

Mobile Virtual Network Operator (MVNO) Agreements

EU/UK Competition Law Issues



What will I learn today?



What is the
regulators'
perspective?



What are the
most common
competition
law issues?



How to avoid
them

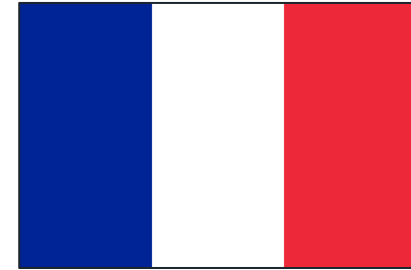


MVNO Round-up



UK

Hundreds of MVNOs and counting.



FRANCE

44 MVNOs and 6 Brand Resellers.
4G MVNO access is a regulatory requirement.



GERMANY

186 different brands offered by 120 MVNOs.
Telefonica / E-Plus: condition for EU clearance



SPAIN

43 MVNOs and 1 Brand Reseller.



AUSTRIA

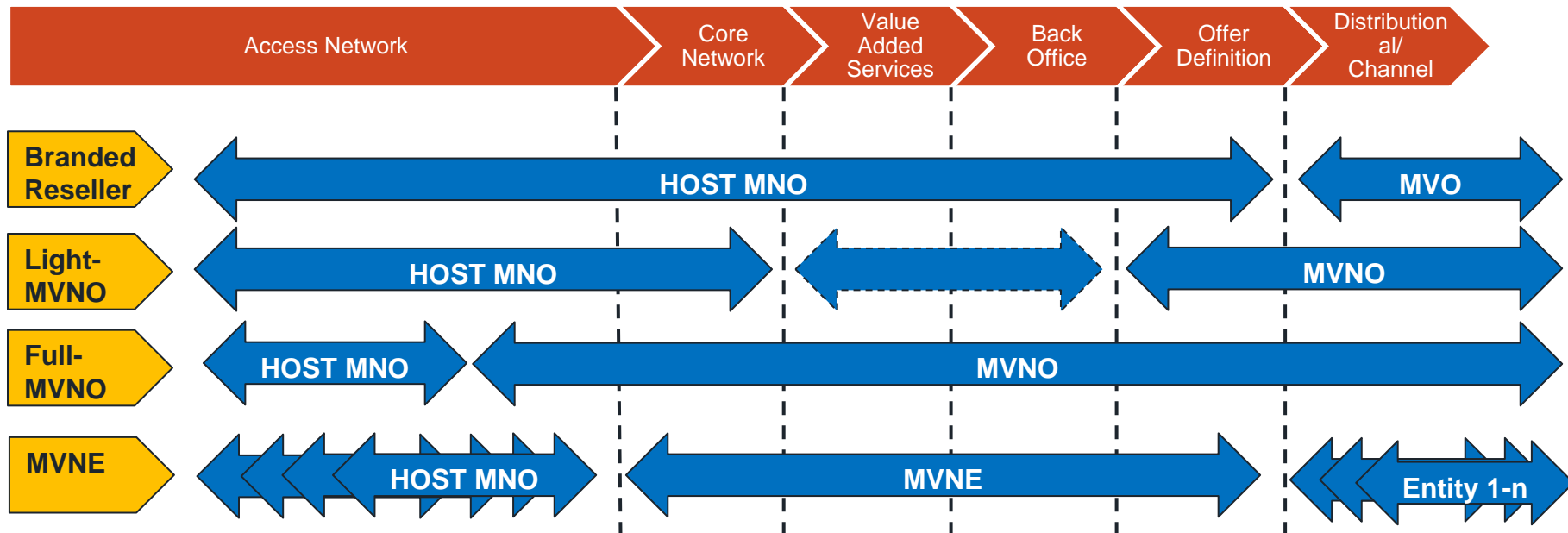
13 MVNOs
Hutchison/Orange: condition for EU clearance.

