



Competition Regulation

Malaysian Experience

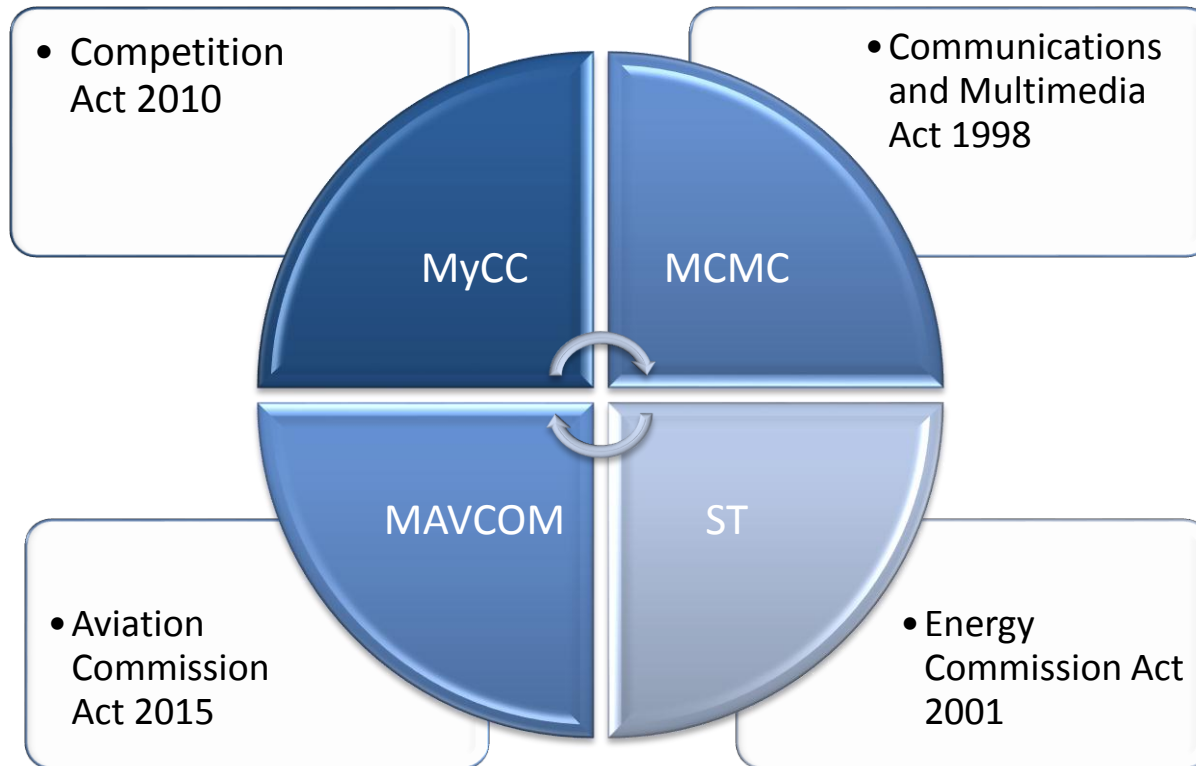
30 October 2017

Agenda



- Overview of competition law in Malaysia
- Competition provisions in the CMA
- Assessing substantial lessening of competition
- Investigation of competition complaints
- Examples of anti-competitive conducts

Competition Law in Malaysia



Special Committee on Competition to discuss issues on competition law and to ensure there is consistency in the application of the law between sector regulators.

Competition Provisions in the CMA



General Competition Practices are under Part VI,
Economic Regulation of CMA

The Commission's role is to protect competition, i.e.
the process of rivalry between firms

It is not the role of the Commission to protect any
particular participant in that rivalry

Rationale for Competition Policy Under the CMA



To provide protection for smaller players

To provide context and certainty about administration of general powers and procedures under the CMA

To establish a framework and clear powers for the Commission to ensure that anti-competitive policies do not undermine the national policy objectives

Prohibited Competition Practices under the CMA



General Prohibition – Section 133

- Conduct which has the **purpose** of substantially reducing competition

Per se Prohibitions – Sections 135 & 136

- Entering into collusive agreements, e.g. rate fixing, market sharing boycott of a supplier of apparatus or boycott of another competitor
- Prohibition on tying and linking

Provisions in the CMA on Dominant Position



Determination of Dominant Licensee – Section 137 of the CMA

- Conduct which has the **effect** of substantially lessening competition

Meaning of Dominant Licensee and Direction by the Commission – Sections 138 and 139

