



**ISOLDE GOGGIN, CHAIRPERSON
COMMISSION FOR COMMUNICATIONS
REGULATION**

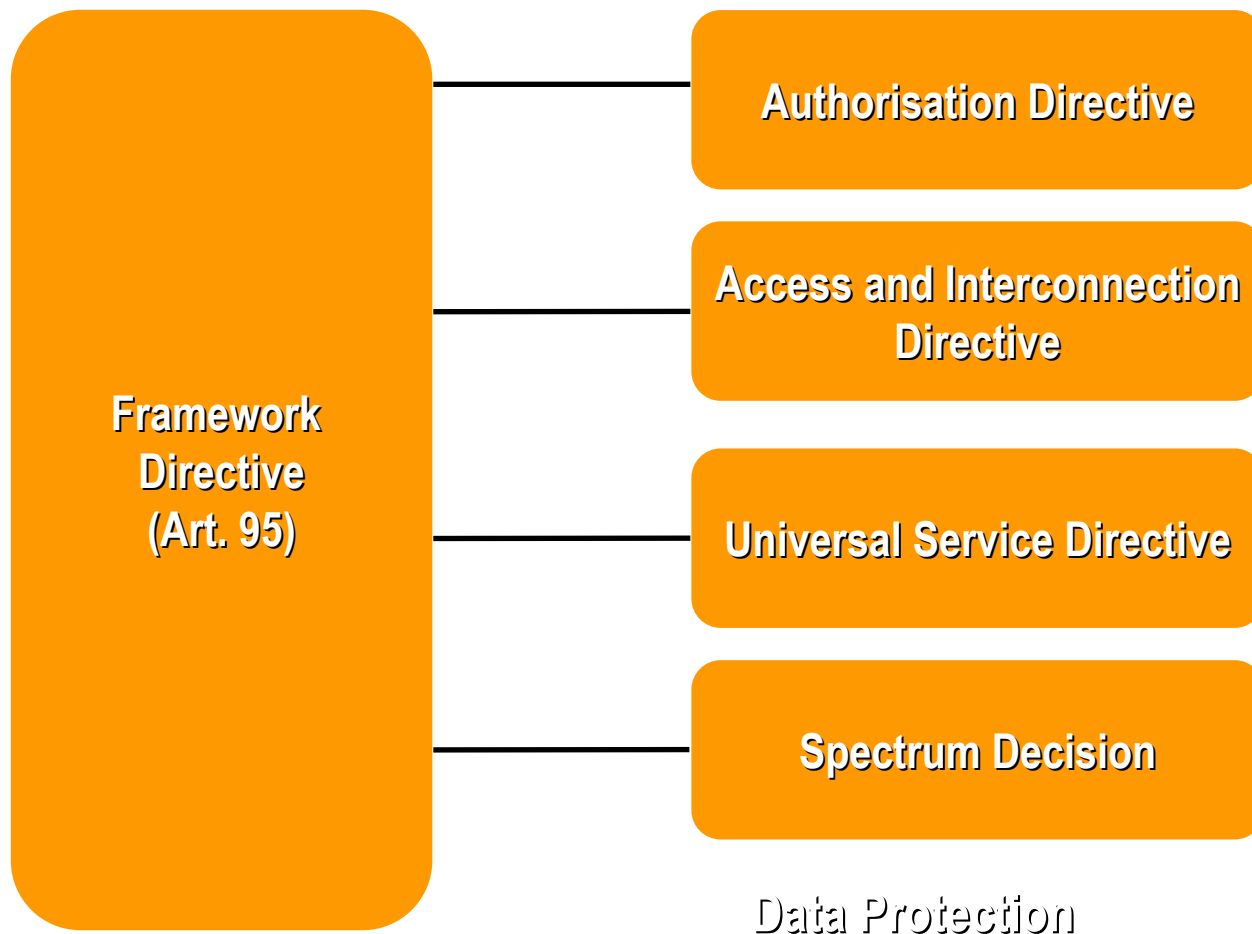
**REGULATORY REMEDIES, APPEALS AND
PENALTIES**

DUBLIN, 4 OCTOBER 2005

INTRODUCTION

- **New electronic communications regulatory framework – July 2003**
- **Draws on competition law principles**
- **Obligations on undertakings:**
 - General consumer protection obligations
 - Obligations on Universal Service Provider
 - Obligations arising from significant market power (dominance)
- **SMP obligations imposed after market definition and market analysis**

