Response to BEREC common position on Mobile Infrastructure Sharing

January 2019

Summary

Vodafone welcomes the opportunity to comment on BEREC's common position on mobile infrastructure sharing. We agree with most of the common position from a technical perspective. The paper correctly identifies the fundamental trade-off between the positive impact of a lower total industry cost of network deployment and a potential reduction in competitive intensity either due to increased co-ordination between competitors and/or a reduction in the ability for competitive differentiation. The paper assesses the different sharing options within the context of this fundamental trade-off and reaches common positions that we believe are technically correct.

However, we believe the common position on Mobile Infrastructure sharing represents something of a missed opportunity. The current profitability of the mobile industry (Return on Capital Employed) in conjunction with increased expectations on coverage, quality and rapid deployment of new technologies is unsustainable. This common position is an opportunity for BEREC and NRAs to signal that the precariousness of the mobile industry's economics is understood and steps can be taken to remedy this. A consistent and harmonised European approach to promoting network cost efficiency in conjunction with the maintenance of competition principles will deliver significant benefits to European citizens and businesses. In our opinion the common position should be improved as follows:

- The fact that almost no network sharing deals have been deemed negative for consumers (as per BEREC's previous work on this topic) does not feature in the paper.
- Network sharing will be of fundamental importance in ensuring the telecoms industry can meet the needs of industry more generally. The common position should speed up this process.
- The analysis of the competition impacts of different sharing options is fairly comprehensive whilst the analysis of the cost sharing benefits is quite limited. A more balanced analysis will help steer regulators towards a presumption of acceptability rather than a presumption of investigation and delay.
- The common position should be a catalyst for greater consistency across a number of similar issues, including spectrum auction rules and market analysis.
- The paper gives national regulatory authorities (and other competent authorities) lots of leeway and flexibility which does not enhance the legal and regulatory predictability that operators desire.

For these reasons we believe the common position should be revised to signal strong support for network sharing. Network sharing should be presumed to be beneficial for consumers and businesses unless certain characteristics are observed.

Each of these points is explained in more detail below.

Empirical evidence

The paper correctly identifies that the vast majority of network sharing deals have been welfare enhancing and good for consumers. This was an opportunity for BEREC to signal broad support for network sharing with a presumption that they are welfare enhancing unless certain extreme conditions are met. The BEREC report on infrastructure sharing from June 2018 included data on existing network sharing deals. Of the 24 deals to date, only 3 have been deemed problematic. This should be given more prominence in the report to support the presumption that network sharing deals are welfare enhancing.

Role of network sharing in a 5G environment

The simple framework for assessing network sharing deals is weighing up the pros (most notably the cost savings) against the cons (most notably the risk of reduced competitive intensity). As noted above, the vast majority of current network sharing deals have not been deemed problematic. Going forward the analysis will tip even more strongly in support of network sharing. This is because on the cost side the combination of a denser grid and greater coverage expectations means there are greater potential cost savings from network sharing. On the competition side, market and technological developments mean even when there is active sharing, the ability for operators to differentiate remains strong. This is in relation to service provision/offerings (handsets, content, convergence etc.) and core network/software differentiation.

Hierarchy of efficiency as well as hierarchy of competition

The competitive effects (and potential problems) of different types of network sharing are explicit and feature prominently in the document, but the different scale of cost saving is not. This indicates a mind-set of regulation/intervention rather than a presumption of consumer benefit. In order to make the document more balanced and more supportive of network sharing, a more detailed (and quantitative) analysis of the benefits of different types of sharing should be included.

Consistent application of principles beyond network sharing

The report also states a clear hierarchy for types of network sharing yet recognises that this hierarchy can be ignored under certain circumstances, e.g. national roaming obligations in spectrum licences for new entrants. This paper is an opportunity for the regulatory institutions to agree to a common set of principles based on long-term consumer welfare. These principles should be established and applied whenever regulators/competition authorities are weighing up the pros and cons of network sharing agreements.

Predictability rather than flexibility

The report gives a lot of leeway for regulators to assess matters on a case by case basis. We would urge BEREC to use this paper to develop a harmonised and consistent approach to network sharing across all areas when network sharing is relevant. The paper should advocate a pro-network sharing approach unless certain red lines are crossed. These red lines would be when a network sharing has most of the following characteristics:

- Comprehensiveness in scope (covering >80% of the population) and technology (2-5G)
- Deep active sharing including spectrum pooling and backhaul
- The market share of the operators involved covers the vast majority of the market
- The sharing agreement is closed to third parties (including the possibility to offer national roaming)
- No alternative sharing options for third parties

For network sharing agreements with the above characteristics it is more likely than not that the impact of competition (loss of long-term consumer welfare) will exceed the cost savings. For less 'deep' network sharing agreements, there should be a presumption of acceptability unless specific competition concerns specific to the market are identified. Such an approach would be a positive and much needed signal for the industry and show that NRAs/BEREC are prepared to step back when market forces appear to be working. It would also lead to greater regulatory certainty and predictability across the EU – something pan-European operators like Vodafone value highly. Unfortunately, the BEREC document still reads as if NRAs need to be central to network sharing deals and assess everything on a case by case basis. This will only slow down network sharing agreements at a time when the European mobile industry is facing extremely challenging economics, but the European industry more generally is looking for the fast and extensive deployment of 5G.

We remain at your disposal to discuss any of the points in this response in more detail and can be reached at the details below.

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