Seminar for National Judges (2011)

Implementing the Revised Regulatory Framework in Electronic Communications

Proceedings

The 2011 seminar for national judges and representatives of national regulatory authorities (NRAs) was organised by the Academy of European Law (ERA) in association with the European Commission, Information Society and Media Directorate-General, on 28 November 2011. Following the adoption of the new EU rules on Telecommunications in 2009 and other important complementary harmonisation measures in 2010 and 2011, this year's focus was on the role of the national judiciary in implementing the revised regulatory framework in electronic communications, with particular attention to specific issues concerning the appeal procedure against decisions adopted by NRAs. The seminar also dealt with the important role of European institutions, like the European Commission, the Court of Justice of the European Union and the newly created Body of European Regulators for Electronic Communications (BEREC), in achieving a true single market in electronic communications. The 2011 seminar perfectly fitted into the series of seminars the European Commission co-organises every year, designed to establish a regular forum for relevant stakeholders where national and EU views are expressed, experience is exchanged, and visions are shared.

This year's seminar was attended by 29 judges from 20 Member States and 19 NRA's representatives from 18 Member States.

The welcome words were delivered by Mr. Wolf-Dietrich Grussmann, Head of Unit at Information Society and Media DG of the European Commission, and Dr Michele Messina, Deputy Head of the European Business Law section at ERA. Mr Grussmann welcomed participants, thanking them and expressing appreciation for the high level of attendance.

Dr Messina, on behalf of ERA, welcomed all the delegates from Member States, representing the national judiciaries, and the regulatory authorities, also highlighting how training seminars constitute one of the core activities of the Academy's mandate. As far as the structure of the seminar was concerned, Dr Messina started by pointing out the major differences of the 2011 edition as compared to previous ones. In particular, he emphasised the choice to give a more central role to judges by devoting the full morning session to a panel of national judges discussing the problems they encounter in dealing with the appeal procedure against decisions of the NRAs. Dr Messina continued by pointing out how attention will also have to focus on the European Institutions and their key role in achieving a true single market in electronic communications. Finally, Dr Messina introduced the moderators of the morning session, Prof Pierre Larouche, and Mr Xavier Taton.

I. IMPLEMENTING THE REVISED REGULATORY FRAMEWORK IN ELECTRONIC COMMUNICATIONS: THE ROLE OF THE NATIONAL JUDGE

PANEL DISCUSSION:

THE APPEAL PROCEDURE AGAINST DECISIONS OF THE NATIONAL REGULATORY AUTHORITIES

Moderators: ***Prof Pierre Larouche****, Professor of Law at Tilburg Law and Economics Center (TILEC), University of Tilburg, and College of Europe, Bruges; and* ***Mr Xavier Taton****, Managing Associate at Linklaters in Brussels, and Researcher at the Université Libre de Bruxelles (ULB).*

Before introducing the different panellists and illustrating the outline of the panel discussion of the morning session, the two moderators, Prof Larouche and Mr Taton, presented the study they carried out for the Centre on Regulation in Europe (CERRE), which has been published in April 2011[1]. In particular, they pointed out that the CERRE study covered the enforcement and judicial review of decisions of NRAs in the energy, telecoms and railway sector in five EU Member States (Belgium, France, Germany, Netherlands and United Kingdom). The methodology followed a functionalist approach based on implications deriving from the analysis of legislation and cases. The theoretical background against which to assess enforcement and appeals procedures was highlighted as follows: preserving the rights of the parties involved; ensuring effectiveness of law; and, make procedure as efficient as possible.

INTERNAL DEADLINES, LENGTH OF PROCEEDINGS, AND THE NATURE OF THE COURT

Mr Taton introduced the topic of internal deadlines, length of proceedings and the nature of the court as the first of the panel discussion among judges and other participants. He emphasised that there is no provision in EU law concerning internal deadlines and length of proceedings in appeal procedures against decisions of the NRAs. As a result of the study, the average length of proceedings is about one and a half year. As for the nature of the court, EU law only requires the requisites of independence and expertise, thus leaving the Member States free to choose whichever approach they prefer. This means that civil, administrative and specialised courts and bodies are competent to receive those appeals depending on the particular Member State.
Mr Taton, then introduced the first speaker of the panel discussion, Mr Charles Dhanowa.

