Connect Europe

COMMENTS

BEREC Draft Report on Infrastructure Sharing as a lever for ECN/ECS Environmental Sustainability

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Connect Europe input to BEREC consultation on the Draft Report on Infrastructure Sharing as a lever for ECN/ECS Environmental Sustainability

1. General remarks

Connect Europe welcomes the BEREC Draft Report on Infrastructure Sharing as a lever for ECN/ECS Environmental Sustainability and its positive stance on operator-led network sharing agreements which are pivotal for telecom operators' path to reduce carbon emissions.

We welcome BEREC's acknowledgment that the assessment of the environmental impact of policy decisions should be improved, that key barriers need to be identified, and that enhancing knowledge on this issue is important. However, we believe the report lacks robust data and draws some incorrect conclusions.

It is important to emphasise the preference for **voluntary agreements** that enhance synergies, rather than imposing obligations that may distort the market. The result of a sustainability action should not be to add new regulatory constraints and burdensome administrative processes for telecom operators while the general trend is to reduce the regulatory burden.

Below, Connect Europe stresses the environmental benefits of network sharing, and the role of competition policy unlocking these benefits. We also highlight areas of improvement in the BEREC draft report.

2. Environmental Benefits of Operator-Led Network Sharing

Network-sharing agreements offer several tangible environmental benefits:

- **Reduced energy consumption**: Many installed network components still consume nearly the same amount of power during off-peak hours as they do at full load, even when traffic is minimal. This inefficiency is particularly evident in legacy sites, where the user base is shrinking, and in mobile sites during late-night hours when demand can drop to zero. By implementing RAN sharing, operators can allow multiple providers to utilise the same equipment and resources, which significantly reduces the overall energy consumption and minimises the need for redundant systems.

- **Reduced carbon emission linked to the building**: The building of infrastructures leads to carbon emissions, mainly because of the manufacturing of network equipment and the construction activities.

- **Reduced waste generation**: Infrastructure sharing improves maintenance efficiency, reducing waste generated both during the installation of new components and throughout the lifecycle of existing equipment.

The NGMN study[1] supports BEREC's conclusion that overall voluntary infrastructure sharing **reduces by 30% the energy consumption** depending on whether telecom operators share passive or active infrastructure, and whether the sharing is partial or complete, covering the entire territory.

For the environmental benefits of network sharing agreements to be fully realised, the scope of the agreement plays an important role. The larger the geographic area covered by active sharing, the more effective the sharing will be in terms of environmental benefits.

3. A Competition Policy Supporting An Environmental-Friendly Network Sharing

To fully unlock the environmental benefits that infrastructure sharing can deliver, it is crucial to address **competition enforcement obstacles** and provide **greater legal certainty** to market players regarding mobile network sharing.

3.1 General comments on competition policy and sustainability

The **2023 revision of the Horizontal Block Exemption Regulations** and **Horizontal Guidelines** by the European Commission marks a step forward. For the first time, the new guidelines include a dedicate chapter on mobile telecommunications infrastructure sharing agreements. Withing these guidelines, the Commission notably acknowledges the potential benefits of network sharing agreements, such as cost reductions and improvements in quality and choice. Furthermore, the Commission considers that faster roll-out of new networks and technologies, wider coverage or denser network grids can lead to improvements in the quality of services and to a wider variety of products and services. Infrastructure sharing agreements may also allow the emergence of competition that would not otherwise exist (paragraph 260). The guidelines also introduce an assessment framework suggesting certain criteria the fulfilment of which would allow for the conclusion that the network sharing agreement *prima facie* is unlikely to have restrictive effects on competition.

However, while the **guidelines** recognise various benefits of network-sharing agreements, **they fall short of explicitly acknowledging their environmental advantages** and such advantages are not part of the competition assessment of network sharing agreements. Furthermore, the current guidelines remain **insufficient to provide the necessary legal security the market players require** to make informed and long-term investment decisions in network-sharing agreements. This omission represents a missed opportunity to integrate sustainability considerations into the evaluation framework and to encourage all efforts of telecom operators in this direction.

