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PITFALLS AND OBSTACLES OF MEDIA POLICYMAKING IN AN AGE OF DIGITAL CONVERGENCE: THE FLEMISH SIGNAL INTEGRITY CASE

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Technological convergence is remaking and even erasing the borders between industries once considered separate, and is forcing policymakers to evolve new regulatory frameworks for a rapidly changing industrial environment. Using the advocacy coalition framework, the authors investigate a struggle by Flemish broadcasters against video distributors to protect the integrity of their broadcast signals. The authors argue that the case may be an indicator of the struggles to come as the television space struggles with convergence, with implications for the European Union and other regions.

INTRODUCTION

This article discusses the challenges posed to media policymaking and its main protagonists by media convergence, broadly defined here as the growing connectivity and interaction between media activities and the erosion of once-distinct boundaries between media entities at the levels of production, organization, content, distribution, and consumption. It does so by analyzing the case of the signal integrity policy debate and legislation in Flanders, the first regulation in an EU Member State to legally organize broadcaster-distributor relationships. Flanders, the Northern and Dutch speaking part of Belgium and a small region of 6.5 million inhabitants, is in charge of media policy and legislation, and has a tradition of combining a neoliberal competitive approach with an interventionist media policy in broadcasting, resulting from a continued belief in the importance of a Flemish media culture and creative industry.[1] As elsewhere, "convergence" has been a buzzword in Flemish media policy and industry debates for over two decades,[2] but it has gained new momentum as the digital convergence of broadcasting and other distribution sectors has shaken up traditional social functions and business models. This has increased pressure on policymakers to react

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[1] Hilde Van den Bulck and Karen Donders, "Of Discourses, Stakeholders and Advocacy Coalitions in Media Policy: Tracing Negotiations towards the New Management Contract of Flemish Public Broadcaster VRT," *European Journal of Communication* 29 (2014): 83-99.
[2] Hilde Van den Bulck, "Can PSB Stake Its Claim in a Media World of Digital Convergence? The Case of the Flemish PSB Management Contract Renewal," *Convergence: The International Journal of Research into New Media Technologies* 14 (2008): 335-350.

"appropriately," requiring them to disentangle the growing complexity of technological convergence and the ever more intricate web of relationships between old and new policy actors who fight battles and forge coalitions across traditional boundaries. It is these processes that we aim to discuss.

The article starts from a theoretical framework elaborating on key issues regarding, first, contemporary media developments including convergence and globalization; and second, trends in contemporary national and regional policymaking processes, influenced by the arrival of new actors, multilevel governance, and the political harmonization of media legislation at the European level. Against this background, the article analyzes how escalating conflicts in Flanders between locally-owned broadcasters and the dominant cable distribution company Telenet, a subsidiary of the American multinational Liberty Global, led to a policy battle that in 2013 resulted in new legislation. The new media decree now recognizes the principle of "signal integrity," explicitly entrusting the ownership of the broadcasting signal to broadcasters.

The case (and period of analysis) starts in August 2010 when the first formal and joint action of Flemish broadcasters against distribution companies was initiated, and ends in July 2013 when the new legislation was adopted. The policy process and outcome are analyzed on the basis of a stakeholder analysis and the study considers a "policy decision [to be the] result of a process characterised by formulation of views and interests, expressed by actors or stakeholders that adhere to a certain logic and that engage in debate and work towards a policy decision on relevant forums."[3] Stakeholder (coalition) positions are identified, grouped, and analyzed using Sabatier and Jenkins-Smith's Advocacy Coalition Framework (ACF), which sees policy development as a competitive process between tight or loose stakeholder coalitions of actors that are united in a shared belief system, i.e. ideas about policy, problems, and solutions for a certain policy issue.[4] Basically, the case study reconstructs the policy process and the role and ideas of various stakeholder coalitions in working towards policy outcomes. It analyses the eventual outcome and what it means, and identifies the possible limits Flanders encountered in implementing its policies.

The case study's empirical data consist of both written and oral sources. The documents analyzed include legal texts, press releases, speeches, parliamentary hearings, etc. as well as reflective documents and communications by stakeholders in relevant fora (e.g. blogs). A thorough understanding of the issue and policy process was enhanced by the fact that both of the present authors were involved in the process of developing the new legislation – one as an advisor to the Flemish public broadcaster, the other as vice-chair of the Flemish Media Council.

A single case study can say only so much because the results are only representative of Flemish media policies. However, we believe that, from an international perspective, this Flemish case study illustrates, first, how the reality and impact of digital convergence is a result of complex policy

[3] Hilde Van den Bulck, "Tracing Media Policy Decisions: Of Stakeholders, Networks and Advocacy Coalitions," in *Routledge Handbook of Media Law*, ed. Monroe E. Price, Stefaan Verhulst, and Libby Morgan (London: Routledge, 2012), 19.

[4] Paul A. Sabatier and Hank C. Jenkins-Smith, eds., *Policy Change and Learning: An Advocacy Coalition Approach* (Boulder, CO: Westview Press, 1993).

decisions and economic pressures as much as of technological possibilities; and second, how the complexity of policy decisions regarding converging media activities allows for the growing power of industry experts in policymaking rather than "the traditional 'subsystem' of dedicated civil servants, legislators and select industry players."[5] Third, the Flemish case may prove instructive for others as conflicts between broadcasters and distributors in countries like the United Kingdom, Canada, and the Netherlands suggest. Indeed, several other countries have shown an interest in the signal integrity legislation. The European Commission, in turn, has taken over some of the underlying principles in its green paper on connected television,[6] but at the same time, has engaged in an informal investigation of the admissibility of the signal integrity principle under EU internal market law. Fourth, the case further provides an inroad to discussing the suitability of such legal initiatives to deal with other, global forces such as Google, Amazon, or Netflix. Finally, the empirical data provide a good avenue for discussing and evaluating the remaining policymaking powers of national and regional entities in a globally converged media landscape.

