

Lecture 9

Regulation of (mobile) Telecommunications

Mobile Business II (SS 2015)

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- Definitions of Regulation
- Origins of Regulation
- Regulation Levels
- Regulation in Germany
- Development and Future of Regulation in Europe
- Examples for Regulation

Dictionary Definitions of “Regulation”

Main Entry: ¹reg·u·la·tion

- Pronunciation: \,re-gyə-'lā-shən, ,re-gə- *also* ,rā-\
- Function: *noun*
- 1: the act of [regulating](#) : the state of being [regulated](#)
- 2 a: an authoritative rule dealing with details or procedure <safety *regulations*> ; b: a rule or order issued by an executive authority or [regulatory](#) agency of a government and having the force of law
- 3 a: the process of redistributing material (as in an embryo) to restore a damaged or lost part independent of new tissue growth; b: the mechanism by which an early embryo maintains normal development

Main Entry: ²regulation

- Function: *adjective* Date:
- : conforming to [regulations](#) : [official](#)

[Merriam-Webster 2008]

Dictionary Definitions of “regulate”

Main Entry: reg·u·late

- Pronunciation: \ 're-gyə- ,lāt *also* 'rā-\
- Function: *transitive verb*
- Inflected Form(s): reg·u·lat·ed; reg·u·lat·ing
- Etymology: Middle English, from Late Latin regulatus, past participle of regulare, from Latin regula rule
- **1 a:** to govern or direct according to rule; **b (1):** to bring under the control of law or constituted authority **(2):** to make regulations for or concerning <*regulate* the industries of a country>
- **2:** to bring order, method, or uniformity to <*regulate* one's habits>
- **3:** to fix or adjust the time, amount, degree, or rate of <*regulate* the pressure of a tire>

[Merriam-Webster 2008]

- Public intervention into markets
 - Limits/enables action scope of market players as to e.g.
 - Market entry
 - Pricing
 - Offerings
 - Limits/enables action scope of individuals
 - Limits/enables application of new technologies
 - Modifies general laws with regard to a certain industry
 - Often owing to market failure
 - Has a long history in telecommunications and broadcast

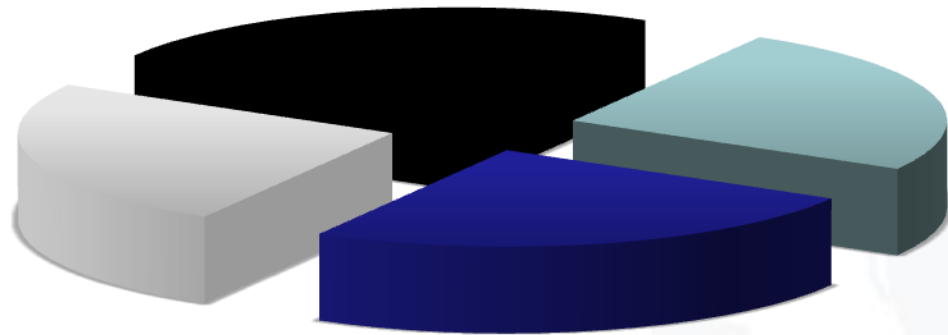
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- Market Failure as a reason for regulation
 - The market price does not reflect the real costs of the system
- Consequence:
 - Hampered competition, innovation, society progress
- This may occur in different ways.

- Telephone monopoly:
 - Formerly high prices and inflexible service, little customer orientation
- DSL flatrate:
 - Higher costs for competitors, advantages for the former monopolist
- Microsoft trial:
 - Exploitation of market power against other web browser providers
- Postal monopoly:
 - Volatile service quality and high prices for international delivery of mail

Types of Market Failures

- 1. External Effects
- 2. Natural Monopolies
- 3. Dominant Supplier
- 4. Political Failure



- Actors and beneficiaries are different:
“Investment does not pay off.”.
- Examples:
 - Basic Research: State subsidizes infrastructure for the benefit of the public since private efforts do not pay off.
 - New Infrastructures: One Market player invests into a new infrastructure, others shave off the benefits.

- In industries with high fixed costs or limited market potential,
- One (monopoly) supplier may produce at lower costs than several suppliers in competition.
- Prices and services need to be regulated.

- If a supplier
 - dominates a market and
 - harms competition and innovation
- Competition surveillance may
 - foster market entries or
 - limit the market power of the dominant supplier.

