

Relevant markets and market analysis

DG CONNECT

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Overview

Article 7 & 7a procedures

Recommendations





EU Regulatory Framework

2003 Regulatory Framework

- ❖ harmonised framework for the regulation of electronic communications networks and services

2009 revised Regulatory Framework

- ❖ Package made up of 5 Directives and a Regulation
- ❖ Transposition by 25 May 2011





EU Regulatory Framework

Framework Directive

- ❖ National Regulatory Authorities (*Art.3*)
- ❖ National & EU consultation (*Art.6 & Art.7*)
- ❖ Consistent application of remedies (*Art.7a*)
- ❖ Policy objectives and regulatory principles (*Art.8*)
- ❖ Market analysis (*Art.15 & 16*)

Access Directive

BEREC Regulation





Recommendation on relevant markets

NRAs first need to carry out a market analysis - starting point is the Commission Recommendation

- ❖ 2003 Recommendation identified 18 markets susceptible to ex ante regulation
- ❖ Reviewed Recommendation to be adopted in 2014

2007 Recommendation lists the following 7 markets:

1. Access to the public telephone network
2. Call origination
3. Call termination
4. Wholesale (physical) network infrastructure access
5. Wholesale broadband access
6. Wholesale terminating segments of leased lines
7. Voice call termination on individual mobile networks





Recommendation on relevant markets

Characteristics of these markets may be such as to justify the imposition of regulatory obligations

- ❖ Identified on the basis of a three-criteria test
 - ❖ Barriers to entry
 - ❖ No tendency towards effective competition
 - ❖ Competition law not sufficient
- ❖ However, by applying a three-criteria test, NRAs can also:
 - ❖ Define markets other than those listed which warrant ex ante regulation
 - ❖ Not regulate a market listed in the Recommendation





Market analysis*

Market definition

- ❖ Retail/wholesale
- ❖ Demand and supply side substitutability
- ❖ Product/geographic

SMP assessment

- ❖ Ability to behave to an appreciable extent independently of competitors and customers
- ❖ Market shares (volume/value)
- ❖ Barriers to entry/expansion; Lack/low level of countervailing buying power; Duplicability of the network, access to capital markets etc.

Imposition of remedies

- ❖ Transparency, non-discrimination, accounting separation, access obligation, price control and cost accounting

* Commission guidelines (2002/C 165/03) on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services



Article 7 procedure

National consultation (Art. 6 FD)

- ❖ Needs to be carried out when draft measures would have a significant impact on the relevant market
- ❖ Interested parties should have an opportunity to comment

EU consultation (Art. 7 FD)

- ❖ The measure needs to be notified to the Commission when it concerns
 - o market definition/SMP designation/imposition of obligations
- AND
- o would affect trade between Member States
- ❖ The notified draft measure is accessible to BEREC and other NRAs

