

**EPRA's 41st meeting – How to ensure a sustainable ecosystem for the media
and content in Europe: Consumption and distribution**

A conceptual framework for debate on the future of
TV policy and regulation

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Confidentiality notice

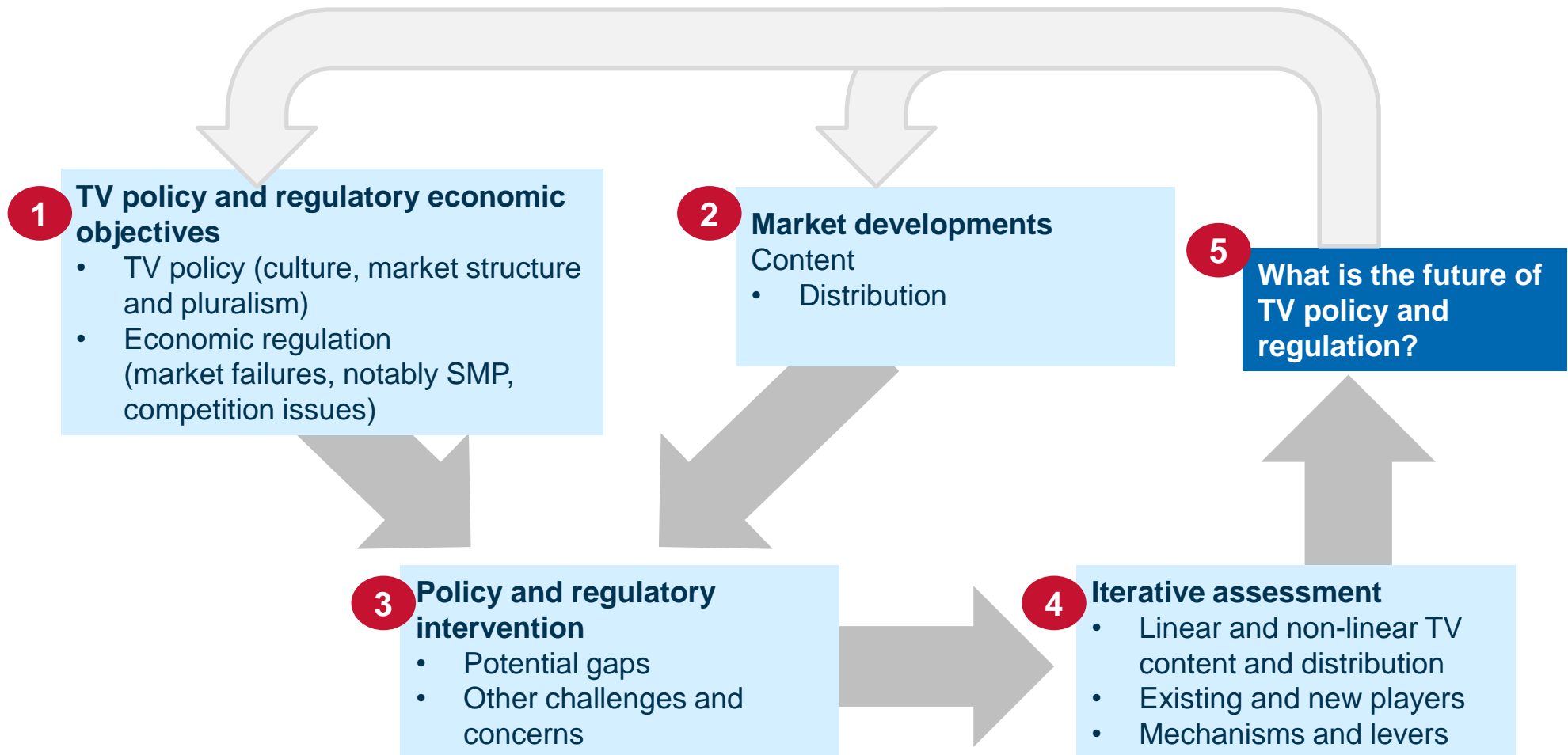
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Agenda

- Overview and historical background
- Key challenges and gaps in regulation
- Key questions for the debate on the future of TV regulation

The slides that follow provide a framework for analysis and discussion but are not intended to be comprehensive and exhaustive. We do not provide recommendations, as debate is still underway at European, national and regional/local levels about potential options for TV policy and regulation. The framework discussed in this presentation is therefore general in nature, though it does focus on current areas of debate among the 28 EU member states

The media industry needs a delicate balance of policy objectives and market forces



Differing policy goals have led to a complex landscape at EU, national and regional levels

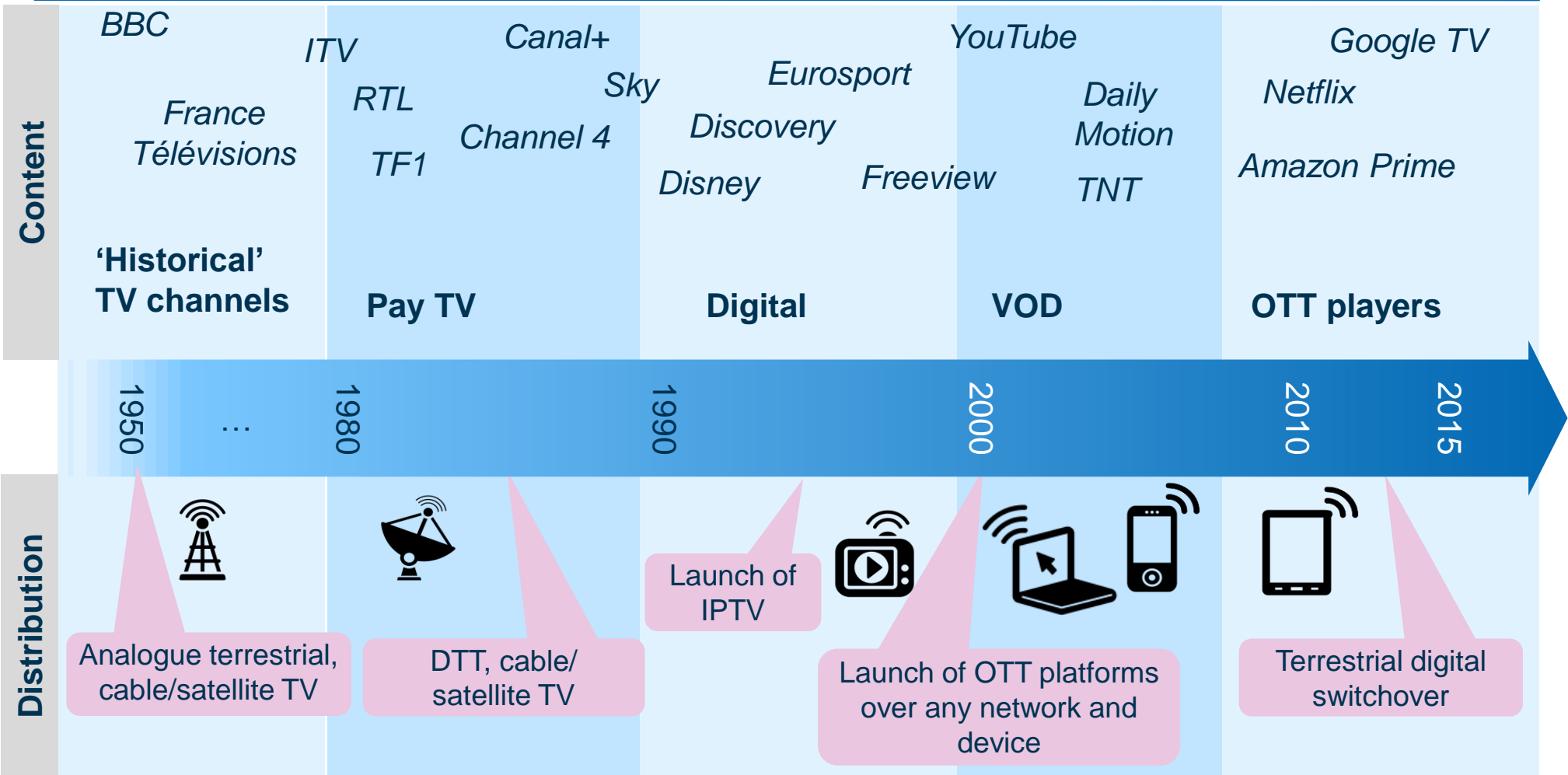
		TV policy objectives	Economic regulation objectives
		Key aspects of TV policy and regulation	Content production and distribution
Pluralism, competition and market structure	<ul style="list-style-type: none"> ▪ Pluralism and market structure: social / political diversity, industrial policy <ul style="list-style-type: none"> – Diversity of players – Diversity of content <ul style="list-style-type: none"> ▪ Viewpoints and opinions ▪ Types of programmes 		<ul style="list-style-type: none"> ▪ Address potential impacts of limited competition <ul style="list-style-type: none"> – Horizontal concentration – Vertical integration

