

التاريخ : 27/2/2020
الرقم : REG-7-20

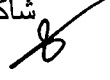
سعادة رئيس مجلس المفوضين / الرئيس التنفيذي المحترم
هيئة تنظيم قطاع الاتصالات

الموضوع: إخطار طلب ملاحظات على تعليمات المشاركة
في البنى التحتية لشبكات الإتصالات والتجوال الوطني

تحية طيبة وبعد،

إشارة إلى الموضوع أعلاه، نرفق بطيه رد وملاحظات شركة زين على هذا الإخطار ضمن المهلة
المحددة، راجين التكرم بأخذها بعين الإعتبار.

شاكرين لكم حسن تفهمكم وتعاونكم.


L.R.

وتفضلوا بقبول فائق الاحترام،،،

الشركة الأردنية لخدمات الهواتف المتنقلة
المدير التنفيذي لدائرة الشؤون القانونية والتنظيمية

لما التميمي



Zain Comments
on the Request for Comments on
Instructions for Telecommunications Network Facilities
and Infrastructure and National Roaming

27 February 2020

Introduction

Jordan Mobile Telephone Services Company (Zain Jordan) has studied the consultation titled "Notice Requesting Comments on the Instructions for Telecommunications Network Facilities and Infrastructure Sharing and National Roaming" (the Instructions) and is pleased to present its comments and suggestions hereunder, hoping that TRC will take good consideration of them.

It is our view that the timing of the document is premature. The Fixed and Mobile market reviews are still on going and we are waiting for the final decisions. It is very unclear why the TRC deem it necessary to introduce these Instructions even though the reviews consultations have just been closed. We would have expected TRC to wait until they have published a decision before issuing any instructions and for any instructions to be a consequence of the market reviews.

Adding to the early timing of issuance, we can find no economic or legal justification for such regulation, in particular in the mobile market, where there is no reference to any competition problem that can be corrected by infrastructure sharing or national roaming. As for the fixed market, the market review does make it clear that access to Civil Engineering Infrastructure (CEI) is an important remedy to ensure lower costs of network build for NGA.

However, these Instructions make no reference to the fixed market review, so it is unclear what the purpose of these Instructions are and how they affect the findings of the review.

Zain understand that the collocation and infrastructure sharing for the sole purpose of interconnection purposes are already regulated by the interconnection instructions ¹ "All licensees shall provide collocation and infrastructure sharing to other licensees subject to availability."

The collocation and infrastructure sharing for commercial purposes, rather than for the interconnection, is not an obligation on the licensees, it is not in the said Interconnection Instructions and should not be in this Infrastructure Sharing Instructions as well, there are no competition stimulation and/or dominant abuse prevention processes required so that a regulatory intervention (ex-ante in specific) is necessary.

General Comments

The Drivers for Infrastructure Sharing

More than a dozen reasons are cited by the Instructions as the drivers to network facilities sharing: including cost-reduction of deployment, environmental protection, accelerating coverage, in addition to others. However, there was no further elaboration on how the intended benefits from of the infrastructure sharing would transfer to reality and to a sustainable practice. At the same time, and contrary to transparency, any actual or potential drawbacks of infrastructure sharing were overlooked and not addressed in the Instructions.

Therefore; we would kindly refer to a recent report released by BEREC² on the infrastructure sharing in which three critical drawbacks associated with sharing mobile network infrastructure were thoroughly examined and discussed, we will state – hereunder- sections of these arguments.

Drawback 1: Reduced incentives to invest/ability to compete

Sharing agreements can negatively impact incentives for participants to invest in their own infrastructure, as any gains in service offering (relating, for example, to coverage, network quality etc.) resulting from a new investment are likely to be shared with other parties involved.

¹ Interconnection instructions, Article 74,

² BEREC Common Position on Mobile Infrastructure Sharing - 13 June 2019

At the same time, network operators participating in sharing agreement are likely to have a reduced ability to compete independently in particular regarding coverage.

This reduction in incentives and ability to compete for those parties involved in a network sharing agreement means that end user choice – both between different infrastructure providers and between different service offerings – might be reduced.

Drawback 2: Requirement for increased coordination between participants

Sharing agreements will necessarily require greater coordination between participants which will need to share at least some information to collaborate on network deployment.

