

Telefónica's response to DG COMP's consultation on Green Deal & Competition Policy

November 20, 2020

Telefónica welcomes DG COMP's consultation on Competition Policy supporting the Green Deal to seek changes on current Competition Law framework aimed at promoting green policies and fighting against climate change.

Telefónica is aware of the challenges presented by climate change and is committed to contributing to the EC's strategy under the Green Deal umbrella to become the world's first climate neutral continent by 2050. We strongly believe that digital transformation is one of the key enablers for achieving the Green Deal's objectives, but it needs concrete regulatory measures to achieve this outcome. In particular, competition policy has much to say and contribute to the green transition by simplifying cooperation, merger transactions and state aid aimed at contributing to this very ambitious but necessary goal.

Digitalization and connectivity as a key pillar to the green transition

We do believe that competitiveness and the environment go hand in hand, because if there is no environmental or social sustainability, there is no long-term economic sustainability. In doing so, digitalization must be the common denominator for a green transformation of all sectors, from real estate and energy to drive towards a circular industry, agriculture and prevention of climate change.

Telefónica is fostering a new [Digital Deal](#) to lay the foundations for more digital and sustainable societies and economies. In this sense, we are of the view that economic recovery plan for growth need to be directly linked with green recovery and we are convinced that green transition should come together with digitalization to reduce carbon emissions of all relevant sectors.

In the process of digitalization, ultra-fast fibre and 5G networks have become key to drive the de-carbonization of economies while at the same time reducing the emissions of the digital sector through the use of more efficient network technologies. Research data publish by WEF indicates that digital technologies can help reduce global emissions by 15-35% in the next 10 years. Digitalization can accelerate the green transition and high-capacity, energy-efficient fixed and mobile broadband are key level.

Telefonica is committed to contribute on building inclusive and sustainable connectivity, reinforcing and investing in the very high capacity networks that have shown to be critical for future competitiveness while betting on green networks deployment supplied by 100% renewable electricity. Indeed, the Covid-19 crisis has also shown that networks in some parts of the EU need to be improved, as many operators and networks cannot provide sufficient capacity nor are able to manage network traffic for higher demands.

In terms of energy efficiency, growth in data traffic has decoupled from energy consumption and carbon emissions over the last decade. Indeed, thanks to the processes of energy efficiency set out by telecoms, the higher demand of traffic caused by this crisis has not been reflected in an increase of the energy consumption. This can be explained thanks to more efficient networks and the use of renewable energies. The figures during the coronavirus crisis back up this statement: energy consumption and carbon emissions from telecommunication networks have remained virtually unchanged in recent weeks, despite huge increases in network traffic.

There is overall agreement that the ICT sector's positive enabling effect exceeds the sectors' climate footprint. Services around the Internet of Things (IoT), Cloud or Big Data require a strong digital infrastructure and enable more efficient use of resources across the industry. This includes manufacturing, agriculture, mobility, transport/logistics, healthcare, education, public administration and many more. The GeSi global #SMARTer2030¹ study shows that every 5% increase in access to digital technologies can reduce CO₂ by 1.6%.

For all above explained, we believe that ambitious public and private investments in high-capacity broadband infrastructure with concrete regulation that favour network roll-out, as well as favouring voluntary infrastructure sharing agreements, are key for the green transition and digitalization.

1. STATE AID CONTRIBUTION

Overall, there is a need to set out a framework on state aid control that boosts public funding to projects aimed at contributing to the objectives of the transition to a green economy. In doing so, we are of the view that sustainability criteria should be considered¹ as a positive effect in the assessment of the compatibility of a state aid with the internal market.

Within the EC' strategy to provide financial means required to reach the Green Deal's objective, we believe that part of these public funds should be destined to green transition initiatives that also help to support the European economy. Indeed, all state aids aimed at funding projects that contribute to some extent to fight against climate change and green transition, should foresee an smooth and flexible analysis when balancing their negative effects on trade and competition in the common market with its positive effects of contributing to the economic sustainability.

Among the key enabler projects to this green transition in the telecoms sector, we highly believe that digital infrastructure and ICT solutions should be one of the priority areas for increased investment. On the other hand, the deployment of new mobile high-speed networks in 5G and fibre networks is vital to improve energy efficiency and reduce ecological footprint.

It is by now widely accepted that market forces alone will not be enough to attain the ambitious environmental goals that the EU is setting. Private parties, both on the consumer and producer sides, are increasingly aware of the impact that their actions and decisions have on the fight against climate change. However, even with enhanced transparency and more information, some parties, especially consumers and small firms, will not fully internalise the impact of their decisions on climate change. State aid is a legitimate tool to address that externality, granting subsidies or more generally Public support to make up for the lack of private funding. It is important to emphasize, however, that the assignment of public funds should be designed carefully in order not to create distortions. A particular concern for Telefónica is that subsidies (or more generally Public support) create a bias in the buy or build decisions of our customers.