The current framework would therefore need to be further improved to also encompass sustainability matters and to take an additional step toward providing a more secure and predictable regulatory environment for mobile network sharing:

- **Sustainability effects in horizontal cooperation**: The Horizontal Guidelines do not consider sustainability effects in the analysis of horizontal cooperation agreements under Article 101 (3) TFEU. Green Deal objectives could be met in many horizontal cooperation agreements, and efforts to contribute to such objectives should be considered as a pro-competitive effect in the general appraisal of horizontal cooperation agreements. The EC should

[1] Green Future Networks: A Roadmap to Energy Efficient Mobile Networks - NGMN

therefore consider sustainability efficiencies in the overall assessment of the pro-competitive effects of horizontal cooperations agreements.

- **Acknowledgment of the environmental benefits brought by mobile infrastructure sharing agreement:** It is welcome that the 2023 Guidelines acknowledge different benefits of mobile infrastructure sharing agreement in terms of improvement of quality and consumer choice, faster roll-out and wider coverage. The Commission should extend the list of these benefits to explicitly acknowledge also positive environmental impact of mobile infrastructure sharing agreements.
- **Refinement of assessment criteria:** Although the criteria established in the 2023 Guidelines (paragraph 264) provide useful guidance for assessing mobile infrastructure sharing agreements, some aspects require further refinement to include also sustainability dimension:
    - **a)** The environmental benefits brought by the mobile network sharing agreement, such as energy saving and carbon emission reduction resulting from such sharing, should be one of the factors relevant for the individual assessment of mobile network sharing agreements,
    - **b)** Geographic scope and coverage of the network sharing agreement should be assessed taking into account the pro-competitive environmental benefits resulting from mobile network sharing. If such benefits are more important for nationwide network sharing, then this should be factored into the competition assessment of such sharing agreements.

- **Introduction of a presumption regarding the compatibility of network sharing agreements with Article 101 TFEU:** taken together, all these benefits demonstrate that network sharing agreements are generally pro-competitive.

3.2 Comments on the BEREC draft report findings and recommendations

- **Lack of data and new obligation on data sharing:** *"Measuring, examining and assessing the direct and especially indirect environmental impact is a very complex task for regulators especially due to the lack of data and the need for a clearer and more harmonised mandate at EU level to collect environmental data." p. 26*

In our opinion, NRAs already have access to a wide range of data such as annual reports, roaming cost models and market analysis. In Germany, for example, in addition, each commercially concluded co-use/sharing agreement already needs to be submitted to the NRA – which already is a huge administrative burden. Therefore, a new mandate for NRAs to collect data on sustainability aspects would run completely counter to the EC pledge to cut red tape by 25%, and rather creates additional red tape. The existing horizontal European directives and regulations regarding the publication of sustainability data and indicators suffice.

- **Need for standardised methodology for environmental assessment:** *"NRAs identified barriers, such as lack of mandate, limited expertise and data, the difficulty to balance these considerations with other regulatory/political goals (e.g., competition, cost considerations), and the need for standardised methodologies for environmental assessments." p. 3*

Having a methodology for environmental assessments based on indicators already used by the industry to quantify the positive environmental impacts and weigh them against any potential

competition concerns could be beneficial. However, it shouldn't be leading to a regulatory intervention, hence more bureaucracy and regulatory obligations for the telecom operators[2].

- **Development of BEREC guidelines defining standards for sustainable infrastructure and network sharing:** *"To facilitate implementation and comparison across countries and to have a reference framework for NRAs and the industry, many NRAs are in strong support of **developing guidelines,** applicable at the EU level and adopted by BEREC along with the Commission, and **defining standards** for sustainable infrastructure and network sharing, providing sufficient flexibility to take into account national specificities." p. 28*

We do not perceive a need for EU wide guidelines or standards regarding sustainable infrastructure and network sharing as there is already sufficient experience and know-how among market participants. Furthermore, there is already a framework for assessing infrastructure and network sharing. It is sufficient to add the sustainability dimension to this framework (please refer to our proposal above).

- **Legal basis for infrastructure sharing**

The assessment of the relevant regulatory basis (EECC, Broadband Cost Reduction Directive, Gigabit Infrastructure Act) is interesting but misses the opportunity to identify barriers resulting from the variety of regulations that require different processes due to varying obligations. To remove such barriers the above-mentioned measures proposed should be implemented.

