

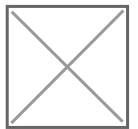
21 January 2013: Mobile telephony / MVNOs

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MVNOs (mobile virtual network operators) play an essential role in market activity by contributing, for example, to the enhancement of offers proposed to consumers.

In a context characterised by a steep drop in prices and the arrival of the 4G, it is indispensable that the conditions set for them by the host operators enable them to immediately produce attractive offers.

> *Version française*



Following a referral from the Alternative Mobile Association, representing virtual operators, the Autorité de la concurrence issues today an opinion on the conditions in which mobile virtual network operators (MVNOs) can continue to contribute to the mobile telephony market in a climate of fundamental change.

Following the opinion issued by the Autorité in 2008, MVNOs obtained a significant improvement in their hosting conditions from host operators.

In its 2008 Opinion (see Opinion 08-A-16 in French and the press release of 30 July 2008), the Autorité de la concurrence noted that the technical and pricing hosting conditions imposed by the network operators on MVNOs were particularly restrictive, and did not allow them to propose commercially attractive offers to consumers. This situation explains their low development in France.

The Autorité asked then for a reinforcement of competition in the wholesale hosting market and, in this respect, declared itself to be in favour of the

allocation of a fourth licence. It also insisted on the need to unlock the contractual constraints that weighed heavily on mobile virtual network operators (such as the length of the contracts, and their exclusivity, pre-emption and preference clauses regarding the sale of assets).

These recommendations contributed, even from the point of view of the Alternative Mobile Association, to an improvement in hosting conditions (with the option of becoming a "full" MVNO) and to the entry of Free Mobile in the market.

MVNOs have contributed to an increase in market activity and a diversification of offers thanks to their ability to innovate and explore new sections of the customer base

MVNOs have undeniably contributed to reviving the mobile telephony market and achieved some success. Between 2008 and 2012, their overall market share rose from 5% to 13% of mobile phones sold to the general public.

This development is a reflection of the MVNOs' commercial dynamism and their skill in exploring new customers segments. Mobile virtual network operators were behind some of the most beneficial purchasing opportunities consumers, some of which have subsequently become market standards. These include the following initiatives:

- unlimited SMS packages and the first ranges of packages without commitment
- all-unlimited packages available to the general public
- packages for frontier-dwellers and regular travellers
- metered packages
- tailor-made packages

Furthermore, in order to distinguish themselves from the network operators, MVNOs have positioned themselves in market niches, targeting specific needs that had not yet been covered. Some MVNOs, for example, have aimed at a young customer base, offering it content that focuses on music and multimedia. More recently, new MVNOs have been developing in the international call sector, specifically targeting demand from foreign consumers or those of foreign

origin (so-called "Community" packages).

The upheavals currently experienced by the market caused Alternative Mobile to warn the Autorité about the position in which the MVNOs find themselves.

The mobile telephony market is undergoing fundamental change due to the arrival of a fourth operator and the launch of mobile high-speed broadband offers.

- The entry of Free Mobile in the market

The arrival of Free Mobile has resulted in a significant drop in retail prices and the emergence of a new market sector represented by the sale of SIM-only offers without commitment.

In 2011, anticipating the attribution of a fourth 3G licence to Free Mobile, the three veteran network operators launched new offers, mainly via so-called "low cost " brands: Sosh (Orange France), B&You (Bouygues Télécom) and Red (SFR). These packages are marketed exclusively over the internet, and involve no commitment and no phone (known as "SIM-only" offers). They are offered at a lower price than the standard packages, based on the principle of subsidising the terminal in exchange for a commitment or recommitment to a 12- or 24-month contract.

In 2012, the launch of Free Mobile offers constituted a breakdown in the pricing structure and caused network operators to align the pricing and services of their own low cost offers to those of the latest entrant into the marketplace.

- The launch of the 4G

According to the operators, the 4G (mobile high-speed broadband) constitutes an unprecedented technological breakthrough, which will now enable high-end offers incorporating data exchange services (fast internet navigation, the receipt of images and HD voice communications, videoconferencing, etc.). The three veteran operators have stated that they are considering a new price positioning for such packages in order to promote an innovative economic model based on both low cost and premium offers.

In this new context, Alternative Mobile wonders whether MVNOs can continue to operate in the mobile telephony market, in view of the pricing and technical conditions now being introduced by their host operators.

The Autorité de la concurrence notes that MVNOs might encounter certain difficulties in responding to the new offers launched by the network operators.

Recent market developments have affected MVNOs through a significant migration of their customers – characterised by a profile of low consumption, and mainly subscribers to prepaid contracts – towards the new post-paid low-end offers at reduced prices provided by Free Mobile and the other three network operators.

The problem is that the pricing and technical conditions imposed on MVNOs appear to restrict their ability to react and compete efficiently with offers from the network operators aimed at the retail market.

- As to the pricing conditions, the Autorité notes that, even though there is a viable economic space in the prepaid and standard contract segments the MVNOs appear to be unable to compete, under conditions of minimum profitability, with the low cost offers, especially those at €19.99 currently offered by the four network operators;

- Moreover, some of the technical conditions in their contracts do not permit them to replicate the high-end service offers that their host operators are currently launching by relying on the 4G. The problems are the download speeds and access to technical innovations that make it possible to improve coverage for their customers, such as the introduction of femtocells, as well as geolocation services.

MVNOs are experiencing difficulties to establish their presence in all the market sectors (especially the low cost and high-end sectors). Consequently, there is a fear of those who have contributed so much to competition in the marketplace since 2004, being marginalised.

The commitments made by the operators to the ARCEP must be applied even before the launch of the first 4G commercial offers, in order to place MVNOs on an equal footing.

In accordance with the recommendations made by the Autorité de la concurrence in its 2008 Opinion, the voluntary commitments made in favour of MVNOs were incorporated into the procedure for the assignment of frequencies implemented by the ARCEP. For instance, certain operators made a commitment:

- not to restrict the commercial freedom of their MVNOs;
- to welcome full MVNOs into their network;
- to accede to any reasonable request for access and to operate reasonable rates.

The Autorité considers that no technical or pricing barrier should be set up artificially by network operators at the risk of putting MVNOs at a disadvantage in the competition dynamics.

Furthermore, the commitments of the four network operators ought to be

applied thoroughly, even before the launch of the first 4G commercial offers. In fact, MVNOs should be capable of making their offers within the same time frames as their hosts, which presupposes that they will have been made a wholesale offer. In fact, the absence of long-term visibility and the slowness of the commercial negotiations are interfering with the MVNOs' ability to innovate and explore demand, and are consequently restricting their commercial independence.

> Full text of Opinion 13-A-02 of 21 January 2013 on the position of mobile virtual network operators (MVNOs) in the French mobile telephony market (in French)

> Press contact: André Piérard / Tel.: (+33) 1 55 04 02 28 / Contact by email