

## Response to TRC Review of Fixed Markets

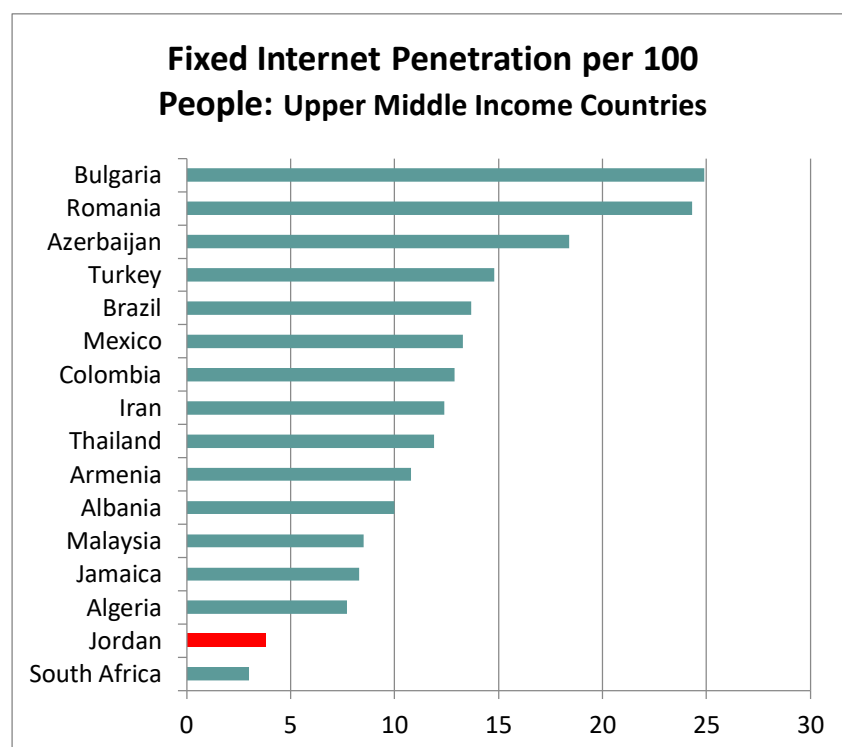
30 December 2019

### Introduction

Zain is very pleased that the TRC has conducted this market review of Fixed Markets, which we believe to be long overdue. The TRC has clearly conducted a thorough and detailed review and we congratulate them on the work done. The review, if properly implemented could have a significantly positive effect on the fixed market in Jordan. There are, however, a number of points we wish to make that will be explained throughout this response.

The fixed market in Jordan is very small. The TRC's analysis shows that telephony and fixed line broadband penetration levels are very low, at just 3.3% and 3.8% respectively (Exhibits II.1 and III.11), although there has been some growth in broadband penetration in the past couple of years. An international comparison shows Jordan near the bottom of the table of upper middle income countries<sup>1</sup> for fixed broadband penetration (above only South Africa) and well below the average of 12.4%<sup>2</sup>.

**Figure 1: Fixed Internet Penetration per 100 People: Upper Middle Income Countries**



Source: International Telecommunications Union

<sup>1</sup> The World Bank defines upper middle income countries as having a Gross National Income (GNI) per capita between \$3,956 and \$12,385 (2018).

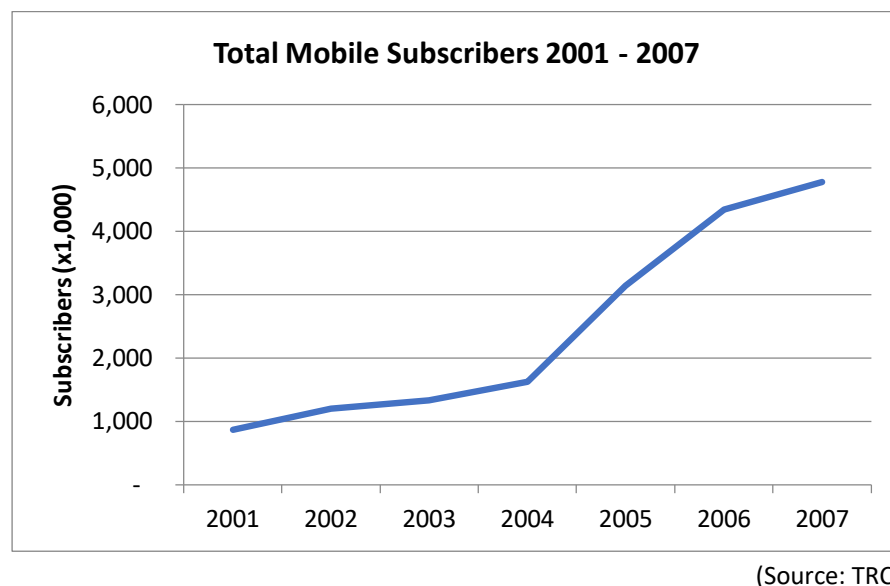
<sup>2</sup> Figure 1 contains only those countries for which fixed Internet penetration data were available.