MEDIA CONVERGENCE AND POLICYMAKING

Convergence as a Technical and Economic Issue

The starting point is the notion of media convergence, considered here as an increasing connectivity and interaction between media activities and an erosion of once distinct boundaries between media at the level of production, organization, content, distribution, and consumption. Neither the term nor the trend are new. As early as 1983, Ithiel de Sola Pool pointed to a "convergence of modes."[7] Convergence became a buzzword in the 1990s, when digitization started to make real waves in the media sector,[8] and has remained a dominant issue in discussions about media structures and policies up to today, confirming Jenkins' suggestion that it is a continuing process for which the end is not in sight.[9] Academically, the concept of convergence is contested for its over-emphasis on a strict media divide pre-convergence,[10] a tendency to ignore pre-digital reshuffling of relationships, and an oversimplification of the complexity of media and technological change.[11] However, its widespread use and common understanding outside of academia warrants the use of the term, which we use to

[5] Des Freedman, "How Level is the Playing Field? An Analysis of the UK Media Policy-Making Process," report, Economic and Social Research Council, Sept. 2005, accessed Sept. 1, 2014, https://www.gold.ac.uk/media/media-report.pdf, 6.
[6] Tom Evens and Karen Donders, "Broadcast Market Structures and Retransmission Payments: A European Perspective," *Media Culture & Society* 35 (2013): 417-434.
[7] Ithiel de Sola Pool, *Technologies of Freedom. On Free Speech in an Electronic Age* (Cambridge, MA: Harvard University Press, 1983), 23.
[8] See for example Peter Humphreys, *Mass Media and Media Policy in Western Europe* (Manchester, UK: Manchester University Press, 1996); Denis McQuail and Karen Siune, eds., *Media Policy: Convergence, Concentration and Commerce* (London: Sage, 1998).
[9] Henry Jenkins, "The Cultural Logic of Media Convergence," *International Journal of Cultural Studies* 7 (2004): 33-43.
[10] Juha Herkman, "Introduction: Intermediality as a Theory and Methodology," in *Intermediality and Media Change*, ed. Juha Herkman, Taisto Hujanen, and Paavo Oinonen (Tampere, Finland: Tampere University Press, 2012), 10-27.
[11] See generally Tanja Storsul and Dagny Stuedahl, eds., *Ambivalence towards Convergence: Digitalization and Media Change* (Göteborg, Sweden: Nordicom, 2007).

encompass different types of convergence including network, terminal, service, market, and regulatory convergence, amongst others.[12]

The technical possibilities of converging media were pushed by a growing emphasis on interactivity and freedom of choice, on "pull" rather than linear "push" media.[13] As a result, convergence has allowed for a plethora of new media services,[14] and discussions regarding its pros and cons have been dominated by an implicit yet strong "technological determinism" – the idea that technology and the arrival of new forms of communication in their own right can change man and society, a claim apparently confirmed by the uptake of new technologies by consumers. For instance, Flanders witnessed an exponential growth in digital television, constituting three quarters of all Flemish television households in 2012 and dominated by cable distributor Telenet. These households generated 68 million video on demand requests in 2011, and 10.25% of all audio-visual viewing in Flanders is time-shift viewing.[15]

However, media convergence is about much more than technology, as it changes relationships, not just between different technologies, but also between markets and industries.[16] Economic convergence thus refers to interconnections between and integration of media companies and the consolidation of their relationships and interactions. As such, convergence was aided by the trend from the late 1980s onwards to a neoliberal society, characterized by deregulation, privatization, and liberalization of both the media and telecommunications sectors. In turn, this trend has furthered concentration across media and national borders.[17] A case in point is Telenet. Established in 1996 as a motor for Flemish technological innovation by the joining of local cable companies that had helped establish Belgium as one of the most densely cabled countries in the world, Telenet developed into a subsidiary of Liberty Global (which holds a majority share) with its mother company in the United States and subsidiaries in many other countries worldwide. Jin refers to this as "neoliberal globalization,"[18] thus linking media convergence to *globalization*, another umbrella term. We use globalization to refer "to the growing interconnectedness of different parts of the world, a process which gives rise to complex forms of interaction and interdependency,"[19] and to an increasing lack of transparency in terms of ownership structures.[20]

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[12] Anders Fagerjord and Tanja Storsul, "Questioning Convergence," in *Ambivalence towards Convergence: Digitalization and Media Change*, ed. Tanja Storsul and Dagny Stuedahl (Göteborg, Sweden: Nordicom, 2007), 19-31.
[13] Herman Galperin, *New Television, Old Politics: The Transition to Digital TV in the United States and Britain* (Cambridge, UK: Cambridge University Press, 2004).
[14] Bernt Stubbe Østergaard, "Convergence: Legislative Dilemmas," in *Media Policy: Convergence, Concentration and Commerce*, ed. Denis McQuail and Karen Siune (London: Sage, 1998), 95-107.
[15] "Aantal klanten groeit bij belgacom; omzet en winst daalde," ADSL and Breedband, Mar. 5, 2012, accessed Sept. 1, 2014, http://www.adsl-breedband.be/actualiteiten/aantal-klanten-groeit-bij-belgacom-omzet-winst-daalde. Statistics were compiled from CIM (Centrum voor Informatie over de Media), http://www.cim.be/media/Televisie/Openbare%20resultaten, via parameters for viewing figures in Flanders including duration of viewing and number of guests, for the period of Jan. 1, 2009 to Aug. 31, 2013.
[16] Jenkins; see also Østergaard.
[17] Østergaard.
[18] Dal Yong Jin, *De-Convergence of Global Media Industries* (New York: Routledge, 2013).
[19] John Thompson, *The Media and Modernity: A Social Theory of the Media* (London: Blackwell, 1995), 149-173.
[20] Gilian Doyle, *Media Ownership* (London: Sage, 2002).