Content services (editorial responsibility): intervention on quotas and obligations, content monitoring (minors, advertising, pluralism); public value content (PSB) funding

Distribution services (to audiences): intervention on spectrum, coverage obligations, access and prominence

Are these objectives still valid in today's TV ecosystem? How can EU, national and regional/local objectives be reconciled? Is continued intervention necessary in order to secure the objectives? Are existing interventions fit for purpose today?

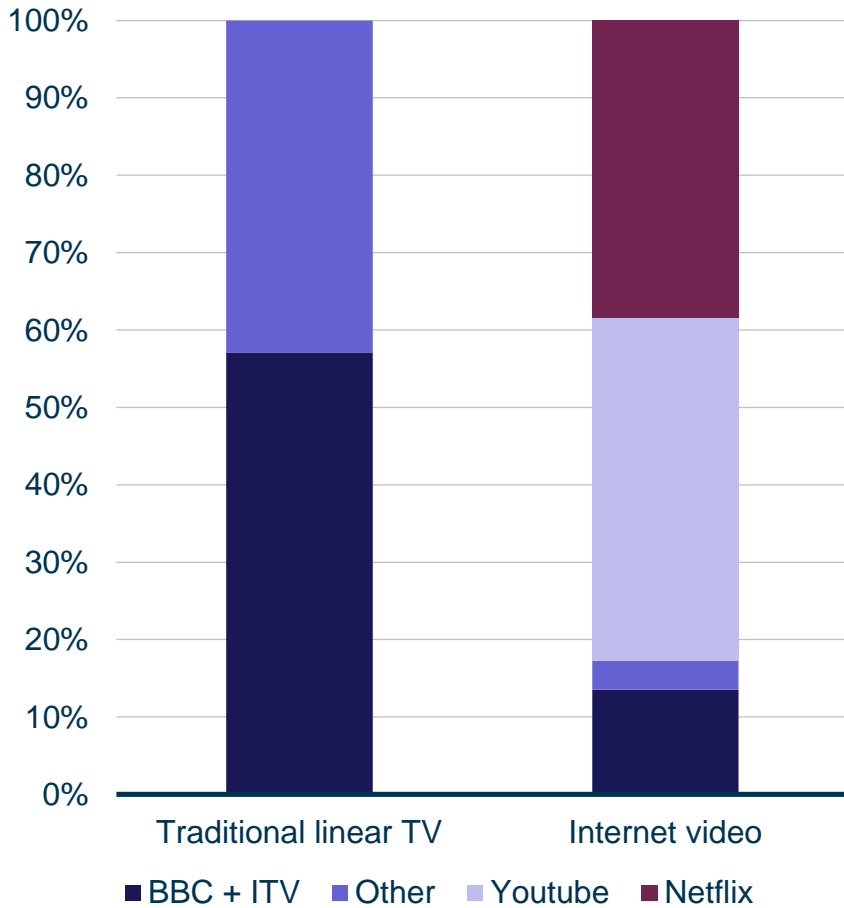
Content and distribution markets have evolved since TV policy and regulation started



What will the TV of the future look like? How to formulate policy, regulate, monitor and enforce regulation in a market with 100s or more players and multiple platforms and devices?

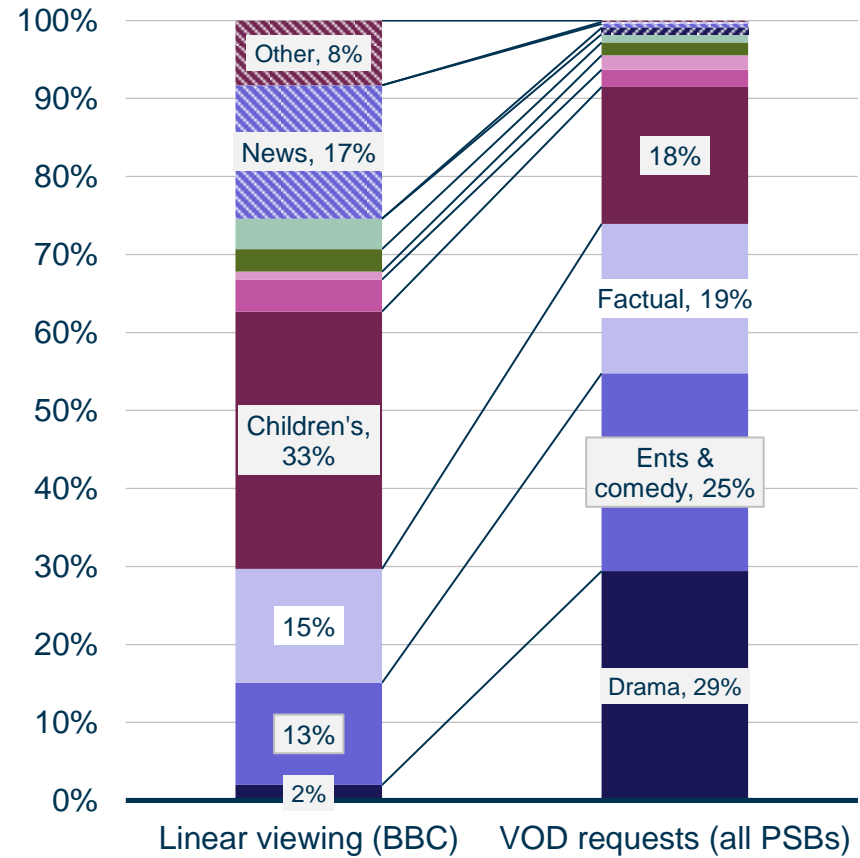
Historical broadcasters do not dominate non-linear TV viewing in the way they do with linear TV, and this trend varies according to genre

UK audience for Internet and traditional linear TV, 2013/14



Source: Analysys Mason estimates based on Ofcom and Plusnet (2014)

