

**THE HASHEMITE KINGDOM OF JORDAN**  
**TELECOMMUNICATIONS REGULATORY COMMISSION**



**Information Memorandum Related to a Program for Licensing  
within the Fixed Telecommunications Sub-sector and the evolution  
to an Integrated Licensing and Regulatory Regime**

**TRC Board Decision No.(1-59/2004) Date(2/12/2004)**

# TELECOMMUNICATIONS REGULATORY COMMISSION

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## **INTRODUCTION**

The Information Memorandum is a means of conveying necessary facts and data to the public and other stakeholders. As such, it is published as Version 1.0. The TRC reserves the right to publish further versions of the document, should it consider that the conveyance of information, including its clarity or accuracy, would be improved by such action.

### **This document comprises four sections:**

- Section A. Reports responses to the “Notice Requesting Public Comment on the Future Licensing Programme for the Fixed Telecommunications Sub-Sector in Jordan” (Consultation). In that process it outlines the conclusions reached by the TRC on the various issues, in the context of comment and advice received from respondents.
- Section B. Sets out the Program of Licensing in the Fixed sub-sector to be effective in 2005, and, it describes the intention, subject to due process, to evolve licensing and regulation to an Integrated Regime within 2006.
- Section C. Provides details of licenses for which application may now be made and instructions containing details of information that must be supplied with applications, and, criteria to be applied when assessing applications.
- Section D. Sets out a program for the availability of regulations that are progressively necessary to the operation of fully open and competitive markets.

## **Section A**

### **A REPORT ON RESPONSES TO THE CONSULTATION**

This section follows a standard format.

Proposals put forward for comment by TRC within its Consultation are first characterized by subject heading. Comments by respondents are then also characterized and the conclusions reached by TRC in the light of comment and advice are then stated.

#### **1. THE LICENSING APPROACH**

##### **1.1 TRC Proposals within the Consultation - Licensing approach**

- 1.1.1 In accordance with Government Policy, the Consultation proposed that the general approach to licensing fixed public telecommunications network operators and public telecommunications service providers in Jordan should:
- a. Impose no limit on the number of licenses that will be issued to future operators of fixed telecommunications services or on the types of networks and services authorized except as required by considerations relating to normal safeguards, security, use of scarce resources and technical limitations.
  - b. Establish a process that will allow the TRC to decide in an objective way whether applicants meet the specific legal, financial, technical and administrative requirements for the application they are submitting and, if necessary, whether they are qualified to make appropriate use of scarce resources but not to determine whether a potential entrant will be successful or unsuccessful in the market.
  - c. Be flexible, allowing qualified licensees to enter the market to provide any type of network or service under the Law and the TRC's rules.
- 1.1.2 Furthermore, TRC proposed an ongoing approach based on minimal regulatory intervention. The TRC's Program of Licensing and regulations under this approach would affect the activities of the licensees only to the extent necessary to ensure the appropriate use of scarce resources, proper working of market mechanisms resulting in fair competition, and, to protect consumers against fraud, misleading advertising and other conduct harmful to consumers.
- 1.1.3 TRC also proposed a new generally applicable licensing approach where licenses are made as concise as possible, with general rights and obligations detailed in separate regulations, which are to be established by the TRC, applying the principles of transparency and due process.

## 1.2 Views of Respondents – Licensing approach

### 1.2.1 Regarding open entry:

- a. Most respondents recognized that full competition will be a reality from 1 January, 2005 onwards.
- b. Several respondents expressed concern at the approach of allowing an unlimited number of licenses, on the apparent basis that full competition should not be introduced without due consideration of the effect on the market and on existing operators.
- c. One respondent strongly disagreed with the proposal that the Program of Licensing should not determine whether applicants will be successful or unsuccessful in the market. It argued for the TRC to take into consideration the resulting impact, on operators and consumers, of allowing into the market any applicant that merely meets the administrative requirements.
- d. Another respondent argued in favor of a competitive market that strikes a balance between ease of market entry, competition between different access technologies, technical efficiency and customer protection. Whilst agreeing that the Program of Licensing should not seek to establish whether or not a business plan will be successful, this operator suggested that TRC adopt measures designed to achieve specifically defined goals for the market (e.g. sustainable competition, customer protection and safety and network integrity) and would thus only allow applicants proving to be able to contribute to such objectives into the market.
- e. The same respondent argued that the Program of Licensing should be designed to minimize the administrative burden on the TRC and recognize that there is a need to adapt the abilities of the TRC and others to implement successful liberalization. Another operator shared this opinion, related to the burden upon and capabilities of TRC.

### 1.2.2 Regarding the proposal that the licensing framework be as simple as possible and associated with the concept of limited regulatory intervention, thus making all licenses concise and referencing generally applicable rules:

- a. Respondents generally stated their agreement with the approach of minimal regulatory intervention, upon the condition that regulation is developed in a manner that achieves clearly defined objectives, such as the development of sustainable competition, consumer protection and safety and network integrity. Respondents also urged that appropriate accompanying capabilities are put in place by TRC, to allow rapid regulatory response when that becomes necessary.
- b. Several respondents complained that the proposed approach will leave licensees in an unsettled situation; where the rules upon which they will be

operating and upon which they based their business case might change at any time subject to the will of the TRC.

