Power conflicts between broadcasters and distributors: developing a framework for assessing regulatory intervention

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ABSTRACT

This paper provides a better understanding of the underlying dynamics of carriage disputes between broadcasters and distributors. Using a political economy perspective, power relationships in TV broadcasting are discussed. By developing an analytical model by which means the bargaining position of a broadcaster and distributor respectively can be assessed, it becomes possible to capture all decisive elements that determine the bargaining position of negotiating firms during carriage agreements.

KEY WORDS

Broadcasters, distributors, carriage negotiations, power relationships, bargaining power, business model

INTRODUCTION

Undeniably, television broadcasting markets are in a period of industrial reform these days. Digital technology has broken traditional boundaries between IT, telecom and media worlds, and lowered barriers for new players to enter the production and distribution business of television programming. Like other media industries, television broadcasting has been highly affected by the digitization wave that enables convergence players to explore new business opportunities and address disruptive challenges across the value chain. The far-reaching integration of broadcast content with broadband delivery platforms, exemplified by the rise of over-the-top (OTT) television platforms (Netflix, Hulu and BBC iPlayer) and Connected TV devices, is producing opportunities to bypass established distributors and destabilizing mainstream business models (Given et al., 2012). Against the background of these technological developments, the TV industry is facing turbulent economic times, marked by an increased level of market competition and lower degree of profitability. Basically, a set of interrelated structural market evolutions have been eroding the advertising-based business model on which most TV broadcasters used to depend. Not only have television advertising

markets fallen dramatically during the economic crisis (minus 16% in Europe), audience fragmentation due to increased channel competition, time-shifted viewing and ad-skipping is further affecting the foundations of the ad-supported business model (Carlson, 2006; Crampes et al., 2009).

The increasing complexity of the ecosystem, together with the impact of the global economic downturn, has urged TV broadcasters to look for alternative and more stable sources of income. Indeed, the high dependence on advertising markets makes TV broadcasters extremely vulnerable to economic recession and necessitates a diversification of revenues. In contrast to advertising, subscriptions for premium cable and satellite services have proved quite consistent during economic downturns and have been steadily growing (Evens, 2010; Picard, 2011). Unsurprisingly, broadcasters are casting covetous eyes on the comfortable profit margins of television distributors and have started to demand a fair share of the profits made by these platform operators. Broadcasters claim they carry the bulk of investments in quality content whereas distributors take a disproportional share of the pie, without significantly contributing to the financing and production of that content. Waterman and Han (2010) provide an empirical basis for such claims, arguing that distributors have been able to take far greater economic advantage of the digital transition than broadcasters. According to UK regulator Ofcom (2012), public service broadcasters (PSBs) in the UK spend 27% of their revenues on first-run originations compared to only 2% for pay-TV operators.

As early as 2004, free-to-air (FTA) television networks in the United States announced their intentions to seek cash payments from cable operators for retransmission of their broadcast signals. These payments are comparable to the payments distributors make for pay-TV channels. Because some broadcasters have been quite aggressive in the pursuit of cash payments, tough negotiations often ended up in blackouts, with either broadcasters refusing to accept the financial terms of distributors, or distributors choosing not to carry greedy television channels. In recent years, the amount of carriage disputes (channel conflicts) between broadcasters and distributors of television programming has multiplied (Caves, 2005; Evens and Donders, 2013). Power conflicts do not remain limited to the North American industry, but also found their way to Canadian and European television markets. O'Reilly (2008) points that the sharp increase in negotiation impasses follows structural market changes that have come along with the digitization of the television industry, and the expanding business roles broadcasters and distributors occupy. O'Reilly furthers claims that

competitive entry in television distribution has, ironically, resulted in higher programming expenses for pay-TV operators and higher costs that are passed on to subscribers.

The main goal of this paper is to analyze how broadcaster-to-distributor relationships are structured and provide a framework that helps analyzing and interpreting the nature of power relationships between broadcasters and distributors. Since most of the public debates occur in a vacuum, however, empirical evidence is needed to ground the arguments of broadcasters and distributors respectively, and justify policy intervention in the market. Hence, a systemic overview of broadcaster-to-distributor and related markets would allow policymakers to monitor developments in the market, identify possible problems and define adequate answers based on the availability of reliable and valid research data. Empirical findings drawn from in-depth with 36 policymakers and industry representatives from several markets (Belgium, Denmark, Finland, Germany, UK and US), and document analysis (with a focus on media regulation) will allow us to build an analytical framework that accurately describes the individual nature of relationships between broadcasters and distributors and that helps assessing economic power in broadcaster-to-distributor markets. Such instrument will provide insight into the economic mechanisms underlying the production and distribution of media content, and eventually help policymakers in really understanding the hotly debated carriage disputes in many markets around the world, with a substantial influence on the quality and approach of broadcasting policy. Using the instrument, regulatory interventions can be made when analysis would show out that there is inequality of bargaining power and that a stronger party is manifestly abusing these advantages in bargaining power.

