

Competition Regulation – General or sector specific?

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Agenda

- ❑ Market forms
 - ❑ Forms of competition
 - ❑ Competition – an overview
 - ❑ Key concepts in competition regime
 - ❑ Approaches to encourage competition
 - ❑ UNCTAD Model law
 - ❑ What's in the name.....
 - ❑ Why telecom is so special
 - ❑ WTO Reference Paper on Telecom
 - ❑ Institutional design
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Market forms

- Monopoly

 - Oligopoly
 - Duopoly

 - Competition
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Forms of competition

- Competition is act of striving against another force for achieving dominance or attaining a reward or goal, or out of a biological imperative such as survival

 - Forms of competition
 - Perfect Competition
 - Effective Competition
 - Market Contestability
 - Sustainable Competition
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Perfect competition

- ❑ Ideal model of competitive market but rarely occurs
 - ❑ It requires
 - Product concerned must be homogeneous
 - ❑ Identical attributes and quality regardless of buyer or seller
 - Large number of buyers and sellers for it
 - Buyers must be homogeneous and perfectly informed
 - No single consumer must buy or sell anything more than insignificant proportion of available market volume
 - All buyers and sellers must enjoy freedom to enter or exit market at will and without additional costs
 - No economies of scale or scope
 - ❑ Economies of scope arise when different products have significant shared fixed costs
 - No externalities
 - No regulation of market or franchise obligations
 - No restrictions on capital
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Effective competition

- Effective competition occurs when 4 market conditions are present:
 - Buyers have access to alternative sellers for desired products at affordable prices
 - Sellers have access to buyers for their products without undue hindrance or restraint from others
 - Market price of product is determined by interaction of consumers and firms
 - No single consumer or firm can determine, or unduly influence, level of price
 - Differences in prices charged by different firms reflect only differences in cost or product quality
 - In effectively competitive markets
 - Consumers are protected to some degree from exploitative prices that firms, acting unilaterally or as a collusive bloc, could charge
 - Firms are protected from manipulation by large individual consumers (or groups of consumers) and from disruption or interference from other firms
 - One form of a product is usually a reasonable substitute for another form of that product (functional equivalence)
 - There are no barriers to entry and exit
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Market contestability

- High firm concentrations in given market may not translate to market power
 - Even in markets where only one or few firms can efficiently operate, it is possible for competition to work
 - Market is said to be contestable when barriers to entry and exit are so low that threat of potential entry prevents incumbent from exercising market power
 - With free entry into and exit from market, threat of potential entry will constrain behavior of incumbent firms
 - Contestability requires that there are no sunk costs for market entry and exit is easy
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Sustainable competition

- Competition is desirable goal not for its own sake, but because of benefits:
 - Efficiency, Innovation, Customer focus, Lower prices, Higher productivity, Service choices, Greater connectivity
 - Overall aim of competition policy is to achieve sustainable competition, where competition occurs on a “level playing field” and consumers and operators are not subject to anti-competitive practices
 - Regulators may be tempted to micro-manage market to ensure that competition takes place or may decide prematurely that market is fully competitive
 - Regulatory decisions need to balance:
 - Long term objective of ongoing, sustainable competition
 - Resolution of immediate short-term concerns
 - Conformance with regulatory and legislative provisions
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Competition – an overview

- Control of
 - Dominance
 - anti-competitive agreements
 - mergers
 - Prevention of
 - concentration of economic power
 - artificial barriers to trade
 - Vertical restraints
 - Regulation of excess profits and fairer distribution of wealth
 - Protection of consumers
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Key concepts in competition regime

- Competition analysis follows following steps:
 - Define relevant market or markets
 - Assess level of competition in market, without behavior or act in question, and
 - Assess level of competition in market, with behavior or act in question

 - Important concepts
 - Markets and Market Definition
 - Market Power
 - Barriers to Entry
 - Essential Facilities
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Markets and market definition

