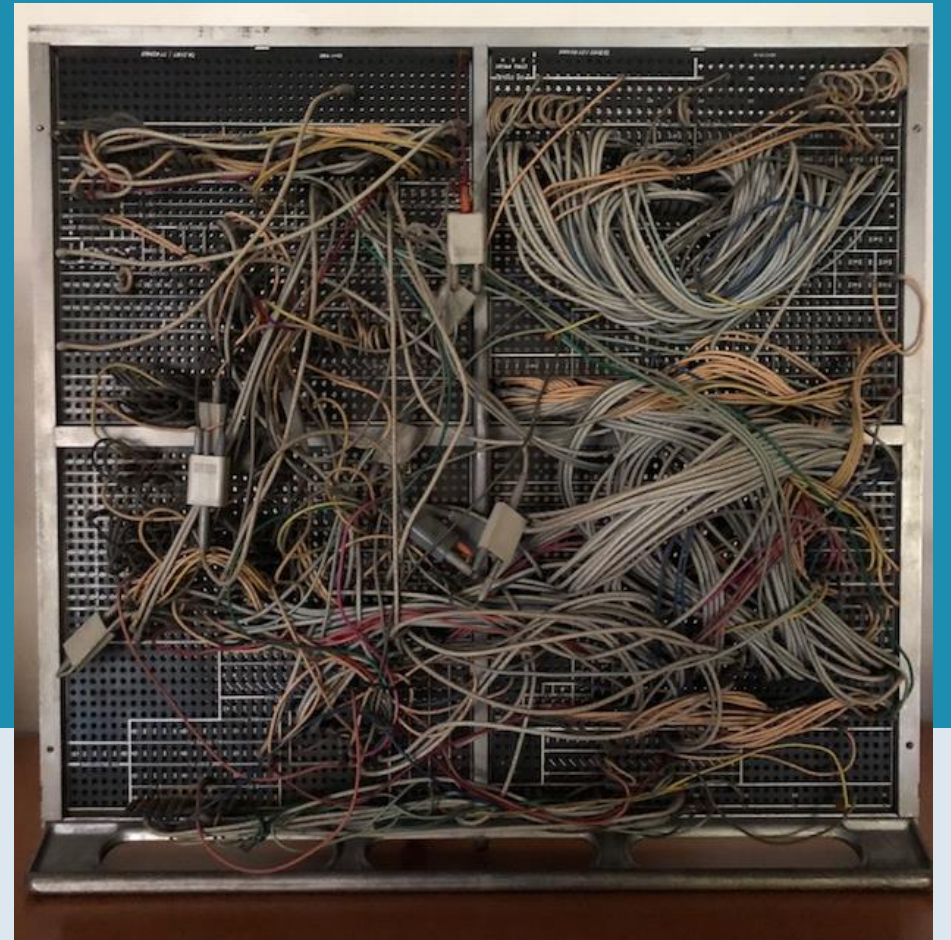


Telenet-DVM

Prof.dr. P. Van Cayseele
Department of Economics

ACE Conference-Copenhagen,
November 15, 2019



THEORIES OF HARM AND COMMITMENTS

- 1 INPUT FORECLOSURE ➡ Remedy (R1): Distributors get access to broadcasters (in particular channels 4&5) on FRAND conditions.
- 2 CUSTOMERS FORECLOSURE ➡ Remedy (R2): Program Guide ranking of channels unchanged (unless objective reasons to do so) and Distribution tariffs remain unchanged (***discussion between BCA and CRA***)
- 3 FORECLOSURE OF AVAD platform ➡ Remedy (R3) : Targeted Advertising originating from non SBS broadcasters at similar conditions
- 4 FORECLOSURE ON DATA ➡ Remedy (R4) viewer data not exclusively available to SBS broadcasters

COMMITMENTS (=REMEDIES) *EVALUATED*

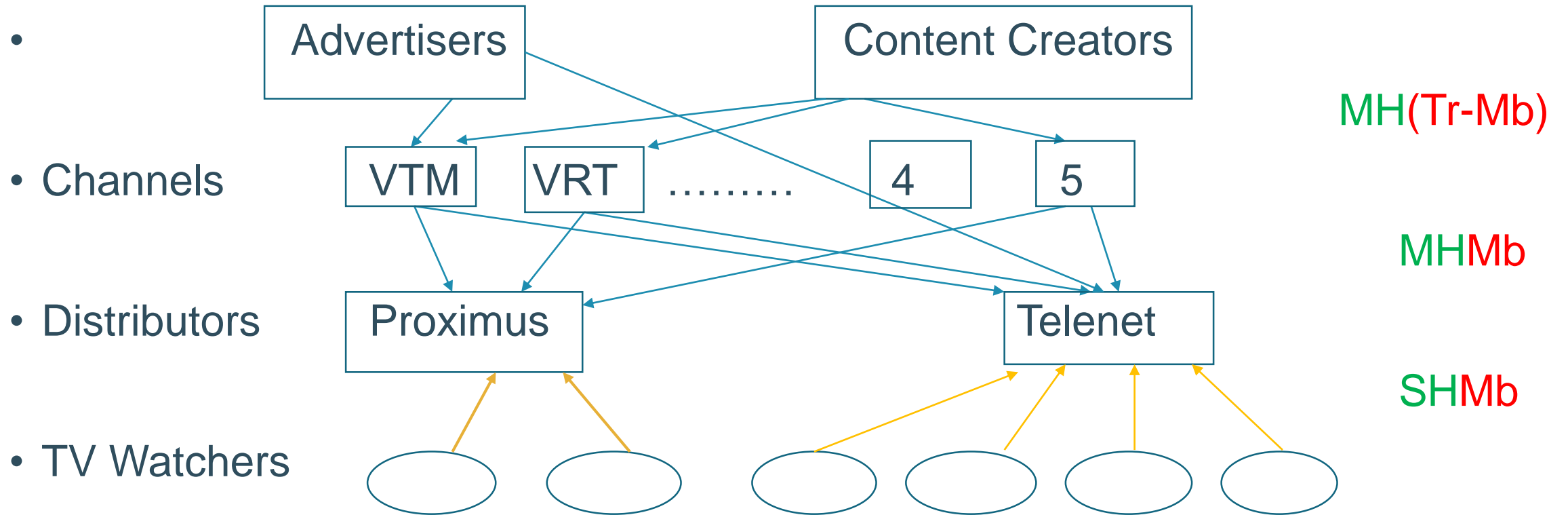
- Two criteria:
- **1 Efficiency** (17 minutes)
 - Was it necessary to impose a remedy, or this **bundle** of remedies?
 - *My role: raising some questions (marked **?**) based on insights from the **academic literature***
- **2 Implementability** (3 minutes)
 - Is it easy/possible for the monitoring trustee/BMA to follow up on the remedy?
 - *My role: share some **experience acquired** in similar cases/environments*

