

## ثانياً: الملاحظات الخاصة

Without prejudice to our position regarding infrastructure sharing and our General Comments stated above, we provide our detailed comments below:

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15	encourage efficient investment in infrastructure and avoid wasteful replication of infrastructure through reducing the inefficient and unnecessary duplication of existing Telecommunications Network Facilities and infrastructure	The regulatory and competition frameworks in our industry and the economic approach should be based in “infrastructure based competition”.
17	Overcoming challenges related to deployment of infrastructure where deploying equipment infrastructure is not (easily) replicable (like in indoor) and even in dense areas where finding new sites could be very difficult	<p>We would to reiterate our position stated in the General Comments above that infrastructure sharing and national roaming should not be mandated, and should be left to operator’s commercial negotiations and agreement without any regulatory intervention. We also believe that TRC should encourage such agreement to be based on commercial terms.</p> <p>On the other hand, Orange Mobile believes that indoor coverage should be out of the scope of regulations.</p>
18	Promote for more efficient rollout of next-generation networks (NGN) five-generation network (5G), accelerate affordable access for digital transformation.	Introducing 5G is too early in Jordan, where a lot of challenges need to be solved prior to this, which are outside the scope of these instructions, taking into consideration that future evolution of sharing arrangements and the role of 5G in shaping requirements/regulatory framework could

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		be of different approach to this instructions of infrastructure sharing.
19	To ensure that National Roaming between the Operators in Jordan takes place on a fair, transparent and economically efficient basis, for the benefit of consumers, Operators and the overall economy.	National Roaming should be used for the purposes of covering rural and sparsely populated areas. In other parts of the country, infrastructure competition should prevail. Otherwise, any players can free-ride on others' investment. And we can end up by having a single infrastructure network where other Parties roam.
26	These Instructions is to establish a framework within which Requesting Licensees, Sharing Licensees and the Owning Licensees can negotiate and conclude sharing arrangements of the applicable Telecommunications Network Facilities, and National Roaming arrangements between all Operators licensed in Jordan that are engaged in the provision of Public Communications services.	<ul style="list-style-type: none"> <li>• This instruction obliges the operators to enter into negotiations, alter their networks, share their networks with other licensees based on a sharing request only. Orange believes that any infrastructure sharing arrangements should only be based on commercial terms.</li> <li>• Orange also believes that national roaming is not justified given current market conditions and extensive network coverage for all mobile operators. More details about on Orange response on these matters are provided in the General Comments section above.</li> <li>• TRC have later amended the scope of the instructions proposing that this instruction should be applied to all operators licensed in Jordan. Orange believes that the TRC should split this instruction into two sets of instructions; Infrastructure sharing that should be applied on all Operators Licensed in</li> </ul>

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		Jordan, and National Roaming should be applied on Public Mobile Wireless Service licensed operators.
27	All Telecommunication infrastructures constructed or located within Hashemite kingdom of Jordan, except those exclusively used for purposes of State security and emergency services, shall comply with the terms of these Instructions	All infrastructures cannot be shared; we believe that TRC should limit the infrastructure that should be subject to sharing that stated in Article 29 “TELECOMMUNICATIONS NETWORK FACILITIES”
29	<p>Any Licensee that owns, leases or manages the following Telecommunications Network Facilities is obliged to negotiate and enter into a Sharing Agreement, upon request, with respect to these facilities:</p> <ul style="list-style-type: none"> <li>a) telecommunications Sites, including but not limited to land, space and access to such Sites;</li> <li>b) masts, towers, poles, antenna structure and other similar structures used in the Site;</li> <li>c) Space, buildings, shelters and rooms in the Sites, including access to such premises;</li> <li>d) utilities required for the operation of Sites, including but not limited to power, cooling, fire protection and earthing;</li> <li>e) Rights of way, Trenches</li> <li>f) Dark fiber, cable access, including but not limited to ducts, routes and trays.</li> </ul>	<p>Orange reiterates its position that infrastructure sharing should not be mandated, neither the facilities to be shared. Moreover, infrastructure sharing arrangements should only be based on commercial terms and voluntary agreements between concerned operators. The sharing operator is better position to decide on the facilities that can be shared taking into consideration the following parameters:</p> <ul style="list-style-type: none"> <li>1) Availability of infrastructure.</li> <li>2) Its own business and strategic plans.</li> <li>3) Technical conditions of the requested facilities, as these facilities might not be in good technical conditions to carry additional loads of infrastructure, e.g. towers.</li> </ul>
30	Telecommunications Network Facilities & Infrastructures subject to sharing are those that can be shared without an attendant risk of lessening of competition.	Lessening of competition should be defined by TRC with related factors that TRC will consider to determine that a case/s of infrastructure sharing will lessen the competition.

