



European Commission

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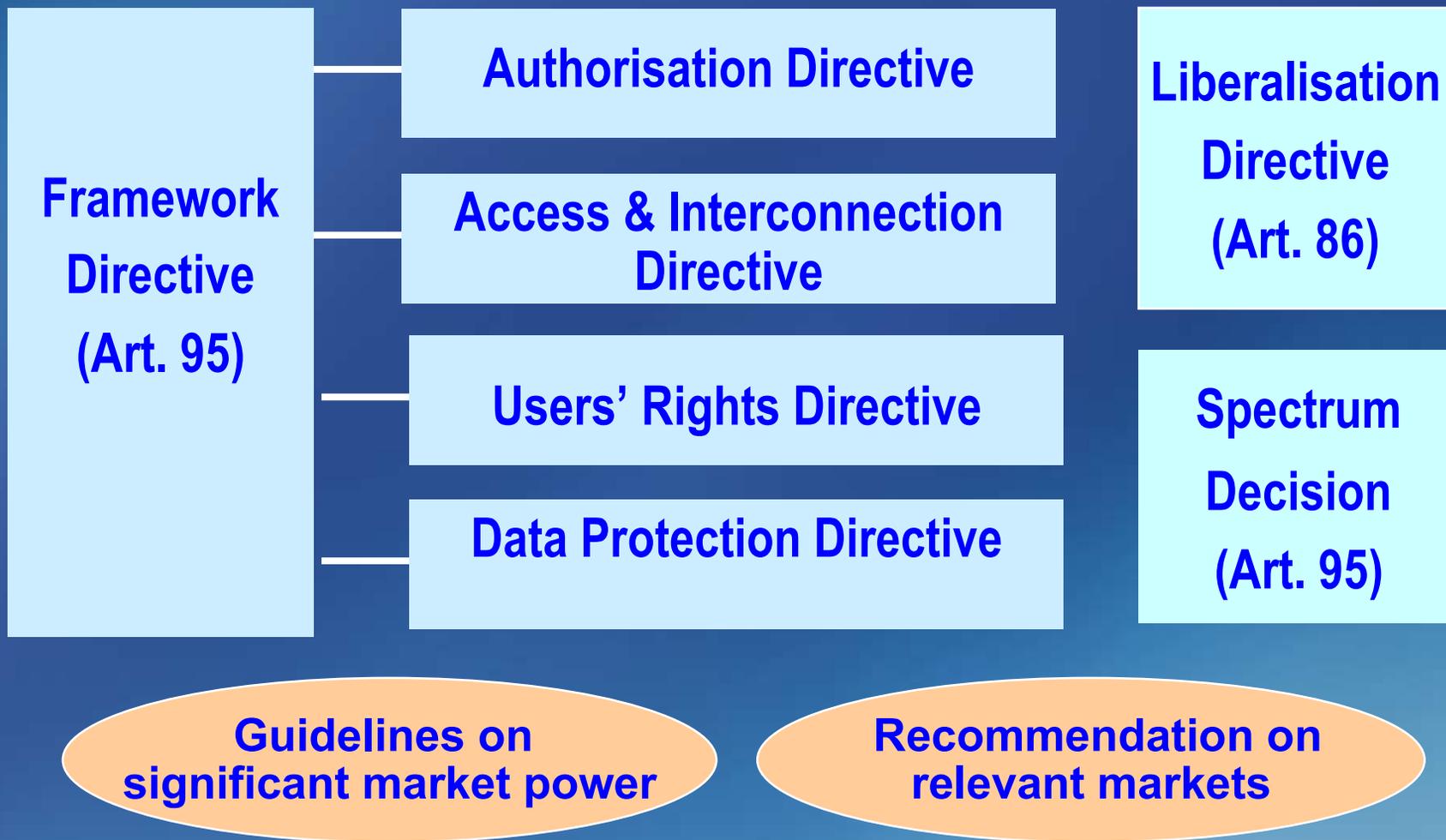
Electronic communications consultation mechanism:  
process, organisation and procedures  
Brussels, 15 July 2003