PART 1: Necessity of the Remedies



CREATING (SOME) CLARITY IN THE SPAGHETTI

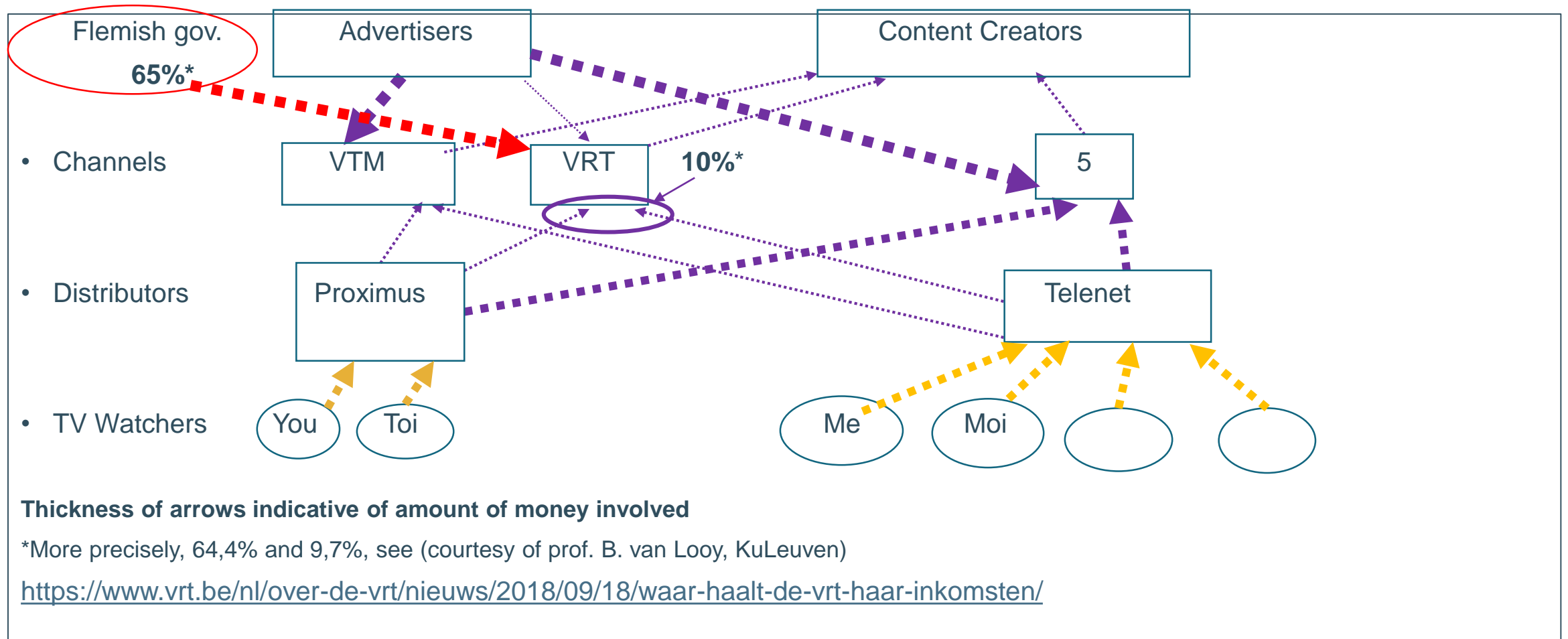
INDUSTRY CONFIGURATION



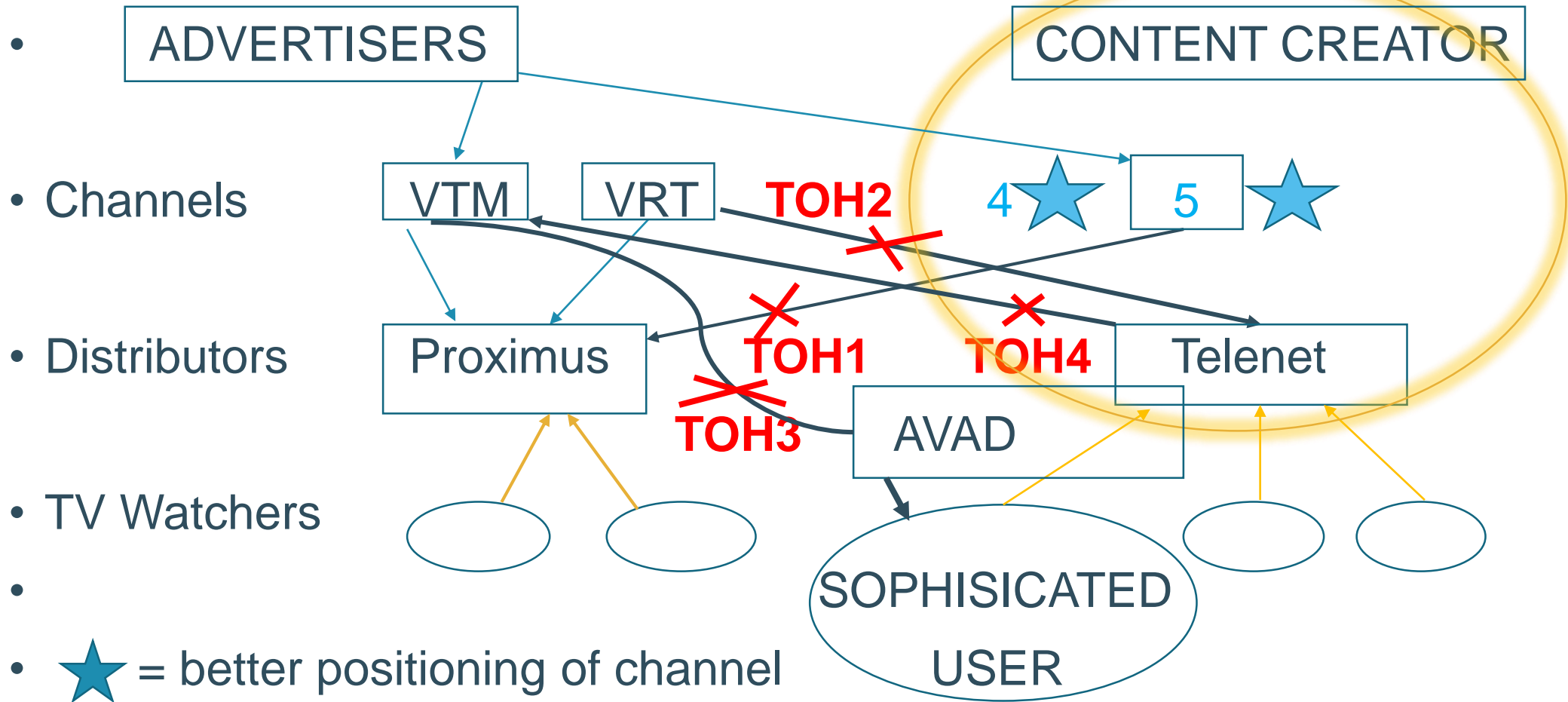
MH-SH Multi or **S**ingle **H**ome

