

6th BEREC Stakeholder Forum – Summary of proceedings

6 December 2018

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1. Purpose of this document

This document is a short synopsis of the proceedings of BEREC's 6th Stakeholder Forum. It does not contain legal, commercial, financial, technical or other advice. Inappropriate reliance ought to not therefore be placed on the contents of this document. For the definitive version of the Forum proceedings, interested parties should consult the recording at the following web link copied here below:

<https://webcasting.streamdis.eu/Mediasite/Catalog/Full/98b265926907468abab6bad5e3af9c9421>

2. Opening

This section sets out a summary of the opening of the Forum as follows:

Mr. Johannes Gungl, BEREC Chair 2018

- BEREC's Work Programme is a key means to provide clarity and certainty to stakeholders on important work in the telecommunications sector
- BEREC's Work Programme 2018 provides a solid basis for the upcoming work:
 - Early ground work on topics is completed (examples include Report on the location the network termination point and Report on contract simplification)
 - Dialogue and stakeholder engagement has continued to intensify in the period
 - BEREC's next decade project is helping to ensure BEREC's mode of operation is fit for purpose for years to come
- Stakeholder input is a vital and valuable part of refining BEREC's draft Work Programme and all stakeholders are invited to contribute

In addition, see also "*BEREC towards the next decade*" video at the following web link here: <https://www.youtube.com/watch?v=qtfxDrUjUVk>

3. Introduction to the draft BEREC Work Programme 2019

This section sets out a short summary of the presentation on the draft BEREC Work Programme 2019 at the Forum.

Mr. Jeremy Godfrey, Incoming BEREC Chair 2019

Points included that BEREC would address the following in its draft Work Programme 2019:

- Longer term planning – 2 year timeframe
 - Benefits include potential for earlier stakeholder input, more time for consultation, earlier input by the Board of Regulators so that aims about the level of harmonisation are identified early
- Harmonising implementation of the new Code and other legislation, using expertise from national regulators to develop
 - Guidelines including, amongst others:
 - Update to BEREC guidelines on net neutrality
 - Guidelines on Intra-EU communication
 - Guidelines related to co-investment
 - Guidelines related to symmetric access
 - Guidelines on very high capacity networks
 - Guidelines on common approaches to the identification of the network termination point in different network topologies
 - Guidelines on the criteria for a consistent application of Article 61(3) (Concentration point etc.)
 - Guidelines to foster the consistent application of the criteria for assessing co-investments on very high capacity network elements
 - Guidelines to assist NRAs on the consistent application of Geographical surveys of network deployments
 - Guidelines on common criteria for the assessment of the ability of undertakings other than ECN or ECS to manage numbering resources and the risk of exhaustion of numbering resources
 - Guidelines detailing QoS parameters of IAS and publicly available ICS and the publication of information
 - Guidelines on how to assess the effectiveness of public warning systems transmitted by different means
 - Opinions to the Commission including, amongst others:
 - Opinion on the functioning of the roaming market, as input to the Commission's evaluation on the functioning of that market
 - Opinion on the review of EC Recommendation on relevant markets
 - Opinions, Reports, position and input papers, technical background analyses, depending on specific requests by the EU Institutions and on needs emerging during the implementation process.
 - Opinion on contract summary template for consumer contracts
 - Databases including:
 - Database of E.164 numbers, pending communication with CEPT/ECO
 - Database of numbering resources with a right of extraterritorial use within the European Union
 - Experience sharing workshops

- Continuing to look forward, identifying and addressing issues for the future
 - Reports and studies include
 - Issues arising from the impact of 5G on regulation and the role of regulation in enabling the 5G ecosystem
 - Study on dynamics of investment in connectivity via very high capacity networks
 - Finalising report on the data economy
 - Workshops include
 - Towards a vision for Europe's telecom consumers
 - Migration from legacy infrastructures to fibre based networks
 - Collaborating with stakeholders, in the EU and further afield
- Setting out the next steps
 - Public consultation from 10 October – 7 November
 - Final version of 2019 Work Programme published in December
 - Outline a Work Programme for 2020 to be published next January

4. Indicative floor comments, audience participation using Mentimeter, and levels of Twitter engagement

This section sets out a short summary of stakeholder comments on the draft Work Programme 2019 presentation.