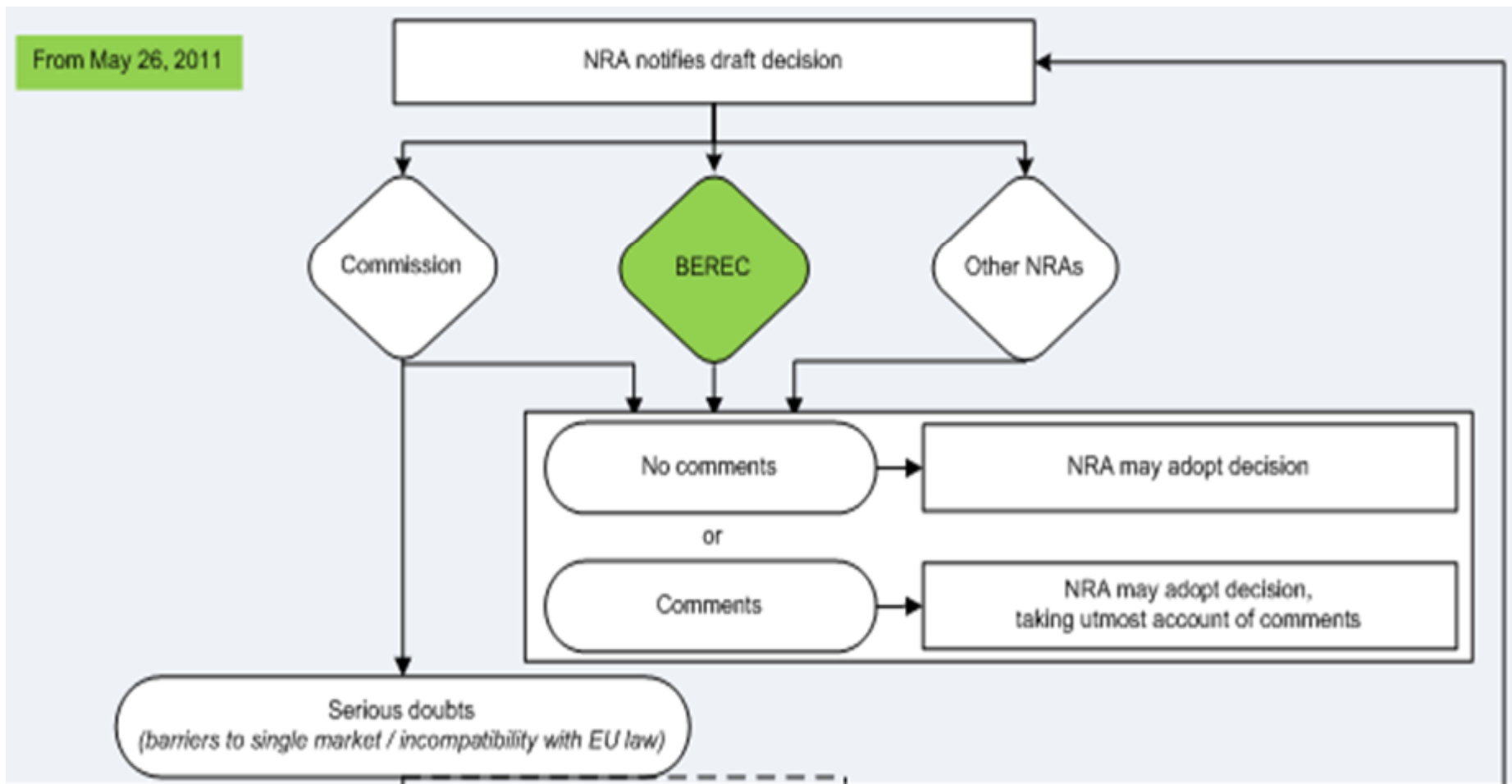


Procedural aspects of EU consultations

