



Decision making in telecoms: Role of the Competition Commission

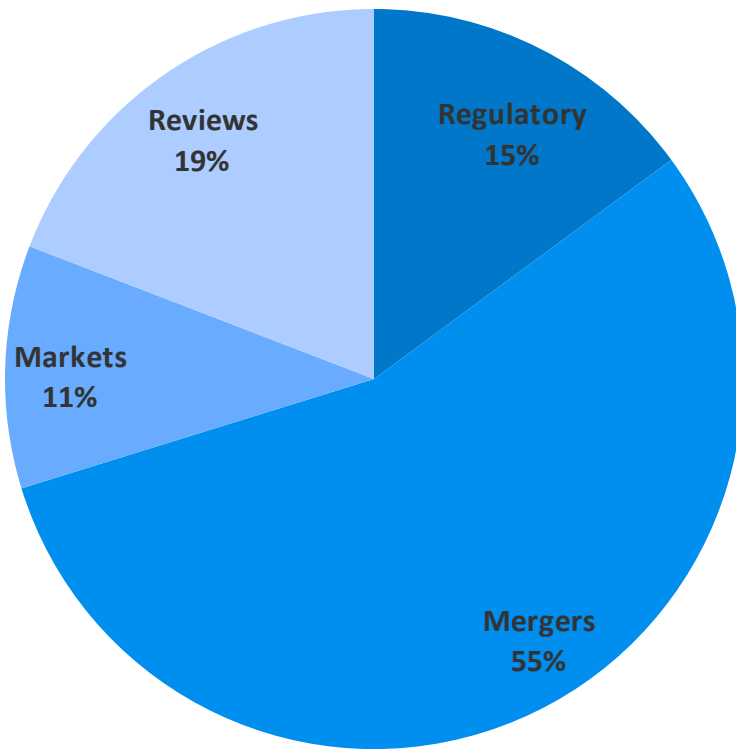
RPI Annual Competition and Regulation Conference

11 September 2012

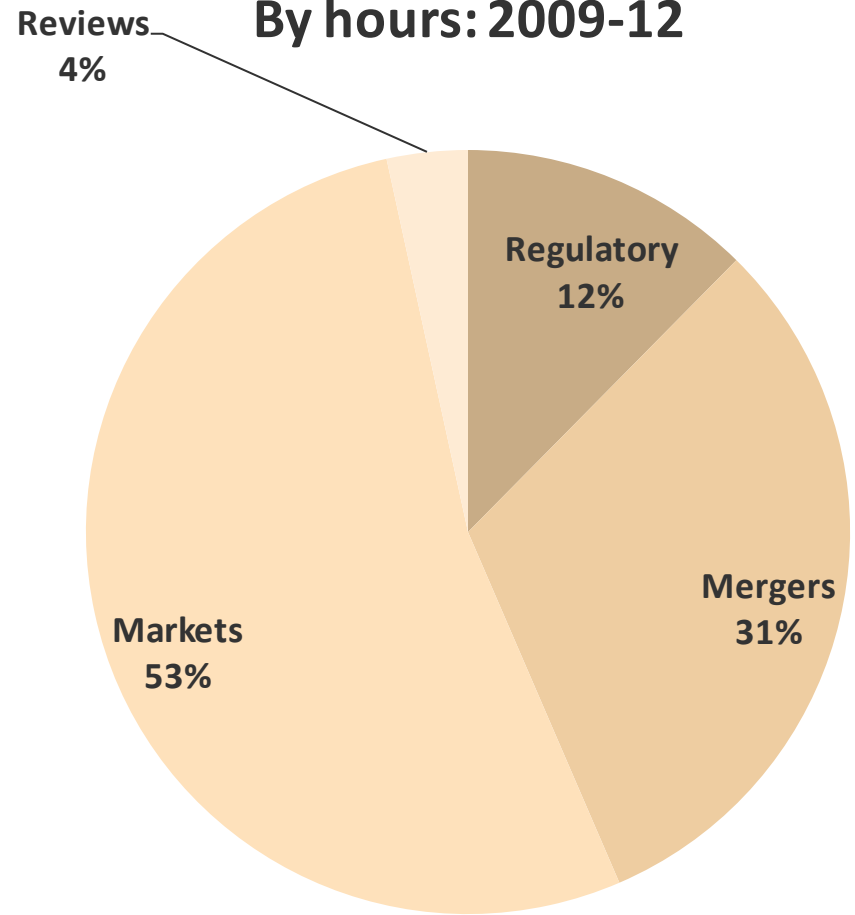
Regulatory business forms a significant part of the CC's work