This is how MNOs see it

Commercial Perspective
MVNOs can help MNOs better meet:

- Marketing mix
- Network utilisation
- Niche service demand

Business models



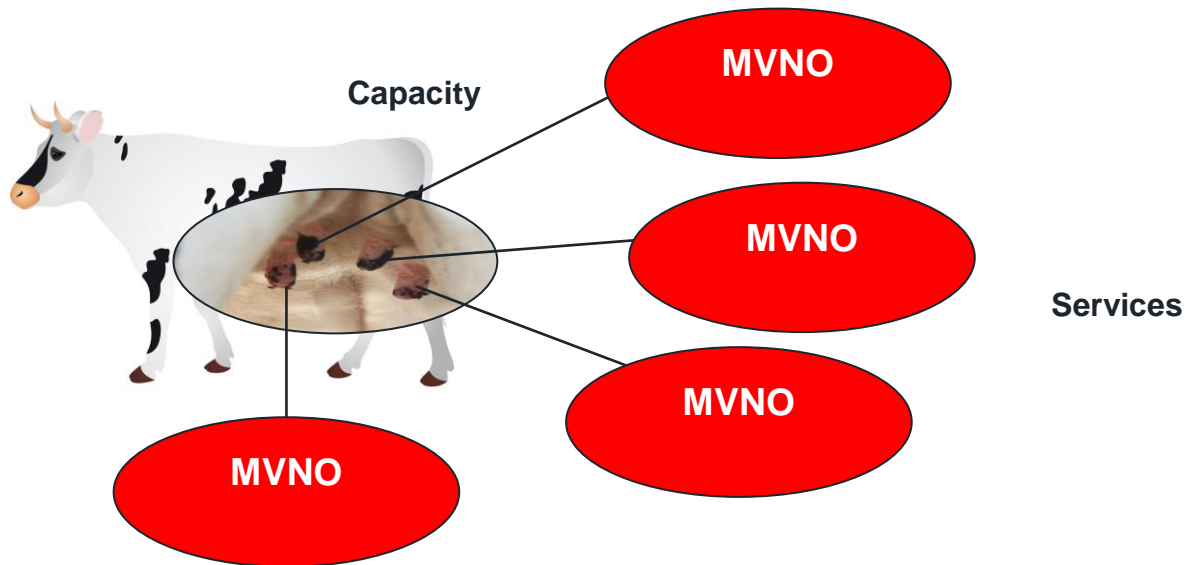
This is how (some) MVNOs see it



Commercial perspective

"One doesn't need to own a cow to milk a cow"

Business model



This is how a regulator sees it

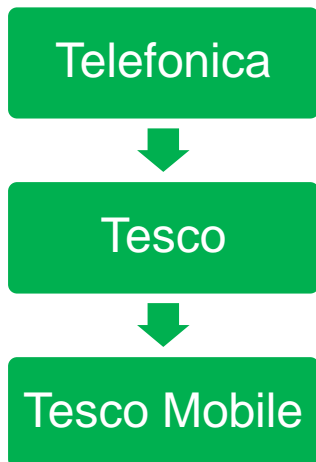


Regulatory Perspective
MVNOs introduce additional competition at retail level:

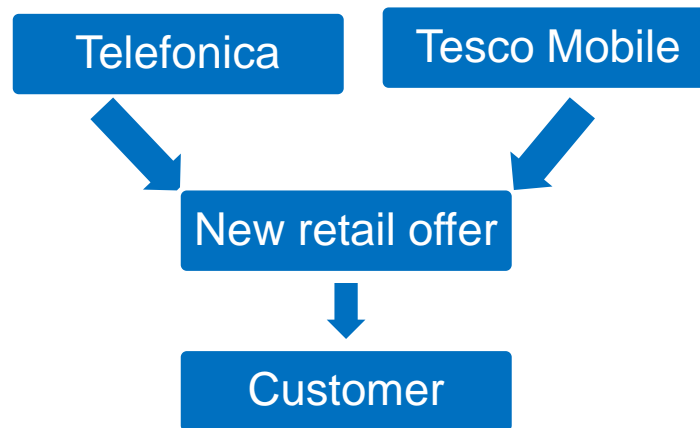
- Lower prices
- Newer services

Regulatory models

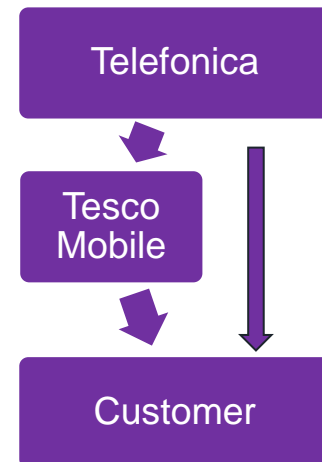
Vertical



Horizontal



Dual Distribution



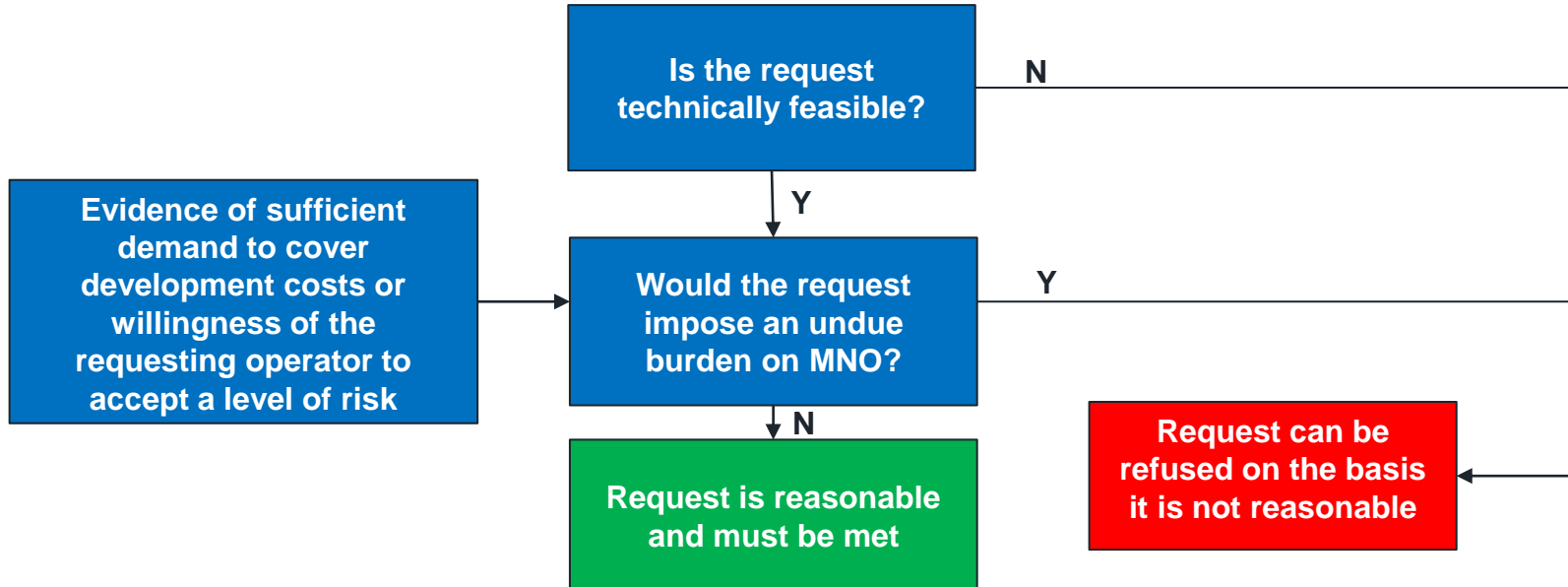
This is how a regulator sees it



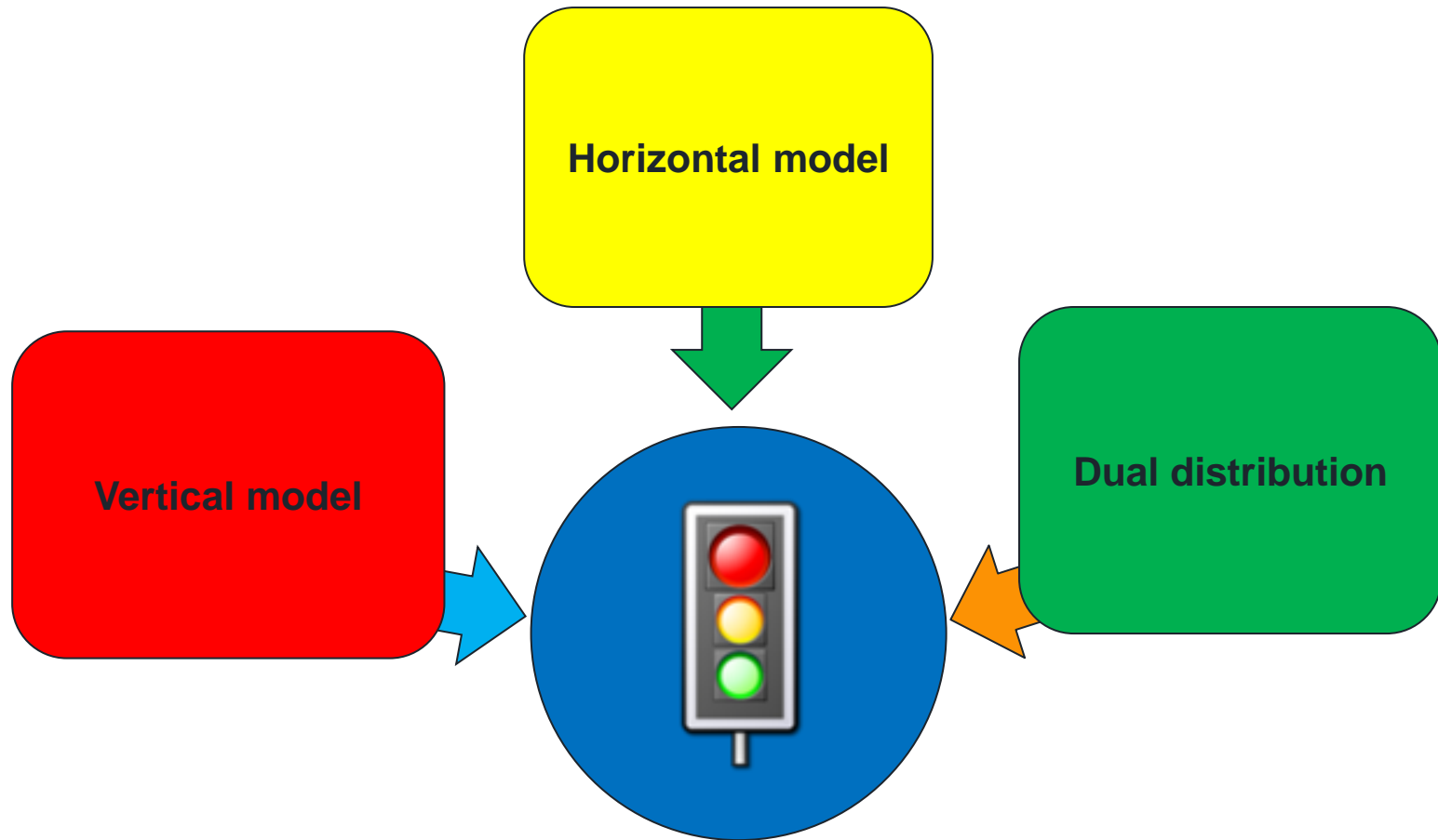
Regulatory perspective

No obligation on MNO to provide MVNO access, but there is an obligation to (i) negotiate in good faith with EU MNO who wants to become MVNO in the UK and (ii) more in general, to comply with competition law

Regulatory model



What are the most competition common issues?



Don't

Resale price maintenance

Prohibition to respond to unsolicited customer requests from outside allocated territory or customer groups

Non-compete post termination

No challenge obligation in respect of licensed IPRs

Do

Maximum prices and recommended

Exclusive customer allocation

Prohibition on actively marketing outside allocated territory or customer groups

Right to terminate licence if underlying IPRs are challenged by licensee

Non-compete for the duration of the agreement

Don't

Resale price maintenance

Prohibition to sell outside allocated territory or customer groups

Exchange confidential information about individual offers

Long term exclusivity and customer allocation (>5 years)

Do

Jointly agree capacity and utilisation levels in relation to jointly produced new retail offer

Jointly distribute and set prices of new retail offer if necessary to launch

Short term exclusivity and customer allocation (<5 years) if necessary to launch

Co-marketing subject to guidelines on (i) exchange of confidential information; (ii) coverage obligations and (iii) sales forecast

Don't

Long term exclusivity (>5 years)

Resale price fixing (e.g. linking wholesale access price to retail resale prices)

Detailed individual sales forecast

Customer allocation

Unjustified restrictions on service levels

Non-compete

Restricting licensee from exploiting its own IPRs or carry out R&D

Do

Short term exclusivity (<5 years)

Setting prices based on cost

Aggregated and average sales forecast

Justified restrictions on service levels (e.g. coverage, speed and other technical parameters)

Discuss technical development plans necessary for the performance of the MVNO agreement

Restricting licence field of use

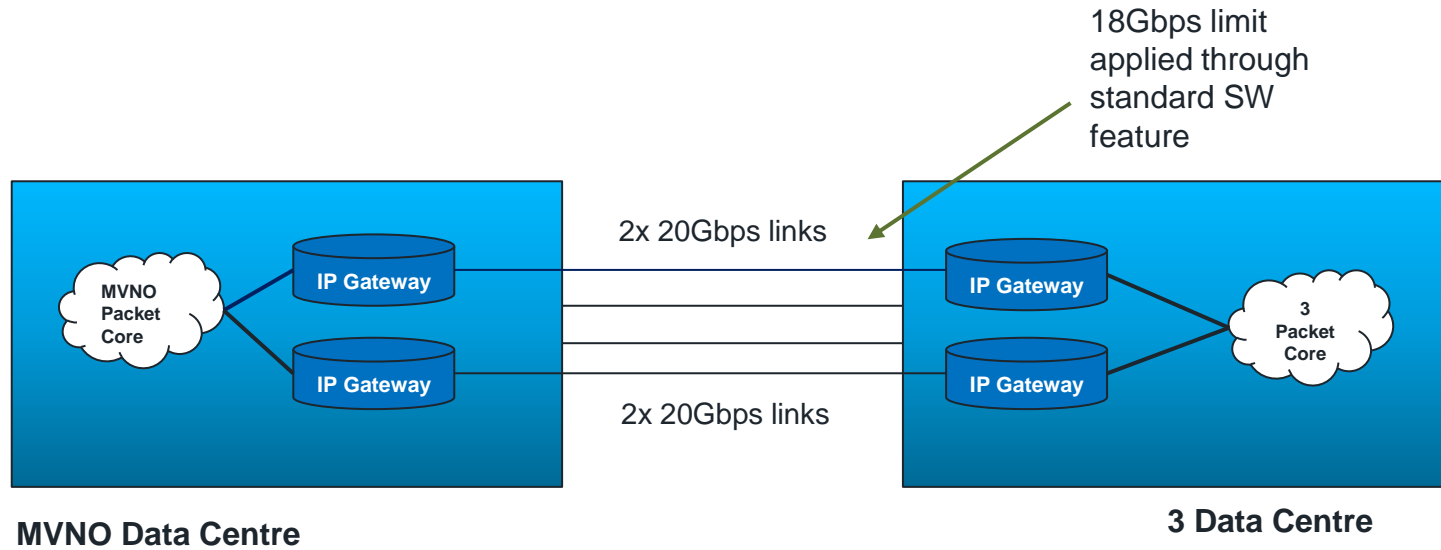


- MVNO Capacity Allocation of up to 15 per cent as a condition for EU clearance
- Not a template for future MVNO agreements in the UK but useful reference in respect to:
 - Calculation of capacity allocation
 - Interconnection points
 - Wholesale access services