More broadly, sharing agreements might lead to delays in deployment, as joint decision making processes can add a layer of bureaucracy to the already complex process and potentially reduced incentives of network deployment. Extensive planning coordination can lead to delays at both the 'strategic' level (relating to network design and network evolution) and the 'operational level' (relating to the actual deployment of the network).

Linked to this, consolidating two previously distinct networks following an infrastructure sharing agreement is likely to involve costs to network operators (relating, for example, to site removal, dismantling of superfluous equipment etc.) Often, this will be offset by efficiency gains resulting from the new infrastructure sharing agreement, but it does present a potential risk to parties with their own networks entering into such agreements.

The experience in the UK is worth noting here. There is extensive infrastructure sharing between EE and 3 and between Vodafone and O2, with each pair of operators forming joint venture companies (MBNL and CTIL respectively) to manage their shared infrastructure. Whilst this arrangement allows for some cost sharing, we also understand that there are co-ordination issues.

Both joint ventures divide the country between the two owners on a geographical basis, i.e. EE is responsible for the west and 3 for the east. We believe that the agreement requires that each should invest in network build equally: thus, for every new base station provided by one operator the other should also provide a new base station. However, the partners have different levels of capital available to them and so the less well-resourced operator

cannot match the investment of the better resourced operator. This could lead to resentment by the better resourced operator that extends its half of the network and/or investment as a whole being reduced as the financially weaker operator effectively sets the pace of investment.

Drawback 3: Reduced network resilience due to increased demand on host networks/sites

Shared infrastructure might reduce the overall resilience of mobile networks in a given geographic location. This is because fewer independent mobile networks will reduce the ability for end users to switch to alternative network operators when their own host network is unavailable (for example, when needing to contact emergency services). Similarly, network problems (e.g. RAN SW errors) can have a higher impact (affecting a greater number of end users over a wider areas) in situations where the RAN is shared. Again, this drawback needs to be balanced against the risk of no network whatsoever being deployed in the absence of a network sharing agreement.

Accordingly, and to strike acceptable balance between the pros and cons of the infrastructure sharing, we urge the TRC to give adequate consideration to all issues, concerns and risks (detailed throughout this response) that are associated with such infrastructure sharing, specifically with the infrastructure network and components pertained to mobile operators.

Scope of the Implementation

The mobile market in Jordan is intensely competitive and has reached a high level of penetration. Therefore, the imposition of infrastructure sharing in this market will have an insignificant effect on the existing level of competition. The current mobile market review, which lately concluded its consultancy period has confirmed this fact³. The market review shows that in the mobile retail market there are three strong mobile operators and retail mobile prices have been falling, both of which are very good indication on the high level of competition this market has reached. We addressed these finding in detail in our response to the Review of Mobile Markets in Jordan⁴.

The coverage issue that the Instructions also brought as a driver to infrastructure sharing is another area in which we hardly can detect any

³ *Mobile Review of Mobile Markets in Jordan – Public Consultation, July 2019, page 56*

⁴ *Zain letter number REG-461-19 dated 29-Dec-2019*

failure that the sharing can address. The level of mobile coverage in Jordan is almost 100%, with very minimal “not spots” (areas without coverage) that do not construct any significant issue.

The Fixed Network market in Jordan, unlike mobile, has witnessed a historical monopoly in all aspects of its operation, including its network infrastructure – the issue of concern in the TRC’s draft Instructions. The TRC recognised this monopoly as early as the 2010 fixed market review decision, in which the TRC obliged the fixed incumbent operator ⁵ with remedies including but not limited to provision of access and transparency, in the wholesale market for physical network infrastructure access and the market for wholesale access

Adding to the above, the fixed operator enjoys the inherited nation-wide infrastructure of the copper line network, that spans all over the kingdom, as well as a recent network of fiber lines spread over its public telephone poles. These two networks, added to many sites and locations distributed in every city and town in the country as a legacy of the national Telecommunications Corporation TCC, still represent an economic bottleneck. Most if not all the ISPs, service providers and operators are basically not experiencing any kind of sharing, albeit the obligation to do so is there since 2010.