- **5 comments** from the floor; ETNO, ECTA, MVNO E, Cable Labs Europe, Strand consult, as follows:
 - There is a need for consistent rules for all players
 - BEREC should avoid creating unnecessary burden on market players
 - Industry is willing to play a greater role in terms of collaborating with BEREC
 - There is support for BEREC to exchange regulatory best practices with regions outside of Europe and also to have more global influence (e.g. specific mention made of FCC project to reduce cost of superfast networks and enable 5G as a case in point)
 - Industry is positive about the initial signs BEREC is optimising its stakeholder engagement. Industry welcomes greater transparency (potentially having communication channels with the experts, if required)
 - Proposals to increase timing for consultations welcomed; timing and duration of consultations needed to be addressed
 - BEREC needs to view Code objectives in the round – noting that the objective on promoting connectivity over very high-speed networks is, arguably, not new and that wholesale access needs to be seen as critical/central objective
 - Sustainable competition is key. And many competitive players also build networks
 - Service competition should be seen as the key to achieving promotion of competition, generally
 - Removing barriers to entry (in access markets) at various levels in the value chain of networks needs to be part of BEREC's ambition
 - Competition and effective competition should be core to BEREC's future work
 - BEREC should do more to enable 5G, and address all underlying issues to support 5G
 - Fact and evidence based decision making should be core to BEREC's mode of operation. To note, cable operators achieved next generation networks without specific regulatory intervention
 - The role of private investment is important and evidence of past investment is important
 - BEREC should achieve the highest common factor of harmonisation rather than the lowest common denominator; its decisions should favour those operators who have proven levels of investment
 - Regulators should aim to be so effective in their work that they are no longer required; competition law should be the main tool of fixing market problems not telecoms regulators
 - There is a need for better regulatory impact analysis as impacts of decisions are not considered – claim that NN has reduced innovation
- Jeremy Godfrey responded to several of the above points, citing relevant projects under draft Work Programme 2019

- The next part of the Forum included audience participation using *Mentimeter*, which is a user friendly presentation software that enables realtime voting by the audience. In a first for BEREC, and a first during any of its Stakeholder Forums, audience views on the draft Work Programme were obtained using a live voting system. In this way, there was a chance for everyone in the audience to voice their opinions. The session was introduced by Philippe Defraigne who asked specific questions and provided high level comments. Further details, including screenshots of results are set out at Annex 1.0, and here <https://www.youtube.com/watch?v=yovs-yRXs6o>
- The interactive part of the session produced **769** live responses from the audience (across six questions)
- For information, in total there was c.**60** tweets accepted through the BEREC Twitter handle during the Forum

5. Panel 1: BEREC's effectiveness and stakeholder engagement

The purpose of this panel session was to generate ideas for the Board of Regulators to reflect on, so that BEREC could explore ways to boost its stakeholder engagement as part of fulfilling its duties under the European Electronic Communications Code. In the session differing perspectives were presented including some theoretical and practical examples of communications in networked agencies, and stakeholder perceptions about BEREC's strengths and weaknesses in this regard.

Mr. Philippe Defraigne (Cullen International), Prof. David Coen (UCL), Mr. Kevin Martin (Facebook), Ms. Ursula Pahl (BEUC) and Mr. Daniel Pataki (GSMA), see also the final agenda at Annex 2.0.

