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Competition problems in the distribution of television programs in Argentina

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Contents

Preface

This work is the final product of a research carried out in the National Commission of Competition Defense of Argentina (CNDC) within the framework of a program to carry out research related to competition issues in the distribution sector, financed by a grant of the International Development Research Center of Canada (IDRC).

This research was coordinated by Horacio Salerno, former commissioner of the CNDC, in collaboration with Diego Povolo, current commissioner of the CNDC, and Germán Coloma, an external expert. It was carried out by a work team which was also formed by Esteban Aguiar, Federico Bekerman, Cecilia Castets, Marcelo D'Amore, Gabriel Giacobone, Diego Oribe and Germán Saller. The work consists of six chapters, and was written by the professionals mentioned before, according to the following description. Federico Bekerman was in charge of chapter 1, in collaboration with Esteban Aguiar, Diego Oribe and Germán Saller. Germán Coloma was responsible for chapters 2, 3 and 6, while Cecilia Castets was in charge of chapter 4, in collaboration with Gabriel Giacobone. Finally, Marcelo D'Amore wrote chapter 5.

In order to gather the information that served as the starting point for writing chapter 1, which describes the sector of distribution of television programs in Argentina, the CNDC opened a market investigation under the title "Study of the dynamics, behavior, and tendencies of the market of television distribution" (File S01:0179259/2006, C1127). This investigation has its own report and conclusions, on which chapter 1 of this work is based.

As regards the management of the grant awarded by the IDRC, the CNDC signed an agreement with the School of Economic Sciences of the National University of La Plata (UNLP), which acted as management agent of such grant. The UNLP also took part in this work through its publishing house (EDULP), which was responsible for the publication of the text. María Paz Hurtado, who translated this work into English, made another important contribution to carry out the final task.

Lastly, it is worth mentioning that, although this work does not necessarily reflect the opinion of the National Commission of Competition Defense regarding all the topics analyzed here, we believe that it represents a contribution that will be relevant for the study of competition problems in the distribution of television programs in

Argentina, and we also hope that it will be useful for all those interested in this matter, both in our country and abroad.

José A. Sbatella
President,
National Commission
of Competition Defense.

1. Description of the sector of distribution of television programs in Argentina

The distribution of television programs takes place through different means (open and pay, cable and air television, etc.). In that activity, there are a number of different economic agents that operate on the different stages of the production and distribution chain. Therefore, apart from the existing relationship between the consumers of television programs and the direct suppliers of those programs, we must take into account the following upstream firms: the companies in charge of marketing television channels who act as suppliers of the television system operators, the television channels themselves, and the companies in charge of the production of contents (who act as suppliers of the television channels).

Although the scheme we have described helps to order the business of the provision of television programs, in Argentina there are several degrees of integration among the companies that operate along the different stages of the chain. In this respect, it is possible to find examples of vertical integration between content producer and TV channel, between cable television operators and marketing firms, as well as channels that are sold directly to cable television operators. Additionally, other parties that we must take into account for the sake of the analysis are the companies in charge of measuring the audience and the Federal Broadcasting Committee (COMFER), in its role as regulatory agency of the sector in Argentina.

The goal of this chapter will be to describe in a general way the operation of the markets that can be identified within the sector of the distribution of television programs in Argentina. This chapter will begin with a general outlook of the features of the broadcasting services, and will then review the markets existing in the different segments (open television, pay television, provision of television channels, and production of contents).

1.1. Characteristics of the broadcasting services in Argentina

According to the Argentine regulation, broadcasting services are divided into two groups: main services and complementary services. In the first group we can find amplitude modulation radio and open television, while the second group is formed by

subsidiary frequency modulation radio, community antenna television services, closed television circuits, ground television, satellite television, and other unspecified complementary services.

Leaving radio services aside, which we will not analyze since it is not purpose of this work, it is worth mentioning that the open television service is formed by the so called "Official Broadcasting Service" (public television), and by the companies awarded the licenses for the television channels granted by the Executive Power by means of a public tender. For all other complementary services, instead, the licenses are granted by the COMFER through direct awarding.

The open service of community antenna television consists of the reception, amplification, and distribution (preferably through a physical link) of the channels coming from one or more broadcasting stations and their relay stations in order to reach consumers. This service originated as a complement to open television, allowing the reception of the channels in those areas where they could not do so in a live way. The closed-circuit community antenna television, on the contrary, is what we normally call "cable television". In Argentina, it is regulated by several norms, most of which have been issued by the National Communications Department and by an agency called the National Communications Commission.

The so-called "ground television", instead, is an air television system that is codified in certain specific bands of the radio electric spectrum, known as UHF (ultra high frequency) and MMDS (multichannel multipoint distribution service). Their transmissions are directly received by subscribers, and they can include from 33 analog channels up to 200 digitally-compressed channels. The main disadvantage of this service, however, has to do with the fact that it makes use of ground stations and antennas to send the channels, which means that it is vulnerable to physical obstacles, either natural (for example, mountains) or artificial (for example, buildings). This is why it is mainly used in rural areas rather than in urban areas, although in the future it may become a more competitive service it there is a greater use of digital technology (that allows offering a greater number of channels, and including additional internet and data-transmission services).

Finally, satellite television is divided into two types, according to the means used for the provision of the service. The first type is the one that uses

telecommunications satellites (fixed satellite service), which connect the signal transmitter and the receiver, which in turn broadcasts the images to the target users by air or cable. The second type of satellite television is the one that uses direct broadcast satellites (DBS), whose signal, which is more powerful but has a more limited coverage, can be directly received by the final users of the television images, by means of the installation of parabolic antennas of a small diameter. In Argentina, this service is regulated by a resolution of the COMFER issued in 1996.

A future development that could take place fairly soon regarding satellite television has to do with the possibility of using the system for the reception of internet data. This would be an asymmetric system where the output would be through the telephone and the input data would be through the satellite. This combination of the telephone and satellite services is used nowadays in the system known as pay-per-view, and it could also be applied to the transmission of financial information and games.

Cable television systems, instead, have integrated its television services with the internet service almost completely, by means of symmetric systems where data input and output takes place through the same wire. In this sector, cable television operators compete mainly against fixed telephone companies, which offer the internet service through their telephone lines.

A technical issue that greatly affects the operation of the markets of television provision in Argentina is the way in which television system operators capture those programs. In general, programs are broadcast by the television channels that provide them, and are transported by means of the satellites that cover the Argentine territory or a part of it. The cost of via satellite transportation is generally fixed, and does not vary with the distance or the effective distribution taking place in a specific area.

The companies in charge of the marketing and distribution of television channels that have their own teleport to link up their channels must hire a capacity segment in a satellite that covers the served area. From the information supplied by the main channel suppliers, we know that there are three satellites that are normally used in Argentina, which are called New Skies Satellite, Nahuel Sat and Panam Sat. Additionally, those companies that market television channels and do not have their own teleport must hire the service of broadcasting transportations to carry out the up-link. The main servers are four companies called Ser Sat, TIBA, Globe Cast and Panam Sat.

The maximum number of channels to be marketed depends on the hired satellite capacity and on the compression and codification systems employed. It is worth mentioning that there is an important difference between satellite television (which in theory can offer a great number of channels) and other distribution means (for instance, cable television). Given the technology used nowadays, cable television systems are limited to a number of 80 channels, although this number could greatly increase if a digital technology were used, the development of which is in its preliminary stage.

1.2. Open television

As we mentioned in the previous section, in Argentina there is an official broadcasting service, which offers public television, and a group of licensees of the different private channels. The only public national channel is LS 82 TV Canal 7, an open television channel in the metropolitan area of Buenos Aires, which also covers the rest of the country by means of optical fiber and/or air reception (so that pay television operators can receive it and include it in their channel grids), and by means of a satellite server, TIBA (which enables national coverage as well as international coverage to bordering countries and the United States).

As regards private open television channels, the most important ones are, undoubtedly, the three channels from the city of Buenos Aires and a channel from the city of La Plata, which is the capital of the province of Buenos Aires and is located 60 kilometers away from the city of Buenos Aires. The first three are: LS 83 TV Canal 9, owned by Telearte S.A., LS 84 TV Canal 11, owned by Televisión Federal S.A. (Telefé), and LS 85 TV Canal 13, owned by Artear S.A. The other channel is LS 86 TV Canal 2 from La Plata (América 2), owned by América TV S.A. These companies cover directly an area of an approximate 70-kilometer radio from their originating station and in many cases they have relay stations in other parts of the country. On the other hand, apart from these relay stations, in other parts of the country there are a large number of open television channels that have their own programs.

The only open television channels that are distributed on a national basis are the public television channel and the four private television channels from Buenos Aires and La Plata. Those channels can be brought to consumers in the rest of the country through their relay stations, or through the sale of the distribution rights by the owners

of each of the channels to the companies that market them. There are also cases where the owners of the channels sell their distribution rights directly to the pay television systems.

As regards Canal 7's distribution, for instance, there is a certain degree of differentiation regarding the commercial terms under which it is offered to cable television operators, which is closely connected with how important the operators are. As regards local cable television operators in the interior of the country, the channel agrees a monthly fee related to the number of users. As regards other cable television operators and satellite television operators, which have a greater coverage throughout the country, there are usually special quantity discounts. Anyway, Canal 7's main source of income is not the marketing of distribution rights (approximately 17%) but the sale of advertising to sponsors (81%). The channel also receives a direct contribution from the Argentine State of approximately 5,000,000 Argentine pesos a month.

Table 1: Ratings and shares of open television channels

Concept / Year	2003		2004		2005	
	Rating	Share	Rating	Share	Rating	Share
Telefé	12,5	34,44	15,0	37,41	14,3	37,83
Canal 13	10,8	29,75	10,9	27,18	9,4	24,87
Canal 9	6,2	17,08	7,2	17,96	8,3	21,96
América 2	5,5	15,15	5,5	13,72	4,7	12,43
Canal 7	1,3	3,58	1,5	3,74	1,1	2,91
Total	36,3	100,00	40,1	100,00	37,8	100,00

Source: IBOPE.

The competition existing among open television channels is basically over the audience, which is measured through the ratings of their programs (that is, the percentage of audience with respect to the total number of existing television sets in the selected universe) and through their share (that is, the audience percentage with reference to the television sets that are on at a certain time). Taking into account data provided by IBOPE, which is the main television audience-measuring company in Argentina, we have calculated the values that appear in Table 1, corresponding to the average audiences of all times for the period 2003-2005.

1.3. Pay television

From the economic point of view, cable television, satellite television and ground television can all be included within the concept of "pay television". This name refers to the fact that all these services are marketed through firms that enter contracts with their viewers and, by means of them, such viewers subscribe to a certain service and pay a certain amount of money, usually monthly. This is their main difference in comparison with open television services, which can be received directly and for free by any person who has a television set, without having to subscribe to any particular television company.

According to the information supplied by the National Institute of Statistics and the Census of Argentina (INDEC) and the main pay television suppliers, the number of homes that have access to this kind of service amounted to 5.7 million in 2001 throughout the country. This represents 56.3% of the total number of homes that had a television set. Of this figure, 53.2% were users of cable television, and 3.1% were users of satellite television or ground television services. The penetration level of cable television in Argentina is remarkable in comparison with other Latin American countries and with many European countries, although it is lower than that of some developed countries such as Canada (72.1%), the United States (71%), Denmark (68,3%) and the United Kingdom (60.3%). Another figure that shows the importance of the cable television service in Argentina is the fact that of all the homes where the cable networks are available, 72.8% of them are users of the system.

According to data collected by IBOPE, however, the ratings of the channels that are only distributed through pay television are much lower than that of the channels that are distributed through open television. Taking into account the average for the period 2001-2005, for instance, the five open television channels from the Buenos Aires metropolitan area concentrated almost 70% of the total share, while the channels that can only be seen through pay television captured the remaining 30%. However, it is worth mentioning that a good part of the open television share is obtained by means of viewers that watch those channels through pay television, and that many of them (especially, those who live outside the Buenos Aires metropolitan area) can only watch the open television channels from Buenos Aires and La Plata if they are users of a pay television system.

According to some data collected in a survey carried out by the COMFER in

2004, in Argentina the only people who give priority to the programs available in pay television are those who watch very few hours of television a day and the children under 14 years of age (who usually alternate between open television channels and children television channels). We must take into account the fact that, according to the data collected in the same survey, the Argentine viewer watches an average of 3 hours of television a day, and that the population segments that watch more television are the people under 18 years of age and the middle-class and lower-class adults. As the education level of the audience increases, the habit of watching television seems to decrease.

Table 2: Share of the main cable television operators, per province

Province / Firm	Multicanal	Cablevisión/ Teledigital	Telecentro	Supercanal	Others
Buenos Aires (metrop area)	44,55	31,75	14,49	0,00	9,21
Buenos Aires (rest province)	47,20	48,96	0,00	0,00	3,85
Catamarca	0,00	0,00	0,00	34,00	66,00
Chaco	45,51	39,17	0,00	0,00	15,32
Chubut	0,00	0,00	0,00	52,90	47,10
Córdoba	41,17	53,69	0,00	0,00	5,15
Corrientes	58,86	21,36	0,00	0,00	19,78
Entre Ríos	24,24	69,31	0,00	0,00	6,45
Formosa	87,66	0,00	0,00	0,00	12,34
Jujuy	0,00	0,00	0,00	0,00	100,00
La Pampa	48,25	51,76	0,00	0,00	0,00
La Rioja	0,00	0,00	0,00	51,90	48,10
Mendoza	0,00	0,00	0,00	76,60	23,40
Misiones	0,00	100,00	0,00	0,00	0,00
Neuquén	0,00	94,80	0,00	5,20	0,00
Río Negro	0,00	76,90	0,00	23,10	0,00
Salta	0,00	99,63	0,00	0,00	0,37
San Juan	0,00	0,00	0,00	45,70	54,30
San Luis	0,00	0,00	0,00	16,60	83,40
Santa Cruz	0,00	0,00	0,00	27,60	72,40
Santa Fe	27,95	57,89	0,00	0,50	13,65
Santiago del Estero	0,00	0,00	0,00	49,70	50,30
Tierra del Fuego	0,00	0,00	0,00	42,80	57,20
Tucumán	0,00	0,00	0,00	29,30	70,70

Source: CNDC, based on company data.

The main cable television suppliers in Argentina are Cablevisión (which is integrated with another company called Teledigital), Multicanal, Supercanal, Telecentro and Red Intercable. The latter is not a company in itself, but a network of about 450 local independent operators. Of the companies that we have mentioned, Telecentro operates in the city of Buenos Aires and its surroundings, while Supercanal does not

operate in that area but covers an important part of the interior of the country. The two largest companies in terms of users on a national level, Cablevisión and Multicanal, have an important geographic coverage, both in Buenos Aires and in the rest of the country. Together they concentrate 57% of cable television users throughout the country, a figure which is much higher in Buenos Aires and in several other provinces.

One of the characteristics of cable television in Argentina is that in several urban areas there are two or more overlapping cable networks. Although we do not have data that allow us to quantify this phenomenon (in order to know which percentage of users lives in areas where they can only choose one cable television operator, and which percentage lives in areas where they can choose among more than one), we could calculate the share of the main companies in the total number of users per province. These are shown in table 2.

As regards satellite television, in Argentina this is provided by only one operator, DirecTV, and it makes use of the provision system known as DBS. The main difference between the service provided by DirecTV and the service provided by cable television operators has to do with the fact that the technology used is digital, which means that its capacity as regards the potential number of channels is greater than that of cable television. In practice, however, the basic service offered by DirecTV in Argentina has basically the same channels than the basic service offered by cable television operators.

Despite this, there are some differences concerning the additional services offered by DirecTV in comparison with cable television operators. It is worth mentioning that satellite television has a greater range of optional premium channels, and it provides the service of pay-per-view programs, which is unusual for cable television operators. Another advantage has to do with the fact that, since wiring is not necessary, satellite television can reach places that cable television cannot, mainly in rural areas and other areas with a low population density.

As regards the problems of the satellite television system in comparison with those of cable television, there are two that are worth mentioning. In the first place, as the broadcasting of the programs is carried out from the same place, it is not possible to include local television channels within the grid, unlike cable television operators who generally do so in the different cities where they operate. Secondly, because of the

technology employed, it is not possible for the different television sets installed in a single home to watch different channels, unless there is a separate antenna connected to each television set (with the subsequent additional cost that this implies). In this sense, cable television has an advantage over satellite television, since all the channels are transmitted through the same wire, which means that different channels can be watched at the same time in different TV sets in the same house.

Table 3: Pay television prices in Argentine pesos (VAT included)

Concept / Year	2002	2003	2004	2005
Basic Cable TV monthly fee				
Buenos Aires (Multicanal)	47,49	55,48	56,87	60,86
Buenos Aires (Cablevisión)	47,45	54,99	56,00	59,95
Córdoba (Multicanal)	45,62	52,89	54,01	57,89
Córdoba (Cablevisión)	42,23	47,92	48,85	52,53
Santa Fe (Multicanal)	41,55	48,33	49,08	49,99
Santa Fe (Cablevisión)	40,58	46,62	47,90	50,98
Chaco (Multicanal)	42,26	47,70	50,40	52,70
Chaco (Cablevisión)	44,25	52,45	53,90	54,90
Formosa (Multicanal)	37,45	40,47	41,99	45,50
La Pampa (Multicanal)	39,99	43,86	45,39	50,46
Salta (Cablevisión)	33,96	35,20	36,42	39,95
Misiones (Cablevisión)	41,92	47,62	48,90	51,95
Basic DirecTV monthly fee	59,87	73,89	73,99	79,54
Cable/satellite price gap	26,12%	33,77%	31,11%	31,68%

Source: CNDC, based on company data.

Traditionally, the price of satellite television in Argentina has been higher than the price of cable television, and this has led to the fact that, in those areas where wiring is available, most people choose cable television instead of satellite television. Nevertheless, the gap between the basic service provided by cable television and satellite television operators slightly decreased between 2003 and 2005, according to what can be observed in table 3. In fact, if we take into account the price of the average service provided by Multicanal and Cablevisión in the city of Buenos Aires and the price of the basic service offered by DirecTV (which is the same throughout the country), the gap decreased from 33.77% in 2003 to 31.68% in 2005.

Together with the reduction of the price gap, the number of users of satellite television in Argentina has increased in the last few years. This number changed from about 255,000 in 2003 to 370,000 in 2005. This figure, however, is still small in

comparison with the number of users of cable television.

Another interesting aspect that can be observed from the figures above is the relatively important geographic differences regarding the price of cable television. Taking the year 2005 as an example, we can see that the price of Cablevisión's basic service in the province of Salta was $39.95 on average, 33% less than the price charged by the same company in the city of Buenos Aires. This difference (and others arising from the figures in table 3) could be due to different factors, among which we can mention the level of income of the population. The existence of competitors in the same geographic region, conversely, does not seem to be important, since Salta is a province where Cablevisión practically monopolizes the cable TV service, while Buenos Aires is one of the areas where there is a greater overlapping (among Cablevisión, Multicanal and Telecentro).

Another example can be seen in the case of the province of Chaco (where both Multicanal and Cablevisión operate), whose average price has been slightly higher than the average price in neighboring provinces like Misiones (where only Cablevisión operates) or Formosa (where only Multicanal operates). However, it is worth noting that these relations between price and competition have a very specific and preliminary character, as we have not been able to collect data regarding the real prices charged by the companies in those areas where their networks overlap, so that we can compare them with those areas in the same cities where their networks do not overlap.

