

EUROPEAN COMMISSION



Relevant markets and market analysis process under the new framework for electronic communications networks and services

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Procedures related to national regulatory measures –
INFSO B 5**

**Workshop on application of the EU Regulatory
Framework in the electronic communications area
(market analysis procedure) – DG INFSO and
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Article 7: consolidating the single market



◆ Aims:

- ◆ To ensure consistent regulation across the EU;
- ◆ To limit regulation to markets which will not become competitive without intervention;
- ◆ To bring more transparency to the regulatory process.

Tasks of the National Regulatory Authorities



- ◆ **National regulators (“NRAs”) are required to:**
 - ◆ **carry out market definition and analyses**
 - ◆ **impose obligations on SMP operators**

Revised concepts for:



◆ market definition and delineation (Art 15 Framework Directive):

- ◆ *The Commission defines a set of market to be analysed by all NRAs*
- ◆ *The NRA delineate those markets according to national circumstances based on competition law*

◆ SMP analysis

- ◆ *SMP is based on (antitrust) concept of dominance (Art. 82 EC and Merger Control Regulation)*
- ◆ *Old “ONP” threshold of 25% market shares no more relevant*

◆ Imposition of remedies

*Proportionate regulation
at least 1 remedy*

Legal basis and instruments



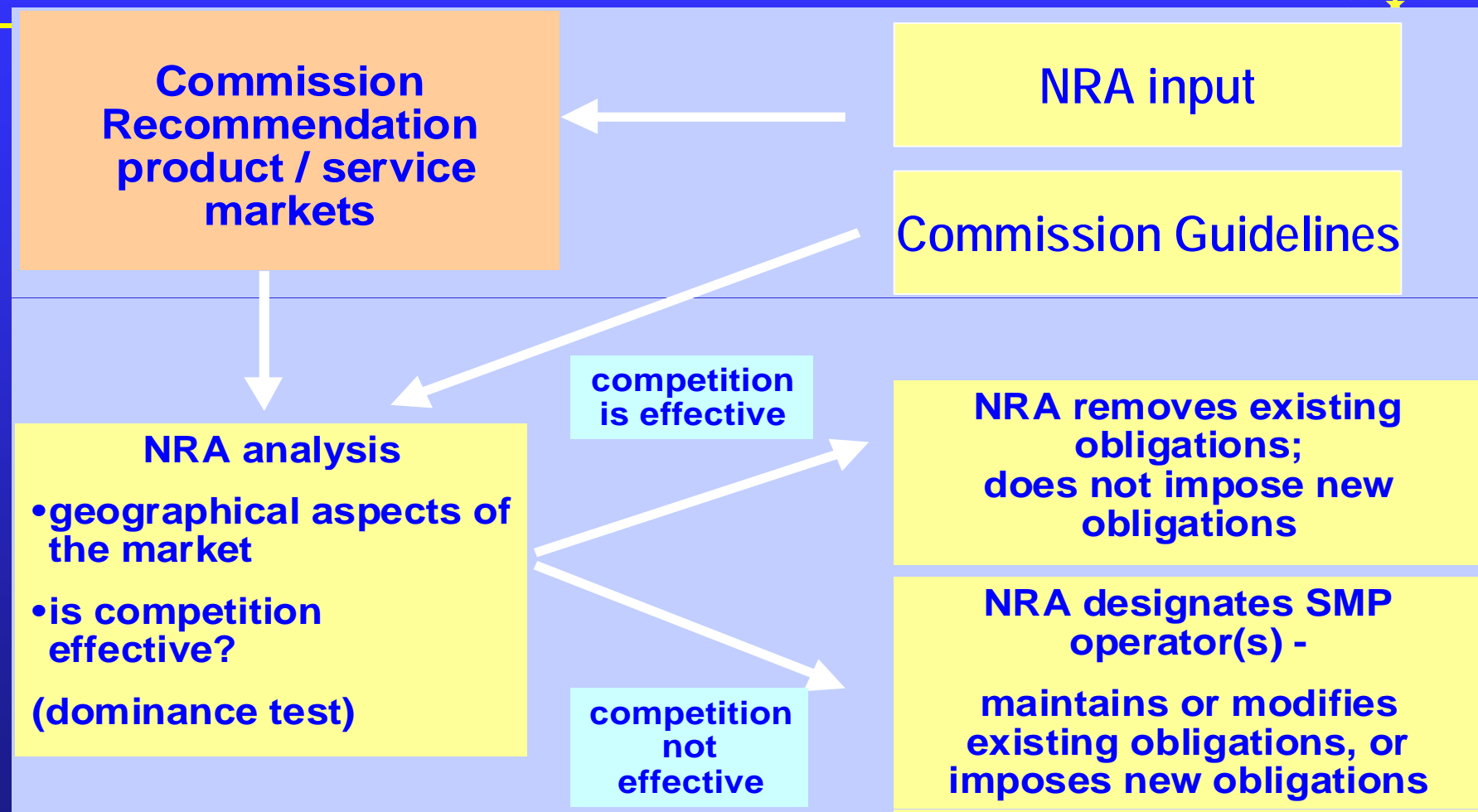
◆ Framework Directive 2002/21/EC

◆ (e.g. Article 6, 7, 14, 15 & 16)

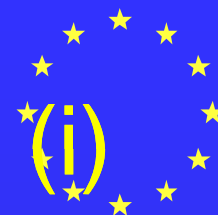
◆ Commission Recommendation on Relevant markets; Explanatory Memorandum

◆ Commission Guidelines on market analysis (“SMP Guidelines”)

Market analysis procedure



The Article 7 consultation process (i)



◆ The Commission is empowered to “veto” draft measures, where such measures seek:

- ◆ to define markets deviating from the Recommendation; or
- ◆ to designate or not operators with SMP

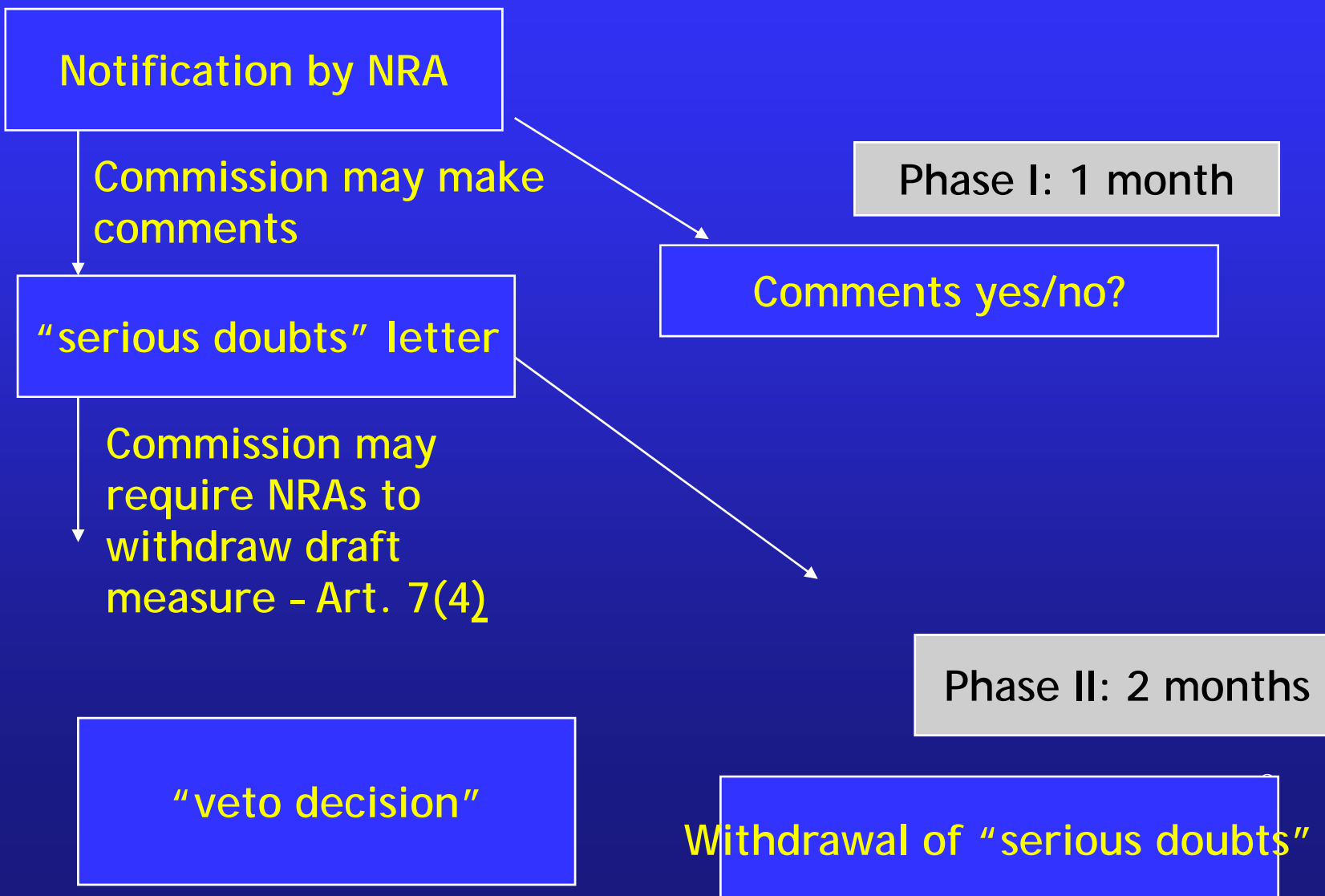
and such draft measures would affect trade between Member States,

