# CONTROLLING MARKET POWER IN TELECOMMUNICATIONS:

# ANTITRUST VS. SECTOR-SPECIFIC REGULATION

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# WHY DO WE NEED TO CONTROL MARKET POWER IN TELECOMMUNICATIONS?

- Even after the market has been open to competition, incumbents will retain substantial market power because they hold high market shares, own essential infrastructures, etc.
- There is thus a risk that they rely on their market power to prevent entry or make it more difficult

# WHAT ARE THE MAIN TOOLS TO CONTROL MARKET POWER?

- Sector-specific rules and institutions

  (e.g., the 1996 US Telecommunications Act as implemented by the FCC)

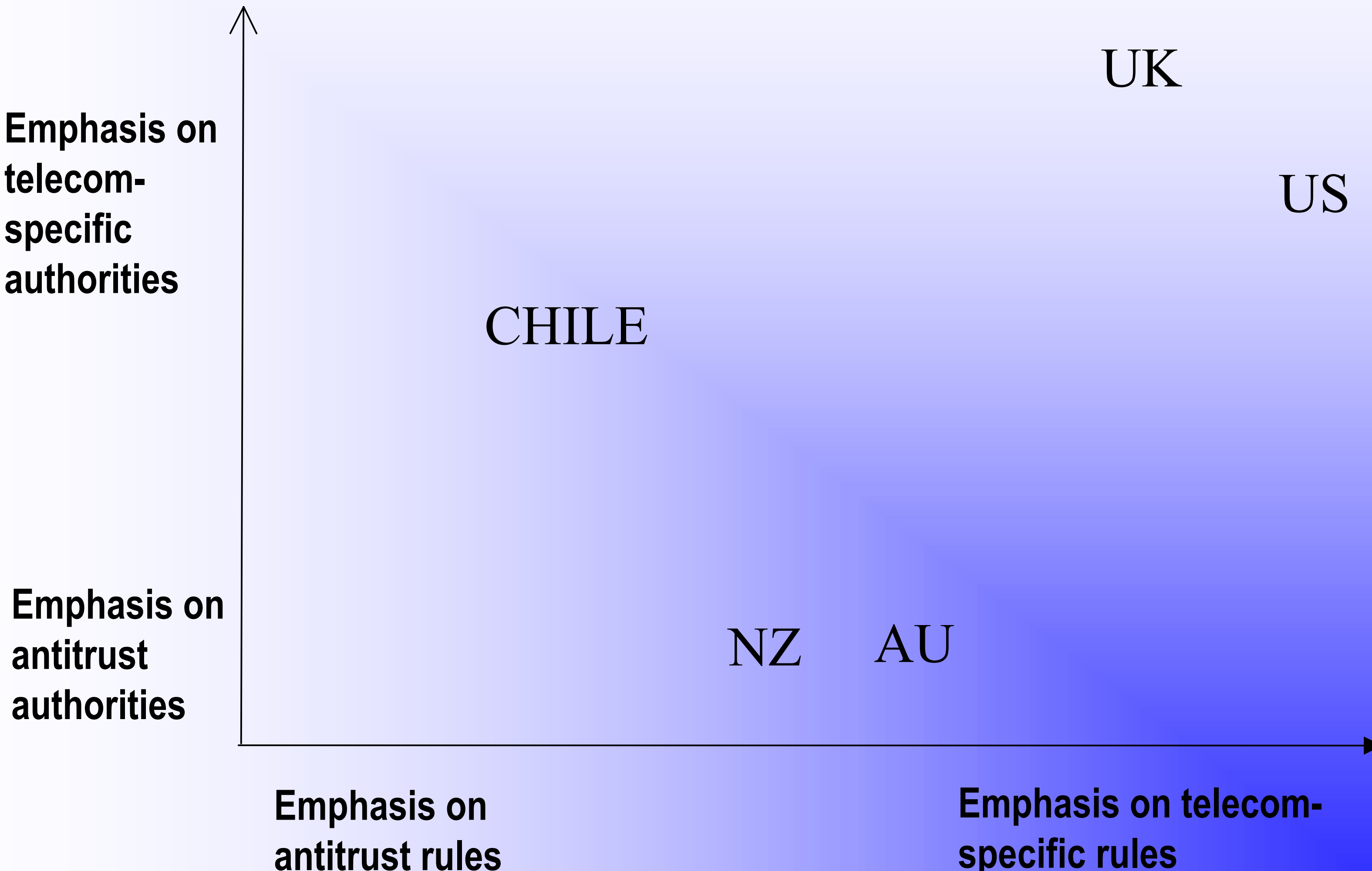
- Competition rules and institutions

  (e.g., the Sherman Act as enforced by the DoJ and the FTC)

# COMPETITION LAW VS. SECTOR-SPECIFIC REGULATION

- Each tool has advantages and disadvantages and countries have tried different combinations
- In order to identify the best model(s) Geradin and Kerf carried out a five-country study

# CHOICE OF FIVE COUNTRY MODELS



# FOUR MAIN CONCLUSIONS

- Some sector-specific rules are desirable at least for some time after liberalization
- Competition rules remain essential
- Specialized regulatory entities are needed at least for some time after liberalization
- There is growing convergence toward a set of best practices

# INTERCONNECTION – SPECIFIC RULES ?

- Incumbent retains substantial market power in fixed local market
