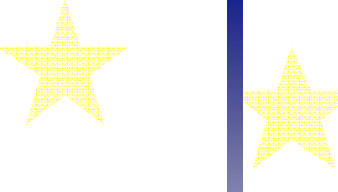




**Review of the EU regulatory
framework for electronic
communications networks and
services**



**Revision of the
Recommendation
on relevant markets**



European Commission

*Public Presentation,
Brussels, 13 July 2006*

Agenda

10.00	Opening remarks	Bernd Langeheine
10.15	Overview of the proposals Innovation and investment	Peter Scott
10.30	Spectrum policy	Frank Greco
11.00	Consolidating the internal market Consumer and user interests	Ivo Locatelli
11.40	Improving security	Philippe Gerard
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12.20	Streamlining the Art 7 procedures	Vivi Michou
12.50	Recommendation on relevant markets	Reinald Krueger
13.15	Close	Bernd Langeheine



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10.15 Overview of the proposals
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10.30 Spectrum policy

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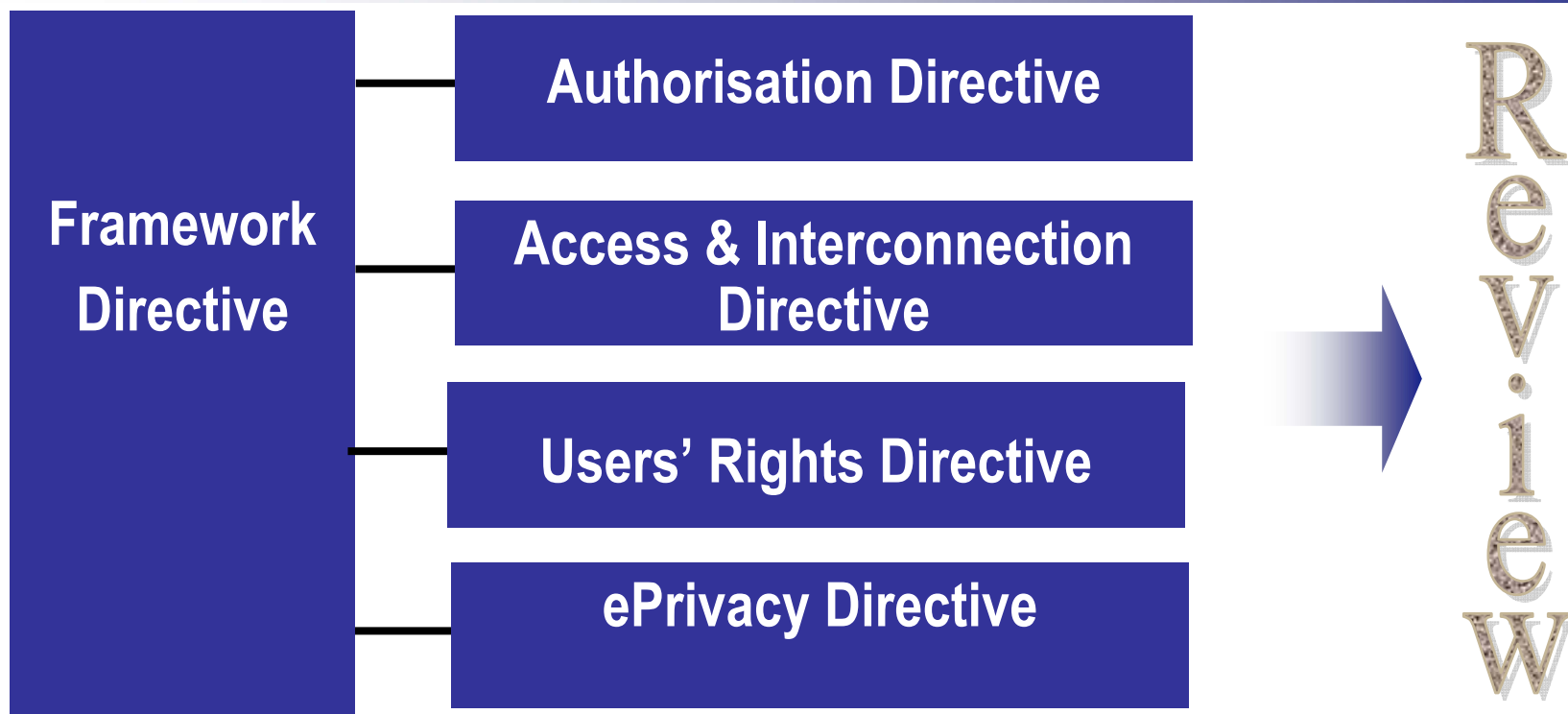


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Overview - Public consultation



Recommendation on relevant markets



Revision



Documents

R
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w



Commission Communication

COM(2006) 334

**Working Document on
proposed changes** SEC(2006) 816

Impact assessment (SEC(2006) 817)

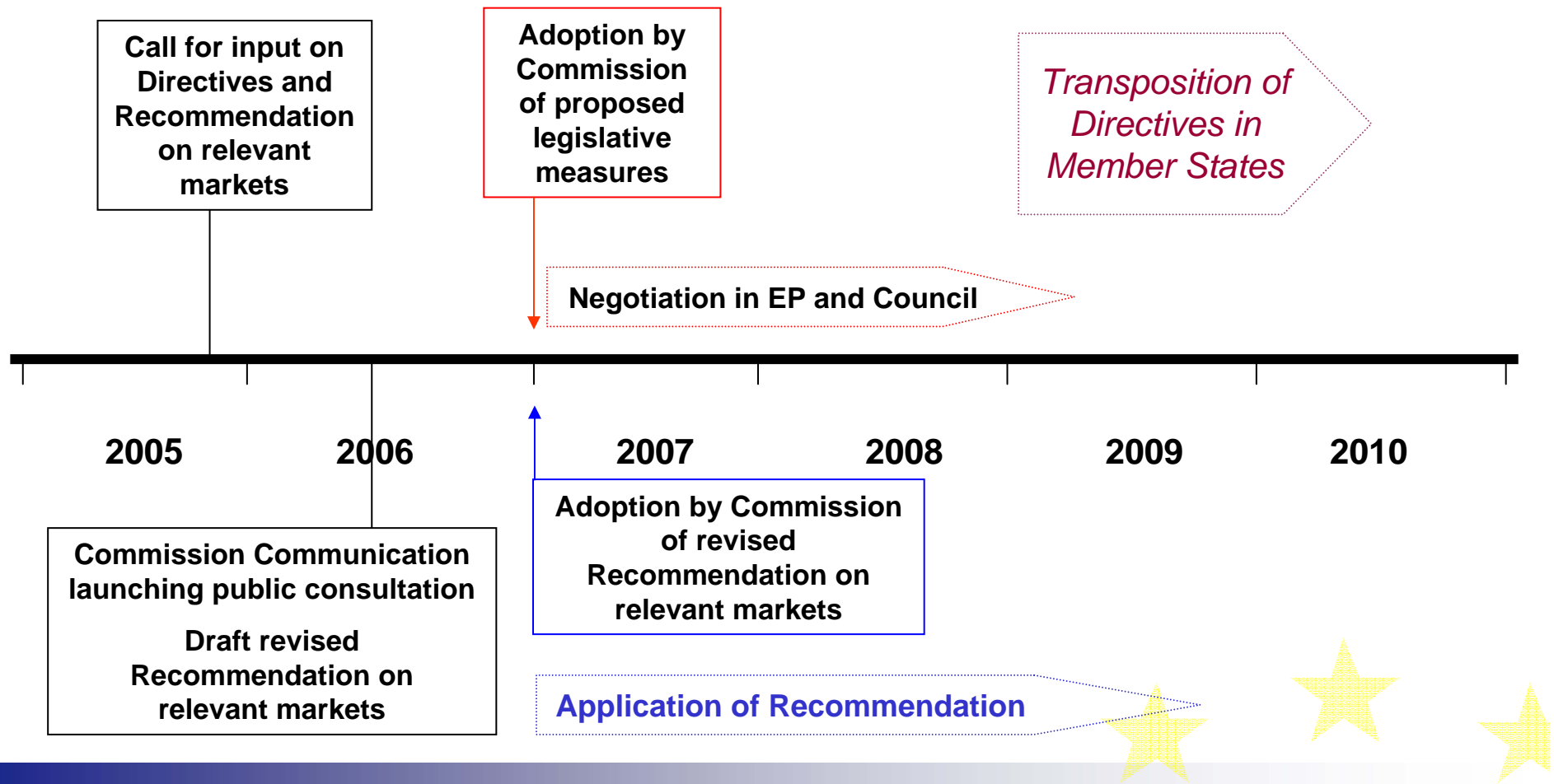


**Draft revision of the
Recommendation +
Explanatory memorandum**

Sec(2006) 837



Timeline for implementation



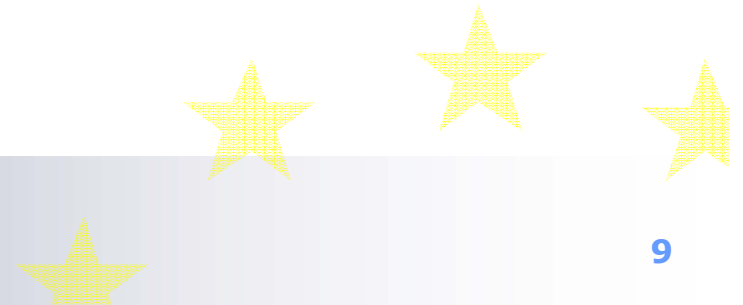
Looking back: Main results of 'Call for Input'

- **Existing framework basically sound**
 - evolution not revolution
- **Objectives remain valid:**
 - promoting competition;
 - consolidating the single market
 - promoting the interests of the citizen
- **Innovation and investment a key issue**



Innovation and investment

- **Investment and regulation**
- **Treatment of emerging markets**
- **Other options**



