

Key principles of market regulation in telecommunications

*Hans Bakker,
director of Regulaid –The Netherlands*



Why does the telecommunications market need special regulation?

Electronic communications are key for economic growth and competitiveness of any national economy

Liberalization of markets is proven best way forward – governments do not have the knowledge or the capital to do the job

By now through experience worldwide there is a clear set of best practice principles for liberalization that countries should follow

Because:

- High barriers to entry for reasons of history, technology and capital expenditure
- It is the only market where companies can only reach end users through the networks of their competitors
- Competitors need to compete and cooperate at the same time: high risk of anticompetitive behaviour



During the workshop, separate presentations on various specific issues of regulatory best practice (institutions, market power and remedies, infrastructure sharing, roaming, access and interconnection, spectrum, universal service e.a.)

.

In this presentation:

- Ex ante and ex post regulation
- How to make a dynamic regulation mechanism
- Top ten of key best practice components to be enshrined in law
- Top three key principles of best practice in economic regulation



Why not use competition law?

Ex ante sector regulation:

- Aiming to *prevent/ remedy* (ab)use of) dominance and create level playing field
- Able to provide up front regulatory certainty and predictability for crucial transition phase
- Predetermined rules enable swift interventions

Ex post Competition Law:

- Aiming to *punish* abuse of dominance in individual cases after they occur
- Case by case
- Lengthy legal fights
- Outcome applies to one case only, although deterrence

Ex ante regulation and Competition Law complementary

Competition Law is catch-all and has far reaching powers of investigation and sanctions

Competition Law also deals with merger control and forbidden collusion

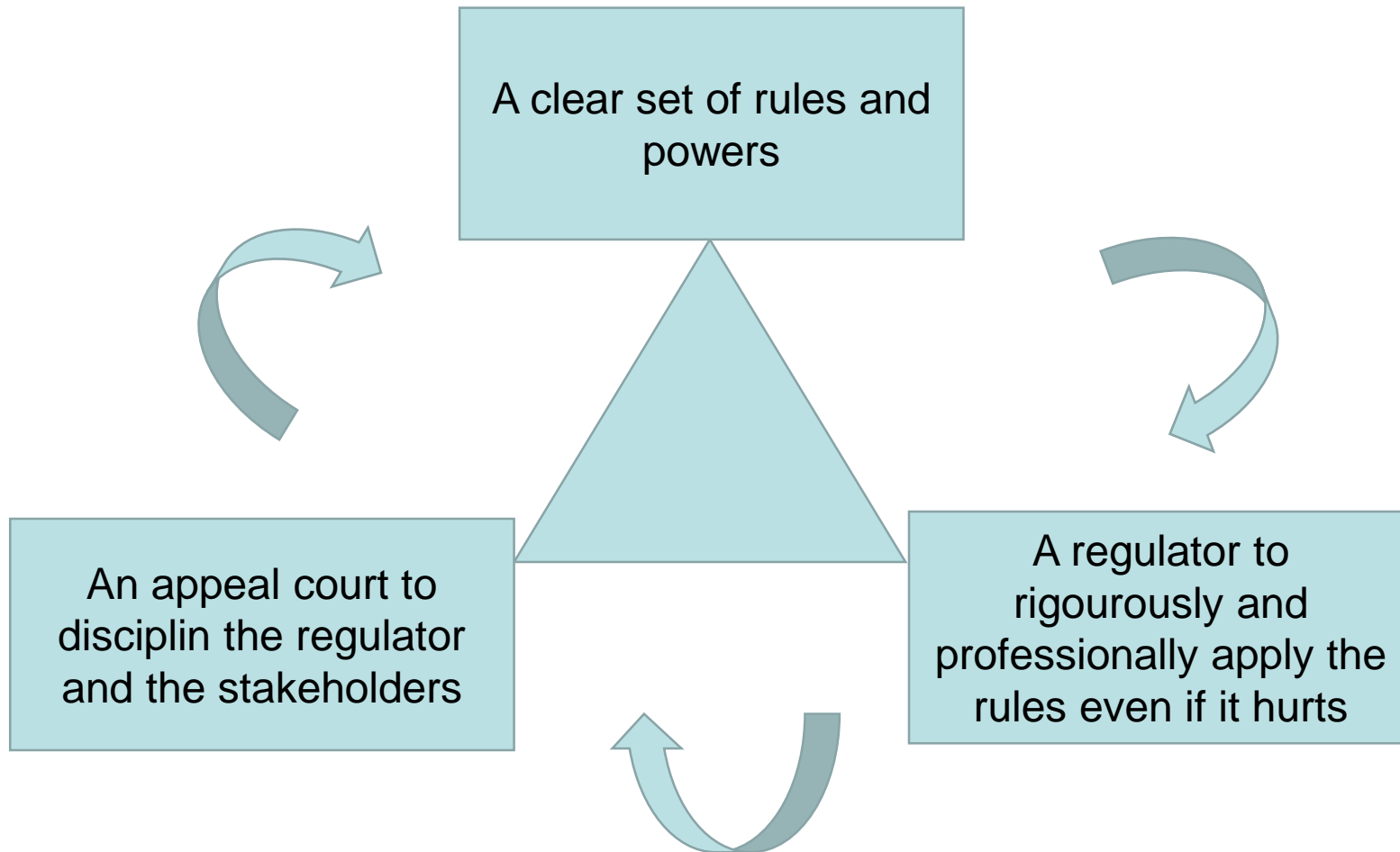
Competition Authorities have good reason to keep an eye on the precedents created by sector regulators

