BEREC - The Body of European Regulators for Electronic Communications Tasks of BEREC and the BEREC Office Regulatory environment and upcoming initiatives

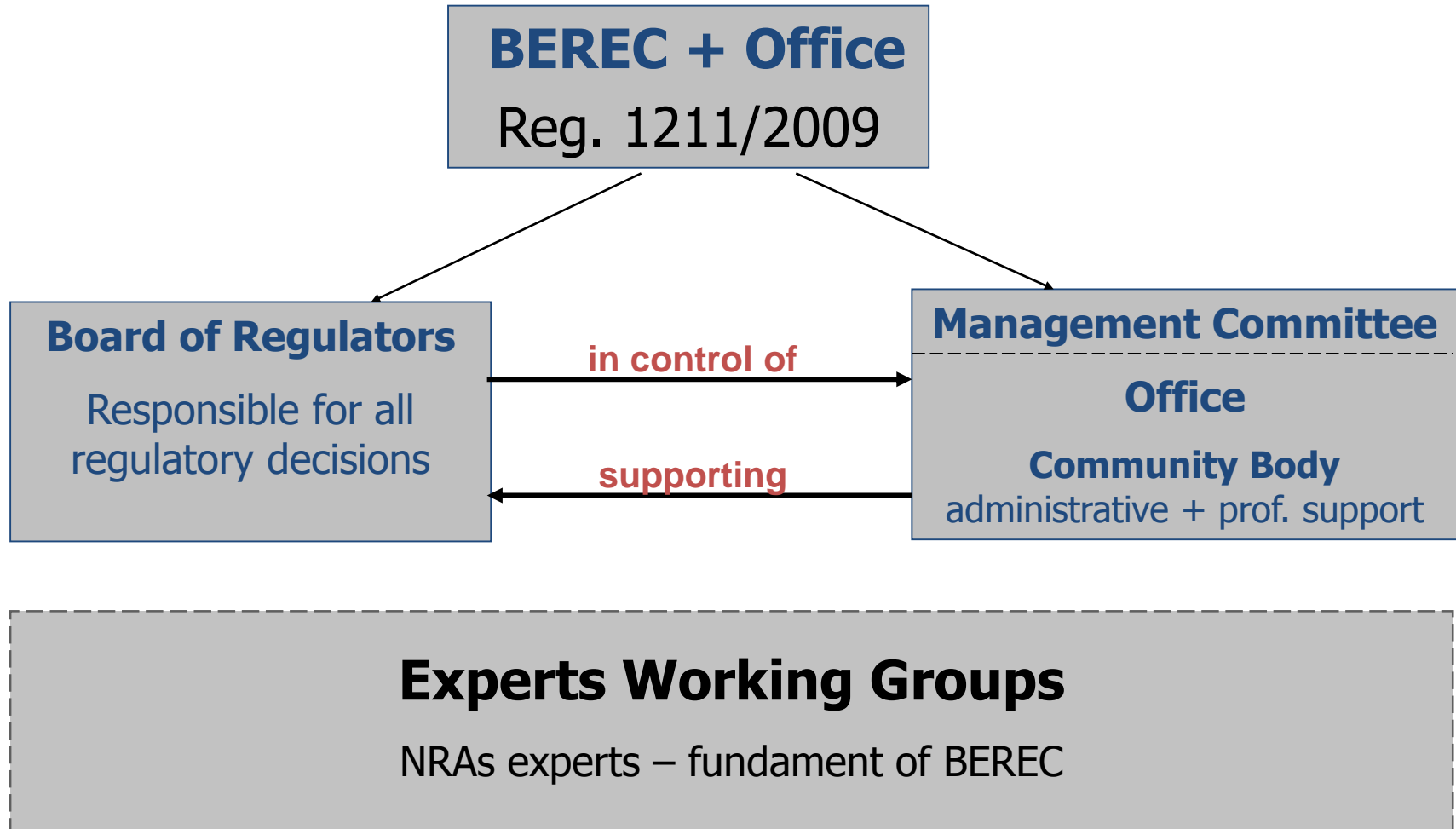Dr Annegret Groebel, BNetzA (Incoming Chair)
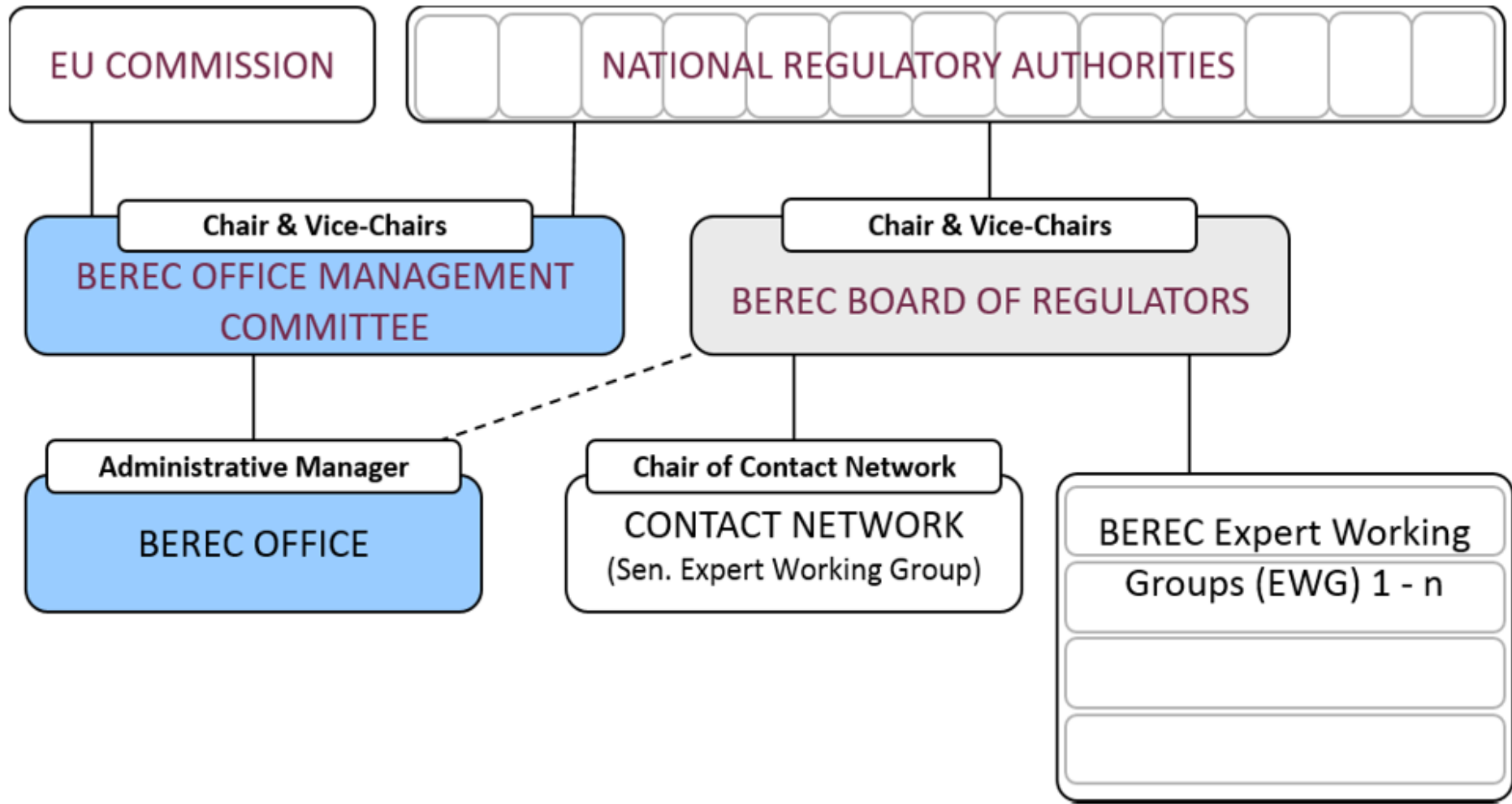Telco Trends 2015, Riga – 11 August 2015

