

JorMall disagrees with assessment of competition problems and appropriate remedies and for the following reasons:

### **Market Size and Growth:**

On page 15 of the above-mentioned consultation Exhibit II the study showed “The total SMS volume in the market is observed to be increasing during the last 3 years as shown in Exhibit II below. Indications from the operators suggest that SMS volumes are increasing on both post-paid and pre-paid subscribers.”

	2015	2016	2017	2018
Total	1,652,510,035	1,951,452,928	1,901,206,524	2,079,889,793
Year to Year % Increase		18%	-2.6%	9%

#### **1. Growth:**

- 1.1 The above data does not include 2019 volumes which could have a major impact on the Market Review of 2019.
- 1.2 2016/2017 figures show a negative growth.
- 1.3 2016/2018 growth is only 6.5%.

2. **OTT:** It is acknowledged that OTT penetration has been rapidly growing over the last 4 years and through the OTTs the messaging service is free locally and internationally. It is assumed that A2P SMS has replaced the lost Person to Person (P2P) SMS volumes and contributed the growth of SMS volumes.

3. **SMS Market Breakdown:** The information in the market review shows combined data on both A2P and P2P SMS. It is believed that the information in the market review does not cover the A2P market details in depth and it will be unfair to undertake any decisions in the absence of detailed information.

**Conclusion:**

- *The A2P SMS has contributed considerably to the current volumes of SMS and consequently generated revenues to all the 3 Jordanian MNOs which replaced the loss of revenues caused by OTT messaging.*
- *The A2P business has contributed to the Jordanian government in the form of taxes. All A2P purchases are subject 26% service tax and all A2P sales are subject to 16% sales tax.*
- *All A2P revenue is cycled within the economy of Jordan instead of channelling it to outside Jordan.*

4. **The A2P Business:**

- 4.1 The A2P business started as early as the year 1996.
- 4.2 The A2P business is conducted by local Jordanian companies "SMS Vendors or Companies". There are currently around 12 companies employing around 120 professionals with investments of around 3 million JODs.

## 5. Legal Framework:

The A2P registered companies operate within a legal framework governed by:

- 5.1 Special Licensing from the **Jordan Media Monitor (JMM)** and with the approval of the TRC. Registered SMS vendors are obliged to pay 1% of their net profit to the **JMM** annually.
- 5.2 The current Jordanian Commercial Laws.
- 5.3 The Telecommunication Law.
- 5.4 The TRC instructions related to Bulk SMS.
- 5.5 The TRC Competition Regulations and the main Competition Law of Jordan.

## 6. A2P Commercial Operations:

- 6.1 The A2P companies buy bulk SMS from the MNOs and resell it to their clients. In most cases A2P companies engage in long term contracts with the MNOs and conduct their sales in the same manner. (1 to 5 years)
- 6.2 The “Bill and Keep” regime which has applied since the start-up of the A2P business. All A2P businesses and operations has been founded and operated based on this regime.
- 6.3 A2P companies sell the bulk SMS in three different formats:
  - 6.3.1 Advertising SMS messages which constitutes around 65% of the A2P market.
  - 6.3.2 Financial and Transactional messages which are sold to Banks and Financial institutions. This sector represents around 20% of the A2P market.
  - 6.3.3 Service SMS which are sold to clubs, schools universities, etc and are usually used for notifications. This sector represents around 10% of the A2P market.
  - 6.3.4 International SMS which is notifications coming from outside Jordan ex. Facebook, WhatsApp etc. This sector represents around 5% of the A2P market.



## **7. A2P Operations:**

- 7.1 A2P companies have to invest in SMS delivery stations which includes servers, routers, data storage systems, firewalls and its related communications network. All delivery stations consist of main and redundant setups to ensure a reliable service. (JorMall operates 3 delivery stations in three data centres in Jordan.)
- 7.2 A2P companies build and manage direct connections with the SMPPs of the MNOs that enables them to deliver their purchased SMS.
- 7.3 A2P companies build and manage interfaces that connect to the core systems of their clients with their SMS delivery network.
- 7.4 A2P companies monitor on 24/7 basis all outgoing messages from their systems to ensure full compliance with the prevailing laws and regulations.
- 7.5 A2P companies have to conduct the full business side of their operations including sales, development, finance etc.
- 7.6 In the case of advertising SMS A2P companies have to collect databases and operate a highly advanced targeting systems.

