INDÉPENDANCE :

DE QUOI S'AGIT-IL ?

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Réseau francophone des régulateurs de l'énergie

Bruxelles, 11 juillet 2017

1) LA RÉGULATION N'EXISTE PAS

2) L' INDÉPENDANCE N'EXISTE PAS

3) UN PEU DE SAGESSE

LA RÉGULATION N'EXISTE PAS

NO REGULATION

SELF-REGULATION

COMMAND AND CONTROL

INDEPENDENT REGULATION

SELF-REGULATION

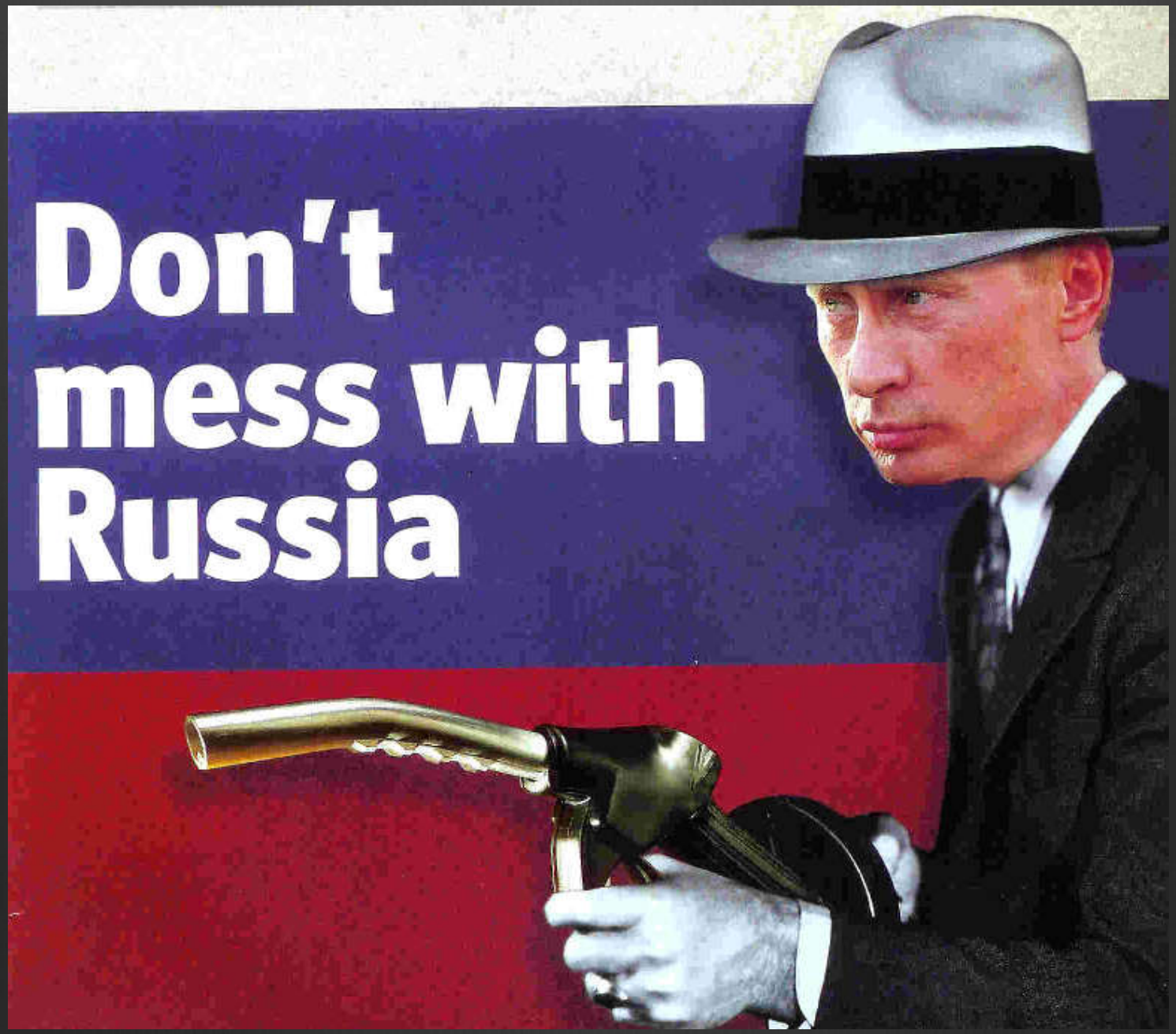
The New York T

NEW YORK, FRIDAY, OCTOBER 24, 2008

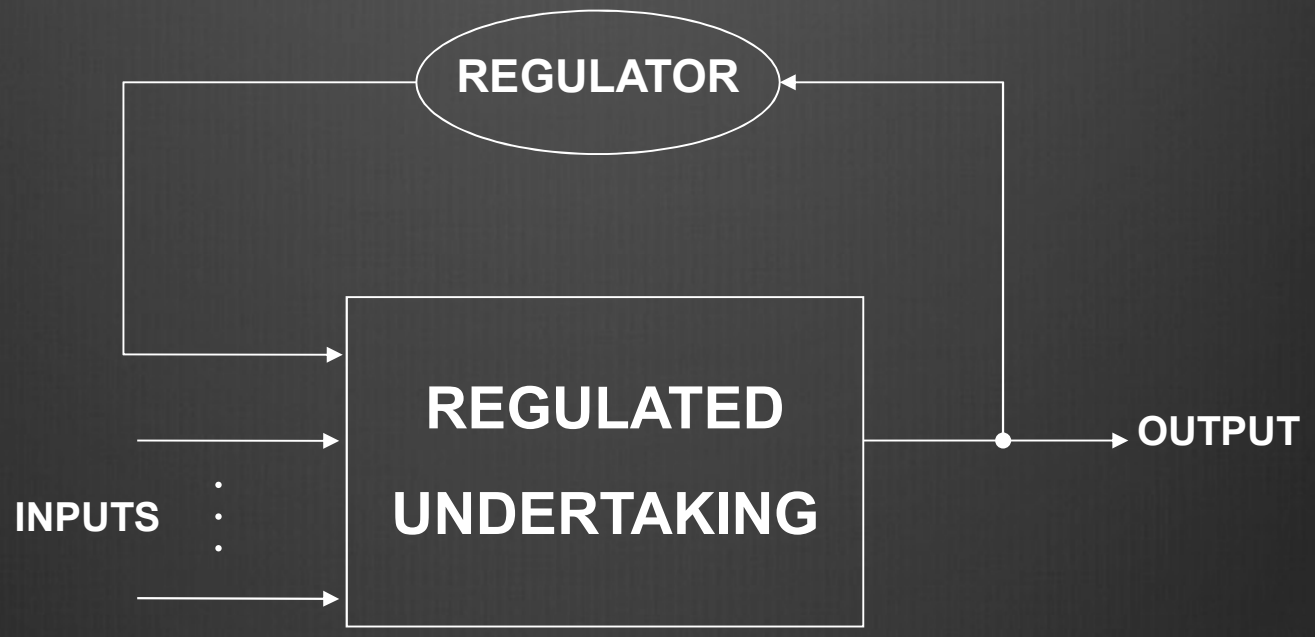
Looking Back in Disbelief

"I made a mistake in presuming that the self-interests of organizations, specifically banks and others, were such as that they were best capable of protecting their own shareholders and their equity in the firms."