- No. of competitors in fixed local market remains small
- Protracted local loop interconnection cases in NZ from 91 to 95 and in Chile before 1987

- When two or several network service providers have comparable market shares agreements will be concluded without need for regulation (e.g., Internet backbones)

# UNBUNDLING – SPECIFIC RULES ?

- Incumbent retains substantial market power in local market
- Promotion of facilities-based competition has yielded disappointing results (UK, NZ)
- Unbundling is complex (choice of network elements, pricing of each element, allocation of space within local exchanges - US, UK)

# NUMBER PORTABILITY – SPECIFIC RULES ?

- In NZ, commercial agreements took a very long time (and pressure had to be applied by Commerce Commission and Executive)
- In Chile, commentators consider that lack of number portability hinders competition

# CARRIER PRE-SELECTION – SPECIFIC RULES ?

- In Chile, multi-carrier system (i.e. selection as well as pre-selection) introduced in 94

- Intense competition followed: ENTEL's share < 50% in 95; calls from Chile to US at $0.34 instead of $2.40 in 97; 13 competitors in 01

# RETAIL PRICING – SPECIFIC RULES ?

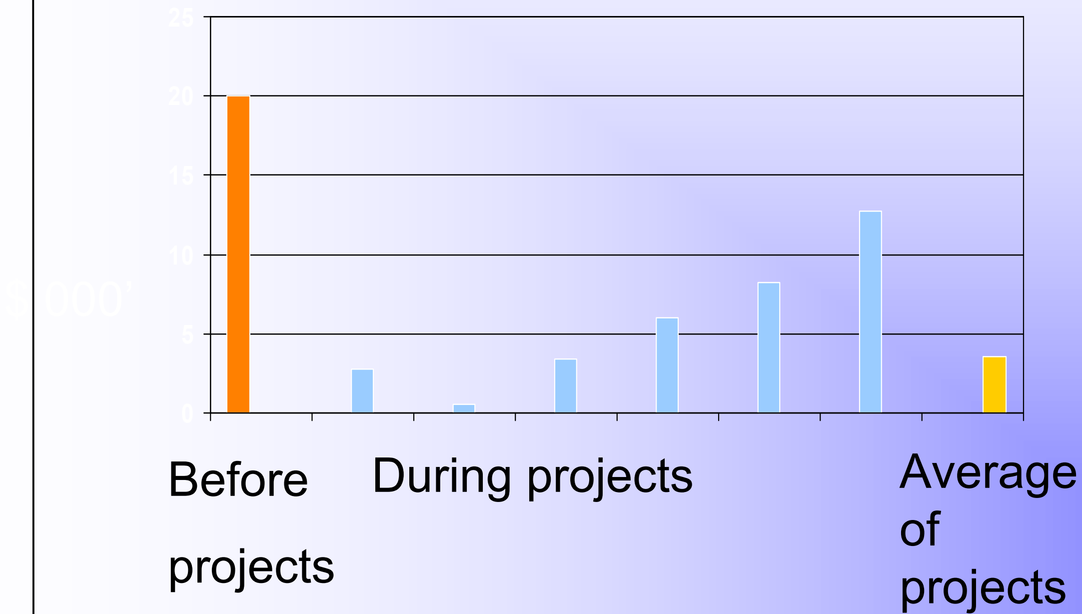
- Price caps normally provide strong efficiency incentives
- Combination of price caps and LRIC methodology limit risk of managerial or accounting cross-subsidies
- Revisions sometimes too frequent (UK, AU)
- Caps sometimes set too high (UK, Chile)
- Concerns on service quality (UK, US)