Mr Charles Dhanowa OBE, *Registrar, Competition Appeal Tribunal (CAT), London.*

[1] http://www.cerre.eu/studies/enforcement-and-judicial-review-decisions-nras

Mr Dhanowa started his presentation by saying that the Competition Appeal Tribunal in United Kingdom is a court like any other national court. It is a fact-finding court in the first place.
Although it is considered a specialised court, it is not much different from other national courts with specialised chambers or judges. The greater differences are to be found in a quite tight case management schedule and in some good practices, like the one providing that the CAT is carbon copied (Cced) in all emails between parties.
Special procedures also apply for confidentiality information (the so-called "confidentiality ring"), which occurs very rarely and only for specific documents, therefore easier to deal with.
When price control matters are at stake, these are referred to the Competition Commission and when the file comes back there is no much power for the CAT to change it, unless the Competition Commission's decision is appealed by the parties.
Mr Dhanowa finally pointed out that the average duration of cases is six months.

During the discussion amongst other the issue was raised how to measure the length of cases, in particular whether to only consider the period of the appeal or also the period after the appeal until a new decision is taken by the NRA, most importantly in cases concerning price control matters.

INTERIM MEASURES AND RETROACTIVE EFFECT OF REMEDIES

Mr Taton introduced the topic by saying that Article 4 of Directive 2002/21 does not provide for any automatic stay, therefore most NRAs' decisions remain enforceable pending the appeal proceedings, also due to the quite high threshold necessary to obtain the award of interim measures. As for the retroactive effects of remedies, Mr Taton pointed out that there is no relevant provision in EU law, also emphasising the complexity of the issue, which ties in with other considerations. Retroactive (*ex tunc*) and prospective (*ex nunc*) effects present advantages and disadvantages alike. He also raised the question on the effects of an *ex tunc* quashing of an NRA's decision, by suggesting that if no concrete compensation is provided for the claimant, it is better not to give retroactive effects to remedies.
Mr Taton, finally, introduced the second speaker of the panel, Mrs Rosa Perna.

Mrs Rosa Perna*, Judge, Regional Administrative Court (TAR Lazio), Rome.*

Mrs Perna started her presentation by saying that the Italian legislator allocated the review of the NRA's decisions (AGCOM) to the Administrative judge and concentrates all the litigation at first instance to the Administrative Tribunal of Rome, which she represents. She observed that the topic assigned sounds like a twofold subject or a dual angle of observation of the same problem.
On interim measures, Mrs Perna affirmed that, while waiting for a final decision on the merit of a case, the plaintiff, by alleging that the execution of the challenged act causes him a heavy and irreparable damage, can obtain an order of suspensive effect of the contested act or an interim measure which

better ensures the effectiveness of the decision. The legal criteria for such provisional measures are summarised by the Latin expressions *"fumus boni iuris"* and *"periculum in mora"*, i.e. a prospective positive outcome of the proceedings and a heavy and irreparable damage related to the execution of the challenged act.
On the issue of retroactive effect of remedies, Mrs Perna affirmed that the principle of retroactivity is seen with disfavour by the Italian legislator. From a formal viewpoint, NRA's remedies cannot have retroactive effects. However, from a substantial point of view, it is possible to assist to an unfolding in the past of the remedy's effects when the starting date of application is prior to its adoption. This happens in particular in the regulatory activity and is connected to the natural temporal scansion of the economic and technical conditions considered in the administrative measure. This however does not represent a formal breach of the principle of non-retroactivity of administrative acts. In fact, as the TAR Lazio recognised in two cases concerning Telecom Italia, the NRA exercises a control of the offering of reference and, if the latter is not in line with the relevant rules, the Authority imposes the elimination of the unlawfulness. The regulatory measure is then an act of control operating *ex nunc* but it is also a condition for the effectiveness of the offering as a whole, therefore any modification in the offering itself operates *ex tunc*. Mrs Perna therefore affirmed that, by this way, the revision of the tariffs from the Authority operates not only on a prospective basis but also on a retrospective basis, i.e. in respect of a period that has already elapsed when the modification comes into effect.
According to Mrs Perna, as long as it can be admitted, the retroactive effect of the remedy is an important element that has a weight in the judicial assessment of the grounds for the award of interim measures, as long as it substantiates a situation of *"periculum in mora"* alleged by the plaintiff.
As far as final decisions are concerned, Mrs Perna pointed out that, as a matter of fact, the Court shall quash the invalid administrative act according to an *ex tunc* model, so that the effects of the act are made undone retroactively, and then remit the matter to the Authority which has to re-exercise the power "now for then" in order to amend or to substitute the invalid act, in compliance with the rules and principles given by the judge. Therefore, the re-adopted measures will have the same date of application as the original contested act.
Mrs Perna, finally, concluded by saying that the retroaction of the effects of a remedy, as amended or replaced by the Authority after a judicial review, is not absolute but it basically encounters a limit in the existence of situations and positions already defined, closed and undisputed.