Various models of cooperation:

- *NRA deals with ex ante regulation only, cooperation protocol with NCA for consultations and referrals*
- *NRA deals exclusively with both ex ante and ex post in the sector*
- *Concurrent powers: both authorities empowered but NRA takes precedence in the sector with back office coordination*



How to make a dynamic regulation mechanism



How to make a dynamic regulation mechanism

A clear set of rules and powers

- Legislation for principles and powers, details in regulations and rulings
- Up front certainty and clarity on main rights and obligations and criteria for their application
 - Basis for appeals of stakeholders against regulatory decisions
 - Parameters that change with time and circumstances delegated to regulator

regulator to
pursue and
conditionally apply the
even if it hurts

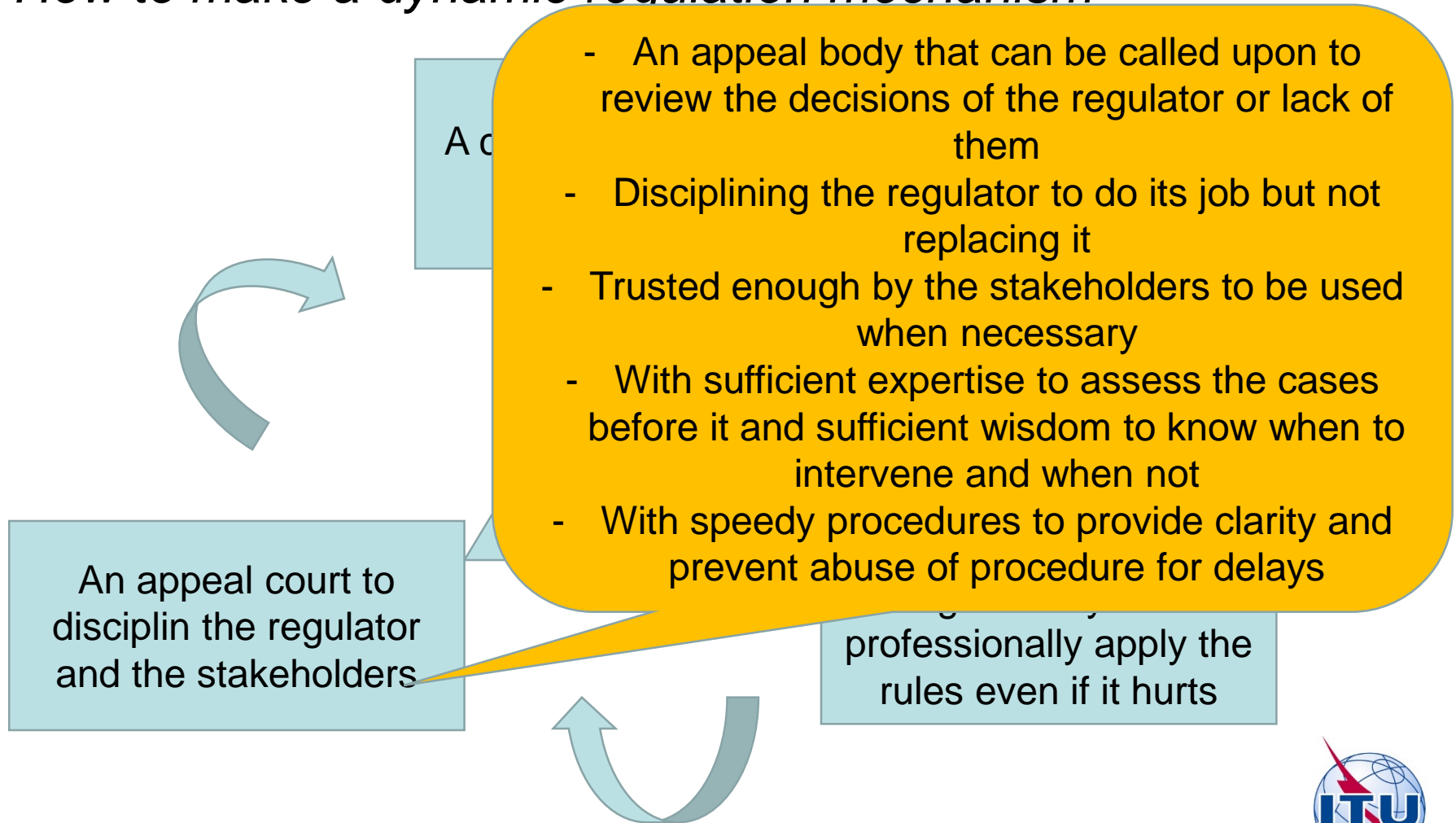
How to make a dynamic regulation mechanism

- A regulator that is independent from stakeholders and from politics
- With sufficient powers to do the job (investigate, rule and enforce)
- With sufficient permanent in-house staff and sufficient budget and freedom to obtain temporary support
- With a professional attitude and courage to do what must be done even when stakes are high and pressures mount up

discipline the regulator
and the stakeholders

A regulator to
rigourously and
professionally apply the
rules even if it hurts

How to make a dynamic regulation mechanism



Top ten of key best practice components to be enshrined in law

1. A clear licensing framework

Preferably licenses only for scarce resources
Predictable and consistently applied
Fees based on administrative costs only



Top ten of key best practice components to be enshrined in law

2. The right of new entrants to roll out their own infrastructure

Right, not duty

Backbone as well as local network

Including the right to establish international gateways



Top ten of key best practice components to be enshrined in law

3. *The right to interconnect with and obtain network access to networks*

Regulated interconnection and access rights

Published and approved Reference Offers

A clear policy on infrastructure sharing rights and obligations



Top ten of key best practice components to be enshrined in law

4. Wholesale services pricing regulation based on up to date costs models

Clear regulatory framework for calculating regulated wholesale services pricing

Up-to-date cost models established in consultation with the industry and publicly available