There are two current events, regarding pay television in Argentina, which could have future implications and are related to a probable increase in the horizontal concentration of the sector and to the potential entry of new competitors. As regards the first of these aspects, it is worth mentioning the announcement made in October 2006 concerning a transaction that would imply the merger of the two main cable television operators (Multicanal and Cablevisión). Regarding the second aspect, we can point out the fact that, together with the emergence of digital television, the main telephone companies in Argentina (Telefónica and Telecom) are investing in infrastructure that will enable them to offer the services known as "triple play" (voice, data and video), with which they could offer their own pay television systems. For the time being, however, this development is still in an early stage, and there are also certain regulations preventing telephone companies to offer television services.

1.4. Provision of television channels

The main input used by pay television companies is the one constituted by the channels that they include in their grids. Therefore, the provision of those channels represents one of the key elements along the process of distribution of television programs. As regards the supply of television channels, we can distinguish two stages in its distribution and marketing. The first stage links the channel suppliers and the television system operators (content distributors). In the second stage, those distributors supply the channels to the users, and distinguish between those that will be televised through the basic service and those that will be codified, premium or pay-per-view.

Concerning the demand for television channels, there are also two stages for the sake of analysis. First, content distributors choose the channels that will make up the grid that they will offer, creating the channel package that they will purchase from the suppliers. Secondly, viewers demand certain contents and show their preferences over the channels, and the times at which they watch the different channels. This demand can be measured by means of the rating or the share of each program or channel.

In order to reach the viewers, contents go through different stages. Therefore, there are content producers who provide the necessary resources in order to create programs. Once the contents have been created, the "program gatherers" purchase the broadcasting rights of the different kinds of contents, and organize them according to a certain schedule. As an example of this, we can mention the case of movie channels which purchase the rights to broadcast certain movies and organize them according to a schedule. Finally, there are different means through which those programs are distributed to the final users, which are the different pay television and open television systems.

Pay television systems in Argentina distribute an important number of channels, since the usual grid has an average of 65 to 70 channels, between those included in the basic service and the codified channels. However, as we mentioned before, almost 70% of the share is concentrated in the five open television channels from the Buenos Aires metropolitan area, which can also be watched in the rest of the country through cable and satellite television (see table 4). In the remaining 30%, the largest portion of the audience is captured by the channels specialized in movies, sports and children's

programs, which together concentrate 17.5% of the total share.

With reference to channel suppliers, the most important ones are Tevefé, Pramer and Artear, which are the companies that provide pay television operators with the private open television channels from Buenos Aires and La Plata (Telefé, in the case of Tevefé, Canal 9 and América 2, in the case of Pramer, and Canal 13, in the case of Artear). Pramer and Artear also market several other specialized channels (news, sports, movies). The next suppliers in order of importance are Imagen Satelital and Turner, which only provide pay television channels specialized in movies, music, news, children's shows, and others.

Table 4: Average ratings and shares, 2001-2005

Concept	Rating	Share
Audience by theme		
Open TV	36,52	69,72
Movies	3,84	7,33
Series	1,41	2,69
Sports	2,13	4,07
Children's progams	3,18	6,07
Music	0,62	1,18
News	2,21	4,22
Others	2,47	4,72
Audience by supplier		
Tevefé	13,15	25,11
Pramer	12,91	24,65
Artear	11,14	21,27
Imagen Satelital	3,02	5,77
Turner	2,13	4,07
Fox	1,55	2,96
ESPN	1,4	2,67
Canal 7	1,38	2,63
Discovery	1,11	2,12
HBO	1,06	2,02
LAP TV	1,02	1,95
TRISA / TSC	0,83	1,58
Others	1,68	3,21

Source: CNDC, based on IBOPE's data.

Although the most direct indicator of the importance of the different channels is their audience, the different marketing methods of the programs mean that some channels are considered much more important than what their ratings or shares indicate. This is the case of the movie channels that are usually codified, and for which users pay an additional fee. Among these channels we can mention HBO and Cinemax, provided by HBO, and Cinecanal and Movie City, provided by LAP TV. Although these

channels usually have relatively low ratings (since not all users are subscribed to them), they usually generate larger amounts of money for their suppliers and cable television operators, since they produce an additional specific revenue. The same happens with the codified soccer matches which are broadcast by TyC Max in Argentina, and are marketed by the TRISA/TSC group. As we will see in chapter 4 of this work, these "star channels" have brought about the greatest number of antitrust cases over disagreements between suppliers and cable television operators.

TyC Max's status of "star channel" seems to extend to the TyC Sports channel, which most pay television operators include as part of their basic service. In fact, these two channels stand out because they are the only two channels that broadcast the Argentine first division soccer matches live. As most cable television operators surveyed by the CNDC have mentioned in several merger and anticompetitive conduct cases, TyC's channels are, from that point of view, channels that contribute to differentiate the service offered by each operator. Indeed, the evidence gathered shows that they are two of the most expensive channels to purchase, and this means that those operators who have them charge a higher amount of money for their service in comparison with those who do not include them in their grid (such as Telecentro in the metropolitan area of Buenos Aires, and several other companies belonging to Red Intercable in the rest of the country).

Apart from the specific features that we have mentioned, there is the feeling that in Argentina the main cable television operators have certain buying power as regards channel suppliers. This buying power seems to be limited to the national channels, and this is probably why those channels usually make use of specialized firms that market television channels, granting them the distribution rights of those channels, in order to counteract the bargaining power of the cable systems. The most renowned international channels, instead, usually negotiate directly with pay television operators through their local or regional branches (for example, Turner, Fox, ESPN, HBO, etc.).

Another aspect that is worth mentioning is the relatively important vertical integration that exists in Argentina between pay television operators and channel suppliers. In fact, the main cable television operator as regards the number of users (the Cablevisión/Teledigital group) is vertically integrated with Imagen Satelital (and it was previously integrated with Pramer). The second operator in order of importance,

Multicanal, belongs to the same economic group than the channel supplier Artear, and is also partially integrated with the Torneos y Competencias group (which controls the channels TyC Sports and TyC Max, and its marketing companies TRISA and TSC). Lastly, we can mention the strategic relationship existing between América TV (supplier of an open television channel, a news channel and a sports channel) and Supercanal (a cable television operator), between Fox and DirecTV, and between Telecentro and Canal 26, a news channel. Therefore, of all the important firms taking part in the business, only Telefé, Pramer and some international channel suppliers (Turner, ESPN, HBO) are currently outside the segment of program distribution through cable or satellite television systems.

As regards channel ownership, there are many different cases. Two of the biggest marketing firms own 100% of their channels and do not market third parties' channels. This is the case of Tevefé, which owns Telefé; Artear, which owns Canal 13, Todo Noticias, Metro, Multideporte, Volver and Magazine; and Canal 7, which only markets and distributes its own channel throughout the country. In the case of Pramer, we can see that it sells 6 channels of its own and 9 channels that belong to third parties, among which América 2 and Canal 9 stand out. The same happens with Imagen Satelital, which markets 5 channels of its own and 6 channels that belong to third parties, and with Discovery Latin America, which sells 4 channels of its own and 2 that belong to a joint venture that it has with BBC Worldwide.

In all of these cases, the marketing of a channel belonging to a third party means the existence of exclusivity rights in a certain geographic area granted by the owner, which varies according to the scope of such area (for example, it can be limited to Argentina and its bordering countries, to all the Latin American countries, or to the whole world). It must be made clear that, in general, this exclusivity does not apply to open television channels, in areas where they have their primary coverage or in areas where there are relay stations of those channels.

As regards the relationships established between channel suppliers and pay television operators, we must say that, normally, the former do not allow the latter to change their contents either completely or partially, and this means that channel suppliers can market their advertising spaces exclusively. This seems to be related to the fact that the satellite provision of the channels determines a national program planning

that hinders local advertising. Nevertheless, in the case of cable television operators, a part of the advertising space is usually sold locally, taking into account a series of restrictions regarding their length and commercial terms previously determined by the operator and the channel supplier. This does not happen with satellite television, which cannot include local advertising in its programs because of technological obstacles.

Concerning the price of the channels paid by television operators, this is based mainly on the number of users that each operator has. Therefore, channel suppliers usually establish a categorization of their customers according to an arbitrary range of users, and that is how they establish the price. In other isolated cases, suppliers charge a fixed price for their channels, and this generally applies to small cable television operators. There are also some companies that offer discounts based on the number of users, on the number of channels purchased, on the number assigned to each channel in the TV operator's grid (the lower the number, the greater the discount), etc. In most contracts, the marketing firms do not establish, suggest or recommend the price that the operator should charge its users, but there has been at least one case where a company established in its contract that if a cable television operator raised the price of its basic service, then the channel supplier had the right to raise its own price in the same proportion.

1.5. Production of contents

The production of contents to be included in television channels is not a homogeneous activity. On the contrary, it is formed by many firms of different size, financial capacity, and content production of several formats, for different kinds of public and for national or international markets. In order to simplify the analysis, our study will only focus on the most important producers which offer their contents regularly to those channels that are most widely watched in Argentina, under the shape of regular series, miniseries, soap operas and magazines (excluding those firms that produce only films or events). We have then taken into account the following producers: Ideas del Sur, Pol-Ka and Pensado Para Televisión (PPT).

In the three cases analyzed, the main client of these producers is Artear, a firm whose stock is owned in a 92.2% by the Clarín group (which also publishes the most widely read newspaper in Argentina) and that, as we have seen, is vertically integrated

with Multicanal. Although Artear appears as their main client, it also holds a 30% share in Ideas del Sur and Pol-Ka. In the case of PPT, instead, Artear does not hold any stock in the firm, but is the only destination of its contents in Argentina, apart from the production of commercials abroad (which represents 10% of PPT's revenue).

Apart from the connections mentioned with Artear, these three firms do not have any further links with firms that operate within the same sector, but they are connected with other media-related firms. We can then mention the relationship between Ideas del Sur and a firm devoted to the purchase and sale of different contents to be offered in different platforms, and the relationship between Pol-Ka and Flehner Films SA and Patagonik Film Group SA, two film-producing companies.

The main characteristics of the contracts for the provision of television contents among the three companies are very similar. In general, the content producers are in charge of production, while Artear holds the broadcasting rights, and can sometimes provide its studio and face the costs of advertising the program. The producer receives a certain payment for the contents sold and additional payments for the advertising that it gets from companies that wish to sell or launch their products or services in that space.

The information provided by the content producers gives more importance to the revenue earned from the sale of programs over the rest (59.6%), but we can also detect a strong share of certain non-traditional advertising revenues (33.7%). This kind of revenue has an even higher share (52%) in PPT, which, as we have seen, is the most independent firm of the three companies analyzed.

It is worth mentioning that from the information gathered from channel suppliers for pay television, we can see that one method of marketing advertising spaces in pay television channels is granting advertising spaces to television program producers. Channel distributors broadcast the television program produced by a certain company through one of their channels, enabling this company to market a specific number of advertising spaces within its program. The content producer then pays a monthly fixed amount of money to the channel supplier, regardless of the number of advertisers or sponsors obtained.

2. Review of the economic literature on television program distribution

The economic literature regarding the distribution of television programs is relatively scarce in comparison with the literature available for other industries. However, its history goes all the way back to at least 1952, and throughout the years this literature has dealt with a series of particular aspects that are of special interest to us. These aspects have been analyzed both from a theoretical and an empirical point of view, and from this analysis there has been a series of results that can be applied to the issue of competition policy in the distribution markets of television programs.

The first relevant issue that appears in the economic literature about the distribution of television programs is their character as a public good, and the potential market failure that this encompasses. Apart from this characteristic, we must take into account the fact that television contents usually have very low marginal distribution costs per user, which creates the argument in favor of their monopolistic provision. It is also important, in the economic literature, the possibility that television programs have of being financed by means of advertising, and the comparison between this system and the one in which television programs are financed by means of the audience's contribution.

Another important issue that has been analyzed by the economic literature is the advantage arising from the fact that companies that supply and distribute television contents are regulated or operated directly by the state. The advantage of one or another form of public intervention, or of none of them, is closely related to the existence or absence of competition, which, at the same time, has implications for the quality and diversity of the contents offered. It is also related to the available technology for the distribution of television programs. This technology may make more advantageous to use open television or paid television systems and, among these, cable or satellite TV.

A further issue analyzed by economic literature, which is of utmost interest for antitrust analysis, is that of the horizontal and vertical relations between the television program suppliers and the distributors of those programs. This topic is particularly important in the case of pay TV systems, which can distribute multiple television channels (which in turn can be supplied by multiple suppliers). In situations like those ones, it is possible to find cases of horizontal and vertical integration between the television program suppliers and the operators of the distribution systems of those

programs. At the same time, we can analyze a number of practices regarding those economic agents, which may have an effect both on the competition level and on the welfare of the service users.

The aim of this chapter is to provide a summary of the main contributions of economic literature regarding all these topics. To do so, we will consider the different aspects mentioned in the previous paragraphs and we will describe the main contributions found, both theoretical and empirical.

2.1. Market structure and service financing

The first important contribution from economic literature to the analysis of the market behavior in the provision and distribution of television programs is probably an article written by Steiner (1952), which, despite being based on the market of radio programs, reaches certain conclusions that can also be applied to open television. In this article, the author shows that, in a context in which the number of potential broadcasters is limited by considerations related to economies of scale, monopoly can have certain advantages over competition in terms of supplying a greater variety. In fact, if there are only a few broadcasting corporations that supply radio and television programs, and these companies compete against each other, there will be a natural tendency for them to offer relatively similar programs aimed at satisfying the preferences of the majority of consumers. If, however, all the broadcasting channels are monopolized by the same economic group, then that group will probably prefer to narrow its channels' contents, so that each of them satisfies a specific group of consumers.

Another important point in the history of the economic literature on the provision of television services has been the debate between Minasian (1964) and Samuelson (1964), in which the latter maintained the superiority of the systems financed through advertising (as they allow companies to supply television programs at no cost for the audience, which in turn coincides with the fact that their marginal cost per viewer is also basically null) and the former claimed that pay TV systems had the advantage of expressing the intensity of the audience's taste in a better way. Through the combination of both arguments, Bebee (1977) built a model that comes to the conclusion that pay TV (i.e., that financed by viewers) leads, in general, to a more efficient allocation than the kind of television that is only financed by means of

advertising, although the latter can sometimes generate a higher surplus for television viewers. The reason why this occurs is that, by means of payment, viewers can reveal information about how much they are willing to pay to watch a certain channel or program. In the case of those television systems that are financed through advertising, this can only be observed indirectly through the programs' ratings. However, while the rating of television programs only tells us how many people (and sometimes what kind of people) prefer one program to another, direct payment allows us to infer in a more accurate way the value of contents for the viewers, an this results in the fact that suppliers can provide those channels and television programs that are more valued by the target audience.

In another theoretical paper written by Spence and Owen (1977), however, it is shown that, as the marginal cost of including television viewers is practically null (especially in open television systems), pay TV has the disadvantage of limiting the number of viewers through a positive price, which means that the number of people receiving their programs is smaller. This leads to the fact that, in certain circumstances, the total surplus generated by an open television system can be greater than the one generated by a pay TV system, as long as the variety of programs is not too small[1]. It also creates a rationale so that pay TV systems are marketed by means of packages that include multiple television channels within the same "basic cable service". With this, the price paid by viewers for each additional channel amounts to practically nothing, and this means that they will be willing to hire the service as long as the total amount that they pay is lower than the value that they assign to the whole acquired package.

Since the 1990s, the theoretical literature about market structure and financing of television programs has started to include certain considerations regarding the quality of those programs. As an example, we can mention Waterman's (1990) and Chae and Flores' (1998) articles, which show how, in certain contexts, the systems of television program provision that create a greater variety of contents can be associated with lower levels of quality, and vice versa. In another work on the same subject, Bourreau (2003) shows that the systems of pay TV result in a greater differentiation of contents and that, conversely, those television systems financed by advertising necessarily lead to a smaller differentiation. But in this last case, in which suppliers of television programs

[1] For a further analysis of this topic, see Owen and Wildman (1992).

cannot compete neither in prices nor in the variety of their programs, the competition to attract sponsors necessarily leads to a competition in quality (i.e., a competition about attributes that are more valued by all the viewers, instead of attributes that are aimed at specific groups of viewers)[2].

Apart from the articles mentioned in the previous paragraphs, the economic literature has produced some empirical studies dealing with the effects generated by the different alternatives regarding market structure and financing of the distribution of television programs. In this respect, the first relevant study is the one by Levin (1971), who, using US data, found that broadcasting diversity was a growing function of the number of open television channels existing in each urban area, but that such growth was less than proportional. He also found that the diversity of programs was significantly larger in those areas where there were non-profit television channels, in comparison with those areas in which there were only commercial television channels. This result is confirmed by a study carried out by Ishikawa (1996), who, through an international comparison of the United States, Great Britain, Sweden, Japan and Canada, found that the diversity of open television is greater in those countries in which there is greater competition between non-profit public television and private commercial television.

Another empirical study about broadcasting diversity is the one by Grant (1994), who analyzed the relative diversity between open television and cable television, finding evidence of greater diversity in the latter. This result is consistent with the emergence of specialized television channels, and with the possibility of financing the service by means of the viewers' direct contribution (instead of doing it through advertising or taxes).

A further empirical work that is relevant, concerning cable television markets in the United States, is the one by Emmons and Prager (1997), who analyze the effects of monopoly and competition between television system operators on service quality and price, on the one hand, and the effects of public and private provision, on the other hand. The main result that they obtained is that both competition and public ownership are associated with a lower price level for the basic cable service, but that the positive effect on the quantity of supplied channels is greater when there is competition among

[2] For a more comprehensive review of all these topics, see Waterman (2004).

private operators than in the case of monopoly and state ownership.

2.2. Public intervention, regulation and deregulation

The issue of public intervention in the distribution markets of television programs has been analyzed from different economic perspectives. Basically, those perspectives differ according to whether the study is carried out regarding the provision of open television or pay television services. While most of the broadcasting of television programs has occurred through open television systems, the main problem of public intervention had to do with the comparison of the advantages and disadvantages of public systems financed by taxes, and private systems (or, more appropriately, commercial systems) financed by advertising. With the increasing penetration of cable television systems financed through paid subscriptions, however, the issue of the benefits of price regulation also arose, based on the argument that cable television had the characteristics of a natural monopoly. These features, however, are less important in those cases in which there is competition among cable television operators, and in the cases in which those operators compete against open television and against the operators of alternative systems such as satellite television.

One of the first works to analyze the issue of the regulation of television services from the point of view of the economic theory was Levin's (1958), who focused essentially on the topic of the economies of scale existing in the provision of television programs and in the attraction of advertising. According to that author, these economies led to the fact that the industrial structure of open television was that of an oligopoly with only a few important television networks, and relatively few channels in each urban area. Further contributions in this first stage of economic literature were made by Coase (1947, 1966), who analyzed the issue of the public monopoly that existed for many years in Great Britain's open television (and its advantages and disadvantages over the more competitive private provision that existed in the United States and other countries) and the possibility of using the price system for the provision of open television services (similar to the one that was used years later for the provision of satellite television services).

After the arrival of mixed systems in most European countries (which were in general the ones that had adopted the model of an open state-owned television without

advertising, and financed by means of taxes), some papers that analyzed the strategic interaction between public and private television began to appear. A recent example of this is an article by Barrowclough (2001), which concludes that, according to the goal of the state-owned television operator, the balance can result in a very different or a very similar program structure between public and private TV channels, and that public channel advertising could be more or less intense. That author also puts forward the idea that state-owned television can operate as an implicit regulator of the contents and prices of advertising for private television channels, which vary depending on whether the main goal of public policy is quality and diversity of television programs or quantity and the price of advertising.

The issue of public intervention in the regulation of pay TV, as opposed to the contributions related to the regulation of open television, does not focus so much on the nature of television services as a public good but on their character as a natural monopoly, and on their tendency to be provided by means of subscriptions that include a great number of channels (i.e., by means of bundling or "block booking") instead of providing and pricing the different channels separately.

One of the first studies on the topic of the regulation of cable television as a mechanism of market power control in natural monopolies is a book by Webb (1983), which estimates average cost functions for the provision of cable television in different areas of the United States and comes to the conclusion that, in general, those functions tend to be decreasing (which supports the theory that the concept of natural monopoly can be applied to this industry). In a more recent paper, however, Law and Nolan (2002) analyze the topic of natural monopoly in the provision of cable television services in Canada, and they found that, towards the late 1990s, there were no significant economies of scale in most Canadian cities that made the coexistence of several television operators inefficient.

Regarding the effect of regulation itself on the performance of cable television, economic literature has also produced contradictory conclusions. Most of them come from the analysis of the US experience, which alternates times in which most part of the operators were local deregulated monopolies (before 1979, and in the period between 1986-1992) with times in which the existence of regulated prices for those monopolies was common (1979-1986 and 1992-1996), and other times in which the service was

deregulated again and tried to encourage competition among cable television operators (as from 1996). One of the most relevant articles on this topic is the one by Rubinovitz (1993), who found that deregulation during the period 1986-1992 brought about a significant increase in the price of cable television caused by greater exercise of market power from television operators. In a posterior paper, however, Hazlett (1996) found that such increase could take place because of an increase in the diversity and quality of the contents of television rather than because of an increase in the operators' market power, and came to the conclusion that regulation did not benefit most users.

Hazlett's study, mentioned in the previous paragraph, also proved that the price of cable television in the United States was typically lower in those urban areas in which there was an overlapping of networks, that is, where two or more operators competed against each other. This generated an interest to analyze the impact that competition could have on television services in general, both in those cases in which the impact was direct and in those situations in which the impact was "potential" (for instance, through internet servers, telephone companies, or outside cable companies which were entitled to enter the market). This topic is developed in a paper by Savage and Wirth (2005), who concludes that, in the case of the United States, when there is a high probability for a new operator to enter a certain market, this induces the existing operator to increase the number of channels that he supplies by 10% and to reduce the implicit price per channel by 14%[3].

The relatively great impact that competition seems to have on the behavior of cable television operators, especially when they operate in contexts that are relatively deregulated, has motivated the appearance of different studies that analyze the competition between cable and satellite television systems. One of the most important works on this topic is the study Goolsbee and Petrin (2001), in which the authors estimate that the introduction of satellite television in the United States brought about an increase of about $50 per year per user in consumer surplus, compared to the surplus that consumers obtained when they only had access to cable television. Moreover, this paper shows that the cross-price elasticity of satellite television against cable television is very large, but that the cross-price elasticity of cable television against satellite television is relatively small. This seems to imply that, for most users of cable

[3] Other important studies in the issue of competition in cable television are Crandall and Furchtgott-Roth (1996) and Johnson (1998).

television, satellite television was not yet a close substitute for CATV when the study was carried out.

The fact that the regulation and deregulation of pay TV services usually have an influence on the diversity and quality of the channels included in the service offered by television operators, has also generated an interest in the economic literature to develop methodologies that are useful for determining the value that viewers assign to the different channels included in the service provided to them. The most widely use methodology for this kind of problems is hedonic pricing. The standard methodology to calculate hedonic prices developed by the analysis of other products, however, has to be modified in this case, in order to contemplate the possibility that those who supply television services have market power, which can affect the relative value that the different channels have for operators and consumers. The paper by Anstine (2001) is an example of a study that makes use of that methodology to estimate the implicit price of each channel supplied by cable television operators. In this work, the author found that most channels have a positive effect on the overall value of the composite good supplied, but that there were also channels whose "marginal value" was negative for consumers.

Instead of packing several channels under the same television service, operators can offer those channels separately, allowing consumers to choose only those that they value the most. This is usually true for those private systems known as "premium" and for other special programs that can be bought through the system called "pay-per-view". The relative advantage that all television channels are offered in this way instead of allowing television operators to offer them as a package has been a matter of discussion from the point of view of regulation, and has also originated some contributions by the economic literature. An example of this is a recent article by Hazlett (2006), in which the author questions the efficiency of forcing operators to offer all the channels separately. To come to this conclusion, it is necessary to take into account different cost considerations (since the system in which users can choose what channels to buy requires the use of a more expensive technology) and the fact that it can bring about the desire for operators to segment their markets, which would mean that each user could end up receiving fewer channels and paying a higher average price than the implicit price paid when the channels are bundled together.

2.3. Horizontal and vertical relations

As in many other activities, the provision of television programs is susceptible of being divided in stages that are part of a production and marketing chain. The first of those stages is the creation and production of television programs, which is followed by the stage of distribution through television channels that group a certain number of programs. Those channels can reach viewers directly through open television systems, or they can be supplied by closed-system television operators, either by cable television or satellite television.

The different stages of the production and marketing chain can be integrated within the same company or can be carried out by different companies. There can also be stronger or weaker horizontal integration within the companies that are on the same stage of the production and marketing chain, allowing a single company to control more than one television channel or television system. In turn, those television channels and systems can operate in different relevant markets or in the same market. It can also happen that in a certain market there may be different companies, but these companies can sign contracts that imply some kind of partial integration among them, or some kind of restriction that may affect their behavior as regards competition with each other or the operation of the market in question.

The economic literature has produced a series of works that deal with different cases of horizontal and vertical relations among the firms involved in the process of television program provision, in particular concerning channel suppliers and cable television operators. One of the first papers that analyzed this issue is the study by Waterman and Weiss (1996), who found strong evidence about the fact that, when a television program supplier was integrated with a cable television operator, there was a larger probability that, in the list of channels offered, they would include their own channels and exclude the channels provided by their direct competitors. This work was carried out using US data about cable television operators, both vertically integrated and not vertically integrated with one of the four main premium motion picture channels that existed at the time when the study was conducted (HBO, Cinemax, Showtime, and The Movie Channel).

Waterman and Weiss's results encouraged further studies, which tried to

determine the effects of vertical integration on the different economic agents involved. Ford and Jackson (1997), for instance, found that the main effect of that integration was the decrease of the acquisition costs of programs for television operators, and that such a decrease had the effect of partially reducing the price that cable television users paid. Similarly, Chipty (2001) found that the exclusionary effects of vertical integration were significant in comparison with the profits of non-integrated channel suppliers that compete against integrated suppliers, but that the price reduction effect was dominant and consumer surplus tended to increase as a consequence of vertical integration[4].

The last line of study concerning the relationship among television companies is the one that focuses on the analysis of certain horizontal practices that have been considered as possibly anticompetitive by different antitrust authorities throughout the world. In reference to this, we can mention an article by Besen (1999) about the Time Warner/Turner merger; the work by Ekelund, Ford and Jackson (2000) regarding US regulations that do not allow the same company to control two or more open television channels in the same urban area; the study by Carroll and Humphreys (2003) about the monopolization of broadcasting rights in US college football games by the National College Athletic Association; the work carried out by Tonazzi (2003) about a similar situation in the Italian Soccer League, and the paper by Nicita and Ramello (2005) about the European regulations that forbid the use of exclusivity clauses in the contracts between television channels and pay TV operators.

[4] Note that the exclusion to which those works refer is always that of a channel supplier by a monopolistic cable operator integrated with another channel supplier. However, the refusal to sell television channels by an integrated operator (to another non-integrated operator that competes against) has not been analyzed in those studies.

3. A theoretical model of television program distribution

From the description of the sector of television program distribution in Argentina given in chapter 1, and from the review of the economic literature carried out in chapter 2, we can derive a series of ideas on the main economic problems to be analyzed about the behavior of television program markets, especially concerning their competition policy implications. In this chapter, we will develop a simplified theoretical model that will try to incorporate some of the problems mentioned, focusing on the relations that can be established among the television program suppliers and the operators of pay television systems.

3.1. General case

Let us imagine a situation in which two television program suppliers (1 and 2) sell those programs through different channels. Those channels, in turn, are marketed through pay television system operators (for instance, cable television operators) that provide a composite good that includes the channels of both suppliers. Let us assume that there are two operators (A and B) who compete against each other to attract the potential viewers that live in the relevant geographic market.

Due to the nature of the problem, the quantity provided by each of the television operators can be measured in terms of the number of users of each system (Q_A and Q_B). The price at which they will be able to sell their product will be given by a certain demand price function, which depends on the marginal value assigned by users to the television channels provided by suppliers 1 and 2. As the good purchased is a composite commodity (that includes the channels provided by 1 and 2), it is useful to divide the demand price in two parts (P_1 and P_2). In order to later determine market equilibrium, let us imagine that those demand prices can be represented as follows:

$$P_1 = a_1 - b_1 \cdot (Q_A + Q_B) \quad ; \qquad P_2 = a_2 - b_2 \cdot (Q_A + Q_B) \quad ;$$

and that the demand price for the whole service (P_C) is:

$$P_C = (1-\lambda) \cdot [a_1 + a_2 - (b_1 + b_2) \cdot (Q_A + Q_B)] \quad ;$$

where λ is a number between 0 and 1/2 that measures the degree of substitution between

the channels provided by 1 and 2[5].

In order to simplify the analysis, let us imagine that all costs for both channel suppliers and television system operators are fixed costs (i.e., that they do not depend on the number of users, at least for variations that do not imply having to extend the service networks). This means that the marginal cost of additional users equals zero, so that the issue of pricing would only be related to product demand issues, which is what interests us from the point of view of antitrust analysis. Let us imagine that the television operators work as Cournot oligopolists (i.e., that they decide the quantity to be supplied taking the quantity supplied by the other operator as given)[6], and that channel suppliers, instead, compete in prices, in a context where their products are differentiated. Let us also imagine that those suppliers can charge operators a fixed amount for providing the channels, which is therefore a rent that depends on the marginal value that those channels have for the operators.

Once the problem has been defined, it can be expressed as a situation in which suppliers 1 and 2 charge the following amounts (T_{1A}, T_{1B}, T_{2A}, T_{2B}) to operators A and B:

$$T_{1A} = [P_C - P_2]\cdot Q_A = [(1-\lambda)\cdot(P_1+P_2) - P_2]\cdot Q_A = [P_1 - \lambda\cdot(P_1+P_2)]\cdot Q_A \quad ;$$

$$T_{1B} = [P_C - P_2]\cdot Q_B = [(1-\lambda)\cdot(P_1+P_2) - P_2]\cdot Q_B = [P_1 - \lambda\cdot(P_1+P_2)]\cdot Q_B \quad ;$$

$$T_{2A} = [P_C - P_1]\cdot Q_A = [(1-\lambda)\cdot(P_1+P_2) - P_1]\cdot Q_A = [P_2 - \lambda\cdot(P_1+P_2)]\cdot Q_A \quad ;$$

$$T_{2B} = [P_C - P_1]\cdot Q_B = [(1-\lambda)\cdot(P_1+P_2) - P_1]\cdot Q_B = [P_2 - \lambda\cdot(P_1+P_2)]\cdot Q_B \quad ;$$

and, therefore, they gain the following gross profit:

$$\Pi_1 = T_{1A} + T_{1B} = [P_1 - \lambda\cdot(P_1+P_2)]\cdot(Q_A+Q_B) \quad ;$$

$$\Pi_2 = T_{2A} + T_{2B} = [P_2 - \lambda\cdot(P_1+P_2)]\cdot(Q_A+Q_B) \quad .$$

Given this, television operators will try to maximize the following profit functions:

[5] If λ equals 0, this implies that suppliers 1 and 2 are totally complementary, and therefore the cost of the service for users is equivalent to the addition of the cost of the channels included. On the other hand, if λ equals 1/2, this implies that the channels provided by 1 and 2 can be completely interchangeable, and what users get is a package whose cost is equivalent to the cost that it would have if they could only watch the channels supplied by 1 or by 2.

[6] This is equivalent to the idea that television system operators compete deciding first the installed capacity that they would have, and then, in a second stage, deciding the price that they would charge to the users.

$\Pi_A = P_C \cdot Q_A - T_{1A} - T_{2A} = [(1-\lambda)\cdot(P_1+P_2) - P_1 + \lambda\cdot(P_1+P_2) - P_2 + \lambda\cdot(P_1+P_2)]\cdot Q_A = \lambda\cdot(P_1+P_2)\cdot Q_A$;

$\Pi_B = P_C \cdot Q_B - T_{1B} - T_{2B} = [(1-\lambda)\cdot(P_1+P_2) - P_1 + \lambda\cdot(P_1+P_2) - P_2 + \lambda\cdot(P_1+P_2)]\cdot Q_B = \lambda\cdot(P_1+P_2)\cdot Q_B$;

and this will occur when:

$$\frac{\partial \Pi_A}{\partial Q_A} = \lambda \cdot \left[P_1 + P_2 + \left(\frac{\partial P_1}{\partial Q_A} + \frac{\partial P_2}{\partial Q_A} \right) \cdot Q_A \right] = \lambda \cdot \left[a_1 + a_2 - (b_1 + b_2) \cdot (2 \cdot Q_A + Q_B) \right] = 0 \quad ;$$

$$\frac{\partial \Pi_B}{\partial Q_B} = \lambda \cdot \left[P_1 + P_2 + \left(\frac{\partial P_1}{\partial Q_B} + \frac{\partial P_2}{\partial Q_B} \right) \cdot Q_B \right] = \lambda \cdot \left[a_1 + a_2 - (b_1 + b_2) \cdot (2 \cdot Q_B + Q_A) \right] = 0 \quad .$$

The equilibrium prices and quantities are, therefore:

$$Q_A = Q_B = \frac{a_1 + a_2}{3 \cdot (b_1 + b_2)} \quad ; \quad Q_T = \frac{2 \cdot (a_1 + a_2)}{3 \cdot (b_1 + b_2)} \quad ; \quad P_C = \frac{(1-\lambda) \cdot (a_1 + a_2)}{3} \quad .$$

With these values, the profits for television system operators ($\Pi_O = \Pi_A + \Pi_B$), the profits for channel suppliers ($\Pi_P = \Pi_1 + \Pi_2$) and the consumer surplus (CS) will be equal to:

$$\Pi_O = \Pi_A + \Pi_B = \frac{\lambda \cdot 2 \cdot (a_1 + a_2)^2}{9 \cdot (b_1 + b_2)} \quad ; \quad \Pi_P = \Pi_1 + \Pi_2 = \frac{(1-2\lambda) \cdot 2 \cdot (a_1 + a_2)^2}{9 \cdot (b_1 + b_2)} \quad ;$$

$$CS = \int_0^{Q_T} P_C(x)dx - P_C \cdot Q_T = \frac{(1-\lambda) \cdot 2 \cdot (a_1 + a_2)^2}{9 \cdot (b_1 + b_2)} \quad .$$

As we can see, the result of this model is that consumer surplus depends negatively on λ (or, what is the same, that consumer surplus increases the more complementary and less substitutable the channels provided by 1 and 2 are). The same happens with the profit earned by channel suppliers, who are able to obtain a higher rent the lower λ is. Television system operators, instead, earn a profit that depends positively

on λ, since the income portion that they appropriate is the one that does not go to channel suppliers, which is higher the more substitutable channels are.

3.2. Analysis of mergers and acquisitions

The model developed in the previous section allows us to analyze the changes in the profit earned by the firms and in consumer surplus that would take place under different cases of mergers and acquisitions. Let us imagine that, in a market like the one described, there is a horizontal merger between two television system operators (A and B). In that case, the new monopolistic integrated operator will maximize the following profit function:

$$\Pi_O = P_C \cdot Q_T - T_1 - T_2 = [(1-\lambda)\cdot(P_1+P_2) - P_1 + \lambda\cdot(P_1+P_2) - P_2 + \lambda\cdot(P_1+P_2)]\cdot Q_T = \lambda\cdot(P_1+P_2)\cdot Q_T \quad ;$$

and this will occur when:

$$\frac{\partial \Pi_O}{\partial Q_T} = \lambda \cdot \left[P_1 + P_2 + \left(\frac{\partial P_1}{\partial Q_T} + \frac{\partial P_2}{\partial Q_T} \right) \cdot Q_T \right] = \lambda \cdot \left[a_1 + a_2 - (b_1 + b_2) \cdot 2 \cdot Q_T \right] = 0 \quad .$$

Therefore, the new equilibrium values will be:

$$Q_T = \frac{a_1 + a_2}{2 \cdot (b_1 + b_2)} \quad ; \qquad P_C = \frac{(1-\lambda) \cdot (a_1 + a_2)}{2} \quad ;$$

which will generate profits and surpluses equal to:

$$\Pi_O = \frac{\lambda \cdot (a_1 + a_2)^2}{4 \cdot (b_1 + b_2)} \quad ; \qquad \Pi_P = \frac{(1-2\lambda) \cdot (a_1 + a_2)^2}{4 \cdot (b_1 + b_2)} \quad ; \qquad CS = \frac{(1-\lambda) \cdot (a_1 + a_2)^2}{8 \cdot (b_1 + b_2)} \quad .$$

As we can see, the effect of the horizontal integration between television operators is to reduce consumer surplus (since now the price of the service increases and the total quantity decreases) and to increase profits, both for system operators and for channel suppliers. This is due to the fact that, with the higher price that consumers have to pay for the service, the profit that television channel suppliers earn is also

higher, even if the competition among them is as intense as before.

The assumption that competition among television operators is to attract viewers and that, conversely, competition among channel suppliers is to capture a certain rent means that the effects of a horizontal merger between channel suppliers are different from the effects of a horizontal merger between system operators. In fact, as the way in which channel suppliers earn their profits is basically through a fixed payment, a merger between suppliers will result in an increase in the amount of money that operators will have to pay for the television channels, but this will not alter the way in which those operators compete against each other to attract consumers or the marginal cost of those consumers (which we are assuming to be null, in order to simplify the analysis). This will lead to the fact that the quantity and the price of the service will remain within the values found in the previous section, that is to say:

$$Q_A = Q_B = \frac{a_1 + a_2}{3 \cdot (b_1 + b_2)} \quad ; \quad Q_T = \frac{2 \cdot (a_1 + a_2)}{3 \cdot (b_1 + b_2)} \quad ; \quad P_C = \frac{(1-\lambda) \cdot (a_1 + a_2)}{3} \quad .$$

The change that occurs as a result of a horizontal merger between suppliers is that now the newly integrated supplier will be able to capture all the rent generated, since there is not any other supplier from whom to buy the same television channels. This means that the amounts of money that this integrated supplier will charge operators can be calculated in the following way:

$T_A = [P_C - 0] \cdot Q_A = (1-\lambda) \cdot (P_1 + P_2) \cdot Q_A$; $T_B = [P_C - 0] \cdot Q_B = (1-\lambda) \cdot (P_1 + P_2) \cdot Q_B$;

and that, therefore, the equilibrium profits and surpluses will now be:

$$\Pi_O = 0 \quad ; \quad \Pi_P = \frac{(1-\lambda) \cdot 2 \cdot (a_1 + a_2)^2}{9 \cdot (b_1 + b_2)} \quad ; \quad CS = \frac{(1-\lambda) \cdot 2 \cdot (a_1 + a_2)^2}{9 \cdot (b_1 + b_2)} \quad .$$

The quantities and prices of the service, however, will change if there is a vertical merger between one channel supplier and one system operator. Let us suppose that, for instance, supplier 1 merges with operator A, and that supplier 2 and operator B remain independent companies. Let us imagine, however, that the integrated supplier still sells its channels to the non-integrated operator, and that the non-integrated supplier

also sells its channels to both operators. In this new situation, the profits earned by these economic agents will be equal to:

$\Pi_{1+A} = T_{1B} + P_C \cdot Q_A - T_{2A} = P_1 \cdot (Q_A + Q_B) - \lambda \cdot (P_1 + P_2) \cdot Q_B$;

$\Pi_2 = T_{2A} + T_{2B} = [P_2 - \lambda \cdot (P_1 + P_2)] \cdot (Q_A + Q_B)$;

$\Pi_B = P_C \cdot Q_B - T_{1B} - T_{2B} = [(1-\lambda) \cdot (P_1 + P_2) - P_1 + \lambda \cdot (P_1 + P_2) - P_2 + \lambda \cdot (P_1 + P_2)] \cdot Q_B = \lambda \cdot (P_1 + P_2) \cdot Q_B$;

and this will result in an equilibrium in which:

$$\frac{\partial \Pi_{1+A}}{\partial Q_A} = P_1 + \frac{\partial P_1}{\partial Q_A} \cdot Q_A - \lambda \cdot \left(\frac{\partial P_1}{\partial Q_A} + \frac{\partial P_2}{\partial Q_A} \right) \cdot Q_B = a_1 - 2 \cdot b_1 \cdot Q_A - [(1-\lambda) \cdot b_1 - \lambda \cdot b_2] \cdot Q_B = 0 \quad ;$$

$$\frac{\partial \Pi_B}{\partial Q_B} = \lambda \cdot \left[P_1 + P_2 + \left(\frac{\partial P_1}{\partial Q_B} + \frac{\partial P_2}{\partial Q_B} \right) \cdot Q_B \right] = \lambda \cdot [a_1 + a_2 - (b_1 + b_2) \cdot (2 \cdot Q_B + Q_A)] = 0 \quad .$$

If we solve the system of equations implied by these economic agents' profit maximization conditions, we obtain that:

$$Q_A = \frac{a_1 \cdot [(1+\lambda) \cdot b_1 + (2+\lambda) \cdot b_2] - a_2 \cdot [(1-\lambda) \cdot b_1 - \lambda \cdot b_2]}{(b_1 + b_2) \cdot [(3+\lambda) \cdot b_1 + \lambda \cdot b_2]} \quad ;$$

$$Q_B = \frac{2 \cdot a_2 \cdot b_1 + a_1 \cdot (b_1 - b_2)}{(b_1 + b_2) \cdot [(3+\lambda) \cdot b_1 + \lambda \cdot b_2]} \quad ;$$

thus arriving at the following prices and quantities:

$$Q_T = \frac{(a_1 + a_2) \cdot [(2+\lambda) \cdot b_1 + \lambda \cdot b_2]}{(b_1 + b_2) \cdot [(3+\lambda) \cdot b_1 + \lambda \cdot b_2]} \quad ; \qquad P_C = \frac{(1-\lambda) \cdot (a_1 + a_2) \cdot b_1}{(3+\lambda) \cdot b_1 + \lambda \cdot b_2} \quad .$$

The comparison between this new equilibrium and the one that existed before the vertical merger depends essentially on the values of the parameters b_1, b_2 and λ. If we think of a symmetrical case in which b_1 and b_2 are the same, for instance, we will see that the new equilibrium will lead to a larger total quantity and a lower price (in

comparison with the pre-merger equilibrium), which will be:

$$Q_T = \frac{(2+2\cdot\lambda)\cdot(a_1+a_2)}{(3+2\cdot\lambda)\cdot(b_1+b_2)} \quad ; \quad P_C = \frac{(1-\lambda)\cdot(a_1+a_2)}{3+2\cdot\lambda} \quad .$$

As we can see, this new equilibrium is more favorable for consumers, since now the denominator of the P_C equation equals $3+2\cdot\lambda$ instead of being equal to 3 (and this induces a lower equilibrium price). The merger also generates an increase in the profits of the firms that merge (i.e., firms 1 and A), but a decrease in the profits of the firms that remain independent (i.e., firms 2 and B). In the case of channel supplier 2, the profit decrease will be caused by the fact that the total profit generated in the market will be smaller, and therefore the non-integrated supplier's profit will be reduced in a proportional way. In the case of operator B, instead, its profit reduction will be due to the fact that its market share will decrease, and so will the equilibrium price at which it will be able to sell its service to consumers.

3.3. Analysis of anticompetitive practices

The case developed in section 3.1 and its potential variations in the case of mergers and acquisitions described in section 3.2 are useful to analyze the behavior of economic agents, which in some cases can have anticompetitive features. The simplest case in this respect is the formation of a cartel of operators, whose effect is the same as that of a horizontal merger between those operators. The same happens with the formation of a cartel of channel suppliers, whose effect is the same as that of a horizontal merger between them.

As we saw in the previous section, horizontal mergers between operators have the effect of reducing the quantity and increasing the price that users of the service pay for it, while horizontal mergers between suppliers mean that those suppliers obtain the whole rent without reducing quantity or increasing the price of the service for consumers. These results also hold for the cartels of operators and suppliers generated by our model, but they also open the door for the possibility of an additional anticompetitive practice: a cartel of system operators induced by a monopolistic channel supplier or by a cartel of suppliers[7].

[7] For a more general analysis of this issue, see Motta (2004), chapter 6.

Let us imagine that there is a single integrated supplier of channels 1 and 2 and that, instead, there are two operators. As we saw in the previous section, this generates equilibrium quantities and prices that equal:

$$Q_T = \frac{2\cdot(a_1 + a_2)}{3\cdot(b_1 + b_2)} \quad ; \qquad P_C = \frac{(1-\lambda)\cdot(a_1 + a_2)}{3} \quad ;$$

a zero profit for the system operators, and a profit for the suppliers which is equal to:

$$\Pi_P = \frac{(1-\lambda)\cdot 2\cdot(a_1 + a_2)^2}{9\cdot(b_1 + b_2)} \quad .$$

If in a case like this the channel supplier encourages the creation of a cartel of operators, it will be able to make operators reduce the quantity and increase the price of the service for consumers, to levels that will be equal to:

$$Q_T = \frac{a_1 + a_2}{2\cdot(b_1 + b_2)} \quad ; \qquad P_C = \frac{(1-\lambda)\cdot(a_1 + a_2)}{2} \quad .$$

With this, the channel supplier will be able to increase its own profit, which will now be equal to:

$$\Pi_P = \frac{(1-\lambda)\cdot(a_1 + a_2)^2}{4\cdot(b_1 + b_2)} \quad .$$

This strategy of cartelizing operators to benefit the channel supplier can be carried out in different ways. One of them is by fixing a minimum resale price for the service users, which induces a restriction in the supply and an increase in total profit. That profit, in turn, will be mostly captured by the channel supplier, through an increase in the fixed payment that it receives from the system operators when they buy the right to broadcast its television channels.

Another kind of anticompetitive practices susceptible of being analyzed with the model developed in the previous sections is that constituted by exclusionary practices.

Let us imagine, for instance, a situation in which a channel supplier, which is vertically integrated with a system operator (e.g., supplier 1 and operator A), sells its product in a market in which there is also another system operator (operator B) and another channel supplier (supplier 2). The equilibrium of this market, analyzed in section 3.2, corresponds to a situation in which both operators provide the channels from both suppliers, but it could happen that the integrated operator refuses to sell its channels to operator B, and that this one could only provide supplier 2's channels (in a context in which the integrated operator offers all the channels).

In a situation like this, therefore, the operators' profits will be the following:

$\Pi_{1+A} = P_C \cdot Q_A - T_{2A} = [(1-\lambda)\cdot(P_1+P_2) - P_2 + \lambda\cdot(P_1+P_2)]\cdot Q_A = P_1 \cdot Q_A$;

$\Pi_B = P_2 \cdot Q_B - T_{2B}$;

and equilibrium occurs when:

$$\frac{\partial \Pi_{1+A}}{\partial Q_A} = P_1 + \frac{\partial P_1}{\partial Q_A}\cdot Q_A = a_1 - 2\cdot b_1 \cdot Q_A = 0 \quad ;$$

$$\frac{\partial \Pi_B}{\partial Q_B} = P_2 + \frac{\partial P_2}{\partial Q_B}\cdot Q_B = a_2 - b_2 \cdot (2\cdot Q_B + Q_A) = 0 \quad .$$

This leads to the following Q_A, Q_B y Q_T values:

$$Q_A = \frac{a_1}{2\cdot b_1} \quad ; \qquad Q_B = \frac{2\cdot a_2 \cdot b_1 - a_1 \cdot b_2}{4\cdot b_1 \cdot b_2} \quad ; \qquad Q_T = \frac{2\cdot a_2 \cdot b_1 + a_1 \cdot b_2}{4\cdot b_1 \cdot b_2} \quad ;$$

which, in a situation where $b_1=b_2$, will imply that:

$$Q_A = \frac{(a_1 + a_2)}{2\cdot(b_1 + b_2)} \quad ; \qquad Q_B = \frac{(a_1 + a_2)}{4\cdot(b_1 + b_2)} \quad ; \qquad Q_T = \frac{3\cdot(a_1 + a_2)}{4\cdot(b_1 + b_2)} \quad .$$

The total number of users of the service under these conditions is higher than the one that prevails when both the integrated and the non-integrated operators offer all the channels, but it happens in a situation in which a third of the users only receive the

channels provided by supplier 2. This leads to the appearance of two different market prices (P_C and P_2), corresponding to the package offered by operator A (that includes all the channels) and to the package offered by operator B (that only includes the channels of supplier 2). Those prices will be equal to:

$$P_C = \frac{(1-\lambda)\cdot(a_1+a_2)}{2} \quad ; \qquad P_2 = \frac{a_1+a_2}{8} \quad .$$

The damage to consumers, originated by this kind of behavior, is twofold. On the one hand, it increases the value of P_C from an amount that is lower than $(a_1+a_2)\cdot(1-\lambda)/3$ to an amount that equals $(a_1+a_2)\cdot(1-\lambda)/2$. On the other hand, it means that one part of the consumers end up receiving a less valuable product (which only includes the channels provided by supplier 2, instead of all the channels), although this may make that some people, who used to choose not to hire the service provided by any of the operators, now decides to hire a poorer but cheaper service from operator B. Anyway, the effect on consumer surplus is negative, since that surplus will now be:

$$CS = \int_0^{Q_A} P_C(x_A)dx_A + \int_0^{Q_B} P_2(x_B)dx_B - P_C\cdot Q_A - P_2\cdot Q_B = \frac{(5-4\cdot\lambda)\cdot(a_1+a_2)^2}{32\cdot(b_1+b_2)} \; ;$$

which is lower than the surplus obtained by consumers when both operators provide all the channels, for any λ value between zero and 1/2.

An additional effect of the refusal of supplier 1 to supply its channels to operator B is that operator B's profit can also be greatly reduced. In fact, as now that operator can only buy the channels from supplier 2, the equilibrium value of T_{2B} will be equal to all the profit generated by operator B, which means that operator B's profit will tend to zero.

A different case of exclusionary anticompetitive practice can take place when a monopolistic operator, vertically integrated with a channel supplier, chooses to use only its channels without buying any of the channels provided by the other supplier. This situation is virtually neutral from the point of view of the profit gained by the integrated operator (if we suppose, as we have done so far, that the highest price that it can charge when supplying the channels of the non-integrated supplier is completely transferred to

that supplier). From the point of view of the non-integrated supplier, instead, the positive profit that he gets in a situation in which the integrated operator broadcasts its channels turns into zero, which means that there is a loss which is not compensated by a higher profit received by the integrated supplier. Finally, from the point of view of the users of the service, there is also a surplus loss, since the highest value generated by the joint provision of the channels disappears, remaining only the surplus generated by the provision of the integrated supplier's channels.

3.4. Results

The theoretical model of distribution of television programs developed in this chapter, in a context in which there can be competition between two television operators and where the channels can be provided by two suppliers that compete against each other, allows us to draw the following main results:

1) The existence of competition between two television operators has the effect of increasing the quantity and reducing the price that the users of the service pay for it, in comparison with the values existing under a situation of monopoly.

2) The existence of competition between channel suppliers, instead, has an effect on the distribution of the rent between suppliers and operators, but it affects neither the quantity nor the price faced by consumers.

3) Consumer surplus, apart from depending on the competition existing between operators, depends positively on the differentiation among the channels provided by the different suppliers.

4) That differentiation (or, conversely, the degree of substitution between the suppliers' channels) also affects significantly the distribution of the rent between operators and channel suppliers, where channel suppliers get a higher profit the more different their products are and where system operators obtain a higher profit the more substitutable the channels are among each other.

5) In a context like the one we have described, a horizontal merger between television system operators has the effect of reducing the quantity and increasing the price that the users pay for the service that they receive.

6) A horizontal merger between channel suppliers, instead, is in principle innocuous for consumers, but it allows the merged channel supplier to obtain a higher profit, at the

cost of an equivalent reduction in the profits obtained by the television system operators.

7) A vertical merger between a channel supplier and an operator, on their part, has the effect of increasing consumer surplus and increasing the integrated company's profit, and this is due to the fact that a vertically integrated operator has more incentives than a non-integrated operator to increase the number of users of its service.

8) However, when an operator that is integrated with a channel supplier competes against a non-integrated operator, there are also incentives for exclusionary anticompetitive practices (like refusals to provide channels to the non-integrated operator). The resulting equilibrium in a situation like that is not only harmful for the non-integrated operator but also for consumers, who will now have to pay a higher price for the service that includes channels from the two suppliers or will receive a poorer service (which will only have the channels provided by the non-integrated supplier).

9) It is also possible that, in a model like the one that we have described, there are exclusionary practices imputable to a supplier integrated with a monopolistic system operator, which will be harmful for the non-integrated channel supplier. In that case, consumers are also harmed, since now they will only be receiving the channels provided by the integrated supplier, without being able to receive the channels provided by the non-integrated supplier.

10) Another kind of anticompetitive practices that can appear in situations like these are the ones related to collusion. The clearest example is the appearance of an operators' cartel, whose effect is identical to that of a horizontal merger between those operators.

11) This operators' cartel can arise from an agreement between operators, but it can also be encouraged by a monopolistic channel supplier or by a cartel of suppliers (through, for instance, minimum resale price-fixing). In that case, the supplier or suppliers will take advantage of the appearance of the monopolistic profit generated by the agreement between operators to increase the profits that they can obtain by selling their channels to those operators.

4. Argentine antitrust case law on the distribution of television programs

The distribution of television programs (both for open and pay television, as well as their variations) is one of the sectors that have produced more cases in the history of the enforcement of antitrust legislation in Argentina. This phenomenon has boosted over the last years, since the number of cases increased from a few cases solved in the 1990s (the first of them in 1995) to several dozens in the first decade of the 21st century.

To this day, Argentine antitrust history regarding the distribution of television programs covers both conduct and merger cases. In this chapter we will review both groups of cases, and for the sake of analysis we will subdivide them according to the type of behavior analyzed and the kind of merger. All cases dealt with here were analyzed by the National Commission of Competition Defense (CNDC) and decided by resolutions of the Secretary of Commerce (or the secretary who was in charge of that area, whose name has changed throughout the years). Some of those decisions were appealed before different courts in the country, which means that there are also judicial sentences in this respect.

4.1. Anticompetitive conduct cases

4.1.1. Concerted practices

The most relevant case of anticompetitive concerted practices that has been analyzed in Argentina in the sector of television program distribution has undoubtedly been "CNDC vs. TRISA, TSC and others" (2002). The CNDC started this case in February 1999, in reference to the behavior of two television channel suppliers (TRISA and TSC) consisting in setting minimum resale prices for the broadcasting of some soccer matches organized by the Argentine Football Association (AFA). This behavior, which was a vertical practice that affected the games broadcasted by the so-called "coded system", and had taken place during 1996, 1997, and 1998 in the Buenos Aires metropolitan area, also involved the three main cable television operators in that area (VCC, Multicanal and Cablevisión), who had participated in the analyzed conduct.

Although TRISA and TSC were two separate companies, their stockholding

composition was identical, and that is why the CNDC considered them as a single economic agent. As a whole, these companies were in charge of the purchasing and sale of the rights for the television broadcasting of AFA's official soccer games, and they produced television programs where those games were broadcast. Multicanal, Cablevisión and VCC, on the other hand, were cable television suppliers. In the beginning they were completely separate companies, but in 1998 VCC was bought in equal shares by the other two companies. Some time later, VCC was split in two and absorbed by Multicanal and Cablevisión. At the same time, stockholders of Multicanal and Cablevisión held stock in TRISA and TSC, but the stockholding composition of these cable TV companies was sufficiently different as to consider them as independent economic agents, which were also independent from the TRISA-TSC group.

The first element that the CNDC took into account to define the existence of the anticompetitive behavior was the definition of the relevant market and, from this, the position that the accused companies had in that market. As a first step toward defining the market, soccer was separated from the other sports, given the importance that the local audience assigned to it. This could be seen from the fact that soccer was the sport that received the greatest amount of money to be broadcast, the one whose advertising space was the most expensive, the one which generated the highest income from its sponsors and private advertisers, and the one whose clubs managed the highest budgets. Secondly, the CNDC analyzed the degree of substitution between the Argentine first division soccer and other national soccer tournaments, and concluded that the different categories were not considered substitutes by soccer enthusiasts. In fact, of all the categories that competed within AFA, the only category whose broadcasting was coded was the first division, which meant that there was a specific demand for those matches. Lastly, the prerecorded broadcast of soccer matches was separated from their live broadcast. Taking into account that both kinds of broadcasts of a single event took place within hours of difference from each other, and that the accused companies who owned the broadcasting rights (TRISA and TSC) coded one of them while the other could be watched on open television, it could be seen that the different broadcasts were not part of the same market, since, if they were, no viewer would have agreed to pay the additional price for the coded games broadcast live.

Therefore, in the market that we have described, TRISA and TSC had no

competition whatsoever as regards the broadcasting of the first division soccer matches, since they held the exclusive rights for the broadcast of those matches until the year 2014. The CNDC could verify that TRISA and TSC fixed a minimum resale price, below which cable television operators would not market coded soccer games. The participation of all of the accused companies in that minimum price-fixing was twofold. On the one hand, TRISA and TSC had set the resale prices that cable television operators would have to charge. On the other hand, cable television operators had taken part in this behavior, by meeting and jointly accepting the resale conditions for coded television that we have described.

Hence, the CNDC came to the conclusion that, as a consequence of the analyzed behavior, the existing competition for the provision of this product was severely limited, and that the final price was artificially high and caused damages to cable TV users. TRISA and TSC were sentenced with fines of 529,289 Argentine pesos each (which was the maximum amount allowed by the applicable antitrust law at that time), while Cablevisión, Multicanal, and VCC were sentenced with somewhat lower fines ($352,859 each), since their participation in the questioned behavior was considered to be less important.

It is worth mentioning that the resolution of this case was appealed by the sanctioned companies before the National Economic Criminal Court, and that such court revoked the resolution in 2003. In doing so, it understood that the analyzed behavior was not anticompetitive, since it was considered to be a vertical practice that had not brought about a restriction on the existing competition between TRISA-TSC and other suppliers of sport television contents. In its analysis, the court of appeals considered that the relevant market for this case was broader than the one defined by the CNDC. Besides, it did not assign importance to the implicit horizontal price-fixing agreement among Multicanal, Cablevisión and VCC. This ruling of the court of appeals, however, is still susceptible to be changed, since the case has been appealed before the Argentine Supreme Court.

4.1.2. Vertical exclusionary practices

Most of the formal complaints against anticompetitive practices related to the sector of television program distribution in Argentina are associated with problems

between television content suppliers and cable television operators. These conflicts are originated by supposed refusals to sell on the part of channel suppliers, or by the imposition of prices that are considered abusive by the plaintiffs. In most cases, these practices can be classified as exclusionary practices, encouraged by the horizontal and vertical relationships established among the main companies in the sector.