STATE OF RETRANMISSION PAYMENTS

Technological developments, as well as changes in the institutional framework, are in the process of fundamentally transforming, and possibly disrupting, legacy television business models. Furthermore, economic power has been slightly transferred to ‘gatekeepers’ who derive a dominant position in the business ecosystem by controlling competitive bottlenecks (Evens, 2013a). As technology shocks challenge the established power relationships in television, interactions between broadcasters and distributors may incur conflicts of interest and eventually result in carriage disputes. Whereas distributors are slightly moving towards commissioning and creating original content, broadcasters are bypassing traditional distributors to team up with over-the-top (OTT) services and build a direct gateway to the viewer (Venturini, 2011).

Carriage disputes typically occur in broadcaster-to-distributor markets, where broadcasters (firms that produce and aggregate content into channels) and television distributors (firms that bundle these channels into different packages, or offer them à la carte to the viewers) negotiate about the carriage of particular video programming, the price to be paid for the exploitation of that programming, and (in some cases) the tier and position in the electronic programming guide (EPG) on which the programming is to be offered to the viewer (Bergman and Stennek, 2007). The outcome of such negotiations is largely determined by the bargaining power negotiating parties have. Broadcasters and distributors respectively have leveraged market power to get most value out of carriage deals and used their political connections to shape the regulatory framework in their favor (Crawford and Yurukoglu, 2012; Evens, 2013b).

Overview of carriage disputes

Most of the incidents have appeared in the US so far, with high-profile disputes between Fox and Time Warner Cable (TWC), and between ABC and Cablevision. The battle between Fox and TWC first emerged late November 2009, and was settled 1st of January, when News Corporation (the owner of Fox) and TWC reached an agreement. The deal threatened to affect approximately 13 million TWC subscribers, among others in New York, Los Angeles, Detroit and Dallas, and was settled before any programming disruption occurred. While initially, TWC was said to have been willing to pay $0.20 per subscriber per month and News Corporation was seeking $1, the two were thought to have settled at an initial fee in the $0.50 range. In the second high-profile dispute, 3.1 million Cablevision subscribers lost their ABC affiliate WABC when Cablevision's dispute with ABC resulted in a day-long blackout, ending 15 minutes into the 2010 Oscar Academy Awards ceremony. It was the first time since 2008 that a major cable operator had lost a broadcast signal. Although the retransmission terms were kept confidential, most industry watchers believe ABC was paid between $0.27 and 0.37 per Cablevision subscriber. According to a report by SNL Kagan (2010), retransmission revenues have revitalized the broadcast model and have now become a standardized practice to reassure investors about the future viability of FTA networks. Furthermore, retransmission payments implied a fundamental change to the economic relationships in the industry to bring FTA networks more on par with cable networks. Ranging from $0.01 to about $4 per subscriber per month – with an estimated average of $0.25 – retransmission fees represent a solid income source for broadcast networks. SNL Kagan estimates that retransmission fees in the US grew from $215 million to $762 million

between 2006 and 2009, and they are projected to exceed $2.6 billion in 2016. With an annual growth rate of 19%, these payments would constitute 13.3% of total broadcaster revenues by 2016.

