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Public Administrations approach to IP-Interconnection

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***The views expressed in this presentation are purely those of the
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Outline

- 'Economic regulation' in the EU electronic communications sector
 - *The market-based approach*
- Regulatory case practice
 - *Art. 7 of Framework Directive*
- Relevant markets for *ex ante* regulation
 - *A case for a wholesale IP connectivity market?*
- Outlook

'Economic regulation'

The market-based approach

- Appropriate economic regulation of dominant operators in specific markets (i.e. defined under competition law principles and meeting certain criteria)
- Focus on:
 - *Where market transactions take place*
 - *Real bottlenecks and access regimes*
 - *Dominance ('SMP') triggers imposition of remedies by NRAs*
 - *In-built transition to 'competition-law-only' scenario*
- Interaction between NRAs, Commission and BEREC
 - *NRAs' market analyses based on Commission's Recommendation*
 - *Oversight by Commission with intervention possibilities*³



Regulatory case practice

Art. 7 of Framework Directive

- PL case on IP traffic exchange ('*IP transit*' and '*IP peering*' in Poland)
- Notified by UKE in November 2009; 'vetoed' by the Commission in early 2010
- General Court dismissed UKE's appeal on procedural grounds
- ECJ
- On substance, veto based on:
 - ***Flawed market definition, i.e., separate markets for transit and peering too narrow***
 - ***Flawed dominance finding***
- Direct interconnection interchangeable with indirect interconnection by way of transit

Relevant markets for *ex ante* regulation

A case for a wholesale IP connectivity market?

- Review of Recommendation on relevant markets
- Identify markets susceptible to ex ante regulation
- 2003: 18 markets, 2007: 7 markets, 2013: ?
- Start of review
 - *Market boundaries shaped by technological and market development*
 - *Substitutability patterns*
 - *Technology neutral*
 - *(De-)regulation where appropriate*
- Important signal for functioning of market-based approach

Outlook

- IP traffic exchange:
 - *How does nature of transactions shape market boundaries?
Can bargaining power amount to SMP?*
- Critical aspect:
 - *Do transit providers continue to providing choice?
What has and what will change?*
 - *Can 'data packets' travel different routes and
circumvent areas of congestion?*
- Link to Net neutrality debate
 - *Evidence-based approach ... BEREC*
 - *Best effort Internet ... min. levels of quality of service*