Ms Vivi Michou, DG Information Society  
Mr Reinald Krueger, DG Competition

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- The 2003 Regulatory Framework
- Actors involved
- Market definition and market analysis
- Consultation and transparency mechanisms
- Article 7 Task Forces in practice - organisation
- Pre-notification meetings
- Next steps
- Greffe/Registry





- SMP threshold set at 25% market share
  - Markets pre-defined in Directives
  - Fixed set of obligations, imposed by Directives
  - Suitable for newly liberalised markets, but inflexible
- SMP threshold set at 'dominance'
  - Flexible market definition process, involving Commission and NRAs
  - Menu of obligations, selected by NRA
  - Flexible enough to deal with complex markets



- NRA : directly responsible for national regulatory measures
- NCA : to be involved in analysis of relevant markets
- Market players / interested parties : to be consulted on proposed measures



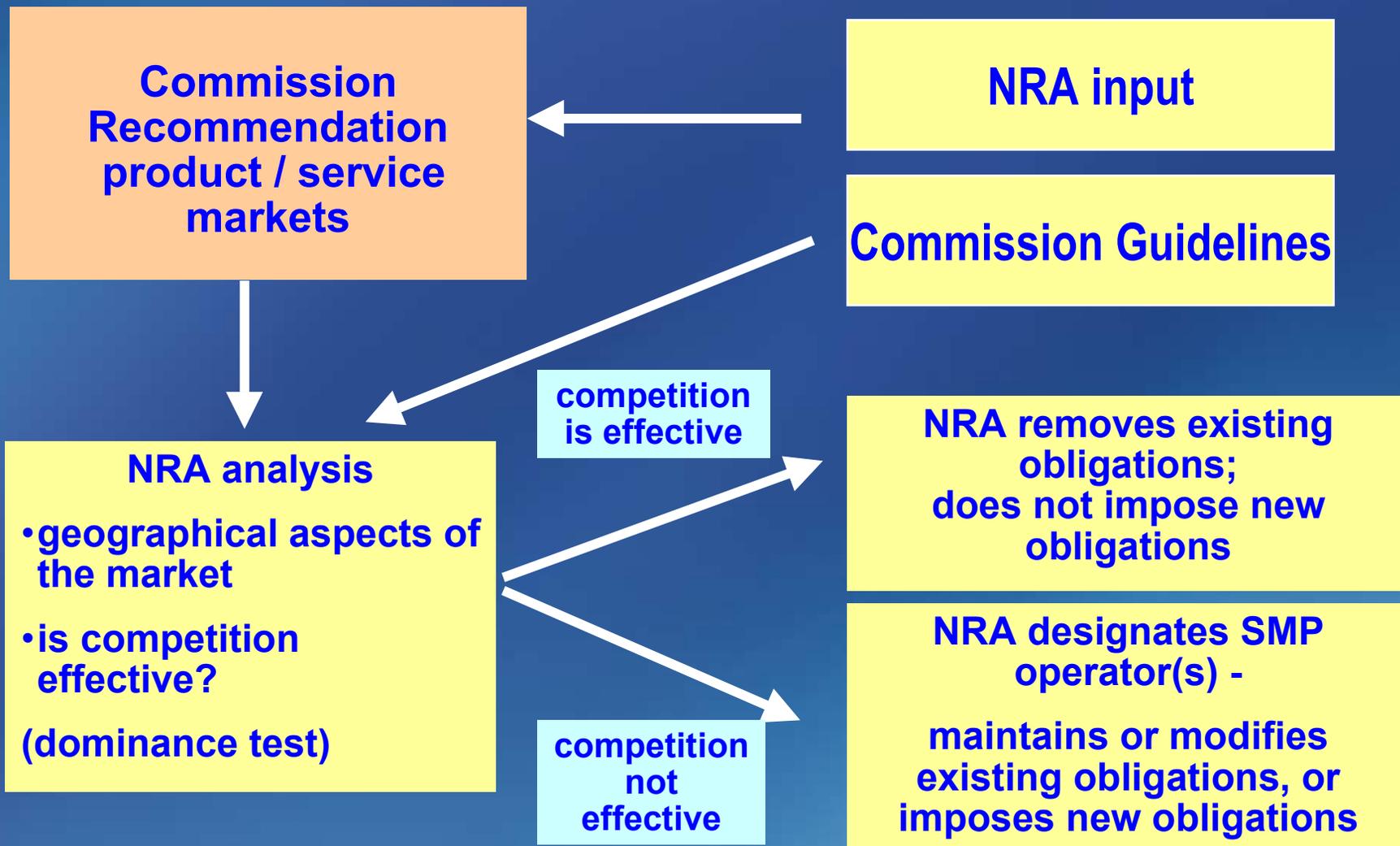
- Other EU NRAs : to be consulted on measures that effect EU trade
- Commission : to be consulted and can veto proposed measures
- Communications Committee : to advise Commission in case of contested measures
- European Regulators Group : must ensure a coordinated approach