- Political goals are not achieved.
 - E.g. employment goals or social goals are not achieved by the market itself.
- Then, state intervention may be necessary.

- Purpose of regulation
 - Encourage more national and international competition
 - Foster innovation through competition
 - Let price competition drive new technologies into the mass market

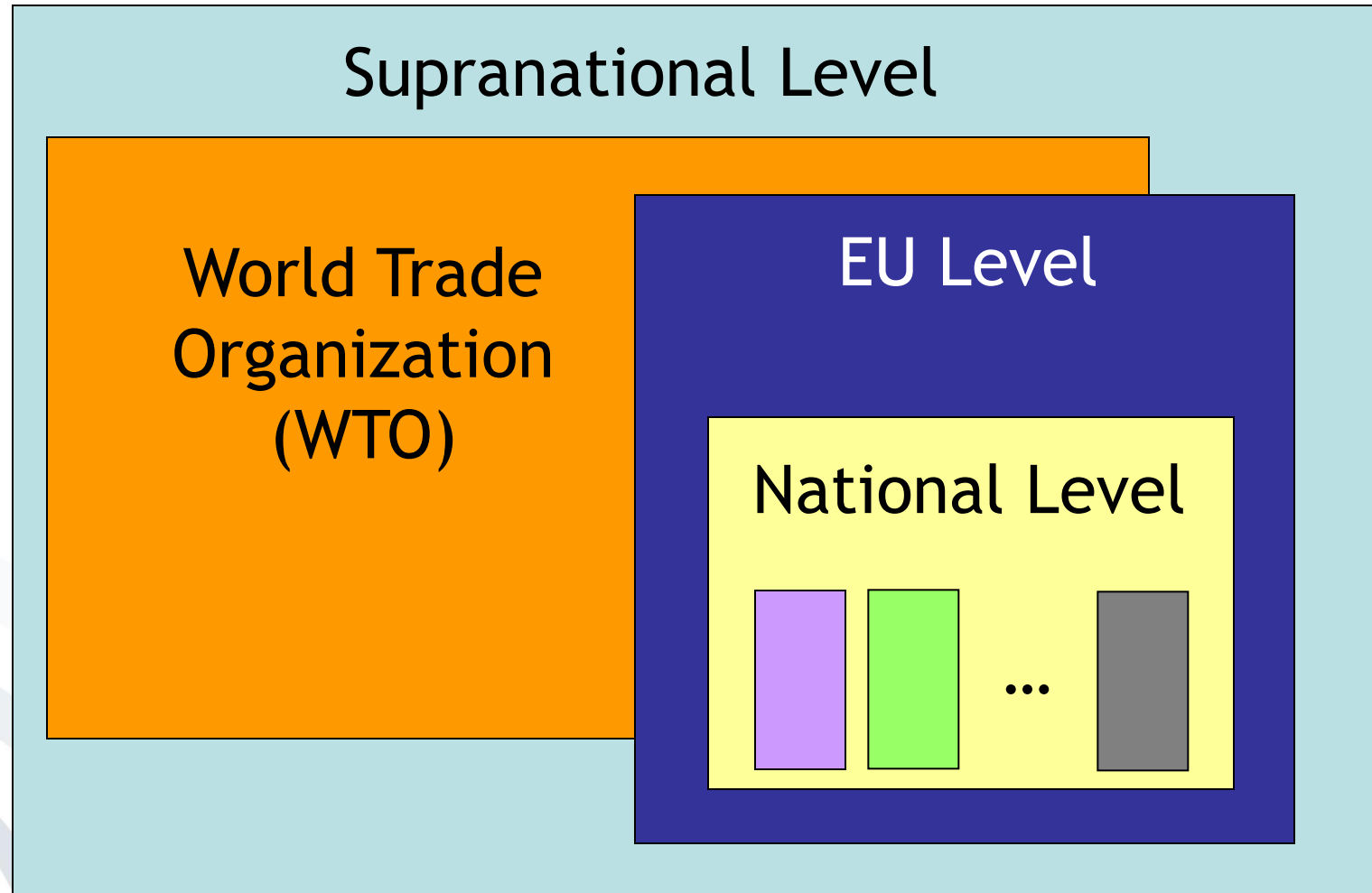
Regulation is

“ ... justified and accepted in case of market failures, i.e. when the market fails to allocate resources in a welfare maximizing way.” [Drüke 1999]

