M.7194
Liberty Global / De Vijver Media

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M.7194 Liberty Global / De Vijver Media

- Vertical merger in Belgium (Flanders)
- Cable operator (Telenet) acquiring a 50% stake in a broadcasting JV (De Vijver Media)
- Clearance with remedies Feb 2015 (phase II, no SO)
The market

TV Broadcasters (viewer shares)
- de Vrijver Media [~10%]
- VRL [~40%]
- Medialaan [~30%]

TV Retailers (subs shares)
- VRT [~40%]
- Medialaan [~30%]
- Stievie

[70-80%] CABLE
[10-20%] IPTV

Competition
**Theory of harm:**
- Rival TV distributors would be foreclosed from distributing the Flemish language channels Vier and Vijf

**Ability:**
- Vier/Vijf are important channels; Customers expect them in a TV package.
- Within the JV, Telenet (who owns 50%) can control DVM's decisions (legal assessment)

**Incentives:**
- **Total foreclosure:** Telenet's subscriber gains likely outweigh DVM losses (vertical arithmetic)
- **Partial foreclosure:** DVM can extract higher licensing fees from Telenet's competitors (Nash bargaining model)

**Effects:**
- **Total foreclosure:** Reduced quality of rival TV subscriptions, increased prices for Telenet's offers in response. Strengthening of Telenet dominance (higher entry barriers)
- **Partial foreclosure:** Increased tariffs by Telenet's rivals
- No efficiency claim by the Parties
Incentives (total input foreclosure)

- Lost advertising revenues & carriage fee
- Gained profits from switching subscribers

**Vertical arithmetic**

\[ \Delta \text{Profit} = (\delta \times a \times N_{Belgacom}) \times \Pi_T - s \left[ F_{DVM} + A_{DVM} \times \frac{N_{Belgacom} \times (1-\delta)}{N} \right] \]

- **GAIN > LOSS** if \( \delta > \hat{\delta} \) (critical switching rate)
- Key quantification issue: actual switching rate \( \delta \)?
  - Belgacom survey
  - Event studies on channel blackouts in US
- Result: amount of switching likely to be sufficient to generate an incentive to foreclose
Incentives (partial input foreclosure)

- Commission adopted a Nash bargaining model to gauge the change in bargaining fee post-merger (see Rogerson and FCC on Comcast/NBCU)
- Simple intuition (Rogerson): vertical merger between a seller S (DVM) and a buyer B1 (Telenet) creates an opportunity cost for the seller when bargaining with the rivals of B1 (e.g. Belgacom)
- Assume: - value of good for the buyer: V
  - cost of provision for the seller: C
  - seller S bargaining strength $\mu$
- Price is such that seller S captures share $\mu$ of the surplus from trade (V-C):
  $$P = \mu V + (1- \mu)C$$
- Vertical merger between a seller S (DVM) and a buyer B1 (Telenet) creates an opportunity cost $\Delta C$ for the seller (DVM) when bargaining with buyer B2 (Belgacom): selling the input to B2 reduces the profit of B1.
  $$\Delta P = (1- \mu)\Delta C = (1- \mu) (\delta \times a \times N_{Belgacom}) \times \pi_T$$
- DVM's bargaining power parameter $\mu$ can be calibrated or assumed (e.g. 50%)
  - Commission calibrated $\mu$ based on info on the pre-merger carriage fee and the profits of DVM and Belgacom
- Predicted a large increase in licences fees charged to competing TV platforms due to the merger
Customer foreclosure

**Total foreclosure**
- Unlikely (unprofitable based on vertical arithmetic)

**Partial foreclosure**
- Reduce quality of rival channels
  - Via EPG positioning/Non-linear services recommendations etc.
- Lower license revenues for rival channels (through greater bargaining power)

**Effects**
- Reduced/sub-optimal viewer experience/choice
- Possibly reduced investment incentives for rival channels because of lower advertising and license revenues
Information exchange

**Theory of Harm**
- Channel providers may need to supply in advance to the TV operators a range of information about their future programs.
- Telenet could confer an advantage to DVM by passing information to it and help it to pre-empt competitive innovation by rival channels.

**Assessment**
- Low risk of information leak (carriage agreements have confidentiality obligations for Telenet)
- Small advantage from information leak (takes 12 months to develop a channel; Telenet is notified 3-6 months before screening → 3-6 months advantage)
Developments before Decision

**Input foreclosure**
- DVM signed carriage agreements with Belgacom, Mobistar, Snow
- DVM made binding offer to M7

**Customer foreclosure**
- Telenet signed carriage agreement with VRT
- Telenet made binding and irrevocable offer to Medialaan

Formal commitments in Decision

**Input foreclosure**
- All TV distributors are granted access to Vier/Vijf on FRAND terms (to protect potential entrants)
- Anti-circumvention clauses: Merged entity not allowed to reduce quality of Vier and Vijf. If content is moved to other channels, the right to access applies to these channels as well
Backup
Incentives (partial input foreclosure)

Formal derivation of the change in license fee using Nash bargaining model

- See Annex 1 of the Decision
- Intuition: Merger introduces a cost for DVM in reaching a deal with Telenet's rivals. This increases the bargaining position of DVM.

**Pre-merger**
- Surplus from agreement: $S^{pre} = (B - b + D - d)$
- $\pi^{DVM} = D + F = \mu S + d$
- $\pi^{Belgacom} = B - F = (1 - \mu) S + b$
- License fee: $F^{pre} = \mu (B - b) - (1 - \mu)(D - d)$

**Post-merger**
- Surplus from agreement: $S^{post} = (B - b + D - d + T - t)$
- $\pi^{DVM} = D + T + F = \mu S + d + t$
- $\pi^{Belgacom} = B - F = (1 - \mu) S + b$
- License fee: $F^{post} = \mu (B - b) - (1 - \mu)(D - d + T - t)$

- $\Delta F = F^{post} - F^{pre} = -(1 - \mu)(T - t) = (1 - \mu)(\delta \times a \times N_{Belgacom}) \times \pi_T$
- DVM's bargaining power parameter $\mu$ can be calibrated or assumed
  - Commission calibrated $\mu$ based on info on the pre-merger carriage fee and profits of DVM and Belgacom
  → predicted a large increase in licenses fees charged to competing platforms due to the merger
References

- Comcast / NBCU (2011)
  - FCC memorandum opinion and order
- Ofcom Pay TV market investigation 2008 (Annex 8 – Annex to premium content)