



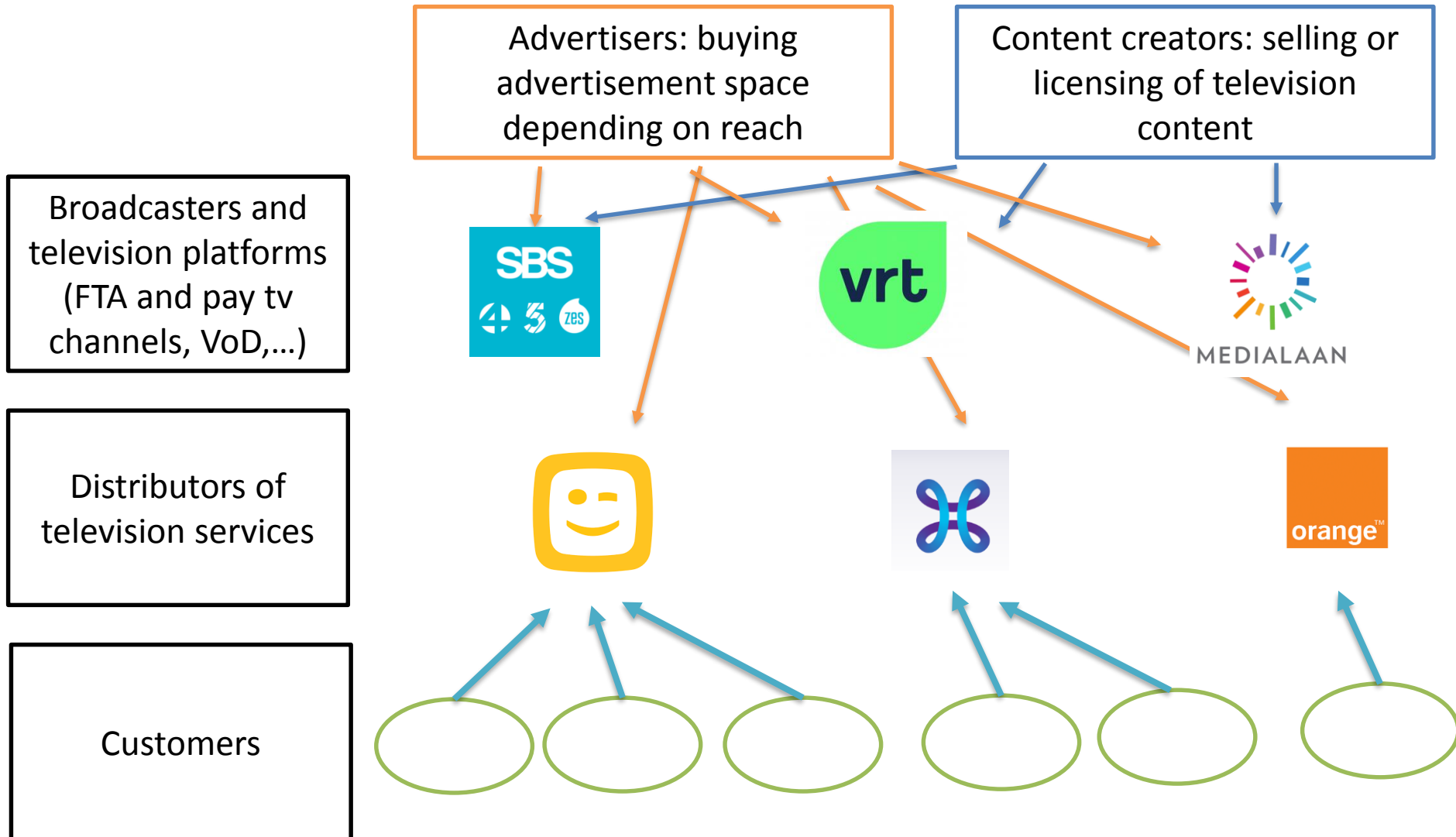
Telenet Group BVBA/De Vijver Media

ACE 2019 Copenhagen

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Deputy CE Belgian Competition Authority