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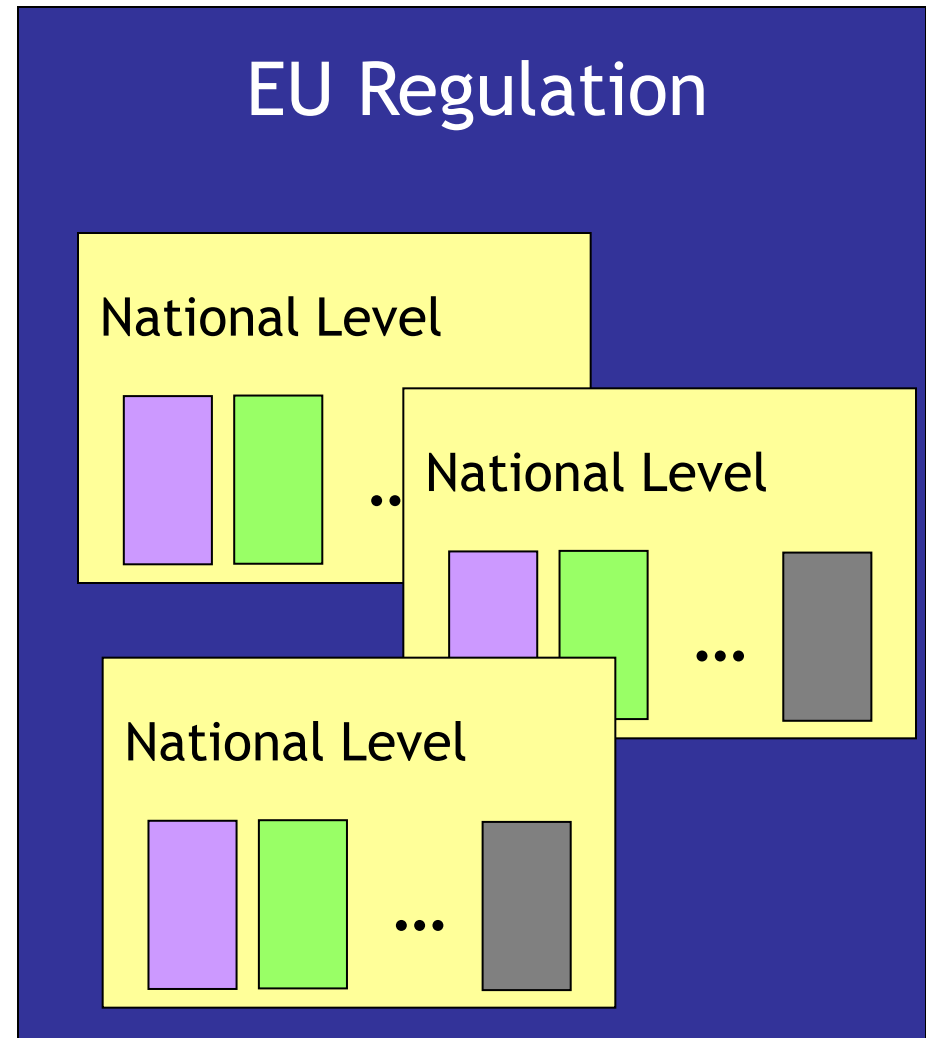
Regulation is done on several levels:

- International agreements (WTO)
- EU regulation
- National regulation
- Regional regulation



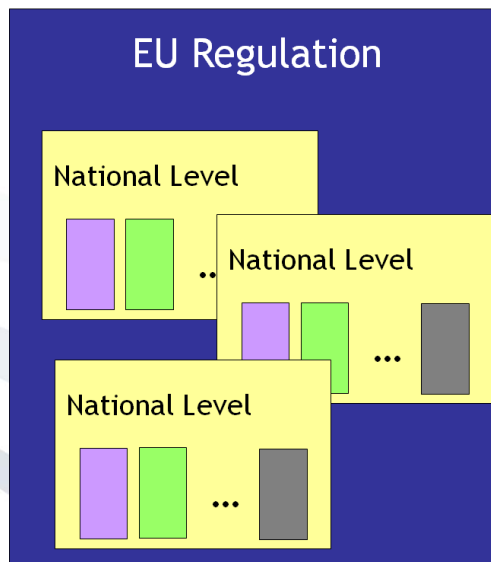
Regulation Levels in Europe - Selected Examples (1)

- Within the EU:
national regulation and
EU regulation
 - National Sovereignty:
multitude of regulations
- ➔ The French military
claimed Bluetooth
frequencies:
- Market failure?
 - Regulation failure?
 - Bad luck in
standardization?



Regulation Levels in Europe - Selected Examples (2)

- ➔ Regulation (“Verordnung”) 717/2007 of the European Parliament and of the Council on *Roaming on Public Mobile Telephone Networks within the Community*



Article 1

Subject matter and scope

1. This Regulation introduces a common approach to ensuring that users of public mobile telephone networks when traveling within the Community do not pay excessive prices for Community-wide roaming services when making calls and receiving calls, thereby contributing to the smooth functioning of the internal market while achieving a high level of consumer protection, safeguarding competition between mobile operators and preserving both incentives for innovation and consumer choice. It lays down rules on the charges that may be levied by mobile operators for the provision of international roaming services for voice calls originating and terminating within the Community and applies both to charges levied between network operators at wholesale level and to charges levied by home providers at retail level.

[REGULATION 717/2007]

- Regulation 717/2007 was claimed by mobile telephone operators to be not valid.
- The European Court of Justice (“EuGH”) decided in June 2010 that
 - *“the object of the regulation is indeed to improve the conditions for the functioning of the internal market and that it **could be adopted on the basis of Article 95 EC.**”*
 - *“maximum retail charges **could be considered to be appropriate and necessary** for the purpose of protecting consumers against high levels of charges.”*



[Court of Justice of the European Union 2010]

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- Was developed over a long period of time
- Some developments can only be explained historically.
- Separation of technical services and content services, e.g.:
 - Telephone networks
 - Mobile radio networks
 - Radio amateur
 - Broadcasting

- Regulation of:
 - Price,
 - Access,
 - Technology,
 - Distribution, and
 - Availability.
- Competence split between federal authorities and state authorities
 - Federal Ministry of Economics,
 - Federal state media institutions,
 - Data protection authorities,
 - Authorities for the protection of minors, and
 - other authorities.

- ➡ Intransparent mesh of competencies
- ➡ One resolution approach:
1997: synchronization and assimilation of
Mediendienstestaatsvertrag (State Treaty for Media
Services) and Informations- und
Kommunikationsdienstegesetz (ICT Law)

Means	Responsibility
Law	Parliament (“Bundestag”)
Ordinance	Government
Ordinance / Decree	Ministry / Department
State treaty	State governments
Licensing	Authority (e.g. Federal Network Agency)
Supervision	

	Technical Services	Content Services		
Service Category	Telecommunication Services	Voice Telephony and Annex Services	Tele & Media Services	Broadcast
Relevant Law	Telekommunikations-gesetz (TKG)	Telekommunika-tionsgesetz (TKG)	Telemediengesetz (TMG)	Rundfunkstaatsvertrag (RSTV)
Holder of Competence	Federation (Bund)	Federation (Bund)	Federation (Bund)	Federal states
Regulation Measures	Limited economic freedom: universal service duty, tariff regulation, control competence of the federal state's media institutes over the broadband cable network, mobile number portability	Limited economic freedom: license obligation; ex-ante tariff control	Economic freedom: no mandatory admission and registration, no supervision	No economic freedom; broadcast freedom (Rundfunkfreiheit) as institution; dual system
Specific Responsible Institutions	Federal Network Agency	Federal Network Agency	none	Supervision bodies of the broadcasting institutions; state media institutions as well as KEF and KEK

	Telecommunication Services	Tele Services	Media Services	Broadcast
Variety, Chances of Communication	Federal Network Agency “Bundesnetz-agentur”			Federal State Media Institutes
Access Control		Federal Cartel Office		“Landesmedien-anstalt”
Concentration Control				KEK ¹ /KDLM ²
Regulation of Promotion and Advertisements, Miscellaneous			Institutions according to § 18 I 3 MDStV	Federal State Media Institutes
Protection of Minors	not explicitly mentioned: BPjS (Prot. of minors)		Institutions according to § 18 I 1 MDStV	
Data Protection	Federal Network Agency Data Protection Offices according to § 38 BDSG		Institutions according to § 18 I 3 MDStV	Institutions according to Federal States law

1) Kommission zur Ermittlung der Konzentration im Medienbereich

2) KDLM: Konferenz der Direktoren der Landesmedienanstalten

Since 1987	State Treaty on Broadcasting (“Rundfunkstaatsvertrag” (RStV))
Since 1996	„Telekommunikationsgesetz“ (ICT Law, TKG), “Telekommunikationsüberwachungsverordnung (TKÜV)”
1997-2007	“Mediendienstestaatsvertrag (MDstV)” and “Informations- und Kommunikationsdienste-Gesetz (IuKDG)” (including “Teledienstegesetz (TDG)” and “Teledienstedatenschutzgesetz (TDDSG)”)
2000-2004	„Telekommunikations-Datenschutz-Verordnung (TDSV)”
Since 2007	“Telemediengesetz (TMG)”

- International agreements on satellite communications
- ... further regulations as to criminal prosecution, basic rights, consumer protection (“Konsumentenschutz”).

