Comments on Zain's responses to the Public Consultation on Mobile Markets

1. Orange Mobile wishes to comment on the response that Zain made in its responses to the Public Consultation on Mobile Markets. In particular, we want to address the following issues:

   - The impact of OTT on the revenue of mobile operators;
   - The mobile market being effectively competitive;
   - The proposed cost-based regulation of SMS termination;
   - The withdrawal of the decision 9-1/2004.
   - The need to introduce asymmetric MTR rates for voice services.

2. We address these issues below in separate sections.

1 The impact of OTT on mobile revenues

3. We agree with Zain's comment that the TRC should research the impact of OTT on the revenue of mobile operators. More in general, TRC should investigate various factors that negatively impact profitability in the mobile market. Next to OTT, this includes the very low level of retail prices. This particularly harms the smaller providers like Orange Mobile, who operate on the verge of profitability. This is likely to harm investment and competition in future. TRC should consider appropriate remedies such as price floors for mobile services mainly for data services which have been introduced in a number of countries, for instance Sri Lanka or Morocco, to prevent a similar race to the bottom and protect the future of the mobile industry.

2 The mobile market is not effectively competitive

4. We disagree with Zain's statement that the mobile market is effectively competitive. Zain brings in the following arguments:

   - A market with three firms is considered competitive in the literature;

- Zain's market share is lower than that of the leading operator in other mobile markets with three operators;
- Zain gained market share in 2015 and 2016 but lost in 2017, which shows that consumer switch providers;
- Prices in the mobile market are low.

5. *Three firms*. The number of firms active in a market is only one of indicators of competition, and of a rather minor importance. Regulators tend to rely more on market shares in combination with other factors such as revenue market share, barriers to entry and competitive advantages enjoyed by the dominant firm.

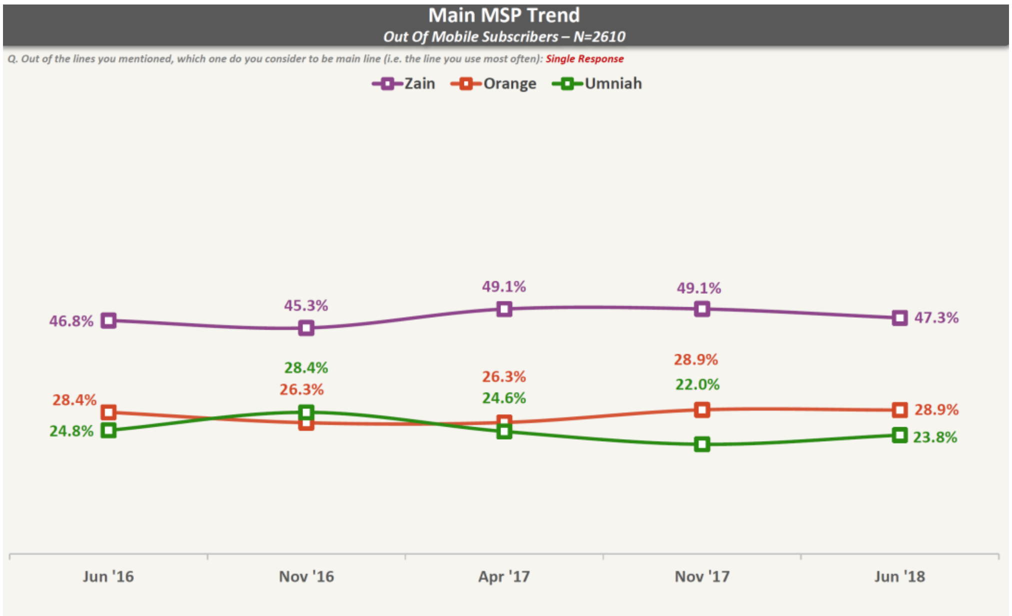
6. The studies cited by Zain are chosen selectively, and none of them relates to the mobile telecom markets, although two of them relate to fixed broadband. Therefore, this argument and literature Zain chooses are more supportive of finding effective competition in the fixed markets than in mobile markets. The choice of literature is important because the impact of additional entry depends on individual market conditions. One of such factors is the ability to quickly expand output, which may be easier in fixed markets where the infrastructure is in place than in mobile markets where there are capacity constraints and excessive use can lead to congestion.[1]

