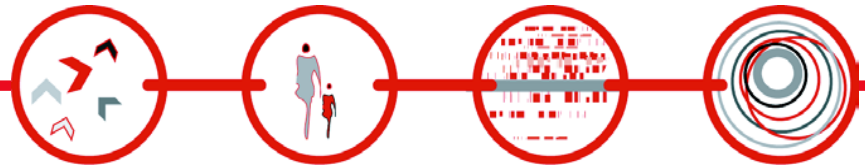


Appeal procedures in Sweden - experiences under the new regulatory framework

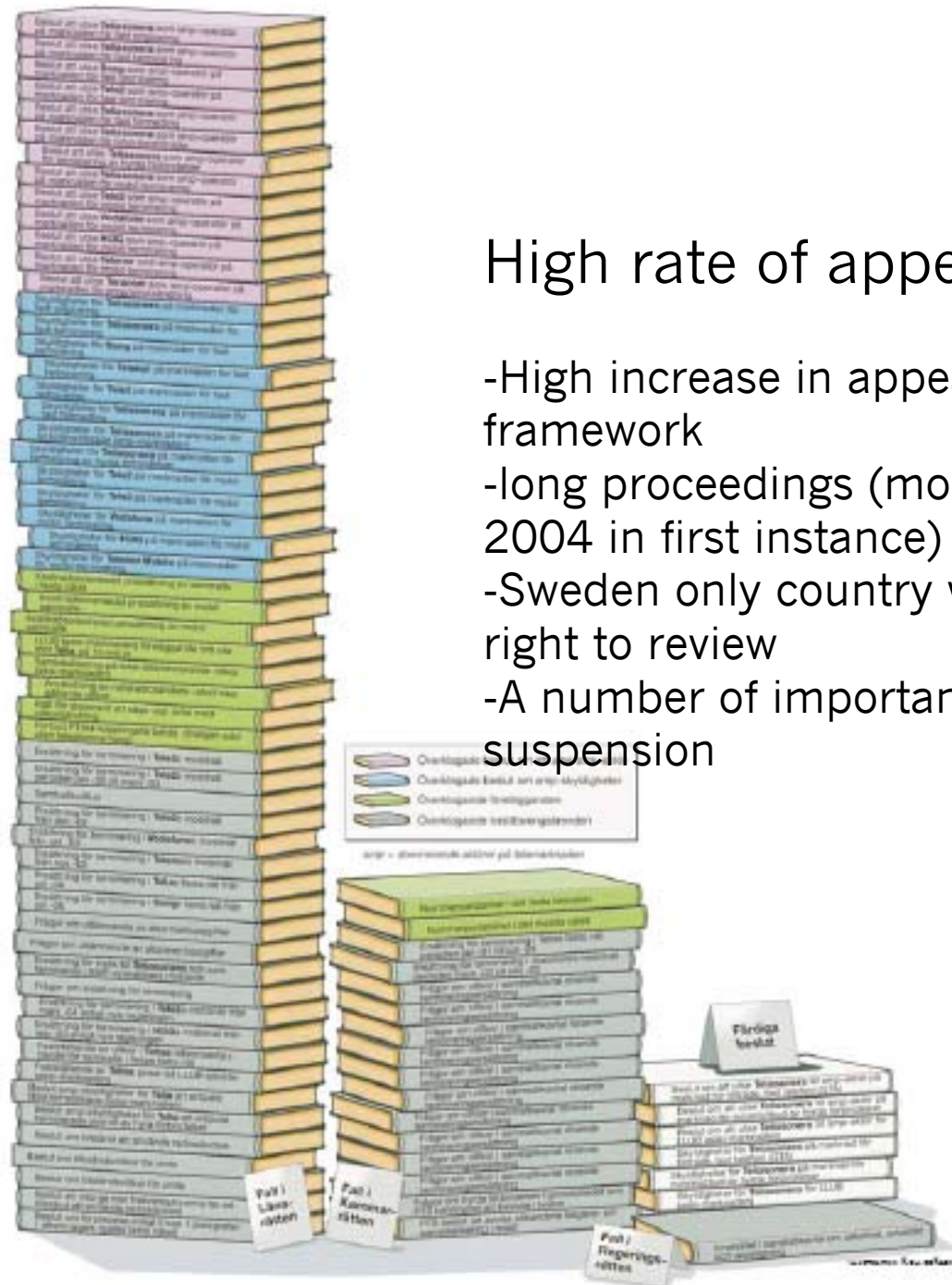
Cullen Conference 6 November, 2006

Sara Andersson, National Post and Telecom Agency, Sweden



High rate of appeals in Sweden

- High increase in appeals with 2003 regulatory framework
- long proceedings (mobile termination since aug. 2004 in first instance)
- Sweden only country with three instances with full right to review
- A number of important cases subject to suspension

