

PRINCIPLES FOR MOBILE NETWORK SHARING

Voluntary mobile network sharing is an important enabler to fulfil Europe's Digital Single Market strategy for mobile coverage and in particular for 5G. It is of fundamental importance for Europe's competitiveness and should be promoted by the EC as a key issue for the European economy at large, not least considering Europe's interest in closing the mobile infrastructure gaps for 5G to have a strong fundament for the Digital Single Market. Network sharing also helps to reduce the environmental impact by lowering energy consumption, CO2 footprint and less redundant equipment and waste, as well as visual impact. Therefore, it should be considered an integral part to achieve the objectives of the European Green Deal in the field of electronic communications.

As infrastructure technology is constantly evolving and we are moving towards virtualized networks, locking in rules that refer to certain infrastructure layers would not be helpful and maybe even dangerous as they might be obstacle to innovation with regard to future sharing. Instead of trying to identify which technical components of mobile networks may be shared without creating an alignment on network parameters such as quality, it appears more adequate to follow the general principles of EU competition law.

If one considers network sharing as joint production, as DG COMP does, the core concern from a competition law perspective normally consists of an eventual risk of collusion in the form of an alignment of production costs. A potential theory of harm in respect of network sharing could in first instance relate to an alignment of the competitive parameters of network deployment which determine network quality and/or prices. Therefore, we have set out following generic principles under which network sharing should be permissible:

Principle	Explanation
1. Mobile network sharing is procompetitive, bringing benefits in form of efficiencies, better quality and sustainability	Network sharing agreements are beneficial for the European economy and society as a whole. It allows for efficient investments and enables accelerated deployment, broader coverage, improved capacity, and service quality. Last, but not least, it should be regarded as pro-competitive since it also intensifies competition at the retail level by unlocking important resources to introduce retail innovation in terms of speed, capacity, new services, etc.
2. Infrastructure sharing should be analysed under 101 TFEU, under the following principles which ensure that competition is maintained between the sharing parties:	Given the importance of infrastructure sharing for the Digital Single Market and its general pro-competitive nature, as recognized by DG COMP in a recent press release (" <i>Network sharing is a widespread practice that can facilitate the roll out of electronic communications networks by reducing costs</i> "), there should be a safe harbour for infrastructure sharing from a competition perspective, if certain conditions are fulfilled to ensure competition is maintained between the sharing parties.
a. common costs are relatively low	According to the Horizontal Guidelines, anti-competitive effects are likely if the commonality of costs is significant. A significant cost commonality may certainly be excluded if not more than (circa 25%) of the overall total company costs of the network sharing parties are concerned and not more than (10%) of the total company variable costs. ¹ However, even

¹ fixed costs relates to equipment, its installation services and related software and software license costs, and variable costs relates to power consumption, maintenance costs, site rentals and leased lines.

