CharlesRussell Speechlys

Network and Facilities sharing

Balancing the risk and reward

The future of sharing

Navigating the complex waters of negotiating network facilities sharing arrangements can bring significant benefits. It remains key, though, to ensure that inherent legal and regulatory risks are managed effectively when negotiating and concluding arrangements.

Other relevant experience

Our TMT sector focussed team also has significant expertise in advising throughout the EMEA region on numerous managed services, outsourcings, joint ventures, and potential divestment/exit mechanisms which may be contemplated in respect of any operator owned Tower Company, such as strategic stake disposal and/or IPO.

Overview

Strategic sharing initiatives continue to present significant cost-saving opportunities for operators, whether through collaborating with market competitors or through tie-ups with independent towers or facilities providers.

The scale of the risk that an operator may have to assume to reap the capex/opex savings reward may well vary depending on the overall nature of the sharing arrangement - whether a sale and leaseback arrangement (where the operator will have a better bargaining position); or whether the operator is seeking managed capacity from an established towers company or service provider (who is likely to be less forthcoming); or if the operator is entering into joint venture with another competing operator (rather than a tower company).

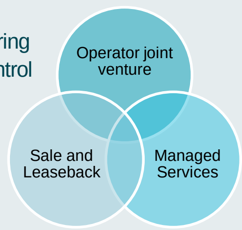
Specialist expertise

A deeply experienced team, including whilst at previous firms, advising operators, all UK tower-sharing deals for the leading UK towers company and investors/financiers on a broad range of sharing initiatives, both in developed and developing markets, in particular, advising:

- Arqiva, the leading UK transmissions towers company, on establishing a consolidated 4G telecoms network by Vodafone, Telefonica (O2) and their joint venture company, Cornerstone Telecommunications Infrastructure Limited (CTIL); and a consolidated 4G/3G network by Everything Everywhere following the T-Mobile/Orange merger.
- Arqiva on the establishment of a consolidated 3G telecoms network by TMobile (UK) Limited, Hutchison 3G UK Limited and their joint venture company, Mobile Broadband Network Limited.
- Leading pan-African mobile operator on preliminary structuring and legal issues in connection with a proposed sale and leaseback of its pan-African towers portfolio.
- Leading pan-African mobile operator on a proposed joint venture with a market competitor to share network infrastructure.

What type of sharing?

- passive/active RAN sharing
- operator investment/ control



- Independent TowerCo
- Build-To-Suit

- end-to-end / redundancy
- SLA/ liquidated damages

charlesrussellspeechlys.com

Risk management - key strategic issues

Certain issues are highlighted here relating, in particular, to the sale and leaseback of a towers portfolio, whereby an operator transfers towers to an independent TowerCo and leases them back (or, otherwise, outsources its towers operations).

Structure: A number of initial business critical questions will need to be answered, taking account of jurisdiction, commercial drivers (e.g. cost savings, speed to market of new technologies/networks) and tax considerations, e.g:

- Will assets be transferred? If so, to an independent SPV in which the operator retains a stake/to be exited subsequently, a joint venture with a market competitor(s)? Will assets be leased back?
- Alternatively will a managed services agreement or outsourcing agreement be entered into with a specialist provider?
- Is passive or active infrastructure sharing contemplated? How "deep" will sharing be - e.g. all passive masts, sites, ducts? MSS/spectrum active sharing?

Legal/Commercial risks: Business driven risks to be mitigated include:

- *Charges*: Opex/capex cost certainty – e.g. fixed maximum charge per tower, as well as other built-in protections around inflationary increases and discounts for decommissioning?
- *Future Proofing/Additional Sites*: e.g. leveraging the TowerCo's scale to expand the operator network, technology/equipment neutral installations, Build-to-Suit, e.g. for Greenfield operations and/or network upgrade.
- *TowerCo Controls*: including control/oversight of passive infrastructure and restriction on active sharing.
- *Performance Regime*: e.g. quality assurances and compensation for any failures around key performance indicators, such as supply of power to the site, failure of key sites etc.
- *Term & Termination*: long term arrangements (10 to 20 years or longer) with limited termination rights. Other considerations include renewal and exit/handover provisions (e.g. buy-back of infrastructure).
- *Competition/regulatory approvals*: depending on the market, various government, regulators and other interested stakeholders' oversight may need to be managed, particularly competition interest in asset transfer/spectrum sharing in terms of merger implications.
- *Asset valuation/identification*: a formal asset register may not exist and informal inventories/purchase orders may need to be verified/ valued independently.

Dhana Doobay
Senior Counsel
T: +44 (0)20 7203 5087
dhana.doobay@crsblaw.com

Originally published May 2014.