



Session 1: Competition approach to regulating the ICT sector

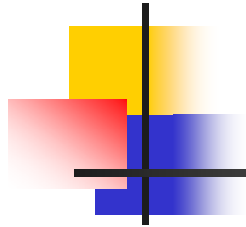
*Training on Competition and Changing
Market Conditions: Impact on ICT Regulation*

Addis Ababa, 6th – 9th November, 2007

By

Dr Chris Doyle

Warwick Business School &
Consultant World Bank



From monopoly towards ex ante regulation



Traditional approach...highly prescriptive

- Traditional ICT regulation tends to be very prescriptive
- Regulation seeks to apply rules to steer sector towards socially desirable outcomes
- Forms of regulation:
 - Economic e.g. prices
 - Legal e.g. licensing
 - Operational e.g. technical



Traditional approach...Economic regulation examples

- Access regulation
 - Access to facilities of incumbent (or dominant) on a non-discriminatory basis on a cost basis
- Retail price regulation
 - Prices for some services may be subject to some form of price control (e.g. price cap)
- Universal service/access
 - Managing cross-subsidies or specific Universal Access funds



Traditional approach...methods

- Work out rules
 - Best practice: public consultation, transparency, right of appeals, regulatory impact assessments
- Apply rules
 - Work closely with stakeholders (e.g. incumbent, alternative providers, end users)
- Monitor compliance
 - Collect data, review market developments, from time to time review regulations



Traditional approach works when...

- Market structure is stable and predictable
 - Monopoly provider, stable technological developments
- Information is readily available and verifiable
 - Accounts are presented and compiled in ways which aid regulation
- The end objective is easily determined
 - Optimal prices can be calculated



Is the traditional approach still appropriate?

- Market structure is stable and predictable
 - Monopoly provider **most cases NO**, stable technological developments **NO**
- Information is readily available and verifiable
 - Accounts are presented and compiled in ways which aid regulation **TYPICALLY NOT**
- The end objective is easily determined
 - Optimal prices can be calculated **CHALLENGING** ₇



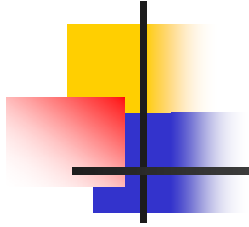
Moving to ex ante regulation...what is it?

- Ex ante regulation emerged within the European Union and is founded upon competition law principles
- Regulator steps back, assumes NO regulation and asks: “is competition law sufficient?” to deal with possible ‘competition problems’
- If the answer is NO, the regulator should determine the least burdensome (i.e. proportionate) form of remedies (i.e. regulation)



Ex ante regulation

- The application of ex ante regulation uses competition policy fundamentals:
 - Market Definition (or 'relevant markets')
 - Market Analysis
 - Remedies (supported by regulatory impact assessment)