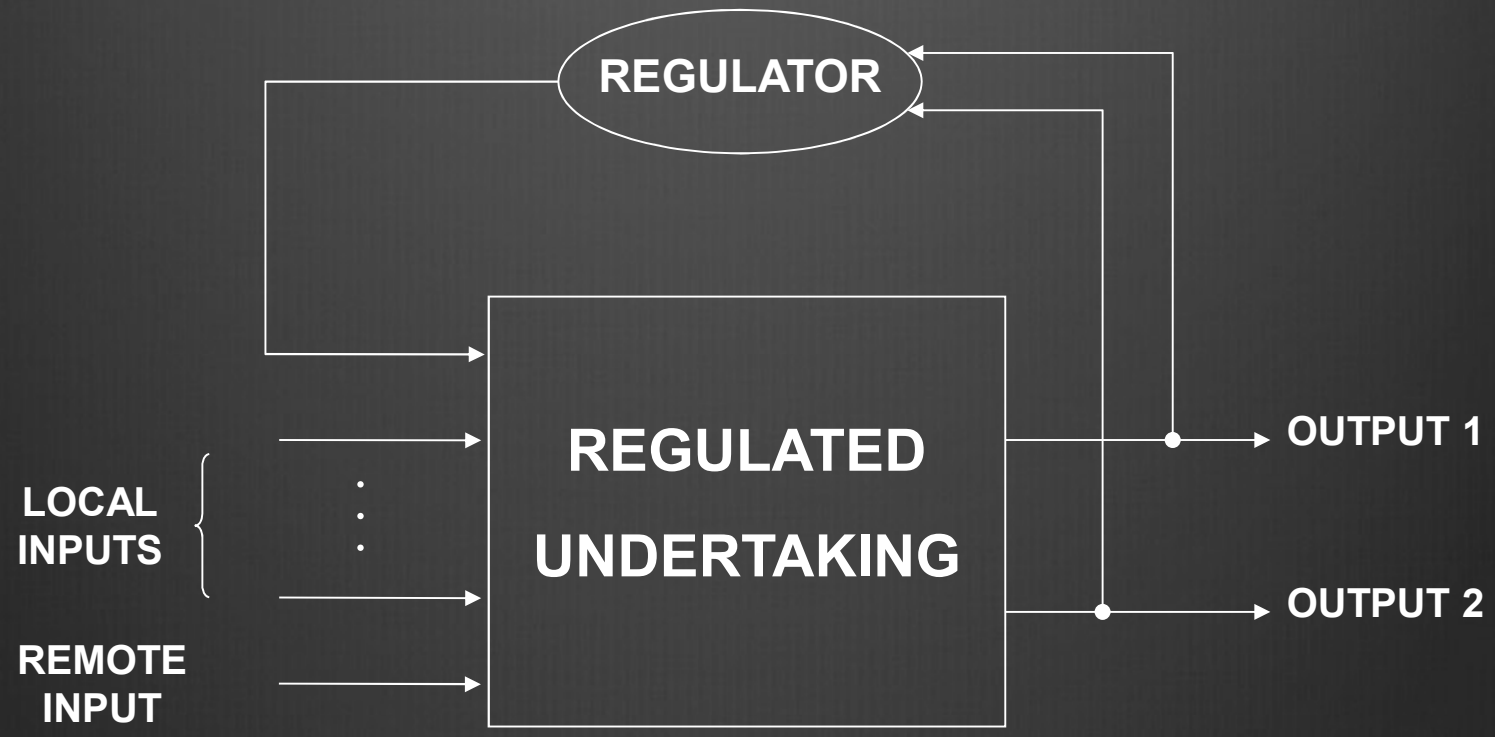
Greenspan Concedes Error on Regulation


Don't
mess with
Russia

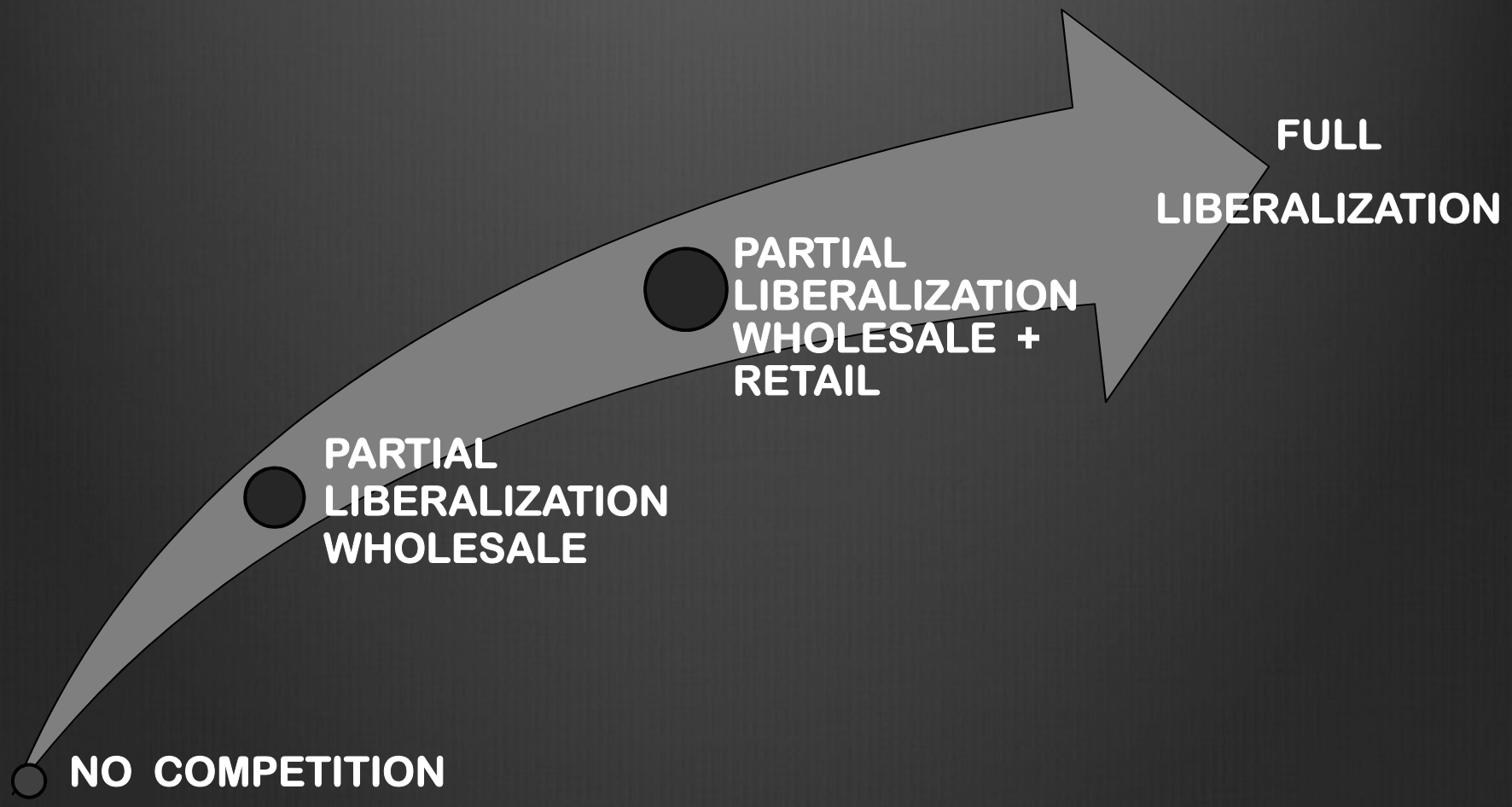
LOW-LEVEL COMPLEXITY



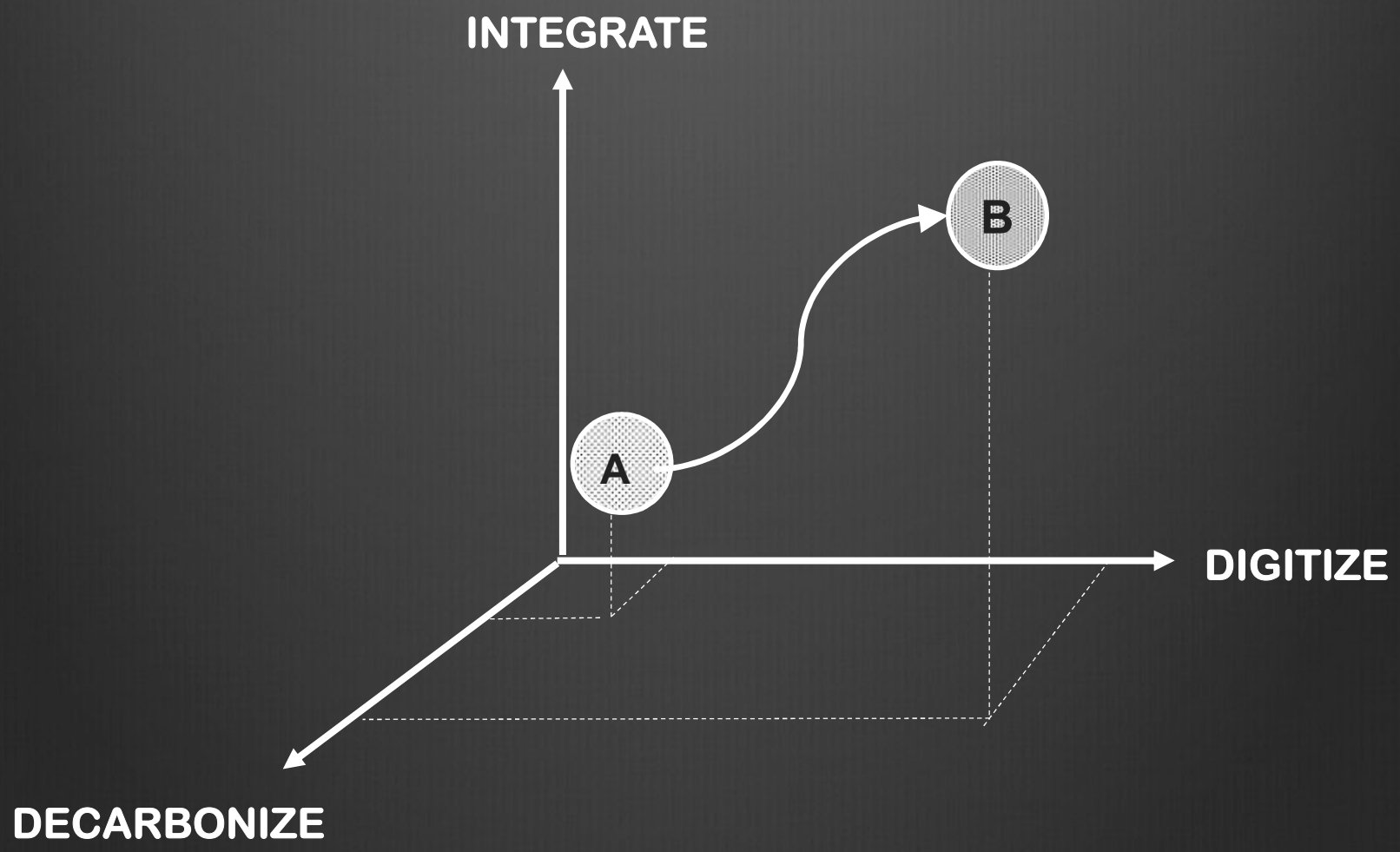
HIGH-LEVEL COMPLEXITY



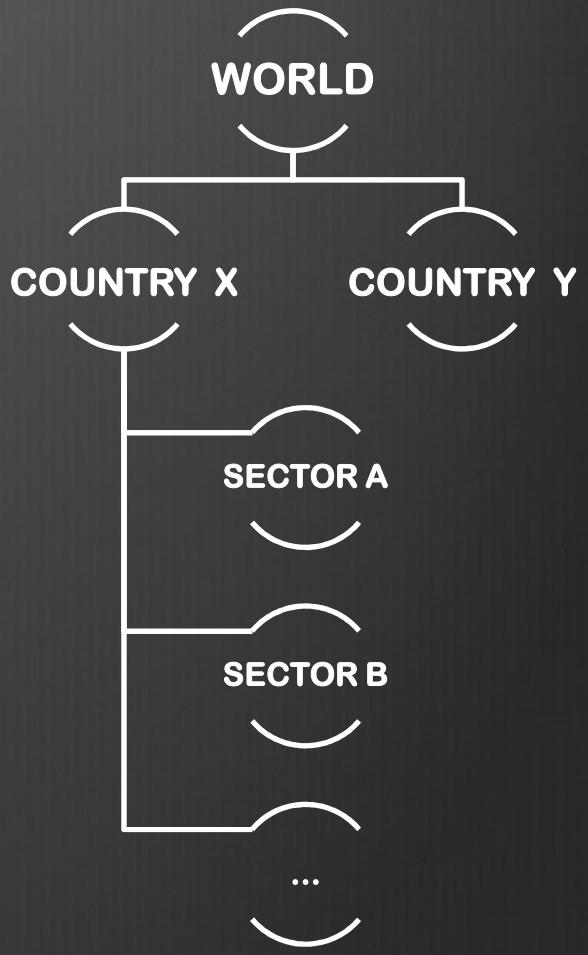
DIFFERENT DEGREES OF ENERGY MARKET LIBERALIZATION

