



Appeal procedures under EU regulatory framework

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Scope of research

- Builds on research for Swedish NRA (PTS)
- Country coverage: Big Five + B, DK, NL and SE
- Purpose: describe national appeal procedures
 - Number of levels of appeal
 - Type of appeal body and timeframe
 - Situations where NRA decisions are suspended
 - Status of appeals against NRA market analysis decisions

Current EU framework

Little guidance on appeals procedures (Article 4 FWD)

- ▼ Member States must provide an effective and independent appeal mechanism
- ▼ Right of appeal for any user or operator affected by NRA decision
- ▼ Appeal body must have appropriate expertise available to it
- ▼ Merits of the case must be taken into account
- ▼ NRA decision stands pending outcome of appeal unless the appeal body decides otherwise
- ▼ If the appeal body is not a court, it must give written reasons for its decision, and its decision must be subject to review before a court

Future EU framework (2009?)

- Appeals systems in some Member States
 - take years to reach final outcome
 - systematically suspend NRA decisions during the appeal process
 - create incentive to use appeal process as a delaying tactic
- European Commission proposal
 - NRA decisions should only be suspended where irreparable harm to the appellant can be shown
 - does NOT address length of appeal proceedings
 - no discussion of proposal in Commission's first Impact Assessment

Situation in 9 Member States

- Number of levels of appeal:
 - 2 stages: B, IT
 - 3 stages: DK, ES, SE (proposal to reduce to 2)
 - Mixed depending on type of NRA decision: F, DE, NL, UK
- First level of appeal usually heard by a court, but not always:
 - Administrative appeals board: DK, IRL
 - Specialised judicial body dealing with economic issues: UK
 - NRA: ES (at choice of plaintiff)
- Further levels of appeal always heard by a court

Timeframe for appeal body to decide

- Few countries specify binding timeframes:
 - DK: 3 months (not mandatory)
 - IRL: 4 months (not mandatory)
 - ES: 1 month (when CMT is first level appeal body)
 - SE: 6 months (proposal)
 - UK: 4 months (CAT referral to Competition Commission concerning price controls)

Interim suspension

- At discretion of appeal body whether to suspend NRA decision, national laws mention following situations:
 - Imposition of fines: B, DK
 - Prevent serious and irreparable harm: F, IT, ES, UK
 - Urgency: F, UK
- But, very different application in practice...

Appeals against NRA market analysis decisions

- Very few appeals: F, NL, ES, UK
- Efficient procedure: DK
 - M 8, 11, 12, 13, 16, limited use of suspensions, cases closed after 6 months at first level, no appeals to second level
- Lengthy procedure, but no suspensions: DE
 - M 1-6, 8-10, 11, 12, 16, no cases closed so far, longest open 17 months
- Lengthy procedure, many suspensions: SE
 - M 8-10, 12, 16, 18, closed cases took 19 months, longest open 27 months

Some open questions...

- Status of European Commission comments
 - ES – M 8 (Wholesale line rental)
 - ES – M15 (MVNOs)
- Cross-border impact of appeals
 - DK – M16 (MTR benchmarking)
- Definition of “irreparable harm”
 - Would apply to MTR glide path?
- Will Commission veto over remedies reduce number of appeals?