An important part of these complaints is related to the segment of sport television channels. The CNDC has noticed on several occasions that sport television channels represent one of the most valued products in this sector, and that final users of the service take them into account when choosing a television system operator. This feature usually implies that the sports program suppliers have a dominant position in the market of the analyzed input. Sometimes, that position is reinforced by the vertical integration between them and the TV system operators.

Either when the questioning was about sport channels or other kinds of channels, on certain occasions the CNDC has pronounced preliminary decisions with a view to restoring the situation existing prior to the complaint. However, there still have not been any cases of sanctions concerning this problem, either because the parties reached private agreements that put an end to the conflict, or else because the refusal to sell was not considered to be proved.

One of the best examples of this kind of behavior can be found in "Multicanal vs. Fox Sports and others" (2004), where the complaint was about the supposed refusal of Fox Sports to sell Multicanal the rights to broadcast its sport channel under the same conditions it was provided for its competitor (i.e., Cablevisión, which was partially owned by the Fox group). This behavior had the potential to cause a downstream competition problem, because of Cablevisión's presence in the market as Multicanal's competitor. The CNDC pronounced a preliminary decision compelling Fox to provide Multicanal with the sport channel under the same commercial terms and with the same contents as those established for Cablevisión. In its final ruling, the Commission considered that the incipient discrimination was rapidly corrected by means of the cease-and-desist order mentioned before, as well as by the agreement reached by both parties.

The companies TRISA and TSC have been involved in several other cases similar to the one that we have discussed. As we said before, these two firms hold the

broadcasting rights of the first division soccer games organized by the Argentine Football Association. In "Teledifusora vs. TSC" (2002), for instance, a supposed refusal to sell the sport cable channel called "TyC Sports" was investigated, as well as the refusal to sell the soccer matches and events marketed separately by TSC. TSC and Teledifusora had started discussing terms for the commercialization of those rights in January 1998, but after a year the companies did not manage to reach an agreement regarding the price of the service provided by TSC. This was finally solved in July 1999, when the CNDC accepted the explanations given by TSC, considering that the supposed refusal to sell was in fact the result of a private commercial disagreement between both parties.

Something similar happened in "Decotevé vs. TRISA and TSC" (2003), where a cable television operator from the city of Salta reported the refusal of the suppliers of the TyC Sports channel to sell their contents, in order to exclude the operator from Salta's urban area. This exclusion was supposedly aimed at favoring its competitor, Cablevisión, whose owners also owned part of TRISA's and TSC's stock, and had vertical agreements with TRISA and TSC at a national level. This case did not receive sanction because both parties agreed to solve the conflict privately, but the CNDC considered that the anticompetitive practice had existed, and that it had the potential to cause damages to the general economic interest protected by the Argentine antitrust law.

The list of cases analyzed by the CNDC, related to conflicts over supposed refusals to sell or abusive price-fixing with exclusionary purposes in the sport broadcast markets, also includes "Nogoyá Televisora Color vs. TSC and TRISA" (2004) and "DTH vs. TRISA, TSC, and others" (2003). Similar behavior, but not related to sport programs, has also appeared in cases such as "Megavisión Santiago vs. Telefé and Cablevisión" (2002), concerning the general interest channel Telefé; "Multicanal vs. HBO and others" (2005), as regards the movie channel HBO; and "Decotevé vs. Pramer" (2000), concerning a group of general interest and news channels provided by a company belonging to the same economic group as Cablevisión. This last case ended with an agreement between Pramer and the CNDC, in which the defendant accepted the existence of the anticompetitive conduct and agreed to put an end to it immediately.

Another group of cases of vertical and supposedly exclusionary nature is that related to certain exclusive dealing restrictions put into practice by the holders of the

rights for the distribution of different television channels. In "Supercanal vs. Tevefé" (2003), for instance, the behavior reported had to do with the alleged refusal of Tevefé to sell the television channel Telefé (for which Tevefé had the marketing rights in the city of Mendoza). Tevefé had given the right to broadcast the channel in an exclusive way to Cuyo Televisora, which was the licensee of Channel 9 from Mendoza, an open television channel included in Supercanal's grid. In this case, the refusal to sell the channel was not related to an abusive price but to a contractual restriction, by virtue of which Tevefé refused to sell the television channel Telefé to cable television operators in areas where it had exclusive dealing agreements with an open television channel. Taking into account the absence of horizontal restraints in Mendoza and the fact that Telefé's main programs were available through Channel 9, the CNDC understood that the practice under analysis was not anticompetitive.

In "Proconsumer vs. DirecTV and HBO" (2003), on the other hand, an association devoted to the protection of consumers reported the removal of movie channels HBO and Cinemax from the cable television grid, making them exclusive for the satellite television operator DirecTV. The contract between HBO and DirecTV established the exclusive distribution of those channels through DirecTV for a specific period of time, but when that period of time elapsed, the channels could be freely licensed by HBO and marketed by the rest of the operators. HBO sustained that this was the way in which the channel was marketed in most countries where it was present, and the CNDC understood that these changes in the marketing method did not affect competition. Since there was not a massive migration of users of the different cable television systems to DirecTV, which would have been expected in the case of truly exclusionary behavior, it was concluded that market dynamics had allowed operators to replace the HBO channels for others, maintaining the number of users.

Another vertical case of exclusionary nature which is interesting to mention is "Cable Grande vs. EDEERSA" (2003), where a cable television operator filed a complaint against the electrical distribution company of the province of Entre Ríos for refusing to allow them to use its electricity posts to distribute the cable TV service in the city of Paraná, despite the fact that the company allowed Cablevisión and Multicanal to make use of those posts. As it happened in other cases, the CNDC issued a preliminary decision forcing EDEERSA to make the posts available to the plaintiff,

whenever that was technically possible. After that decision, both parties reached an agreement which put an end to the conflict.

One last case of vertical exclusionary conduct that appears in the Argentine antitrust history is "Imagen Satelital vs. Cablevisión" (2004), where the defendant is a cable television operator and the plaintiff is a channel supplier that felt affected by a series of commercial practices on the part of the operator. Those practices were allegedly damaging for Imagen Satelital's erotic television channel Venus, and were supposedly favoring a new entrant called Afrodita. The behavior consisted in an increase of the price of Venus for the public, the free supply of Afrodita for a month to those who were already users of Venus, and a change in the position of Venus in the grid, favoring Afrodita (that took Venus's previous place in Cablevisión's grid). Although the case began with a preliminary decision in favor of the plaintiff, no sanction was finally applied, as it was understood that the behavior of the defendant could be basically explained by Cablevisión's individual motivations. Those motivations seemed to have no relation with an intention of deliberately favoring Afrodita over Venus. It was also proved that Afrodita's supplier had no connection whatsoever with Cablevisión, which meant that the exclusionary hypothesis was greatly weakened.

4.1.3. Horizontal exclusionary practices

Another kind of exclusionary behavior presented in several cases had to do with strategies of horizontal nature in order to get rid of competitors, such as the reduction of prices encouraged by cable television operators in areas where there was strong competition. In those cases, it can be seen that the price reduction is generally limited to those geographic regions in which the defendant faces competition, while it maintains higher prices in other areas. An example of this appears in "Surcor TV vs. Cablevisión and Multicanal" (2002), where Multicanal was accused of offering the connection at a special price (only to potential customers) in the same areas where Surcor TV had begun to operate, while it maintained a higher price for the rest of the market. The CNDC understood that this kind of behavior was not anticompetitive, since from the commercial point of view there was a legitimate reason for doing so: the need to meet the offer presented by a competitor.

In “L. Cabrera vs. VCC, Cablevisión and Multicanal” (2006), instead, what was questioned was the price charged by VCC (later taken over by Cablevisión and Multicanal) for the cable television service in the city of Rosario, which was higher in comparison with the prices charged by the same companies in other cities. Although the complaint was about the damaging effect that this practice had for consumers in Rosario, the CNDC’s main concern had to do with the possibility that the higher prices charged in Rosario were in fact used to subsidize predatory prices in other geographic regions. This could be true, as long as the existence of a dominant position in those areas where prices were higher and the existence of greater competition where prices were lower could be verified.

To prove this, a series of audits were carried out, with which it was found that the provision costs of the service in Rosario were higher than in other cities, and that for most cities the price charged for the cable television service was higher than the provision cost of that service. Only in one town was the price of the cable television service (provided by Multicanal) lower than its provision cost. However, this was not considered to be a predatory behavior, since in that town Multicanal did not compete against any other cable TV operator.

A further issue related to price reduction is connected with the behavior of some not-for-profit public utility suppliers which, having a dominant position in the provision of their main service in some cities, had easier access to the cable television market with lower prices than those of their competitors. The first case regarding this kind of practice was “R. Díaz vs. Cooperativa San Bartolomé and Cablevisión San Bartolomé” (1997). That case ended with the acceptance of the explanations given by the defendants, since it was understood that their pricing policies had not prevented the plaintiff’s access to the market, and that their behavior was not motivated by the intention of excluding competitors but by their not-for-profit nature.

A similar situation occurred in “SRT vs. Cable Charlone and others” (2002), where a cable television supplier, through an agreement with a not-for-profit public utility firm, was accused of offering its services for free, with predatory purposes. The CNDC’s decision, though, was that the low prices charged by the defendant at the beginning of its business activity had to do with a special launch offer that only lasted for two months. Since Cable Charlone later set its prices on a similar level to those of its

competitor, SRT, the case did not end with a sanction, as it was understood that it was not a situation of predatory pricing.

4.1.4. Exploitative abuse of dominant position

The Argentine law regarding the exploitative abuse of dominant position in the markets of television program distribution has developed through several cases, none of which received sanction. As we mentioned before, the discriminatory reduction of prices was questioned in several circumstances by the competitors of the accused parties. But at the same time, the same behavior on the part of cable television suppliers has been questioned by consumers. In those cases, the issue was not analyzed from the point of view of its exclusionary potential but as a presumably exploitative practice.

An example of this kind of behavior can be seen in "R. Lloveras vs. Cablevisión" (2002), where Cablevisión was accused of setting different prices for cable television users in the city of Río Cuarto, reducing the price of the service in those areas where there was competition. The plaintiff, a user of the cable television service, considered that the reductions implemented by Cablevisión showed a situation in which the users had initially paid an artificially high price for the service, granting the company abusive profits. The CNDC, however, ordered the proceedings to be closed on, based on the fact that Cablevisión's reaction to new competition (i.e., the reduction of its price) was not regarded as punishable behavior from the point of view of competition law (as long as such behavior was not predatory).

Another case in which abusive pricing was reported was "Dirección General de Comercio de Misiones vs. Posadas Cable and Televisión Misionera" (2002), where the local trade authority of the province of Misiones was concerned by an increase in the price of the basic cable television service that took place in the city of Posadas, after the merger of the only two cable television operators in the city. As the existence of a dominant position on the part of the sole cable television operator was proved, the matter to be evaluated was whether the price increase represented an abuse of that position. The answer to that question was negative, since in its analysis the CNDC considered that the main reason for the price increase were the changes introduced by the operators into their service. Specifically, the elements that were taken into account were that the number of channels included in the TV grid had increased significantly,

that a great number of users had received better reception equipment for the coded and pay-per-view channels, and that the distribution network had been improved.

Another supposedly exploitative practice, in this case related to difficulties in the access to sport programs, appears in "National University of Córdoba vs. Durford" (1997). Here the licensee of an open television channel from the city of Córdoba reported the existence of abusive prices for the purchase of the broadcasting rights of the 1998 World Cup qualifying-round soccer games, together with a situation of tying (that consisted in the block sale of the 46 games). The CNDC rejected the objection regarding abusive pricing, but considered that the block sale of the 46 matches was a potentially harmful practice for the general economic interest, derived from the existence of a dominant position. However, the CNDC stated that it was impossible to remedy that damage using antitrust law instruments, since the television program supplier had found more profitable to market its contents through cable television rather than through open television, and there was no competition argument that could make the supplier sacrifice its more profitable choice to grant its rights to an open television channel which was willing to pay less for the same product.

Another interesting case regarding tying, filed by a cable television user, was "N. Ferrari vs. Supercanal" (1995). Supercanal, monopolist of cable television in the city of Mendoza, distributed a magazine with the contents of the different channels whose price was 3.50 Argentine pesos, but the company did not give users the option of purchasing the television service without having to buy the magazine at the same time. This practice did not receive sanction by the CNDC, since it considered that the magazine was a complementary product to the cable television service, something that was usual for cable television operators. Moreover, the CNDC understood that in order to consider tying anticompetitive, the fact that the company imposed additional obligations was not enough unless these were separate services, which was not the case in the investigation under analysis.

4.2. Merger cases

Since 1999, when the procedure of antitrust merger notification was enacted in Argentina, and until around the middle of 2006, the CNDC has analyzed 26 merger cases with effects on the markets of open television, cable television, satellite television

and television contents. The majority of those cases involved the joint analysis of horizontal and vertical relations. In this context, the most serious concern has always been related to an increase in the vertical integration of the sector, and to the effects derived from this. Additionally, there have also been cases in which the main effects were of a horizontal or market-extension nature, based on the disappearance of real or potential competition between the consolidating companies. In the following sections we will analyze the main decisions taken by the CNDC on this matter, separating those cases that were mainly horizontal from those that were mainly vertical.

4.2.1. Horizontal and market-extension mergers

The first mergers analyzed by the CNDC in the markets of television program distribution, whose effects on competition were basically horizontal, were certain transactions that were authorized without restrictions. All of them were market-extension cases, in which the merging parties were not actual competitors. Several of those mergers were carried out by Teledigital, a company that purchased different firms that provided cable television services in several separate cities. Among those transactions we can mention "Teledigital/Las Heras Televisión" (2000), "Teledigital/TV Interactiva and others" (2000) and "Teledigital/Pampa TV" (2000).

Teledigital, however, was also the company that tried to carry out the only merger that was prohibited by the CNDC, until now, in markets related to the distribution of television programs. That is the acquisition analyzed in the case "Teledigital/Esmeralda-Venado Tuerto Televisión" (2003), where the acquiring firm, who owned TV Interactiva and operated in the cable television market in the city of Venado Tuerto, tried to buy the assets belonging to the other two cable TV companies that operated in the same city. Although the merger was predominantly horizontal, it also had a related vertical aspect, since Teledigital was partially integrated with several television channel suppliers such as Imagen Satelital and the TyC Sports group.

In order to deny the authorization to carry out the transaction, the CNDC took into account the achieved concentration level, which meant the constitution of a monopoly in the cable television service in Venado Tuerto. Additionally, the existence of entry barriers of different kinds was also relevant. Among them, the most important was the degree of the vertical integration of the Teledigital group, which could create an

obstacle for the entry of new competitors when they had to buy the contents that would make up their broadcasting grids. That barrier added to those of legal nature, related to obtaining licenses in any cable television market in Argentina, and to those barriers related to the economies of scale and to the high sunk costs of setting up a cable television system.

In the analysis of this transaction, it was also important the consideration of the possible competition that satellite television could exert against cable television. This competition, however, was considered to be still insufficient, and both products were considered to belong to different relevant markets. A further point that was taken into account was the potential efficiency gains that the transaction could bring about through the removal of network overlapping in the city of Venado Tuerto. In this regard, however, it was concluded that, although the existence of three overlapped networks to supply the same geographic area could have meant an inadequate resource allocation for the society as a whole, the change to a situation with only one network could imply even higher social costs, since it would mean the divestiture of assets that could not be used for other activities. The existence of network overlapping, therefore, was considered to be a stock of "competitive capital" that the merger under examination could dilapidate.

The other predominantly horizontal acquisition that has been important in the Argentine antitrust history regarding television markets is "Telefónica/AC Inversora-Atlántida Comunicaciones" (2000), which was one of the first transactions where the CNDC imposed certain conditions in order to approve a merger. This transaction affected the open television markets, and implied the acquisition of the companies AC Inversora and Atlántida Comunicaciones on the part of the Telefónica group.

As Atlántida Comunicaciones controlled open television channels in the cities of Buenos Aires, Salta, Bahía Blanca, Rosario, Córdoba, Santa Fe, Mar del Plata and Neuquén, and AC Inversora indirectly controlled open television channels in the cities of Mar del Plata, Resistencia, Paraná and Buenos Aires, there were two geographic areas (Mar del Plata and Buenos Aires) where the merger was horizontal. This feature extended further to some markets of commercialization of advertising spaces and production of certain television contents.

Of all these overlapping situations, the one that encompassed a higher potential

risk was the one taking place in the open television market in Mar del Plata, since AC Inversora and Atlántica Comunicaciones were the only two open television channels available in the city. In Buenos Aires, instead, there were three other independent open television channels, and that meant that the horizontal integration taking place was much less harmful from the point of view of competition. Due to this, the transaction was approved, but the Telefónica group was made to sell one of the open television channels in Mar del Plata, transferring its entire stockholding to a third party.

Other mergers that affected the open television markets were "Artear/Telecor" (2000) and "Artear/Teledifusora Bahiense" (2001). In both cases, however, the transactions were market-extension mergers, since the acquiring firm was a company that controlled an open television channel in the city of Buenos Aires, and the acquired firms operated in other cities (located in the provinces of Córdoba, Santiago del Estero, Tucumán, Catamarca, La Rioja, San Juan and San Luis, in the case of Telecor, and in the districts of Bahía Blanca and Coronel Rosales, in the case of Teledifusora Bahiense). In both transactions, besides, the CNDC took into account the fact that the purchased companies already broadcast contents marketed by Artear (and in a certain way, they were affiliated to the main channel of that company). That is why the acquisitions analyzed did not bring about significant changes in the existing situation. In this manner, both transactions were authorized without restrictions.

Argentine antitrust case law also has some examples of horizontal mergers that mainly affected the markets of pay television channel provision. Among these, we can mention "Pramer/GEMS" (2000) and "Pramer/Film&Arts" (2000). Both transactions were approved without restrictions, as it was understood that they encompassed the acquisition of channels of low market share by a group that, despite controlling an important number of television channels, also faced substantial competition in all the segments where it operated.

4.2.2. Vertical mergers

The most relevant merger of predominantly vertical nature, analyzed by the CNDC in the markets of television service provision, is undoubtedly the case called "Liberty Media-Hicks/Cablevisión" (2001). In that case, the acquiring companies (Liberty Media and Hicks), already controlled several cable television operators and

television channel suppliers, and they jointly took over Cablevisión, one of the main cable television operators in many Argentine cities.

As the transaction did not bring about a significant increase in the concentration within the markets of cable television services, the CNDC approved the transaction without requesting any divestiture of assets. Nevertheless, to avoid potential damages to competition derived from the strengthening of the vertical relation produced by the transaction, the CNDC obliged the parties to warrant the availability of the television channels controlled by Liberty Media and Hicks, in fair commercial terms, to all those television operators who requested them. Similarly, the grid of Cablevisión, and the ones of the other cable TV operators that became part of the same group, should be available, in fair commercial terms, for the television channel suppliers that competed against Liberty Media and Hicks in the markets of television contents.

As part of the previous transaction, Hicks reached an agreement with Liberty Media that resulted in a joint control over Cablevisión, where each of them received 50% of the stock belonging to the other. Likewise, the transaction also stated that half of the Cablevisión's stock bought by Liberty Media would go to Unitedglobalcom, a firm devoted to the production and marketing of contents. This change in the nature of control over Cablevisión was analyzed from the point of view of two different scenarios. On the one hand, if Liberty Media did not control Unitedglobalcom, the transaction would imply a horizontal relation of relatively small magnitude connected to two TV channels called MGM and Casa Club TV. This, in turn, implied a divestiture, since five other channels split away from the group (those connected with Discovery Networks Argentina and with Fox Sports). The second analyzed scenario took for granted that Liberty Media controlled Unitedglobalcom, or that it had a strong influence on it. This meant that the second stage of the transaction would produce horizontal relations and that the divestiture mentioned before would not take place.

