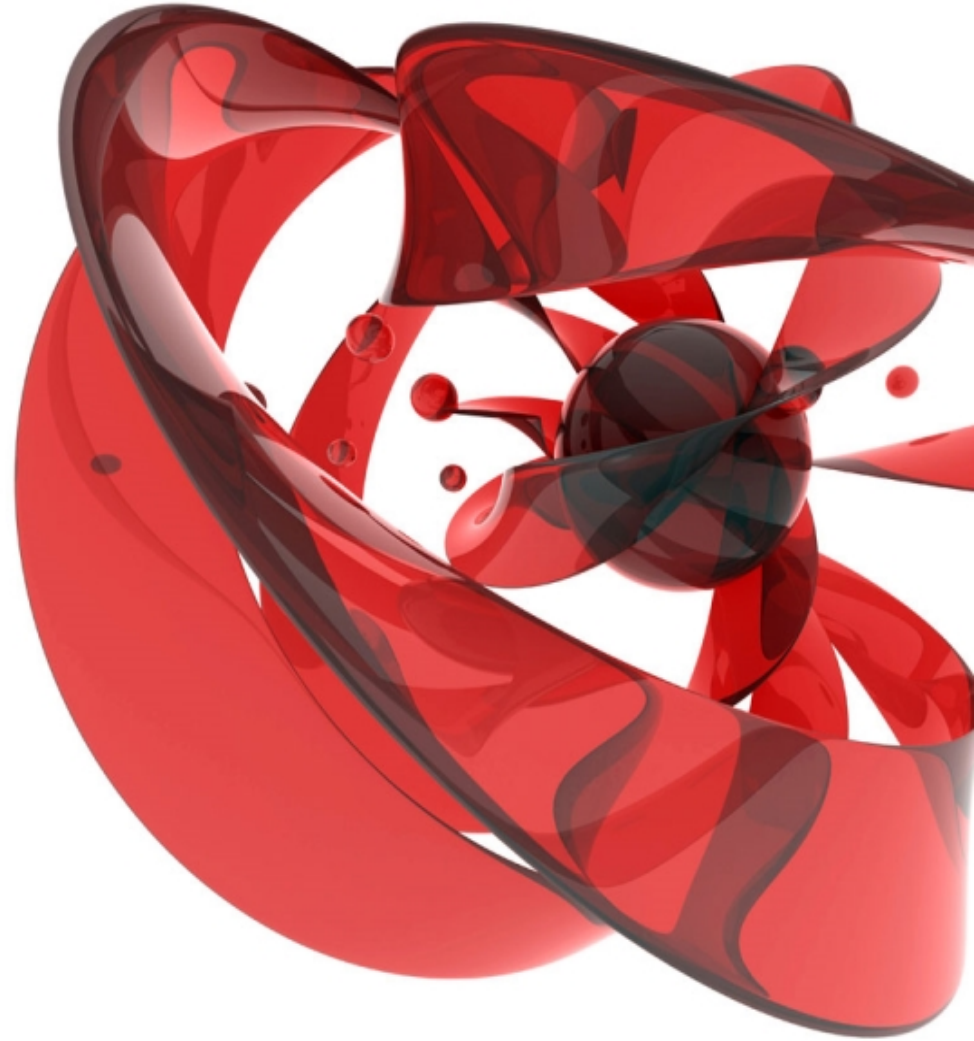


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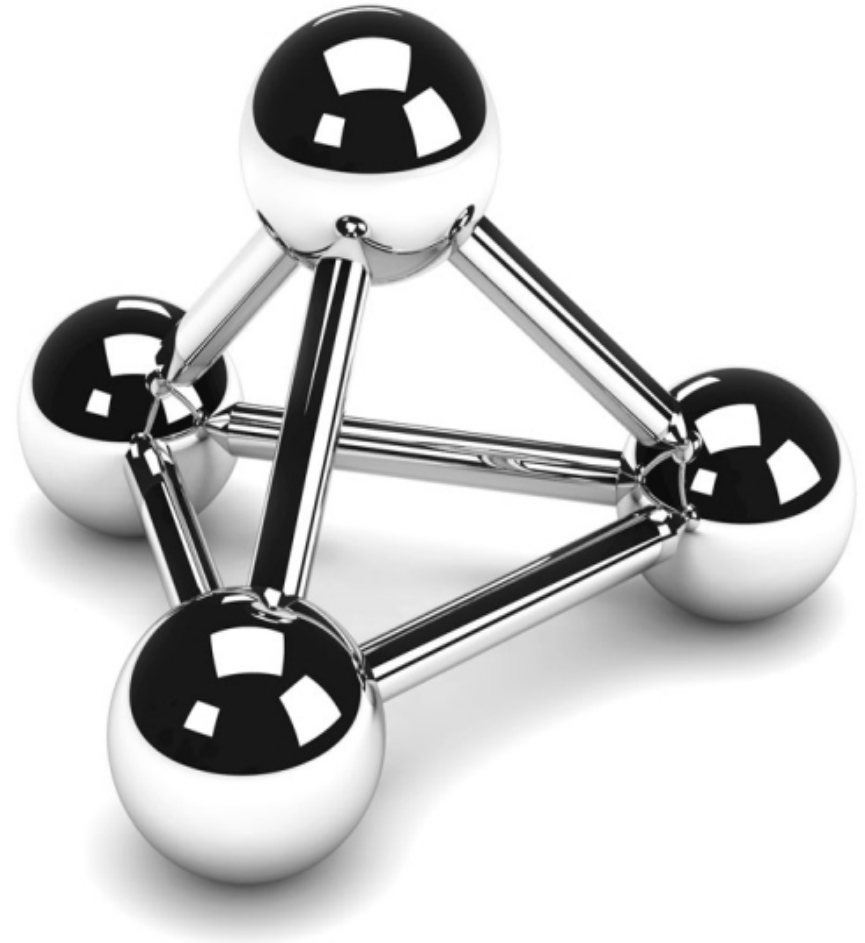
FRAND
Royalties and
Injunctions

David Por

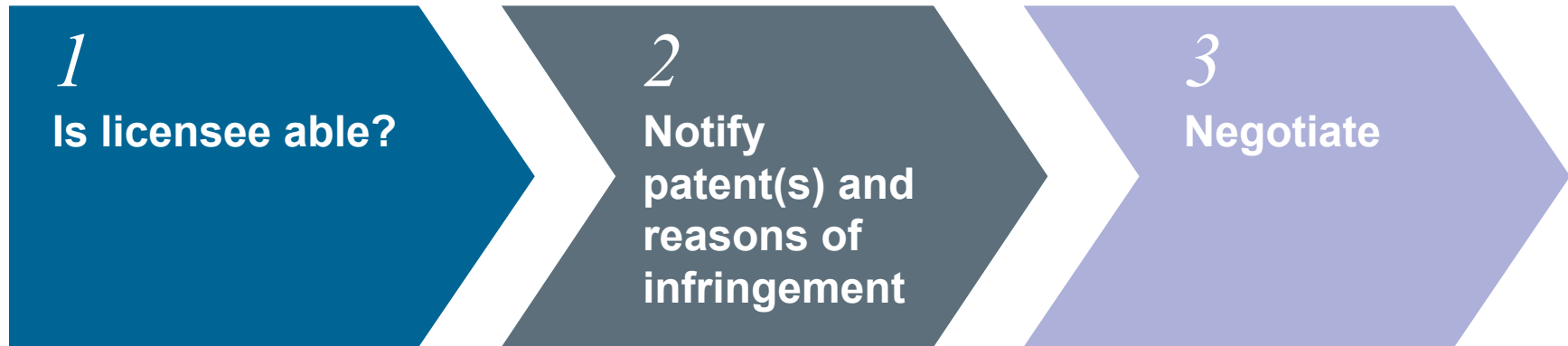


Agenda

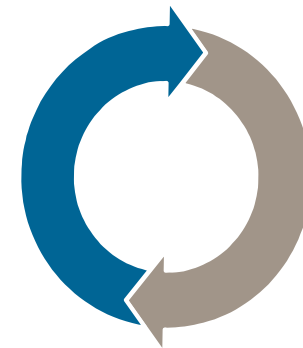
- **FRAND negotiations**
- **FRAND licenses**
- **FRAND royalties**
- **Is the conceptual framework the right one?**



1. FRAND negotiations – How AG Wathelet sees them




**Patentee makes
FRAND offer**



**Implementer makes
counter-offer**

1. FRAND negotiations – A few fundamental questions



A framework for the negotiation process or a strict obligation?

