The right of appeal under Article 4 of Directive 2002/21/EC  
(Framework Directive)

Outline

Introduction

Background/History

Article 5a(3) of Directive 90/387/EEC (open network provision)  
General principles of law: effective judicial protection; effectiveness

C-222/84 Johnston v Chief Constable of the RUC [1986] ECR 1651;  
C-213/89 Factortame [1990] ECR I-2433;  
C-506/04 Graham J Wilson, judgment of 19 September 2006, not yet reported.

Codifying the general principles

Directive 89/665/EEC (public procurement review procedures)

Case C-185/95 P Baustahlgewebe [1998] ECR I-8417

The requirements of Article 4

"1. Member States shall ensure that effective mechanisms exist at national level  
under which any user or undertaking providing electronic communications networks  
and/or services who is affected by a decision of a national regulatory authority has  
the right of appeal against the decision to an appeal body that is independent of the  
parties involved. This body, which may be a court, shall have the appropriate  
expertise available to it to enable it to carry out its functions. Member States shall  
ensure that the merits of the case are duly taken into account and that there is an  
effective appeal mechanism. Pending the outcome of any such appeal, the decision  
of the national regulatory authority shall stand, unless the appeal body decides  
otherwise.

2. Where the appeal body referred to in paragraph 1 is not judicial in character,  
written reasons for its decision shall always be given. Furthermore, in such a case, its  
decision shall be subject to review by a court or tribunal within the meaning of  
Article 234 of the Treaty."

Case C-426/05 Tele 2 UTA (pending);  
Case C-55/06 Arcor (pending);  
Case C-438/04 Mobistar, judgment of 13 July 2006, not yet reported

Article 4 and the Review

Commission Communication on the Review of the EU Regulatory Framework for  
electronic communications and services of 29 June 2006 {COM (2006) 334 final}

Conclusion