ecta RESPONSE

TO THE PUBLIC CONSULTATION BY BEREC ON THE

DRAFT BEREC REPORT ON INFRASTRUCTURE SHARING AS A LEVER FOR ECN/ECS ENVIRONMENTAL SUSTAINABILITY

BoR (24) 186

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Introduction

1. ecta, the european competitive telecommunications association,[1] welcomes the opportunity to comment on the Draft BEREC Report on Infrastructure Sharing as a lever for ECN/ECS Environmental Sustainability – BoR (24) 186.
2. ecta represents those alternative operators who, relying on the pro-competitive EU legal framework that has created a free market for electronic communications, have helped overcome national monopolies to give EU citizens, businesses and public administrations quality and choice at affordable prices. ecta represents at large those operators who are driving the development of an accessible Gigabit society, who represent significant investments in fixed, mobile and fixed wireless access networks that qualify as Very High Capacity Networks (hereafter 'VHCN') and who demonstrate unique innovation capabilities.
3. The ambitious environmental goals defined by the European Union and the outcome of several studies[2] showing that electronic communications networks and services will have a crucial role in **enabling a significantly lower energy consumption in other sectors, put electronic communications at the centre of the green deal and gives electronic communications a special status with respect to the other sectors**. In this context, infrastructure sharing could effectively be an important lever for the electronic communications networks and services' own environmental sustainability.
4. Therefore, ecta considers this BEREC initiative timely, necessary and appropriate, and is happy to submit its considerations and constructive proposals on BEREC's Draft Report.
5. In the following paragraphs, ecta provides very concise general considerations on the Draft Report's content and on BEREC's overall assessment and proposals.

Remarks on BEREC's Draft Report, and overall assessment and related proposals

6. ecta welcomes the draft BEREC Report, which: I) gives a first overview of the state of the art of the EU regulatory framework as regards infrastructure/network sharing as a lever for environmental sustainability of electronic communications networks, II) analyses the existing practices by NRAs in applying the framework, and III) summarises the view of industry associations (Connect Europe, ecta and EWIA) that have been invited to a dedicated workshop to express their views on

[1] https://www.ectaportal.com/about-ecta

[2] Belkhir, L. & Elmeligi, A. (2018), 'Assessing ICT global emissions footprint: Trends to 2040 & Recommendations', Journal of Cleaner Production (estimates 3.5% by 2020 and 14% by 2040). The Shift Project, (2019). 'Lean ICT – Towards Digital Sobriety': (estimates 4% by 2020) GreenIT.fr, 'ICT's global environmental footprint', September 2019; Arcep, 'Future Networks - Digital Tech's Carbon Footprint', October 2019; CGE, 'Reducing digital technology's energy consumption', December 2019; and Citizing, 'ICT's carbon footprint in France: are public policies enough to handle increasing usage?', June 2020.

the issues.

7. ecta stated in the presentation given during the BEREC workshop organized with the aim of collecting inputs from the stakeholders, that the EU regulatory framework already offers several substantial provisions to support infrastructure sharing, and that established competition rules provide indications for the operators that want to engage in infrastructure sharing agreements.
8. First and foremost, ecta notes that most telecommunications operators are already setting ambitious net-zero targets for themselves, so they are already intrinsically motivated to take any action that will help them achieve these targets
9. ecta believes that **the current legislation already foresees the needed tools for smoothly integrating environmental considerations into decisions on infrastructure and network sharing and does not see any additional policy need. It is important that what is in the legislation is effectively implemented and followed.**
10. In fact, considerations on fixed network sharing agreements are already part of the EECC (namely Article 44, Article 47, Article 61 and Article 73[3] and the related

[3] *Article 44*

Co-location and sharing of network elements and associated facilities for providers of electronic communications networks

1.Where an operator has exercised the right under national law to install facilities on, over or under public or private property, or has taken advantage of a procedure for the expropriation or use of property, competent authorities may impose co-location and sharing of the network elements and associated facilities installed on that basis, in order to protect the environment, public health, public security or to meet town- and country-planning objectives.
(…)

Article 47

Conditions attached to individual rights of use for radio spectrum
1.Competent authorities shall attach conditions to individual rights of use for radio spectrum in accordance with Article 13(1) in such a way as to ensure optimal and the most effective and efficient use of radio spectrum.
(…)

*2.**When attaching conditions to individual rights of use for radio spectrum, competent authorities may, in particular with a view to ensuring effective and efficient use of radio spectrum or promoting coverage, provide for the following possibilities:***

(a) sharing passive or active infrastructure which relies on radio spectrum or radio spectrum;

(b) commercial roaming access agreements;

(c) joint roll-out of infrastructures for the provision of networks or services which rely on the use of radio spectrum.
(…)

Article 61

Powers and responsibilities of the national regulatory and other competent authorities with regard to access and interconnection

*4.Without prejudice to paragraphs 1 and 2, **Member States shall ensure that competent authorities have the power to impose on undertakings providing or authorised to provide electronic communications networks obligations in relation to the sharing of passive infrastructure or obligations to conclude localised roaming***

recitals 105, 106, 124, 156). Moreover, environmental policy objectives have also been one of the driving forces of the recently adopted GIA[4].