This not only means that fewer Jordanians have fixed broadband access than is found in other economically equivalent countries, but that the Jordanian economy suffers as well, as there is a well-known link between broadband penetration and economic development<sup>3</sup>.

It is our view that the poor development of this market (and knock on effects on the economy) has been due to the dominance of Orange and the lack of pro-competition regulation of the market in the past. Experience in Jordan and other countries shows how increasing the level of competition also increases the size of the market.

- Prior to 2005, the Jordanian mobile market consisted of two players: Fastlink and Mobilecom (now Zain and Orange respectively). The market was growing, but only slowly. The third licensee, Umniah, launched its service in 2005 and there was an immediate acceleration in the growth of the market, as illustrated in Figure 2.
- Local Loop Unbundling (LLU) was launched in the UK in 2000, but there was a very slow take up by Internet Service Providers (ISPs). By 2005 there were fewer than 40,000 LLU lines out of a total of 7.5 million broadband subscribers. At that time Ofcom introduced new regulations to promote competition, in particular the functional separation of BT. This resulted in an almost immediate acceleration in the take up of LLU, such that by 2009 there were over five million broadband customers connected via LLU. The two largest ISPs using LLU had unbundled exchanges covering around 95% of the population<sup>4</sup>

**Figure 2: Total Mobile Subscribers 2001 - 2007**



These examples show the power of pro-competition regulation in promoting the development of markets. We are therefore delighted to see that the TRC is now planning to be much more proactive

<sup>3</sup> See, for example Minges, M. (2015). *Exploring the relationship between broadband and economic growth*. World Bank

<sup>4</sup> See Lemstra, W., & Melody, W. (2015). *The dynamics of broadband markets in Europe*. Chapter 9

and proposes new regulations that will promote competition and add dynamism to the market. It is our expectation that these regulations will feed through to a more active market and accelerating growth, in particular in fixed broadband access, that will benefit consumers and the economy more widely. However, it is important that the TRC learns lessons from Orange's past behaviour and ensures there is no repeat of this behaviour in future fibre markets.

The TRC refers to the example of Local Loop Unbundling (LLU) as an illustration of Orange's past behaviour that has stifled market growth. We fully agree with the TRC's analysis. Another example is the opening up of geographic number ranges by Orange. We have raised the story of the geographical and fixed numbers allocated to Zain before with the TRC but repeat the point here as we believe it exemplifies Orange's unique ability to exclude competitors that arises from its vertical integration and dominant position.

In 2010, Zain was allocated 10,000 geographic numbers in the 06 range in the Amman region that would allow it to provide fixed voice services alongside its mobile network. In 2011 a further 10,000 numbers in each of the 02, 03 and 05 ranges were allocated to Zain covering governorates in the northern, southern and central regions respectively.

However, for Zain to actually provide a fixed service to its customers, it required Orange to open these geographic numbers for interconnection, and to abide by the TRC Board Decision number 13/2012 dated 19/7/2012 where the TRC modified the interconnection agreement and included Zain's fixed service schedule. Without such opening Zain's fixed line customers would only be able to call other Zain fixed and mobile customers.

Despite this requirement, Orange Fixed refused to open these number ranges to Zain. In 2013 the TRC fined Orange JD200,000 for this refusal but the fine has made no difference as today these number ranges remain closed for interconnection from the Orange Fixed side.

In contrast, we are aware that Orange Fixed has opened similar geographic number ranges for Batelco, Umniah's fixed subsidiary, and for the fixed range of Trasol (an ISP) and has opened only the 06 range for Mada.