- Prof David Coen
 - Overview of the European context as regards the interplay between Regulators and Regulated agents-
 - c.12,000 entities listed on the European transparency register on lobbying in Brussels, including some c.300 of which could be considered Regulated agents in telecommunications
 - lobbying in telecoms necessitates a strong technical understanding of the issues and allocation of lobbying resources in Europe reflects that there is a co-legislation environment (more resources being devoted to lobbying parliamentarians in addition to the Commission)
 - Three elements of relevant governance in this context; Credibility; Legitimacy; and Transparency
 - Credibility is a function of three things
 - balancing the achievement of goals against capacity / resources to achieve same
 - clarity of delegation (between the various actors at the nation State, NRA, Regional/federal level and Policy (EC)
 - autonomy to deliver (e.g. independence)
 - BEREC faces challenges in terms of legitimacy as NRAs are the enforcers of regulation while BEREC is the developer of harmonisation and, in terms of transparency, stakeholders need to know who the experts are
- Mr. Kevin Martin
 - Key challenges facing BEREC come from the multi-level context (between the satisfying goals of the nation state and those of the wider European region)
 - Similar contextual challenges faced by the FCC previously (a) multi-level challenges given separation between the FCC and State; and (b) challenges around achieving harmonisation in that context
 - Reflecting on how to achieve harmonisation in the context, the State set the specific pricing levels and the FCC set the higher level definitions / ambitions. Something similar might apply for BEREC
- Ms. Ursula Pahl
 - BEUC has worked successfully with BEREC and considers that BEREC has been very effective for its stakeholders (particularly on the transparency front)

- BEUC has joint vision statement with stakeholders in energy ecosystem; the benefits of the joint vision statement are that it frames a conversation so there is collective understanding on issues. The statement can be used to follow up with individual stakeholders
- BEUC supports BEREC's proposal to give more time for consultations
- BEUC supports BEREC continuing to be forward looking on topics including data economy etc
- Agencies in financial and banking sectors have dedicated interactions with consumers – e.g. there are annual consumer days – something for BEREC to consider
- Mr. Daniel Pataki
 - BEREC and the telecoms sector is at a pivotal moment in time
 - Can BEREC be effective at both horizon scanning / forward looking and implementing harmonisation?
 - In terms of credibility, BEREC will need to be supported by resources but access to talent in the telecoms industry is not what it used to be (this is a wider challenge for the sector)
 - Europe needs to take a global perspective and the GSMA is available to provide global insights
 - BEREC's willingness to discuss and optimise its stakeholder engagement is a positive signal. Cooperation and deeper partnership with industry might be required in the future
 - Evidence based decision making is important, including with more impact analyses though these would have resource implications

6. Panel 2: Efficient investment in European telecoms

The purpose of this panel session was to explore the complex interplay between efficient investment, promotion of competition and consumer benefits. In the session a number of points were made on practical examples of what attracts an investor to telecoms rather than to other regulated/unregulated markets, what considerations does a transnational company take when investing between markets and sectors in different geographical regions, and views on how European telecoms investment opportunities rank in a global setting.

Tony Shortall (Telage), Prof. Emanuele Tarantino (University of Mannheim), Dr. Jonathan Dann (RBC), Mr. Frank Sixt (Hutchison Whampoa), Dr. Martin Wrulich (McKinsey), Ms. Gabrielle Gauthey (Caisse des Dépôts) see also Annex 2.0.

- Prof Emanuele Tarantino
 - New objective for NRAs: promoting connectivity over Very High Capacity Networks (VHCN) across Europe. Greater focus on promotion of investments. Arguably, a move away from traditional technological neutrality approach.
 - Specifically, from general goal of promoting investments, to more concrete identification of the technologies that are object of investments.
 - Examples: fibre to the building in a fixed network context, and fibre to the base station in mobile network context.
 - Distinction between mobile and fixed networks.
 - Mobile line: mergers and investments. Network Sharing Agreements. Challenges posed by transition to 5G.
 - Fixed line: emphasis on the vertical dimension of the market (upstream-downstream), and role of wholesale-only operators.
 - Further analysis performed through the lens of the theoretical and empirical literature in economics.