- License-free vs. license obligation
- Licenses have to be assigned before operations start, i.e. there are preconditions for a license to be assigned
- License-holders also have to fulfil ongoing obligations, in order to retain the license.

Examples for license preconditions

- IT security and data protection concept
- Proof of technical competence

Examples for continuous license obligations

- Employment of reliable personnel
- Provision of emergency numbers
- Support of police and intelligence services at e.g. law enforcement, criminal prosecution and protection of the constitution.

The “Regulatory Authority” and “its” Ministry

- Federal Ministry of Economics and Technology “BMWi”
 - Includes former post ministry
 - ➔ responsible for post and telecommunications
 - Supervision of “Regulatory Authority” Federal Network Agency (FNA)



Bundesministerium
für Wirtschaft
und Technologie

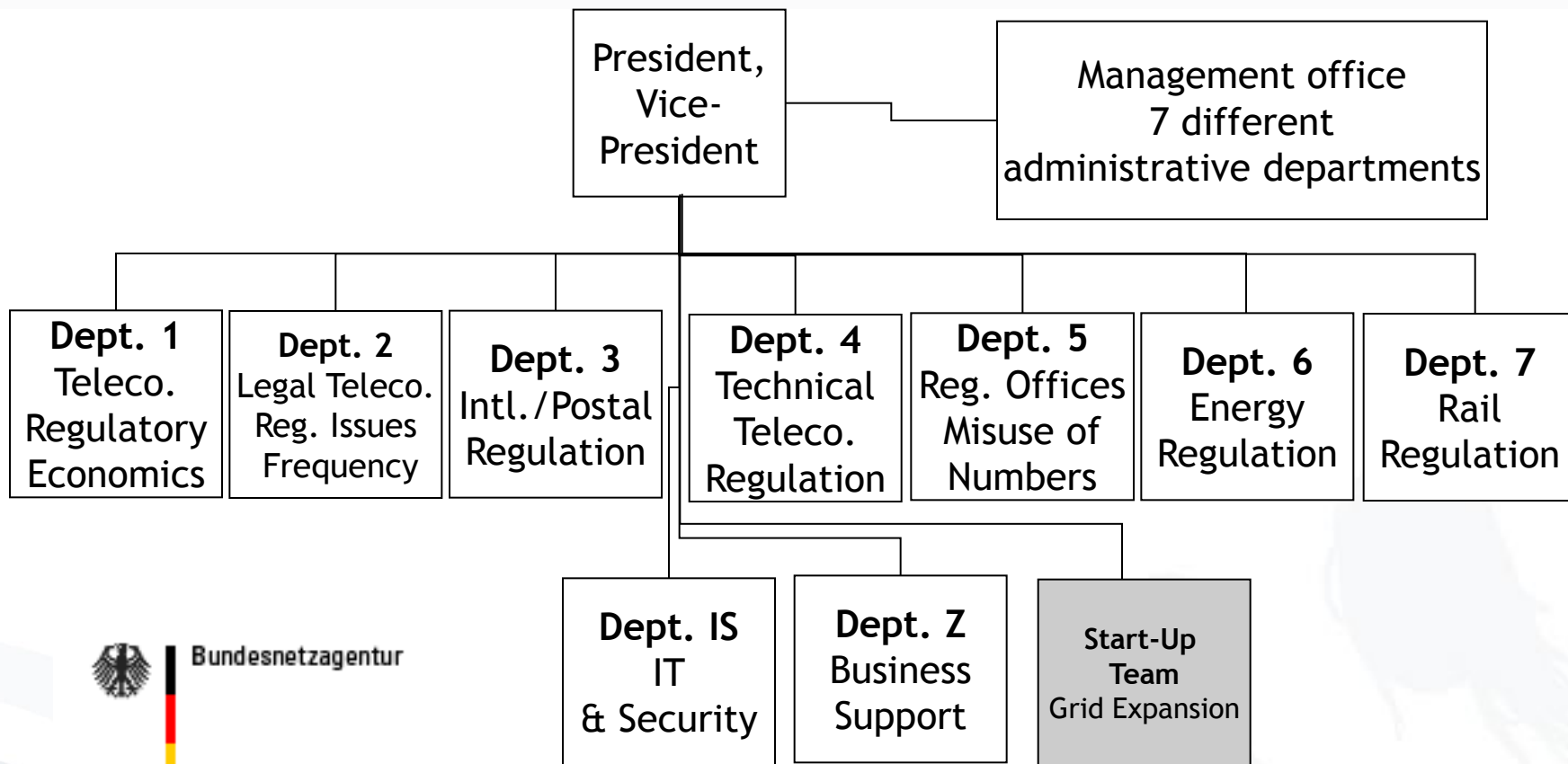
The “Regulatory Authority”

