ITU Regional Workshop on "Competition in Telecommunications Market"
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Market power, Anticompetitive practices and Types of regulatory intervention

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Two types of regulatory interventions:

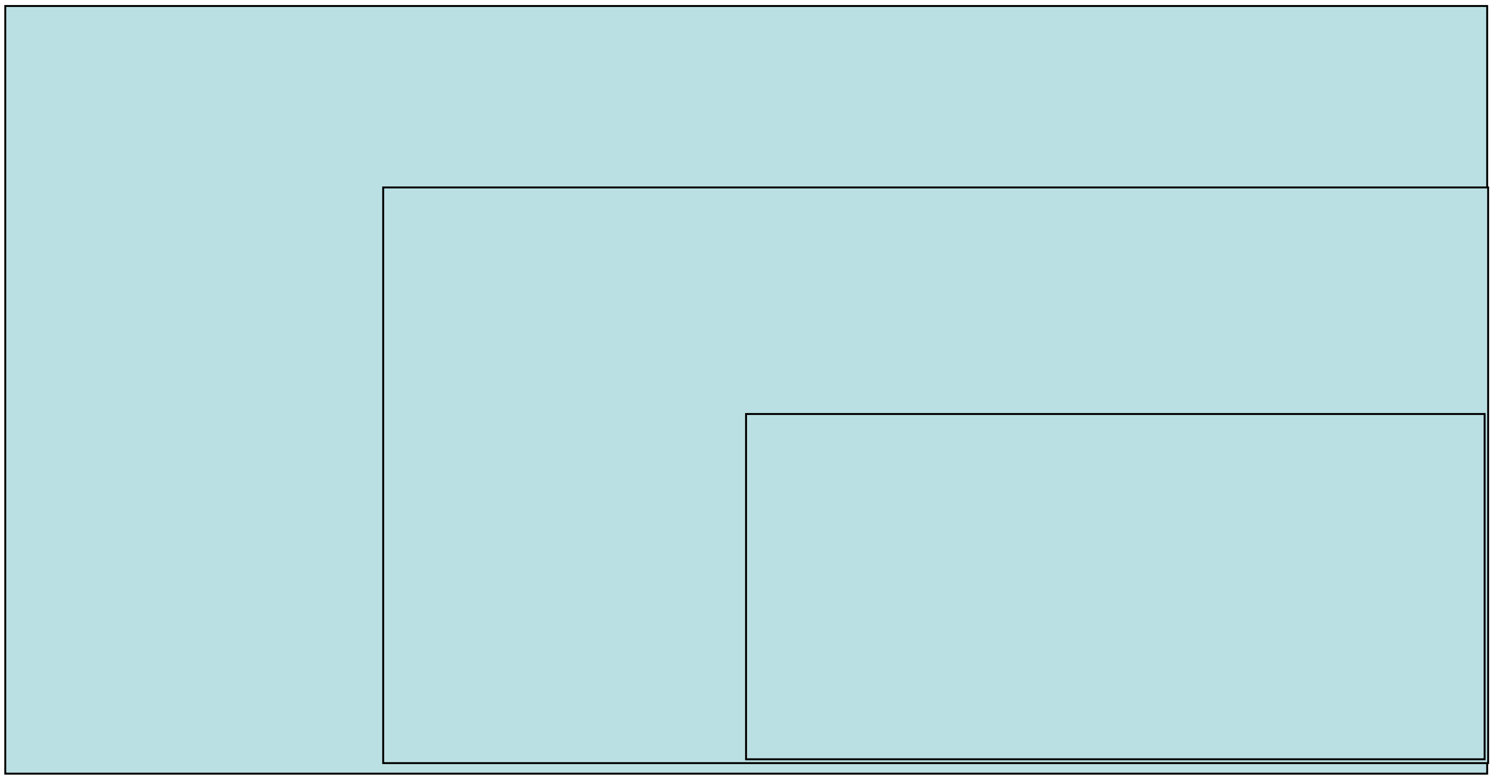
- Asymmetrical obligations imposed on operator with dominance (significant market power/SMP) to establish level playing field

- Other obligations imposed on all operators for the benefit of the functioning of competition and protection of consumers