Vertical merger in media sector

Industry configuration



Prequel: CASE M.7194-LIBERTY GLOBAL/ CORELIO/ W&W/ DE VIJVER MEDIA

Decision: February 24th 2015



LG controlling shareholder of Telenet
Telenet:

- Cable network operator in Flemish Region
- Operates a number of pay tv channels and VoD-services

50%

25%

25%

Publishing of newspapers, online news and selling of advertising space



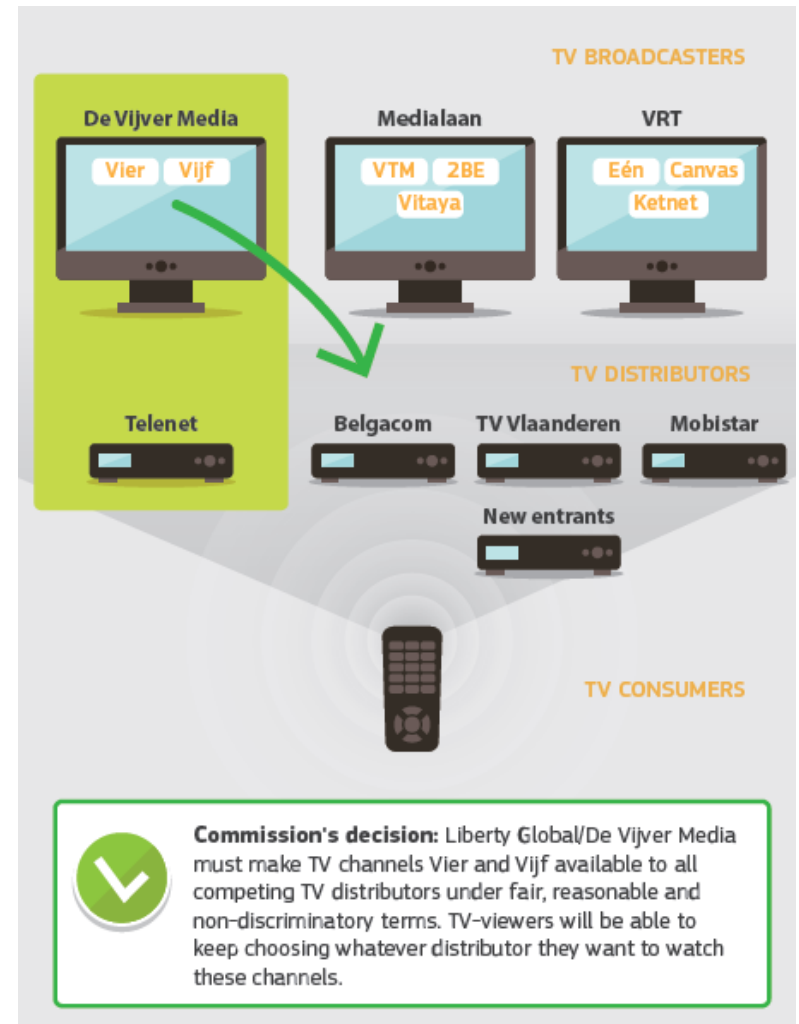
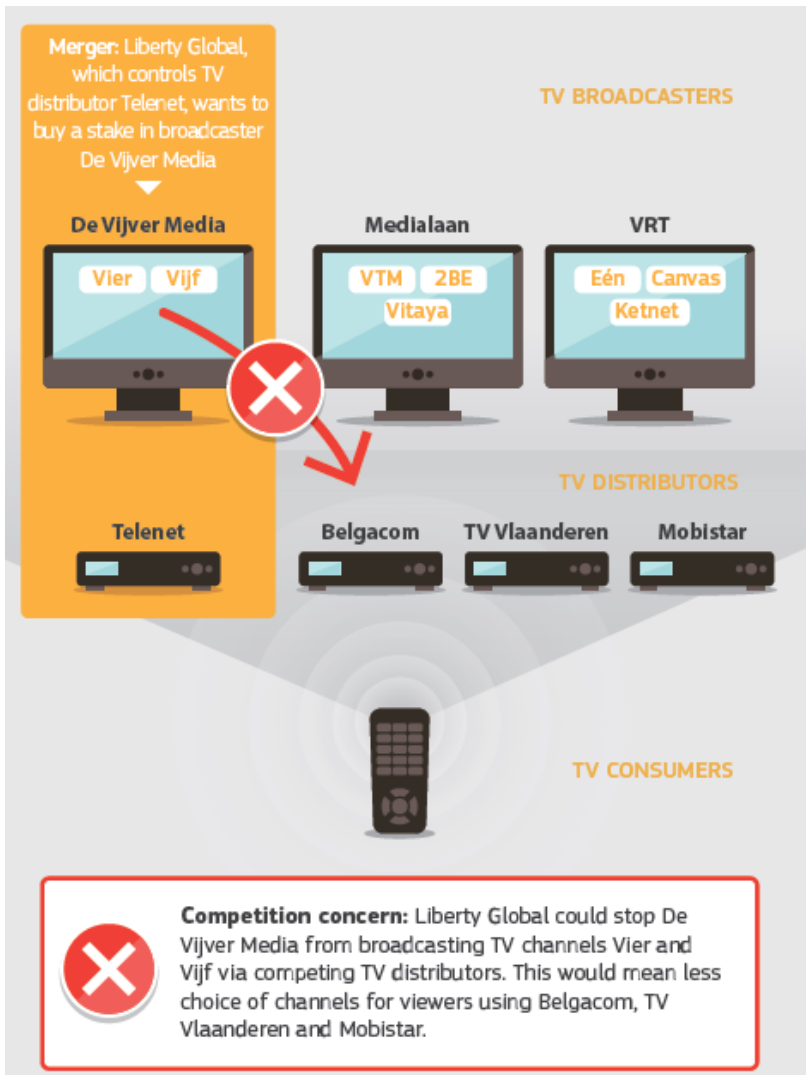
3 commercial Dutch-language basic pay TV channels
+ advertising on these channels

