The TPS / Canal+ merger in the French pay-TV industry
Pre-merger:

Two independent satellite platforms in France
Canal+ (VU) 66 %
Lagardère 34 %
TF1 (Bouygues) 66 %
M6 (RTL) 34 %
Canal+ France: Canal+, CanalSat, TPS
Canal+ (VU) 65 %
Lagardère 20 %
TF1 (Bouygues) 9.9 %
M6 (RTL) 5.1 %
Minority shareholders were not notifying parties → could not be subject to commitments

TPS, Canal Sat: turnover in France VU achieves more than 2/3 of its turnover in France → The merger has not a Community dimension

The Minister of economy approved the merger in phase II after an opinion of the Conseil de la concurrence subject to 59 conditions!
Three-tier architecture

Upstream markets:
Acquisition of rights for (premium) contents

Intermediate markets:
Acquisition of distribution rights for pay-TV channels

Downstream markets:
Pay-TV distribution markets
The relevant markets

Contents
Movies: US / French, PPV / VoD / Pay TV
Sports: Football (Ligue 1 / Other), other sports
Other contents:
Minister defines a market for popular TV shows

Channels
Premium Channels (Canal+ and TPS Star)
Thematic: Movie / Sports / Information / Children
PPV / VoD
[segmentation had been left open in earlier cases]

Retail
{ Satellite + Internet + Cable + DTT } / Mobile
PPV / VoD /
Free-to-air
Specificities of the French market  
(Differences with Telepiù/Newscorp 2003)

Vertical integration

- TPS and Canal+ are active on U,I and D markets.  
- In particular, they are important suppliers of pay-TV channels

- Strength of the French film industry (French films = premium content)  
- Canal+ is a major player in the movie industry (StudioCanal)

Development of Internet broadband access in France

- 11 million ADSL subscribers, of which 1.5 m. have access to TV

- Internet: Competitive market: Incumbent (Orange) and many competitors: Free, Neuf Cegetel, Alice, Club Internet, AOL  
- The incumbent telco (FT) does not participate in the deal
Merger between two vertically integrated firms: Horizontal and vertical effects

Likely horizontal effects on the retail market
Merger strengthens Canal+ dominant position on the pay-TV markets

[In France, the substantive test has always been SLC. Here the distinction does not matter.]

- Very little about efficiency gains: lower operating (distribution and programming) costs, increased number of channels, 2 satellites instead of 1
  - Depends on the post-merger strategy (merger of the bouquets, very costly, takes time)
  - Essentially fixed costs?
  - No estimation of cost savings

- Unilateral effects: risk of price ↑ (pre-merger, frequent special offers)
Horizontal effects on upstream markets

- Creation of monopsony situations
  - Acquisition of football rights: ADSL operators are not credible competitors
    - Seller's bargaining power will be reduced → rent transfers
    - Final consumers not necessary affected [Consumer welfare is the priority]
    - Canal+ has incentives to pay for quality
  - Acquisition of rights for US films: Hollywood Majors keep a high bargaining power
  - Acquisition of rights for French films:
    - Monopsony for pay-TV, PPV
Horizontal effects on intermediate markets

Market power of the New Entity in the intermediate markets

Approx. market shares in viewer share / turnover:

- **Premium channels:** 60% + 40% = 100%
- **PPV:** 60% (Kiosque C+) + 40% (Multivision TPS) = 100%
- **Movie channels:** 45% + 35% = 80%
- **Sport:** 30% + 5% = 35% [Eurosport (TF1): 45%]
- **Information:** The notifying parties have 0%!
  - Only pay-TV information channel, LCI (TF1)
  - other are free-to-air: I>Télé (Canal Plus), BFM TV
- **Children:** 0% + 20% = 20% [Lagardère: 30%]
Vertical concerns: Input foreclosure

**Input foreclosure (Intermediate markets)**: NE could deny other distributors (in particular ISPs) access to its channels

- **Ability**: Post-merger, the shareholders (incl. minority shareholders) control
  - the majority of channels
  - the satellite distribution, which covers 100% of the French population

- **Incentives**: to block or to delay the entry of ADSL operators, and to maintain high prices
  - Complete (refusal to supply, squeeze) or partial (raising rivals’ costs) foreclosure
  - Currently: TF1, M6 are not distributed by ISPs
  - TF1 and Canal Plus has signed exclusivity agreements for LCI and Eurosport
Input and Consumer Foreclosure

- **Counter-strategy of distributors**: produce channels themselves
  - Very unlikely because of high barriers to entry: high investment, know-how, access to premium content
  - The Conseil does not believe that the ADSL operators will produce channels in the short run