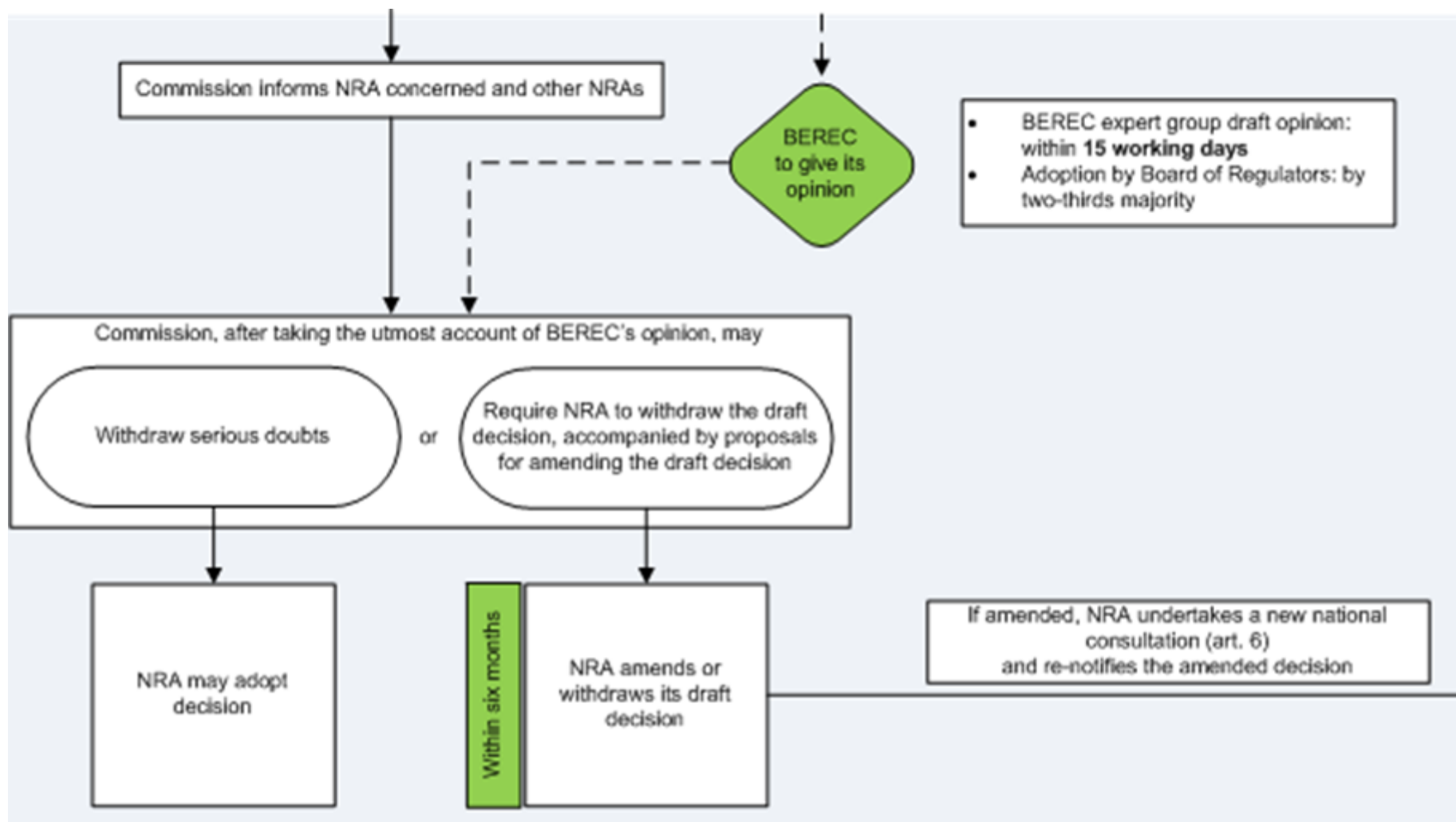
- ❖ Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services