Agenda

- BEREC – The institutional design (2-pillar-model)
- Tasks of BEREC and the BEREC Office
- BEREC Strategy 2015 – 2017
- Regulatory environment
- Recent events and publications
- Ongoing work and consultations
- Upcoming initiatives
- Conclusions and outlook

- BEREC was established with Regulation 1211/2009 which provides a strong(er) legal basis, BEREC is not an EU agency, but a body *sui generis*: Two tiered approach to BEREC – BoR and Office, successor to ERG, first meeting held in Jan. 2010

- BEREC key player in regulatory approach: cooperation strengthened in order to ensure consistent application of the framework for the development of the internal market by developing best regulatory practice principles (common approaches) and of which NRAs as well as Commission have to take utmost account; thus similar problems are dealt with in a similar way

- Formal role in relation to specific measures – Art 7/7a FD notifications and advisory role e.g. on draft recommendations acc. to Art. 19 FD and the relevant market rec.

- Seat of the BEREC Office in Riga, 2nd Admin Manager took office on 1/4/14
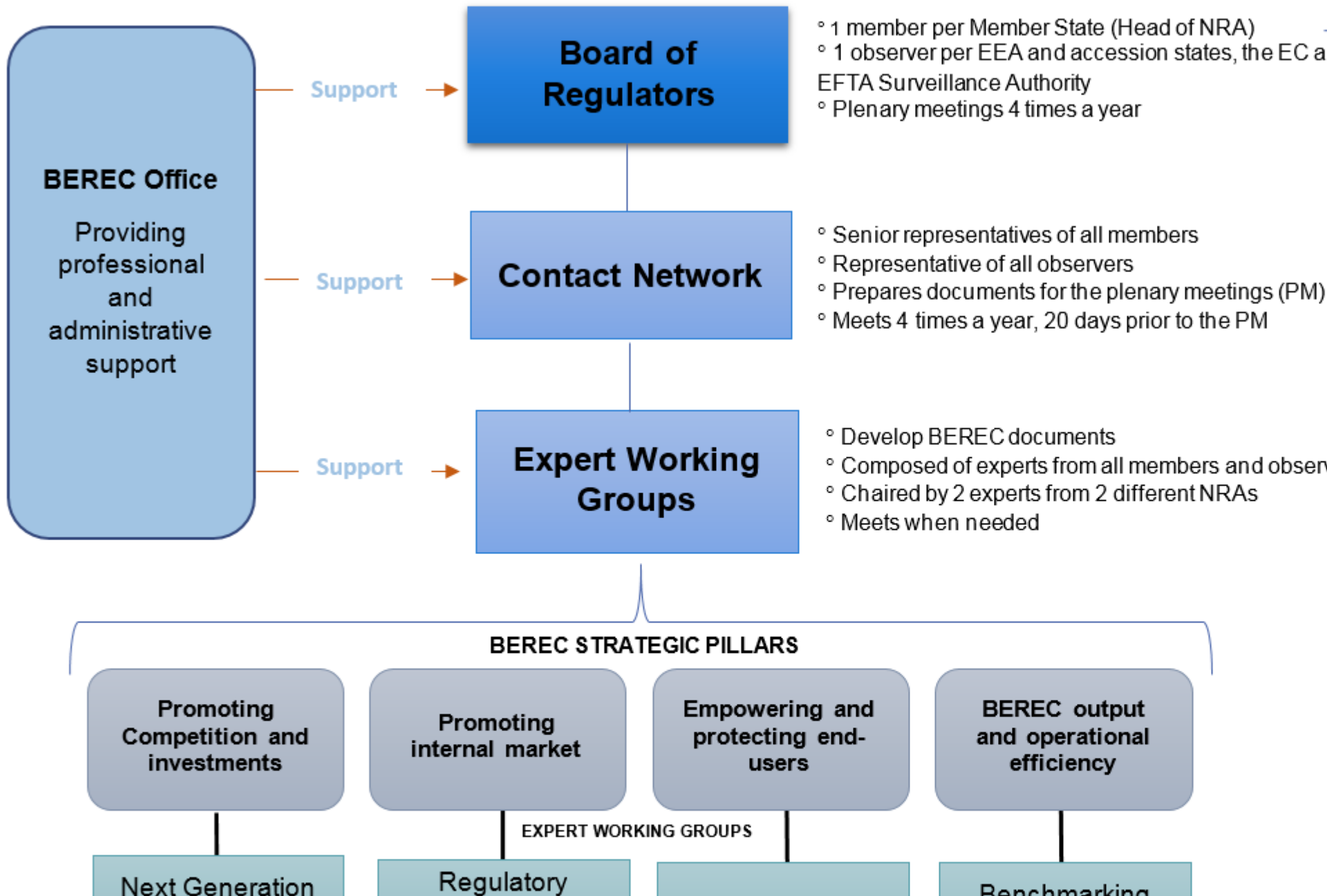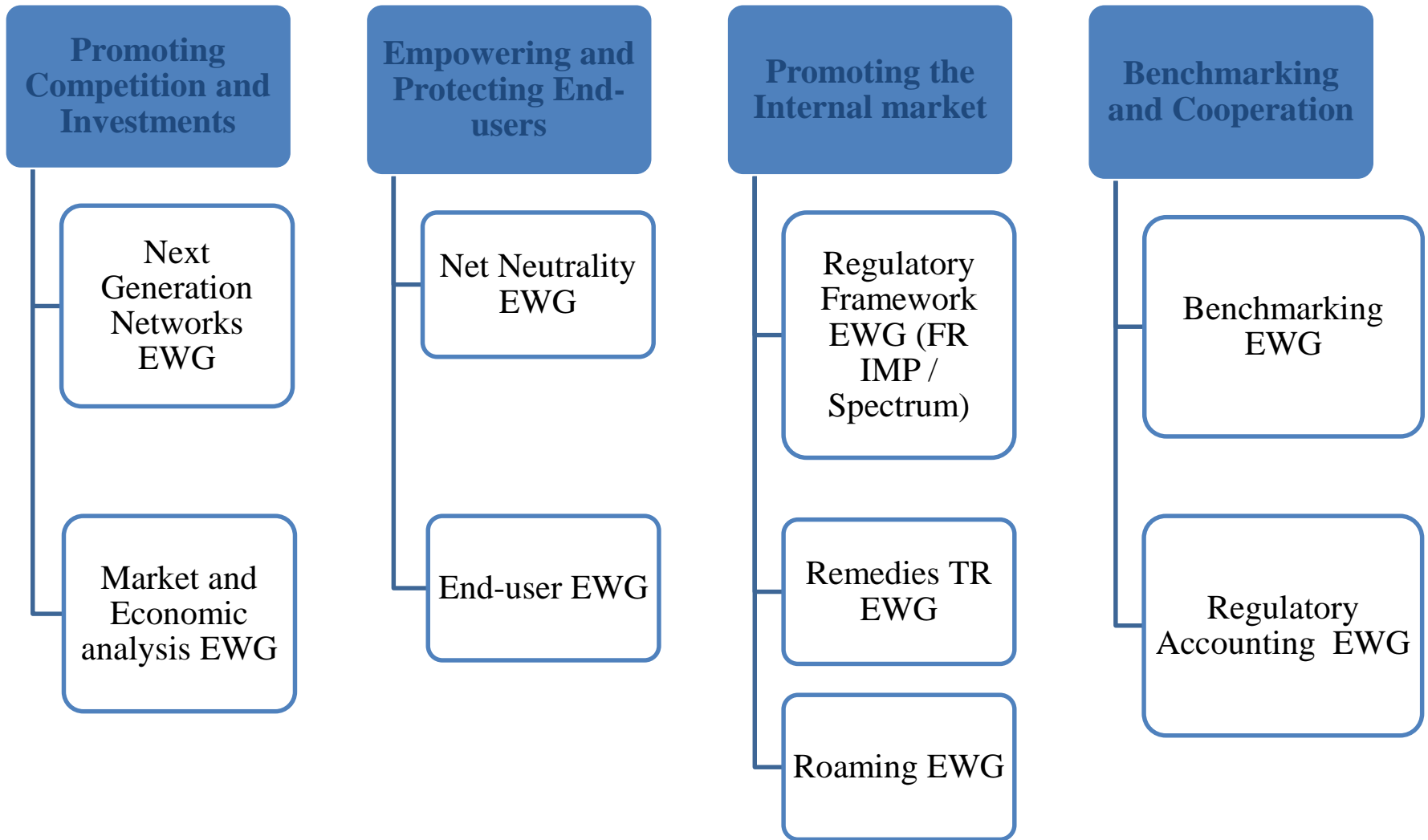
BEREC – 2-tier-model (1)