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33	Where the TRC, acting pursuant to Article (30, 31, 32) above, determines that an Network Facilities & Infrastructures sharing arrangement is inconsistent with the relevant license(s), and/or identifies a risk of lessening of competition as a consequence of such infrastructure sharing, it may require such specific arrangement to be discontinued.	<p>Orange believes that this article is not clear due to the following:</p> <ul style="list-style-type: none"> <li>- Does this mean discontinue of current agreements?</li> <li>- How would TRC assess arrangements are inconsistent?</li> <li>- How would TRC assess legal impact and how would TRC deal with and rectify this impact?</li> </ul>
34	Licensees wishing to share Telecommunications Network Facilities shall have the right to negotiate and come to agreement on terms and conditions of a Sharing Agreement. The terms and conditions of such Sharing Agreements shall be in accordance with the principles and conditions stipulated by these Instructions.	Licensees means “Requesting Licensee” or “Owning Licensee”
35	The Owning Licensee shall be obliged to share Telecommunications Network Facilities with other Licensees on a first-come, first-served basis, determined by the chronological order in which it receives requests for sharing its Telecommunications Networks Facilities.	As stated in our general comments, the TRC should encourage network sharing agreements on commercial terms; however, it will be fully counterproductive to impose wide-range and unconditional sharing obligations, the cope should be limited to rural areas, universal service.
43	TRC may require that any Sharing Agreement is amended to rectify any failure to comply with these Instructions. TRC must provide written reasons for its decision to amend the Sharing Agreement. Any decision of Instructions that a Sharing Agreement should be amended, shall be implemented by the parties within the time as specified in TRC’s decision.	As the sharing agreement must be submitted to TRC within 5 working days of execution of the sharing agreement (article 41), TRC should specify in the instructions the timeframe needed to review the sharing agreement and issue its decision accordingly, such open period to get TRC decision could impact the execution of the agreement and certainty to implement the sharing agreement.

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44	For the purpose of facilitating efficient and balanced Sharing Agreements between the Owing Licensees and Sharing Licensees, a sample Sharing Agreement will be published on TRC’s web site.	Orange believes that such sample agreement should not be binding on licensees; rather it may guide operators to TRC requirements. This agreement should set guidelines to facilitate coordination between licensees. In addition, this sample agreement should be developed in consultation and coordination with all licensees.
53	<p>Every operator shall reserve the right to decline a sharing request on grounds of;</p> <ul style="list-style-type: none"> <li>a. Insufficient capacity</li> <li>b. Safety, reliability, incompatibility of facilities and</li> <li>c. General engineering considerations.</li> </ul>	<ul style="list-style-type: none"> <li>• “Every operator” should be replaced by “Owing Licensee”.</li> <li>• Would need to provide proof for a, b or c</li> </ul>
54	<p>The owning licensee shall not be required to share its Facilities where in the view of the TRC it is not reasonable to require the owning Licensee to provide sharing including but not limited to circumstances where;</p> <ul style="list-style-type: none"> <li>a. it is beyond the control of the owning Licensee to provide infrastructure sharing and/or</li> <li>b. it is not reasonably practicable for the owning Licensee to provide infrastructure sharing</li> </ul>	<ul style="list-style-type: none"> <li>• TRC should provide proofs/ evidences on why TRC finds it is not reasonable to require the Owing Licensee to provide sharing.</li> <li>• “not reasonably practicable “ is a wide word, based on the principle of transparency and fairness in application of this term, TRC should set the criteria or cases on which the TRC will be based on its decision that such cases is not reasonable practicable for Owing Licensee to provide infrastructure sharing.</li> </ul>
55	Licensees are encouraged to pursue a policy of facility sharing within the constant development and upgrading of their networks facilities so as to make adequate capacity and space	Orange believes this policy should not be binding. Any infrastructure sharing should be based on availability.