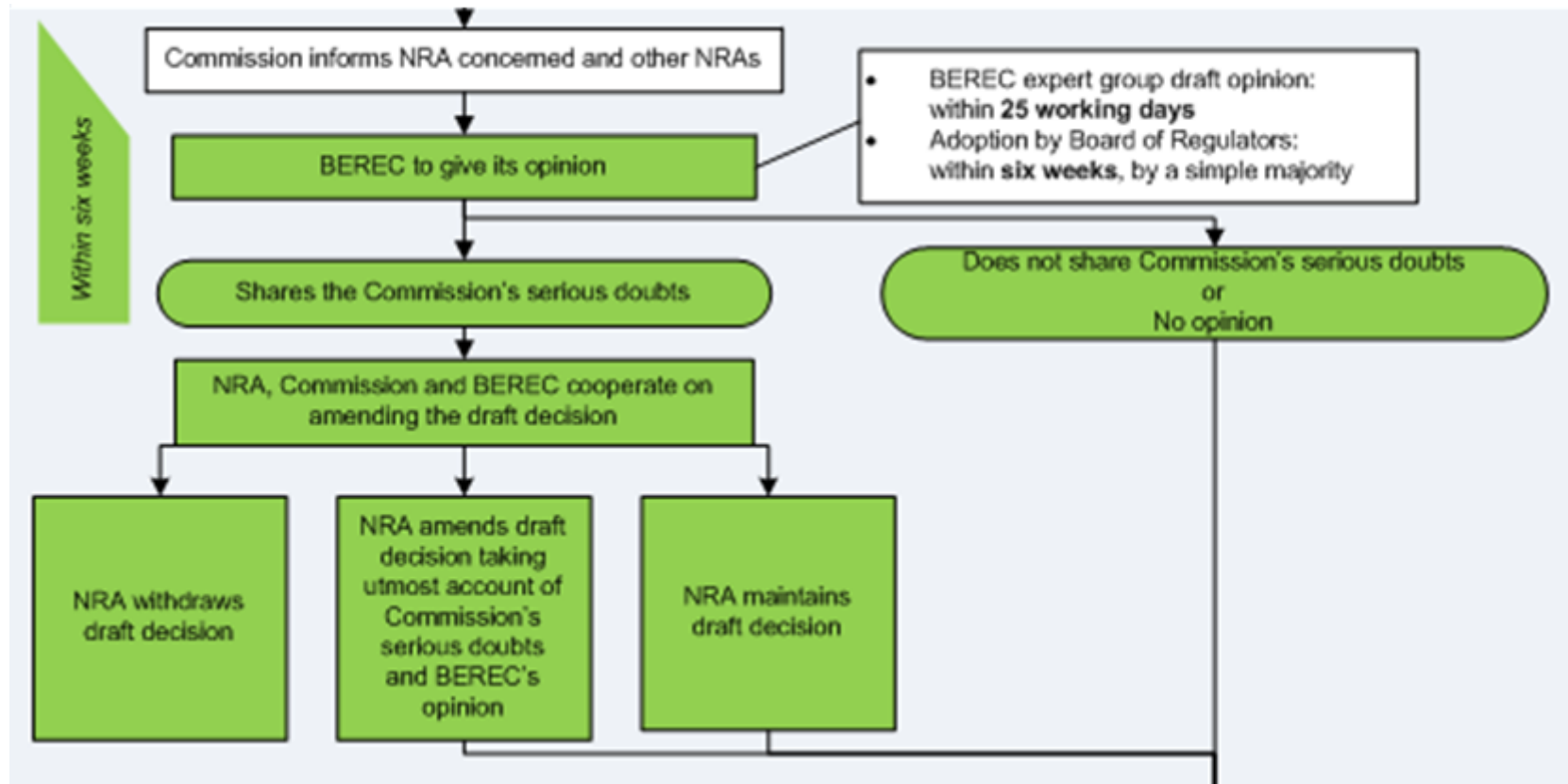
Art. 7&7a Phase I: one month



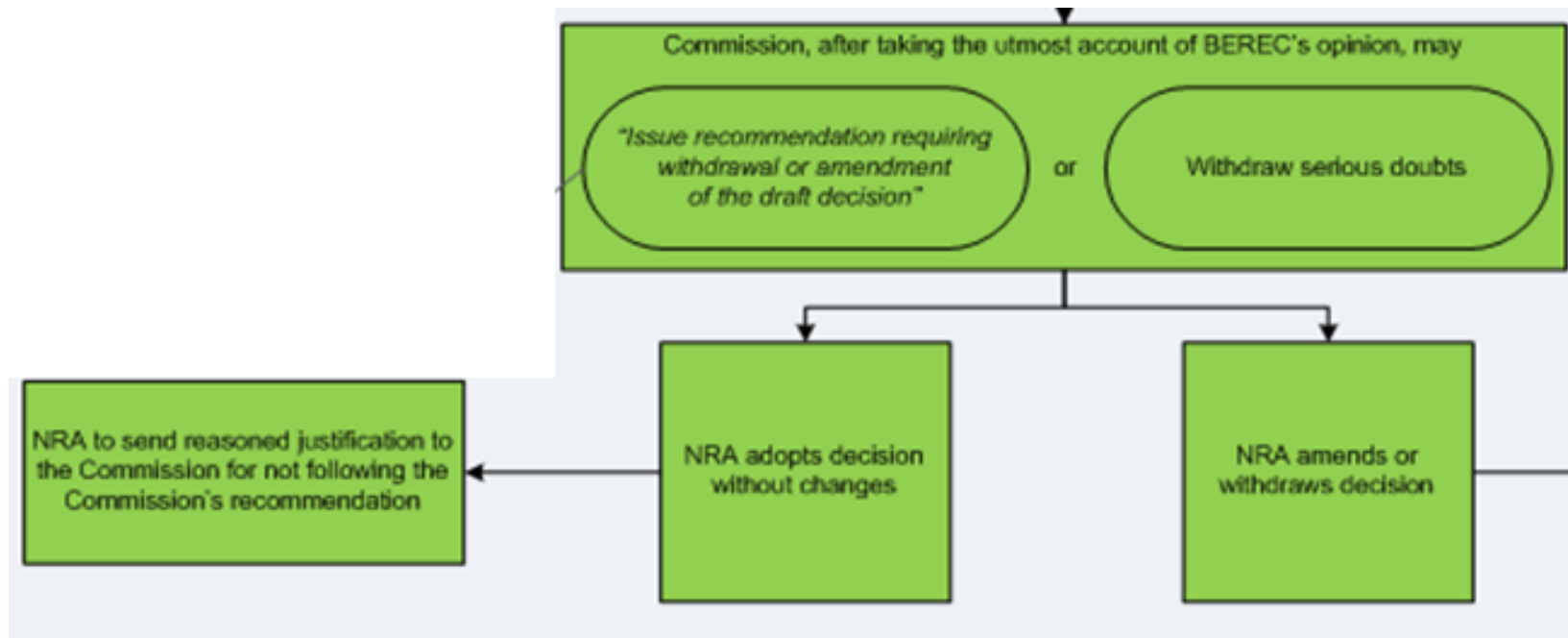
Art. 7 Phase II: 2 months



Art.7a Phase II: 3 months



Art.7a Phase II: + 1 month





Recommendations

What to do to further enhance consistent regulation among Member States?

- ❖ Commission may, taking utmost account of the opinion of BEREC, issue a **recommendation or decision** if it finds that divergences in the implementation by NRAs of the regulatory tasks create **a barrier to the internal market** (Art. 19 FD)
- ❖ NRAs need to take utmost account of these recommendations and provide a justification in case of deviation

Commission's recommendations on the consistent application of remedies:

- ❖ Recommendation on termination rates (2009)
- ❖ Recommendation on regulated access to Next Generation Access Networks (2010)
- ❖ Recommendation on non-discrimination and costing methodologies (2013)





Termination Rates Recommendation

- ❖ Operators have both the ability and incentive to set excessively high prices
- ❖ Price regulation (cost orientation) is considered the most appropriate remedy

Inconsistent regulation led to:

- ❖ Diverging fixed and mobile termination rates across the EU
- ❖ Large gap between fixed and mobile termination rates
- ❖ Asymmetries in termination rates within Member States

Goal was to:

- ❖ Strengthen the internal market
- ❖ Create a level playing field between operators
- ❖ Maximise benefits for consumers





Termination Rates Recommendation

TRs at a cost efficient level by 31 December 2012

- ❖ Pure LRIC model which takes into account only traffic-related costs
- ❖ Based on costs of an efficient operator
- ❖ In exceptional circumstances, alternative approach allowed until 1 July 2014 (even beyond if NRA resources limited)
 - ❖ The outcome of benchmarking should not exceed the average of the termination rates set in Member States implementing pure LRIC

Symmetric TRs by 31 December 2012

