

Public hearing on 9 January 2025 (BK1-22/001 proceedings)– guidelines under consideration for a negotiation requirement benefiting service providers and MVNOs

The Chamber is considering imposing a negotiation requirement for the benefit of service providers and MVNOs. In this connection, guidelines providing more detail are to be included in the rationale supporting the decision on the provision of spectrum in the 800 MHz, 1800 MHz and 2600 MHz bands.

These guidelines were presented during the public hearing held on 9 January 2025 and are set out below.

Guidelines for negotiations:

- Reasonable contract periods: excessively short or long contract periods for contracts between assignment holders, service providers and MVNOs without any possibility for adjustment whatsoever may be a sign of unreasonable contractual arrangements. Such rigid contract conditions could restrict flexibility with respect to changes in external circumstances and conflict with the principle of fairness. Service providers and MVNOs should generally be able to recoup the investments made when carrying out the contract during the regular contract period. The absence of any possibility for adjustment may also lead to an imbalance of power between the contracting parties.
- Reasonable notice periods: the shorter the notice an assignment holder has to give to terminate a wholesale contract, and the wider the range of reasons permitted for terminating a contract, the more likely it is that an infringement of the negotiation requirement may be assumed. Reasonable notice periods promote stable and equal contractual relationships. Unreasonable notice periods could restrict planning certainty.
- Reasonable contract conditions: the more preference is given for an assignment holder's own sales and the sales of affiliated companies over external service providers without a reason, the more likely it is that an infringement of the negotiation requirement may be assumed. Fair contractual arrangements must therefore ensure that it is possible for service providers and MVNOs to offer competitive retail services in the market. This includes fair and transparent pricing for wholesale services, which could lead to a wider range of offers for the benefit of retail customers and thus strengthen competition. If service providers and MVNOs were placed in a worse position than the sales of affiliated companies and the assignment holder's own sales without a reason, this could be an indication of an infringement of the service provider regulation.
- Reasonable migration rules: the more difficult it is to migrate the retail customers of a service provider or an MVNO to a new wholesale provider without an objective reason when a wholesale contract is terminated, the more likely it is that an infringement of the negotiation requirement may be assumed. If a contractual clause exists to the effect that retail customer contracts revert to the wholesale provider without an objective reason when a contract is terminated, this could be an indication of an infringement of the service provider regulation. Irrespective of this, the provision of services to the retail customers must be guaranteed at all times.
- Unreasonable exclusivity rules: the more an assignment holder ties a service provider or an MVNO exclusively to them without an objective reason, the more likely it is that an infringement of the negotiation requirement may be assumed. If the exclusive procurement of wholesale services from

only one assignment holder is stipulated without an objective reason, this could be an indication of an infringement of the service provider regulation. The business models of services providers and MVNOs could be restricted without the possibility of concluding contracts with other providers.

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