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	available to other licensees for the sharing of facilities.	
56	There shall be no obligation on owning Licensees to develop new infrastructure whenever its capacity has reached saturation level. However, owning Licensees are expected to reasonably take into consideration the demand for infrastructure sharing when expanding their facilities and or installing or deploying new infrastructure amenable to sharing	Orange stress on its position that infrastructure sharing should be <b><u>based on availability only</u></b> . Licensees should not be requested to consider any demand of sharing when expanding their facilities and or installing or deploying new infrastructure.
57	Where there is no capacity at the existing facilities to meet the needs of additional requesting Licensees, the owning licensees should consider redevelopment as a means of increasing capacity at existing facilities.	Orange stress on its position that infrastructure sharing should be <b><u>based on availability only</u></b> . Licensees should not consider redevelopment as a means of increasing capacity at existing facilities to meet the needs of additional requesting Licensees.
58	The TRC will consider that capacity is available where the specific resource is not occupied nor reserved by the owning licensee.	“reserved” might be interpreted that reserved for other Requesting Licensees. Therefore, we believe that the term should include also reserved for Owning Licensee future plan.
60	Where the Requesting Licensee requests facility sharing on or in Telecommunications Network Facilities and the existing capacity is fully utilized (taking into account the obligation to remove unnecessary equipment in Article 59 of this Instructions), the Owning Licensee shall extend the facility to allow for sharing, provided the facility is technically capable of withstanding the additional loads.	<ul style="list-style-type: none"> <li>• Orange stresses on its position that infrastructure sharing should be <b><u>based on availability only</u></b>. Sharing or extension of facilities should not be obliged to extend the facility to allow for sharing.</li> <li>• This term is contradicting with the term (53) where one of the reason to decline the request of sharing is “insufficient capacity”</li> </ul>

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62	<p>The Requesting Licensee shall be obliged to pay to the Owing Licensee a one-off payment to compensate for the proportion of costs efficiently incurred by the Owing Licensee in carrying out the upgrade and alteration works to the facilities requested for sharing. The proportion of costs shall be calculated to the amount of the benefit incurred by the Requesting Licensee because of the upgrade or alteration compared with the benefit incurred by the Owing Licensee and any other Sharing Licensees currently or in the future</p>	<p>(1)Why proportion of cost, where carrying out the upgrade and alteration works have been done based on the request of Requesting Licensee which shall pay full compensation for the cost incurred by the Owing Licensee on such upgrade and alteration works.</p> <p>(2)There should be more details on the process and in case Requesting Licensee refuses to pay amounts estimated by the Owing Licensee.</p> <p>(3)Moreover, in case Requesting Licensee refuses to pay, can Owing Licensee stop implementation?</p> <p>(4)However, TRC also should clarify in regard the legal impact and how TRC would deal with and rectify this impact.</p> <p>(5)In case of any delay in following the process by Requesting Licensee due to no agreement on the dues, delay should not be counted on the 21 days previously decided above.</p>
63	<p>The development or alteration required and the related cost should be jointly assessed by the parties or, where the parties cannot agree or consider it to be most practical, then by an independent third party expert appointed by agreement of the parties or, failing such agreement, then by TRC, and shared at the percentage agreed by all parties, or in the case of failure to agree, set by the independent third party expert</p>	<p>(1)There should be more details on the process and timeline for the case that the Requesting Licensee refuses to pay amounts estimated by the Owing Licensee.</p> <p>(2)Moreover, in case Requesting Licensee refuses to pay, can Owing Licensee stop implementation?</p> <p>(3)However, TRC also should clarify in regard the legal impact and how TRC would deal with and rectify this impact.</p> <p>(4)In case of any delay on following the process by Requesting Licensee due to no agreement on the dues,</p>