During the discussion, it has been emphasised that issues related to retroactivity are easier to be dealt with when price control is concerned, as compared to situations when access is at stake. Moreover, it was suggested to invest more resources for NRAs, in order to have better administrative decisions, than for appeals procedures.

ASSESSMENT OF THE MERITS AND APPROPRIATE EXPERTISE

Prof Larouche introduced the third topic of the panel discussion by emphasising that Article 4 of Directive 2002/21 provides that, as part of the review process, the merits of the case must be taken into account. He also pointed out that it is

possible to identify a converging pattern, at least among the Member States considered in the CERRE study, consisting of an assessment of all legal, factual and policy issues. He then formulated a recommendation consisting of an unlimited scope of review although mitigated by a limitation to grounds raised by parties.
As for the details of review, Prof Larouche highlighted that there is no specific rule in EU law and that various levels are applicable in the different national legal orders. He also identified and agreed with a trend towards a distinction between a full review of errors of law, a broad review of errors of fact, and a marginal review where the NRA has discretion.
As for the type of analysis carried out by the review court, Prof Larouche affirmed that there is no provision in EU law and that, whilst specialised courts are used to a substantive analysis, other courts are reluctant to abandon a formal analysis. The recommendation brought forward by Prof Larouche is in favour of a substantive analysis, coupled with a marginal review.
Prof Larouche finally introduced the third speaker, Dr Andras Kovacs.

Dr Andras Kovacs, *Judge, Supreme Court, Budapest.*

Dr Kovacs started his presentation by affirming that the so-called "deference doctrine" does not exist in Hungarian law, if meaning that the judicial review should be based on the assumption that the administrative decision is lawful and only serious and flagrant violations will be remedied by the court.
Dr Kovacs affirmed that the rules in Hungarian law provides for the following: the infringement of procedural requirements leads to a setting aside of a decision only if the infringement had a bearing on the substance of the case; the authority's discretion is unlawful only if it is expressly illogical, irrational and significantly mistaken; and, finally, that any infringement of substantive rules must be remedied no matter how small they are. He also emphasised that the authority's broad discretionary power is typical of the field of electronic communications and its practice requires choosing and applying economic principles, qualified as expert's opinion. As particular expertise is needed for the understanding of these issues, the appointment of experts is necessary during the judicial procedure to establish whether the discretion was or was not adequate.
Dr Kovacs pointed out that in judicial proceedings in the field of electronic communications so far the use of experts with regard to price regulation has been primarily in determining the cost model adequacy. The decisive question here is what is the cost-oriented price and if it falls within the discretion of the NRA. Dr Kovacs then affirmed that the cost-oriented price is traffic dependent, different in every moment, especially at high fixed costs as they are in the telecoms sector. Under a market share equalisation trend, it is possible to converge to symmetric prices and these symmetric prices could be applied when market shares are equal.

During the discussion, the issue of the legal value of Recommendations in general was raised, while acknowledging that their aim is to promote convergent approaches, i.e. NGA and Termination Rates Recommendations. The issue of the meaning of the "assessment of the merits" and what does it mean in the different jurisdictions was also raised.

ACCESS AND PROTECTION OF CONFIDENTIAL INFORMATION BY NATIONAL COURTS

Mr Taton introduced the fourth topic of the panel discussion by saying that Article 5 of Directive 2002/21 provided for the protection of confidential information by NRAs, before giving the floor to the fourth panellist, Mrs Irma Telivuo.

***Mrs Irma Telivuo**, Judge, Supreme Administrative Court, Helsinki.*

Mrs Telivuo started her presentation listing the two relevant acts on publicity in Finland, namely the Act on the Publicity of Administrative Court Proceedings and the Act on the Openness of Government Activities. She also affirmed that Court proceedings and trial documents are public unless otherwise provided in the Act on Publicity of Court Proceedings, in compliance with the principle of publicity.

As for the publicity of a trial document, Mrs Telivuo affirmed that the provisions of the Act on the Openness of Government Activities and of other Acts on the publicity of documents apply to the publicity and secrecy of trial documents to the extent that it is not provided otherwise in the Act on the Publicity of Administrative Court Proceedings. The Administrative Court may nonetheless, notwithstanding the provisions on secrecy, provide information on a trial document to the extent that is needed in order to ensure due process or to protect an important public or private interest connected with the case.

