



Revision of the Guidelines on State aid for broadband networks

MVNO Europe response

with reference to the draft European Commission Communication
entitled

Guidelines on State aid for broadband networks

11 February 2022

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 (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, IoT in a broad sense, 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. Specifically, MVNOs pay for each voice call minute, for each SMS, for each Mb of mobile data. A portion of MVNOs' traffic is traffic that would otherwise not exist on Mobile Network Operators' networks, because MVNOs often serve market segments that Mobile Network Operators are not well equipped to serve, and MVNOs develop innovative services that generate entirely new types and amounts of traffic. Therefore, MVNOs help Mobile Network Operators to grow their overall business, and contribute to Mobile Network Operators' return on investment, including the recovery of the fees that they pay for radio spectrum.

II. Introduction and Important Note – Focus on Mobile Communications

7. MVNO Europe welcomes the opportunity to respond to the European Commission consultation on the revision of the Guidelines on State aid for broadband networks.
8. MVNO Europe notes with interest that the European Commission's proposals amount to a major extension of the 2013 Guidelines, to include for the first time mobile access networks and take-up stimulation measures, including for mobile communications.
9. Whilst MVNOs do not deploy the mobile Radio Access Network (RAN), but lease this resource (and where applicable other resources such as backhaul) from Mobile Network Operators, there are clear areas of interest for MVNOs in relation with State aid that will potentially be granted to Mobile Network Operators, and also in relation with take-up stimulation measures (e.g. vouchers for mobile communications subscriptions).
10. **The elements contained in this response solely concern mobile networks, and take-up stimulation measures relating to mobile communications. Fixed ultrafast networks are not addressed.**
11. Where reference is made to the text contained in the draft COMMUNICATION FROM THE COMMISSION: Guidelines on State aid for broadband networks, we use the term 'Proposed Guidelines'.

III. Eligibility for State Aid

12. MVNO Europe has taken careful note of the conditions put forward by the European Commission relating to compatibility with the Treaty, and the purpose of State aid control. We agree, and we wish to place particular emphasis on the provisions contained in *paragraph 10* of the Proposed Guidelines. Any state intervention should limit as much as possible the risk of crowding out private investments, of altering commercial investment incentives and ultimately of distorting competition contrary to the common interest.
13. In this regard, MVNO Europe is particularly concerned with State aid (as well as take-up measures) **potentially altering the dynamics of competition on mobile markets, e.g. Mobile Network Operators benefiting from financial support but not making their subsidized networks available on a wholesale basis to MVNOs. There is a risk is that Mobile Network Operators, as beneficiaries of State Aid, could privatize the benefit, without appropriately sharing it with ALL operators. In particular, according to the Proposed Guidelines, only other Mobile Network Operators may in practice be able to benefit from the wholesale access obligations, but not MVNOs. This is the case**

because the wholesale access solutions put forward appear to be only suitable for other Mobile Network Operators, and do not include light and full MVNO access.

14. This point is important from MVNO Europe's perspective, because the current state of affairs is that some MVNOs are faced with:

- a) Refusal to supply by Mobile Network Operators (notably of full MVNO access and access for the purposes of provision of domestic and pan-EU Internet of Things).
- b) Unacceptable delays during technology transitions, for example:
 - i) Widespread +/- 18 months delay to access 4G after the Mobile Network Operator's own retail 4G launch, and many years longer in the largest EU Member State;
 - ii) Delay of VoLTE integration, which is still problematic today in several EU Member States;
 - iii) Denial of access to 5G, or supply of 5G access on economically unattractive terms.
- c) Particularly unfavourable treatment of MVNOs focused on the Internet of Things.
- d) Wholesale pricing structures and margin-squeeze practices, aimed at relegating MVNOs to serving low-end market segments.
- e) Issues with wholesale roaming.

15. Based on the above, MVNO Europe advocates that **eligibility of State aid for Mobile Network Operators should be subject to three additional conditions:**

- a) Only Mobile Network Operators making a **signed commitment to provide light and full MVNO access across their entire network** on fair and reasonable terms should be eligible for State aid, **even if the State aid concerns only portions of their network.**
- b) Where State aid is granted, wholesale access must be provided. This is a key principle of the Proposed Guidelines, including for mobile access networks, which MVNO Europe fully supports. However, the forms of wholesale access to mobile networks contemplated (in [paragraph 139 and footnote 97](#) of the Proposed Guidelines) appear to be only suitable for other Mobile Network Operators to benefit from. **Paragraph 139 and footnote 97 of the Proposed Guidelines should be extended to also include wholesale access**

for MVNOs: (i) in the form of light MVNO and full MVNO¹ modalities, (ii) on a non-discriminatory basis (e.g. in terms of the availability of technology generations, RAN coverage, etc.), and (iii) on economic terms that guarantee the absence of margin-squeeze.