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		delay should not be counted on the 21 days previously decided above.
64	The Owing Licensee shall give adequate written notice to Sharing Licensees of its intention to develop and/or alter Telecommunications Network Facilities. The notice period shall not be less than six (6) months for Telecommunications Network Facilities development and twelve (12) months for collocation change.	This should consider any unexpected circumstances that force the Owing Licensees to change collocation which might not allow the Owing Licensee of 12 months to change collocation (government authority decision, contract term with Lessor, repeated site sabotage,.... etc).
67	The Owing Licensee shall have the right to reserve reasonable capacity or space for future use, provided the Owing Licensee has a clearly demonstrable and reasonable development plan to use such capacity or space within one year of reserving the capacity or space	There should be no obligation to intervene of the Operators' business and technical plan, and of managing their network and how to utilize it. Orange stresses on its position that the Owing Licensee has the right to manage its owned network infrastructure, and to develop its plan for future use to provide its services as priority over the sharing of its infrastructure with other Licensees. Therefore, the sharing agreement should be based on voluntarily basis, that if Owing licensee sees that the request for sharing is feasible even if the capacity or space are reserved for future plan, then he has the right to accept or reject the request upon his sole discretion.
69	An Owing Licensee shall have the right to refuse a Sharing Request in the following cases: a. where the available space is either fully occupied (taking into account the obligation to remove the unnecessary equipment in Article 59 of this Instructions) or the remaining	This article should be integrated within article (53).



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	<p>space is reserved for the Owning Licensee's or another Requesting Licensee's use, as specified within this Instructions;</p> <p>b. where the sharing of a facility is not technically or economically feasible;</p> <p>c. Where the Sharing Request, if granted, will constitute a threat to safety or affect the reliability of the Owning Licensee's network or services</p>	
<b>78</b>	Prices for sharing Telecommunications Network Facilities shall be fair and reasonable and based on cost	<p>Prices for such services should be calculated based on market value.</p> <p>Cost based infrastructure sharing should be based on negotiations; this service is not subject to regulated prices.</p> <p>Please refer to our comments on prices in the General Comments.</p>
<b>79</b>	TRC may require any Licensee to provide justification for their sharing facilities and component prices and may, where appropriate, require that any or all prices be adjusted so that they are in accordance with the provisions of the Telecommunications Law and conditions stipulated by these Instructions	<p>This service is not subject to regulated prices. Market value is the base for pricing infrastructure services.</p> <p>Please refer to our comments on prices in the General Comments.</p>
<b>90</b>	Should TRC determine that the Owning Licensee should share the Telecommunications Network Facilities in question; the parties must enter into a Sharing Agreement following the procedures outlined in Article 49 of these Instructions above	Orange stress on its position about legal mandate of infrastructure sharing, please refer to our General Comments above.

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91	TRC is empowered to issue decisions include an order imposing Telecommunications Facility sharing arrangements between the parties	Orange stress on its position about legal mandate of infrastructure sharing, please refer to our General Comments above.
93	Licensed Operators that materially or persistently fail to comply with the provisions of this Instructions will be deemed in material breach of the Telecommunications Law and will be subject to enforcement action under the relevant provisions of the Telecommunications Law.	<p>The reliance on the penalties stipulated in the Telecommunications Law is misplaced, given that the penalties referred to in the law require a material breach of the law, and since the licensee's commitment to share infrastructure is not a material obligation contained in the law, therefore failure of the licensee to adhere to these instructions is not considered material breach.</p> <p>The instructions should not amend or create new legal obligations that exceed the obligations stipulated in the law, nor should be considered as a material obligation.</p> <p>We believe that it is necessary to refer and rely on the relevant provisions of the license in the event that it can be applied.</p>
	<b>National Roaming</b>	
94	National Roaming shall apply to all Operators licensed in Jordan that are engaged in the provision of Mobile Communications services.	<p>TRC should consider the following risk and challenges of the wide scope of mandating National Roaming:</p> <p>(1) Puts at risk network investments of existing operators (discouraging efficient investment in infrastructure and deterring innovation) and deter their differentiation capacity and overall service quality and customer choice.</p> <p>(2) Such general obligations without certain conditions can only deter investment (the existing operators will be extremely reluctant to invest), as it encourages 'free riders' to enter the market simply by requesting access to other</p>

