View metadata, citation and similar papers at core.ac.uk

brought to you by CORE

provided by Ghent University Academic Bibliography

biblio.ugent.be

The UGent Institutional Repository is the electronic archiving and dissemination platform for all UGent research publications. Ghent University has implemented a mandate stipulating that all academic publications of UGent researchers should be deposited and archived in this repository. Except for items where current copyright restrictions apply, these papers are available in Open Access.

This item is the archived peer-reviewed author-version of:

Mergers and acquisitions in TV broadcasting and distribution: challenges for competition, industrial and media policy

Evens, T. & Donders, K.

iMinds-MICT-UGent, iMinds-SMIT-VUB

Telematics and Informatics, 33(2), 674-682, 2016

doi:10.1016/j.tele.2015.04.003

To refer to or to cite this work, please use the citation to the published version:

Evens, T. & Donders, K. (2016). Mergers and acquisitions in TV broadcasting and distribution: challenges for competition, industrial and media policy. *Telematics and Informatics* (special issue: Television distribution – economic dimensions, emerging policies), 33(2), 674-682.

Mergers and acquisitions in TV broadcasting and distribution: challenges for competition, industrial and media policy

Tom Evens & Karen Donders

Abstract

This article focuses on the recent wave of M&A activity, both vertical and horizontal in TV broadcasting and distribution industries, and discusses the implications of M&A activity for competition, industrial and media policymaking. Moreover, it aspires to set a forward-looking perspective on the regulation of M&A in the TV industry. It is argued that while EU competition policy has difficulties to fully grasp anti-competitive effects resulting from vertical M&A activity in particular, industrial and media-specific policies dealing with the creation of an economically and culturally sustainable, European broadcasting and distribution sector are virtually absent from national and European policy agendas. It is particular in the latter two domains of policymaking that policy action is necessary.

Highlights

- M&A activity in TV broadcasting and distribution industries is heating up
- Consolidation wave produces global powerhouses that control entire TV value chain
- Competition policy has imposed behavioural and structural remedies
- Industrial and media-specific policies are virtually absent from policy agendas
- Call for a more integrated policy approach towards M&A in Tv markets

Key words

Mergers and acquisitions, TV broadcasting, distribution, business model, competition policy, industrial policy, media policy, regulation

1. Introduction

In recent years, merger and acquisition (M&A) activity in TV broadcasting and distribution has been heating up. Consolidation in these industries basically follows a cyclical pattern, with economic and regulatory conditions accelerating or slowing down M&A activity. In general, three major stages of industry consolidation can be identified. The Telecommunications Act of 1996 represented a seismic change in the American telecommunication landscape, creating a new regulatory environment that lifted cross-media ownership and fostered the convergence of broadcasters, phone companies and cable TV providers. In the wake of the Act, media, telecommunications and cable firms built strategic partnerships (e.g., AOL and Time Warner) helping them in vying for leadership in the dot.com marketplace. A second consolidation wave began in the US in 2004 and resulted in the four-major-operator landscape controlling over 90% of the US distribution market (with Comcast, Time Warner

Cable, Verizon and AT&T holding a firm grip on the market). The US industry is now entering into a further, and probably final, stage of industry consolidation, marked by the moves of industry leaders Comcast (acquiring Time Warner Cable) and AT&T (acquiring DirectTV). Today's industry transformation is largely driven by the increasing rivalry from Internet and over-the-top (OTT) streaming platforms, which are threatening cable's powerful gatekeeper position in the market. Whereas the US industry is already highly concentrated, the list of deal proposals seems to suggest that Europe is likely to lead the third wave of consolidation in broadcasting and distribution. As the European market is still fragmented with over hundred fixed and mobile operators and the European Commission is pushing for a single European telecommunications landscape, the expected, massive consolidation will result in a handful of European and, especially, non-European players controlling European infrastructure networks.

Unsurprisingly, research into these matters closely reflects the speed of the subsequent consolidation waves in broadcasting and distribution. In the aftermath of the Telecommunications Act, many studies focused on the impact of the new regulation on the industry, and on the patterns of industry consolidation. Chan-Olmsted (1998) concluded that M&A activity in broadcasting and distribution heated up after the passage of the Act, and that cable TV providers opted for horizontal consolidation to prepare for the upcoming competition with telecommunications firms. Tseng and Litman (1998) analysed the merger between US West and Continental Cablevision, the first one after deregulation, and scrutinised the rationales behind the merger. They focused on the fact that not only large, but also smaller cable operators merge to become bigger, not only to compete with other cable operators, but also because of new entries from telephone, wireless or satellite. Competitive entry by satellite providers triggered off a new wave of M&A activity, with an increasing emphasis on vertical integration with content owners in order to differentiate from rivalling carriers. In the digital era, new players in distribution increase competitive rivalry, upgrading the importance of content (e.g., sports rights) as a differentiator. The growing ownership interest of cable operators in cable (sports) networks triggered off questions regarding discriminatory behaviour at both the upstream and downstream levels (e.g., Chen and Waterman, 2007; Lee and Kim, 2011; Singer and Sidak, 2007). Meanwhile, Jin (2013) concluded that de-convergence would become the most significant business trend in the 21st media century, with firms focusing on their core activities through de-consolidation. Vertical disintegration allows firms to split off business units that can be managed in a more flexible manner. The recent boost in M&A activity in broadcasting and distribution, however, suggests that horizontal and vertical mergers are more than ever strategically important in the international video landscape.

This article focuses on the renewed M&A activity in (and between) broadcasting and distribution, and discusses the implications of M&A activity for competition, industrial and media policymaking. The renewal of M&A activity in broadcasting and distribution markets, and especially its acceleration across national markets, is producing global powerhouses that control the entire TV value chain and therefore enjoy significant market power. Moreover, vertical M&A deals are producing the blueprint for the media and communications industry for the next decades as it is often believed that the combination of infrastructure and content ownership is a critical lever for winning platform competition. Since policymakers are struggling how to deal with the impact of M&A activity in broadcasting and distribution, and to assess the impact of global behemoths in local TV ecosystems, this article questions the role for policymakers in this regulatory process. Furthermore, it aspires to set a forward-looking perspective on the regulation of M&A in the TV industry. On the basis of a literature study, drawing from communication sciences, media economics and law , this article sketches the effects of M&A activity and presents the implications of M&A activity for policymakers. First, a brief overview of recent M&A activity in broadcasting and distribution markets is presented.

Second, the effects of M&A activity, both vertical and horizontal, on competition and diversity in TV markets is discussed. Third, remedies and recommendations for policymakers are outlined. We argue that while EU competition policy has difficulties to fully grasp anti-competitive effects resulting from vertical M&A activity in particular, industrial and media-specific policies dealing with the creation of an economically and culturally sustainable, European broadcasting and distribution sector are virtually absent from national and European policy agendas. It is particular in the latter two domains of policymaking that policy action is necessary. While some would claim policy action is premature, we argue that some intervention is necessary with an eye on securing fair competition, market entry from new players (of which hopefully some in 'European hands'), and media pluralism.

2. Recent and on-going M&A activity in broadcasting and distribution

2.1 Challenging market conditions

As mentioned, M&A activity in broadcasting and distribution has been heating up since 2011, largely due to the spectacular rise of online video and the arrival of OTT platforms. Although these developments might create opportunities for broadcasters and distributors alike, the anticipated shift towards streaming video may negatively impact on the level of TV advertising income and pay-TV subscription revenue. Although research shows that the impact of 'cord-cutting' (i.e. cutting pay-TV connections in order to change to low-cost video services) crucially depends on the level of network infrastructure, subscription tariffs and the attractiveness of the available OTT platforms, and that OTT tends to be a complement rather than a substitute to traditional sources of TV (e.g., Baccarne et al., 2013; Fontaine and Noam, 2013), the industry is witnessing an increasing rate of pay-TV subscriber defections: roughly 1,4 million US households tuned out pay-TV in 2014 (Ramachandran, 2014). Moreover, a growing number of subscribers are cutting back on their programming tiers, signing up for smaller, cheaper bundles of TV channels, which provides evidence for the 'cord shaving' trend (Hagey and Ramachandran, 2014). Other studies highlight that, similar to their US counterparts, European pay-TV operators start facing a stagnation in subscription revenues and report a lower growth in EBITDA margins due to increased programming and infrastructure costs. A report from Digital TV Research (2014) forecasts that by 2020 European pay-TV operators will face a fall in pay-TV revenues, and reveals that subscriber numbers will drop due to greater competition from digital video platforms. With nearly 90% of European households having access to digital TV platforms and a forecasted 99% by 2016, digital TV is approaching a saturation stage which leaves little room for expansion. Similar to cable TV providers, telecommunications operators are confronted with historically low ARPU (i.e. average revenue per user) levels weighted down by cut-throat price wars and regulations (e.g., on roaming tariffs) that further erode margins. Against this backdrop, M&A activity is considered an effective strategy to overcome these challenging market and regulatory conditions, and is helped by attractive stock valuations, availability of debt at low interest rates and the willingness of financial institutes to underwrite these high amounts of debt (Capgemini, 2014).

2.2 Convergence between fixed and mobile distribution

One structural driver underpinning the current consolidation wave is the accelerating convergence between fixed and mobile network distribution. Telecommunications and cable operators, both in Europe and the US, anticipate the spectacular shift towards mobile communications, and bet on offering quadruple play services (broadband Internet, TV, telephony and mobile services). This strategy, enabling customers to get all their household communications from a single service provider, lowers churn and reduces customer acquisition costs in the highly-competitive and volatile market for telecommunications services (Chan-Olmsted and Guo, 2011). The quest for a bundled

communications offer, including mobile services, largely explains why fixed network operators have been going on a buying spree acquiring wireless service providers. Moreover, the steady stream of investments to secure high-capacity network infrastructure is driving fixed and mobile operators altogether. US telecom giant AT&T is expanding its mobile business, but its ambition to become the largest mobile operator in the US was thwarted when the Department of Justice prohibited the purchase of T-Mobile USA ($39 billion, in 2011). Its proposed $48.5 billion takeover deal for satellite provider DirecTV will allow the second-largest US mobile operator to become the biggest US pay-TV provider (Gryta and Ramachandran, 2014). Similarly, UK telecom incumbent BT has re-entered the mobile market after acquiring EE from Deutsche Telekom and Orange in a deal valued at £12.5 billion. This offensive move by BT, which has become the main challenger in the pay-TV market, has induced competitors Sky and Virgin Media to look for partnerships with mobile operators and is definitely leading to a massive consolidation of the UK telecom industry (Raice and Bender, 2014). In contrast, world's second-largest mobile operator Vodafone has a strategy of adding fixed network assets to its existing mobile footprint. The UK-based operator not only sold its 45% stake in Verizon Wireless to Verizon ($130 billion, in 2013), but heavily expanded its European footprint after swallowing German cable operator Kabel Deutschland (€7.7 billion, in 2013) and Spain's largest cable company Ono (€7.2 billion, in 2013) (Henning and Vitorovich, 2013; Roman, 2013).