The latter often creates the impression that all media companies work together, either to create a global village of networked individuals served with on-demand, mobile media fare, or to gag governments and homogenize cultures. However, this overlooks the fact that convergence is also a constant battle between media actors over (economic) power because '[d]ominant actors are repositioning to control the whole media process from content inception to delivery to individual audience segments."[21] As the case study in this article will demonstrate, convergence critically affects traditional value chains – that is the sequence of investing, producing, selling, and collecting in the media industry where different links in the chain generate a certain value and where various media actors play a part in the production or distribution sectors or other relevant processes.[22]

Convergence allows for formerly segregated sectors of production and distribution to merge and thus alters the potential for value creation and the distribution of costs and revenue across actors. For instance, convergence allows for services like video on demand, pay television, and over-the-top (OTT) content services to complement free-to-air distribution. In Flanders, Telenet has increasingly ventured beyond traditional cable distribution into these various forms of audiovisual content distribution. These services create new release windows and opportunities for value creation, yet they can have a negative effect on the business models of traditional content providers like broadcasters, as the case study herein will illustrate. As a result, a struggle over the search for a new digital media economy can be observed[23] – that is, a need for old and new media players to find "new ways of co-existing in the digital reality, a natural need for new business models and new ways of structuring cooperative relationships, funding models, distribution platforms and marketing strategies."[24]

The Impact of Convergence on Policymaking

Convergence is not just a technological and economic reality. Since the 1990s, a "discourse of convergence" has permeated media and ICT policymaking in Flanders as elsewhere,[25] with many policy battles being fought around the notion and implications of convergence. In these policy debates, two main positions can be identified. Optimists, from a technological determinist position, promote convergence and its innovative possibilities, usually with economic growth as the ultimate goal. This is often accompanied by a technological nationalism; policy stakeholders promote convergence to

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[21] Østergaard, 97.
[22] Paolo Guerrieri, P. Lelio Iapadre, and Georg Koopmann, eds., *Cultural Diversity and International Economic Integration: The Global Governance of the Audio-Visual Sector* (Cheltenham, UK: Edward Elgar, 2005); John Hartley, "The 'Value Chain of Meaning' and the New Economy," *International Journal of Cultural Studies* 7 (2003): 129-141.
[23] Jenkins.
[24] Filmby Aarhus, Alexandra Institute, and High Tech Accelerator Innovation Centre of the University of Lodz Foundation, "Report On Business Models, Value Chains and Business Development Services in the Audiovisual/Creative Industries: Cases of the Łódź and Małopolska Provinces and West Denmark," report, First Motion and the European Regional Development Fund, July 2011, accessed Sept. 2, 2014, http://www.firstmotion.eu/art/MediaCenter/FirstMotion/Results%20and%20Outcomes/BusinessModelsValueChains_DK_Poland.pdf.
[25] Tony Sampson and Jairo Lugo, "The Discourse of Convergence: A Neo-Liberal Trojan Horse," in *Broadcasting and Convergence: New Articulations of the Public Service Remit*, ed. Gregory Ferrell Lowe and Taisto Hujanen (Göteborg, Sweden: Nordicom, 2003), 83-92.

improve economic investments and political prestige.[26] Convergence also features positively in a discourse of technological democracy as an engine for the increased autonomy of, and new possibilities for, the citizen-user.[27] This argument is embraced both by stakeholders attempting to obtain a dominant position in new and potentially lucrative markets, and by the cultural and minority sectors who believe new media can fulfil "old" ambitions regarding alternative media for voices not heard elsewhere.[28] Optimists by and large argue that, due to the explosion of services, devices, and platforms, regulation has become obsolete – or, alternatively, impossible to impose and that, more than ever, the market will take care of itself.

Pessimists, from an equally determinist position, see convergence as a threat to existing relationships and to the carefully established equilibrium in specific media markets, undermining the once stable value chains and thus the viability of existing actors and positions. Convergence, together with globalization, are seen by pessimists as further enhancing the power of transnational multimedia groups, particularly undermining the existing positions and future developments of local players that provide content and opportunities for local producers. Convergence thus hampers the social role of media, made explicit in public service broadcasting,[29] but that role is also considered to be served by healthy local media markets. Therefore convergence will ultimately push the homogenization and commercialization of culture.[30] For the hardest conservatives and pessimists, this constitutes the potential end of everything that is considered good and important. Hence, they advocate the need for more regulatory intervention or re-regulation in spite of issues of enforceability.[31] As the case study herein will illustrate, in policy processes, optimists and pessimists can be seen to fight it out while trying to find solutions for various policy issues.

The pessimists suggest that convergence makes national or regional media policy more relevant than ever. At the same time, convergence and globalization make media policymaking increasingly complex. First, they have opened up traditional media markets to new players, most notably those from the once distinct telecommunications sector and its spin-offs. Convergence also results in new configurations between old and new players. Together, these lead to new stakeholders that must be identified and understood in their attempts to influence media policy.[32] Second, the growing economic importance of media and ICT industries has led to the emergence of new policy actors with a stake

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[26] Van den Bulck, "Can PSB Stake Its Claim in a Media World of Digital Convergence? The Case of the Flemish PSB Management Contract Renewal."
[27] Petros Iosifidis, "DTT and the Role of PSBs in Driving Digital Switchover," paper presented at the RIPE (Re-Visionary Interpretations of the Public Enterprise) conference, Amsterdam, Nov. 2006, accessed Sept. 2, 2014, http://ripeat.org/wp-content/uploads/2010/03/Iosifidis.pdf.
[28] Bart Cammaerts and Nico Carpentier, eds. *Reclaiming the Media: Communication Rights and Democratic Media Roles* (Bristol, UK: Intellect, 2007).
[29] Sampson and Lugo.
[30] Els de Bens, "Media between Culture and Commerce: An Introduction," in *Media between Culture and Commerce*, ed. Els de Bens (Bristol, UK: Intellect, 2004), 9-24.
[31] Van den Bulck, "Can PSB Stake Its Claim in a Media World of Digital Convergence? The Case of the Flemish PSB Management Contract Renewal."
[32] Leen d'Haenens and Susan Brink, "Digital Convergence: The Development of a New Media Market in Europe," in *Western Broadcasting at the Dawn of the 21st Century*, ed. Leen d'Haenens and Frieda Saeys (Berlin/New York: Mouton de Gruyter, 2001), 125-145.