- Federal Network Agency (“Bundesnetzagentur”; “BNetzA”, FNA)
 - “Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway”: separate higher federal authority within the scope of business of the Federal Ministry of Economics and Technology.
 - According to TKG (1996) established as an authority under the supervision of the Ministry of Economics
 - Emerged from Federal Ministry of Post and Telecommunications (Bundesministerium für Post und Telekommunikation (BMPT)) and the Federal Bureau of Post and Telecommunications (Bundesamt für Post und Telekommunikation (BAPT)).
 - Start of operations 1998-01-01 as “Regulierungsbehörde für Telekommunikation und Post” (RegTP)
 - Renamed in 2005-07-13 to the current name

- The task of the “Regulatory Authority” (currently the “Federal Network Agency”) is to develop postal and telecommunications markets by liberalization and deregulation.
- Starting 2005 the Federal Network Agency also supervises the energy industry.
- The “Regulatory Authority” ’s instruments are:
 - Information
 - Investigation
 - Sanction authority

Organization Chart of the “Regulatory Authority”

9 Ruling Chambers for several Regulation areas



Bundesnetzagentur

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Within the EU:

- Greenbook “Convergence in Telecommunications” (1997)
- EU regulation with aligned rules, e.g. on emergency call services and voice and data roaming fees

Within the EU:

- Request for a joint regulatory authority for telecommunications

- Separation of media, services and transmission technology becomes obsolete owing to digitization
 - “Range” is not limited to radio signals since digital services are ubiquitous (⇒ Internet)
 - Merging of infrastructure and services (radio as part of the infrastructure, content as service)
- ⇒ Hence, the historically grown separation of technical services and content services is obsolete.

- 1990: Directive on „Open Network Provision“ (ONP) for telecommunications network access within the EU
- 1996/97: Adaptation of ONP:
 - Data protection rules
 - Licensing
 - ONP-revision (e.g. addition of topics like preselection, call-by-call, number portability)
 - Guidelines for user devices
 - National implementation had to happen swiftly.
- 2002: Electronic Communications Networks (ECNS) Regulatory Framework
- 2006/07: Review of the EU Regulatory Framework for electronic communications networks and services (ECNS)

mobile business 2002 Electronic Communications Networks (ECNS) Regulatory Framework

Framework
Directive
(Art. 95)