2.3 *Economies of scale, synergies and negotiation power*

Economies of scale are another structural driver for the next generation telecommunication and cable industries. They allow for operational efficiency and help in profitably rolling out network upgrades and improved services. Greater scale is a powerful answer to the inflated programming costs to secure sports rights and retransmission consent from TV broadcasters. According to SNL Kagan (2013) retransmission fees in the US grew from $215 million to $762 million between 2006 and 2009, and they are projected to exceed $6 billion in 2018. Pay-TV operators' programming expenses (as a proportion of total revenues) have risen from 33.3% to 39.7% between 2004 and 2013, and are likely to further erode pay-TV operators' margins. In this context, scale enables pay-TV operators to exert more negotiation power vis-à-vis broadcasters and content suppliers (Evens and Donders, 2013). Consolidation in the US cable market is taking excessive proportions with Comcast's intended acquisition of Time Warner Cable ($45.2 billion, in 2014), AT&T's bid for DirecTV and Charter's purchase of Optimum West ($1.63 billion, in 2013) (Jannarone and Ramachandran, 2013; Ramachandran and Cimilluca, 2014). Also in Europe, consolidation is taking place at an ever faster pace. Since 2013, BSkyB completed its acquisition of Sky Germany and Sky Italy for £4.9 billion, while Liberty Global secured its position as the world's leading cable operator after buying Virgin Media ($23.3 billion) and Dutch pay-TV operator Ziggo ($12.6 billion). Moreover, Liberty has been expanding vertically, purchasing shares in UK production company all3media, British free-to-air channel ITV and De Vijver Media, a Belgian production and free-to-air TV company. It has been unequivocal about its strategy of vertical integration with OTT, TV production and free-to-air TV. CEO Mike Fries, in an interview with the Wall Street Journal, said such a strategy is a means to overcome competition from Netflix-like players and to pay lower retransmission fees (Schechner and Zekaria, 2014).

The above overview of the three main drivers of the on-going M&A activity may suggest that M&A is a purely rational process only depending on a business logic of creating more size and efficiency. However, such neoclassical perspective only gives a one-sided picture on M&A activity and overlooks the importance of corporate values and culture, cognition and leadership in strategic planning (Kung, 2008). Referring to the principal-agent theory, CEO's not always pursue the

company's long-term interests since they ambition to maximise individual, short-term gain. Klein (2003) analysed the monumental merger between America Online (AOL) and Time Warner, completed in 2000, and concluded that the combination of disastrous culture clash, financial mismanagement, CEO hubris, greed and arrogance led to dramatic failure of the merger. In this context, the majority of all mergers – contrary to the claimed efficiencies beforehand the mergers – fails to produce any benefit for the shareholders and over the half even destroys value. Stahl and Voigt (2005) show that the overwhelming cause for failure is the people and cultural differences between the merging parties (over 30% of all cases), and that different corporate values are the biggest obstacle for media managers to overcome failure. Hence, M&A is not always the Holy Grail since efficiency gains are not automatically guaranteed.

3. Theories of harm: effects of M&A activity in broadcasting and distribution

3.1 Horizontal integration

So far most mergers in broadcasting and distribution have been typical examples of a horizontal integration strategy, with firms acquiring or merging with other firms competing in the same part of the industry value chain (TV production, aggregation and/or distribution). The benefits of horizontal integration in broadcasting and distribution have been widely described in literature. First and foremost, horizontal integration helps distributors in building buyer power, enabling them to negotiate advantageous deals with broadcasters and other content suppliers. 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 (e.g., licensing, retransmission, etc.). In this context, M&A's are a popular strategy to increase firm size and build bargaining power. Bargaining power *vis-à-vis* buyers and suppliers is a central component of competitive analysis, and should be seen in relation to other performance indicators such as possible entrants, possible substitutes and intensity of rivalry (Küng, 2008; Porter, 1996). Chipty and Snyder (1999) have empirically addressed the relationship between firm size and bargaining power, and found that large distributors are able to bargain lower prices in their negotiations with content suppliers. These results are in line with other studies and are not unique to cable distribution (Snyder, 1998; Tyagi, 2001). Crawford and Yurukoglu (2012), for example, found that large distributors such as Comcast have about 17% lower programming costs than small-sized distributors. Through experimental design, Ruffle (2013) identified, however, that subtle changes in the buyer-size distribution or the number of sellers in the market can create or negate large-buyer discounts. Furthermore, the benefits of horizontal integration can self-evidently also be explained in terms of economies of scale, allowing firms to minimise costs and increase margins.

Horizontal integration strategies may, however, strengthen the market position of the merging firms and decrease the level of competition in the market, potentially to the detriment of consumers. While benefiting from network effects, powerful distributors can build pivotal power with regard to broadcasters. Adilov and Alexander (2006) show that the presence of large buyers may have a make-or-break effect on a content supplier's decision to produce, and creates gatekeeping, if not monopolistic, power with large distributors. If a distributor enjoys a (quasi-)monopoly position, broadcasters often have no outside option and little flexibility to close deals with alternative distribution platforms. The rise of the Internet may have broken the distribution bottleneck to a certain extent, but distributors controlling large portions of the market remain a crucial outlet for broadcasters to reach their audience, putting them in a skewed dependency relationship. This is especially the case in countries, which rely mainly on one to two modes of distribution for television consumption (Evens

