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REGULATORY SEQUENCING AND ADAPTIVE GOVERNANCE: A COMPARATIVE LEGAL STUDY OF BANKING AND TELECOMMUNICATIONS REFORM IN INDIA, THE UNITED STATES, THE EUROPEAN UNION, JAPAN, AND BRAZIL

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I. ABSTRACT

This article examines whether the sequencing and design of regulatory reform, rather than the ideological choice between regulation and deregulation, determines institutional durability and consumer-welfare outcomes. It employs a structured comparative-doctrinal method, analysing enabling legislation, regulatory mandates, appellate arrangements, judicial decisions, agency materials, and multilateral institutional assessments. The study compares India, the United States, the European Union, Japan, and Brazil between 1980 and 2025, with banking and telecommunications as its two principal sectors; energy and transportation are used only as contextual comparators. The article advances three propositions. First, reforms that establish operationally independent regulators with technical capacity and effective appellate oversight before competitive market opening are more likely to yield durable outcomes than reforms that liberalise first and regulate later. Second, regulatory capture is a systemic institutional risk requiring structural, rather than exclusively procedural, safeguards. Third, Indian regulatory law is broadly capable of supporting adaptive governance but retains identifiable gaps in

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accountability, independence, and anti-capture design. By disaggregating the regulation–deregulation binary into sequencing, agency independence, appellate architecture, stakeholder engagement, anti-capture safeguards, and adaptive capacity, the analysis identifies institutional combinations associated with resilient regulatory systems. The comparative findings support a reform agenda centred on pre-liberalisation institutional investment; transparent, independent data capacity; fixed and protected regulatory appointments; cooling-off restrictions; and stronger legal protection for the autonomy of systemically significant agencies. For India, the article recommends circumscribing executive direction powers and considering enhanced constitutional or other higher-order legal safeguards for key regulators. The analysis is deliberately doctrinal and institutional, not econometric: it does not claim to establish universal causal effects or measure sectoral outcomes exhaustively. Its conclusions are therefore limited to the five selected jurisdictions, the two primary sectors, and the 1980–2025 period. Within those limits, the article offers a transferable framework for evaluating regulatory reform.

II. KEYWORDS

Regulatory Reform, Regulatory Sequencing, Regulatory Capture, Adaptive Governance, Comparative Doctrinal Analysis.

III. INTRODUCTION

The past four decades have generated an extensive record of regulatory reform across all major economies. Governments have privatised, liberalised, re-regulated, and restructured their economic institutions in response to fiscal pressure, technological change, financial crises, and ideological shifts. Despite this empirical richness, a precise analytical question has remained underexplored in comparative legal scholarship: does the order in which regulatory reforms are introduced the sequencing of institutional creation relative to market opening matter as much as, or more than, the substantive content of any particular reform?[2]

[2] Tianshu Zhao, Barbara Casu and Alessandra Ferrari, 'The Impact of Regulatory Reforms on Cost Structure, Ownership and Competition in Indian Banking' (2008) Journal of Banking & Finance 110–119.

Most comparative regulatory literature addresses this question at a high level of generality, concluding that "hybrid" or "adaptive" frameworks outperform rigid regulation or full deregulation. That conclusion, while broadly defensible, provides limited practical guidance because it does not identify which institutional variables within hybrid frameworks explain better outcomes. This article seeks to operationalise that broader claim by tracing a specific causal pathway: independent regulatory agency creation preceding market liberalisation produces more durable outcomes than liberalisation preceding institutional reform.[3]

The article proceeds as follows. Part II surveys the existing literature and identifies the gap this article addresses. Part III sets out the research proposition and explains the case selection methodology. Part IV develops the theoretical framework. Parts V through VIII conduct the comparative sectoral analysis. Part IX examines institutional design variables across jurisdictions. Part X synthesises the cross-jurisdictional findings. Part XI makes prescriptive recommendations, and Part XII concludes.

A. Research Objectives

This article has the following objectives:

1. To examine whether the sequence in which regulatory institutions are created and markets are liberalised affects institutional durability, market competition, consumer welfare, and systemic stability.
2. To compare banking and telecommunications reforms in India, the United States, the European Union, Japan, and Brazil through the variables of sequencing, agency independence, appellate architecture, anti-capture design, and adaptive capacity.
3. To identify the institutional safeguards that reduce regulatory capture and strengthen regulatory accountability during and after market liberalisation.

[3]OECD, 'Regulatory Reform' (OECD, 2025) <https://www.oecd.org/en/topics/policy-issues/regulatory-reform.html> accessed 16 October 2025.

4. To evaluate the Indian regulatory framework against the comparative findings and formulate legally workable reforms for strengthening the autonomy and resilience of key regulatory agencies.

B. Research Questions

This article addresses the following research questions:

1. Does the establishment of operationally independent regulatory institutions before market liberalisation produce more durable regulatory outcomes than post-liberalisation institutional construction?
2. How do agency independence, appellate oversight, anti-capture mechanisms, and adaptive capacity interact with regulatory sequencing in the banking and telecommunications sectors?
3. What reforms can Indian regulatory law adopt, in light of the comparative evidence, to strengthen regulatory independence, accountability, and resistance to capture?

C. Research Methodology

The article employs a structured comparative-doctrinal method. Doctrinal analysis identifies the legal content of regulatory frameworks enabling statutes, institutional mandates, appellate mechanisms, and judicial interpretations in each jurisdiction. Comparative analysis then assesses those frameworks against five institutional variables:

1. sequencing of agency creation relative to market opening;
2. degree of formal operational independence;
3. appellate and accountability architecture;
4. anti-capture mechanisms; and
5. adaptive capacity (the legal framework's capacity to evolve in response to technological and market change).

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Primary sources include legislation, judicial decisions, regulatory agency orders, and multilateral institutional reports. Secondary sources comprise peer-reviewed scholarship and comparative policy evaluations from the OECD, World Bank, IMF, and BIS.

