

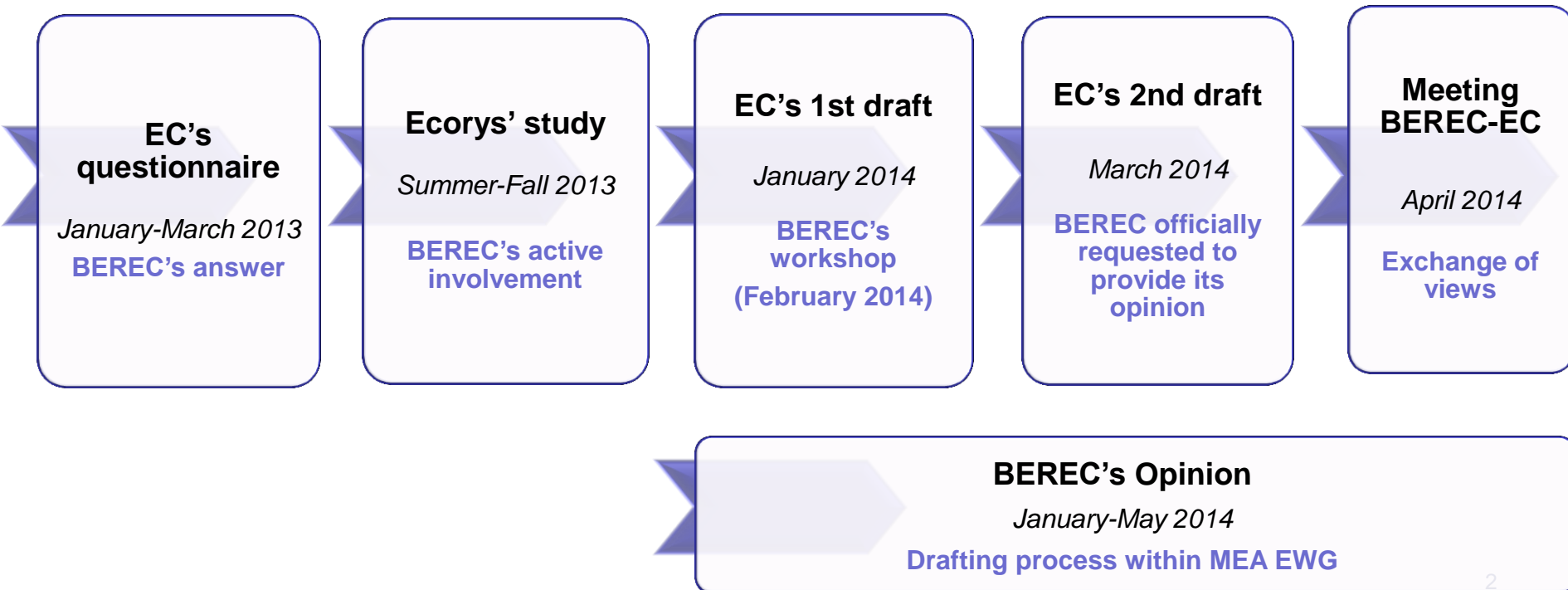
# **BEREC's Opinion on the revised Recommendation on relevant markets**

*Public debriefing 19th BEREC Plenary*

*Brussels, June 2014*

# 1. Progress of the EC's draft Recommendation

## *Reminder of the background*



# 1. Progress of the EC's draft Recommendation

## *Expected timeline*



## 2. Content of the EC's draft Recommendation

### *Revised list of relevant markets*

#### 2007 Recommendation

M1 (Retail Fixed Access PSTN)  
M2 (Fixed Origination PSTN)

M3 (Fixed Termination)  
M7 (Mobile Termination)

M4 (Physical Network  
Infrastructure Access)

M5 (Broadband Access)

M6 (Terminating Leased Lines)

#### Draft 2014 Recommendation

Deleted in the draft rec.