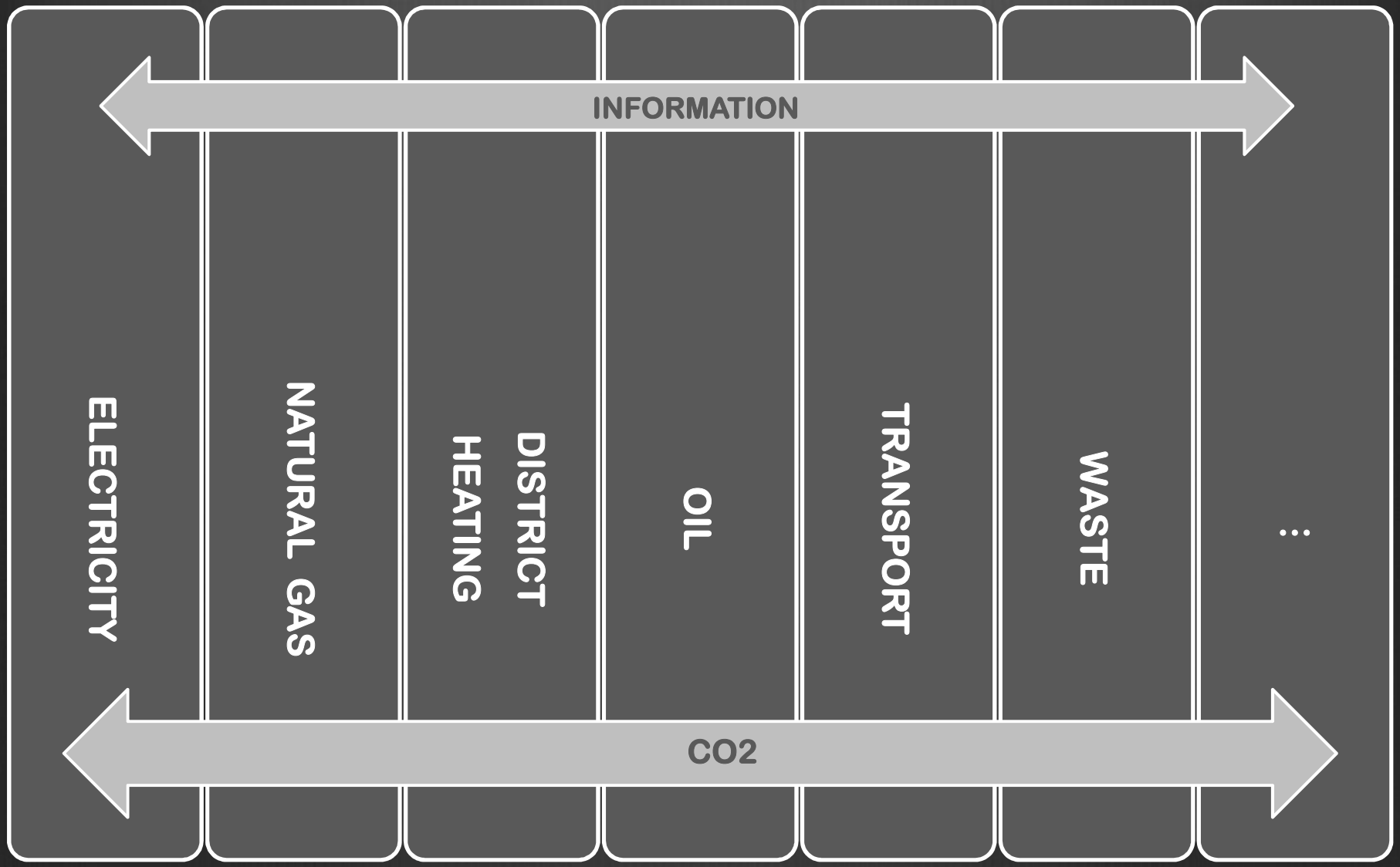


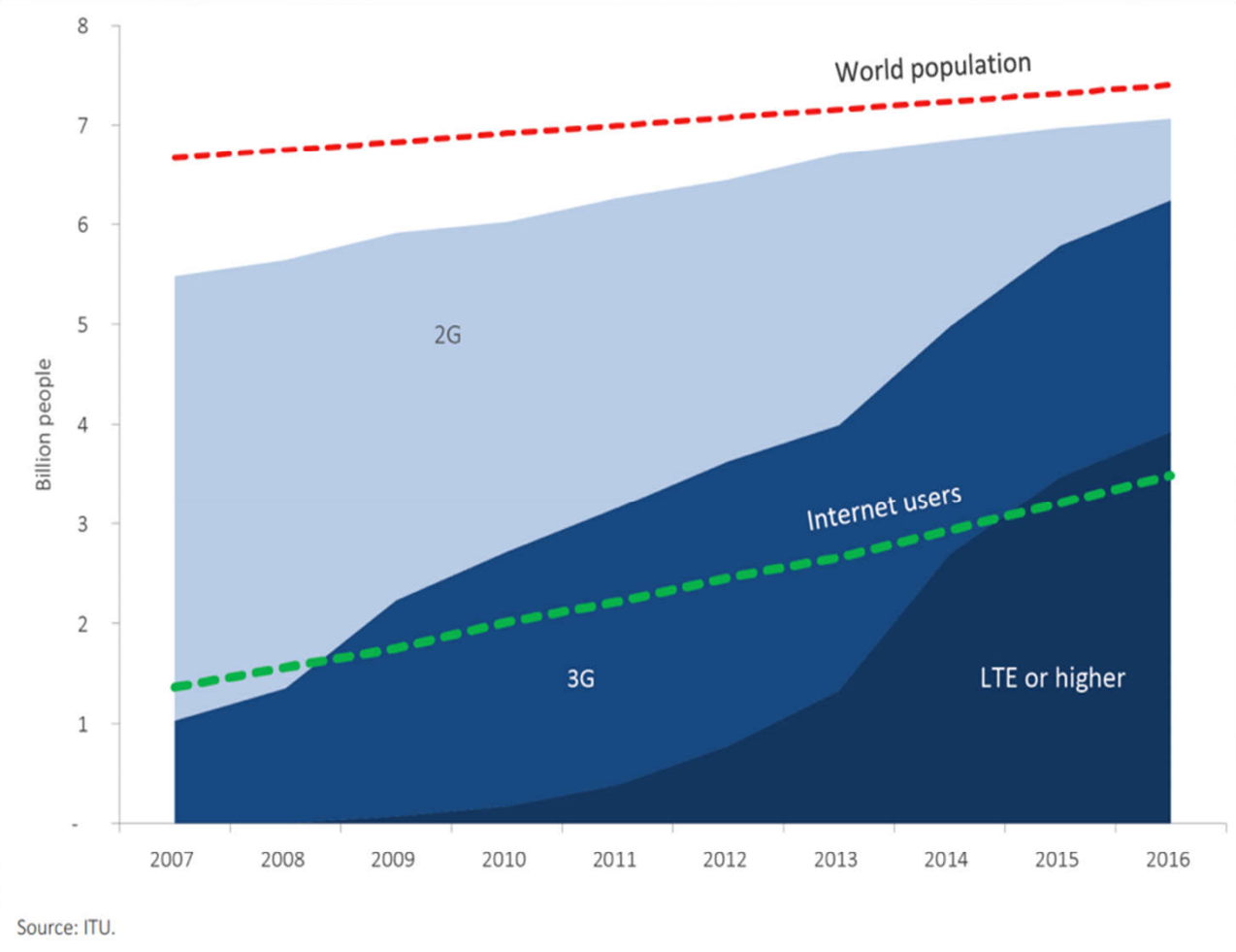
THE 3 DIMENSIONAL EU ENERGY TRANSITION



PARIS AND BEYOND




INFORMATION
ELECTRICITY
NATURAL GAS
DISTRICT HEATING
OIL
TRANSPORT
WASTE
...
CO2



https://www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2016/MISR2016-w4.pdf

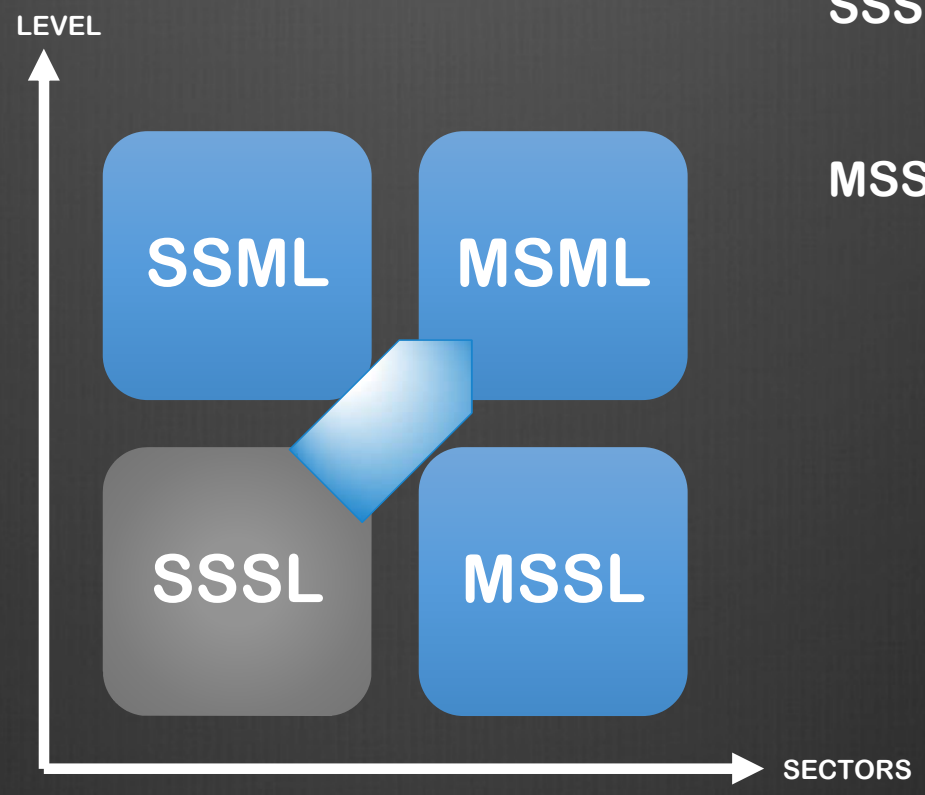
ENERGY SYSTEM ARCHITECTURE

SSML: Single Sector Multiple Level

MSML: Multiple Sector Multiple Level

SSSL: Single Sector Single Level

MSSL: Multiple Sector Single Level



THE ELECTRICITY MARKET DOESN’T EXIST

Talking about *"the"* electricity market is a conceptual mistake and a dangerous approach to market redesign because there is no such thing.