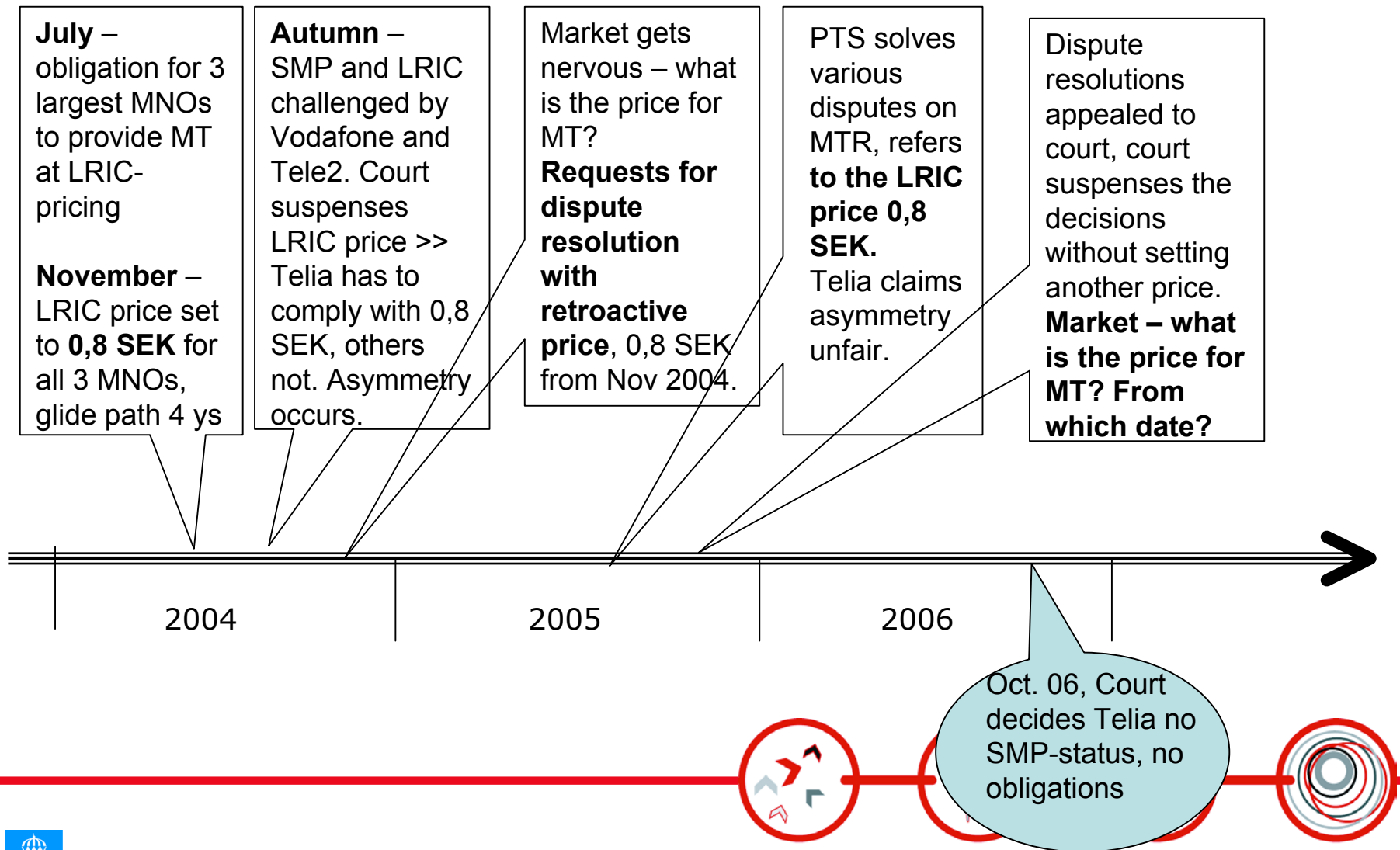


Current situation – appeals and suspensions

- Appr. 80 court cases in first, second and third instances. Still highest degree of appeals in Europe on market reviews and ex ante obligations?
- Very high degree of appeals also for dispute resolution (appr. 95 per cent of all cases) and decisions on compliance control
- Both incumbent and new entrants challenge decisions of which they are addressees
- 4 important decisions on obligations are stayed in court
 1. USO obligation to provide fixed connection
 2. Obligation to provide bitstream access
 3. Price control fixed interconnection
 4. Price control mobile termination
- Courts do not apply the principle of "economic entity", have quashed decisions on SMP on "mother companies", claiming that the affiliated company (daughter company) is the right addressee for SMP. This means no SMP-status for incumbent on mobile termination at present

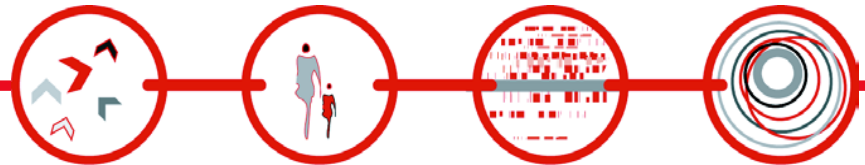


Example – mobile termination, market 16

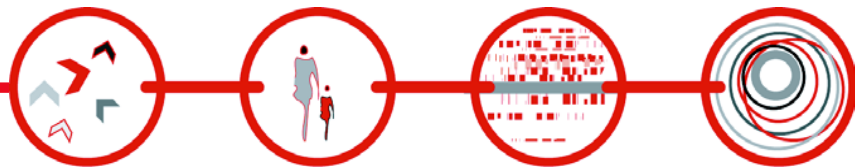
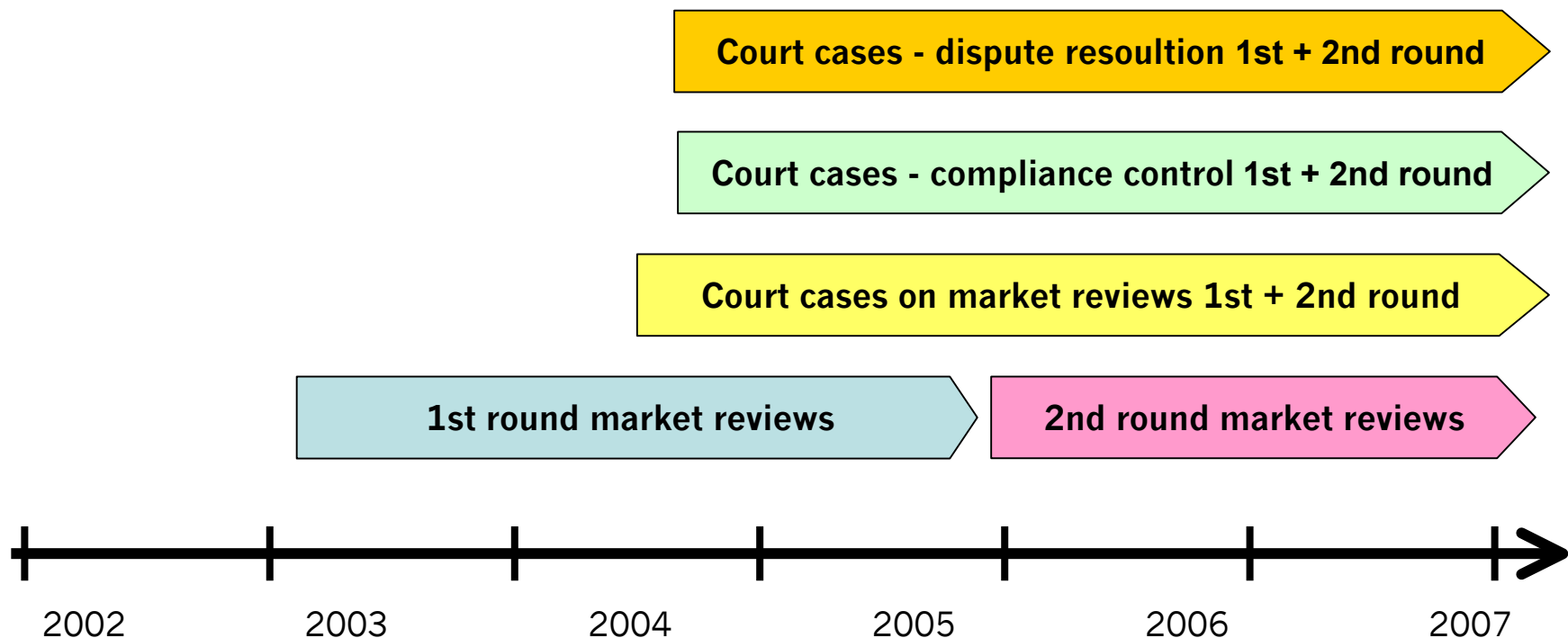


