

---

---

ROUND TABLE « REGULATION AND MARKET CONCENTRATION »

WITH : NICOLAS CURIEN (CSA), RICHARD FEASEY (FRONTIER ECONOMIC), NEIL PRATT (OFCOM),

JOËLLE TOLEDANO (SUPELEC)

CHAIR « GOVERNANCE & REGULATION » – UNIVERSITÉ PARIS DAUPHINE – 26 MAI 2016

« THE COMPLEX ORGANIZATION OF MARKETS FOR MEDIA SERVICES »

NICOLAS CURIEN

---

---

I would like to make four comments and one conclusive remark.

1. **The ability of the French audio-visual medias' regulator, the CSA, to design market structure, is today rather limited** and it is in any case much smaller than that of the telecom regulator, the ARCEP. Until 2013, the CSA had no other actual opportunity to shape the market than through spectrum allocation. Today, the regulator has acquired a somehow extended economic power, including the approval or disapproval of a change in the business model of a TV channel. At the end of 2015, the CSA used this new faculty by authorizing the transition of the TV news channel LCI from the pay TV to the free TV economic status. After having pronounced a « no » two years before, on the basis of a potential harming of existing free TV channels in the context of a globally declining advertising market, the regulatory authority judged this time that LCI had no other chance to survive than becoming a free channel, given the announced decision of major ISPs to stop its distribution on their platforms. Through saying « yes », the CSA thus implicitly judged that the risk of a harmful competition in the market of News channels was overcompensated by the incremental content diversity offered to the consumers of digital free TV.

It should also be noted that, as compared to the packet of telecom directives, the European framework for media services, *i.e.* the AMS directive, is much younger and weaker at this stage, in such a way that the national regulators show heterogeneous characteristics as concerns their structure, their operating modus and their scope of competency. In France, the governmental objective of promoting a strong « cultural exception » historically gave rise to strict obligations made to media services, in terms of diffusing French and European works and financing the production of local content. These legal dispositions bear an impact on the market structure of content production, since small « independent » content producers are explicitly favoured against « dependent » ones (*i.e.* linked to an editor through a significant capitalistic link or a major or long term commercial relationship).

2. **In any complex industry, one should take into account global market architecture rather than just market concentration in the different market components.** In the particular instance of the media industry, three relevant market

components must be distinguished: firstly, the upstream component, in which the editors buy content to rights holders; secondly, the intermediate component, in which the TV channels contract with distributors; and finally, the downstream component, in which the distributors deliver bundled and stand-alone channels to end users. With this typology in mind, it appears that, in the French context, the still strong dominant position of Canal+ within the oligopolies prevailing in the intermediate and downstream market components originates in the quasi-monopsonistic position of the latter in the upstream acquisition of premium sportive and cinematographic content. Thus, when assessing dominant positions and possible abuses of such positions against a fair and efficient competition in the media markets, one should consider the different links of the chain of value altogether rather than just separately.

3. **“Convergence”, often mentioned as being the main driving force in the restructuration of communication markets, is an ambiguous concept with both a horizontal and a vertical dimension.** Horizontally, there exists a convergence across “pipes”, as the IP protocol tends to generalize in all network platforms and as wired fixed and wireless mobile infrastructures tend to share a common core. In parallel, there also exists another horizontal convergence across content, as low cost user generated videos and high quality professional audio-visual content do now coexist in the digital universe and the gap between the two will progressively be filled up. Vertically, *i.e.* between pipes and content, we observe mergers or alliances between industrial groups holding a telecom branch and media companies: recently, in France, the international telecom group Altice made the acquisition of both the telco SFR-Numéricable and the media company Nextradio TV.

The rationales behind respectively horizontal and vertical moves in the communication industry do differ in nature. Horizontally, the incentive for national or international mergers mainly consists in benefiting from the economies of scale generated by the convergent technological evolution; whereas, vertically, the presence of economies of scope is not so clear and the incentive for integration rather consists in aiming to be active all along the chain of value, in order to collect downstream the value derived from access to content and then to use it upstream for investing in pipes. Thus, on the one hand, intra-pipes and intra-content horizontal moves are pushed by strong underlying techno-economic determinants; while, on the other hand, the so called pipes/content convergence appears as being more opportunistic and guided by industrial and financial strategies. The regulators should both anticipate the dynamics of the horizontally changing world under the pressure of a “digital determinism”, and be cautious about the possible dangers of vertical restrictions inspired by strategic behaviour.