- First step in any competition analysis is to define relevant market
 - A market exists where buyers wishing to buy a good or service come into contact with sellers wishing to sell that good or service
 - “SSNIP” or “Hypothetical Monopolist” Test
 - Smallest group of products and smallest geographical area in which a hypothetical monopoly could successfully implement a “small but significant and non-transitory increase in price”
 - Market definition must also determine geographic boundaries of market
 - Can a SSNIP for a product in one location substantially affect price of same product in another location?
 - If answer is “yes”, then relevant geographic market includes both locations
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Other dimensions of market

- Market definition may consider other dimensions of product or service in question, where they are relevant
 - Other dimensions include:
 - **Functional dimension:** Relevant level of production or distribution chain (market at wholesale or retail level)
 - **Temporal dimension:** Timeframe or timing within which market operates
 - **Customer dimension:** Different customer types within a market (should large business customers and residential customers be viewed as separate markets)
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Market power

- Market power is:
 - “The ability of a firm to raise prices above competitive levels, without promptly losing a substantial portion of its business to existing rivals or firms that become rivals as a result of the price increase”
[Robert Pitofsky, “New Definitions of Relevant Market and the Assault on Antitrust”, Columbia Law Review, 90(7), 1990]

 - Market power is only damaging if firm concerned exercises its power

 - Firms with SMP or dominance may be able to implement a range of strategies to reduce competition, and enhance their position in the market
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Dominance and SMP

- There is no universally accepted definition of dominance
 - EC Competition Commission takes into account:
 - Firm size,
 - Role of any essential facility,
 - Any technological advantages, or privileged access to financial resources,
 - The strength of the countervailing power of consumers,
 - Economies of scale and scope,
 - Barriers to entry (or exit),
 - Product differentiation,
 - Potential competition, and
 - Type and availability of sales channels
 - EC defines SMP as ability of a firm to act independently of competitors and customers
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Anti-competitive conduct

- ❑ Telecom firms with market power may try to use their position to reduce competition
 - ❑ Common forms of anti-competitive conduct:
 - Abuse of dominance
 - Refusal to supply
 - Vertical price squeezes
 - Cross-subsidization
 - Misuse of information
 - Customer lock-in and restrictive agreements
 - Exclusionary and predatory pricing
 - Tying and bundling of services
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Mergers, acquisitions, JVs

- Mergers, acquisitions, and joint ventures are all different ways for two or more firms to integrate or coordinate their operations
 - These are motivated by cost savings, economies of scale and scope, efficiencies from vertical integration, or geographical diversification or cross-selling of products
 - Merger
 - Structural fusion of two firms that results in a common ownership and management structure
 - Acquisition
 - Type of merger in which a firm with more resources and greater market strength may acquire another firm
 - Joint venture
 - Strategic alliance between two firms that share resources, equity, revenues, expenses, and management to pursue a common goal
 - Types of mergers
 - horizontal, vertical, conglomerate
 - Conglomerate mergers occur between firms operating in separate markets. As such they do not generally raise competition concerns
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Approaches to encourage competition

Competition Policy

- Competition laws
- Rules in specific sectors

Regulation

- Ex Ante and Ex Post Regulation

Regulatory Forbearance

Competition laws

- Competition laws aim to promote efficient competition by penalizing or undoing conduct that reduces competition
 - Competition laws generally include provisions to:
 - Prevent competing firms from getting together (“colluding”)
 - Prevent firms with a dominant position, or “SMP”, from using their market power to exclude competitors
 - Stop mergers or acquisitions that would reduce competition
 - Broader principles established in competition laws may not provide solution to problems
 - Operational
 - Technical
 - Commercial
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Ex ante and ex post regulation

□ Ex ante regulation

- Ex ante regulation is anticipatory intervention to:
 - Prevent socially undesirable actions or outcomes in markets, or
 - Direct market activity towards socially desirable ends

□ Ex post regulation

- Ex post regulation aims to redress proven misconduct through a range of enforcement options including fines, injunctions, or bans
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Regulatory forbearance