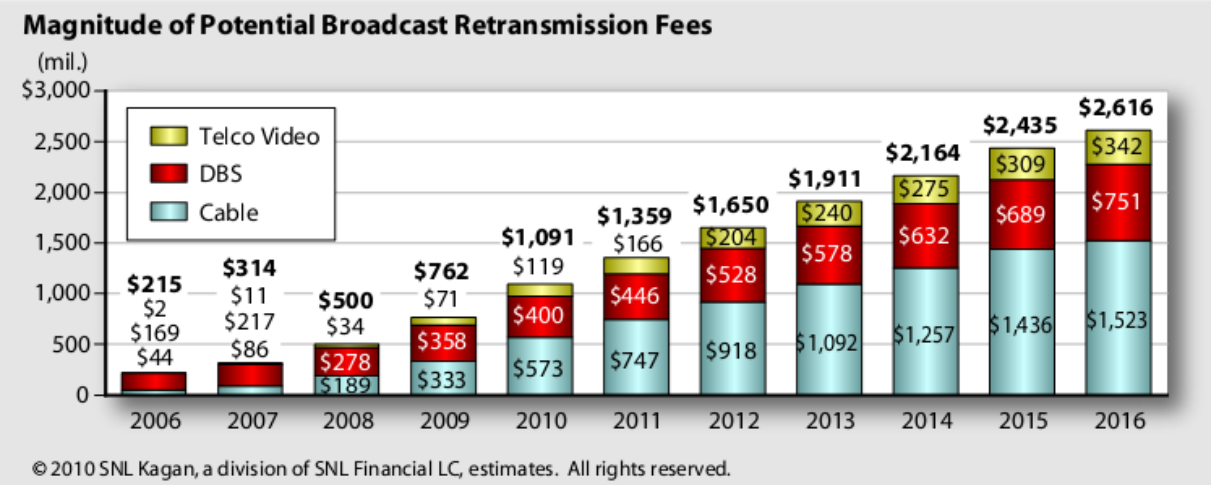

Figure 1: Evolution of US retransmission fees (SNL Kagan, 2010).

According to an Oliver & Ohlbaum Associates analysis (2011), the UK has the least generous television retransmission terms for FTA broadcasters when compared to a wide range of comparable developed world markets such as Australia, France, Spain and the United States. The report reveals that, in contrast to the other markets studied in the report, UK FTA broadcasters – most of them with public service broadcasting (PSB) requirements – enjoy only limited copyright protection and need to pay significant access fees to platforms for retransmission. In October 2011, the BBC claimed that it could save £50 million over five years if leading pay-TV platform Sky would waive the costs of carrying the BBC's channels on its satellite platform. Sky justified its access charges by arguing that the company had to recoup the £1 billion investments costs in its satellite platform (Webster, 2011). As a result of the public controversy following the BBC's statement, Sky published a new rate card which brought in a reduction in platform contribution for more than a hundred channels, and announced it would reduce the costs over 50 per cent by 2014 – from £24.4 million to £11 million for the main UK free-to-air broadcasters. According to calculations by newspaper The Guardian, the BBC will see its Sky access charges reduced from £9.9 million a year to £4.4 million, ITV's charges will fall from £8.1million to £3.1million, Channel 4 will see its charges reduced from £5 million to £2.7 million, and Channel 5's costs will drop from £1.4 million to £800,000. The PSB's, however, also argued that Sky should actually pay them for the privilege of carrying their channels, as they are the most popular on the Sky platform. Based on comparisons with the US, the PSBs claimed that Sky should need to pay £120 million to

offer the channels to satellite TV customers. Another study, commissioned by the UK's Department for Culture, Media and Sport, estimated the impact of retransmission payments on PSB's revenues between £190 and £220 million (Mediatique, 2012). Although Sky refuted the argument that it should pay PSBs for their channels, News Corporation, Sky's biggest shareholder, has successfully persuaded pay-TV operators to pay the Fox FTA network in the US (Sweney, 2012).

Implications for public welfare

Because of the characteristics of public goods, carriage disputes in broadcaster-to-distributor markets have received wide attention in popular press and trade magazines. Broadcasters as well as distributors have been involved in a 'hegemonic struggle' to convince public opinion that their negotiation counterpart is not playing fair, and are devoting considerable time advocating against each other, mainly through commercials and (sponsored) press coverage. On the one side, broadcasters demand a fair compensation for the investments in original programming, and claim that programming costs account for a small – and declining – proportion of a cable operator's revenues. According to Eisenach (2009), a study sponsored by the National Association of Broadcasters, US cable operator's gross profits increased with $14.03 to $62.99 per subscriber per month between 2003 and 2006. During that same period, programming expenses increased with $2.84 to $18.47 per subscriber per month. Hence, broadcasters point that cable operators' profits rose by about five times as much as their programming expenses. Moreover, broadcasters contend that the distributors have monopoly power due to high concentration and entry barriers, in contrast to the highly competitive market for video programming. Hence, broadcasters are not well-positioned to extract excessive retransmission fees from cable operators it is said (Eisenach and Caves, 2010).