and Donders, 2013). Raskovich (2003) somehow nuances pivotal power and claims that large buyers not always benefit from firm size in a bargaining context. 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 (as the latter's payments do often not cover the supplier's costs and the pivotal buyer needs to ensure further supply). Moreover, literature shows that horizontally integrated distributors may build excessive power and engage in monopoly pricing, which reduces consumer welfare (in terms of supply, diversity, pricing etc.). Several studies have examined price evolutions and found positive relationships between market concentration and price increase. The more competition in the market, the more consumer prices for TV services are disciplined (e.g., Goolsbee and Petrin, 2004; Karikari et al., 2003; Seo, 2008). Other studies assessed the impact on programming quality and content diversity. Inderst and Shaffer (2007), for example, show that suppliers will strategically choose to produce less differentiated products, which further reduces product variety, consumer surplus and welfare. Iosifidis (2014) notes that excessive concentration can endanger media pluralism (presence of different and independent voices) and diversity in the media (different political opinions and representations of culture). Diversity, also in the form of local, regional, national and supranational content, creates large choices for the audience thereby giving viewers greater freedom. On the contrary, Adilov et al. (2012) found that distributors with large bargaining power are more likely to provide programme packages that increase consumer welfare. Whereas small distributors favour *à la carte* programming, a monopolist with sufficient bargaining power bundle programming, which limits increases in programming prices and increases the subscribers base. They nevertheless conclude that asymmetries in bargaining power between broadcasters and distributors, and excessive market power because of dominant positions, should be of interest to antitrust and regulatory agencies.

3.2 Vertical integration

Two perspectives compete with respect to the effects of vertical integration in broadcasting and distribution markets. Integration can increase profits either by increasing operational efficiency or reducing competitive rivalry, among others through market foreclosure. Firstly, advocates of vertical integration claim that vertical mergers improve efficiency in bilateral contracting while reducing transaction costs, protecting brand names, and safeguarding intellectual property (Gershon, 2013). Additionally, vertical integration allows distributors to create synergies in terms of scale and scope economies, and easily share information with (affiliated) producers about viewer tastes and preferences (Waterman, 1993). Distributors collect valuable viewer information via online platforms and/or set-top boxes which they can monetise through innovative business models or new productions. Sharing such information might spur innovation in the form of new (thematic) channels, distribution platforms or advertising formats (Evens & Berte, 2014) – although it leads to discriminatory behaviour when only affiliated broadcasters have access to this information. 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. In this context, Evens (2014) suggests that a vertical integration strategy helps distributors in reducing transaction costs and, hence, tempering the level of retransmission fees paid to broadcasters. Research shows a significant efficiency gain from vertical mergers between broadcasters and distributors, resulting into increased programme diversity, higher subscriber penetration and price decrease between the merging firms (e.g., Ahn and Litman, 1997; Ford and Jackson, 1997; Rogerson, 2013; Suzuki, 2006; Waterman and Weiss, 1996).

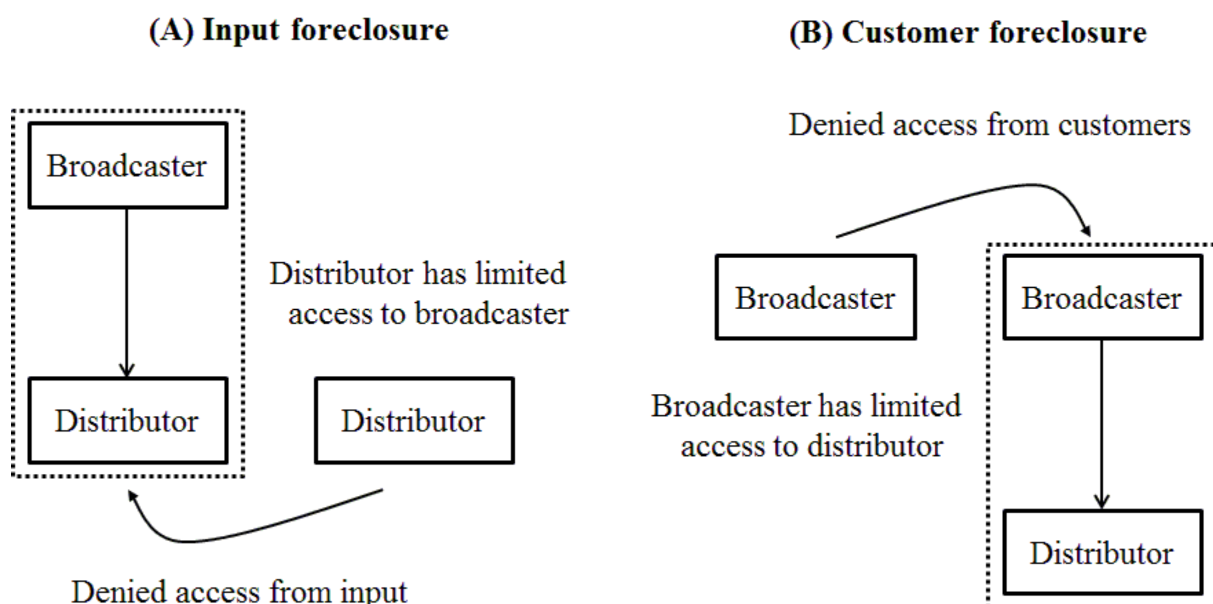

Figure 1: Foreclosure effects of vertical integration (Source: Evens, 2013: p.62)