- Commission may publish guideline on how to apply the test of dominant position
- Commission may direct licensee in Dominant Position to cease a conduct

Key Concepts on Competition



Conduct

- Any commercial or other activities undertaken by licensees in the relevant market
- Primary concern is conduct that has the potential to have negative effect on competition

Purpose

- The end sought to be accomplished by the conduct
- Based on direct evidence of purpose or infer purpose based on various factors

Effect

- Result or outcome of the conduct
- MCMC will examine the results or likely results of the conduct

Assessing Substantial Lessening of Competition



Step 1: Define the market

Define the boundaries of the relevant communications market.



Step 2: Define the context

Consider whether the licensee is in a dominant position in the relevant market.



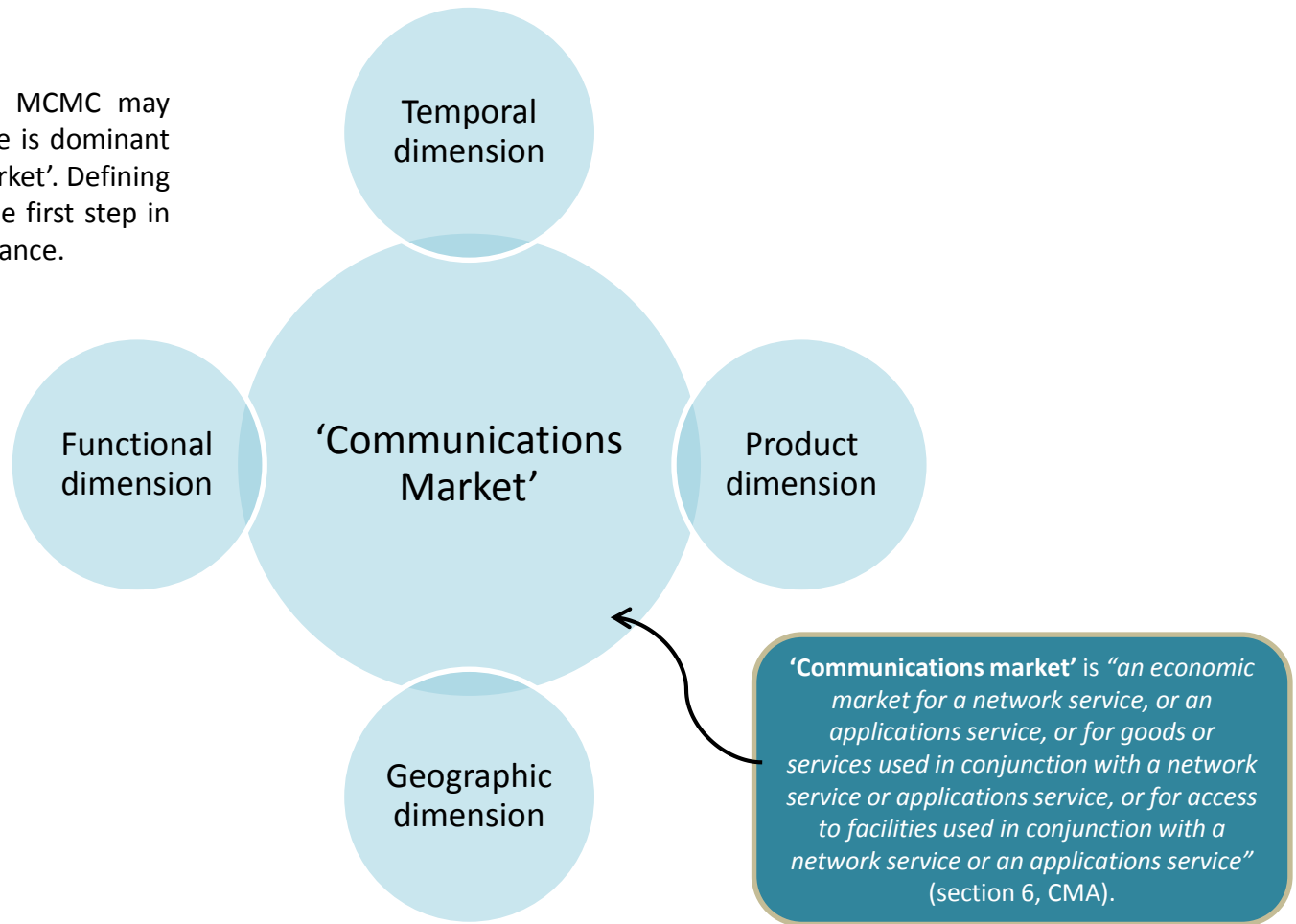
Step 3: Assess the licensee's conduct

- ***With and without** test*
- *Lessening of competition?*
- *Lessening of competition substantial?*
- *Assess conduct with regards to objects of Act*

Market Definition



Under section 137, the MCMC may determine that a licensee is dominant in a 'communications market'. Defining the relevant market is the first step in the assessment of dominance.