and who therefore interfere in media policy decisions.[33] Third, media policymaking is no longer reserved for national governments, as power has been eroded by the growth of multi-level governance – i.e. policymaking responsibilities increasingly being shared by various policy actors at the regional, national and inter- or supranational levels.[34] European governments have been faced with the growing involvement of the European Union (EU), and the impact of the European Commission (EC) and European Courts in media and ICT policymaking.[35]

Adhering to a neoliberal "markets can cater for diversity" discourse, putting economic goals first and cultural and public interests second, the European Commission has been instrumental in pushing convergence ever since it liberalized the use of cable networks and then point-to-point distribution systems.[36] This has led some to a certain defeatism regarding the (im)possibility of regulating convergence; regulation may still be valuable to ensure socially agreed-upon values, but it has become obsolete due to a lack of enforceability. At the same time, as the case study herein will illustrate, there are indications that national and regional governments remain powerful actors in the media policy arena, particularly in sectors like broadcasting.[37] The enormous diversity of media markets in Europe further indicates a level of path dependency: choices made in the past impact the present and will continue to do so in the future.[38] For one, small EU member states have adopted various models of "controlled liberalization," opening up their media markets but with due protection for domestic players in the interests of preserving national identities, culture, and language.[39]

In the next section, these considerations, in regards to convergence and its impact on policymaking, will be discussed by means of the case study of the signal integrity policy process and legislation in Flanders. After a brief introduction of the issue, the policy process and outcome will be deconstructed and reconstructed by means of the above framework.

SIGNAL INTEGRITY AS A POLICY ISSUE: POLICING BROADCASTER/DISTRIBUTOR CONFLICTS

The story of the signal integrity case starts in August 2010, when the main Flemish broadcasters – the public broadcaster VRT, the Flemish owned commercial VMMa (now Medialaan), and the

[33] Patrick Hendriks, "Communications Policy and Industrial Dynamics in Media Markets: Toward a Theoretical Framework for Analyzing Media Industry Organization," *Journal of Media Economics* 8 (1995): 61-76.
[34] Richard Collins, "Hierarchy to Homeostasis? Hierarchy, Markets and Networks in UK Media and Communications Governance," *Media Culture & Society* 30 (2008): 295-317.
[35] Humphreys.
[36] Østergaard.
[37] John Sinclair, "Globalization, Supranational Institutions and Media," in *The Sage Handbook of Media Studies*, ed. John H. Downing (London: Sage, 2004), 65-82.
[38] Benadetta Brevini, *Public Service Broadcasting Online: A Comparative European Policy Study of PSB 2.0* (Basingstoke, UK: Palgrave Macmillan, 2013); Thomas Gibbons and Peter Humphreys, *Audiovisual Regulation under Pressure: Comparative Cases from North America and Europe* (New York: Routledge, 2012).
[39] Gregory Ferrell Lowe, Christian E. Berg, and Christian S. Nissen, "Size Matters for TV Broadcasting Policy," in *Small Among Giants: Television Broadcasting in Smaller Countries*, ed. Gregory Ferrell Lowe and Christian S. Nissen (Göteborg, Sweden: Nordicom, 2011), 21-41.

Flemish/Finnish owned SBS Belgium, which together represent an 80% audience share in the Flemish television market – joined forces and sent an open letter to the dominant cable operator Telenet, which holds an 80% share in the multi-channel television distribution market. The result of a political effort to make Flanders a leader in technological innovation, Telenet could count on continued and strong political support from various Flemish political parties, even after it became a subsidiary of Liberty Global. While VRT and SBS Belgium had a contract with the distributor (until March 2014), no agreement was reached with VTM, which nevertheless allowed distribution of its channels by Telenet. The latter provoked broadcasters by offering for free a range of additional consumer services that allow time shifting, ad-skipping, and program recording, while maintaining an unyielding attitude in negotiations. The Belgian telecommunications incumbent Belgacom, which lost political support in the privatization wave of the 1990s when it became a de-monopolized, mixed private/public company with a conflictual relationship with consecutive governments, provides similar services, but created less friction with broadcasters because it holds only a 15% share in the market for digital television distribution and is considered to be a more flexible player.[40]

Analysis of the open letter from the broadcasters and subsequent discussions in the Flemish Parliament[41] reveals that broadcasters claim to be the owners of their signals and that this signal integrity claim in fact consists of two arguments: "content integrity" and "economic integrity." *Content integrity* refers to the demand of the broadcasters that providers, in the distribution of services, must not harm the integrity of their signal's content. This point was most forcibly made by the public broadcaster, who claimed that digital convergence allows third parties (i.e. commercial service providers) to intervene in broadcasters' content without permission – an unacceptable infringement on the ongoing creative process that is a television channel. Moreover, providers can potentially interfere with broadcasters' compliance with legal obligations per content regulation, regarding minors or commercial communication in the case of commercial broadcasters, and the public service remit in the case of public broadcasters. In Parliament, VRT's CEO made reference to smart TV player Panasonic overlaying news bulletins of German public broadcasters ARD and ZDF with commercial banners, and to the website TV Catchup that pre-rolls commercial communication while streaming BBC programs – a violation of public broadcasting regulation in the United Kingdom that the BBC cannot control. While the EU Court of Justice has condemned TV Catchup for streaming TV channels without broadcasters' consent,[42] it has not mentioned the overlay practices.