Electricity markets are a very recent social construction, they exhibit very different features in different countries and, within any given country, they have changed substantially over the past two decades.

“The creation of new markets is frequently complicated and sometimes even thwarted by ideological enmity, political resistance, fear of uncertainty, or mere ignorance.

(…) the creation of markets is always a social enterprise. It requires the collective actions of many individuals, organizations, and government agents. As in all collective efforts, human relations matter. The market does not and cannot reduce flesh and blood people with distinct identities into machine-like atomistic agents. Market participants certainly calculate and reason; but they remain social animals. The operation of the market also requires complicated rules and structures, which in turn requires concerted efforts and planning. Rules and norms are frequently needed. Many such rules and norms are self-enforced. But the state is often involved in enacting and providing credible third-party enforcement.”

Ronald Coase

In Foreword to Richard L. Sandor “Good Derivatives”, John Wiley and Sons, 2012

THE MAIN CHALLENGES FACED BY REGULATION SINCE THE END OF THE 20th CENTURY RESULT FROM:

- NEED TO MOVE FROM COST-BASED TO (MORE EFFICIENT) PERFORMANCE-BASED REGULATION
- UNBUNDLING, INTRODUCTION OF COMPETITION
- SUSTAINABILITY POLICIES

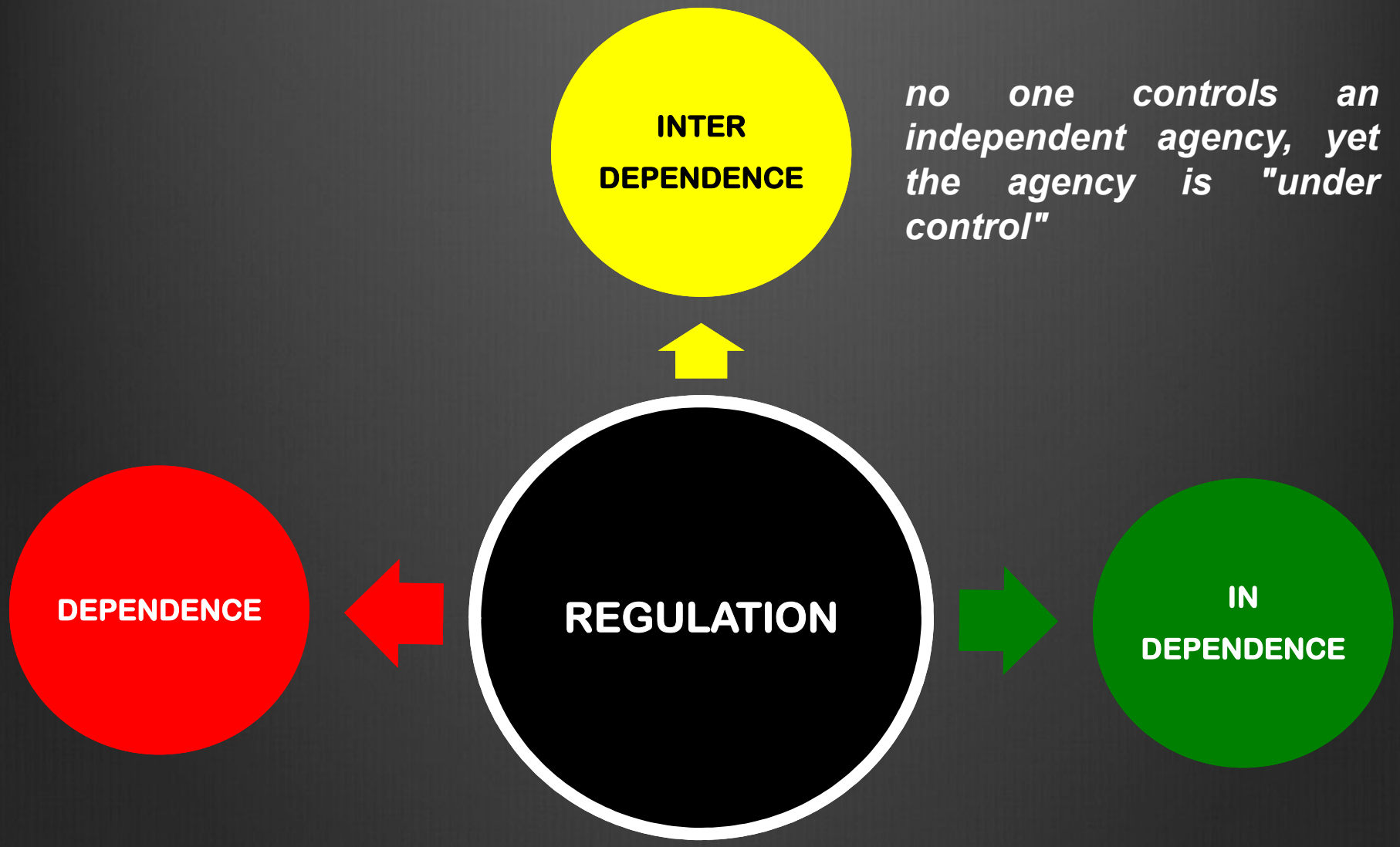
AN INDEPENDENT ENERGY REGULATOR: WHY ?

- ENERGY REGULATION - WHY ?
- ENERGY REGULATION - HOW ?
- ENERGY REGULATOR - WHY ?

L’ INDÉPENDANCE N’EXISTE PAS

THERE ARE FOUR MAJOR QUESTIONS REGARDING REGULATORY AUTHORITIES:

- LEGITIMACY (PROCEDURAL AND SUBSTANTIAL)
- EFFECTIVENESS
- INDEPENDENCE
- CO-ORDINATION



no one controls an independent agency, yet the agency is "under control"

we conclude that politically independent expert agencies can be monitored and kept politically accountable only by a combination of control instruments: clear and narrowly defined objectives; strict procedural requirements; judicial review; professionalism and peer review; transparency; public participation. (…) The record shows that when such a multi-pronged system of controls works properly, no one controls an independent agency, yet the agency is "under control"

Giandomenico Majone
Temporal Consistency and Policy Credibility: Why Democracies Need Non-Majoritarian Institutions
European University Institute, Working Paper RSC No 96/57, 1996

HOW TO BUILD AN INDEPENDENT REGULATOR ?

