



MVNO Europe Response to ČTÚ Consultation

Draft of the Invitation to Tender for Granting of the Rights to Use
Radio Frequencies to Provide Electronic Communications Networks
in the 700 MHz and 3440–3600 MHz Frequency Bands

4 May 2020

This contribution is presented in English. A Czech translation will be filed in the next few days.

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I. About MVNO Europe

1. MVNO Europe represents various types of Mobile Virtual Network Operators (MVNOs), with different business models, addressing consumers, business users (including start-ups/scale-ups)/medium/large businesses, the public sector, ICT service/systems integrators, and Internet of Things (hereafter 'IoT') markets, etc. <http://www.mvnoeurope.eu/members>
2. MVNOs currently represent +/- 10% of SIM cards in the European Union.
3. The term "virtual" refers to the fact that MVNOs do not control radio frequencies and related mobile physical infrastructure (antennas, base stations etc.). However, MVNOs do control the necessary hardware/software/resources to provide wireless/mobile services and may own other telecom infrastructures depending on the extent of their business model.
4. Our members provide mobile-only offers, fixed-mobile convergent offers and offers incorporating audio-visual media content, financial services, machine-to-machine communications, embedded data SIMs for tablets, laptops and other devices, connected mobility for vehicles, etc. Some of our members are also active on wholesale markets as MVNE (E=Enabler) / MVNA (A=Aggregator) supporting other companies and brands that provide wireless/mobile services. MVNO Europe does not represent branded resellers.
5. MVNOs contribute strongly to innovation and competition and provide clear Business to Consumer (B2C) and Business to Business (B2B) end-user benefits.
6. MVNOs also contribute to financing mobile network infrastructure through payment of wholesale charges which assure revenues to Mobile Network Operators, whilst avoiding costly duplication of network assets.

II. Introduction and Key Comments

7. MVNO Europe again (confirming points made in our response to the 2019 consultation) warmly welcomes the fact that the ČTÚ proposes to include a wholesale access obligation in the spectrum licences of 700 MHz licensees (Section 8.2 of the main body of the draft Tender document, Annex 2A – Section 2 for incumbent operators, Annex 2B – Section 1 for new entrant operators). We also welcome the ČTÚ's explicit references to the 2019-2020 examination of the wholesale mobile access market in application of the Significant Market Power regime (results of the three-criteria test and preliminary analysis).
8. We confirm that we consider a wholesale access obligation necessary in the Czech Republic, including in the specific context of radio spectrum assignment, especially in light of the fact

that the market share secured by independent MVNOs (i.e. MVNOs whose shareholding is not (in full or in part) controlled by the three main MNOs) remains marginal in the Czech Republic to-date.

9. We urge the ČTÚ to maintain wholesale access obligations in the final text of the tender documentation. Imposing such obligations is clearly in accordance with powers granted to national regulatory authorities/competent authorities in application of the existing EU regulatory framework, notably Art. 5.2(a) of the Radio Spectrum Policy Programme¹, and Art. 52 of the European Electronic Communications Code². Any arguments to the contrary made in the context of this consultation should be rejected by the ČTÚ.
10. We regret that the wholesale access obligation still explicitly contains the words "*for the purpose of provision of a high-speed Internet access service*". We commented specifically on this point in our response to the 2019 consultation. In MVNO Europe's view, the wholesale access obligation needs to be completely service-agnostic, i.e. it should Allocation holders to provide wholesale access without in any way pre-specifying the scope of activities of the access takers (Applicants Interested). We also regret that the wholesale access obligation is not applied to the 3440-3600 MHz band. We note in this regard that the French NRA (ARCEP) has taken a decision on 21 November 2019 containing very clear wholesale (Full MVNO) access commitments to be entered into by the MNOs seeking preferential financial terms on initial 50 MHz blocks in the 3.4-3.8 GHz band³ (and all 4 French MNOs have applied accordingly, confirming that they are prepared to take on those wholesale access commitments⁴).

III. Specific Comments

11. MVNO Europe confirms that it particularly welcomes that Annexes 2A and 2B of the draft tender documentation again entail a signed commitment to be entered into by Allocation Holders for 700 MHz spectrum, addressing necessary items for effective wholesale access such as:
 - a) The scope, quality and geographic coverage of wholesale access must not be worse than the scope, quality and geographic coverage provided by winning 700 MHz Allocation Holders to their own customers; (as stated above and below, MVNO Europe considers that

¹ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:081:0007:0017:EN:PDF>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2018:321:FULL&from=EN>

³ <https://en.arcep.fr/news/press-releases/p/n/5g-10.html>

⁴ <https://en.arcep.fr/news/press-releases/p/n/5g-13.html>

connecting this to high-speed Internet services needs to be avoided; wholesale access needs to be service-agnostic)

