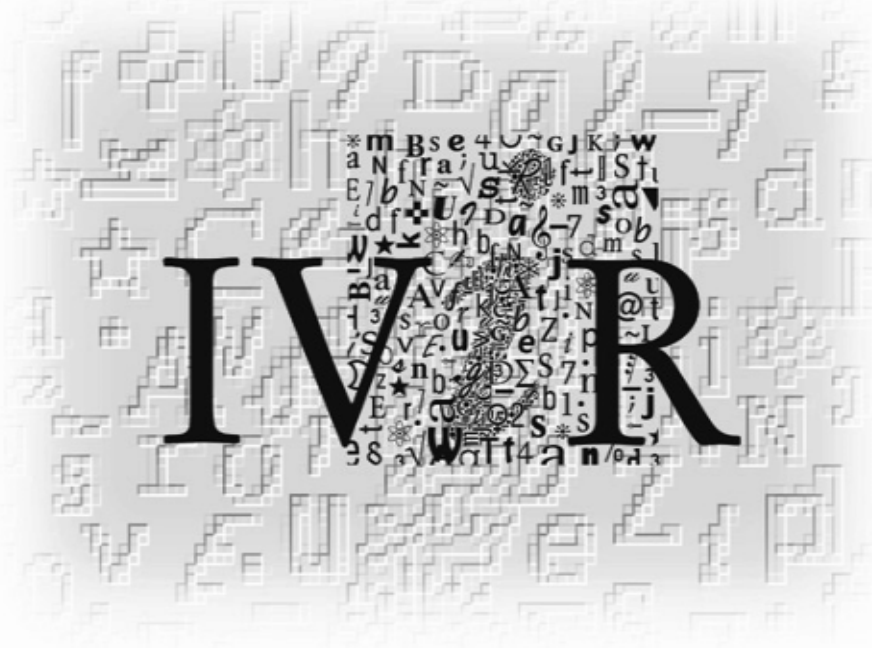


# TV bottlenecks in transmission: the use of sector regulation to enforce access to decoders

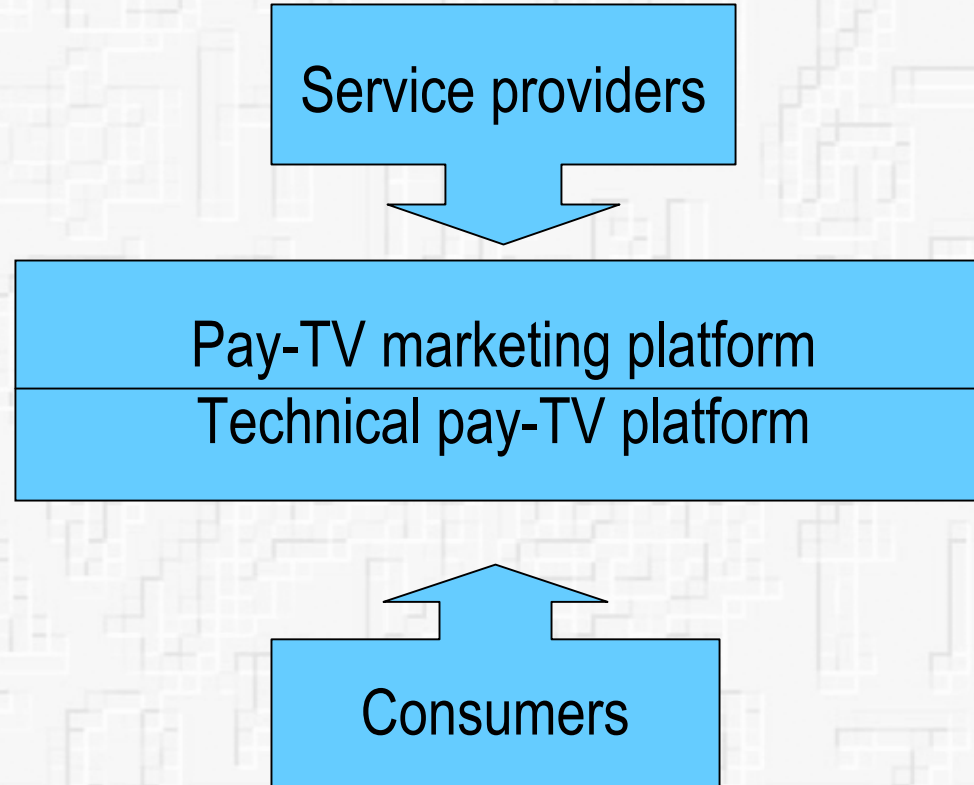


Dr. Natali Helberger  
CLEC Seminar  
Brussels, March 22

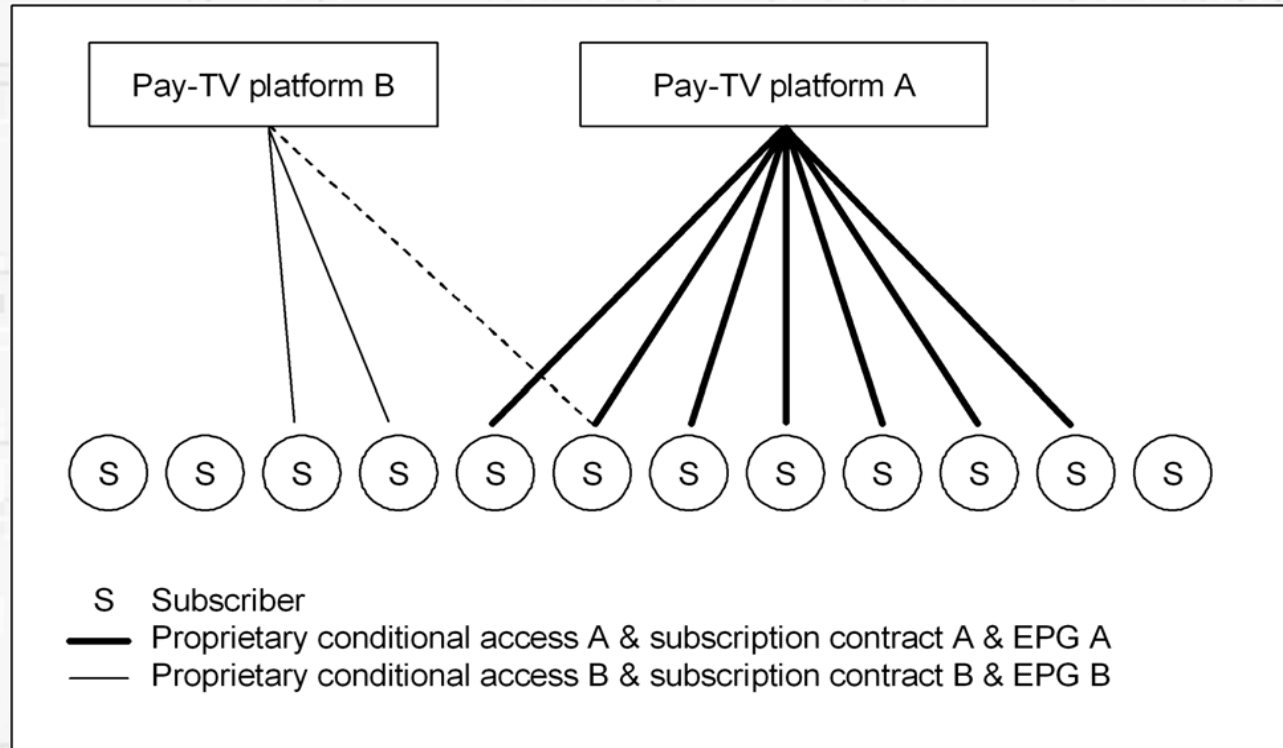
# Content

- 1. Access issues in digital broadcasting
- 2. Access regulation for digital broadcasting sector
- 3. Critique
- 4. Reform proposal
- 5. Other examples

# 1. Access Issues in digital broadcasting



# Monopolization of the Consumer Base



# Reasons to regulate access in digital broadcasting

- Market policy
  - Discipline strategic bottleneck control.
  - Competition.
  - Multi-platform approach.
- Public policy
  - Consumer interests.
  - Information policy goals.
  - Investment, innovation.

# Challenges for the regulator

- Realise policy goals.
- Identify bottlenecks.
- Balance interests.
- Stimulate investment, innovation.
- Be efficient

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# The Access Directive in a nutshell

- New, harmonised framework: principally open to cover all possible bottlenecks in the communications sector.
- Flexible toolbox approach.
- Distinct, stricter rules for digital broadcasting.

# Regulation of access in digital broadcasting markets

- ▶ Article 6: conditional access
  - Pre-defined bottleneck: the conditional access.
  - Access obligation restricted to digital broadcasting services.
  - Availability Significant Market Power (SMP)
    - test limited.
  - Automatic access obligation.
- ▶ Article 5 (1) b: EPG, API

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# Convergence

- Regulation of technical bottlenecks in digital broadcasting differs fundamentally from flexible type of access regulation for all other technical bottlenecks.
- Inconsistencies and incoherencies.
- Obstacles to convergence, take-off truly integrated services.

