

## Tele2 response to the consultation on the draft BEREC Common Position on Mobile Infrastructure Sharing

Tele2 AB (Tele2) is a Sweden based pan-European telecommunications operator and is an MNO in Sweden, the Baltic states and Croatia.<sup>1</sup> We appreciate the effort BEREC has undertaken to carefully put together its draft Common Position on Mobile Infrastructure Sharing (Draft Common Position). With this document we would like to offer our views to BEREC on the subject.

We care about mobile infrastructure sharing, because our operations rely to a major extent on network sharing for their success. Tele2's purpose is to fearlessly liberate people to live a more connected life. To do so, we have pushed the envelope on offering affordable unlimited and high data volume bundles in our markets, and our mobile offerings are available without a binding period. To make these types of consumer focussed offerings, we need to rely on excellent and efficient networks and a winning cost structure. Without mobile infrastructure sharing, we would not have been able to do so. This is more than an anecdotal point—it is the embodiment of the benefits of mobile infrastructure sharing pointed out by the Draft Common Position in paragraph 2.2.1.

In the paragraphs below, we provide further comments on the Draft Common Position. First, we have noted some general comments, followed by specific feedback on the paragraphs, in the order of the Draft Common Position, using the same headers.

Confidential information has been marked with a **blue highlight**.

### *General remarks*

Tele2 agrees with BEREC that commercial sharing agreements should be assessed on a case-by-case basis, but our main reservations with the Draft Common Positions is that it unduly negatively pre-empts such analysis on certain aspects.

To a large extent, the document relies on past observations and conceptual findings. This is problematic for two reasons:

1. the future is likely to be very different for mobile networks compared to the past; and
2. the reality of network sharing in the past has (in our experience) developed differently than the theoretical views shared by BEREC in the Common Positions on key aspects.

As we are at the eve of widespread 5G deployment, what has held true in the past does not necessarily hold true in the future, nor may it cover all relevant aspects. In that sense, the analysis and the Common Positions lack a forward-looking approach to some extent. Given that 5G will require a significantly different network deployment than any previous generation of mobile network, the need for, and potential positive effects of sharing infrastructure (such as efficiencies), are in our view likely to be even bigger than before.

Furthermore, in some areas of the report, the conclusions are more sceptical towards infrastructure sharing than market realities and industry experience warrant. This is where the report is based too much on a conceptual approach, and too little fact based. There seems to be a disconnect between the negative views of the document towards certain types of sharing based on theoretical findings, in comparison to the reality where those exact sharing modalities have been successfully applied and have led to improved competition and outcomes for users. Ultimately, the question whether commercial sharing agreements should be allowed, depends on weighing the pros and cons against

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<sup>1</sup> Tele2 is a minority owner of the joint-venture that operates the Tele2 brand in the Netherlands. This contribution is not on behalf of this operation and without prejudice to any position that the joint-venture or the joint-venture partners take on the subject.

the objectives NRAs need to pursue. In order to correctly weigh each aspect, fact-based findings should be included, to avoid over- or underestimation of these aspects.

Since there is empirical evidence available, BEREC should as much as possible rely on evidence before such strongly guided positions can be taken, or be much more reserved towards its findings. Given the involvement of competent authorities in (commercial) sharing agreements, these cases should be readily available to BEREC for an analysis. Despite earlier BEREC work on this subject, market realities are not given appropriate consideration in the Draft Common Position. Applying the Draft Common Position as it is would lead to an analysis that in key parts undervalues the upsides of mobile infrastructure sharing and overestimates potential negative effects, without any factual or empirical back-up. As a result, the analysis of these type of arrangements may unjustifiably be skewed.

For infrastructure sharing based on commercial agreements, the approach under competition law should be that they are *'permitted unless'*. However, the harsh approach taken towards certain types of infrastructure sharing (e.g. active sharing) implies that such sharing arrangements *de facto* become *'prohibited unless'*. This is against the nature of ex-post analysis of these types of agreements, and could lead to the wrong approach of doing assessments. A strong assumption against the arrangement could quickly lead to a burden of proof on the operator to establish the opposite.

#### *Paragraph 2.2. Benefits and drawbacks related to sharing agreements*

In our view, BEREC has attempted to provide a tentative and non-exhaustive list of potential benefits. However, it is not clear from the text that this is the case. We believe this should be explicitly mentioned, and the document should express that a case-by-case analysis should aim to uncover all the possible benefits (and drawbacks) of that particular mobile network sharing arrangements, whether or not previously identified in this Draft Common Position.

#### *Paragraph: 2.2.1. Potential benefits of infrastructure sharing*

While BEREC has identified four separate categories of benefits, these are often strongly related, and looking at the benefits inside their 'containers' is not helpful to making an appropriate analysis.

For example, running a more cost-efficient operation can easily enhance consumer choice. If two operators decide to pool their available investments to run a more cost-efficient operation, they are able to achieve a better network (e.g. broader coverage, higher quality, faster deployment) than without the sharing arrangement. The total available CAPEX and OPEX investments are better employed compared to a non-sharing scenario, since they are made more efficiently (e.g. the need to deploy less equipment to achieve the same outcome and other scale efficiencies) and overhead costs are reduced. That does not mean that cost reduction is the ultimate goal, as the paragraph in the document incorrectly implies—cost efficiency is. Cost efficiency can translate to the same quality for a lower amount invested, or to better quality for the same amount invested, compared to a non-sharing scenario, and anything in between.