UK consumption of linear and on-demand TV content, 2013

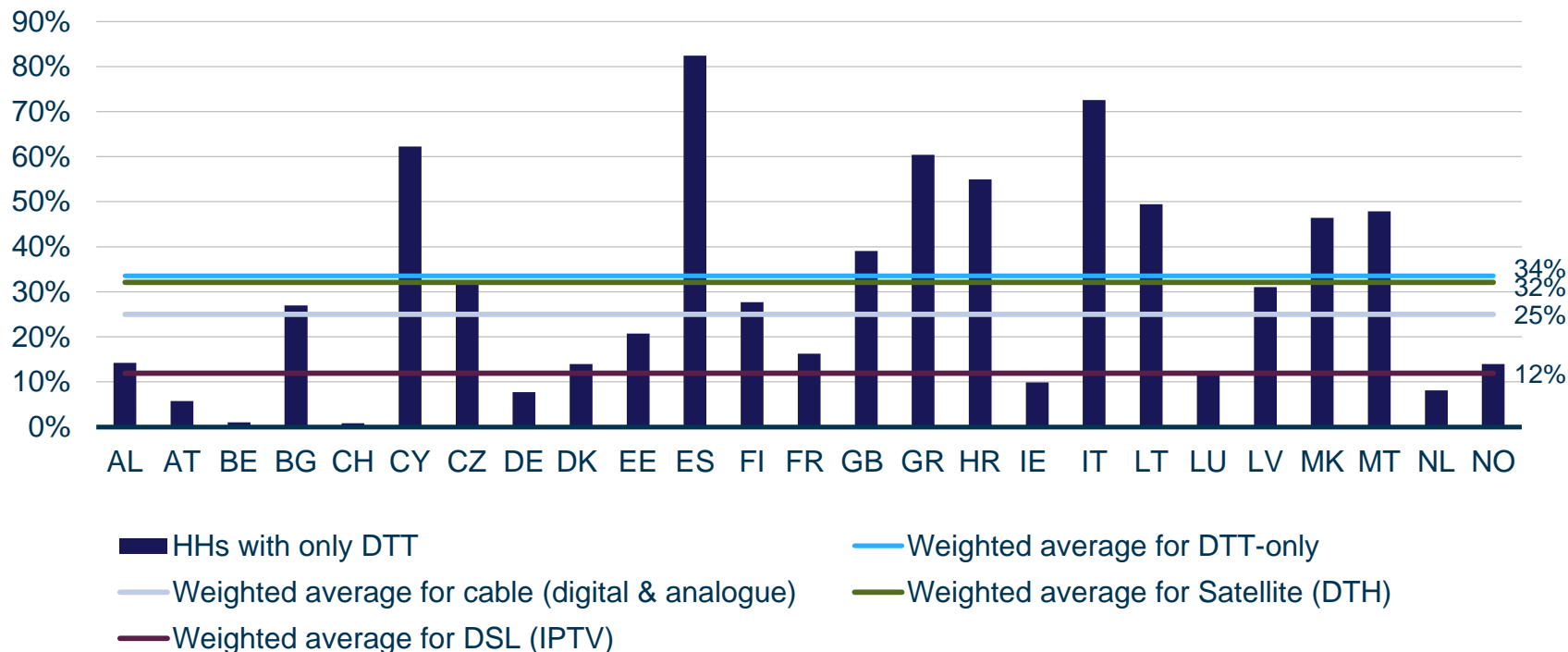


Source: Ofcom (2014)

2500+ VOD services operate across the EU. The viewing share of traditional broadcasters may be drastically lower on non-linear TV, though the impact could vary by genre

The historical role of terrestrial TV platform is now shared with cable, satellite and IPTV...

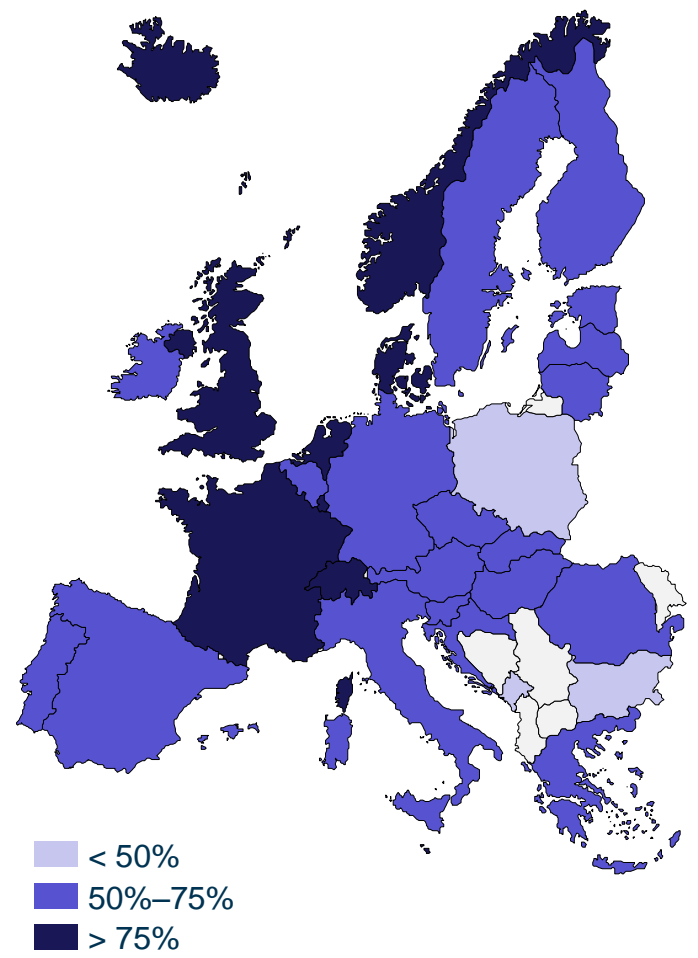
Households with DTT as sole means of TV reception, 2013/14



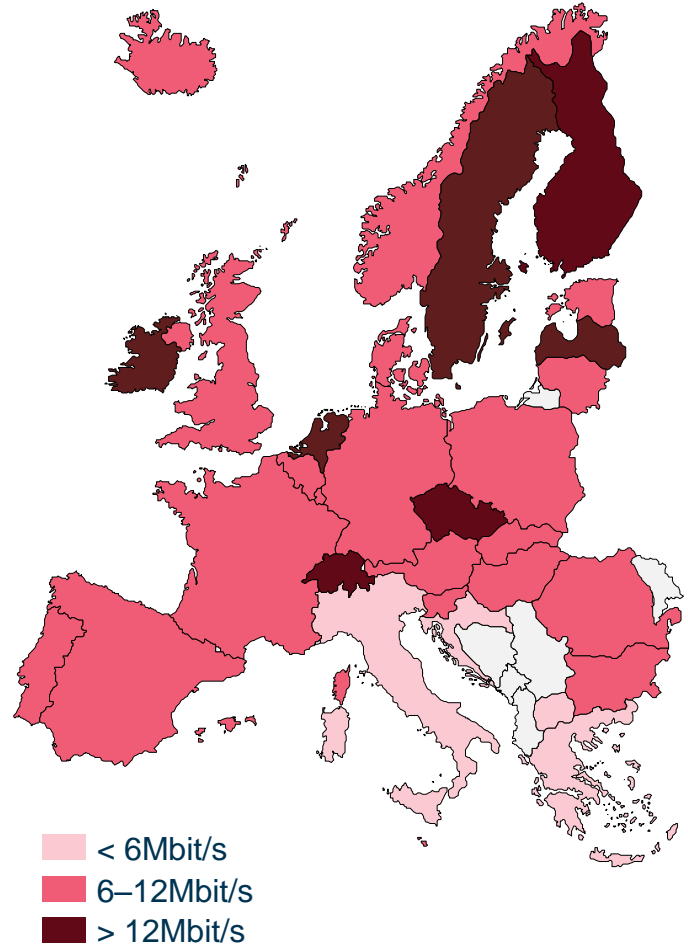
- Terrestrial remains a strong TV distribution platform in the EU
 - principal means of reception for around 34% of digital TV households
 - strongest in Spain and Italy
- But the picture is varied; in some countries, terrestrial is now the second (or even third) most used TV platform
 - UK, Finland, Czech Republic
- At EU level, cable TV is following close behind at around 32%

TV based on fast reliable broadband access is likely become a universal platform for content across the EU within 5 to 10 years

