whole country, Telenet's activities are limited to the Flemish-speaking community. In order to meet the required obligation, Telenet reached an agreement with Walloon cable operator VOO to broadcast the remaining matches in the southern part of the country, and with Brussels-based cable company Numéricable. In contrast to the previous contract, the new broadcasting deal also encompasses mobile and online media rights so that operators can serve their customers across different platforms. For the first time in six years, the commercial broadcaster VTM was also able to reposition itself in the sports broadcasting market by acquiring the highlight rights.

Later, it was revealed that Belgacom only bid for non-exclusive rights, which implies that competing operators have access to these non-exclusive rights package from the 2012-2014 seasons on the condition that they pay the same amount as Belgacom. Hence, Telenet decided to buy this additional package of non-exclusive rights for €1



million, and, thus, will cover all matches of the Jupiler Pro League from 2012-2013 onwards. Given that Telenet did not acquire all live rights on an exclusive basis, this implies that the company is not obliged to share its premium football channel Sporting Telenet (the former Canal+) with its competitors.

While obliging Telenet to share its pay-television channel with competing platforms on the condition that the cable company would acquire all live rights on an exclusive basis, the Competition Council clearly aimed at creating more competition in a market that may be described as oligopolistic. Now that alternative operators can acquire live rights on a non-exclusive basis for a relatively small amount, the Council may have succeeded in its 'mission'. Despite these new competitive dynamics, it should be regretted that the Council has not taken into account the interests of the general public. Given that the broadcasting rights are now split up between two service operators, football fans that want to watch all matches of a particular match day are now obliged to subscribe to two different platforms and install two different decoders. Despite the relative positive effects from a competition perspective, the revised must-offer obligation could have negative effects for the wider public and the sports fans. Now that Telenet has access to all live matches, this may become less of a concern.

#### **8.4. Conclusion**

Benefiting from the positive social effects coverage of sports events creates, public service broadcasters pioneered the sports broadcasting market. Soon, private television companies were seduced by the commercial opportunities presented by sports coverage and started to outbid public service broadcasters. Later, commercial television was dethroned by pay television as a full migration from free-to-air to subscription platforms occurred. With the entrance of multichannel and later digital television, an increasing amount of companies outside the television business, such as telecom operators or new media companies, acknowledged the strategic power of live sports rights and joined this battle for controlling these rights. Beyond this struggle for platform leadership, an interesting paradox appears. Whereas this battle was mainly driven by technological developments that were basically fuelled by a process of

liberalisation and de-regulation in European audio-visual markets, the sports broadcasting market has become increasingly regulated to guarantee fair competition and preserve the social role of sports in society.

This chapter mainly focused on the European sports arena, in particular the Belgian television market, which was used as a case study to illustrate the transition of power from traditional broadcasters to vertically integrated operators, and the increasing importance of sector-specific media and competition policies in the process of selling, buying and exploiting media rights. As a result of this intensified battle for live sports rights, viewing opportunities for sports fans increased, and football clubs – which behave like supply-side monopolists – benefited from the increased competition on the demand side. Following the introduction of digital television and the importance of broadcasting services for driving up average revenue per user, telecommunications operators have been involved in an enduring fight for rights acquisition and have spent significant amounts of cash to settle this rights battle. Compared to the 2005-2008 contract, the latest 2011-2014 Belgian broadcast deal increased 50 per cent in value. Although this television income was distributed among all football clubs, the bigger clubs benefited the most from this evolution, leaving open the possibility of selling their rights on an individual basis.

Almost everywhere in Europe and elsewhere, broadcast deals have increased in value and competition for these rights is frequently tight and intense. Now that digital television is maturing in several large markets, it could be expected that telecommunications carriers will be reluctant to invest large amounts of cash in the exclusive acquisition of live sports rights. This reluctance could ultimately produce a situation in which operators are willing to share rights in order to reduce capital expenses and focus on developing new, and probably less costly, competitive advantages. Alternatively, the rising popularity of online television services could trigger off a new phase in the long-standing struggle for platform leadership and give another boost to the income flowing from 'broadcasting' rights. However, this then raises the question whether the acquisition of national football rights by global technology firms like Google or Apple creates the need for a new kind of regulation, one

that goes beyond the national and even European audio-visual policy framework. As a transnational media sport order, rooted in national competitions and teams, is beginning to take shape, this might affect the distribution of economic power in sports media markets, and could danger the interests of the general public. Therefore, the consequences of these developments need to be closely watched and analysed from social, market and access equality perspectives.

### Notes

- <sup>1</sup> After a fundamental revision of the Directive, this provision was renumbered to Article 14 of the Audiovisual Media Service Directive. This mechanism allows every member state to draw up a list of events that are of major interest for society. According to the article, these events should be broadcast on “free-to-air” television ensuring that a “substantial proportion of the public” has the ability to watch those major events.
- <sup>2</sup> For more information, see [http://www.ifm-sports.com/share/Fernsehen\\_in\\_Europa.pdf](http://www.ifm-sports.com/share/Fernsehen_in_Europa.pdf).
- <sup>3</sup> For more information, see <http://www.futebolfinance.com/ranking-de-direitos-de-transmissao-tv-2010>.
- <sup>4</sup> The EBU is a confederation of 74 (mainly but not limited to public service) broadcasting organizations from 56 countries. On behalf of its members, the EBU negotiates with rights holders.
- <sup>5</sup> It should be noted that in the tender for the broadcasting rights, it is specified that the rights holder is obliged to provide at least 200 hours of FTA coverage of the Summer Games and at least 100 hours of FTA coverage of the Winter Games. Sportfive has to make sure that pay-television operators will sublicense the FTA broadcasting rights.
- <sup>6</sup> The Belgian list, however, does not contain the Belgian football competition as an event of major importance to the Belgian population. Hence, the restrictions imposed to the listed events do not apply for the national football league.
- <sup>7</sup> Official figures provided by Pro League. Many thanks to Ludwig Sneyers, CEO Jupiler Pro League Belgium.
- <sup>8</sup> For a more detailed discussion, see Valcke et al. (2009).
- <sup>9</sup> The decision to abolish Telenet’s must-offer obligation was annulled by the Court of Appeal. According to the new decision, Telenet would have to share its pay-television channel with competing platform, but only on the condition that the company would exclusively acquire all live rights.

# 9. THE POLITICAL ECONOMY OF RETRANSMISSION PAYMENTS AND CABLE RIGHTS: IMPLICATIONS FOR PRIVATE TELEVISION COMPANIES

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## 9.1. Introduction

Since its creation in the 1980s, private, free-to-air television in Europe has largely depended on advertising revenue. In spite of new as yet immature sources of income related to online and on-demand services, selling television advertising remains at the core of private television's success and survival. However, this high dependence on the advertising industry may become a major threat to business. The European television advertising market was hit hard by the recent economic downturn. In the 2008–2009 period, television advertising revenue fell dramatically by 16 per cent to about €27 billion (gross revenue). The recession affected different mediums to varying degrees (e.g., online expenses kept rising). Furthermore, some national UK (-32.1 per cent) and Spanish media (-32 per cent) faced a sharp decline, whereas mid-sized markets such as Portugal (+8.3 per cent) and Belgium (+6.7 per cent) experienced a relatively steady growth since 2007. This confirms the thesis by Picard (2011a) that the economics of small and large media markets differ significantly. The European Audiovisual Observatory (2011) further reported pressure on the operating revenues (-14 per cent) and profit margins (-52.1 per cent) of broadcasting companies. As private broadcasters in particular rely on advertising revenues, they are extremely vulnerable to economic

recession. Therefore, the downturn in European television advertising markets has made cost cutting and efficiency measures among these companies necessary. Reducing investments in audio-visual production also heavily affects other players along the value chain. Negative spill-over effects can be expected to reach numerous independent producers, who depend on broadcasters' programming orders, and who are traditionally in a weaker economic position (Christophers, 2008).

Although most advertising markets recovered from this dip and saw growth since 2010, the problems mentioned above are only the tip of the iceberg and should be understood within the context of a longer process of declining television advertising revenues. Generally, the advertising-based business model that private, free-to-air television companies relied on since their inception is eroding as a result of technological advances and increased competition. Regarding the latter, the digitisation of television and the proliferation of new, mostly thematic, channels has fragmented the audience, making it harder for broadcasters to attract large portions of viewers and effectively sell commercials. The advent of new channels is driving up competition in the market and lowering advertisement prices so that total commercial income stabilises or even declines (Crampes et al., 2009). Furthermore, advertisers are increasingly allocating budgets to the Internet, which offers advantages in terms of personalised offerings, measurability and costs. However, it should be acknowledged that most of the growth of the online advertising market is largely at the expense of the newspaper industry (Evans, 2009). In addition to these market forces, technology is putting pressure on television advertising markets. Digital video recorders (DVR), like those included in regular set-top boxes, allow viewers to bypass advertisements in television programs (Carlson, 2006). This time shifting and ad skipping could hurt private television's main income source and destroy the foundations of its business model.

The funding of private television has become a tough and risky business in which viewer demand for programs is unpredictable. The growing number of television channels cannot be sustained by these shrinking and volatile television expenditures; therefore, media diversity and pluralism could be at risk, since failure, consolidation

and market homogenisation are the dominant outcomes of this financial instability. In 2006, UK communications regulator Ofcom questioned Channel 4, ITV and Five's ability to deliver their public service remit (including investments in high-standard drama, children's television, educational programming, etc.) in a digital era in which they would be faced with increased competition and less stable income from advertising. Most of Ofcom's predictions became a reality. Channel 4 sought government help, RTL sold its loss-making subsidiary, Five, and ITV announced huge cutbacks.

The changing economic conditions have urged broadcasters to look at alternative and more stable income sources. The golden years of free-to-air television and detergent commercials may have come to an end, so broadcasters have to look for diversification of activities and alternative revenue streams. In its Annual Report 2011, ProSiebenSat.1 Group, the second largest private television company in Europe, reported a 9.3 per cent growth rate in its diversified activities, which complemented the free-to-air television segments. These activities accounted for 12.5 per cent of the group's total €2.9 billion turnover. They included all revenue models that were not directly dependent on television advertising, including online, mobile, music, radio, pay-tv and video on demand.

An older but particularly interesting revenue stream has been rediscovered—payments made by multichannel platforms. Whereas advertising investments tightly corresponds to economic conjuncture, consumer expenditures on television have been on the rise for years. Indeed, subscriptions for premium cable and satellite services have proved quite persistent during economic downturns (Picard, 2011b). Consequently, a growing number of private television companies are considering a move towards basic pay television (as opposed to premium television) or, at least, demanding a higher remuneration from cable and satellite operators (*i.e.* retransmission fees). Hence, broadcasters look for 'supplementing revenue from an increasingly splintered and competitive advertising market with subscription fees and distribution revenues' (Harrie, 2009, p. 173). Such a hybrid business model would allow them to continue to invest in popular and high-quality programming and ensure diversity in the market. However, platform operators are not enthusiastic about claims of increased payments

and are reporting growing pressure on profit margins due to rising costs for content acquisition, distribution and network infrastructure deployment. Hence, they are trying to reduce broadcasters' compensation and are also contesting the payment of cable rights. Whereas retransmission fees are regarded as market-based mechanisms that compensate broadcasters, the payment of cable rights is based upon legal provisions that compensate the programming rights owners. Since pricing power lies with the distributors, leaving broadcasters little control over monetary flows, the question arises as to what extent these developments will impact the private television industry.

This chapter focuses on the political economy of retransmission fees in the broadcaster-to-distributor market. These payments are highly controversial in the US and are becoming more relevant in the European television market. Disputes between distributors, broadcasters and content producers may illustrate the increasing competition for scarce resources and the on-going battle for power and control in the market. In addition, we look at the contested payment of cable rights in European markets, which could also affect the economics of private television. Starting from a political economy perspective and highlighting the continuous interplay between policymaking and economic processes, the next section deals with the circulation of power in television markets. Thereafter, both the practice of paying for cable rights and retransmission fees are analysed from a historical perspective. In the final section, conclusions are provided and recommendations for the future of private television companies are proposed.

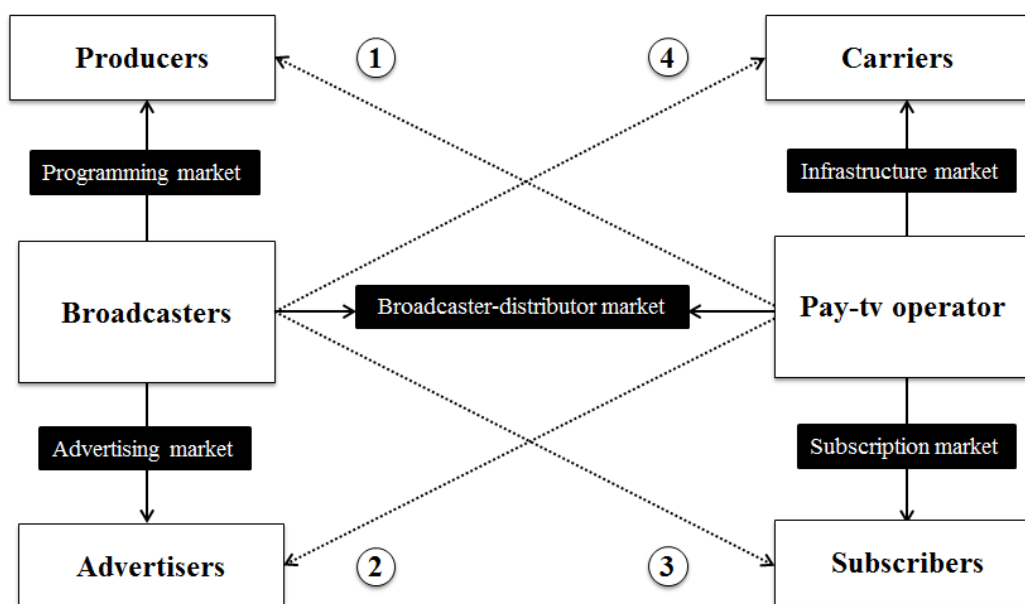
## **9.2. Circulation of power in broadcasting**

Owing to technological advances that were reinforced by the liberalisation of the European audio-visual market, the institutionalised distribution of power within the industry may have been shaken or, at least, could be subject to fundamental changes in the future. Much of the literature on this power balance in media industries is rooted in the political economy of communication. This critical perspective aims at unravelling power relations within the media ecosystem and analysing structural processes of control over the production, distribution and consumption of information goods. The

political economy of communication examines the institutional aspects of media and telecommunications systems, with particular attention being devoted to the economic attributes of cultural commodities and the historical relationships between industry, state and consumers (Mosco, 2009). Based on this perspective, firms may exert market power over competitors when achieving monopolistic control over industry bottlenecks and, therefore, play a gatekeeping role in the market. This control of access to scarce resources, however, may be jeopardised in an era of abundance, in which firms are urged to seek new ways of constraining abundance in order to preserve market power (Mansell, 1997).

With regard to the circulation of power within broadcast markets, and more specifically between broadcasters and distributors, two opposite approaches are found in academic writings. One of the foundational contributions in this field has been made by Garnham (1987), who argued that 'it is cultural distribution, not cultural production, that is the key locus of power and profit' (p. 31). The author contends that, because the business of cultural goods is as much about 'creating audiences' as it is about 'producing cultural artefacts', distribution is characterised by the highest level of capital intensity, ownership concentration and multi-nationalisation. Hence, distributors act as gatekeepers, controlling access and bundling programming for commoditised audiences. Controlling the distribution bottleneck is like having a 'liquor license' because it affords distributors a privileged position along the value chain. According to a more technology-optimistic viewpoint, however, technological forces, especially abundance in transmission technology, may loosen and eventually eliminate this distribution bottleneck. Todreas (1999) points out that profits will move upstream and that 'conduit[s] will resemble a commodity while content will have the opportunity to create branded, high-value-added products' (p. 34). Hence, control of intellectual property will become a crucial asset for the content business, moving power in the industry from a distributor's ability to reach mass audiences to a broadcaster's ability to attract and maintain mass audiences (Christophers, 2008).



**Figure 11** Double multi-sided broadcaster to distributor market

Despite reducing the discussion to a ‘patron-client’ relationship debate about which player exerts power over the other, the circulation of power within broadcast markets is much more complex than both sides’ arguments contend. First and foremost, this broadcaster-to-distributor market is characterised by the mutual dependence of broadcasters and distributors. This horizontal relationship is based upon their complementary interests: broadcasters need distribution to reach an audience and sell advertising, distributors need broadcast programming to attract subscribers (Bergman and Stennek, 2007). Since each party controls crucial platform functionalities, one could speak of the market as having bilateral bargaining power. Must-have programming has obviously more power than niche programming. Distributors that are highly integrated have more control over broadcasters than their smaller counterparts. This indicates either a vertical (ownership of programming and/or network infrastructure) or horizontal (concentrated market) integration. Here, we touch upon a second important feature of this double multi-sided broadcaster-to-distributor market (see Figure 11). Since broadcasters and distributors both operate as a multi-sided platform and coordinate demand between multiple markets, they are able to deploy strategies to internalise market externalities and simultaneously harm other platforms’ interests. This refers to the double marginalisation effect that occurs when a seller with market power is likely to set higher retail prices and is discouraged from promoting certain

channels. By exerting pricing power, distributors can reduce the availability of broadcast channels and negatively influence the advertising revenues of these channels (Kind et al., 2010). Furthermore, distributors not only have pricing power, they eventually decide upon channel carriage, allocation, numbering and payment.

Generally, these points are subject to a negotiation process that is partly determined by the bargaining power of broadcasters and distributors, but without acknowledging the impact of individual negotiation skills and organisational culture. Hence, the outcome of these negotiations, including the level of payments, reflects the circulation of economic power in the industry and its part in the institutional context of broadcasting, which includes a set of complex relationships between different parties in the ecosystem. Therefore, we assume that bargaining power in broadcast markets is not a given, but context-specific and highly determined by the individual nature of the broadcaster-distributor relationship. As this context is continuously changing, this balance of power in the industry is in flux as these relationships lack mutual trust (Donders and Evens, 2011). Bilateral market power and control may provoke conflicts between broadcasters and distributors, which are parties in a double-marginalisation process, grasping opportunities to intervene in each other's markets to influence the distribution of revenues in the system. Figure 11 shows that pay-tv operators are looking to partner with content producers and advertisers, whereas broadcasters are directly connecting with viewers and network carriers. These conflicts, resulting from and provoking strategic bypassing behaviour, eventually end up in a battle for power and control in broadcast markets and are identified by tough negotiations for carriage payments. Consequently, processes of power and control heavily affect the economics of private television because broadcasters capture revenue from carriage contracts and retransmission fees.

### **9.3. Retransmission fees: levelling broadcasters and distributors**

The practice of multichannel operators paying broadcasters for carriage has become an industry standard in the US, and it is also likely to affect the bottom line of European private television. Compensating for the volatile income from advertising, the influx of retransmission fees delivers a more predictable and growing revenue stream for the industry. These payments changed the economic relationships in the industry by levelling broadcasters' power balance and putting it on a par with cable networks. Retransmission fees should be understood as a market-based mechanism that compensates broadcasters with cash and represents a monetary exchange between distributors and television broadcasters. The size of these payments is largely the result of parties' bargaining leverage. Until 1992, US broadcasters had little bargaining power as the Federal Communications Commission (FCC) argued that no existing regulation required cable systems to obtain broadcasters' consent to retransmit their signals. However, as the US cable business grew, the United States Congress grew concerned that it had created a competitive imbalance in favour of the cable operators, so it enacted the 1992 Cable Act. According to this regulation, broadcasters can choose between must-carry and retransmission consent every three years. In case of a must-carry status, broadcasters are guaranteed carriage on cable without compensation. In the case of retransmission consent, broadcasters can negotiate with cable systems for compensation but carriage is not guaranteed. Instead of cash payments, however, most cable operators entered into agreements that compensated broadcasters with advertising deals or the carriage of affiliated networks. Networks like CBS and ABC initially waived away any fee and claimed a position on the cable system for an affiliated channel (Eisenach, 2009).

However, as satellite operators, which had been paying cash compensations since the late 1990s, started competing in cable markets, broadcast networks forced cable operators to offer similar financial terms to those offered by satellite companies. However, negotiations regularly ended up in disagreement about the level of retransmission fees. The four major networks (ABC, CBS, Fox and NBC), in particular,

began aggressively pursuing retransmission payments and ended up in extremely mediatised blackouts, with networks campaigning to raise public awareness and pulling off their signal during negotiations for bargaining leverage. Such blackouts between programmers and distributors, once rare, are now becoming more commonplace in the US market, and there have been some high-profile disputes between Fox and Time Warner Cable and between ABC and Cablevision. With advertising income declining, retransmission fees could revitalise the broadcast model and make the industry more financial healthy. Ranging from \$0.01 to about \$4 per subscriber per month – with an estimated average of \$0.25 – retransmission fees represent a solid income source for broadcast networks. According to SNL Kagan (2010), retransmission fees in the US grew from \$215 million to \$762 million between 2006 and 2009, and they are projected to exceed \$2.6 billion in 2016. With an annual growth rate of 19 per cent, these payments would constitute 13.3 per cent of total broadcaster revenues by 2016. However, since cable companies' programming expenses include an average of 39 per cent in yearly video revenues, operators claim that broadcasters' 'brinkmanship tactics', which include threats of temporary blackouts, may harm consumers in the form of annual rate increases. In addition, cable operators could consider dropping less-watched channels and limiting network supply (Salop et al., 2010a).

Although the mechanisms for retransmission payments are strongly rooted in historical and structural patterns of particular markets, this market-based system of compensating broadcasters for popular programming is also making its entrance in many European television markets. This issue of compensating broadcasters in addition to the payments for rights acquisition has become more relevant with the advent of digital broadcasting, which triggered more competition in the highly concentrated markets of television distribution. Indeed, when satellite carriers and telephony service providers manoeuvred themselves into the market, they engaged in exclusive deals with broadcasters, aiming at a forceful market entry with a compelling supply of channels. In return for this exclusivity, these broadcasters were granted a considerable retransmission fee. Since then, the payment of retransmission fees has been gradually introduced in Scandinavian markets and is now trickling out to other national markets. Often bundled with telephony and Internet services, digital platform operators

increasingly acknowledge the value of programming, which is considered a genuine driver for these profit-generating bundles (Waterman and Han, 2010). Broadcasters argue that despite their investments in content production and commission, the owners of distribution networks are taking the lion's share of the revenues generated in the industry. Hence, broadcasters have started to claim retransmission fees for complementing advertising with income from distribution, either in the form of lump-sum payments or per-subscriber fees.