The new regulatory package



Remedies – Legal situation

- **Imposed on basis of SMP: if no SMP – withdraw**
- **Must be**
 - Proportionate
 - Based on nature of problem identified
 - Justified in light of objectives of framework
- **Wholesale obligations:**
 - Access to, and use of, specific network facilities
 - Transparency
 - Non-discrimination
 - Accounting separation
 - Price control and cost accounting

Remedies – Legal situation

▪ **Retail remedies**

- Only imposed where wholesale measures would fail to achieve objectives of competition and public interest
- Requirements not to:
 - charge excessive prices
 - inhibit market entry or
 - restrict competition through predatory pricing
- Price caps, control of individual tariffs or cost orientation of tariffs

Market review process

Guidelines for analysing relevant markets for effective competition

Recommendation identifying candidate markets for potential regulation.

Markets not identified:
Article 7

ComReg to analyse markets using guidelines:
Is competition effective?
(i.e. evidence of dominance)

Competition
is effective

Remove existing obligations;
no new obligations

Consultations: Art 6
and Art 7

Designate undertaking(s)
with SMP.

Competition
is not effective

Maintain or modify
existing obligations,
or impose new obligations

Remedies – Experience to date

- **Little guidance on remedies compared to market definition and market analysis**
- **Commission has veto on first two elements, not on third**
- **Can make comments on notified remedies**
- **European Regulators' Group has produced agreed guidelines**
- **Complex issues e.g. incentivising investment – but by whom?**
- **Relative pricing and interaction between different markets important**
- **Too early to make recommendations for change**