Tr-Mb Transaction or **M**embership Fee

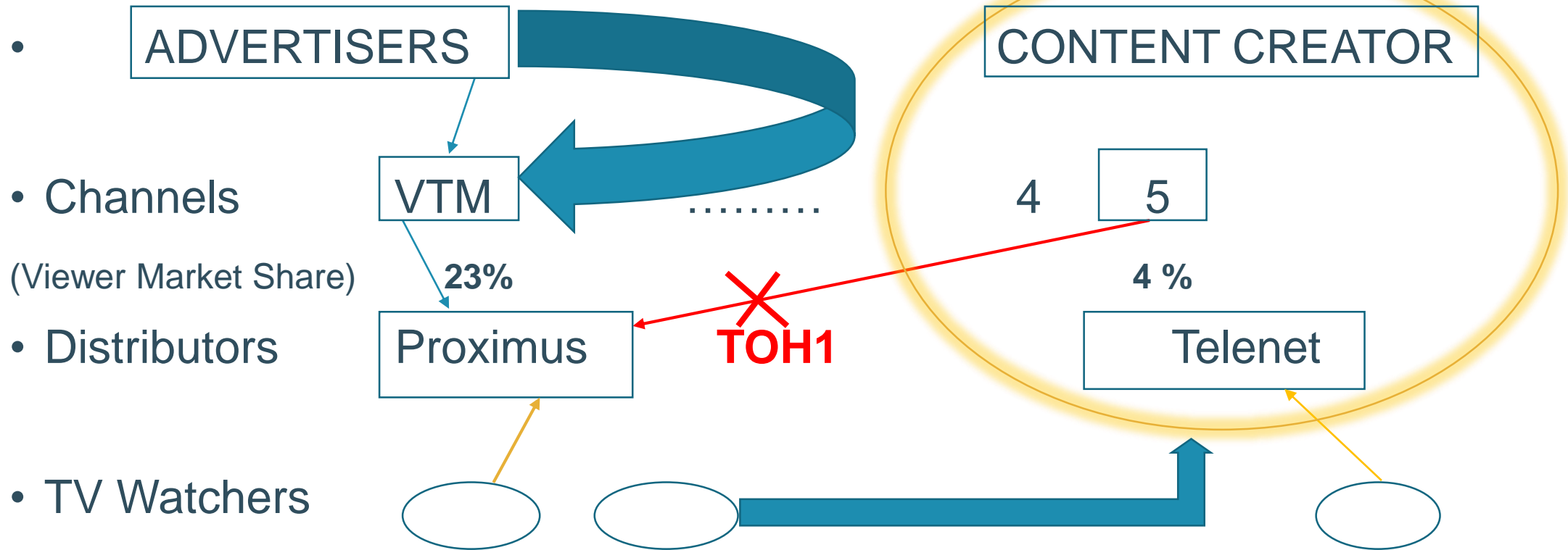
INDUSTRY CONFIGURATION (Revenue Flows)



INDUSTRY CONFIGURATION (TOH's)



INDUSTRY CONFIGURATION (Input Foreclosure)