- c. Even those that are broadly in agreement with the general approach outlined by the TRC believe that all operators are likely to have serious reservations about any augmentation of the TRC's powers to issue regulatory decisions, if those effectively create new license conditions. They suggested that in order to gain the approval of existing licensees, where approval is required, the TRC may need to provide assurances to the operator community that future regulatory decisions will be preceded by a transparent period of consultation on issues of universal service, the access network deficit, rights and duties to interconnect, geographic coverage obligations, reporting obligations, quality of service guarantees, and rights of way over public and private land.
- d. Other respondents recognized that the expected increase in the number of new licenses and the liberalization of the telecommunication market will require a more flexible regulatory environment.
- e. One respondent challenged the right of TRC to make a regime, which is proposed in relation to the final liberalization of the Fixed sub-sector, generally applicable, and, challenged the concept of concise licenses in the context of the terms of Article 29 of the Telecommunications Law.
- f. Another respondent questioned the wisdom of the general implementation of the proposals without adequate preparation and market maturity.

### **1.3 Conclusions Reached by TRC– Licensing approach**

#### **1.3.1 Regarding market entry:**

- a. The TRC has noted concern by various respondents regarding the proposal to allow an unlimited number of telecommunications licenses. However, Jordan's WTO commitments, and, Government Policy related to the liberalization of the fixed sub-sector are very clear in requiring open competition for the Jordanian telecommunications market at, or as soon as practicably possible, after, 1 January, 2005. The TRC is obligated to implement the Government's Policy, in accordance with Article 6(a) of the Telecommunications Law. In practical terms this means that licenses for the supply of services, other than Public Mobile Wireless Services<sup>1</sup>, will be granted to all qualified applicants that satisfy criteria as set out in Section C of this information memorandum, unless there are objectively justifiable reasons

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<sup>1</sup> **Public Mobile Wireless Services** are Public Telecommunications Services, as defined by the Telecommunications Law, that both, permit two-way communications between users' terminals (radio stations) and other similar radio stations, as well as with any apparatus, station or service connected to the Public Switched Telephone Network (PSTN) in Jordan, and, are supplied by means of multiple cells of radiocommunication transceivers, configured so as to permit full mobility of customer radio stations, with hand-off between adjacent cells and frequency re-use throughout the various cells.

for TRC not to do so. Objectively justifiable reasons not to grant licenses may include, but are not limited to, constraints related to National security, safety, scarce resource, technical limitations, and when in accordance with Article 28 of the Telecommunications Law, award of a license to an Applicant would “lead to an anti-competitive environment in the market” for public telecommunications services in Jordan, together with normal network safeguards.

- b. TRC also notes concerns by certain respondents that the licensing framework should detect and eliminate parties whom the TRC would judge to be weak at the application stage. TRC has determined that the licensing application process should be carried out in an objective manner based upon published criteria. The process must only seek to determine whether applicants meet the required criteria. TRC will not seek to make judgments as to whether an otherwise qualified applicant will, or will not, be successful in the market.
- c. TRC has considered the implications of the Program of Licensing that is set out in Section B of this document in relation to the supply side structure of the telecommunications sector. The TRC is of the view that the Program of Licensing will contribute significantly to the achievement of the goals of Government Policy. Clearly, it is a responsibility of the TRC to keep these issues under constant review and to respond through regulation and licensing action to any foreseeable or actual market failure.
- d. For the reasons stated above, it will be found that the TRC has adopted within the Program of Licensing, a set of criteria and procedures for licensing that will achieve its aims of developing the sector to the benefit of the economy and protecting consumers. Those criteria and procedures will be found in Section C of this Memorandum.

1.3.2 Regarding the approach of minimal regulatory intervention, with concise licenses referencing generally applicable rules:

- a. It is the TRC's view that concerns expressed by respondents in these areas can be summarized in two important questions:
  - Is a regime of minimal regulatory intervention and concise licenses acceptable within the legal and regulatory context of Jordan? Notably, does TRC enhance its ability to effectively amend license terms in an arbitrary manner?
  - Do stakeholders and other interested parties perceive the TRC as being a sufficiently resourced regulator with adequately developed and transparent procedures for such a regime?
- b. The TRC particularly noted the position of stakeholders and, other interested parties, related to these matters. The outcome of the considerations will be clearly seen within the Program of Licensing in Section B. The following paragraphs explain certain factors that have shaped the Program of Licensing.