- ❖ Asymmetry justified only by objective cost differences outside the control of operators
- ❖ Transitory asymmetry for new mobile entrants (4 years)





NGA Recommendation

- ❖ Enhance consistency in the application of remedies to Next Generation Access networks*
 - ❖ Support investment in fibre rollout
 - ❖ Safeguard effective competition and ease the transition from copper to NGA
- * Consisting wholly or in part of optical elements and capable of delivering broadband services with enhanced characteristics



NGA Recommendation

- ❖ No regulatory holidays and continued availability of wholesale access products
 - ❖ Unbundled access to the fibre loop irrespective of the network architecture and technology implemented
- ❖ Relaxation of access regulation in case of:
 - ❖ Infrastructure competition
 - ❖ Co-investment agreements
- ❖ Cost-orientation as a principle



Recommendation on non-discrimination and costing

- ❖ Lack of consistent application of remedies poses a threat to competition and investment in NGA, and hampers a pan-European provision of networks and services
- ❖ 1) Surest way to non-discrimination is Equivalence of Input (EoI)
 - ❖ **EoI is \approx same wholesale inputs, at same price and using same systems and processes.**
 - ❖ **Proportionality test in light of national circumstances**
- ❖ 2) Stable and consistent wholesale copper access prices in Europe in the transition to NGA
 - ❖ **BU-LRIC+ estimating current cost of modern efficient NGA by end 2016**
 - ❖ **Other methodologies could stay in place under certain conditions**

Recommendation on non-discrimination and costing

- ❖ 3) No price regulation on NGA networks in presence of competition safeguards:

Conditions	Market 4	Market 5
EoI	✓	✓ (both in markets 4 and 5)
Technical replicability	✓	✓
Economic replicability	✓	✓
Competitive safeguards:		
• Copper anchor	✓	
• Take-up of upstream passive wholesale inputs		✓
• Infrastructure competition	✓	✓



Thank you!

Questions?