Identifying the Scope of Market Substitution



Substitutability refers to the ability of a customer or supplier to switch from one product or service to an alternative in response to a change in the relative price, service or quality.

In general, a product or service is considered 'substitutable' for another product or service if it is a close alternative to that product or service.

Demand-side substitution

Willingness of customers to switch to an alternative product or geographic source of supply in response to a price increase or a decrease in service or quality.

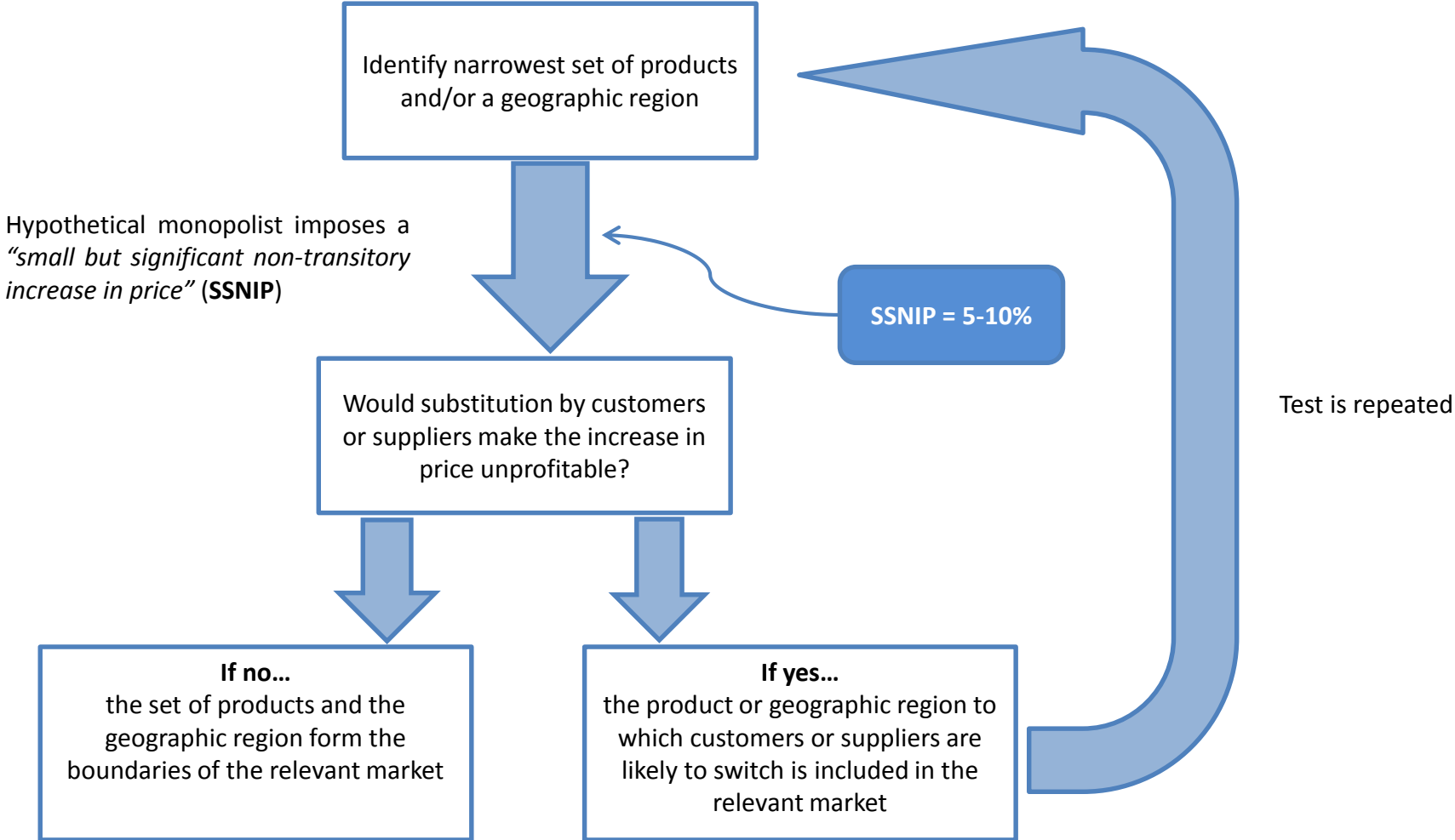
To be part of a single market, products or geographic regions must be 'close substitutes'.

Supply-side substitution

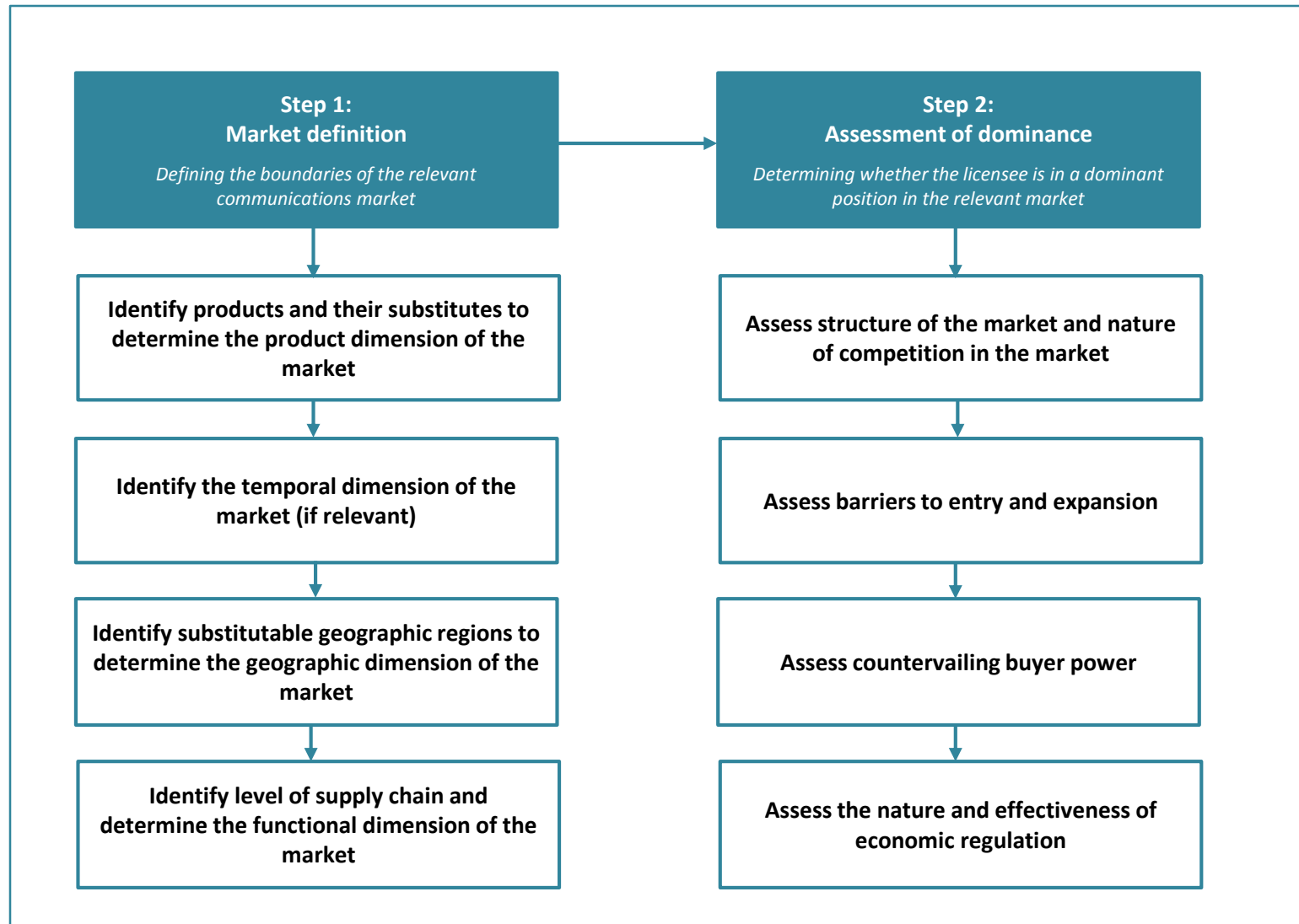
Ability of suppliers to switch from supplying a product or geographic region to another product or region in response to an increase in price.