● Cannot be both at the same time

● Does this correspond to what happens in real life?

● Could a process-oriented obligation still be judicially sanctioned?



From whose perspective is FRAND looked at?

● An obligation for the patentee or a right for the implementer?

● Who chooses between different possible FRAND license structures?

2. FRAND licenses – Non-financial terms

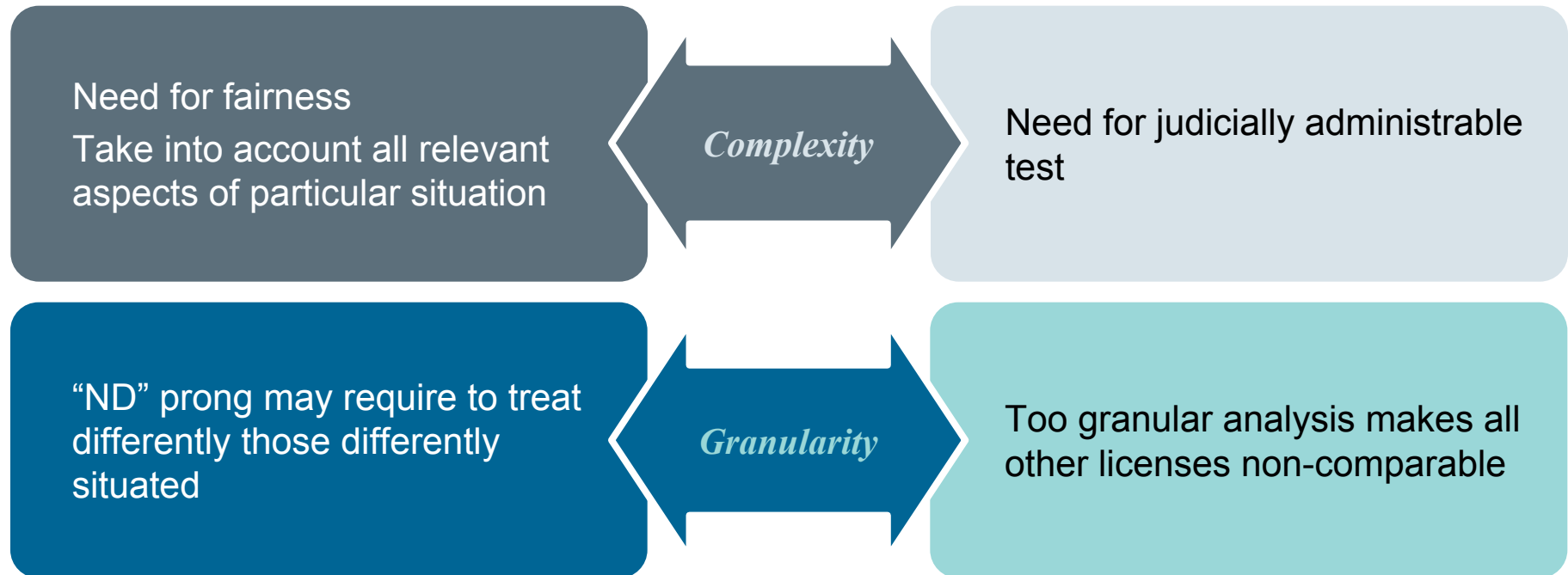
– Licensee must be able to challenge validity and infringement

Seems logical

– BUT: what if change of scale?



3. Determining the amount of FRAND royalties



What royalty basis?



Bottom-up or top-down?

4. How SEPs confer a dominant position



SEPs are patents essential to implement a specific industry standard. It is not possible to manufacture products that comply with a certain standard without accessing these patents. This may give companies owning SEPs significant market power.

EU Commission Press Release, 29 April 2014



[An undertaking in dominant position has] the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of the consumers

CJEU, *Hoffmann La Roche* 1979



4. Do SEPs confer a dominant position?

Is the declared-SEP an SEP?