On the other side, distributors complain about the 'brinkmanship' tactics that broadcasters use to receive higher fees in their negotiations with cable operators. Such tactics include various threats and conduct that harm the distributor more than they harm the broadcaster, including withdrawing signals from the distribution platform and thus causing a blackout. Salop et al. (2010a) show how brinkmanship behavior harms consumers through service interruptions and higher subscription prices. First, blackouts cause subscribers to lose access to desirable programming, especially when blackouts coincide with popular events like the Academy Awards (officially known as The Oscars) or the Super Bowl. Blackouts can harm

viewers by leading to uncertainty and anger that programming will be available. Secondly, blackout threats result in higher programming fees which lead inevitably to higher cable subscription prices in the US. According to the distributors, basic and expanded programming costs increased by 437% from 1995 to 2008, while the retail price for expanded services grew by 122%. Assuming a pass-through rate of 100%, retransmission payments in 2006 would have been responsible for $3.78 of a subscriber's annual cable bill, $10.08 in 2010 and $26.01 by 2016 (Salop et al., 2010b).

POWER RELATIONSHIPS IN TELEVISION BROADCASTING

Much of the literature on power relationships in television broadcasting is rooted in the political economy of communication. This critical approach is aims at unraveling social and, in particular, power relations within media ecosystems and analyzing structural processes of control over the production, distribution and consumption of information goods. The political economy of communication examines the institutional aspects of media and telecommunications systems, with particular attention to economic attributes of power, and the historical relationships between industry, state and consumers (Mosco, 2009). Through studying the concentration of ownership and control in media industries, political economists deal with corporate power and look at structural inequalities within capitalist market systems (Winseck, 2011).

Following this perspective, firms may exert market power when achieving monopolistic control over industry bottlenecks, such as premium sports rights or distribution networks. Bottlenecks refer to scarce but essential resources upon which the economic performance of an industry strongly depends. Hence, ownership of industry bottlenecks allows companies to play a 'gate-keeper' role in the market. The control of access to scarce resources, however, may be jeopardized in an era of plenty, which urges firms to seek new ways of constraining abundance in order to preserve market power (Mansell, 1999). With the rapid adoption of digital media technologies that substantially reduce distribution bottlenecks, Flew (2011, pp. 86-87) questions 'whether the economic power conferred by control over distribution channels and networks is diminishing over time or is being reconfigured around alternative sources of economic rents, such as highly restrictive copyright and intellectual property regimes'.

With regard to power relationships in television broadcasting, and more specifically between broadcasters and distributors, traditional political economists consider power

relations as static and determined, contending that distributors have gained economic power to the detriment of creative authors and content producers. A seminal contribution to the field was made by Garnham (1987, p. 31), arguing that 'it is cultural distribution, not cultural production, that is the key locus of power and profit'. The author contends that because the business of cultural goods is as much about 'creating audiences' as it is about 'producing cultural artifacts', distribution is characterized by the highest level of capital intensity, ownership concentration and multi-nationalization. Distributors act as gate-keepers, controlling access and bundling programming to commoditized audiences. Hence, controlling the distribution bottleneck is like having a 'liquor license' that awards distributors a privileged position along the value chain. In contrast to the high number of producers, economic power resides with those few firms that have oligopolistic control over the delivery of cultural productions – referring to the hourglass structure of media industries (many producers, few distributors). This concentration of ownership may result in power asymmetry with relations of power skewed towards distributors, and broadcasters highly depending on delivery networks controlled by multichannel operators (Hesmondhalgh, 2007).

Another stream of literature points that technological forces, and more abundance in transmission technologies in particular may loosen and eventually eliminate this distribution bottleneck. Hence, economic power is considered a fluid concepts that, depending on the configuration of business activities, circulates within the industry. As spectrum scarcity comes to an end, new distributors may come into the market and erode the power of established gatekeepers. Todreas (1999, p. 34) points out that profits move upstream, stating that 'conduit[s] will resemble a commodity while content will have the opportunity to create branded, high-value added products'. Whereas the 'analogue era' was characterized by little competition with incumbents protected by technology and politics, the proliferation of new distribution 'pipes' in the digital era will transfer power to producers of content, who will benefit from distributors' rivalry for delivering the best content. Control of intellectual property thus becomes a lucrative asset for the content business, possibly evolving as the new competitive bottleneck. Must-have broadcasters gain leverage over distributors in negotiations and may derive better financial terms as the distribution bottleneck erodes. Following the thesis that the broadcasting industry is evolving from a distribution economy to an attention economy (Davenport and Beck, 2001), powerful brands that successfully capture and aggregate consumer attention may benefit from scarcity. Hence, economic power in

broadcasting may shift from a distributor's ability to 'reach' mass audiences to a broadcaster's ability to 'attract and maintain' mass audiences (Christophers, 2008).