- b) Wholesale access must be granted regardless of the scope of applicants' own infrastructure and (OSS/BSS) systems, and concepts such as MVNE, Full MVNO, and MVNO (Light MVNO) are recognised.
 - c) It is also recognised that good faith negotiations on other wholesale access models must be entered into (including for broader scope of wholesale access);
 - d) The fact that wholesale access takers are explicitly entitled to provide both retail services and their own wholesale services to third parties;
 - e) A clause preventing margin-squeeze, under ČTÚ supervision; we appreciate the precise reference to the margin-squeeze testing methodology determined by the ČTÚ;
 - f) A more explicit clause requiring the explicit publication of two separate reference offers: one of the Full MVNO type, and one of the Light MVNO type, under ČTÚ supervision;
 - g) A dispute-settlement mechanism, with the ČTÚ acting as the arbiter; (we do have concerns about the scope of ČTÚ dispute-resolution powers, as these seem to be restricted to the consistency of a draft agreement with the relevant reference offer or the conditions of the commitment, whilst broader/different aspects of a wholesale access dispute could arise);
 - h) Sanctions in case of MNOs' non-compliance with wholesale access obligations.
12. We have some concerns, and we see opportunities for improvement of the formulation of wholesale access obligations placed on tender winners, notably as follows:
- a) The wholesale access obligation should extend to 3440-3600 MHz spectrum, which is offered in this tender. We believe that the ČTÚ should at least include an opportunity for bidders to make a voluntary commitment to renew and extend wholesale access across ALL their spectrum holdings (those in the past and those part of this tender), and perhaps a reward (e.g. in terms of lower spectrum fees) could be given to those who do make such commitments, including extension of wholesale access to network capacity based on the 3440-3600 MHz band.
 - b) The wholesale access obligation is framed in terms of enabling the provision of 'high-speed Internet access service'. We consider this highly problematic, as it refers to a specific service (Internet Access Service). MVNO Europe strongly believes that this needs to be changed

and become more generic, at least to refer to 'mobile data', to enable /MVNEs/Full MVNOs to use the wholesale access for other purposes, and indeed to use it for any purpose they wish. It is particularly important to enable MVNEs/Full MVNOs to provide non-Internet 5G network services intended to serve specific industry and public sector segments (often referred to as 'network slices' and 'verticals', e.g. factories and business campuses ('Industry 4.0'), connected mobility, connected devices of all kinds, smart metering, smart cities, healthcare, etc. which require dedicated and tailored services (often referred to as 'specialised services')). Furthermore, it should not be excluded (in fact it should be promoted) that wholesale access is used by MVNEs/Full MVNOs to gain customers in the area of Internet of Things (IoT), to support Czech innovative companies, and to support pan-European services and applications. Finally, if an MVNE/Full MVNO would wish to use its wholesale access to provide more traditional services, including voice and sms, this should also be unrestricted by the wording of the wholesale access obligation/commitment. Note: MVNO Europe does explicitly welcome the concept that Applicants Interested may ask for a different (including broader) scope of access, but we think that it is key that the scope is not just narrower (e.g. for 'very light MVNOs/service providers/resellers), but that it needs to be totally clear that access can be requested independently of the ultimate offer, in particular (in part) the provision of ANYTHING ELSE than high-speed Internet/voice/sms. The Applicants Interested need to be able to request any form of wholesale access, to underpin any retail or wholesale innovative services they invent.

- c) The wholesale access obligation lasting only until 24 February 2026, and the proposed contract duration of minimum 2 years both are very short, and may create uncertainty discouraging MVNEs/Full MVNOs from making the necessary significant investment in a MVNE/Full MVNO platform, which is more suited to enabling genuine competition by MVNEs/Full MVNOs. We recommend extending the wholesale access obligation duration to the entirety of the period of spectrum assignment, and the minimum contract duration to 4 years (at the option of the wholesale access seeker to agree to a shorter contract if they so wish, e.g. to be able to switch more readily between wholesale access providers). Note: Some MVNO Europe members have been able to sign non-exclusive contracts with multiple domestic host MNOs, which has greatly increased their ability to secure improved technical and economic wholesale access conditions. We therefore recommend that the ČTÚ adds a condition that wholesale access contracts cannot be exclusivity contracts, unless both parties explicitly choose to enter into an exclusivity contract, and their willingness to do so is verified independently by the ČTÚ.