D. Literature Review and Research Gap

1. Regulatory State Theory

The foundational account of the regulatory state is Majone's, which identifies the late twentieth-century transition from direct state ownership to rule-based governance through independent agencies as the defining feature of modern economic administration.[4] Majone's framework is normative as well as descriptive: it posits that regulatory agencies, insulated from short-term political cycles and equipped with technical expertise, will produce welfare-superior outcomes compared to politically directed interventions. This proposition has been enormously influential, shaping institutional design choices across Europe, Asia, and the developing world.

Its limitation, which subsequent scholarship has extensively documented, is that it underestimates the problem of regulatory capture. Stigler's economic theory of regulation demonstrates that regulated industries have both the incentive and the means to shape regulatory outcomes in their favour.[5] More recent work has refined this insight by identifying subtler forms of capture: "information capture," in which agencies become structurally dependent on industry for data; and "cultural capture," in which regulators absorb industry norms through professional socialisation.[6]

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[4] Giandomenico Majone, Regulating Europe (Routledge 1996); see also 'Beyond the Deregulation Dilemma: The European Regulatory State at Crossroads' (Austrian Institute for International Affairs, 2025) https://www.oiip.ac.at/publikation/beyond-the-deregulation-dilemma-the-european-regulatory-state-at-crossroads/ accessed 22 October 2025.

[5] George J Stigler, 'The Theory of Economic Regulation' (1971) 2(1) Bell Journal of Economics and Management Science 3. See also Borges M, 'Regulation and Regulatory Capture' (World Academy of Art and Science, 2017) https://www.worldacademy.org/files/colloquium_2017/papers/Regulation_regulatory_capture_M.Borges.pdf accessed 24 October 2025.

[6] Regulatory Policy and Administrative Systems' (Astrid Online, 2025) https://www.astridonline.it/static/upload/mwad/mwad002.pdf accessed 16 October 2025.

2. Comparative Regulatory Reform

The OECD's long-running programme of comparative regulatory reform has produced the most extensive empirical record of regulatory management practices, documenting the spread of Regulatory Impact Assessment (RIA) and stakeholder consultation requirements across member states.[7] The World Bank's parallel work on developing country regulatory governance emphasises the role of institutional capacity constraints in shaping reform outcomes.[8]

Malyshev's three-stage periodisation of regulatory policy evolution — initial deregulation, integrated reform combining deregulation with re-regulation, and contemporary regulatory management — provides a useful descriptive schema, though it does not isolate the sequencing variable as a causal factor in its own right.[9]

3. The Research Gap

Two gaps in this literature motivate the present article. First, comparative regulatory scholarship has produced strong general conclusions about the superiority of adaptive over rigid frameworks but has not systematically examined whether the sequencing of reform components — specifically, whether independent regulatory institutions precede or follow market opening — explains variation in outcomes across otherwise similar reform programmes. The California electricity crisis of 2000–2001 and Japan's "Big Bang" financial deregulation both illustrate the costs of poorly sequenced reform, but these

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[7]World Bank, 'Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments' (World Bank, 2018) https://documents1.worldbank.org/curated/en/905611520284525814/pdf/Global-Indicators-of-Regulatory-Governance-Worldwide-Practices-of-Regulatory-Impact-Assessments.pdf accessed 22 October 2025.

[8]World Bank, 'Regulatory Governance in Developing Countries' (World Bank, 2010) https://documents1.worldbank.org/curated/en/746611468762920193/pdf/28958.pdf accessed 16 October 2025.

[9]OECD, 'Evolution of Regulatory Policy in OECD Countries' (Regulatory Reform, 2015) http://regulatoryreform.com/wp-content/uploads/2015/02/OECD-Evolution-of-Regulatory-Policy-in-OECD-Countries.pdf accessed 16 October 2025.

episodes have not been subjected to a structured cross-jurisdictional comparison that isolates sequencing as the relevant variable.

Second, the Indian regulatory literature, while rich on individual sectors, lacks a structured comparative dimension that would allow Indian institutional experiences to be assessed against a consistent analytical benchmark. This article provides both: a sequencing-focused analytical framework and a five-jurisdiction comparison that places India's regulatory trajectory in a rigorous comparative context.

E. Research Proposition, Methodology, and Case Selection

1. Research Proposition

This article advances the following research proposition in lieu of a hypothesis: regulatory reform programmes that establish operationally independent regulatory agencies with adequate technical capacity and appellate oversight before the introduction of competitive market entry produce more durable institutional outcomes measured by market competition levels, consumer price trends, systemic stability, and regulatory independence than programmes that liberalise first and build regulatory institutions subsequently. The proposition is evaluated comparatively, not tested econometrically; the article makes a doctrinal and institutional argument, not a causal statistical claim.

2. Case Selection

The five jurisdictions the United States, European Union, Japan, India, and Brazil were selected on the following grounds. The United States and European Union represent the two dominant global models of independent regulatory agency design and offer well-documented comparative experiences of both deregulation and re-regulation. Japan provides an important comparator as a large, advanced economy that undertook rapid financial deregulation without adequate prior institutional preparation. India constitutes the primary jurisdiction of analysis, given the article's focus on Indian regulatory law, the richness of its banking and telecommunications reform record, and its significance as a model for other developing-country regulatory trajectories. Brazil was selected as a

developing-country comparator with a constitutionally embedded independent regulatory agency model that followed a broadly similar privatisation-and-liberalisation trajectory to India but under different institutional constraints.

The two primary sectors banking and telecommunications were selected because they both exhibit natural monopoly or oligopoly characteristics that make regulation necessary, both underwent major liberalisation episodes during the study period (1980–2025), and both have well-developed domestic and comparative legal literatures that permit rigorous doctrinal analysis. Energy and transportation are addressed in Part VIII as secondary comparators that reinforce the sequencing thesis but are not the primary object of doctrinal analysis.

IV. THEORETICAL FRAMEWORK

A. The Regulatory State and Its Institutional Requirements

The regulatory state model, as elaborated by Majone, requires more than the formal creation of an independent agency: it requires that the agency possess the technical expertise, financial independence, and legal mandate necessary to resist both political direction and industry capture.[10] New institutional economics adds a further requirement: the agency must be credible. Credibility the settled expectation among market participants that regulatory commitments will be honoured is necessary to attract investment and sustain competition. Credibility is damaged when agencies are perceived as captured, when their decisions are routinely reversed by the government, or when their mandates are ambiguous.[11]

B. Public Choice and the Capture Problem

[10]Ibid (n 4).