## **Conclusion:**

- ***The A2P companies have founded their businesses on the current Laws and Regulations and on the Bill and Keep Regime.***
- ***The A2P companies have started and developed this business throughout the last 23 years.***
- ***The A2P companies have created successful partnerships with the MNOs that have resulted in providing the MNOs with considerable revenues.***
- ***The A2P companies have served successfully many sectors of the Jordanian companies and organizations by providing them with affordable and effective communications solutions.***

- ***The A2P companies and through their operations and efforts managed to retain the spending of their clients cycled within the Jordanian economy instead of migrating this spending to Social Media Platforms and OTTs outside Jordan.***
- ***The A2P companies represent an economic success story through their operations, investments, and achievements. Without the A2P companies the SMS market would be at considerably lower volumes.***

## **8. Local Competition in the A2P market:**

- 8.1.** Since the start-up of this business A2P companies were buying their bulk messages from all the three MNOs in Jordan.
- 8.2.** A2P companies and as their business increased and encountered market requirements started to specialize in their own fields. Some companies specialised in Banking SMS, others specialised in Advertising SMS and Service SMS. Throughout this period A2P companies built strong associations with the MNOs in their specific fields of specialisation. Accordingly, there is a direct affiliation between A2P companies and individual MNOs.
- 8.3.** Some MNOs feel that there is an unfair distribution of revenues. that revenue distribution was uneven between them. This situation could have been solved smoothly if MNOs addressed the situation through a competitive offering instead of dominant practices.
- 8.4.** Up and until 2017 all the MNOs were conducting their A2P business on whole sale basis. In 2017 one MNO started entering the market on Retail basis by selling directly to end users.
- 8.5.** As the competition intensified between MNOs, some MNOs started to take steps to acquire the A2P SMS business by applying their Dominance and Significant Market Power. This was applied in many formats as follows:
  - 8.5.1.** Refusal to sell some A2P companies or by providing them with discriminate prices.



- 8.5.2.** Some MNOs blocked completely incoming SMS on their network originating from other networks.
- 8.5.3.** Some MNOs block specific inbound SMS originating from other networks for the purpose of undermining the quality of the A2P service of the sending A2P companies.
- 8.5.4.** In 2018 one MNO decided to give a foreign unregistered International A2P company exclusive rights on its network. Their network was blocked for a period of one month on all incoming traffic from other networks. The unblocking of incoming SMS to this specific MNO was stopped through a Court Order.
- 8.5.5.** One MNO constantly delivers wrong reporting on the status of incoming SMS of other networks. The delivery report always states that all SMS are delivered successfully.
- 8.5.6.** Some MNOs offered dumping prices of SMS messages in order to drive specific A2P companies out of business.
- 8.5.7.** Some MNOs offer free SMS as part of a bundle when they sell other services of the MNO contradicting the prevailing Competition Laws and Regulations.
- 8.5.8.** Some MNOs are conducting SMS retail operations and are using their dominant situation by conducting profiling on their customer base and depriving the A2P companies from this service.

## **9. External Competition:**

- 9.1.** According to the Ministry of Telecommunications the spending of Jordanian companies and organizations reached 80 million dollars during 2018.
- 9.2.** In the case of advertising messages Social media platforms have a considerable advantage against SMS and as follows:
  - 9.2.1.** Price advantage.
  - 9.2.2.** Advertisements can be broadcasted on 24/7 basis while advertising SMS is restricted to 5 days a week and it is not allowed to be broadcasted on holidays.

- 9.2.3.** Social media spending is not subject to income tax and any form of taxes imposed on SMS.
- 9.2.4.** Although the Jordanian Government requests Jordanian Spenders on Social Media to pay 16% sales tax yet it is well known that hardly any spenders pay this amount.
- 9.2.5.** In the case service messaging WhatsApp our now offering a WhatsApp Business platform that can replace all service SMS messages and for free.