	with higher common and/or variable costs, a significant cost commonality may also be excluded, especially in situations where the sharing aims at helping fulfil very ambitious regulatory roll-out obligations.
b. individual deployments remain possible	Each operator should have the freedom to unilaterally decide to deploy infrastructure without the consent of the sharing partner as long as such unilateral deployment does not negatively interfere with the shared technology.
c. technical and commercial differentiations are still guaranteed and possible	<p>Given current technological evolution with 4G and 5G, where we have fully IP-based networks and the parameters of competition and the related infrastructure innovations are moving outside the RAN equipment, this criterion would mean that passive and active RAN sharing should be permissible. New technologies like network virtualization and slicing facilitate sharing of active access infrastructure without compromising differentiation. The possibility to tailor flexibly to different parties sharing an active infrastructure is at the core of ongoing network sharing standardization efforts in 3GPP.</p> <p>Spectrum sharing and core network sharing will have to be considered on a case by case basis at this stage of technological development, since they still play a significant role for quality and service functionalities in 4G. This may shift with innovation in 5G technology.</p>
d. information exchange is sufficiently ring-fenced	The information exchanged under the network sharing agreement should be strictly limited: (1) to technical information necessary for the network cooperation and only on a “need to know” basis and (2) to the indispensable people who should be involved and only on a “who should know” basis, while at all instances preventing exchange of potentially competitively sensitive information through a robust safeguard system.
3. Sharing agreements must not be designed as to foreclose the market	Foreclosure effects can be generated by exclusivity clauses prohibiting parties to the agreement to join other agreement(s) or by other characteristic of the agreements which could lead to the creation of a non-replicable network. However, this should not be the case if the operator(s) not participating to the agreements could roll-out in a reasonable timeframe such a network.
4. When these conditions are not met the network sharing parties need to justify that the net competitive impact of the cooperation is such that it can be considered pro-competitive (and so exempted of the application of	Where the infrastructure sharing does not fulfil the conditions for the safe harbour they are not automatically prohibited, but the parties to the network sharing agreement should be able to prove the benefits and the efficiency gains that outweigh any restrictive impact. In the recent press release DG COMP has already recognized network sharing related efficiencies



101.1 TFEU) or to prove that eventual anticompetitive effects are compensated by appreciable efficiency gains (and so exempted under 101.3 TFEU)	in general (<i>"In most cases, network sharing is a source of efficiencies"</i>).
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Given their specific nature and characteristics there are two criteria that do not make sense to analyse in the context of network sharing cooperation:

- **Market Share:** As the telecommunication industry is a very concentrated industry the joint market share of sharing partners will always be very high, currently 23 EU network sharing partners have a joint market share of over 50%, therefore market shares are not practical criteria for network sharing.
- **Coverage:** As confirmed by DG COMP, network coverage is not a competitive parameter as long as the MNOs are under regulatory roll out obligations, the logic being that there is hardly no room for competitive network differentiation in the respective areas. Therefore, we should not have coverage or any geographic feature as one of the parameters. Beyond that, coverage is determined by passive sites where sharing is classified as uncritical by NRAs and NCAs.

The current legal framework (the Guidelines on horizontal cooperation agreements) does not provide sufficient legal security to operators entering into network sharing agreements and there is no consistency in the different competition authority positions when it comes to such agreements. As outlined above, we consider that there shall be a favourable stance for RAN sharing agreements as they can generally be considered as source of substantial efficiencies and consumer welfare. Therefore, in addition to guidance in form of the general principles defined above, certain RAN sharing agreements should also benefit of a block exemption regulation.

Moreover, in the context of future networks rollout, allowing more and deeper network sharing, which would result in a more efficient use of CAPEX, will be critical to ensure the efficient roll out of 5G networks as fast and extensively as possible. Further, the cooperation between operators in form of joint infrastructure build-out will become, in certain cases, an important pillar to ensure the timely creation of future proof networks.

The GSMA believes that the importance of the industry has been confirmed by the role that electronic communications networks have played in the current COVID-19 crisis. This crisis, in fact, has represented an unprecedented challenge throughout the EU and will have severe socio-economic consequences. While telecommunication industry financials have been affected negatively, high performance digital infrastructures have revealed themselves as an indispensable tool to cope with this extraordinary situation. Additionally, the crisis has proven that consumers value network quality over price.

In light of the above, GSMA considers that, going forward, higher performing infrastructures will be key to meet consumer and government expectations as well as to be an adequate safeguard in case special situations will require additional capacity and speed to be quickly available.

About the GSMA

The GSMA represents the interests of mobile operators worldwide, uniting more than 750 operators and nearly 400 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and internet companies, as well as organisations in adjacent industry sectors. The GSMA also produces the industry-leading MWC events held annually in Barcelona, Los Angeles and Shanghai, as well as the Mobile 360 Series of regional conferences. For more information, please visit the GSMA corporate website at www.gsma.com. Follow the GSMA on Twitter: @GSMA and @GSMAEurope.