Broadcaster-to-distributor market

Instead of this polarized theory-driven discussion of which player exerts power over the other reducing the debate to a 'patron-client' relationship, with companies either in distribution or programming dominating the market, the allocation of power in television broadcasting is probably much more complicated. Rather than sticking to hollow aphorisms such as 'content is King, but distribution is King Kong', we assume that the allocation of power is not a linear process but highly depends on the institutional context of broadcasting, including the set of complex relationships between different parties in the business ecosystem. Hence, economic power, and more in particular bargaining power, in television broadcasting markets is context-specific, highly determined by the allocation of scarce resources within the industry, the individual nature of the broadcaster–distributor relationship and path dependency in media and telecommunications policies. As the strategic context of digital broadcasting is continuously in motion, the balance of power in the television industry is in flux and these relationships lack mutual trust (Donders and Evens, 2010, 2011; Evens and Donders, 2013).

The increasing sources of uncertainty in the broadcaster-to-distributor market, in which both parties negotiate the economic terms of distribution similar to those of manufacturers and retailers, however, have provoked conflicts between broadcasters and multichannel operators, who are grasping the opportunities for intervening in each other's markets, creating sources of market power and hence influencing the distribution of revenues in the system. Figure 2 shows that pay-TV operators are looking to partner with content producers (1) and advertisers (2), whereas broadcasters are directly connecting with viewers (3) and network carriers (4). These conflicts, resulting from but also provoking strategic by-passing behavior, eventually end up in a battle for power and control in broadcast markets and are illustrated by tough negotiations for carriage payments. In the United States, broadcast networks ABC, NBC and Fox have launched the Hulu platform, which allows consumers to watch their favorite shows directly over the Internet across multiple screens. Hulu forms a counterweight to YouTube and the 'TV Everywhere' services deployed by US distributors such as AT&T and Comcast. Similarly, Google-owned YouTube has announced partnerships with over 20,000 content providers to provide an online alternative to television broadcasting. In response, US

broadcast networks have collectively blocked access to Google TV and have demanded fair payment if their shows are retransmitted by Google.

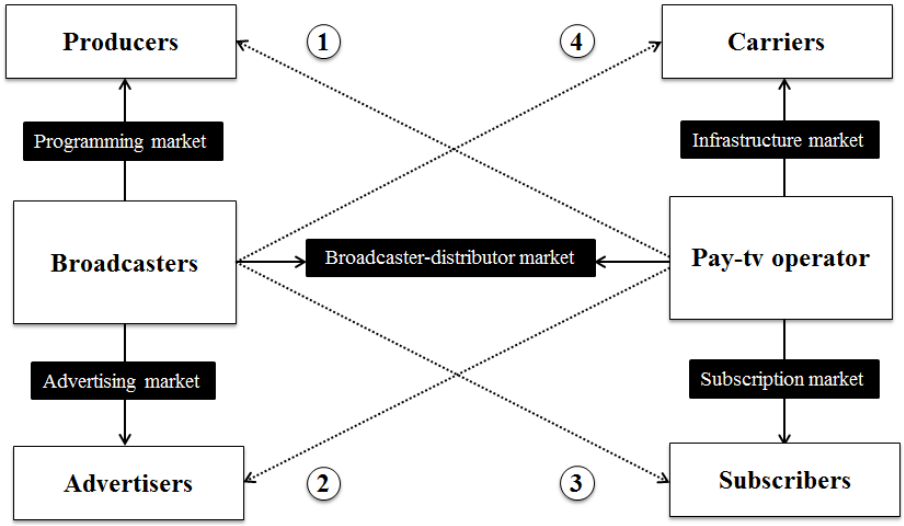

Figure 2: Double multi-sided platform market structure (Evens and Donders, 2013)