If subsidies are granted, for example, to finance the digitisation of an economic sector and make it “greener”, the design of the support scheme should be such that for companies in that sector self-supply of connectivity is not favoured compared to the option of externalising connectivity services to a telecom operator. Along the same lines, there should be no bias in favour of some parts of the “digitisation value chain”. For example, subsidising the acquisition of IT equipment but not the upgrade of connectivity could create a bias against cloud solutions (which are much more energy efficient than having servers on premise).

EU Taxonomy

In Telefonica, we appreciate the role of the EU taxonomy as an essential facilitator of the EU Green Deal, with the purpose of channelling long-term, sustainable finance into sustainable activities. This regulatory process can also be observed through competition policy principles and operate more harmoniously with sectoral climate change initiatives, while avoiding creating disincentives for the required massive investment in digital infrastructure. Modern communication networks should be promoted as green infrastructure of sustainable finance.

Sustainable and sustained network investment by the European telecommunication industry is a prerequisite for the digital transformation of the EU. In converse, only a digitalized EU can reach Europe’s ambitious sustainability targets. As the taxonomy regulation will greatly impact the investment activities of networks and further products and solutions, it is of paramount importance that taxonomy criteria for all taxonomy objectives is defined in a clear, comparable and incentive-compatible way.

Criteria for taxonomy-eligibility of business activities around “climate change mitigation” in telecommunication networks should rather establish a reliable basis for investment and incentives to constantly improve the energy efficiency of the networks. To further guarantee relevant entry levels for taxonomy-eligibility, it might be convenient to consider adding a company-level commitment to an overall established standard, on top of the energy efficiency criteria (i.e. through the adoption of “Science Based Targets” and/or a specific minimum share of renewable energy use).

A proper taxonomy framework should facilitate sustainable investment by leveraging stimulus policies with a view to also invest in connectivity infrastructure, i.e. benefits in public sector tenders. Further positive incentives could be tax benefits, fee reductions, preferential regulatory treatment, and benefits for procurement of environmentally efficient ICT solutions.

Especially intelligent and smart ICT products and solutions have a strong impact on resource efficiency by optimizing our customers’ deployment of energy and materials in all steps of the value chain. This ranges, for example, from dematerialization of products, virtualization of networks, promotion of cloud services to re-use of equipment and responsible action on e-waste.

On the other hand, these kind of customer services can also be an enabler for the 2nd objective of the EU taxonomy: climate change adaptation. ICT based solutions are at the core of business activities which contribute improved adaptation to climate change risks. (i.e. weather & climate monitoring and modelling systems, smart agriculture...)

Innovative digital solutions profoundly support the transition towards climate neutrality and circularity. However, to eventually leverage the full potential of digitalization, a more

investment-friendly financial framework is required. To unleash their full potential, we recommend considering these activities as taxonomy eligible:

- a) **Gradually improved efficiency of existing infrastructure:** activities that gradually increase energy efficiency of existing mobile and fixed networks, without moving to new network generations such as FTTH and 5G roll-out (see next bullet). This also includes projects that improve energy efficiency of data centres. Measure encompass e.g. deployment of more efficient equipment, cooling and energy saving software.
- b) **Deploying entirely new infrastructure generations:** activities that enhance efficiency of networks and data centres through new deployments i.e. fibre optic networks, 5G roll-out,... which facilitates switch-off of legacy networks (copper wireline network, 2G, 3G...).
- c) **Investments in renewable energy,** both in terms of self-generation and power-purchase agreements, which contribute to the additionality of the renewable energy supply and the transition towards a zero-carbon energy mix.
- d) Promote **Network Sharing Agreements** to foster the deployment of more efficient telecommunications infrastructure.
- e) **Consider all aspects of resource-efficiency** beyond direct climate impact (i.e. virtualization of data centres as well as circularity aspects like environmentally responsible sourcing, product reuse, increase of post-consumer material, responsible treatment of e-waste...).
- f) **Deployment of digital solutions like Internet of Things (IoT) technologies, Big Data, Cloud and Artificial Intelligence (AI).**

2. ANTITRUST CONTRIBUTION

The need for cooperation to achieve sustainability objectives

Cooperation between European players is nowadays essential to overcome the challenges emerged by digitalisation and boost green policies aimed at achieving both economic sustainability and reducing environmental impact.

As consumers become sensitive to the environmental impact of a product or service, that impact could be a vector of competition for policymakers that would take into consideration. However, the reduction in environmental costs would be limited by the efforts firms could make on their own to develop initiatives or projects to contribute to the green transition. Hence, in a cooperation it will be important to show that the net reduction in environmental costs for the cooperation participants is significantly larger than could be achieved in the counterfactual, is spread across a much larger proportion of the market and therefore would justify the neutralisation of this competitive vector.