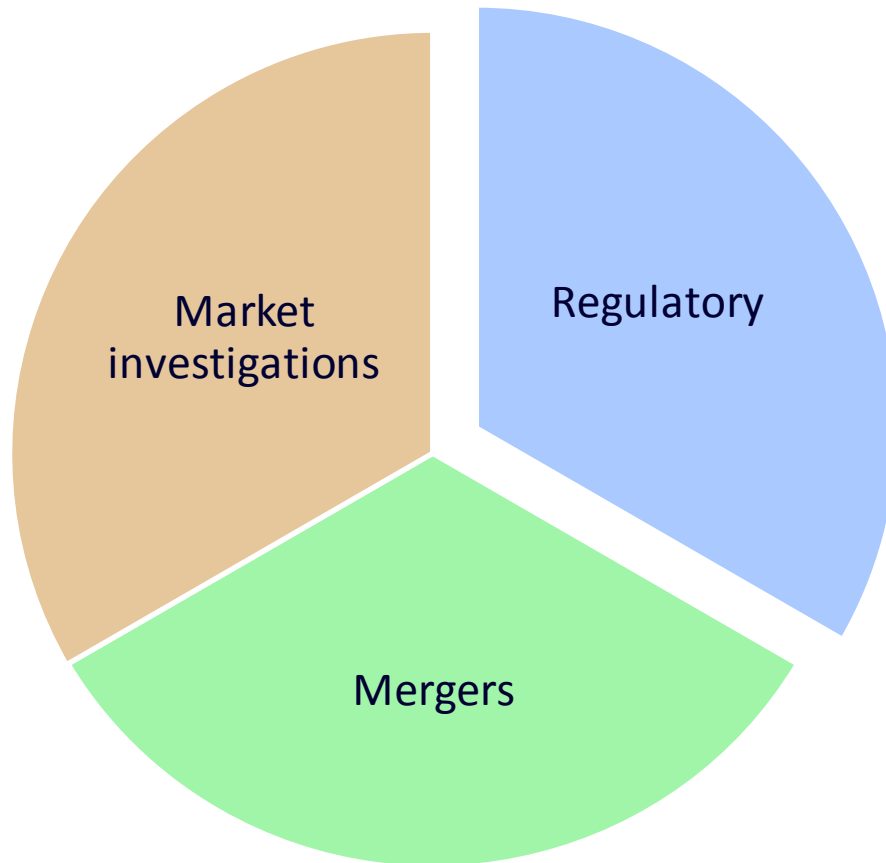
By no of cases: 2009-12



By hours: 2009-12



Our regulatory work comes in a variety of flavours



Licence modifications:

- water and sewerage
- rail
- air traffic services
- gas & electricity
- *public health*
- *airport operation*