BEREC – 2-tier-model (2)

- BEREC Website

BEREC's Organisational Structure

Board of Regulators

° 1 member per Member State (Head of NRA)
° 1 observer per EEA and accession states, the EC a
EFTA Surveillance Authority
° Plenary meetings 4 times a year

BEREC Office

Providing professional and administrative support

Support →

Contact Network

° Senior representatives of all members
° Representative of all observers
° Prepares documents for the plenary meetings (PM)
° Meets 4 times a year, 20 days prior to the PM

Support →

Expert Working Groups

° Develop BEREC documents
° Composed of experts from all members and observ
° Chaired by 2 experts from 2 different NRAs
° Meets when needed

Support →

BEREC STRATEGIC PILLARS

| Promoting Competition and investments | Promoting internal market | Empowering and protecting end-users | BEREC output and operational efficiency |

EXPERT WORKING GROUPS

Next Generation | Regulatory | | Benchmarking

BEREC EWG Structure 2015

Promoting Competition and Investments	Empowering and Protecting End-users	Promoting the Internal market	Benchmarking and Cooperation
Next Generation Networks EWG	Net Neutrality EWG	Regulatory Framework EWG (FR IMP / Spectrum)	Benchmarking EWG
Market and Economic analysis EWG	End-user EWG	Remedies TR EWG	Regulatory Accounting EWG
		Roaming EWG	

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- BEREC's main tasks include:

- to participate in consultations under the single market consultation (Article 7) procedure;

- to give opinions on cross-border disputes;

- to disseminate best practices, assist NRAs, advise the Commission, the European Parliament and the Council, and assist the institutions and the NRAs in their relations with third parties;

- to deliver opinions on draft recommendations and/or guidelines on the form, content and level of detail to be given in notifications, in accordance with Article 7b of Directive 2002/21/EC (Framework Directive);

- to be consulted on draft recommendations on relevant product and service markets, in accordance with Article 15 of the Framework Directive;

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- to deliver opinions on draft decisions on the identification of transnational markets, in accordance with Article 15 of the Framework Directive;

- to be consulted on draft measures relating to effective access to the emergency call number 112;

- to be consulted on draft measures relating to the effective implementation of the 116 numbering range;

- to deliver opinions on draft decisions and recommendations on harmonisation, in accordance with Article 19 of the Framework Directive;

- to deliver opinions aiming to ensure the development of common rules and requirements for providers of cross-border business services.

- According to article 6 (2) of the Regulation, the Office performs its tasks under the guidance of the Board of Regulators by:

- providing professional and administrative support services to BEREC,

- collecting and exchange of information from NRAs in relation to all BEREC tasks,

- disseminating regulatory best practices among NRAs,

- assisting the Chair in the preparation of the work of the Board of Regulators,

- setting up Expert Working Groups (EWG), upon request of the Board of Regulators (BoR), providing them with the support need in order to ensure their smooth functioning.

- Not a revolution

- Strategic pillars detailed in strategic priorities

- Identify the challenges + evolutions and to address them

- BEREC: Quality of output, impact to be improved

- Keep it simple & Strategic vision to be reflected in the work programs

1. BACKGROUND AND BEREC MISSION

2. BEREC'S STRATEGIC PILLARS

3. MAJOR TRENDS AND DEVELOPMENT

4. BEREC'S STRATEGIC PRIORITIES

5. QUALITY OF BEREC OUTPUT AND OPERATIONAL EFFICIENCY

BEREC is committed to ensuring the independent, consistent, and high-quality application of the European regulatory framework for electronic communications markets for the benefit of Europe and its citizens

Pillar 1
Promoting Competition and Investment

Pillar 2
Promoting the Internal market

Pillar 3
Empowering and protecting end-users
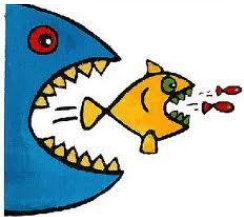
Quality of BEREC output and operational efficiency