MAIN ASPECTS TO BE CONSIDERED :

	DIMENSION
❑ LEGAL FRAMEWORK	EXTERNAL
❑ MANAGEMENT	INTERNAL
❑ INTERACTION WITH STAKEHOLDERS	INTERFACE

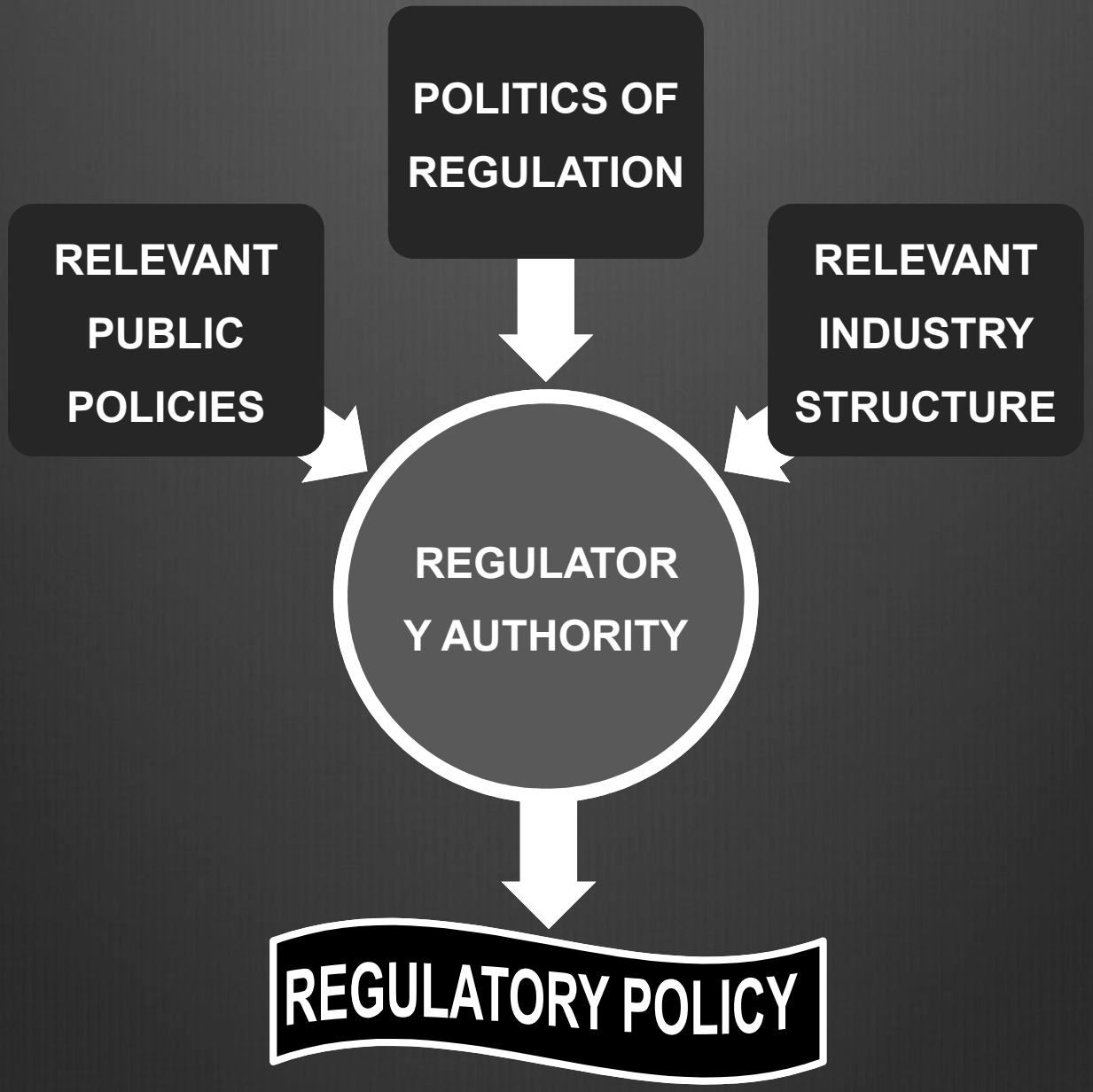
European Review of Energy Markets - volume 3, issue 3, October 2009

Energy regulation in Europe: regulatory policies and politics of regulation

Jorge Vasconcelos

1. Introduction

Regulation is a "technical" activity, i.e. it is *"marked by (…) specialization"* and *"relating to a practical subject organized on scientific principles"*[1]. So has been and so is energy regulation. Back in 1930, following the 1929 financial crash, reinforcement of the powers of the US Federal Power Commission (which had been established in 1920 and is the predecessor of the present Federal Energy Regulatory Commission - FERC) was justified in the following terms: *"there are some problems of their very nature so technical that neither the courts nor the legislatures are competent to handle them – problems such as utility rate making – that require specialized knowledge by trained experts"*[2].

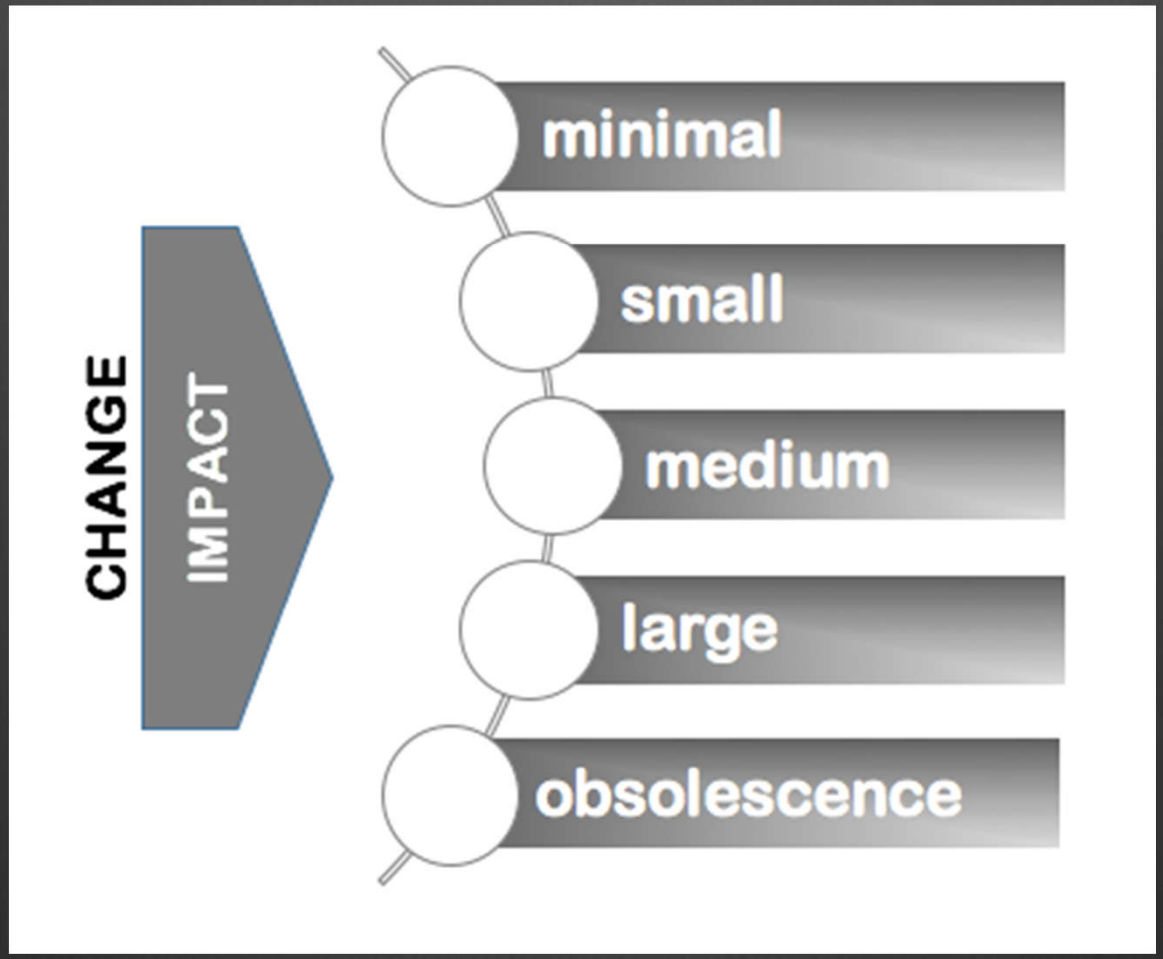

POLITICS OF REGULATION
RELEVANT PUBLIC POLICIES
RELEVANT INDUSTRY STRUCTURE
REGULATOR Y AUTHORITY
REGULATORY POLICY

Regulation is more than a succession of unrelated technical decisions: to be predictable and successful, regulation needs a coherent strategy, i.e., a clear "regulatory policy".

