

The design of judicial review in electronic communications



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Fundamental principles of the framework

- De-centralised application of the regulatory framework by NRAs
- Based on EC competition law principles
- With certain specific tasks entrusted to the Commission for single market purposes:
 - » Recommendation on relevant markets as starting point for national market analyses
 - » Article 7 cooperation mechanism



Article 7 cooperation mechanism

- other NRAs and Commission can make comments
- NRA concerned must take utmost account of those comments
- Commission may exercise veto power in specific cases
 - » market definition or SMP assessment
 - » effect on trade between Member States
 - » barrier to single market or not compatible with Community law, in particular objectives Article 8



Article 7 is not intended as a judicial review mechanism

- purpose is to consolidate the internal market, not to offer judicial review (contrary to Article 4)
- no contradictory procedure (contrary to Article 4)
- very short time frame (contrary to Article 4)



Article 7 does not operate *in practice* as a judicial review system

- what does the Commission look at?
- the nature of the comments: invitations to strengthen motivation, to make sure that remedies are more in line with what has been done by other NRAs, advise on effectiveness of remedies,....
- follow-up of comments letters by NRAs
- follow-up to comments letters by national courts/ appeal bodies



“Accountability” of Commission for Article 7 decisions

- What is meant by “accountability”?
- NRA decisions are reviewable by national courts/ appeal bodies
- Veto decisions are challengeable before the CFI (by operators directly and individually concerned)
- Political accountability of the Commission to the Parliament
- ⇒ Wrong to say that the Commission is not “accountable” for its Article 7 decisions



Critical analysis of Expert Panel proposal

- More accountable than the Commission?
- Legitimacy?
- Role of the Commission to foster internal market
- Effectiveness?



Conclusion: the current judicial review system is sound