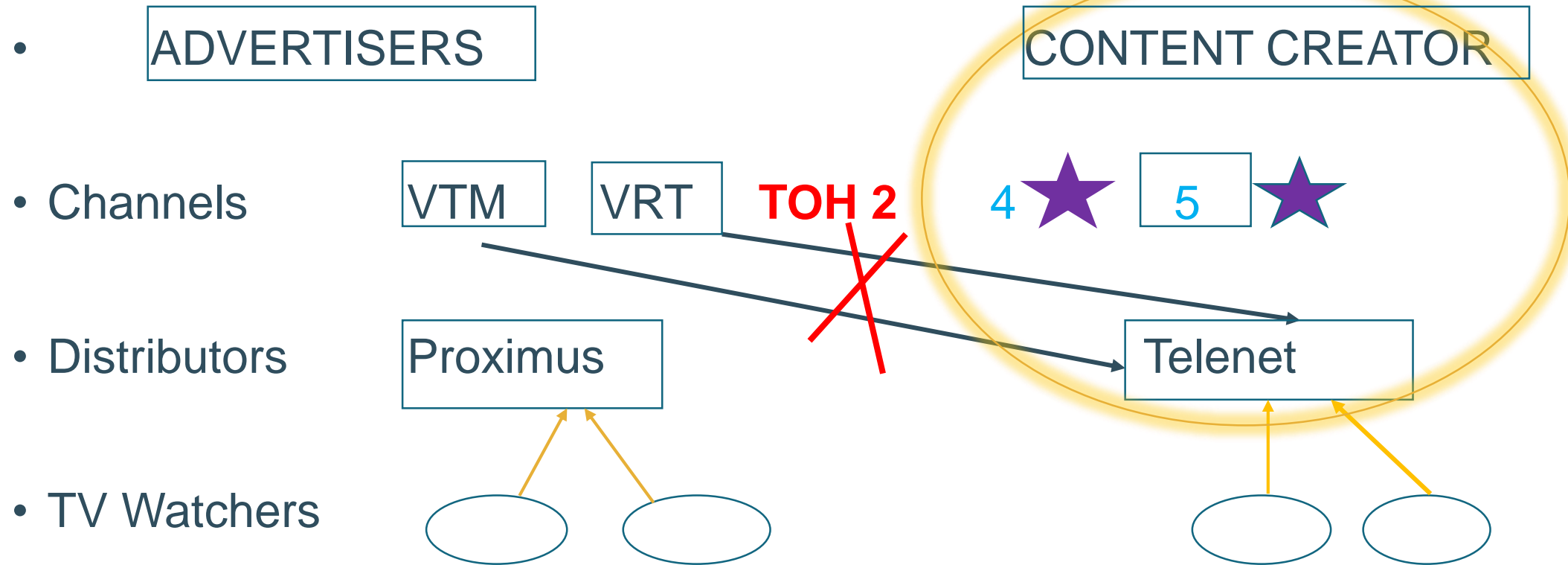
INPUT FORECLOSURE

- On page 12 (nr. 70) of the decision BMA identifies the market as **two sided**, ***and the analysis of the feedback loop from TV watchers to advertisers was based on the calculation of a critical switching rate from Proximus to Telenet in comparison to an estimate based on surveys.***
- Why would the DVM-Telenet **silo** not offer channels 4-6 to Proximus, reaching more potential consumers and thereby collecting more advertising money flowing to the DVM channels?
- **The crucial question then is: do the *incremental gains* from more subscribers to the Telenet platform compensate for the marginal losses in *reduced advertising money* that will be collected by the DVM channels?**

INPUT FORECLOSURE (2)

- If the stealing of Proximus clients is massive, then of course most advertisers will move to DVM channels, but Telenet already has a large market share. How many additional TV viewers will switch?
- Proximus and Telenet sell bundles (TV, data streaming, fixed phone, mobile phone, alarm systems, ...), so will TV watchers subscribe to Telenet as the result of a narrower offering of TV channels given the other services in the bundle?
- What is the **cross quality** (*deterioration* = having less channels) **elasticity at the extensive** margin of viewers versus the **cross quality elasticity at the intensive margin of advertisers**.
- Do the surveys capture revealed behavior to a sufficient extent (e.g. was it made clear to the participants that they are in for quadruple play?)
- ?

INDUSTRY CONFIGURATION (Customer Foreclosure)(discussion between BCA and CRA)



★ = better positioning of channel

CUSTOMER FORECLOSURE

- Two issues here:
- **1) Quality degrading and Partial foreclosure : Electronic Programme Guide (EPG) Accessibility**
- **2) Price discrimination and Total Foreclosure as a threat point in the bargaining game**
- **Quality**
- From all the research on auctioning positions in Google ads, we know there may be an issue, see (among others):
- B. Edelman, M. Ostrovsky and M. Schwarz, 2007, Internet advertising and the generalized second-price auction: Selling billions of dollars worth of keywords, *American Economic Review*
- But is the “**downscrolling fatigue**” equally strong for TV where there are a limited number of channels with very **different** content, as opposed to very similar ads?
- **Apparently yes: Reports by OFCOM** find that the channel position on the menu is important. (I have somewhat more doubts because even for channels very deep in my menu, I can use the function “Record the entire season”. So once I found the program of my interest, I don’t worry for months whether I will be able to recall finding it).