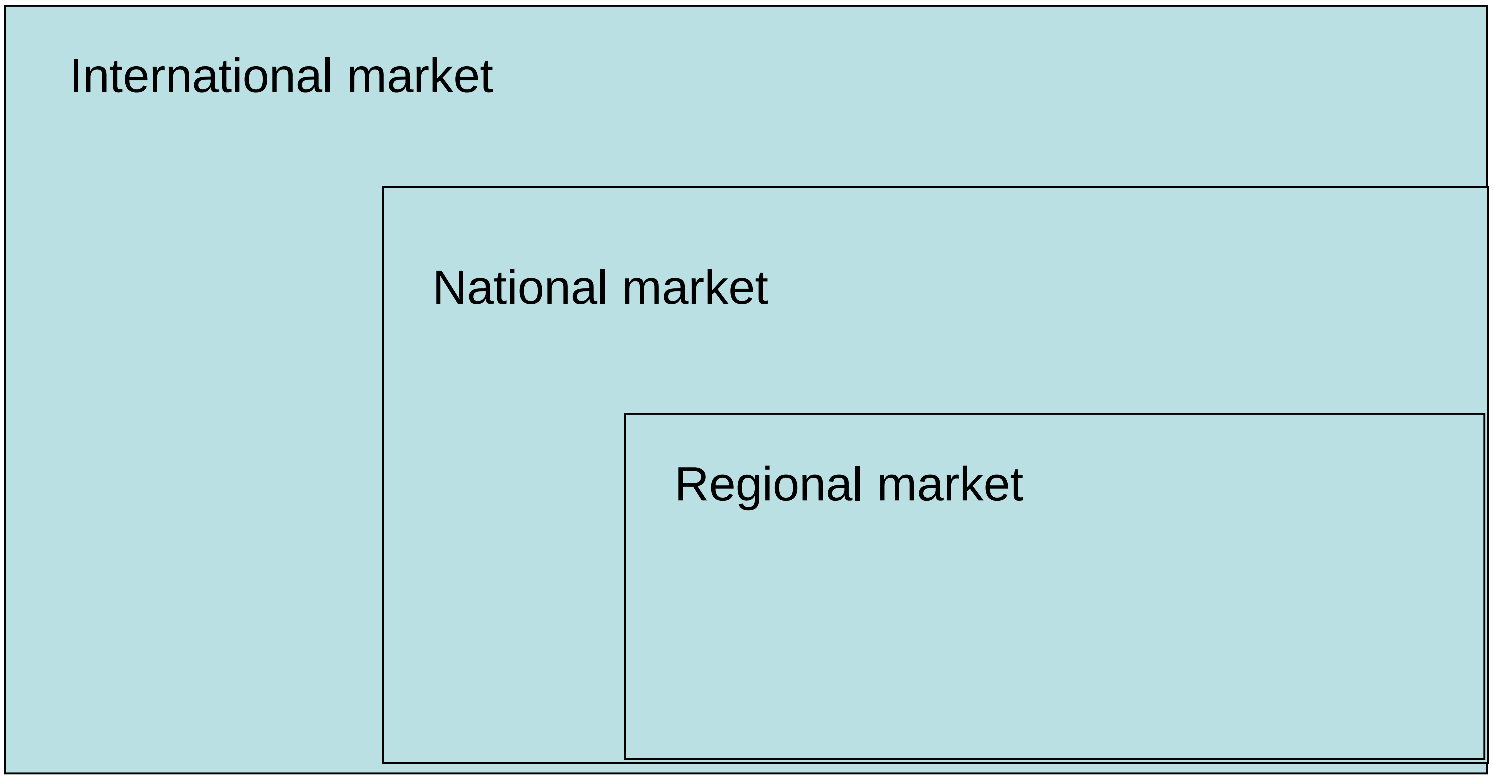
Three types of market dominance:

- Single Dominance Significant Market Power
- Leverage SMP
- Joint dominance

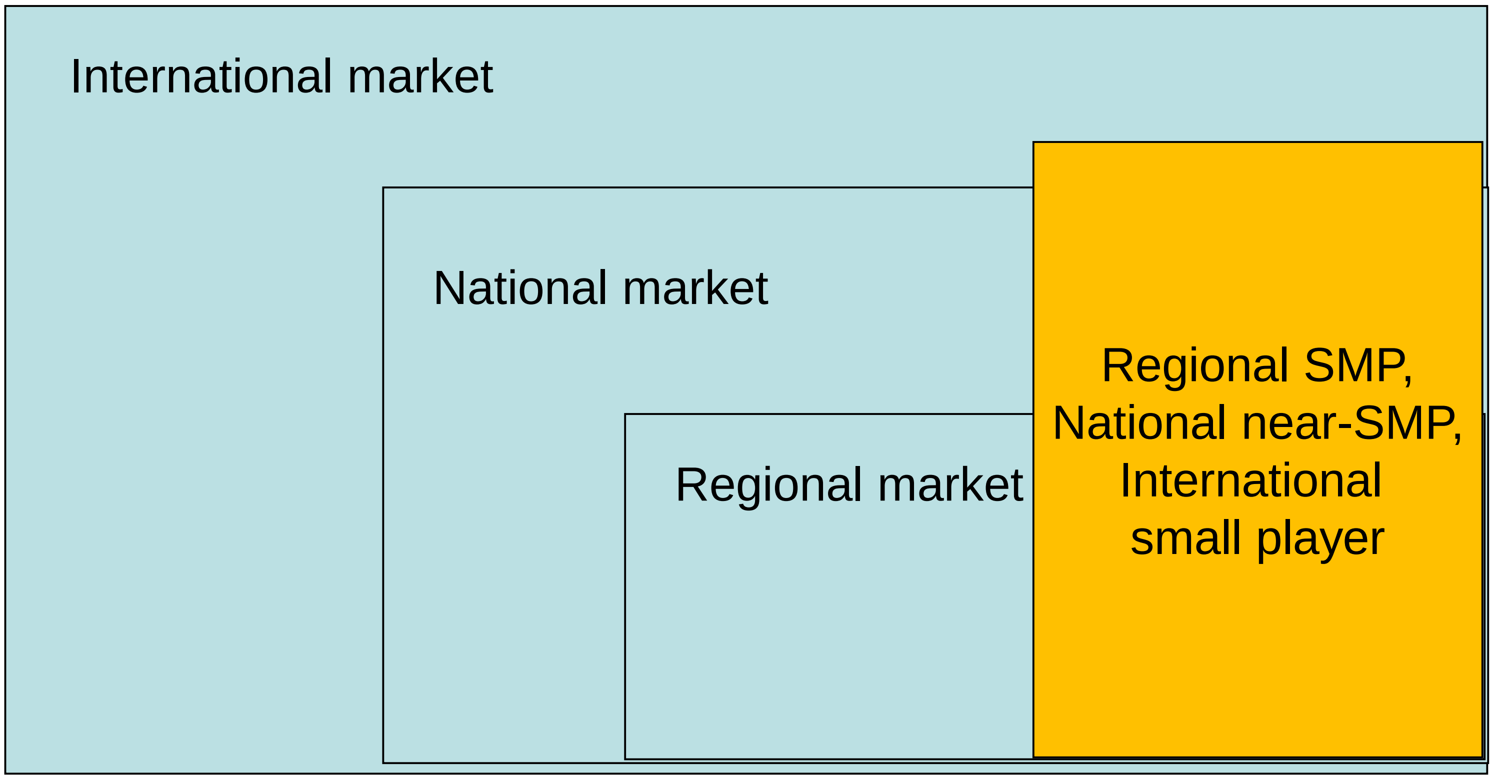
Market delineation determines chance of SMP



