



## Views of a global operator on dispute settlement processes

ITU Session, Geneva  
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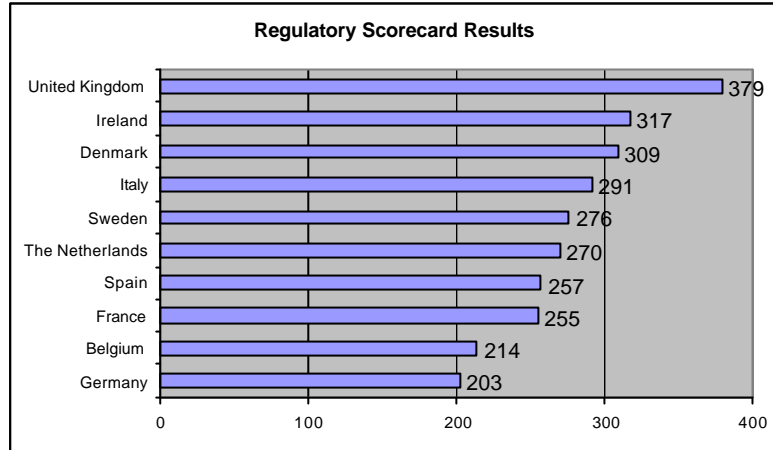


## CONTENT

- Why it matters?
- Investment and regulatory certainty
- Models of dispute settlement and core principles of a successful regime



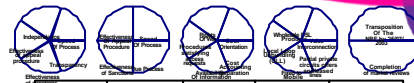
## Investment flows to effective regimes – dispute resolution is key\*



\*Regulatory Scorecard, ECTA



## Report on the effectiveness of national regulatory frameworks and investment impact



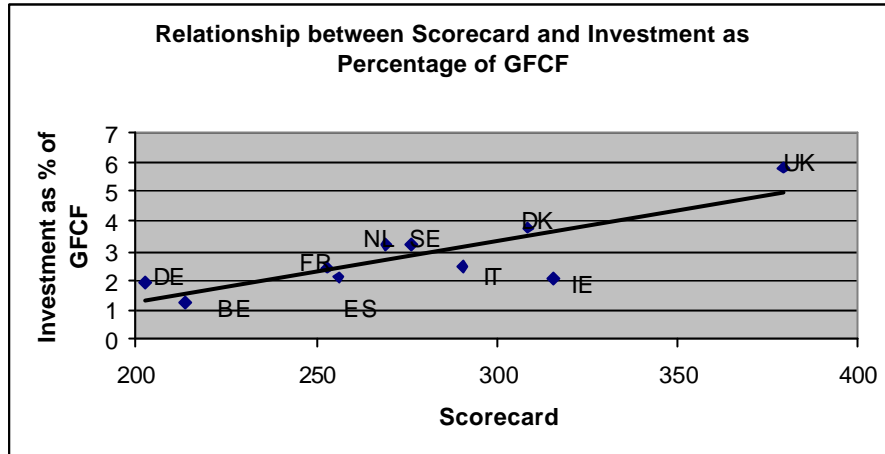
	Regulator: General	Regulator: Dispute Resolution	Access: Regulation	Access: Products	Transposition Of The NRE
Belgium					
Denmark					
France					
Germany					
Ireland					
Italy					
Netherlands					
Spain					
Sweden					
United Kingdom					



\*Regulatory Scorecard, ECTA



## Investment and Regulatory Effectiveness



\*Regulatory Scorecard, ECTA



## Core Principles of Successful Dispute Resolution

- Transparency
- Speed
- Clear and effective rights of recourse
- Consistency
- Certainty
- Expertise
- Focus on core bottlenecks but technology neutral
  
- Turning to each of above...



## Transparency

- Need effective and speedy consultation process
- Third party inputs key
  - Honest broker review
  - Ensures commercially relevant outcome
- Business secrets respected but not to detriment of process
- Clear policy goals set out in advance – e.g. infrastructure investment v service level competition



## Speed

- Critical – investment dampening impact of delay
- EC rules on interconnection disputes and mandated time frame welcome
- National procedural rules on appeals must NOT render ineffective the process
- Interim remedies – presumption on remaining in force unless material risk of error



## BIICL Report: Regulatory Decisions and Appeals\*

	FRANCE	GERMANY	IRELAND	NLDS	SPAIN	UK
<b>Decisions by NRA 97-03</b>	57	750	90	109	235	53
<b>Duration of proceedings</b>	4-6 mths	1.2-2.2 mths for i/x much longer for other proceedings	5 mths	6.4mths	3-4 mths	5-6 mths

\*British Institute of International and Comparative Law



## Regulatory decisions and Appeals

	FRANCE	GERMANY	IRELAND	NLDS	SPAIN	UK
<b>Appeals to courts</b>	15 4 pending	1000 500 pending	3	70 112 internal revision 170 pending	429 250 pending 121 internal revision	7
<b>Duration of appeals</b>	4-5 months	2-4 years excl interim measures	8 mths 1 <sup>st</sup> instance	2.8 mths internal revision 1.5 years 1 <sup>st</sup> instance 1 year 2 <sup>nd</sup> instance	Up to 5 years	1.1 years

\*British Institute of International and Comparative Law



## Regulatory Decisions and Appeals

	FRANCE	GERMANY	IRELAND	NLDS	SPAIN	UK
<b>Overall Duration of Proceedings</b>	1-2 YEARS	UP TO 5-6 YEARS	1.2 YEARS	2.6 YEARS	UP TO 5 YEARS	1.1 YEARS

\*British Institute of International and Comparative Law



## Clear and Effective Rights of Recourse

- Single body with clear powers and if more than one body, e.g. anti-trust and regulatory agency – strong co-operation – ideally similar legal base
- Clear rules on when dispute will be deemed worthy of remedy by regulator – not vitiable by one party



## Consistency & Certainty

- Investment is driven on this key criteria
- No material change in policy without material impact assessment
- If more than one body or if mediation in place in individual disputes – mechanisms in place to determine conflicts



## Expertise

- Increasingly complex issues have to be determined by regulator
- Discrimination, price squeeze, cost allocation methodology – need hugely skilled people
- Mesh with consultation of interested parties and have effective regime



## When to intervene or engage dispute resolution process

- Focus on core bottlenecks – generally access – and ensure effective process to deal with such issues
- EC regime in appropriate model – anti-trust determination of market power / bottleneck
- Technologically neutral



## Other Forms of Dispute Settlement

- ADR mechanisms can be appropriate – however need clear and effective fall back
- If pass disputes to alternate body, e.g. arbitrator, need to very clearly map distinctions from normal interconnection dispute process
- Both parties must agree
- Thresholds to alternate mechanisms clearly articulated and all principles above adhered to – including transparency and consistency