- c) Where State aid is granted to a Mobile Network Operator to **upgrade** its network (for instance to **5G Stand Alone, or to 6G** in the future), such an upgrade would likely be national in scope (or contributing to it ultimately being national in scope). Therefore **in these circumstances**, particular attention is needed to ensure that **wholesale access provided to MVNOs (light and full MVNO access) is also national in scope.**

16. Notes: MVNO Europe **agrees** with the European Commission's proposals in terms of: (i) locations and type of mobile networks that could be eligible for State aid, for geographic expansion or for material technological enhancement (5G Stand Alone / 6G) as indicated in [paragraphs 62-69](#) of the Proposed Guidelines, and (ii) the notion of 'step change', with regard to mobile access networks as indicated in [paragraphs 107-109](#) of the Proposed Guidelines.

IV. Wholesale Access Pricing

17. MVNO Europe has carefully considered the European Commission's proposals relating to wholesale access pricing, as indicated in [paragraph 151](#) of the Proposed Guidelines. The proposal amounts to a form of hierarchy among potential forms of wholesale access price setting. We have **three suggestions in this regard**:

- a) **Cost-orientation**, provided for in [paragraph 151 c\)](#), should be put **at the top of the hierarchy**, i.e. be moved to [paragraph 151 a\)](#) rather than be at the bottom of the hierarchy.
- b) Where the beneficiary of State aid is active on retail markets (directly or through entities it controls), a requirement for a **margin-squeeze test (to be conducted on a recurring basis, for instance twice a year) could usefully be added to the modalities for wholesale access price setting.** This is particularly relevant for mobile access networks, because the forms of regulation contemplated seem tailored more for fixed ultrabroadband access networks than for mobile access networks.

¹ MVNO Europe is able to make available a 2-page description of full MVNO access, in technical terms and in commercial terms, to inform the European Commission in the context of a potential enhancement of Paragraph 139 and footnote 97 of the Proposed Guidelines.

- c) **Non-discrimination (in price terms) should be added** to or around paragraph 151, as a condition relating to wholesale access pricing. As regards non-price non-discrimination (e.g. access to technology generations, RAN coverage), please refer to our paragraph 15 above.

V. Take-Up Measures

18. MVNO Europe wishes to **explicitly welcome** the European Commission's proposals relating to take-up measures (demand-side stimulation, including social vouchers and connectivity vouchers) contained in *paragraph 171 to 201* of the Proposed Guidelines.
19. We **thank the European Commission** in particular for the **strong non-discrimination provisions** contained in *paragraphs 184 and 196* of the Proposed Guidelines. These provisions show that the European Commission sees **very real risks of voucher schemes distorting competition**, and that measures are necessary to prevent these disproportionately benefiting a selected set of undertakings, to the detriment of others. Clearly, these **provisions should be maintained in full in the final text to be adopted, and in no case be weakened**.
20. *Paragraph 199* of the Proposed Guidelines, requiring Mobile Network Operators a market share above 25% to provide **wholesale services (under open, transparent and non-discriminatory conditions, and subject to wholesale access price regulation) to ensure that other service providers, such as MVNOs, are also able to provide services based on vouchers** without being discriminated, also underscore that that the European Commission understands the risks of voucher schemes distorting competition. These provisions are very welcome; **we applaud the European Commission for their inclusion**. Given that Mobile Network Operators and interests representing them or intervening on their behalf may ask for the removal of paragraph 199, **MVNO Europe wishes to put it on the record that our position is that paragraph 199 should in no case be weakened or deleted**.
21. In case vouchers would be limited in terms of technology (e.g. only for 5G Stand Alone or 6G), and in case Mobile Network Operators would only be obliged to provide wholesale access to other Mobile Network Operators, but not to MVNOs (a concern raised by the wording of *paragraph 139 and footnote 97* - discussed in our paragraph 15 above), the **take-up measures could amount to reinforcing the practice of Mobile Network Operators to withhold or delay wholesale MVNO access on new technology generations**. Such withholding and delaying practices are widespread, as is indicated in our paragraph 14 above. **Countenancing measures need to be explicit in the final text of the Guidelines. Addressing the risk of reinforcing behaviour which amounts to (constructive)**

refusal to supply is an additional argument for maintaining and not weakening paragraph 199.

22. Finally, MVNO Europe considers that take-up stimulation measures (vouchers and others) should only serve the purpose of fostering citizens' digital inclusion, and reducing the digital divide directly for citizens as well as for public sector entities and SMEs. They should not serve another purpose, such as funding Mobile Network Operators' investments. Investment requirements are an understood part of the commitments Mobile Network Operators enter into when acquiring rights of use over radio spectrum, and – beyond coverage obligations included in spectrum licences – investment gaps can conditionally be addressed by State aid in its own right, as provided for in the first parts of the Proposed Guidelines. We believe that the European Commission shares this MVNO Europe view, but that it does not seem sufficiently explicit in an individually identifiable article of the Proposed Guidelines. MVNO Europe believes that it would be most worthwhile for the European Commission to be unequivocally explicit on this point, also to avoid having to take corrective action on individual cases in the future.

VI. 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: