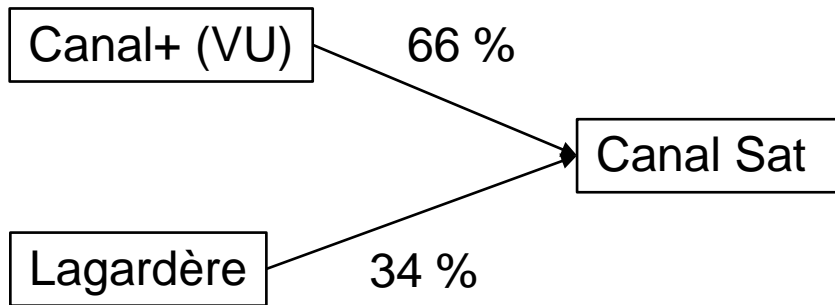
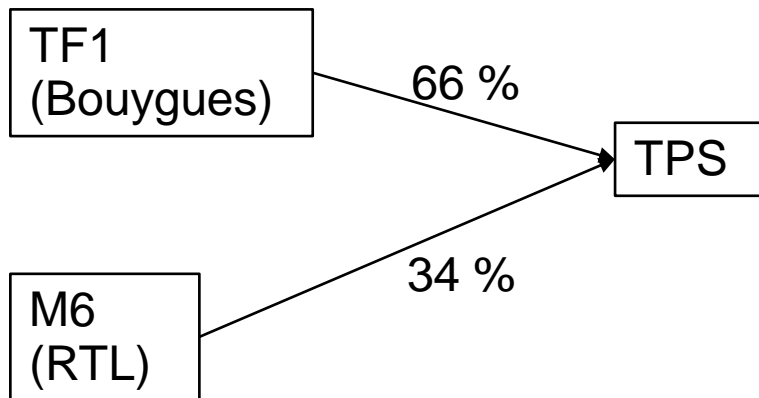


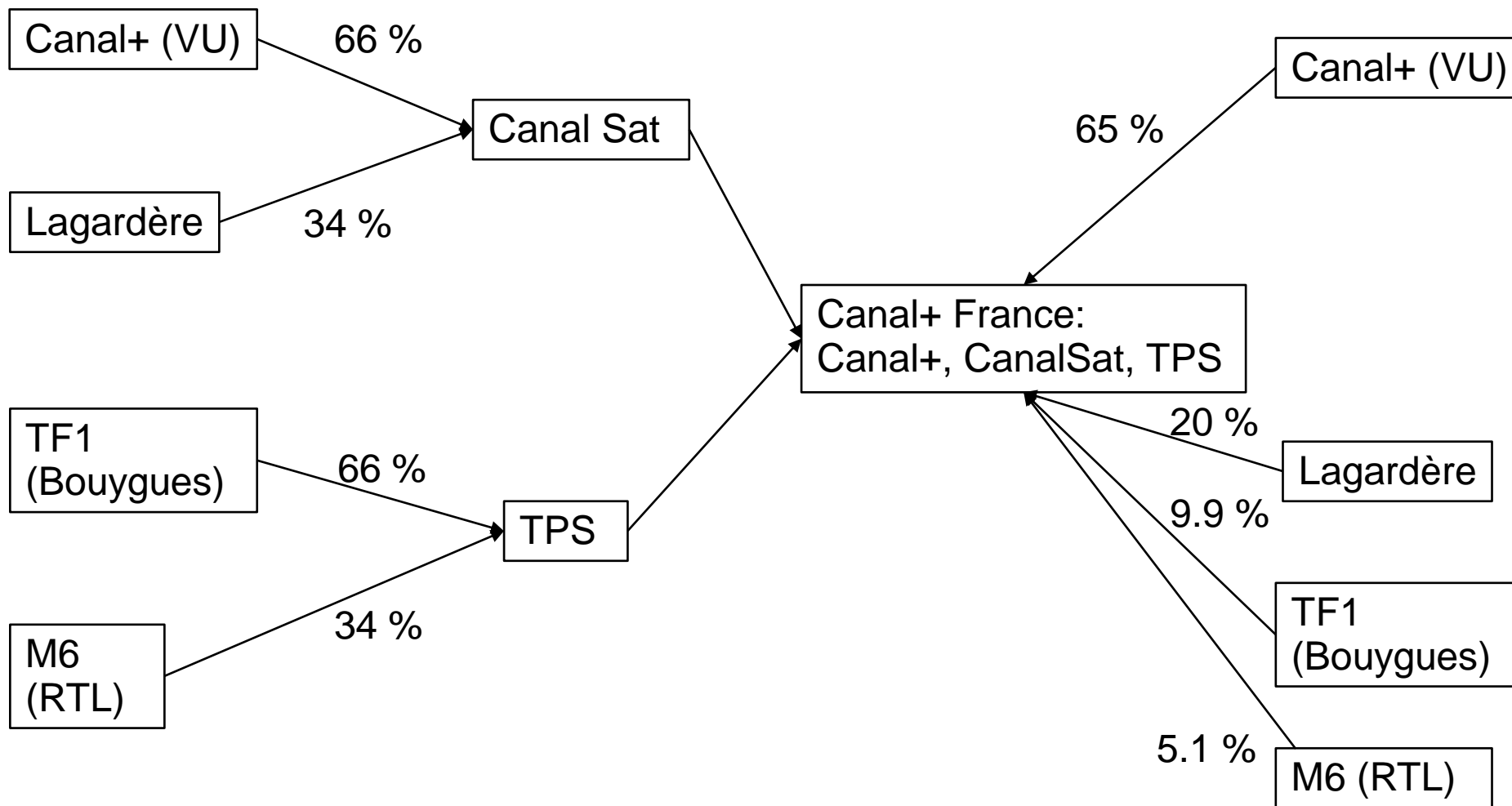
**The TPS / Canal+ merger
in the French pay-TV industry**