First and foremost, the broadcaster-to-distributor market is characterized by a mutual dependence between broadcasters and distributors. Such horizontal relationship is based upon the complementariness of their interests: broadcasters need distribution to reach an audience and sell advertising, while distributors need broadcast programming to attract subscribers (Bergman and Stennek, 2007). During negotiations, broadcasters and distributors bargain about the level of payments and agree upon the economic conditions for carriage. Distributors are aware of their control over the supplier's access to consumers, which may give them a strategic advantage in carriage negotiations. In buyer–seller relationships, however, it is not always in the retailer's best interest to reduce a supplier's margin, especially not – like in multichannel markets – where the value proposition of a platform strongly depends on the supplier's input quality. For the entire broadcasting industry, squeezing the margins of less powerful broadcasters may prove counterproductive in the long run, diminishing consumer choice and quality, and restricting financial capacity to invest in innovative content and services. By receiving monthly US$7 per subscriber, cable channel HBO is able to continue its investments in expensive high-quality series and deliver a value-added component for US cable providers – whereas the average fee for cable channels is less than US$1 per subscriber. Hence, the industry's long-term viability may crucially depend on a fair distribution of investments and profits between all stakeholders in the media ecosystem (Donders and Pauwels, 2012).

Since each party controls crucial platform functionalities, one could speak of a market with bilateral bargaining power, which closely relates to a second distinctive feature of this double multi-sided platform broadcaster-to-distributor market (see Figure 2). Current frictions and tough bargaining games between broadcasters and distributors directly relate to the arising nested, double multi-sided platform structure of the broadcasting industry. Since broadcasters and distributors both operate as a multi-sided platform, leveraging common components and shared user relationships, they are moving into another's market, resulting in a multi-platform bundle, a phenomenon called 'platform envelopment' (Eisenmann et al., 2011). HBO has sought direct access to viewers by providing online programming via its paid 'HBO GO' app, whereas cable operator Comcast has swallowed broadcaster NBC to secure access to popular programming. Such strategies for expanding market power eventually lead to corporate clashes and anti-competitive behavior. Coordinating demand between multiple markets enables each platform to employ strategies to internalize market externalities and reduce the 'taxes' imposed by other's platforms. Especially when they are vertically integrated with programming suppliers, distributors with market power may have incentives to set higher retail prices and discourage the promotion of unaffiliated channels (Waterman and Choi, 2011). By exerting pricing power, distributors can reduce the exposure of broadcast channels and negatively influence advertising revenues of rivaling channels (Kind et al., 2010). In addition to this pricing power, distributors eventually decide upon channel carriage, tier and position in the electronic programming guide. By allocating a channel in a high price-tier, or by positioning it as a high-number channel, distributors can negatively influence a channel's rating and performance, and, hence, exert bargaining power during negotiations (Chen and Waterman, 2007). After eight years of negotiation, Time Warner Cable and NFL Network finally reached an agreement in September 2012. NFL Network will be put on a basic digital tier rather than a high-priced sports tier package, and will thus benefit from higher viewership and retransmission payments.

BARGAINING POWER IN BROADCASTER-TO-DISTRIBUTOR MARKETS

So far, few research effort has addressed the origins of power positions in television broadcasting. Although literature suggests that the vast majority of buyer-supplier relationships are skewed in favor of large retail buyers (e.g. Dukes et al., 2006; Hald et al., 2009), the debate on which resources affect, influence and determine bargaining power in television broadcasting remains largely unsolved. According to Industrial Organization theory, bargaining power is enhanced by the concentrated ownership of critical resources, the

absence of substitutes for dominant buyers and/or suppliers, combined with the degree of product differentiation and the level of switching costs (Caves, 2005; Comanor and Rey, 2003). Media economics research has predominantly focused on the impact of firm size (Adilov and Alexander, 2006; Chipty, 1995; Chipty and Snyder, 1999; Ford and Jackson, 1997), vertical integration (Chen and Waterman, 2007; Hong et al., 2011; Lee and Kim, 2011; Singer and Sidak, 2007; Waterman and Choi, 2011) and conglomerateness (Goolsbee, 2007; Waterman, 2007). The abovementioned studies emphasize that market and firm structure are the main dimensions of the origins of bargaining power. However, we claim that strong economic positions not always pay off in superior commercial outcomes as favorable deals could be leveraged through personal relationships, negotiation skills, high motivation, strong leadership, and so on (van Dijk and Vermunt, 2000). Additionally, a change in the policy framework and regulatory environment can rebalance existing power relationships and may turn a seller's market into a buyer's market (Brown, 2003). Hence, we propose a multidimensional approach to bargaining power in television broadcasting, identifying five clusters of variables that help assessing the bargaining position of broadcasters and distributors respectively during carriage negotiations (see Figure 3).