The payment of retransmission fees became an accepted practice in the late 1990s when satellite companies entered the television distribution market, which had long been dominated by cable operators. This model quickly gained ground, particularly in Scandinavian markets. This practice first started when pan-Nordic satellite provider Viasat was keen to differentiate from other multichannel operators and spent large amounts of money carrying exclusive programming. In Denmark, for example, the advent of digital television opened a window of opportunities for niche channels that catered to the interests of specific target groups. With low levels of advertising investment, however, it became hard to finance the growing number of channels, most of which were digital-only and thus had limited reach. However, as consumer expenses for television services in Denmark are substantially higher than in other countries, broadcasters began negotiating payments from multichannel operators. Supported by the distributors, TV2 News was established, becoming the first 24/7 news channel in the Nordic area. Hence, distributors followed the same strategy as the US cable operators that started financing cable networks in the 1970s to enrich their programming supply. Generally, channels are remunerated via minimum guarantees and per-subscriber fees, which vary between €0.5 and €2 depending on the bargaining position of the channel (Donders and Evens, 2011). The example of TV2 shows that retransmission payments function as a substantial revenue source for television companies. In its Annual Report 2011, the company reported that between 2006 and 2011, retransmission income grew from €34 million to €92 million, a rise from 12.9 per cent to 29.8 per cent of total revenues (TV2, 2012).

However, in many other European markets, these negotiations for retransmission fees did not go as smoothly and provoked conflicts between broadcasters and distributors. In addition, renegotiating contracts after previous carriage agreements expired proved difficult. In December 2010, Deutsche Telekom decided to stop offering RTL Deutschland's pay-tv channels, RTL Crime, Passion and RTL Living, as part of its IPTV service *Entertain*. Different views on the financial and technical aspects of the distribution of RTL's channels were the basis of this decision. First, RTL wanted to extend the carriage agreement under the existing conditions, while Deutsche Telekom tried to push through lower retransmission fees. In addition, RTL demanded the operator make technical guarantees so that viewers could not skip advertisements during recorded programmes. A similar concern arose in Belgium in 2010, when the major broadcasters explicitly complained about the threat of DVR's fast-forwarding opportunities. Faced with the growing practice of time-shifted viewing and skipping advertisements, broadcasters VRT, VTM and VT4 claimed that delayed viewing was hurting their advertising-based business model, and that the user-friendliness of recording programmes led to lower revenues from paid video on demand. As a result, the broadcasters have – unsuccessfully at the time of writing – asked main distributors, Telenet and Belgacom, to compensate them for declining advertising income by having a share of the revenues distributors generate from such 'flex services'.

In addition, Belgian broadcasters and distributors disputed the level of retransmission fees. At the end of 2011, cable operator Telenet announced a reduction in retransmission payments to regional broadcasters of €1.59 to 0.18 per subscriber, based on market shares. After wide protests by these channels and intervention by the Flemish media minister, the case was settled and a three-year long transition period, during which retransmission fees were to be gradually decreased, was announced. Despite policy intervention, the fact that retransmission payments for the regional broadcasters were to decrease significantly by 2014 shows the limited possibilities for policymakers to intervene in carriage disputes between two private media firms even when the provision of a public good is involved. Market intervention, however, may prove necessary in the event a dominant distributor abuses its market power to

squeeze program suppliers and dictate poor financial terms to broadcasters and producers.

In the UK, broadcasters have also claimed retransmission payments from distribution platforms. Whereas the former are responsible for the bulk of investments in domestic television production and play a vital role in the British content production ecosystem, platforms like Sky hardly invest in original content creation but have by far the largest profit margin. In 2010, Sky reported a programming budget of around £1.9 billion, of which sports, movies and carriage fees constitute about £1.7 billion. Sky's annual investment in original UK non-news, non-sport programming has been estimated at around £100 million, not much more than Channel Five's UK programming budget, but Sky's turnover (£5.9 billion in 2010) is more than 15 times that of Five's (Thompson, 2010). Sky responded by offering to double investments in British content to £600 million by 2014, but it warned that a regulatory burden would undermine Sky's future role in the content value chain. However, broadcasters in the UK claim they are by far the most watched channels and demand a fair reward for the content and traffic.

#### **9.4. Cable Rights: producers footing the bill?**

In addition to the abovementioned compensation to broadcasters for carrying their channels, multichannel operators pay so-called 'cable rights' to collective rights associations that then further allocate these payments to rights owners, content creators and producers. In contrast to retransmission payments, which are largely based upon the bargaining power of the negotiating parties, the payment of cable rights fees is based upon legal provisions. The level of payments is either specified by local law or determined through negotiations between distributors and collective rights agencies. Essentially, copyright law provides that for each exploitation, the user has to enter into agreement with each rights holder, either via a collective rights agency or individually. However, the legal framework underlying these cable rights, and hence distributors' payments to rights owners of audio-visual works, has come under severe pressure as a result of rapid technological evolutions. Cable operators contest the validity of cable rights in the digital era and are keen to eliminate payments altogether, whereas

collective rights associations complain about the enduring pressure on cable rights payments. The dispute is closely connected with the growing practice of 'all rights included' (ARI) agreements or buy-outs. According to such contracts, broadcasters provide cable operators with programmes that are already cleared with the rights associations, and distributors can indemnify broadcasters for extra claims from collective rights agencies. In contrast to the non-ARI contracts distributors generally enter into with public service broadcasters, private television companies are mostly involved in ARI agreements for which no additional cable rights payments are required. Hence, the growing number of ARI contracts could eventually burden private television companies with extra costs for rights clearance on behalf of the cable operators and eliminate a substantial revenue stream in the audio-visual value network (European Broadcasting Union, 2007). One could ask whether distributors may recoup extra costs for retransmission fees by eliminating cable rights payments. If that is the case, it seems that this move could be detrimental to private television companies, especially producers of original programming.

Similar to the situation in the US, in the early 1960s cable operators in Western Europe began capturing over-the-air signals and distributing these signals over wired networks to households. Although under the 1886 Berne Convention broadcasters' permission for this practice is required, cable companies disputed the need for retransmission consent. Only in 1979, when the Belgian Court of Appeal explicitly stated that cable company Coditel had violated copyright law, the principle of retransmission consent was confirmed. Since satellite services had become available all over Europe, the 1993 Satellite and Cable (SatCab) Directive was designed to harmonise all national provisions and to reduce copyright-related barriers for cross-border television. The directive introduce a clearance system for simultaneous, complete and unchanged cable retransmission, confirming the contractual relationship between copyright holders and cable companies. Moreover, the directive precludes mandatory collective licensing and requires satellite and cable operators to enter into an agreement with a collective rights agency. This collective licensing was thought necessary because the European Commission feared that individual rights holders would prohibit cable retransmission and create 'black-outs' in cable offerings (Hugenholtz, 2009; Valcke, 2008).



However, innovations in distribution technologies and the European-wide process of switching off analogue terrestrial television signals could ultimately lead to an erosion of this framework. The SatCab Directive prescribes that cable and satellite operators must clear rights when distributing broadcasters' primary transmission when it is intended for public consumption and occurs over the air or by wire. Hence, primary transmission also includes encrypted signals, insofar as the primary transmission is provided to the public by the broadcasting organisation or with its consent (e.g. in the case of pay-television or other subscription-based mechanisms). Whereas in the past, cable operators retransmitted those signals that were broadcast via over-the-air or satellite technology, an increasing number of private broadcasters started to directly inject their signals over fibre optic network connections with the cable company. In the case of direct injection, the initial transmission is not broadcast to the public, but distributed by cable. Referring to this rather technical characteristic of direct injection, cable operators have started to claim that, technically speaking, there is no longer a retransmission practice, therefore, they are not obliged to pay cable rights to collective rights associations (Solon, 2006). The same goes for encrypted broadcasts in which broadcasters decode their signals and directly transfer them to cable base stations. Collective rights associations, however, disagree with this viewpoint and argue that even in the case of direct injection, cable distribution equals retransmission as defined in the SatCab Directive and requires rights clearance (Foged, 2009). As a result, cable companies and collective rights associations in several countries have been involved in lawsuits to settle this problem, making future payments of cable rights fees highly uncertain.

In 2009, collective rights associations Norma and Irda claimed that cable companies in the Netherlands had to clear the rights for the simultaneous, unaltered, and unabridged retransmission of broadcast programs via cable networks. However, the District Court of The Hague (2009) decided that broadcasters directly inject encrypted signals to cable operators and that cable distribution should be considered an act of primary transmission rather than one of secondary retransmission. In a similar case initiated by rights agencies Buma/Stemra against cable operator Chellomedia, the Dutch Supreme Court (2009) confirmed that a transmission via satellite of encrypted

programs that are intended for reception by a cable operator could not be qualified as a communication to the public. Hence, cable operators are not obliged to ask permission of broadcasters and make additional payments for distributing these channels to the public. Aside from the financial concerns, this would also imply an erosion of the responsibilities of the collective rights agencies, since cable and satellite operators would no longer need to negotiate rights clearances, especially not when private television companies are increasingly entering into all-rights included contracts. The aforementioned issues were also dealt with in a 2011 lawsuit initiated by Belgian cable operator Telenet against eight collective rights agencies (Telecompaper, 2011). The Commercial Court ruled that, unlike public service broadcasters, cable operators are not obliged to pay author rights to collective rights associations for retransmitting private television channels via direct injection. When television companies enter into ARI agreements, distributors cannot be obliged to make additional payments to collective rights associations, except for possible musical works included in the programs. The court further ruled that the simultaneous transmission of analogue and digital signals constitutes the same copyright event and therefore does not require additional payments. Regarding the question of which actor should then be responsible for clearing the rights, the court ruled that broadcasters are responsible for the initial transmission because the facilitating role cable operators play cannot be considered an act of primary transmission. Although some of the arguments made by the court could be disputed, a critical analysis of this (temporary) decision falls outside the scope of this paper. However, if the Supreme Court confirms this decision, it could bring an end to classic cable rights management and have important implications for the economics of private television broadcasters and independent producers in the audio-visual value network.

## 9.5. Conclusion

As television advertising markets currently face tough times, private television companies are looking to tap into alternative sources of revenues. By diversifying income, broadcasters can become less dependent on volatile advertising spending, build a more sustainable business and derive more bargaining power *vis-à-vis* external producers and distributors. An interesting and highly lucrative revenue stream that re-emerged during the launch of digital television services was the retransmission payments made by multichannel operators. This practice of compensating broadcasters first started in the US but is gradually becoming commonplace in European markets. However, negotiations have become fierce, with both parties trying to get the most out of this bargaining process. As discussed, this broadcaster-to-distributor market is characterised by bilateral bargaining power, with both parties owning critical platform functionalities. This could eventually lead to double marginalisation effects with vertically-integrated distributors exerting pricing power over broadcasters. Hence, the allocation of retransmission fees has provoked conflicts with distributors, exemplified by numerous blackouts and impasses. As we believe that bargaining power is context-specific, private television companies can develop bargaining power by investing in high-quality, domestic and popular programming that differentiates them from competing channels. As a result, investments in local content are likely to pay off during retransmission negotiations with distributors.

However, the movement towards all-rights-included agreements with distributors could put a financial burden on private television companies. Since cable operators are no longer required to compensate rights owners, private television companies are obliged to clear primary transmission rights and simultaneously, for programmes internally produced, receive fewer royalties from collective rights associations. In addition, revenue streams for external producers may run dry harming the financial health of television producers and packagers. As revenue for external producers may erode, they could diversify their business by considering product placement and advertising-financed productions. In addition, financial instability could trigger consolidation in the production sector, transferring more bargaining strength to

broadcasters that might eventually pay higher royalties to producers for primary and secondary rights acquisition. The abovementioned dynamics largely affect the circulation of power within the audio-visual industry. One could argue that distributors will compensate for higher retransmission fees by increasing subscriber rates and reducing cable rights payments. This strategy could enable distributors to maintain profit margins, leverage pricing power over broadcasters, producers and consumers, and therefore control the audio-visual value network.

The examples discussed in the chapter reveal a tight battle for power and control in broadcasting markets and show the difficulties of finding a balance between corporate and public interests. Both broadcasters and distributors have market power and leverage their control over essential facilities to bargain for better financial terms in the broadcaster-to-distributor market. In this way, they can play a leading role in the audio-visual value network. However, chances exist that a dominant distributor may abuse market power and squeeze program suppliers, and/or that must-have content providers may demand excessive retransmission payments and withdraw content from particular platforms. Hence, policymakers and regulatory authorities have a responsibility to preserve diversity and fair competition and regulate excessive control of bottleneck functionalities, which could lead to dominant position or monopolistic market structures. Market intervention may prove necessary, but it also risks being ad-hoc. In contrast to the assumptions made by traditional political economists, the balance of power is not seen as a given, but determined by particular aspects of the commercial relationship between individual firms. In addition, the circulation of power is highly dependent on factors in the external environment, including technological progress and changes in the regulatory framework. Since disruptive innovation in new media technology can produce new market structures and practices, policy intervention should be future-proof and look further than solving temporarily problems and remedies.



# 10. BROADCAST MARKET STRUCTURES AND RETRANSMISSION PAYMENTS: A EUROPEAN PERSPECTIVE

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In European markets, broadcasters used to depend on fairly simple revenue streams for many years. Until the 1980s, public service broadcasting derived income from license fees, possibly complemented by advertising revenues. When audio-visual markets were liberalised, a dual order emerged in which public service broadcasters' funding model remained unchanged and private, free-to-air television companies built a lucrative business selling advertising (Michalis, 2007). With television advertising markets gradually shrinking and support for public service broadcasting declining, the golden years of broadcasters' profitability may have come to an end. Since new players have entered the business at all stages along the value chain, the pie has to be divided amongst an ever-increasing number of actors. Consequently, the changing economic environment has compelled broadcasters to look at alternative and more stable sources of income (Jung and Chan-Olmsted, 2005).

The strive for diversification of revenues became most obvious in the United States. Broadcast networks started arguing that cable operators earned money with their content without adequate compensation. Consequently, they began to aggressively pursue retransmission payments from cable operators. Fights between broadcast networks and cable operators have ended in mediatised blackouts, with broadcasters pulling off their signals during negotiations as bargaining leverage and campaigning to

raise public awareness. Blackouts between programmers and distributors, once rare, are now becoming commonplace in the US market, with high-profile examples of 'cable battles' between Fox and Time Warner Cable, and NFL Network and Comcast dominating the debates about a fair revenue sharing model between both parties. While addressing the News Corporation's 2009 annual meeting, Rupert Murdoch stressed that 'asking cable companies and other distribution partners to pay a small portion of the profits they make by reselling broadcast channels, the most-watched channels on their systems will help to ensure the health of the over-the-air industry in America.' Paradoxically perhaps, Murdoch's BskyB platform has consistently argued against the payment of retransmission fees in the United Kingdom, as insisted on by BBC Director-General Mark Thompson<sup>1</sup>.

By conducting in-depth case studies of two European markets<sup>2</sup>, this article focuses on the political economy of retransmission fees in the broadcaster-to-distributor market. These payments are highly controversial in the United States and Canada, but the issue is on the rise in European television markets as well. Being an area of considerable industry conflict, negotiations of retransmission payments may well illustrate the intensifying competition for scarce resources and reflect the on-going battle for power and control in the market. However, as will be shown in the case studies, market-specific bargaining parameters largely influence which party gains control over these monetary streams and, hence, the audio-visual value network. In addition, policymakers – even though some would argue their powers are limited – also affect the power balance between broadcasters and the distributors of their signal. Starting from a political economy perspective, the next section deals with the circulation of power within broadcast markets. After a note on the research design, the markets in Flanders (northern region of Belgium) and Denmark are discussed and compared, using a mix of qualitative and quantitative data. In the final section, conclusions are provided and future perspectives are set.

## **10.1. Power and control in broadcasting**

### ***10.1.1. Power balance in media industries***

Much of the literature on power balance in media industries is rooted in the political economy of communication. This critical approach aims at unravelling social and in particular power relations within media ecosystems and analysing structural processes of control over the production, distribution and consumption of information goods. The political economy of communication examines the institutional aspects of media and telecommunications systems, with particular attention to the economic attributes of cultural commodities, and the historical relationships between industry, state and consumers (Mosco, 2009). Through studying the concentration of ownership and control in media industries, political economists deal with corporate power and look at structural inequalities within capitalist market systems. Following this perspective, firms may exert market power on competitors when achieving monopolistic control over industry bottlenecks such as premium sports rights or distribution networks. Bottlenecks refer to scarce but essential resources upon which the economic performance of an industry strongly depends. Hence, ownership of industry bottlenecks allows companies to play a 'gatekeeper' role in the market. As Poel and Hawkins (2001) contend, any analysis of access issues in bottleneck environments should take into account the commercial relation of the access providers with both service providers and end-users. The control of access to scarce resources, however, may be jeopardised in an era of plenty, which urges firms to seek new ways of constraining abundance in order to preserve market power (Mansell, 1999). With the rapid adoption of digital media technologies that substantially reduce distribution bottlenecks, Flew (2011) questions 'whether the economic power conferred by control over distribution channels and networks is diminishing over time or is being reconfigured around alternative sources of economic rents, such as highly restrictive copyright and intellectual property regimes' (p. 86-87).

With regard to the power balances in broadcasting markets, and more specifically between broadcasters and distributors, traditional political economists consider power relations as static and determined, contending that distributors have gained economic



power to the detriment of creativity and content creation. A seminal contribution to the field was made by Garnham (1987), arguing that 'it is cultural distribution, not cultural production, that is the key locus of power and profit' (p. 31). The author contends that because the business of cultural goods is as much about 'creating audiences' as it is about 'producing cultural artefacts', distribution is characterised by the highest level of capital intensity, ownership concentration and multi-nationalisation. Distributors act as gatekeepers controlling access and bundling programming to commoditised audiences. Controlling the distribution bottleneck is like having a 'liquor license' which awards distributors a privileged position along the value chain. In contrast to the high number of producers, economic power resides with those few firms that have oligopolistic control over the delivery of cultural productions – referring to the hourglass structure of media industries (many producers, few distributors). This concentration of ownership may result in power asymmetry with relations of power skewed towards distributors, and broadcasters highly depending on delivery networks controlled by multichannel operators (Hesmondhalgh, 2007).

According to another viewpoint, however, technological forces, and more abundance in transmission technologies in particular may loosen and eventually eliminate this distribution bottleneck. Hence, economic power is considered a fluid concept that, depending on the configuration of business activities, circulates within the industry. As spectrum scarcity comes to an end, new distributors may come into the market and erode the power of established gatekeepers. Todreas (1999) points out that profits move upstream, stating that 'conduit[s] will resemble a commodity while content will have the opportunity to create branded, high-value-added products' (p. 34). Whereas the cable era was characterised by little competition with incumbents protected by technology and politics, the proliferation of new distribution 'pipes' in the digital era will transfer power to producers of content, who will benefit from distributors' rivalry for delivering the best content. Control of intellectual property thus becomes a lucrative asset for the content business, possibly evolving as the new competitive bottleneck. Must-have broadcasters gain leverage over distributors in negotiations and may derive better financial terms as the distribution bottleneck erodes. Following the thesis that the broadcasting industry is evolving from a distribution economy to an attention

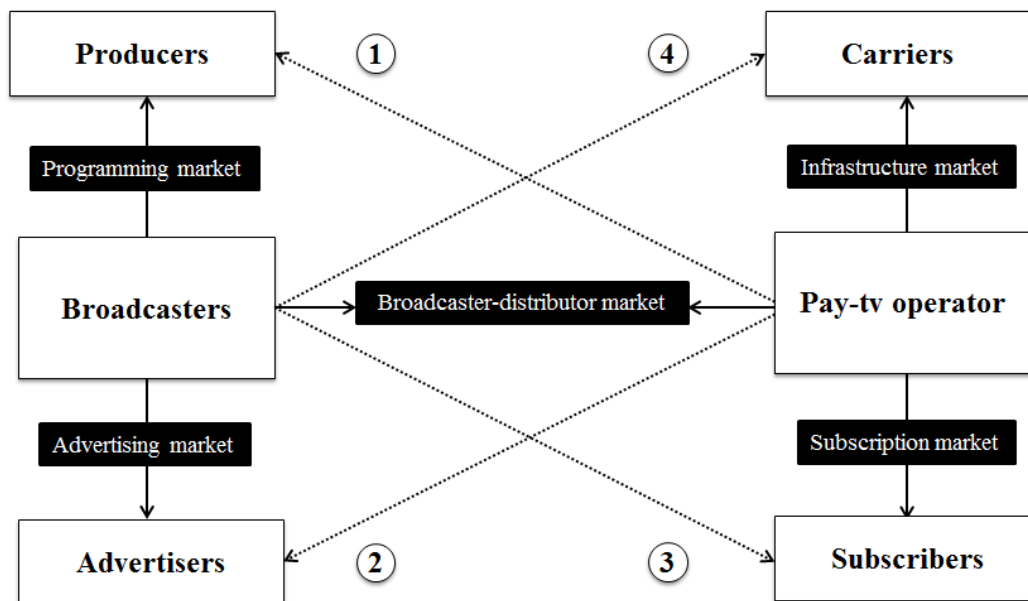
economy (Davenport and Beck, 2001), powerful brands that successfully capture and aggregate consumer attention may benefit from scarcity. Hence, economic power in broadcasting may shift from a distributor's ability to 'reach' mass audiences to a broadcaster's ability to 'attract and maintain' mass audiences (Christophers, 2008).

### ***10.1.2. Broadcaster-to-distributor market***

Instead of this bipolar discussion of which player exerts power over the other reducing the debate to a 'patron-client' relationship with companies either in distribution or programming dominating the market, the allocation of power within broadcast markets is probably much more complicated. Rather than sticking to hollow aphorisms like 'content is King, but distribution is King Kong', we assume that the allocation of power is not a linear process but highly depends on the politico-economic context of broadcasting, including the set of complex relationships between different parties in the business ecosystem. Hence, economic power, and more in particular bargaining power, in broadcast markets is context-specific, highly determined by the allocation of scarce resources within the industry and the individual nature of the broadcaster-distributor relationship and path dependency in media policies. As the strategic context of broadcasting is continuously in motion, the balance of power in the industry is in flux as these relationships lack mutual trust (Donders and Evens, 2011). The increasing sources of uncertainty in the broadcaster-to-distributor market, in which both parties negotiate the economic terms of distribution similar to those of manufacturers and retailers, however, have provoked conflicts between broadcasters and multichannel operators, who are grasping the opportunities for intervening in each other's markets, creating sources of market power and hence influencing the distribution of revenues in the system. Figure 12 shows that pay-tv operators are looking to partner with content producers (1) and advertisers (2) whereas broadcasters are directly connecting with viewers (3) and network carriers (4). These conflicts, resulting from but also provoking strategic by-passing behaviour, eventually end up in a battle for power and control in broadcast markets and are illustrated by tough negotiations for carriage payments. In the United States, broadcast networks ABC, NBC and Fox have launched the Hulu platform, which allows consumers to watch their favourite shows directly over the Internet across multiple screens. Hulu forms a

counterweight to YouTube and the ‘TV Everywhere’ services deployed by distributors like AT&T and Comcast. Similarly, Google-owned YouTube has announced partnerships with over 20,000 content providers to provide an online alternative to television broadcasting. In response, US broadcast networks have collectively blocked access to Google TV and have demanded fair payment if their shows are retransmitted by Google.