We can see strong reasoning that infrastructure sharing in the fixed network is a priority rather than in the mobile market, noting that the international best practice in many regulatory regimes mandate the fixed infrastructure sharing.

Stability and Preserving of Legal Positions and the Investment Sustainability

One of the basic principles in the administrative legislation is that the decisions Must apply onward (starting from the date enacted), and hence Must Not be applied retroactively on the acquired rights and legal status that took place under previous legislation regime, the jurisdiction ruling in terms of time should be respected. It is recognized in the administrative judiciary that the rule of non-retroactivity principle in administrative decisions is a commanding rule, violating that rule will result is the invalidity of the administrative decision that is associated with retroactive effect. The principle of non-retroactivity in administrative legislation is based on several

⁵ Regulatory Decision on the Broadband Markets Review- July 2010

considerations including Respect the acquired rights: If individuals acquired some right (s) under a specific legislation, or they are granted some legal position due to administrative legislation; that position/status should not be violated unless through a special provision, whereby that change or amendment Must take place from the date of its implementation and not retroactively.

The legal (and hence the financial, commercial and reputational) positions acquired by Zain based on the all the previous legislation regime, including basically the individual license that is issued based on the telecom law, and the instructions and bylaws enacted in accordance with the provisions of that law and other laws enforce, all the aforementioned positions should be respected and accordingly any new legal tool whether law and/or bylaws and/or instructions must not affect or interfere with the stability of those positions acquired and enjoyed by Zain.

The stability of legal positions and consequently the stability of the commercial, financial, etc. positions are crucial to the investment environment and to its sustainability in any country, any changes or amendments to that stability would actually be one of the most deterring factors to investments, not to say the foreign ones, the whole network infrastructure built by Zain over little less than three decades consists a reflection of tremendous and continuous investment throughout these years, the position Zain has gained due to this investment expenditure is a position that shouldn't be undermined by any emerging legislation, instead the new instructions are expected to preserve that position in the best manner, which will be seen by other investors as a safe and stable environment and eventually will encourage for more investment.

Accordingly, and to keep the level of the investment represented as infrastructure build and maintaining the sharing of any infrastructure component, whether active or passive should be left to commercial negotiation in good faith between licensees, and of course the prices for such sharing should be also based on commercial basis and should reflect the market value rather than the cost, more elaboration on the necessity for commercial arrangements is addressed in the next article.



Commercial Agreements

So far in this response we have brought to the attention of the TRC many reasons and arguments that assist and support the logical need to withdraw these Instructions. We have also explained that the Instructions might become redundant after the market reviews are published.

These points notwithstanding and without prejudice to all of the above elaborations, it is Zain's view that the infrastructure sharing subject can be dealt with as commercial arrangements between the parties wishing to share any of their network components. The TRC can support this approach that is in line with the best international practice, and can at the same time reserve its right to intervene where the parties might not reach an agreement or either party called the TRC to intervene.

A recent **GSMA**⁶ study on the infrastructure sharing recognized that "commercial considerations, rather than regulatory mandates, appear to be driving the increasing trend for MNOs to adopt a variety of infrastructure models". They suggested that "Infrastructure sharing is usually commercially driven rather than mandated by regulators;".

The previously-referenced BEREC report⁷ has witnessed that the case of letting the infrastructure sharing for commercial arrangements and agreements is the **most frequent practice** in most of the European mobile markets, contrary to the case where the requirement is imposed by the regulator: "*...Several markets have more than one such system in place, which generally come about either as a result of commercial negotiation between participating parties, or – less frequently – as a result of regulatory intervention by NRAs and/or competent authorities*".

The pricing of the shared components, as the Instructions suggests, is to be on cost-based approach (article 78, page 19). Although it might be understood that pricing collocation and/or infrastructure sharing for the sole purpose of network interconnection between licensees could be on cost-based basis, it is

⁶ GSMA: Mobile Infrastructure Sharing

⁷ BEREC Common Position on Mobile Infrastructure Sharing - 13 June 2019, page 3



hard to understand, and basically to accept, the logic behind setting cost-based pricing regime for services that are the components and facilities some party is sharing with the another party's own network, and use that sharing to sell its services on a commercial basis.

