**Body of European Regulators
for Electronic Communications**

BEREC

Outcomes
BEREC 29th Plenary Meeting
8-9th December 2016
Berlin

Dr. Wilhelm Eschweiler, BEREC Chair 2016

Outline

- **Outcomes of the 29th BEREC Plenary meeting – 8-9th December**
  - ➢ **BEREC opinion on Telecoms review**
  - ➢ **BEREC Work Programm 2017**
  - ➢ **Elections BEREC chair 2018/Vice-chairs 2017**
- **Documents published**
- **Next BEREC main meetings / events**

BEREC Opinion on Telecoms review

Structure of the BEREC Opinion

- **Introduction – objectives and principles**
  - **Umbrella section, bearing considerations on subjects dealt with in further detail in the Opinion as well as on those not further developed (e.g., spectrum; US; general authorization regime)**
- **Scope, definitions and end-user provisions**
- **Access**
  - **Competition vs. investment**
  - **Constraints in the use of the regulatory toolbox by NRAs**
  - **Regulatory certainty**

- **Governance**
  - **NRAs' independence and minimum harmonised remit**
  - **The new BEREC**
  - **Regulatory harmonisation tools**

Introduction - Objectives and principles

Strenghts

- **Code consolidating the existing Directives into a single one (the "Code")**
- **No prioritisation of one regulatory objectives over another**
- **Scope broadened in proportionate way**
- **MS flexibility in defining US scope and US still as a «safety net»**
- **Harmonisation of minimum set of competences for independent NRAs**

Weaknesses

- **Complex set of conditions for NRAs to meet in order to be able to apply ex-ante regulation**
- **Specific provisions restricting NRAs' ability to promote competition in the name of investment**
- **Spectrum management unduly stiffened**
- **End-user protection: concerns in relation to the "full harmonisation" concept**
- **BEREC's institutional set-up (Agency model)**

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Scope, definitions and end user provisions

- **Broadened "ECS" concept and new scope of specific provisions**

- **Beyond the "conveyance" concept, new definitions ensure more clarity**

- **Need to broaden NRAs' data and information collection powers to all digital players**

- **Concerns on proposed «full harmonisation» - BEREC will closely examine the EC proposals to ensure that they do not entail any reduction in the protection currently afforded to end users**

Access I/III

Competition vs Investment

➢ **Some EC's proposals start from the premise that investment will be incentivised through relaxing regulation and consequent dulling of competition (e.g. reducing cases where NRAs can impose price controls on access to newly built high-capacity networks + regulatory treatment of "wholesale only" operators)**

➢ **Co-investment role for high-speed connectivity / potential for ineffectively competitive market outcomes -> EC criteria to assess co-investment offers (= conditions for regulatory forbearance) to be supplemented with additional considerations**

➢ **On non-collusive non-competitive oligopolies, questions on the NRAs' ability to intervene where competition problems derived from unilateral effects are likely to occur – suitability to make it clear that NRAs can regulate non-competitive oligopolies**

Access II/III

Unjustified constraints in the use of the toolbox:

➢ **General principle of addressing and remedying market failures based on SMP regulation maintained + greater prominence to symmetric regulation**

➢ **But some new provisions may drive to an** undue restriction of NRAs' ability to choose appropriate means to regulate national markets

➢ **Reservations on Commission's preference for top-down harmonisation**

Access III/III

The importance of regulatory certainty

➢ **Proposed provisions provide guidance on the management of the migration from legacy infrastructure**

➢ **Extension of market review cycles from 3 to 5 years**

➢ **3-criteria test and the Greenfield approach now enshrined in the Code (although description of second criterion makes it harder for NRAs to find that a market is susceptible to ex-ante regulation)**

➢ **Mapping of current and planned broadband networks and its impact on market reviews: concerns regarding the value recognised to 3-year planning and relevant possible operators' tactics.**

Governance I/II

NRA independence and harmonisation of minimum competences

  ➢ **Independence requirements of NRAs strengthened and their tasks standardised**

The new BEREC:

  ➢ **Commission's desire to reinforce its effectiveness**

  ➢ **However, the proposal, based on the Common Approach, would undermine BEREC's independence and rootedness in its constituent national regulators**

  ➢ **An EU Agency would slow the pace of NRA cooperation and the development of harmonised best practices**

  ➢ **No compelling reason is given for transforming BEREC into a decentralized EU agency**