- d) The non-discrimination obligation seems mainly framed as an 'external' non-discrimination obligation, i.e. to prevent the spectrum holder from discriminating between individual third parties. We think that formulating an explicit 'internal-external' non-discrimination obligation, which covers what the spectrum holder provides to itself, and what it provides to third parties, is even more important (going beyond the scope, quality and geographic coverage aspects of wholesale access).
- e) The reference offer provisions, and contract negotiation provisions, seem to allow in practice a severe time lag (publication of reference offer only at the time of MNO commercialisation of its own retail services; 3 months from that date to reach a contract with a wholesale access taker; 3 months also if the request is different from what is contained in the reference offer, with 'stop-clock') between the spectrum holder launching its own services, and enabling a wholesale access taker to effectively launch its own retail or wholesale services. We think that these time lags should be avoided by tighter wording of the wholesale access obligation, basically to enable simultaneous launch of services by the Host MNO and MVNEs/Full MVNOs (such conditions have been imposed in fixed markets, supported by European Commission Recommendations). We understand that time lag/technology lag has been a factor holding back MVNOs in the Czech Republic and elsewhere in the past. Such time/technology lag has damaged competition, and end-user interests. It should be avoided going forward; the ČTÚ can and should be an active regulatory authority in this area.

13. MVNO Europe has a long-standing description of what Full MVNO access constitutes. We provide it hereafter, distinguishing the technical aspects from the commercial aspects.

Full MVNO access – in technical terms

In technical terms, we believe that the following conditions must be fulfilled in order to achieve Full MVNO access, and thereby achieve the necessary technical independence of the MVNO from the Host Operator(s):

- a) Rights-of-use over numbering resources granted by the national regulatory authority directly to the Full MVNO, including: IMSI mobile network code, MSISDN number range, non-geographic numbers, signalling point codes, operator ID code/number portability code, etc.
- b) Own SIM cards, including control over all SIM card functionalities.

- c) Control over all network elements, with the exception of the Radio Access Network (RAN), and – at the Full MVNO’s discretion – with the exception of backhaul from the RAN. This implies that the Full MVNO has its own HLR (Home Location Register), MSC (Mobile Switching Centre), SMSC/MMSC (SMS and MMS Switching Centre(s)), SGSN/GGSN (Mobile Data network elements).
- d) Control over all OSS/BSS (Operations Support and Business Support systems), billing system, customer care system, ability to provision post-paid and pre-paid customers, etc.
- e) All calls, SMS/MMS, and data sessions are delivered to the Full MVNO’s equipment (i.e. none stay ‘on-net’ of the Host MNO, none are routed end-to-end by the Host MNO).
- f) Full MVNO benefits from the same RAN technologies (e.g. 2G/3G/4G LTE + LTE-M/NB-IoT and 5G) and the same RAN coverage as the Host MNO.

Note: In some cases, the Full MVNO may wish to ‘outsource back’ the ownership and/or management of certain technical resources or technical processes to the Host MNO, or to outsource them to another provider. This is acceptable as long as it is clear that it is done by the Full MVNO on a fully voluntary basis, without coercion or operational/financial pressure from the Host MNO, and likely under a contract that is separate from the wholesale access contract.

Full MVNO access – in commercial terms

In commercial terms, we believe that the following conditions must be fulfilled in order to achieve Full MVNO access, and thereby achieve the necessary commercial independence from the Host Operator:

- g) Full MVNO unequivocally owns its customer base, and is able to migrate that customer base to another Host MNO, to its own network, to sell that customer base, etc.
- h) No restrictions on type of services provided, and on the type of customers (retail and wholesale) to whom services are provided.
- i) No restrictions on the setting of retail prices to customers and wholesale charges to third parties.
- j) No restrictions on the receipt of wholesale call / sms termination payments.
- k) No restrictions on the Full MVNO to organise its own international roaming.

- l) No restrictions on the ability to contract with any third parties (in particular no exclusivity; the Full MVNO must be able to use multiple domestic Host MNOs and international roaming partners if it so wishes).
14. On the basis of its experience, MVNO Europe considers that where regulatory obligations are imposed on MNOs towards MVNOs, these should include internal-external non-discrimination and transparency principles not only on quality, but also on the wholesale access charges, and specific safeguards against margin-squeeze, in order to ensure that MVNOs are able to replicate ALL retail/channel offers marketed by the Host MNO at all times, without facing a margin-squeeze situation.
15. In addition, there is a need for specific safeguards for innovation, specifically the prohibition of technical and commercial restrictions as set out above, and a guarantee that MVNOs will be able to benefit from the same RAN technologies (e.g. 2G/3G/4G LTE + LTE-M/NB-IoT and 5G) and the same RAN coverage as the Host MNO, at the same time as the Host MNO. This is important because we are aware of cases where, for example, 4G was offered to MVNOs several years after the Host MNO started providing it to its own retail customers. Time lags on 5G MVNO access have already been announced: for example, at the May 2019 MVNOs World Congress in Amsterdam, an MNO announced its 5G retail network launch. When questioned about MVNO access, it answered that this would probably be forthcoming 12 to 18 months later.

IV. MVNO Europe Contact Details

Should you require any clarifications or further information on the elements and positions set out by MVNO Europe in this document, please contact:

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