



Infrastructure Sharing - a European Regulatory Perspective

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EU Regulatory approach to infrastructure sharing

Infrastructure sharing can be instrumental for the deployment of very high capacity networks

- ✓ Reduced cost and risk of deployment -> faster rollout and wider reach, especially in less densely populated areas
- ✓ Reduced environmental impact
- ✓ Efficient use of spectrum and network assets



May arise either as a result of a **regulatory obligation** or as a **voluntary agreement**

Infrastructure sharing as a regulatory obligation

Pursuing public interest objectives and/or addressing specific market failures



Under the Broadband Cost Reduction Directive:

- All network operators (telecoms, electricity, gas, water etc.) are **obliged to meet reasonable requests for access to their physical infrastructure** it for deploying high-speed broadband (Art. 3)

Under the European Electronic Communications Code:

To pursue **objectives of public interest (environment, health, town planning)** (Art. 44):

- For infrastructure that has been built on **rights of way**, authorities may impose sharing or co-location of network elements

To address market failures related to **Significant Market Power** (Art. 68):

- Operators designated with SMP may be obliged to provide access to their infrastructure. Obligations may concern physical, passive or active elements. To enable the deployment of new networks, focus is on **physical infrastructure**.

To address **insurmountable obstacles** to market driven deployment for mobile (Art. 61):

- Competent authorities are able to **impose mobile infrastructure sharing or localised access agreements**

Voluntary infrastructure sharing

Incentivising co-investment in fixed networks and promoting efficiencies in mobile networks



Incentivising **co-investments in fixed very high capacity networks** by **deregulating** under strict conditions:

- SMP operators **commit on open offers for co-investment** with other operators:
 - On **fair, reasonable and non-discriminatory terms to co-investors**, allowing effective and sustainable competition
 - Allowing **access to non co-investors**, initially to legacy capacity and over time to more advanced capabilities of the network
- Process managed by the NRAs, assessing the commitments (also by means of a **market test**) and making them **binding** if they decide to deregulate

Promoting **mobile infrastructure sharing**:

- When attaching conditions to the rights of use for radio spectrum, competent authorities may expressly **authorise sharing of passive or active infrastructure**
- Restricting **spectrum sharing** is not allowed

Ex-post competition law

Mainly Article 101 TFEU (agreements that restrict competition)

Compliance with ex-ante regulatory framework does not exempt network sharing co-operations from ex-post competition law

- **Potentially relevant factors for the assessment (but always case-by-case):**
 - number and market position of operators involved
 - technical form of the cooperation (active/passive/spectrum)
 - legal form of the cooperation (e.g. JV)
 - geographical scope (countrywide/rural etc.)
 - exchange of commercially sensitive information
- **Ongoing investigation by European Commission in the Czech Republic**
 - Statement of objections adopted on 9 August 2019
 - Competition concerns mainly relate to a possible reduction of incentives to invest and improve the shared network
 - Adoption of SO does not prejudice the outcome

Conclusions

- Network sharing can lower costs and risks for operators and **bring significant benefits** in terms of rollout speed, network coverage and service quality
- In the European regulatory framework, **obligations to share infrastructure can be imposed only under strict conditions**, in order to address specific market failures or public interest objectives
- **Voluntary sharing agreements**, both in fixed and mobile networks are **promoted and incentivised**, while providing for appropriate pro-competitive safeguards
- All agreements continue to be subject to **ex-post competition law** – but there is significant scope for pro-competitive sharing

Thank you for your attention

New **EU telecom** rules for a

Gigabit society

Enhance the deployment of **5G networks**

Ensure **competition** to ease the way for **co-investments** in very high capacity networks

Strengthen the **protection of consumers** using electronic communications

Introduce caps for **#IntraEUcalls**

#EECC

#DigitalSingleMarket