Technology, market and end-user developments

EU regulatory developments

Growth of OTT services, Network Convergence, QoS, Investments, market developments, end-users protection, consolidation, bundles

Impact of new EP/EC Commission on the future regulatory landscape

Review of the European regulatory framework should aim to build on the existing principles of a pro-competitive approach, and address the challenges facing the sector:

- how to address the role of OTT players
- challenges posed by market consolidation
- impact of IP technology and fixed/mobile convergence
- future role of symmetric regulation
- ex ante assessments of leverage effects and joint dominance
- review of the Radio Spectrum

Strategic Priority 1
Promoting Competition and Investment

Through effective, predictable, and consistent regulation of national wholesale (broadband) markets

■ **Promoting effective competition** requires attention to convergence and consolidation ensure information transparency and ease of switching for end-users

■ **Fostering a favorable climate for investment** in high-speed networks ensuring that market players can operate in an undistorted market as competition is the best driver of investment

■ **Supporting innovation** ensuring a smooth transition from PSTN to all IP-technology by taking a pro-competitive, technologically neutral and forward-looking approach that supports the development of new business models, while protecting the interests of end-users

Increasing end-user access to services independently from location, device or platform

- **Supporting convergence**
  - support development of IP network technologies
  - Address fixed/mobile convergence

- **Taking down barriers**
  - within its sphere of competence: e.g. common approach to net neutrality, harmonized consumer protection framework, EU approach to international mobile roaming, facilitating the provision of pan-European services, cross-border issues
  - outside its sphere of competence: cooperate with other relevant bodies (RSPG, ENISA,…)

■ **Promoting end-user choice, accessibility and affordability**

- ensure end-users are equipped to make informed choices about the increasingly complex products emerging in a convergent environment
- ensure ease of switching to enable end-users to access offers that meet their needs

■ **Safeguarding an open internet**

- Dealing with issues of Net Neutrality
- Attention to new end-user needs emerging from growing range of new internet applications and services including OTT services
- QoS becomes increasingly important aspect of end-user protection

■ **Promoting end-user protection online**

- Seeking cooperation with other relevant bodies to improve end-users' trust around data privacy protection, internet security and content regulation

- **Ensure that BEREC's output contributes directly to its strategy**
  - Strategic vision to be reflected in the work programs
  - improve work planning in order to make optimum use of its resources

- **To be developed at three levels**
  - by working to improve the quality and consistency of individual NRA decisions through guidelines, best practices, monitoring
  - by engaging and cooperating effectively in particular with the Commission and other EU institutions as well as stakeholders and academic and research communities
  - by improving working methods and the quality of the output i.e. Article 7/7a procedures, better use of the BEREC Office support, encouraging participation of all NRAs, improving the efficiency of its decision-making processes

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BEREC is committed to ensuring the independent, consistent, and high-quality application of the European regulatory framework for electronic communications markets for the benefit of Europe and its citizens

Trends & developments

Promoting Competition and Investment	Promoting the Internal market	Empowering and protecting end-users
Promoting effective competition	Supporting convergence	Promoting end-user choice, accessibility and affordability
Fostering a favorable climate for investment	Taking down barriers	Safeguarding an open internet
Supporting innovation		Promoting end-user protection online

Ensure that BEREC's output contributes directly to its strategy
Quality, Cooperation, Methods

- In line with the **BEREC Strategy 2015-2017**

- **Connected Continent Regulation** and the **Digital Single Market Initiative (incl. the next Framework Review)** will be priorities in BEREC's WP 2015

- **Priority assessment** in light of the resources available during the course of the year

- Flexibility and transparency

- Enhancement of BEREC Office's engagement in the BEREC WP

- Engagement with stakeholders through consultations and the Stakeholders Forum

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Strategic Priority 1:

Promoting Competition

and Investment

Strategic Priority 2:

Promoting the Internal

Market

Strategic Priority 3:

Empowering and

Protecting End-Users

Quality of BEREC's output and operational efficiency

- Wholesale Products

  - Monitoring implementation of the BEREC Common Positions on Wholesale Products – 2nd Phase

  - Virtual Access Products

- Implementation of the Recommendation on Relevant Markets and Common Position on Geographical Segmentation

- Challenges and drivers of NGA roll-out and infrastructure competition

- Preparing migration to "all IP networks"

- Oligopoly analysis and regulation

- Facilitation of access to radio spectrum

- Article 7/7-A – Phase II

- Implementation of the Recommendation on Termination Rates

- Legislative Evolution

  - Subjects linked with the proposal on a Connected Continent regulation

  - Preparation of the next framework review

- **International Roaming**

  - International Roaming Benchmark

  - Transparency and Comparability of International Roaming Tariffs

- **Report on OTT services**

- **Advanced connectivity of devices, systems and services**

- **Cross-border regulatory cooperation within the scope of Art. 28 (2) of the Universal Service Directive**

- Broadband quality of service and net neutrality (NN)

  - Feasibility study of QoS Monitoring in the context of NN

  - ECODEM – Ecosystems dynamics and demand side forces in net neutrality developments from an end user perspective

  - Traffic Management Investigation

- Review of the scope of the Universal Service

- Initiatives to facilitate operator switching for non-residential customers

- Benchmarks (MTR, FTR, SMS benchmarks)

