

# Robust contractual agreements underpin the success of telecoms infrastructure carve-outs

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Makram Chehayeb

The number of telecoms infrastructure carve-outs (either of existing infrastructure to an infraco or similar deals relating to financing of future roll-outs by an infraco) has increased recently. Operators are seeking to create additional value for their shareholders and infrastructure investors are seeking to invest in projects with predictable long-term returns. The success of these transactions relies on a robust review of the market and technical and business plans and also depends on the negotiation of numerous contracts between infracos, operators and suppliers. It is crucial that these contracts and the key clauses are reviewed by expert advisers with the appropriate commercial and technical knowledge. Analysys Mason has considerable experience in this area.

Multiple contracts define the relationship between the infraco, the operator and their suppliers. The set of key contracts is similar across the asset classes that are being carved out (mobile towers, fibre assets, data centres), but some contracts are specific to brownfield transactions whereas others are specific to greenfield transactions.

**Figure 1: Non-exhaustive list of key contractual agreements relevant to carve-out transactions**

Contract	Type of transaction	Parties to the contract
Shareholder agreement	Brownfield and greenfield	Infrastructure investors and operator
Share purchase agreement	Brownfield	Infraco and operator
Asset purchase agreement	Brownfield	Infraco and operator
Master service agreement	Brownfield and greenfield	Infraco and operator
Roll-out/deployment agreement	Greenfield	Infraco and operator or infraco and supplier or tripartite agreement
Maintenance agreement	Brownfield and greenfield	Infraco and operator or infraco and supplier or tripartite agreement

Source: Analysys Mason

**Shareholder agreement.** This agreement defines the rights and obligations of an infraco’s shareholders, the issue and distribution of shares, minority shareholder protections and the constraints (if any) regarding future changes in the shareholding structure. This agreement typically does not require material inputs from commercial/technical advisers.

**Share purchase agreement.** This agreement defines the transfer of all, or part of, the shares of the carved-out infraco to the infrastructure investor. The agreement includes the legal definitions of terms (some of which relate to the assets being transferred) and could include appendices that enumerate the assets included within the infraco’s perimeter and the remainder of the carve-out plan that is envisaged (if the carve-out is not completed yet). The technical/commercial adviser should play a key role in reviewing the consistency of relevant legal definitions in the contract and ensuring that the asset and carve-out plan schedules are in line with the agreed transaction perimeter.

**Asset purchase agreement.** In situations where the carve-out plan is not expected to be completed when the infrastructure investor and the operator sign the agreement, an asset purchase agreement is required to define the terms of the transfer of the remaining assets. The clauses and schedules in the contract that are particularly important for the technical/commercial adviser to review relate to the perimeter of assets being transferred. It is crucial that the asset perimeter is defined correctly, in line with the agreed transaction perimeter, and that the definition does not omit important assets that would be required for the operations of the infraco (for example, fibrecos would need to know if ducts and poles are partially included or fully included in the perimeter, or towercos would need to know if shelters are included etc.)

**Master service agreement.** This agreement defines the services offered by the infraco to the anchor tenant operator and the terms on which such services are offered. Key clauses in the master service agreement that require the technical/commercial adviser's review include the duration and renewal terms of the agreement, the volume commitments by the operator, the scope and prices of the different services, the potential indexation mechanism, the sharing of regulatory risks (where applicable), service-level agreements (SLAs) and contractual penalties. Typically, infracos aim to maintain a lean structure and hence tend to outsource most of their operations to the operator or other suppliers. In that context, it is also critical to review the infraco's obligations (SLAs) that are defined in the master service agreement and ensure that these are appropriately transferred to other contracts with the providers to which those services will be outsourced.

**Roll-out/deployment agreement.** This agreement defines the terms that govern the deployment of physical infrastructure. The deployment agreement could be an agreement between an infraco and the anchor tenant operator, whereby the operator subcontracts the deployment to one or more suppliers and provides the services on a turnkey basis to an infraco. Alternatively, the contract could be signed between an infraco and the supplier(s) directly or in some cases the agreement could be a tripartite agreement between an infraco, the operator and the supplier(s). In all cases, the agreement will contain key clauses that the technical/commercial adviser should review. These include:

- the volume commitments to assess the risk relating to the pace of roll-out as defined in the business plan
- the price mechanism (for example, fixed price per premises for FTTH or per base station type for towercos, or a variable price structure) to assess the risk of cost overruns
- the SLAs by which the supplying party should abide (and relevant contractual penalties)
- the process by which a roll-out target is defined, and the high- and low-level design processes.

**Maintenance agreement.** Maintenance is one of the key services that the infraco generally outsources. The maintenance agreement typically includes clauses relating to the scope of the maintenance services, the prices at which these are offered and the pricing mechanism (fixed or variable) and the indexation of these prices. The agreement also includes SLAs and contractual penalties. This is another contract that should be critically reviewed by the technical/commercial adviser to ensure that the scope of services is properly defined, the prices are in line with what has been assumed in the business plan and that the SLAs and contractual penalties are in line with industry best practices and allow for the successful operations of the infraco.

In all carve-out transactions, contractual negotiations are a key component of the binding offer proposal submitted by bidders. They can make or break a deal. At Analysys Mason, we can complement our unmatched experience of commercial and technical due diligence projects in the telecoms industry with an in-depth contractual review. We have, in fact, helped many clients to critically review and successfully negotiate commercial and technical clauses in all of these key contract types, paving the way for a fruitful and successful long-term relationship between the operator and the infraco.