In any of the two analyzed scenarios, however, the transaction did not alter Cablevisión's shares in the markets of cable television services, since it did not imply an increase in the number of users of this company. However, the CNDC took into account the possibility that the merger would increase the incentives for a possible coordinated action in the market of pay television channel provision, in order to exclude competitors or to establish discriminatory clauses when marketing TV channels. In fact, the Hicks

group controlled Pan American Sport Network, a sport channel, and was a stockholder in Imagen Satelital, a company that produced and marketed television channels. On the other hand, Liberty Media controlled Pramer, a company that supplied more than 20 television channels, and was a stockholder in Fox Sports, MGM and Casa Club TV. Apart from this, Hicks and Liberty Media partially controlled TyC Sport and TyC Max, the main sport channels.

In order to protect the competitive process from practices that could have an adverse effect on competition, the Liberty Media group took the responsibility before the CNDC of exercising its right to sell its stock in Fox Sports, and made a commitment not to market those television channels where it had direct or indirect participation jointly with the Hicks group, as long as market or stockholding conditions did not change substantially.

The "Liberty Media-Hicks/Cablevisión" merger induced a relatively large reorganization of the sector of television program distribution in Argentina, and this took place through several other transactions carried out in the following years. The most significant one was the merger analyzed in "Liberty Media/Fox Sports" (2004), where the group formed by Liberty Media and Hicks joined the Fox group in order to create a new company (Fox Pan American Sports), which would provide mainly sport channels. This new company, in turn, entered a contract with Torneos y Competencias, by means of which that company, that owned the main competitor of the Fox Sports channel, was in charge of selling the Fox Sports contents to the television system operators.

This transaction, therefore, had a great effect on the market of sports channel broadcasting. Following a methodology through which the CNDC analyzed several alternative relevant markets, it was concluded that this merger entailed the joint operation of the only channels that participated in the marketing of sport channels that broadcast live soccer games played by Argentine first division teams. The channels that did so were Fox Sports (the channel under examination), on the one hand, and TyC Sports and TyC Max, on the other (controlled by Torneos y Competencias).

The entry conditions into the defined relevant market were characterized by the existence of barriers that prevented a timely, likely and sufficient entry of competitors that would be able to counteract the possible exercise of market power. One of those

barriers was the existence of a long-term contract for the assignment of broadcasting rights, signed by the Argentine Football Association and the Torneos y Competencias group. Another important barrier was the existence of vertical relations between Fox Sports, Torneos y Competencias, and the main pay television operators. On the other hand, no efficiency gains that could counterbalance the potential exercise of market power could be observed; neither was the "failing firm defense" considered to be applicable. Finally, the existence of contracts and no-competition clauses between Fox Sports and Torneos y Competencias strengthened their dominant position even more in the defined relevant market.

Taking all these reasons into account, the transaction was approved conditioned to the fulfillment of certain terms that both parties would have to present. First, the parties presented an agreement by means of which they would implement a swap between Fox Pan American Sports and Torneos y Competencias, in order to completely separate the stocks of both companies. This agreement was approved, but a further requirement was added to it, which was also suggested by the merging companies. This requirement was that Torneos y Competencias stopped marketing the Fox Sports channel to television system operators.

Another relevant transaction related to the Fox group, that implied a predominantly vertical merger, was "NewsCorp/DirecTV" (2005). This transaction, where the company controlling the Fox group (NewsCorp) purchased stock in Hughes, controller of the only satellite television operator in Argentina (DirecTV), was approved with no restrictions. In this case, the CNDC understood that the merging parties did not have any previous horizontal relations, and that the arising vertical integration did not have any significant anticompetitive effect. In fact, the channels belonging to the Fox group (that is, the one specialized in series, the sports channel and the documentary channel) faced strong competition from other pay television channels that operated in the same segments, while DirecTV, despite being a monopolist in the satellite television segment, faced strong competition from the different cable television operators. This last aspect can be considered as a significant issue for the Argentine case law on the subject, since in this case the CNDC understood that, from the point of view of satellite television, cable television was an important source of competition. This implies a difference from previous cases, where satellite television had not been considered to be

a source of substantial competition for cable television.

5. International antitrust case law on the distribution of television programs

Although in most countries the antitrust case law regarding the distribution of television programs is not as extensive as it has been in Argentina over the last few years, it is possible to find many antitrust cases throughout the world referred to anticompetitive conduct and mergers involving economic agents that operate in the markets of the production and marketing of television contents. In this chapter we will review some of the most relevant ones, in order to derive some lessons that could be applicable to the Argentine case.

Since the development of competition law is closely connected to the progress taking place in such field in the United States and the European Union, a good part of the cases reviewed in this chapter will refer to the experience gained in those two places. Given the cultural connection existing between Argentina and Spain, and the existence of an important amount of case law regarding competition policy in the sector of the distribution of television programs, we will also give considerable space to the Spanish experience. Lastly, as we have found some interesting recent cases, we will also make reference to the antitrust experience in Chile and the United Kingdom.

As we have done in the previous chapter regarding the Argentine case law, in this section we will divide the cases into two important groups: one referred to supposedly anticompetitive conduct and the other one referred to merger cases.

5.1. Anticompetitive conduct cases

5.1.1. United States

In the United States, the antitrust law-enforcement agencies are the Department of Justice (DOJ) and the Federal Trade Commission (FTC). In the sectors connected with telecommunications, however, those authorities share their antitrust powers with the Federal Communications Commission (FCC), which also has regulatory authority over such sectors. Federal and local authorities are also usually involved in this field, especially concerning the regulation of market entry and the prices that television operators can charge.

Traditionally, the regulatory activity of the FCC and the federal and local

agencies has played an important role in the structure and operation of the sector of television program distribution in the United States, both regarding open and pay TV. Although this regulatory activity does not mean that the sector has been exempted from the enforcement of the antitrust legislation, it can be a good explanation for the relatively scarce number of investigations related to anticompetitive conduct carried out in this sector by the US antitrust agencies[8].

Among some of the most relevant cases carried out by the Department of Justice, we can mention the three separate lawsuits filed in 1972 against the open television networks CBS, NBC and ABC, where the DOJ alleged that each of those channels had violated sections 1 and 2 of the Sherman Act, by restricting competition with their affiliate television channels and other companies, monopolizing the market of their own "prime time" programs, and also the market consisting of the whole prime time segment. Although none of these companies were sanctioned, the lawsuits did bring about certain legal commitments among the parties. In "United States vs. Columbia Picture Industries" (1981), on the other hand, the DOJ questioned the constitution of a joint venture that would have allowed four out of the six largest Hollywood studios to create a premium movie channel on cable television which would have hold exclusive rights over a group of movies that the companies sold to cable television channels. The government alleged that such joint venture constituted a price-fixing agreement and a group boycott.

In another case, called "United States vs. Primestar Partners" (1994), the Justice Department filed a suit against a consortium made up of ten cable television operators for restricting the competition regarding the service of pay television distribution. Such consortium had been formed in order to provide the service of satellite television, and it was considered to be a continual agreement to lessen competition (since they prevented the entry of other companies into the business of satellite television provision). Apparently, the Primestar partners also controlled an important part of the television channels available to the subscribers of satellite television, and there was a risk that the access to those channels would be blocked for the satellite television operators that

[8] It is worth mentioning that the US courts have understood that the Robinson-Patman Act, which prohibits price discrimination with anticompetitive purposes, does not apply to the cable television service, since that service is not a "good". Besides, the 1961 Sports Broadcasting Act states that certain agreements, by means of which sport leagues sell the broadcasting rights for their games, are beyond the scope of antitrust law.

competed with the new enterprise. This case ended with a commitment suggested by the DOJ, which was accepted by the defendants, by means of which they committed themselves to avoid applying exclusive dealing clauses or other clauses that could affect broadcasting availability, price, terms or conditions, in connection with any of the cable television or satellite television operators.

As regards the investigations carried out by the Federal Trade Commission, it is worth mentioning that in "FTC vs. Summit Communications" (1995), this agency pressed charges against the firm Summit Communications and against seven cable television operators owned by another company called Wometco, claiming that they had illegally agreed on the division of customers in a county in Georgia, where the cable television systems overlapped. According to the FTC's statement, this market division started in March 1990 when Summit and Wometco reached an agreement in order to decide which company would serve certain housing condominiums. The FTC claimed that the agreements between Summit and Wometco lessened competition regarding the cable service in the area, preventing subscribers from having access to cable television services whose price and quality could be defined in a competitive way. Finally, the defendants reached an agreement with the FTC by means of which they promised that they would not enter any agreements regarding the division of markets, customers, contracts or territories in any of Georgia's counties where their cable TV systems overlapped.

However, the most important American case in the history of antitrust law, referred to the distribution of television contents, is a private case where neither the DOJ nor the FTC was involved. In that case, the University of Oklahoma sued the National Collegiate Athletic Association (NCAA) for its marketing system regarding the broadcasting rights of American football matches that took place within its sphere. Those rights were marketed by the universities that were members of the NCAA under certain terms set by such association through agreements with some television networks, and the NCAA had announced that they would apply disciplinary measures to several universities (the University of Oklahoma among them) if they entered any agreements that did not comply with the terms set by the association. This case was of great importance because in 1984 it reached the US Supreme Court, which understood that the measures adopted by the NCAA infringed section 1 of the Sherman Act (and

were therefore anticompetitive), since they brought about damage for consumers that was not made up for by any efficiency advantage. Although the ruling of the Supreme Court considered that this kind of contracts between athletic associations and television networks were not anticompetitive *per se* (as they should be analyzed applying the rule of reason), in the case of the NCAA it understood that the adopted broadcasting system was not a necessary element to fulfill the main goal of the sued association, that is, the organization of the American football national college tournament[9].

5.1.2. European Union

In the European competition law, the two basic types of anticompetitive conduct are the horizontal and vertical agreements to lessen competition (characterized by article 81 of the European Community Treaty) and the abuse of dominant position (mentioned in the article 82 of that treaty). The law-enforcement authority of this legislation is the European Commission (EC), whose headquarters are in Brussels, and its decisions can be appealed before the European Union justice system.

Throughout the years, the EC has analyzed several horizontal and vertical agreements in the sector of distribution of television programs. With reference to the horizontal agreements, the Commission has questioned several agreements related to the joint sale of the broadcasting rights of soccer games on the part of associations that group soccer clubs. In these proceedings, the EC and the parties involved have generally made a commitment once these approved the introduction of certain changes to the original agreements. In "UEFA Champions League" (2003), for instance, the Commission analyzed the joint sale of the commercial rights of the matches of the main championship organized by the Union of European Football Associations (UEFA). In this case, the restriction to competition among the clubs took place because the UEFA was in charge of setting the prices and other commercial terms on behalf of the individual clubs that produced the contents of the Champions League. On the other hand, the potential benefits of the joint sale agreement were cancelled by the commercial policy carried out by the UEFA regarding the exploitation of the television rights previously mentioned. The reason for this was that the UEFA sold the rights to broadcasting the games by open and pay television using exclusivity clauses, by means

[9] For a detailed economic analysis of the NCAA case, see Kwoka and White (1998), chapter 8.

of a unique package and to only one television operator in each country for a period of several years. In view of the objections made by the Commission and several comments made by third parties, the UEFA presented new versions of the agreement of joint sale which in a way reduced the exclusive rights of that entity concerning the broadcasting of the Champions League. Those versions were finally approved by the EC, as it was understood that, although there were still many exclusive dealing restrictions, they brought about benefits like the creation of a product that could be purchased in a single outlet. In view of all this, the joint sale agreement was approved until 2009, subject to the removal of the restrictions that prevented soccer clubs from individually selling certain broadcasting rights to open television companies.

The European Commission has also examined agreements concerning the joint sale of television rights on the part of national soccer associations. Two important cases in this respect were the investigations called "German Football League" (2005), and "Football Association Premier League" (2006). Both cases ended with a commitment made by the associations mentioned before that enabled the approval of the agreements under examination.

Another group of relevant cases analyzed by the EC is that involving the agreements of joint purchase, sharing and exchange of audiovisual rights regarding sport events by television channels. In the case of "Eurovision" (2000), for instance, the European Broadcasting Union (EBU) made an announcement in reference to its statutory regulations and other rules that governed the purchase of the television rights for sport events, the exchange of sport programs within the framework of Eurovision, and the contractual access of third parties to those programs. The EBU is an association of radio and television organizations that coordinates and facilitates the exchange of programs among its active members within the framework of Eurovision, a system of European scope that deals with the exchange of programs through which its members offer each other the news coverage of important events, current affairs, and sport and cultural events taking place in the different countries. The Commission understood that the announced agreements restricted competition among the members of the EBU in the markets of television rights for important sport events and in the markets of open and pay television. However, it was understood that they fulfilled the conditions to receive the approval of the Commission, as the agreements brought about some important

benefits. Those benefits consisted in the reduction of transaction costs, which especially benefited the member channels from smaller countries while allowing them to have a group of television programs of a quality and number that would not occur without the agreements. Despite granting the requested permission, the EC established that the agreements regarding the purchase of television rights for sport programs should allow free access to those rights for third parties that were not members of the EBU.

As regards vertical agreements, the European Commission has started some proceedings against the establishment of clauses of most favored supplier, also known as "most favored nation clauses". For example, in "European Commission vs. Buena Vista and others" (2004), the EC investigated eight important Hollywood studios for the inclusion of this kind of clauses in their contracts with other pay television operators, claiming that those clauses had the effect of fixing the price paid to such motion picture suppliers.

The exclusive distribution agreements in the sector of television program provision have also been examined by the European Commission. In "Telenor/Canal+/Canal Digital" (2003), for example, the EC was notified of several agreements entered between Telenor Broadband Services, subsidiary of the main telecommunications company in Norway, and the group Canal +. The agreements mentioned fixed the settled conditions by means of which the parties were planning to carry out their pay television activities in the Nordic countries, especially the distribution of premium channels through Canal Digital, a satellite television company. The agreements included a series of exclusivity features and clauses of no competition between Canal +, as a supplier of pay TV contents, and Telenor/Canal Digital, in its character as open television and satellite television operator. Those clauses were understood to lessen competition, but the Commission had nevertheless a positive view of them, despite objecting their 10-year duration which was considered to be excessive.

5.1.3. Spain

The Spanish competition law is very similar to that existing in the European Union, from which it is inspired. Its application, however, is carried out by means of a "double agency" system, where there is a Service of Competition Defense (SDC), which acts as a government attorney, and a Court of Competition Defense (TDC),

which resolves the cases in their first instance.

Among the most relevant antitrust cases related to the distribution of television programs in Spain, it is worth mentioning the case named "Antena 3 vs. National Professional Football League and others" (1993), where the TDC reached a decision regarding the negotiation of the exclusive television rights corresponding to the National Professional Football League (LNFP). In 1989 the LNFP awarded exclusive contracts regarding the broadcasting of the Spanish national soccer championship and the soccer King's Cup, for the seasons 1989-90 until 1993-94. The contracts were awarded to a company called "Promoción del Deporte", which in turn sold the rights to the autonomous public television channels of Catalonia, Valencia, Galicia, Madrid and the Basque Country. Soon after the sale of those rights, the government approved the operation of three new private television networks: Antena 3, Telecinco and Canal Plus (the latter of which was a coded channel). In July 1990, Canal Plus entered an agreement with the LNFP and the autonomous TV channels in order to share the broadcasting of the soccer games for a period of eight years. The exclusivity clauses included in the contract prevented the rest of the channels from broadcasting the games. Consequently, Antena 3 and Telecinco objected those agreements before the SDC for restricting competition, and they alleged an abuse of dominant position on the part of the LNFP.

To rule in this matter, the TDC defined the relevant market as that of the soccer broadcasting rights in Spain, and considered that the LNFP had a dominant position in that market. It also understood that the LNFP had abused of such dominant position, as it illegally prevented the plaintiff (the private channels) from having access to those rights for eight years. The TDC also understood that the agreements entered by the LNFP, the autonomous TV channels and Canal Plus were illegal, since the exclusivity defined by those agreements resulted in the restriction of competition. The measures adopted by the TDC consisted in an order to stop the prohibited practices at the end of the 1993-94 season, while compelling the autonomous TV channels to allow all the other operators to show images of the soccer games and imposing a fine to the LNFP.

In another case named "Asociación de Organizadores de Espectáculos Taurinos and others vs. Toros e Imágenes" (2000), the TDC analyzed a situation where the plaintiffs questioned the legality of some block-booking and exclusive broadcasting

rights agreements regarding bull races. A firm called "Toros e Imágenes", and a group of stockbreeders, were reported to have incurred in anticompetitive practices after entering an agreement whereby the stockbreeders favored Toros e Imágenes with the assignment of the exclusive broadcasting rights for those bull shows where their fighting bulls took part. The TDC considered that Toros e Imágenes and the 31 stockbreeders had undertaken an anticompetitive restrictive practice. However, they were not fined, as the TDC understood that the agreement previously mentioned had not been put into practice.

As regards those cases of abuse of dominant position where there were no exclusive dealing issues, we can mention the decision reached by the TDC in "Telecinco and Antena 3 vs. TV Autonómica de Madrid and others" (1998). The accusing private corporations claimed that the accused autonomous public television channels had a dominant position derived from the subventions that they received, of which they abused in two ways: by paying non-competitive prices for the programs that they purchased, and by selling their advertising space at non-competitive rates. The TDC rejected the complaint pointing out to the fact that the subventions themselves do not grant a dominant position, and considering that they were connected with economic and cultural reasons that were unrelated to competition policy goals.

Another case where a supposed abuse of dominant position unrelated to exclusive dealing matters was analyzed is that of "Canal 7 vs. Sofres" (1998). In this case, Canal 7, a firm that exploited a local television network in Madrid, pressed charges against Sofres, a firm devoted to measuring television audiences, because of the latter's refusal to measure the former's audience, a fact which prevented Canal 7 from entering the advertising market. The TDC dismissed the case as it understood that the abuse of dominant position was nonexistent, since although Sofres was the only firm in charge of measuring television audiences, it was controlled by the agents that would make use of it for their commercial proceedings as customers or suppliers of advertising spaces. Lastly, in "Televes vs. Vía Digital" (2000), the TDC analyzed a case where a satellite television company was accused of a supposed abuse of dominant position. The plaintiff, a manufacturer of parabolic antennas, accused Vía Digital of loss sales with exclusionary purposes, since this operator gave the parabolic antenna and its installation for free to all of its satellite television subscribers. The TDC agreed with the SDC that

Vía Digital did not hold a dominant position in the relevant market of satellite television in Spain, and that the free offer of the parabolic antennas was a business strategy intended to facilitate the introduction of satellite television in those segments where it competed against other pay television operators.

5.1.4. United Kingdom

The investigation of anticompetitive practices in the market of distribution of television programs in the United Kingdom has somewhat been connected with a satellite television company called BSkyB. As BSkyB is a firm that is vertically integrated in the production, wholesale distribution and retail distribution of channels, the British antitrust agency, known as the Office of Fair Trading (OFT), started proceedings in 1994 related to the position held by such company in the provision of broadcasting to cable television operators that competed against it. BSkyB had a dominant position in the markets of wholesale provision of premium sport and movie channels, and at the same time it was the main pay television operator in the United Kingdom. The investigation ended in 1995 with a series of voluntary commitments that were later clarified and reinforced by a second investigation concluded in 1996. In those commitments, BSkyB was asked to do a separate bookkeeping for its contents division and its distribution division, as well as to issue a price list for the different channels that it sold in the wholesale market, and to abstain from block-booking practices concerning certain important channels.

