

# Managed service arrangements

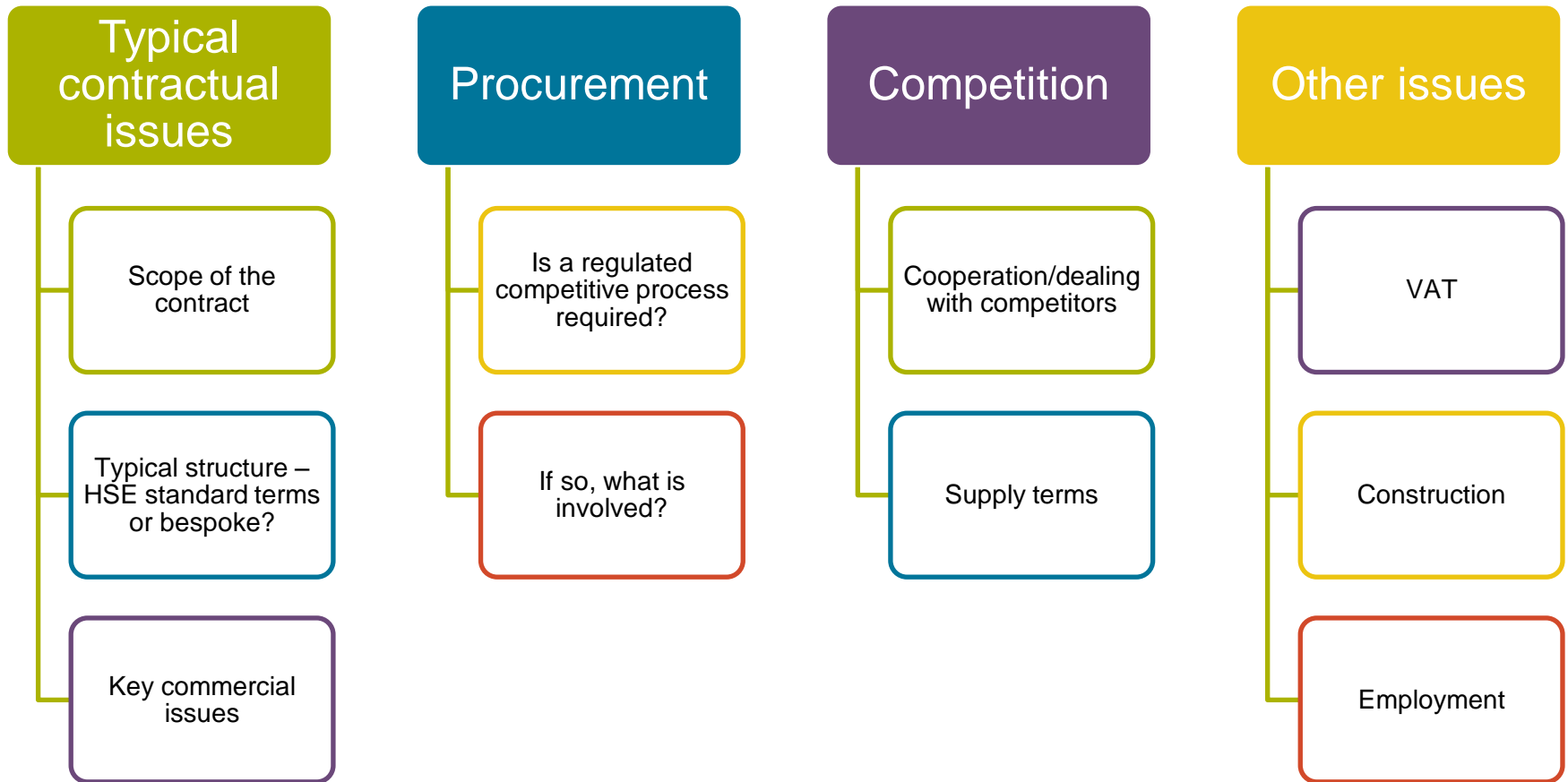
Caroline Hobson



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# Legal issues – what are they?