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		<p>operators' existing networks without investing (or marginally) and competing against them in the retail markets.</p> <p>(3)National Roaming should be used for the purposes of covering rural and sparsely populated areas. In other parts of the country, infrastructure competition should prevail. Otherwise, any player can free-ride on others' investment. And we can end up by having a single infrastructure network where other Parties roam.</p>
95	The National Roaming shall not include any service that is not interconnected with the public switched network.	<p>This article is not clear. The TRC objective from this article is also not clear.</p> <p>The only mobile service that is interconnected with the public switched network is the voice service. Does this mean that the hosted operator will only roam for the voice service and will provide data services to its subscribers directly by its owned network?</p> <p>Does the subscriber of the hosted operators be required to have devices with multiple SIMs?</p> <p>Orange believes that this article should be elaborated more by TRC.</p>
96	Upon receipt of a reasonable request, an Operator is obliged to provide roaming to any technologically compatible Operator, on terms and conditions contained in a roaming agreement that are mutually agreed upon, just, commercially reasonable and non-discriminatory.	National Roaming should not be applied for the whole country. National Roaming should be used for the purposes of covering rural and sparsely populated areas. In other parts of the country, infrastructure competition should prevail. Otherwise, any player can free-ride on others' investment. And we can end up by having a single

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		infrastructure network where other Parties roam.
<b>97</b>	This roaming obligation shall apply to each of its currently deployed networks and any future networks (all spectrum bands and generations of technologies used by the Host Operator to provide Mobile Communications services to its own subscribers/end users). This obligation shall also be applicable to all the geographic areas (in any specified area or location in Jordan) where the Host Operator has a cellular mobile network footprint or coverage if the Host Operator does provide international roaming services in the specified area or location.	National roaming should only be mandated in order to increase coverage in white areas that otherwise would not be rolled out, because of the lack of return on investment on such areas. Taking into consideration that the above criteria are not applied in the Jordanian market where the geographic coverage of all mobile operators are universal and almost the same, unless on specific cases that should be studied and mutually agreed between the operators and TRC.
<b>107</b>	Effective the date of these Instructions, each Operator shall maintain adequate information that shall be availed to any other Operator that expresses an interest for roaming arrangements. This information shall comprise: a. the information required by the Operator for consideration of a request for roaming arrangements, including but not limited to, technical data, engineering information, network requirements, and other information relevant to formulate a roaming agreement, b. information to facilitate the potential Hosted Operator in preparing a request for roaming arrangements including, but not limited to: c. information on areas covered;	The national roaming criteria is not fulfilled as stated above, and national roaming should not be mandated and regulated, and should be based on commercial terms if necessary. Please refer to our general comments above.  Moreover, the numbering in these articles should be reconsidered: (108 should be “d”, 109 should be “e”).
<b>108</b>	technical characteristics of voice, data, and SMS services,	Contradicts with article (95) that limits the national

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	including the technologies available in each area;	roaming to voice only services, data, and SMSs are excluded.
113	The Operators shall negotiate the prices of national roaming. If the Operators fail to agree on the prices to be charged, either Operator may refer the dispute to the TRC for resolution. such TRC resolution shall be binding and enforceable to all parties (operators)	National roaming should only be based on commercial terms as decided by operators. Where no ex ante obligation should be enforced on such type of services, it should be based on negotiated prices.
114	The prices for national roaming shall be cost oriented below retail levels	Not cleared, is it cost oriented or retail minus?
117	<p>Reasons for which a Host Operator may decline a request for roaming arrangements may include the following:</p> <ul style="list-style-type: none"> <li>a. the network of the Operator requesting roaming arrangement is not technologically compatible;</li> <li>b. it is not technically feasible to provide roaming for the particular mobile service for which roaming is requested and any changes to the Host Operator's network necessitated to accommodate roaming for such mobile service are not economically reasonable;</li> <li>c. the mobile services for which roaming is sought are not offered by the Host Operator to its end-users</li> <li>d. An unfounded suspicion of a particular</li> </ul>	<p>Orange stress on its position that National Roaming should not applied for the whole country. National Roaming should be used for the purposes of covering rural and sparsely populated areas. In other parts of the country, infrastructure competition should prevail. Otherwise, any player can free-ride on others' investment. And we can end up by having a single infrastructure network where other Parties roam.</p> <p>Accordingly, the first reason for refusal in article 117 should be: roaming requested in areas not open to roaming, such as dense urban and urban areas!</p> <p>Another comment, "d" should be (118), and "e" should be (119).</p> <p>As for "e": if no party refers the subject to TRC, why such</p>