sales of advertising space on
third-party channels

("Desert fish"): production of
TV content

Prequel: CASE M.7194-LIBERTY GLOBAL/ CORELIO/ W&W/ DE VIJVER MEDIA

Main Theory of Harm: input foreclosure (foreclosure of DVM channels)



Prequel: CASE M.7194-LIBERTY GLOBAL/ CORELIO/ W&W/ DE VIJVER MEDIA

Commitments in 2015

- Input foreclosure – 7 years duration:
 - Respond to all reasonable requests from distribution platforms to distribute the SBS channels under FRAND conditions.
 - The parties may not intentionally do anything with the effect of reducing the quality of channels Vier and Vijf.
- Customer foreclosure: its proposal to Medialaan to modify the distribution agreement would continue to apply for a period of 6 months.

BCA – case: from joint to sole control

Decision: February 2019



~~Publishing of newspapers, online news and selling of advertising space~~

100%



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("Desert fish"): production of TV content



3 commercial Dutch-language basic pay TV channels + advertising on these channels



sales of advertising space on third-party channels

Vertical merger in media sector

Situation of players involved

Advertisers: buying advertisement space depending on reach

Content creators: selling or licensing of television content

Broadcasters and television platforms (FTA and pay tv channels, VoD,...)



5 – 10%
25 - 30%



20 – 25%
0 – 10%



25 – 30%
60 – 70%

Distributors of television services



60 – 70%



30 – 35%



0 – 5%

Customers



TOH 1: Total and partial input foreclosure of SBS-channels for distribution platforms competing with Telenet

- SBS-channels: important input => TNT has ability and incentive to foreclose
- Merger-specific element: the disappearance of the disciplinary effect of the other shareholders

Commitment - 7 years:

- Distribution on FRAND-terms
- No deterioration of quality

TOH 2: Partial foreclosure of Telenets distribution platform for competing broadcasters

- SEE FURTHER

TOH 3: Foreclosure of the AVAD-platform of Telenet for competing broadcasters

- Telenet: ability and incentive to foreclose competing broadcasters from access to its AVAD platform
- Essential that all commercial broadcasters have access to Telenet's AVAD platform in the same way and on the same commercial terms as the SBS channels

Commitment – up to 3 months after decision:

- Binding offer of the AVAD Agreement to any Flemish broadcaster that makes a written request to sign into this, on condition that the broadcaster submits a credible and substantiated business plan on the basis of which Telenet can realise a RoI in line with the market over a period of 3 years.