11. The European Commission has recently adopted Horizontal Block Exemption Regulations on Research and Development ('R&D') and Specialisation agreements ('HBERs'), accompanied by revised Horizontal Guidelines[5], which contain a new section on Mobile Telecommunications Infrastructure Sharing Agreements. This text reflects recent enforcement practice. In the chapter of the Horizontal Guidelines on Production Agreements, the Guidelines provide, in order to facilitate the achievement of those agreements under competitive conditions, new guidance setting out factors relevant for the assessment of these agreements and including a list of minimum conditions that companies must comply with to reduce the risk of infringing competition rules.
12. In particular, ecta agrees with the EC horizontal Guidelines for mobile sharing agreements and with the important clarificatory statement, as follows: *"The Commission considers that mobile infrastructure sharing agreements, including a possible spectrum sharing, would in principle not be restrictive of competition by*

access agreements, in both cases if directly necessary for the local provision of services which rely on the use of radio spectrum, in accordance with Union law and provided that no viable and similar alternative means of access to end-users is made available to any undertaking on fair and reasonable terms and conditions. *Competent authorities may impose such obligations only where this possibility is clearly provided for when granting the rights of use for radio spectrum and where justified on the grounds that, in the area subject to such obligations, the market-driven deployment of infrastructure for the provision of networks or services which rely on the use of radio spectrum is subject to insurmountable economic or physical obstacles and therefore access to networks or services by end-users is severely deficient or absent. In those circumstances where access and sharing of passive infrastructure alone does not suffice to address the situation, national regulatory authorities may impose obligations on sharing of active infrastructure.*
(…)

Article 73

Obligations of access to, and use of, specific network elements and associated facilities

1.National regulatory authorities may, in accordance with Article 68, impose obligations on undertakings to meet reasonable requests for access to, and use of, specific network elements and associated facilities, in situations where the national regulatory authorities consider that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, and would not be in the end-user's interest.

National regulatory authorities may require undertakings inter alia:
(…)

(g)to provide co-location or other forms of associated facilities sharing;

[4] *(13) It can be significantly more efficient for operators, in particular new entrants, to reuse existing physical infrastructure, including that of other utilities, to roll out very high capacity networks or associated facilities. This is the case, in particular, in areas where no suitable electronic communications network is available or where it may not be economically feasible to build new physical infrastructure. Moreover, synergies across sectors may significantly reduce the need for civil works relating to the deployment of very high capacity networks.* ***This reuse can also reduce the social and environmental costs linked to these works, such as pollution, noise and traffic congestion.*** *Therefore, this Regulation should apply not only to operators but also to owners or holders of rights to use extensive and ubiquitous physical infrastructure suitable to host electronic communications network elements, such as physical networks for the provision of electricity, gas, water and sewage and drainage systems, and heating and transport services. In the case of holders of rights, this does not change any property rights of third parties.*

[5] Available here

object within the meaning of Article 101(1), unless they serve as a tool to engage in a cartel".

13. While in general the network sharing agreements are beneficial for sustainability, cost efficiency and greater coverage of the planned network, some elements relating to specific agreements are key in assessing the overall effect on competition: i) the number of parties active on the market, the market shares of the parties, the density and coverage of their existing networks together with the amount of spectrum held by those parties and the fact that the agreement is open or not to other operators; ii) the existence of local regulation (such as for example Electromagnetic Field Emission limits, permits, etc.) is an important factor that should be used in assessing the competitive restrictions posed by mobile network sharing agreements. In general, ecta believes that the current legislation and guidance (recently adopted EC Horizontal Guidelines) are appropriate to avoid such risk. Effective implementation remains key for the correct balance of market dynamics in terms of achieving multiple objectives of competition, network infrastructure investments, innovation, environmental sustainability and consumer welfare.