and the Commission considers that

- ◆ the draft measure would create a barrier to the single European market, or
- ◆ has serious doubts as to its compatibility with Community law.

7

The Article 7 transparency process



Commission actions



- ◆ **683 notifications from 26 MS resulted in 433 Decisions**
- ◆ **5 “veto” decisions (7 markets)**
- ◆ **29 notifications withdrawn by NRAs**

Starting point of market analysis: Commission Recommendation on Relevant markets



list of 18 markets:

- **Markets 1-6: fixed access and calls markets**
- **Market 7: retail leased lines**
- **Markets 8-10: interconnection markets**
- **Market 11: local loop unbundling**
- **Market 12: broadband access**
- **Markets 13 and 14: wholesale leased lines**
- **Market 15: call origination and access**
- **Market 16: mobile termination**
- **Market 17: international roaming**
- **Market 18: broadcasting transmission**

Experiences

Consistency - Market definition and market analysis



- ◆ **The regulatory approaches for market definition and market power analysis have converged to a large extent**
- ◆ **The EU consultation mechanism has brought sound economic analysis to the market review process**
- ◆ **The Commission has given guidance on key issues, e.g.**
 - ◆ **Treatment of new technologies (VDSL)**
 - ◆ **The use of alternative interfaces in the provision leased lines (Ethernet)**

COMPETITION / REGULATION - FIRST ROUND

3 September 2007

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



Effective competition - no ex ante regulation



No effective competition - ex ante regulation



Partial competition - partial ex ante regulation



Withdrawal (totally or partially) not yet re-notified



The market does not meet the three criteria test



Veto



Veto - measure corrected by a new notification



Separated notification for remedies



Final measure adopted

Experience with market analysis



- **Communication from the Commission on market reviews under the EU regulatory framework (2nd report) of 11 July 2007**
- **Annex with focus on divergences in remedies**
- **Staff working document listing all notifications and all comments made by the Commission**

EU consultation mechanism

Looking ahead



- ◆ **Review of the Recommendation on relevant markets**
- ◆ **Review of the Regulatory framework**

Further Information



Directorate General INFSO portal:

http://ec.europa.eu/information_society/policy/ecommerce/article_7/index_en.htm:

- **download all letters/decisions/notifications of Article 7 procedures:**
 - **Search by country**
 - **Search Commission decision**
 - **Search recent Commission decisions**
 - **2nd report on market review**
 - **Judgments of national courts**

Thank you for your attention