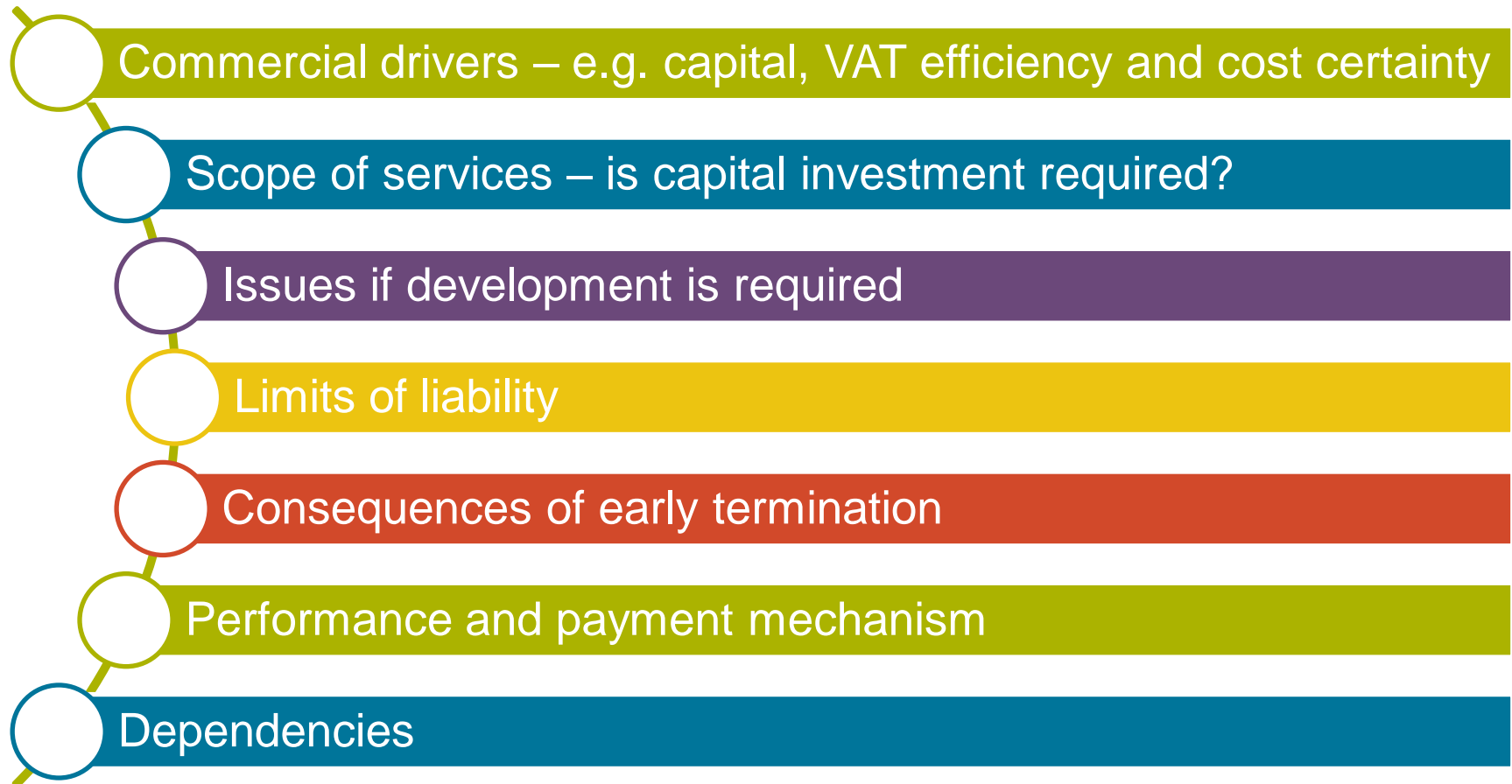
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## Some typical key issues