And again, without prejudice to our view on the sharing regulation, we see that it's more acceptable and logical that the prices for shared components and facilities reflect market values at the time of sharing. Such an approach would represent fair and equitable treatment between the sharing/partnering parties.

The GSMA study⁵ on infrastructure sharing – referenced earlier – confirmed that the international best practice suggests that regulators normally adopt commercial pricing approach for the infrastructure sharing, *"5.4 Controls on charges In general, it appears that regulators tend to rely on operators to engage in commercial negotiations to set a price for infrastructure sharing. The price is then set based on the relative bargaining power of each operator"*.

Apparently, if the norm is to let the infrastructure sharing be based on commercial agreements, then the prices of these shared components should be commercially based as well. The two sharing parties may negotiate and reach an agreement on such prices, while in all cases the regulator can be referred to in any disputed circumstances.

Based on the above and given that **National Roaming** is a kind of (*active*) infrastructure sharing between licensees, we hardly can detect or witness any practical need to implement national roaming in Jordan, there is practically no persistent or chronic issues with mobile coverage that might necessitate national roaming.

A presentation titled international examples of national roaming and their relevance to the ACCC's inquiry in Australia⁸, presented by Analysys Mason to Optus recognized the fact that National Roaming should NOT be regulated, in line with the international best practice, the presentation stated "Regulators in several benchmark countries (*UK, France and Germany for example*) have removed national roaming arrangements. Examples of 'price regulation' by other regulators focuses on guidance not price setting. The declaration of national roaming requires price regulation which is not light touch and would

⁸ Presentation on National Roaming, submitted to Optus of Australia, analysis mason 2016

make *Australian* regulations more onerous than the majority of countries. National roaming intervention carries high risk of unintended consequences on market competition and investment plans”.

The idea of national roaming theoretically addresses the problem of mobile connectivity in areas outside a given mobile network operator's (MNO) coverage. Allowing an MNO's customers to roam onto the networks of others when their own devices can't receive a 2, 3 or 4G signal, but the national roaming is not the answer neither is a good solution to the lack of mobile coverage.


National roaming has been investigated in the past by various regulators and governments and found to carry various risks.

First, allowing one or more players to use facilities invested in by others, or which could be prospectively competitive, could undermine the incentives to invest and compete on coverage. Secondly, national roaming will increase the risk of dropped calls, due to more congested networks and users not moving seamlessly from one network to another. Thirdly, roaming will reduce devices' battery life, as they constantly search for networks with a better signal. These last two risks will harm user experience.

A final problem of national roaming is that operators with smaller networks can effectively “free-ride” on the investments made by larger operators, allowing the smaller operator to offer service to customers whilst leaving the larger operator with the investment risk.

In Jordan; the National Roaming is fundamentally different to international roaming, as it would be technically far more complex, slow to implement and would cause serious problems with network resilience and – the most important - could deter or at least discourage infrastructure investment and competition. Therefore, we believe that the idea of imposing National Roaming should be abandoned.

The optimum alternative solution instead of deploying national roaming is to encourage operators to continue to invest in rolling out networks throughout the country, basically by feasible reduction of the spectrum fees and incentives for fast and wide roll out plans.



In light of the above-mentioned arguments and justification, we would urge the TRC to withdraw these Instructions, for much the reasons above stated that we summarize below:

1. There is no unforeseen market distortion or issues associated with deployment, coverage or any other issue that the TRC presented in the Instructions document as reasons to impose infrastructure sharing.
2. The TRC didn't conduct any study, assessment, survey or any other relevant verification method to check the telecom markets status in terms of penetration, roll-out plans, current and planned investment, etc. to assist its findings that infrastructure sharing is considered necessary and required to rectify network problems.
3. Any new or emerging regulation should preserve the stability of the acquired legal positions for the licensees, including commercial, financial, reputational etc. positions as well, represented basically by the network they build over the course of their operation, these positions shouldn't not jeopardized by any obliging them to facilitate their whole infrastructure as cost-based service to other licensee who will commercialize it for its own purposes.
4. The issuance of these Instructions is premature, and, without prejudice to our position and view stated and detailed above, it would be more practical and logical to wait until the market reviews decision are approved and released before such Instructions are studied, considered, and - if needed – issued.

Actually the market reviews (both for mobile and fixed markets) addressed in very much detailed manner the issue of the network access and relevant subjects like transparency and publishing information on sites/locations. The market reviews decisions will set remedies to rectify any detected issues with the relevant market, this would render the Instructions redundant, and accordingly we would strongly advice to wait the market reviews outcomes.



Specific Comments

Although we believe the Instructions should be withdrawn in the first place, but nevertheless; we state herunder our comments to some articles in concern as follows.

1. **Article 1.3**, Definition of the Telecommunications Network facilities includes "virtual" facilities,

Virtual is a vague and unclear term that is not explained anywhere in the document, However, we believe that the virtual sharing is out of scope of these Instructions, we kindly request to remove it from the definition.

2. **Article 30** (Telecommunications Network Facilities & Infrastructures subject to sharing are those that can be shared without an attendant risk of lessening of competition).

This is a very important condition that implies the driver for and the idea behind issuing the Instructions, implantation the infrastructure sharing as an obligation has a big chance it would affect the competition and deter the desire and the ability to invest.

While on contrary, the accomplishment of facilities sharing on commercial basis, and according to commercial agreement should basically incur no threat to competition, as the owning party decision to voluntary offer its facilities for sharing is its own choice and is assumed it's backed up by strategic plans that take any possible risk of sharing into consideration.

3. **Article 41**, Parties of Sharing Agreement The submitted Sharing Agreement must be accompanied by a written declaration signed by both parties that the Sharing Agreement complies with the Law and the Instructions.

The request to include the written declaration is very strange, first because the sharing agreement should be a commercial agreement (please refer to our above argument in this regard), second the TRC has always the power and authority to audit and check the conformity to law and instructions of the provision of any and all telecommunications services.

We kindly recommend removing the obligation to provide the declaration.

4. **Article 47**, setting 21 working days to complete the feasibility study,

Extra time should be available for sharing requests that require accurate and precise feasibility study, we recommend setting 30 working days, and if needed another 30 working days but with an acceptable justification from the owning party.

5. **Article 49**, 21 working days to conclude the sharing agreement is short, we recommend a two-months period.

6. **Article 78** (Prices for sharing Telecommunications Network Facilities shall be fair and reasonable and based on cost).

It is accepted to set fair and reasonable prices for the shared network facilities; however, it should NOT be cost-based in light of the fact that the sharing agreement itself should be commercial in essence.

We recommend removing the last phrase "and based on cost"

7. **Article 95** (*The National Roaming shall not include any service that is not interconnected with the public switched network*) is not clear, we kindly request more elaboration to clarify it.

8. **Article 97** (*This roaming obligation ... 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.*

The host operator provided international roaming based on commercial arrangements and agreements with the roaming party, therefore, and according to the obligation of this article; if the national roaming is to be dealt with as the international roaming, then it should also be provided on commercial basis as well.

9. **Article 114**, (*The prices for national roaming shall be cost oriented below retail levels*).

10. The price of the national roaming should be commercially and mutually set between the two operators, although it should be less than the retail one.

Finally, and upon taking all the above views and arguments into good consideration, we kindly request the TRC to basically withdraw these Instructions, and to kindly pay considerable attention to the following:



- A. Adopt no-regulation approach to the infrastructure sharing, specifically in the mobile market, the fixed market network infrastructure is still a bottle neck. However, the TRC can augment the facilities sharing remedies proposed by the fixed market review with regulation (e.g. instructions) on sharing the fixed infrastructure facilities and components.
- B. Wait the outcome of the mobile and fixed markets reviews before assessing the need for intervention in the infrastructure sharing.
- C. In the rare case that TRC finds out there is a need to intervene, we recommend adopting a light- touch regulatory approach where the subject is left to commercial arrangement and agreements between the partners. TRC could reserve its right to intervene where the parties might not reach an agreement or either party called the TRC to intervene.. Ex-ante regulation should only be imposed in the event that a persistent market failure has been identified that cannot be rectified by any other means.
- D. In all cases TRC should refrain from imposing cost-based prices for the shared components and facilities, and instead leave the negotiating parties to agree on a set of fair and acceptable prices.