A product or geographic region will be substitutable if a supplier can quickly and easily switch its production or distribution in response to a price increase.

Hypothetical Monopolist Test

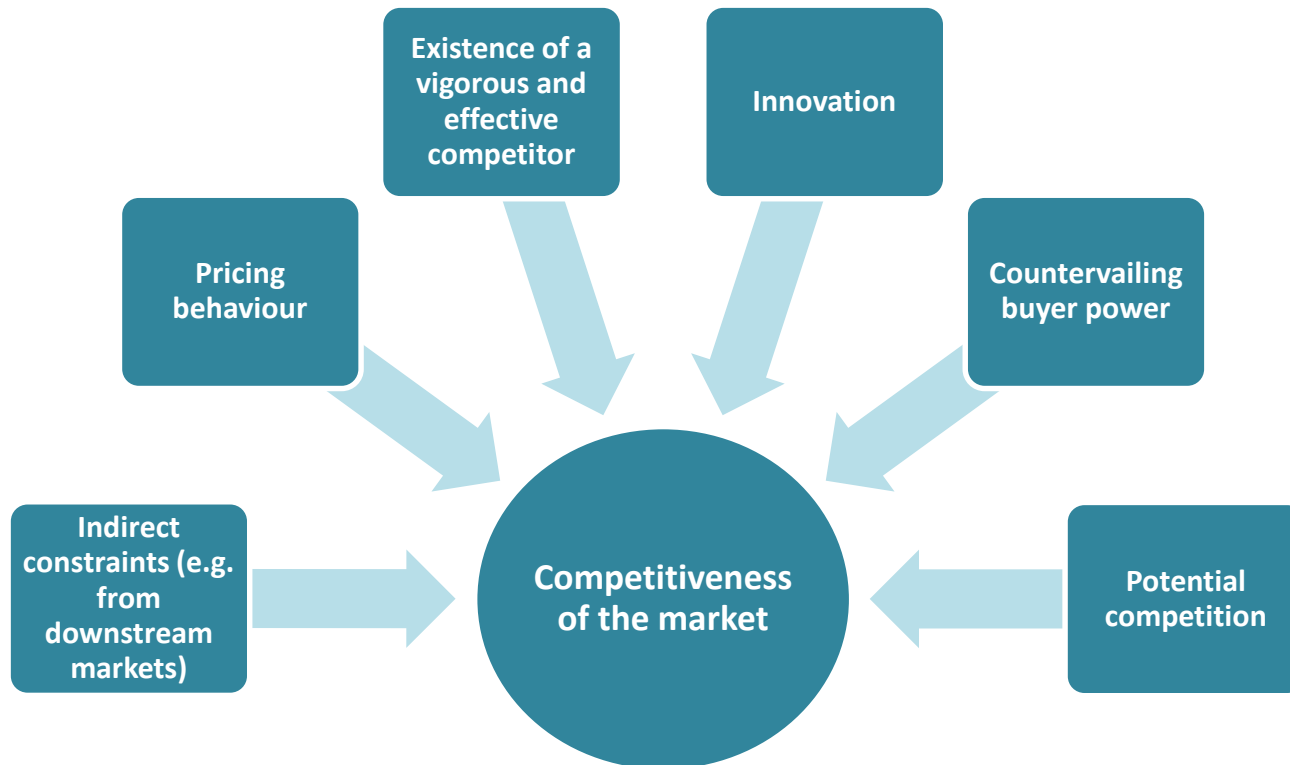


Assessment of Dominance

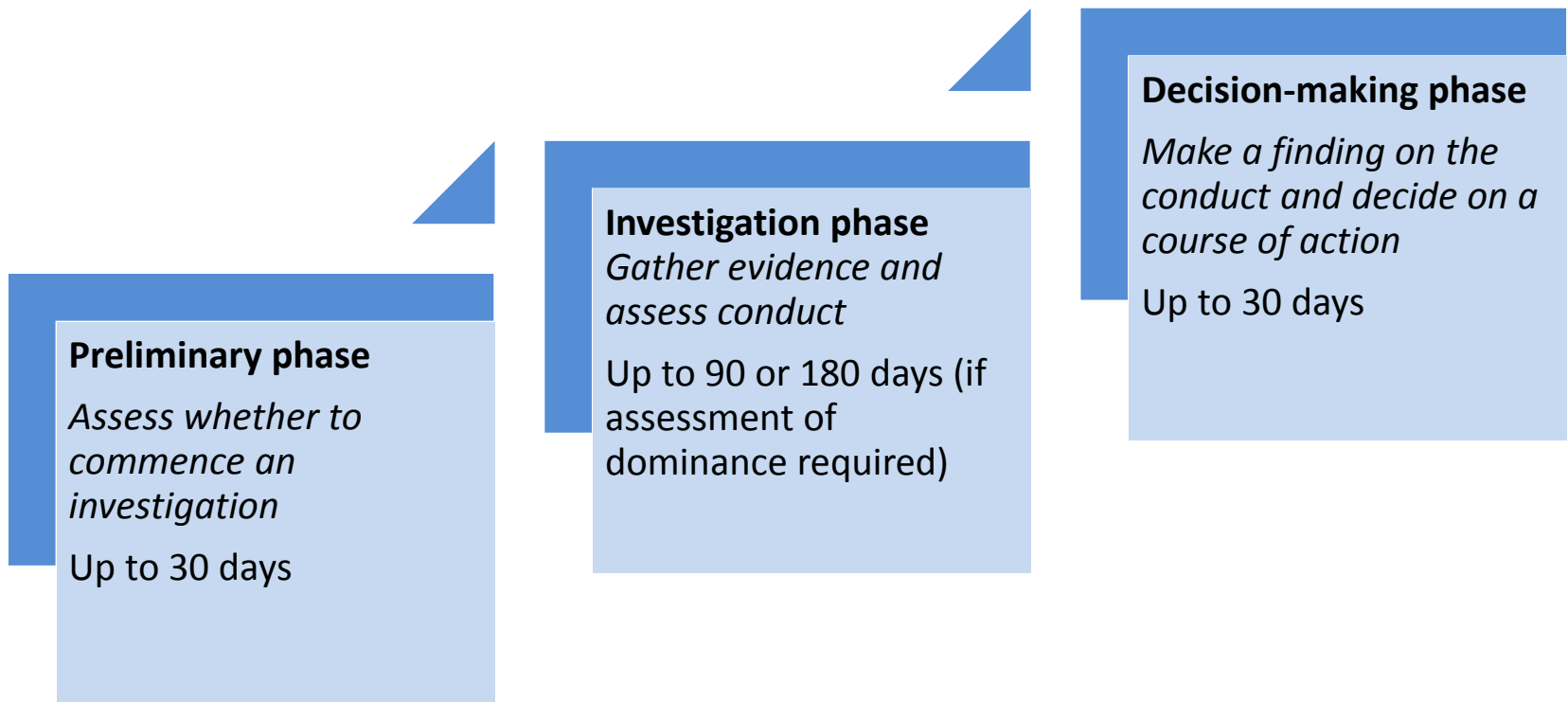


Competitive Dynamics

In addition to market share, our assessment of competitiveness in each communications market was also based on a range of other factors:



Investigating Competition Complaints



Filing of Competition Complaints



Nature

- What is the nature of complaint?
- Which is the licensee engaging in anti-competitive conduct?
- Is it fair competition or anti-competitive?

Conduct

- What is the conduct?
- Has the licensee assessed that all elements of conduct are present?

Information

- Is the licensee able to provide sufficient information to MCMC?

Appeal of Decisions



Statement of reasons

- Request made by a person aggrieved or adversely affected by decision
- Commission to provide within 30 days

Appeal tribunal

- Appealed by person aggrieved or adversely affected by decision or direction of Commission
- Merits and process of decisions or Directions

Judicial review

- Review decision or action of Minister or Commission
- The person must first exhaust all other remedies under the Act

Examples of Anti Competitive Conducts



Predatory Pricing

- Low pricing strategy to eliminate/deter competitors
- Likely to be engaged by dominant operator
- Assess whether price is below cost, duration of conduct, exit of rivals, efficiency of competitor

Refusal to Supply

- Actual constructive refusal
- Assess whether refusal is legitimate
- Conduct could be SLC if product or service necessary for downstream competition and eliminates or prevents competition

Margin Squeeze

- Vertically integrated operator controls essential downstream input and sets prices for that input at a level that results in insufficient margin
- Assessment is via Imputation test

Bundling

- Two or more products or services are sold as a package
- Bundling is anti-competitive if supplier is dominant and forecloses competition in another component that it is not dominant



THANK YOU