



Dispute Resolution: Procedure and Effectiveness

ITU, European Workshop on Dispute Resolution
Geneva, 31 August – 2 September 2004

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OVERVIEW

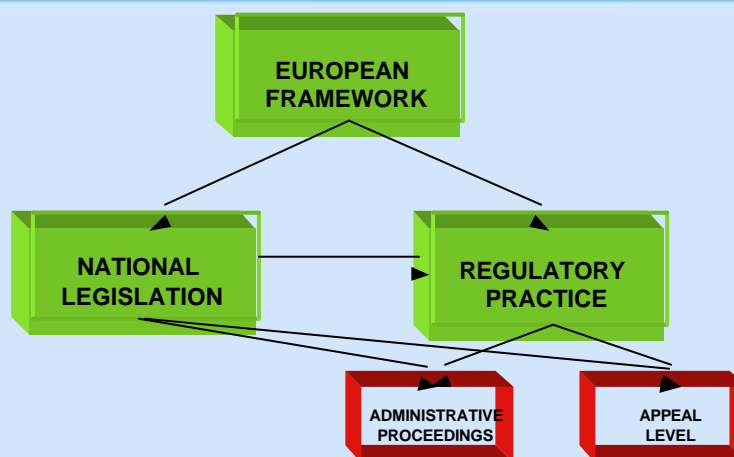


1. BIICL Study
2. Dispute Resolution – Key Issues
3. European Framework
4. Deficiencies Identified
5. Statistics
6. Benchmarking: Best Practice Model
7. Conclusions

BIICL STUDY – METHODOLOGY

- Policy Objectives and European Regulatory Framework
- Current Status of Dispute Resolution in the EU Member States
- Conclusions
 - Gaps between Policy Objectives and Current Status
 - Impact on Market Participants
- Best Practice Model

BIICL STUDY – POINTS OF REFERENCE



DISPUTE RESOLUTION – KEY ISSUES

- Dispute Resolution ? Effective and Timely Telecommunications Regulation
- Procedure ? Availability of Substantive Rights (“Procedural Barriers”)
- Regulatory Practice!
- National Procedural Competence and/vs. European Requirements
- Failure to Implement Community Law ? Barriers to Interstate Trade

European Regulatory Framework

Main Provisions relating to Dispute Resolution:

- Structure and Functioning of NRAs
- Consultation and Transparency Obligations
- Treatment of Business Secrets
- Remedies
- Dispute Resolution
- Appeals

DEFICIENCIES IDENTIFIED

- Institutional Issues
- Powers & Competences of NRAs
 - Clear, Precise and Sufficient?
- Time Frames
- Business Secrets
- Appeals
 - Delays, Internal Appeals, Suspension of Regulatory Decisions, Interim Measures...
 - cf. Article 4 FW Dir. “effective appeals mechanism”!
- Legal (Un-)Certainty?

STATISTICS

	France	Germany	Ireland	Netherlands	Spain	UK
Market Regulation and Dispute Decisions by NRA (1997-2003, unless stated otherwise)	57 (dispute resolution)	750 (market resolution, including dispute resolution)*	90 (market regulation)** 17 (dispute resolution)	109 (dispute resolution)**	235 (market regulation, including dispute resolution)*	35 (dispute resolution) 331 (market regulation)
Duration of NRA Proceedings	4 – 6 mths (since July 2005: 3-4 months)	1.2 – 2.2 mths in interconnection disputes no time limit and much longer duration for other procedures	5 mths	6.4 mths	3 – 4 mths	5 – 6 mths
Appeals to Courts	15 ³ (4 pending)	300 ⁴ (500 pending)	8	70 ⁵	429 ⁶ (250 pending)	7
Duration of Appeals	4 – 5 mths (first instance) in one case longer duration	2 – 4 yrs, excluding interim measures	8 mths (first instance)** 2.6 years in one case (second instance, before the Supreme Court)	2.8 mths (second instance) 1.5 yrs (first instance)** 1 yr (second instance)	2-3 yrs	8 mths (first instance) 4 mths (second instance)
Overall Duration of the Proceedings	1-2 yrs	Up to 5-6 yrs	1.2 yrs	2.6 yrs	Up to 5 yrs	1.1 yrs

BIICL BEST PRACTICE MODEL

Focusing on:

- ⇒ *Legal Certainty*
- ⇒ *Sufficient Powers for Regulators to Act in Accordance with the Policy Objectives*
- ⇒ *Rapid Dispute Resolution and Respect of Statutory Time Limits*
- ⇒ *Clear Rules on Confidentiality of Business Secrets*
- ⇒ *Effective Appeals Procedures (including Limitation of Appeals on the Merits to One Instance)*
- ⇒ *Prompt Review of Administrative Decisions*
- ⇒ *Clear Rules for Procedural Standing and the Right of Third Parties to Intervene.*

CONCLUSIONS

- **Dispute Resolution as an Integral Part of Telecommunications Regulation**
 - Focus on Legislation & Practice
 - Effectiveness ? Assess Regulatory & Appeal Proceedings as a Whole
- **Efficient Regulation and Dispute Resolution = Equal (Access to) Substantive Rights and Obligations**
- **Consistency Across Europe**
 - Level Playing Field
 - Investment Opportunities

“The European Telecommunications Industry Relies Heavily on Effective Decision-Making which is both Timely and Coherent when a Dispute Arises”



THANK YOU!

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Study available at www.hiicl.org ("Research")