[11]'Public Institutions and Private Transactions: A Comparative Analysis of the Legal and Regulatory Environment for Business Transactions in Brazil and Chile' (Cambridge University Press, 1996) https://www.cambridge.org/core/books/empirical-studies-in-institutional-change/public-institutions-and-private-transactions-a-comparative-analysis-of-the-legal-and-regulatory-environment-for-business-transactions-in-brazil-and-chile/64202E1100F1F94AAC45256F96> accessed 5 November 2025.

Stigler's central insight is that the political economy of regulation systematically favours concentrated producer interests over diffuse consumer interests.[12] The practical implication for institutional design is that anti-capture measures must be structural rather than merely procedural: transparency requirements and public consultation, while valuable, are insufficient on their own. Structural anti-capture measures include agency funding through industry levies rather than government appropriations (reducing political leverage); fixed-term appointments with prescribed conditions for removal (insulating personnel decisions from political pressure); mandatory independent data collection capacity (reducing information asymmetry); and post-employment cooling-off periods for senior regulators (reducing the revolving-door problem). These structural requirements are assessed in each jurisdiction in Part IX.[13]

C. The Sequencing Thesis

The article's core analytical claim is that sequencing the order in which regulatory institutions are created relative to competitive market entry is a first-order determinant of regulatory outcomes. The logic runs as follows. Where regulatory institutions are created first, the agency develops technical capacity, establishes credibility, and constructs the legal infrastructure (licensing frameworks, interconnection regimes, prudential standards) before market participants emerge and entrench competing interests. Where market opening precedes institutional creation, established market participants have both the incentive and the resources to shape the subsequently constructed regulatory framework in their favour. The sequencing thesis predicts, therefore, that post-hoc institutional construction in liberalised markets will produce weaker regulatory independence, higher regulatory capture risk, and less durable consumer welfare outcomes than pre-liberalisation institutional investment. The case studies in Parts VI and VII evaluate this prediction across five jurisdictions.

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[12]Ibid (n 5).
[13]Ibid (n 6).

D. Comparative Analytical Framework

The five-dimensional framework used in this article sequencing, formal independence, appellate architecture, anti-capture mechanisms, and adaptive capacity draws on the comparative regulatory analysis tradition associated with Gerber's work on competition law convergence, which emphasises the importance of contextual institutional factors in determining whether formally similar regulatory frameworks produce convergent substantive outcomes.[14]

V. HISTORICAL PATTERNS OF REGULATORY EVOLUTION (1980–2025)

A. The First Deregulation Wave (1980–2000)

The 1980s initiated a sustained wave of market-oriented reform across developed economies, driven by the confluence of fiscal pressure, public choice critiques of regulatory capture, and the demonstrated efficiency gains of competitive markets in sectors previously thought to require monopoly provision.[15] In the United States, airline deregulation (1978), telecommunications deregulation (culminating in the Telecommunications Act 1996), and financial sector liberalisation (culminating in the Gramm-Leach-Bliley Act 1999) followed in rapid succession. In the United Kingdom, privatisation of British Telecom (1984) and liberalisation of financial services (the "Big Bang" of 1986) followed a similar trajectory.

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[14]'Comparative Law and Global Regulatory Convergence: The Example of Competition Law' (Cambridge University Press, 2025) https://www.cambridge.org/core/books/practice-and-theory-in-comparative-law/comparative-law-and-global-regulatory-convergence-the-example-of-competition-law/7DC8247559AAA5208F3515A6D882D54E accessed 16 October 2025.

[15]'A Brief History of Regulation and Deregulation' (George Washington University Regulatory Studies Center, 2025) https://regulatorystudies.columbian.gwu.edu/brief-history-regulation-and-deregulation accessed 22 October 2025.

Japan's "Big Bang" financial deregulation of the late 1990s is instructive for this article's sequencing thesis. The reforms were implemented with urgency following the collapse of the asset price bubble, but the pre-existing banking supervisory architecture was inadequate to manage the transition. The Ministry of Finance, which had historically combined monetary policy, banking supervision, and fiscal functions in a single ministry, lacked the institutional separation required for independent prudential oversight. The result was a prolonged banking sector crisis characterised by regulatory forbearance, concealment of non-performing assets, and delayed resolution.[16]

B. Crisis and Re-regulation (2000–2015)

The post-deregulation period generated a series of regulatory failures that, taken together, constitute strong empirical support for the sequencing thesis. The Enron collapse (2001), the California electricity crisis (2000–2001), and the 2008 global financial crisis each illustrate in different sectors and jurisdictions the costs of liberalisation without adequate prior institutional infrastructure.[17]

The 2008 crisis in particular exposed the systemic risks generated by the Gramm-Leach-Bliley deregulation: the removal of Glass-Steagall's separation between commercial and investment banking created interconnectedness that existing regulatory architectures were not equipped to monitor. The legislative response the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 in the US, and the Basel III framework internationally — represented a large-scale exercise in post-hoc institutional construction of the kind that the sequencing thesis predicts will be less effective than pre-liberalisation institutional investment.[18]

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[16]Financial Services Agency, 'Japanese Big Bang—On Financial System Reform' (January 2000) (accessed 19 June 2026).
[17]BIS, 'Banking and Financial Stability in Central Europe' (Bank for International Settlements, 2004) https://www.bis.org/publ/bppdf/bispap04a.pdf accessed 5 November 2025.
[18]BIS, 'Financial Development in Central and Eastern Europe' (Bank for International Settlements, 2002) https://www.bis.org/publ/bppdf/bispap06.pdf accessed 16 October 2025.