# No 'per se' bottlenecks in digital broadcasting

- Not access to any CA (EPG, API) is critical, but access to the most popular one.
- Bottleneck character is often not so much result of control over the facility per se, but of factors that influence the size of switching costs:
  - Indirect network effects.
  - Contractual lock-ins.
  - Technical lock-ins (lack of interoperability).
  - Lack of transparency.
- In all other cases: risk of over-regulation.

# Undesirable side effects

- Negative investment incentive.
- Hampers development of alternative platforms.
- Excessive influence on technical, market developments.
- Excessive influence on journalistic competition.

# Regulatory efficiency

- Deutsche Telekom/Betaresearch (1998):  
Mandated access ‘*might go some way to ensuring that parties are not subject to discrimination*’, but it does not suffice.
- Newscorp/Telepiu (2003):  
‘... the merged platform, in the absense of corrective measures, will thus be in a position to *raise rival’s costs* by controlling third parties’ access to the DTH platform services and to the conditional access. Consequently, the *possibility for a newcomer DTH broadcaster, which is not able to set up an alternative infrastructure, to be in a position to become operational will depend on NewsCorps’ goodwill not to raise barriers when giving access to its platform services.*’

# Interim conclusion

- Evolution of bottleneck situations: from ‚natural monopoly‘ to ‚dominant standard‘.
- No per se bottlenecks in digital broadcasting.
- Access obligations
  - do little to reduce switching costs and promote alternative platforms as durable solution to bottleneck problem.
  - or to comfort consumer concerns.
  - are difficult to monitor.
- Present approach needs update.

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# Tackle Monopolization of the Consumer Base

- Removing bottleneck character by reducing switching costs
  - Technical lock-ins.
  - Contractual lock-ins.
  - Information lock-ins.
- Stimulate development of alternative platforms (where possible).
- That is: the ‘only solution to the bottleneck problem that is viable in the long run.’

# No need to reinvent the wheel...

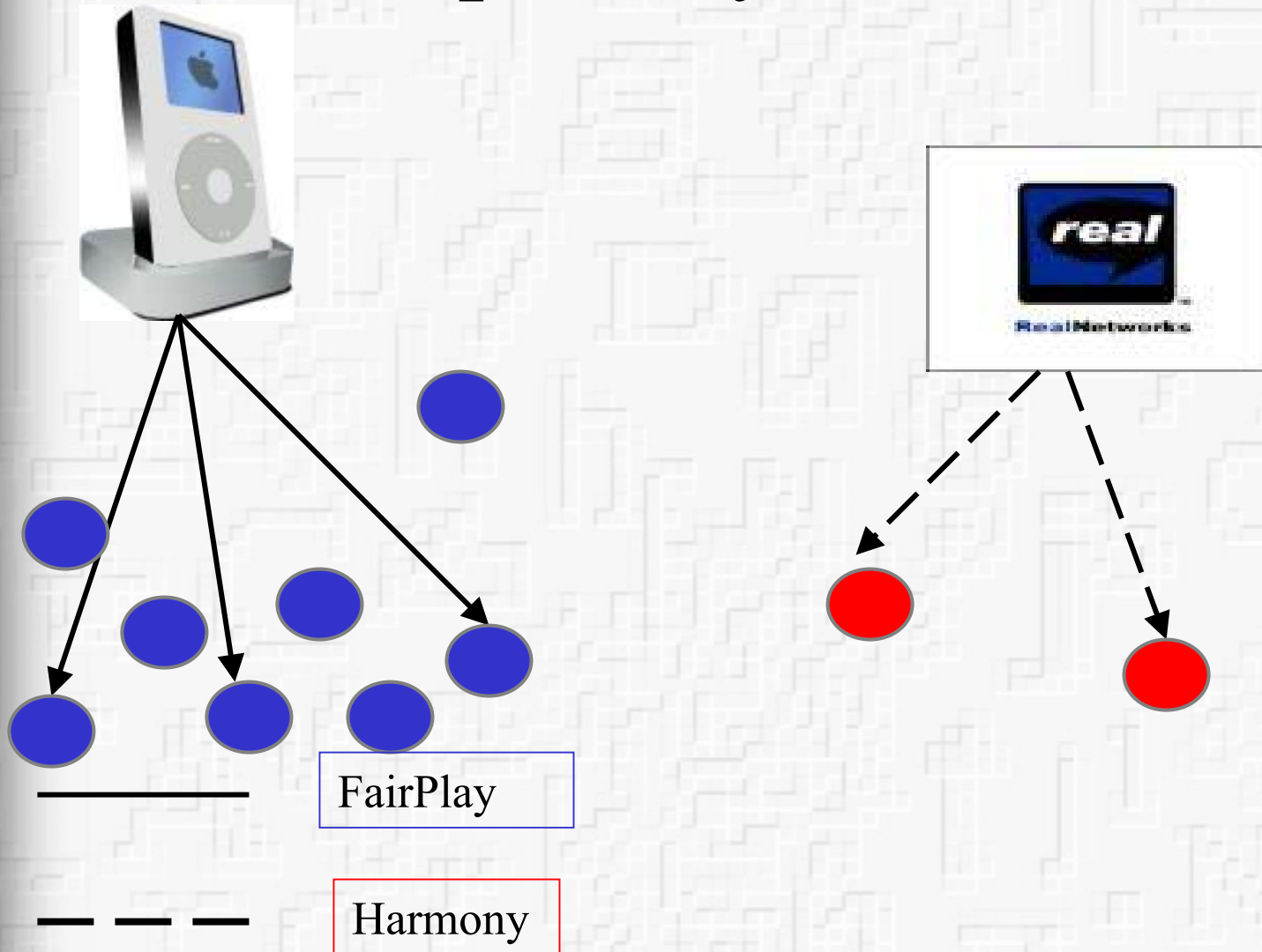
- ... had Communications Framework kept its promise of a technology-independent approach.
- Universal Services Directive addresses:
  - Contractual lock-ins: transparency, unbundling, fair pricing.
  - Technical lock-ins: interoperability of television equipment.
  - Information lock-ins: comprehensive, comparable and user-friendly service information.
- But not for digital broadcasting.
- Why not?

