

Umniah Mobile Company
Response Document to the
Public Consultation issued by the TRC
Review of Fixed Markets in Jordan

December 2019

Contents

1. Introduction	3
2. Responses to Consultation Questions	4
3. Other Issues.....	8

1. Introduction

Umniah Mobile Company (Umniah) welcomes the opportunity to participate in responding to the TRC's Public consultation for the Market Review on Fixed Markets issued by the TRC on 29 July 2019 hereinafter referred to as the (Consultation Document). Umniah has made general comments in each chapter of the Consultation Document, where specific questions have been posed and responses provided.

Umniah appreciates the TRC's efforts and its thorough analysis on the wholesale and retail level. Umniah finds that the TRC, while conducting this market review, has to take into consideration and focus on ensuring that a fair competitive environment is created in the fixed market. This Fixed market review seems to be intended to bring further competition to the retail broadband internet access market by encouraging the supply of products in upstream wholesale markets associated with broadband facilities and broadband services.

The TRC preliminary findings in this consultation document of defining relevant wholesale markets susceptible to ex-ante regulation, defining operators with SMP and proposing remedies are inconsistent with the TRC findings published for consultation within its decision related to : "Instructions for telecommunications network facilities and infrastructure sharing and national roaming" that oblige all telecommunication infrastructures constructed or located within Jordan to negotiate and enter into sharing agreements.

Umniah notes that the data upon which the TRC has relied, such market shares and market concentration have not been disclosed and therefore full comment and response is not possible. Therefore, Umniah must reserve its position with respect to its comments and responses contained in this document

We elaborate on each of these points, and many others, in this response.

2. Responses to Consultation Questions

This chapter lists each question, describes and summarizes Umniah's responses:

1. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for retail FACO services?

Umniah generally accepted the TRC's preliminary conclusion regarding the scope of the respective product market definitions for retail fixed access and call origination (FACO) services covering the entire territory of Jordan.

2. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for retail fixed broadband services?

Umniah generally accepted the TRC's preliminary conclusion regarding the scope of the respective product market definitions for retail fixed broadband services covering the entire territory of Jordan.

3. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for Wholesale Local Access services?

Umniah generally accepted the TRC's preliminary conclusion regarding the scope of the respective product market definitions for wholesale local access services covering the entire territory of Jordan. Umniah believes that the market for wholesale local access shall exclude virtual unbundled local access (VULA) products provided over fiber network as it's a premature to regulate this product considering that the fiber networks are currently geographically limited .

4. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for Wholesale Broadband Access services?

Umniah generally accepted the TRC's preliminary conclusion regarding the scope of the respective product market definitions for wholesale broadband access services covering the entire territory of Jordan. Umniah believes that the market for wholesale broadband access shall exclude Bit-stream over fiber products as it's a premature to regulate this product considering that the fiber networks are currently geographically limited .

5. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for Wholesale Fixed Voice Call Termination services?

Umniah agrees with the TRC's preliminary conclusion regarding the scope of the respective product market definitions for wholesale fixed voice call termination services covering the entire territory of Jordan.

6. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for Wholesale Fixed Voice Call Origination services?

Umniah agrees with the TRC's preliminary conclusion regarding the scope of the respective product market definitions for wholesale fixed voice call origination services covering the entire territory of Jordan.

7. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for Wholesale Fixed Transit services?

Umniah agrees with the TRC's preliminary conclusion regarding the scope of the respective product market definitions for wholesale fixed transit services covering the entire territory of Jordan.

8. Do you agree with the TRC's preliminary conclusions regarding the wholesale fixed telecommunications markets found to be susceptible to ex ante regulation?

Umniah agrees with the TRC's preliminary conclusion that the following fixed wholesale markets are meet all of the three criteria test and so is susceptible to ex-ante regulation:

- Wholesale local access
- Wholesale broadband access
- Wholesale voice call termination
- Wholesale voice call origination
- Wholesale transit

9. Do you agree with the TRC's preliminary conclusions regarding the retail fixed telecommunications markets found to be susceptible to ex ante regulation?

Umniah agrees with TRC's preliminary conclusion that the retail market for broadband services does not meet all of the three criteria test and so it is not susceptible to ex-ante regulation.

10. Do you agree with the TRC's preliminary conclusions regarding the competition assessment and SMP findings in the wholesale fixed markets?

Umniah agrees with TRC's preliminary conclusion that:

- Orange Fixed is the operator with SMP in the market for wholesale local access, the market for wholesale broadband access and wholesale transit service
- All operators that terminate fixed voice calls have SMP for termination on their own network.

11. Do you agree with the TRC's preliminary conclusions regarding the competition assessment and SMP findings in the retail fixed markets?

Umniah notes that the data upon which the TRC has relied, such market shares measured in traffic volumes and retail voice call origination revenues have not been disclosed and therefore full comment and response is not possible. The TRC need to consider the impact of the delay of the provision of LLU on the competition for the provision of retail fixed market as the provision of fixed retail services come from operators who have their own access infrastructure.

12. Do you agree with the TRC's preliminary proposals for remedies in the Wholesale Local Access market?

Umniah agrees that an SMP operator in the wholesale access market may be insulated from the need to innovate and improve efficiency, so limiting the development of new technologies and that the delays in the development of an LLU product in Jordan indicate such inefficiency.

