

Appeals: procedural aspects

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APPELLATE BODY

- CAT
 - > judicial body
 - > expertise
 - > independent
- Not yet a general RAT
 - > but see HL Constitution Committee 6th report

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NATURE OF APPEAL

- Art.4 requires due account of the merits
- How much account? Due account
- Merits appeal - ok
- Judicial review?
- Choice has implications for speed of process

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UK APPROACHES

- Comms Act '03 – merits
 - remission required (if appeal allowed)
- Comp Act '98 – merits
 - new material introduced
 - lengthier, more difficult to manage
 - remission not required
- Enterprise Act '02 – JR
 - Market powers apply to comms
 - “muscular” JR by CAT

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UK APPROACHES

- Price Control matters
 - CAT must refer to CC
 - “play within a play” / “zigzag”
 - CC *investigates*
 - CC better equipped for investigation
 - but is 2nd tier investigation warranted – political compromise
 - alternative: NRA + JR by CAT?

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Consistency

- Art.234 reference?
- “Softer options”
 - cooperation/awareness
 - Amicus brief by EC Commission?
- CAT in *Hutchison*
 - ECAP decision of own motion
 - dialogue between German Regulator and Commission

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INTERIM MEASURES

- Approach in working paper akin to CAT approach
- Key points
 - > not unfounded (if complex difficult to rule out)
 - > must show "irreparable harm"
 - > balance harm vs effect on market
 - > no automatic suspension but CAT cautious in exercising discretion
 - > prefers speedy final resolution rather than spending time on interim measures

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Thank You

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