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M.7194
Liberty Global / De Vijver Media

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Disclaimer: the views expressed are those of the speaker only and
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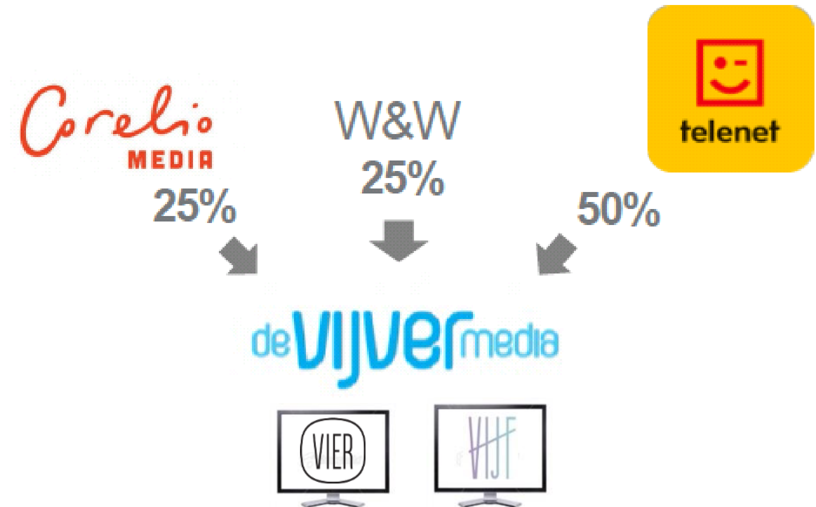
- Vertical merger in Belgium (Flanders)
- Cable operator (Telenet) acquiring a 50% stake in a broadcasting JV (De Vijver Media)
- Clearance with remedies Feb 2015 (phase II, no SO)



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The market

TV Broadcasters (viewer shares)

- De Vijver media [~10%]: VIER, VIJF
- VRT [~40%]: één, CANVAS
- MEDIALAAN [~30%]: vtm, 2BE, Vitaya

TV Retailers (subs shares)

- [70-80%] telenet — CABLE
- [10-20%] belgacom proximus — IPTV
- TV VLAANDEREN DIGITAAL — SATELLITE
- BASE SNOW — IPTV
- Mobistar — CABLE
- Stievie — OTT (Internet TV)

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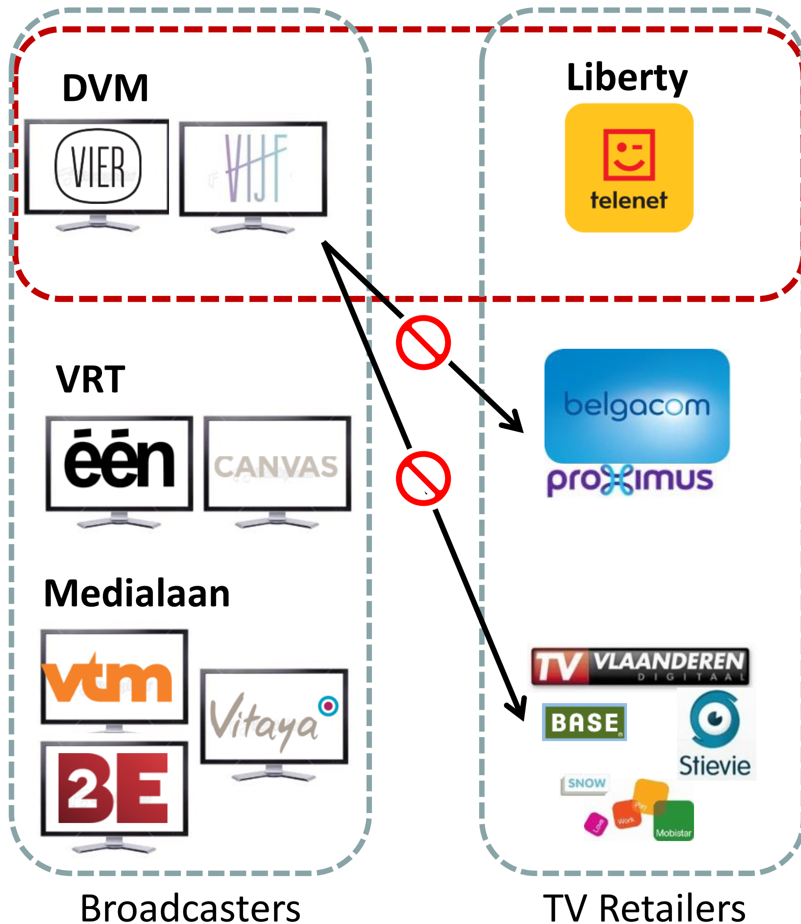
Input foreclosure