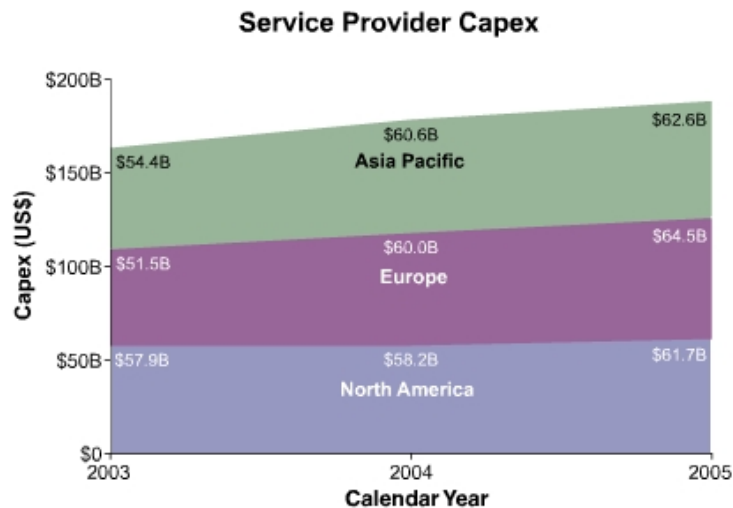
eCommunications in Europe

- **Overall revenue growth of the sector outpaces growth of the EU economy as a whole** (11th Implementation report)
- **In 2005 the ICT sector was valued at € 614 billion**
- **EU radio spectrum market worth over € 200 billion**



Investment and regulation

- Investment in Europe is comparable to that in N America and Asia.



(Source: Infonetics, 2005)

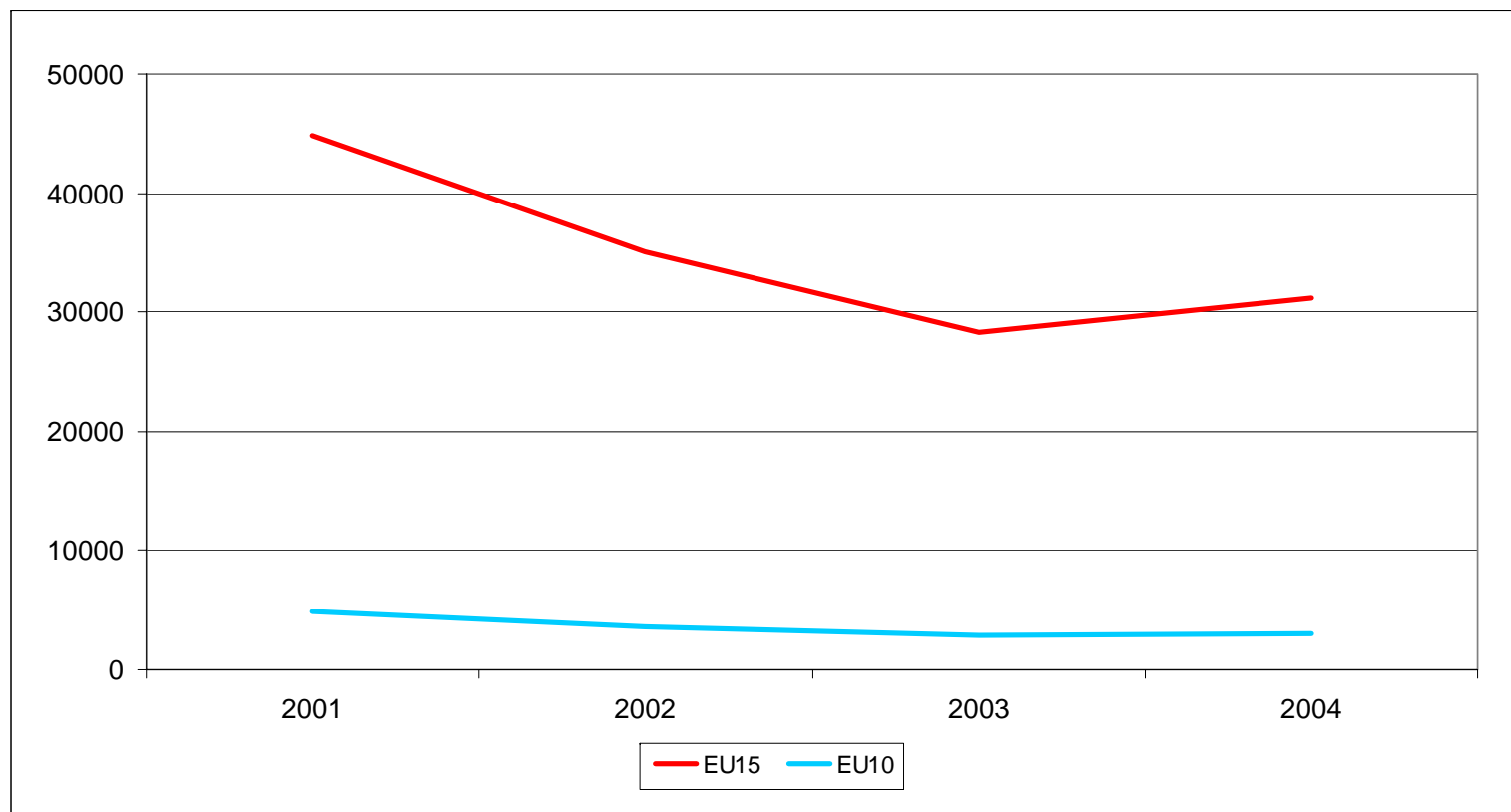
Asia Pacific € 49 bn

Europe € 51 bn

N America € 48 bn



Investment trends 2001- 2004 (EU 15 and EU 10)