Any "regulatory policy" reflects the way regulators apply their knowledge and expertise taking into account not only the general "politics of regulation" but also all relevant sector specific policies. Therefore, the performance of regulators depends not only on the quality of their "specialized knowledge", but also on their ability to conveniently and timely interpret public policies, translating them into an appropriate and transparent "regulatory policy".

PUBLIC POLICIES

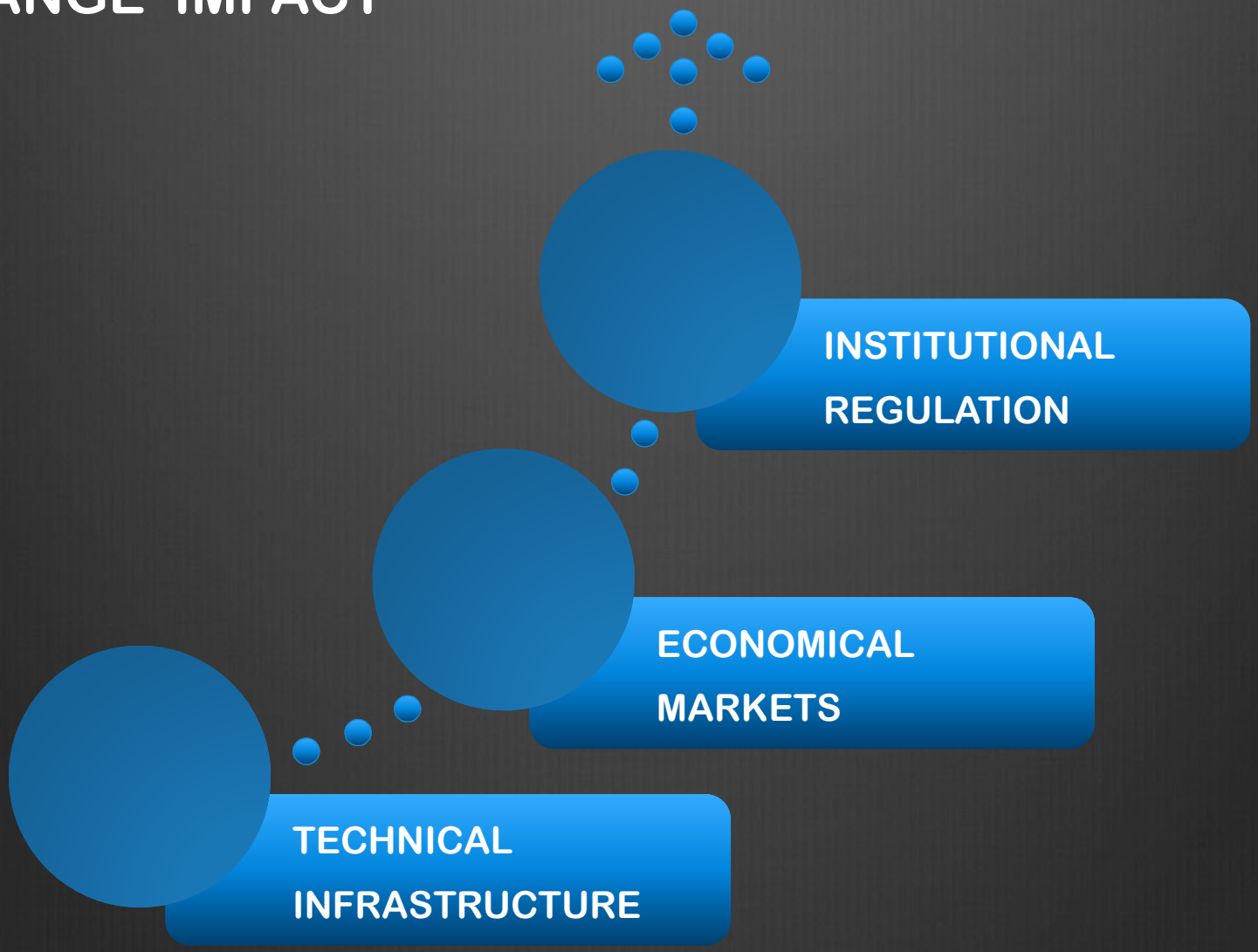
TECHNOLOGIES



INTENSITY OF POLICY (OR OTHER STRUCTURAL) CHANGE

IMPACTS UPON NETWORKS

CHANGE IMPACT



CHANGE

NETWORK INADEQUACY

TOPOLOGY

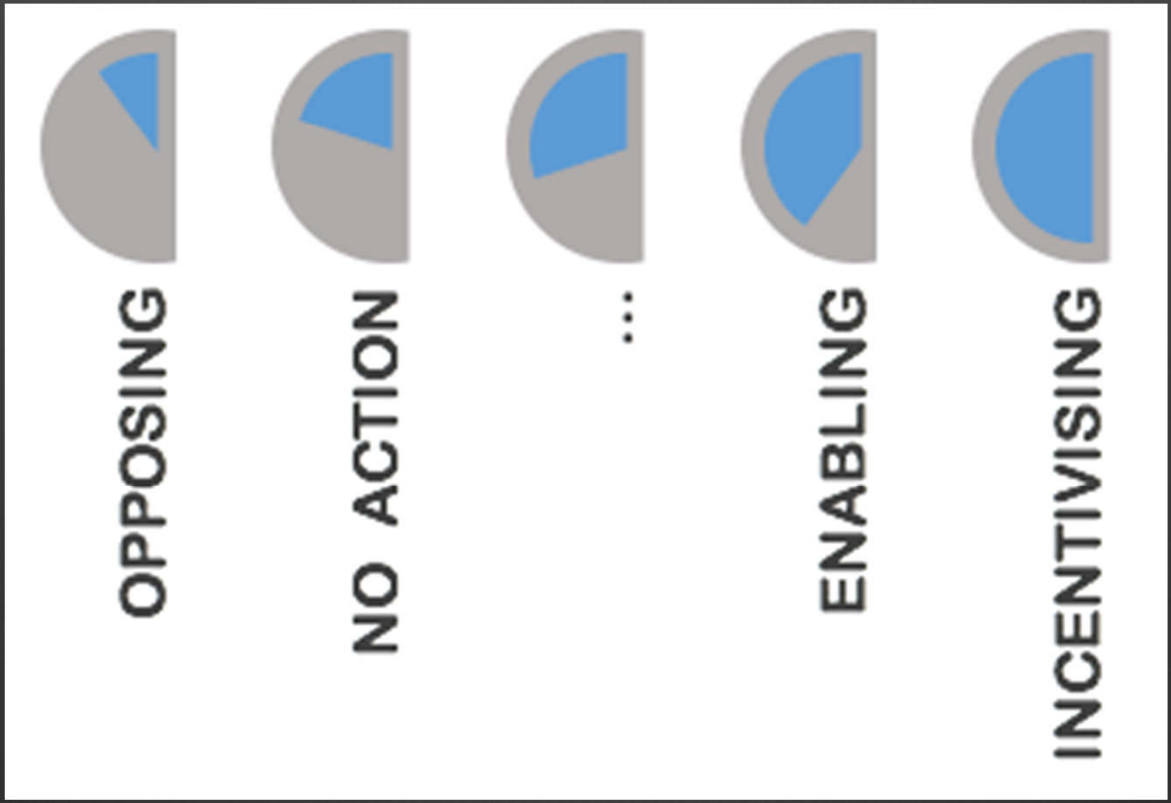
a suitable network must connect the "right" dots (i.e., producers/sellers/senders with consumers/buyers/receivers); if some actors are left “off-grid”, they cannot benefit from the advantages provided by the network.