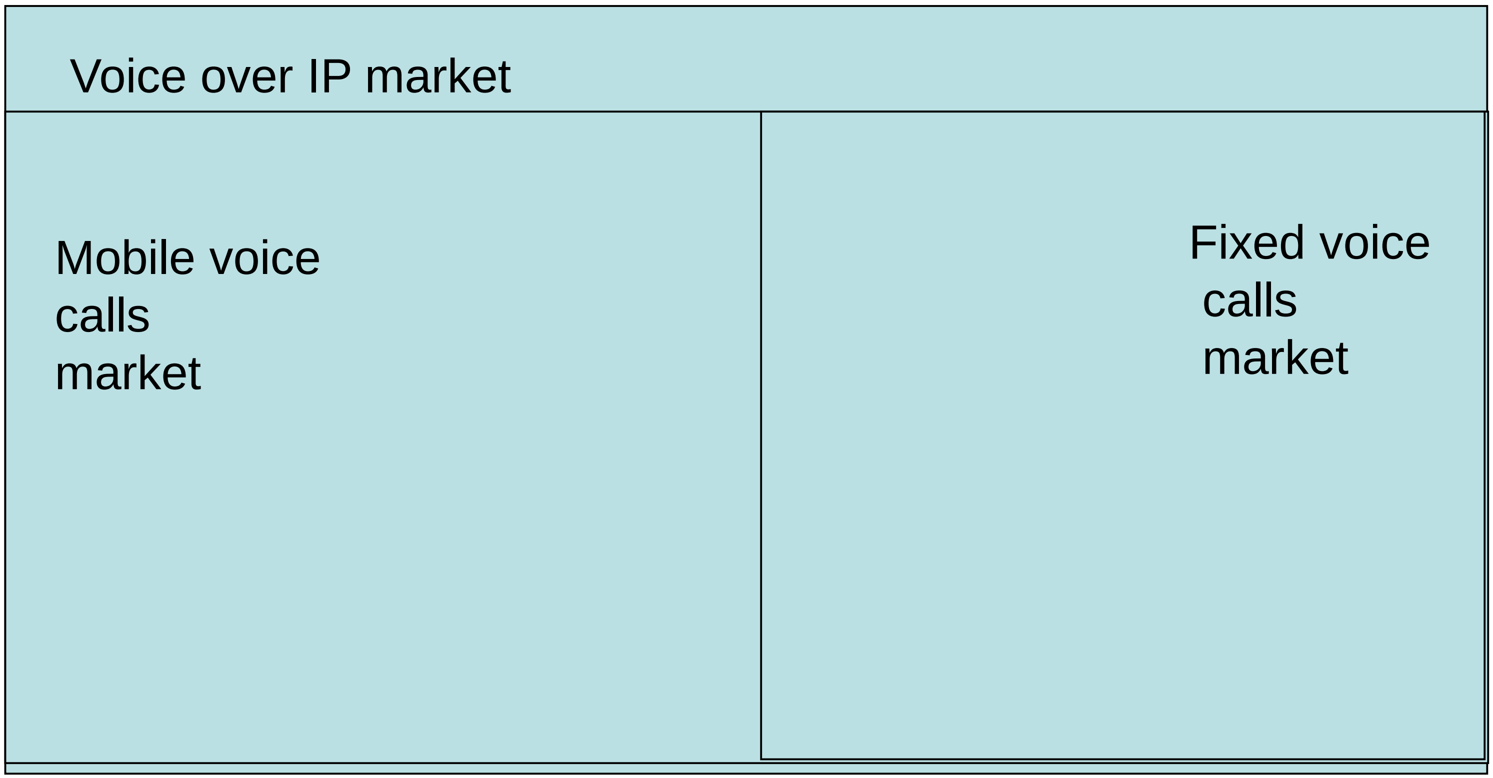
Geographical market



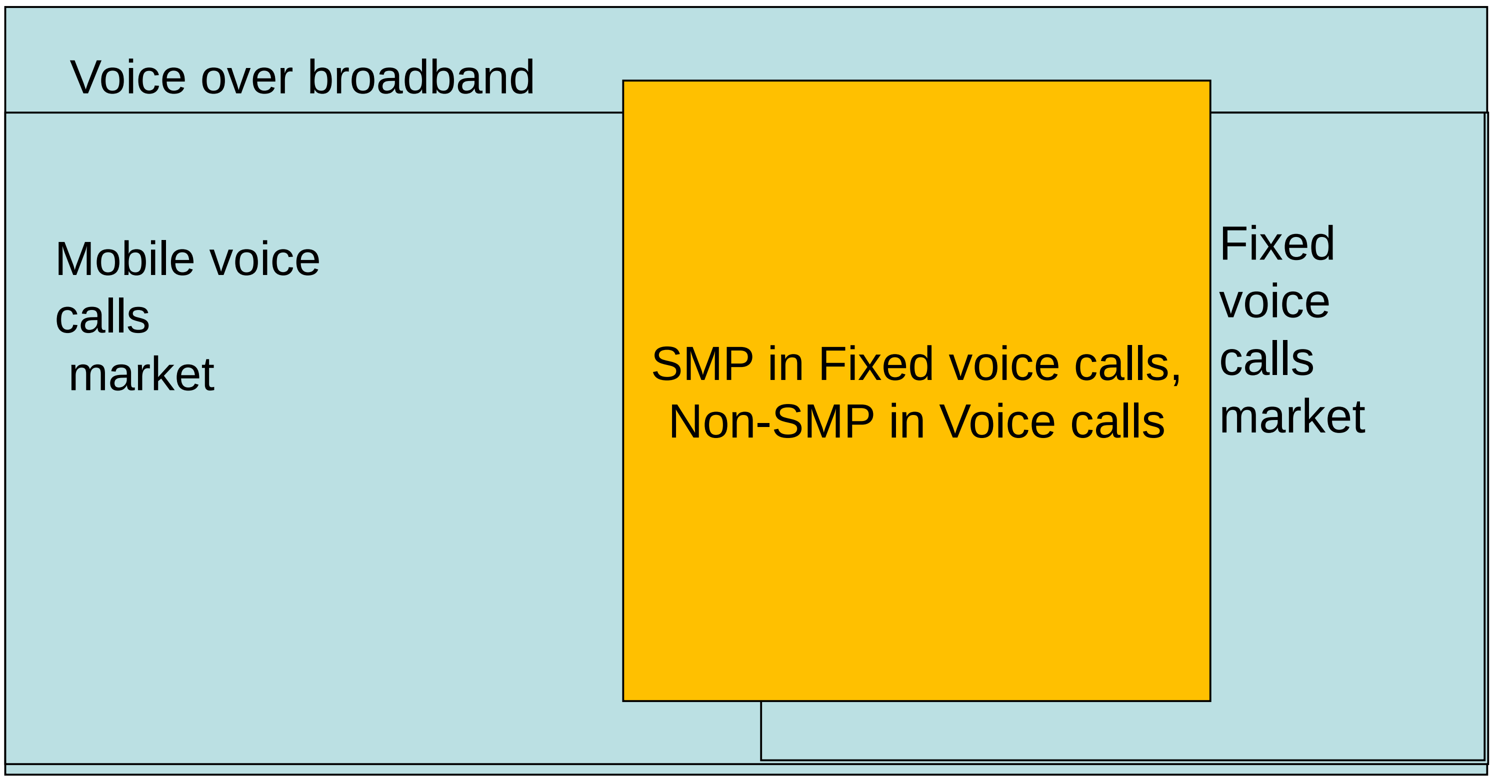
Geographical market



Product market

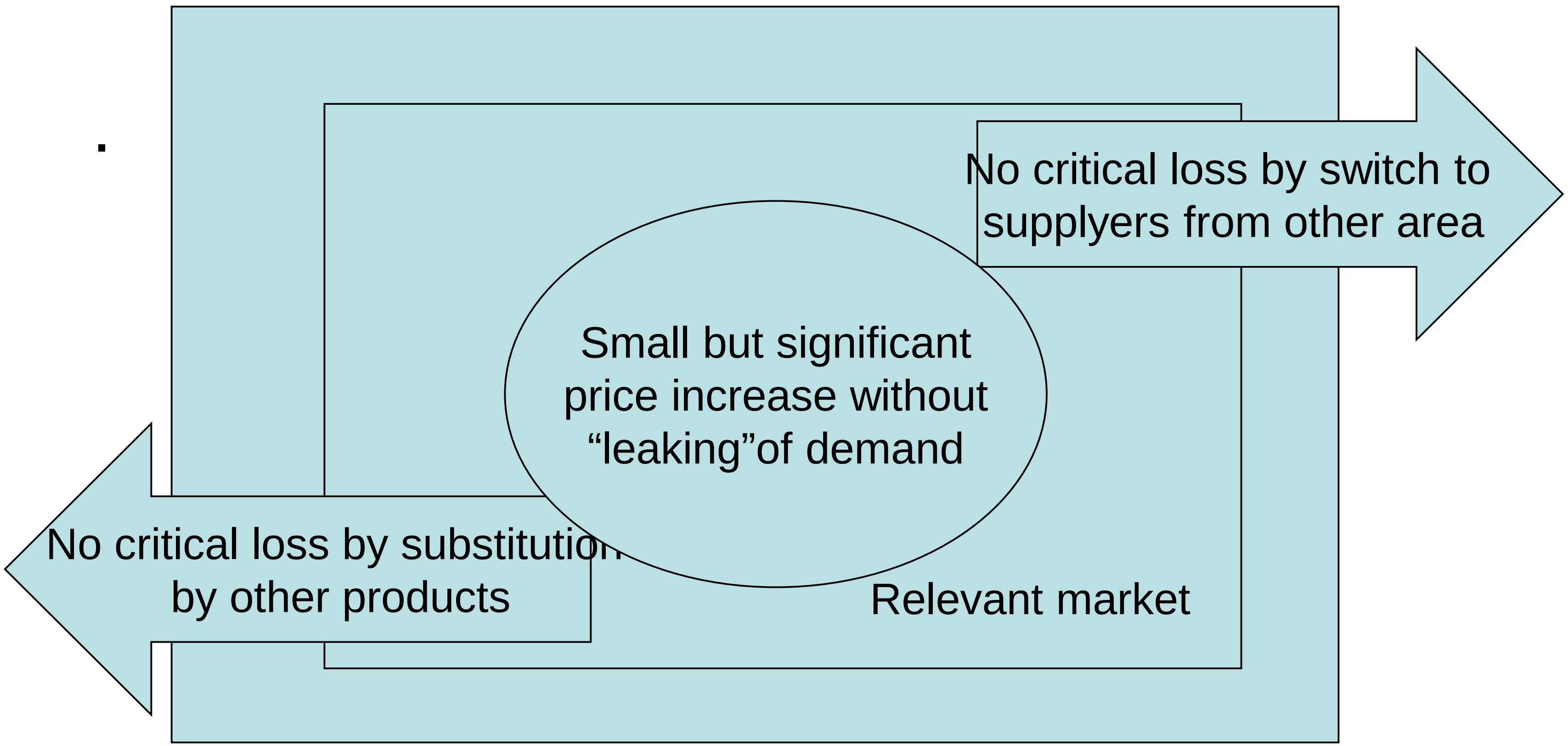