VI. SECTORAL ANALYSIS: BANKING

A. The United States: Deregulation Preceding Institutional Redesign

The banking sector in the United States provides the clearest example of the sequencing problem in a developed economy. The removal of geographic banking restrictions through the Riegle-Neal Interstate Banking and Branching Efficiency Act 1994, the loosening of product line restrictions throughout the 1980s and 1990s, and the repeal by the Gramm-Leach-Bliley Act 1999 of the Glass-Steagall separation between commercial and investment banking were all implemented before the regulatory architecture was redesigned to monitor the systemic risks that greater interconnectedness would generate.[19]

The consequences of this sequencing were visible as early as the Savings and Loan crisis of the 1980s, in which the combination of deposit insurance, relaxed asset restrictions, and inadequate supervisory capacity produced approximately $124 billion in direct costs to taxpayers and an estimated $160 billion in total losses including industry costs, per Congressional Budget Office estimates. The 2008 crisis represented the same dynamic at far larger scale: financial holding companies operating across banking, insurance, and securities under a single corporate umbrella generated systemic risk that the Basel I capital adequacy framework, designed for simpler balance sheets, could not adequately capture.

The Dodd-Frank Act's creation of the Financial Stability Oversight Council (FSOC) and the Consumer Financial Protection Bureau (CFPB) was an acknowledgment that the institutional architecture had been inadequate. These bodies were constructed ex post, after the damage was done, and their effectiveness has been constrained by the political

[19]Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub L No 103–328, 108 Stat 2338; Gramm-Leach-Bliley Act of 1999, Pub L No 106–102, 113 Stat 1338.

economy surrounding their establishment — precisely the capture dynamic that pre-liberalisation institutional investment would have been better positioned to resist.[20]

B. India: Gradual Liberalisation with Prior Prudential Infrastructure

India's banking sector reform represents a contrasting case in which broadly sound sequencing produced considerably more resilient outcomes. The Narasimham Committee Report of 1991, prepared in response to the balance of payments crisis, recommended a graduated liberalisation programme that would reduce statutory pre-emptions (CRR from 15% to 3–5% and SLR from 38.5% to 25% over five years), introduce prudential norms aligned with emerging international standards, and permit the entry of new private sector banks, all while maintaining Reserve Bank of India oversight and majority government ownership of systemically important public sector banks.[21]

The critical sequencing feature of the Indian approach was that prudential reform preceded competitive liberalisation. The RBI's capital adequacy framework, income recognition and asset classification norms, and provisioning requirements were all introduced before new private bank licences were granted and before interest rate deregulation removed the administered pricing that had previously protected incumbent banks from competitive pressure. The second Narasimham Committee Report of 1998 reinforced this approach, recommending consolidation through merger rather than rapid privatisation.

The result was that when the 2008 global financial crisis created severe stress in interconnected global banking systems, Indian banks were largely insulated from contagion — not because they were technologically or financially sophisticated, but because the prior prudential infrastructure limited their exposure to the instruments and counterparty relationships that transmitted systemic risk internationally. The Insolvency

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[20] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub L No 111–203, 124 Stat 1376, titles I and X.

[21] M Narasimham (Chair), *Report of the Committee on the Financial System* (Government of India, November 1991).

and Bankruptcy Code 2016 (31 of 2016) represent a further example of sequenced institutional construction: a statutory resolution framework was established before the full recognition and write-down of non-performing assets was required, providing a legal infrastructure for resolution rather than regulatory forbearance.

C. European Banking Integration

The regulatory history of European banking integration illustrates a tension between market integration objectives which pushed for competitive opening and financial stability objectives which required supervisory infrastructure. The single market initiative removed restrictions on cross-border banking across the EU, but supervisory responsibility remained with national regulators. This created a mismatch: markets were integrated, but oversight was fragmented along national lines.[22]

The 2008 crisis exposed this mismatch acutely: Irish and Spanish banking crises, generated by domestic real estate bubbles, required European-level responses for which no European institutional infrastructure existed. The subsequent creation of the European Banking Authority (EBA), the Single Supervisory Mechanism (SSM) under the European Central Bank, and the Single Resolution Mechanism (SRM) represented a large-scale ex post institutional construction. The Banking Union remains incomplete, with the European Deposit Insurance Scheme (EDIS) still unimplemented a further instance of liberalisation preceding the full institutional infrastructure required to manage its risks.

D. Japan and Brazil: Divergent Sequencing Outcomes

Japan's "Big Bang" financial reforms illustrate the costs of rapid liberalisation without adequate prior supervisory reconstruction. The dismantling of the convoy system — the informal regulatory arrangement under which the Ministry of Finance managed competition among financial institutions preceded the creation of an independent financial supervisory authority. The Financial Supervisory Agency was established only

[22]Financial Services Agency, 'On the Establishment of the Financial Services Agency' (13 September 2000) (accessed 19 June 2026).

in 1998, the same year that major liberalisation measures came into effect, leaving insufficient time for institutional capacity to develop before competitive pressures intensified.[23]

Brazil's banking sector reform offers a partially contrasting experience. The Plano Real stabilisation programme of 1994 and the subsequent PROER programme for banking sector restructuring established a credible monetary framework and a disciplined resolution mechanism before the full liberalisation of banking competition. The Banco Central do Brasil (BCB) had been structurally separated from the Ministry of Finance since 1964 and had developed significant technical capacity in monetary and prudential policy. This prior institutional investment meant that Brazilian banks, though less sophisticated than their US or European counterparts, were better insulated from the 2008 crisis than might have been expected from an economy of Brazil's income level.[24]

VII. SECTORAL ANALYSIS: TELECOMMUNICATIONS

A. Global Reform Patterns and the Sequencing Variable

Telecommunications have been, by global consensus, the most successful sector for regulatory reform over the past three decades. The near-universal transition from state monopoly to competitive markets has produced documented gains in service quality, price reduction, and innovation across both developed and developing countries.[25]

However, the distribution of reform outcomes has been uneven, and the sequencing thesis offers a parsimonious explanation for that unevenness. Countries that established independent telecommunications regulatory agencies before privatising incumbent operators and before introducing competitive licences — the sequence recommended by

[24]MO Dias, 'Regulatory Agencies in Brazil vs the United States: A Comparative Study' (Figshare Repository, 2023). See also Ibid (n 15).
[25]'Telecommunications Reform in China and Nigeria: Same Result, Different Strategies' (Social Sciences Research, 2025) https://www.sosyalarastirmalar.com/articles/telecommunications-reform-in-china-and-nigeria-same-result-different-strategies.pdf accessed 24 October 2025.

the International Telecommunication Union (ITU) from the mid-1990s — consistently produced better outcomes than countries that deregulated first and constructed regulatory institutions subsequently. The causal mechanism is straightforward: privatised incumbents have both the incentive and the resources to shape the regulatory frameworks constructed after their creation, whereas pre-privatisation regulatory institutions face no such constraint.