# Consumer Empowerment is Key

- Consumer protection = key to realizing competition and information policy objectives.
- B2C relationship = source of switching costs.
- Regulation of broadcasting sector ignores a B2C relationship
  - “Once-sent-freely-accessible-for-all”.
- Needed: rules to empower digital broadcasting consumer.

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# Proprietary DRM

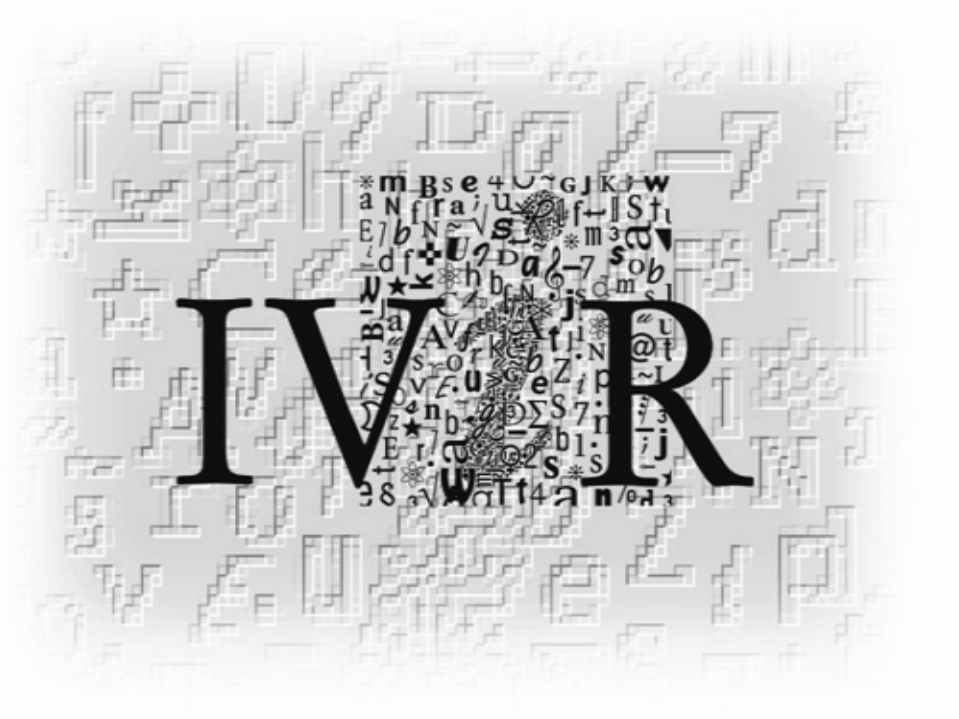


# Search engines



# Conclusions

- **Access obligations:** Remedy of the symptoms, not of the cause
- **Cause:** Monopolization of the consumer base
- **Key to tackle the matter:** Reducing switching costs in the B2C relationship in digital broadcasting – consumer law.



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