Comments on Umniah's responses to Public Consultation on Fixed Markets

1. Orange Fixed wish to comment on the following issues which Umniah raises in its answers to the consultation:

   - Regulation of fibre;
   - Orange Fixed SMP;
   - Inconsistency between the market review and the Instruction on Infrastructure Sharing and National Roaming;
   - The use of outdated data in market reviews;
   - Price cap in retail FACO market;

2. Below, we address the issue of fibre regulation and SMP in Section 1

1 Fibre regulation and Orange Fixed SMP

3. Without prejudice to our position stated in the responses to the consultation on fixed markets, we agree with Umniah's comment that it is premature to regulate VULA on fibre, given its current geographic coverage. We consider that the same should apply to WBA on fibre.

4. Fibre is still in its early stage of development in Jordan. Jordan lags behind other MENA countries regarding roll out and take-up of fibre. At this stage of development, focus should be on encouraging investment and the further development of infrastructure competition, rather than encouraging access-based competition in services. Regulation of access to the fibre network will reduce incentives to invest both by Orange Fixed and by other operators as other operators will not see a need to invest in their own infrastructure as they can use Orange Fixed's network.

5. There is evidence that access regulation has a negative effect on investment in fibre and in general on investments in the telecommunications infrastructure.[1] There is also evidence that deregulation has a positive impact on investment.[2]

6. Furthermore, regulation of fixed infrastructure in general is not needed. We disagree with Umniah's view that Orange Fixed is an SMP operator in fixed markets. It is clear that the fixed markets in Jordan are characterised by effective competition. First, there are three operators owning networks with a national coverage (Orange Fixed on copper and Umniah and Mada on wireless), and even more operators who are rolling out fibre networks. Second, the legacy copper infrastructure of Orange Fixed is declining in importance. As a result, the market share of Orange Fixed in fixed access and broadband is not "well above 50%" as claimed by Zain, but it was just above 50% in 2018 and has been rapidly declining, meaning that it is below 50% now. A decline in market share from above 90% in 2010 to approximately 50% is a clear sign that competition is vigorous and that, prospectively, it will increase further.

7. In many areas of Jordan such as Amman, several operators with fibre networks are present meaning that in those areas Orange Fixed's market share is probably even lower. The use of wholesale products of Orange Fixed such as WBA has been in decline, showing that in the presence of infrastructure competition there is little demand for access.

8. Umniah states that:

> *As a single vertically integrated entity Orange can affect conditions in the competitive conditions in retail markets that depend on the existence of a physical 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.* [3]

9. We note that all fixed operators in Jordan, including Umniah, are vertically integrated and provide their services based on their own infrastructure. None of them depends on wholesale access to Orange Fixed's network. Therefore, vertical integration does not give Orange Fixed an advantage above other operators.

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1 M. Grajek, L.-H. Röller (2012), "Regulation and Investment in Network Industries: Evidence from European Telecoms", The Journal of Law and Economics, vol. 55, no.1. page 44. NERA Economic Consulting (2018), "Telecommunications Infrastructure International Comparison".

2 DotEcon (2012), "Regulatory policy and the roll-out of fibre-to-the-home networks: A report for FttH Council in Europe", page vi.

3 Umniah Mobile Company Response Document to the Public Consultation issued by the TRC Review of Fixed Markets in Jordan, page 6.

10. Further, Umniah states:

> *In the absence of regulation, Orange can engage in excessive pricing and denying of access to WBA while supplying it to its downstream divisions.* [4]

11. We note that external WBA supply is very small and the demand for it decreases, as operators prefer to provide retail services based on their own infrastructure rather than externally purchased wholesale services. Therefore, access to WBA or its pricing has a negligible impact on the market and does not justify regulation.

12. Other comments. We agree with Umniah's comment that the market reviews use outdated data, and consider that TRC should update the market reviews with more recent data for 2018 and 2019.

13. We also note Umniah's comment that the remedies imposed by the market review on access to CEI are inconsistent with the instructions on Infrastructure Sharing and National Roaming, currently under consultation by TRC. This supports our position that it is inappropriate to consult at the same time different regulatory documents covering the same issue. It is confusing for operators and it is very difficult to avoid inconsistencies.

14. We disagree with Umniah's view that the price cap in the retail FACO market should be maintained and made dependent on the implementation of the remedies to examine bundles. We do not see what problems can be caused by bundling of broadband and voice services, and how that would be solved by a price cap. All operators can offer bundles, and most competitors in the broadband market bundle internet with fixed access and telephony. In fact, the retail market is already a market for bundles including fixed access, internet and fixed telephony. Therefore, it is not clear what bundle problem this remedy is supposed to solve.

15. We also disagree with Umniah's view that the termination rates should be immediately set at the LRIC level, without a glide path. A gradual glide path towards the target level is in line with the best international practice and necessary so that operators are able to adjust their business model to the new level of termination rates.

16. Umniah notes further that the LRIC fixed termination rate is higher than the mobile termination rate, and states that it is not in line with the international regulatory practice. However, termination rates are based on the actual costs of providing termination, which are different in different countries. For instance, in Finland fixed termination rates are also higher than mobile. [5] Termination costs are subject to economies of scale, and therefore the costs of larger networks are typically lower

[4] Idem, page 7.

[5] See e.g. BEREC, Termination rates at the European level. January 2019.

than the costs of smaller networks, other things being equal. As mobile networks in Jordan have many more subscribers than the fixed networks, it can be expected that the termination costs on the mobile networks are lower.