M1 (Fixed Termination)  
M2 (Mobile Termination)

M3a (Wholesale Local Access)

M3b (Wholesale Central  
Access for mass market  
products)

M4 (Wholesale high-quality  
access)



### 3. BEREC's Opinion

#### *Overview*

- The draft Opinion is generally supportive of the EC's draft Recommendation and Explanatory Note
- It welcomes the EC's review of the continued developments that have taken place across the EU since the previous Recommendation
- It shares the EC's long term view of the European electronic communications markets but sometimes disagrees on short term issues

### 3. BEREC's Opinion

#### *Horizontal Issues (i)*

- General agreement with the EC's analysis regarding technological developments and market trends
- Yet, some reservations (i) and demands for clarification (ii)
  - (i) Reservations

<b>Technological developments</b>	
<b>BEREC' view</b>	Transition to IP-based networks will presumably take more time than anticipated.
<b>BEREC's recommendation to the EC</b>	Modify the Explanatory Note to reflect the likelihood that the transition to VoIP will take place in phases, and that narrowband voice services will remain necessary in the meantime.

### 3. BEREC's Opinion

#### *Horizontal Issues (ii)*

- (ii) Demands for clarification

Impact of OTT services	
<b>BEREC's view</b>	The impact of OTT services on the competitive process should be considered by NRAs when undertaking market reviews. Yet, NRAs have limited powers to request data from OTT players.
<b>BEREC's recommendation to the EC</b>	Modify the Explanatory Note to acknowledge that NRAs have limited power under the current regulatory framework to obtain data from OTT undertakings (this issue should be considered in the next review of the regulatory framework).

Self-supply	
<b>BEREC's view</b>	Alternative operators' self-supply could be included in the market not only when these operators exert direct pricing constraints, but also when they exert indirect pricing constraints.
<b>BEREC's recommendation to the EC</b>	Modify the Explanatory Note to state that alternative operators' self-supply should be included in the market also when strong indirect pricing constraints are present.

### 3. BEREC's Opinion

#### *Methodological Issues*

- No significant change in the draft Explanatory Note compared to the 2007 Explanatory Note; yet, some demands for clarification

<b>Joint SMP and oligopolies</b>	
<b>BEREC's view</b>	Failure to adapt the regulatory framework to account for a duopoly scenario might lead to a situation where NRAs are unable to find a single SMP-operator and therefore unable to impose regulation.
<b>BEREC's recommendation to the EC</b>	Update the SMP Guidelines and modify the Explanatory Note to explicitly take into account the potential for joint dominance.

<b>Relation between retail markets and (the relevant) wholesale markets</b>	
<b>BEREC's view</b>	Where (1) downstream retail markets are found to be competitive (2) no remedies have been previously imposed in the corresponding wholesale market(s); and (3) the NRA does not propose to regulate those market(s), NRAs should not be required to assess the corresponding wholesale access market(s) – this does not apply to call termination market.
<b>BEREC's recommendation to the EC</b>	Modify the Explanatory Note so that NRAs should not be required to carry out an assessment of the wholesale market in such a case.



### 3. BEREC's Opinion

#### *Removal of Markets 1 and 2 from the list (i)*

##### **Analysis of the current / short term situation**

##### **BEREC's view**

- New services or technologies cannot be seen nowadays as direct constraints on operators of traditional public telephone services in all Member States (especially as transition from PSTN to all-IP networks is slower and more gradual than initially envisaged and timing for phasing out of PSTN is uncertain).
- Proportion of captive users should not be underestimated (it goes far beyond elderly people as many business users are still structurally dependent on PSTN services) and social policy measures, even those included in the universal service obligations, are not likely to be suitable for addressing these issues.
- The lifting of regulatory obligations imposed under these markets (WLR and CP/CPS) would leave the incumbent operator with significant market power in Market 1.

##### **BEREC's conclusion**

It is likely that a large number of NRAs will still propose to regulate Markets 1 or 2 for the next round of market analysis.