Product market



The SSNIP (Small Significant Non-transitory Increase in Price) test:

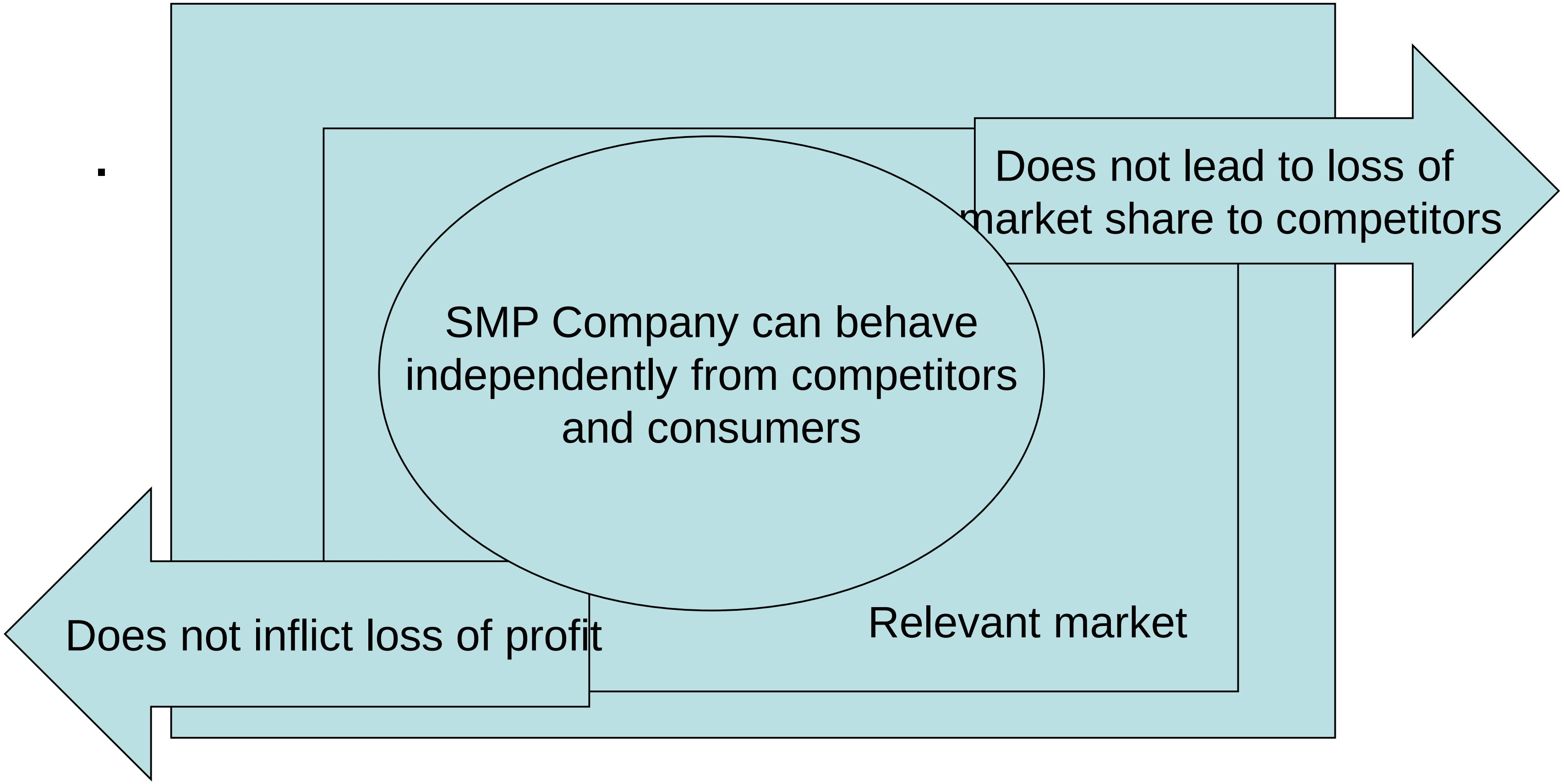
The smallest (group of) product(s) and the smallest geographical area in relation to which sellers, if acting as an individual seller, could profitably impose and sustain a significant and non-transitory price increase