Economically, the signal integrity argument refers primarily to the financial well-being of broadcasters, especially the commercial players that were the main advocates of this point. They see their business model threatened by new digital services, especially those allowing ad-skipping, which means bypassing the advertisers who finance the content, and, in turn, do not want to pay for audiences that skip their messages. Originally, cable operator Telenet charged costumers €4.95 per month for

[40] Evens and Donders.
[41] Vlaams Parlement [Flanders], Verslag hoorzitting [hearing], Apr. 16, 2013, Stuk 1703 (2011-2012), Nr.4.
[42] United Kingdom, High Court of Justice, Judgment of the Court (Fourth Chamber), decision in Case C-607/11, Mar. 7, 2013, accessed Sept. 15, 2014, http://curia.europa.eu/juris/document/document.jsf?text=&docid=134604&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=161892.

additional consumer services (including ad-skipping) and shared those revenues with broadcasters. In 2008, however, Telenet unilaterally terminated this deal and started offering the same services for free to consumers in a move to strengthen customer loyalty by using television content as an incentive for triple-play service packages. Broadcasters claim that the success of the digital packages and of ad-skipping undermines their revenues – thus affecting content. In the same period, according to the broadcasters, Telenet's own revenues rose by 350%, largely generated from broadcasters' content, but entirely passed on as dividend to Liberty Global.

In Parliament, the CEOs of SBS Belgium and VMMa both illustrated the point by making reference to Flemish fiction series.[43] These perform key social-cultural functions because they are widely popular with audiences and crucial in (re-)articulating local culture and identity, are the most expensive television genre to produce, are most subject to ad-skipping, and are difficult to exploit through pay television because of the limited size and revenue potential of the Flemish television market. This jeopardizes future investment in local content, fictional or otherwise. Both CEOs objected to others (distributors) controlling their revenue streams and taking advantage of their gatekeeper positions without financial compensation, thus undermining broadcasters' business models and hampering their potential for innovation. As owner of the signal, broadcasters want autonomy over decisions about the economic exploitation beyond free-to-air delivery of content.

Both the content and economic aspects of the signal integrity claim were refuted by the two main service providers, Telenet and Belgacom. They claimed to respect the principle with regards to content, despite evidence to the contrary. Economically, they argued that additional consumer services are controlled by consumers and that distributors cannot be held accountable for changing television consumption behavior. They further claimed that ad-skipping in Flanders is still quite rare and that, in fact, broadcasters in recent years saw an increase in revenues from both advertising[44] and distribution (up 40% since 2004). Distributors accused broadcasters of being averse to innovation and took a determinist stance, claiming that technological innovation is unstoppable and should therefore be embraced rather than curbed.[45] Interestingly, international players such as Google and YouTube, amongst others, acted like disinterested bystanders in the policy debate, expecting national legislation to pass them by.

Unable to come to an agreement with the distributors, the broadcasters urged the Flemish Parliament to take legal action to protect their signal integrity, inspiring Members of Parliament of all three coalition parties (Christian-Democrats, Socialists, and Flemish Nationalists) of the Peeters I government to submit a legislative proposal. The proposal stipulated that service providers must distribute linear broadcasting programs without alterations, interruptions, etc. Every functionality

[43] Vlaams Parlement [Flanders], Verslag hoorzitting [hearing], Apr. 16, 2013, Stuk 1703 (2011-2012), Nr.4.
[44] "Telenet overweegt gerichte advertenties via digitale tv," *DeMorgen*, Apr. 25, 2013, accessed Sept. 2, 2014, http://www.demorgen.be/dm/nl/5401/Multimedia/article/detail/1621951/2013/04/25/Telenet-overweegt-gerichte-advertenties-via-digitale-tv.dhtml.
[45] "Reclame doorspoelen wordt betalend," *Het Laatste Nieuws*, Apr. 16, 2013, accessed Sept. 2, 2014, http://www.hln.be/hln/nl/943/Consument/article/detail/1616095/2013/04/16/Reclame-doorspoelen-wordt-betalend.dhtml.

deviating from that general principle requires the prior consent of broadcasters.[46] On June 11, 2013, after a lengthy and heated policy process (discussed below), the Media Commission of the Flemish Parliament reached consensus on a legislative proposal that was subsequently voted in the same Commission on June 25 and in the Flemish Parliament on July 10, with all members of Parliament voting in favor.

The amended Flemish media decree states that distribution companies have to transmit a television broadcast signal without interruptions or alterations (Article 180, §1) and that functionalities that contravene this require prior consent from the concerned broadcasters (Article 180, §2). In the absence of prior consent, the Flemish Media Regulator must arrange a three-month reconciliation procedure after which it provides non-binding advice. Services that breach content integrity, i.e. go against the editorial independence, autonomy, and responsibility of broadcasters, can be refused outright by broadcasters (Article 180, §3). In return, any remuneration that broadcasters receive for allowing functionalities must be invested in the production of Flemish content (Article 180, §2).

ANALYZING THE SIGNAL INTEGRITY POLICY PROCESS

Shifting Coalitions and Their Ideological Positions

While the unanimous vote in the Flemish Parliament creates the impression of the adaptation of the decree as a predictable outcome, this was not the case, and was quite the contrary. Analyzing the policy process, two main stakeholder coalitions can be identified – the "no regulation" coalition and the "signal integrity" coalition – each working from their own belief systems, each gaining and losing coalition partners throughout the process, and each vigorously lobbying their case.