7. *Market shares*. Zain's states that according to TRC it gained market share in 2015, but lost in 2017. However, in 2017 the TRC changed its methodology of calculating number of active subscriber. That means that the figures for 2016 and 2017 are not comparable and cannot be used to draw conclusions on changes in market shares. As TRC states, Zain's market share in 2018 increased. That means that Zain's market share increased at least in 2015, 2016 and 2018, while the growth figure for 2017 is not available. [2]

8. We doubt whether the market share of Zain has substantially decreased over the past years. A recent IPSOS survey shows a stable and sometimes increasing market share:

[1] The textbook model of Bertrand duopoly shows that if there are no constraints to expanding output, two firms are sufficient to reproduce perfect competition outcomes.

[2] TRC, Public Consultation: Review of Mobile Markets in Jordan Mobile consultation, July 2019, page 18.



Source: IPSOS 2018 Telecom Scene survey. Subscribers are assigned to operators based on the operator of the line which they consider as their main line.

9. According to the newest TRC figures for Q1 2019, the largest operator's share in mobile subscriptions is 44.6%. This is much higher than the market share presented by Zain in Figure 1 and would place Jordan among countries with one of the highest market shares of the leading operator, between Austria and Greece.

10. Finally, the subscriber market share is less important as an indicator of effective competition and dominance than the revenue market share. It should also be considered jointly with other factors which point to a lack of effective competition and Zain's dominance, such as:

- High market shares up to 60% in most profitable market segments (postpaid, Amman);
- Zain's advantages such as largest spectrum holding, network coverage, brand recognition;
- Zain's higher profitability;
- Zain's on-net/off-net price discrimination and the resulting club effect, putting Zain at an advantage;
- Lack of mobile number portability, impeding switching, and the obvious role of Zain in preventing the implementation of MNP.

11. Zain comments that when spectrum that can be used for 4G is considered, Orange Mobile has the largest holding. However, for the provision of mobile broadband 3G is also valuable and taking into consideration that Orange Mobile acquired a carrier

in 2.6 GHz in April 2018. In addition to that, once the restriction on Zain's 900 license is removed by 2021, Zain will have the largest spectrum holding suited for 3G/4G, which will increase its advantage above other operators.

12. *Low prices.* We consider that low prices in Jordan, which are among the lowest in the world, are not a sign of healthy competition, but the result of a price war, which harms especially the smaller operators and can impede future development of mobile services. In a number of other countries where this problem occurred as well, such as Sri Lanka or Morocco, this lead the regulator to impose price floors on mobile services to protect operators' revenues and incentives to invest.

3 SMS termination

13. We disagree with Zain's view that SMS-termination should be based on cost.

14. Zain states that the TRC has rightly pointed out that the current Bill&Keep arrangement is voluntary, and there is a risk that it will be terminated during the next regulatory period. In such case, termination rates could rise to the monopoly level.

15. However, the risk is created by Zain itself, and the proposed remedy will only benefit Zain, the dominant operator. It will give Zain an opportunity to introduce on-net/off-net price discrimination on SMS traffic in addition to voice, which will exacerbate the club effect and strengthen Zain's dominant position. TRC should take into consideration Zain's historic refusal to implement the on-net/off –net ex ante remedies such as the refusal to provide mobile call termination services at the weighted average price of on-net calls.

16. Increasing SMS termination rates will have additional negative consequences:

    - The current offers in the market include free bundles of SMSs, where the increased cost of SMS termination will put the operators in a situation where they have to increase their retail prices.
    - Prices charged currently to Bulk SMS providers are based on zero-rate SMS termination rates. When these termination rates are raised, current prices for Bulk SMS will lead to losses to mobile operators. However, attempts to change the contract terms will lead to legal disputes with the Bulk SMS providers,

17. TRC should focus on supporting the Bill & Keep regime as a tool to promote effective competition. TRC should not allow Zain, the largest operator to undermine the Bill & Keep regime in order to replace it with cost-based regulation that will allow that operator to exploit the club effect and harm competition by creating an artificial advantage over its competitors.

