



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 3400–3600 MHz Frequency Bands

26 July 2019

This contribution is presented in English. If it is necessary for this contribution to be presented in the Czech language in order for it to be taken into consideration by the ČTÚ, we will provide a Czech translation in the short term. Please confirm with us whether a translation is required.

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I. About MVNO Europe

1. MVNO Europe represents various types of Mobile Virtual Network Operators, with different business models, addressing retail consumers, business users, the public sector, machine-to-machine (M2M) and Internet of Things (IoT), etc. <http://www.mvnoeurope.eu/members>
2. Our members provide mobile-only offers, fixed-mobile convergent offers and offers incorporating audio-visual media content, financial services, machine-to-machine communications including connected cars, embedded data SIMs for tablets, laptops and other devices, etc. Our members are also active on wholesale markets as MVNE (Enabler) / MVNA (Aggregator). MVNO Europe does not represent branded resellers.
3. MVNOs currently represent +/- 10% of SIM cards in the European Union taken as a whole. MVNOs have secured significantly larger market shares in several EU Member States.
4. MVNOs strongly contribute to competition and provide clear Business to Consumer (B2C) and Business to Business (B2B) end-user benefits. MVNOs also contribute to financing mobile networks through payment of wholesale charges which assure revenues to mobile network operators, whilst avoiding costly duplication of network assets.

II. Introduction and Key Comments

5. MVNO Europe 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).
6. We consider this necessary in the Czech Republic, 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 to-date.
7. 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.

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>

III. Specific Comments

8. MVNO Europe particularly welcomes that Annexes 2A and 2B of the draft tender documentation entail a signed commitment to be entered into by winning bidders, 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 bidders to their own customers;
 - b) Wholesale access must be granted regardless of the scope of applicants' own infrastructure and (OSS/BSS) systems, and concepts such as Full MVNO and MVNE are recognised, i.e. the access taker has the freedom to only take access to the radio network of the winning bidders, whilst it is also recognised that good faith negotiations on other wholesale access models must be entered into (e.g. lighter MVNO models and branded reseller models);
 - c) The fact that wholesale access takers are explicitly entitled to provide both retail services and their own wholesale services to third parties;
 - d) A clause preventing margin-squeeze for voice/sms/data, under ČTÚ supervision;
 - e) A clause requiring the publication of a reference offer for Full MVNO/E access, under ČTÚ supervision;
 - f) A dispute-settlement mechanism, with the ČTÚ acting as the arbiter;
 - g) Sanctions in case of MNOs' non-compliance with wholesale access obligations.
9. 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 does not appear to extend to 3400-3600 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 3400-3600 MHz band.
 - b) The wholesale access obligation seems to be framed in terms of enabling the provision of 'high-speed Internet access' (the purpose'). 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 MVNO/MVNEs to use the wholesale access for other purposes, and indeed to use it for any purpose they wish. It is particularly important to enable MVNOs/MVNEs 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 MVNOs/MVNEs 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 MVNO/MVNE 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.

- c) The proposed contract duration of minimum 2 years seems short, and may create uncertainty discouraging MVNOs/MVNEs from making the necessary significant investment in a Full MVNO/MVNE platform, which is more suited to enabling genuine competition by MVNOs/MVNEs. We recommend extending its 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 third parties. We think that formulating an explicit 'internal-external' non-discrimination obligation, which covers what the spectrum holder provides to itself, and 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 time lag (possibly of many months) 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 MVNOs/MVNEs (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.

10. 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).
11. 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.
12. 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. Relationship with Three-Criteria Test, and SMP Regulation

13. The elements provided in this MVNO Europe response are without prejudice to our position on economic regulation (see our response of 8 April 2019 to ČTÚ's consultation).
14. We have noted with disappointment the European Commission's comments letter on the ČTÚ's notification of its draft findings on the three-criteria test for the wholesale mobile access market. In particular: (i) we disagree with the European Commission indicating that (hypothetical) MVNOs could be a factor for Criterion 1 (high and non-transitory barriers to market entry), (ii) we disagree with the European Commission treating MNO-owned MVNOs/brands as genuine competitors for the purposes of Criterion 2 (competition behind barriers to entry), (iii) we are disappointed to see the European Commission 'talking-up' the market share of MVNOs while ignoring the marginal role played genuinely independent MVNOs, not to mention Full MVNOs/MVNEs, on the Czech market to-date., and (iv) we note that the Czech Market is characterised by high retail prices generally – adding Norway/Iceland/Liechtenstein in the European Commission's benchmark just serves to increase the average. The European Commission also failed to reflect its own DESI 2018 reporting, which clearly showed that the Czech Republic is among the EU Member States with the highest prices and the lowest mobile data allowances at specific price points.
15. We applaud the ČTÚ press release of 24 July 2019³ and subsequent reporting and citations in the Czech press, indicating that the ČTÚ intends to proceed with proving conclusively that regulatory action is needed.
16. We agree that regulatory action is needed to boost competition in the Czech Republic, including by enabling Full MVNOs/MVNEs to become genuine competitors, including their ability to go in head-to-head competition with MNOs, for traditional as well as for innovative and new services, tailored to end-user needs (and serving wholesale markets where relevant). This includes all

³ <https://www.ctu.cz/tiskova-zprava-zprava-ze-zasedani-rady-ceskeho-telekomunikacniho-uradu-ve-30-tydnu-2019>

Internet of Things (IoT) and 5G opportunities going forward. MVNOs/MVNEs can and will help to make the market better for end-users, and make the Czech economy as a whole more competitive in Europe and on the global stage.

17. MVNO Europe therefore strongly encourages the ČTÚ to proceed, in parallel with the spectrum tender terms, to ensure a competitive Czech electronic communications market, by means of regulatory intervention where justified to promote (currently weak) competition, and to preserve and support end-user interests (both Business-to Consumer (B2C) and Business-to-Business (B2B) – including public sector) interests.

V. 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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