B. India: Institutional Construction and Its Judicial Elaboration

The transformation of India's telecommunications sector is among the most significant regulatory successes in any developing country: growth from approximately 5 million connections in 1991 to more than 1.2 billion connections by 2024, with mobile data prices among the lowest globally.[26]

The critical institutional decision was the creation of TRAI under the Telecom Regulatory Authority of India Act 1997 (24 of 1997) before the full liberalisation of the sector. The 1997 Act established an independent regulatory body with authority over tariff determination, interconnection, and licensing conditions. The 2000 amendment to the TRAI Act established the Telecom Disputes Settlement and Appellate Tribunal (TDSAT), providing a specialist appellate mechanism that separated the regulatory and judicial functions that had previously been conflated. TDSAT's creation was a significant institutional contribution: it provided a rule-of-law mechanism for resolving disputes between operators and the regulator without requiring recourse to the generalist civil courts, which lacked the technical expertise to adjudicate complex spectrum and interconnection disputes.[27]

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[26]'Revolutionising Connectivity: The Surge of India's Telecom Sector' (India Brand Equity Foundation, 2025) https://ibef.org/research/case-study/revolutionising-connectivity-the-surge-of-india-s-telecom-sector> accessed 24 October 2025.

[27]'TRAI Act 1997' (Centre for Internet and Society, 2025) https://cis-india.org/telecom/resources/trai-act-1997 accessed 5 November 2025.

The judicial elaboration of TRAI's mandate has been significant. In Star India P Ltd v Telecom Regulatory Authority of India & Ors,[28] the Delhi High Court confirmed that broadcasting services fall within the statutory definition of "telecommunication services" and upheld TRAI's competence to prescribe tariffs and interconnection conditions in that field. The Supreme Court's decision in Cellular Operators Association of India v TRAI[29] supplies an important qualification: it struck down the Telecom Consumers Protection (Ninth Amendment) Regulations, 2015, which required operators to credit Re 1 for specified call drops, as ultra vires the TRAI Act and violative of Articles 14 and 19(1)(g) of the Constitution. The decision establishes that TRAI's regulation-making power under s 36, though broad, must conform to the purposes of the Act and remains subject to substantive judicial review for manifest arbitrariness. Together, these decisions clarify both the scope and the legal limits of TRAI's regulatory authority.

Three structural features of the Indian telecommunications regulatory framework have proved particularly important. First, the transition from fixed licence fees to a revenue-sharing model (National Telecom Policy 1999) aligned operator incentives with sectoral growth rather than regulatory arbitrage. Second, mandatory interconnection requirements prevented the incumbent (BSNL and later private operators with substantial market share) from using network access as a competitive weapon. Third, the allocation of spectrum through market-based mechanisms auctions rather than administrative assignment has progressively improved allocative efficiency, though spectrum management has remained a source of regulatory controversy.

The Telecommunications Act 2023 represents the most significant legislative reform of the sector since 1997. It consolidates and modernises the regulatory framework, addresses emerging issues in satellite communications and digital connectivity, and

[28]Star India P Ltd v Telecom Regulatory Authority of India & Ors WP(C) 24105/2005 (Delhi HC, 9 July 2007). This case directly addressed TRAI's jurisdiction over broadcasting services under s 2(1)(k) of the Telecom Regulatory Authority of India Act 1997 (24 of 1997).
[29]Cellular Operators Association of India v Telecom Regulatory Authority of India (2016) 7 SCC 703 (SC).

introduces enhanced provisions for national security oversight. Its long-term significance for the sequencing thesis lies in whether it preserves or dilutes TRAI's operational independence in relation to the expanded Ministry of Communications role the Act creates.

C. The United States: Regulatory Architecture and Its Limits

The United States telecommunications deregulation experience illustrates a different kind of sequencing problem. The Federal Communications Commission (FCC) was established in 1934, long before the Telecommunications Act 1996 opened local loop competition. The sequencing problem in the US context was not the absence of a regulator, but the mismatch between the FCC's established mandate — designed for a monopoly telecommunications environment — and the new competitive dynamics that the 1996 Act sought to promote. The implementation of the "unbundled network elements" (UNE) regime, which required incumbent local exchange carriers (ILECs) to lease network elements to competitors at regulated prices, generated substantial litigation and political controversy that significantly delayed the development of local loop competition.

D. Japan and Brazil: Contrasting Privatisation Sequences

Japan's telecommunications reform provides a partial validation of the sequencing thesis. NTT was corporatised in 1985 and partially privatised, but an independent regulatory authority with genuine enforcement powers was not established: regulatory oversight remained largely within the Ministry of Posts and Telecommunications (later the Ministry of Internal Affairs and Communications). The consequence was that NTT retained dominant market power for considerably longer than comparable incumbents in countries where more genuinely independent regulators were established, and the

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pace of competitive entry particularly in fixed-line services was slower than in comparable economies.[30]

Brazil's telecommunications reform more closely resembles India's favourable sequencing pattern. The Lei Geral de Telecomunicações (General Telecommunications Law) 1997 established ANATEL as an independent regulatory agency before the privatisation of the Telebrás system in 1998. ANATEL was given constitutional protection as an "autarquia especial" (special administrative agency) with legal, administrative, and financial autonomy — a stronger formal independence guarantee than TRAI's statutory basis provides. The result was that Brazil's privatisation proceeded with a functioning regulatory framework in place, and competitive entry followed more rapidly than in markets where the regulator was constructed after privatisation.[31]

VIII. SECTORAL ANALYSIS: ENERGY AND TRANSPORTATION AS COMPARATIVE CONTEXT

A. Energy: The California Crisis and the Sequencing Problem

Energy sector regulatory reform provides some of the most dramatic illustrations of the sequencing thesis. The California electricity crisis of 2000–2001 arose directly from a sequencing failure: retail electricity prices were capped while wholesale electricity markets were deregulated, creating a structural arbitrage opportunity that market participants most notably Enron exploited to produce rolling blackouts and the near-bankruptcy of Pacific Gas and Electric. An independent market monitoring body existed, but it lacked the real-time enforcement powers and the data access necessary to detect and counter market manipulation at the speed at which it occurred.[32]

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[30]IMF, 'Japan: Financial System Stability Assessment and Supplementary Information' (IMF, 2003) https://www.imf.org/external/pubs/nft/2003/japan/index.htm accessed 16 October 2025.