# SPECTRUM ALLOCATION – SPECIFIC RULES ?

- Scarce resource
- Simultaneous, multiple round auctions max. info, limit risk of winner's curse, ensure that price paid is sunk cost
- Tradable licenses or even spectrum managers (NZ, US, perhaps UK)
- Promotion of new entry (AU, Chile, NZ, UK)
- Complexity
- Spectrum managers may not yield expected benefits in small markets

# USOs – SPECIFIC RULES ?

- Chile: competition for the market




- US: competition in the market
- AU: competition for the market and in the market

| | Costs of USOs (% sector rev.) |
|---|---|
| AU | 2 |
| Chile | 0.2 |
| NZ | 3.85 |
| UK | 0.2-0.3 |
| US | 5 |

# VERTICAL SEPARATION – SPECIFIC RULES ?

- Competition in local loop is limited
- Unbundling is difficult to implement
- Voluntary "separation"
- Higher market valuation of specialized companies
- Risks of loss of economies of scale and scope
- Costs of separation and risks of litigation

# COMPETITION RULES REMAIN ESSENTIAL

- To deal with issues not addressed by sector-specific rules
  - Merger control (US, AU)
  - Collusive practices between operators
  - Abuses of dominant positions (AU, Chile)
- To fill gaps in sector-specific regimes
  - Interconnection (NZ, US)
  - Number portability (NZ)
  - Vertical separation (US, Chile)