CUSTOMER FORECLOSURE (2)

- **Price:** But would it affect the **distribution fee** negotiations? Is **Total foreclosure a threat point?** Maybe, but **not possible** for VRT, a **public** broadcaster. So total foreclosure is not a threat point in the bargaining game between Telenet and VRT.
- How does that effect VTM, the largest competitor of VRT?
- Two scenario's:
 - a) VTM very much afraid that if it doesn't agree to accept a lower distribution fee, it will not be distributed anymore, so VTM concedes
 - b) VTM goes to court or colludes with VRT to bargain jointly against Telenet, given the "entente" that already exists on the fact that VRT leaves advertising (mostly) to VTM provided that VRT receives public money

Outcome



CUSTOMER AND INPUT FORECLOSURE(1) : SUMMING UP

- **And now to the more interesting question:**
- “DOES BCA need to worry about BOTH input and CUSTOMER FORECLOSURE and impose 2 remedies?”
- ***I can only guess*** for TV , but ***I know*** for Classified Advertising Directory Services (= Yellow Pages), see:
- D. De Smet and P. Van Cayseele, 2012, The Universal Service Obligation for Telephone Directories: Regulating the Redundant Competition and Regulation in Network Industries, Vol. 13, No. 1, pp.40-70

CUSTOMER AND INPUT FORECLOSURE (2)

- In that article, we write:

*“ We examine the Universal Service Obligation (USO) for telephone directories . In most countries , the USO consists of **two parts**. First publishers must offer a **comprehensive directory, including all telephone subscribers**. Second, this directory should **be available to all users**. Building a simple model inspired by the literature on two-sided markets, we find that one of these two obligations is redundant. **Imposing availability to all users is sufficient to induce publishers to offer a comprehensive directory. The reverse however does not hold.**”*

- Takeaways:

Availability= No Customer Foreclosure

Comprehensiveness= No Input Foreclosure



Single Homing Side will not be foreclosed due to R2

CUSTOMER *AND* INPUT FORECLOSURE (2)


SO: dealing with customer foreclosure is sufficient to guarantee no input foreclosure

Probably this explains why in TNT-DVM the discussion between CRA and BCA focussed mostly on customer foreclosure.

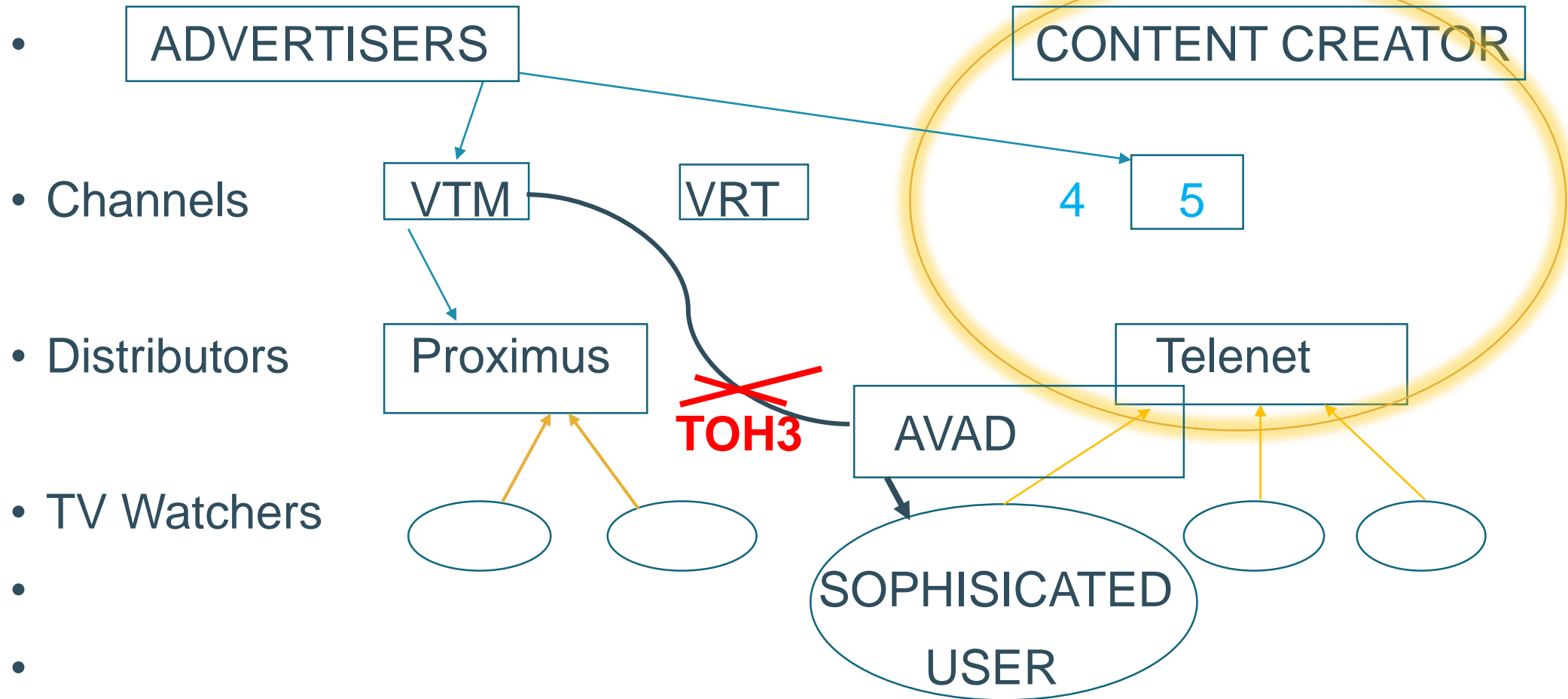
Probably this explains why the remedy to not discontinue the distribution of Medialaan remains in place for a long time (7years)

And BCA imposed no input foreclosure nonetheless (maybe due to dismissal of the argument in the EC case). I infer from this they didn't rely on no customer foreclosure to guarantee no input foreclosure: **better safe than sorry**

CUSTOMER AND INPUT FORECLOSURE (3)

- ***There is no analysis of efficiency gains***
 - (Again probably because the earlier decision by the EC did not investigate these)
 - See also:
 - Cristina Caffarra, Gregory Crawford and Helen Weeds, 2018, Kabuki Dances or Rube Goldberg Machines? Vertical Analysis of Media Mergers, *CPI Antitrust Chronicle*, August, 8p.
 - Efficiency gains: internalizing pricing externalities
 - Vertically: Double Marginalisation (Spengler (1950))
 - Horizontally: Complementary Cournot Problem (Cournot (1838), ch. 10)
-  This last one will pop up in Data Foreclosure later on

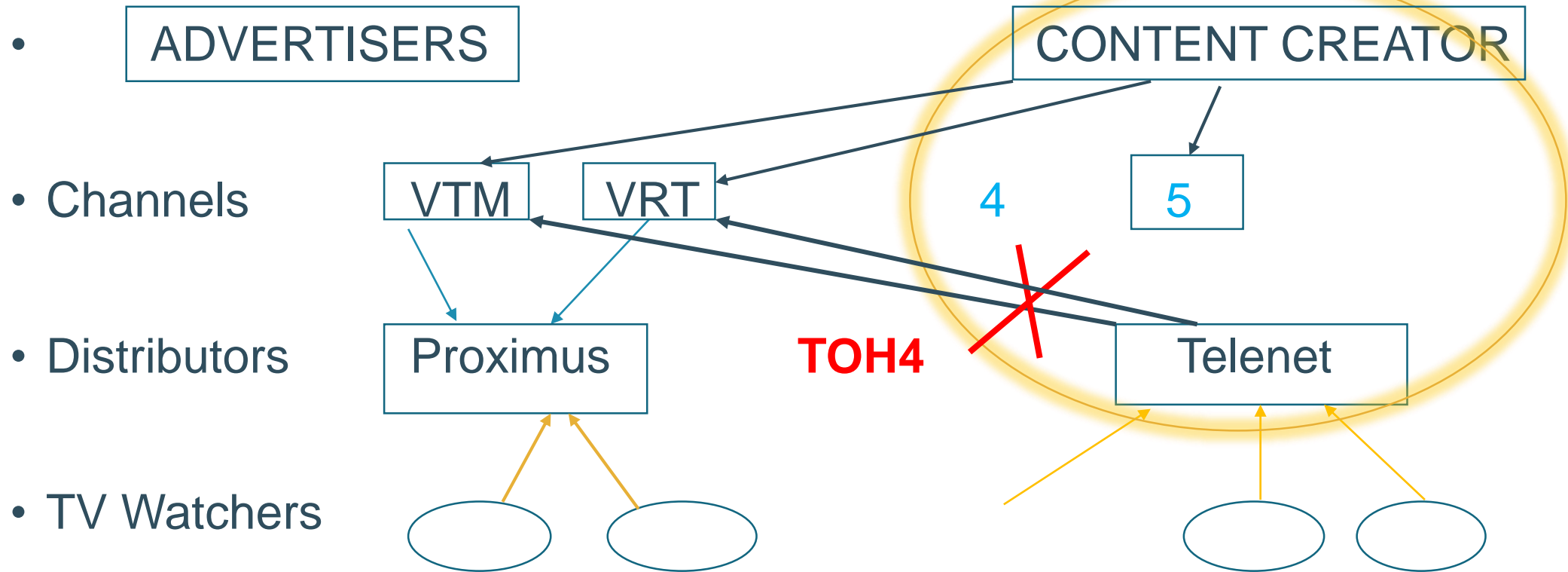
INDUSTRY CONFIGURATION (AVAD Foreclosure)



AVAD FORECLOSURE


- Economic Analysis in the “**industry configuration used until now** “ is much in the same line as with Customer Foreclosure, except distinction of TV viewers that are targeted by more sophisticated advertising
- Will skip this TOH in view of time and given that it expired after 6 months and was meanwhile not lifted.

INDUSTRY CONFIGURATION (Data Foreclosure)



DATA FORECLOSURE(1)

- Several Models available*, *one* for example is:
- Patrick Van Cayseele and Jo Reynaerts, 2011, Complementary Platforms, *Review of Network Economics*, Vol. 10, pp. 32-63

 Data **and** last mile are **complements** in the production of a successful advertisement or viewing “experience”. Advertisers therefore need **both** distributors and channels for producing targeted advertising.

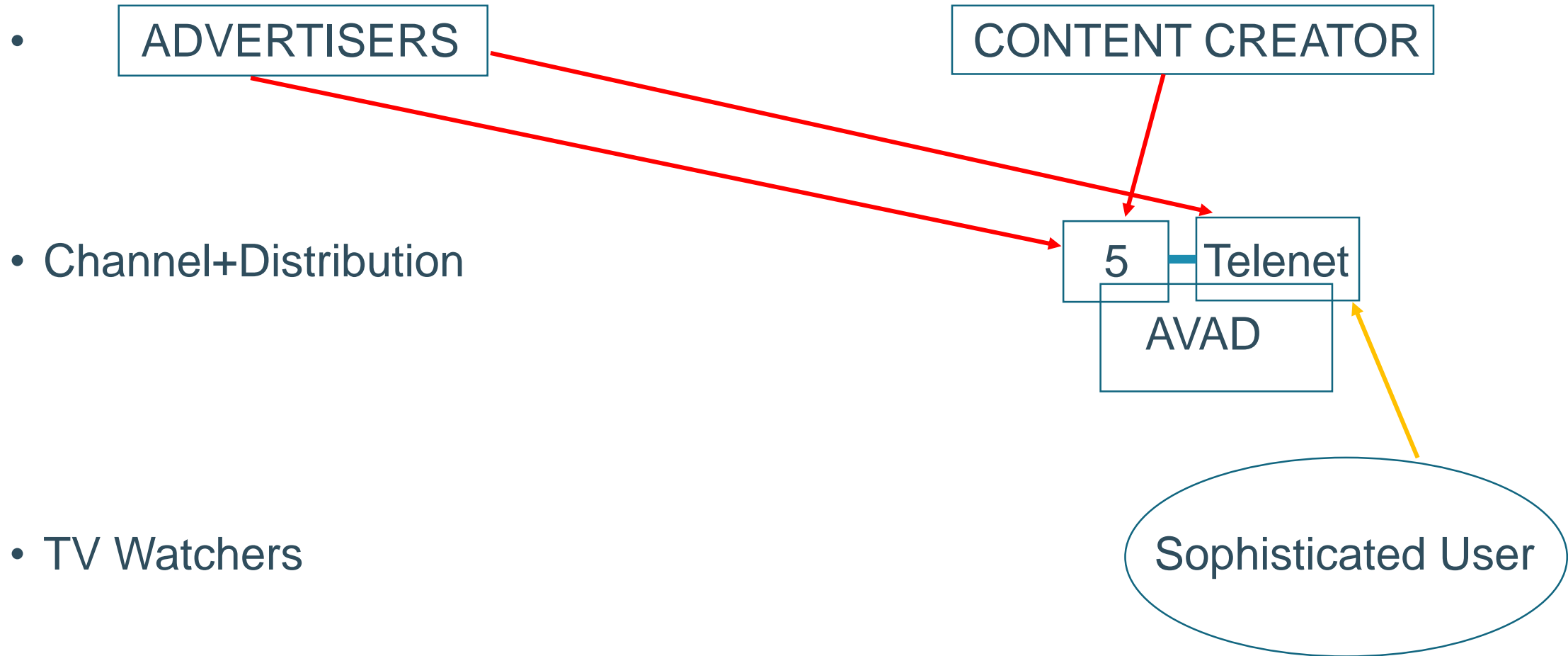
Take-away: A merger between complementary platforms benefits the multihoming sides (advertisers providers) at the detriment of the single homing side (TV viewers), but overall price declines and single homing side gets better/more content: **the merger in this configuration is pro-competitive****