4 Decision 9-1/2004

18. Contrary to Zain, we disagree with the removal of Decision 9-1/2004. This decision, if implemented, would alleviate the problem of on-net/off-net price discrimination and reduce the club effect.

19. The lack of implementation of Decision 9-1/2004 allowed Zain to continue its anticompetitive practices. Even after TRC approved LRIC-based MTR rates in 2011, Zain continued to apply margin squeeze by applying on-net/off-net price discrimination and pricing on—net calls below MTR. At the same time, it refused to comply with the said decision and to allow other operators to terminate calls on its network on the weighted average price for its on net prices.

20. According to TRC data, Zain's subscriber market share is almost 45%, which is much higher than that of other operators, and relatively stable. This shows that Zain manages to maintain its advantage in the mobile market. The club effect created by high and symmetric termination rates, combined with Zain's on-net/off-net price discrimination, contributes to this situation. Absent the regulation and the resulting threat of legal action by other operators, Zain will not face any constraint to increase the difference between on-net and off-net prices, putting other operators at a further disadvantage.

21. Zain also suggests removing this obligation retroactively, based on the argument that if TRC had conducted a market review within 2-3 years as foreseen by the framework, it would have been removed already then. We consider this a very remarkable proposition, contrary to all regulatory practice. If applied consistently, this would require introducing retroactive measures in all telecommunication markets. Moreover, such retroactive lifting of the decision would not be legal given the currently running legal dispute by Orange Mobile against Zain regarding Zain's failure to comply with the decision.

5 Asymmetric voice termination rates

22. Zain states that as the mobile operators are "roughly the same size", there is no need to introduce asymmetric termination rates for voice services. We disagree with this statement.

23. As discussed above, Zain is able to maintain its dominant position in the mobile market by applying on-net/off-net price discrimination and creating a club effect. TRC decision Decision 9-1/2004 that was imposed to remedy this situation, has not been implemented. No action was taken in response to Orange Mobile's repeated complaints on Zain refusal to deliver termination at the weighted average of on-net prices. Furthermore, the lack of MNP and extending 2014 MTR to years 2015, 2016 and 2017 has kept the termination rates high strengthening the club effect.

24. If this situation continues, Zain will be able to maintain or increase its dominant position in future. Symmetric MTRs set at long run incremental cost do not fully remove the threat of margin squeeze applied by the SMP operator. The long run incremental cost typically includes the cost that is fixed in the short run, as well as a mark-up for common costs. That means Zain can still profitably set on-net retail prices below the MTR as long as they are above short-run variable costs of termination. The fixed and common costs can be earned back on other services, for instance in the retail market on the locked-up post-paid customers.

25. To address this problem, we consider that the voice termination rates should be asymmetric, with smaller operators allowed a higher rate. This would have a number a positive effects on the mobile market:

- It would allow smaller operators to offer lower off-net rates to their customers, thereby partially countering the club effect.
- It would make high-usage consumers (such as post-paid) relatively more profitable for the smaller operators. As a result, competition for post-paid and other high usage customers, which is currently limited as shown by the high market share of Zain in that segment, would intensify.
- Smaller operators are currently making losses. A market situation in which some operators incur continuous losses is not a sustainable market outcome: if revenues do not increase, in the future, either retail prices will have to be increased or costs reduced. As the operators are already efficient, a cost decrease may only be achieved by decreasing quality or reducing investment. Increased terminating revenues would help Orange Mobile and Umniah to continue to offer reasonably priced quality services on a sustainable basis.

26. There are some international examples of re-introducing asymmetric termination rates (Morocco). However, what is most important is that the regulation should be tailored to the market situation in Jordan, which requires action to improve the competitive position of smaller operators to ensure that consumers can enjoy the benefits of competition in future.