Mrs Telivuo also affirmed that, according to the Act on the Openness of Government Activities, official documents shall be in the public domain. No access to a secret document or its content shall be granted unless specifically otherwise provided in the same Act. When only a part of a document is secret, access shall be granted to the public part of the document if this is possible without disclosing the secret part. Moreover, documents containing information on a private business or professional secret, as well as documents containing other comparable private business information are to be kept secret. The same rule applies if access causes economic loss to the private business, provided that the information is not relevant to the safeguarding of the health of consumers or the conservation of the environment or for the promotion of the interests of those suffering from the business conduct, and that it is not relevant to the duties of the business and the performance of those duties.

As for the right of a party to receive information, Mrs Telivuo highlighted that a party to the proceedings has the right to receive information that can affect or could have affected consideration of his or her case from documents other than the public trial document. The administrative court may refrain from providing information of a document, access to which would be contrary to a very important public interest, the interest of a minor or some other very important private interest. Moreover, it is necessary to refrain from providing the information in order to protect the interest referred to in the secrecy provision, although the refrain should not endanger due process.

Mrs Telivuo finally explained how all this works in practice by saying that parties are asked to point out any part of the document given that they wish to be kept secret. Parties are also supposed to give the court a public version of the

documents in question, which can be disclosed to other parties. If the latter claim that the information not given can affect the consideration of his or her case, it is for the court to decide whether it is necessary to refrain from providing the information in order to protect the interest referred to in the secrecy provision or if refraining from providing the information endangers due process.

During the discussion, the difficulty concerning the mechanism of the “confidentiality ring” has been pointed out in cases where undertakings choose to be represented by in-house counsels, like in most telecoms cases.

NATIONAL JUDGES AND THE EU INSTITUTIONS

Prof Larouche introduced the fifth and last topic of the morning session by highlighting the existing links between national judges and the EU institutions, like the preliminary reference procedure before the Court of Justice and the possibility for the Commission to act as *amicus curiae* in national proceedings in the competition law field. Before giving the floor to the last speaker of the morning panel Dr Hans Peter Lehofer, Prof Larouche posed a question concerning whether, in general terms, national judges should take the EU dimension into account, in particular with reference to Article 7 procedures and cases from other Member States, training and networking opportunities, and databases.

***Dr Hans Peter Lehofer**, Judge, Administrative Court, Vienna.*

Dr Lehofer started his presentation by expressing some observations on national judges, national rules and national regulatory authorities. In particular, he stressed out that, although we always talk about coherence and uniform application of the regulatory framework across Europe, we have to keep in mind that the starting point for a judge is the national legal framework, for instance in checking whether the formal requirements of an appeal are met. The coherence we always try to achieve can only be obtained if the applicable rules are harmonised. However, it is not the task of the national court to complete what the European legislator left incomplete.
Dr Lehofer also pointed out that judges have to consider and respect the EU law requirements, even in applying national procedural law. That may well mean accepting an appeal from an operator that according to national law would not have legal standing to bring an appeal. This happened at the Austrian Administrative Court after having first requested a preliminary ruling by the Court of Justice.
Alongside the preliminary ruling procedure, in the electronic communications sector, there is a further instrument of cooperation stemming from the Article 7 and 7a procedures that have to be followed by NRAs, bringing in the comments from the European Commission, the other national regulators as well as the opinion of BEREC. These procedures provide for a dialogue between administrative authorities, thus contributing to the facts of a case that may, under appeal, come before a national judge. These procedures are not however instruments of dialogue between judges and the administrative authorities or the Commission, consequently there is no Article 7 procedure to be followed by