Index	State Names	S 0	S 1	S 2	S 3	S 4	S 5	S 6	S 7	S 8	S 9	S 10	Sum	Status
0	S 0	0	10	0	0	0	0	0	0	0	0	0	10	Class-1
1	S 1	6	0	10	0	0	0	0	0	0	0	0	16	Class-1
2	S 2	0	12	0	10	0	0	0	0	0	0	0	22	Class-1
3	S 3	0	0	12	0	10	0	0	0	0	0	0	22	Class-1
4	S 4	0	0	0	12	0	10	0	0	0	0	0	22	Class-1
5	S 5	0	0	0	0	12	0	10	0	0	0	0	22	Class-1
6	S 6	0	0	0	0	0	12	0	10	0	0	0	22	Class-1
7	S 7	0	0	0	0	0	0	12	0	10	0	0	22	Class-1
8	S 8	0	0	0	0	0	0	0	12	0	10	0	22	Class-1
9	S 9	0	0	0	0	0	0	0	0	12	0	10	22	Class-1
10	S 10	0	0	0	0	0	0	0	0	0	12	10	22	Class-1
	Sum	6	22	22	22	22	22	22	22	22	22	20		



Top ten of key best practice components to be enshrined in law

5. *A retail price regulation framework that leaves room for competition*

Retail prices only regulated where competition not yet effective and only for dominant operators, not for new entrants

Retail price regulation of dominant operator(s) based on costs, not affordability



Top ten of key best practice components to be enshrined in law

6. *A good regulatory toolbox to fight anticompetitive behavior*

Protection against margin squeeze and predatory pricing

Protection against bundling and tying

Protection against collusive behaviour

Chinese walls to separate wholesale from retail information

Etc...



Top ten of key best practice components to be enshrined in law

7. Universal service funding system fair and transparent

Pay or play

Contributions not excessive

Spending transparent and accountable



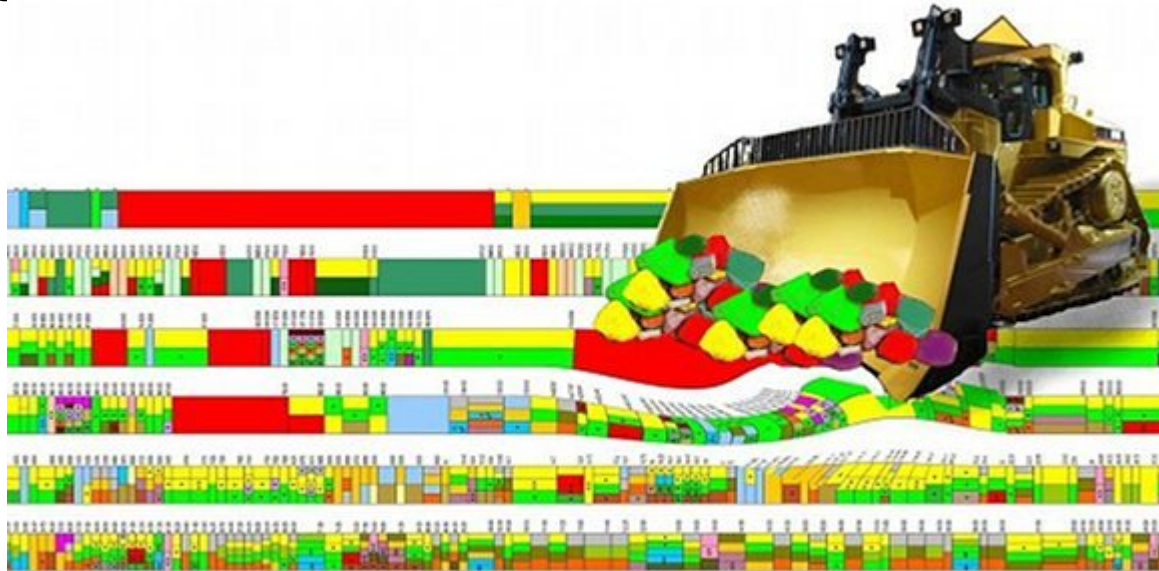
Top ten of key best practice components to be enshrined in law