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

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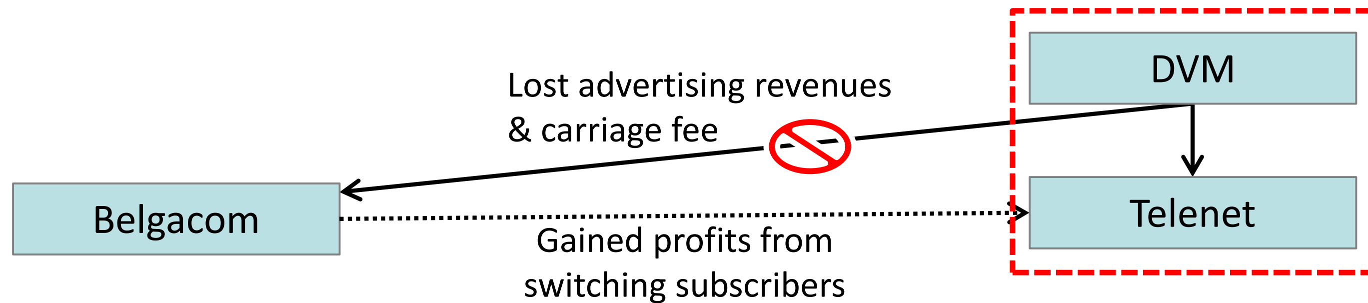
Incentives (total input foreclosure)



- **Vertical arithmetic**

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

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

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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 μ;
- Price is such that seller S captures share μ 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 ΔC 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 μ can be calibrated or assumed (e.g. 50%)
  - Commission calibrated μ 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

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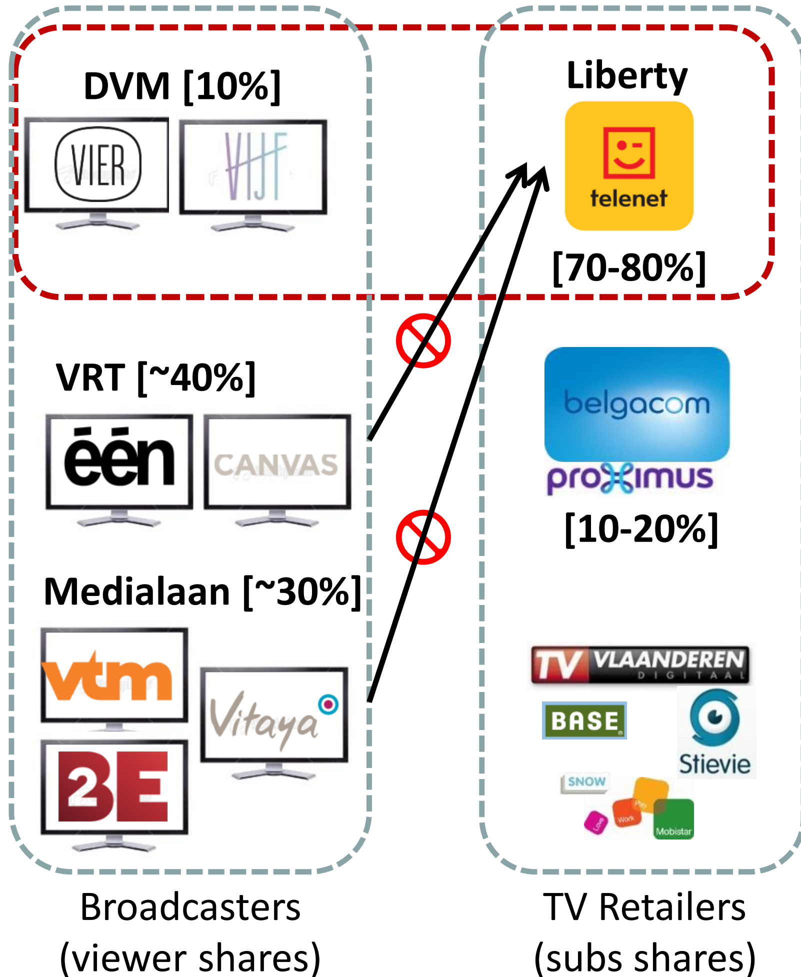
Customer foreclosure