- Dynamics of markets
  - Flexibility for regulators
- Need for legal certainty
  - Clear objectives and strict procedures for regulators
- Ensuring consistent application of the rules
  - Coordination of NRAs



- Commission Recommendation
  - identifies product/service markets which may be subject to ex-ante regulation
- NRA decides on relevant geographic market
  - NRA can define markets other than those in Recommendation, but Commission can veto
- Commission Decision (optional)
  - identifies trans-national markets, where NRAs have to act together

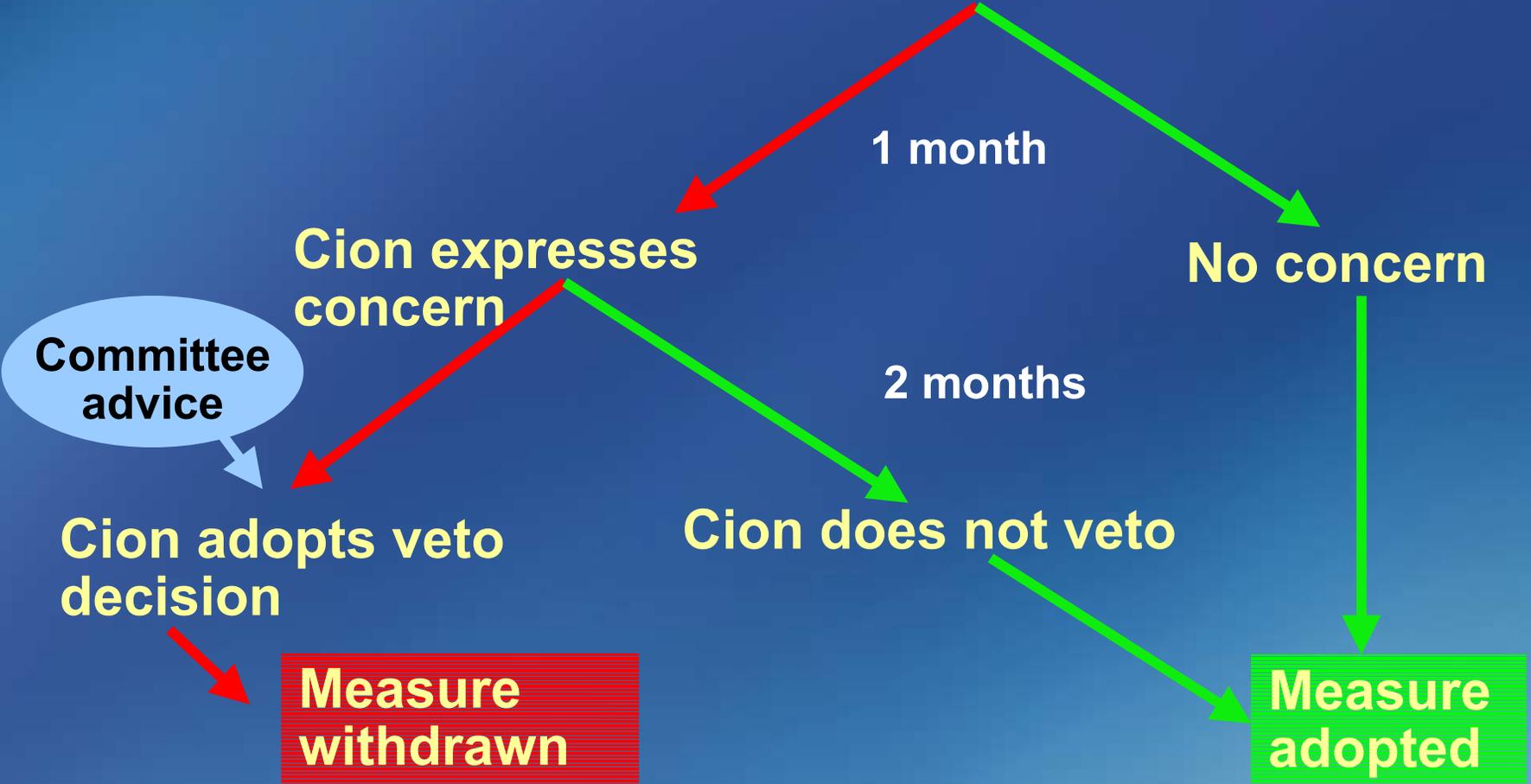




- Articles 6 & 7 of the Framework Directive
- Article 7 Procedural Recommendation
- Relevant market Recommendation
- SMP Guidelines
- Commission's internal manual of procedure ("MoP Article 7")
- Internal decision-making procedures