[32]OECD, 'Regulatory Impact Assessment' (OECD, 2020) https://www.oecd.org/content/dam/oecd/en/publications/reports/2020/02/regulatory-impact-

India's electricity sector reform under the Electricity Act 2003 (36 of 2003) avoided some but not all of these sequencing problems. The Act established the Central Electricity Regulatory Commission (CERC) and State Electricity Regulatory Commissions (SERCs) as independent regulatory bodies before the full unbundling and privatisation of distribution companies. However, the persistence of cross-subsidisation obligations on distribution companies and ongoing government interference in tariff-setting by SERCs have significantly limited regulatory independence in practice. The institutional form was created before liberalisation; the substantive independence required to give that form effect has been more difficult to establish.

B. Transportation: Sequencing Validation and Limits

Transportation deregulation provides further comparative evidence. The United States airline deregulation of 1978, implemented under the Civil Aeronautics Board and managed by an existing regulatory body that then deliberately wound down its own authority, was relatively orderly. By contrast, the United Kingdom's railway restructuring under the Railways Act 1993 created a fragmented franchise structure. The Rail Regulator and the Office of the Rail Regulator were established on 1 December 1993, before the principal operational restructuring of April 1994, although most of the Regulator's statutory powers took effect only on 2 April 1994. The early regulatory framework was therefore required to oversee a complex new network of licensing and access arrangements at the outset of privatisation; significantly, the initial access contracts entered into on 1 April 1994 did not require the Regulator's approval. Subsequent service-reliability and franchise-management difficulties demonstrate the limits of formal institutional creation where regulatory powers and oversight arrangements remain immature.[33]

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assessment_0bf78a03/7a9638cb-en.pdf accessed 24 October 2025. See also The Electricity Act 2003 (36 of 2003).

[33]Railways Act 1993, ss 1–4; OECD, *Railways: Structure, Regulation and Competition Policy* (OECD 1998) 136–37.

In India, the aviation sector's liberalisation from the early 2000s produced significant consumer benefits through price competition among private carriers. However, the collapse of Kingfisher Airlines (2012) and Jet Airways (2019) exposed the inadequacy of the Directorate General of Civil Aviation's financial oversight capacity: the DGCA's mandate was primarily safety-focused, and no regulatory body with adequate financial monitoring authority existed to identify the liquidity crises of these carriers before they had become irretrievable.

IX. INSTITUTIONAL DESIGN AND GOVERNANCE

A. Agency Independence: Formal Structure and Substantive Reality

The comparative analysis reveals a consistent gap between formal institutional independence and substantive operational independence. TRAI enjoys statutory independence under the TRAI Act 1997 and has demonstrated significant technical capacity in tariff determination and spectrum management. However, the government's residual powers to issue policy directions to TRAI under s 25 of the TRAI Act, and the periodic conflicts between TRAI and the Ministry of Communications over the scope of those directions, illustrate that formal independence does not guarantee substantive autonomy. The Telecommunications Act 2023 has expanded the Ministry's policy direction powers in certain respects, creating renewed concerns about regulatory capture by the executive.[34]

ANATEL in Brazil, by contrast, benefits from constitutionally anchored autonomy as an "autarquia especial": its decisions cannot be reversed by ministerial direction, though they remain subject to judicial review. This higher-order legal protection has produced a more consistent record of regulatory independence, though ANATEL has faced its own capture concerns in relation to the major telecommunications conglomerates that dominate the Brazilian market. The EBA and the ECB's Single Supervisory Mechanism

[34]Ibid (n 30).

in Europe have strong operational independence backed by treaty-level legal protection, though this independence is itself contested in the context of democratic legitimacy debates about technocratic European governance.

B. Appellate Architecture

The establishment of TDSAT as a specialist appellate body in India represents an institutional innovation with significant comparative significance. Most regulatory appeals in comparative experience are addressed through generalist administrative courts or through the ordinary civil courts, which lack the technical capacity to evaluate complex spectrum and interconnection determinations at speed. TDSAT's domain-specific expertise has produced faster and more technically informed appellate review than generalist courts would have generated. The absence of an equivalent mechanism in the early phases of Brazilian telecommunications regulation contributed to delays in resolving interconnection disputes during the critical competitive entry phase of the late 1990s.

C. Regulatory Tools and Enforcement

Contemporary regulatory practice across all five jurisdictions has moved away from command-and-control toward a more varied toolkit encompassing price caps, access obligations, risk-based supervision, and regulatory sandboxes.[35]

The UK's Financial Conduct Authority and the Reserve Bank of India have been significant innovators in risk-based supervisory methodology, concentrating regulatory intensity on entities and activities that pose the greatest systemic or consumer risk rather than applying uniform standards regardless of risk profile. India's regulatory sandbox framework in fintech and its experiment with payment system regulation illustrate the Telecommunications Act 2023's ambition to extend this adaptive approach across the digital economy.

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[35]Ibid (n 33).

D. Stakeholder Engagement and Transparency

Stakeholder engagement mechanisms across all five jurisdictions have evolved significantly over the study period, and the regulatory impact assessment (RIA) has become a near-universal formal requirement in OECD countries.[36]

In practice, the quality of consultation processes varies considerably. TRAI's consultation papers and the resulting counter-comments and recommendations have generally been substantive and technically engaged — a model of transparent regulatory process. However, the information asymmetry between large telecom operators (who can deploy teams of economists and lawyers to respond to consultations) and consumer representatives (who lack equivalent resources) means that formal transparency does not guarantee balanced input. This information asymmetry is itself a structural form of capture risk, which the anti-capture framework in Part IX addresses.