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

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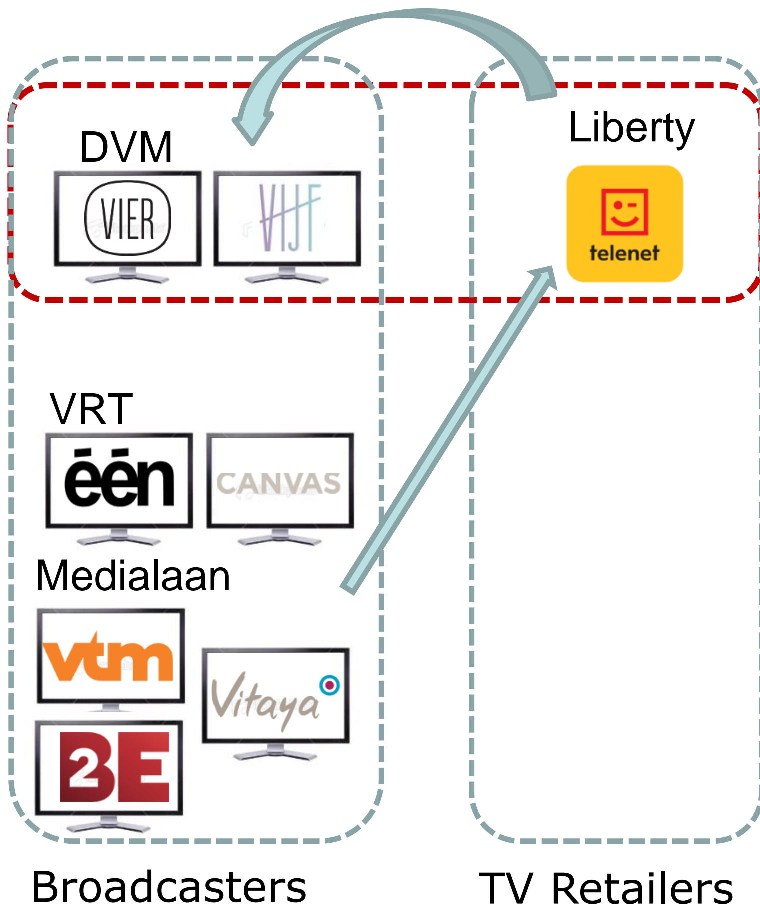
Information exchange



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)

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Remedies

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-circumventions 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

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Backup

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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:
  $S^{pre} = (\mathrm{B} - \mathrm{b} + \mathrm{D} - \mathrm{d})$
- $\pi^{DVM} = D + F = \mu S + d$
- $\pi^{Belgacom} = B - F = (1 - \mu)S + b$
- License fee:
- $F^{pre} = \mu(\mathrm{B} - \mathrm{b}) - (1 - \mu)(\mathrm{D} - \mathrm{d})$

Post-merger

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

- $\Delta F = F^{post} - F^{pre} = -(1 - \mu)(\mathrm{T} - \mathrm{t}) = (1 - \mu)(\delta \times a \times N_{Belgacom}) \times \pi_T$
- DVM's bargaining power parameter μ can be calibrated or assumed
  - Commission calibrated μ based on info on the pre-merger carriage fee and profits of DVM and Belgacom

→ predicted a large increase in licences fees charged to competing platforms due to the merger

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References

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  - Rogerson (2013). The Antitrust Revolution, 6th Edition, Edited by John E. Kwoka, Jr. And Lawrence J. White. New York: Oxford: Oxford University Press, 2013
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