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

Tom Evens [a,*], Karen Donders [b]

[a] iMinds-MICT, Ghent University, Korte Meer 7-9-11, 9000 Ghent, Belgium
[b] iMinds-SMIT, Vrije Universiteit Brussel, Pleinlaan 9, 1050 Brussels, Belgium

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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.
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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 DirecTV). 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.

* Corresponding author.
E-mail addresses: Tom.Evens@UGent.be (T. Evens), Karen.donders@vub.ac.be (K. Donders).

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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

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