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 1). Vertical integration not only allows firms in a weaker negotiating 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 and geographical markets (Rey and Tirole, 2007). Vertically integrated distributors can keep affiliated content exclusively on their platform or demand higher licensing fees for affiliated content to rivalling TV and/or OTT platforms. If the merging firms have market power on the upstream level, input foreclosure might arise. Hence, backward integration creates incentives for the merged entity to foreclosure its competitors in the downstream market. Merged firms can thus stop supplying rivalling distributors and deny complete access to the necessary input (Doganoglu and Wright, 2010). Conversely, customer foreclosure occurs when broadcasters have exclusive access to the platform of an affiliated distributor. Backward integration allows distributors to deny unaffiliated broadcasters access to their platforms and subscribers, and give carriage priority to affiliated channels. Research provides evidence that vertically integrated distributors are more likely to exclude rivalling networks and favour affiliated channels in terms of pricing and positioning (Chen and Waterman, 2007; Hong et al., 2011; Waterman and Choi, 2011). Vertically integrated distributors could potentially raise a rival network's cost and its vulnerability to competition by excluding or disadvantaging it (e.g., by charging for carriage). In both cases, limited distribution of channels may negatively impact the consumer choice and, hence, diversity and pluralism in the market. Furthermore, studies reveal that vertically integrated distributors are more likely to collude with other vertically integrated distributors to carry each other's networks (Kang, 2005; Lee and Kim, 2011). However, the results do not imply that unaffiliated distributors automatically pay higher programming prices, nor are they systematically denied access to programming.

4. Challenges for policymakers

4.1 Competition policy

The on-going consolidation wave produces national TV distribution markets that get increasingly controlled by a few telecommunications and cable operators, which might even operate on an international scale. Although there is still fragmentation across Europe with over hundred providers of TV services, the convergence between fixed and mobile networks is pushing distribution markets from a four-operator to three-operator structure (or less). Incumbent cable operators are nevertheless confronted with ever more inter-platform competition from terrestrial, satellite and/or IPTV providers, in addition to OTT services. A market with less players resulting from M&A activity does not automatically imply consumer welfare loss as it helps distributors to benefit from economies of scale and scope, and to find the money needed for network and programming investments. Especially in smaller TV markets, policymakers should ask themselves how new entrants and OTT start-ups (e.g., now defunct Flemish WeePee TV and Bhaalu) can survive against much bigger rivals, and eventually approve mergers between smaller operators (e.g., number 3 or 4 in the market like German Tele Columbus or Dutch CanalDigitaal) to (re-)establish competitive balance in the market. Otherwise said, M&A activity enhances the intensity of competition in the market under certain conditions.

Competition authorities, both at the national and European level, should, however, seek to promote or maintain market competition by regulating anti-competitive conduct by operators, not often those with significant market power. This might imply *ex-ante* measurements in addition to conventional *ex-post* regulation. There might be situations where ex-post regulation is insufficient and, hence, ex-ante regulation is recommended. Additional rules (e.g., with regard to exclusive agreements, platform neutrality or gatekeeping positions) may deem necessary to shape the market, or behaviour of the merging parties, and complement the traditional ownership limitations. Moreover, competition authorities should ensure a level-playing field in a market that is increasingly marked by convergence, and populated by telecommunications, cable and online platforms. Telecommunications operators are in most cases highly regulated compared to their cable counterparts and especially OTT platforms (e.g., with regard to open access obligations). Regardless of the technical infrastructure on which they operate, operators performing in the same stage of the industry value chain should be regulated symmetrically.

In contrast with gatekeeping positions resulting from horizontal M&As, regulators are less familiar with the growing trend towards vertical ownership structures. Although efficiency gains might produce a positive outcome, competition authorities should predominantly focus on the anti-discriminatory behaviour of vertically integrated operators and the accumulation of power that comes with it. Especially when these operators have already significant market power in the production, aggregation or distribution stage and want to expand further along the industry value chain, rivals can be severely disadvantaged and fair competition could become at risk. Hence, regulators should be concerned about the accumulation of bargaining power residing with one gatekeeper and the effects of this pivotal power on rivalling broadcasters and distributors. Greater bargaining power often comes at the detriment of weaker parties in the industry value chain (i.e. independent producers and smaller broadcasters) and creates a zero-sum game with the powerful firm taking the lion share of the value created. Therefore, competition authorities should set rules that ensure a fair treatment of all business partners and prohibit discriminatory treatment between affiliated and independent undertakings. One of the possibilities is to impose accountancy or even functional and/or structural separation between the network infrastructure operator, service provider and content owner to prevent vertically integrated distributors from anti-competitive conduct.

4.2 Industrial policy

The 2008 global economic crisis and the on-going globalisation of the media industries have acted as a catalyst for renewed interest in industrial policy, through which governments actively shape markets so as to pursue 'public interest' objectives. Industrial policy includes government intervention at the supply side and aims at encouraging structural change (e.g., as part of a macro-economic agenda). In this context, merger control, as part of the competition policy framework, has been used, both to prevent and to promote, the creation of 'national champions'. The idea behind such government intervention is that national champions acquire dominant positions in domestic markets so that they can achieve critical mass that is necessary to compete in the European internal market and the global marketplace. European member states have been relaxing merger control so as to facilitate mergers between national companies and allow a consolidation of strategic national industries including telecom and cable (e.g., Italian pay-TV operators Stream and Telepiù merging into a single satellite platform). In contrast, competition authorities have also applied these same antitrust rules to protect a hostile takeover of a national champion by a foreign (either European or non-European) competitor, which tends to suggest that the competition regulation has often been applied according to the economic and political interests at stake, and that industrial policy considerations may have been taken into account by competition authorities.