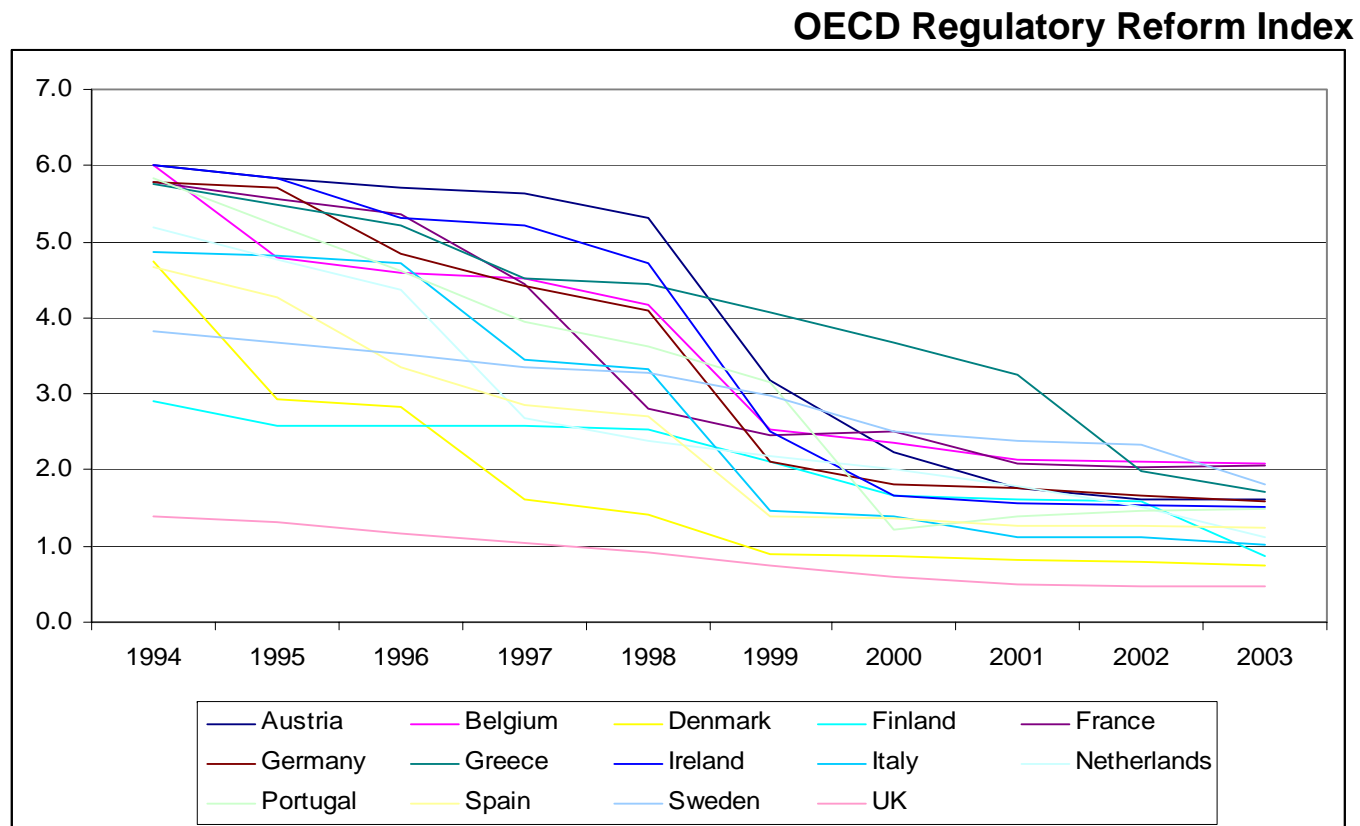


Source. London Economics study for EC



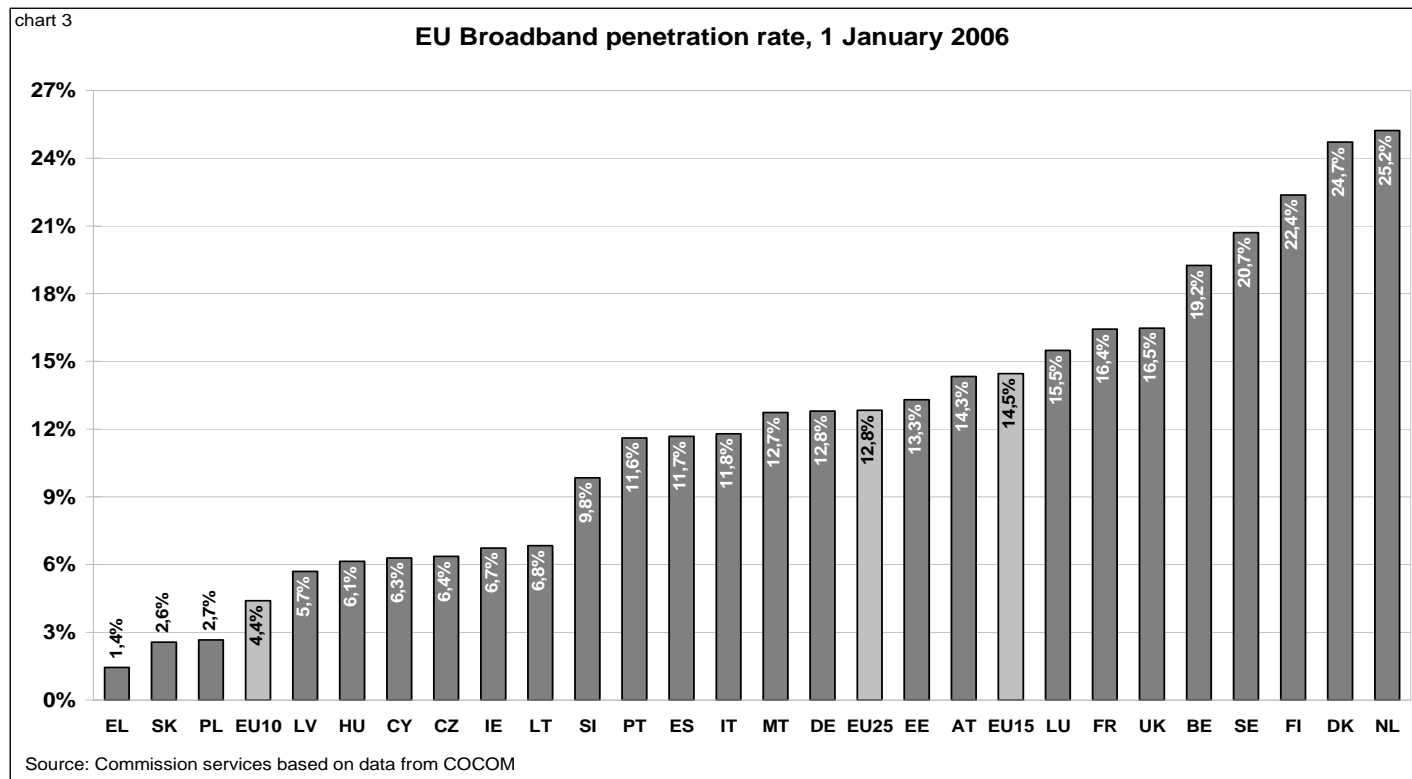
Factors that encourage investment

■ Regulatory reform



Factors that encourage investment

■ Competition



Investment and regulation

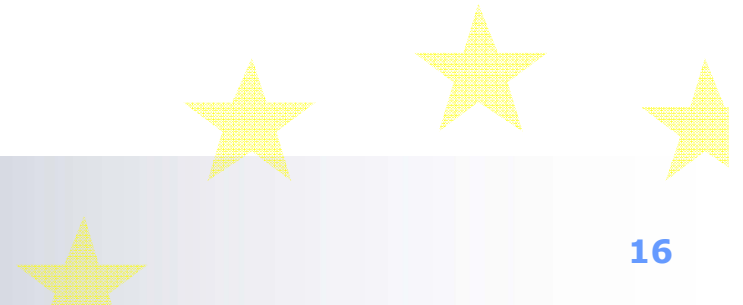
Conclusions

- **Competition drives investment**
- **Slow implementation of regulatory reform and poor implementation of the framework hold back investment**



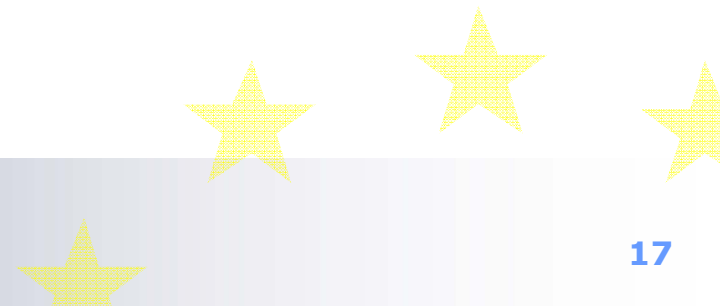
Innovation and investment

- Investment and regulation
- **Treatment of emerging markets**
- Other options



Treatment of emerging markets

**Is the market
stable enough
to apply the 3
criteria test ?**

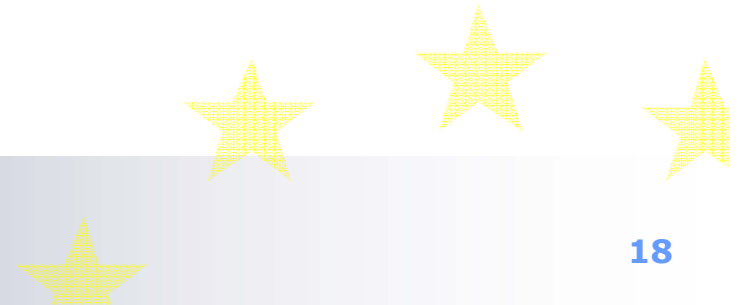


The 3 criteria test

- **used to identify markets which may justify ex-ante regulation**

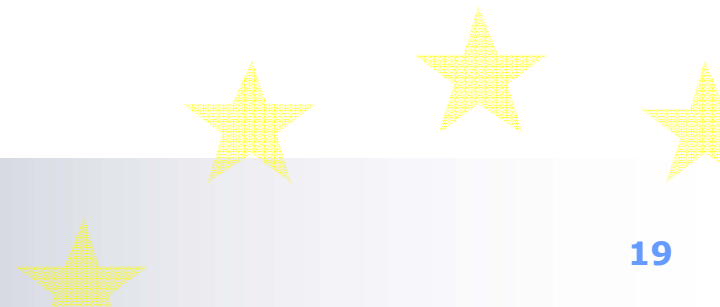
- the presence of high and non-transitory barriers to entry;
- no tendency towards effective competition (in the absence of regulation);
- the insufficiency of competition law to address the market failure

- **applied cumulatively**



Treatment of emerging markets

**Is the market
stable enough
to apply the 3
criteria test ?**



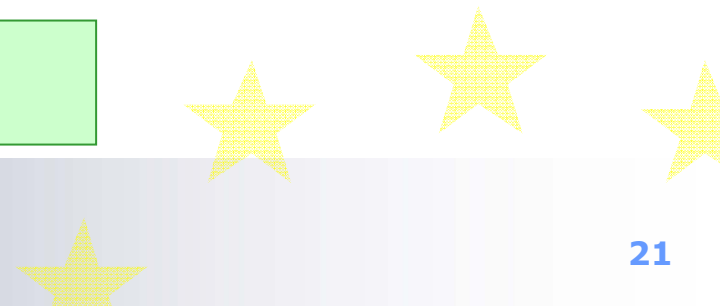
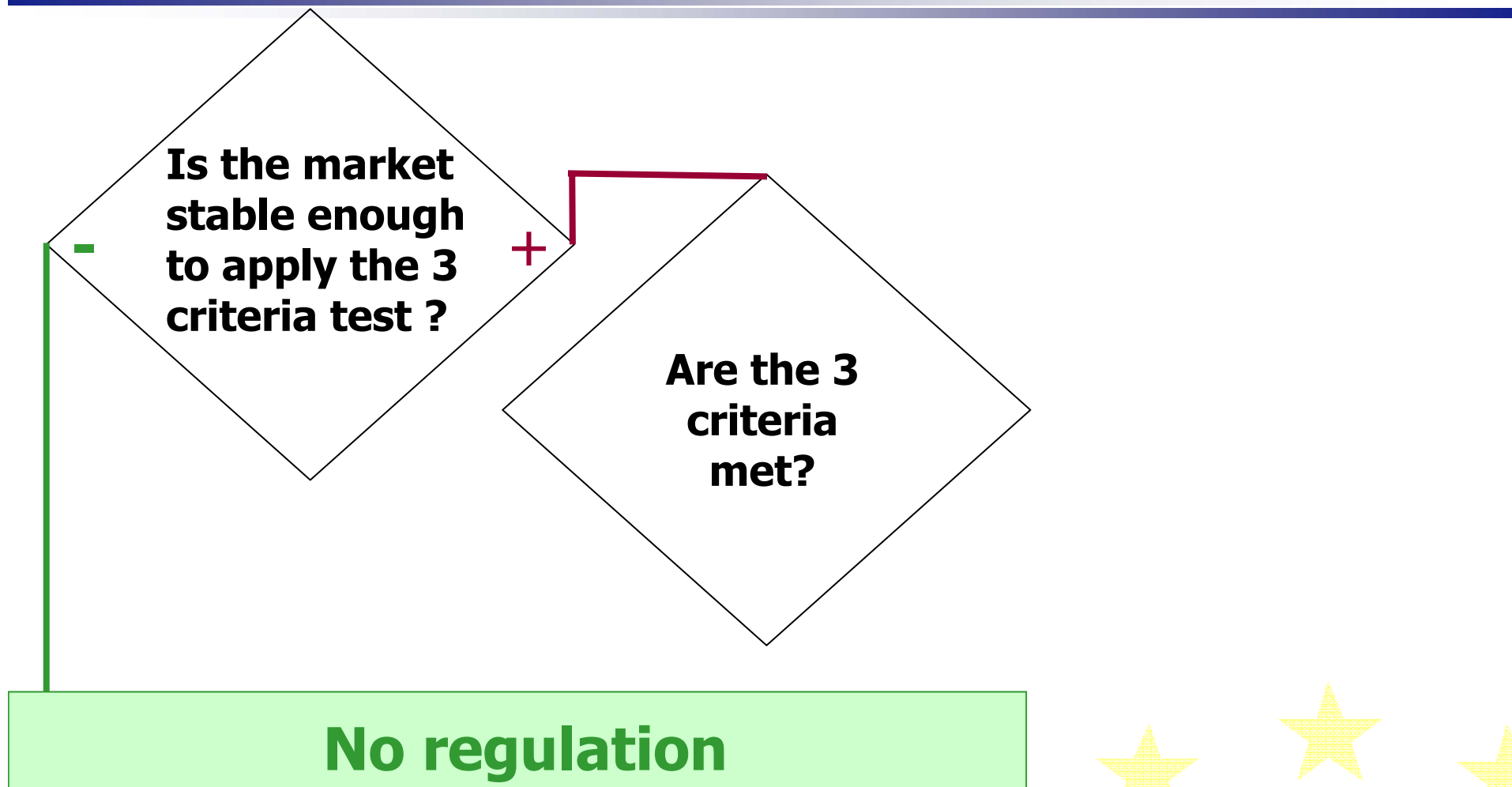
Treatment of emerging markets