“The most serious challenge to achieving the goals of the regulatory framework in Sweden is the functioning of the appeal process. [...] The appeal procedures take too long and result in significant legal uncertainty to the point of calling into question the functioning of the marketplace. Since the transition to the new Electronic Communications Act, there has been a tendency to systematically appeal decisions based on the new legislation.”

European Commission in its 11th Implementation Report, February 2006

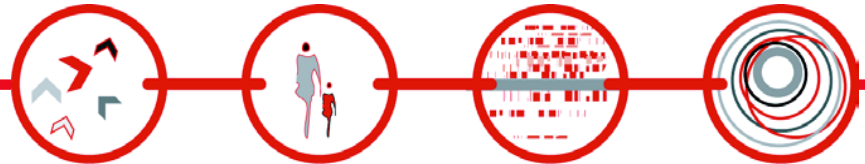


Multiple generations of decisions will succeed in courts...



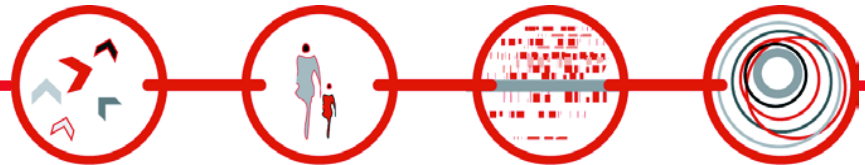
Problematic areas

- **Inefficiencies** – long court proceedings contradictory to NRF:s objectives on timely and prompt intervention
- **Lack of predictability** - regulation itself is subject to court proceedings – not just *in casu* dispute settlement between litigating parties. What rights and obligations can market players rely on and base their business case upon in the meantime?
- **Lack of harmonisation** – if courts disrespect market definitions, basic consumer rights such as USO etc.
- **Need for legal security** – right to fair trial also on the merits



Judicial reform recently proposed

- Commissioner appointed by Government delivered legislative proposals last week – judicial reform suggested
 - Two instances instead of three, cut the supreme court
 - Mandatory time frames – max. 6 months for court trial
 - Economic experts to assist judges when trying cases on market reviews, remedies and dispute resolution
 - Obligation to provide written reasoning for suspension



Issues yet to be solved...

- How can the European regulatory framework safeguard a harmonised application in the European courts?
- Today we see a lack of a common understanding of this field of law in courts and divergent outcomes.
- There are no harmonisation mechanisms in the framework for judicial review (such as art. 7 procedure)
- Will this lack of harmonisation mechanism jeopardise the whole idea of an internal market for electronic communication services?