- Regulation is not heal-all
 - Comes with costs
 - Effective competition generally delivers better outcomes
 - Where regulation is necessary, regulatory forbearance is key to good outcomes
 - Regulatory forbearance is about focusing regulation to where it is needed, and withdrawing regulation in those parts of market where it is no longer necessary
 - Concept of regulatory forbearance has two elements:
 - Regulator may refrain from applying certain regulatory conditions, or from intervening in certain markets
 - Regulator may reduce scope of regulation, or withdraw entirely from regulating specified markets
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Remedies

- Directive, remedies, injunctions or bans, require firm to
 - Cease its abusive behavior, or
 - Make specific changes to its behavior
 - Punitive Remedies include fines
 - Accounting Separation
 - Accounting separation aims to separate out competitive and non-competitive parts of firm's business, without going to extreme of full structural separation
 - Structural remedies
 - If anti-competitive behavior is very damaging and there is a high probability of repetition, structural separation may be necessary
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UNCTAD–Model law on competition

- ❑ Restrictive agreements or arrangements
 - ❑ Acts or behavior constituting an abuse of a dominant position of market power
 - ❑ Notification by enterprises to Authority
 - ❑ Notification, investigation and prohibition of mergers affecting concentrated markets
 - ❑ Relationship between competition authority and regulatory bodies, including sectoral regulators
 - ❑ Some possible aspects of consumer protection
 - ❑ Administering Authority and its organization
 - ❑ Functions and powers of Administering Authority
 - ❑ Sanctions and relief
 - ❑ Appeals
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What's in the name.....

- There is no common rule for title of competition laws
 - Elimination or Control of Restrictive Business Practices
 - Anti-monopoly Law
 - Competition Act
 - Protection or Safeguarding of Economic Competition
 - Anti-trust laws
 - Divergence reflect objectives and hierarchy of law, as well as legal traditions of countries concerned
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Why telecom is so special?

- Telecom competition issues be handled by Telecom Regulator
 - Most obligations comes from license

 - Sector issues
 - MNP, LLUB, QoS, infrastructure sharing, RIO & interconnection, national roaming, net neutrality
 - Other technology issues

 - Ex post & Ex ante regulations?