X. CROSS-JURISDICTIONAL SYNTHESIS

A. Sequencing: The Evidence Assessed

The comparative evidence across banking and telecommunications in five jurisdictions supports the research proposition with some qualifications. In both sectors, jurisdictions that established operationally independent regulatory institutions before the primary liberalisation episode produced more durable outcomes than those that did not. The clearest positive cases are India (telecommunications) and Brazil (telecommunications, banking); the clearest negative cases are the United States (banking, post-Gramm-Leach-Bliley) and Japan (banking, post-Big Bang). The European Banking Union represents an intermediate case: market integration preceded supervisory integration, generating the institutional gaps that the 2008 crisis exposed, and the subsequent ex post construction of supervisory infrastructure has been politically and technically difficult.

[36]Ibid (n 7).

Two qualifications are necessary. First, sequencing is a necessary but not sufficient condition for good regulatory outcomes: India's energy sector illustrates that institutional creation preceding liberalisation does not guarantee genuine regulatory independence if the enabling statute or the political environment permits executive override of regulatory determinations. Second, the sequencing thesis explains variation in institutional durability better than variation in initial performance: some rapidly liberalised markets produce strong short-term consumer benefits (US airline deregulation, for example) while exhibiting long-term structural vulnerabilities that the sequencing thesis predicts.

B. Lessons from Japan and Brazil for India

The Japanese and Brazilian experiences provide particularly instructive lessons for Indian regulatory design. Japan's banking crisis illustrates the specific consequences of combining financial liberalisation with regulatory forbearance under an institutional structure that conflated supervisory and fiscal functions. The Indian banking sector's relative resilience owes much to the RBI's maintained separation from the Ministry of Finance and its explicit mandate to prioritise financial stability over competitive efficiency. The ongoing debate in India about the appropriate degree of RBI independence and the periodic tensions between the RBI and the Ministry of Finance over monetary policy and bank recapitalisation should be understood in this comparative context: the Japanese experience demonstrates that the institutional separation is not merely a technocratic preference but a systemic risk management device.

Brazil's ANATEL experience offers a different lesson: that constitutional or supra-statutory protection of regulatory agency autonomy produces more durable independence than statutory protection alone. TRAI's mandate rests entirely on an ordinary statute that Parliament can amend by simple majority, and the Telecommunications Act 2023 has in fact expanded executive policy direction powers in ways that reduce TRAI's effective autonomy in certain domains. The Brazilian model of constitutional autarquia especial status for independent regulators suggests that India might consider similar constitutional recognition for TRAI, the RBI, SEBI, and other

systemically important regulators a reform that would require a constitutional amendment but that the comparative evidence suggests would produce material improvements in regulatory credibility and investor confidence.

C. The Capture Problem: Structural Gaps Across Jurisdictions

The comparative analysis reveals that all five jurisdictions have significant structural gaps in their anti-capture frameworks. In India, the post-employment cooling-off period for TRAI and RBI officials is inadequately specified and inconsistently enforced. In Brazil, the revolving-door problem between ANATEL and the major telecommunications operators is well-documented. In the United States, the SEC's "revolving door" with Wall Street financial institutions has been extensively criticised in the post-2008 literature. In Europe, the ECB's Single Supervisory Mechanism has faced criticism for the cultural capture problem identified by Stigler's successors: supervisors who spend extensive time embedded with the institutions they supervise risk absorbing those institutions' worldviews.[37]

These structural gaps suggest that anti-capture reform is a priority across all five jurisdictions, not merely in developing economies. The comparative evidence supports a package of structural anti-capture measures detailed in Part XI that goes beyond existing procedural transparency requirements.

D. Adaptive Capacity

The final cross-jurisdictional finding concerns adaptive capacity: the ability of regulatory frameworks to evolve in response to technological and market change without requiring wholesale legislative reconstruction. The frameworks that have demonstrated the greatest adaptive capacity are those built around principles-based mandates (as in the FCA's approach to financial services conduct regulation), supported by regulatory sandbox mechanisms (now deployed in more than 50 jurisdictions in financial services)

[37]Ibid (n 6).

and by administrative rule-making procedures that permit rapid regulatory updating without parliamentary legislation.[38]

India's regulatory framework has mixed adaptive capacity. The RBI's administrative rule-making powers are broad and have been used effectively to adapt the prudential framework to emerging risks. TRAI's consultation and recommendation process has enabled relatively rapid adaptation to technological change in telecommunications. However, both bodies are constrained by the legislative primacy of their enabling statutes, meaning that fundamental reforms require parliamentary action. The Telecommunications Act 2023 represents an improvement in this respect, providing broader administrative rule-making authority to the government (though not to TRAI directly), but the improvement is partial.

XI. SUGGESTIONS AND RECOMMENDATIONS

The following prescriptive recommendations flow directly from the comparative findings in Parts VI through X. They are directed primarily at the Indian regulatory framework but have comparative relevance for Brazil, Japan, and other developing economies with significant independent regulatory agency sectors.

1. **Establish Regulatory Institutions Before Liberalising Markets:** The single most robust finding of the comparative analysis is that pre-liberalisation institutional investment produces more durable outcomes than post-liberalisation institutional construction. Future reform programmes in Indian energy distribution, aviation financial oversight, and digital markets should follow the TRAI sequencing model: establish and resource the independent regulatory body, provide it with adequate technical capacity, and allow it to develop sector-specific expertise before competitive entry is opened. The Airports Economic Regulatory Authority (AERA) and the Petroleum and Natural Gas Regulatory Board (PNGRB) have not

[38]Ibid (n 18).

consistently followed this model; the evidence suggests that their regulatory effectiveness has been correspondingly limited.