CAPACITY

the branches connecting the dots (nodes) must exhibit the "right" physical characteristics (namely size), i.e., they must enable the required flows between nodes; insufficient capacity leads to congestion, latency or similar phenomena, while overcapacity means idle assets – both cases are responsible for economic inefficiency.

REGULATION

the technical and commercial rules governing infrastructure access and use should enable all legally acceptable transactions to take



SPECTRUM OF REGULATORY REACTIONS TO

STRUCTURAL CHANGE

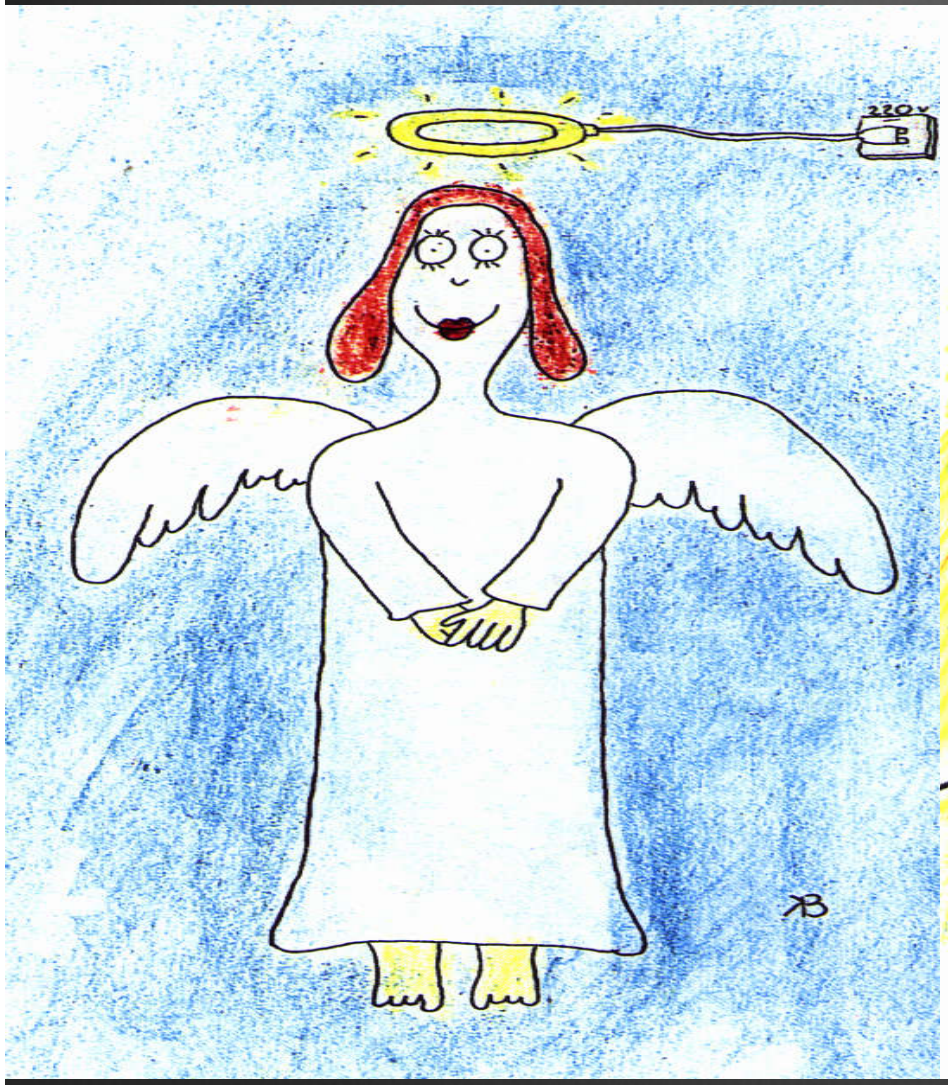
A RATIONAL APPROACH TO REGULATORY CHANGE

COMPLIANCE

FAIRNESS

EFFICIENCY

UN PEU DE SAGESSE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"(…) It is because, in my judgement, public ownership of railroads is highly undesirable and would probably in this country entail far-reaching disaster, that I wish to see such supervision and regulation of them in the interest of the public as will make it evident that there is no need for public ownership. The opponents of government regulation dwell upon the difficulties to be encountered and the intricate and involved nature of the problem. Their contention is true. It is a complicated and delicate problem, and all kinds of difficulties are sure to arise in connection with any plan of solution, while no plan will bring all the benefits hoped for by its more optimistic adherents. Moreover, under any healthy plan the benefits will develop gradually and not rapidly. Finally, we must clearly understand that the public servants who are to do this particularly responsible and delicate work must themselves be of the highest type both as regards integrity and efficiency. They must be well paid, for otherwise able men cannot in the long run be secured; and they must possess a lofty probity which will revolt as quickly at the thought of pandering to any gust of popular prejudice against rich man as at the thought of anything even remotely resembling subserviency to rich men. But while I fully admit the difficulties in the way, I do not for a moment admit that these difficulties warrant us in stopping in our effort to secure a wise and just system.(…)"

President Theodore Roosevelt, December 5, 1905

"(…) C'est parce que, à mon avis, la propriété publique des chemins de fer est hautement indésirable et entraînerait probablement dans ce pays une catastrophe de grande envergure, que je souhaite que la surveillance et la réglementation de ces chemins de fer soient effectuées dans l'intérêt du public, ce qui rendra évident qu'il n'y a aucun besoin qu'ils deviennent une propriété publique. Les adversaires de la réglementation gouvernementale insistent sur les difficultés à rencontrer et sur la nature complexe et impliquée du problème. Leur affirmation est vraie. C'est un problème complexe et délicat, et toutes sortes de difficultés risquent de se produire dans le cadre de n'importe quel plan de solution, alors qu'aucun plan n'offrira tous les avantages attendus par ses adhérents les plus optimistes. De plus, dans le cadre de tout plan cohérent et sensé, les avantages se développeront graduellement et pas rapidement. Enfin, nous devons comprendre clairement que les fonctionnaires qui doivent faire ce travail particulièrement responsable et délicat doivent eux-mêmes être irréprochables, à la fois en matière d'intégrité et d'efficacité. Ils doivent être bien payés, car autrement ces personnes compétentes ne peuvent pas être gardées à long terme; et ils doivent posséder une grande probité qui se révolte aussi rapidement à la pensée de se plier à tous les préjugés populaires contre l'homme riche qu'à la pensée de quelque chose qui ressemblerait, même de loin, à la subordination aux hommes riches. Mais, tout en admettant tout à fait les difficultés sur ce chemin, à aucun moment je ne peux admettre que ces difficultés nous obligent à stopper nos efforts dans le but d'assurer un système judicieux et juste."

Président Theodore Roosevelt, 5 décembre 1905