14. In relation to the implementation of the EU Regulatory Framework's provisions regarding network sharing by the NRAs, ecta notes that **the use of the environmental sustainability motivations could be used in the implementation of the EECC without any legal obstacles already today.** The main article of the EECC, Article 44, clearly foresees the environmental sustainability motivation for the provision of co-location and sharing of network elements: *" Where an operator has exercised the right under national law to install facilities on, over or under public or private property, or has taken advantage of a procedure for the expropriation or use of property,* ***competent authorities may impose co-location and sharing of the network elements and associated facilities installed*** *on that basis,* ***in order to protect the environment, public health, public security or to meet town- and country-planning objectives****".*

15. Moreover, infrastructure sharing per se is an important tool for the operators to reach several efficiencies: not only in terms of cost, coverage, quality of service (and related consumer welfare), but also the ones related to environmental sustainability. In fact, infrastructure sharing has the potential for positive environmental impact both in terms of reducing embodied emissions of hardware and operational impacts from energy and cooling. At the same time, there appears to be a certain degree of forward-looking trade-off between (mobile) telecoms infrastructure and the sustainability objectives: higher network densification required by 5G technology if not accompanied by adequate solutions, is likely to increase the energy consumption and encounter issues in terms of lack of available locations to install antennas, especially in urban areas.

16. This is why there are today numerous sharing agreements in place, based on

commercial agreements without any regulatory intervention, and there will likely be more and more in the future. ecta expects that mobile network sharing agreements, and deals with tower companies which entail mast sharing, which European mobile network operators started to sign many years ago with the beginning of 3G network deployments, will probably become an even more attractive option for the operators, especially with the advent of 5G networks and for the achievement of common environmental goals.

17. Having stated that, the telecommunications sector in Europe, thanks to the EU Regulatory Framework in place, has registered good progress in the past 20+ plus years in terms of competition. European users of mobile services enjoy a real possibility of choice between different providers' offers. This is a very important asset that Europe has built over time for European consumers and businesses, taking into account the strategic importance of telecommunications in enabling the digitalization of other sectors by creating a spillover effect. Any additional policy should be designed in a way to preserve competition and enable it to further unfold its beneficial effects in European telecommunications markets.
18. In light of those considerations, ecta invites BEREC to exercise caution regarding its advocacy in favour of the extension of the EECC objectives to include a new objective on environmental sustainability, as proposed in the BEREC draft report. As underlined by BEREC several times, there are important tradeoffs between environmental sustainability (in this specific case network sharing agreements) and the other main objectives, first and foremost for ecta, competition and consumer welfare.
19. ecta considers that objectives regarding the promotion of infrastructure sharing, harmonization of regulatory practices and the definition of the standards to assess network sharing's positive effects can be reached without expanding NRAs' mandate or including sustainability as an objective to the EECC. Those objectives could be met through harmonization of NRA practices through industry workshops/consultations on sustainability issues, studies on carbon footprint and environmental impact of ECNs and ECSs, or end-user awareness programs. In addition, a potential revision of the EECC, focusing on targeted articles and aimed at streamlining application of existing instruments and the definition of standards of proof and how to apply them, can allow NRAs to deal with all issues identified by BEREC in the Draft Report. In fact, ecta highlights that NRA decisions that are inter alia aimed at incentivizing efficiency (as already used according to the examples indicated in the Draft Report) already partly or fully consider environmental sustainability objectives. It partly considers the sustainability objectives from an individual operator standpoint (e.g. network and cost management) and it fully considers those objectives from an industry standpoint (e.g. avoiding network duplication). As highlighted by ecta during the dedicated workshop and reported by BEREC in the Draft Report, the French New Deal case is a success story not only for its effect of maximizing spectrum, network and cost

efficiency, but it also maximizes the environmental sustainability. This case already falls under spectrum framework of the EECC. Consequently, it is clear that the NRAs are perfectly able to pursue the environmental sustainability objectives while they use the existing framework and regulatory tools.

20. ecta notes that BEREC states, in the conclusions of the Draft Report, that "*network cloudification and virtualisation trends could also present an opportunity to promote resource optimization through sharing when it is relevant and compatible with applicable legal obligations. These trends could deserve close look from BEREC and its members in the future*". ecta first and foremost would like to invite BEREC to exercise caution in the analysis that it will undertake in this regard. As stated also in its presentation during the dedicated BEREC Workshop, ecta sees no role for the virtualized access solutions (i.e. APIs) to the network being categorized as network or infrastructure sharing. ecta emphasizes that effective wholesale (passive and active) access to electronic communications infrastructures is and will remain a fundamental pillar also in a world characterized by the advent of "cloudification" and virtualization. Effective and fit for purpose infrastructure access is propaedeutic for the operators to provide access to cloud and edge computing services to consumers and businesses and to continue to innovate at the virtual layers of the network where those services are provided. Any option aimed at restricting wholesale access to the infrastructures of operators with Significant Market Power by replacing this with access to APIs, if adopted, would not only disrupt irreversibly the advent of innovative technologies, including cloud and edge computing services, but it would also dry up the potential for innovation in other sectors of the European economy and therefore irreparably harm Europe's competitiveness.

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In case of questions or requests for clarification regarding this contribution, BEREC and NRAs are welcome to contact Mr Luc Hindryckx, ecta Director General or Ms Pinar Serdengecti, ecta Regulation and Competition Affairs Director.