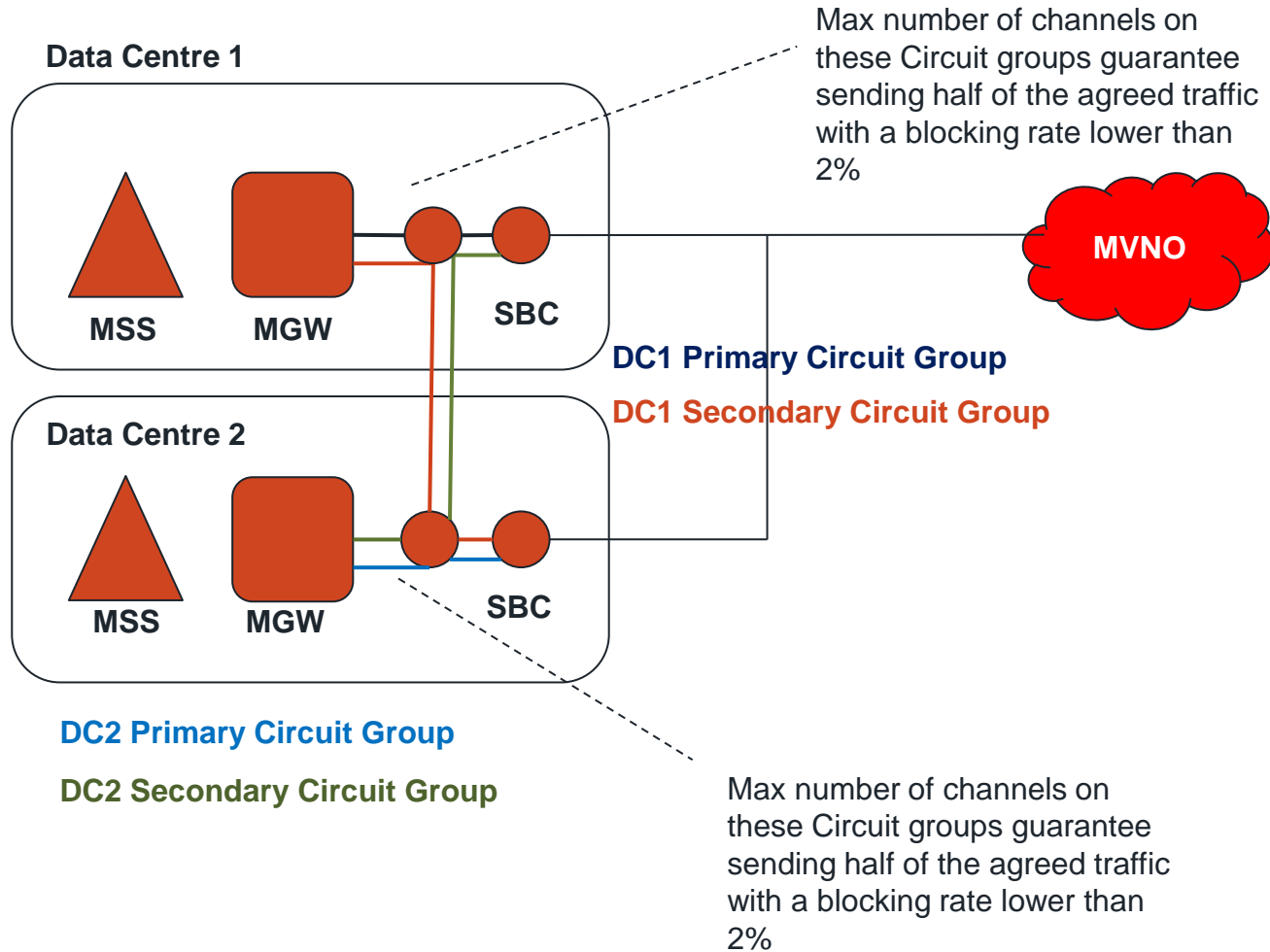
Calculation of Capacity Allocation

- A dedicated “pipe” for voice and data traffic at fixed annual fee
- Size of each pipe as a percentage of the total Packet and Circuit Switched capacities
- Defined in Gbps for Packet and Erl for Circuit

Interconnection - Packet



Interconnection - Circuit



Wholesale Access Services

- Origination and termination of circuit switched, SMS, packet switched data (including MMS) services to MVNO customers
- Wholesale access for the provision of MVNO value added services
- Call routing to MVNO and location data for emergency call delivery
- Location data and real time CDRs for legal interception services with respect to MVNO customers
- Additional services at reasonable request (e.g. number portability)

- Mobile Bitstream Access (MBA) MVNO Agreement as a condition for EU clearance
- Not a template for future MVNO agreements in the UK but useful reference in respect to:
 - Bitstream components
 - Information exchange in the context of MVNO agreement

- ❑ Fixed peak throughout capacity in Gbit/s (download and upload)
 - The peak is the 60 minute-interval with the highest usage in a month
 - Minimum initial capacity to be purchased is 2.0 Gbit/s (approximately 10 per cent of current peak data throughput) with a glide path
 - Maximum capacity to be made available is up to 20 per cent of data capacity
 - Set maximum amount of subscribers

- ❑ MVNO will buy volumes of millions of Megabytes for a minimum runtime of 1 year. The price will depend on the actual volume and the technology used.

- ❑ Voice and SMS packages are bought in bulk packages and can be used for up to 2 years. Termination fees are excluded.

- 3 years traffic forecast with a monthly granularity comprising:
 - Subscriber numbers
 - Voice minutes
 - SMS MO
 - MMS MO
 - Data volume or volume per customer
 - Customer segmentation of data speed
 - Smartphone share
 - Prepaid/postpaid split
 - Voice traffic split in CS & LTE
 - Geographic breakdown of customer base
 - Any other parameter necessary to ensure the right capacity dimensioning and network performance

What are the consequences for getting it wrong?



Unenforceable agreements
Investigations
Bad publicity
Potential disciplinary action and
disqualification of directors – prison?

Fines: up to 10% global annual turnover
Sued by 3rd parties for damages
Wasted management time
Legal/defence costs



How to ensure your MVNO agreement is compliant



**Identify what
model you are
applying**



**Keep in mind
red flags**



**Amend internal
documents
bearing
competition law
in mind**



Contact



Francesco Liberatore
Partner, London, Brussels, Milan
T +44 207 655 1505
francesco.liberatore@squirepb.com

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■ Office locations
■ Regional desks and strategic alliances