Energy code modifications

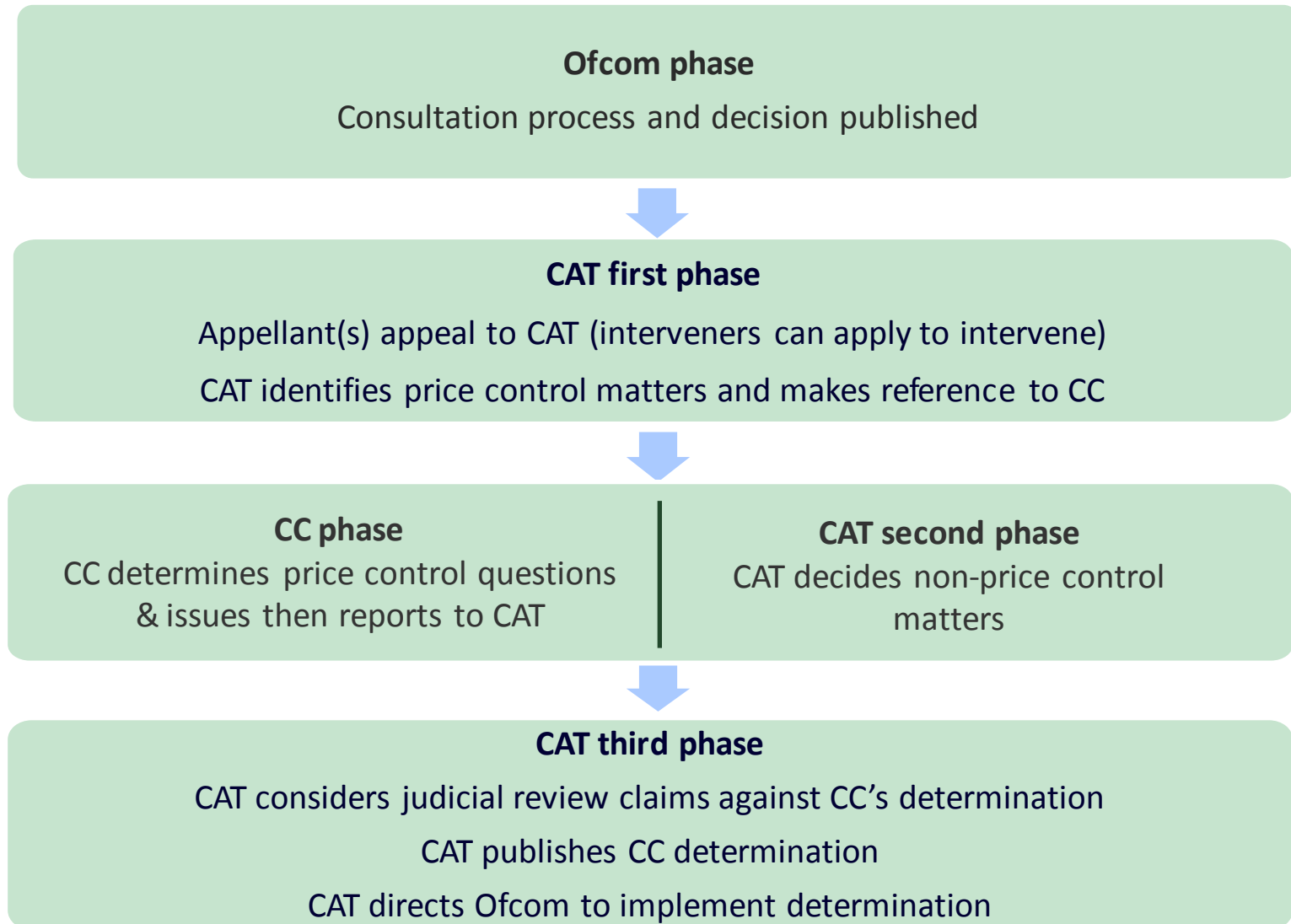
Price controls:

- telecoms
- *postal services*
- gas & electricity
- water
- *airport operation*

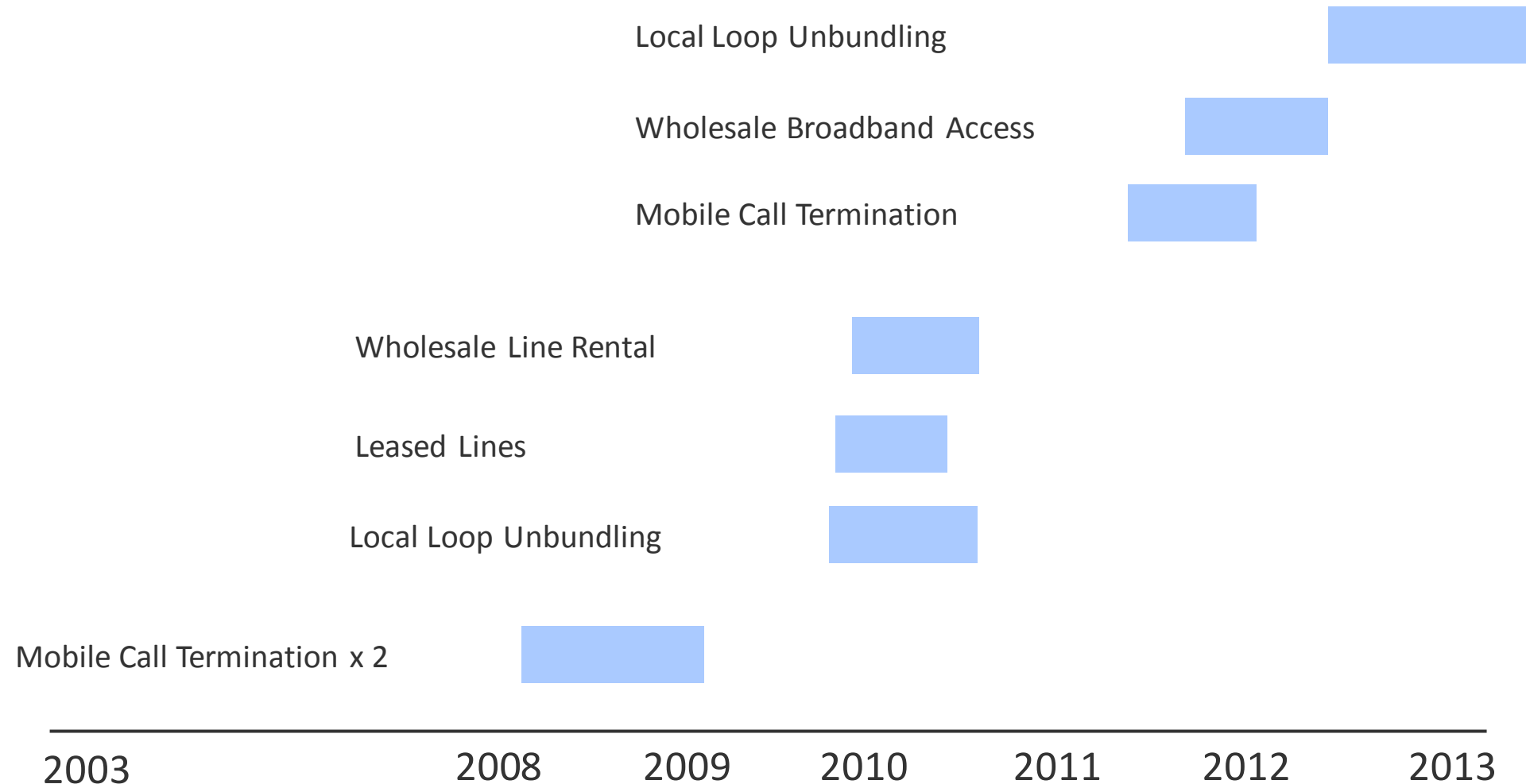
Access charges in railways sector

Non-licensable activities - gas & electricity

The process for Communications Act appeals is unusual



The CC's workload of CA03 telecoms price control cases is lumpy



The CC adapts the processes it uses for merger and market inquiries to match the regime