**Figure 12** Double multi-sided broadcaster-to-distributor market



First and foremost, the broadcaster-to-distributor market is characterised by a mutual dependence between broadcasters and distributors. Such horizontal relationship is based upon the complementariness of their interests: broadcasters need distribution to reach an audience and sell advertising, while distributors need broadcast programming to attract subscribers (Bergman and Stennek, 2007). During negotiations, broadcasters and distributors negotiate about the level of payments and agree upon the economic conditions for carriage. Distributors are aware of their control over the supplier’s access to consumers, which may give them a strategic advantage in carriage negotiations. In buyer-seller relationships, however, it is not always in the retailer’s best interest to reduce a supplier’s margin, especially not – like in multichannel markets – where the value proposition of a platform strongly depends on the supplier’s input quality. For the entire broadcasting industry, squeezing the margins of less powerful broadcasters may prove counterproductive in the long run, diminishing consumer

choice and quality, and restricting financial capacity to invest in innovative content and services. By receiving monthly \$7.98 per subscriber, cable channel HBO is able to continue its investments in expensive high-quality series and deliver a value-added component for US cable providers – whereas the average fee for cable channels is less than \$1 per subscriber. Hence, the industry's long-term viability may crucially depend on a fair distribution of investments and profits between all stakeholders in the media ecosystem (Donders and Pauwels, 2012).

Since each party controls crucial platform functionalities, one could speak of a market with bilateral bargaining power, which closely relates to a second distinctive feature of this double-sided broadcaster-to-distributor market (see Figure 1). Current frictions and tough bargaining games between broadcasters and distributors directly relate to the arising nested, double-platform structure of the broadcasting industry. Since broadcasters and distributors both operate as a multi-sided platform, leveraging common components and shared user relationships, they are moving into another's market, resulting in a multi-platform bundle, a phenomenon called 'platform envelopment' (Eisenmann et al., 2011). HBO has sought direct access to viewers by providing online programming via its paid 'HBO GO' app whereas cable operator Comcast has swallowed broadcaster NBC to secure access to popular programming. Such strategies for expanding market power eventually lead to corporate clashes and anti-competitive behaviour. Coordinating demand between multiple markets enables each platform to employ strategies to internalise market externalities and reduce the 'taxes' imposed by other's platforms. Especially when they are vertically integrated with programming suppliers, distributors with market power may have incentives to set higher retail prices and discourage the promotion of unaffiliated channels. By exerting pricing power, distributors can reduce the exposure of broadcast channels and negatively influence advertising revenues of rivalling channels (Kind et al., 2010). In addition to this pricing power, distributors eventually decide upon channel carriage, tier and position in the electronic programming guide. By allocating a channel in a high price-tier, or by positioning it as a high-number channel, distributors can negatively influence a channel's rating and performance, and, hence, exert bargaining power during negotiations (Chen and Waterman, 2007). After eight years of negotiation, Time

Warner Cable and NFL Network finally reached an agreement in September 2012. NFL Network will be put on a basic digital tier rather than a high-priced sports tier package, and will thus benefit from higher viewership and retransmission payments.

Without acknowledging the impact of individual negotiation skills and brinkmanship, economic power is largely determined by a wide array of bargaining parameters, including the regulatory environment, market structure and technology change. In this article, the focus is on the level of competition in the market. Drawing upon industrial organisation theory, a firm's competitive position may depend on the degree of concentration in the market, extent of entry barriers, and product differentiation (Peitz and Belleflamme, 2010). First, the broadcaster-to-distributor market takes the form of an hourglass structure, a market characterised by a small number of large buyers and a large number of sellers. Horizontal integration tendencies with distributors result in considerable buyer power, enabling them to negotiate advantageous deals with broadcasters (Chipty and Snyder, 1999; Tiffen, 2007). Crawford and Yurukoglu (2012) claim that large distributors such as Comcast have about 17 per cent lower programming costs than small-sized distributors. Given the vertical integration strategies between broadcasters, pay-tv operators and carriers, ownership of programming and/or network infrastructure may lead to market foreclosure. Not only competing distributors could be disadvantaged, distributors may also leverage affiliated channels to discriminate independent broadcasters (Chipty, 2001; Lee and Kim, 2011; Waterman and Choi, 2011). Time Warner Cable's ownership of sports rights partly explains the long-lasting battle between the cable provider and the competing NFL sports network. Secondly, economic power is reinforced by high entry barriers in distribution, which are relatively low in production and programming. Technological progress has lowered entry costs and multiplied the overall number of distribution platforms and broadcasters in the market. Apart from a few telecommunications operators that leveraged their existing network infrastructure to successfully enter the multichannel video business, the multitude of new players in broadcasting is involved in content production and programming. As switching costs are likely to be higher between distributors than broadcasters (viewers tend to switch more easily between channels than between platforms), this may add bargaining power to distributors

(Menezes and Quadros, 2009). Finally, market players tend to reduce substitution effects by differentiation strategies. As differentiating between transmission technologies proves difficult, distributors need to differentiate in the services they provide. Hence, they enter into agreements with popular programmers and invest in the exclusive acquisition of must-have productions. Consequently, must-have broadcasters, usually those with the highest viewership or those providing hit programming, as well as niche channels that bring in specific and valuable target profiles, obviously have more bargaining power than undifferentiated, generic channels. Sports channel ESPN charges \$5.40 per subscriber whereas Fox Sports receives \$2.62 per month. Since ESPN manages to acquire top premium sports rights, Fox Sports is unable to command the premium pricing that ESPN enjoys. However, the more distributors invest in their own original programming, the less bargaining power broadcasters have (Chan-Olmsted, 2005).

## **10.2. Research design**

In the remaining part of the article, a comparative analysis of the broadcaster-to-distributor market in Flanders and Denmark is presented, with specific emphasis on the market structure and the practice of retransmission payments. Both representing small broadcast markets, Flanders and Denmark, share a lot of structural commonalities, which justify a comparative analysis. The two markets are characterised by small population sizes (6.28 million inhabitants in Flanders vs. 5.56 million in Denmark) and are among the most prosperous regions in Europe, with a gross domestic product per capita of €28,779 and €30,806 in Flanders and Denmark, respectively (compared to an EU 27 average of €25,051)<sup>3</sup>. Flanders and Denmark may, as open economies, highly depend on neighbouring countries for economic wealth and export, but neither has a same-language giant neighbour whom they can rely upon for the influx of cultural goods and broadcast services. Regarding broadcasting, both countries have a long tradition of the public service broadcast institution being the leading media company in the market, complemented by a limited number of nationwide private channels. From a distributor's perspective, cable penetration is high (98.2 per cent and 71.6 per cent in Flanders and Denmark, respectively) with rather moderate but increasing competition

from other distribution technologies. Additionally, digital television services are successful and widely diffused (76 per cent and 73 per cent, respectively)<sup>4</sup>. Finally, both markets are subject to European regulation, and are among the few EU member states that have no specific cross-media law.

Previous research has identified market size as a significant factor in assessing economic conditions, constraints and challenges broadcasting systems face in smaller markets, referring to the limited availability of resources, economies of scale problems, concentrated markets, lower investments in domestic programming and restricted consumer choice (Lowe et al., 2011 ; Trappel, 2011). Despite the similarities they share, Flanders and Denmark were selected as case studies because large differences can be found with regard to the relationships between broadcasters and distributors. Hence, the focus of the comparative analysis is on relating differences in bargaining position to the variance in market structure and the level of competition among the selected markets. Although these differences may be influenced by divergent political views regarding the role of the state in economic life<sup>5</sup>, the qualitative analysis mainly focuses on the economic context of the broadcaster-to-distributor markets in Flanders and Denmark.

Given the multi-faceted character of the broadcaster-to-distributor market, a multi-disciplinary and multi-methodical approach of the research issue was deemed necessary. Regarding the multi-disciplinary nature of the study, a political economy analysis of this converging market requires a review of literature on economics, political sciences and media studies, but also benefits from readings in information technology and copyright law. In light thereof, a multi-methodical approach relying on a triangulation of methods is preferred to an exclusive reliance on literature review, policy analysis or interviews. In addition to a literature study and document analysis (legislation, case law, corporate financial reports and press statements), seventeen field interviews were conducted with representatives from media companies<sup>6</sup> and regulators, or academics specialised in the field. The data were collected in the context of a research project funded by SBS Broadcasting, then operating in both markets. In addition to the data collection process, findings were validated through a workshop

with four national experts in political economy, media economics and telecommunications policy, whereas three international experts were asked to review and comment upon the case studies during the project.

### **10.3. Case studies**

#### ***10.3.1. Denmark: channel proliferation and fragmented distribution***

The Danish broadcast market is probably one of the few remaining in Europe in which public service broadcast channels, operated by DR and TV2, occupy over half of the daily audience share. Next to these generalist channels, public service operators also host some ten thematic channels that cater for specific niches. Market leader TV2 dominates the market with 30.2 per cent, followed by DR1 with 23.9 per cent – public service broadcasting accounting for 68.8 per cent of the viewing market (including niche channels). Because of this dominance of public service broadcasting, private channels have a rather moderate viewing share in Denmark. TV3 was the first private channel that launched a Danish channel, operating from London to circumvent severe advertising regulations. The channel is owned by the Swedish Modern Times Group (MTG), which also operates TV3+ and TV2 Sport (together with TV2), and has a large footprint in Nordic and Baltic television markets. Operated by the international SBS Broadcasting group and owned by ProSiebenSat.1 Media, the other main channels Kanal 4 (women's channel), Kanal 5 (movies and series) and 6'eren (men's channel) are the only private channels that managed to slightly increase their market share in recent years (see Table 11). Similar to TV3, SBS's channels are UK-licensed to circumvent Danish advertising rules. Television advertising accounts for 18.4 per cent of total advertisement expenditure (€366 million), which has decreased in recent years. The plenitude of channels and the fragmentation of the audio-visual landscape have produced a saturated market and fierce competition for advertising sources, driving most of the channels towards (basic) pay-television status.



**Table 11** Market shares broadcast market Denmark (EAO, 2012)

Channel	Operator	2006	2007	2008	2009
TV2	TV2	34.2	33.4	31.2	30.2
DR1	DR	27.7	26.4	24.6	23.9
DR2	DR	4.7	4.6	4.1	4.7
TV3	MTG	5.0	5.3	4.9	4.7
TV3+	MTG	3.7	3.7	3.6	3.1
Kanal 5	SBS	2.5	2.6	2.9	2.9
Kanal 4	SBS	3.1	1.2	1.7	1.8
6'eren	SBS	-	1.0	1.0	1.3

**Table 12** Subscribers distribution market Denmark (EAO, 2012 + own calculations)

Company	Operator	Mode	Subscribers
YouSee	TDC	Cable	1,350,000
Boxer	Teracom	Terrestrial	300,000
Stofa	Ratos	Cable, IPTV	253,000
Canal Digital	Telenor	Satellite	195,000
Viasat	MTG	Satellite	177,000
TDC Home Trio	TDC	IPTV	100,000
Digi-TV	DR	Terrestrial	100,000
Danske Bredbånd	Waoo!	IPTV	80,000

The multichannel market in Denmark is dominated by cable operators, with a footprint of approximately 1.8 million out of a 2.5 million total television household population. Cable is the main television distribution platform with about 1.6 million households connected to cable television services. The cable market, which accounts for 64 per cent of all television connections, is controlled by YouSee, a 100 per cent subsidiary of the former telecommunication monopolist TDC, serving 1.35 million customers. Main competitor Stofa serves about 253,000 households. In addition to these two major cable suppliers, Denmark hosts a large number (>1500) of smaller independent, decentralised operators, so-called satellite master antenna television associations (SMATV), non-profit organisations that manage large building and housing associations serving about 550,000 households. These associations negotiate with distributors that wholesale packages to community networks. In exchange for multi-

year agreements with mainly cable and satellite operators, antenna associations receive discounts due to network ownership and scale. In urban regions TDC faces increased competition from Wao!, grouping local utility companies providing telecommunication services over fibre-optic networks, and has, as a response, started its own IPTV service after swallowing some local providers.

In less densely populated areas there is tight competition between satellite and terrestrial service providers. The Danish market hosts two satellite operators, with a combined subscriber base of approximately 380,000. Canal Digital, part of Norway's Telenor Group, serves some 195,000 customers with its direct-to-home platform. More interestingly, pan-Nordic satellite operator Viasat serves approximately 177,000 subscribers and is owned by MTG. Hence, the company can leverage its affiliated TV3 programming in the distribution market. Except for cable operators, competing platforms have no access to TV3. In return, Canal Digital has secured the exclusive carriage of the SBS channels on satellite platforms. As terrestrial analogue signals were switched off by November 2009, a public service multiplex is operated by Digi-TV transmitting, free of charge, national and regional public service channels. In addition, a commercial gatekeeper Boxer TV provides some thirty pay-tv channels. Since TV2 lost its must-carry status in January 2012 and is no longer carried as a free-to-air channel, Boxer sales tripled to about 300,000 customers (Table 12).

Regarding the payment of retransmission fees, this model quickly gained ground in Denmark. Payments became common practice in the late 1990s when Viasat entered the television distribution market, which had long been dominated by TDC Cable TV (later rebranded Yousee). Viasat was keen to differentiate from other multichannel operators and spent large amounts of money to carrying exclusive programming. With digitisation, a window of opportunity was opened for several niche channels to target interesting viewer profiles. With low levels of advertising, however, it became hard to finance this growth in programming, most of them digital-only and originally with limited reach. Supported by distributors, TV2 News was established as the first 24/7 news channel in the Nordic area. In March 2012, Kanal Sport focussing on smaller sports was established, and initially secured distribution from YouSee. Such carriage

agreements, including financial compensation, allow new channels to pre-finance operations and reach the critical mass necessary for building a sustainable business model. Generally, channels are remunerated via minimum guarantees and per-subscriber fees – varying between €0.2 and €2 – depending on the bargaining position of the channel. The example of TV2 shows that retransmission payments function as a substantial revenue source for television companies. In its annual report 2011, the company reports that between 2006 and 2011, retransmission income grew from €34 million to €92 million, rising from 12.9 per cent to 29.8 per cent of total revenues. Negotiating its move to pay television, TV2 will receive a monthly €1.35 retransmission fee per household, adding some extra €40 million in turnover. However, TV3 channels take the highest share of these retransmission payments, which were valued at €315 million in 2009. TV3 network takes some 30 per cent (€96.11 million) whereas SBS channels account for 14 per cent (€44.64 million) of the total distribution market, which is expected to grow further in the coming years.

### ***10.3.2. Flanders: content triumvirate and cable monopoly***

In the Flemish broadcast market, competition between the public broadcaster VRT and its private counterparts is fierce. VRT has dominated the market for many years since it regained viewer leadership from VTM in 2001. In addition to the generalist channel Eén, VRT also operates the information channel Canvas, Ketnet (children programming) and Sporza (sports). VRT is totally license-funded and carries no television advertising. In addition to VTM, the leading private television company VMMA also operates 2BE (series and reality), Anne (music), Vitaya (health), Jim (music) and vtmKzoom (kids). In 2011, other popular channels in the market, Vier (series and reality) and Vijf (women) were purchased by production company Woestijnvis and cross-media groups Corelio and Sanoma. As a result of enduring consolidation, these three main operators account for more than 80 per cent of the total viewer market – with fierce competition for advertising income (Table 13). Television advertising accounts for 38.1 per cent of all gross investments, equivalent to €941 million.

**Table 13** Market shares broadcast market Flanders (EAO, 2012)

Channel	Operator	2006	2007	2008	2010
Eén	VRT	30.3	31.3	32.9	33.4
VTM	VMMa	24.4	23.1	24.4	20.2
Vier	De Vijver	7.0	6.3	6.7	7.0
Canvas	VRT	7.0	7.0	6.7	8.4
2BE	VMMa	7.1	5.9	6.2	5.2
Vitaya	VMMa	2.9	3.4	3.8	4.0
Vijf	De Vijver	4.9	4.7	4.6	3.2

**Table 14** Subscribers distribution market Flanders (EAO, 2012 + own calculations)

Company	Operator	Mode	Subscribers
Telenet	Liberty Global	Cable	2,274,000
Belgacom	Belgacom	IPTV	475,000
TV Vlaanderen	M7 Group	Satellite	80,000
Norkring	Telenor	Terrestrial	35,000
Mobistar	France Telecom	Satellite	30,000

Thanks to a penetration of over 98 per cent and its compatibility with antenna reception, cable technology became the dominant distribution technology in Flanders. Historically, this market was monopolised by Telenet but its former monopoly has been ended with the introduction of digital television. Today, the television distribution market is characterised by a duopoly, with Telenet being a dominant player (holding a market share of over 80 per cent) and state-controlled telephony provider Belgacom acting as a challenger (Table 14). In addition, Telenet entered into an agreement with multiplex operator Norkring to launch a nationwide digital terrestrial offer – possibly in an attempt to foreclose the market. Apart from cable subscriptions, Telenet has launched a number of thematic channels with local producers such as Studio 100 (kids) and Njam! (cooking). It also owns pay-television network Canal+ (rebranded Prime) and acquired large packages of premium rights, including those of sports competitions and US series. In 2012, Telenet announced that it would invest €30 million in local and independent content production (in exchange for the video-on-demand and pay-TV

rights), and also acquired the first rights to broadcast the popular HBO series (e.g., *Game of Thrones* and *Boardwalk Empire*).

Telenet faces competition from Belgacom, which successfully launched an IPTV offer over its copper network. It quickly gained market share after acquiring exclusive sports rights in 2005 (e.g., *Champions League* football), now serving some 475,000 households in the northern part of the country. Digital television is also delivered by two satellite providers, TV Vlaanderen and Mobistar, but these initiatives have not been an overwhelming success in the cable-dominant region, and failed to challenge Telenet's dominant position. For Mobistar, the second largest mobile operator, the provision of television is an important cornerstone in its strategy to provide multi-play services, including telephony and Internet. At the end of 2010, the media and telecommunications regulators decided that Telenet and Belgacom would need to open their network so that alternative operators could compete in the television distribution market.

With regard to retransmission payments, negotiations between broadcasters and distributors have provoked several conflicts in recent years. After all, carriage payments do not exceed more than 4 per cent of total turnover for Flemish broadcasters. Renegotiating contracts after previous carriage agreements had expired proved difficult, especially since the two main distributors have built up a substantial subscribers' base. End of 2011, for example, Telenet announced that it would reduce the retransmission payments to regional broadcasters from €1.59 to 0.18 per subscriber – based on market shares. After wide protest by these channels and intervention by the Flemish media minister, the case was settled and a three-year long transition period during which retransmission fees would gradually be decreased was announced. Simultaneous with distributors' attempts to reduce carriage payments, domestic broadcasters contest the level of retransmission fees (normally in the form of single, lump-sum payments) by arguing that for distributors the provision of digital television acts as a growth engine for their multi-play strategies. Broadcasters argue that they invest the bulk in content production and that distributors capture most of the economic value broadcasters generate. Hence, broadcasters want a larger share of this

growing pie and also tap into the revenues generated by bundled service packages. The exploitation of comfort services, which make it easy for viewers to record programmes and watch them delayed, form a second issue of major dispute. Digital video recorders not only affect potential revenues derived from video on demand, which distributors share with broadcasters, but also threaten the advertising-based business private television companies rely upon – allowing consumers to bypass advertising. In 2010, VRT, VTM and VT4, in an open letter to the press, explicitly complained about the threat of fast-forwarding advertising. They now claim a fair share of the fees distributors charge consumers for the use of these comfort services – compensating them for declining advertising income. Following these disputes, Telenet has still not secured carriage of VMMA channels for its mobile TV everywhere service Yelo – illustrating the soured relationship between the two parties. Instead, VRT, VMMA and Vier have unfolded plans for an on-demand web TV service to by-pass distributors and exploit their content online via the Stievie platform.

#### **10.4. Comparative analysis**

In the theoretical section of the article, it has been argued that market structure, and more specific the level of competition in the market, is an important determinant of bargaining power. Considering the degree of market concentration, channel ownership and product differentiation, the case studies suggest that relationships between broadcasters and distributors in Denmark are more trust-based than in Flanders, and that both parties pronouncedly acknowledge their mutual dependence or, at least, that Danish broadcasters gain more leverage over multichannel operators. Comprising a comparative analysis, this section tries to link the relative economic power of broadcasters *vis-à-vis* distributors to the different bargaining parameters. In so doing, the context-specific nature of individual broadcaster-distributor relationships, emphasising crucial contextual factors – market concentration, vertical integration and product differentiation – that influence the competitive position of an actor in a bargaining game is highlighted.

First, broadcasting markets in Flanders and Denmark are relatively highly concentrated, with public service broadcasters taking the lead. In Denmark, this public service dominance is even stronger than in Flanders. but this does not prevent private broadcasters from gaining leverage as well. As the Danish distribution market is much more fragmented than the Flemish one with several substitutes in rural areas, private broadcasters can play satellite and terrestrial companies against each other, and bargain the most favourable carriage conditions. Despite a market share of over 54 per cent and a strong presence in densely populated areas, YouSee has less market power than one should think. The company mainly relies on its contracts with housing associations, which generally own the access network and have the freedom to choose between several interested suppliers. In Flanders, however, Telenet acts as a powerful gatekeeper due to its quasi-monopoly. Since broadcasters rely extremely upon cable carriage, this is creating power asymmetry in the broadcaster-to-distributor market. Now that Belgacom has been settled as a powerful runner-up, broadcasters could face difficulties in bargaining lucrative contracts for IPTV as well. Using the widely applied Herfindahl-Hirshman Index (HHI) as a measure of competition and market power<sup>7</sup>, Table 15 suggests that broadcaster-to-distributor markets in Denmark are indeed more equally balanced than in Flanders, where these relationships seem more skewed in favour of distributors. Since all markets have a HHI score higher than 1800, this means that broadcast and distribution markets both in Flanders and in Denmark are highly concentrated. However, HHI scores for broadcast and distribution markets in Denmark are more or less equal, whereas HHI scores for Flanders differ largely. A HHI score of 6453, more than three times the allowed threshold of 1800, indicates excessive market power in the distribution market in Flanders.