Panel discussion moderated by Tony Shortall who invited response to Prof Tarantino's presentation and also invited comments:

- Frank Sixt
 - The next 2-5 years will be critical for European telecom operators. New investments in telecoms are at risk because of the increase cost of capital demanded by not only incumbent operators but also competitive operators. This is a wider policy issue for the entire telecoms sector; there is a duty for the sector to perform as it supports jobs
 - 5G and creation of virtual slices is a real business opportunity
 - Certainty is very important for investors
 - Improved auction design needed especially if rollout was to be a key criterion – and objectives of auctions should not be to raise revenue
- Gabrielle Gauthey
 - The wholesale only model is attractive to investors
 - Because the telecoms sector was opened to (passive) competition before the surge in NGA, regulation has been focusing at the wrong layer. Passive infrastructure is an essential infrastructure and active infrastructure competition is what has been required

- Fibre equals a future proof solution as mobile cannot expect to compete with it now
- Long term investors are most interested in the first layer but future of 5G could also be wholesale only
- Regulators should develop a menu/catalogue on wholesale access levers for different types of investors – long term investors want low risk long return (so interested in the first layer –and fibre is an obvious security)
- Regulators might play a more important role in incentivising rural rollout – and that subsidies might play an increasingly important role, alongside wholesale only models
- Jonathan Dann
 - Possible risk for European telecoms is the risk of approaching peak regulation
 - There is a need for more stakeholder and shareholder engagement. How regulation is framed in conversations with CEOs is unhelpful. Using NN as an example, the impacts of regulatory decisions should be clearer; that grooming data is unreasonable but monetising network wholesale partnerships through slicing is likely to be reasonable
 - Stakeholders should focus on concrete examples of regulation and less on theoretical and academic studies
- Martin Wrulich
 - Supports operator viewpoints
 - The return on investment for telecoms operators is a real dilemma – falling revenues and returns too close to the cost of capital. On balance there is too much regulation of telecoms as compared to other parts of the 'telecoms profit pool'
 - 5G and converged connectivity will increasingly rely on fibre so that there is a blurring where investment needs to apply, and what access levers should be used
 - While there are parallels between the electric and other utility industries with telecoms, there are key differences; the renewal cycle of core equipment in telecoms is more frequent than changes to equipment in other regulated industries/sectors. As a result, trying to keep things stable by regulation could be considered a fallacy
 - Renewal cycles will continue to be frequency even with fibre infrastructure
 - The risk premium for telecoms operators is coming from the regulatory risk of uncertainty (not market risk where demand is growing and not operational risk where there is expectation that operators know how to build and rollout out networks)

Floor discussion (Orange and FTTH)

- Europe needs more telecoms investment; investment is 50% per capita less in Europe than in the US. One operator, Orange, invests 17% of its turnover annually
- The Code will assist investors and help telecoms investment flow, but the final Code terms are more watered down; spectrum licence duration is not as long as it might have been

- Effective and efficient transposition will be key in the next period and the new objective about promoting connectivity and take up of VCHN should be to the fore of BEREC
- There should be more clarity and certainty for European investors and the Code related Guidelines (particularly around co-investment) need to deliver more certainty
- Acknowledging the need for new investments, all stakeholders should recognise that migration from copper based infrastructure will be important
- There is support for forward looking projects such as on 5G