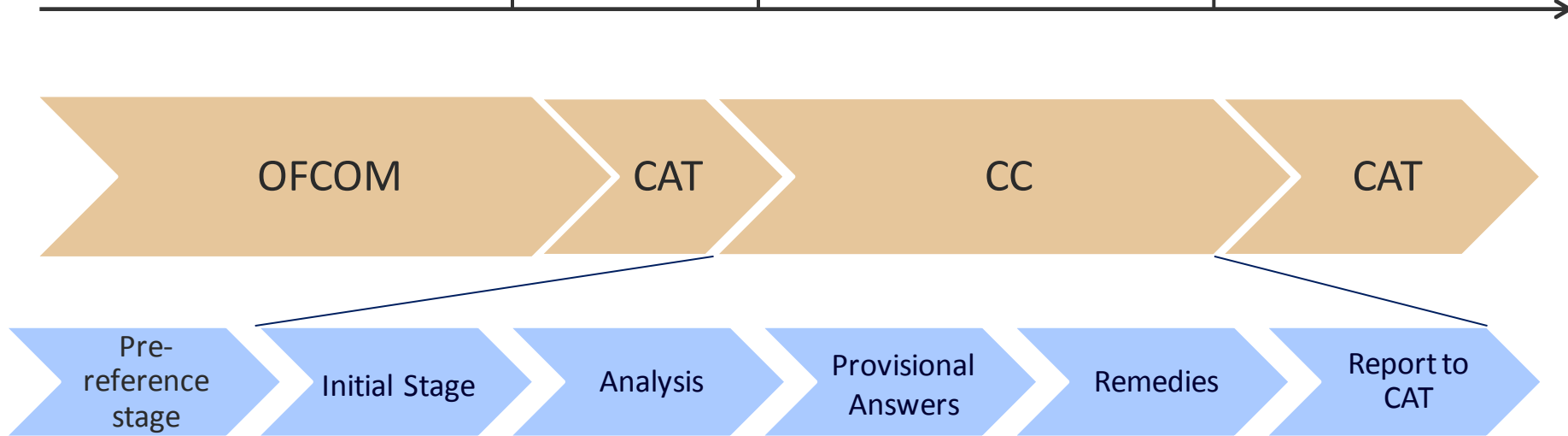


2 years

1-3 months

6-9 months

1-4 months



CC

Planning process

Meetings with all parties to understand technical aspects

Consider core submissions

Bilateral hearings with CC; respond to CC written questions

Publish PA & remedies letter

Respond to PA

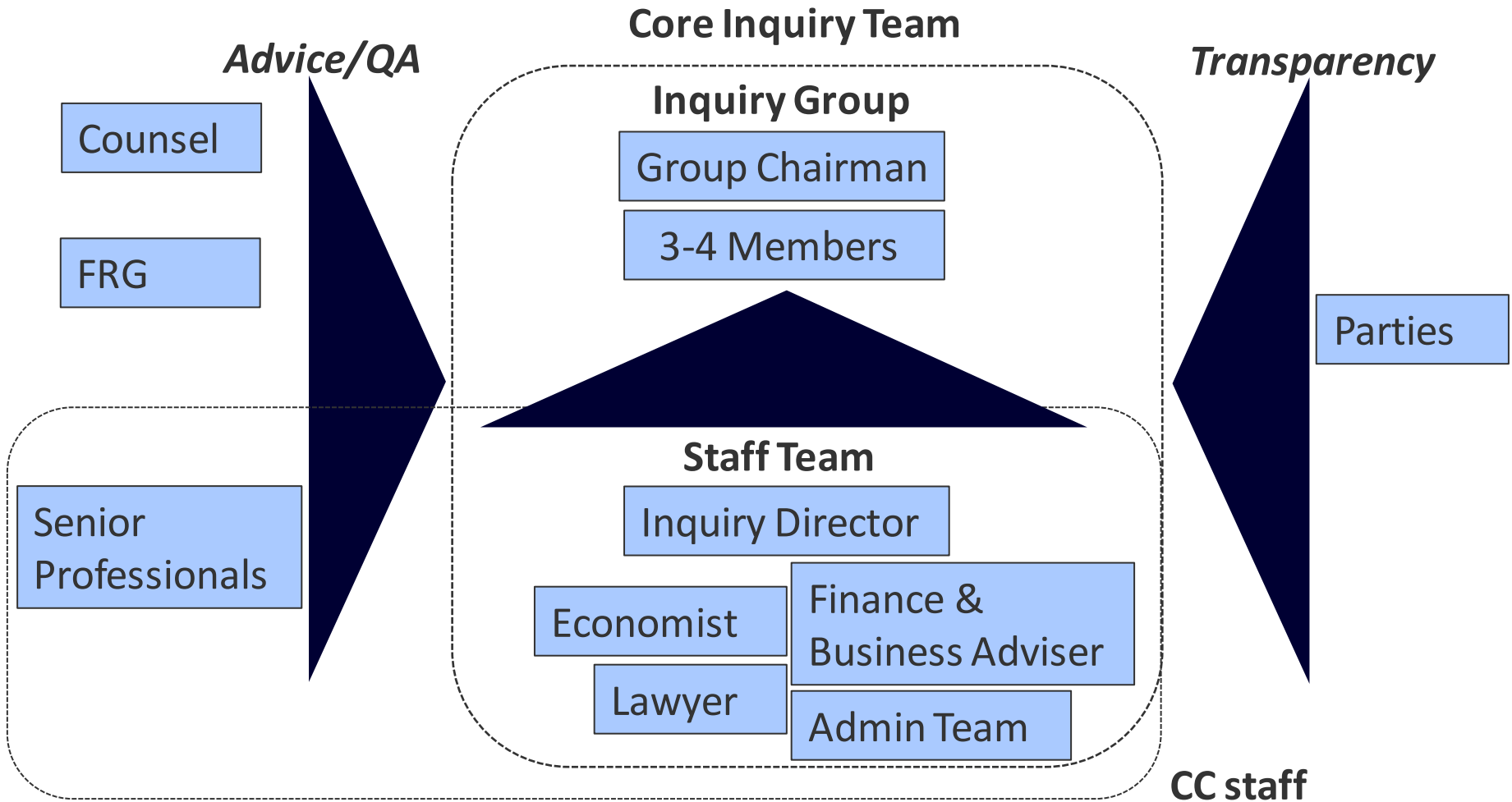
If remedies proposed, multi-party meetings held