**Table 15** Market concentration ratios (own calculations)

		HHI
Flanders	Broadcasters	2560
	Distributors	6453
Denmark	Broadcasters	2941
	Distributors	3174

Secondly, vertical integration tendencies are most obviously found in distribution companies in Flanders compared to Denmark. In addition to the combined role as a pay-television and network operator, distributors in Flanders have unfolded several activities in commissioning and producing content. Not only Telenet and Belgacom launched various thematic channels to enhance the attractiveness of their programming supply, the companies were involved in an aggressive bidding war for acquiring the exclusive rights of the national and European football leagues. By providing top premium programming, normally catering for niche audiences, they are directly entering the arena of niche television already developed by small broadcasters. Although hard to prove, several of these smaller broadcasters complain about anticompetitive conduct and a refusal to deal. In contrast to the established broadcasters, niche channels are often deprived of retransmission payments. Such tensions hardly exist in the Danish market, where – except for the vertical link between Viasat and TV3 – no distributor is involved in programming. YouSee, for example, has explicitly stated that it has no intention of competing with established channels or taking part in sports rights auctions. However, the ownership of TV3 enables Viasat to exert market power, and has provoked conflicts with other satellite and terrestrial operators. By carrying TV3 exclusively, Viasat tries to foreclose distribution in rural areas and lure consumers to their platform. There have been concerns that Viasat would withdraw its TV3 bouquet within community associations that signed a contract with Canal Digital. Instead, both distributors reached an agreement to distribute TV3 within housing associations. Private broadcasters, mainly those operated by SBS, have financially benefitted from this rivalry and were able to bargain lucrative terms for carriage by Canal Digital and Boxer.

Finally, the lack of vertical integration enables Danish broadcasters to gain market power. Indeed, the more distributors rely on external programming for offering compelling packages, the more bargaining power broadcasters derive. Since distributors in the Danish market do not bid for premium sport rights, broadcasters have developed a portfolio of attractive programming allowing them to enter into beneficiary contracts with platform operators. In addition, public and private broadcasters are strongly differentiated and cover various viewer segments in the



market that can attract specific target audiences to distributors' programming tiers. Hence, Danish distributors have followed the same strategy US cable operators deployed when these started financing cable networks in the 1970s to enrich their programming supply. Since advertisement expenditures are insufficient to finance the broadcast ecosystem, distributors have started to financially support broadcasters to guarantee high-quality programming. This is less the case in Flanders, where operators are directly involved in programming through premium rights ownership and mainly the smaller channels suffer from achieving favourable carriage conditions. By deploying content activities, one could even argue that Telenet and Belgacom want to create audience fragmentation and weaken broadcasters' bargaining position.

### **10.5. Conclusion**

Based on two detailed case studies, this article conducted a political economy analysis of retransmission payments in European broadcast markets. As these markets are characterised by fundamental institutional reform, so are the relationships between broadcasters and distributors that form an important subset of the institutional framework in which these parties operate. Both in and outside Europe, tough negotiations for retransmission payments illustrate the on-going battle for power and control in the business ecosystem. Instead of assuming a patron-client relationship with either broadcasters or distributors in the driver's seat, it was assumed in this article that the allocation of bargaining power within the industry is largely determined by the ownership of scarce resources and influenced by structural features of the market wherein broadcasters and distributors navigate. Contending that each party controls crucial platform functionalities, we have argued that the broadcaster-to-distributor market is characterised by bilateral bargaining power and control, eventually leading to platform envelopment strategies.

Building further on industrial organisation theory, the circulation of economic power within broadcast markets was linked to the market structure and the level of competition in broadcasting. The case studies suggest that relationships between broadcasters and distributors in Denmark are more trust-based and cooperative than

those in Flanders, and that Danish television companies have acquired more leverage over distributors compared to their Flemish counterparts. Indeed, the high level of market concentration, illustrated both by horizontal and vertical integration tendencies in the Flemish distribution market, suggest that pay-tv operators are able to exert bargaining power over broadcasters. An analysis of the Danish market, in contrast, suggests a more balanced distribution of power between both parties, as is also reflected in the level of retransmission payments, which was smoothly accepted as an industry practice in Scandinavian broadcast markets. Whereas these payments account for about 4 per cent of the total industry turnover in Flanders, income from retransmission represents up to one third of the total revenues of Danish broadcasters.

Since the focus of the article was predominantly on the structure of broadcast markets, little emphasis has been put on regulatory interventions and their consequences. Despite the substantial stakes at play, public policymakers in Europe have undertaken few specific attempts in regulating broadcaster-to-distributor markets and preserving a fair balance between broadcasters and distributors. In certain countries, national regulators have imposed ownership rules, but such regulations have not prevented large media companies, either broadcasters or distributors, from developing into powerhouses that settle carriage negotiations in their favour. Apart from preserving fair competition in the market by eliminating artificial entry barriers and fighting the excessive concentration of economic power leveraged by particular players, it seems that policymakers are rather limited in their options for dealing with carriage disputes between two or more contracting parties. In extreme cases, regulators could regulate the level of the fees or impose mandatory binding arbitration when parties are not negotiating 'in good faith' to avoid blackouts and ensure consumer choice. In Flanders, several Members of Parliament have submitted a proposal to change Flemish media legislation to ensure more fair negotiations between broadcasters and distributors, stressing the former's exclusive rights over their content and the latter's obligation to add functionalities to this content and charge for it only after approval of the right holders. The change of decree has not been approved yet as several issues regarding free flow of services (as ensured by European law) will have to be resolved first.<sup>8</sup>

The article has practical implications for both industry stakeholders and policymakers. For policymakers, analysing economic structures of broadcast markets may identify important issues for cultural policies, such as the effects of corporate concentration on media diversity and pluralism in society. The results indicate that regulatory intervention aimed at creating a level-playing field between broadcasters and distributors could have far-reaching implications for the financial health of the broadcast market, which suffers from shrinking advertising expenditures and increasing competition from online video platforms. Lowering entry barriers in network access (*e.g.*, open access rules) or imposing limits in market concentration (*e.g.*, through cross-ownership regulation) could increase competition in the distribution market and improve relationships with broadcasters. Ultimately, regulators can impose a separation between content production and distribution activities when ownership restrictions fail to eliminate anti-competitive conduct and abolish dominant positions. For broadcasters, the results suggest that providers of attractive and differentiated programming may develop bargaining power and enter into more advantageous carriage agreements with distributors. Since operators are continuously seeking for the best content to differentiate from competing platforms, the supply of domestic programming could add to the competitive position of broadcasters, and hence pay off the substantial investments in providing high-quality programming through more valuable retransmission deals. Platform operators, from their perspective, could increase investments in original content to spur the value of their offerings. Ownership of top premium content is also seen as a means to leverage bargaining power *vis-à-vis* content providers.

As a concluding note, the importance of retransmission payments and carriage disputes as a research issue will only increase in the future. Against the backdrop of rapid technological changes, most notably the deployment of broadband television, the global battle for power and control in television markets has just started and will only intensify in the coming years. Since the scope of the article is limited to two case studies, future research could focus on including more countries – taking into account the methodological challenges related to case-oriented comparative analysis – to produce more generalizations concerning the impact of the bargaining parameters discussed in

the article. In addition, the number of bargaining parameters could be expanded, constructing a complex of interrelated factors that contribute to the competitive position of a negotiating company. Other sources of bargaining power could be considered, eventually building a statistical model to assess the impact of related parameters on carriage negotiations in a quantitative way. Combined with qualitative case studies, such a multi-method research design would allow the complete unravelling of the complex relationships between content producers and distributors in broadcasting markets, and identify sources for policy intervention.

### Notes

<sup>1</sup> The lecture can be watched at <http://www.guardian.co.uk/media/video/2010/aug/27/mgeitf-mark-thompson-mactaggart-2010> (Retrieved September 20, 2010).

<sup>2</sup> As in Belgium media responsibilities have been transferred to the regional level, the Flemish broadcasting market is considered a separate consumer market.

<sup>3</sup> Further regional benchmarks can be found at [http://www.pes-benchmarking.eu/uploaddoc4852/193\\_2012-02-16-flanders-outlook.pdf](http://www.pes-benchmarking.eu/uploaddoc4852/193_2012-02-16-flanders-outlook.pdf) (Retrieved March 28, 2012).

<sup>4</sup> Further statistics can be found in the yearly European Audiovisual Observatory publication (EAO, 2012).

<sup>5</sup> Main differences can be found in the articulation of the political, economic and social sphere. Whereas Flanders can be classified as a liberal corporatist model, Denmark obviously adheres to the social corporatist model that typifies Nordic countries.

<sup>6</sup> In Flanders, representatives of television companies VRT, VMMa, SBS, Acht, Vitaya and distributors Telenet and Belgacom were interviewed. The sample in Denmark included representatives of television companies DR, SBS and TV3, and distributors YouSee, Viasat and Boxer TV.

<sup>7</sup> HHI uses a function of all the individual firms' market shares to measure concentration in a given market and equals the sum of the squared market shares (expressed as a percentage) of each firm in the industry. Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated. A HHI higher than 1800 indicates a concentrated market.

<sup>8</sup> The provision was voted in Spring 2013 as part of the radio and television decree.



# 11. BARGAINING POWER IN BROADCASTER-TO-DISTRIBUTOR MARKETS

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In previous chapters, the broadcaster-to-distributor market has been portrayed as a vertical market in which broadcasters and distributors negotiate the economic terms of carriage. Reference was made to the arenas of conflict between brand manufacturers and retailers (such as price and shelf space) and the competitive weapons used both by brand manufacturers and retailers (such as price cuts, product innovation and private label programs). While manufacturers and retailers perform complementary functions, there is a competitive dimension to their relationship since they compete *vertically* to obtain a larger share of a brand's retail price. In addition, in a product category brand manufacturers compete *horizontally* among themselves as do retailers. Steiner (2004) notes that horizontal and vertical competition often reinforce each other. If a retailer captures horizontal market share from rival dealers, the retailer's vertical bargaining power will be strengthened, enabling the retailer to obtain better prices from brand manufacturers. The subsequent increase in margin and profits makes the retailer an even stronger horizontal competitor (the same logic applies to manufacturers).

In a similar way, broadcasters and distributors are involved in vertical competition, and the outcome of carriage negotiations strongly influences the competitive position of both broadcasters and distributors in their horizontal market (either programming or distribution). More income from distribution would allow TV broadcasters to invest in original programming, and competitive scheduling would boost viewer shares and advertising rates. However, media convergence has enabled a process of platform envelopment and transformed the industry into a complex ICT ecosystem marked by

cross-sector competition (software, hardware, media, telecommunications, computing etc.). This trend towards envelopment has become the most visible in the online video marketplace, where domestic TV broadcasters and distributors compete with global technology firms (Samsung, Amazon) and OTT aggregators (Netflix, YouTube) that benefit from scale economies. By setting up proprietary video platforms like Stieve or Hulu, broadcasters horizontally compete with pay-TV operators that operate their TV Everywhere platforms. Hence, it is reasonable to expect that horizontal competition will induce strategic behavior in vertical markets and vice versa (it is for example quite remarkable that both VRT and VMMA are not available on Telenet's Yelo TV).

The intertwining of vertical and horizontal rivalry is associated with the concept of 'co-opetition' which has grown as one of the most influential business perspectives in recent years, and induces TV firms to fundamentally revise management strategies. Co-opetition refers to 'the dyadic and paradoxical relationship that emerges when two firms cooperate in some activities, such as in a strategic alliance, and at the same time compete with each other in other activities' (Bengtsson and Kock, 2000, p. 412). Hence, it implies a situation in which media firms simultaneously compete and collude, and benefit from such an ambivalent strategy. In the TV industry, co-opetition seems one of the dominant strategies to build and sustain competitive advantage through strategic partnerships, distribution deals, content licensing agreements, revenue sharing, ads affiliation or cross-investments (Daidj and Jung, 2011). In the UK, YouView is a joint venture with seven equal partners, including broadcasters (BBC, ITV, Channel 4 and Five), ISPs (BT, TalkTalk) and DTT network infrastructure provider Arqiva, to deliver connected TV services. Vertical relationships between buyers and suppliers are generally built on a mutual interest to interact, but horizontal partnerships between close competitors are sometimes conflicting. Nevertheless, co-opetition strategies are inherent in rapidly changing business dynamics and highly competitive ICT markets where rivals can emerge overnight and come up with disruptive business models. The implementation of a successful co-opetition strategy, however, is not easy, and requires a governed distribution of power and control to ensure that all collaborating partners create maximum value (Jorde and Teece, 1989).

When the distribution of economic benefits and the sharing of profits are concerned, the respective bargaining power of the business partners comes into play. Bargaining in

the cable TV industry is widely covered in literature, and focuses predominantly on basic models of game theory, assuming that Nash bargaining provides a Pareto efficient outcome with the incremental surplus evenly split (e.g., Adilov et al., 2012; Crawford and Yurukoglu, 2012). However, surplus from bargaining is not automatically divided equally, and might be extremely skewed in the presence of a dominant broadcaster or distributor. Power asymmetries in cable TV have been predominantly studied from an Industrial Organisation approach, which tends to overemphasise industry and firm structures. Whereas multiple studies show that industry and firm structure are indeed the main dimensions of the origins of bargaining power, buyer-supplier literature – as discussed in Chapter 3 – suggests a multidimensional and multilevel approach to the study of bargaining power. So far, little research has addressed the origins of power positions in broadcaster-to-distributor markets, and has expanded the number (and dimensions) of bargaining parameters. Therefore, this final chapter aims to construct a complex of interrelated power attributes that influence the competitive position of a TV broadcaster vis-à-vis distributors (and vice versa) and that go beyond the limited set of power resources traditionally applied in mainstream Industrial Organisation research. Following the interviews conducted with media managers, academics and other experts, a fifth power attribute – a personal dimension – has been added to the preliminary model already presented in Chapter 3 (see Figure 13).



**Figure 13** Power resources in broadcaster-to-distributor markets

<b>INDIVIDUAL - PERSONS</b>	<ul style="list-style-type: none"> <li>- Negotiation Strategy</li> <li>- Relative Familiarity</li> <li>- Reputation for Fairness</li> <li>- History of Conflicts</li> </ul>
<b>MICRO - PRODUCT</b>	<ul style="list-style-type: none"> <li>- Product Differentiation</li> <li>- Exclusivity</li> <li>- Bundling</li> <li>- Switching Costs</li> </ul>
<b>MICRO - COMPANY</b>	<ul style="list-style-type: none"> <li>- Relative Size</li> <li>- Conglomerateness</li> <li>- Vertical Integration</li> <li>- Financial Resilience</li> </ul>
<b>MESO - MARKET</b>	<ul style="list-style-type: none"> <li>- Industry Concentration</li> <li>- Number of Buyers/Sellers</li> <li>- Entry Barriers</li> <li>- Technological Change</li> </ul>
<b>MACRO - INSTITUTIONS</b>	<ul style="list-style-type: none"> <li>- Media-Specific Regulation</li> <li>- Telecommunications Policy</li> <li>- Competition Law</li> <li>- Copyright Law</li> </ul>

The added (academic) value of the proposed model is twofold. First and foremost, the model allows identifying those power resources that influence bargaining power in broadcaster-to-distributor markets, and helps in assessing whether and to what extent specific power attributes imply (relative) bargaining power. By assessing the attributes at both an individual broadcaster and distributor, power asymmetries in vertical relationships can be identified. By explaining the dynamics of vertical competition, the model provides added value compared to existing frameworks that mainly explore horizontal rivalry in the market. In addition, existing models are usually too generic for capturing the complexity of today's TV ecosystem that demands for a tailored and specialist model. Compared to Porter's established framework, it is suggested here that the regulatory context and the psychology of negotiations play a decisive factor in the allocation of bargaining power in the industry. Second, the model allows policymakers and regulators to understand the dynamics of broadcaster-to-distributor markets and comprehend what factors determine carriage negotiations whose outcome regularly appears as a 'black box'. Given the increasing number of carriage disputes and

blackouts, combined with the rise of ‘power empires’ in the ecosystem, competition in the broadcaster-to-distributor market is becoming tougher and might require regulatory intervention. In that context, the model allows identifying those power resources that create disproportionate (relative) bargaining power and allows imposing measurements to abolish monopoly control over critical resources that hamper effective competition in the market.

In the next paragraphs, the impact of each power attribute on bargaining power is discussed, complemented with personal reflection and insights gathered from the in-depth expert interviews and where possible illustrated by means of concrete examples. It is important to add that all the power attributes not necessarily appear at the same level. The bargaining position of a negotiating firm is affected by factors at different – macro, meso and micro – levels. Obviously, the policy and regulatory context form the macro-level factor that determines bargaining power. Market structures form the meso level at which power asymmetries in broadcaster-distributor relationships should be analysed. Furthermore, firm structure and product characteristics form the micro-level factors that help negotiating firms in building bargaining power. Lastly, analysis should take into account the psychological and emotional dimensions at the individual level to assess the amount of bargaining power in the market.

## **11.1. Policy and regulations (macro)**

Although contractually settled by private negotiations, a number of institutions, legal provisions and regulatory requirements strongly affect the carriage negotiations (but of course not all are applicable in all geographical markets). Although it is not the ambition to provide an exhaustive overview of all the provisions and rules that affect carriage negotiations worldwide, some remarkable rules and their impact on power balance are listed and discussed below.

### ***11.1.1. Competition regulation***

Applied to the broadcaster-to-distributor market, the *competition policy framework* aims at facilitating free and fair competition both with horizontal and vertical rivals, and ensures that media firms and consumers have equal access to programming and sports rights (Iosifidis, 2011). Competition law concerns intervention in the marketplace when

there is some problem with the competitive process, or when there is what economists refer to as 'market failure'. Underpinned by the principles of the neoclassical economic theory, competition law is usually designed to promote a competitive marketplace that is characterised by a high number of buyers and sellers, and absence of market power (both in TV broadcasting and distribution). The antithesis of a competitive market is a monopoly, a market controlled by a single supplier. In a monopoly, a single business has the market power to provide goods and services on a 'take it or leave it' basis and can therefore reduce supply and force prices up so as to maximise profits. Sky's *dominant position* in the UK as satellite provider has triggered off public intervention by Ofcom and the Competition Commission to limit its market power with regard to broadcasters and rivaling platforms. Next to monopolies, cartelisation or (tacit) collusion have raised anticompetitive concerns with competition authorities. Several reports (Mediatique, 2012; Oliver & Ohlbaum Associates, 2011) suggest that *collective negotiations*, grouping together broadcasters, might secure better terms from platforms and are likelier to lead to settlements in their favour. This is particularly the case for smaller broadcasters that have minimal leverage when entering into negotiations with a larger platform operator. However, *collective action* requires an explicit exemption from competition law, which may not be feasible in most ways. This is similar to joint ventures and strategic alliances with TV broadcasters and distributors for establishing a hybrid TV platform to bundle forces against more powerful parties (consider YouView, Stievie, Hulu, Germany's Gold, etc.).

The case of *cartelisation* has been dealt with in the context of the sale and purchase of TV sports rights. The question whether sports media rights should be controlled by individual teams or by a league, usually acting as a joint venture between all teams, but occasionally as the rights owner itself, forms the main controversy in relation to sports rights. *Collective selling* agreements have a tendency to restrict competition in several ways. First, they amount to a price fixing mechanism and give the league market power to dictate the price of sports media rights, which leads to inflated prices for both TV broadcasters and consumers (double marginalisation). Furthermore, collective selling can strengthen the market position of large firms because they are generally the only operators able to bid for the combined rights. If TV rights were sold by individual clubs, rather than collectively, there would be more possibilities for other broadcasters to

obtain rights, which, in turn, would foster competition in broadcasting and distribution. Nevertheless, the joint sale of broadcasting rights was given an antitrust exemption in many parts of the world (see, for example, the *Sports Broadcasting Act of 1961* in the US) entitling sports clubs to behave as supply-side cartels and jointly sell their rights to FTA and pay-TV broadcasters. In Europe, the potential foreclosing effects of a joint-sale mechanism were acknowledged, but granted a conditional exemption in the Bundesliga, Premier League and UEFA Champions League cases. By limiting rivalry on the supply side and taking advantage of the increasing competition on the demand side (broadcast and distribution), sports leagues have built bargaining power and seen an explosion in the income from TV deals.

In recent years, competition authorities have also dealt with the issue of *exclusive broadcast rights*, which forms an important source of competitive advantage for both the seller and buyer. Whereas in the past competition authorities seemed to share the incumbents' views on exclusivity, recent decisions tend to promote rights-sharing policy models in favour of alternative operators. The main aspects of the competition law framework (*Article 101 and 102 TFEU*, and *Merger Regulation*) deal with distortion of competition and the abuse of a dominant position within the common market. With regard to exclusivity, competition authorities increasingly rely on this framework to rule on the (presumably) pre-emptive nature and market foreclosing effects of such deals. These authorities have focused on ensuring access to any possible bottleneck, so as to preserve the possibility for future inter-platform and intra-platform competition (Geradin, 2005). The remedies addressed are often based on the removal of exclusivity clauses in the contracts and on incumbents' obligation to allow wholesale access to alternative operators. Exclusivity has been addressed by the Commission in several merger cases. In the *Newscorp/Telepiù* case (2003), the European Commission raised its concerns over the merger between the Italian pay-TV services Stream and Telepiù that would create a monopoly in the Italian pay-TV market. Although the Commission argued it sought to preserve platform-to-platform competition to maximise consumer welfare and promote innovation, the merger was authorised under several conditions. The main objective was to ensure that existing competitors and future entrants would constrain Sky Italia's competitive behaviour by being entitled to unbundled access to all technical bottleneck services. In recent years, national regulators have also imposed

*wholesale must-offer obligations* to dominant pay-TV operators like Sky (UK), Canal+ (France), PRISA TV, formerly known as Sogécable (Spain) and Telenet (Belgium). The obligation to provide premium sports channels to rivaling platforms should prevent pay-TV operators from exerting market power in the wholesale supply of premium channels, thereby driving up access prices, limiting consumer choice and restricting platform innovation.