 - Consistency across sectors required?
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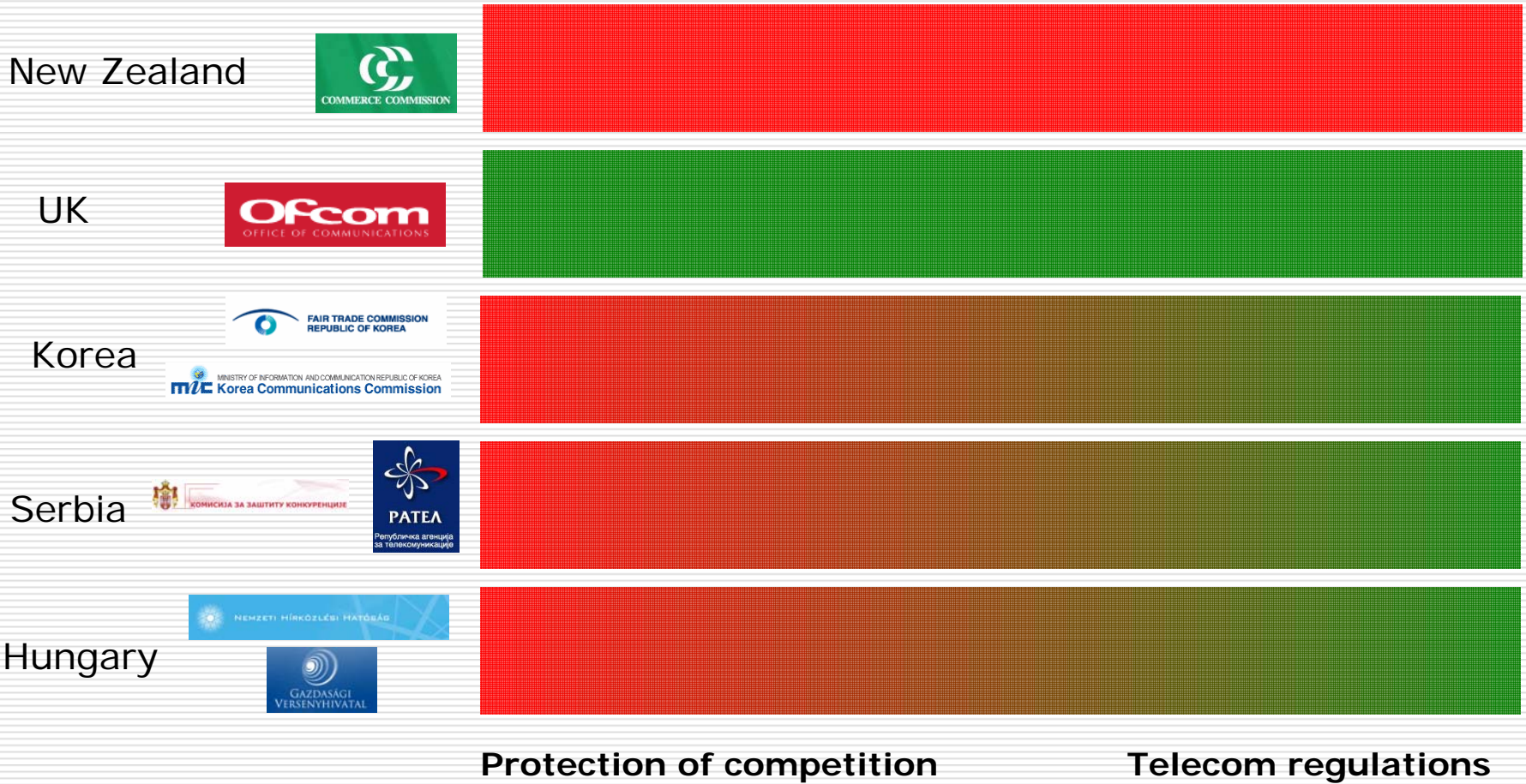
Technological change

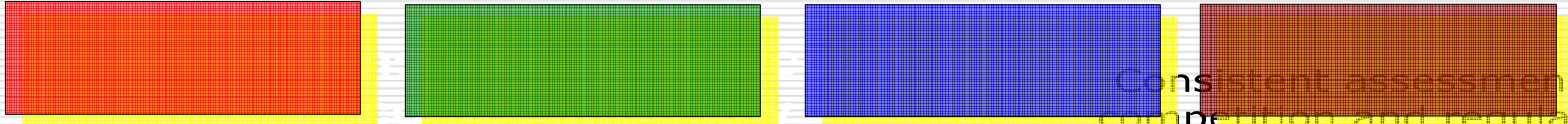
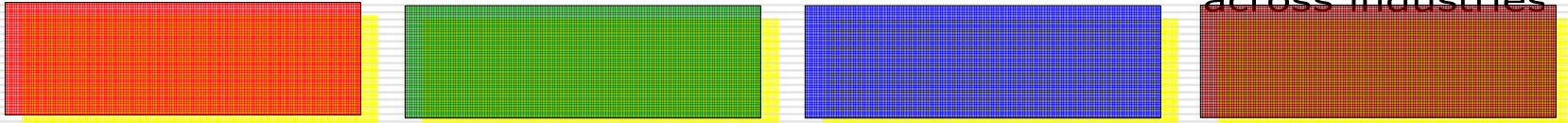
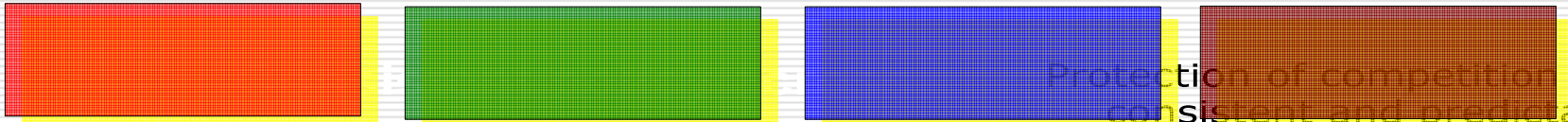
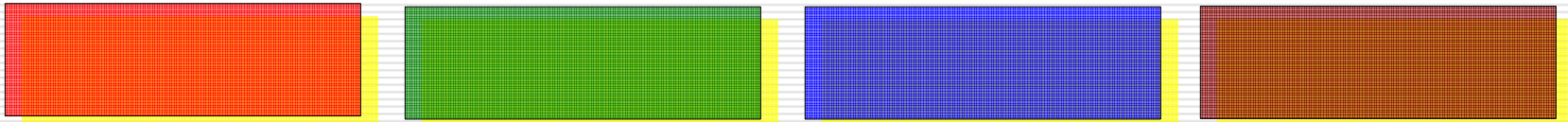
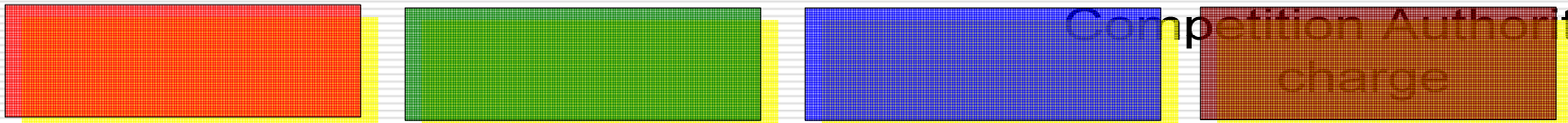
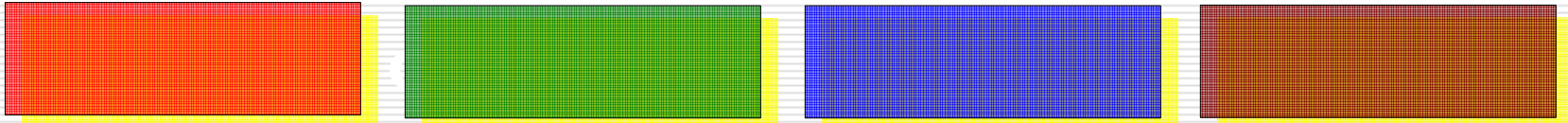
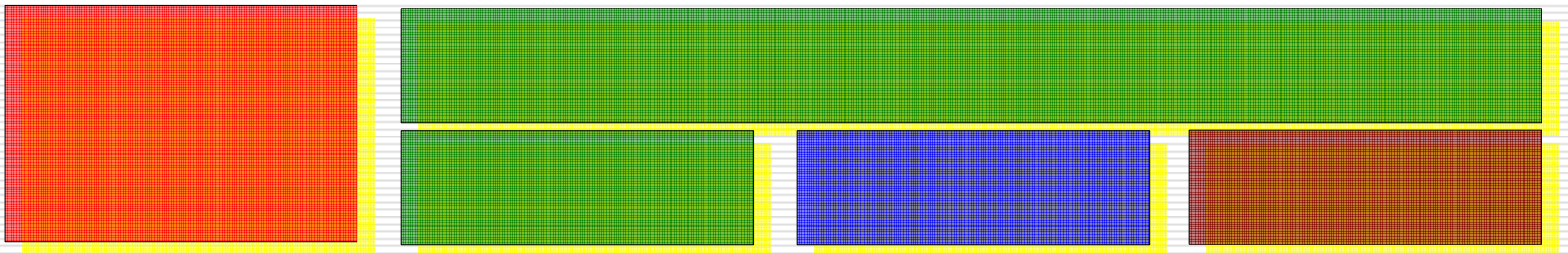
- ICT sector is changing rapidly. Nature and pace of change create challenges for both regulators and regulated firms
 - Shift of ICT technological change
 - Analog to digital technologies
 - Voice to data
 - Circuit switching to packet switching
 - Narrowband to broadband
 - Migration of intelligence from core of network to edge
 - Increasing role of wireless
 - Emergence of new services
 - Changes in market structure and level of competition
 - Financial forces that are impacting on sector
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WTO Reference Paper on Telecom

- Competitive safeguards
 - Prevention of anti-competitive practices in telecom
 - Interconnection
 - Interconnection with major supplier will be ensured under non-discriminatory terms, cost-oriented rates and in a timely fashion
 - Universal service
 - Members are free to define kind of USO they wish to maintain
 - Public availability of licensing criteria
 - Terms and conditions of license, processing time, reasons for refusal
 - Independent regulators
 - Impartiality
 - Allocation and use of scarce resources
 - Frequency, numbers, RoW
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Institutional design – Approaches differ across countries

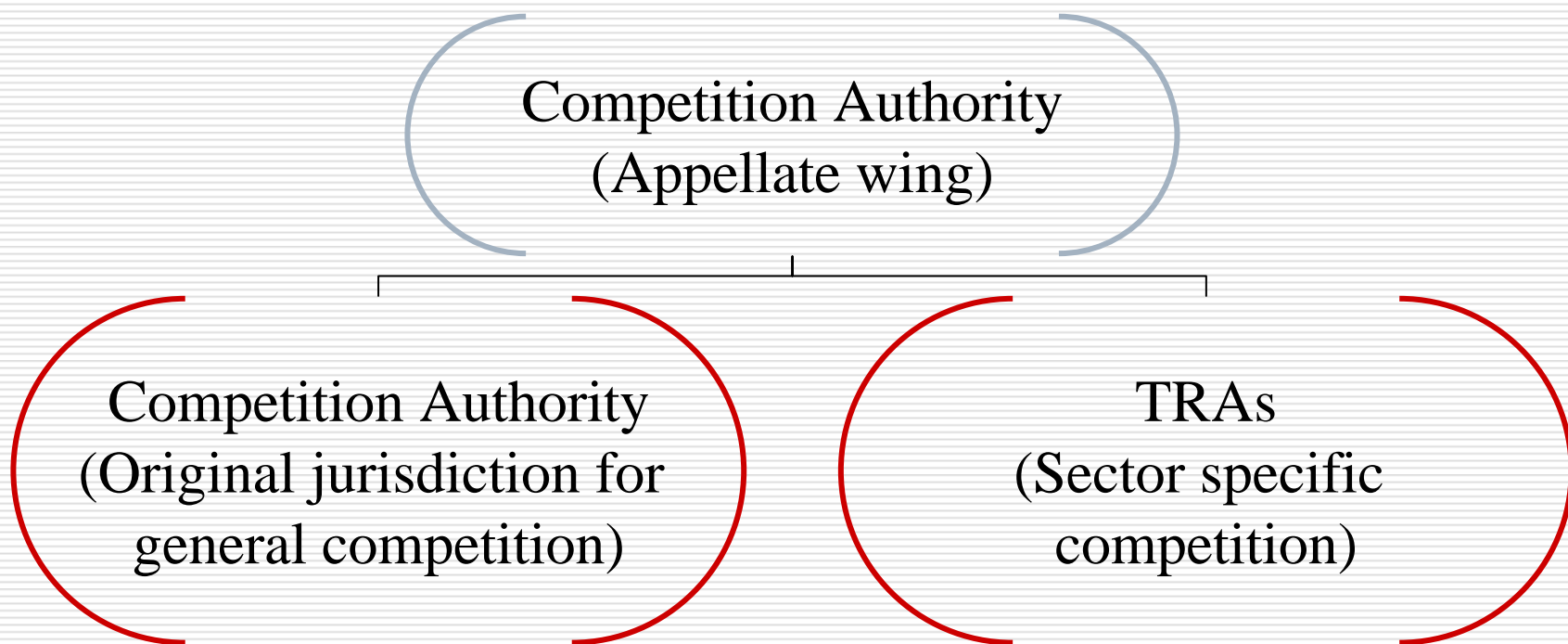




and telecom regulation

cases is likely

Out of box.....



Some selected references

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 - UNCTAD–Model law on competition
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