8. Up to date spectrum policy

Spectrum allocation plan updated regularly to new needs

Outdated spectrum usage reformed

Updates implemented transparently and in consultation with the industry



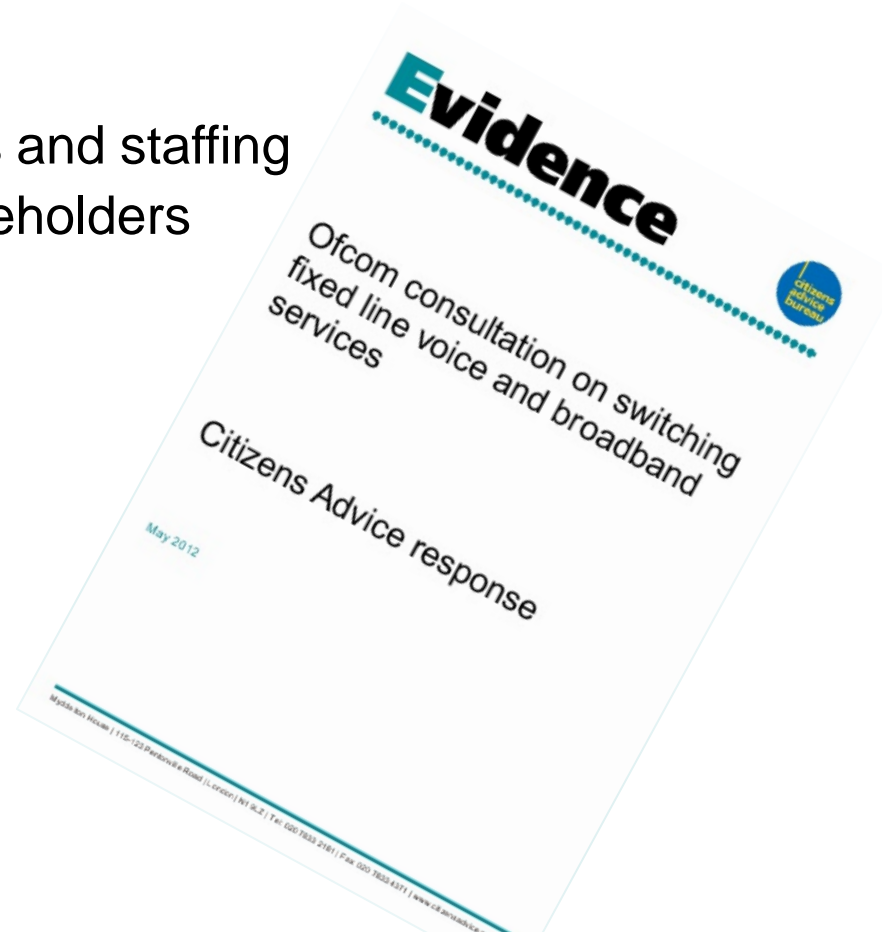
Top ten of key best practice components to be enshrined in law

9. An independent, non-political and professional regulator

Independent and impartial

Sufficient powers, resources and staffing

Intensive dialogue with stakeholders



Top ten of key best practice components to be enshrined in law

10. Accessible, speedy appeal process

Accessible

Reliable and knowledgeable

Speedy



Three key principles of economic regulation

- 1. The best way to enhance competition is to allow completely open access to markets: abandon all licensing except for scarce resources*
 - Only an obligation to register when a company enters the market suffices to collect administrative fees
 - Governments can not assess ‘when the market is saturated’
 - Why generate state revenues from licenses if you can generate it from economic growth



Three key principles of economic regulation

2. The role of regulation is to establish a level playing field

- NOT to treat everyone the same – if the playing field is tilted, obligations will need to be asymmetrical
- NOT to make sure every competitor survives – competition is the survival of the fittest, some may perish and make room for others
- NOT to lower prices at all costs – consumer protection can be the enemy of competition in the long run



Three key principles of economic regulation

3. Regulation should mimick market forces as much as possible

Wholesale regulation before retail regulation:
the best protection of consumers is
the freedom to switch between providers

Ensure that market players' decisions are
based on economic merits, not on artificial
conditions created by regulation

Allow for maverick behaviour from new entrants:
there is no abuse of non-dominance



Thank you

hbakker@regulaid.com