Achieving a better network, in terms of quality, coverage and price, was and is the key motive for our engagements in network sharing. The amount of funds we can invest in networks is limited by (e.g.) how much capital we can attract and projected returns. We know that often we can achieve a greater level of network operations that would be impossible if we were to invest in networks separately. In the scenarios we encounter, pooling available funds into a more potent network allows each of the operators the possibility to better position themselves in the market against their competitors, offering more and better choices for end-users. Hence, achieving superior networks at competitive cost-structures has been part of the strategy that we have communicated publicly to our shareholders for many years, and we have delivered positive results from that strategy.

Due to the level of competition in the markets where we are present, it is the rational choice to engage in network sharing with the aim to achieve a better network, rather than to save on the total amount invested. As a result, there is fiercer competition both at infrastructure and service level than would have been with more but inferior individually deployed networks. This dynamic is not expressed sufficiently by the relevant paragraph in the document, as it focuses primarily on cost reduction as a primary objective, and improved offerings as a secondary possibility. Furthermore, the paragraph on enhancing consumer choice only discusses geographic availability, and fails to acknowledge improvements in terms of quality available to users as a result of network sharing.

Also, efficiencies have welfare effects beyond competition and user choice. More than 90% of our CO<sub>2</sub>-equivalent emissions<sup>2</sup> are from electricity usage, which in turn is almost entirely caused by our base stations and other network elements. Due to a strong increase in the data transmitted through the networks, this figure is expected to rise. Network sharing is also from an environmental perspective by far the more efficient operational approach.

*Paragraph: 2.2.2. Potential drawbacks of infrastructure sharing*

BEREC identifies that potential drawbacks associated with infrastructure sharing were less observed by NRAs. From that, BEREC takes that *'it demonstrates simply that conclusive evidence demonstrating the negative impacts of infrastructure sharing agreements is less well developed'*. This is a leap to a conclusion that is not supported by facts. Other explanations (e.g. that those drawbacks are indeed less common, or that they are offset by taking appropriate countermeasures) are not excluded by the facts and cannot be dismissed. Nonetheless, the only explanation in BEREC's view is underdeveloped evidence of negative impacts. While possibly true, this conclusion cannot be drawn based upon the information presented.

Next, BEREC indicates that there may be a reduced incentive to invest or ability to compete. In our view, the concept that there is a reduced incentive to invest is too categorical. Conceptually, it is true that in certain modalities any upgrades to a network would benefit all participants in network sharing, and therefore one participant's refusal to invest puts the other participant(s) in a position to consider whether they want to invest by themselves, offering the refusing sharing partner a 'free ride'.

In reality, this situation is not likely to occur. Partners in sharing agreements have the same incentive to maintain a network that is competitive and keeps up with the market and with customer demand. As long as there is an appropriate return on the investment, a rational operator will make the investment. Furthermore, sharing agreements normally include measures to avoid these situations, e.g. by requiring a set decision making process or specific KPIs that the network shall meet and that sharing partners need to invest in.

The concept that there is a reduced ability to compete is counterintuitive and not supported by evidence. A rational operator does not enter into a sharing agreement knowing it is likely that their ability to compete will be reduced. On the contrary, the basic rationale behind a sharing agreement is that each and all parties of such an agreement will be more competitive as a result of the sharing agreement. Our experience points exactly in that direction, as our and our network sharing partners' ability to compete has been strengthened by sharing agreements.

BEREC asserts that participants in a sharing agreement *'are likely to have fewer opportunities to differentiate their service offerings from those made by competitors also engaged in the related agreement'* and that this *'drawback is likely to be particularly pronounced in active sharing agreements, as these further limit the ability of service providers to differentiate their services*

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<sup>2</sup> Tele2 reports annually on its CO<sub>2</sub>-equivalent emissions in its sustainability report.

*compared with passive sharing agreements*'. As examples for fewer opportunities to differentiate services offerings, BEREC mentions factors like coverage and quality of service.

Tele2 disagrees that these are significant drawbacks in network sharing. Regarding coverage, BEREC's reservations can be justified only if a scenario of a higher number of individual networks with lesser but differentiated coverage is preferable over a scenario of a lower number of individual networks that offer broader coverage, both for competition and welfare. However, operators unequivocally strive to achieve national coverage, since this leads to an ability to both serve more customers and serve customers wherever they go. Thus, a lesser but differentiated coverage being an ideal and desirable differentiator is simply not supported by market outcomes, nor is it likely to promote welfare. Furthermore, BEREC only compares the ability of one network sharing party to differentiate its offering from the other network sharing party. BEREC does not consider the strengthened ability of the network sharing parties to better differentiate their offerings from other operators outside of the network sharing agreement.