It therefore appears that Orange is acting in an exclusionary manner that straightforwardly denies access to Zain to prevent it competing with Orange. This behaviour appears intended to harm Zain's interests and deprive it of its right to compete and provide fixed services to its customers. It therefore appears to violate the Telecom Law and prevailing competition legislation (Competition Law 2004 and Competition Safeguards Instructions)

Refusal to open geographic number ranges and LLU are examples of Orange's past behaviour. Zain is concerned that unless Orange is effectively regulated in the future then it could behave in similar exclusionary manner in the future for vital services, such as access to fibre and civil engineering infrastructure. If it does continue to exclude competitors from the market then the benefits of competition will not be enjoyed in Jordan and the country will continue to underperform against its peers. It is vital, therefore, that as a result of this market review the TRC ensures that Orange

complies with all regulations placed on it and is not allowed to continue to flaunt the directions of the TRC.

The TRC is restricted by individual licence terms and conditions from imposing a fine greater than JD200,000, which is an inadequate penalty and could easily be accepted as a cost of doing business by an operator, especially one with the financial resources of Orange. The TRC therefore needs to consider other non-financial remedies that could be imposed on Orange to ensure it complies with regulation designed to promote competition and beneficial consumer outcomes.

So long as Orange Fixed remains a vertically-integrated, single economic entity it retains the incentive and ability to harm competition in the market and so reduce market development to its own advantage. In other countries where the dominant firm has been able to reduce market development, regulators and governments have introduced functional, or even structural, separation of the dominant firm. Examples include Bahrain, the UK, New Zealand, Italy and Sweden. Separating Orange Fixed would remove both the ability and, crucially, the incentive to harm competition.

It is our view that, if the new set of regulations proposed in this market review do not result in an effectively competitive market, the TRC should consider the separation of Orange Fixed. This is discussed further in response to question 12 below.

Whilst in general we agree with many of the proposals set out by the TRC we do have a number of comments and have set these out in response to the questions in the consultation document.

- 1. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for retail FACO services?*
- 2. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for retail fixed broadband services?*
- 3. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for Wholesale Local Access services?*
- 4. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for Wholesale Broadband Access services?*
- 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?*
- 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?*
- 7. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for Wholesale Fixed Transit services?*

We agree with the preliminary conclusions regarding market definition for all the retail and wholesale products set out above, with the exception of the Wholesale Local Access (WLA) market, where we consider that the TRC has confused the market definition with appropriate remedies. It is vital that markets are correctly defined so that the right remedies are applied. We are concerned that by confusing market definition and remedies, the TRC may end up applying the wrong remedy

allowing Orange to continue to slow the development of the market and to the detriment Jordanian consumers.

The TRC proposes that the focal product in the WLA market is Local Loop Unbundling (LLU) and that Virtual Unbundled Local Access (VULA) is also a product in the market. We are puzzled that the TRC thinks this is the case. It is quite clear from the TRC's market review in 2010 that it previously considered LLU to be a remedy in the market, then named the Wholesale Physical Network Infrastructure Access (WPNIA) market. The TRC's Decision in that market review required Orange Fixed to "provide **fully unbundled and shared access to local loops and sub-loops upon reasonable request**" (emphasis in original) to address competition problems in the WPNIA market, including denial of access<sup>5</sup>. The TRC's position in 2010 was in line with international practice, as explained below.

WLA is normally considered a physical market, i.e. it consists of physical access lines such as copper or fibre local loops. For example, the UK regulator, Ofcom, uses the following definition of the WLA market:

*"... the provision of a connection at a fixed location (i.e. to a customer's premises) from a point of aggregation of such connections which can be accessed by another telecoms provider."*<sup>6</sup>

Where a firm is in a dominant position in this market, the regulator may require it to provide access to these copper and fibre local loops through products such as LLU or VULA respectively. The European Commission's Explanatory Note accompanying the 2014 Recommendation on Relevant Market explains:

*"... physical unbundling is usually considered to be the most adequate **access remedy**, as it ensures alternative operators' ability to differentiate their retail offers and innovate. It is therefore expected that NRAs will continue mandating physical unbundling in [the Wholesale Local Access] market. However, in situations where fibre physical unbundling is not technically or economically feasible (...) NRAs have been mandating virtual access products as a more proportionate **remedy**..."* (emphasis added)

Ofcom requires BT, as the operator with Significant Market Power (SMP) in WLA market, to provide LLU on copper lines and VULA on fibre lines as remedies to its SMP as provision of such access opens up competition in that market<sup>7</sup>.

