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

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
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

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?

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
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

Thank You

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