- Regulatory Accounting in Practice Report

- Stakeholders' Forum

- BEREC annual report on activities and developments

in the sector

- Engagement with the EU institutions

  - Cooperation with the EU institutions

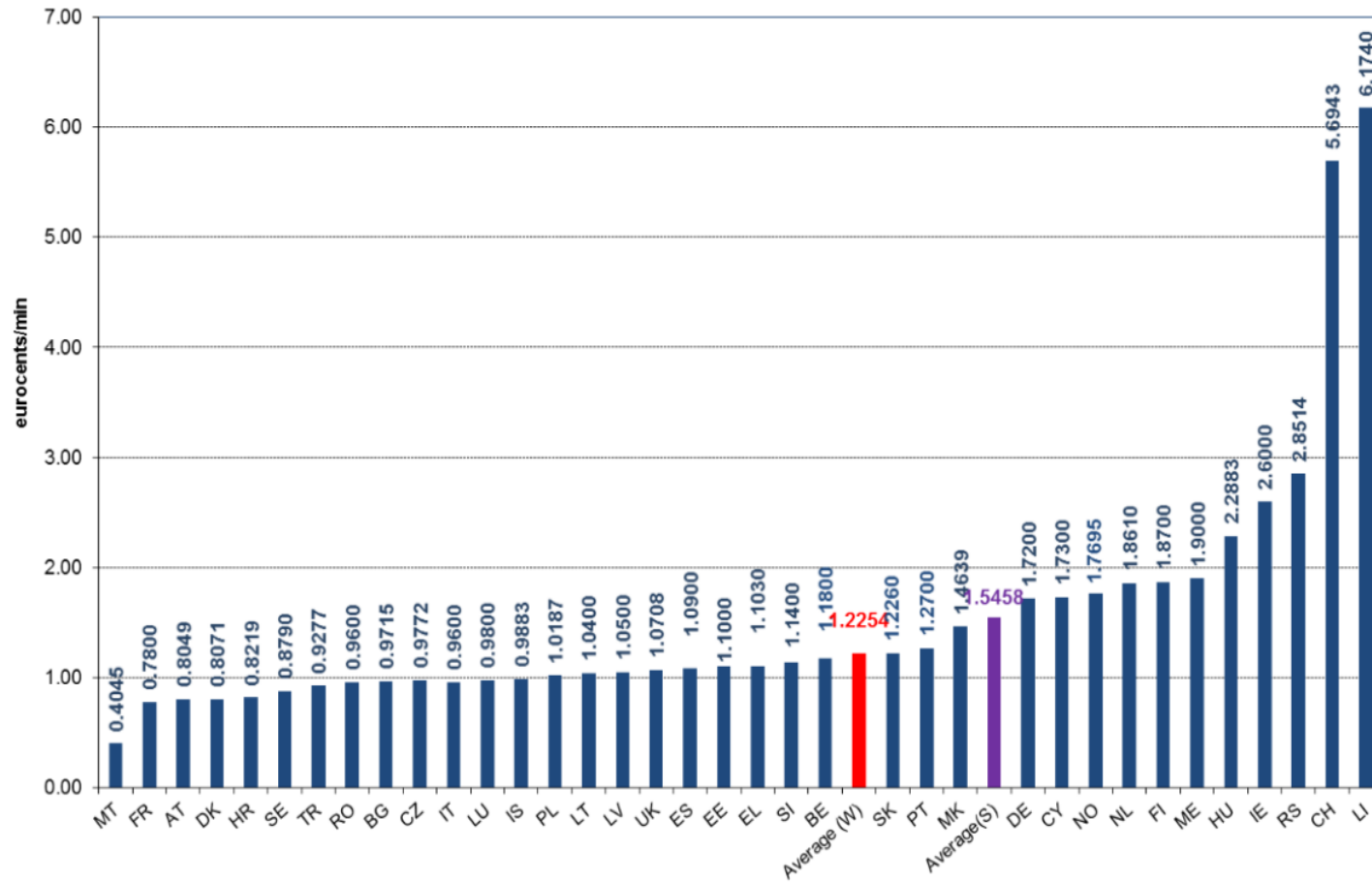 - Information Sharing Portal

- International Cooperation

27

Digital Assembly – 18 June 2015, Riga

■ To improve the connectivity, accelerate the investments and stimulate the competition - these are the major tasks for the Body of European Regulators for the Electronic Communications (BEREC). The BEREC Chair 2015 Fatima Barros outlined these primary tasks in the [Digital Assembly](#) on 18 June, 2015 in Riga, Latvia.

■ During her speech at the Workshop ["A Connected Digital Single Market"](#) BEREC Chair emphasized: "The speed is the main detriment of what we do. Investors and markets do not wait for us." Along with the other speakers of the workshop, Fatima Barros also highlighted the need for regulatory flexibility as well as the importance of competition, therefore the BEREC will continue to work together with the European Commission in order to discuss and find the best solutions for the regulatory framework.