national judges, they only have to check whether the Article 7 or 7a procedures have been followed by the NRAs. A decision of the Commission taken in the context of an Article 7 procedure creates binding law that has to be respected by the NRA as well as national courts.
Dr Lehofer went on by illustrating that the regulatory framework for electronic communications also includes Commission recommendations and guidelines, which, although not binding in themselves, have a specific legal basis in the directives. This legal basis gives the recommendations and guidelines a specific legal effect, that is the NRAs have to take utmost account and, in most cases, either to inform the Commission if they choose to depart from a recommendation or even choose a different procedure. Therefore, national courts cannot dismiss the recommendations and guidelines as being non-binding instruments, or merely use them as an inspiration for the reasoning of a judgment, but, if raised in appeal, they have to analyse whether there is sufficient reasoning in the NRA's decision to justify a deviation from a recommendation. In any case, the Court will have to establish the substance of the recommendation, which sometimes can seem rather vague.
Dr Lehofer also took the chance to mention the role of *amicus curiae* that the Commission can exercise before national courts, as provided by Article 15 of Regulation 1/2003 in the field of competition law. He thinks that this role could also be exercised in the field of electronic communications when competition law aspects are also at stake. This seems to be corroborated by a judgment from the Court of Justice allowing the Commission to intervene in national proceedings concerning tax deductions because the coherent application of Articles 101 and 102 TFEU so required. That judgment confirmed that the latter condition could be fulfilled even if the proceedings concerned did not pertain to issues relating to the application of Article 101 or 102 TFEU.
Dr Lehofer concluded his presentation by making reference to an article written some years ago by Pierre Larouche and Maartje de Visser, where the two authors identified an *"uneasy triangular relationship between the Commission, the national regulatory authorities (NRAs) and national courts"*. They held, in particular, that national courts can be *"something of a "loose cannon" in the general scheme of EU law"*. Dr Lehofer, therefore, left to the audience the questions concerning whether it is true that judges are *"loose cannons"*, and if so whether that is something judges should be embarrassed about.

II. ACHIEVING A TRUE SINGLE MARKET IN ELECTRONIC COMMUNICATIONS: THE ROLE OF EUROPEAN INSTITUTIONS

Chair: ***Dr Wolfgang Heusel**, Director, Academy of European Law (ERA), Trier*

Dr Heusel started the afternoon session by highlighting the key role European institutions at all levels have in shaping a true single market in electronic communications. For this reason, the eminent speakers of the afternoon session are representatives of some key actors, like the European Commission, the Court of Justice of the EU and the newly created Body of European Regulators for Electronic Communications (BEREC).

WHERE ARE WE WITH THE DIGITAL AGENDA FOR EUROPE?

Mr Robert Madelin*, Director-General for Information Society and Media, European Commission, Brussels.*

Mr Madelin started his presentation by saying that the Digital Agenda for Europe, adopted in May 2010, sets out a number of objectives that need to be addressed urgently in order to get Europe on track for smart, sustainable and inclusive growth. The Digital Agenda for Europe contains a package of measures, which includes 101 actions, including 31 pieces of EU legislation.
Mr Madelin informed the audience that as from 2011 the Commission measures progress by an annual Scoreboard and organises an annual Digital Agenda Assembly that brings together EU Member States, EU institutions and stakeholders alike. He also anticipated that, if everything goes as scheduled, there would be chances to stand at 20% of the 101 actions completed.
Mr Madelin then proposed to discuss those measures, which are likely to be of most relevance for participants, like the digital single market, trust and security, and fast and ultra fast internet access.
As for the digital single market, Mr Madelin affirmed that the Commission is proceeding quite well, with a proposal for a Single Euro Payment Area (SEPA) regulation, the Radio Spectrum Policy Programme (RSPP) closed for adoption and a proposal for an Optional Contract law instrument, complementing the Consumer Rights Directive, in particular as regards the online environment. He also announced a few actions still expected by the end of 2011, like an e-commerce communication, a legislative proposal for Alternative Dispute Resolution and for regulation of Online Dispute Resolution system for e-commerce transactions, or the Green Paper on Payments.
As for trust and security, Mr Madelin affirmed that the overall progress on these actions is good and the key actions are the following: the revised legislative framework for ENISA and the Directive on combating cyber attacks against information systems. Moreover he also announced that the Commission is currently working on a comprehensive European Internet Security Strategy, whose policy objective is to put in place, by 2015, a robust line of defence against cyber disruptions and attacks.
As for fast and ultra fast internet access, Mr Madelin highlighted that Europe needs to continue investing in broadband rollout. The overall aim is to remove regulatory uncertainty and create an environment conducive to investment. A lot has been already done with the Recommendation on regulated access to Next Generation Access (NGA) Networks, a proposal for a Radio Spectrum Policy Programme (RSPP), and a Broadband Communication on encouraging increased investment. Moreover, the Commission is actively supporting Member States' efforts aimed at implementing operational national (high-speed) broadband plans.
Mr Madelin, finally, concluded his presentation by outlining the follow-up actions, namely a public consultation on costing methodologies for key wholesale access prices in electronic communications; a public consultation on the application, monitoring and enforcement of non-discrimination obligations in electronic communications; the implementation of the Radio Spectrum Policy Programme; Universal Service; and, Net Neutrality.

