

## Article 78f

### Regulatory treatment of new very high capacity network elements

1. Without prejudice to the assessment by national regulatory authorities of co-investment in other types of networks, a national regulatory authority shall not impose obligations as regards new very high capacity networks that are part of the relevant market on which it intends to impose ~~or maintain~~ obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as having significant market power on that relevant market ~~has deployed or is planning to deploy~~, if it concludes on the basis of evidence provided by that operator that the following cumulative conditions are met:

- (a) the deployment of the new network elements is open to co-investment at any point during their lifetime by any other operator with whom the operator competes on the same downstream market offers according to a transparent process and on terms which favour ensure sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;
- (b) access seekers not participating in the co-investment can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;

When assessing co-investment offers and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those offers and processes comply with the criteria set out in Annex IV.<sup>1</sup>

2. When assessing co-investment offers, national regulatory authorities may decide to conduct a market test by consulting potentially interested parties.

3. The regulatory treatment of the new very high capacity networks deployed by the operator referred to in the first paragraph shall depend on whether the offer has been taken up:

(a) Where the offer has been taken up by other operator and the cumulative conditions in the first paragraph are still met, a national regulatory authority shall not impose access obligations;

(b) Where the offer has not been taken up by other operator and the cumulative conditions in the first paragraph are still met, a national regulatory authority may determine -not to impose access obligations;

Article 28

**Radio Spectrum Coordination among Member States**

1. Member States and their competent authorities shall ensure that the use of radio spectrum is organised on their territory in a way that no other Member State is impeded, ~~in particular due to cross-border harmful interference between Member States,~~ from allowing on its territory the use of<sup>2</sup>radio spectrum, ***and in particular of harmonised radio spectrum,*** in accordance with Union legislation, ***in particular especially due to cross-border harmful interference between Member States, including with respect to harmonised radio spectrum.***

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<sup>2</sup> [AM 499 Kumpula-Natri.](#)