In so doing, the current rules on horizontal cooperation should be adapted to ensure a future-proof framework, able to respond to the challenges ahead. The following proposals suggest some modifications to the current framework as well as new proposals for block exemption that would provide full legal certainty for stakeholders when meet certain conditions:

2.1. HORIZONTAL GUIDELINES

❖ **Sustainability criteria should be considered as a pro-competitive criterion in the analysis to boost cooperation agreements for green purposes**

Sustainability criteria should be considered as one of the key elements in the assessment of the legal and economic context of a horizontal agreement to determine whether it falls under 101 (1) TFEU or otherwise its pro-competitive effects justify its exemption under 101 (3) conditions. Therefore, sustainability criteria should be included as accumulative criteria in point 1.2.2 of the Guidelines when evaluating horizontal co-operations under Art. 101(3).

❖ **Sustainability co-operations should be considered pro-competitive:**

Horizontal agreements aimed at reducing the ecological footprint (carbon emissions, energy consumption, recyclability and recycling, reduction of plastics and composting projects), to gain efficiencies and to share infrastructure and costs, as well as certain standards to reduce the environmental impact and/or to increase the commercial viability of environmental projects, should be considered procompetitive.

❖ **Considering efficiency of horizontal cooperation vs unilateral approach**

In the context of digitalisation and globalisation, with a key focus on green politics to struggle against climate change, European companies need to co-operate in a flexible way to achieve the scale necessary to develop innovative products and services as well as to invest in sustainability projects. Nowadays these goals are rarely achieved unilaterally, which makes now even more important now than before the need for European companies to cooperate.

When analysing industry-wide forms of horizontal co-operation, the EC may ask companies to demonstrate why cooperation between several industry actors is necessary. However, the analysis should go beyond whether individual companies can or cannot undertake a project unilaterally, and look at whether the cooperation will:

- reduce the ecological footprint by creating infrastructure efficiencies and lessening energy consumption. The main sources of energy consumption in the telco sector are the overlapping of networks and technologies, rather than the total amount of traffic carried. Indeed, for a given network architecture, the high demand of traffic (that increases double every two years) has not been reflected in an increase of the energy consumption. Consequently, agreements among competitors to carry the same amount of traffic over a reduced number of networks or technologies would greatly reduce energy consumption.
- achieve minimum viable scale in order to compete at global level and create new digital or environmental propositions for consumers and industry.
- allow the emergence of alternatives to the ecosystems created by global digital actors and enhance competition and innovation to digital markets,
- drive improvements in consumer welfare, environmental protection, delivering a single market.

Therefore, any of the positive outcomes outlined above should be considered as pro-competitive and compatible with Article 101 (3) TFEU.

2.2. NEW BLOCK EXEMPTION REGULATIONS (BERs)

A **new block exemption regulation for joint production and commercialisation agreements** is needed. The procompetitive effects of this kind of horizontal cooperations justify their exemption which would provide stakeholders the necessary legal certainty to ensure such kind of horizontal agreements comply with Art. 101(3) under certain requirements. The following kind of agreements should be covered either in this new BER or in a specific BER for each one:

- **Infrastructure sharing agreements:** Network sharing agreements are a usual and effective way for telecom operators to deploy networks across Europe due to their procompetitive effects: substantial efficiencies, costs-savings, reduction of environmental impact, co-investments; as well as the benefits for consumers: increase coverage, innovation, high quality and speeder networks.

In the process of digitalization, ultra-fast fibre and 5G networks have become key to drive the de-carbonization of economies while at the same time reducing the emissions of the digital sector (enablement effect). Moreover, as said beforehand, the Covid-19 crisis has shown that the networks in some parts of the EU need to be improved, as many operators and networks cannot provide enough capacity nor are able to manage network traffic for higher demands. In satisfying all these demands, the huge investment required for network deployment with ambitious expectations from public authorities and consumers regarding roll-out timing and coverage will not be possible to achieve without infrastructure sharing agreements among operators to ensure business sustainability, improve efficiency of energy consumption, reduce environmental impact and satisfy high quality connectivity demand in accordance with regulatory obligations.

- **Data sharing and data pooling agreements:** when aimed at contributing to sustainability goals, this kind of agreements could justify their exemption under certain requirements. For instance, telecom operators are increasingly using Big Data and AI applications to optimize system performance to make networks as sustainable and cost-efficient as possible. The data transmitted by smart meters is used for the targeted implementation of energy efficiency solutions, such as the application of standby mode to limit energy consumption when traffic is slowed down.