Broadband penetration by household, December 2014

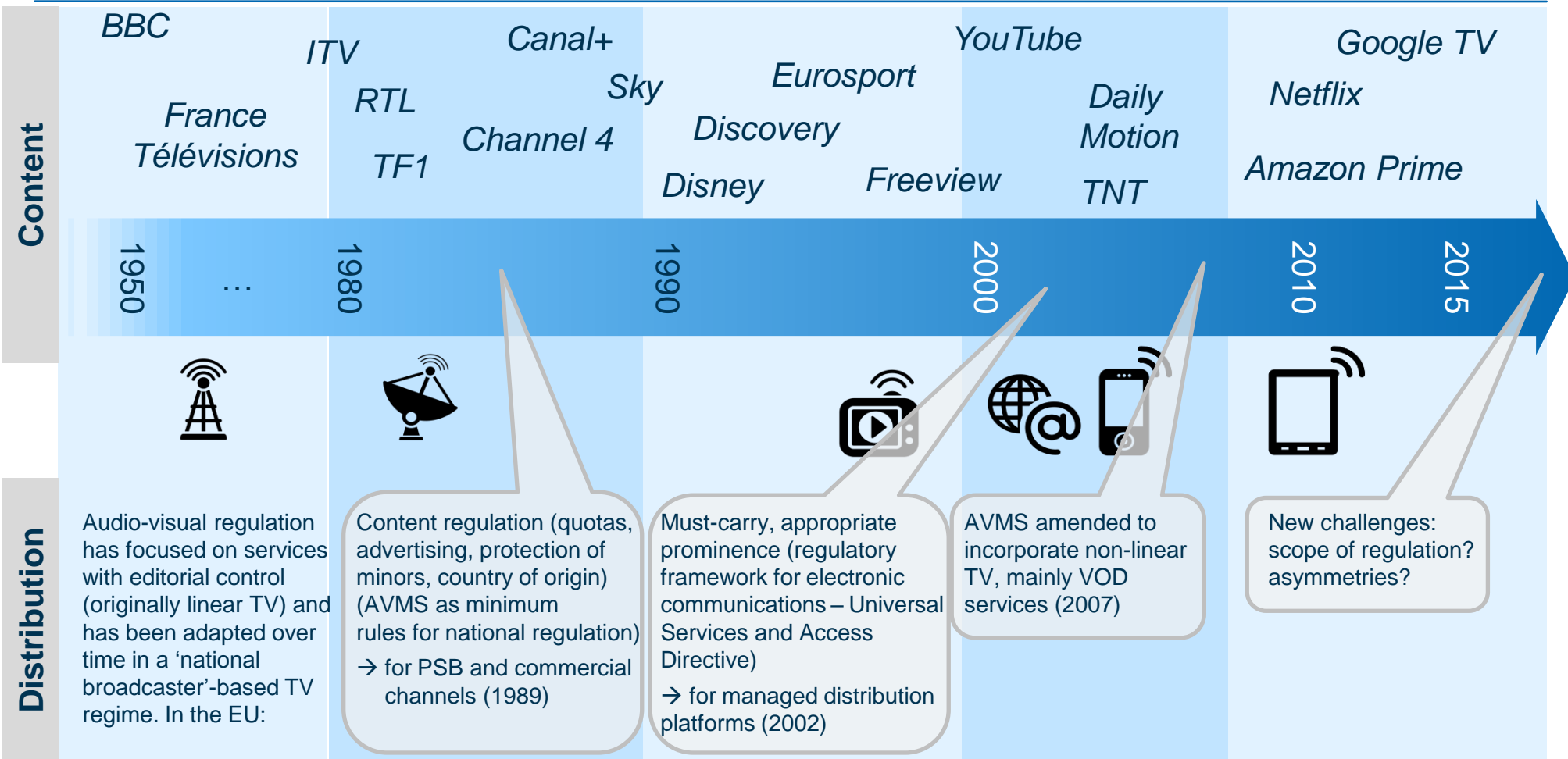


Average connection speed, Q4 2014



Source: Analysys Mason, Akamai State of the Internet Report

Content and distribution markets have evolved since TV policy and regulation started



Parallel interventions based on editorial responsibility for content created and offered (*audiovisual*) and distribution to audiences (*telecoms*): consistency between audiovisual and telecoms regulation in an era of convergence? Should distribution aspects of TV be captured by audiovisual regulation?

TV regulation differs according to the type of player and territorial jurisdiction

		Content quotas			Protection of minors		
		France	UK	Germany	France	UK	Germany
		← Diversity across countries →					
Linear	Publicly funded channels (FTV, BBC, ARD)	●	●	●	✓	✓	✓
	Other historical channels (TF1, ITV, C4, RTL)	◐	◐	◑	✓	✓	✓
	New FTA DTT channels	◐	◑	◑	✓	✓	✓
	Premium pay-TV channels (Canal+, Sky)	◐	◑	◑	✓	✓	✓
	Thematic channels (e.g. cable/satellite)	◐	◑	◑	✓	✓	✓
Non-linear	VOD services (Netflix)	◐	◑	◑	✓	✓	✓
	OTT video platform (YouTube)	○	○	○	X	X	✓

Evolution over time

Territoriality?

Extent of regulatory intervention

● Very high
◐ High
◑ Medium
◒ Minimum EU Directive requirements

Source: Analysys Mason

Access and prominence regulations also differ by country

	Must carry		Must offer		EPG prominence		Platform access		EPG non-discrimination		
	FR	UK	FR	UK	FR	UK	FR	UK	FR	UK	
Linear	Publicly funded public channels (FTV, BBC)	A	C	AP	A	A	A	S, TPS	n/a ¹	A	
	Former analogue FTA commercial channels (TF1, ITV, C4)	FRND	C *	C	A *	C	A *	A	TPS	n/a ¹	A
	New FTA DTT channels	FRND	NR	C	NR	NR	NR	A	TPS	NR	A
Non-linear	Other non-DTT channels	NR	NR	NR	NR	NR	NR	FRND ²	TPS	A	A
	Online channels and VOD services (Netflix)	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR

A = all traditional platforms | AP = all platforms including OTT | C = cable | S = satellite | * = only main channels | NR = not regulated

FRND = Fair, reasonable and non-discriminatory | TPS = Technical platform services (a regulated FRND scheme)

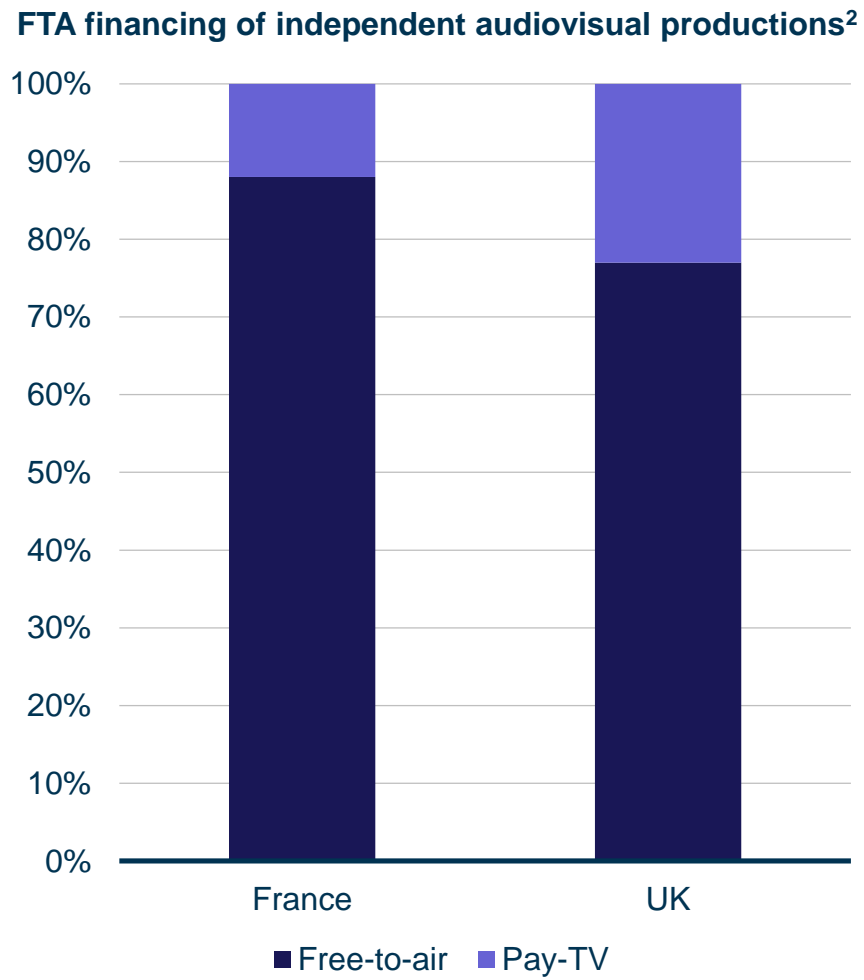
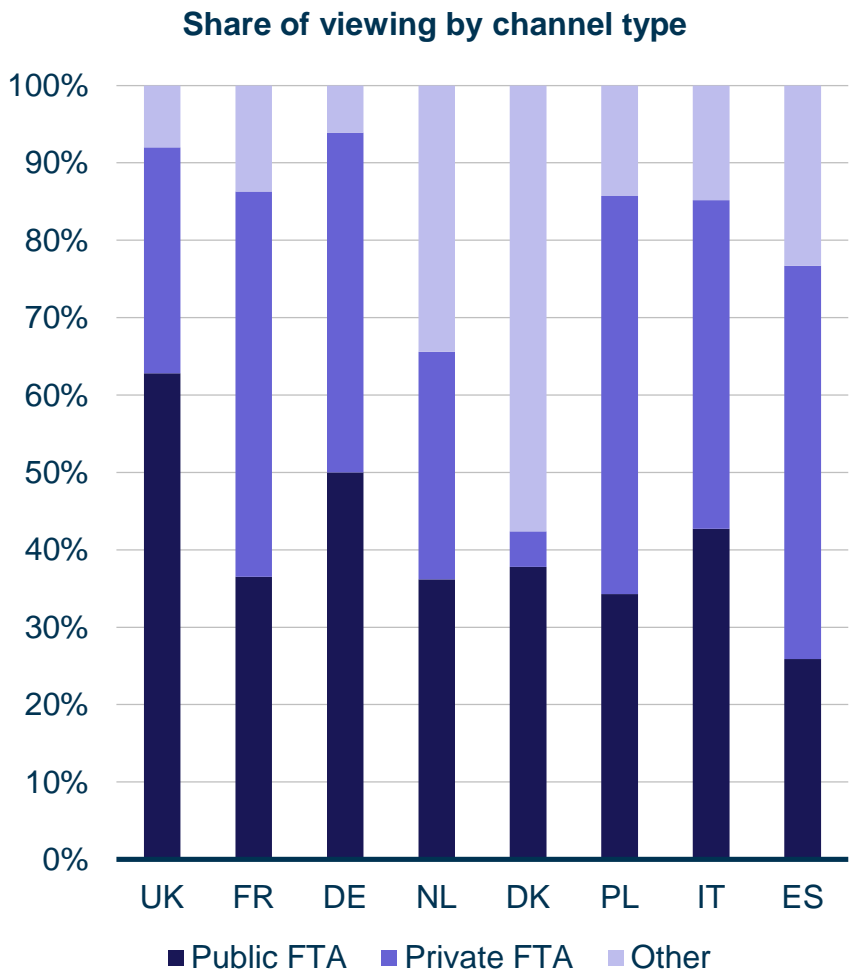
¹ EPG placement set by regulator | ² Only when a contractual relationship already exists

The result is a balanced TV ecosystem centered on well financed ‘historical’ broadcasters ...

Key aspects of TV policy and regulation		TV policy objectives	Economic regulation objectives
		Content production and distribution	<ul style="list-style-type: none"> ▪ Cultural: citizenship, education, common culture ✓ Support for national/local production via broadcasters ✓ Well-established protection of minors ✓ Universal TV distribution ensured by terrestrial distribution via cable, satellite and IPTV with must carry/must offer ‘extending’ regulation
Pluralism, competition and market structure	<ul style="list-style-type: none"> ▪ Pluralism and market structure: social / political diversity, industrial policy ✓ Diversity and pluralism achieved, at least in: <ul style="list-style-type: none"> ▪ number of TV channels ▪ viewpoints ▪ TV genres 	<ul style="list-style-type: none"> ▪ Address potential impacts of limited competition ✓ Traditional competition tensions managed to support objectives (ex-post if needed) <ul style="list-style-type: none"> ▪ public vs. private sector ▪ content vs. distribution 	

Objectives have been met through ex-ante and ex-post intervention; ‘historical’ broadcasters (and in some cases DTT channels) have operated as guardians of the European TV ecosystem objectives, on content and distribution respectively

... which act as 'guardians' of consumption and EU-originated production



¹ Approximate, based on 2013 data from EAO and our own research. For the UK, 'Public FTA' includes viewing of private public-service channels 4 and 5

² Excluding self-financing (~10% of financing). Source: PACT, CNC (2013)

Changes in the TV ecosystem might challenge the existing balance of commercial and regulatory imperatives

		TV policy objectives	Economic regulation objectives
		Key aspects of TV policy and regulation	Content production and distribution
Pluralism, competition and market structure	<ul style="list-style-type: none"> ▪ Pluralism and market structure: social / political diversity, industrial policy ? In some markets, linear TV media groups have SMP, giving limited diversity/plurality ? Need for regulation given the infinity of content access on the Internet? 		<ul style="list-style-type: none"> ▪ Address potential impacts of limited competition ? Consolidation: effect of new wave of transactions on competition <ul style="list-style-type: none"> ▪ OTT vs. traditional competition and case for symmetric regulation ▪ Potential for adverse effects from vertically integrated gate-keepers with SMP ▪ Potential harm from horizontal consolidation in platforms (UPC+Ziggo vs. CMCSA+TWC)

Will the gatekeepers/guardians of TV ecosystem change; if so, how fast? Should they have more support? Changes to support for public content? Should traditional and new gatekeepers be subject to the same regulation? Should content, access and prominence obligations apply to (more) OTT platforms?

What could be the challenges and gaps in current TV regulatory intervention?

Gaps between objectives and regulation with market developments	Cultural and pluralism objectives		Economic objectives	
	Content	Distribution	Content	Distribution
1) Scope – services or gaps in the services	<ul style="list-style-type: none"> Debate about what constitutes public content and should be included in obligations Some 'TV-like' services (UGC video) not included 	<ul style="list-style-type: none"> Linear TV streaming included? 'De-linearised' (timeshift PVR) services included? 	<ul style="list-style-type: none"> Concerns about achieving the right balance between content obligations (i.e. quotas) and distribution benefits (i.e. access and prominence) supporting public-interest content (public and private players) Concerns about the right balance between TV channels and producers for international distribution 	<ul style="list-style-type: none"> Concerns about potential abuses following increases in horizontal and vertical consolidation (i.e. Liberty) Concerns about net neutrality issues
2) Scope – players Or gaps on the players and jurisdiction	<ul style="list-style-type: none"> New players hosting platforms (i.e. YouTube, Facebook) out of the scope (no editorial control) Manufacturers and Internet stores and websites (Appstores, Internet sites, radio and press with video) out of scope? 	<ul style="list-style-type: none"> New players like providers of apps or content search (algorithms) out of the scope of regulation 	<ul style="list-style-type: none"> Concerns about the role of the Internet and/or foreign players in changing the economics and funding of public value content (i.e. Netflix, Amazon) 	<ul style="list-style-type: none"> Concerns about the role of the Internet and/or foreign players in changing the economics and funding of public value content (i.e. Google)
3) Asymmetries in the mechanisms used	<ul style="list-style-type: none"> Linear more regulated than non-linear (quotas and obligations, content monitoring (minors, advertising, pluralism)) 	<ul style="list-style-type: none"> Limited or no regulation on non-linear distribution compared to linear distribution (spectrum, coverage obligations, access and prominence) 		

Territoriality (EU country-based) regulation challenged by OTT services and players – concerns about the EC Digital Single Market initiative

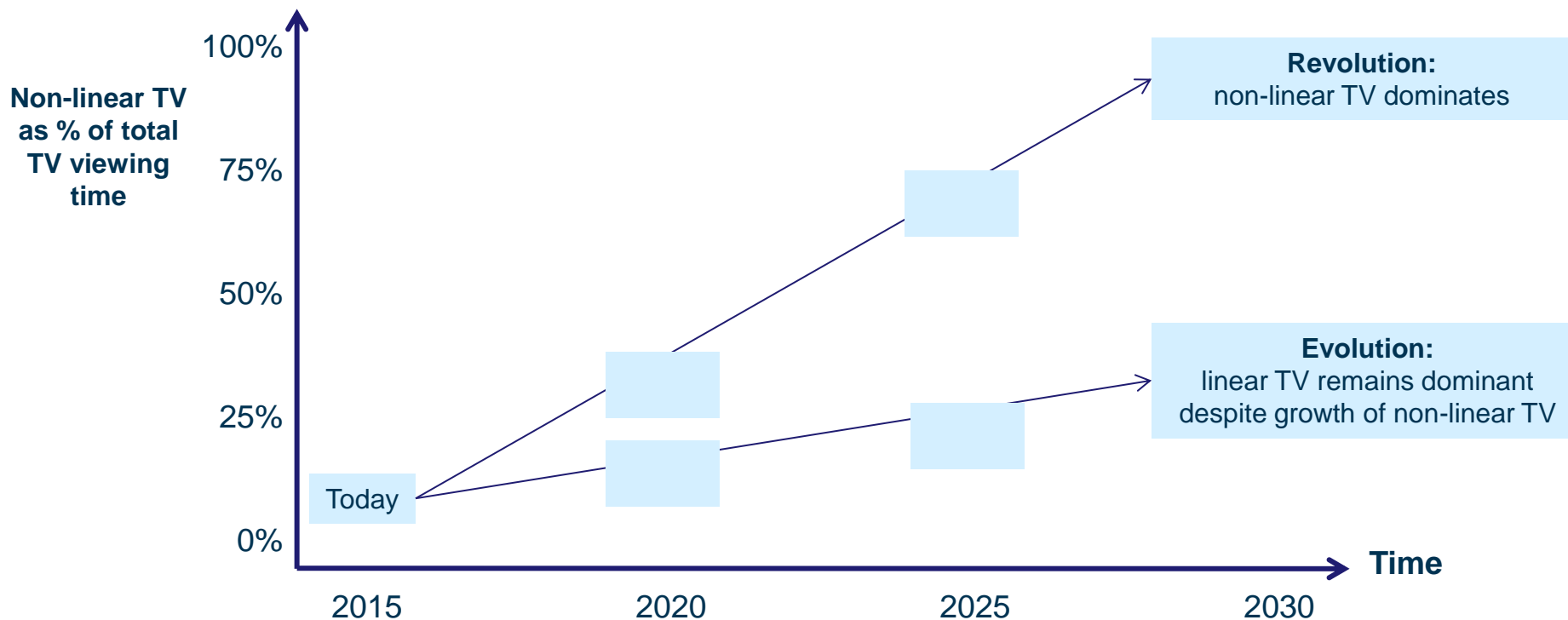
Should the focus be on scope, asymmetry and territoriality of current TV regulation?

Future of TV policy and regulation – additional considerations

1. **The need for timely and proportionate changes to TV regulation**
 - Speed and scale of change
2. **The need to have accurate information**
 - The complexity of effective monitoring (and enforcement)
3. **The need to adapt the approach to intervention**
 - Alternatives to statutory TV regulation

The timing/scale of the TV regulation review will be determined by parallel market developments ...

Development of consumption of linear and non-linear TV

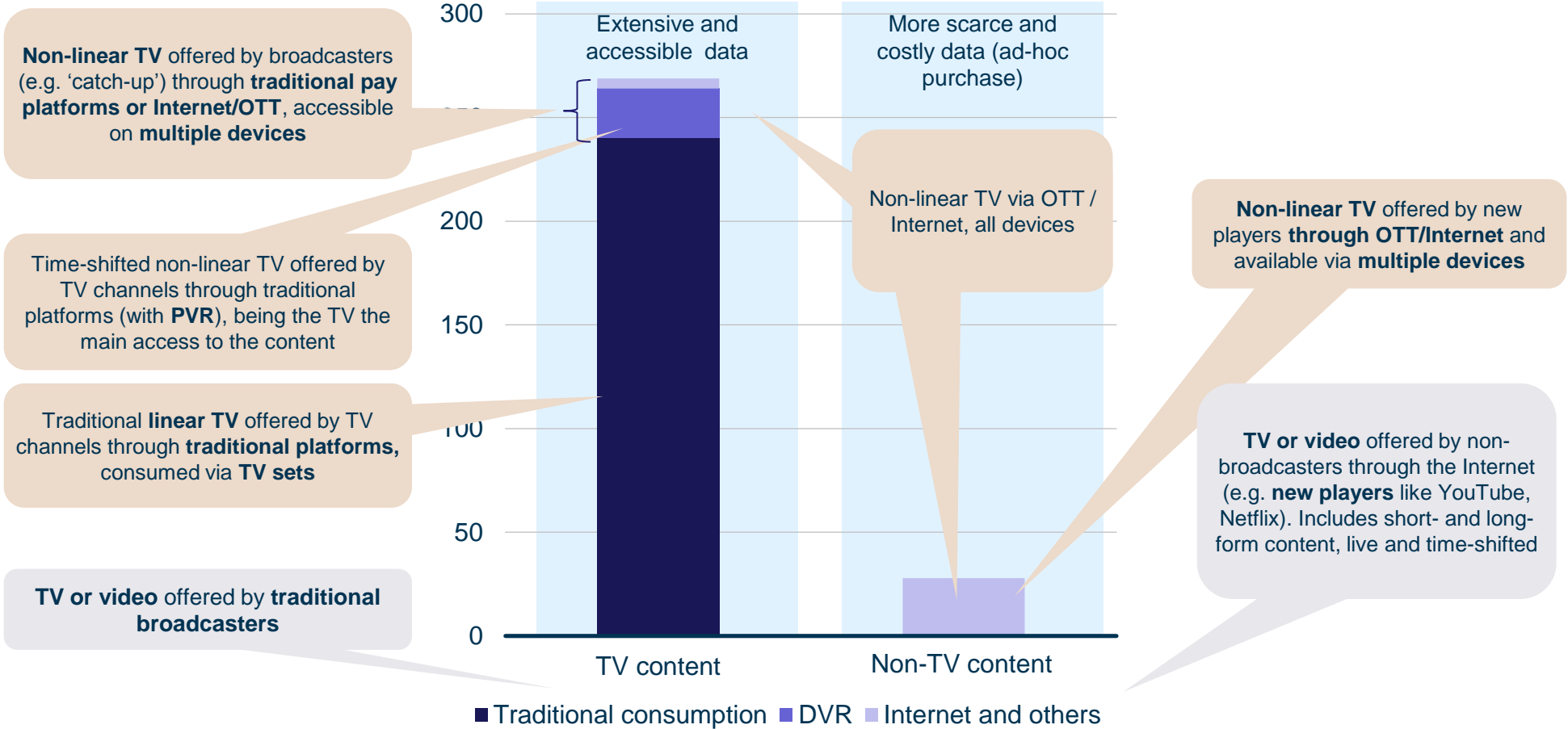


How fast and significant will the changes be? Is it time for a new adaptation or a complete re-think? Regulation must be adapted to the time horizon and scale of change