Authorisation Directive

Access & Interconnection
Directive

Users' Rights Directive

Data Protection Directive

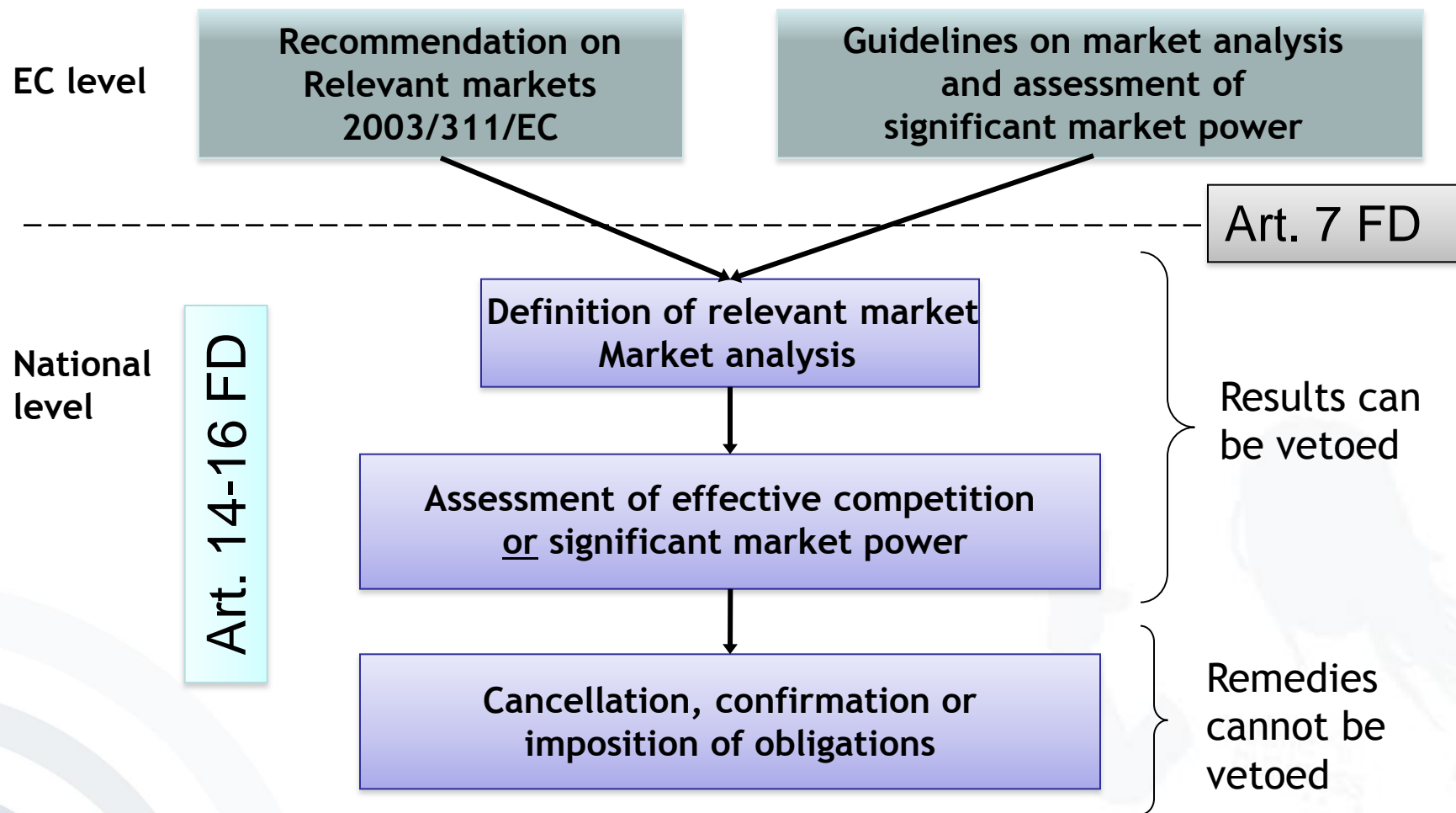
Liberalisation
Directive
(Art. 86)

Spectrum
Decision
(Art. 95)