Is the market
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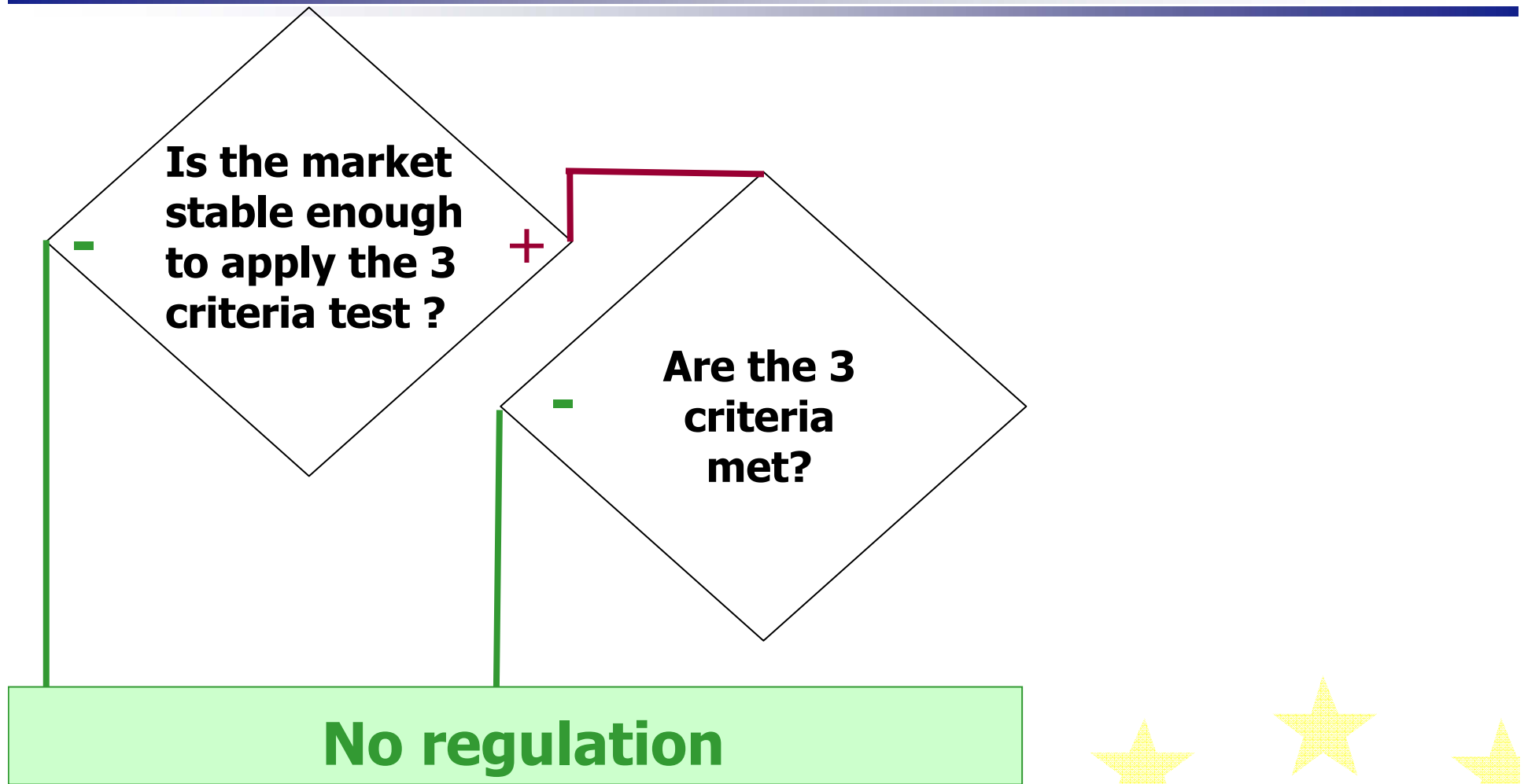
No regulation