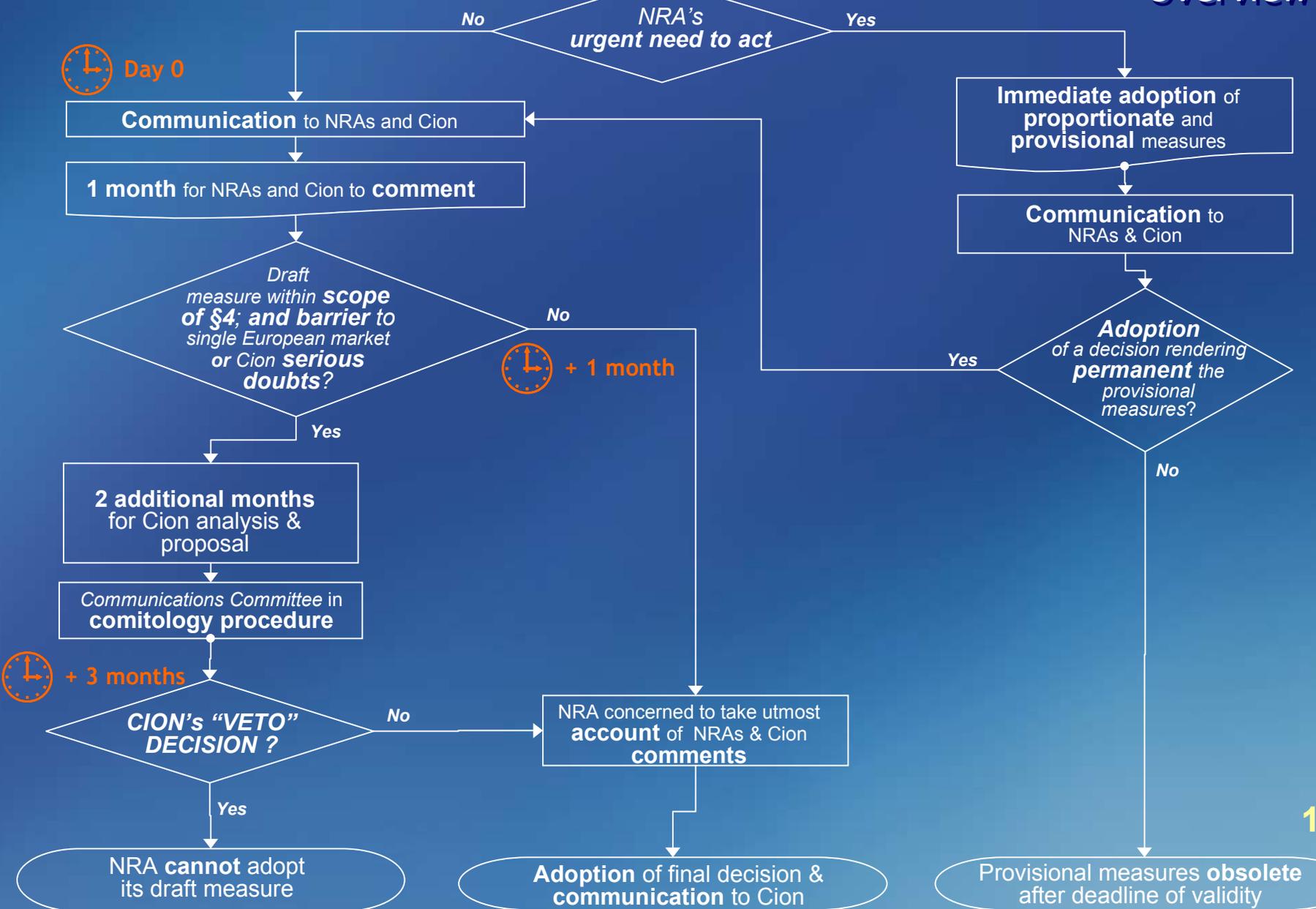
# NRA publishes draft measure





# Draft measure within scope of 7§3

# Article 7 Overview





- Where NRAs intend to take measures with a significant impact on the relevant market, interested parties to be given the opportunity to comment within a reasonable period.
- NRAs to publish their national consultation procedures.
- MS to ensure the establishment of a single information point through which all current consultations can be accessed.
- The results of the consultation procedure to be made publicly available, except in the case of confidential information.



- NRAs to take the utmost account of the Article 8 policy objectives
  - ➔ Promotion of competition
  - ➔ contribution to the development of the internal market
  - ➔ promotion of the interests of the citizens of the European Union
- NRAs to contribute to the development of the internal market by co-operating with each other and with the Commission in a transparent manner to ensure the consistent application, in all Member States, of the 2003 regulatory framework
- NRAs to seek to agree on the types of instruments and remedies best suited to address particular types of situations in the market place.



- Scope: NRAs must notify to the Commission and all other NRAs and give them the opportunity to comment within one month on draft measures taken under:
  - Article 15 or 16 FWD (on market definition, market analysis and SMP designation);
  - Article 5 or 8 AID (on imposition of ex-ante regulatory obligations on operators with SMP in wholesale markets); or
  - Article 16 USD (on review of regulatory obligations on SMP operators in retail markets);

AND such draft measures would affect trade between Member States.

- NRAs must take the utmost account of comments of other NRAs and the Commission and may adopt the resulting draft measure (with communication to the Commission).



- The Commission is empowered to “veto” draft measures, where such measures seek:
  - to define markets other than those defined in the Commission Recommendation; or
  - to designate or not operators with significant market power

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.

Decision subject to an advisory procedure under comitology rules.



- In case of an urgent need to act in order to safeguard competition and protect the interests of users, NRAs may immediately adopt proportionate and provisional measures.
- NRAs must communicate those measures, with full reasons, to the Commission and the other NRAs.
- A decision by the national regulatory authority to render such measures permanent or extend the time for which they are applicable shall be subject to the consultation mechanism (Article 7, §§ 3 & 4).



Article 8§3 of the Access Directive = Separate process

- In exceptional circumstances, NRA may request to apply an obligation not covered by Articles 9-13 of the Access Directive.
- Commission must take a decision authorising or preventing the national measure.
- Commission must first consult the Communications Committee (advisory comitology procedure).