Both theory and practice therefore show that LLU and VULA are remedies to address dominance and not products in the market, as the TRC determines.

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<sup>5</sup> TRC (2010) 'Regulatory Decision on the Fixed Broadband Markets Review' July 2010, Section VI. 1.1

<sup>6</sup> Ofcom (2018) 'Wholesale Local Access Market Review Statement – Volume 1' Section 3.1, 28 March 2018

<sup>7</sup> Ibid Section 7.2

This matters because the TRC imposes remedies on dominant firms. Physical and virtual unbundling are required to ensure that downstream competitors can access the copper or fibre loops and so compete with the dominant firm in the WLA market, providing physical access to the wholesale broadband market.

In the 2010 market review, the TRC imposed LLU as an access obligation on Orange in relation to its dominance in the local access market but failed to ensure that Orange implemented this obligation. It is very important to separate the definition of the market from the obligation so that the TRC can ensure the obligation is met to the benefit of competition and consumers. Looking to the future, VULA, or some other form of unbundled access to fibre loops, is going to be critical to ensure Orange does not transfer its monopoly of copper access to fibre access. It is our view, therefore, that the TRC should make it clear that VULA is a **remedy** in the Wholesale Local Access market and not a product in that market.

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

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

Zain agrees with the TRC's conclusion regarding wholesale and retail markets 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?*

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

The market share data used by the TRC to determine dominance are redacted<sup>8</sup> and so we cannot tell whether the data support its conclusions. However, it is clear that Orange has a market share well above the 50% threshold at which dominance is presumed.

If we consider the "impact factors" as set out in the Competition Safeguards instructions<sup>9</sup>, then it becomes clear that Orange Fixed is in a dominant position in the market.

Below we consider just some of the impact factors:

- **Barriers to entry and expansion:** There are high economic barriers to entry in the fixed communications market. There is no economic case to build a second fixed network in the vast majority of Jordan, with the exception of some areas in west Amman. The fact that there are no competitive networks covering Jordan is clear evidence of such barriers to entry, protecting Orange's dominance.

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<sup>8</sup> Although the TRC leaves in data on p122 of the consultation showing Orange has a market share of 72.4% in the WLA market.

<sup>9</sup> *Instructions on Competition Safeguards in the Telecommunications Sector* February 2006, Article 8(c).

- **Vertical Integration:** As the TRC points out in its consultation document (p. 140), Orange is a vertically-integrated, single economic entity that operates in all fixed and mobile markets. It is comfortably the largest fixed player in the market and has approximately the same share of the mobile market as Zain and Umniah. This gives it the ability to control resources and behave in a manner that its rivals cannot, allowing Orange to “control and affect” the market. Vertical integration also allows Orange to leverage its dominance from one market into another closely related markets.
- **Countervailing buyer power:** Wholesale customers of Orange cannot credibly threaten either to backwards integrate, by building their own access physical network (due to barriers to entry), or to sponsor the development of another company. They are therefore beholden to buy from Orange Fixed.
- **Orange’s behaviour in the market:** Perhaps the clearest sign of Orange’s dominant position is its past exclusionary behaviour in the market. The history of its refusal to open the geographical number ranges allocated to Zain and its delay in providing LLU show how it can and does abuse its dominant position to exclude rivals in downstream markets. Without adequate regulation, potentially even the separation of Orange, we would expect such behaviour to continue into the future.
- **Control of essential facilities:** Orange Fixed has control over civil engineering infrastructure, copper and fibre loops. Any firm wishing to offer a competitive access services must be able to use at least one of these essential facilities, which it can only do with the co-operation of Orange. The delaying tactics deployed by Orange to prevent the use of LLU demonstrates that not only does Orange have control over essential facilities, but it is also able to prevent rivals from gaining access.
- **Access to capital markets:** As a part of the Orange Group, Orange Fixed in Jordan has access to significantly more capital than either Zain or Umniah. At the time of writing this response, Orange SA had a market capitalisation of €38 billion compared with €6.9 billion for Zain and €1.5 billion for Batelco, giving Orange SA access to more than five times the capital of Zain<sup>10</sup>.