4. **In the sector of medias, complexity does not simply arise from the horizontal/vertical bi-dimensionality of the market; it also comes from the coexistence and interference of several production processes, *i.e.* parallel “ways” of delivering content to the end users, although directly or through intermediaries.**

- Way 1 is the historical model of a *direct relationship* between the editors and the consumers in a two-sided market where content is provided for free to the end users and advertisers do pay for reaching the audience; this model today prevails in the case of digital terrestrial TV or in the case of the TV channels' sites online, accessible through the open internet.
- Way 2 is the model of *intermediation through dedicated distributors*, i.e. well identified intermediaries which may be technical operators, such as an Internet service provider or a cable or satellite company, or websites specialised in the distribution of audio-visual content. The distributor charges subscription fees to the end users and it pays a retribution to the editors.
- Way 3 is the uprising model of *pervasive digital intermediation*, in which the intermediary giving access to content may be almost any actor present on the web, be it a social network, a video sharing platform, an applications store, a search engine, etc. Along this third way, the market becomes three-sided (editors/advertisers/users) and many different or superposed business models are then possible: the intermediaries earn advertising revenues from collecting audience and commercial revenues from selling applications or reselling data, whereas the editors gain extra advertising revenue from incremental audience and/or do share revenues with the intermediaries.

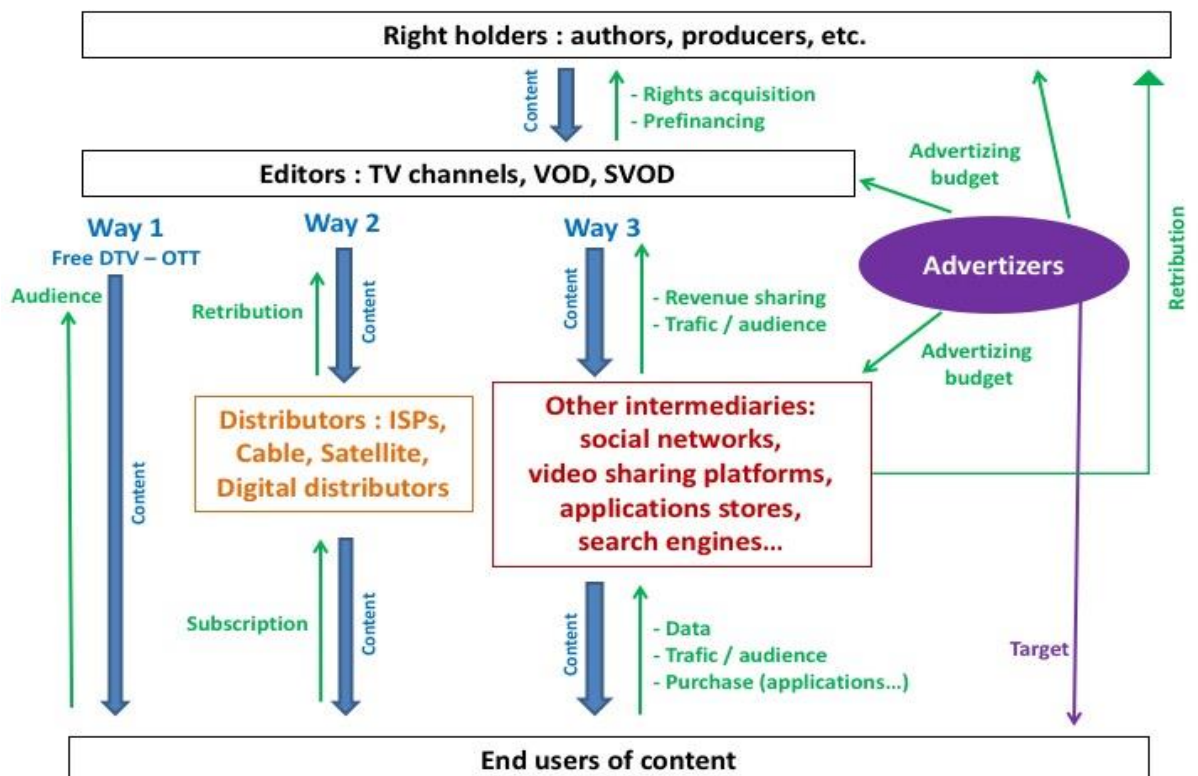


Figure: the value chain for content delivery (source: CSA, Economic Department).

5. **As a conclusion**, the markets for media services do exhibit a pretty complex structure, due to their own internal stratified architecture (see comment 2), to their embedding in a global two-layer “pipes/content” digital world (see comment 3), and to the multiplicity of parallel processes for delivering content from the upstream segment of creating content to the downstream segment of viewing content. Facing such a complexity, a regulator with limited economic empowerment (see comment 1) should act as a “reflexive” body, at least as much as it acts as a prescriptive and controlling authority.

**Reflexivity means:** (i) anticipating correctly major foreseeable trends in the industry, (ii) guiding accordingly the sector’s evolution in the concerted and “soft” manner of co-regulation, (iii) adopting adaptive behaviour and methodology which could resist to the occurring of unforeseen events.

Under his reflexive facet, the regulator does no longer stand as the repressive policeman of the audio-visual sector but rather as the benevolent keeper of the “Media’s House”. In this original role, the regulator is liable for the fair coexistence of inhabitants in their daily collective use of the premises, for the continuous upgrading of accommodation facilities, and for insuring a sufficient prior level of security in case of unexpected damage.