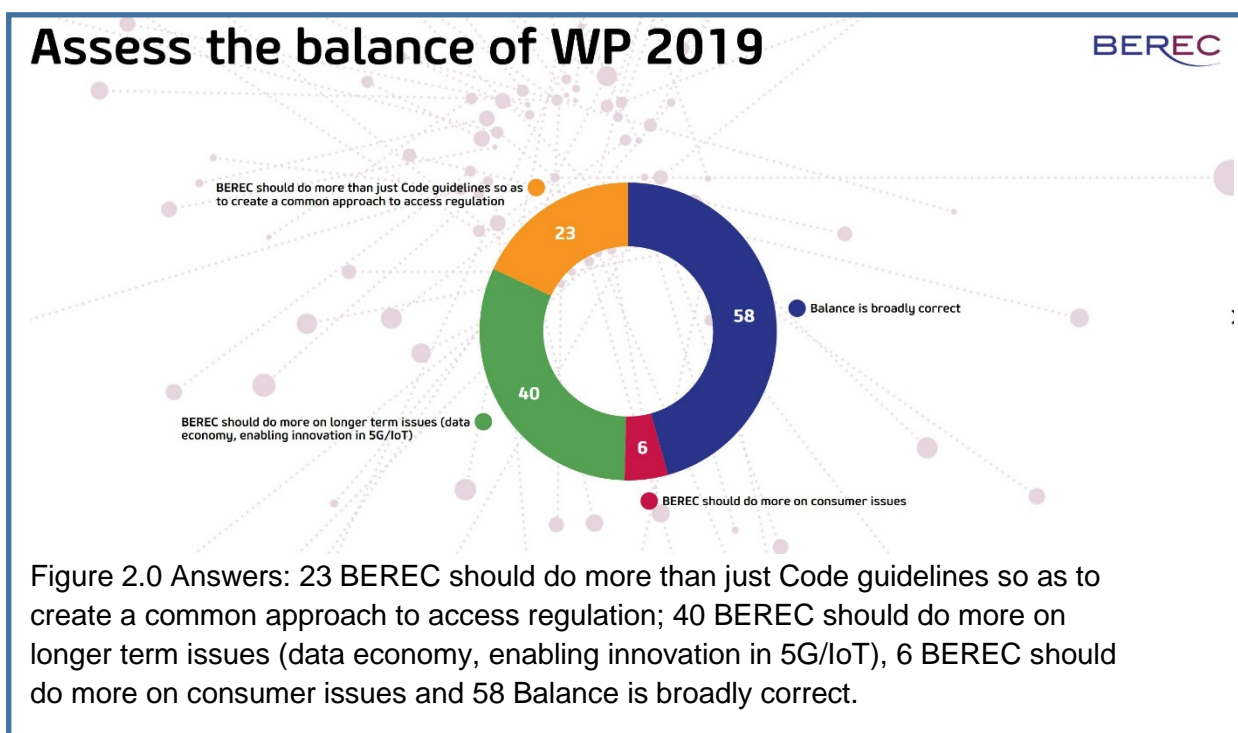
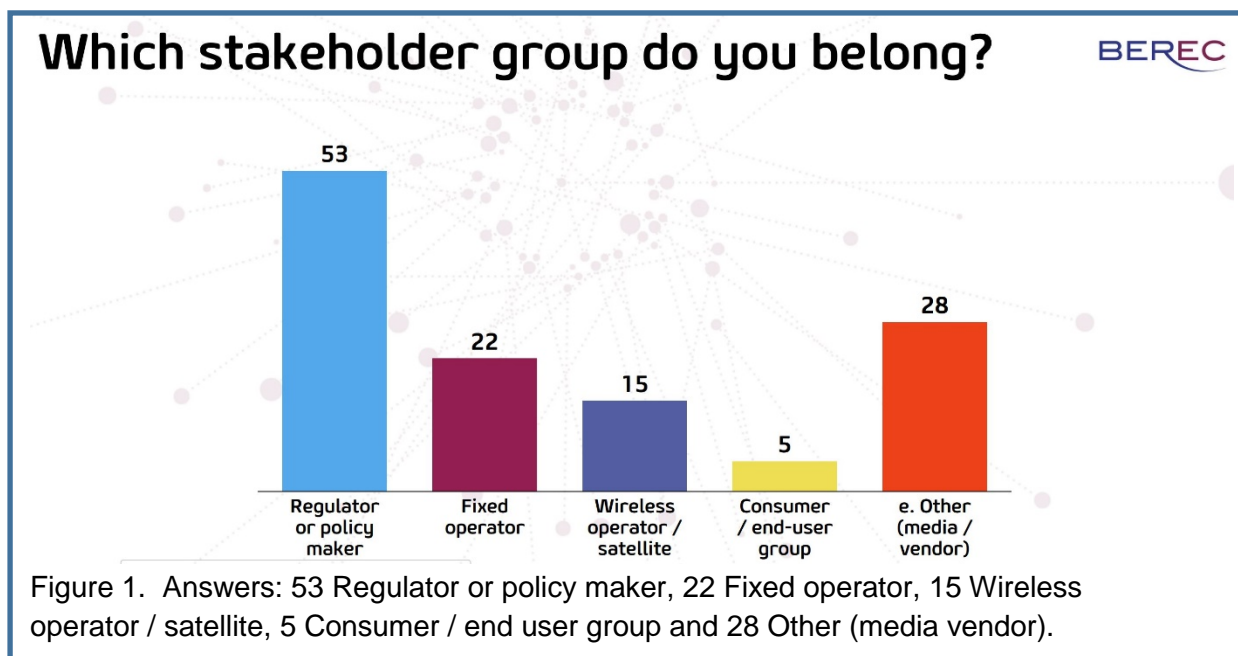
7. Contribution by European Commission