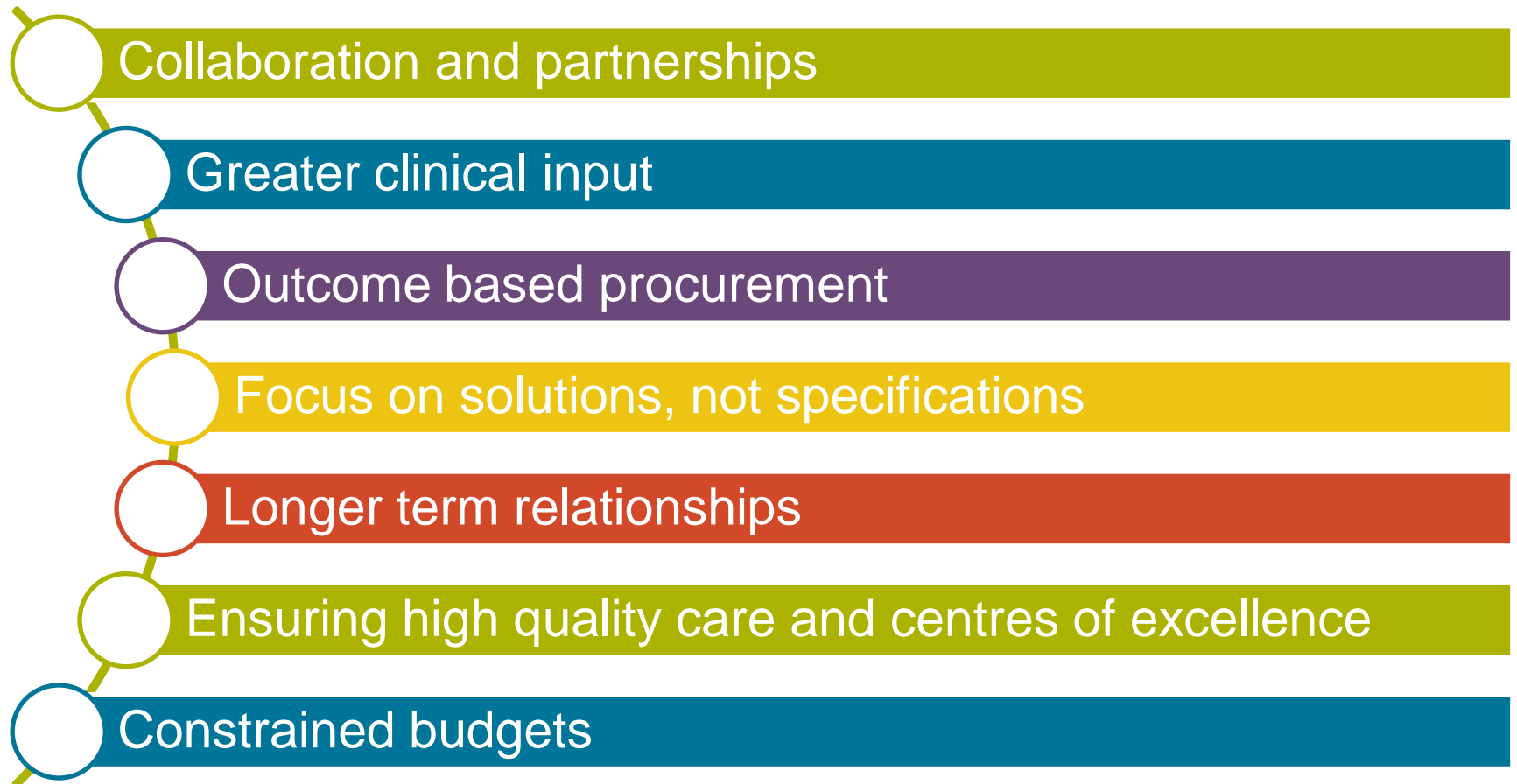
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# Procurement themes

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# Procurement issues

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Procurement rules will govern procurement process, ability to negotiate contract and evaluation of supplier

- Fully regulated or Light Touch Regime?
- Allows use of a 'light touch procurement procedure'
- Which procedure? Restricted/negotiated/competitive dialogue procedures?
- Reliance on the sole supplier exemption to avoid the need for competition?

What is being procured?

- Services (clinical services, management of facilities)
- Works (design and build of facilities)
- Suppliers (provision of equipment and consumables)

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# The challenges of the procurement process

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Pre-tender engagement?

Light touch, or a more regulated restricted/negotiated/competitive dialogue procedure?

Potentially a long, costly process – SME challenge?

Does the authority know what it wants?

What does the specification say?

Requirements change

Poor communication with bidders

Clinician influence – too much or not enough?

Pricing proposal may need to fit terms of tender response, little room for creativity

Large winner takes all contract – vulnerable to challenge?