The long-standing dominance of US-based corporations in the ICT industries, together with the rise of Asian tigers, has induced European policymakers to encourage 'European champions' to compete in the global digital market (including network infrastructure and OTT services). The evolution towards a worldwide industry, and the subsequent need for scale economies has triggered off the on-going consolidation wave in the European broadcasting and distribution industries. The Digital Agenda proposes a major step forward in the creation of a single telecom market so that Europe can become a global digital leader, and the imperative of international competitiveness echoes the view towards M&As which prevails in Europe nowadays. The Digital Agenda is, at least at the rhetorical level, an example of how Europe is developing industrial policies to address market failure (fragmentation in the market due to limited scale) and claim back leadership in a global industry, but it needs to be brought into reality with all respect for the current competition policy framework. It makes no sense to abandon the existing cross-media ownership rules, and replace the current market structure by European telecommunications and cable giants, eventually vertically integrated with broadcasters and content suppliers, that hold a dominant position in European markets. Competition policies and industrial policies should therefore go hand in hand, since a champions policy not necessarily infringes merger control. Without merger control, champions would be able to collect monopoly rent – at the expense of European citizens – and would not be incentivized to effectively expand internationally. Instead of building European giants, governments should bet on combining merger policy with a macro-economic agenda that promotes research, innovation and knowledge sharing, stimulates entrepreneurship, incentivises investments, provides adequate funding and enhances training and education facilities.

4.3 Media policy

The future of European media ownership in broadcasting and distribution is, however, more than a competition question as it also affects media pluralism, diversity and localness. Only recently, the European Commission has re-intensified discussions on media pluralism and transparency of ownership structures in particular, organizing a specific event on 3 October 2014 to discuss best practices in member states like Austria (#EUMT2014). Despite the importance of maintaining and preserving the media's democratic function, it is fair to say though that the EU and also its member states have a complex and at times troubled relationship towards media pluralism.

On the one hand, most will agree that the European understanding of media pluralism relates to a firm desire to limit government control over media, but extends to avoiding commercial interests becoming so overly dominant they can inhibit of free pluralistic exchange of media services as well and as effective as governments can. The entire public service media system, with public broadcasters being supposed independent from state and market, is exemplary of that vision. In that regard, Europe differs from the US, which has already since the beginning of the 19th century adopted a rather libertarian approach to media, assuming a full and uncontrolled functioning of the market results in a 'free flow of ideas'. Several important policy documents such as the *Charter of Fundamental Rights of the European Union* (article 11) and the *Treaty on the Functioning of the European Union* (article 167) do entrust the Community not only with the possibility, but also with the responsibility to act in case media freedom and pluralism might be harmed. In this respect, cultural policy considerations (e.g., media pluralism) can be pursued by measures that are mainly devised to attain other EU policy goals (such as creating fair competition). On the other hand, however, translating the shared concerns about media freedom and pluralism into European policy practice has at times proven difficult given the European Commission's dominant focus on the achievement of economic policy objectives and member states' sensitivities regarding their 'sovereign' competencies in the cultural realm. Member states themselves also take less and less action in the field of M&A. Indeed, the Merger Regulation entrusts Member States with powers to review mergers with a Community dimension for reasons other than competition goals, among others when a proposed merger affects media plurality. Having said that, national competition authorities often lack the competencies to take more diverse policy considerations into account. Moreover, many member states have with an eye on industrial policy goals (see above) consistently relaxed ownership regulation and some (among others Belgium and Denmark) do not even have any media-specific ownership rules. This makes any meaningful intervention at the national level in case of M&A activity a challenging exercise.

A combination of national and European measures should be explored in case we want to ensure media pluralism, and the importance of local content for identity as well as cultural diversity reasons. Firstly, while national media ownership rules have been relaxed over the last decades, policymakers should consider (re-)introducing European-wide ownership rules. Whereas the introduction of media pluralism rules at the European level turned out to be an impossible exercise in the past, it is clear that competition policy in itself is not sufficient to address some concerns in this area. Secondly, several countries (among others Belgium, France, Germany) are experimenting with a diversity of taxation measures on content carriers, assuming these should not only benefit from exploiting content services, but also contribute to the sustainable creation of local content. E.g., in France, new laws have been adopted, which oblige electronic communications players to contribute part of their profits to the funding of public service content (Donders and Lamensch, 2010). And in both the Dutch and French speaking part of Belgium distributors of content have to invest in local content production, be it directly or through a government-steered media fund (Donders and Evens, 2014). It is strongly recommendable to analyse how effective and efficient these instruments are and to consider, again, European-wide regulation.

5. Discussion

This article investigated the rationale of the renewed M&A wave in broadcasting and distribution industries, and discussed the implications for competition, industrial and media policymaking. Traditionally, EU policymakers have focused on merger control, as part of the competition policy framework, to assess M&A activity on the level of competition in a particular market, and imposed behavioural, and to a lesser extent structural, remedies to regulate anti-competitive conduct by