Mr. Robert Viola, Director General, Communications Networks, Content and Technology

- Europe is an open market where investors can make informed investment decisions with high levels of regulatory predictability and certainty. The regulatory framework is founded on core principles that include non-discrimination, so the Commission would refute operators' claims about regulatory uncertainty in the European telecoms market
- For its part, the Commission has contributed significantly to stability and clarity in the European telecoms market such as by establishing BEREC
- The Commission establishes BEREC as an independent body and together with the NRAs ensures that it has the expertise to address its functions, objectives and duties in the Code. BEREC guarantees certainty and stability through its independence, technical expertise and distance from political intervention
- Stakeholders believe and trust in BEREC as demonstrated through the effective implementation of its NN guidelines, which unlocked messaging applications for more than 300m European citizens. The Commission would refute claims that NN prevents network slicing as all users treated the same way when the same conditions apply
- Another important contribution by the Commission comes from its wider relationship building with other demand-side players including in the EdTech and FinTech communities. Together with the cyber security community, Europe's telecommunications ecosystem will continue to attract investors
- The immediate task will be prepare for transposition and maintain levels of certainty and predictability
- BEREC's Stakeholder Forum is valuable event for engaging stakeholders and the Commission is pleased to support it going forward

8. Annex 1.0 Screen shots of results of audience views on draft Work Programme 2019

This Annex sets out a short summary of the results of audience views gathered during an interactive session run using *Mentimeter*.



Which choice would most benefit from enhancing levels of harmonisation ?

BEREC

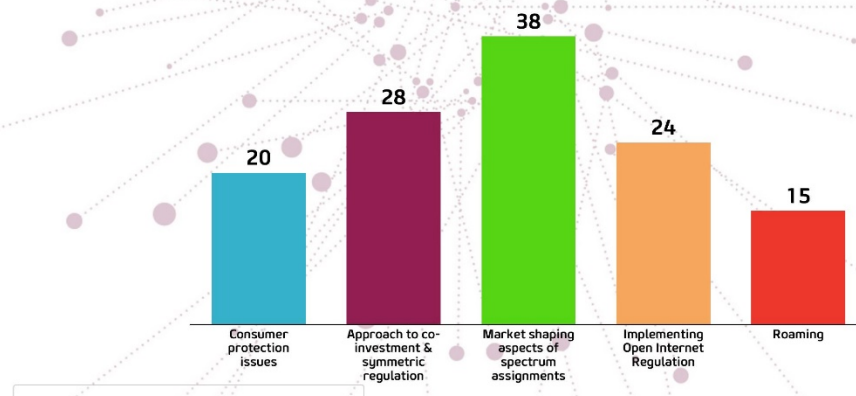


Figure 3 Answers: 20 Consumer protection issues, 28 Approach to co-investment & symmetric regulation, 38 Market shaping aspects of spectrum assignments, 24 implementing open internet regulation, and 15 Roaming.