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# Competition law issues - overview

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## Common competition law issues

- Issues can be complex under both competition law prohibitions but the issues encountered are common to all managed service/integrator/sub-contractor/consortium procurement models in all sectors

## Anti-competitive information exchange or collusion?

- visibility of competitor pricing and other commercially sensitive information?
- establishment of clear guidelines and protections internally may be required
- in tender markets, avoid exchanging information about bid plans or strategies

## Are supply terms an abuse of a dominant position? If dominant, issues to consider include:

- pricing levels
- rebates
- bundling
- exclusivity
- long-term nature of arrangement

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## Contact Details

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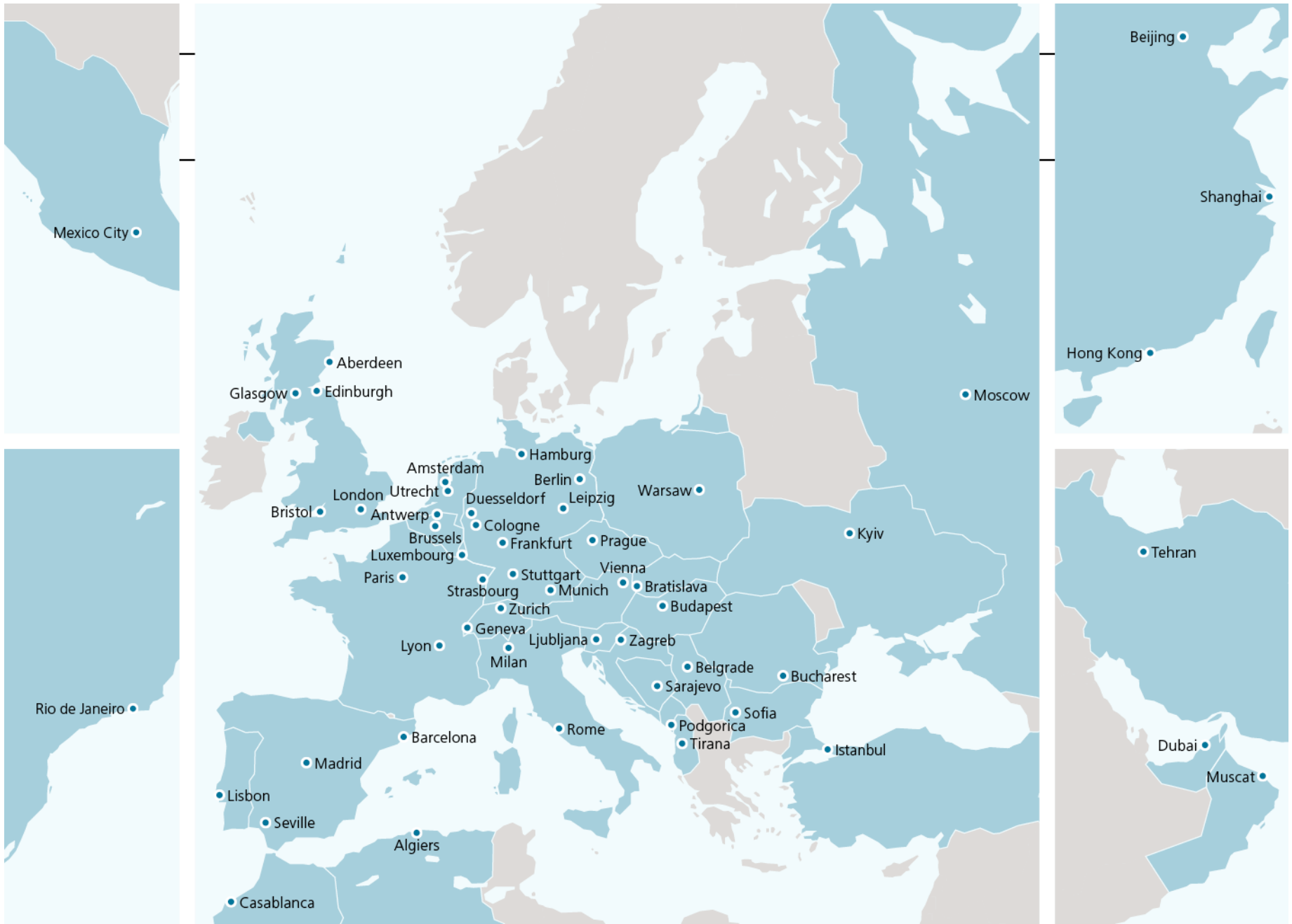


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# CMS at a glance

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