

FINAL CA12B

Article 59(3)

The CA covers Art 59(3) and recital 142. All relevant AMs, including AMs 784-788 as well as IMCO xx, CULT 44, fall.

Recitals

(142) Sharing of passive ~~or active~~ infrastructure used in the provision of wireless electronic communications services, ~~or the joint roll-out of such infrastructures~~, in compliance with competition law principles can be particularly useful to maximise very high capacity connectivity throughout the Union, especially in less dense areas where replication is impracticable and end-users risk being deprived of such connectivity. National regulatory authorities should, exceptionally, be enabled to impose such sharing ~~or joint roll-out~~, or localised roaming access, in compliance with Union law, ***if that possibility has been clearly defined-established in the original conditions for the granting of the right of use and*** they demonstrate the benefits of such sharing ~~or access~~ in terms of overcoming ~~very significant~~ ***insurmountable economic or physical obstacles and access to networks or services is therefore severely deficient or absent*** barriers to replication and of addressing otherwise severe restrictions on end-user choice or quality of service, or both, or on territorial coverage, and taking into account several elements, including in particular ***the need for coverage along major transport paths, choice and higher quality of service for end-users as well as***¹ the need to maintain infrastructure roll-out incentives. ***In ~~those circumstances where~~ there is no access to 5G technologies by end-users-is-absent, and sharing of passive infrastructure alone does not suffice to address the situation, the national regulatory authorities should be able to impose obligations on the sharing of active infrastructure. ~~Any such obligations shall be limited to the minimum necessary.~~***²³

Article 59(3)

3. Member States shall ensure that national regulatory authorities have the power to impose on undertakings providing or authorised to provide electronic communications networks obligations in relation to the sharing of passive or active infrastructure ***or*** ; obligations to conclude localised roaming access agreements, or the joint roll-out of infrastructures if directly necessary for the local provision of services which rely on the use of spectrum, in

1 Techmeet 14/7

2 DR AM 19_Updated after 28/6 Shadows and again after 7/7 techmeet. DLA input.

3 Shadows 11/7

compliance with Union law **and provided *that***⁴ ***no viable and similar alternative means of access to end-users is made available to any undertaking on fair and reasonable terms and conditions***, where it is justified on the grounds that,

- (a) the replication of such infrastructure would be economically inefficient or physically impracticable, and
- (b) the connectivity in that area, including along its main transport paths, would be severely deficient, or the local population would be subjected to severe restrictions on choice or quality of service, or on both.

National regulatory authorities shall have regard to:

- (a) the need to maximise connectivity throughout the Union, ***along major transport paths*** and in particular territorial areas, ***and to the possibility to significantly increase choice and higher quality of service for end-users***;⁵
- (b) the efficient use of radio spectrum;
- (c) the technical feasibility of sharing and associated conditions;
- (d) the state of infrastructure-based as well as service-based competition;
- ~~(e) the possibility to significantly increase choice and higher quality of service for end-users;~~
- (f) technological innovation;
- (g) the overriding need to support the incentive of the host to roll out the infrastructure in the first place.

Such sharing, access or coordination obligations shall be subject to agreements concluded on the basis of fair and reasonable terms and conditions. In the event of dispute resolution, national regulatory authorities may inter alia impose on the beneficiary of the sharing or access obligation, the obligation to share its spectrum with the infrastructure host in the relevant area.

4 [DLA input](#)

5 id