For quality of service, each network shall need to meet the minimum requirements as demanded by the market, whether or not it is a shared network. It is unclear why competition based on "superior, but a lesser number of shared networks" would lead to lesser outcomes compared to competition based on "inferior, but a greater number of shared networks".

These drawbacks, should they even matter, are not necessarily present in active networks in a more decisive way. Throughout the document, BEREC indicates that active sharing almost per definition reduced the possibilities for operators to differentiate. In our experience, **where we use MOCN for the majority of our sharing arrangements**, this is not the case. **Because each operator controls their own core network and often can "purchase" different quality of services via the use of different QCI classes in a shared network**, they have full control to differentiate their offerings on aspects that are vital to competition. What is more, contrary to the point of BEREC, our experience is that we and our network sharing partners, are able to differentiate offerings from each other as well as other operators not engaged in network sharing.

BEREC considers tacit collusion and potential breaches of competition law as a potential issue, which must be addressed by the participating parties. This is obviously the case, but also not effectively a drawback. While the threat is there, it is not clear why parties would not be able to address this threat in an appropriate manner. To Tele2's knowledge, there is no situation of tacit collusion established in which a network sharing agreement was a material aspect. Tele2 has also agreed with its network sharing partners upon very far reaching safeguards with regard to any sort of information sharing between the parties and these safeguards have turned out to work very well in practice.

Furthermore, BEREC describes that overhead or bureaucracy could delay in deployment, due to the joint-decision making, which could reduce incentives of network deployment. Again, this is a purely theoretical downside, which is not observed by Tele2 in any of its network sharing agreements. Operators have a strong incentive to find the most efficient way to decide on, design and roll-out their network. This is not necessarily different for a shared network. Furthermore, there are ways to efficiently incorporate the governance of a network (e.g. planning, network design and decision making regarding the deployment) within a separate vehicle (such as a joint venture) that operates at relative distance from the sharing operators, reducing the need for continuous coordination. The critical parts of a network sharing setup are also in practice regulated in detail in the network sharing agreements already when the agreements are entered into, which make deadlock-situations very rare. Network sharing agreements also often include deadlock-provisions that are designed with the sole purpose to achieve an effective decision making purpose.

*Common position (CP2) on the main objectives to be pursued when considering network sharing agreements*

In Tele2's view, BEREC takes a position that is detrimental to the fast adoption of 5G technology, despite the European Commission's strategic connectivity objectives.<sup>3</sup> For us, being able to engage in network sharing agreements is a key requirement to be able to deliver this technology quicker, at a higher quality and to more users. Especially at the start of a technology shift, where important aspects of network deployment are a greenfield situation, the pooling of capabilities and investment power of two or more operators can lead to better results than individual deployments. This is insufficiently expressed within regulatory objective '2. Better connectivity'.

*Common position (CP3) on the parameters to consider when assessing network sharing agreements in order to achieve/maintain the above mentioned objectives*

In this Common Position, BEREC stipulates a number of parameters to consider in relation to the regulatory objectives. Those parameters exclusively relate to the objective of *Effective competition*. While BEREC indicates that other parameters can also be considered, BEREC fails to include those, despite ample opportunity and a clear need to do so. When it comes to *Better connectivity* and *Efficient use of spectrum*, BEREC should support NRAs in their assessment of these parameters, especially during a time when Member States are licensing spectrum and operators are going to deploy new network technology in the near future.

Furthermore, as pointed out above, BEREC's analysis of the effects on *Effective competition* of network sharing agreements primarily focusses on the effects on competition between operators within the network sharing agreement and ignores how the larger effects on competition in the market outside the sharing agreement. For example, network sharing has been fundamental to the strengthening of competition in Sweden, as it has critically enabled participating operators to fully compete with the incumbent on 4G services.

#### *Paragraph 4.2 Active Sharing*

In this paragraph, BEREC takes a strong negative stance towards active sharing. This analysis is based on a few flaws that we have pointed out previously:

- An assessment should address all regulatory objectives, not only that of *Effective competition*, and include parameters to be weighed against a possible potential loss to competition;
- The positive effects identified in §2.2.1 are underestimated in both scope and importance;
- The drawbacks identified in §2.2.2. are either not present in current sharing agreements or to a lesser extent, are not supported by market realities, relevant factors are already limited due to constraints other than network sharing (for geographic coverage and quality of services), or can be effectively remedied by taking appropriate countermeasures;
- BEREC's assessment that active sharing leads to lesser opportunities to differentiate is incorrect, because where differentiation matters for competition it depends on having individual control over the core network rather than the RAN;
- The assessment does not take into account wider public policy interests, such as the quick adoption of 5G technology at network level.

#### *Closing remarks*

BEREC has taken an important task at hand, one that can create certainty and guidance for mobile network sharing. However, as it currently stands, the Draft Common Position is unfit to serve as a strong guidance for competent authorities to perform their assessment.

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<sup>3</sup> See COM(2016)587 - Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society

We encourage BEREC to look at this task with the opportunity that empirical evidence and forward-looking analysis offers, and create a work that is open to fulfil all relevant objectives under the regulatory framework. If not, BEREC risks to misinform the assessment that competent authorities need to make, with possibly damaging consequences to the development of future networks.