Report issued to CAT; non-confidential version to parties

Parties

Dialogue with CC

CC decisions are made by members, but not in isolation



The CC's distinctive attributes apply to telecoms appeals



CC's characteristics (as applied in Enterprise Act merger and market cases)...

....apply differently to Communications Act appeals

Decision making by independent members

At least one member drawn from Communications panel

Rigorous economic and financial analysis

Assessing cases as presented, not conducting a full investigation
Often narrow detailed technical points
Test is whether Ofcom erred, so some latitude

Transparency

With parties only during case - often multiple parties on both sides
Publication of decision informs future cases

Project management underpinned by time limits

Time limits are not statutory
CC processes subject to CAT rules and directions

Determine remedies

Determine remedy rather than remit back where possible, but seek to follow Ofcom approach

Against the Government's criteria for a good regulatory framework...



Accountability

- Expert, capable regulator
- Decisions subject to review and challenge

Focus

- Protecting interests of end-users
- Replicate outcomes of competitive markets

Predictability

- Provide stable and objective environment to operate in

Coherence

- Forms part of Government's broader policy context

Adaptability

- Capacity to evolve

Efficiency

- Timeliness
- Robust decisions

...the telecoms regime measures up reasonably well



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The advantages and disadvantages of the regime derive from its effect on incentives



Pros

- Where remedies required, appellant generally has incentive to resolve quickly
- Focused appeal – access to justice

Cons

- Sums involved - incentive to appeal
- No retrospection - incentive to delay price control implementation
- Focused appeal - incentive to appeal all points

There are challenges for both Government and the CMA to overcome in future



Ministers

- Getting an appropriate number and nature of appeals
- Getting the incentives right (for regulator and regulated)
 - announcement March 2012 after consultation – no change to basis of review
 - ERR Bill provides for one way cost recovery

CMA

- Maintaining (and effectively deploying) expertise among members and staff
- Maintaining independence from regulator – relations will be closer as result of formation of CMA and reforms to concurrency
- Managing conflicts - more risk of staff (and possibly also member) involvement in CA98 cases
 - Public presentation - complex framework to explain to public



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