

**BEREC Report on
Oligopoly analysis and regulation
Questions to stakeholders**

December 2014

1 INTRODUCTION

Recently, European telecommunications markets have witnessed several developments, such as a trend towards consolidation via mergers and acquisitions, an increased uptake of services provided by alternative operators, especially in certain geographical areas, and an increase in competition based on bundled services. These developments result in an evolution of the electronic communications services markets and imply that market dynamics are changing, potentially leading in certain situations to an increase in oligopolistic market structures characterised by a small number of actors.

NRAs have accumulated great experience in the regulation of markets characterised by individual SMP, but there are fewer precedents concerning analysis and regulation of oligopoly markets in an ex ante context. BEREC could therefore provide a valuable input dealing with issues related to the treatment of oligopolies, ranging from the market analysis in the context of oligopolistic market structure (assessment of joint-dominance or highlighting of suboptimal outcomes resulting from the oligopolistic competition) to the definition of the most adequate remedies in this case. With this aim, the BEREC Work Programme for 2015 includes the preparation of a report on oligopoly analysis and regulation that will be submitted for public consultation in summer 2015, prior to the final publication of the report at the end of 2015.

One of the results to be produced by BEREC is an overview of the application of the existing regulatory framework (including the Commission's guidelines on market analysis and the assessment of SMP) to oligopolistic situations, before providing any possible recommendation on the evolution of this regulatory framework in relation to the treatment of oligopolistic situations.

As part of the work to be done, BEREC will organize a workshop in February 2015, with the aim to collect views from stakeholders. The questions included in this document are designed to prepare this workshop but also, more generally, to get input from stakeholders in the area of analysis and regulation of oligopolies, in order to feed BEREC's internal debate.

2 GENERAL INSTRUCTIONS

Please provide your contribution either in a Word document or in a searchable PDF document. If available, support your answers to the questions with data. In case your answers differ depending on the markets concerned, please indicate it and provide separate responses for each market.

The response must include the following data:

- Name of the organization responding to the questionnaire,
- Brief description of the role of the organization (operator, consumers' association, academia, etc.),
- Name, e-mail address and phone number of the contact person.

3 QUESTIONS

2.1. Situations of oligopolistic competition in the electronic communications sector

1. In the electronic communications sector, do you consider that there are markets that were characterized by oligopolistic structures from the outset? In your view, which factors (scarcity of spectrum, high level of required investments, etc.) explain the existence of these market structures? Are wholesale markets more prone to oligopolies than retail markets?
2. Do you consider that there has been an increase in oligopolistic market structures (including duopolies) in any of the electronic communications services markets or more generally in the sector?
 - i. If so, please state in which electronic communications services markets you observe this evolution, making reference to specific retail and wholesale electronic communications services markets. Please state whether you observe this evolution at a subnational, national, or European level.
 - ii. What do you consider to be the main drivers of this increase (if any) in oligopolistic situations (mergers, fixed-mobile convergence, bundled offers, roll-out of next generation or other networks, operators' strategies, etc.)? Do you expect this trend to continue?

2.2. Possible effects of oligopolistic competition

3. What are the main threats to competition and to the interests of end-users, which might result from the oligopolistic market structures referred to above?
4. Do you consider that there are any benefits or opportunities (for instance related to the roll-out of NGA networks in the context of broadband access) that could arise from oligopolistic situations? Please explain your reasoning.
5. In your view, are there any electronic communications services where oligopolistic markets are more susceptible than others to uncompetitive outcomes? Please, explain your view.

2.3. Regulating oligopolies

6. In your view, are there any areas of concern in relation to oligopolistic outcomes which are not adequately addressed by the current regulatory framework (i.e. both the European Union relevant texts and NRAs' policies)? In particular, what is your appreciation of the concept of collective dominance? What do you consider to be the most effective regulation of anti-competitive oligopolistic situations?)

2.4. Remedies in the context of oligopolies

7. In your view, what are the main ex ante remedies (which are currently present or could be introduced in the European ex ante regulatory framework) that could be applied to electronic communications services markets exhibiting oligopolistic market structures? (similar or differentiated remedies, symmetric regulation, etc.)?

2.5. Other issues

8. Please, provide any other insight or opinion regarding oligopoly analysis and regulation.

4 PROCEDURE TO SEND RESPONSES AND CONFIDENTIALITY ISSUES

All stakeholders are invited to send their contributions by the 25th of January 2015 at the latest to pm@berec.europa.eu, in English, in order to speed up the processing of the contributions. Questions regarding the questionnaire itself can be sent to kevin.wood@berec.europa.eu.

BEREC will publish all individual contributions on its website, taking into account stakeholders' requests for confidentiality (if any), which should be clearly indicated in the contributions to be submitted. It is also possible to send both a confidential and a public version.