- **Benefits of infrastructure sharing & Fiber sharing,** *p. 22*

While many comments of the BEREC report are very pertinent, further input could be taken on board such as the of complexity of the legal requirements for sharing basic infrastructure. Additionally, in the context of subsidies for fixed networks, there is a tendency to build more infrastructure than needed. This could lead to reduced sustainability as these additional infrastructures often remain unused..

- **Regulatory intervention**

  "BEREC included in its 2024 Work Program a workstream to explore the impact of infrastructure sharing on ECN/ECS sustainability and the role that regulation could play in this perspective." p. 5 / "lack of legal basis for imposing concrete obligations" p. 25

  "The review of the EECC, and potentially the expected "Digital Network Act" proposal, could be a possibility to include additional competences for NRAs towards e.g. NetCos and TowerCos" p. 30

Infrastructure sharing should be operator-led and not be mandated by law. This would be counterproductive to the positive effects of infrastructure competition e. g. in terms of innovation or dynamic efficiencies, also acknowledged and enshrined as a basic paradigms of the telecoms regulatory framework. Moreover, the review of EECC and the announced Digital Networks Act should not be used to further extend legal obligations but rather consider measures that incentivise voluntary infrastructure sharing that work well. The general principle should remain that a telecom operators should always keep the full discretion of whether to invest solely on its

[2] The European Commission is developing a Code of Conduct for common indicators for measuring the environmental footprint of electronic communications networks (ECNs) for the provision of electronic communications services (ECSs).

own infrastructure or to share fully or partially its infrastructure with other market actors. Such decisions should be taken considering different advantages of such sharing, including market specificities and business interests.

- **Infrastructure Sharing – Sustainability & Competition**

Decision-making should be well balanced between environmental considerations and competition concerns. It is in market players' very own interest to strike the optimal balance in this respect, not least, because sharing is often both economical and sustainable. Yet a market player should always keep the full discretion over make or buy decisions, and not be limited by regulation.

- **Environmental sustainability objective:** *"Hence, to facilitate the inclusion of environmental considerations in regulation, including regarding infrastructure sharing, adding an environmental sustainability objective to the regulatory mandate of NRA" p. 38*

This would clearly make regulation even more complex and bureaucratic, by adding yet another regulatory objective while the European Commission pledged to reduce bureaucracy. We believe the right approach to boost sustainability should rather be through incentives. Additionally, we are concerned it could set a precedent for implementing such objectives in future legislations.

- **Environmental benefits of mergers**

Connect Europe believes that BEREC should acknowledge more explicitly in the report that the assessment of environmental benefits should be better incorporated in the analysis of mergers e.g. considering sustainability as part of the resilience and efficiency parameter in merger control assessment, including in the analysis of the impact of the merger and later in the balancing of negative effects versus efficiencies. It is common for antitrust merger analysis to take network sharing as a counterfactual, implicitly assuming that any environmental benefits from network sharing would materialise even if the merger is not approved. Our experience is that the situations and markets are different and certain environmental benefits that can only be achieved through a merger.

- **Further research & new studies**

Lastly, we would encourage BEREC to compile existing studies analysing the environmental benefits of infrastructure sharing to inspire innovative approaches. For example, the study "Network Sharing and its Energy Benefits: A Study of European Mobile Network Operators"[3] concludes that infrastructure sharing can reduce the energy required to operate mobile networks "by 35% to 60% compared to scenarios where each operator manages a separate network". Along the same lines, we encourage BEREC to conduct or commission new studies to 1) try to quantify the environmental benefits listed in table 2, page 36, of the report, using different scenarios of traffic growth and network evolution 2) on the interplay between resilience and sustainability. Relying primarily on sustainability criteria might undervalue the importance of network resilience and gathering more data on how to achieve the right balance between resilience and sustainability would be valuable.

These points should receive due consideration to enhance the legal framework for operator-led network sharing and bring more legal certainty to market actors and support the environmental and competitive benefits network sharing can deliver.

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[3] Network sharing and its energy benefits: A study of European mobile network operators, IEEE, 2013, https://ieeexplore.ieee.org/document/6831460

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