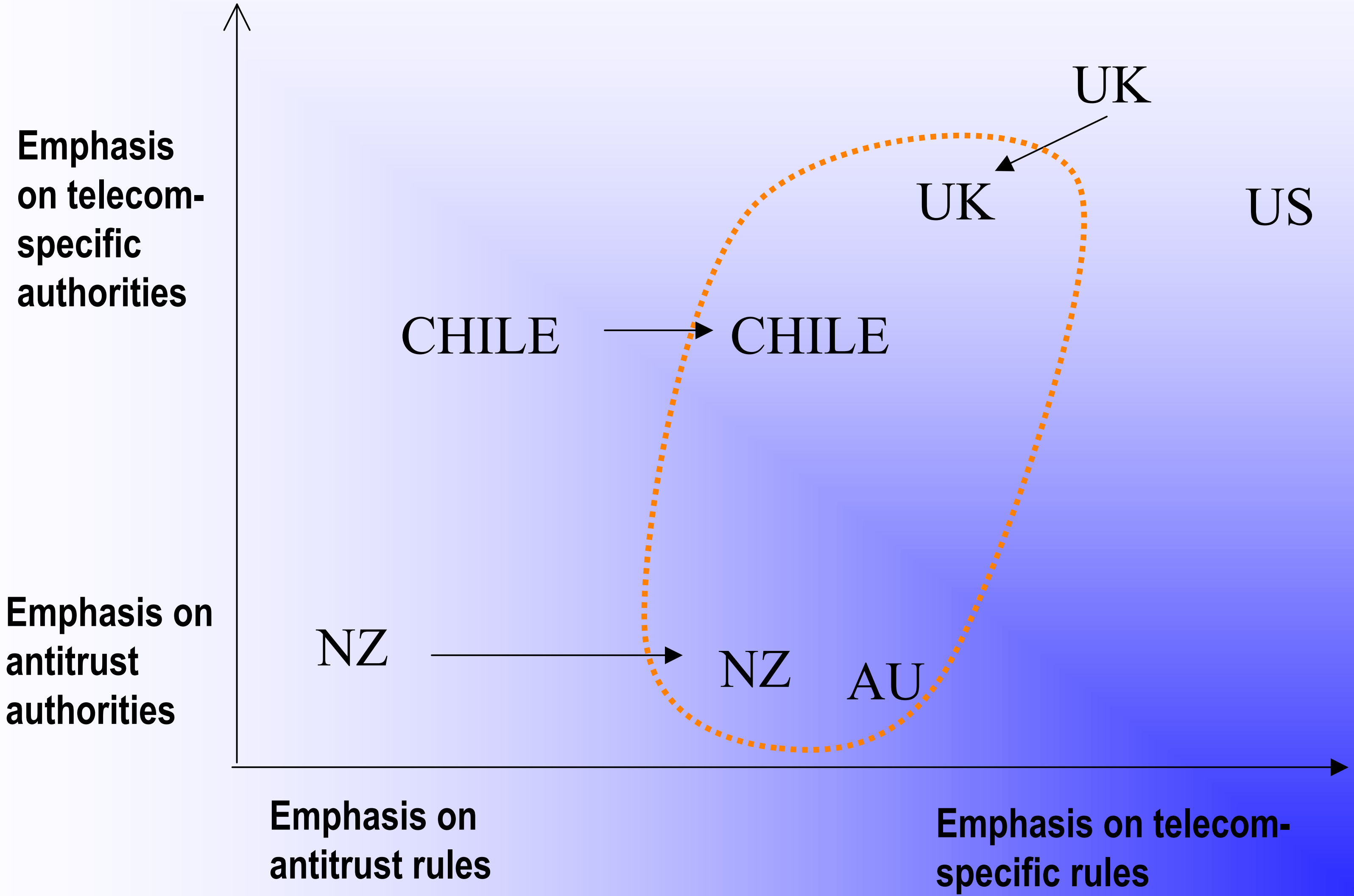
# SPECIALIZED REGULATORY ENTITIES WERE NEEDED

- Non-specialized judges are ill-equipped to deal with complex telecom regulatory issues (e.g. local interconnection cases in NZ)
- Legal processes are often not designed to give a voice to those who are not directly parties to the dispute (e.g. NZ)
- Costs of protracted litigation and regulatory mistakes can be very high (e.g. NZ)

# CONVERGENCE TOWARD SET OF BEST PRACTICES

| | AU | Chile | NZ | UK | US |
|---|---|---|---|---|---|
| Interconnection | √ | √ | √ | √ | √ |
| Resale | √ | √ | √ | √ | √ |
| Unbundling | √ | √ | √ | √ | √ |
| No. portability | √ | | √ | √ | √ |
| Pre-selection | √ | √ | √ | √ | √ |
| Price caps (retail) | √ | √ | √ | √ | √ |
| Spectrum auctions | √ | √ | √ | √ | √ |
| Spectrum managers | | | √ | | √ |
| Compet. USO regime | √ | √ | | | √ |
| Cross-sector spec. reg. | √ | | √ | | |

# CONVERGENCE OF THE 5 COUNTRY MODELS



# LOOKING AT THE FUTURE

- Continued adoption of “best practices”
- Then, as technological developments facilitate establishment of competing networks in local loop:
  - Reduced need for specific rules on interconnection, pre-selection, unbundling, resale, vertical separation for ex.
  - But still a need for rules on spectrum allocation, USOs, and no. portability for ex.

Changing balance between antitrust and sector-specific regulation

# THANK YOU

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