The "no regulation" coalition originally consisted of the service providers, most importantly Telenet and Belgacom. While competitors in the market, they shared views on policy and on the goals to be achieved. In line with the euphoric-utopians identified above, this coalition underlined the inevitability of progressive technological convergence (technological determinism), presented constant innovation as an economic necessity, and referred to consumers and their behavior as proof hereof and as an important argument in favor of a neoliberal "no regulation" argument (technological democracy). They claimed that the proposed legislation would hamper (but not stop) the inevitable technological and economic progress and goes against consumer interests because it would result in higher prices. The coalition was externally strong as both providers had strong ties with political stakeholders – Belgacom as a former state monopolist and Telenet from its inception by politicians as an engine for Flemish innovation. However, the coalition turned out to lack internal strength, which resulted in Belgacom at some point changing sides and supporting the broadcasters' claim. As a consequence, throughout the policy process, the coalition lost external strength and thus negotiation power.

[46] Vlaams Parlement [Flanders], *Voorstel van decreet van de heren Ludwig Caluwé, Bart Van Malderen, Kris Van Dijck en Philippe De Coene houdende wijziging van het decreet van 27 maart 2009 betreffende radio-omroep en televisie*, Stuk 1703 (2011-2012), Nr.1 (July 4, 2012).

The "signal integrity" coalition originally consisted of commercial broadcasters VMMa and SBS Belgium, public broadcaster VRT, and the Flemish Socialist Party (of which then-Media Minister Ingrid Lieten was a member). It was quite strong both internally and externally. Despite considerable competition between the broadcasters, and earlier conflicts between commercial broadcasters and the media minister over the public broadcasters' management contract,[47] these stakeholders also held common views on policy (albeit from different ideological perspectives) and goals to be achieved. They shared a belief in both the social-cultural importance (articulation of culture and identity, popular with audiences) and the economic importance (for the creative industries) of a strong Flemish broadcasting industry. Like the first coalition, they acknowledged the "inevitable" power of technological convergence if left to the market and recognized a (carefully-paced) need for technological innovation as an engine for economic development. However, differently from the first coalition, they underlined the impact hereof on the value chain and the broadcasters' business model, which undermines the economic viability of the sector. This apparently warrants government intervention to curb the process and help guarantee a flourishing Flemish broadcasting market and culture. Throughout the policy process, this coalition managed to convince other stakeholders, most notably service provider Belgacom, but also other political parties.

Indeed, much time and effort was invested by the main stakeholders of each coalition in convincing other policy actors who were either undecided or represented opposing views. A key example of the latter was the Sectoral Council for Media (SARC), made up of representatives of the sector (broadcasters, rights organizations, content producers, service providers, print publishers, and advertisers, amongst others) and independent members. Obliged by law to consult this Council on media-related legislative initiatives, the Flemish parliament asked for advice on the issue. As its members held conflicting views, the council ended up writing a carefully-worded advice document. It pointed out that the proposal potentially clashes with EU internal market rules, but was overall supportive of the initiative. Government interference was seen to be inevitable because broadcasters and distributors appeared unable to resolve their conflicts by themselves.[48]

An example of an undecided actor was the consumer organization Test-Aankoop. Originally, this group aligned with the "signal integrity" coalition, motivated first by the position of Telenet as a dominant player driving high rates for television, telephony, and Internet, and then by concerns that broadcasters would cut investments in (very popular) Flemish content. These two trends were seen to go against consumer interests.[49] As the debates went on, though, Test-Aankoop moved closer to the "no regulation" coalition, emphasizing the rights of consumers to tape content and skip advertising. Many "expert" commentators in newspaper articles and blogs confirmed the "no regulation" coalition's threat that consumers would suffer from the proposal.[50]

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[47] Van den Bulck and Donders.

[48] SARC (Strategische Adviesraad voor Cultuur, jeugd, sport en media), *Advies voorstel van decreet houdende wijziging van het decreet van 27 maart 2009 betreffende radio-omroep en televisie*, regulatory document, Brussels, Jan. 28, 2013.

[49] Vlaams Parlement [Flanders], Verslag hoorzitting [hearing], Apr. 16, 2013, Stuk 1703 (2011-2012), Nr.4.

[50] See for example "Het geld van televisiekijkend Vlaanderen," blog post, Apache.be, Apr. 25, 2013, accessed Sept. 2, 2014, http://www.apache.be/2013/04/25/het-geld-van-televisiekijkend-vlaanderen/; Benny Salaets, "Het digicorder

The most interesting stakeholder observed during the policy process was service provider Belgacom. Originally rooted firmly in the "no regulation" coalition, it proved open to discussion, indicating that it could appreciate broadcasters' concerns regarding Telenet.[51] The latter was instigated by Belgacom's weak competitive position in the market for television distribution, dominated by Telenet. This influenced its stance as the process evolved. When invited to provide confidential information in a closed parliamentary session in May 2013, Belgacom stated that it was willing to support the proposal on the condition that it include a different approach towards the dominant cable (i.e. Telenet) and other operators (including Belgacom). This formally marked Belgacom's move to the "signal integrity" coalition. The eventual law did not include diversified treatment of different distributors, but Belgacom changing sides affected the policy process, as it seriously weakened the "no regulation" coalition, leaving Telenet to fight its battle virtually on its own.

Political Stakeholders Facing New Configurations and New Technologies

As the theory suggests and our case study confirms, convergence results in new configurations that politicians need to deal with. Earlier work shows that Flanders, in terms of broadcasting, has had quite stable policy coalitions of political parties and other stakeholders, gathered around a belief in social responsibility or market failure, while policymaking with regards to ICT (considered a separate field) focused on neoliberal politics, innovation, and technological optimism.[52] Relationships between political parties and other stakeholders differed along those lines. In the signal integrity case, both sectors converged and its representatives arrived at a standoff. This pushed political parties into a difficult position, as often their views on each sector separately did not match when deciding on a stance on the converged issue at hand.