### **11.1.2. Media-specific regulation**

#### *Retransmission consent and must-carry (US)*

Until 1992, US broadcasters had little bargaining power vis-à-vis distributors as the FCC argued that no existing regulation required cable operators to obtain broadcasters' consent to retransmit TV signals. However, as the US cable business experienced rapid growth and Time Warner Cable and Comcast lured millions of subscribers, US Congress enacted the *Cable Act of 1992*, which codified a 'must-carry' for the US TV broadcasting industry. The law introduces the *retransmission consent and must-carry rules*, which govern the carriage of TV broadcast signals by cable operators. Under these rules, local TV broadcasters can either demand cable operators to carry their TV signals (without receiving a compensation for such carriage) or negotiate 'in good faith' a retransmission consent fee with each cable operator (without any guarantee on carriage). The rules imply that local network affiliates in the US are guaranteed carriage on cable systems, and that a TV distributor cannot 'black out' a network affiliate, which are normally in a weaker bargaining position. In other words, a channel has the ability to withdraw from a platform and demand a retransmission fee (with the risk of not being carried by a distributor though). In 1999, Congress enacted the *Satellite Home Viewer Improvement Act* establishing a similar framework for satellite operators. With the overwhelming majority of retransmission consent renewal negotiations, and the increasing number of blackouts (from 12 in 2010 to more than 90 in 2012), TV distributors, often backed by Members of Congress, are clamoring for reform. They have asked the FCC to impose *mandatory arbitration* during carriage disputes, and eventually fine parties that fail to negotiate fees in 'good faith'. TV broadcasters, however, believe the regime is working well and government should allow the free market to determine fees. A report by analyst J.P. Morgan (2013) stresses the increase of payments to networks and claims that the rules rebalance the leverage between (local) broadcasters and distributors.

Indeed, retransmission consent and must-carry regulations have been largely about managing the evolving power relationships between TV broadcasters and multichannel operators following the successive waves of industry consolidation.

### *Must-carry regulation (EU)*

Not only in the US but also in Europe must-carry rules form an important regulatory aspect of the retransmission landscape. Article 31 of the *Universal Service Directive* includes a provision of must-carry obligations, and prescribes that these rules are proportionate, transparent and limited to what is necessary to meet clearly defined general interest objectives. The Directive further allows Member States to foresee a remuneration for network operators in return for *must-carry obligations* (albeit in a proportionate and transparent manner). As a result, Member States are free to decide whether must-carry channels need to pay network operators a carriage fee and can choose the most appropriate remuneration regime (if there is any at all). Must-carry regulations have been introduced in a large number of European markets, and require certain broadcasters to be carried over certain networks. The rationale is to guarantee the universal accessibility of certain TV channels, and hence preserve a diverse and pluralistic TV offer to the public. Must-carry rules usually benefit broadcasters with a public service remit, but commercial channels also benefit in certain countries. Must-carry rules were traditionally applicable to cable networks (despite the principle of platform neutrality), and have a considerable impact on network operators since they restrict the operator's ability to use their capacity in a competitive way (though this should be qualified in a digital context). Although must-carry rules have been called in question by network operators (as they represent a possible cost burden and limit free movement of goods and services), must-carry regulation may be appropriate in case of limited competitive rivalry in distribution, or when subscribers are locked in to a given platform (Capiou, 2002).

Historically, in Belgium as well as in other EU countries cable operators have tried not to pay a fee for the cable retransmission of must-carry channels, claiming that the must-carry obligation is not compatible with the obligation of asking a broadcaster for the retransmission authorisation requested by the copyright law and paying a copyright fee to the broadcasters (European Broadcasting Union, 2007). However, case law has

come to the opposite conclusion, saying that must-carry rules do not exempt cable operators from obtaining consent from the right holders and from paying them a fee for exploiting their programmes on cable systems. In the *RTBF-BRT vs. RTD* case (1997) the Brussels Court of First Instance distinguished between the must-carry obligation (falling within the scope of administrative law) and the obligation to obtain consent in exchange for an adequate remuneration (falling in the scope of private law) – confirmed in recent cases with cable operators Numéricable (2005) and Telenet (2011). As a result, there is no need to make a distinction between national and foreign broadcasters when it comes to retransmission consent. Cable operators have not only challenged payments to must-carry channels, but also argue that a must-carry retransmission is subject to financial remuneration by the broadcaster (compensating the transport costs of the signal). In the Flemish Decree on radio and television, no obligatory payment has been fixed for the must-carry channels (which implies that network operators are free to choose the regime). Actually, the rules in Flanders are clearly in favour of the must-carry broadcasters; the Decree explicitly states that cable operators must not charge regional broadcasters for carriage, and the expert interviews revealed that PSBs are advantaged as well. However, a must-carry status, it is raised by several experts, should not imply a discriminatory treatment between must-carry and other channels in terms of technical costs. Despite the strong bargaining position of the VRT, analysis of the UK market learns that must-carry PSB channels are not always in an advantageous position vis-à-vis TV distributors (see the example of the BBC below). In that context, must-carry regulations, in all its variations, form an influential factor in the allocation of bargaining power in the TV ecosystem.

#### *Technical Platform Services regime (UK)*

Prior to the introduction of the current *Technical Platform Services (TPS) regime* in the UK, the carriage of PSB channels by television platforms was the subject of well-documented negotiations between the BBC and Sky (1998 and 2003), and ITV and Sky (1998-2001). In the latter case, a failure to reach agreement meant that ITV1 was kept off Sky's platform throughout the period 1998-2001 – partly because ITV had set up (now-defunct) ITV Digital and wanted to favour its proprietary platform with privileged carriage. ITV ended up paying Sky a negotiated yearly fee for carrying its channels. The relatively rapid growth in Sky's customer base compared to alternative providers, and

its subsequent market power induced Ofcom (2006b) to regulate the terms of the carriage of FTA channels on Sky. TPS is an answer to concerns around Sky's ability to deny broadcasters access to its platform and mandates that Sky provides access on a 'Fair, Reasonable and Non Discriminatory' (FRND) basis. Hence, the TPS regime was introduced, under which Sky is permitted to recover specific costs related to the building and maintenance of its satellite delivery platform (related to marketing expenditure and the costs of set-top boxes that are provided free to subscribers). Under the TPS regime, in return for carrying core linear channels on its platform, all PSB's pay Sky (a) channel-specific Platform Contribution Charges (PCC) based on a rate-card and (b) smaller, fixed charges for additional services such as EPG listings, regionalisation, conditional access, red button, etc.

Ofcom, the UK regulator, assumes that channels benefit from their availability on the Sky platform, and Sky's investments made to launch, manage and promote its platform (regardless of its benefits carrying channels). Consequently, Ofcom's guidelines state that the PCC should be determined on a basis that seeks to distribute the platform's costs in line with the benefits broadcasters derive from carried by the platform. Since these benefits are calculated through the available viewership figures, popular channels pay the highest fees. However, Sky is not required to 'net off' a channel's benefits against any benefit that the platform derives from carrying that channel. As a consequence, popular channels effectively subsidise the Sky platform that likely derives more benefits than it confers. A report by Mediatique (2012) states that the TPS regime precludes any meaningful negotiation between PSB's and Sky, and creates imbalanced negotiations. For negotiations to be meaningful, the report recommends that the benefits at stake for Sky – reflected in subscriber revenues – should be taken into account as well. As a final note, PCC only relates to the carriage of PSB's core linear channels, which implies that PSB's can bargain carriage fees for extra services including HD channels and video-on-demand rights that are not covered by *must carry/must offer regulations*. Furthermore, Sky pays carriage fees to a number of pay-TV channels (including Sky's own channels as well as third-party pay channels), with fees typically paid on a per-subscriber basis.

*Editorial and signal integrity regulation (EU)*



Public fights between TV broadcasters and distributors have induced policymakers to intervene the commercial negotiations and introduce tailored rules in order to regulate power asymmetries between bargaining parties. More in particular, reference is made to newly introduced regulation that seeks to preserve the *editorial integrity* of the content transmitted over the distribution networks, and give the TV broadcasters a 'veto right' to ensure that their content is displayed unaltered on screen and without unauthorised promotion overlays. Closely connected with the goal of preserving content integrity and the viewing experience is the need to protect broadcasters and other right owners from unlawful activities such as *content piracy* and hence protect copyright. In that context, TV Catch-up, a UK streaming service allowing viewers to watch live content from over fifty channels, was found in breach of copyright recently as it failed to obtain permission from ITV, Channel 4 and Channel Five. The example shows retransmission consent is extremely important in case new services are introduced, for which new authorisation is required (Foged, 2010). Supported by the broadcasters, in June 2013, the Flemish Parliament adopted a new rule implying that each functionality enhancing the linear signal (e.g., delayed viewing, overlays, search engines, social media, content recommendations, EPG etc.) provided by a service provider requires the authorisation of the broadcaster concerned. The rule suggests that broadcasters have the ownership of the TV signal and that distributors need consent for any use of the TV signal, with the possibility of paying TV broadcasters an appropriate remuneration. The rule clearly favours broadcasters in their negotiation with distributors, and will allow broadcasters to demand a (higher) remuneration from service providers. The rule also creates more leverage with regard to international players like Apple, Google and Netflix that want to roll out online TV services and therefore will need local programming to step foot on the European TV market. Similar legal initiatives have been taken in the Netherlands and are also considered at the European level (in the context of the European Commission's Green Paper on Connected TV).

#### *(Cross-)media ownership rules*

As market (industry concentration) and firm (relative firm size, vertical integration, conglomerateness) structures were identified as powerful determinants of bargaining power in broadcaster-to-distributor markets, *(cross-)media ownership rules* might have a significant effect on the relative negotiation strength of broadcasters and distributors.

Such rules restrict ownership (in terms of reach, market share, or the amount of outlets that are controlled by one single entity) of media companies, and heavily affect the level of power a particular firm can exert over its competitors. Restricting corporate power of either a TV broadcaster or distributor might affect its bargaining power, and influence the level of retransmission payments it receives or needs to pay. Policymakers all over the world have complemented competition law with sector-specific ownership caps to regulate corporate control in the media business. However, policymakers have wrestled with a variety of issues involving ownership of media and concerns over the impact of large media companies that are based on normative but contested assumptions on the relationship between market concentration and company size on the one hand, and economic performance and media diversity on the other hand (Harcourt and Picard, 2009). Nevertheless, media ownership has traditionally been strictly regulated in most European countries, as well as outside Europe (for example the US broadcast ownership and cable ownership rules). Especially small states stick to the interventionist model as the competition approach fails due to the scale of small media markets (Puppis, 2009). Although one can hardly deny the impact of media ownership regulation on the amount of relative bargaining power in a given geographic market, one important issue pops up. As media ownership rules largely apply to broadcasters and in some cases distributors, this could create competitive imbalance with international video providers like Netflix or Google that pursue corporate synergies and benefit from economies of scale and scope. As these global players often remain unregulated, they are able to negotiate more favourable terms with 'local' providers of TV programming.

#### *Program Carriage Rules (US)*

In 1992, Congress passed the *Cable Television Consumer Protection and Competition Act* in order to ensure that cable operators would continue to expand their capacity and service offerings, cable operators would not have undue market power, and consumer interests are protected in the receipt of the cable service. Hence, US Congress expressed concern that as cable operators would vertically integrate, TV broadcasters would be harmed because cable systems could be incentivised to use their affiliated programming (a cable or TV network is deemed affiliated with a cable company if that cable company owns a five per cent or more), which could result in reduced competition and a lack of diversity in TV programming (as a result of *input and customer foreclosure*). With cable

operators serving more than 95 per cent of all MVPDs subscribers and affiliated with over half of all national cable networks, in 1993, Congress directed the FCC to establish regulations governing programme carriage agreements and related practices between cable operators or others MVPDs and TV broadcasters. Programme carriage rules thus prevent vertically integrated cable operators from *discriminating* between affiliated and non-affiliated TV networks, and hence exerting power over independent producers. Under these rules, vertically integrated cable operators must also grant competing mvpds reasonable and non-discriminatory access for programming. Moreover, the rules prohibit vertically integrated cable systems to enter into exclusive distribution agreements with affiliated (and generally regional sports) networks. Mergers or contractual exclusivity between regional sports networks and MVPDs may result in higher subscription prices, reduced diversity and less innovation both in programming and distribution it is argued (Moss, 2008). Under certain market conditions, exclusive agreements may potentially generate *anticompetitive effects* due to their ability to prevent rival suppliers from accessing MVPD-affiliated programming, or raise rival's costs by charging more for programming, or lowering its quality. In expectation that competition in the distribution market would develop, Congress provided that the rules would expire on October 5, 2002. However, the FCC found that it continued to be necessary to preserve and protect competition and diversity in the MVPD market. In 2002 and again in 2007, the FCC renewed the prohibition for five years, but decided to decline to extend the exclusive contract prohibition section of the programme carriage rules beyond its October 5, 2012 sunset date. The main reason for that decision is the increased rivalry in the US MVPD market as a result of which bargaining power vis-à-vis TV networks is to rebalance (Chandra, 2012).

*Listed events regulation (anti-siphoning)*

Media-specific regulation, *in casu anti-siphoning laws* and *listed events regulation*, is designed to guarantee that events of major importance to society, most notably sports events, are covered by a FTA broadcaster, and that the public gets free access to such events. Major events regulation was introduced to deny that pay-TV broadcasters would buy monopoly TV rights before FTA broadcasters had a chance to bid on them (Lefever, 2012). Since the introduction strategy of many pay-TV operators has been to exclusively acquire live sports rights, FTA broadcasters were subsequently bid out by pay-TV

operators (with BSkyB as most notable example). Ever since, anti-siphoning regulation has been introduced to secure that FTA broadcasters would have buyer power in the sports rights market by listing certain events to be covered free of charge to the viewer. Opponents of anti-siphoning regulation, sports leagues and associations in particular, have repeatedly claimed that the rules enable FTA broadcasters, and especially PSBs, to purchase the rights to key sporting events and competitions at artificially low prices and thus prevent sports organisations from maximising the economic value of sports rights. Evens et al. (2013) distinguish between two anti-siphoning approaches, with a different impact on power relationships in the TV ecosystem. In Europe, a 'dual rights' approach has been adopted, which allows broadcast rights to listed events to be purchased by either FTA or pay-TV broadcasters, but not broadcast exclusively on pay-TV, unless no FTA broadcaster shows interest in covering the sports event. By contrast, the Australian anti-siphoning regulation is based on a 'first choice' approach, which prioritises FTA broadcasters in the purchase of rights, and possibly creates competitive imbalance between FTA and pay-TV broadcasters. Since FTA broadcasters are entitled the first right to bid (and buy), the regulation is said to limit rivalry in the sports rights markets and therefore reduce the economic value of the sports rights (Healey, 2009). International comparison shows indeed that the sports rights market in Australia is severely underdeveloped (in economic terms) and that the penetration rate of pay-TV is relatively low compared to similar countries. This might suggest that the balance has tilted in favour of the FTA broadcasters, which have been awarded (excessive) buyer power in the sports right market in order to get relatively cheap access to sports rights.

### **11.1.3. Telecommunications regulation**

The liberalisation of the telecommunications sector intended to create a competitive market that was previously characterised by natural monopolies, and hence establish a 'level playing field' for new entrants. As the telecom industry expanded internationally, regulation got conveyed at the European level (van Kranenburg et al., 2005). In order to keep up with this new context of technological developments and industry change, European policymakers have adopted the *Electronic Communications Framework* (in 2002, revised in 2009). The regulatory framework applies to all transmission networks and services for electronic communications including telecommunications (fixed and mobile), Internet access and content-related broadcasting (the content itself remains

regulated by the audio-visual media services rules). The framework is intended to raise the standard of regulation and competition across all EU Member States. In concrete, the rules seek to strengthen competition in the communications industry by making market entry easier and stimulating investments, with the consumers as the ultimate beneficiaries of the EU telecom rules. The rules are made of a package of five Directives (Framework, Access, Authorisation, Universal Service and E-Privacy Directive) and two Regulations (BEREC and roaming). Only provisions of the Access and Universal Service Directive are of relevance to the broadcaster-to-distributor market.

### *Access Directive*

The *Access Directive* aims to harmonise regulation of access to, and interconnection of, electronic communication networks and facilities, and regulates the relationships between suppliers of networks and services that will result in sustainable competition. The objective is to encourage competition by stimulating the development of networks and services, and ensure that bottleneck ownership in the market does not constrain innovation of networks and services that could benefit the consumer. Its principle is to allow competition rules to act as an instrument for market regulation, and eventually allow national regulatory authorities to impose obligations on network operators with significant market power.

One important obligation included in the Access Directive is to give third parties access to essential facilities, including *unbundled access* to the local loop (LLU). Cable network unbundling (CNU) replicates LLU in telecommunication networks and forces dominant cable operators to share their CATV networks with competing TV platforms (Hou et al., 2013). In recent years, discussions have centred on whether infrastructure-based competition (inter-platform) in telecommunications is sustainable and whether the service-based (intra-platform) competition approach discourages investments in infrastructure (Bouckaert et al., 2010). In 2010, the Belgian regulators decided to open the cable networks to alternative operators of broadband and TV services. This opens up the opportunity for smaller, alternative providers to launch a digital TV supply and offer competitive triple play services over cable networks (CRC, 2011). Since Telenet owns over 80 per cent of the TV distribution market in Flanders, such *open access obligation* is likely to result in a more competitive market in which service delivery to

consumers is enhanced and in which triple play benefits consumers, alternative TV operators and other stakeholders in the value chain. Increased competition in the TV market that has been historically controlled by a single party is likely to fragment the market, and to create sustainable outside options for TV broadcasters in order to build leverage for negotiating the financial terms of carriage.

The Access Directive recommends obligations relating to *functional separation* as a regulatory tool. Functional separation is a process by which the management of the network infrastructure operations of a vertically integrated operator is distanced from those of the services that are provided by that network infrastructure (Cave, 2006). The approach is a radical departure from existing regulatory remedies that focus on mandatory access to an incumbent's assets (such as local loop). These remedies ensure a *non-discriminatory treatment* and full equivalence of internal and external access seekers. Incumbents like BT and TeliaSonera have voluntarily opted for functional separation, either to avoid the intrusive and irrevocable imposition of structural separation (i.e. separation of full ownership) or to benefit from significant advantages associated with controlling the infrastructure (Whalley and Henten, 2010). Functional separation, which remains unapplied to TV markets to date, should be seen as a remedy of last resort, one that irreversibly changes the structure of the market. Moreover, functional separation should be part of a coordinated set of regulatory initiatives to address anticompetitive tensions between vertically integrated incumbents and new market entrants. If intertwining of content and distribution roles results in a concentrated market structure and concrete cases in which the double gatekeeper role is leading to unequal treatment of independent TV broadcasters, non-discrimination regulation (among other functional separation) should be considered to prevent abuse of dominant position and to ensure unrestricted entry. However, in the converged media and telecommunications markets boundaries are blurring in such far-going ways that one should question whether current regulatory frameworks are able to tackle discriminatory treatment between networks and services. The intrinsic links between transmission and content are 'rendering a complete separation of transmission and content regulation infeasible' (Valcke and Stevens, 2007, p. 300).

The *Universal Service Directive* set minimum requirement for the level of availability and affordability of basic electronic communications services and guarantees a set of basic rights for users and consumers of such services. The aim is to secure that high-quality services are available to all users at an affordable price, without distortion of competition. The Directive therefore imposes obligations with regard to the provision of certain mandatory services (as part of universal service obligations), and establishes end-users rights. Among others, the Directive imposes that electronic communications services are made available to all users in their territory, regardless of their location, at a specified quality level and an affordable pricing. The Directive also includes must-carry obligations for TV and radio broadcasting, as discussed earlier.

The Directive prescribes that consumers should be able to take full advantage of the competitive environment and that they should be able to *switch to another operator* without being hindered by legal, technical or practical obstacles including contractual conditions, procedures or charges. This does, however, not preclude the imposition of reasonable minimum contractual periods in consumer contracts. The provision implies that switching costs should be reduced so that consumers are no longer locked in by a particular service operator. As a result, the market would be more competitive, with a likely positive effect on consumer prices. Adopted in September 2012, the new Belgian telecom law prescribes that consumers must be able to switch operators free of charge, unless they have entered the contract for a period less than six months. As suggested, consumers are often locked in by triple play services, bundling (fixed) Internet access, (mobile) telephony and TV. Although the law frees users from contractual obligations regarding their telecom services, it has an important side-effect on power relationships between broadcasters and distributors. By increasing competition in the market for TV packages, TV broadcasters could be better equipped to negotiate better retransmission terms with TV distributors.

Finally, the Universal Service Directive contains provisions that concern the widely debated issue of '*net neutrality*', and include transparency of information supplied by network operators and Internet service providers (ISPs) to their subscribers. According to the text, operators need to inform users of any change to conditions limiting access to and/or use of services and applications (traffic management), where such conditions are permitted under national law in accordance with Community law. Net neutrality in

Europe lies at the heart of a conflict between network and content providers, and ensures that video services can be viewed, while also allowing platform operators to manage their own networks and services. European network operators are already throttling online video services, mainly for technical reasons in order to avoid network congestion. However, distributors can also discriminate video services that rival with their proprietary video platforms and preserve high-quality transmission for paying content providers (and best effort for non-paying users). Waterman and Choi (2011) point that ISPs have bottleneck power to discriminate between non-affiliated services, and draw a parallel with cable TV services. Network neutrality would therefore ensure that video providers (and TV broadcasters) are not discriminated and charged more for carriage.

#### **11.1.4. Copyright law**

Copyright regulation is of utmost importance in understanding the dynamics of carriage disputes. Cable retransmission is governed by the Berne Convention and the WIPO Copyright Treaty. The *Berne Convention* gives authors of creative works the right to authorise the (cable and other) retransmission of broadcasts. Retransmission occurs when a broadcast is carried out by an entity other than the originating one, using the broadcast programme for its own business (focus on economic advantages). According to the Berne Convention, member countries are free to determine the conditions under which the rights are exercised. The general interpretation is that a country can replace the author's exclusive right by an obligatory licensing system provided that the country lays down in parallel a right to equitable remuneration, to be established by an amicable agreement or by a competent authority (like the Nordic Copyright Licence Tribunal), which has the authority to define the terms for retransmission if a collecting society or a broadcaster offers the rights on unreasonable terms (European Broadcasting Union, 2007). In Europe, the 1993 *SatCab Directive* set out a system of compulsory collective management for cable retransmission in TV programmes, in order to assist cable operators in clearing all necessary rights. The regime of the Berne Convention is fully maintained by the 1996 *WIPO Copyright Treaty*, which is implemented by the US *Digital Millennium Copyright Act* (DCMA) and the *Copyright Directive*.

Summarised, the legal framework makes the cable operator liable for clearing the cable retransmission rights from all right holders concerned – which distributors want



to avoid by entering into ARI contracts – while creating a clear incentive for similar treatment of other broadcast retransmission operators. Across much of continental Europe and the US retransmission of free-to-air networks is protected by copyright and is accompanied by an obligation on platforms to require a channel's consent and to pay a copyright fee which is then shared between the TV broadcaster, producers and authors. While in Europe this tends to apply mainly to cable networks, in the US it applies to both cable and satellite retransmission. In the UK, however, cable operators have been exempted from copyright based retransmission payment obligations. As a result, Virgin can effectively distribute free-to-air networks – accounting for about 95 per cent of viewing time, including BBC One, BBC Two, ITV, Channel 4 and Channel 5 – without being obliged to pay the networks. While digital satellite (Sky) is not exempted, the UK government recognises that this fee is effectively zero as copyright owners have no leverage to extract value from the satellite platform. Hence, an Oliver & Ohlbaum Associates analysis (2011) has concluded that the UK market offers the least generous retransmission terms. Limited copyright protection deny free-to-air networks to charge cable operators for retransmission and clearly advantages cable (and satellite) systems.