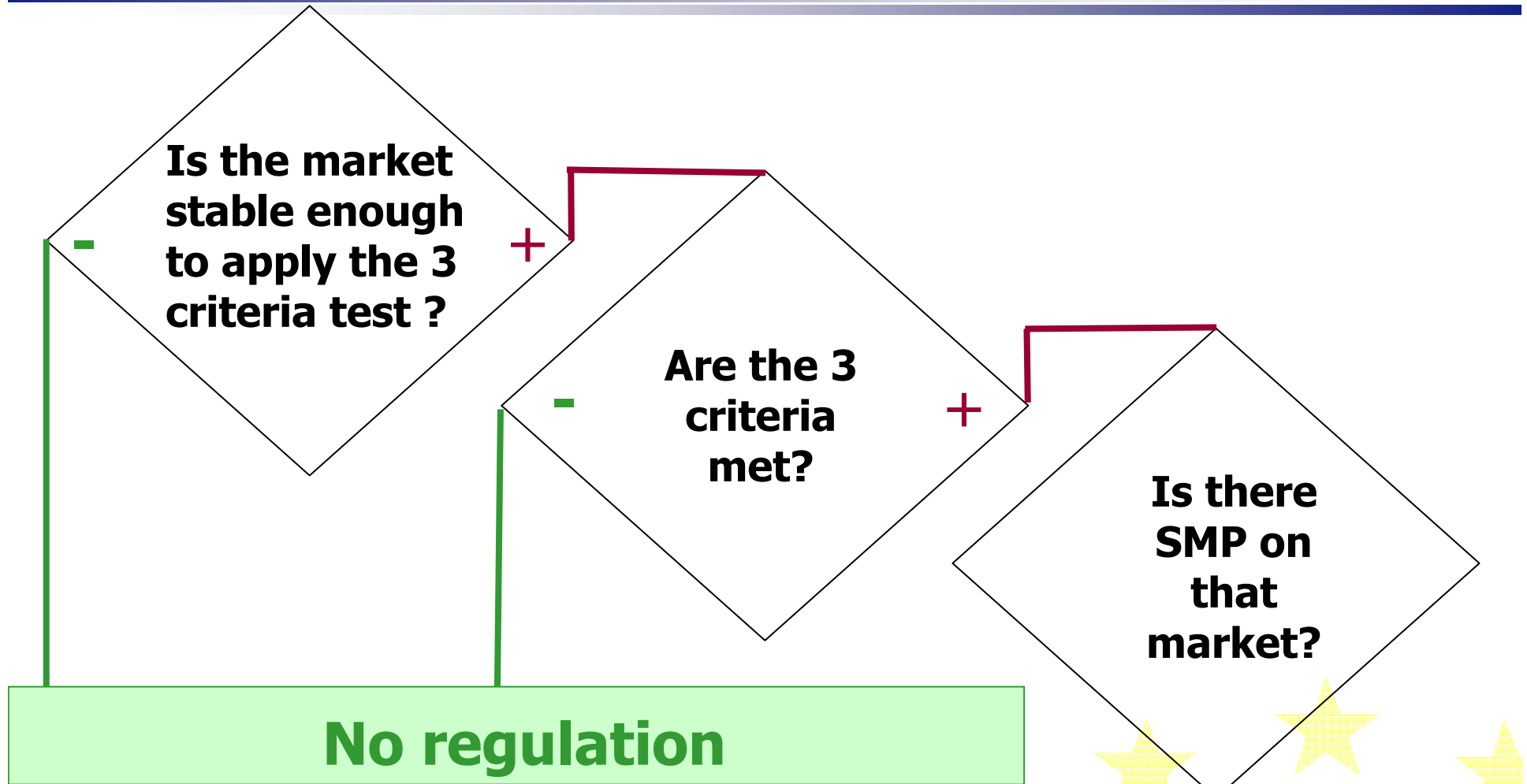
Treatment of emerging markets



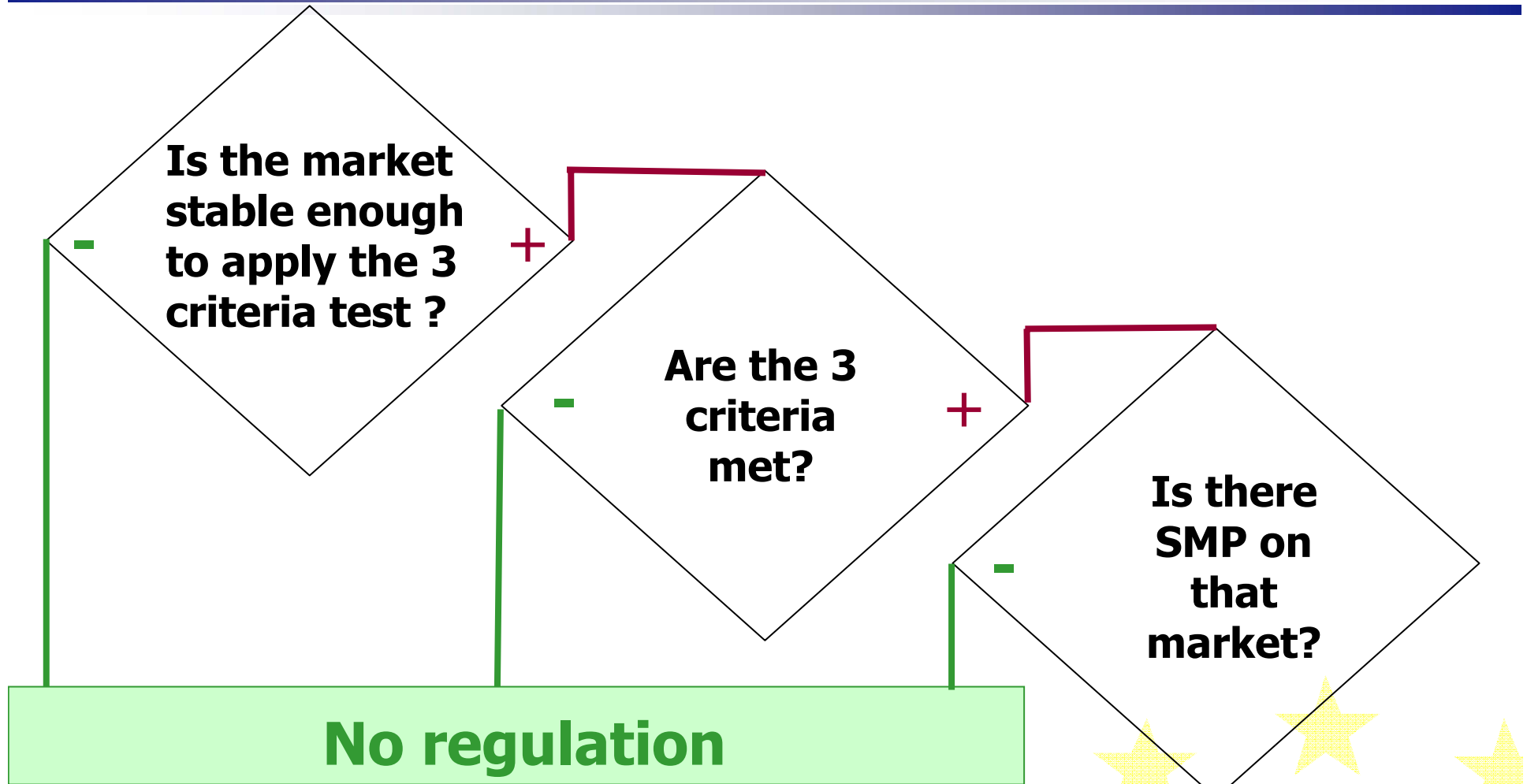
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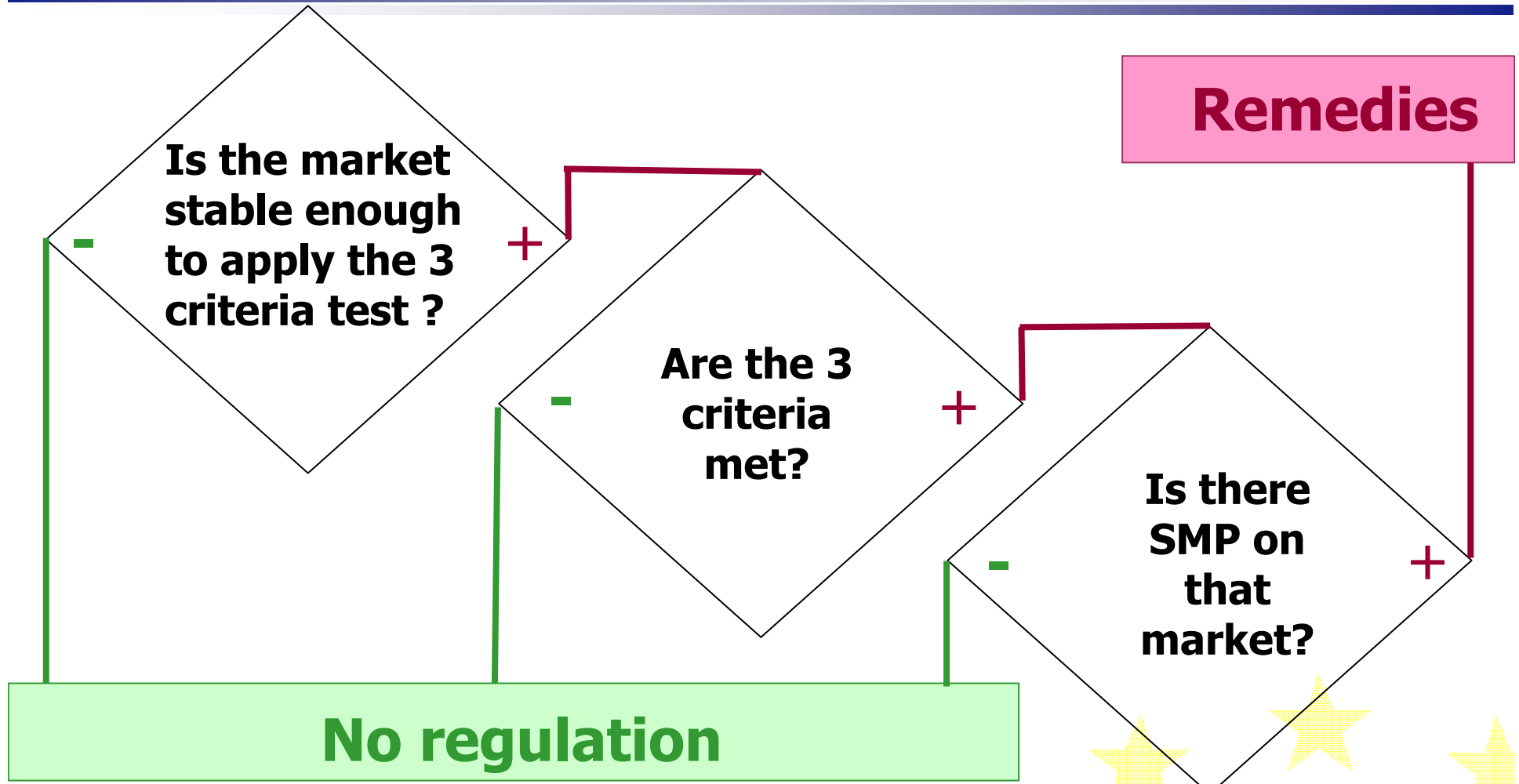
Treatment of emerging markets



Treatment of emerging markets



Treatment of emerging markets



Treatment of emerging markets

Remedies

- **Transparency**
- **Non-discrimination**
- **Accounting separation**
- **Access obligations**
- **Price control**

“Taking account of the initial investment by the facility owner, bearing in mind the risks involved in making the investment” Art 12 AID



Treatment of emerging markets

Conclusion

- **Existing framework is sufficiently flexible to handle new and volatile markets**
- **NRAs can take account of:**
 - risk
 - the need to generate an adequate return on capital

when imposing pro-competitive access obligations



Innovation and investment

- Investment and regulation
- Treatment of emerging markets
- **Other options**



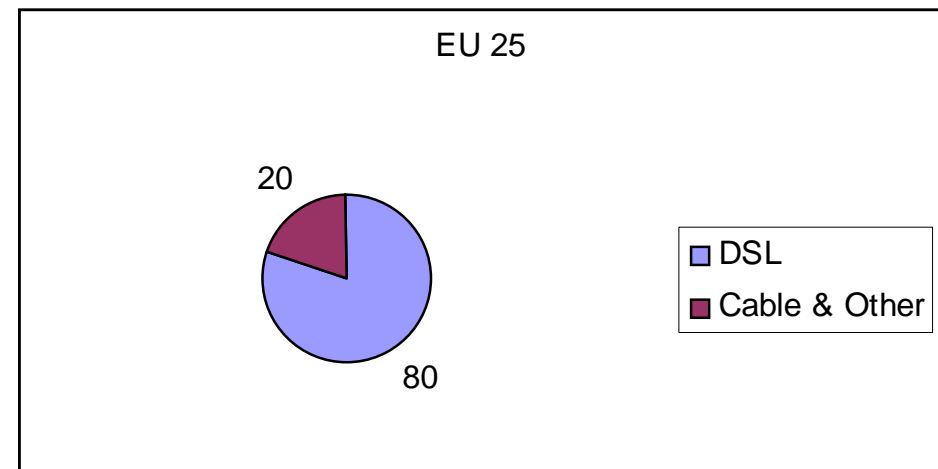
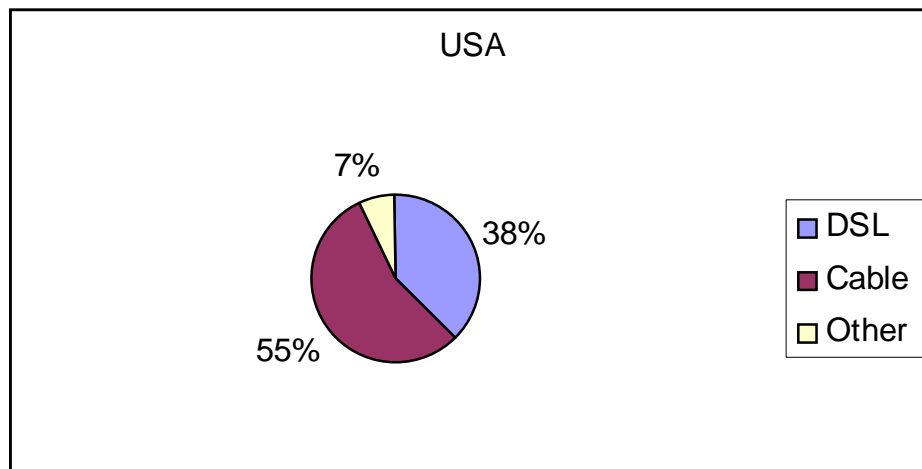
Other options