  ➢ **Binding powers and the nature of EU Agency: unnecessary administrative burdens for undertakings and NRAs**
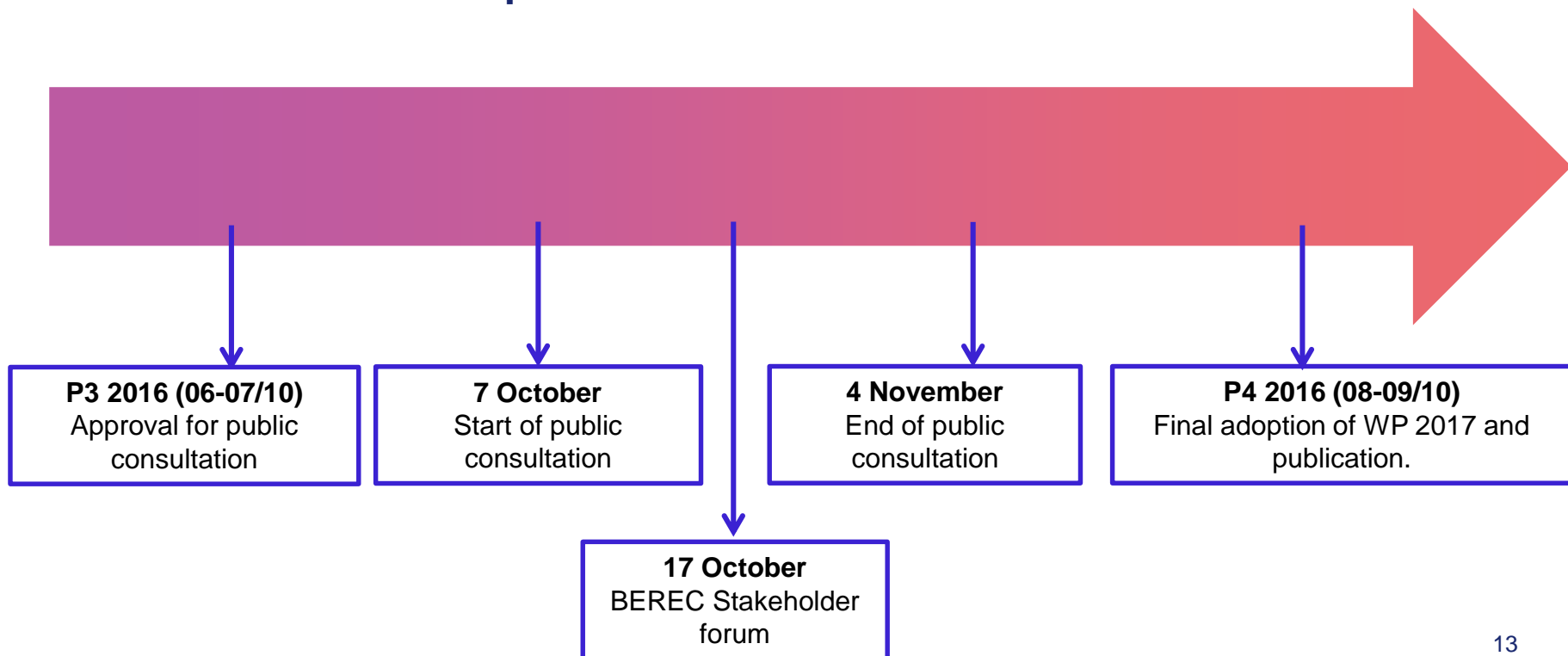
Governance II/II

Regulatory harmonisation and the pursuit of the single market

➢ **The current ecosystem is based on a balance between the Commission, the NRAs and the BEREC Office**

➢ **Experience shows that harmonisation does not imply that the same measures should be applied everywhere**

➢ **Proposed Commission's veto on remedies: an unwarranted attribution of decision-making powers to EC over the detailed regulation of individual national markets**

➢ **Common European approach for voice TRs, as this is a stable market, but no support for a common cost methodology**

➢ **Consultation between BEREC and EC should be embedded in the draft Code as a standard practice.**

BEREC Work Programme 2017

Process followed for the work programme 2017

P4 2016 – Final adoption of WP2017

P3 2016 (06-07/10)
Approval for public consultation

7 October
Start of public consultation

4 November
End of public consultation

P4 2016 (08-09/10)
Final adoption of WP 2017 and publication.

17 October
BEREC Stakeholder forum

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Public consultation on BEREC WP 2017

- **9 contributions received from stakeholders**

- **Overall support for the topics of BEREC Work programme for 2017, in particular the focus on the Framework review**

- **Stakeholders invited for a higher prioritization or visibility of the review of the mid term strategy**

- **Stakeholders would also like to be more involved in the BEREC work from an early stage, notably in the review of the mid term strategy, as well as on net neutrality.**

- **Some stakeholders suggested studying the role of platforms and related competition problems. BEREC considered difficult to include an additional work stream at this stage, but this topic could be discussed later on.**

BEREC Work Programme areas
Coherence with BEREC current strategy

A. Promoting competition and investment

1. Market analysis

2. Favouring investment and connectivity

3. Supporting innovation

B. Promoting the internal Market

1. Framework review

2. International roaming

C. Empowering and protecting End-Users

1. Promoting end-user choice, accessibility and affordability

2. Safeguarding an open internet

D. Quality and efficiency

1. Review of the BEREC Mid-Term Strategy 2018-2020
2. Benchmarks
3. Regulatory accounting
4. Communication and cooperation