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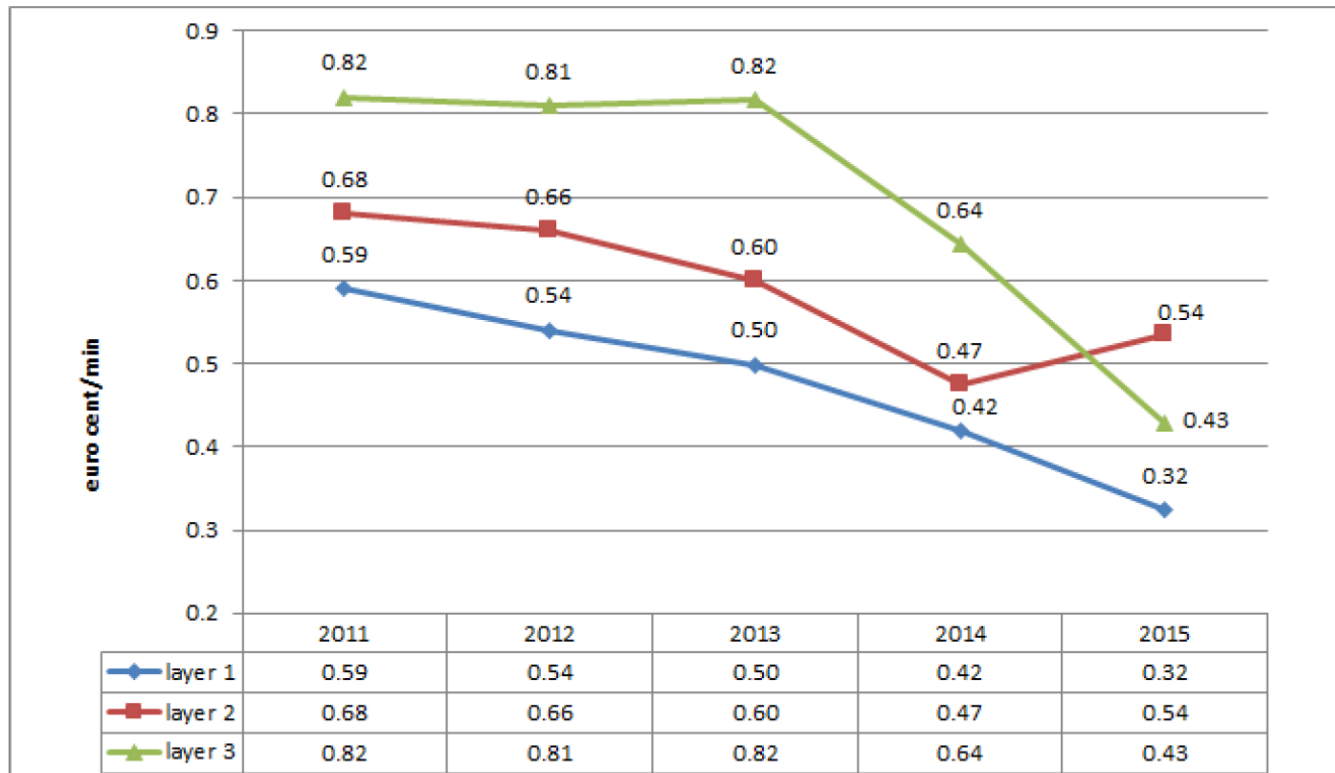for Electronic Communications
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Debriefing of 23 BEREC BoR/MC Plenary meeting held in Bergen/Norway on 4/5 June 2015

- Debriefing was held on 19 June in Brussels of the 23 Plenary
- Discussion on the future of the electronic communications sector and the future regulatory framework
- Publication of a number of documents:
  - BEREC Annual Reports 2014 (contains the BEREC and BEREC Office Annual Report)
  - BEREC Benchmark Reports (MTR, FTR, SMS)
  - ECODEM Report: how consumers value net neutrality
- 2 consultations launched:
  - Oligopolies draft report (analysis of changing market structures and impact on SMP regulation)
  - Common characteristics of Layer-2 wholesale access products draft report

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MTRs in Europe – January 2015

Glide path of the simple EU average of incumbent operators FTRs in Europe

	2011	2012	2013	2014	2015
layer 1	0.59	0.54	0.50	0.42	0.32
layer 2	0.68	0.66	0.60	0.47	0.54
layer 3	0.82	0.81	0.82	0.64	0.43

How do consumers value network neutrality in an evolving market place?
A report into ecosystem dynamics and demand-side forces

ECODEM - Aims of the project

- We sought to increase understanding of the market dynamics relating to net neutrality, particularly from the demand-side

- Previous BEREC work had looked at recommended approaches to potential problems

- This report focused on what is actually going on in the market

- Price most important, but traffic management attributes are also a consideration

- Information should relate to the *effects* of practices

- Consumers are willing - but not always able - to switch

- Neutral packages preferred; likely to be attractive for ISPs to offer; and likely to remain prominent

- But some consumers will prefer cheaper, restricted packages

- Important for NRAs to monitor market and to consider long-term implications on innovation

■ The first consultation, which closed on 10 July, 2015, is on its report on common characteristics of Layer 2 wholesale access products (BoR(15)64). Once the final report is adopted later this year, BEREC will consider the scope for developing it into a Common Position in order to further contribute to the harmonization of product specifications for those wholesale access products.

■ The second consultation is on BEREC's report on oligopoly analysis and regulation (BoR(15)74), and closed on 1 August, 2015.