Impact assessment

- **Remove or restrict sector specific regulation**
 - Different US and EU markets
- **Adopt an 'open access' model for network infrastructure**
 - some form of structural remedy



Market shares of cable & telcos in US and EU



Other options

Impact assessment

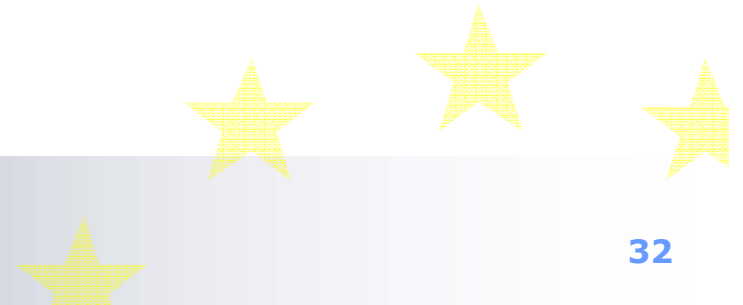
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Overview

Innovation and investment

■ Questions ?

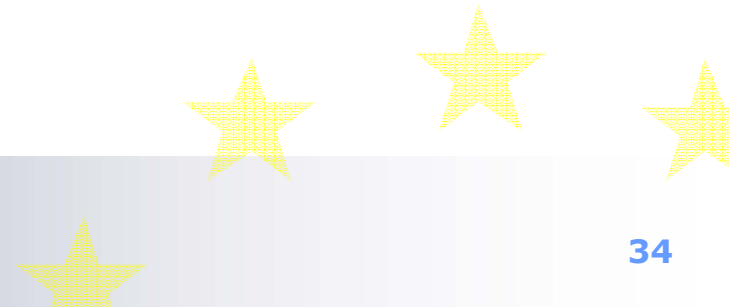


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A new policy approach to spectrum management



Economic dimension

- Spectrum management is a **key enabling factor** to achieve **Lisbon goals**:
 - Direct impact given importance of sector: **growth, jobs;**
 - Indirect impact: **competitiveness**
 - **Innovation** potential: breeding new technologies / applications and valorising R&D output through adequate spectrum management approach
 - **“Digital integration”**: connecting *all* citizen, *all* regions



Market dimension

- **Market size matters** in the radio sector
 - equipment: economies of scale
 - services: interoperability
 - innovation: tends to follow markets (that is market size...)
- Spectrum management to support the **EU internal market:**
 - Radio markets have a global dimension:
are 25 national radio markets in the EU viable ?
 - Synergy effect of pooling the power of *European* market!



Changing role of spectrum management

- Until recently: **Distribution of available resources** based on technical consideration
 - Now: **Methodology ensuring “optimal usage”** of radio spectrum as production factor
- **Spectrum management becomes more complicated:**
- Link of radio resource usage to economic / societal value of applications and services, for which spectrum is indispensable
 - Technical interference management remains key *and* becomes more complicated



Spectrum reform: objectives

- **Lower access hurdles to radio spectrum**
 - Lower (direct and indirect) costs of accessing radio resources
- **Empower spectrum user** (market player) to decide upon usage as much as possible
 - Market players know better than administrations about business cases
- More **flexibility in spectrum usage** to overcome “scarcity” and to create an innovative friendly environment



Least onerous spectrum management for users

- Existing regulatory framework calls for **least onerous** market access and authorisation system for provision of e-comm networks and services
- Objective: **stimulate development** of e-comm services and networks and pan-European services and networks to benefit from internal market
- These principles must be **fully reflected** in spectrum management considering new developments and technological progress.



Spectrum Management Models

- **EU-wide “mix” between spectrum management models:**
 - **Market based approach:** tradability of spectrum to ensure most efficient user gets access to individual spectrum usage rights with guaranteed interference protection
 - **“Unlicensed” approach:** shared usage of spectrum, no individual rights nor interference protection, but easy access to spectrum
 - **Administrative decision:** usage of spectrum for agreed public purposes



Spectrum management

- areas for coordination at EU level

- identification of **common bands**
(eg tradable bands, unlicensed bands)
- usage and tradability **conditions** in such bands
- availability, accessibility and reliability of **information**
needed for spectrum trading
- requirements to safeguard **competition**
- common criteria to solve **legacy** issues
- **authorisation** of services with pan-European or
internal market dimension
- **exceptions** to technology or service neutrality



Secondary Trading

- **In specific spectrum bands identified to this end and subject to individual rights, tradability of rights between users would apply throughout the EU.**



Authorisation of Spectrum Use

■ General authorisations

- Ensure divergences from general authorisations are duly justified

■ Harmonise “licence-free” bands

- Give EU-wide legal certainty to the general authorisation status of specific bands

■ Pan-European licensing

- Enable the provision of common licensing conditions in the EU for specific bands



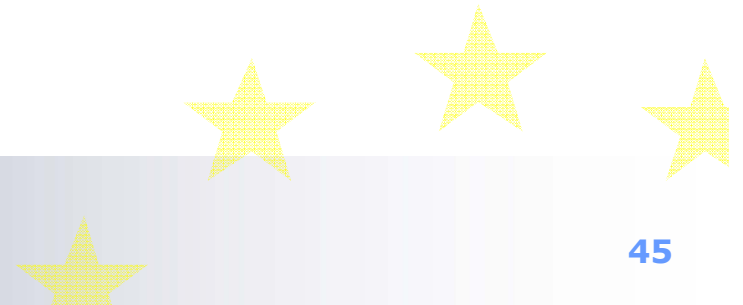
Technology neutrality

- **Spectrum users would be free to use any type of radio network or access technology in a given spectrum band to provide a service provided they do not cause interference**
- **Exceptions justified by public interest objectives**



Service Neutrality

- **Spectrum users should be able to provide any service or mix of services in a given spectrum**
- **Exceptions justified by public interest objectives**



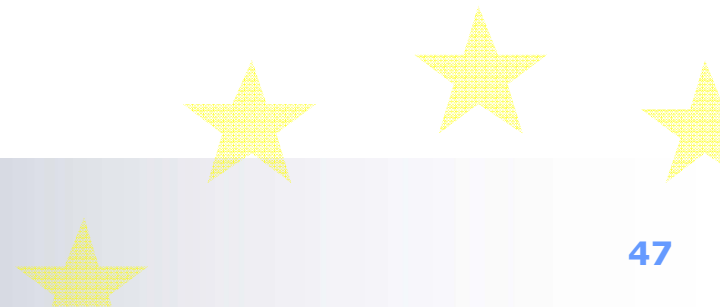
An EU Spectrum Entity?

- A « light touch » agency with responsibilities for EU issues on spectrum, to support and coordinate existing national activities.
- All possibilities to be analysed.



Spectrum policy

■ Questions ?

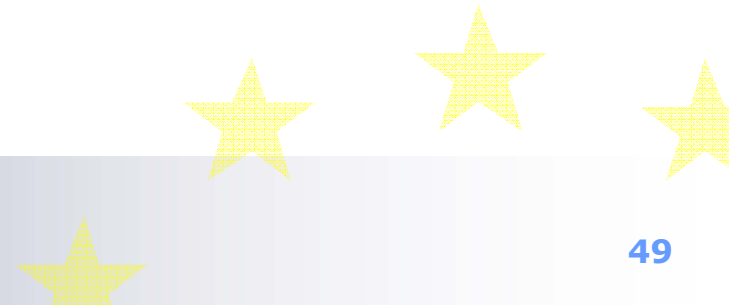


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Consolidating the internal market



Consolidating the internal market

- **Suspension of NRA decisions on appeal only where 'irreparable harm' to the appellant can be shown**
- **Improving enforcement mechanisms**
 - More powers to NRA to address breaches of authorisation directive (eg fines & penalties)
 - Improve enforcement of the ePrivacy Directive eg right of action against spammers



Consolidating the internal market

- **Improved cross border access to Information Society services**
- **Obligations on non SMP operators (under Art 5(1) of the Access Directive) to be subject to Commission agreement**
- **Strengthening the obligation on Member States to review and justify 'must carry' rules**



Consolidating the internal market

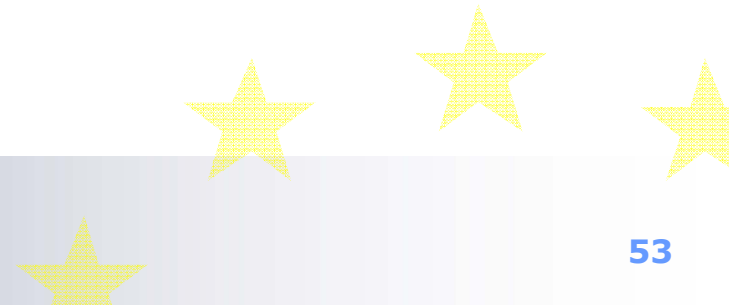
- **Establish mechanisms to improve coordination between Member States in areas such as:**
 - authorisation of services with pan-European or internal market dimension
 - common requirements for networks or services (eg emergency access)
 - numbering issues

(via committee procedures)



Consolidating the internal market

Adapting the framework to cover telecommunications terminal equipment, ensuring consistency with the R&TTE Directive