Another significant British antitrust case is "OFT vs. Premier League, BSkyB and BBC" (1999), filed before the Restrictive Practices' Court. In that case, the OFT questioned certain agreements which stated that first-division English soccer clubs could only sell the broadcasting rights of their games through the Premier League. In that way, only 60 out of the 380 matches played annually were broadcast live, and the soccer clubs were banned from selling the broadcasting rights of the rest of their games. By virtue of the mentioned agreements, BSkyB held the exclusive rights for five years regarding the live broadcasting of the matches, and the BBC was the only network allowed to record and broadcast the important events during the matches later on.

The theory of the OFT in this case was that the Premier League operated as a cartel, and that the objected contractual restrictions had the effect of reducing the

quantity of the broadcast matches, creating an unsatisfied demand, increasing prices and reducing consumers' choice. The remedies suggested by the OFT consisted in placing a prohibition on the joint sale of the broadcasting rights, "unbundling" them, and restricting the exclusivity period. However, the Restrictive Practices' Court ruled in favor of the defendants, since it considered that the agreements questioned by the OFT did not go against the public interest. According to the decision of that court, the agreements did not represent a typical case of quantity restriction to increase prices, since the Premier League clubs did not make great profits and there were also certain benefits for the public interest, as the system contributed to keeping a competitive balance between the most and least powerful clubs[10].

The last antitrust case involving BSkyB in the United Kingdom consisted of a public investigation regarding certain practices that supposedly violated the British Competition Act ("OFT vs. BSkyB", 2002). In that case the matter analyzed was meant to determine whether BSkyB had a dominant position in one or more markets and, if that was the case, whether that position had been abused of by the exercise of a "market squeeze" regarding its rival pay television distributors. As part of the conclusion of the investigation, the OFT understood that BSkyB held a dominant position in the relevant markets of wholesale supply of certain sport and premium movie channels, not only because of its important market share in those market segments but also because of the exclusive control that it had over the broadcasting rights, a fact that generated large entry barriers into those markets. The British antitrust agency, however, concluded that, from the investigation carried out, there were no elements to assert that BSkyB was guilty of the anticompetitive practices previously mentioned.

5.2. Merger cases

5.2.1. United States

The main mergers and acquisitions that have taken place in the sector of distribution of television programs in the United States have involved television content suppliers and television system operators (both satellite and cable television). The agencies in charge of examining those mergers and acquisitions (the FTC, the FCC and

[10] Note the difference between this argument and the argument used by the US Supreme Court in the NCAA case reviewed in section 5.1.1.

the Department of Justice) have distinguished two kinds of vertically-related relevant markets in the sector of pay television. One of them, which is located "upstream", is the programming market, which consists of the sale of television channels to television operators. The second kind of market is a downstream market, and consists of the distribution of the different television channels to its users. Open television, movie rental, and other kinds of entertainment, instead, have always been placed outside the relevant markets defined.

As a general rule, in the United States satellite television operators have been included in the same market than cable television operators, although the US case law pointed out that they were markets where there was an important product differentiation (arising from the different marketing alternatives and from the composition of the channel grids). From the geographic point of view, the definition of those markets has always been of a local nature. What normally happens in the United States is that there is only one cable television operator in each urban area, which means that the relevant downstream market is supplied by such operator and by the satellite television operators that offer their services in the area under examination. In the case "EchoStar/DirecTV" (2002), for instance, the affected local markets were sorted out into three categories: markets where there was only satellite television, markets where there was satellite television and a low-capacity cable television operator, and markets where there was satellite television and a high-capacity cable television operator.

As regards the upstream relevant markets, there have been cases (for example, "Time Warner/Turner", 1996) where all the channels were considered to be part of the same market, since it was understood that television operators took into account every kind of program when they came to determine the appropriate program mix that they would offer to their subscribers. In other cases, instead, television channel markets were divided into segments. In "NewsCorp/DirecTV" (2003), for instance, a market of pay television channels unrelated to sports, a market of local sport channels, and a market of local open television channels were analyzed separately. The first of those markets was defined in terms of a national geographic dimension, while the other two were analyzed as local markets.

The characteristics of retail cable television provision in the United States have led to the fact that most mergers involving different cable TV operators were approved

without restrictions, since they were understood to be market-extension mergers (as opposed to horizontal mergers). Despite all this, the only important horizontal merger between satellite television operators (EchoStar/DirecTV) was objected by the FCC and the Department of Justice, and in the end the parties decided to give up the transaction. In this case, the analysis carried out by the antitrust agencies was based on the fact that the concentration level would be significantly increased in each of the local markets analyzed, since in most areas the merger between EchoStar and DirecTV meant getting rid of a competitor where there had previously been only three suppliers (two satellite television operators and a cable television operator). Such increase in concentration was even greater in those areas where there were no cable television operators, since it meant the emergence of a monopoly situation. The DOJ and the FCC also understood that in those markets entry barriers were high, and that the timely entry of new competitors in response to a price increase on the part of the merged entity was not probable. The main entry barrier had to do with the fact that the available radio electric spectrum used for the provision of satellite television was limited.

In the rest of the mergers that we have reviewed, which affected the markets of television program distribution, the US antitrust agencies imposed certain restrictions but did not object the mergers themselves. Most of those restrictions appeared in cases where an important vertical integration was taking place, and there was thus fear that the new firm would make use of certain strategies to exclude competitors both in the markets of channel provision as in the retail markets of pay television services. In the first of these groups, the main danger arises because an entity that controls an important percentage of the users of pay television on a national level, and is vertically integrated with television channel suppliers, can refuse to purchase the channels belonging to competitors, therefore excluding them from the market. In the second group, instead, the main exclusion problem arises when an entity that controls several "star channels", and is vertically integrated with television operators, refuses to sell those channels to other operators, lessening the competitive capacity of such independent operators.

As an example of some of the restrictions imposed to clear mergers of a basically vertical nature, we can mention the case "Time Warner/Turner", where the FCC stipulated certain non-discrimination clauses in favor of the channel suppliers that

did not belong to the merging group[11]. Similarly, in "Time Warner-Comcast/Adelphia" (2006), the FCC imposed certain conditions that prohibited the merging group to tie the sale of its main television channels to the purchase of other less important channels. Moreover, the FCC prohibited the granting of exclusivity rights of those channels to certain television system operators. In that merger, however, the general opinion of the regulatory agency was that this transaction brought about a series of procompetitive benefits, as it helped the acquired firm (Adelphia) to solve its problems as a "failing firm", allowing it to compete in other adjacent markets (such as fixed telephony and internet provision).

Similar requirements to the conditions previously mentioned in "Time Warner-Comcast/Adelphia" were made by the FCC in the "NewsCorp/DirecTV" merger. In that case, additionally, there were some requirements related to specific markets of local sport channel provision, as well as local open television channels (that are usually part of the grid of pay television operators). Those requirements had to do with the fact that the merging group should neither discriminate between member and independent operators nor grant any exclusivity rights regarding the sale of those channels.

The US antitrust agencies have not imposed many structural remedies in mergers related to the television distribution industry (if we exclude the "EchoStar/DirecTV" case, where the whole transaction was objected). The most important divestiture requirement imposed is probably the one that affected the "AT&T/MediaOne" merger (2000), where the merging group was asked to sell its stock in several local cable television companies. This request, however, was more regulatory than antitrust in nature, since it was based on an FCC regulation (known as "cable ownership limit") by means of which no pay television operator could concentrate more than 30% of all users at a national level.

5.2.2. European Union

The enforcement of competition law regarding the assessment of mergers and acquisitions referred to the distribution of television programs in the European Union has taken place in a series of cases examined by the European Commission. Those cases refer basically to three types of markets: the distribution of programs through pay

[11] For a detailed economic analysis of the "Time Warner/Turner" merger, see Kwoka and White (1998), chapter 19.

television, the distribution of programs through open television, and the supply of inputs needed by the firms that operate in those two markets. In all the cases that were analyzed, the EC understood that pay television was a different relevant market than open television, basically because in the former competition is over subscribers, while in the latter competition is more related to the audience's share. In its first decisions regarding the sector ("MSG Media Service", 1994; "Nordic Satellite Distribution", 1995), the Commission even considered that satellite television was a separate market from cable television. However, after the process of technologic convergence that took place later on, the EC changed its opinion, and in the most recent cases it has understood that the different pay television systems compete with each other, independently of the broadcasting technology employed.

As regards the geographic dimension of the markets, the European Commission has always held that the TV markets (both open and pay television) are defined by national or linguistic borders. The EC has also identified a series of upstream markets which are vertically related to the markets of pay television, such as the markets of TV contents, and has segmented those markets distinguishing between several relevant segments: movies, sports, production and marketing of channels, etc. Regarding the purchase of rights over movies, the Commission has determined the existence of a specific market of premium movies in the pay television systems, since not many of those movies are broadcast through open television, and when they are there is usually a considerable delay. Concerning the purchase of the rights for sport events, the EC has established that the broadcasting rights of soccer games constitute a separate market, and it has even identified smaller markets within televised soccer.

The mergers that affect markets related to the distribution of television programs have brought about situations in which a dominant position was created or reinforced in one or several relevant markets, either because of an increase in the horizontal concentration, through the establishment or reinforcement of a vertical link, or because of the extension of a dominant position to markets adjacent to the distribution of television programs. In view of these situations, the EC's position, especially in the most recent cases, has been to approve the mergers subject to the fulfillment of some commitments undertaken by the parties, intended to remedy the anticompetitive effects.

In the case named "Telia/Telenor" (1999), for instance, a merger combined

Telia, the Swedish state-owned telecommunications company, and Telenor, the Norwegian state-owned telecommunications company, into only one firm. These two firms provided the television service in their own countries and in some other areas in Northern Europe. The merger brought about an increase in the number of subscribers and a vertical integration throughout the whole distribution chain, which in turn created or reinforced a dominant position in different markets: capacity provision of satellite transponders, retail distribution of pay television, purchase and sale of TV contents, and provision of technical services for pay television. There was also the risk that the new company would tie in its television, internet, and telephone services. The merger was approved once the parties had undertaken several commitments. In the sector of television, the main commitment had to do with the divestiture of certain assets intended for the provision of cable television, which meant that the number of subscribers of the television systems belonging to the merging group would not increase in comparison to their situation before the transaction.

In the case called "Vivendi/Canal+/Seagram" (2000), the merger analyzed reinforced the dominant position that the pay television operator Canal + had in France, Spain, Italy, Belgium and Holland, since it caused a vertical integration with Universal, one of the six most important Hollywood studios. This vertical integration had a negative effect on Canal +'s competitors in the market of pay television distribution, as it hindered access to the broadcasting of important Hollywood movies. The merger, however, was approved once Vivendi undertook the following commitments: to limit Canal +'s access to the motion pictures produced by Universal, to grant competitors access to those movies, and to sell its share in BSkyB (so as to get rid of the link with Fox, another great Hollywood studio).

Another relevant case, related to satellite television, was that of "NewsCorp/Telepiù" (2003), where the merger generated a situation of virtual monopoly in the market of pay television in Italy (since the only two satellite television operators would be merging, and the development of cable television was extremely small). Besides, the EC understood that the possession of the codifying system belonging to the new company raised the entry barriers for new competitors into the market. Therefore, the Commission approved the merger subject to a series of commitments that consisted in the restriction of the scope and duration of the

exclusivity clauses in the contracts of TV contents' provision, the non-discriminatory access of third parties to the platform and technical support services of the newly-merged firm, and the sale of the digital television network business belonging to Telepiù.

Finally, in the case "BSkyB/KirchPayTV" (2000), the EC understood that the acquisition of a percentage of the capital stock of the German pay television company KirchPayTV by BSkyB, a British satellite television company, increased the potential monopoly that KirchPayTV already had in the German market of pay television services (due to the amount of financial resources coming from BSkyB), and there was the additional risk that such position would extend to the market of the interactive services of digital television. Nevertheless, the Commission approved the acquisition as long as KirchPayTV granted non-discriminatory access to its technical infrastructure for the provision of pay television and interactive services.

5.2.3. Spain

Of all the merger cases analyzed by the Spanish Court of Competition Defense (TDC), the "Sogecable/Vía Digital" merger (2002) is undoubtedly the most relevant one in the sector of distribution of television programs. By virtue of this merger, Vía Digital, a satellite television operator belonging to the Telefónica group, merged with Sogecable, a firm that controlled Canal Satélite Digital, a satellite television operator, and Canal +, a coded ground television operator. In this way, the merger led to the integration of the two platforms of satellite digital television existing in Spain. In turn, those satellite TV companies were also vertically integrated, producing their own contents that were also sold to other pay television operators.

In the beginning, the "Sogecable/Vía Digital" merger was analyzed by the European Commission, but afterwards it was referred to the Spanish authorities so that it could be examined according to the Spanish legislation. Following the precedents of the European Union, the TDC considered the market of pay television as a different market from that of open television, but made no distinctions between cable, satellite, or ground distribution (Hertzian waves), and all those systems were included within the same relevant market. However, from the geographic point of view, the TDC distinguished between those areas where there were only satellite television operators

and those areas where there was also a cable television operator.

Within the markets that were vertically related with pay television, the ones that received most attention were the markets of "premium contents", especially those related to the broadcasting of soccer games. Hence, for instance, the TDC defined the live broadcasting rights of soccer events taking place during the year and on a yearly basis (such as the Spanish League, the King's Cup, the Champions League, and the UEFA Cup) as a relevant market. As regards the purchase of contents related to the motion picture industry, the EC's definition was adopted, limiting the market to the broadcasting rights of films produced by the major Hollywood studios. The edition and marketing of theme channels was also considered to be a relevant market in itself, since those channels were a second element, together with premium contents, through which pay television won subscribers, offering a variety and range of programs that could not be found in open television.

Although the horizontal impact of the "Sogecable/Vía Digital" merger in the market of pay television was important, since Sogecable's market share after the merger became very high, the TDC understood that the most important anticompetitive risks arising from this merger were not related to horizontal problems but to its vertical nature, especially concerning the exclusivity clauses for the purchase of rights oven premium contents. This is why the TDC decided that the approval of the transaction would have to be subject to ten conditions which Sogecable would have to fulfill.

The Spanish Council of Ministers, finally, decided to approve the merger subject to the fulfillment of thirty-four conditions, including the ten conditions stated by the TDC. Of those thirty-four conditions, twenty-four were of a general nature, while ten of them referred to the broadcasting of soccer. The general conditions had to do with the non-discriminatory access of third parties to broadcast through channels belonging to Sogecable's satellite platform, the separate book-keeping, the prohibition of mechanisms that extended exclusivity rights over premium contents, the prohibition to purchase films of premium contents to be broadcast through mobile telecommunications and data-transmission systems, the obligation to market at least one channel that included premium films to third-party distributors, the obligation to market theme channels to third-party distributors, the prohibition to market the satellite platform jointly with the broadband internet service belonging to the Telefónica group, the

prohibition to favor the Telefónica group regarding the sale of audiovisual contents (especially concerning cable television operators), the obligation to carry out a uniform pricing policy for the whole country, the prohibition to raise the prices charged to the users over a certain limit for a period of four years, and the prohibition to carry out further alliances with the Telefónica group. As regards soccer, the conditions imposed established prohibitions related to the priorities and options for the deferral in the purchase of the rights on the part of the clubs for the broadcasting of the Spanish League or the King's Cup matches, a restriction regarding the duration of the contracts signed about those matches, the prohibition to purchase the matches exclusively to be broadcast by means of mobile communications and data-transmission, and the obligation to sublicense the open television and *pay-per-view* broadcasting in case of acquiring the exclusive rights for the pay television broadcasting.

As regards other merger cases in the sector of distribution of television programs, the Spanish authorities have had a tendency to impose conditions in those mergers that presented potential risks for competition. This happened in "Cablevisión/Canal Plus-Telefónica" (1996), where the Council of Ministers subjected the merger to conditions meant to prohibit exclusive dealing in the purchase of Canal Plus's programs on the part of cable television operators, to allow the same cable television operators to set the prices (instead of being subject to Cablevisión's pricing policy), and to limit the maximum number of subscribers to the local operators belonging to the Telefónica group. In the case "Banco Bilbao Vizcaya/Argentaria" (2000), finally, the TDC suggested the restriction that the merging group (BBVA) had representation in the board of directors of only one company in each segment of the media sector, and the Council of Ministers added the condition that, for a period of five years, the BBVA group could have a substantial stock share in only one of the operators in each of the relevant markets of cable television, radio, open television, and satellite television.

5.2.4. Chile

The Chilean case is particularly interesting to us because the antitrust authority in Chile (that is, the Court for the Defense of Free Competition, TDLC) was in charge of analyzing one of the largest mergers between cable television firms, as was the

"Metrópolis/VTR" merger (2004). Before that merger, Metrópolis and VTR were the two largest cable television operators in Chile, and their networks overlapped in several geographic regions, especially in the city of Santiago. Liberty Media owned and controlled VTR, and it also owned indirectly 50% of Metrópolis. The other 50% belonged to CristalChile, which after the transaction become the owner of 20% of the merged company. In turn, Liberty Media had a share in companies that provided contents for their distribution on television.

In order to analyze the effects of the "Metrópolis/VTR" merger, the TDLC defined four relevant markets: pay television, broadband internet services, local telephony, and provision of contents to pay television companies. The geographic dimensions of the market were understood to cover the whole country, although it was recognized that there were different competition conditions in the different regions. The market of pay television was characterized as the distribution of several channels to the users, in exchange for a monthly payment, which included cable, ground and satellite television companies. On a national level, VTR had a share of 57% taking into account the cable TV service, an additional 2% in its ground television network, and less than 1% in its satellite TV service. In turn, Metrópolis had a share of approximately 29%, which meant that the parties involved had about 89% of the pay television market altogether. In the market of contents, Liberty Media had an important share in several companies that supplied television channels.

As regards the potentially anticompetitive horizontal effects of the "Metrópolis/VTR" merger, the TDLC understood that, in the market of pay television, the merger, if not subject to certain conditions, would bring about damages to consumers through higher prices, smaller supply of programs and a lower-quality service. Besides, it took into account the fact that, as the markets of pay television, internet and fixed telephony were related from the point of view of both supply and demand, there was a possibility of tying strategies, which meant that the VTR-Metrópolis group could expand its dominant position from the sector of pay television to other sectors. Regarding the vertical anticompetitive effects, the TDLC understood that, although there was already a vertical integration between Liberty Media and several other television companies, the merger reinforced that vertical integration, generating entry barriers originated by the buying power of the merging parties

regarding the purchase of contents.

In reference to the efficiencies derived from the merger, the TDLC particularly emphasized a 44% reduction in the bidirectional network expansion costs in those places where the networks belonging to the merging firms overlapped, which allowed to offer the "triple play" service (that is, pay television, broadband internet and fixed telephony jointly) in those areas that where less attractive from the point of view of demand. This was a decisive element regarding the decision to approve the merger, whose effect was understood to be positive in the Chilean telecommunications markets (internet and fixed telephony), as it reduced investment costs to supply the three services altogether. According to the Chilean antitrust agency, the expected benefits in these two markets exceeded the damages expected from the consolidation of a dominant position in the market of pay television, which, besides, was considered to be temporary.