There appears no doubt, therefore, that Orange Fixed is dominant in the market.

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

We are very pleased to see that on p. 140 of the consultation document, the TRC explicitly recognises the unreasonable delays that Orange imposed with regard to LLU. Zain has raised this with the TRC on a number of occasions and emphasised the harm this behaviour has caused to competition. So it is very pleasing to see that the TRC now recognises the problems associated with such delaying tactics by Orange. What is now necessary is that the TRC takes enforcement action against Orange with regard to any breach of the obligations placed on it.

On pages 141 – 142 of the consultation document the TRC discusses issues with the current regulation of Orange in the WLA market. We would like to congratulate the TRC on providing such

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<sup>10</sup> Market capitalisation data taken from Reuters on 4<sup>th</sup> October 2019.

an honest and candid appraisal of the weakness of the current set of regulations and Orange's lack of compliance. For example, on p141 in relation to Transparency, the TRC states:

*In particular, the processes are currently unclear concerning the sequencing of the notification to the TRC of any new products and changes to existing products, and the dissemination of this information to licensees. This applies both to price and non-price terms and conditions.*

Later, on p142 when discussing Accounting Separation, the TRC says:

*Although the obligation states that Orange is to produce separated accounts, and refers to further consultation on rules and reporting formats, accounting separation has not been implemented, i.e. Orange has not provided accounting information to the TRC.*

What these examples demonstrate is that regulating a "vertically-integrated, single economic entity" (p.140), such as Orange, using behavioural remedies only is likely to be inadequate, as Ofcom found in the UK. Indeed, these examples really suggest that the current set of regulation is not fit for purpose and needs a significant overhaul.

If properly implemented and enforced, the proposed remedies set out by the TRC should have a beneficial effect on the market. In particular, if access to Orange's essential facilities is fit for purpose, then we would expect a more competitive market to emerge.

However, if it transpires that Orange remains able to obstruct the development of competition through actions that have the intention or effect of harming downstream rivals, then in our view the TRC should consider the more radical alternative of enforcing the functional, legal or even structural separation of Orange, as has been done in other countries. In part, we make this proposal because the TRC's legal powers to fine Orange for breach of SMP obligations are inadequate. A fine of JD200,000 is simply not enough of a deterrent. By comparison, Ofcom in the UK has the power to fine an SMP operator up to 10% of turnover.

It is our view that if Orange knew that it is likely to be subject to a structural remedy, such as some form of separation, then it would be much more likely to behave in accordance with the obligations placed upon it than if it is only subject to a currently allowed maximum fine.

The use of separation as a remedy was trailed by the TRC in its White Paper on the Market Review Process published in 2009. Here it states:

*"Competition problems such as discrimination, vertical leveraging and margin squeezes may be tackled by a non-discrimination obligation as a primary remedy, usually supported by an accounting separation obligation, **and in certain circumstances by an obligation to vertically separate the regulated business from the rest of the operator's businesses.**" (P. 40, emphasis added)*

It is instructive to compare the situation in the UK in 2005, when BT was subject to functional



separation, with that found in Jordan today. At that time BT's competitors were reluctant to enter the broadband market using LLU as they feared BT would be able to harm them through non-price discrimination. As a fully vertically integrated company it had the opportunity and incentive to do so. Ofcom summed up the situation in its Telecoms Strategic review document, stating that operators that rely on BT for access *"have experienced twenty years of:*

- *Slow product development;*
- *Inferior quality wholesale products;*
- *Poor transactional processes; and*
- *A general lack of transparency."*<sup>11</sup>

To correct this situation, Ofcom and BT agreed a number of organisational and behavioural changes at BT that became known as "functional separation". In particular, it was agreed that the access division, branded Openreach, would be located in separated premises and employees would be under a strict code of conduct to ensure they treated all access seekers equally.

Ofcom and BT also agreed that some wholesale products would be provided under an "Equivalence of Input" obligation. This ensured that Openreach provided all access seekers, including BT's own retail arm, with the same product, on the same timescale, using the same processes and with the same degree of reliability.

The effect of this combination of functional separation and Equivalence of Input was dramatic. Within two years the number of households served by unbundled local exchanges had increased from less than 20% to more than 80%, and today is well over 95%. It also encouraged BT to invest in fibre to the cabinet as Virgin Media upgraded its cable network to compete with ISPs using LLU.