2. **Strengthen Statutory Guarantees of Regulatory Independence and Consider Calibrated Constitutional Safeguards:** TRAI, the RBI, SEBI, and IRDAI should first receive strengthened statutory protection through transparent selection processes, fixed and protected terms of office, defined grounds for removal, operational funding autonomy, mandatory consultation, and narrowly circumscribed executive policy-direction powers. The Brazilian autarquia especial model should be treated as a statutory comparator, not as a model of constitutional entrenchment. In the longer term, Parliament may consider an amendment under Article 368 to constitutionally protect the core institutional guarantees of systemically significant regulators. Such protection must not immunise regulatory action from judicial review or displace constitutional rights: regulatory measures affecting trade, profession, or business must remain consistent with Article 14 and Article 19(1)(g) and must satisfy the requirement of reasonable restrictions in the interests of the general public under Article 19(6). Any amendment must also remain subject to the basic-structure limitation.[39] The Financial Sector Legislative Reforms Commission (FSLRC) Report 2013 provides the more appropriate doctrinal reference point.[40] Its draft Indian Financial Code proposed a functional allocation of financial-regulatory responsibilities: the RBI would retain monetary-policy functions and prudential supervision of banking and payment systems; a Unified Financial Agency would consolidate the non-banking functions of SEBI, IRDA, PFRDA, and FMC; and an independent Public Debt Management Agency (PDMA) would assume public-debt-management functions. The FSLRC also

[39] Constitution of India arts 14, 19(1)(g), 19(6), 368; Kesavananda Bharati v State of Kerala (1973) 4 SCC 225.

[40] Financial Sector Legislative Reforms Commission, *Report of the Financial Sector Legislative Reforms Commission: Volume I – Analysis and Recommendations* (Government of India, March 2013) chs 3, 11, 12 and 14.

proposed a Financial Sector Appellate Tribunal, a Resolution Corporation, a Financial Redress Agency, and a statutory FSDC. The proposed framework was not enacted as a consolidated Code; the Government instead accepted and pursued non-legislative governance measures while stating that the legislative restructuring required wider stakeholder consultation. This incomplete implementation reinforces the article's wider conclusion that structural regulatory reform requires durable legal design, phased transition arrangements, and sustained political commitment.[41]

3. **Reform the TDSAT Model and Extend It to Other Sectors:** TDSAT's specialist appellate function represents a valuable institutional innovation that should be extended to banking (the Debt Recovery Appellate Tribunals perform a related function but lack equivalent sectoral expertise), energy (the CERC's appellate function is inadequately resourced), and aviation (no equivalent body exists). The comparative evidence from Japan where the absence of specialist regulatory tribunals contributed to extended interconnection disputes and delayed competitive entry supports this recommendation.
4. **Implement Structural Anti-Capture Measures:** The following structural measures should be mandated across all central regulatory agencies:
    - agency funding through industry levies rather than government appropriations;
    - fixed five-year non-renewable terms for agency heads and commissioners, removable only by parliamentary resolution on grounds of incapacity or misconduct;
    - a mandatory two-year post-employment cooling-off period for all senior regulatory officials before joining regulated entities;

[41] Ministry of Finance, 'Recommendations of FSLRC; Revamping the Legislative Framework Governing the Financial Sector' (Press Information Bureau, 8 August 2014).

- mandatory publication of all meetings between agency officials and regulated entities; and
- independent data-gathering capacity sufficient to avoid structural dependence on regulated entities for market information.

5. **Institutionalise Regulatory Impact Assessment:** All central regulatory agencies should be required by statute to publish a Regulatory Impact Assessment for every significant regulatory determination, quantifying the expected consumer welfare, market competition, and systemic risk effects of the proposed measure and its primary alternatives. The OECD's established RIA methodology provides a well-tested template. The current situation, in which TRAI's consultation process is substantively similar to RIA but lacks the formal legal requirement for structured cost-benefit analysis, should be regularised.
6. **Adapt the Regulatory Sandbox to Regulatory Oversight:** India's regulatory sandbox programmes in fintech and telecommunications should be extended to regulatory oversight itself: a "regulatory learning" framework should permit agencies to pilot new supervisory approaches including algorithmic monitoring, real-time data submission requirements, and outcomes-based regulation in defined market segments before rolling them out sector-wide. This adaptive mechanism would improve the regulatory framework's capacity to respond to technological change without requiring legislative reform for each new regulatory tool.
7. **Address the RBI-Ministry of Finance Governance Boundary:** The Japanese experience with regulatory forbearance under a Ministry of Finance with conflated functions provides a strong comparative argument for strengthening not weakening RBI's formal independence from the Ministry of Finance. The formal governance boundary should be codified in primary legislation: the Financial Sector Legislative Reforms Commission's 2013 recommendation for a Monetary Policy Committee with independent external members was partially implemented, but the broader question of RBI's statutory independence in

prudential oversight has not been addressed. Brazil's constitutional separation of BCB functions provides a useful drafting precedent.

XII. CONCLUSION

This article has advanced and evaluated a specific doctrinal proposition: that the sequencing of regulatory reform whether independent regulatory institutions are created before or after market liberalisation is a first-order determinant of regulatory durability and consumer welfare outcomes. The comparative analysis across banking and telecommunications in India, the United States, the European Union, Japan, and Brazil has provided substantial support for this proposition, while identifying two important qualifications: institutional creation is necessary but not sufficient (the Indian energy experience demonstrates that formal independence can be hollowed out by statutory executive direction powers), and sequencing predicts durability better than initial performance (rapid liberalisation can produce short-term consumer gains while generating structural vulnerabilities that emerge over time).

Three specific contributions emerge from the analysis. First, the article identifies the sequencing thesis as a more precise and actionable analytical framework than the regulation deregulation binary that has dominated both policy debate and much regulatory scholarship. Second, it demonstrates that India's telecommunications reform exemplifies and Japan's banking reform exemplifies the absence of the institutional preconditions that the sequencing thesis identifies as critical. Third, it shows that Brazil's model of constitutionally anchored regulatory agency independence represents a reform path that India's legal system is capable of implementing and that the comparative evidence suggests would produce material improvements in regulatory credibility.

The implications for Indian regulatory law are concrete. The Telecommunications Act 2023 has modernised the statutory framework but has expanded executive direction powers in ways that the comparative evidence suggests will weaken long-term regulatory independence. The RBI's governance boundary with the Ministry of Finance remains inadequately codified. TDSAT's specialist appellate model should be extended

to banking and energy. And the structural anti-capture measures that the comparative evidence identifies as most effective agency funding through industry levies, fixed non-renewable terms, post-employment cooling-off periods, and mandatory independent data capacity are not yet consistently implemented across India's central regulatory agencies. Addressing these gaps would bring the Indian regulatory framework into closer alignment with the best comparative practice the evidence supports.

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