Umniah suggest that the TRC should apply all necessary steps both to have Orange Fixed comply with the regulation it intends to produce and to ensure that the RIO to be published by Orange fixed; shall be transparent and technically and commercially reasonable. This offer must be sufficiently unbundled so as to ensure that new entrants are not charged for facilities that they do not require and such offer must provide a description of the relevant offerings in detail, including the associated terms, conditions and prices. It's worth mentioning that as a vertically-integrated, single economic entity, Orange would be able to affect competitive conditions in a number of related retail markets that depend on the existence of a physical access connection to an end user. Vertical leverage could include refusal to supply a wholesale product, or to introduce unreasonable delays in the development and/or supply of new products.

13. Do you agree with the TRC’s preliminary proposals for remedies in the Wholesale Broadband Access market?

Umniah suggest that the TRC should apply all necessary steps both to have Orange Fixed comply with the regulation it intends to produce and to ensure that the RIO to be published by Orange fixed; shall be transparent and technically and commercially reasonable. This offer must be sufficiently unbundled so as to ensure that new entrants are not charged for facilities that they do not require and such offer must provide a description of the relevant offerings in detail, including the associated terms, conditions and prices. It is Umniah’s understanding that in the absence of regulation in the fixed broadband wholesale market Orange fixed will have the ability to engage in excessive pricing and to deny access to bitstream while continuing to supply to its downstream operation.

14. Do you agree with the TRC’s preliminary proposals for remedies in the Wholesale Fixed Voice Call Termination market?

Umniah believes that for the TRC to achieve its objective in enhancing competition , it has been proven that cost –based pricing using LRIC is much more viable to achieve such a goal. Having said that and understanding the fact that the proposed TRC interconnection rates for wholesale fixed call termination has already being determined using a glide path for reducing the termination rate down to modelled cost over a four year period , Umniah suggests that the TRC to set the fixed termination rate at the cost calculated by LRIC model to avoid excessive termination charges paid by the mobile operator to Orange Fixed. On the other hand, the TRC need to study that the determined termination rate for the fixed network in 2021 of 3 Fills/ minute is higher than the mobile termination rate of 2 Fills/ Minute which is not in line with the international best practice.

15. Do you agree with the TRC’s preliminary proposals for remedies in the Wholesale Transit market?

Umniah generally accepted the TRC’s preliminary proposals for remedies in the transit market that targeted to reduce Orange Fixed ability and incentive to price its transit services excessively. Umniah suggest that the TRC should apply all necessary steps both to have Orange Fixed comply with the regulation it intends to produce and to ensure that the RIO to be published by Orange fixed; shall be transparent and technically and commercially reasonable.

16. Do you agree with the TRC's preliminary proposals for remedies in the retail Fixed Access and Call Origination market?

Umniah disagree with the TRC's proposal to withdraw the price caps and to maintain a watch in prices so that it can intervene if required. Umniah suggest that such a remedy can be withdrawn when the TRC specify the information it requires to assess bundles, and the test that will be applied. In add to TRC right to examine any bundle after launch, using its competition powers.

3. Other Issues

- **Use of out of date data in a rapidly changing market:** The data that TRC has used to test for market power is two years old, given the rapid changes to the fixed broadband market, the data that TRC has used is out of date and does not by itself provide a reasonable indication of current market shares and market concentration. Nevertheless, the TRC has chosen to base its analysis on this out of date information. TRC has not projected market share trends forward. Hence, TRC has no comprehension of the state of the relevant markets at the point of time when remedies will come into effect.
- **Inconsistency in regulations:** The TRC issued a decision subject to consultation titled "Instructions for telecommunications network facilities and infrastructure sharing and national roaming" before it continues with the market review which is the subject of this consultation. The TRC is in danger of inconsistency in market regulation in the following points:
 - a. **Obligation to provide the service:** this consultation document required operators with SMP following a market review to provide access to civil engineering infrastructure like poles, ducts and dark fiber if it is reasonably available while the infrastructure sharing decision oblige **all licensee** that owns, leases or manages telecomm network facilities to negotiate and enter into a sharing agreement.
 - b. **Remedies imposed:** in fixed broadband consultation the TRC proposes that there should be a specific exclusion of FTTx services from the cost orientation obligation at this time but the TRC should retain the right to monitor prices and take action in the event of excessive wholesale pricing without having to conduct another market review. However, in infrastructure sharing decision the TRC in article 78 stated that "prices for sharing telecommunications network facilities shall be fair and reasonable and based on cost".

- c. The proposal of the TRC to produce Network Access Instructions that will include Bit-stream, Local Loop Unbundling and Access to civil engineering and Infrastructure Sharing Services should be restricted to the fixed line incumbent operator, and in this case, it would be consistent with the endeavors aiming at encouraging service-based and facility sharing competition, and the fact that new entrants would not be in a position to compete with fixed line operator on facility-based condition.
- **The TRC should undertake a thorough impact assessment:** The TRC has not demonstrated that the impact of Orange Fixed not implemented the remedies imposed in the previous market review conducted in 2010 on the take up of broadband internet access or increase market share of smaller operators. It has not attempted to assess the impact on other operators that decided to invest in their own infrastructure.

* * *