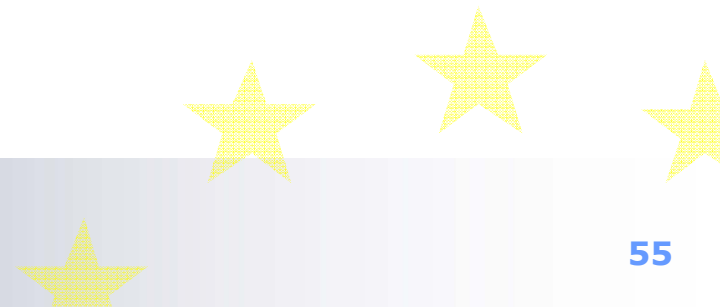
Consolidating the internal market

■ Options (see Impact Assessment)

- Option 1 – A single European regulatory body
- Option 2 – Maintain the decentralised model but strengthen the Commission's role in selected areas
- Option 3 - No change to the regulatory framework



Strengthening consumer protection and user rights



Strengthening consumer protection and user rights

Consumer protection and user rights

- **Improving the transparency and publication of information for end-users**
- **Improving caller location obligations related to emergency services**



Strengthening consumer protection and user rights

Updating Universal Service

- **Green Paper on Universal service**
- **Removing provisions on universal directories and directory inquiry services from the scope of universal service**



Strengthening consumer protection and user rights

- **Adapting 'telephone service specific' provisions to technology and market developments**
 - carrier selection and carrier pre-selection
 - Number Portability
 - Separation of access and provision of services
- **'Net neutrality':**
 - Ensuring that regulators can impose minimum quality of service requirements



Strengthening consumer protection and user rights

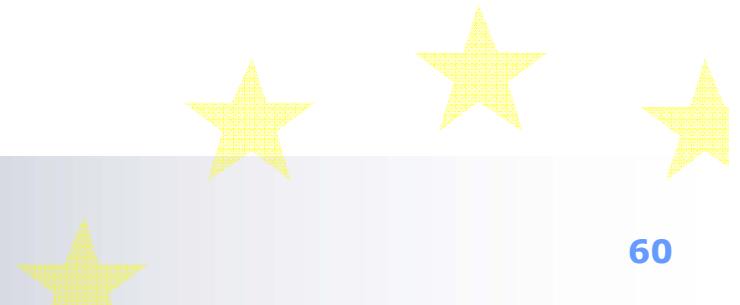
Facilitating use and access to e-communications by disabled users

- **Strengthening the right of disabled users right to access emergency services via the number '112'**
- **Introducing a Community mechanism to address eAccessibility issues**



Strengthening consumer protection and user rights

Review definitions (e.g. PATS, NTP)



Consolidating the internal market

Consumer and user interests

■ Questions ?

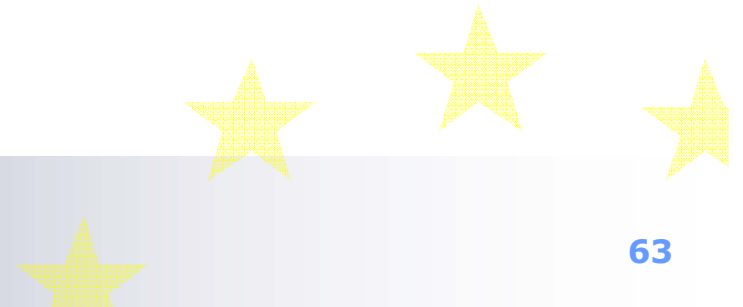


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Improving Security



Security

- **Options (see Impact Assessment)**
 - Option 1 - Introduce detailed new provisions on security and integrity
 - Option 2 - Introduce general security and integrity requirements together with enabling measures
 - Option 3 - No change to the regulatory framework



Security

- **Future-proof network integrity requirements beyond PSTN**
- **NRAs to have powers to :**
 - Ensure operators implement adequate security policies or emergency plans, based on Recommendations agreed at EU level
 - Sanction non-compliant companies eg by fines



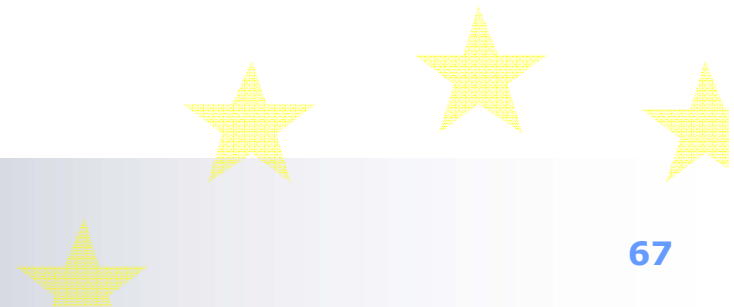
Security

- **Network operators and Internet Service Providers (ISPs) to:**
 - notify the NRA of any breach of security that led to the loss of personal data and/or to interruptions in the continuity of service supply
 - notify their customers of any breach of security leading to the loss, modification or destruction of, or unauthorised access to, personal customer data.



Improving security

- **Questions ?**

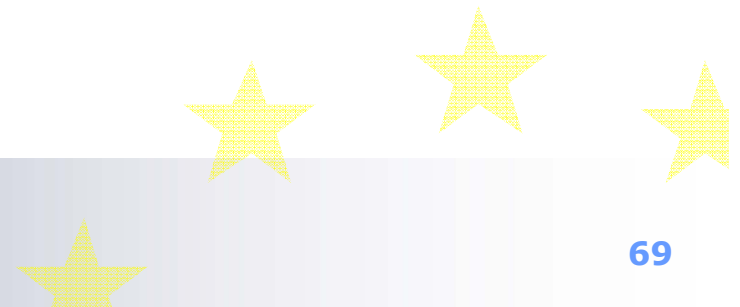


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Better regulation : Removing outdated provisions



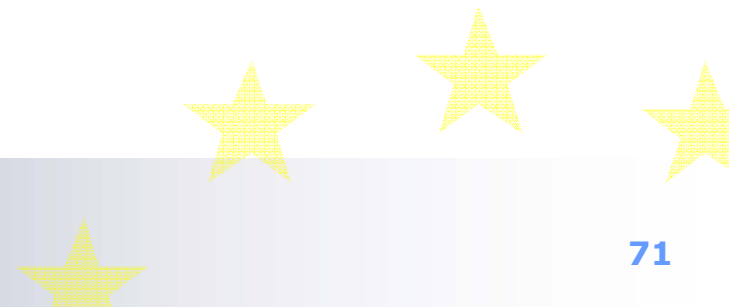
Better regulation: removing outdated provisions

- **Deletion of the minimum set of leased lines**



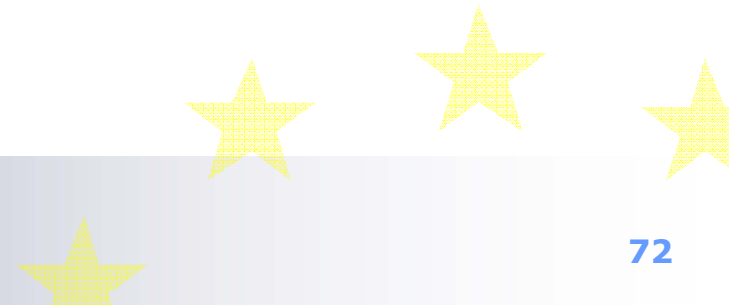
Better regulation: removing outdated provisions

- **Deletion of the minimum set of leased lines**
- **Withdrawal of Article 27(2) of the Universal Service Directive on ETNS**



Better regulation: removing outdated provisions

- **Deletion of the minimum set of leased lines**
- **Withdrawal of Article 27(2) of the Universal Service Directive on ETNS**
- **Repeal of Regulation 2887/2000 on unbundled access to the local loop**



Better regulation: removing outdated provisions

- **Deletion of the minimum set of leased lines**
- **Withdrawal of Article 27(2) of the Universal Service Directive on ETNS**
- **Repeal of Regulation 2887/2000 on unbundled access to the local loop**
- **Other deletions**
 - *Annex I of the Framework Directive*
 - *Transitional measures (Art 27 Framework Directive)*
 - *Article 5(4) of the Access and Interconnection Directive*



Better regulation : Removing outdated provisions

■ Questions ?

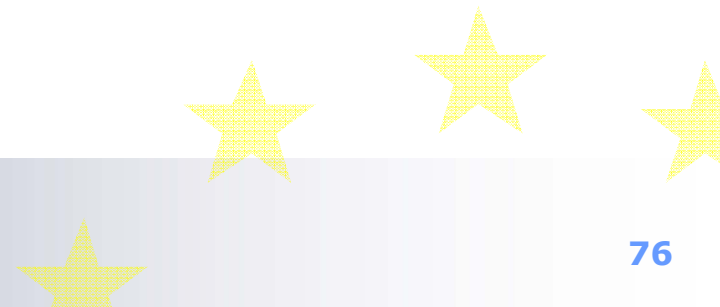


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Streamlining Article 7 procedures



Article 7 procedures

* GOALS *

- **Ensure consistent regulation across the EU** on the basis of competition law principles
- **Limit regulation to markets where there is a persistent market failure**
- **Bring more transparency to the regulatory process**



Article 7 Procedures

* TODAY *

- To date Commission has received 442 notifications from 25 Member States
- 17 notifications have been withdrawn by the National Regulator
- Commission has issued 244 comments letters and required withdrawal of proposed measures in 5 cases