Model is on transactional competition a la Rochet Tirole (2003) (Remember **Tr** on slide 5)

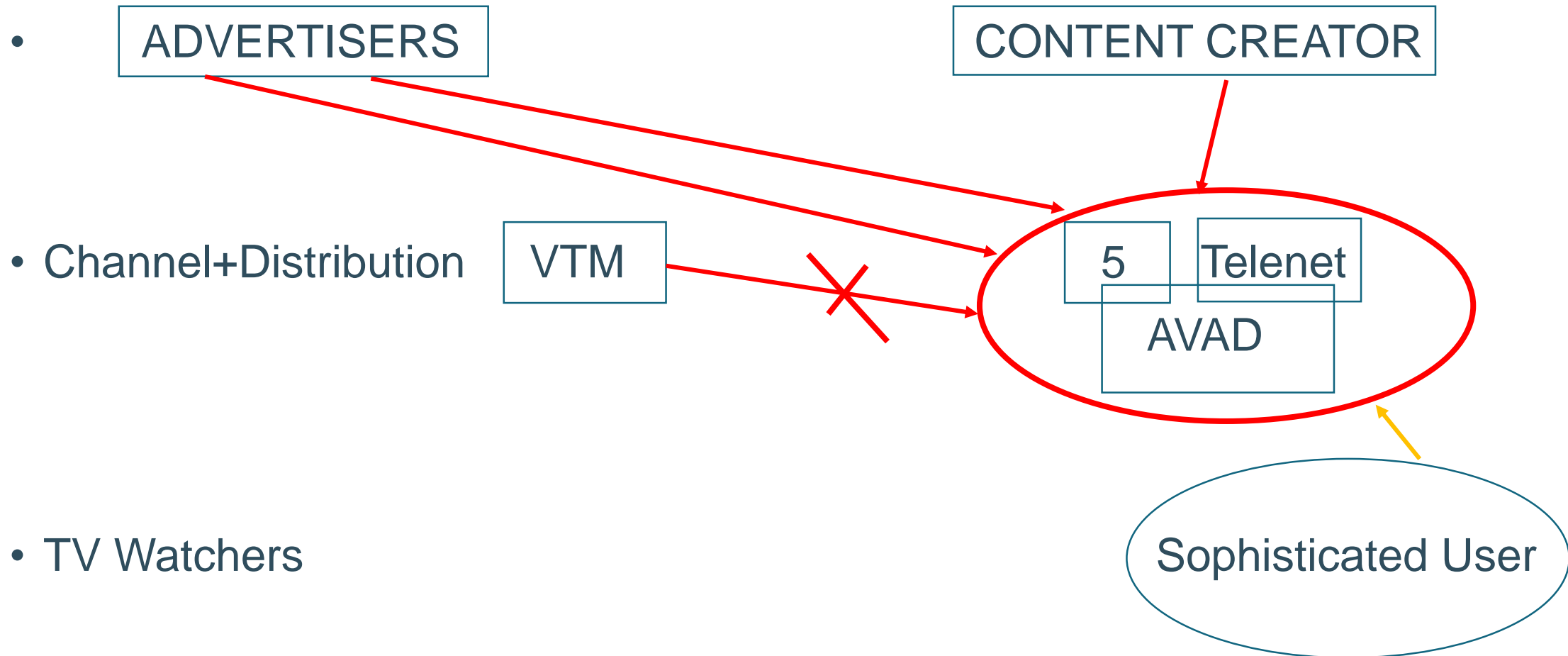
* Montes, Sand-Zantman&Valetti(2018), Kim, Wagman&Wickelgren(2018),

** But beware of the Katz-critique: see Michael Katz, 2018, Platform economics and antitrust enforcement: A little knowledge is a dangerous thing, *JEMS*, Vol. 28, pp. 138-152

INDUSTRY CONFIGURATION (VC&R(2011) Data Merger, before)



INDUSTRY CONFIGURATION (VC&R(2011) Data Merger, after)



DATA FORECLOSURE(2)

- *Another* Model however is:
- Alexandre de Corniere and Greg Taylor, 2019, Data and Competition, Mimeo, Toulouse School of Economics and Oxford Internet Institute, University of Oxford*

 Focus in this model is on **more** uses of data than merely establishing a transaction (better data enhance channels' markups because they have better data), which can be done in their framework because the model is on competition-in-utility a la Armstrong-Vickers (2001)(Remember **Mb** on slide 5)

Take-away: Data availability (through merger if trade is not feasible) is **anti**-competitive for targeted advertising (with nuisance costs).