A. Promoting competition and investment

B. Promoting the internal market

Inputs to the Framework review

C. Empowering and protecting End-Users

D. Quality and efficiency

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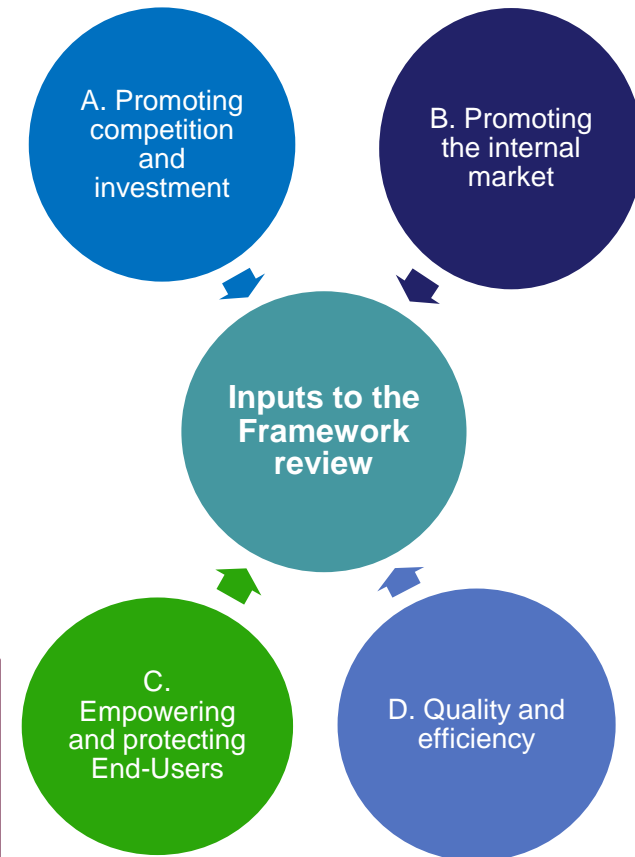
BEREC focus in 2017

- **Review of the Regulatory Framework**

  - ➢ **Opinions, Reports, position and input papers, technical background analyses in the context of the EC Regulatory Framework Review**

- **Net neutrality implementation:**

  - ➢ **Report on the implementation of Regulation 2015/2120 and Guidelines on net neutrality;**

  - ➢ **Regulatory toolkit and guidance for the development and technical implementation of QoS assessment mechanisms;**

  - ➢ **Report analysing tools and methods used to identify contractual, commercial and technical practices.**

BEREC focus in 2017

- **Review of BEREC mid term strategy**

- **Common Position on monitoring of mobile network coverage**

- **Engagement with stakeholders:**

  ➢ **Workshop on IoT technologies and their impact on regulation**

  ➢ **BEREC Stakeholder forum**

![BEREC - Body of European Regulators for Electronic Communications]

In 2017, BEREC will contribute to

Enhance connectivity

Safeguard an open environment

Bring agility to the regulation

Elections of BEREC Chair 2018 and Vice Chairs 2017

- **Handover to the BEREC Chair 2017, Sébastien Soriano of ARCEP (FR)**

- **BEREC MC elected Johannes Gungl of Austria's RTR as BEREC Chair 2018, thus Vice Chair 2017 (incoming Chair)**

- **Alejandra de Iturriaga Gandini (CNMC, ES) and Stephen Unger (Ofcom, UK) were elected as BEREC Vice Chairs 2017**

- **Dr. Eschweiler as outgoing Chair**

Documents published

Subject	Doc. No.	Observations
BEREC Decision on the Expert Working Group Co-Chairs for 2017-2018	BoR/2016/04	For publication
BEREC Opinion on the European Commission's proposals for a review of the electronic communications framework	BoR (16) 213	For publication
BEREC Report on the outcome of the public consultation on draft BEREC Work Programme 2017	BoR (16) 214	For publication
BEREC Work Programme 2017	BoR (16) 215	For publication
Summary of the 4th BEREC Stakeholder Forum	BoR (16) 216	For publication
BEREC Report on Transparency and Comparability of International Roaming Tariffs	BoR (16) 217	For publication
BEREC Report on Termination rates at European level (July 2016)	BoR (16) 218	For publication
BEREC Report "Monitoring implementation of the BEREC Common Positions on Wholesale Local Access (WLA), Wholesale Central Access (WCA) and Wholesale High Quality Access at a Fixed Location (WHQAFL): Phase 3"	BoR (16) 219	For publication

Documents published

Subject	Doc. No.	Observations
BEREC Office MC Decision on the policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment	**MC/2016/ 15**	**For publication**
Final Budget and Establishment Plan for 2017	**MC (16) 130**	**For publication**
BEREC Office annual and multiannual programming document for the period 2017-2019	**MC (16) 136**	**For publication**

Next BEREC Meetings / Events

Meeting	Date	Location
BEREC Contact Network	**2 - 3 February 2017**	**Malmö**
BEREC Board of Regulators and Management Committee of the BEREC Office	**23 – 24 February 2017**	**Paris**

Q&A