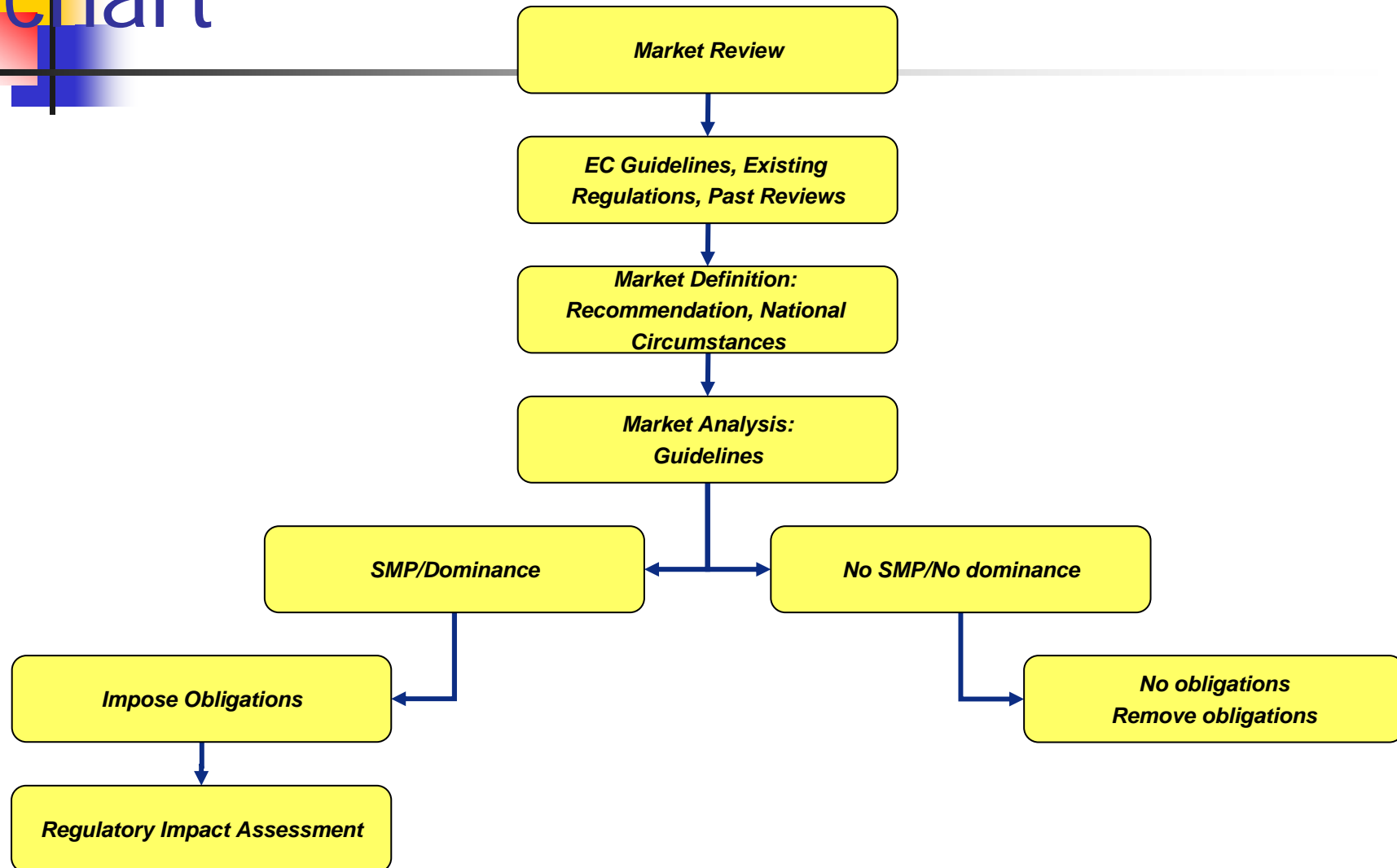
Market Reviews



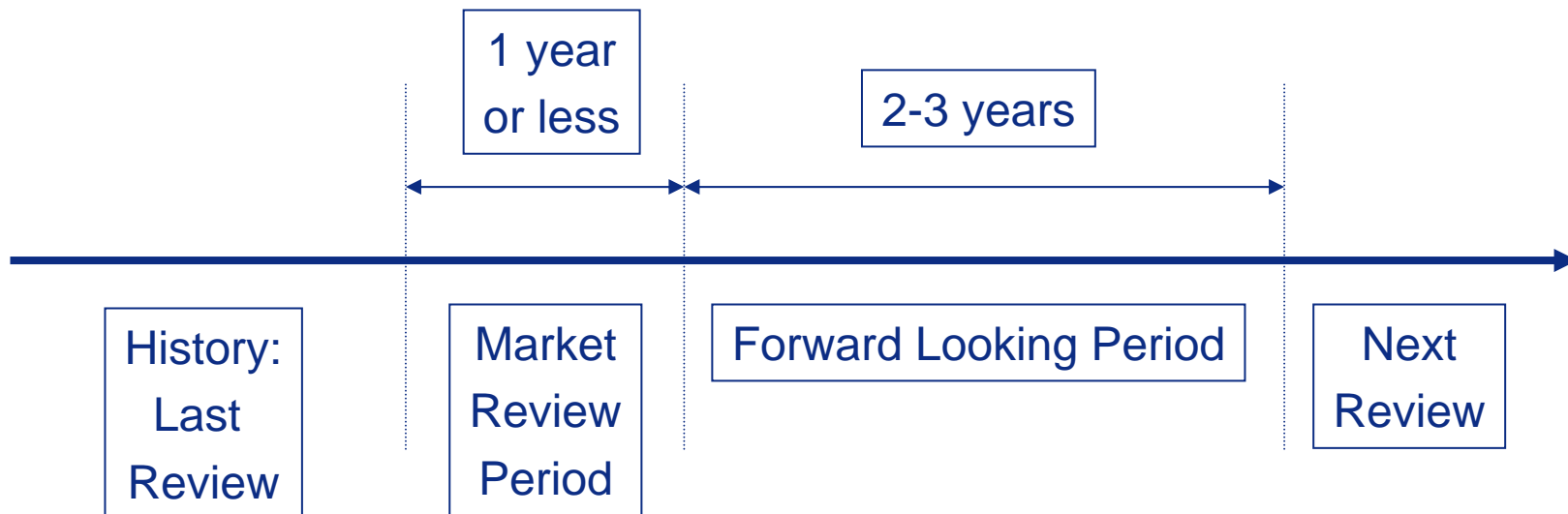
Market review

- In the EU required under the Framework directive
- Assessing whether ex ante regulation is required
- If ex ante regulation is necessary, one or more undertakings (licensed operators) must have Significant Market Power (SMP)
- Obligations to be applied in accordance with the principle of proportionality
 - The problem needs to be remedied by the least onerous package of obligations
- Regulatory Impact Assessment
 - Assess costs and benefits of proposed obligations and reason why there is a net benefit

Market review organizational chart



Market review timeline





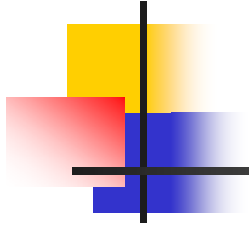
The process of a market review

- A market review is an inquiry into the economic conditions of a market
 - Looking at the extent of effective competition
- Focus on market structure (e.g. number of firms in a market, relative size of firms, entry barriers, vertical linkages, etc.), conduct of firms and behaviour of customers (retail and/or wholesale)
- If competition problems are identified (possible or actual), ex ante regulation required
- Obligations need to be justified



Key stages of a review - summary

- Market Definition
 - Identify relevant markets in which to conduct analysis
- Market Analysis
 - Analyse the competitive conditions in the relevant market, if effective competition is absent designate one or more undertakings as having SMP
- SMP Decision
- Obligations
 - Determine best form of regulation to deal with identified problems
- Perform Regulatory Impact Assessment



End Session 1