■ Evaluation of responses ongoing, final documents to be approved at the next BoR in Riga on 1/2 Oct. 15

- After Council and EP agreed on the remaining topics of the Connected Continent (TSM) Regulation, i.e. net neutrality and roaming, BEREC is now working on:
  - Input to the Commission on the calculation of the weighted average maximum MTRs in Europe for wholesale roaming
  - Guidelines for the implementation of net neutrality provisions of the TSM

- BEREC is committed to assist the implementation under the new rules and ready to fulfil its obligations to provide input to the European Commission on the Implementing Acts, including detailed rules on the application of a fair use policy, and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges (cf. press release of 2nd July 2015).

High speed changing world

Traditional business models are no longer valid

Market borders are eroding

New Digital Ecosystem

As regulators we have to look ahead

Make a forecast about our role in the future

Within BEREC we are working to find the most efficient, proportionate and least intrusive regulatory approaches.

Digital Single Market (DSM) Strategy based on 3 pillars:

I. Better access for consumers and businesses to digital goods & services

- Geoblocking
- Copyright
- E-commerce
- Parcel delivery
- Reducing VAT burden

II. Creating the right conditions for digital networks & services

- Telecoms market
- Media services
- Platforms and intermediaries
- Trust and security

III. Maximizing the growth potential of the digital economy

- Data economy
- Inclusive digital economy and society
- Interoperability and standardisation

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European
Commission

Better access for consumers and businesses

- Geoblocking
- Copyright
- E-commerce
- Parcel delivery
- Reducing VAT burden

Advanced digital networks and innovative services

- Telecoms market
- Media services
- Platforms and intermediaries
- Trust and security

Enhance the digital economy

- Data economy
- Inclusive digital economy and society
- Interoperability and standardisation

- **BEREC welcomes the new initiative's overall goals of making the most of the growth potential of a barrier-free, seamlessly operational Digital Single Market.**

- BEREC appreciates the holistic approach to promote cross-sectoral measures, considering all factors that have an impact on the completion of the digital single market.

- Being aware that the measures related to the electronic communications sector represent an important element of the Commission's vision, BEREC particularly shares the view that telecommunications represent the backbone of digital products and services.

- BEREC agrees on the need for an assessment of the regulatory treatment of all players in the digital ecosystem in order to promote competition, encourage investment in new infrastructure and capitalize on innovation such as Cloud computing, Big Data tools or the Internet of Things.

At the same time, BEREC also recognises of the key role of the demand side in building a digital single market, considered from the perspective of consumers, businesses and public administrations respectively.

Through close and continuous cooperation with the European Commission, BEREC is pleased to contribute its expertise to the process and, in the exercise of its statutory duties, is considering the potential changes to the current electronic communications legislative framework. BEREC will be glad to share with the EU Institutions its ideas on the specific solutions that the EC proposes.

Topics and Questions to be addressed

- **Connectivity**: is there a connectivity issue around Europe?
  - What instruments/combination are/is suitable:
    - Regulation?
    - Universal Service?
    - State Aid/Public Intervention?

- **Universal Service**: does the current scope of the USO need to be updated? Should the global connectivity objective be part of the USO?

- **Level Playing Field**: is there a distortion of the level playing field among different players? Are ECS and OTT services competing?

- **End-Users' Protection**: general and/or specific consumer protection legislation for telecom? Is specific consumer protection additionally needed?

"What-If" Meetings

- Connectivity, investment and competition
- Services, consumers' rights and Universal Service
- Governance (BEREC institutional design)

Workshop & Follow-up

- On the foreseen review of the 2009 regulatory framework
  - Regulatory consistency and predictability
  - Boosting connectivity
  - The role of spectrum in terms of connectivity goals
  - Level playing field between ECS and substitutes
  - Universal Service
  - Regulatory changes to exploit the full potential of digital services (non-ECS substitutes)

Opinion to the C'ion

- Request for a formal opinion received on 22 July 2015.
- Evaluation of the existing framework
- BEREC's opinion to be finished beginning of December.

Stakeholders Forum

- October 15th 2015, Brussels.

- Evaluation of the existing regulatory framework and assessment if and where adjustment of the pro-competitive regulatory approach is needed to deal with the challenges of converging technologies, new business models, changing consumers' needs and changing market dynamics

- Promote competition as the best driver for investment

- <u>Regulatory flexibility</u> needed to take into account diverse national market situations coupled with <u>regulatory consistency</u> to promote the development of the digital single market

- <u>Regulatory predictability</u> needed to ensure a stable regulatory environment inducive to long-term investment decisions in highspeed broadband networks for the benefit of the users

- Cooperation among NRAs and with the Commission within BEREC supported by the BEREC Office

- **Workshops** – 30 Sept. 2015 in Riga

- **BEREC Plenary** – 1/2 October 2015 in Riga
  - Final approval of the BEREC report on oligopoly analysis and regulation and the report on common characteristics of Layer 2 wholesale access products
  - Approval for consultation of draft WP 2016

  - Orientation discussion on request of the Commission for a BEREC Opinion on the review of the framework

■ Pursue the most efficient, proportionate and least intrusive regulatory approaches

- **All BEREC documents are published on the BEREC website:**

  http://berec.europa.eu

THANK YOU