

digitales_

D^a ALICIA RICHART RAMÓN with Identity Document 46748705D, representing **DIGITALES**, ASOCIACION ESPAÑOLA PARA LA DIGITALIZACIÓN, with VAT number G87830998, dully registered as Business Association at the Spanish Ministry of Labor, Migration and Social Security with register Statutes number 99005807, appears and, as best proceeds in law

STATE

FIRST – That the BEREC opened a **Public consultation on draft BEREC Common Position on Mobile Infrastructure Sharing**

SECOND - That by means of the present document, DigitalES sends its comments, thus complying with the procedure of the feedback period.

Taken into consideration all the above mentioned, we

REQUEST

ONE. – Accept the present document in dully form and time, taking into consideration the comments included for this Public consultation and translating them into the next consultation phases, and finally to the implementing act foresee.

Madrid, 18th January 2019



Alicia Richart Ramón
Directora General

ONE – GENERAL COMMENTS

- DigitalES considers that the sharing of mobile network infrastructures is a very important aspect for the future development of 5G networks, so that any hindrance to the same through its regulation may imply serious damage to the sector. Thus, provided that the sharing models are freely agreed by the operators, they can be a driver for the competition, so the BEREC proposal should aim to facilitate future 5G deployments with this premise. The sharing in mobile networks is something already very extended in Europe, so regulating it could suppose a disincentive to it given that it is the different agents of the market that know and value in a holistic way the costs and benefits of the different sharing models as well as the externalities associated with them.
- Therefore, the development of guidelines that intend to tackle the sharing, must have as a fundamental premise the case-by-case analysis of sharing agreements, with special focus on their benefits, and avoiding their imposition or the prevalence of any of the different models, due to the competitive intensity in the European market and the strong investments to undertake for the future deployment of 5G technology.
- DigitalES discourages the imposition of an ex ante regulation on sharing, and on the contrary proposes the realization of generic guidelines that give certainty to the different sharing models that can be freely agreed upon and developed by the operators, taking as example the extensive previous experience (at least in Spain) in which the sharing scenarios have worked and operate commercially, without the need for any ex post intervention.
- Finally, it is essential to indicate that, in the case that it would be determined to impose sharing obligations for mobile network infrastructures by the competent authorities, without a doubt there could be a distortion of competition conditions in relation to the auctions of spectrum
- On the other hand, from digitalES we suggest that the document be renamed "BEREC report on mobile infrastructure sharing, 2018" instead of "BEREC position common position on mobile infrastructure sharing" in the same way that we suggest that in all the paragraphs of the document the term "**COMMON POSITION**" is replaced by "**ANALYSIS ON**" taking into account the following considerations:
 - that this document describes legal / competitive aspects to be assessed in sharing agreements, an analysis of sharing modalities, and aspects to be considered by regulators, and possible pros and cons of sharing agreements only for mobile infrastructures.

- that, looking at all the described cases, taking into account the peculiarities of each local market, we suggest avoiding the use of COMMON POSITION because there is neither a common position nor a general guideline valid for all cases and countries.
- BEREC itself, in the 2011 and 2018 documents, uses the term "REPORTS" and not "COMMON POSITION"

Therefore, we understand **that the regulatory authorities should not impose in any case specific sharing scenarios**, so the BEREC should focus on the development of generic guidelines that facilitate and give legal certainty to the agreements that can be reached by operators on sharing without favoring some to the detriment of others, allowing the sector to develop the models that best suit the different situations, and always taking as a basis the case by case analysis according to the different market situations.