In order to neutralize the anticompetitive effects of the "Metrópolis/VTR" merger in the market of pay television, the TDLC imposed several conditions, among which we can mention: the sale of all stocks in satellite or ground television operators in Chile, the prohibition to take part in dominant fixed telephone companies, the prohibition of tied sales, the obligation to identify individual prices in case of joint sales of telecommunications services, the prohibition to use its market power over third-party operators who sold channels or television contents, the prohibition to act as a distributor or representative of the theme channels produced or distributed nationally or internationally, the prohibition to include exclusivity clauses regarding the sale of films, theme channels or others produced by any national or international company, the prohibition to increase prices or decrease the quality of the service for a period of three years (without any cost justification), and the obligation of keeping a uniform pricing policy for the entire national territory, without discriminating between areas with or without the presence of other pay television operators.

6. Conclusions

From the analysis carried out in the previous chapters (where we described the sector of television program distribution in Argentina, reviewed the economic literature on the provision of television programs, presented a theoretical model, and commented on the most relevant cases of the Argentine and international case law on the subject) we have reached several conclusions regarding competition problems in the sector of television program distribution. Those conclusions are the object of this chapter, where we will first see the main antitrust implications of the analyzed matters, and then we will include a section referred to the main regulatory implications. In this last section we will analyze what kind of problems cannot be solved by means of the ordinary remedies offered by competition law, and we will outline some ideas regarding the possible state interventions in the sector of provision and distribution of television contents.

6.1. Antitrust implications

The main antitrust implications that can be outlined from what we have analyzed in this work are the following:

1) The agreements to lessen competition among television system operators that operate in the same relevant market are particularly harmful for competition, since they increase the monopoly power of those operators and this can lead to an increase in the price that they charge their users or to a reduction in the variety of their contents. These agreements can either be price-fixing or market-division agreements, the effects of which being very similar. The same objections apply to most horizontal mergers among television system operators that are in the same relevant market.

Strictly speaking, the first implication of our work is no other thing than the application of one of the most general principles of antitrust analysis. For example, the Argentine competition act (Act No. 25,156) prohibits all those practices that are "intended to... lessen ... competition... in such a way that it can be harmful to the general economic interest" (article 1). As examples of those practices, the act mentions "fixing… the price… of goods or services" (article 2, subsection A) and "distributing certain areas, markets, customers and supply sources horizontally" (article 2, subsection

B). The Argentine competition act also prohibits those mergers "whose purpose or effect is or might be... to lessen... competition, in such a way that it can be harmful to the general economic interest" (article 7).

From the point of view of the economic analysis, we have seen that those horizontal agreements intended to fix the prices charged to users or to share out customers have the effect of reducing the traded output (in our case, the number of viewers that receive the programs), and that this brings about a reduction in the economic surplus that those customers obtain, which is even larger than the profit earned by the suppliers for undertaking such maneuver. This means that both the consumer surplus and the total surplus generated in the market are reduced.

A similar phenomenon takes place when the horizontal agreement is carried out by means of a merger among the companies that compete in the same relevant market, with the exception that in this case the integration may bring about cost reductions (for instance, through savings in the distribution and marketing of the programs) that in a way make up for the surplus loss induced by the disappearance of competition. That is why in these cases the analysis must take into account this additional element, as well as the possibility that the analyzed relevant market is a natural monopoly, and does therefore not allow for more than one supplier of the service.

An important fact that must be taken into account is the difference between horizontal mergers and market-extension mergers. If the case under examination involves television system operators that are in the same relevant market, the merger is horizontal, because we are dealing with companies whose integration implies the disappearance of the competition existing between them. If, instead, the merger under examination involves television system operators that are in different relevant markets (for instance, in two different urban areas), then the integration is not horizontal but it implies an extension of the market where the companies operate. This, in principle, does not generate a competition restraint since, as the merging firms were not competitors *ex-ante*, then their integration does not reduce competition between them (as it was nonexistent before the merger).

The Argentine and international antitrust case law has produced several examples where collusion among television system operators was punished, as well as examples of prohibition and partial conditioning of horizontal mergers among television

system operators. Among them, we can mention the US case named "FTC vs. Summit Communications" (1995), analyzed in chapter 5, and the Argentine case "CNDC vs. TRISA, TSC and others" (2002), analyzed in chapter 4. In the latter, one of the key elements objected was the implicit horizontal agreement among the three main cable television operators in the metropolitan area of Buenos Aires.

A similar problem was found in "Teledigital/Esmeralda-Venado Tuerto Televisión" (2003), a merger that was forbidden by the CNDC because it implied the creation of a monopoly in the market of cable television services in the city of Venado Tuerto. The same criterion was applied in order to subject the "Telefónica/AC Inversora-Atlántida Comunicaciones" merger (2000) to the divestiture of one of the two open television channels existing in the city of Mar del Plata, which would belong to the same economic group once the merger took place.

The international case law has also produced several cases of prohibition and conditioning of horizontal mergers. The most relevant example is, undoubtedly, the US case "EchoStar/DirecTV" (2002), where the Department of Justice objected to the merger of the only two satellite television operators that existed in the United States at that time. Conversely, in the case "NewsCorp/Telepiù" (2003), the European Commission only conditioned the merger of the two single Italian satellite television operators, imposing certain restrictions regarding the exclusivity contracts that the merging group signed with channel and TV content suppliers.

2) The mergers among television channel suppliers that do not sell their products directly to the viewers could have a lower potential to affect the general economic interest than the horizontal mergers among television system operators. This is due to the fact that, in general, there are a larger number of alternatives available in the market and a greater ability to replace a supplier's contents with another's. Besides, because of the way in which TV contents and channels are marketed, the effect of a greater market power in their provision can bring about changes in the distribution of profits between suppliers and operators, but less significant variations regarding the prices paid by the viewers.

The second implication of our work can be considered as a particular feature of the industry of television program provision, although it can also apply to other

activities where the revenue obtained by suppliers on the part of distributors takes place basically through fixed amounts, as opposed to unit prices. As we have seen in chapter 1 of this work, that is one of the features of the wholesale market of television programs, where channel suppliers enter certain agreements with operators in which they specify the global amounts to be paid, based on the operator's scale but not on the exact number of subscribers that it has. This is why the changes regarding the amounts paid by operators do not have such a great impact on the marginal cost of having new subscribers. Moreover, those changes basically alter the distribution of profits between operators and suppliers but not the total amount of consumers' surplus.

Therefore, the effects of a horizontal merger among television content suppliers, who do not sell their products directly to the viewers, on the general economic interest will be of an indirect nature. These can appear if, as a consequence of the merger, the variety of available programs decreases, or if there are important changes in the operation of the TV advertising markets. Within the effects of the reduction in the variety of contents, we must include a possible reduction in the opinion spectrum represented within television programs. This last effect could be more or less important depending on whether the merger takes place among channels that specialize in news coverage or political, economic or social programs, where it may affect the existence of a true "information democracy".

Note, however, that the less significant anticompetitive effect of a merger among TV content suppliers, in comparison to the usual effect of horizontal mergers, has to do with the fact that those suppliers do not sell their products directly to the viewers but through television system operators. When channel suppliers reach their viewers directly (as is the case with open television channels, for example), then such argument does not apply, since the effects of a merger among them are much more direct.

Another difference that can be observed in the case of horizontal mergers among content suppliers in comparison with horizontal mergers among television system operators is that, in the former case, natural entry barriers are usually much smaller, given the more widespread nature of the activity and the relatively lower cost that it has in comparison with the distribution of TV contents. That is why, in the same TV content segment (e.g., children's shows, movies, news, etc.), there is usually a relatively large number of channels and a relatively continuous process of entry and exit. This means

that the effects of the mergers among those channels are not so important in terms of potential restrictions to competition.

From the review of the national and international case law that we have made, we can observe that there are no relevant cases that ended with the prohibition of horizontal mergers among TV content suppliers. However, we can mention some mergers that have been subject to certain divestiture requirements, such as the Argentine merger named "Liberty Media/Fox Sports" (2004), where the merging parties were asked to separate the ownership rights over two companies that supplied sport contents, (Fox Sports and Torneos y Competencias), banning one of the firms from marketing the channels and programs of the other. On an international level, it is worth mentioning the "Vivendi/Canal+/Seagram" merger (2000), which was approved by the European Commission on condition that the acquiring party, who was partially integrated with Universal Studios, would part with its indirect stock share in Fox, one of Universal's main competitors in the wholesale market of motion picture provision.

3) Vertical agreements between television content suppliers and television system operators are in principle harmless from the point of view of competition law. However, their potential anticompetitive effects appear in those situations in which there is a restriction to competition in one of the industry segments (which in general is the segment of retail television provision in a certain relevant market). The most important anticompetitive effect that can occur due to vertical agreements is undermining and eventually excluding a rival operator from the market. This kind of effects is also the one that deserve the most attention when we analyze a vertical merger between a channel supplier and a television system operator.

This third antitrust implication can be applied to a high percentage of the reported cases that refer to the operation of the distribution markets of television programs in Argentina. In order to assess these cases, it is relevant to distinguish between those situations that simply involve the cooperation between a supplier and an operator but that do not affect competition among operators or among suppliers, and those cases where there are clauses that in some way lessen competition in one of those segments. The main problem here is usually the exclusivity in the provision of certain television contents to one operator, especially in those situations where such contents

are products that cannot be easily substituted by other contents.

We must nevertheless distinguish between those cases where the exclusivity is the result of an individual commercial advantage for the TV content supplier (for instance, those cases where the programs are only supplied to one operator because the other one is not interested in those programs, or because it offers to pay a much lower price for them) from those cases in which the exclusivity is intended to undermine the rival operator's competitive capacity and to eventually exclude it from the market. Those last situations represent clear cases of restriction to competition that affect the general economic interest since, due to the nature of the television program industry, there are no important efficiency reasons that justify the exclusivity of contents through one operator to the detriment of another.

The high degree of vertical integration that exists in Argentina between channel suppliers and television system operators enables those operators to make use of exclusionary practices in many segments and geographic markets. Besides, the opposite phenomenon is also possible: because of a refusal to buy from an operator that is vertically integrated with a channel supplier, another non-integrated supplier may be excluded from the market, increasing the market power of the integrated supplier. Those cases are not so frequent since, on a global level, each individual operator is usually a rather small client for the channel suppliers (even if holds a monopoly in its geographic area). However, as the concentration between television system operators increases, this problem can become a more important issue, especially for local or national channel suppliers.

Among the Argentine and international cases that we have reviewed, regarding the vertical agreements and mergers with potentially exclusionary effects, it is possible to mention several examples of supposedly anticompetitive practices, although very few of those practices were considered to be illegal. One of those practices appeared in the Argentine case "Decotevé vs. Pramer" (2000), where the defendant made a commitment to reestablish the provision of a group of channels to the plaintiff, which competed with another cable television operator with which the defendant was vertically integrated.

The Argentine case law has also produced several examples of vertical mergers between a channel supplier and a TV system operator, as we have seen in chapter 4. Among them, it is worth mentioning the case named "Liberty Media-

Hicks/Cablevisión" (2001), where the CNDC imposed basically conduct remedies, which meant the obligation of avoiding price discrimination among suppliers and among television system operators, either as sellers or buyers.

As regards the international case law on this matter, it is also possible to find conditions concerning the prohibition to discriminate (for example, in the US case "NewsCorp/DirecTV", 2003) and conditions related to the obligation to sell stock (for instance, in the US case "Time Warner/Turner", 1996). Such tendency to conditioning vertical mergers (as opposed to banning them) has been seen in other cases such as the Chilean case "Metropolis/VTR" (2004) and the Spanish case "Sogecable/Vía Digital" (2002). In the latter, for example, the conditions imposed by the antitrust authority even involved the obligation to offer channels belonging to independent suppliers and to allow the access of potential competitors to certain segments of the merging group's network.

4) Another potentially anticompetitive effect of vertical agreements and mergers between TV content suppliers and television system operators appears when those agreements or mergers help to extend the supplier's market power from the wholesale market to the retail market. The most important case is the one that occurs when the supplier imposes a marketing method for its channel or content (for instance, codified, pay-per-view) and the price at which such channel or content must be sold to the viewers. These practices can become particularly harmful when they are used to lessen competition among operators, which stop competing with each other in a certain important dimension.

This last implication of our antitrust analysis is relevant as long as the restriction induced is significant for the competition among operators or for the surplus of television viewers. In order for this to happen, the key element that must be taken into account is the degree of market power that the TV content supplier has in its relevant market since, if it faces a strong competition itself, then the effect of its marketing strategy could be neutralized by such competition. That is why this kind of problems is generally limited to those cases where the channel supplier has an important monopoly power, and what it is looking for is to extend that power to a retail market. This could also happen in situations where there is a horizontal agreement among channel suppliers

to market their contents in a certain way and to fix their resale prices. In that case, the restriction to competition existing in the retail market is accompanied by a parallel restriction to competition in the wholesale market.

The most relevant Argentine case where this kind of situation took place was the case known as "CNDC vs. TRISA, TSC and others" (2002), which was already mentioned above. In that case, the CNDC understood that the resale price maintenance imposed by a supplier of sport programs would increase the monopoly profits of that supplier, by means of suppressing competition among the cable television operators that sold those programs to the viewers. Therefore, the resale price maintenance had in this case the same effect than organizing a cartel of cable television operators, whose supracompetitive profits were captured by the program supplier (through the payment received from those operators).

As regards the international case law, we can find some similar examples, such as the case "European Commission vs. Buena Vista and others" (2004), where it was understood that the eight most important Hollywood studios were carrying out anticompetitive practices intended to extend their market power from the wholesale market of provision of motion pictures to the retail market of operation of pay television systems in Europe.

6.2. Regulatory implications

As regards the regulatory implications of the issues analyzed in the current work, we can mention the following:

5) The problems brought about by the existence of natural monopolies in the provision of television contents and services cannot be solved by means of the usual competition policy mechanisms, since their solution generally involves the need to regulate prices and provision terms directly. This means that, if it is necessary to intervene in this kind of situations, it is more appropriate to do so using specific regulatory norms and mechanisms, instead of applying the competition law and its enforcement agencies.

This implication is derived directly from the nature of competition policy as a regulatory mechanism. As, by definition, antitrust is an indirect way of intervening in the markets intended to improve their operation in those cases where such improvement

can be achieved through the existence of more competition, its ability to work as a positive influence is seriously limited in those markets where the monopoly has certain efficiency advantages (such as natural monopolies). Hence, in those markets, market power control can only be carried out by means of a direct regulation of price and other provision terms, and this is an activity that is not within the scope of competition authorities.

The object of this work has not been to determine which segments of the distribution of television programs are natural monopolies and which of them are not, since that issue must necessarily be analyzed in each individual case and seems to be changing fast along with telecommunications technology. In this respect, it is worth mentioning the studies analyzed in Chapter 2 concerning the US and Canadian experiences, which show that, although cable television seems to have lower average costs because of the existence of scale economies (which would place this activity within the category of natural monopoly), those scale economies become rather insignificant in most important urban areas.

The Argentine antitrust case law has analyzed some cases in which it has found itself powerless when it came to solving certain efficiency problems originated in the existence of specific natural monopolies. In "National University of Córdoba vs. Durford" (1997), for instance, the CNDC arrived at the conclusion that the market power exercised by the owner of the broadcasting rights of the games played by the Argentine national soccer team was the result of the fact that, in a way, that product was a natural monopoly (caused by the little substitutability that those games had for the Argentine soccer viewers). Therefore, it was the owner's decision whether he wanted to market the games through open or cable television, and there was little that could be done from the point of view of competition law. If it was understood that the best solution for those games was that they were broadcast through open television, then the most appropriate tool that the state had was to use a specific regulation. That solution was finally adopted later, concerning the official games played by the Argentine national soccer team.

6) Certain interventions by the antitrust authority, however, can be useful in some cases to reduce the impact of specific problems that arise in the case of monopoly situations.

Among those interventions, we can mention the prohibition to discriminate prices among customers, the obligation to give access to essential facilities, the prohibition to sell certain television contents in block, and the prohibition to fix resale prices regarding certain television contents.

Despite what was said in the previous paragraphs, there are some cases in which the intervention by the antitrust authority can remedy situations where the exercise of monopoly power occurs through specific practices, the disappearance of which improves the operation of the markets although it does not eliminate their monopoly nature. Most of these cases can be seen as situations of exploitative abuse of dominant position, although they can also appear in some merger cases.

An example of this kind of situations can take place when the monopoly supplier of certain television contents charges different prices to the different operators that purchase such contents, with the intention of extending its market power from the wholesale market to the retail market. Another possible case can occur when a monopoly operator refuses to purchase television contents from a supplier, in order to favor another supplier with which it is integrated, with the intention of monopolizing the wholesale market as well.

The block booking of contents in those cases where such contents are provided by a monopoly supplier can also imply a situation of exploitative abuse. For example, if a group of programs is marketed separately through independent channels that compete with each other to attract viewers, that competitive mechanism can bring about a larger supply and a larger consumer surplus than the ones obtained if all those programs are distributed through the same channel (or through a group of channels that belong to the same owner). This seems to be especially important for the broadcasting of sport events (for instance, for the different games of the same tournament), in particular if we are dealing with events that cannot be easily substituted by other programs.

The international case law has produced several examples where the block booking of contents was banned, both in cases of anticompetitive practices and in merger cases. Among them we can mention the Argentine case “Decotevé vs. TRISA and TSC” (2003), concerning the sport channel called TyC Sports (monopolist of the broadcasting rights of the Argentine first-division soccer matches), the Spanish case “Antena 3 vs. National Professional Football League and others” (1993), concerning the

broadcasting rights of professional soccer in Spain, and the European case "Eurovision" (2000), concerning the agreements about the exchange of programs among the main European TV channels. We can also mention several clauses included in the decisions regarding the approval of certain important mergers, such as "NewsCorp/DirecTV" (2003) in the United States, "NewsCorp/Telepiù" (2003) in the European Union, and "Metrópolis/VTR" (2004) in Chile.

7) The last possible intervention by the antitrust agencies regarding regulatory matters can be the opinions given as competition advocacy. In the case of the sector of distribution of television programs, those opinions can refer to the advantages to allow the broadcasting of such programs through networks other than cable television's, to enable direct competition among channel suppliers to capture the viewers' preferences, and to encourage the entry of new television system operators.

Apart from the sanction of anticompetitive practices and of the procedures of merger control, the antitrust authorities generally have the power to suggest the regulation or deregulation of the different sectors of economic activity so that competition can operate in a more effective way. This activity is known in the antitrust literature as "competition advocacy", and in certain cases it can represent a significant contribution to perform specific changes in economic policy issues. In the case of the sector of distribution of television programs, it is possible to think about a series of competition advocacy activities that could be carried out.

An issue that has appeared in several sections of the present work is the possibility that television programs can be distributed through networks other than cable television's, such as the telephone lines, and perhaps, the electric network. The fixed telephone network is an important potential substitute, since such network currently competes against cable television networks in the provision of broadband internet services. Nowadays, one of the main obstacles in Argentina for telephone companies to supply television services has to do with an existing regulation for the sector. This means that it is possible to study the convenience of changing that regulation, in order to bring about more competition both in cable television and in fixed telephone services.

Another issue that appears in the economic literature and that has also been relevant in the regulatory debate is the advantage that pay television operators begin to

act as mere content transporters, which would mean that channel suppliers would offer their services directly to the viewers, in a system known as "*à la carte*" programming. The advantages of that system are nevertheless ambiguous since, although it can increase competition over the subscribers, it could also imply an increase in the average price of each channel and a reduction in the average number of channels received (and consequently, in the variety of the programs consumed by viewers).

A last recurring issue that has appeared in our work is the idea that air television operators (for instance, satellite television or ground television) can represent a source of competition for cable television operators, especially in those areas where there is only one cable television operator. Hence, a potential activity of competition advocacy may be the encouragement of new air television operators, especially because it is an activity for which the physical network is not so important, and the efficiency gains of monopoly are therefore much smaller.

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