Which of the following would be the most meaningful measure of BEREC's success in next 3-4 years

BEREC

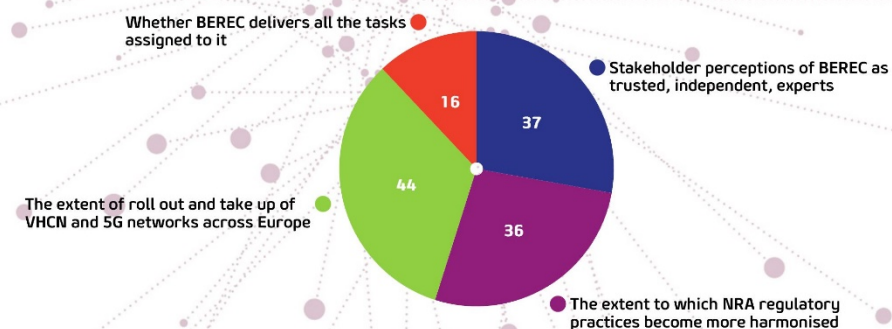


Figure 4 Answers 16 Whether BEREC delivers all the tasks assigned to it, 37 Stakeholder perceptions of BEREC as trusted, independent, experts, 36 The extent to which NRA regulatory practices become more harmonised, 44 The extent of rollout and take up of VHCN and 5G networks across Europe.

Which stakeholder(s) could have the greatest impact on achieving a vision of Europe as a leader in the global digital economy

BEREC

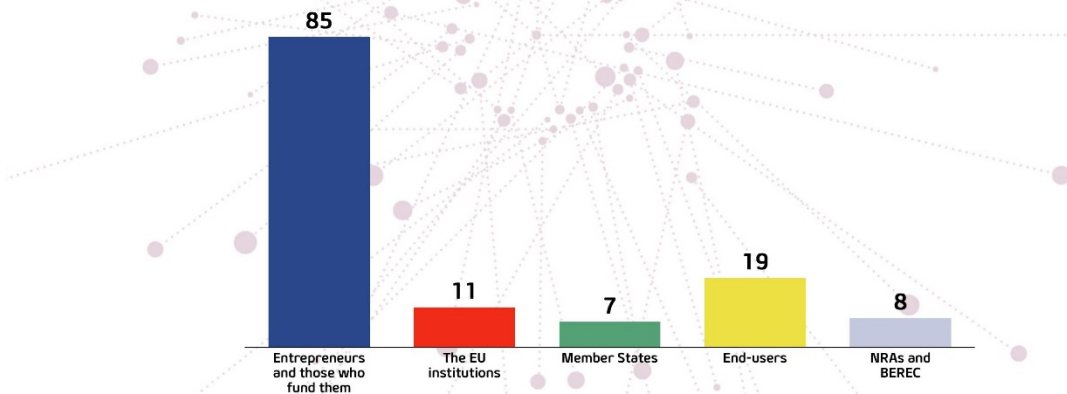


Figure 5.0 Answers: 85 Entrepreneurs and those who fund them, 11 The EU Institutions, 7 The Members States, 19 End-users, 8 NRAs and BEREC.

***Which of the following would be the most effective way of optimising stakeholder engagement ?**

BEREC

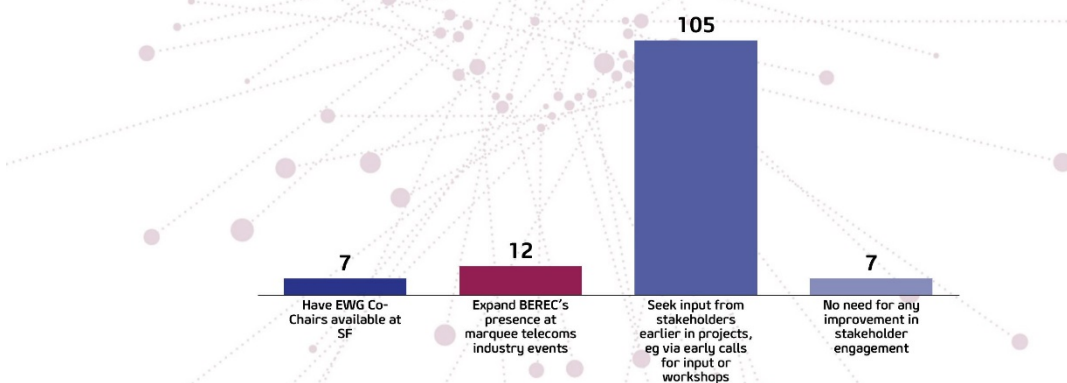


Figure 6.0 Answers: 7 - Have EWG Co-chairs available at Stakeholder Forum, 12 Expand BEREC's presence at marquee telecoms industry events, 105 Seek input from stakeholders earlier in projects e.g. via early calls for input or workshops, 7 No need for any improvement in stakeholder engagement.