TOH 4: Foreclosure of access to their own user data for competing broadcasters

- Telenet: ability and incentive to foreclose competing broadcasters from accessing their user data
- Essential that broadcasters have access to the data generated by Telenet on the basis of their own content.

Commitment – 7 years:

- Not to share (analyses of) viewing data relating to competing channels with, or to use them for the benefit of its own channels or production company
- Chinese Walls for confidentiality
- Creation of a “Viewing data platform” to which Flemish broadcasters can gain (paid) access, but only wrt their own channels and only to use for own activities

Customer foreclose

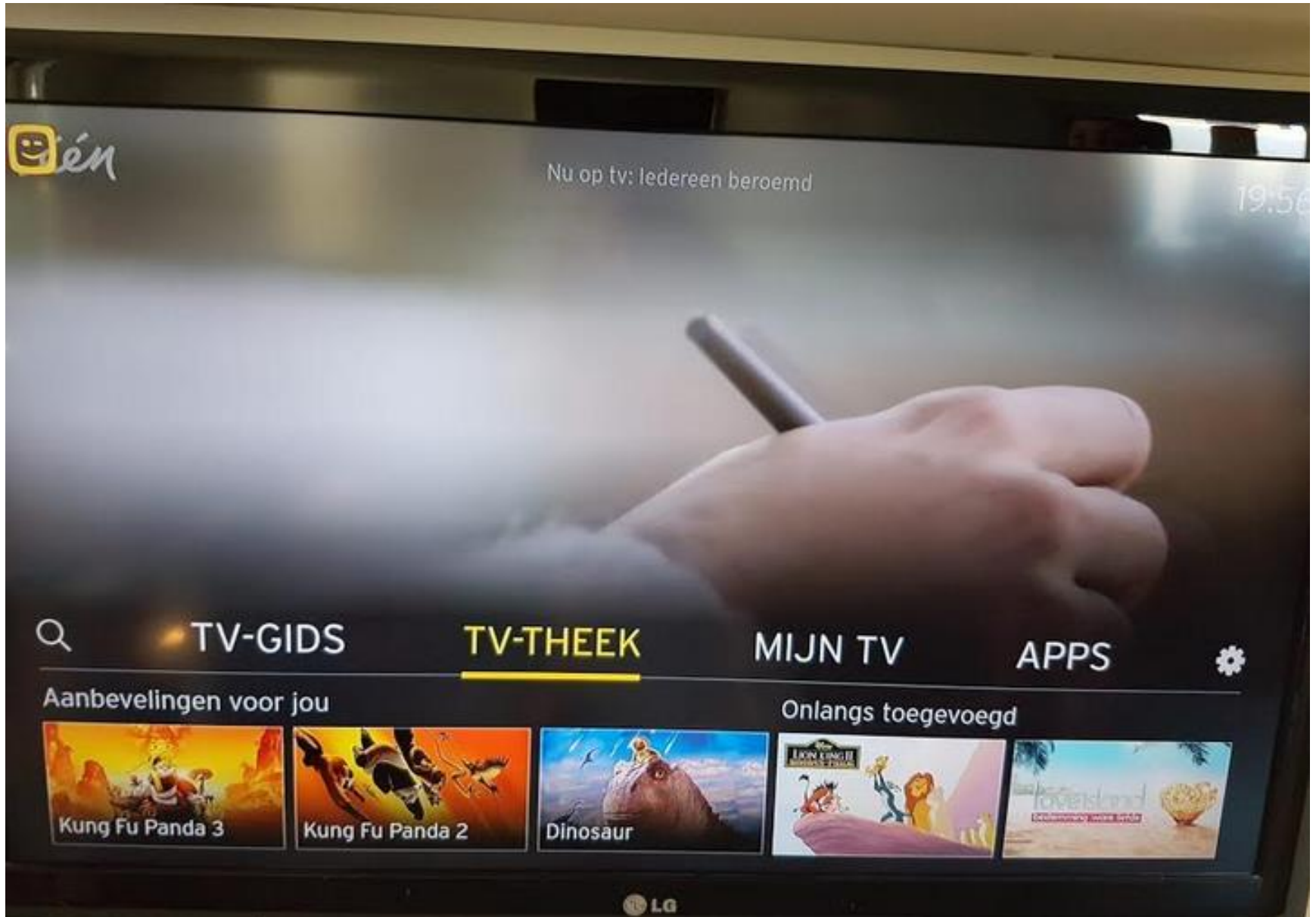
- Merger specific element:
 - Ability: disciplining effect of other shareholders drops
 - Internal presentations and board documents describing the strategic possibilities under sole control
 - Purpose of the transaction (in notification form): aim initial partnership => enhancing DVM's ability to increase competition in the television markets BUT problems to achieve this because:
 - few synergies between activities of shareholders
 - changing consumer behavior
 - changes in the behaviour of advertisers
 - => Sole control by Telenet: easier to achieve synergies between Telenet and DVM => increase the attractiveness of the channels of DVM for advertisers and consumers (better content, more innovative ways of consuming content)
 - Incentive: increase of advertising income (now 50% ; post-transaction: 100%)