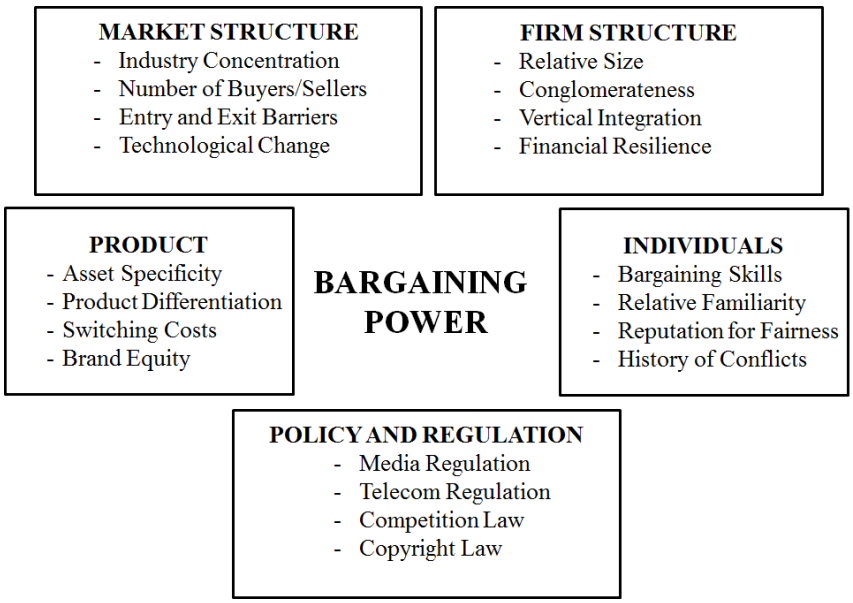

Figure 3: Bargaining parameters in television broadcasting

First, *industry* variables refer to the market structure in which broadcasters and distributors respectively operate. The degree of market concentration, measured by the *m*-firm concentration ratio (C_m) and the Herfindahl-Hirschman Index (HHI), is commonly used as an indicator of a firm's market power. A firm derives power by virtue of controlling a large portion of the market, with a monopoly (one seller, many buyers) and monopsony (many

sellers, one buyer) as extreme cases, and when the firm is protected by high barriers to entry. In this context, asymmetries in bargaining power might create pivotal power with particular broadcasters and/or distributors. This might occur when a broadcaster has an outside option and the flexibility to deal with other distributors if the bargaining between the two parties breaks down. Sports networks, or similar must-have channels, might have the ability to play pay-TV operators off against each other and sell exclusively to the highest bidder. Likewise, cable operators who are so large that their commitment is essential to a channel's decision to deliver might have significant bargaining power, and are able to extract large discounts from broadcasters. Hence, monopolists in cable television have a 'make-or-break' effect on a broadcaster's ability to successfully produce and distribute programming in a particular market, and obtain lower input costs for programming. Hence, firm size and industry consolidation have an important impact on retransmission negotiations between broadcasters and distributors. Nevertheless, the intensity of competition is largely influenced by the rate of technological change. Indeed, technology abundance could eliminate the distribution bottleneck, giving rise to alternative distribution opportunities including OTT platforms and Connected TV services, and erode the presumed power of pay-TV operators.

Secondly, *organizational* variables relate to firm-specific characteristics of the broadcasters and distributors involved in a carriage negotiation. As discussed previously, firm size (market share, customer base or geographical coverage) provides a substantial leverage to bargain more favorable carriage conditions. Vertical integration might allow cable operators to create synergies in terms of scale economies, and easily share information with producers about viewer tastes and preferences, but also raises create anticompetitive effects to non-integrated suppliers and buyers. Vertical control of affiliated networks may create incentives to stop supplying competing distributors and deny access to necessary input. Conversely, backward integration allows cable operators to deny unaffiliated networks access to their subscribers, and give carriage priority to affiliated channels (in terms of better positioning and pricing). Nevertheless, the majority of 'independent' networks is owned by large media conglomerates that are not involved in cable distribution (such as Viacom) and thus benefit from the financial resources and bargaining leverage of these media conglomerates. During carriage negotiations, financial resilience is therefore one of the most significant advantages that bargaining firms have. Furthermore, broadcasters that are highly dependent on distributors for the financing of their programs (in terms of total sales) might put themselves in a weak negotiation position.