**Input foreclosure (upstream):**
- Acquisition of rights for French films: the New Entity could impose exclusivity agreements, especially for VoD and PPV
- Canal+ could refuse access to its film catalogue *CanalPlay*

**Customer foreclosure:**
- Deny independent channels access to the platform
  - forcing them out of the intermediary markets
  - reinforce the position of the New Entity on intermediate markets
  - harm other distributors through input foreclosure…
Remedies for input foreclosure (upstream)

- **Limit to 3 years** the duration of future films right purchases
- Do not acquire **sports rights** through contracts lasting more than **3 years**
- Minister: Purchase broadcasting rights of **popular American TV shows** for a max. duration of 12 months for each release window
- Do not request bundled agreements including PPV, VoD and pay-TV
- Grant PPV, VoD and Pay-TV distribution rights for **StudioCanal library** on a non-exclusive basis, according to **normal market conditions** and in non-discriminatory terms

- **Do not purchase exclusive film rights for PPV / VoD**
  - One of the most disputed commitment
  - VoD: Emerging market, first offers in October 2005: Free and Orange use CanalPlay (Canal+ film catalogue), but begin to contract with American Majors
  - Monopsony? FT announced the creation of a subsidiary in charge of investing in catalogue rights and film production (10 films/year)
Remedies for input foreclosure (Intermediate markets)

- **Grant distribution rights for 7 TPS channels** (on a non-exclusive and unbundled basis):
  - TPS Star, Cinéstar, Cinéculte, Cinétoile, Sport +, Teletoon and Piwi
    - No commitment for access to LCI (TF1) and Eurosport (TF1)
    - Sport + is a substitute for Eurosport
    - the Conseil had suggested to enjoin Canal Plus to refuse exclusivity of LCI and to grant sub-licenses to other distributors
    - Minister imposes a passive commitment: do not oppose a request to waive the exclusivity; do not oppose the distribution of TF1 and M6 by competitors

- **No price regulation** [no “retail minus” principle]
  - Just says: “in transparent, objective and non-discriminatory terms”
  - does not say: “reasonable” nor “fair”
  - Ex post use of Art. 82 should be sufficient (strong dominance of Canal+)

- **Quality regulation**: Commitment to maintain the quality of TPS Star and the other channels (made precise in the minister decision)
Remedies for customer foreclosure

- Access to the satellite platform for “independent” channels
  - not linked to a minority shareholder or linked to the New Entity by long-term contracts (output deal)
  - maintain as many independent channels as currently distributed
  - « non-discriminatory and fair market conditions »
  - Do not bundle transport and commercial distribution
  - Do not request exclusivity in distribution agreements for more than 4 years
Market design: Towards a mixed competition model

- **Two polar models:**
  - Competition at each layer: unrealistic
  - Competition between VI platforms: proved unstable
- **Mixed model:** Competition VI firm / non VI firms

→ Access to content?

→ Build a wholesale market: *partial* / *full “unbundling”*?

- Choose partial unbundling [no requirement for Canal+ channels]
  - Forcing access to all the channels of the New Entity would be disproportionate
    - For historical reasons, the cable operators (now a monopoly) have access to all the channels
    - Decision requires this advantage to be maintained, but does not extend it to ADSL
    - The cable advantage existed pre-merger, modify this would require regulatory intervention
The underlying logic

- Allowing the ADSL operators (ISPs) to exploit their competitive advantages: Interactivity, Triple play, VoD

- Promote asymmetric competition: satellite platform / ISPs
  - TPS Star got exclusive contracts with some Majors (+ English Premier League)
    - The access to TPS Star can help the ADSL in an interim period
    - not valid for French overseas departments

- Support the development of a pay-TV supply designed for customers with intermediate WTP, between
  - 0 € (Free DTT, 18 channels, successful!)
  - and 30 € or more (Satellite and cable)
- Packages { Telephone + Internet + VoD + basic TV bouquet } can
  - fill a gap in the pay-TV supply
  - exert competitive pressure on the New Entity and counter the unilateral effects
Duration and implementation of the remedies

- **No divestiture**, only “behavioural” remedies

- An independent trustee will monitor the commitments: will not be the French Media Authority (now in charge of dispute resolution)

- Minister’s decision
  - Maximum duration 6 years (5 years for VoD) [≠ Conseil’s opinion]
  - The conditions relating to PPV and VoD can be revised 18 months after completion of the transaction
  - the parties can ask at any time the Minister to waive some commitments; they must justify that the competitive environment changed

- **Conclusion**: A pragmatic and well-balanced decision