dominant parties. In contrast, industrial and media-specific policies dealing with the creation of an economically and culturally sustainable broadcasting and distribution industry are virtually absent both from national and European policy agendas. With regard to competition policy, a more dynamic analysis of M&A activity in media and related markets is necessary. Whereas the European Commission has significant expertise in the area of horizontal mergers, assessments of vertical mergers do not sufficiently consider the adverse affects vertical integration might have on fair competition within the entire value chain and over-estimate the efficiencies resulting from M&A, or at least assume they exist. Moreover, competition policy and industrial policy go hand in hand. They eventually pursue complementary goals and should, hence, be considered more together. National, or European, champions can only gain competitive advantage with an effective merger control that seeks to promote fair competition in the market, and that prevents dominant parties from inefficient, monopoly rent-seeking behaviour. Similarly, policymakers have had a complex relationship towards media pluralism and ownership transparency in the past. The introduction of European-wide ownership rules, in combination with taxation instruments to favour locally-created programming, could therefore strengthen the role of the European content creation and distribution sectors in this global economy. These three areas of government intervention have always been dealt by like silos, and considered different and incompatible levels of governance. However, the complexity of the current global ecosystem and the drastic impact of the on-going M&A activity on local markets definitely call for a more integrated policy approach towards M&A activity in broadcasting and distribution. That does not mean we call for 'instant' regulation. However, we recognize the need to see these policy areas not as mutually exclusive, but as highly complementary. Cross-fertilization and mutual support between competition, industrial and media policymakers, all relying on more complete and layered assessments of M&A, therefore become necessary to preserve European broadcasting and distribution industries as economically and culturally sustainable, and to retain a leading position in the international video landscape.

6. References

Adilov, N., Alexander, P., and Cunningham, B. (2012). Smaller Pie, Larger Slice: How Bargaining Power Affects the Decision to Bundle. *The B.E. Journal of Economic Analysis & Policy 12*(1), Topics, Article 12.

Adilov, N., and Alexander, P.J. (2006). Horizontal merger: Pivotal buyers and bargaining power. *Economics Letters, 91*(3), 307-311.

Ahn, H., and Litman, B. (1997). Vertical integration and consumer welfare in the cable industry. *Journal of Broadcasting & Electronic Media, 41*(4), 453-477.

Baccarne, B., Evens, T., and Schuurman, D. (2013). The television struggle: an assessment of over-the-top television evolutions in a cable dominant market. *Communication & Strategies, 92*(4), 43-61.

Capgemini (2014). Communications Industry: On the Verge of Massive Consolidation. Rennes, France.

Chan-Olmsted, S.M. (1998). Mergers, acquisitions, and convergence: the strategic alliances of broadcasting, cable television, and telephone services. *Journal of Media Economics, 11*(3), 33-46.

Chan-Olmsted, S.M., and Guo, M. (2011). Strategic bundling of telecommunications services : triple-play strategies in the cable and telephone industries *Journal of Media Business Studies, 8*(2), 63-81.

Chen, D., and Waterman, D. (2007). Vertical ownership, program network carriage and tier positioning in cable television: an empirical study. *Review of Industrial Organization, 30*(3), 227-251.

Chipty, T., and Snyder, C.M. (1999). The role of firm size in bilateral bargaining: A study of the cable television industry. *Review of Economics and Statistics, 81*(2), 326-340.

Crawford, G.S., and Yurukoglu, A. (2012). The welfare effects of bundling in multichannel television markets. *American Economic Review, 102*(2), 643-685.

Digital TV Research (2014). *European Pay-TV Operator Forecasts*. Cambridge, United Kingdom.

Doganoglu, T., and Wright, J. (2010). Exclusive dealing with network effects. *International Journal of Industrial Organization 28*(2), 145-154.

Donders, K and Evens, T. (2014). Government intervention in marriages of convenience between TV broadcasters and distributors. *Javnost - The Public* 21(2), 93-110.

Donders, K. and Lamensch, M. (2010). The introduction of a tax-and-fund system to subsidise public television in France: Cultural revolution or legal swamp? *Journal of Media Law* 2(2), 227-244.

Evens, T. (2013). *Power Play in Television. A Political Economy Analysis of Power Balances in Broadcasting Markets.* Ghent, Belgium.

Evens, T. (2014). If you won't pay them, buy them! Merger mania in distribution and content markets. *International Journal of Digital Television, 5*(3), 261-265.

Evens, T. & Berte, K. (2014). Challenges of Digital Innovations: A Set-top Box Based Approach. In J. Bourdon & C. Méadel (Eds.), *Television Audiences Across The World: Deconstructing the Rating Machine* (pp. 234-247). Basingstoke: Palgrave Macmillan.

Evens, T., and Donders, K. (2013). Broadcast market structures and retransmission payments: a European perspective. *Media, Culture & Society, 35*(4), 415 - 432.

Fontaine, G., and Noam, E.M. (2013). Cutting the Cord: Common Trends Across the Atlantic. *Communication & Strategies, 92*(4), 1-13.

Ford, G.S., and Jackson, J.D. (1997). Horizontal concentration and vertical integration in the cable television industry. *Review of Industrial Organization, 12*(4), 501-518.

Gershon, R.A. (2013). *Media, Telecommunications and Business Strategy*. New York: Routledge.

Goolsbee, A., and Petrin, A. (2004). The consumer gains from direct broadcast satellites and the competition with cable TV. *Econometrica, 72*(2), 351-381.

Gryta, T., and Ramachandran, S. (2014, May 18). AT&T to Buy DirecTV in $49 Billion Deal, Creating Pay-TV Giant, *The Wall Street Journal*. Retrieved from http://www.wsj.com/articles/SB10001424052702304652804579570203461903742.

Hagey, K., and Ramachandran, S. (2014, October 9). Pay TV's New Worry: 'Shaving' the Cord, *The Wall Street Journal*. Retrieved from http://www.wsj.com/articles/pay-tvs-new-worry-shaving-the-cord-1412899121.

Henning, E., and Vitorovich, L. (2013, June 24). Vodafone Launches Bid for Kabel Deutschland, *The Wall Street Journal*. Retrieved from http://www.wsj.com/articles/SB10001424127887324183204578564691978389914.

Hong, A., Lee, D., and Hwang, J. (2011). Metafrontier production function analysis of horizontal and vertical integration in Korea's cable TV industry. *Journal of Media Economics, 24*(4), 221-236.