No critical loss by switch to supplyers from other area
Small but significant price increase without “leaking”of demand
No critical loss by substitution by other products
Relevant market

Single dominance/SMP

Competition is not effective is there is one (or more) players “in a position if economic strength, affording it the power to behave to an appreciable extent independently of competitors, consumers and ultimately customers”

Single Dominance SMP



Single dominance/SMP mostly based on market share

Rule of thumb:

- Market share >50 %: presumption of SMP (SMP unless….)
- 25 % < Market share >40 %: possible SMP
- Market share < 25 %: presumption of no SMP (no SMP unless…..)

Examples of other factors to take into consideration (1)

Overall size of undertaking

Control of infrastructure that is not easily duplicated

High barriers to new market entry

Technology advantages

Low countervailing buying power

Privileged access to capital

Ability to offer bundling of products

Economies of scale and scope

Vertical integration

Highly developed distribution/sales network

Absence of potential competition

Barriers to market expansion and to switching

Persistent excessive pricing ability

Examples of other factors to take into consideration (2)

Evidence of previous anticompetitive behaviour

No active competition behaviour in marketing, R&D

Lack of transparency for consumers

Price trends

Based on such factors

- *Companies with high market share may not have SMP (e.g. provider in business market dealing with strong countervailing buying power)*
- *Companies with low market share may have SMP (e.g. if they control essential infrastructure)*

Leverage SMP

- If a company has SMP in one market, it may also be deemed to have SMP in a closely related market if the links between the markets allow for leveraging of market power from one market to another.

- E.g. relevant for upstream – downstream markets (wholesale-retail, network-services) and for e.g. multi-service untility companies.

Joint dominance (1)

Two or more jointly dominant players due to market structure that induces *tacit* collusion (co-ordinated behaviour *without explicit agreement*) leading to abuse of joint dominance.

Unlike the case of cartells there is no need of evidence of agreement or malicious abuse. Due to the market characteristics the collusive behaviour can be evidently profitable and rational.

Joint dominance (2)

Joint dominance indicators:

- Market concentration:
  - *small number of competitors*
- Transparency:
  - *ability to know competitors behaviour*
- Mature product
  - *not easy to enter market*
- Homogeneous product:
  - *collusion relatively easy*
- Stagnant growth on demand side:
  - *if growth, more agressive competition for higher returns*

Joint dominance (3)

Joint dominance indicators (cont’d):

- Similar cost structure of operators:
  - *Similar profit levels at given price*
- Low elasticity of demand
  - *No incentive to undercut competitors prices*
- High entry barriers
  - *Therefore no threat from potential new entrants*
- Lack of technological innovation
- Lack of countervailing buying power
- Informal links between providers

Likely collective interest stronger than likely gains of individual competitive behaviour

EU categories of regulatory interventions (remedies)
In climbing order of intrusiveness:

1. Transparency
2. Non-discrimination
3. Accounting separation
4. Access obligations
5. Price control and accounting obligations

Abusive behaviour e.g.	**Key Transparency remedies**
Monopolize knowledge of network characteristics Refusal to negotiate, slow down negotiations	Obligation to publish a Reference Offer with sufficiently unbundled services (subject to approval of NRA) with specified information on technology and network characteristics, terms and conditions, and pricing (often in support of access obligations)
Excessive pricing because of inability of consumers to compare offers	Obligation to publish offers in a comparable format

Abusive behaviour e.g.	**Key Non-discrimination remedies**
Margin squeeze: higher wholesale charges to competitors than to vertically integrated retail services	Offer equal/equivalent services, prices and information to competitor companies as available to vertically integrated service provision
Discriminatory, preferential treatment of retail customers	Obligation to provide retail services to all retail customers on equal basis
Discounts for on-net calls by bigger companies	Maximum difference of on-net and off-net call charges

Abusive behaviour e.g.

Vertically integrated company cross-subsidizes retail prices with wholesale revenues

Cross subsidy from regulated SMP market sales to unregulated competitive market

Key Accounting separation remedies

Separate accounts for wholesale and retail divisions

Separate accounts for regulated products/services and unregulated products/services

Subject to approval and even publication

Regulatory accounts often support non-discrimination and price regulation remedies

Abusive behaviour e.g.

Abuse of control of non-replicable network facilities

Key Access remedies

Obligation to comply to any reasonable request for access to network services or resale of wholesale services

- Terminating and originating of services to/from other networks or service providers
- Resale of wholesale services e.g. wholesale line rental
- Co-location, facility sharing, access to network intelligence
- Operational support systems e.g. billing

Abusive behaviour e.g.

- Excessive wholesale pricing
- Margin squeeze
- Excessive retail pricing
- Predatory pricing

Key Pricing remedies

- Pricing restrictions varying between retail-minus and cost-oriented pricing
- Wholesale price floor or margin squeeze test
- Pricing restrictions based on benchmarking or cost-orientation; price caps
- Retail price floor, non-discrimination or margin squeeze test

Types of regulatory interventions irrespective of market dominance, imposing obligations on all market players to ensure inter alia:

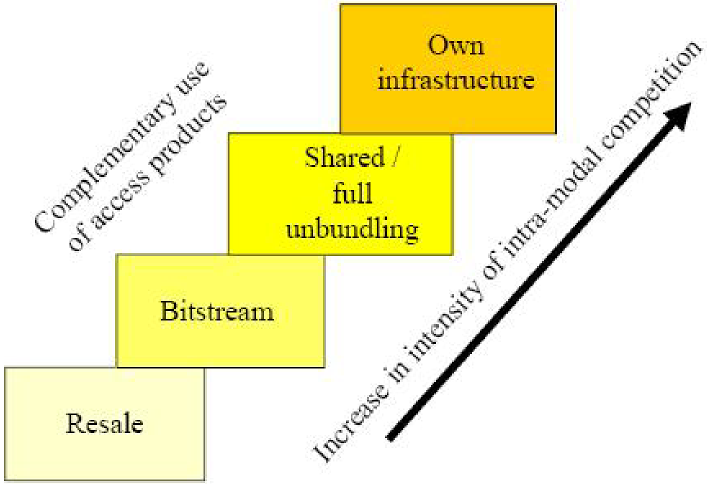
- the right of consumers to a specified contract
- price transparency
- publication of quality of service information (ETSI standards)
- right to entry in directory
- availability of directory services
- free access to emergency services
- provision of number portability (fixed or mobile)

Key best practice principles in applying remedies:

Wholesale market remedies before retail market regulation – let competition do the work

Proportionate remedies – least disruptive option to solve a competition problem

Remedies must allow for / stimulate climbing the “ladder of investment”



Joint dominance remedy

The remedy for a situation of joint dominance is the introduction of a new competitor forcing the players to abandon their collusive behaviour

In mobile markets e.g. the introduction of an obligation to allow Mobile Virtual Network Operators to access the networks

Dispute resolution is the ultimate remedy

- For obligations that have not been defined clearly in law and regulations such as ‘reasonable request’

- Regulator must be ready to intervene speedily to prevent dispute procedures to be abused for tactical delays

Thank you

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