



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
- ▼ 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:
 - Two stages: B, IT
 - Three stages: DK, ES, SE
 - 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
 - Specialised court dealing with economic issues: NL, UK
 - NRA: ES (at choice of plaintiff)
- Further levels of appeal always heard by a court

Timeframes and interim suspension

- Few countries specify timeframes for appeal body to decide:
 - DK: 3 months (not mandatory)
 - ES: 1 month (when CMT is first level appeal body)
 - UK: 4 months (CAT referral to Competition Commission concerning price controls)
- At discretion of appeal body whether to suspend NRA decision, but 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 small number of appeals (mostly M16): B, F, IT, NL, ES, UK
- Small number of appeals:
 - DK - 7 cases, limited use of suspensions, cases closed after 6 months at first level, no appeals to second level
- High number of appeals:
 - DE – 15 cases, no suspensions, no cases closed so far, longest open 17 months
 - SE – 12 cases, many suspensions, closed cases took 19 months, longest open 27 months

Today in Sweden...

- M8-10
 - Suspended
 - TeliaSonera's IC charges not changed since September 2003
- M9
 - Appeal body ruled "fair and reasonable" does not mean strict reciprocity with TeliaSonera's rates
 - But, decision only applies to 3 ANOs
- M12
 - Suspended
 - Still no bitstream access offer in practice in Sweden
- M16
 - Remedies suspended
 - Actual MTRs are substantially above glide path set by PTS