### 3. BEREC's Opinion

#### *Removal of Markets 1 and 2 from the list (ii)*

<b>Analysis of the mid-term / long-term situation</b>	
<b>BEREC's view</b>	<ul style="list-style-type: none"><li>- The trends cited by the EC as reasons for removing Markets 1 and 2 from the list of relevant markets are realistic in the long run.</li><li>- It seems however difficult to predict the timing of these changes.</li><li>- There is thus uncertainty about when it can be deemed that there are sufficient competitive constraints in Markets 1 and 2 to remove regulation in most Members States.</li></ul>
<b>BEREC's conclusion</b>	It is premature to remove Markets 1 and 2 from the list and BEREC requests a transitional period for these markets.

<b>Remark on the appropriate market for imposing remedies</b>	
<b>BEREC's view</b>	It is a good point that the EC takes into account the fact that many NRAs would presumably still conclude that Market 2 require <i>ex ante</i> regulation.
<b>BEREC's recommendation to the EC</b>	At least, modify the Explanatory Note to recognise that it would also be the case of Market 1 and that it should focus on relevant wholesale obligations on the SMP player to provide WLR offers and CS/CPS.

### 3. BEREC's Opinion

#### *Termination (and comparable) markets*

<b>New Markets 1 (current M3) and 2 (current M7)</b>	
<b>BEREC's view</b>	BEREC agrees with the assessment of the termination markets. <i>Ex ante</i> regulatory intervention is rather standard across Member States. Given that this situation is unlikely to change in the foreseeable future, BEREC considers that a simplified regulatory approach could be implemented, on the basis of guidance provided by the EC.
<b>BEREC's conclusion</b>	Consider lowering the burden of undertaking a whole market analysis every three years in the next review of the regulatory framework.

<b>Value added services</b>	
<b>BEREC's view</b>	Competition in the market for origination services supplied to value-added service providers may be insufficient. Willing to ensure the widest accessibility to their services, value-added service providers in some Member States may have to negotiate interconnection on a non-equal footing with operators providing origination services.
<b>BEREC's recommendation to the EC</b>	Modify the Explanatory Note to acknowledge these potential competition problems, as well as the possibility to regulate the corresponding market.

### 3. BEREC's Opinion

#### *Access to data at a fixed location markets (i)*

<b>Submarkets in new Market 4</b>	
<b>BEREC's view</b>	Depending on national situations and on the type of high quality products, different submarkets may be identified by NRAs. Market definition will always be the result of a demand- and supply-side substitution analysis of different wholesale products. Quality characteristics listed in the draft Explanatory Note should only be indicative.
<b>BEREC's recommendation to the EC</b>	Develop the substitutability analysis in the Explanatory Note when delineating this market and recognize that all high quality access products at the wholesale level are not necessarily in the same chain of substitution.

<b>Constraints stemming from Cable</b>	
<b>BEREC's view</b>	Both direct and indirect constraints should be investigated in Markets 3a and 3b. Currently, in some Member States, cable operators provide broadband services not only to residential customers, but also to business customers.
<b>BEREC's recommendation to the EC</b>	Acknowledge, in the Explanatory Note, that direct constraints should be considered in M3b and that cable should be included in M4.

### 3. BEREC's Opinion

#### *Access to data at a fixed location markets (ii)*

<b>Supply-side substitution</b>	
<b>BEREC's view</b>	Supply-side substitution is possible, at least in some Member States, as the same wholesale inputs can be used to supply both high-quality and mass-market products. In this regard, in some countries, providers of mass-market bitstream are already supplying higher-quality business services or could easily do so.
<b>BEREC's recommendation to the EC</b>	Explicitly analyse supply-side substitution when assessing the boundary between the WCA market and the high quality market.

<b>Link with other Recommendations</b>	
<b>BEREC's view</b>	Concerning certain bitstream access products that currently belong to Market 5 and may fall under the new Market 4 (rather than under the new Market 3b) in the future, it is uncertain whether they will still be covered by the NGA Recommendation and the Cost and Non Discrimination Recommendation.
<b>BEREC's recommendation to the EC</b>	Clarify how the Recommendation on Relevant Markets relates to these Recommendations.

Thank you for your attention