Customer foreclose

Ability – how is foreclosure possible?:

- Telenet still dominant distribution platform in Flemish region (60 – 70% on the downstream market)
- TNT: introduction of new STB's => more possibilities to impact aggregation and curation
- Importance of EPG-positioning and user interface – see next slides:
 - Professor Donders – expert in media
 - Study Ofcom
 - Deterioration can be implemented in a very subtle way
 - Results of market investigation
- Price discrimination wrt distribution fees

Customer foreclose



Customer foreclose



Customer foreclose

Incentives partial foreclosure:

- Costs very limited: quality deterioration and steering of own content can be done in a subtle way, but with a significant impact on viewing behaviour
- Consumers Telenet highly locked-in: high share of multiple play customers => not likely that many of them will switch due to this quality deterioration
- From joint to sole control: additional profits of partial foreclosure for DVM after transaction 100% for Telenet
- Calculations based on method DG Comp in 2015 + reviewing calculations of CRA
- Result: incentive even if distribution fee still has to be paid

Customer foreclose

- Update approach 2015:
 - yearly ad income DVM on TNT platform; increase per percentage point of the viewing share => “x” euro additional ad income; In 2015 – only 50%; In 2019 – similar amount but at 100%
 - Compare this to critical churn. In 2015: not done by EC. Two explanations:
 - i.) not feasible to calculate reliable switching rates under partial foreclosure
 - or ii.) churn in case of partial foreclosure considered to be neglectible (e.g. due to locked-in situation of TNT customers)
- Method CRA - disagreements between CRA and BCA regarding assumptions made by CRA - Expectations BCA:
 - Higher % of viewers that switch away from a foreclosed broadcaster
 - Higher % of these viewers that will switch to DVM-channels (close substitutes)
 - Higher impact on advertising income: for Dutch television ad space DVM by far 2nd most important supplier => lost ad-sales of Medialaan would largely shift to DVM
- Higher critical switching rate than CRA + high locked-in character of TNT customer

TOH 2: Partial foreclosure of Telenets distribution platform for competing broadcasters

- Non-price related discrimination: reduce the quality of the viewing experience
- Price related discrimination: use threat of full foreclosure or quality degradation to force broadcasters to accept lower distribution fees

Commitments – 7 years:

- **No change of the existing EPG ranking** without objective justification.
- **In the EPG, the User Interface and the Recommendations:** treatment of other channels in equivalent, **non-discriminatory manner** compared to SBS-channels
- New SBS channels distribution fee no benchmark for other channels