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	<p>behavior or outcome of the roaming arrangements shall not be justifiable reason to warrant a decline of a request for roaming arrangements.</p> <p>e. If the TRC reviews the reasons for refusal and finds that these are not justified, then the Host Operator shall respond to the request for roaming with an offer to enter into a roaming agreement ( in any case response shall be within five (5) working days at max)</p>	<p>TRC intervention, this issue should be followed by the dispute resolution process.</p>
121	<p>The TRC may itself require the Operators to amend their roaming agreement to accommodate any changes in the regulatory or legal environment, Government policy, technology, markets and competition, national security requirements, or for any other reason.</p>	<p>The TRC should consider that such changes or amendments enforced by TRC will affect the acquired rights established under the national roaming agreement, the stability of commercial transactions, and uncertainty of regulatory legislations which impact the business.</p> <p>We believe that a prior consultation should take place to tackle any updated issues stated in this article.</p>
127	<p>Although service provision obligations such as legal interception, and quality of service shall be supported under such roaming agreements, these obligations shall at all times remain the responsibility of the Hosted Operator</p>	<p>Orange requires further clarification on TRC view to keep the hosted operator responsible for the obligations</p>
128	<p>Consideration shall be done of evidence of inadequate service performance by a Host Operator to a Hosted Operator under</p>	<p>This article needs to be clarified more</p>

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	the roaming arrangements before determining sanctions and remedial action for shortfalls in associated license obligations	
131	<p>TRC may resolve the following disputes arising between the parties in accordance with the provisions of this Article if such a dispute is referred to TRC within the deadlines stipulated in each respective subparagraph of this Article below:</p> <ul style="list-style-type: none"> <li>a. The Host Operator does not reply to a <b><u>Sharing Request</u></b> within the timeframe prescribed by Article 101 of this Instructions, Submission of the dispute to TRC must occur within 15 working days of the deadline for the reply;</li> <li>b. The Requesting (Hosted) Operator wishes to dispute: <ul style="list-style-type: none"> <li>i. The Owning Licensee's letter proposing amendments, issued under Articles 101(b) and Article 117 of this Instructions. Submission of the dispute to TRC must occur within 15 working days from the date of the Hosted Operator receiving that letter; or</li> </ul> </li> </ul>	<p>(a): "Sharing Request" should be replaced by " Hosted Operator"</p> <p>(b): "Owning Licensee" should be replaced by "Hosted Operator"</p>
140	The decision of the TRC or results of the arbitration shall be final and binding. This may include imposing a roaming agreement between the Operators, or imposing particular terms	It is not clear what the term arbitration indicated. TRC did not specify any arbitration process in the draft instructions.

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	and conditions on them, or requiring the Operators to undertake specific steps in order to conclude a roaming agreement	
<b>144</b>	144. Any Operator who fails to comply with the requirements and obligations contained in these instructions or fails to submit information as required to be submitted by these instructions, shall be deemed <b>guilty</b> of contravening the LAW	Mentioning the violation and the penalty or measures related to such violation in the instructions is considered a creation of a criminal penalty, and that is inconsistent with the provisions of Article 3 of the Criminal Code, which stipulates that an explicit legal text shall define the violation, the penalty or any relevant measures and procedures, which is not provided in the Telecommunications Law.
<b>145</b>	Remedial action by the TRC in respect of such contravention may include: a. issuance of a written warning with a deadline for compliance by the respective Operator; b. imposing fine in accordance with the License; c. Take any other measure the TRC deems as reasonable in the circumstances	The operator cannot be considered guilty of violating the law due to the lack of legal basis for this guilt.  Also, the TRC is not entitled to take measures other than those stipulated in the law and the license, and that Clause C of the article introduces procedures and penalties that need the law to be amended.  Please refer to the legal comments provided in the General comments above.
<b>154</b>	These Instructions shall enter into force from the day following publication.	This Article contradicts with article 153, where the instructions shall enter force based on the schedule plan agreed between TRC and the concerned operators.