## **11.2. Market structure (meso)**

Relying on Industrial Organisation and strategic management literature, this section focuses on the market structure in which broadcasters and distributors respectively operate. More in particular, industry concentration, number of business partners, entry barriers and the threat of technological progress are identified as critical parameters.

### **11.2.1. Industry concentration**

The degree of market concentration, and hence the level of competition, is usually considered an important indicator of economic power in media industries. Whereas in perfectly competitive markets firms have no market power, media industries are often characterised by market failure that give rise to powerful firms. Due to the presence of economies of scale as a decisive feature of TV broadcasting and especially distribution markets, there is a tendency towards *oligopolistic control* in broadcaster-to-distributor markets. Typically, a few TV broadcasters and distributors control a significant share of the market, leading to (an often unhealthy) accumulation of power among a few firms,

which eventually induces anticompetitive conduct (if unregulated). Whereas powerful parties can command higher prices to buyers (broadcasters increase advertising rates, distributors raise subscription fees), they can bargain lower input costs from suppliers (broadcasters commission programmes from independent producers more efficiently, distributors bargain lower retransmission fees to be paid to broadcasters, or charge a remuneration for technical costs). In that perspective, buyer/supplier power strongly improves a firm's performance, increases bargaining power and creates leverage vis-à-vis vertical competitors.

The *nature of rivalry* in TV broadcasting has changed significantly since the 1980s with the proliferation of more broadcast networks and the growth of broadcast groups. Between 1992 and 2012, the number of national TV channels in Europe has expanded from 47 to more than 11,000 (369 new, mainly niche channels were launched in the course of 2012 in the EU). Since the rise of satellite platforms, with BSkyB as noticeable example, competition in the distribution market has increased as well. In the US, local cable systems controlled about 100 per cent of the market until the mid-1990s, but the growth of the satellite business, and later IPTV services, intensified internal rivalry. In Flanders, cable became the dominant distribution mode from the late 1960s, and was operated by local cable companies that merged into one dominant operator, Telenet. Only recently, cable's traditional monopoly was challenged by the introduction of new, digital TV platforms. Nowadays, the market contains five operators delivering digital television services to end-users via cable, terrestrial, satellite, mobile and the switched network. Counting the number of different channels and distributors in the market, it is likely that competition in the market has increased in recent years due to technological and regulatory developments.

Nevertheless, media convergence and to a lesser extent the economic environment have spurred *a new wave of consolidation* that is the most visible in the TV distribution market. Confronted with rising programming costs (double-digit growth in last years), US operators have expressed the need to consolidate in order to counter 'monopolistic' power of the TV networks, which are demanding rates by three to five times inflation (Steel and Taylor, 2013). US cable operators argue that further industry consolidation is needed to rebalance bargaining power that is 'out of whack'. Indeed, further industry consolidation is likely to happen, and the long-expected merger between DirecTV and

Dish Network seems only a matter of time. Liberty, US fourth-largest cable operator, recently acquired a 27.3 per cent stake in Charter Communications, and has been in talks with Cox, Cablevision and even Time Warner Cable for a horizontal acquisition. In Europe, Liberty Global has also fuelled expectations of further consolidation, having bought Virgin and raised its stakes in Ziggo and Telenet – but lost Kabel Deutschland to Vodafone and saw its acquisition of Kabel Baden-Württemberg (KBW) blocked by the German court. Next acquisition targets may include South European cable companies ZON (Portugal), Numéricable (France) and ONO (Spain).

Enduring consolidation both in TV broadcasting and distribution, however, has not automatically lessened competition in the market. More than ever, the TV ecosystem is marked by intense competition with a keen *focus on creativity and innovation*. Because in Flanders the price of a basic cable subscription is strictly regulated (with €15.2 per month among the cheapest in Europe), price competition has proven an unsuccessful and especially unsustainable strategy. Therefore, operators Telenet and Belgacom bet on product differentiation, with a focus on service and business model innovation. The fierce competition for double/triple play customers has triggered a wave of innovation in television distribution technology, exemplified by the launch of its mobile services Yelo and TV Overal. Furthermore, both operators continue investments in upgrading network technology, resulting in a high-performance broadband infrastructure. Similarly, competition in the TV market is intense, especially since VIER was rebranded as a generalist TV channel. For fear that increased competition would result in lower viewing shares and declining advertising income, all broadcast groups betted on original, domestic programming as part of a differentiation strategy. Although this innovation rat race comes at a cost, it is reasonable to say that such competitive dynamics (with a focus on uniqueness) pay off during carriage negotiations.

In previous chapters, it has been suggested that different markets exhibit different power configurations, and that power is unequally distributed across markets. One of the articles addressed the level of competition in the Flemish and Danish broadcaster-to-distributor market, and confirmed our basic assumption that strategic positioning in the value chain does not adequately explain bargaining power. The study calculated market concentration indices (HHI) and concluded that fragmentation in the Danish TV distribution market, combined with a high concentration of TV broadcasters, creates

relative bargaining power for TV broadcasters. Although broadcaster-to-distributor markets in Denmark are indeed more equally balanced compared to Flanders, TV distribution was conceived as public utility and became often organised as a monopoly. As scale economies are automatically increasing efficiency in networks, consolidation patterns are more prominent in distribution markets. Despite the entry of new TV distributors because digitisation and the Internet lowered barriers to entry, it is expected that network operators will continue pursuing operational efficiency by means of mergers and acquisitions. Using the HHI as an indicator of market power, and considering the more fragmented nature of TV broadcasting – albeit that the major TV networks are still controlling large parts of the market – it may be fair to conclude that TV distributors benefit from industry consolidation leading to power asymmetries in carriage negotiations.

### **11.2.2. Number of buyers/sellers**

Density of competition is determined by the *amount of business partners* (buyers or suppliers) in the market. As discussed, broadcasting markets are regularly organised as oligopolies, controlled by a few conglomerated broadcasting groups, which may own a portfolio of generalist and niche channels, and TV distributors. In some cases, however, TV distributors have integrated backward into content activities so that competition is even more constrained. Broadcaster-to-distributor markets are shaped according to the form of an *hourglass*, characterised by a small number of large distributors and a large number of broadcasters. According to media regulator VRM (2012), the Flemish TV ecosystem is populated by 51 external producers, 26 domestic broadcasters and 5 distributors. Three groups (VRT, VMMA and SBS) control over 80 per cent of the TV broadcasting market while cable operator Telenet controls about 80 per cent of the distribution market (analogue and digital combined). Whereas competition increased as a result of the successful market entry by Belgacom, TV broadcasters still need a distribution deal with Telenet, which has been identified as a dominant operator, and for which there is no real alternative operator. Because private TV broadcasters would lose access to about 80 per cent of the market (audiences and advertising), the cable company has considerable bargaining power during carriage negotiations. Telenet acts thus as a powerful gatekeeper due to its quasi-monopoly in the distribution market.

The strength of a firm's competitive positioning ultimately depends on the presence of *substitutes*. Basically, substitute products refer to different products from outside the industry that perform the same or similar functions as a product that the market offers. In the context of broadcaster-to-distributor markets, OTT aggregators such as Netflix, P2P file sharing including BitTorrent and Smart TV providers like Sony form important substitutes for multichannel operators, but it is highly questionable whether and to what extent broadcasters can rely on these alternatives only for building a sustainable business. Nevertheless, the launch of OTT service Stievie provides VRT, VMMa and SBS with an outside option to put pressure on and eventually bypass platform operators to bargain favourable terms of carriage. Indeed, the presence of a close substitute constrains a firm's ability to raise prices and creates opportunities for buyers or suppliers to switch to another broadcaster or operator. To assess the degree of threat posed by substitute products, one needs to consider the chances that consumers switch to the alternative, and how differentiated the substitute product is. Competition in the TV market becomes fierce because multiple firms target the same audience segment, leading to homogenisation of output. Since mainstream tastes predominate, channels competitively duplicate broadcasting schedules because it is more profitable to carve up the majority-taste audience segment. However, such duplication lowers product differentiation, increases the substitutability of TV channels and lowers bargaining leverage vis-à-vis distributors.

Rights owners, producers and TV broadcasters have repeatedly tried to change the hourglass structure of the broadcaster-to-distributor market by acting collectively, and reducing supply-side competition (e.g., collective selling agreements). Collective action might equalise bargaining power, and create leverage for TV broadcasters. Such *pooled bargaining* would disadvantage any platform operator that could not agree carriage terms, and end up in the situation in which the platform loses access to all broadcasters that are part of the coalition (for PSBs this would breach their universality obligations). As discussed further, collective bargaining in TV broadcasting has been subject to antitrust scrutiny. Collective selling of sports TV rights, however, has been exempted from antitrust persecution and have helped sports rights owners in building significant leverage during negotiations with buyers. Following the increasing demand-side rivalry with the introduction of pay-TV and later digital TV platforms, the price of sports TV

rights has almost exploded since the end-1980s. When the FA Premier League was founded in 1992, UK football rights (for highlights and occasional live games) were worth £15 million. BSkyB secured the 1992-1997 live rights – generating revenues for the Premier League of £61 million per season. The recent TV deal, with BT and Sky splitting live rights, raised £3.018 billion (for 3 years), marking a rise of 70 per cent on the previous £1.773 billion deal with Sky and Setanta (later ESPN). The impressive sales suggest that limiting internal rivalry by acting collectively (*divide et impera*) creates relative bargaining leverage vis-à-vis pay-TV operators.

### **11.2.3. Entry barriers**

In recent years, competition in TV broadcasting as well as distribution markets has increased dramatically. Whereas TV broadcasting was protected by *high entry barriers* due to spectrum scarcity, advances in technology have soared the number of channels that cater to a niche or minority-taste – and preferably an affluent – audience segment. As a strategic response, major TV networks have launched a wide portfolio of spin-offs to retain market share. Nevertheless, the proliferation of thematic channels may erode viewing shares and lead to audience fragmentation. In the UK, the number of channels increased from 416 to 515 between 2005 and 2011. During the same period, the share of the five main channels dropped from 70 per cent to 54 per cent. However, the drop was compensated by the success of the respective portfolio channels, rising from 3 per cent to 19 per cent of total viewing time, and driving PSBs viewing share to 73 per cent (Ofcom, 2012a). Given the saturation of advertising markets and its competition with the web, the question is whether there is room for this multitude of niche TV channels. Chances are likely that these TV channels will adopt underexplored revenue models, including product placement and direct viewer payments, to become sustainable.

Due to digitisation, entry barriers have lowered in distribution as well, leading to an expansion of distribution platforms, and both domestic and international operators in the market. Driven by media convergence, the digitisation of television has produced a more competitive industry structure, with incumbent telecom operators stepping into the arena, and satellite providers upgrading the quality of their offers. Increased rivalry has enabled broadcasters to gain leverage during carriage negotiations. In the US, entry by satellite operators (DirecTV and Dish Network) and telecommunications companies

(AT&T and Verizon) and recently Google Fiber in cable markets previously controlled by operators like Comcast, Time Warner Cable and Cox, has led to tougher carriage negotiations, with distributors paying higher programming costs for retransmission. Launching Belgacom TV broke the cable's (regional) monopoly in Belgium, and gave TV broadcasters an outside option in bargaining. The rapid growth of digital television, spurred by triple play strategies, put the retransmission fees on the industry agenda and allowed TV broadcasters to demand higher payments from platform operators that earned money by bundling access to TV channels with other communication services.

Bargaining power in broadcaster-to-distributor markets is reinforced by barriers to entry, which are likely to persist, even in times of abundance. Like in other industries, distribution value is created through market demand for scarce resources. Although entry barriers have been reduced in past years, illustrated by the remarkable increase in competition both in TV broadcasting and distribution, these barriers remain higher in distribution compared to broadcasting. Whereas broadcasting markets have been flooded with new and often low-budget channels, distribution markets have remained relatively stable due to economies of scale. Competitive entrance has been almost only possible for deep-pocketed telecommunications operators that have leveraged existing network infrastructure to successfully enter the market. Other interested parties often failed in overcoming the substantial capital requirements (sunk costs) for deploying network infrastructure, difficulties in taking advantage of demand-side economies of scale and purchasing premium programming (e.g., due to rival's vertical integration strategies). As it is relatively easier to start a business in TV broadcasting than in distribution, it is fair to claim that entry barriers are higher in distribution, softening horizontal competition and creating bargaining leverage vis-à-vis broadcasters.

#### **11.2.4. Rate of technological change**

Although it plays a major role in the production and delivery of goods and services, technology is a factor that is often overseen in competitive industry analysis. Indeed, rivalry in broadcaster-to-distributor markets is influenced by *technological innovation*, and especially its potential to disrupt established industry structures and monopolies. No matter whether technology is considered an exogenous production factor, or being institutionalised by firms operating in the TV industry (consider Telenet neutralising a

rivalling DTT supply), it has the potential to erode industry barriers to entry, challenge monopoly/oligopoly control over critical access points (i.e. distribution) and pose a big threat to bottleneck functionalities that give rise to gatekeeping powers. Indeed, new technology might fuel a process of *creative destruction*, with new entrants relying on disruptive business models that allow bypassing behaviour. Online aggregators like Netflix and Hulu, offering unbundled access to TV programming, are sometimes seen as substitutes for cable and satellite operators. The point here is that online alternatives might induce cable subscribers to cut the cord (for which there is little empirical evidence though), and connect with the Internet for watching TV programs, shows and films. However, the cable industry has strategically responded by launching innovative multi-screen offerings (like Yelo) and unbundled access to appeal to the on-demand-everywhere demands of next-generation viewers.

The interviews with media managers made clear that the risks associated with new technology are substantially higher for distributors than for broadcasters. The rise of *new middlemen* such as online streaming services and Smart TV providers presenting themselves as future-proof TV distribution platforms form a possible threat to cable operators' gatekeeping position. Although these platforms are still immature yet in full expansion and seeking for a sustainable business model, there is chance that content producers and TV broadcasters will target consumers directly via these platforms, and bypass those cable and satellite operators that previously ruled the distribution scene. Losing access to popular, must-have programming would possibly imply that cable and satellite subscribers would drop subscriptions and rely on online streaming platforms. In August 2013, Sony and Viacom reportedly reached an agreement to offer popular channels like MTV, Comedy Central and Nickelodeon on devices like the PlayStation gaming console and Sony Smart TV sets. With the rise of connected TV sets and online video platforms, however, the cable industry is inexorably losing its core audience for traditional TV services (disintermediation) and could become a 'dumb pipe' making money by offering broadband access. In such context, TV broadcasters gain bargaining leverage vis-à-vis cable operators, and will benefit from the multitude of distribution platforms to secure better retransmission deals.

Indeed, TV broadcasters have clearly taken advantage of the *increasing amount of distribution options* that were made possible by digitisation. Especially newcomers in



the market, which need attractive content to reach critical mass, have been vulnerable to the financial demands of TV broadcasters. As discussed, technological progress has lowered barriers to entry and allowed different types of players (telephony providers, satellite operators, device manufacturers, etc.) to establish a TV distribution platform. Increased rivalry in TV distribution has established multiple – albeit often immature – outside options for broadcasters to put pressure on leading cable operators, and derive better deals. Whereas digitisation has allowed for more efficiency in the supply chain of producing and programming TV content, digital technology provides an opportunity, rather than a threat, for broadcasters (unless copyright cannot be protected). Because privileged access to content becomes an extremely valuable asset in the TV ecosystem, TV broadcasters may reap the fruit from their reputed brand names and hence take a powerful position in the value chain. In a multiplatform environment, broadcasters are extremely valuable in seeding all online and mobile platforms, and might therefore see a substantial increase in the value that is derived from retransmission negotiations.

### **11.3. Firm structure (micro)**

In addition to the market structure, one needs to take into account the structure of the negotiating firms to assess bargaining power. Hence, firm-specific characteristics of broadcasters and distributors involved in a carriage negotiation include relative firm size, conglomerateness, vertical integration and financial resilience.

#### **11.3.1. Firm size**

As discussed previously, both broadcasting and distribution markets are marked by economies of scale that create greater efficiency with merging firms. Hence, integration strategies (horizontal, vertical and diagonal) enhance firm size. Consolidation in the US cable industry suggests indeed that distributors integrate horizontally in order to realise efficiency gains; firm size also enhances bargaining position regarding suppliers of programs. Economic theory provides an explanation for why large buyers, relative to smaller buyer firms, bargain lower prices with suppliers, referring to the concept of *pivotal power*. Indeed, cable operators occupying a dominant position, due to a gateway monopoly, are ‘incontournable’ and thus essential to a channel’s decision to deliver. (Quasi)-monopolists in distribution have significant bargaining power and are able to

bargain considerably more favourable retransmission terms with broadcasters. As TV broadcasters are looking for distribution as wide as possible, cable operators leverage the *amount of subscribers* they serve. Losing access to large portions of the viewing market would mean that commercial income via advertising would drop, and would seriously threaten the sustainability of TV broadcasters. In Flanders, it is argued that cable operator Telenet has a quasi-monopoly, and has a make-or-break effect on a broadcasters' ability to run a successful channel (no distribution, no revenues from advertising). Market share (or the amount of viewers served) therefore is an important determinant of bargaining power.

Conversely, small and mid-sized TV distributors complain about power asymmetries with popular programmers and face a similar fate when negotiating about the prices to be paid. For smaller TV distributors, access to popular programming forms a key asset in competing with larger distributors, but since they cannot leverage a large subscriber base, chances are likely that, relatively to larger distributors, retransmission payments (per subscriber) will prove costly to secure popular programming. Indeed, powerful programmers, such as the major broadcasters and premium rights owners, might have pivotal power and be in a favourable position to derive higher retransmission fees from distributors. In that respect, a domestic popular channel like VTM with high *time shares* have relatively more bargaining than niche or most foreign channels. Sports leagues that decide to organise a competitive bidding (auction) and sell the exclusive broadcast rights to the highest bidding pay-TV operator might have the ability to play bidding parties off against each other and maximise the economic value of the rights sold. As the demand-side rivalry for sports rights has increased, sports leagues have benefited from relative bargaining power and have seen sports rights soaring spectacularly in the last twenty years. Since 2002, rights prices for the Belgian Jupiler ProLeague have risen from €15.4 million to €53.1 million (the current contract expires in June 2014).

*Geographical coverage* – another indicator for measuring firm size – is an important determinant of negotiating power in the broadcaster-to-distributor market. This is true in those distribution markets that are divided in several segments, marked by limited overlap between cable/IPTV and terrestrial/satellite platforms. A distinction between high-density (urban) and low-density (rural) areas is said to fundamentally impact on the competition between distributors. Whereas in urban areas collective distribution in

the form of cable is relatively efficient, individual distribution via terrestrial or satellite networks is more cost effective in rural areas. Since substitution between platforms is limited, some platforms only operate in small areas. Whereas satellite operator Sky is available to all UK households, 48 per cent of all UK households are passed by Virgin's cable network, which is concentrated in urban areas (55 per cent of homes in urban areas, compared to 21 per cent in rural areas). Operators with higher geographical coverage, serving large portions of the broadcasters viewing area, have higher bargaining power and can leverage the number of viewers they serve. TV broadcasters that break up the negotiations with large distributors may risk losing access to that audience. For that reason, local stations often affiliate with larger, regularly national, broadcast networks, which negotiate with distributors on behalf of all TV network affiliates. Distributors' geographical coverage (and firm size) also reduces transaction costs for broadcasters, which bestow large distributors with a competitive advantage during carriage negotiations.

### **11.3.2. Vertical integration**

In addition to horizontal integration tendencies, broadcaster-to-distributor markets are characterized by a considerable degree of vertical integration, with TV distributors integrating backward in upstream activities (programming), and TV broadcasters integrating forward in downstream activities (distribution). In previous sections of the dissertation, emphasis has been put on the potential anticompetitive effects of vertical integration, ending up in foreclosing access to essential programming or distribution. Increasingly, distributors have been combining *multiple roles in the vertical supply chain* and started to control access to premium programming. This evolution first started in the US, where cable operators encouraged, and even financed and owned, TV networks that would be available only to their subscribers. To make sure these networks were sufficiently better than free-to-air channels, production costs increased in order to deliver high-quality programming. Looking for programming that would make its investment in a cable system profitable, Time Inc., a Manhattan cable company, supported the nowadays well-reputed cable network HBO. Cable News Network (CNN) and Discovery Channel were financed by cable operators (TBS and Liberty respectively) to become successful in the market. In so doing, cable firms tried to break the oligopolistic position of the Big Four networks (ABC, CBS, NBC and Fox), and took

viewership and advertising from the established broadcast networks. Declining viewing rates put pressure on the broadcast networks and increased bargaining power of cable operators. Cable's power position would only erode with the entry of satellite and IPTV operators in the US, and the introduction of retransmission consent regulation.

Following the distributors' *divestiture strategies*, the ownership of cable channels shifted away to broadcast groups – Time Warner Cable was spun off by Time Warner in 2009 as an entirely independent company with no affiliation to national networks like CNN and HBO (although it does own several local news and sports channels). Although the number of networks affiliated to a TV distributor has drastically declined in recent years, vertical integration remains a popular strategy to extend control of the content supply and increase bargaining power in broadcaster-to-distributor markets. Control of premium programming remains a strategic and highly-valued resource for pay-TV operators to strengthen their competitive position, both in the horizontal and vertical market. News Corp has used exclusive sports rights as an instrument for successfully penetrating pay-TV markets in the US (Fox), the UK (BSkyB), Australia (Foxtel), Japan (JSkyB), New Zealand (Vox) and Asia (Star TV). Inspired by this extremely successful entry strategy, pay-TV operators all over the world started purchasing exclusive rights to key sports competitions in order to benefit from first-mover advantages. Hence, the dominance of free-to-air networks in sports has been broken, at least in Europe. In most European markets, sports rights have been secured by pay-TV firms integrated with distributors. It is therefore reasonable to conclude that pay-TV's ownership of live sports rights increases bargaining power vis-à-vis broadcasters, and can be used to lower financial demands of sports channels which regularly bargain the highest fees. The larger the downstream distributor, the greater the impact of vertical integration of course.

In most instances, the combination of programming and distribution, appears with vertically integrated cable or satellite operators. Whereas most distributors operate pay-TV channels or niche channels targeting a minority-audience segment of whom it can be questioned to what extent they do rival with established TV channels and which impact they have on the retransmission fees of channels providing similar content, other operators (like Viasat) have launched generalist TV channels directly competing for audiences and advertising. Although free-to-air broadcasters used to rely on over-

the-air transmission to secure distribution, forward integration into distribution is no strategy widely applied by TV broadcasters (backward integration into production, however, is a popular way of control among TV broadcasters). Nevertheless, the introduction of digital terrestrial platforms has induced several TV broadcasters to manage their own multiplex, with ITV Digital and Mediaset as noticeable (but not always successful) examples. The entrance of OTT and Smart TV enables broadcasters, rights owners and other content providers to operate as TV distributors themselves, and lessen their dependence on intermediating platforms. In August 2013, the Dutch broadcaster RTL acquired Videoland On Demand in order to respond to the changing market conditions and grasp a share of the burgeoning online video market. The acquisition not only allows the company to strengthen its interactive content activities, but also to enter the Dutch pay-TV market which was previously monopolised by cable and satellite operators.

### **11.3.3. Conglomerateness**

Because vertical integration allow cable operators to discriminate between affiliated and non-affiliated networks (in terms of positioning and pricing), this suggests that independent networks will face difficulties to bargain favourable carriage terms when compared to affiliated channels. However, a quick look at the retransmission fees paid by US distributors to independent channels shows this is clearly not the case. In terms of retransmission fees, ESPN is the highest valued network in the industry at, according to its recent deal with Time Warner Cable, about \$5.40 per subscriber. HBO is the top network in terms of retransmission fees, charging distributors \$7.98 per subscriber. Among the Top 15 cable networks (ranked by retransmission fees) in the US, only USA Network (place 6) is affiliated with a cable operator, other networks like TNT, Disney Channel and Fox News are independent, though affiliated to large conglomerates (Time Warner, Disney and 21<sup>st</sup> Century Fox, respectively) that use their *portfolio of channels* and other media outlets. Indeed, the fact that 'independent' networks are not affiliated to a cable operator does not automatically mean they are overpowered by vertically integrated distributors. By being part of big media conglomerates, broadcast networks can leverage the collective strength of the whole company and also bargain better deals (or carriage) for less popular networks.

Vertical and diagonal integration strategies have induced a severe concentration of ownership in the US media landscape, with six *media conglomerates* controlling almost 90 per cent of the media market. As part of a global consolidation wave, the formation of media giants with interests in various mass media such as television, radio, publishing, music, movies and digital facilitates oligopolistic control of the markets around the world, and hence creates an enormous amount of power due to the control of critical resources. It has been argued that, rather than vertical integration itself, capital resources derived from the accumulation of power common to international multimedia corporations is one of the most significant advantages successful cable network suppliers have. Cross-media ownership could, however, lead to tensions and conflicts of interest across the several geographical markets the conglomerate serves. Whereas Fox Network started to aggressively demand retransmission payments from cable and satellite operators, Sky – also part of the 21st Century Fox corporation – consistently waived away demands from UK PSBs to provide financial compensation for their channels. It is believed this schizophrenic situation has much to do with the respective bargaining power of the US and UK networks. Whereas Channel 4 and Five are organised as independents, Fox Network is part of a global entertainment conglomerate which provides Fox Network with considerable bargaining leverage in carriage negotiations.

Power asymmetries between US broadcast networks and distributors can indeed be explained by the presence of media conglomerates. While most US cable and satellite operators largely focus on distribution (economies of scale), US broadcast networks are part of large entertainment conglomerates like Disney and 21<sup>st</sup> Century Fox that have diversified activities in order to reduce risks and realise economies of scope. In addition, *cross-media ownership* provides opportunities to cross-promote the firm's products (and thus also to support commercials that warn viewers that some of their favourite shows will no longer be provided by particular cable and satellite operators). Next to cash payments, distributors can also compensate broadcasters with advertising deals (and benefit from these commercials as well). Furthermore, conglomerateness allows carriage of portfolio channels that would have less leverage had they negotiated on their own. In Flanders, VMMA can leverage its portfolio channels (VTM, 2BE, JIMtv, vtmKzoom and Vitaya) – it is reasonable to conclude that Vitaya would have bargained

less favourable carriage conditions as an independent. In a similar vein, the majority of new channels successfully launched in recent years are backed by large media firms: Acht and Lacht (Concentra), Njam! (Studio 100) and Libelle TV (Sanoma). This suggests that conglomerateness – another dimension of firm size – provides the financial means to continue operations in the risky TV business.

#### **11.3.4. Financial resilience**

Being part of a multiproduct firm (i.e. media conglomerate) enhances the bargaining position of an ‘independent’ broadcast network in its carriage negotiations with a cable or satellite operator. In that perspective, one needs to assess the respective financial positions of the bargaining firms in order find another indicator of power asymmetry. Financial analysts use *financial ratios* that allow for comparing the financial strengths and weaknesses between companies, between a single firm and its industry average, between geographical markets, between industries, and so on. If companies are stock listed, the market price of the shares is used in certain financial ratios – values are taken from the company’s financial statement (balance sheet, income statements, cash flow etc.). Standardised ratios are used to *benchmark* single firms with competitors. Although it is relatively easy to benchmark horizontal competitors (e.g. networks with networks), companies in different industries (e.g., broadcasting and distribution) may face different levels of risks, capital requirements and competition. It is therefore not always easy to compare competitors in vertical markets. Although one hardly denies the completely different economics of broadcasting and distribution, TV broadcasters as well as distributors are involved in a converging TV market, with forms of platform envelopment and vertical integration at both sides of the market, which makes it reasonable to compare performance. In that perspective, it is commonly accepted that cable and satellite operators have deeper pockets (equity) than TV broadcasters, at least in most European countries. In Belgium, for example, Telenet’s EBITDA (€777.8 million) is almost as much as the combined turnover of the three big broadcast groups (€925,8 million). In the US, however, media conglomerates such as 21<sup>st</sup> Century Fox and Disney outperform all cable and satellite operators in financial terms (revenues, EBITDA, net income, net margin, etc.). This might suggest that power relationships are skewed in favour of US broadcasters.

Broadcaster-to-distributor markets are characterised by mutual dependency. Such horizontal relationship implies that broadcasters and distributors need to enter into an agreement for securing access to programming and distribution. However, the *financial risks* (in terms of loss of revenues) when a deal remains unclosed might be completely different for both negotiating parties. For TV broadcasters, no carriage means declining viewer shares and a potential loss in advertising income. For distributors, not carrying a popular channel might put the platform at a competitive disadvantage with regard to rivalling platforms and induce its subscribers to switch to another provider. Smaller TV broadcasters will find themselves in a vulnerable position to bargain with a dominant cable operator that serves large portions of the market and allows the broadcaster to generate a considerable percentage of its sales, whereas providers of popular content might have different outside options for distribution and are less dependent from that platform. Risk asymmetry (in terms of *financial dependence*) therefore creates power positions during bargaining, with one party being in the comfortable position to raise its stakes and bluff at its risk. Hence, bargaining parties need to assess the implications of a potential blackout on its viewer share or subscriber base. It is likely that the party that expects the highest negative impact on its business runs the highest financial risk. Consequently, that company will act in a more risk averse manner and will accept less favourable retransmission conditions in order to sustain its business. Again, the ability to diversify activities and even cross-subsidise between multiple business units might create bargaining leverage in carriage negotiations.

#### **11.4. Product characteristics (micro)**

Next to industry and market structure, Industrial Organisation puts much emphasis on product differentiation as a source of a strategic advantage. Product characteristics are highly related to the market and industry structure, and predominantly refer to product differentiation, exclusivity, bundling and switching costs.

##### **11.4.1. Product differentiation**

In marketing and economics, *product differentiation* is the process of distinguishing a product/service from its competitors to make it more attractive to a particular buyer. Differentiation can be a source of competitive advantage because it lowers competitive



pressure from substitutes and thus reduces the impact of rivalry. A successful product differentiation strategy moves a company's strategy from competing primarily on price (i.e. cost leadership) to competing on non-price factors (i.e. product differentiation). In this context, product characteristics and distribution strategies have a decisive impact on customers' perceptions of '*uniqueness*'. Uniqueness enhances a company's ability to charge its customers a price premium. Additionally, a differentiation strategy may lead to monopolistic competition, referring to a market structure where each firm targets a different niche by selling closely related yet differentiated products. With regard to the topic of this dissertation, product differentiation allows TV broadcasters to reduce the impact of substitutes, and demand better retransmission conditions. Many TV channels can, however, build competitive advantage and leverage differentiated programming.

First and foremost, providers of *must-have programming* have better cards during negotiations with distributors. It is no surprise that ESPN, TNT, Fox Network and NFL Network are amongst the Top 5 cable networks (ranked by retransmission fees) in the US. Ownership of sports programming, which is not available on OTT platforms such as Netflix, and the ability to build viewership creates leverage to demand higher carriage fees. In contrast to European networks, US FTA networks have secured access to live rights of the major sports competitions (NFL, NHL, NBA, MLB and NCAA). In addition, their decade-long run as top-rated generalist networks (especially during prime time) explains why the Big Four networks are in a comfortable position of bargaining power. Secondly, smaller channels that bring in un-served target groups can build leverage as well because they help distributors to reach hard-to-reach groups and to differentiate from competing platforms. Niche broadcasters might also induce TV viewers to switch to digital platforms, which typically generate higher ARPU for pay-TV operators, and therefore are an interesting supplier for distributors. The same logic applies to foreign (public service) broadcasters, which sometimes benefit from a must-carry status and are collectively negotiated (via the EBU or UBO for example). The rationale here is that foreign broadcasters are not dependent on foreign distribution because it does not add to their target market, but that distributors need popular foreign broadcasters (like the BBC, France Télévisions and NOS in Belgium) to please segments of their subscribers. Despite low ratings, foreign channels often have quite some leverage to bargain a good deal.

In a similar vein, increased competition in distribution has urged pay-TV operators to differentiate from competing TV platforms. During the interviews, experts regularly raised that distribution is likely to become a *commodity* while content has the ability to create branded, high-value-added products. It is therefore no surprise that distributors have launched affiliated channels or bought premium rights to differentiate from other platforms. Nonetheless, distributors are faced by increased competition, being virtually identical and vulnerable to technological imitation strategies. Almost all distributors now operate advanced TV Everywhere solutions, and feel increased pressure from OTT players. However, there are still many service attributes on which TV distributors can differentiate including billing options, sound and picture quality, reception equipment, service bundling and interactive features. In that respect, cable and IPTV platforms run superior technology and integrate interactive services whereas satellite and terrestrial platforms have no two-way return path. Nevertheless, programmers have plenty more options for product differentiation compared to distributors, which highly depend on the provision of value-added content to differentiate from other platforms.

#### **11.4.2. Exclusivity**

One popular way for distributors to enhance differentiation in competitive markets and capture superior value, is acquiring *exclusive access* to premium programming. In that context, exclusive programming primarily serves differentiation purposes, rather than the wish to exploit monopoly power. For many years, pay-TV platforms claimed exclusive sports rights to create a competitive advantage over rivals and drive overall subscriber uptake. As pay-TV platform operators started exploiting business models based on a set-top box system providing conditional access to encrypted content, most entered into exclusive deals with premium rights holders to differentiate from free-to-air networks (but also gain prestige, build a subscribers base and recoup investments from platform development). Using exclusive windows allows rights holders to benefit from content scarcity. However, limited competition in each layer of the European pay-TV market has induced a fundamental transformation in the meaning and extent of the acquisition of broadcasting rights. The original exclusive windows assigned for the use of content by pay-TV operators (compared to free-to-air broadcasters) have been interpreted as the exclusive right accorded to the incumbent or first-mover to provide these contents. In other words, exclusive dealing seems the *outcome of competitive*

*strategies* used by first movers to foreclose the market. In this context, the pay-TV business has evolved into a monopolistic market structure and a 'competition for the market' model.

From the perspective of the premium rights holders, exclusive selling maximises the short-term profitability and incentivises high investments in high-quality production. But the network externalities generated by exclusive deals between upstream rights holders and downstream pay-TV operators might create potential *foreclosure effects* of vertical restraints. Albeit accepted as a widespread practice in broadcasting, opponents claim that exclusive dealing mainly serves as an entry-deterrent strategy to preserve market power and to leverage monopolies in broadcasting markets. As demand-side scale economies allow incumbents to exclude competing platforms and deny rivals critical mass to profitably enter markets, access to premium content is increasingly acknowledged as the new bottleneck in broadcasting. The bottleneck is thought, partly, to explain the delay in investments in and the roll-out of alternative infrastructures such as optic fibre cable and digital terrestrial television in many European countries. However, the main problem with exclusive dealing is that it creates opportunities for anticompetitive conduct, and monopolisation within different stages of the value chain. The exclusive sale of sports rights is typified by a *bilateral monopoly* (single seller and single buyer). Since live rights for them most popular sports constitute heterogeneous products with no substitute, single sellers have considerable bargaining power to drive up rights fees. Although there could be many downstream buyers interested in buying the rights, exclusive dealing implies that rights holders contract with a single buyer. Winning rights auctions enables to create a competitive advantage by offering a unique product mix and, hence, exert pricing power in downstream markets.

Referring to the *double marginalisation* problem, such a bilateral monopoly not only produces inflated rights fees (upstream), but also inflated retail prices (downstream). Exclusive dealing entails a market situation in which both *upstream and downstream monopolists* with pricing power can set a double mark-up, ending up with inefficient allocation of resources. UK regulator Ofcom recently forced leading operator BskyB to make Sky Sports 1 and 2 available to third-party platforms on a non-exclusive basis, and at significantly reduced wholesale prices. Competitors BT, Virgin, TopUP TV and, the now-defunct, Setanta has complained that Sky's control of premium rights created a

vicious circle and keeping retail prices artificially high (the argument was overruled by the Competition Commission though). Because broadcaster-to-distributor markets are often marked by a bilateral oligopoly, bilateral bargaining power increases the risk of double marginalisation. When broadcasters bargain high retransmission fees with distributors, the latter will pass on escalating programming costs to their subscribers (if possible). With competitive entry in distribution, however, it is less likely that pay-TV operators are able to exert pricing power over subscribers and therefore need to take the loss related to higher programming costs. This suggests that broadcasters, and especially providers of exclusive programming, might capture a disproportionate share of the profits once the bottleneck power in distribution is eroded due to technological progress and increased rivalry (consider the situation in the US today).

#### **11.4.3. Bundling**

Despite a broadcaster's often considerable bargaining power, distributors remain in a *gatekeeping position* that allows them to exert pricing power and pressure networks to demand lower input prices. Typically, distributors aggregate channels in different packages (basic or upgraded), decide on the positioning and pricing of the channels in the package, and sell the bundles to viewers. In response to the competitive pressure increased by OTT video platforms, several distributors have started to offer channels à la carte to the viewers. *A la carte* refers to a pricing model in which platform operators allow consumers to subscribe only to those channels they select, and thus contrast the prevailing practice of bundling channels into subscription packages. Since the average cable bills have reached high levels in certain markets (up from \$40 to \$86 per month in the US between 2001 and 2011, and forecasted to rise to \$123 by 2015), pressure from policymakers has induced cable and satellite operators to provide more flexibility and provide consumers with the freedom to only pay for those channels they watch. In Denmark, Boxer TV successfully pioneered the Flex model that allows DTT subscribers to compile their own channel package. In July 2013, cable operator YouSee launched 'Ekstrakanaler', enabling cable viewers to subscribe to individual channels (on top of the basic cable TV package). Although it has been argued that à la carte is the best way to cut the cable bills and spur more competition in distribution, opponents (including TV broadcasters and consumer groups) have repeatedly argued that à la carte induces viewer prices and hurts programme diversity. When channels are bundled into tiers,

less popular niche channels are more likely to survive because their cost is borne by both viewers and non-viewers. Indeed, *cherry-picking* undeniably affects a channel's business model as it would lose a guaranteed reach and relatively predicted turnover. If people are free to pick their channels of choice, smaller channels will face difficulties for being selected. The latter would have so few subscribers that they would eventually disappear, harming media diversity. For being sustainable, TV channels would demand higher retransmission fees which would possibly increase, rather than lower, the cable fees. As each platform operator decides whether to bundle or unbundle channels, this gatekeeping position gives considerable leverage during carriage negotiations.

In addition to bundling channels into subscription tiers, most pay-TV operators have developed *triple, quadruple or quintuple strategies*, bundling several communication services into one package. The combination of multiple services (broadband, telephony and television) is often viewed as a powerful vehicle to provide strategic and financial advantages for telecommunication operators. Service bundling allows for benevolent price discrimination and increases producer surplus. Half 2013, Telenet reported that 42.3 per cent of its customers subscribed to triple play services, and that the growth in triple play adoption led to a higher ARPU (to €47.1, up from €45.1) – up to six times higher than analogue TV subscribers. Moreover, it has often been argued that bundling is largely responsible for the massive growth of digital television, which was positioned relatively cheap, and sometimes free of charge, in the market as it was cross-subsidised by broadband and telephony. Also in other geographical markets bundling, with digital television as ultimate driver for consumer adoption, has become common practice. In addition to its financial merits, bundling has proven an effective strategy to raise rival's costs, prevent competitive entry and preserve strong power positions. Nevertheless, service bundling has enabled a few network operators, including FTTH operators and utility providers, to offer digital TV packages. With regard to broadcaster-to-distributor markets, bundling allows platforms to diversify activities and cross-subsidise between multiple product categories. Hence, operators are less vulnerable to financial demands of TV broadcasters and have more leverage during negotiations. Bundling also creates lock-in effects, and thus imposes switching costs on triple play subscribers.

#### **11.4.4. Switching costs**

Mutual dependence between a negotiating broadcaster and distributor implies that both the TV broadcaster and distributor may profit from carriage, but also stand to lose from an abandonment of carriage. The extent to which each negotiating party loses out from a blackout predominantly depends on consumer behaviour, and determines for which party the at-risk income is the greatest. In other words, the TV viewer ultimately decides what party suffers the most in case carriage negotiations cease. The question is how many subscribers would switch to another platform if a particular TV channel was to stop being carried (*churn*), and how viewing rates would drop as a result of failed negotiations (*viewer impairment*). First, broadcasters are facing decreased viewing by those subscribers (typically a large majority of households) that stay with the platform after the channel is dropped. Secondly, platform operators might see some subscribers defecting the platform in response to a channel's absence, or lower subscription fees in order to entice dissatisfied customers to stay (both will lead to decreased subscription revenues). Another scenario, however, is that viewers get tired from carriage disputes, with millions of consumers denied access to programming, cut the cord one and for all. Indeed, the just resolved dispute between CBS and TWC is said to drive more viewers to pay-TV alternatives like Netflix or Hulu that are less cumbersome and expensive than switching cable and satellite platforms. It may be expected that the absence of popular channels from a platform will have a larger impact on churn, whereas the impact of small channels on churn would be far lower than the channel's share. A recent study by Mediatique (2012) calculated that dropping BBC One and BBC Two would generate a churn of between 7 and 19 per cent, whereas Channel Five would represent a drop of 1 to 2 per cent of a platform's income.

However, viewers are faced with a different level of costs when switching channels and platforms. First, the costs incurred by a consumer in zapping from one television channel to another is practically zero. In the competitive TV market, however, channels invest to become strong TV brands, which create loyalty with the viewer. In addition to promotion strategies, the creation of a clear-cut content profile forms a major task for TV broadcasters (and media companies in general). Exclusive content is probably the key success factor for creating and sustaining a *unique brand position*, news is seen as an essential characteristic elements that helps the audience orient itself. Furthermore,

competitive scheduling strategies, including vertical (daily consistency) and horizontal (weekly consistency) are used to shape viewing patterns. In contrast to broadcasters, distributors might impose considerable *switching costs* to consumers, who could face the inconvenience of having to toggle between TV platforms, and thus create a lock-in effect. First, the incompatibility of reception equipment may require people to invest in expensive equipment purchase (set-top box, satellite dish, terrestrial receiver, etc.) and installation (connection) fees. In some cases, such costs are waived by the providers in exchange for a long-term contract agreement. Such long-term agreements may prohibit people (or housing communities) to switch operators. Another important component of switching costs are the costs associated with the choice of, and connection to, a provider. Transaction costs may include information and search costs in order to choose the best provider. Finally, customers may decline to churn because they are lock in by the bundling of television, telephony and broadband services.

## **11.5. Individuals (individual)**

In contrast to market power, which is relatively easy to measure, bargaining power is a much more subjective concept and involves the psychological dimension of the negotiating process. Although this did not become clear from the literature review, the expert interviews revealed that the interpersonal and emotional aspects play a decisive role in carriage negotiations.

### **11.5.1. Negotiation strategy**

During carriage negotiations, TV broadcasters, rights owners and distributors try to find a retransmission agreement that meets their needs and interests acceptably. But it is important to emphasise that neither firms nor industries negotiate, but that they are represented by human beings. Negotiations in the form of teams is becoming widely accepted in the media industry; teams effectively collaborate to break down a complex negotiation by sharing knowledge and wisdom. As the people that sit at the negotiation table can exert considerable influence on the outcome of the negotiation process, it is obvious that *interpersonal, emotional and psychological issues* play a decisive role in the negotiation process. Apart from the negotiation tactics, including brinkmanship (e.g., a broadcaster pulling off its TV signal from a distribution platform) and highball/lowball

(e.g., an opening offer that is ridiculously low or high), the applied negotiation strategy is an influential variable in the distribution of bargaining power. In contrast to the *integrative, cooperative approach*, which focuses on expanding the pie, negotiations increasingly end up in disputes. *Distributive, hard-bargaining negotiations* focus on a fixed pie and represent zero-sum games (win-lose situations). Since both broadcasting and distribution markets are pressured by increasing market competition, saturated advertising income and rising income from subscription, each party is willing to 'play hardball' to take as much value off the table as possible.

Information asymmetry forms an important part of negotiation strategies and their subsequent performance. In negotiation theory, *information asymmetry* deals with the study of decisions in transactions where one party has more or better information than the other. Whereas neoclassical economics assumes perfect information, information asymmetry creates imbalance of power (and information monopolies) during carriage negotiations. Reliable data about retransmission fees are scarce because contracts are subject to confidentiality. Consequently, both broadcasters and distributors face major difficulties in assessing the level of market-conform payments. Information asymmetry induces some negotiating parties to claim for more transparency, and introduce rate-cards to 'objectify' the negotiations. Standardising retransmission fees would prevent particular distributors from discriminating between different broadcasters, especially when these are not affiliated. Because of *confidentiality clauses*, broadcasters have no clue about the level of payments competing broadcasters receive from a distributor. In addition, the operator controls all the data generated by the set-top boxes and thus has a perfect overview of consumption patterns. However, distributors hardly know what a broadcaster receives from competing platforms and need to make a competitive offer in order to secure distribution of that broadcaster. Nevertheless, it is expected that due to its gatekeeping position a distributor benefits more from information asymmetry than a broadcaster during carriage negotiations.

### **11.5.2. Relative familiarity**

In literature, (mutual) trust has been identified as an essential feature of successful buyer-supplier relationships, which ultimately depend on the interaction of the people who participate in the negotiation process. From the interviews, it became clear that the



*interpersonal relationship* with the different negotiators is an important indicator for the level of trust between broadcasters and distributors. It was repeatedly argued that a lack of trust between representatives of broadcasters and distributors is a high barrier to negotiation, and has been responsible for several carriage disputes. Indeed, *high relative familiarity* between negotiators indicates a close, cooperative relationship that leaves room for pie expansion. Furthermore, lack of trust implies that negotiators begrudge and try to maximise their own interests at the expense of the other party. As a matter of fact, low levels of trust are typical to distributive negotiation strategies, with each party acting unilaterally and without any fair distribution of the surplus that is created through the relationship. As negotiations progress slowly or have come to a dead end, the atmosphere at the negotiation table may become grim. Consequently, negotiating parties may look for more opportunistic behaviour and try to take as much value as possible. In the US, carriage conflicts escalated and negotiations broke down, and were then fought in the media. Once a relationship is marked by a lack of trust and opportunistic conduct, then it may become extremely difficult for negotiating parties to find an agreement that meets the interests of both parties.

However, parties do not always negotiate with the intention to reach compromise. In such case, the party is said to be negotiating *in bad faith* and act in an unfair manner. In contract theory, bad faith is a concept whereby negotiating parties pretend to reason to reach a satisfying agreement, but have no intention to compromise. Although a party is free to negotiate and is not liable for failure to reach an agreement, parties that break off negotiations in bad faith may be liable for the losses caused to the other party. In the newly adapted Media decree, policymakers in Flanders have foreseen a reasonable time slot in which negotiating parties need to find an agreement (within three months). If not, a mediating party can arbitrate and independently determine the level of the remuneration to be paid. In the US, distributors have asked policymakers to prohibit broadcast networks from negotiating in bad faith. Cable operators like Time Warner Cable and Cablevision suspect broadcast networks of negotiating in bad faith, with the ultimate aim to threaten with a blackout and increase retransmission payments. Despite the increasing number of carriage disputes, however, the FCC received five complaints and has found a party to be negotiating in bad faith only once in the last eleven years. That party was not a broadcaster, but a distributor (Choice Cable TV was found to have

breached the duty to negotiate in good faith with Univision-owned WLII in 2007). In that respect, it is important to emphasise that hard bargaining not automatically equals bad faith negotiation.

### **11.5.3. Reputation for fairness**

As broadcasters and distributors are mutually dependent for being successful, both negotiating parties need to secure a long-term buyer-supplier relationship. Fairness is crucial in negotiating productively and maintaining a positive, respectful relationship. During interviews with representatives of broadcasters and distributors who are, or have been, involved in carriage negotiations, it was repeatedly mentioned that *honesty, empathy and fairness* strongly increase one party's ability to influence the other. The way people behave during negotiations reflects their generosity of spirit, and help the parties to sustain and strengthen the relationship. Fairness implies that all negotiating parties have a feeling of *fair play* (in contrast to bad faith negotiations), and that the more powerful party tries to generate trust and commitment by treating the weaker the weaker party fairly. This requires that the negotiating firms keep eye on long-term goals, rather than pursue short-term gains. In addition, negotiators need to understand and show empathy for the bargaining position of the counterparty. Often, standpoints in the bargaining process diverge because the negotiating parties have different levels of access to information, or are not familiar with the basic economics of the industry in which the counterparty operates. In such cases, sharing information with negotiation opponents can create fairness, and open doors for a constructive discussion. Because successful negotiations are marked by a give-and-take process, parties need to grant concessions before arriving in order to produce a fair outcome.

Increasingly, broadcasters demand a 'fair' share of the surplus value that is created through the partnership with distribution platform and complain about distributor's '*unfair*' economic practices. Broadcasters indeed argue that the relationships are (no longer) economically fair, and point to the low levels of retransmission payments and the high level of distribution costs. According to the arguments, TV broadcasters invest considerable sums of money in the production of original content without appropriate remuneration. In the UK, Sky is said to take a disproportional share of the value since it hardly contributes to the financing and production of original programming, and earns

massive profits by reselling the PSBs without compensating the channels. Moreover, broadcasters put forward that distributors provide customised services that allow ad-avoiding behaviour, such as digital video recorder (DVR), ad-skipping and flex view with various degrees of recording facilities. Broadcasters say distributors give away TV content for free in order to lock in consumers in triple play bundles, but do not provide a fair compensation for the additional use of the TV signal. Distributors reversely claim broadcasters are behaving in an economically unfair way, threatening with blackouts. Platform operators say broadcasters ignore the investments cable, satellite and other distributors make in order to ensure performing network infrastructure, and claim that, given these investments, it is not unreasonable to charge broadcasters that seek access to distribution networks. Whoever is right, the divergence of standpoints shows that each party may have a different interpretation of 'fairness'.

#### ***11.5.4. History of conflict***

It is extremely interesting to trace the history of carriage negotiations that end up in severe disputes or blackouts. The state of present retransmission negotiations between a particular broadcaster and distributor is often influenced by the outcome of previous deals, or is scarred by serious conflicts in the past. Negotiating parties with a history of conflicts will indeed lack a reasonable level of trust and could take a tough draw during the negotiations. The carriage dispute between AMC Networks (Sundance) and satellite operator Dish Network, beginning in July 2012, came as no big surprise. Negotiations between AMC and Dish Network broke down when Dish banished AMC Networks to channel 9069 and both descended into a series of vicious press releases. Dish claimed it dropped the network, which included *Mad Men* and *Breaking Bad*, from its line-up because it did not justify the increased fees AMC was demanding. AMC countered that fees were no issue and said the channels were actually dropped in retaliation for a lawsuit filed by AMC subsidiary Voom HD, which had been dropped by Dish in 2008. In October 2012, Dish agreed to pay \$700 million to AMC Networks to receive consent for distribution in 45 markets. Under a separate multiyear agreement, Dish will resume broadcasting AMC on channel 131.

When broadcasters and distributors operate in multiple geographical markets, it is likely that conflicts appearing in one market may affect the relation in other markets.

This not only applies in the US, which consists of over 100 local markets, but all over the world. Global entertainment conglomerates like 21st Century Fox and Viacom have regional subsidiaries, including Fox International Channels and Viacom International Media Networks that operate in the Benelux countries. In a similar vein, distributors like Liberty Global, which controls major Benelux cable operators Telenet, Ziggo and UPC, have a large footprint in the Benelux. Although distribution deals are still made at the local level, conflicts between both conglomerates in the Netherlands can affect the relationship in Belgium, and vice versa. Especially when broadcast groups also operate distribution facilities, local conflicts may escalate and expand to other European areas. Since Liberty Global wants to distribute its affiliated Discovery and Chello channels, it needs to enter into agreement with Sky that is the leading pay-TV operator in the UK, Italy and Germany. This finding supports that vertically integrated operators are more likely to collude in order to secure reciprocal carriage. Besides geographical markets, rivalry and conflicts in adjacent product markets, such as online video markets, might trouble the relationship between a TV broadcaster and distributor. In that context, it is expected that the launch of Stievie, and the withdrawal of VMMA channels on Telenet's Yelo platform, will not particularly bring a thaw in the relations between Telenet and VMMA.



# 12. CONCLUSION

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Since 1994, 'Power is nothing without control' is the well-known slogan of the Pirelli Tyre Company. Successfully applied to the automobile industry (powerful six cylinder engines have little added value unless the car has grip tyres), the slogan also fits well to describe the competitive dynamics of the broadcaster-to-distributor market. In this dissertation, the focus has been on the sources of power asymmetries in broadcaster-to-distributor markets and the contextual factors that influence bargaining power in carriage negotiations. By relying on value creation theory and literature on inter-firm relationships, power was identified as an essential component of the broadcaster-to-distributor relationship. It has been concluded that power is embedded in the social structure and dependent on the specific context in which both firms operate. Hence, the origin of power positions lies in controlling and limiting access to power resources (or competitive bottlenecks). Unequal distribution of power resources in the market may produce power asymmetries, and lead to competitive advantage during carriage negotiations. Whereas cooperative negotiations produce a fair level of payments between the business partners and represent a win-win situation, conflicts between upstream (broadcasters) and downstream (distributors) firms increasingly result into adversarial arm's-length interactions ending up in zero-sum games or, even worse, lose-lose situations.

Because broadcasters, both free-to-air networks and premium channels, carry the bulk of investments in the commissioning of first-run and often domestic originations, secondary data suggests that distribution platforms hardly contribute to the financing and production of programming. Nonetheless, as it is argued by the TV broadcasters, distributors take a disproportional share of the surplus that is created through the

partnership. Burdened with a turbulent economic context in which TV firms operate, most began (successfully) pursuing retransmission payments to compensate the value they bring in for the distributor. Whereas the value chain framework assumes that a firm's competitive advantage rests on the activities it performs, my research suggests that resources and capabilities, rather than the respective positioning, create leverage. Rather than sticking to populist aphorisms like 'Content is King, but distribution is King Kong', power depends on the politico-economic context of broadcasting and distribution, including the set of complex relationships between different parties in the business ecosystem. Instead of the polarised, one-sided debate of which players exert power over the other making 'take-it-or-leave-it' offers, it has been suggested that the conditions of supply and demand, shaped by the structure and policies in individual geographical markets, largely determine the size of the profit that is made, and which party takes the largest share of the profits. Different configurations of control predominantly explain why power relationships between broadcasters and distributors in the United States and United Kingdom, or Denmark and Flanders differ. Based on interviews with 36 media managers and experts, a multidimensional and multilevel approach to bargaining power was developed, enabling analysts to map the contextual factors that create economic power with a broadcaster or distributor.

The broadcaster-to-distributor market is characterised by mutual dependence. Such horizontal relationship is based upon their interconnectedness. TV broadcasters need distribution to reach an audience and sell advertising; distributors need programming to attract subscribers. Since each party controls crucial platform functionalities and leverages bottleneck resources, one could speak of a market with bilateral bargaining power. Ownership of scarce resources might help firms to build competitive advantage and obtain a larger share of the pie in carriage negotiations. Popular channels leverage must-have programming; dominant distributors leverage access to audiences. Hence, the vertical structure of the broadcaster-to-distributor market, marked by oligopolistic control on both sides, might lead parties to integrate vertically (and horizontally), and ultimately causes channel conflicts and anticompetitive behaviour. Dominant positions in multiple stages of the value chain might leave pricing power with monopolists and create incentives to set higher wholesale (upstream) and retail (downstream) prices, eventually increasing subscription prices. Distributor (broadcaster) dominance occurs

when a distributor (broadcaster) bargains lower (higher) retransmission fees without imposing extra costs to the viewers. Bilateral pricing power, however, may end up in distributors passing through increasing programming costs to viewers in the form of higher subscription prices (double marginalisation) – especially when competition in the downstream market is high. This might support the assumption that broadcaster-to-distributor relationships might impact on other agents (competitors, independent producers, viewers) in the TV ecosystem, and that each strategic move by a single firm affects the competitive position of another firm.

### **12.1. Future directions for the industry**

It is no bold statement to claim that video distribution platforms are, or at least will become, central nodes in the TV ecosystem. With the advent of digital television, cable and telecommunication operators have an increasing amount of strategic options to take over the central position in the market. Moving beyond their traditional roles of selecting and transmitting channels, operators became involved in developing content services, directly monetising television consumption (e.g., through video-on-demand) and even in advertising. The gatekeeper's role allows digital TV platforms to determine the financial modalities for distribution and enables them to control both the supply and consumption of TV programming. However, the rise of Internet-based modes of TV content distribution, and their ability to bypass incumbent operators, might trigger off a struggle for platform leadership in the ecosystem. With the omnipresent Internet and smart consumer electronics as possible game changers, hybrid business models could drive the industry towards a multiplatform environment. The supply and consumption of content over IP networks may radically reshape the market and reconfigure existing power configurations. It is unclear, however, whether cable and telecommunications operators will be able to stand the competition from OTT players, including on-demand platforms (Netflix, Hulu, iTunes) and device manufacturers (Sony, Nintendo, Samsung), and who will control the future TV ecosystem.

In that context, content creators (film studios, sports rights owners, independent producers) and programmers (broadcasters) are in a relatively powerful position to reap the fruits of their widely reputed brand names and have the ability to bypass cable



and other platform operators by building a direct relationship with the viewers and setting up proprietary platforms/applications (e.g., HBO GO). The opportunity of OTT platforms might induce broadcasters to directly engage with audiences and build countervailing power. The launch of Stievie, jointly operated by VRT, VMMA and SBS, can theoretically change the power relationships with the pay-TV operators in Flanders, and tilt the balance in favour of the broadcasters. However, this does not free broadcasters from adapting their ad-supported business models and embracing new technology to strengthen competitive position. For incumbent pay-TV providers, it is of crucial importance to strengthen relationships with the domestic content creators for building competitive advantage vis-à-vis global OTT platforms. Cable operators have few incentives to squeeze the margins of value-added broadcasters and to solely focus on short-term profits. Power play could prove counterproductive in the longer run, restricting a broadcaster's capacity to invest in innovative content and services, and diminishing consumer choice and quality of programming. The industry's long-term sustainability thus crucially depends on the fair distribution of investments and profits between all stakeholders.

Although broadcasters and distributors have been seen as respective suppliers and buyers in the thesis, it can be questioned to what extent both should be considered as complementors, rather than as suppliers and buyers. Broadcasters and distributors can be seen as businesses that create more demand for the complementing product, and that provide added value to mutual customers. Since broadcasters and distributors are mutually dependent both benefit from the complementarity of interests. Broadcasters need distribution in order to sell advertising, whereas distributors need programming in order to entice subscribers. It is obvious that a strategic partnership brings in value for both broadcasters and distributors, and that a fair distribution is needed in order to sustain this cooperation and to defend against the 'external' threat from OTT players. The discussion whether broadcasters and distributors should be seen either as buyers and suppliers, or complementors goes beyond the semantic level, and has implications on the payment modalities of content distribution. If distributors are seen as neutral transmitters of channels and create little added value on top of that programming, the payment of a cost to the distributor seems reasonable. Distribution of TV channels can then be equalled to the distribution (or transport) of newspapers, and broadcasters are

charged for technical and logistics costs. If distributors build a platform on top of the content for their own business, however, it is obvious that third-party programming is exploited and monetised, and that a payment to the broadcasters becomes reasonable.

The fact that the business model of broadcasters (by decreasing advertising income) and distributors (by the rise of Internet-enabled distribution) are challenged, implies that both parties face a high pressure on profit margins. As both are faced by ICT firms that operate on a global level and thus benefit from economies of scale, cooperation (in the form of strategic alliances, partnerships or joint ventures) is a crucial strategy to sustain the media ecosystem in local markets. Broadcasters need to make investments in high-quality, domestic productions to differentiate from successful and international TV series whereas network operators are cannibalised by OTT players like Skype and YouTube that reject to co-invest in the development (and maintenance) of the network infrastructure. Especially in small media markets, economies of scale are at stake, and can be realised by working together. As co-opetition strategies increasingly become important for the successful deployment of (expensive) technology, it is regrettable that distributors and broadcasters in Flanders directly compete in the online video market, and have failed in launching an industry-wide solution (with YouView as a textbook case). Furthermore, both parties have failed in launching a platform for open dialogue that would develop a roadmap for consensus-building. It may be obvious that an evolution towards 'next-generation television' crucially depends on cooperation and dialogue in the ecosystem. Already in December 2011, in the Netherlands, independent producers, broadcasters and distributors initiated RODAP, a discussion platform that aims to agree on a future-proof and platform-neutral regime for content distribution and technological innovation. It is therefore suggested that such platform would enable broadcasters and distributors to solve their disputes more easily.

## **12.2. Future directions for policymakers**

Induced by high-profile carriage disputes in the US, conflicts between broadcasters and distributors have appeared all over the world, and have urged media policymakers to address conflicts of interests in local markets. The settlement of these disputes has, however, shown that there are limited possibilities for policymakers to intervene in

such business battles. In order to enhance the sustainability of local ecosystems, one important action policymakers can undertake is indeed fostering dialogue. A platform that enables such dialogue helps local media firms in aligning conflicts of interests, and drawing a sector model that (a) supports all these conflicting interests, and (b) helps the ecosystem in creating competitive advantage in a global context. In that respect, content production and technological innovation in infrastructure and services can be enhanced by means of financial stimuli or innovation programs. Government cannot be blamed for a lack of industry-wide consensus, but can give a helping hand in creating a roadmap for industrial development. In the past, the Flemish government initiated several trial projects for interactive digital television, which were considered an ideal base for the commercial roll-out of digital television platforms (e.g., IO and Vlaanderen Interactief). In these projects, cable operators and all major broadcasters were united. It is therefore suggested that the existing innovation and research institutions (iMinds) and instruments (living labs) provide a fruitful basis for further developing a roadmap for the TV ecosystem in Flanders.

It seems reasonable that the sector would benefit from more transparency, more in particular regarding the payment of copyrights. At present, it is totally unclear where the money flows and which revenue sharing models are applied. In addition, collective rights associations are hardly controlled and often criticised for a lack of transparency. Today, consumers are charged for copyrights but it is unclear whether these payments are effectively used to compensate the producers of original works (regardless of the transaction costs that are made by collective rights agencies). Without diving too deep in this controversial issue of copyrights, the model of copyright payments should be reformed in order to enhance transparency. Furthermore, the practice of bargaining copyright fees in relation to the number of viewers/subscribers tends to neglect the fundamental nature of copyright (i.e., an act of transmission/retransmission, and not of consumption) and differentially treats all broadcasters and distributors in the market. It is remarkable that consumer organisations like Test Aankoop and OIVO have not complained about this practice of arbitrariness. In contrast, in the Nordic countries, tariffs for the distribution of copyright-protected works are defined by an independent organisation, which clearly states that distributors cannot leverage their subscribers base to bargain lower fees. Whereas in Belgium the price for a basic cable subscription

(and not the digital package) is regulated by the government, copyright tariffs are not. In a transparent world, copyright payments are independently defined and equal for all market players. Similarly, retransmission fees could be defined by a matrix agreed by all market players or the supervising regulator. Hence, regulation should protect the viewer and ensure that the copyright regime is transparent so that copyright fees paid by the consumer are eventually used to remunerate producers, and not used to serve other commercial purposes.

It is a misconception that relationships between broadcasters and distributors are, or should be, balanced. A dynamic approach to media industries implies that markets, structures and institutions evolve, and that power relationships are in constant motion. Broadcaster-to-distributor relationships therefore always reflect power asymmetries. In particular cases, power asymmetries could produce positive outcomes unless the dominant party tends to abuse its market power. Hence, the tendency to regulate power asymmetries by means of newly-introduced regulation and establish a 'new' power balance may ultimately lead to excessive regulation and, paradoxically perhaps, create a new power asymmetry. Because new technology tends to change overnight, new regulation often lags behind and could prove ineffective. In essence, policymakers should not jump on the retransmission fee-control bandwagon. Relationships between broadcasters and distributors are basically buyer-supplier interactions which outcome is determined by the level of competitive advantage both parties build and leverage. It is perfectly normal that media firms leverage bargaining power, and policymakers should not automatically intervene, unless one party is not playing fair or the dispute produces negative social externalities (e.g., blackout, less diversity, less investments in content). Competition regulation forms an appropriate framework in order to govern carriage disputes and regulate abuse of power. Additionally, media-specific regulation can impose a binding arbitration process to solve the carriage dispute, especially when the viewer is harmed. Competition policy should therefore continue to play the first fiddle, but needs to be complemented with media-specific regulation that is tailored at the specificities of the media. In that context, a more coordinated cooperation between the different regulators proves necessary for a more effective regulation of converging markets.

### **12.3. Future directions for academics**

Academic research to broadcaster-to-distributor markets is still in its infancy, and it is expected that, as a result of the proliferation of carriage disputes all over the world, this research field will expand in the coming years. Against the backdrop of the rise of broadband television, the global battle for power and control has only just started and will produce numerous carriage disputes in the future. Whereas power asymmetries between broadcasters and distributors (cable, satellite, IPTV) may give rise to conflicts, the relations between broadcasters and OTT platforms such as Netflix and YouTube are also becoming conflicting. UK broadcasters ITV and Channel 4 have protested against services like TV-Catchup, which streams over 50 television channels without prior consent of the broadcasters and without any remuneration. Follow-up analysis should therefore also look into the burgeoning market of OTT platforms, and analyse their impact on the business models of traditional broadcasters and distributors. It is also expected that the sports rights market and the broadcaster-to-distributor market will converge, as the examples from the US (with NFL Network) and the Netherlands (with FOX Sports Eredivisie) illustrate. In a multiplatform environment and spurred by the increasing rivalry on the distribution side, self-exploitation could generate more profits for sports rights owners. Contrary to lump-sum payments, which represent a financial burden for new entrants without any guarantee of attracting subscribers, it is argued that producer surplus is maximised when rights holders are paid on a per-subscriber-fee. A revenue sharing model that would allow new platforms to enter the market, gain market share and create competition eventually drives up bargaining power of rights sellers. Future research could address this intermingling of sports broadcasting rights and retransmission fees.

Furthermore, research should focus on the international dimension of broadcaster-to-distributor markets. Following the enduring consolidation on the distributors' side, domestic broadcasters need to compete with distributors that are part of international conglomerates and may therefore face difficulties in acquiring bargaining power. Since geographical markets show different patterns of power configurations, the sole focus on Flanders fails in acknowledging the basic competitive dynamics of broadcaster-to-distributor relationships. I therefore would like to make a plea for more international case studies that allow for comparative analysis. Using the model developed in this

thesis (see Chapter 11) to identify and assess power resources in broadcaster-to-distributor markets, different patterns of power configurations can be studied between countries all over the world. One way to do so, is using advanced statistics that explain the impact of the resources on power asymmetries. However, limited availability of reliable data sets forms the main barrier to quantitative modelling. Nevertheless, a qualitative approach (like QCA) provides a possible solution for this lack of data. Such qualitative design, in combination with a broader mapping and monitoring of the markets, would allow for a deeper understanding of the complex relationships and underlying dynamics between broadcasters and distributors, and hence provide useful insights for media managers as well as policymakers. This is what each research ideally should aim for in the very end.



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