Analysis shows that this was the case for several of the Flemish parties. The Christian-Democrats (CD&V) of Flemish Minister and President Kris Peeters historically had strong ties with Telenet since the party played a key role in its creation in 1996 and subsequent success. As a result, the party was lobbied intensely by Telenet. However, several CD&V politicians expressed appreciation for the arguments of the "signal integrity" coalition, which equally lobbied its case based on relationships built in many years of negotiation on broadcasting matters. The liberal party Open VLD, traditionally siding with commercial broadcasters in defense of a market failure perspective, was now asked to join them in a regulatory intervention, while Telenet appealed to their traditional stance of "no regulation" and threatening considerable job losses as regulation might push Telenet to leave the country.[53] Despite being in favor of neoliberal economics, the Flemish nationalist government party NV-A (and radical nationalist opposition party Vlaams Belang) could not align with Telenet, a company controlled by an

debat: de return van het kijk- en luistergeld, de bettwistbare bestemming ervan en een uitweg," blog post, Apr. 19, 2013, accessed Sept. 2, 2014, http://bennysalaets.wordpress.com/2013/04/19/het-digicorder-debat-de-return-van-het-kijk-en-luistergeld-de-betwistbare-bestemming-ervan-en-een-uitweg/.

[51] Vlaams Parlement [Flanders], Verslag hoorzitting [hearing], Apr. 16, 2013, Stuk 1703 (2011-2012), Nr.4.

[52] Van den Bulck, "Can PSB Stake Its Claim in a Media World of Digital Convergence? The Case of the Flemish PSB Management Contract Renewal;" Van den Bulck and Donders.

[53] Vlaams Parlement [Flanders], Verslag hoorzitting [hearing], May 31, 2013, Stuk 1703 (2011-2012), Nr.5.

American multinational.[54] Following the argument for a robust Flemish media industry, NV-A successfully suggested amendments that would ensure additional revenues for broadcasters, resulting from the new legislation, to be reinvested in Flemish content.

Analysis of the data further suggests that the complexity of the issue promoted a growing role for industry experts, thus shifting the power balance between the different actors in the policy process. Media companies very much took the lead in terms of agenda setting and policy (re-)formulation. The broadcasters formally initiated the proceedings with their open letter and originally convinced the Media Minister to respond. The very technical nature of the issue, inherent in the rapid development of technological convergence, meant that politicians had a hard time grasping the issue, as can be witnessed in parliamentary hearings that often revolved around technical clarifications from experts. This created a key role for experts from the industry, not only in explaining technical and economic issues but, more importantly, in suggesting solutions. This reveals a rather thin line between industry informing policymakers and industry actually making policies, which is problematic because the industry stakeholders are largely motivated by their own gain.[55]

The Power of National/Regional Policymaking

National and regional policy actors not only have to deal with new actors in new configurations, but are increasingly part of a multi-level governance model in which they share responsibilities with other political actors. In Europe the most notable of these is the European Union (EU) and its liberalized internal market and competition regulation. Analysis of the data indicates that the regulatory initiative was indeed evaluated by stakeholders against the EU frameworks – as can be witnessed, for instance, in the request for advice from the Sectoral Council for Media. Nevertheless, the Flemish government still opted to interfere in a way that potentially clashed with those frameworks. Arguments regarding the importance of a local broadcasting market seem to have overridden concerns regarding the EU, even with political parties (and other stakeholders) that are usually in favor of a free market. This indicates that the coalition formed around a pragmatic set of ideas on the importance of local broadcasting, rather than deep ideological convictions. The result was that the Flemish government went against the EU in favor of instruments of controlled liberalization and even economic and cultural protectionism. In doing so, the Flemish government showed a certain path dependency as it tried to repeat the success of the regulation granting VMMa a commercial advertising monopoly in the 1980s, which went against the EU's Television Without Frontiers Directive. While this measure was later rejected by the Court of Justice of the EU, it gave the first Flemish commercial television provider a head start, helping it to retain a dominant position up to the present day.[56]

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[54] "Liberty Global neemt heft in handen bij Telenet," *De Standaard*, Mar. 5, 2013, accessed Sept. 2, 2014, http://www.standaard.be/cnt/dmf20130305_012.
[55] Des Freedman, *The Politics of Media Policy* (Cambridge, UK: Polity Press, 2008).
[56] Evens and Donders.

DISCUSSION AND CONCLUSION

The signal integrity case demonstrates that the forces and impact of digital convergence, combined with globalization, are real and considerable, posing challenges to politicians and stakeholders from the media industries alike. These challenges are prominently illustrated by the increasing impact of Telenet, a subsidiary of an American multinational, on the Flemish broadcasting sector, potentially undermining the carefully constructed balance and economic equilibrium in the media ecosystem that results to a large extent from Flemish-controlled liberalization policies in the sector since the 1980s.[57] This comes on top of the strong interference of the EU in media matters, of which the neoliberal philosophy of an open single market and competition seems to leave little maneuvering room for national and regional governments.

However, the Flemish signal integrity case indicates that these forces can be effectively modified, if not countered, by governments through the operation of strong advocacy coalitions; the case study showed the massive support from public broadcaster VRT, commercial broadcasters, the most important consumer organization, several political parties, most independent experts, and even distributors like Belgacom. It showed how successful coalitions that have strong ties that cut across government and non-government actors (mainly industry players) can be, and is exemplary of the close connection between domestic media industries and government.[58] Advocacy coalitions also are not static, but change over time, depending on the issue.[59]

While in conflict in the past,[60] public and commercial broadcasters joined forces, while Flemish politicians started questioning the dominant position and American ownership of a company which they considered for a long time the example *par excellence* of Flemish innovation policies. Since the case, conflicts between broadcasters and Telenet have been resolved to the extent that Telenet has acquired an important share in the former SBS Belgium group, claiming an interest in maintaining a "healthy" Flemish broadcasting market.[61] This far-reaching vertical integration between a television distribution company and a free-to-air broadcaster might in fact increase tensions with the other broadcasters in the market. The move of Liberty Global into the Flemish market was, moreover, quickly followed by its acquisition of 6.4% of the shares of ITV in the United Kingdom, illustrating the group's eagerness to increasingly control assets in content.

