

BEREC Workshop on Oligopolies Analysis and Regulation (Bern, February 25th)

Public Debriefing 22nd BEREC Plenary (26th-27th February)
Brussels, March 4th 2015

1. Background

- MEA EWG's work program for 2014-2015 includes a **BEREC Report on Oligopoly Analysis and Regulation**
- This project requires developing BEREC's own analysis of oligopoly market structures and of the most appropriate manner to deal with them, paving the way for an **update of the 2002 SMP Guidelines**, providing BEREC feedback in the context of the framework review
- Since the ERG and previously the IRG already worked on this issue from a conceptual point of view and as NRAs were collectively in lack of clear precedent to deal with oligopoly markets :
 1. A first step was to **collect information from NRAs' experience** to give the report some substance and to guide our work
 2. A second step was to **get input about stakeholders' views on the oligopolies' issue**, through a workshop (held on February, 25th) in order to feed internal debate in BEREC (21 written responses)

2. Stakeholders' workshop

General remarks

- Hosted by the Swiss Federal Communications Commission (ComCom) and the Federal Office of Communications (OFCOM/BAKOM/UFCOM).
- Organized with the collaboration of Prof. Bruno Jullien (IDEI) as a moderator and a keynote speaker
- 3 panel discussions, 162 attendants (119 from NRAs, 43 stakeholders), 8 Panelists (ETNO, ECTA, GSMA, EAFM, DG COMP, ComCom, RTR and Cable Europe)
- General outcome of the workshop:
 - Lively discussion and different views from different type of stakeholders.
 - A lot of concerns about the framework review with current trends;
 - The role of *ex ante* regulation taken to the core of the debate;
 - Consensus on the target (need for a competitive market, incentives for investments and ROI protection) but, different views on how to obtain it.³

2. Stakeholders' workshop

Panel 1 : Mergers & acquisitions and trends leading to oligopolistic market structures

- Telecoms markets are **oligopolistic in nature** due to the characteristics of the market :
 - High investment costs, sunk costs, economies of scale, fast technological progress, high rate of innovation, network externalities and scarcity of spectrum in mobile markets
- Trends of **concentration widely observed**
- As other drivers of concentrated markets, **new sources of pressure** which lead to less operators in markets
 - the need for scale to allow for high investments;
 - convergence and the evolution of bundle offers.



2. Stakeholders' workshop

Panel 2 : Oligopolistic situations and Market analysis

- Oligopolies are not per se harmful, but **some markets are more susceptible to uncompetitive outcomes** than others
- Uncompetitive outcomes can lead to **threats to the interests of end-users** (risk of slower innovation, higher prices and lower quality), can increase the **likelihood of coordination** which could lead to harmful effects, or can raise a potential **problem of foreclosure**.
- But oligopolies can also bring **benefits** to market, **in terms of incentives for investments and innovation**



2. Stakeholders' workshop

Panel 3: Oligopolistic situations and relevant *ex ante* remedies

- No need for new tools, use the existing ex-ante regulation remedies, but in a **case by case approach**...
 - ... depending on outcomes : differentiation between non-collusive and coordinated oligopolies
 - ... depending on markets : mobile license may be enough in case of mobile market?
- ETNO: it's time to deregulate, ex ante regulation was meant to be transitional
- ECTA: strong regulation still needed in the fixed market: enduring bottleneck
- EAFM: 'soft regulation' as in "monitoring the market".
- Are **ex-post tools sufficient** ?
 - **Merger control regime** considered as adequate



3. Next steps

- **Work in progress preparing BEREC Report**
 - Under the scope of the Market and Economic Analysis Expert Working Group
 - Input from NRAs
 - Written responses from stakeholders
 - Discussion at the BEREC Workshop on oligopolies
 - Analysis of ex-ante and competition cases as well as EU jurisprudence on joint dominance.
- **Draft Report to be approved in BEREC 2nd Plenary (Bergen)**
 - Public consultation to be started on June 2015
 - Review based on responses to be received to take place along 2nd half of 2015
- **Definitive report to be published in December 2015.**