Today's state of play of received notifications

	AT	BE	CY	CZ	DK	EE	ES	FI	FR	DE	EL	HU	IRL	IT	LT	LU	LV	MT	NL	PL	PT	SE	SI	SK	UK	
1	v	v		v	v		v	v	v	v		v	v	v	v			v	v		v	v	v	v	v	
2	v	v		v	v		v	v	v	v		v	v	v	v			v	v		v	v	v	v	v	v
3	v	v		v	v		v	v	v	v		v	v	v	v			v	v		v	v	v	v	v	v
4	v	v			v		v	v	v	v		v	v	v	v				v		v	v	v	v	v	v
5	v	v			v		v	v	v	v		v	v	v	v			v	v		v	v	v	v	v	v
6	v	v			v		v	v	v	v		v	v	v	v				v		v	v	v	v	v	v
7	v				v		v	v	v			v	v	v	v			v	v		v	v	v			v
8	v	v		v	v		v	v	v	v		v	v	v	v		v	v	v	v	v	v	v	v	v	v
9	v	v		v	v		v	v	v	v		v	v	v	v		v	v	v	v	v	v	v	v	v	v
10	v	v					v	v	v	v		v	v	v	v		v	v	v		v	v	v			v
11	v		v	v	v		v	v	v	v	v	v	v	v	v				v	v	v	v	v	v	v	v
12	v		v		v		v	v	v	v	v	v	v	v	v				v		v	v	v			v
13	v				v			v	v		v	v	v	v	v			v	v		v	v	v	v	v	v
14	v							v	v		v	v	v	v	v			v	v		v	v	v	v	v	v
15	v		v	v	v		v	v	v			v	v	v	v	v			v	v		v	v	v	v	v
16	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v	v		v	v	v	v	v	v	v	v	v
17	v				v			v						v										v		
18	v						v	v	v				v	v	v				v			v				v



Article 7 Procedures

TODAY

Experience shows:

- Enhanced cooperation with NRAs
- Enhanced transparency with all interested parties
- Enhanced consistency in market definition and assessment of SMP



Article 7 Procedures

* TRANSITION PERIOD *

- About 100 notifications more to complete 1st round
- By 2009-10 (cf. proposed framework in force) NRAs will have carried out at least 2 market reviews
- Effective regulation of wholesale markets
 - => lift retail regulation (cf. revised Recommendation on relevant markets)



Article 7 Procedures

* TOMORROW *

1) Relaxation of notification requirements

- **For markets already found competitive**
(absent substantial changes)
- **For minor changes to previously notified measures**
(e.g. details of a remedy)



Article 7 Procedures

* TOMORROW *

Combined with

- Revised list of markets susceptible to ex ante regulation
- Effective wholesale regulation bearing fruits in overall level of regulation

RESULT:

Administrative burden on NRA & market players reduced



Article 7 Procedures

* TOMORROW *

2) Binding timetable for

- Initiating market reviews
- Completing market reviews
- Imposing or removing remedies
- Re-notification after Commission requirement to withdraw proposed measure

RESULT:

Increased legal certainty for market players across the EU and better implementation



Article 7 Procedures

* TOMORROW *

3) Changes to the notification procedure

- Minimum standard: simultaneous notification of market definition, SMP assessment and imposition/withdrawal of remedies
- Remedies: requirement for prior Commission agreement

RESULT:

Swifter (de-)regulatory actions, increased harmonisation, increased legal certainty for market players across the EU



Article 7 Procedures

* TOMORROW *

Prior agreement requirement for remedies

- Under the current Framework the Commission has commented in 147 notifications on proposed remedies
- Remedies are key to shaping competitive market conditions
- Similar market failures require similar remedies

RESULT:

Better harmonisation of the regulatory landscape, increased investment, facilitation of pan-European players, increased consumer benefits



Streamlining the Art 7 procedures

■ Questions ?

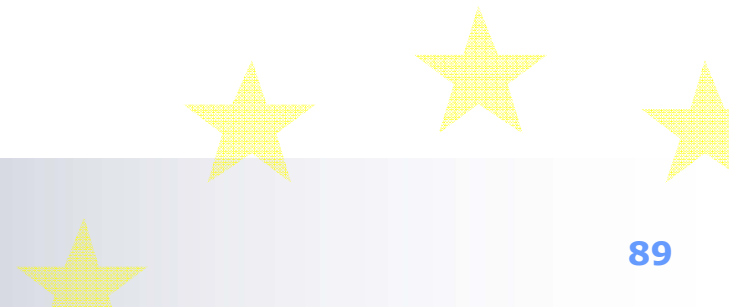


Agenda

10.00	Opening remarks	Bernd Langeheine
10.15	Overview of the proposals Innovation and investment	Peter Scott
10.30	Spectrum policy	Frank Greco
11.00	Consolidating the internal market Consumer and user interests	Ivo Locatelli
11.40	Improving security	Philippe Gerard
12.00	Removing outdated provisions	Peter Scott
12.20	Streamlining the Art 7 procedures	Vivi Michou
12.50	Recommendation on relevant markets	Reinald Krueger
13.15	Close	Bernd Langeheine

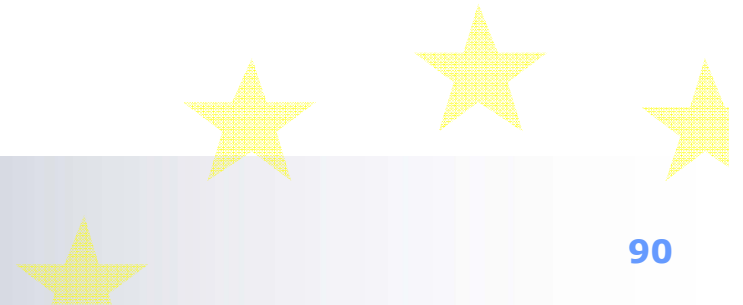


**Draft revision of the
Recommendation
on relevant markets and
Explanatory Memorandum
*SEC(2006) 837***



Overview

- **Overview of the revised list of markets**
- **Background to major changes**
- **Explanatory Memorandum**
- **Next steps**



Overview of the revised list of markets (1)

Retail level

- 1. Access to the public telephone network at a fixed location for residential and non-residential customers**
- 2 (combined with 1)
- 3 Publicly available local and/or national telephone services provided at a fixed location for residential customers
- 4 Publicly available international telephone services provided at a fixed location for residential customers
- 5 Publicly available local and/or national telephone services provided at a fixed location for non-residential customers
- 6 Publicly available international telephone services provided at a fixed location for non-residential customers
- 7 The minimum set of leased lines

Removed



Overview of the revised list of markets (2)

Wholesale level

- 2. Call termination on individual public telephone networks provided at a fixed location**
- 3. Call origination on the public telephone network provided at a fixed location**
- 4. Transit services in the fixed public telephone network**



Overview of the revised list of markets (3)

Wholesale level

5. **Wholesale unbundled access (including shared access) to metallic loops and sub-loops (or equivalent) for the purpose of providing broadband and voice services**

6. **Wholesale broadband access**



Overview of the revised list of markets (4)

Wholesale level

- 7. Wholesale terminating segments of leased lines**
- 8. Wholesale trunk segments of leased lines**
- 9. Voice call and SMS termination on individual mobile networks**



Overview of the revised list of markets (5)

Wholesale level

- 10. * Access and call origination on public mobile telephone networks**
- 11. Wholesale national market for international roaming on public mobile networks.**
- 12. * Broadcasting transmission services, to deliver broadcast content to end users**

** Views requested specifically on these two markets*



Background to major changes (1)

Removal of retail calls markets

- **development of competition across EU**
- **technological development, e.g. VoIP**
- **effective wholesale regulation**
- **3 criteria in principle not fulfilled**



Background to major changes (2)

Removal of retail market for minimum set of leased lines

- **development of competition across EU**
- **effective wholesale regulation**
- **3 criteria not fulfilled**
- **Commmission will make minimum set a null set**



Background to major changes (3)

Inclusion of SMS in mobile termination market

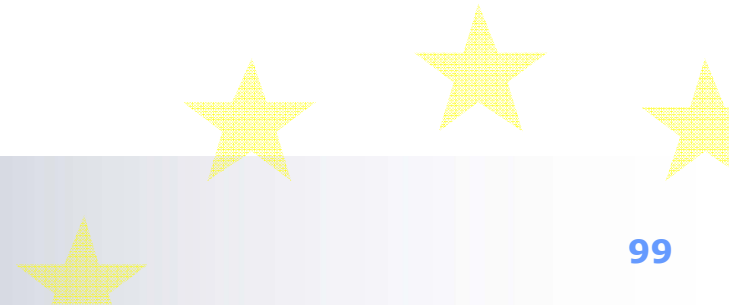
- **SMS termination presents equal market characteristics as mobile voice termination**



Background to major changes (4)

Core network markets (transit and trunk leased lines) remain included

but Explanatory Memorandum indicates circumstances under which NRAs may deviate from Recommendation



Background to major changes (5)

Special input sought on mobile access and call origination and on broadcasting transmission services

raises complex issues such as relevance of other instruments to ensure access (licence conditions, must carry rules, ...)

Wholesale International Roaming

market maintained pending adoption of EU Regulation and outcome antitrust cases



Explanatory Memorandum (1)

Three criteria test

- **now embodied in corpus of Recommendation**
- **purpose clarified (NRAs can but are not obliged to redo 3 criteria test for markets included in the Recommendation)**
- **content clarified**



Explanatory Memorandum (2)

Attempt to provide more guidance on inter alia:

- **" clustering" of markets (i.e. interrelationship between various market analyses**
- **emerging markets**
- **remedies in areas outside but closely related to the relevant market (e.g. accounting separation covering related retail markets)**



Next Steps

- **Public consultation until end of October**
- **Finalisation and adoption by beginning of 2007, with immediate entry into force**



Recommendation on relevant markets

■ Questions ?



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For more information

- **Electronics Communications policy**
 - http://europa.eu.int/information_society/policy/ecom/comm/index_en.htm
- **Review of the EU eComms framework**
 - http://europa.eu.int/information_society/policy/ecom/tomorrow/roadmap/index_en.htm#communication1



Email addresses for contributions

- **Review of framework**

infso-2006review@ec.europa.eu

- **Recommendation on relevant markets**

marketsrecommendation@ec.europa.eu

Closing date : 27 October 2006

Workshop : 10 October 2006 (provisional)