9. Annex 1.0 Agenda of 6th BEREC Stakeholder Forum

12.30-13.30 Lunch and Registration

13.30	Start of Meeting
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13.30 -13.45 **Opening remarks**

Mr. Johannes Gungl, BEREC Chair 2018

13.45-14:35 **Draft BEREC WP 2019**

Mr. Jeremy Godfrey, BEREC Vice-Chair 2018 (Incoming BEREC Chair 2019)

Discussion

14.35-15:35 **Panel I: BEREC effectiveness & stakeholder engagement**

2018 has been an important year for BEREC as it has continued to progress its interactions with stakeholders, amongst other things. For example, BEREC adopted an online consultation platform for receiving submissions on its draft Work Programme 2019 in April. In addition BEREC has also strengthened bilateral relations with other regulators outside Europe. For example, a Memorandum of Understanding between BEREC and the Telecom Regulatory Authority of India ("TRAI") was adopted in June. But what are the criteria that BEREC's stakeholders use to assess whether it has been successful? What ideas do stakeholders have about how it can optimize its stakeholder engagement? What information do stakeholders expect from BEREC and how should it communicate and cooperate with them?

The purpose of this session is to generate ideas for the Board of Regulators to reflect on, so that BEREC can boost its stakeholder engagement as part of fulfilling its duties under the European Electronic Communications Code. In this session for example, you will hear from differing perspectives including some theoretical and practical examples of communications in networked agencies, and stakeholder perceptions about BEREC's strengths and weaknesses in this regard.

Moderator

Philippe Defraigne, Director, Cullen International

Speakers

- *Mr. Kevin Martin, Mobile and Global Access Policy, Facebook*

- *Mr. Daniel Pataki, Vice President, Policy and Regulation, GSMA*
- *Ms. Ursula Pachl, Deputy Director General, The European Consumer Organisation*
- *Prof. David Coen, Director School of Public Policy Institute, University College London*

Discussion and Q&A with presenters

15.35-16.00 Coffee break

16.00-17:30

Panel II: Efficient Investment in the European telecoms sector

The European Electronic Communications Code adds an objective for BEREC, the Commission and Member States to promote connectivity, access, and take-up of very high capacity networks (VHCNs) by citizens and businesses in the EU. Together with the existing objectives of creating the conditions for investment in the telecommunications sector, promoting competition, promoting the internal market and optimising end-user welfare, the scene is set for European telecoms to address future challenges.

The purpose of this session is to explore the complex interplay between efficient investment, promotion of competition and consumer benefits. A noteworthy starting point is try to build a collective understanding of the underlying factors that promote efficient investment in European telecoms. Therefore, in the session you will hear practical examples of what attracts an investor to telecoms rather than to other regulated/unregulated markets, what considerations does a transnational company take when investing between markets and sectors in different geographical regions, and views on how European telecoms investment opportunities rank in a global setting.

Moderator

Tony Shortall, Director, Telage

Introductory Keynote

Prof. Emanuele Tarantino, Assistant Professor of Economics, University of Mannheim

Speakers

- *Dr. Jonathan Dann, Managing Director Capital Markets, RBC*
- *Mr. Frank Sixt, Group Finance Director and Deputy Managing Director, Hutchison Whampoa*
- *Dr. Martin Wrulich, Partner, McKinsey*

- *Ms. Gabrielle Gauthey, Directrice, Direction des Investissements et du Développement Local, Caisse des Dépôts*
- *Prof. Emanuele Tarantino, Assistant Professor of Economics, University of Mannheim*

Discussion and Q&A with presenters

17.30-17.45

Contribution by European Commission

Mr. Roberto Viola, Director General, Communications Networks, Content and Technology

17.45-18.00

Closing remarks and Conference wrap

Mr. Johannes Gungl, BEREC Chair 2018

18.00

Networking reception