Pre-merger:

Two independent satellite platforms in France

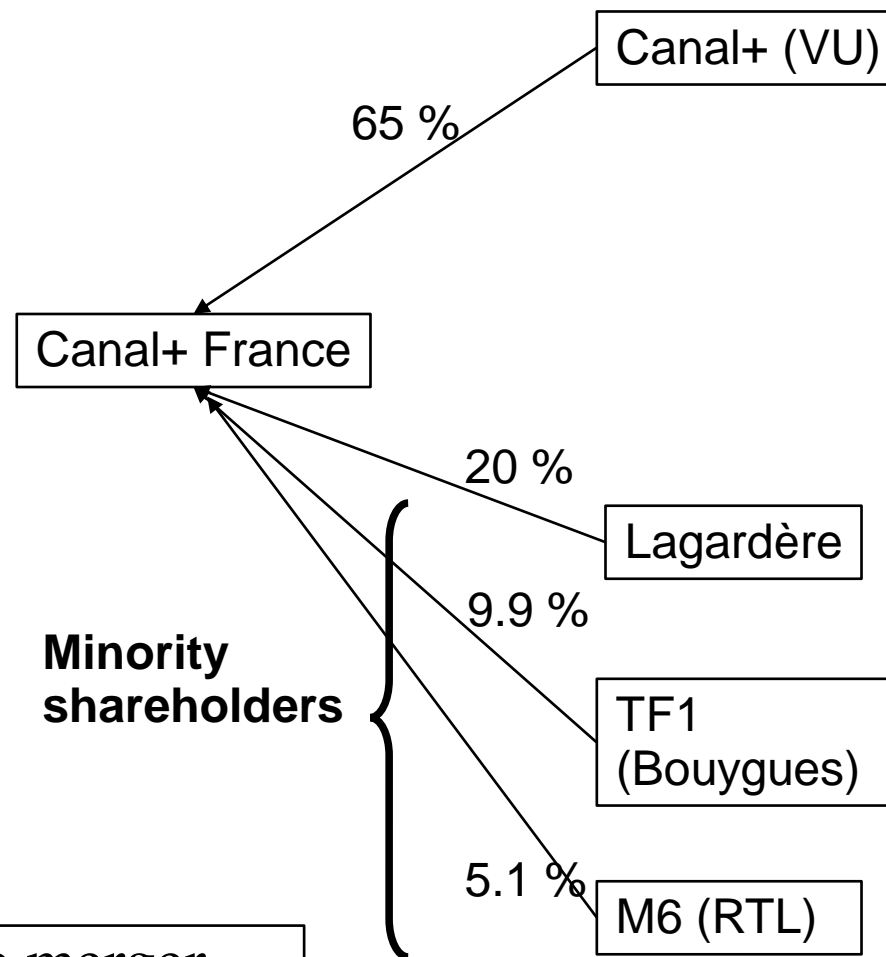




Minority shareholders were not notifying parties
→ could not be subject to commitments

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 \uparrow (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