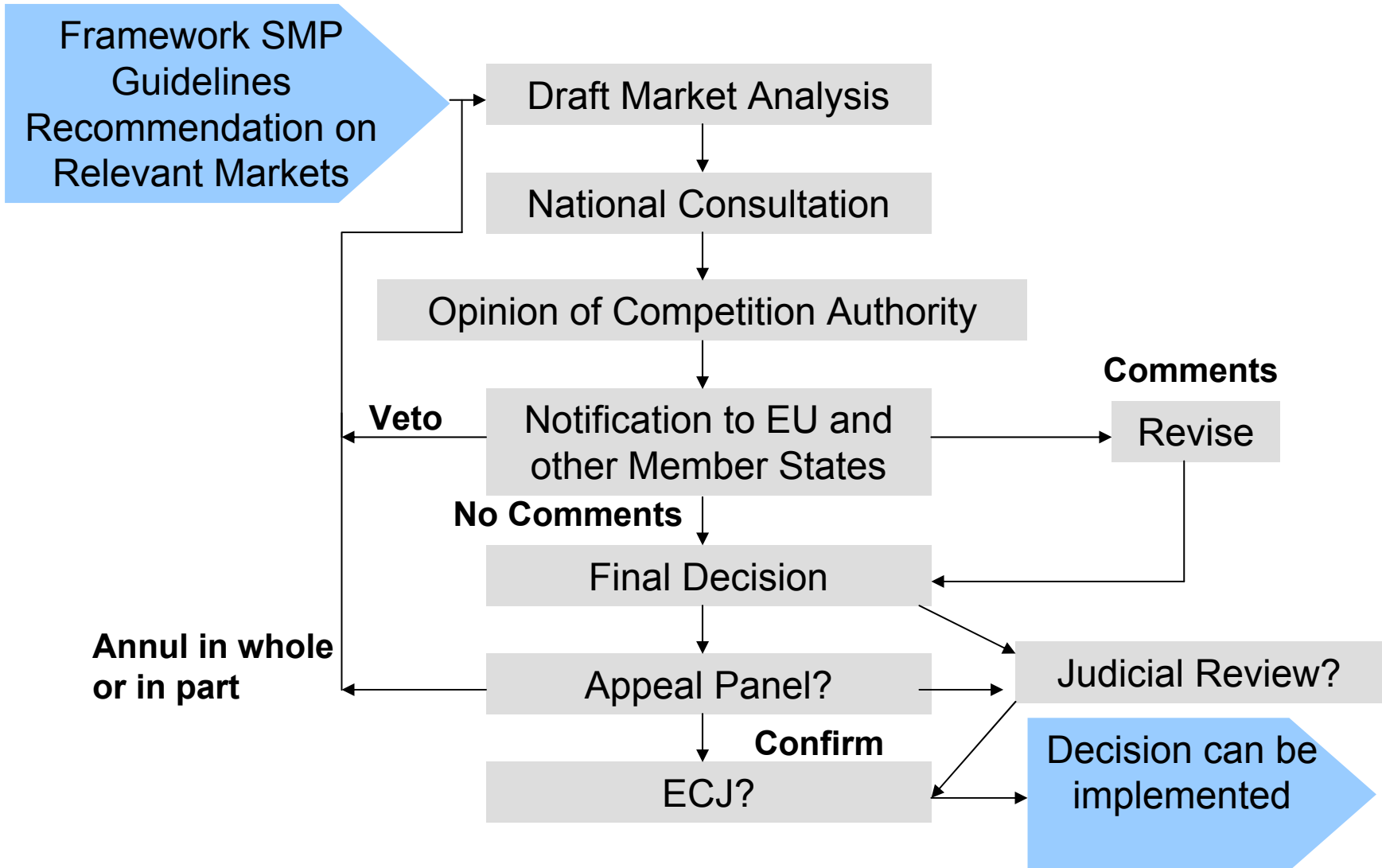
Appeals – Legal situation

- **Any user or undertaking affected by a decision of NRA has right to appeal**
- **Appeal body to be independent and have appropriate expertise available to it**
- **Electronic Communications Appeal Panel**
 - Not a standing body – constituted to deal with each appeal
 - Minister may or may not refer issue to a panel
 - Endeavour, as far as practical, to deal with within 4 months of referral
 - Use of outside expertise

Appeals – Experience to date

- **Need for speedy resolution – telecoms is fast moving environment!**
- **Eleven appeals to date from regulatory decisions**
- **Most have sought a stay – Irish system tends to grant them**
- **First appeal decided on 27 Sept 05, from decision taken in July 04**
- **Not unique to Ireland – many appeals across Europe**
- **Further appeal possible to ECJ, judicial review to courts**
- **Delay in implementing decisions creates uncertainty, discourages investment**

Market Analysis Process



Appeals - Recommendations

- **Seek members with expertise in electronic communications sector, preferably in regulatory arena**
- **Speed up process by having standing panel with appeals directly to it rather than referred by Minister**
- **Establish scope of appeals directly via terms of reference in Regulations**

Penalties – legal situation

- **If undertaking is non-compliant, ComReg must notify and give one month to remedy breach**
- **If breach continues, apply to High Court for order of compliance**
- **May apply for “financial penalty” to be paid to ComReg**
- **Breaches of obligations imposed as remedies are civil matters – criminal offences (summary only) tend to be technical in nature**
- **Civil or criminal – not both**
- **Indictable offences and large fines in 2002 Act lost on transposition (via SI)**

Penalties – experience to date

- **Pre-existing enforcement weakness in Ireland as regulator lacked power to fine**
- **Technical offences (e.g. failure to update authorisation notification) more serious than economic offences**
- **Breach notification requirement disincentivises compliance**
- **No penalty unless breach is continued after notification**
- **Penalties (max €3,000) insufficient to act as deterrent**

Penalties - recommendations

- **Restore indictable offences and heavy fines (€4m/10% of turnover) from 2002 Act**
- **Allow ComReg to impose civil fines, subject to confirmation by a court (similar to IFSRA provisions in Central Bank Act 2004)**
- **“Economic” breaches must be capable of being penalised**
- **Provision for cumulative and daily offences**