

# Fastweb Response to the public consultation by BEREC on Common Position on Mobile Infrastructure Sharing

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## 1. Introduction

Fastweb welcomes BEREC effort to provide a common basis for NRAs called to assess the impact of sharing solutions, when called to do so by existing applicable legislation.

Overall, we agree with the methodological approach aimed at identifying objectives and factors that should be taken into consideration by NRAs when assessing sharing agreements or imposing sharing conditions, and find that the analysis is quite extensive, even if it fails to identify sharing practices that might seriously affect market conditions.

## 2. Background

Fastweb fully agrees with the identified objectives and legal instruments provided by the current legal framework, as described in the Common Position.

In particular, Fastweb appreciates the fact that updated observations relating to the potential risks and benefits of infrastructure sharing are highly context – specific and that market context is likely to be highly significant in any assessment of infrastructure sharing agreements.

On this point, BEREC updated observations (based on NRA answers to the BEREC questionnaire) are not comprehensive of specific voluntary agreements with intermediaries (i.e. Tower Companies), also due to the information asymmetry suffered by the regulators (and smaller or alternative players) with respect to commercial agreements already in place.

For what concerns the role of general competition law (whether enforced locally by NRA or NCA, or the EU Commission), it is redundant to stress that all voluntary sharing agreements based on commercial terms, if implemented by established MNOs with significant coverage and fully repaid networks should always be seriously scrutinized by competition authorities, to prevent any negative effect on the market, and to avoid that mobile infrastructure sharing perpetuates the maintenance of oligopolistic/SMP advantages, thus hindering new investments and reducing the competitive dynamics of the market.

As correctly noted in the BEREC Common Position, in fact, the increased coordination between participants in sharing agreements “*presents an obvious risk of tacit collusion, as well as potential breaches of competition law*”.



### 3. Common Position

#### 3.1. Common position (CP1) on the typology of infrastructure sharing types

For what concerns the typology of infrastructure sharing, BEREC's effort of systematizing network infrastructure sharing schemes, for the sake of an informed and clear discussion with all stakeholders at EU levels is useful.

At the same time current definitions are somewhat blurred by the emergence of new network architectures, and the new paradigm of 5G where spectrum represents only one of the different layers/enablers of the future networks.

Moreover, it appears evident that active sharing definitions are today intrinsically limited by legacy architecture designs, that might not be fully appropriate to drive the growth of new converging networks, or to describe the way spectrum is exploited.

In particular, taking into account the current and future deployment of 5G networks, it is evident that new challenges are arising, related mainly to the definition of sharing in a virtualized network scenario.

In fact, while standardization is enabling the roll out of new solutions and better spectrum utilization, serious concerns are raising over the correct development of full interoperability that should allow a better exploitation of existing networks, and a faster roll out of new networks.

In addition, NRAs might be called in the very near future to define specific solutions to allow new features of 5G networks (such as slicing), therefore Fastweb invites the BEREC to fully endorse the principles of technology neutrality and full interoperability in its Common Position, so that NRA can enjoy a robust guidance when called to define, allow, or promote specific sharing solutions.

Therefore, BEREC should clearly express that active and passive sharing solutions, as described in the Common Positions are only representative of past (legacy) solutions introduced to allow collaborations of different players with diverse goals at different stages of market development, while the new emerging sharing models might fall under dissimilar description, and nonetheless subsume challenges, risks and benefits. At the same time BEREC should expressly recall the principles of full networks interoperability and of technology neutrality, underlining



that that might severely affect any sharing scheme that might be voluntarily adopted, or that might be introduced based on existing regulatory provisions.

### **3.2. Important objectives and factors to consider when assessing mobile network infrastructure sharing agreement**

The objectives listed in the common position are fully in line with the scope of ex ante regulation.

In particular, the fact that BEREC considers infrastructure-based competition as the crucial goal of NRAs, while at the same time confirming that *“The larger an operator’s market share is, the smaller is the incentive to make (...) investments in order to win additional customers from other competitors. And the lower the competitive pressure of others, the smaller is the incentive to retain the existing customers through investments and better offers”* is certainly positive.

For what concerns the *“Common position (CP3) on the parameters to consider when assessing network sharing agreements (...)”* the parameters can be of guidance to NRAs but at the same time, it is necessary to clarify the high context specificity of each single different situation, so as to exclude that the common position might be superficially interpreted as a recommended stylization of admissible agreements.

In any analysis of market forces evolution, also the non-sharing parties and the market in general must be carefully examined.



For what concerns the number of operators involved in the sharing agreements, it is also clear that a specific analysis of the other competitive players active on the market is needed, so as to ascertain if there are sufficient competitive forces exerting their pressure on the involved parties.

Technology as well is crucial, but often it might not truly represent the full extent of the agreement, in the cases where well established operators are upgrading existing networks, or expanding the existing footprint, or on the other hand, smaller players are entering the market with substantial investments with a technology neutral approach. In this sense, a correlation with technology might be misleading also in light of the recent technological developments.

A factual analysis of infrastructures shared must be carried out, based more than on a characterization based on static technology classification.

Geographic scope and time frame are obviously crucial as well as expressed by the Common position.

Lastly, it has to be stated that infrastructure sharing has proven crucial when used to reduce barriers to entry or to favor the emergence of alternative players, and to accelerate the deployment of alternative infrastructure that are capable of generating positive outcomes for the final users.

In this light, the size, in terms of market shares, and of existing coverage of the sharing parties are decisive to assess the positive effects on the market dynamics and for the final customers.



#### 4. Indicative analysis of different types of network sharing

The analysis carried out is very valuable for the sake of defining a common ground for discussion, but it does not need to be part of the common position, since it somehow suggests, even with all caveats expressed, that certain solutions are more “acceptable” than others.

Taking into account the emergence of new networks and new architecture therefore, such an analysis might rapidly become outdated and obsolete, therefore Fastweb invites BEREC to continue on the effort of assessing the future sharing practices, and to maintain the indicative analysis for information purposes only.