**Conclusions:**

- ***Despite the dominant practices by some MNOs and unfair competition the SMS A2P companies continued to grow and provide their clients (The local organizations) with adequate communications solutions.***
- ***The A2P companies managed to compete strongly against Social Media platforms and messaging through the OTTs.***
- ***MNOs should consider stronger cooperation with the A2P companies which will lead to a fairer distribution of revenues and will help grow the A2P SMS business.***



***As for the impact of introducing new regulations and imposing termination rates, JorMall feels that this will lead to Market Failure, eradication of fair competition, major drop in SMS volumes, depriving local organizations from this service, and will inflict major losses for A2P vendors and for the following reasons:***

1. A2P companies were established based on the existing Laws, Regulations, and by-laws. Any adoption, imposition, promulgation, modifications or repeal in the current laws, Regulations, and by-laws should be in the direction of improving the platform of the existing A2P business rather than in the direction of increasing MNOs dominance.
2. The Bill and Keep Regime for SMS existed from the first day of the telecommunications business, and the A2P commercial business activities were established based on this Regime. Thus, eliminating this Regime and imposing termination charges will lead to A2P SMS market failure and will provide MNOs with significant market power.
3. The A2P business has replaced the loss of SMS volumes due to the penetration of OTTs. The market review does not contain any substantial information related to the A2P business nor does it show the impact of the proposed solutions.
4. The need for market review or market regulation would be called for in the cases of Weak Competition, or Market Failure. The fact that the market is maintaining the current volumes and is showing growth is a strong indication of a healthy market structure and healthy competition, which means that there is no real need for any adoption, imposition, promulgation, modifications or repeal in the current laws, Regulations, and by-laws.



5. If any new regulations are adopted, especially in the introduction of termination fees, each MNO will practice a full dominance on its network. Healthy competition will be fully eradicated. This contradicts with the TRC objectives of protecting and encouraging healthy competition and also contradicts with the prevailing competition laws, regulations, and by-laws.
6. The termination rates mentioned on page 80 of the market study (4.68 fils for 2019 and 6.09 fils for 2020) are double or more than the average selling prices of the A2P vendors. JorMall average price currently is 2.8 fils per SMS and is expected to go down even further as volumes grow. The proposed termination rates will double or triple the current prices which will lead to grave losses above the financial means of the A2P companies.
7. The growth of the SMS business has been a result of free market factors and healthy competition. If these factors are removed the quantities of SMS will drop considerably. This will result in a major revenue reduction for MNOs and the Government.
8. The price of SMS will increase considerably and the beneficiaries of this service will suffer considerably in the form of additional costs. This is a clear contradiction to the TRC objective of protecting the beneficiaries.
9. Customers will shift to alternative communication platforms especially social media and OTT channels. This will affect negatively the income of MNOs, and the government, and will also affect the Jordanian Balance of Trade negatively.
10. Most of the A2P companies have long term contracts and commitments with the MNOs (1-5 years). Any change in market factors will result in catastrophic losses on A2P companies which will turn result in closure, loss of investment and loss of jobs.

11. Most of the sales of the A2P companies sell SMS on long term contracts (1-3 years.) If the contract prices were to increase or termination fees were to be added, then A2P will lose their contracts and will be subject to legal and financial obligations and losses.
12. Termination fees will be paid by the MNOs to the MNOs. This fee will not be reflected on the A2P business.
13. If a termination fee was introduced, MNOs can manage the transactions on local basis but will not be able to impose any termination fees on inbound traffic from outside Jordan.

#### **Recommendations:**

- *Since the A2P business is operational within all the legal frameworks and since this business has contributed considerably to the communications market and to the economy at large. It is recommended that a full market study is conducted for this sector and appropriate measures should be put in place to help it grow and protect it from dominant practices.*
- *MNOs are the biggest beneficiaries from this market, accordingly they can and will improve their revenues through healthy competition, strong offering and not through dominant practices.*
- *Both A2P companies and MNOs should join forces to improve the service and develop new features that will allow them to compete against social media platforms and OTTS.*