

ثانياً: الملاحظات الخاصة

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

Article No.	Article	Orange Fixed Comments
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	We would to reiterate our position stated in the General Comments above that infrastructure sharing 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.
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">• 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. More details about on Orange response on these matters are provided in the General Comments section above.

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		<ul style="list-style-type: none"> • Since TRC amended the scope by including all operators licensed in Jordan, Orange believes that the TRC should differentiate the Infrastructure sharing that should be applied on all Operators Licensed in Jordan, and that 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"> a) telecommunications Sites, including but not limited to land, space and access to such Sites; b) masts, towers, poles, antenna structure and other similar structures used in the Site; c) Space, buildings, shelters and rooms in the Sites, including access to such premises; d) utilities required for the operation of Sites, including but not limited to power, cooling, fire protection and earthing; e) Rights of way, Trenches 	<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"> 1) Availability of infrastructure. 2) Its own business and strategic plans. 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. old poles.

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	f) Dark fiber, cable access, including but not limited to ducts, routes and trays.	
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.
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"> - Does this mean discontinue of current agreements? - How would TRC assess arrangement is inconsistent? - How would TRC assess legal impact and how would TRC deal with and rectify this impact?
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.

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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..
44	For the purpose of facilitating efficient and balanced Sharing Agreements between the Owning 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	Every operator shall reserve the right to decline a sharing request on grounds of; <ul style="list-style-type: none"> a. Insufficient capacity b. Safety, reliability, incompatibility of facilities and c. General engineering considerations. 	<ul style="list-style-type: none"> • "Every operator" should be replaced by "Owning Licensee". • Would need to provide proof for a, b or c
54	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; <ul style="list-style-type: none"> a. it is beyond the control of the owning Licensee to provide infrastructure sharing and/or 	<ul style="list-style-type: none"> • TRC should provide proofs/ evidences on why TRC finds it is not reasonable to require the Owning Licensee to provide sharing. • "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

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	b. it is not reasonably practicable for the owning Licensee to provide infrastructure sharing	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.
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 available to other licensees for the sharing of facilities.	Orange believes this policy should not be binding. Any infrastructure sharing <u>should be based on availability</u> .
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 <u>based on availability only</u> . 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 <u>based on availability only</u> . 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 Owing Licensee future plan.

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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 Owing 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"> • Orange stresses on its position that infrastructure sharing should be <u>based on availability only</u>. Sharing or extension of facilities should not be obliged to extend the facility to allow for sharing. • This term is contradicting with the term (53) where one of the reason to decline the request of sharing is “insufficient capacity”
62	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>(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	The development or alteration required and the related cost should be jointly assessed by the parties or, where the parties	(1)There should be more details on the process and timeline for the case that the Requesting Licensee refuses to pay

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	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>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, delay should not be counted on the 21 days previously decided above.</p>
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	<p>There should be no obligation to intervene of the Operators' business and technical plan, and of managing their network and how to utilize it.</p> <p>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</p>

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		space are reserved for future plan, then he has the right to accept or reject the request upon his sole discretion.
69	<p>An Owning Licensee shall have the right to refuse a Sharing Request in the following cases:</p> <ul style="list-style-type: none"> 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 space is reserved for the Owning Licensee's or another Requesting Licensee's use, as specified within this Instructions; b. where the sharing of a facility is not technically or economically feasible; 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 	This article should be integrated within article (53).
78	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>
79	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	<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</p>

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	they are in accordance with the provisions of the Telecommunications Law and conditions stipulated by these Instructions	Comments.
90	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.
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>
154	These Instructions shall enter into force from the day following	This Article contradicts with article 153, where the

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	publication.	instructions shall enter force based on the schedule plan agreed between TRC and the concerned operators.