



The need for more effective appeal mechanisms

Andy Tarrant
Head of Government Affairs
BT Global Services



Regulatory Framework

Article 4(1) Framework Directive (FD):

- **Effective appeal mechanisms** shall exist at national level
- **Any person** who is affected by a decision of the NRA shall have a right of appeal
- **NRA decision shall stand**, pending the outcome of any such appeal, unless the appeal body decides otherwise

2



**National Appeal Systems:
findings in the 11th implementation report**

- length of appeal procedure (17 Member States)
- practice of systematic appeals (10 Member States)
- suspensory effect of appeals / suspensions on a regular basis (6 Member States)
- denial of third parties' rights of appeal (1 Member State)

effective application of the Regulatory Framework may be undermined

3



Operational effect on BT in Sweden

- BT provides services to businesses and government purchasers in every country in the EU, including Sweden
- BT has own infrastructure outside the UK but must complement that with monopoly access inputs. In order to serve its customers anywhere, a communications provider must provide connectivity everywhere
- Key monopoly access inputs include wholesale leased lines (known as ppcs) and wholesale broadband services (known as bitstream). These are required to be provided by BT in the UK as a result of application of the EU Framework. Abuse of the appeals process in Sweden means that they are not available in Sweden.

7



Case example: Germany

- An element used to be too many instances: situation improved in 2003.
- Principal issue now is the test for suspensive relief (Section 80(5) of the Admin Ct Procedure Act).
- Two limbed: does potential harm to the party outweigh the interest of the NRA to execute the decision.
- In practice, the German courts focus on the second part only which leads them to take a rule of thumb view on the likelihood of the NRA's decision withstanding the appeal. The theory is that the NRA could have no interest in applying a decision that is likely to fail.
- The view of our legal advisors in Germany is that when the Court's come to hear the full appeal they then merely copy across the decision in the hearing for suspensive review.
- There are no published figures. Our guess, approximately 50% of NRA decisions with respect to market regulation are appealed. 50% of these are suspended.
- Our view is that this is a contributory factor to the extraordinary tardiness of the German NRA; key access products which are regulated in most other Member State (bitstream, ppcs, mobile termination) are not yet regulated in Germany.

8



2006 Review

- BT's view, advised by Brick Court Chambers, is that the Community legislature has the power on the basis of Article 95 to:
- Impose time limits on national courts determining appeals under Article 4 of the Framework Directive;
- Place limits on the number of instances of national appeal;
- Set out substantive rules governing the circumstances in which interim relief may be granted.

9


