

## 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