- Over-declaration
- Design-around?
- But effect on infringement case

Case of optional features

- Different rules in SSOs
- Market analysis needed

SEP owners will often not be dominant!

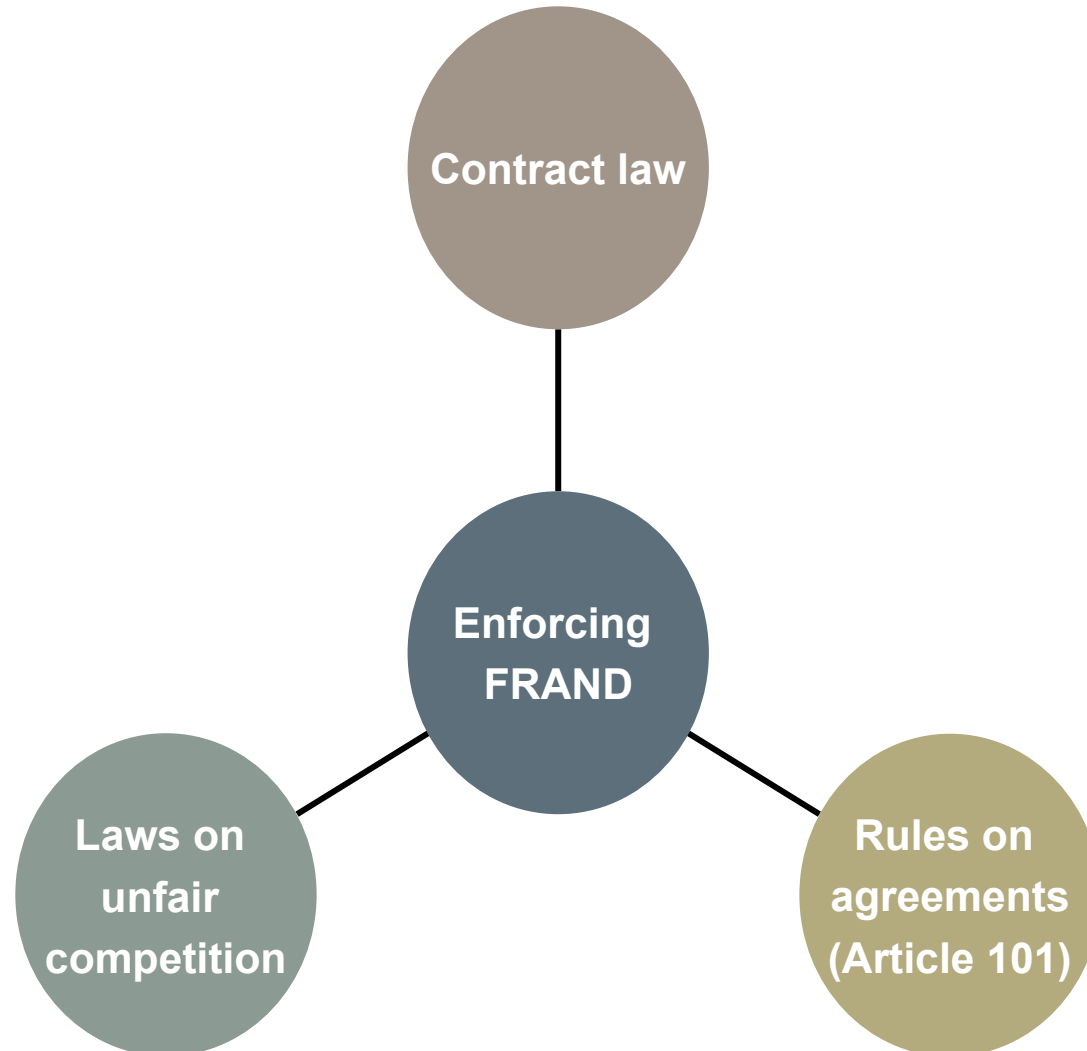
Essentiality of the standard?

- See France Brevets decision

Other SEP owners

- Need licenses from others?
- Independent behaviour?

What other frameworks could be applied?



Presenting today



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Questions?

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