BT and Ofcom agreed in 2016 to move from functional separation to legal separation, transforming Openreach into a separate company within the BT Group and further distancing it from the parent organisation.

It is Zain's view that the behaviour of Orange over the recent past, as illustrated through the stories of the 06 number range and LLU, has strong parallels with the perceived behaviour of BT before 2005, with similar results. Jordan still suffers from ineffective competition in fixed markets as Orange has used its dominant position to exclude rivals. The threat of a JD200,000 fine has, unsurprisingly, proved inadequate to deter this behaviour.

Therefore, Zain encourages the TRC to consider carefully the option of imposing a form of separation on Orange in the event that Orange does not comply with the set of remedies imposed on it in this market review and/or if there is not sufficient development of a competitive markets for fixed broadband services. Although separation is an expensive and time-consuming process, it may be the only way in which dynamism can be injected into the market.

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<sup>11</sup> Ofcom (2004) 'Strategic Review of Telecommunications: Phase 2 Consultation Document' Para.1.19

Concerning the proposed remedies set from the TRC, we make the following comments.

*Access to Civil Engineering Assets:* On p. 141 the TRC states that it has considered requiring Orange to allow access to its Civil Engineering Infrastructure (CEI) assets, and on p. 143 states that it will impose such an obligation.

Zain congratulates the TRC on this proposal. Orange benefits from inheriting the former state owned Jordan Telecom's physical infrastructure. At least some of this can be reused to provide fibre rather than copper access, which gives Orange a significant advantage over its rivals who would also like to build FTTH networks. The civil engineering cost of building a new network accounts for 70% – 80% around total costs, so if Orange is allowed to reuse this asset for itself it has a significant cost advantage over its rivals.

Many countries have required dominant operators with SMP in fixed access markets to open their CEI to other operators to allow those operators to build fibre networks on equal terms to the dominant company. Figure 3 below is taken from a BEREC report<sup>12</sup> on the use of a physical infrastructure access remedy in the fixed access market and shows the widespread application of this remedy on operators with SMP in that market.

**Figure 3: Application of Physical Infrastructure Access in EU Countries**

Physical Infrastructure	Number of EU countries
Ducts, Pipes	26
Manholes	18
Poles	12

(Source: BEREC)

The two best examples are Spain and Portugal, which have both created dynamic and competitive markets between competing fibre operators who largely use the SMP operators' ducts and poles. Spain now has the second highest level of FTTH penetration in the EU and over 58% of broadband lines are based on fibre to the building<sup>13</sup>. Further, the level of competition is such that in 2016 the Spanish regulator withdrew regulation, other than physical infrastructure access, from several geographic areas of market.

We therefore applaud the TRC's proposal to impose access to Orange's CEI. However, history has shown that it is not enough just to impose an obligation of access. As the LLU problems highlighted above show, Orange must not be allowed to delay access and the obligation must be effectively enforced by the TRC.

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<sup>12</sup> 'BEREC Report on Access to physical infrastructure in the context of market analyses' June 2019

<sup>13</sup> Source: CNMC.

WIK Consult, in a report for Vodafone<sup>14</sup>, highlights the need to have effective regulation in place. WIK suggests that an effective regime consists of the following elements:

- No restriction on the use of ducts and poles, meaning that they should be useable for leased lines, broadband and backhaul;
- Strict controls to ensure non-discrimination; and
- Specific measures to operationalise physical infrastructure access. WIK state that these measures should include:
  - Availability of online systems containing up-to-date information on duct location and availability, with measures to ensure accuracy of such data.
  - Removal of requirements to conduct a feasibility analysis, where online information shows that there is availability.
  - Accreditation for engineers so that alternative operators can access physical infrastructure without supervision.
  - Measures to give access seekers more autonomy in accessing ducts and cables (e.g. notifying after access).
  - Mechanisms to allow access seekers to recover or defray the costs associated with improvements to the incumbent infrastructure.

Overall, we support the TRC's proposal to introduce access to Orange's CEI and propose that the TRC ensures that it imposes a set of enforceable remedies on Orange to make access to its CEI fit for purpose within a reasonable timeframe. Given the nature of Orange's CEI in Jordan it is particularly important that there is fit for purpose access to poles.