- DG INFSO and DG COMP jointly responsible for the application of the Article 7.
- Each DG set up a task force responsible for
  - the receipt of notifications of draft measures from NRAs,
  - the assessment of these draft measures
  - the drafting of Commission Decisions.
- All staff assigned administratively to each one of these DG's but work on a fully horizontal basis in whichever case team they have been allocated to. In principle, case teams include at least one official of each DG.
- Registry/Greffe

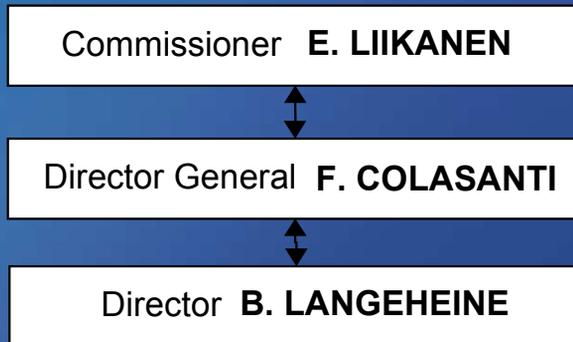


Main objectives:

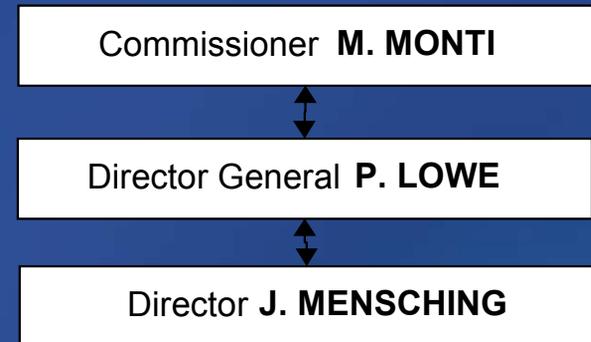
- to discuss with NRAS their possible/probable draft measure that would deviate from the markets defined in the Recommendation and/or designate undertakings as being jointly or individually dominant;
- to provide guidance to NRAs on legal or other aspects of the Commission's assessment of such notifications;
- to ensure that the required information are transmitted in the notification so as to ensure that the Commission can reasonably perform its tasks under Article 7;
- to indicate to the NRAs the likely attitude of the Task Forces on substantive issues, and exchange views on any other issue likely to be related to a notification.



## DG INFSO



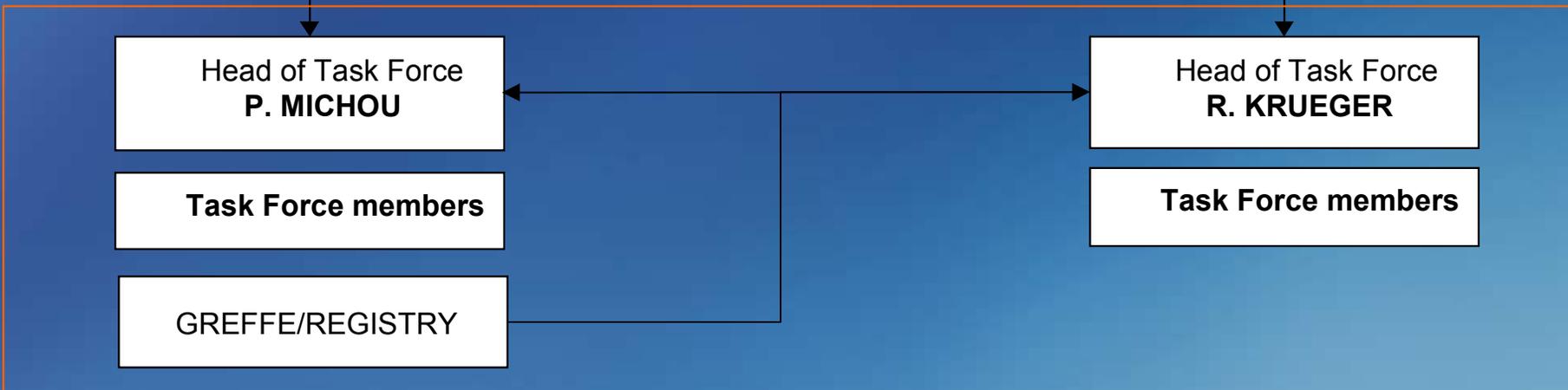
## DG COMP



### DG INFSO B2

### Article 7 Task Forces

### DG COMP C1





- Expected notifications shortly after the 25th July 2003
- Point of contact of NRAs
- Training in September 2003 on Greffe/Registry



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