TWO. CONCRETE COMMENTS:

However, as despite our general considerations, it is very likely that the document will go ahead, we believe necessary a series of observations on the published text:

- It is very important to take into account the broad development in Europe and, specifically in Spain, of infrastructure operators, whose introduction into the market has had a significant impact on the creation of new sharing scenarios and which endorses the competitive intensity in the market, which we do not appreciate that are expressly included in this document despite being favorable to passive sharing scenarios.
- In the section of the "Legal Framework" (point 2.1 of the document) all the European reference standards (European Communications Code, Cost Reduction Directive, etc.) are collected, but **we consider essential to also take into account** the very different local regulation and, specifically in the case of Spain, **the wide dispersion in Autonomic and Municipal regulation that affect the deployment.**
- We consider **necessary to clarify the differentiation made in the text between the "Drawbacks" and "Benefits"**, since the related aspects within each block can turn into the opposite depending on the scenario and the type of sharing. Thus, the differentiation by level of service offered, which is pre-established in the document as a consequence of the disadvantage "Reduced incentives to invest / ability to compete", may not be such a disadvantage according to the type of sharing: in passive sharing what the operators that share lose is the difference of the footprint of sites, but they still maintain opportunities to differentiate themselves in coverage and quality of service. In MORAN sharing type, both opportunities for differentiation are still maintained, and it is in the MOCN-sharing type scenario that these opportunities begin to be lost. We also do not agree with the statement that infrastructure sharing reduces the resilience of mobile networks in a certain geographical location (drawback 3) it is not like that actually.

- Related to "Potential benefits and drawbacks" of the sharing agreements listed (point 2.2.), we miss the fact that **certain sharing scenarios could lead to exceeding the limits of radioelectric emissions**, which can condition the choice of a certain type of sharing, so it would be necessary to be decided by a modification of the important limitations in the regulation of radioelectric emissions based on densities of maximum power and go to statistical models in order to facilitate sharing as well as the development of 5G. Related to what was described in the previous point, this point that is a "drawback" in the case of passive sharing, however, is reduced with active sharing (and even more when spectrum is shared).
- In relation to the position of the BEREC when defining the existing sharing scenarios, national roaming is included as one of the active sharing types. Well, we must specify that it would only be a sharing scenario when the agreement is bilateral and reciprocal, since otherwise it would not be a pure sharing scenario. On the other hand, in relation to these national roaming agreements, the document discourages those agreements that are of a universal and permanent nature, justifying their existence in those cases in which they want to facilitate the entry of an operator or in low density population environments. However, digitalES believes that roaming agreements, freely reached by operators, should be facilitated since they could be beneficial for the competition.
- On the position of the BEREC in relation to the "Parameters" to be considered when analyzing the sharing agreements (point 3.2.2.), specifically in relation to the parameter "2. Feasible level of competition", the BEREC seems to assume that in more densely populated geographical areas it is profitable for operators to deploy their own infrastructure as a general rule, so it recommends the promotion in these scenarios of own network investment and infrastructure competition. However, **we believe that it is the operators who must define the investment or sharing model that best adapts to the different realities of the market**, since the existence of other impediments, not directly related to the costs of deployment, can not be ignored, such as the existence of municipal regulation or the protection of certain areas of a municipality (cultural heritage, usually in more densely populated areas), as well as the visual impact or situations of social alarm, which prevent or hinder in many cases new deployments in certain areas and that can be resolved with sharing agreements. This aspect will be even more relevant in view of the deployment of 5G networks. Therefore, we understand that it is necessary to include in this section 3.2.2. an additional parameter to be analyzed by the NRAs in relation to the existence of these barriers to the deployment of mobile networks. The same, on the other hand, would have an impact on the conclusions established in section 4.2.
- In this same section 3.2.2. the sharing of information is included as a parameter to be reviewed as well, which we believe it should be outside the scope of these guidelines given that the sharing agreements, like the rest of the agreements between the operators, are subject to compliance with the laws of Competition. For this reason, strict rules are always contemplated within them in what refers to establishing protection barriers with respect to the exchange of information, ensuring that shared information is the minimum necessary and also restricted to the necessary persons.

- Finally, in relation to section 4 of the document, where the BEREC establishes a series of conclusions on the different sharing scenarios, digitalES considers that they must be qualified for the reasons mentioned above. The BEREC seems to assume certain aspects of the different sharing scenarios that could be misinterpreted. For this reason, it is necessary to insist on the need to avoid the mentions included in the guidelines that may be ambiguous or to favor some models over others (passive vs active) and focus on facilitating and providing legal certainty to the development of the different models. Indeed, one model should not be expressly favored over another. In addition to the reasons for cost efficiency, the sharing may arise from a technical need.