Thirdly, distinctive *product* characteristics may bestow negotiating firms with a strategic advantage. Idiosyncratic assets, transaction-specific investments that cannot be deployed for any other purpose, create dependency and lock in customers forcing them to sustain the relationship. Independent broadcasters often invest in committed (or sunk) assets when producing TV programs tailored for (exclusive) carriage by a particular pay-TV operator. The fact that the producer has no outside options to monetize its specific programming without sacrificing the majority of its productive value places that production company in a dependent and hence vulnerable position. Moreover, broadcasters that deliver differentiated programs might have better cards during carriage negotiations – especially when they are able to bring in un-served target groups or provide value-added programming by which means distributors can differentiate from competing platforms. It is no surprise that ESPN, HBO and Sports Net tend to negotiate the highest fees in the US market. Since network distribution is likely to become a commodity and differentiation originates from enriching content services and state-of-the-art technology, this might benefit the bargaining position of must-have input suppliers. Consequently, strong media brands have an advantage during negotiations because they create customer loyalty and reduce churn. In this context, switching costs form an important determinant of bargaining power. When a TV broadcaster is dropped by a platform, a trade-off between churn (switching distributors) and viewer impairment (switching channels) takes place. The easier it becomes for a customer to switch between platforms, the more bargain power a broadcaster gains.

Fourthly, *personality* traits might heavily influence the bargaining process and eventually impact on the outcome of the negotiations. Since trust is an important determinant of cooperative buyer-supplier relationships, personality traits of individual negotiators are an important determinant of the 'atmosphere' of a carriage negotiation. Television is a 'people's business' where a network of interpersonal relationships is a valuable asset and often makes the difference between failure or success. In some carriage disputes, CEOs are not willing to put their ego aside and enter into agreement with a buyer (seller). Hence, the social context in which the negotiations take place are as important as the structure of the industry or media firm. Although strong economic positions can help a bargaining party, negotiators with good bargaining skills and strong leadership can make a remarkable difference around the table. High relative familiarity and empathy involves a close, cooperative and sometimes friendly relationship and often ensures an agreement that is perceived as fair by both bargaining

parties. In a similar way, broadcasters and distributors with a history of conflicts will lack a reasonable level of trust and could take a tough draw during the negotiations.

Finally, the *policy and regulatory* context might impact on the established power balance between broadcasters and distributors. Copyright law plays a decisive role in retransmission disputes and defines to what extent distributors need to receive consent from and pay royalties to broadcasters (or collective rights associations). In addition, the competition policy framework has been applied to facilitate free and fair competition in the TV broadcasting and distribution market, and ensures a level-playing field for broadcasters and distributors in their respective markets. In the past, competition authorities have been dealing with dominant positions in broadcasting and distribution markets, and have stimulated competition in the market. Complementing competition policy, media-specific provisions are affecting the relationship between broadcasters and distributors. In the US for example the Program Access Rules were designed to protect unaffiliated distributors and protect them from anti-competitive behavior. Similarly, the retransmission consent regime allowed broadcasters to demand a retransmission fee from distributors. Also may/must carry rules, media ownership caps and listed events regulations affected the power configurations in the broadcaster-to-distributor market. Furthermore, telecommunications regulation have gained importance in broadcasting markets now that telephone and telecommunications networks are playing a growing part in the TV industry. Hence, open access regulation and the hotly-debated net neutrality issues put an enduring pressure on the profitability of network carriers.

DISCUSSION

The main goal of this paper was to analyze how broadcaster-to-distributor relationships are structured and provide a framework that helps interpreting the nature of power relationships between broadcasters and distributors. Whereas political economy of communications literature takes a rather oversimplified view to this problem assuming a patron-client relationship, we have claimed that the allocation of bargaining power within the industry is largely determined by the ownership of scarce resources and influenced by structural features of the market wherein broadcasters and distributors operate. Contending that each party controls critical platform functionalities, we have argued that the broadcaster-to-distributor market is characterized by bilateral bargaining power, eventually leading to platform envelopment strategies.

Building further on Industrial Organization theory, combined with insights from political economy, it has been argued that bargaining power not only stems from market and organizational structure (such as firm size, vertical integration and conglomerateness), but is also largely affected by the social context. Indeed, market power not always pays in superior carriage deals, but is also leverages through personal relationships, bargaining skills and strong leadership. Furthermore, the policy and regulatory environment has a decisive impact on the structure and performance of firms operating in the industry, and hence on the outcome of commercial negotiations between broadcasters and distributors. Taking a multidimensional approach to power, the model defines five important determinants of bargaining power during carriage negotiations. Assessing the framework to both broadcasters and distributors allows policymakers and regulatory authorities for identifying potential bottlenecks and undertake appropriate measurements to provide a level-playing field and ensure balanced competition between broadcasters and distributors (including OTT operators).

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