- Regulation introduced too early might jeopardise innovation and growth
- Regulation introduced too late might put current TV ecosystem at risk

... that are complex to monitor and forecast given the lack of a holistic picture

Approximate breakdown of daily TV consumption per person, UK (2013)



Source: Analysys Mason estimates based on Ofcom, Mediatique, CSA, EBU and HSBC

One particular area for debate is about alternative modes to statutory TV regulation

Outline of potential regulatory models from initial debates in the UK and Germany – *Illustrative*

Regulatory model	Description	Key characteristics
Statutory regulation (e.g. linear TV and radio)	Government or independent regulator manage and enforce regulation	<ul style="list-style-type: none"> ▪ “Likely to be more appropriate in industries where there are significant tensions between commercial interests and the wider public interest and/or where the risks of regulatory failure are high” (Ofcom) ▪ Gives greater regulatory certainty ▪ Can be too rigid to cope with innovation and fast changes
Co-regulation (e.g. TV on demand)	Involves both industry and regulators, usually with a ‘backstop’ statutory regulator	<ul style="list-style-type: none"> ▪ More flexible ▪ Requires active monitoring and enforcement ▪ Controversial issues can create conflicts
Opt-in regulation (under consideration)	Industry players can opt into regulation (statutory or otherwise), in return for privileges	<ul style="list-style-type: none"> ▪ Allows flexibility for industry players ▪ May lead to an ecosystem with different degrees of regulation and public value
Self-regulation (e.g. press and Internet sites)	Industry players design and administer the regulatory framework, often on a voluntarily opt-in basis	<ul style="list-style-type: none"> ▪ Potentially most flexible and adaptable to change ▪ Difficult to monitor when public interests are not aligned with those of industry ▪ No statutory enforcement

Once policy objectives have been validated or changed and the market developments assessed and fully recognised, should alternative policy and regulatory intervention models be considered?

What are the key questions for the debate on future TV policy and regulation?

1. Do **key TV policy and regulatory** objectives still hold?
2. What are the **major shortcomings of current TV policy and regulation** in fast-changing TV markets?
3. What could be the **solutions going forward** – local/national specificities and pan-EU practices/approaches?
 - What **national and pan-EU debates** are underway about potential approaches for updating both current TV policy and regulatory objectives and TV regulatory frameworks?

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Players across the media value chain