OVERVIEW OF THE RECENT COURT OF JUSTICE OF THE EU CASE LAW IN THE FIELD OF ELECTRONIC COMMUNICATIONS

Mr Marko Ilešič, *Judge, Court of Justice of the European Union, Luxembourg*.

Mr Ilešič started his presentation on the recent case law in the field by saying that decisions from the Court can sometimes be a compromise and therefore less clear that expected. However, the electronic communications sector is contributing to discover new frontiers, thus triggering new juridical challenges for judges. All this also contributes to tear down borders between different areas of law. He therefore started his analysis of the case law pointing out the important issue of territorial limits and the applicable law. He made reference, in particular to the *Peter Pammer* and *Hotel Alpenhof* case (Joined Cases C-585/08 and C-144/09), where the jurisdiction over consumer contracts was at stake, together with the accessibility to the website where the “package travel” was presented.
Mr Ilešič followed his presentation by illustrating the *L’Oreal/eBay* case (Case C-324/09) delivered by the Grand Chamber of the Court of Justice. This case concerned an offer for sale, on an online marketplace targeted at consumers in the European Union, of trade-marked goods intended, by the proprietor, for sale in third countries. It also concerned the liability of the online marketplace operator.
He then dealt with the *Sabam* case (Case C-70/10), where the installation of a system for filtering electronic communications in order to prevent file sharing which infringed copyright was at stake. According to Mr Ilešič, this is a case, which perfectly represents the difficulties related to the regulation of the electronic communications sector, as it called the judges to assess and interpret five Directives at once.
Mr Ilešič concluded his presentation with a case concerning cross-border television, in particular the *Football Association Premier League Ltd* (Joined Cases C-403/08 and C-429/08). More specifically, it concerned satellite decoder cards lawfully placed on the market in one Member State and used in another Member State and the visualisation of broadcasts in disregard of the exclusive rights granted. This case clearly affected the freedom to provide services as well as restricting competition within the internal market.
Mr Ilešič, finally, highlighted that many principles involved in the judgments listed above were already pre-existing, therefore, the challenge for judges in general is to prove their flexibility and how can they apply to new situations.

BEREC AND ITS CONTRIBUTION TO CONSISTENT APPLICATION OF TELECOMS RULES ACROSS EUROPE

Dr Georg Serentschy*, Vice-Chair, Body of European Regulators for Electronic Communications (BEREC).*

Dr Serentschy started his presentation by giving a brief outline of the tasks and organisation of BEREC. In particular, the new Body constitutes a new and enhanced interface at EU level, being a central advising body for the European Commission, the European Parliament and the Council, as well as NRAs. For

that purpose, the European Commission and the NRAs are obliged to provide BEREC with the necessary information in order for the latter to be able to carry out its tasks.
BEREC engages in the common application of the EU framework directives in all 27 Member States to support the internal market. One of the major tasks of BEREC is in Article 7/7a procedures. As part of that procedure, NRAs have to notify draft decisions to BEREC too, alongside the Commission and the other NRAs. BEREC can give comments and, if so, the NRA, in adopting its decision, has to take utmost account of those comments.
Dr Serentschy, after giving a brief overview of the structure and organisation of BEREC, went through the 2012 work programme. In general, he pointed out the strategy framework aimed at ensuring consistency in the application of the European regulatory framework within the Member States and the EU by improving harmonisation and development of the internal market in the interest of the citizens of Europe and the promotion of competition as the overall tasks. All this involves consistency of remedies and review, promotion of broadband, network neutrality, consumer empowerment, spectrum management, cross-border and demand-side related issues, international cooperation, implementation of Next Generation Access (NGA) Networks.

During the discussion, issues were raised in relation to BEREC's role, in particular concerning its activity to assist and help NRAs with market analysis. In fact, if a small NRA does not manage, BEREC will make a market analysis for that NRA.

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On behalf of the organisers, Dr Messina delivered the concluding remarks of the seminar, highlighting the most important issues raised during the day. He expressed particular satisfaction for the interactivity reached in the morning session during the panel discussion among national judges on the appeal procedure. That session raised important issues concerning the different national systems whilst also giving national judges the opportunity to exchange their views and opinions. Also the afternoon session proved to be useful and rich of interesting features concerning the last policy developments and initiatives for the attainment of a Digital Agenda for Europe, the most recent EU case law developments and the new key role BEREC is going to exercise in order to implement the 2012 work programme.

Mr Grussmann, on behalf of the Commission, thanked the speakers, the organisers and all participants for their contributions to this year's seminar for national judges, which left substantive scope for follow-up by another such event in 2012.