At the same time, the case shows that when governments opt for re-regulation of markets, there is friction. Controlled liberalization is not considered a "natural" or self-evident policy option, and in reality is quite the contrary. The policy problem, possible solutions, and consequences were fiercely contested and debated, and continuous lobbying was needed to keep the issue on the policy agenda

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[57] Leen d'Haenens, Frédéric Antoine, and Frieda Saeys, "Belgium: Two Communities with Diverging Views on How to Manage Media Diversity," *International Communication Gazette* 71 (2008): 51-66.
[58] Freedman, *The Politics of Media Policy*.
[59] Van den Bulck and Donders.
[60] Van den Bulck, "Can PSB Stake Its Claim in a Media World of Digital Convergence? The Case of the Flemish PSB Management Contract Renewal."
[61] "Telenet investeert fors in De Vijver Media," *De Standaard*, June 17, 2014, accessed Sept. 2, 2014, http://www.standaard.be/cnt/dmf20140617_01143768.

and to push for the adoption of the new decree. The result is "hybrid" regulation – i.e. rules that enable and further a free flow of services and goods while protecting the Flemish market with media-specific measures. The case further proved the messiness of policy processes,[62] as the adoption of the signal integrity regulation revealed considerable lack of knowledge of the policy problem on the side of politicians, necessitating the involvement of industry experts; and political negotiations that, despite public parliamentary hearings, lacked transparency at every stage of the legislative process. As a result, the exact nature of the relations between governmental parties and the industry remain clouded, raising questions of accountability.[63]

The concern voiced by Flemish broadcasters, and the legal action resulting from it, has been noticed elsewhere. For one, the European Parliament's Committee on Culture and Education has warned the European Commission that existing intellectual property rights are not sufficient and should be adjusted to "safeguard by law the integrity of linear and non-linear services on hybrid platforms and in particular to prohibit the overlay or scaling of these services with third-party content, unless the latter have been authorised by the content provider and explicitly initiated by the user."[64] More and more countries, such as the UK and the Netherlands, are being confronted with similar cases. The Netherlands adopted a legislative proposal concerning the relation between distribution and broadcasting in 2013, but it is not as far-reaching as the Flemish decree.[65]

It is too soon to assess the staying power and effect of the signal integrity legislation, but some issues can be raised. First, some decry the discriminatory nature of the regulation, enforcing tougher rules on domestic distributors (Telenet and Belgacom). In a globalized media market this may simply prove beneficial to international players like Google and Apple. So far, legal interpretations of the issue differ: the "signal integrity" coalition argues that the new rule applies to all service providers targeting Flemish audiences with Flemish content, while Telenet refutes this.[66] Second, the new rule runs the risk of becoming quickly outdated due to continuing technological evolutions and new economic initiatives. While recent experiments by broadcasters with their own OTT services and user-friendly apps (such as Stievie) may help target early adopters looking for new methods of ad-skipping and program recording without payment, other alternatives will not necessarily be captured by the legal concept of "service provider." For instance, in July 2014 a Flemish judge ruled that this term is not applicable to Baahlu, an online video recorder service that was introduced in Flanders in 2014 by the international group Right Brain Interface, and that allows subscribers to tape programs and watch them within 90 days. This judgment may influence the outcome of the broadcasters' appeal against Baahlu based on

[62] Rebecca Sutton, "The Policy Process: An Overview," Working Paper 118, Overseas Development Institute, Aug. 1999, accessed Sept. 2, 2014, http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/2535.pdf.
[63] Yiannis Papadopoulos, "Problems of Democratic Accountability in Network and Multilevel Governance," *European Law Journal* 13 (2007): 469-496.
[64] European Parliament, Committee on Culture and Education, "Draft Report on Connected TV," report, Jan, 13, 2013, accessed Sept. 2, 2014, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML%2BCOMPARL%2BPE-504.075%2B01%2BDOC%2BPDF%2BV0//EN, 6-7.
[65] Evens and Donders.
[66] Vlaams Parlement [Flanders], Verslag hoorzitting [hearing], Apr. 16, 2013, Stuk 1703 (2011-2012), Nr.4.

the signal integrity legislation.[67] Third, the legal sustainability of the rule can be questioned. The Belgian Council of State, in its advice on the legislative proposal, warned that some of its provisions may go against the free movement of services, a key legal principle within the EU internal market.[68]

In February 2014, Telenet filed a complained against the new rule to the Belgian Constitutional Court,[69] and an informal complaint with the Internal Market and Services Directorate General of the European Commission is being investigated. The European Commission's position might, somewhat surprisingly, be more ambivalent as DG Connect (European Commission Directorate General for Communications Networks, Content & Technology) might in fact be cautiously exploring the possibilities of introducing similar regulation at the European level. Hence, the Flemish case may prove a case of bottom-up learning within the EU.

[67] Sara Van Poucke, "Bhaalu mag zijn activiteiten voortzetten," *De Redactie*, July 8, 2014, accessed Sept. 2, 2014, http://deredactie.be/cm/vrtnieuws/cultuur%2Ben%2Bmedia/media/1.2026708.
[68] Raad van State afdeling Wetgeving [Belgium], *Advies voorstel van decreet houdende wijziging van het decreet van 27 maart 2009 betreffende radio-omroep en televisie*, Advies 52.043/3, Oct. 9, 2012, accessed Sept. 1, 2014, http://docs.vlaamsparlement.be/docs/stukken/2011-2012/g1703-2.pdf.
[69] "Telenet trekt naar de rechter over decreet uitgesteld kijken," *De Standaard*, Feb. 17, 2014, accessed Sept. 2, 2014, http://www.standaard.be/cnt/dmf20140217_00983661.

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