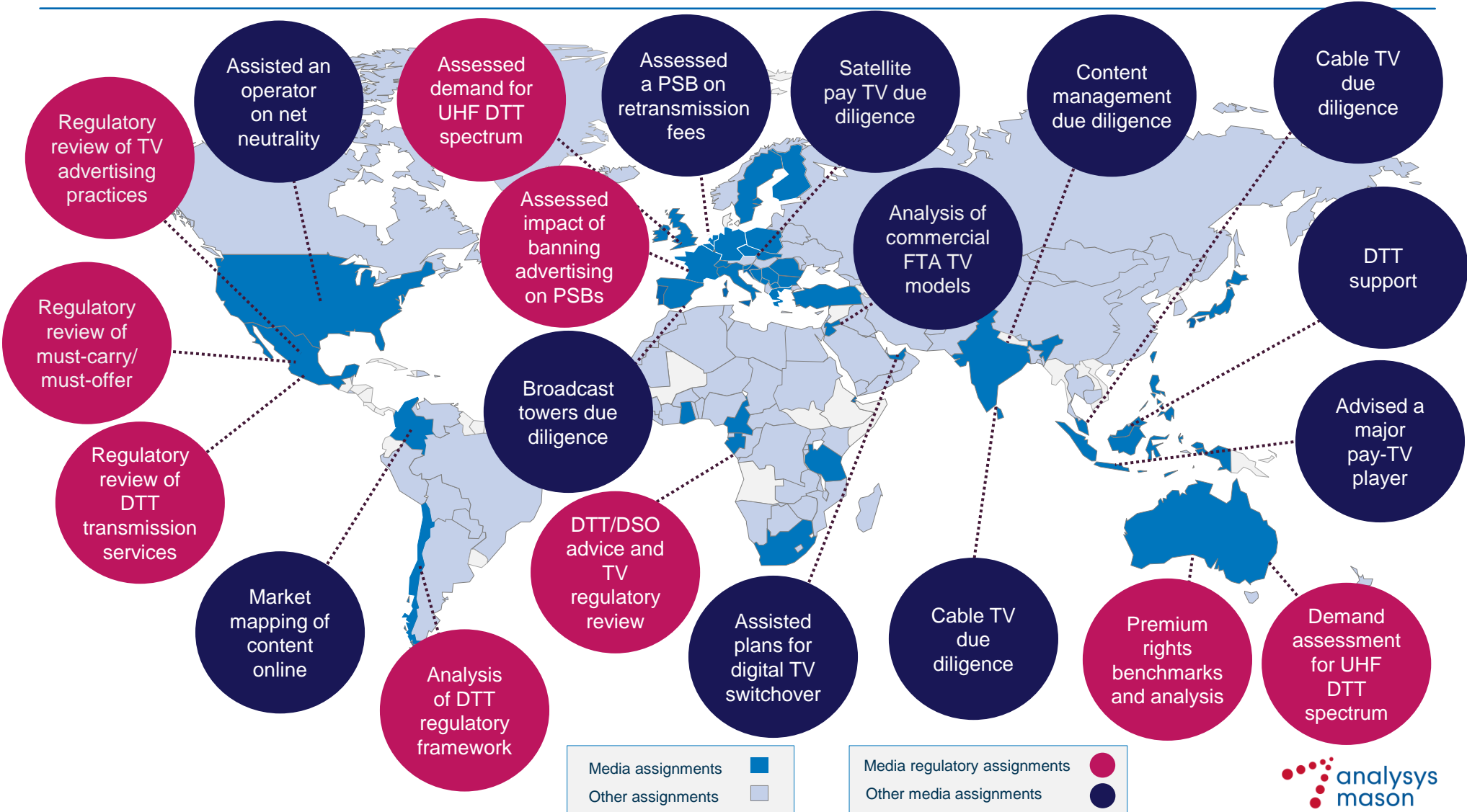


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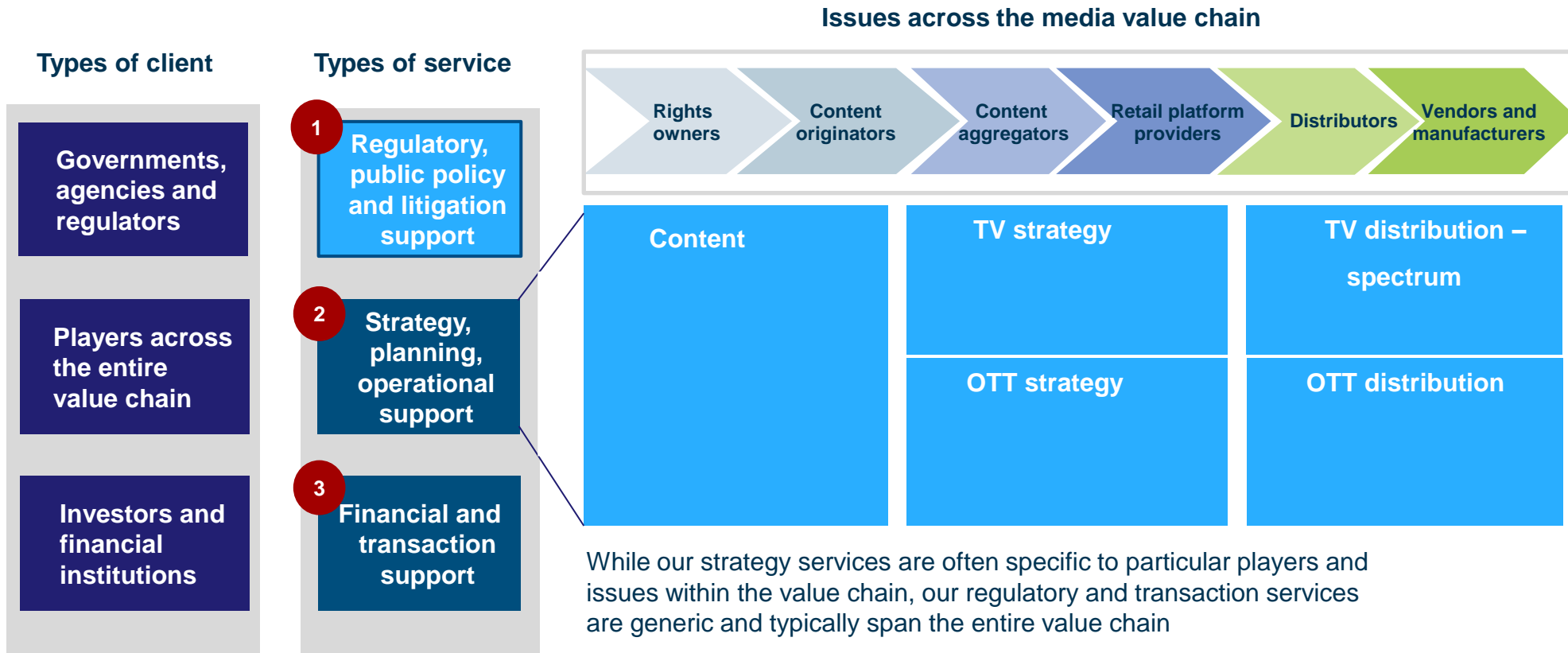
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We have completed over 150 media assignments in more than 35 countries over the last five years, with a number of these on regulatory matters



Advice to the media sector is one of Analysys Mason's core areas of expertise – this presentation focuses on our expertise in media regulation



The future of TV increasingly leverages the IP world, and the convergence between media and telecoms. Our specialist media and telecoms focus allows us to be at the core of these developments, so that we are better positioned to help existing and new media players as well as to advise regulators and investors on media market issues

We have a global reputation for advice on policy and regulation, including regulatory services that are critical to television and radio

- World leaders in cost modelling of fixed and mobile networks, including long-run incremental cost (LRIC) for interconnection and wholesale price setting
- We have applied LRIC in the media context for setting platform access charges
- More general quantitative skills:
 - content rights valuation
 - business planning/demand forecasting
 - spectrum valuation

Economic and cost modelling

1

Regulation of media services

2

Competition and market assessments

- Assurance of efficient competition in media markets
- Review of media markets (former Market 18 in EU)
- Margin squeeze
- Assessment of content exclusivities and remedies
- Assessment of public value and market impact
- Expert witness support

Licensing

3

4

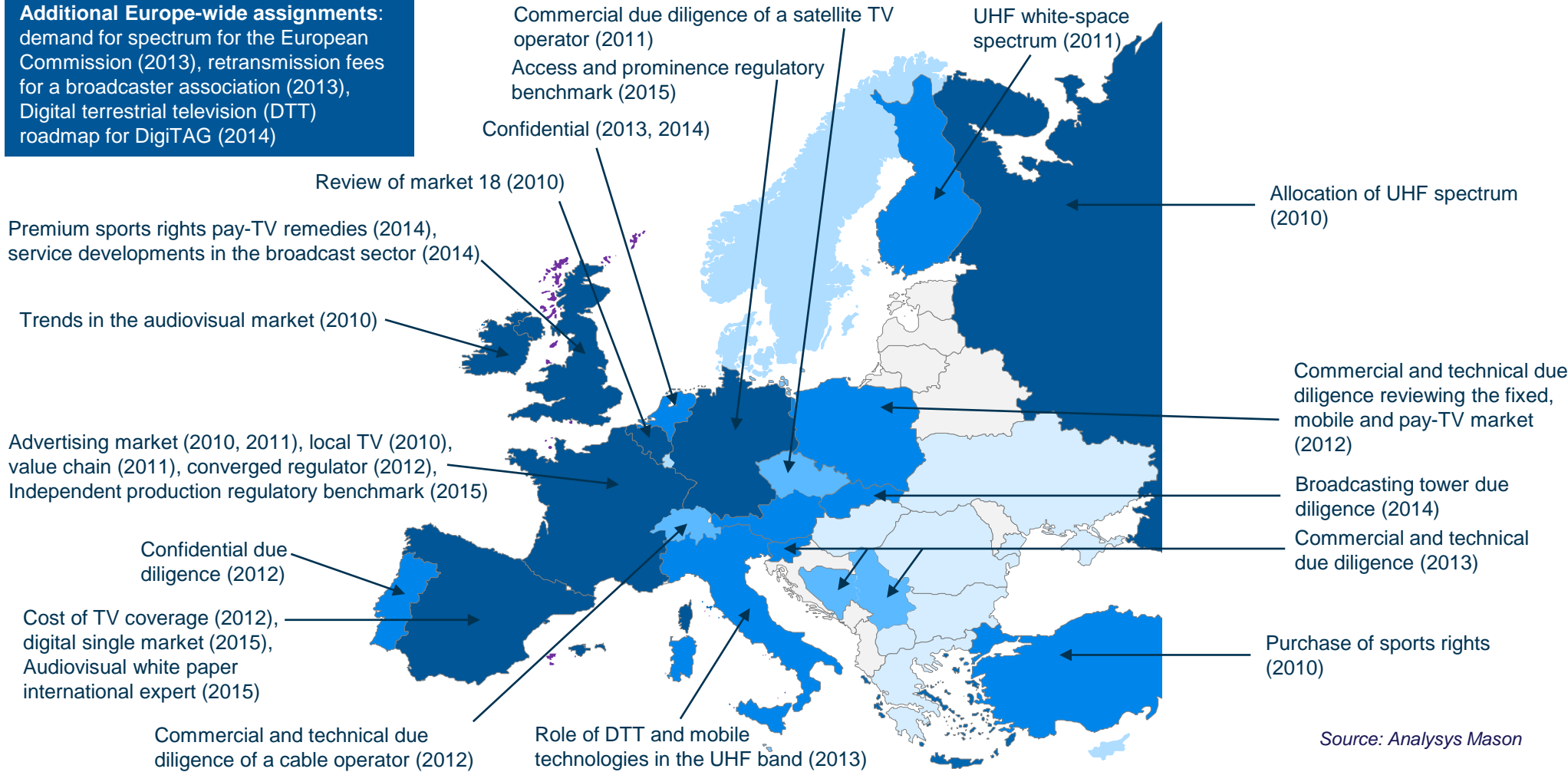
Policy formulation and implementation

- TV licensing and obligations
- Advertising regulation and econometric models
- Spectrum allocation and pricing
- Digital switchover
- Media plurality reviews
- Rights issues, for example territoriality and portability
- Content prominence/‘must be found’
- Country of origin vs. country of destination principles

- Identification of market failures and designing remedies
- Assessment of level playing field of linear vs. non-linear TV
- Assessment of ‘must carry’ and ‘must offer’ regimes
- Assessment of carriage and retransmission fees

In particular, we have extensive media and regulatory experience in most major countries in Europe in the last five years

Additional Europe-wide assignments: demand for spectrum for the European Commission (2013), retransmission fees for a broadcaster association (2013), Digital terrestrial television (DTT) roadmap for DigiTAG (2014)



Source: *Analysis Mason*

■ Regulatory assignments
 ■ Media assignments
 ■ Media and regulatory assignments (separately)
 ■ Media regulatory assignments