BUT DIFFERENT MODELS YIELD OPPOSITE CONCLUSION, so ? Again

* Thanks to Prof. Helen Weeds (Imperial College) for having suggested me this reference

Part 2: Implementation of Behavioral remedies

Here I wore a different casquet!!!



SOME EXPERIENCE WITH PAST BEHAVIORAL REMEDIES IN THESE INDUSTRIES

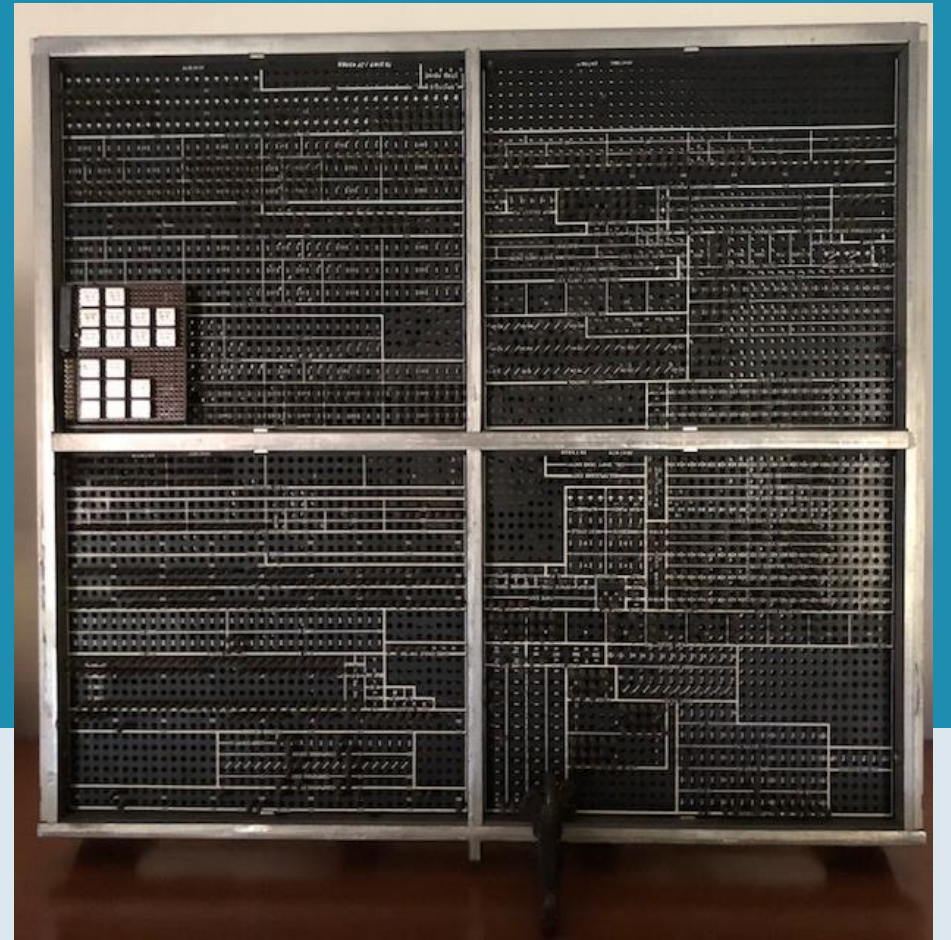
	Violation	Void
BCA in other Media cases	CPI cap on AD prices in yellow Pages	
French CA in TV	CanalSat/TPS	
BCA in TNT-DVM		Some (one?) remedies offered but not called

SOME EXPERIENCE WITH PAST BEHAVIORAL REMEDIES IN THESE INDUSTRIES (2)

- **BCA in other Media cases.** In the “Truvo” merger (Yellow Pages-White Pages), BCA imposed the restriction that prices of ads could not increase more than the CPI. According to the consultant involved in the same operation in the Netherlands, this was not the case and hence the Dutch competition authority did not consider this remedy. (The merger was approved without remedies)
- **French CA in CanalSat/TPS.** Clearance of merger had been granted in 2006, on the condition that remedies (**seemingly 59!!!**) be made by the acquirers. In 2009, the Competition Authority unilaterally decided to review whether these remedies were kept. Its decision of 2011 ruled that certain remedies were not kept and ordered de-merger and the payment of a fine.
- **BCA in TNT-DVM.** The option of the no foreclosure of the AVAD platform apparently was not called upon.

And now at the end: The front side of my opening picture

SOME CONCLUSIONS



CONCLUSIONS

Parsimonious set of remedies to be preferred if possible

(see discussion of TOH 1&2)

EC decisions pre-empt decisions by the NCA's "foreclosing" on what could and should be investigated: **efficiencies**, both vertical (double marginalisation) and horizontal (Complementary Cournot) and what should not be an issue: Portuguese CA had more degrees of freedom than Belgian CA. Is there a Level Playing Field?

(see discussion of TOH 4)

Some behavioral remedies are hard to monitor, and if they are many, they will be violated nearly for sure. This may lead to (more costly) structural measures (a breakup) afterwards.

(see Canal Sat/TPS)

KU LEUVEN

And last but not least: the appropriate economic model can create order in the spaghetti, but pick the correct one—single versus multi homing, competition in transactions versus competition in utility:

Moore's Law.

10000's of these go in one of these

THANKS FOR YOUR ATTENTION