Inderst, R., and Shaffer, G. (2007). Retail Mergers, Buyer Power and Product Variety. *The Economic Journal, 117*(516), 45-67.

Iosifidis, P. (2014). Pluralism, media mergers and European merger control. In K. Donders, C. Pauwels and J. Loisen (Eds.), The palgrave Handbook of European Media Policy (pp. 461-475). Basingstoke: Palgrave Macmillan.

Jannarone, J., and Ramachandran, S. (2013, February 7). Charter to Buy Optimum West, *The Wall Street Journal*. Retrieved from http://www.wsj.com/articles/SB10001424127887323452204578290213200288742.

Jin, D.Y. (2013). *De-Convergence of Global Media Industries*. New York: Routledge.

Kang, J.-S. (2005). *Reciprocal Carriage of Vertically Integrated Cable Networks: An Empirical Study*. Paper presented at the 38th Research Conference on Communication, Information and Internet Policy (TPRC), Arlington, USA.

Karikari, J.A., Brown, S.M., and Abramowitz, A.D. (2003). Subscriptions for direct broadcast satellite and cable television in the US: An empirical analysis. *Information Economics and Policy, 15*(1), 1-15.

Klein, A. (2003). *Stealing Time*. New York: Simon & Schuster.

Küng, L. (2008). *Strategic management in the media: theory to practice*. Thousand Oakes: Sage.

Lee, S.-W., and Kim, C. (2011). Vertical integration and market foreclosure in the Korean cable television industry: an empirical study. *Journal of Broadcasting & Electronic Media, 55*(1), 54-71.

Porter, M. (1996). What is strategy? *Harvard Business Review, 40*(6), 61-78.

Raice, S., and Bender, R. (2014, December 15). BT Group in Exclusive Talks to Buy EE, *The Wall Street Journal*. Retrieved from http://www.wsj.com/articles/bt-group-in-exclusive-talks-to-buy-ee-1418664069.

Ramachandran, S. (2014, November 6). Pay-TV 'cord-cutting' accelerates, *The Wall Street Journal*. Retrieved from http://www.wsj.com/articles/pay-tv-cord-cutting-accelerates-1415321442.

Ramachandran, S., and Cimilluca, D. (2014, February 13). Comcast Acquiring Time Warner Cable in All-Stock Deal Worth $45 Billion *The Wall Street Journal*. Retrieved from http://www.wsj.com/articles/SB10001424052702303704304579379801986541412.

Raskovich, A. (2003). Pivotal buyers and bargaining position. *Journal of Industrial Economics, 51*(4), 405-426.

Rey, P., and Tirole, J. (2007). A primer on foreclosure. In M. Armstrong and R. Porter (Eds.), *Handbook of Industrial Organization (Volume III)* (pp. 2145-2220). Amsterdam: Elsevier.

Rogerson, W.P. (2013). Vertical Mergers in the Video Programming and Distribution Industry: The Case of Comcast-NBCU. In J.E. Kwoka and L.J. White (Eds.), *The Antitrust Revolution (6th edition)*. Oxford: Oxford University Press.

Roman, D. (2013, March 16). Vodafone to Buy Spanish Cable Operator Ono, *The Wall Street Journal*. Retrieved from http://www.wsj.com/articles/SB10001424052702303287804579443730209020364.

Ruffle, B.J. (2013). When do large buyers pay less? Experimental evidence. *The Journal of Industrial Economics, 61*(1), 108-138.

Schechner, S., and Zekaria, S. (2014, July 29). For Liberty Global, the Next Step Is the Content *The wall Street Journal*. Retrieved from http://www.wsj.com/articles/next-step-for-liberty-global-content-1406667563.

Seo, S. (2008). Convergence and diversification in cable industry: An empirical analysis of the deployment pattern of cable telephony in US local telecommunications markets. *Telecommunications Policy, 32*(2), 145-155.

Singer, H.J., and Sidak, J.G. (2007). Vertical foreclosure in video programming markets: Implications for cable operators. *Review of Network Economics, 6*(3), 348-371.

SNL Kagan (2013). Rising retransmission fees: the potential impact on cable MSO video margins. Charlottesville: SNL Kagan.

Snyder, C.M. (1998). Why Do Larger Buyers Pay Lower Prices? Intense Supplier Competition. *Economics Letters, 58*(2), 205-209.

Stahl, G.K., and Voigt, A. (2005). Impact of cultural differences on merger and acquisition performance: a critical research review and an integrative model. *Advances in Mergers and Acquisitions, 4*, 51-82.

Suzuki, A. (2006). Vertical integration in the U.S. cable industry. ISER Discussion Paper Series No. 675.

Tseng, K.-F., and Litman, B. (1998). The impact of the Telecommunications Ac of 1996 on the merger of RBCOs and MSOs. Case study: US West and Continental Cablevision. *Journal of Media Economics, 11*(3), 47-64.

Tyagi, R.K. (2001). Why Do Suppliers Charge Larger Buyers Lower Prices? *Journal of Industrial Economics, 49*(1), 45-61.

Waterman, D. (1993). A model of vertical integration and economies scale in information product distribution. *Journal of Media Economics, 6*(3), 23-35.

Waterman, D., and Choi, S. (2011). Non-discrimination rules for ISPs and vertical integration: lessons from cable television. *Telecommunications Policy, 35*(11), 970-983.

Waterman, D., and Weiss, A. (1996). The effects of vertical integration between cable television systems and pay cable networks. *Journal of Econometrics, 72*(1-2), 357-395.