There are many detailed issues to be addressed with regard to CEI and, in particular access to poles, for example the reuse of fibre when a consumer changes supplier. This requires regulated processes that ensure minimum disruption of services. We would be happy to engage directly with the TRC to help design the terms of access to CEI.

*Transparency:* On p. 145, the TRC proposes that the "transparency" obligation should include an obligation on Orange to provide the TRC with Key Performance Indicators (KPI) to demonstrate that Orange is compliant with its non-discrimination and access obligations. Such KPI information is of course necessary to ensure compliance and we support the TRC's proposal.

However, we think the TRC should go further and that Orange should be required to make this information public so that it is available, not just to the TRC, but also to all operators against whom it might be discriminating or refusing access. It is our view that this measure would make the market far more effective by ensuring that any discriminating behaviour is visible to all stakeholders and so can quickly be addressed. Such transparency would reduce Orange's incentive to behave anti-competitively as it knows any such behaviour will be visible to all stakeholders.

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<sup>14</sup> WIK (2017) 'Best Practice for Passive Infrastructure' April 2017

*Accounting Separation: “The TRC proposes that, rather than imposing an overall obligation to produce separated accounts, it will take the opportunity of identifying the specific accounting or financial information required to be sure that the SMP operators meet all of the obligations imposed.”*

Zain does not believe that this obligation is sufficient given that Orange has SMP across all fixed access products. It is our view that Orange should be required to publish a complete set of separated accounts for its fixed business to help the TRC ensure that it is complying with its various obligations in fixed and dedicated access markets. Simply providing “specific accounting and financial information” will not be enough and would give Orange the incentive and opportunity to move costs between regulated and non-regulated products in a manner that would not be visible to the TRC.

Further, a full set of separated accounts would give the TRC the necessary information to develop more accurate cost models that can be more easily reconciled with Orange’s financial statements.

Finally, it is our view that separated accounts should not be provided to the TRC alone, but made public on Orange’s website in full and in a timely manner. Publication of separated accounts is international best practice and is followed by, for example, BT plc in the UK<sup>15</sup>. Publication of separated accounts ensures all stakeholders have visibility of Orange’s financial position and so have the data to raise concerns with the TRC should those stakeholders have any. Given that separated accounts refer only to markets where Orange has SMP, we do not believe that there is any commercially sensitive information in these accounts, the publication of which would commercially harm Orange

*Economic Replicability Test:* Zain does not object in principle to the use of a margin squeeze or economic replicability test (ERT) instead of a direct cost orientation obligation for FTTx where there is an unknown degree of risk. However, there are two broad comments that we would wish to make at this time. We would be happy to engage further with the TRC in the design of an ERT.

First, the structure of the ERT will be critical. We note that the TRC has listed a number of considerations that would need to be taken into account in an ERT and that it will be consulting on this in the near future. We look forward to this consultation and expect to provide a full and detailed response.

Secondly, it will be vital that the TRC fully implements the ERT and rapidly forces Orange to correct any breach should one be found. With this in mind, we believe that the TRC should require Orange to notify the TRC of any proposed changes to retail or wholesale prices before their implementation and that the TRC should ensure that these change do not impose a margin squeeze *before Orange is allowed to amend its prices*. If the TRC does not do this, but checks for a margin squeeze after prices have been changed then harm will already have been done to competition.

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<sup>15</sup> See <https://www.btplc.com/Thegroup/Policyandregulation/Governance/Financialstatements/index.htm> for a complete set of separated accounts for BT plc.

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

Comments on transparency and accounting separation above apply to Wholesale Broadband Access.

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

In this market we agree that accounting separation would be disproportionate if applied to all operators, but it is still relevant for Orange as it has SMP in all fixed markets.

Zain looks forward to the TRC publishing the details of the information required from other operators and will comment on the TRC's proposals when published.

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

Comments on transparency and accounting separation above apply to Wholesale Transit.

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

Comments on transparency and accounting separation above apply to Retail Fixed Access and Call Origination.

We also note that the TRC is proposing to withdraw price cap regulation on retail products except for a safeguard cap of RPI – 0% on out of bundle calls.

Overall, we do not object to this proposal, and agree that tighter regulation of the wholesale market should help to constrain any exploitative price rises by Orange.