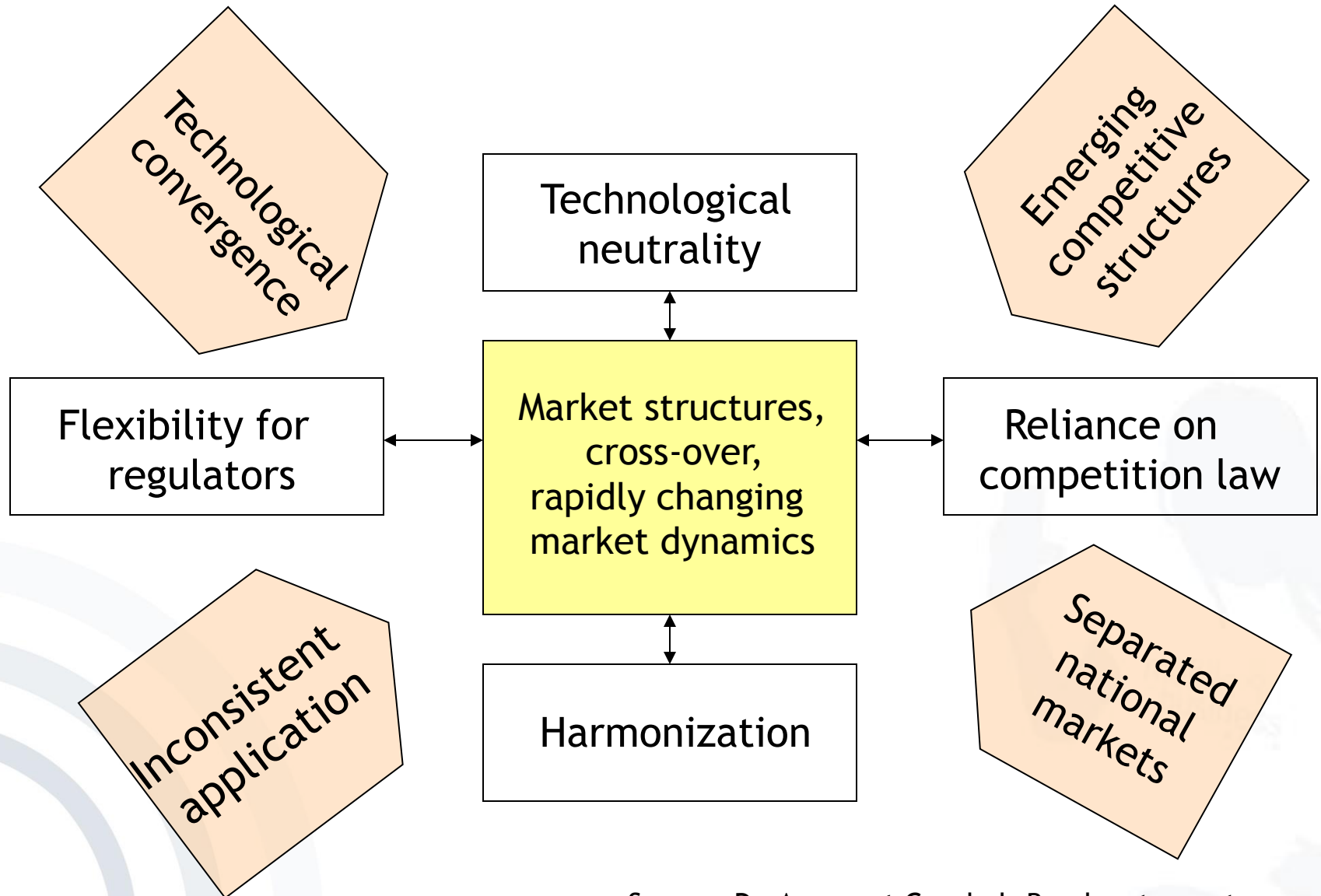
Guidelines on
SMP

Recommendation on
relevant markets

Recommendation
on Article 7



➔ Remedy should be effective → solve the lack of competition
Important role of national regulatory authorities (NRA) to choose the appropriate remedy



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- Spectrum allocation for radio and television broadcasting (DVB-T)
- Spectrum allocation for mobile communications
- Frequency Allocation
- License awarding
 - Mobile communications
 - Broadcasting services
 - Electronic signatures
 - ...
- Digital / electronic signature
- Countermeasures against illegal diallers

Administration by state media institutions

- Spectrum allocation by tendering
- Public and private broadcasting corporations
- Analogue and digital transmission via cable and broadcasting
- Not responsible for Internet television and Internet radio

- Administration of radio frequencies and issuing of licenses by Federal Network Agency.
- Determining frequency bands
- Administration of licenses for mobile network operation
- Recent licenses were auctioned.

Most recent (May 2010):

Frequency Allocation for high-speed wireless data transfer (800 MHz, 1,8 GHz, 2 GHz, 2,6 GHz)

- Auction amounted to tremendous license costs
- Strict license obligations as to
 - Network construction
 - Coverage
 - Investments
- Dispute over division between federal government and states
- Is UMTS telephony, data service, or broadcast?

- Adoption of the German Signature Act (Deutsches Signaturgesetz (SigG)) and Signature Ordinance (Signaturverordnung (SigV)) 1997
 - Trust center control
 - Security related prerequisites
- EU directive 1999/93/EC
- 2001 Adaptation of SigG and SigV according to EU directive 1999/93/EC
- Further changes made to SigG in 2005, 2007 and 2009.

Council Directive 1990/387/EEC of 28th June 1990 on the establishment of the Internal Market for telecommunications services through the implementation of Open Network Provision. OJ L192, 24.7.90, http://europa.eu.int/information_society/topics/telecoms/regulatory/98_regpack/text_en.htm

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