The TRC must work within a particular context:

- The current population of licenses is small and includes several very detailed license agreements that reflect the particular circumstances of the licensee and in certain respects constrain the activities of the licensee or of other licensees.
  - These detailed license agreements contain much of the relevant information and the regulatory requirements that apply to the licensees and in large measure are self-contained. The role of the TRC in these circumstances being largely to enforce the restrictions to competition that may be created by the terms of the existing licenses.
  - Certain of the license agreements contain provisions that relate to parity of terms and treatment of future licensees. These detailed license agreements were, of course, entered into in an environment of restricted or zero competition.
  - The final removal of formal monopoly from the Fixed sub-sector has impact across all sub-sectors of Telecommunications. In reality, it removes many of the differentiations between the activities of sub-sectors.
  - This environment inevitably creates a need for changes in the way that the TRC deals with future licensees, and, a rationalization of existing licenses. It can be expected that the population of licenses will be larger and the range of activities undertaken will be greater than at present.
- c. To address this new environment, TRC intends to implement, by 2006, the Integrated Licensing and Regulatory Regime that is referred to in the Program of Licensing in Section B. This Regime will be better suited to conditions that will then prevail in the Telecommunications Sector. In selecting 2006, rather than 2005, as the date for final implementation of the Integrated Regime, TRC responds to the comments and concerns of respondents.
- d. The intention to implement an Integrated Regime will be recognized in the format of licensing used within the fixed telecommunications sector in 2005. The intention is that 2005 licenses will prevail in the Integrated Regime.
- e. Existing non-Class licensees will not be required to transition their licensed activities to the Integrated Regime, by means of license amendment or new licensing, until 2006 and then only after completion of procedures, if, and to the extent, stipulated within existing licenses and the Telecommunications Law. Existing non-Class licensees may of course transition before 2006, should they so choose.
- f. Provisions exist within the Program to ensure that existing licensees are not precluded from telecommunications activities outside the scope of their existing licenses in 2005, provided that there is assurance that Appropriate

Equivalence of Treatment<sup>2</sup> between all licenses will be achieved, such that an Integrated Regime applies in 2006.

- g. The form of license that is set out in Section C pays due regard to the terms of Article 29 of the Telecommunications Law.
- h. Concerns expressed as to the ability of TRC to act arbitrarily under a regime where licenses are concise and reliance is placed upon general regulation are recognized. However, Regulatory certainty cannot mean that the regulatory regime applicable at the start of the license is to remain unchanged during the term of the license. Indeed, TRC as a telecommunications regulator has the obligation to adjust the level of regulation, as stated in the Telecommunications Law, article 6 (o) “ to assess the need for the adjustment of the level of regulation.”
- i. The necessary element of regulatory certainty for licensees comes in the obligation taken by TRC to consult publicly before establishing or amending regulatory instruments, and, to follow the open procedures that are stipulated by the Telecommunications Law in relation to amendment of the terms of licenses. This consultative approach is widely applied and is successful internationally. TRC will bring forward a regulation related to ‘rule making’ that will institutionalize this consultation and thus provide protection for licensees.
- j. The TRC also recognizes concerns as to whether the administrative, legal and regulatory framework in Jordan, including the independence and capacity of the TRC, has evolved sufficiently to effectively manage such a regime. In this regard the TRC considers that it will have the necessary resources to be able to implement the Program of Licensing successfully. The TRC is a financially and administratively independent body and at this time considers its powers under the Telecommunications Law to be adequate for the tasks in hand.
- k. The aim of the TRC is to be as non-interventionist as possible by progressively shifting its focus from narrow license term enforcement to the assurance of fair competition in individual markets, the protection of consumers and the further development of the Sector.

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<sup>2</sup> **Equivalence of Treatment** means that the effect of the terms of all extant licenses, whenever granted, and the body of regulations published by TRC are such that they reasonably ensure that licensees that are in identical circumstances in terms of permitted supply of services, obligations and all other matters, are not subject to any undue competitive disadvantage, one against the other, that arises from licensing or regulation. **Appropriate Equivalence of Treatment** accordingly means the exceptional modification of the state of equivalence of treatment to the extent that modification of that state is made necessary by the non-identical circumstances of licensees relative to the generality of licensees, in terms of permitted supply of services, obligations and all other matters. Modification of equivalence of treatment to achieve Appropriate Equivalence of Treatment is typically necessary when a licensee has rights and obligations associated with its activities that do not apply to the generality of licensees, is determined by the TRC to have significant market power or dominance in relevant markets, or, for other reasons determined by TRC to be appropriate to the achievement of fair competitive environments.

## **2. LICENSING STRUCTURE**

### **2.1 TRC Proposals in the Consultation – Scarce Resources**

#### **2.1.1 Definition and Treatment of Scarce Resources**

- a. The TRC proposed that the distinction between the two categories of licenses should be based on whether the licensee uses scarce resources in order to provide service. The aim of this distinction being to achieve particular oversight of the use of scarce resources, which are in the main public resources and whose exclusive use or material depletion may give rise to market distortions.
- b. TRC proposed to define scarce resources in terms of public rights of way, radio spectrum and numbering.
- c. The TRC proposed that the definition of users of radio spectrum should include all users of radio spectrum, as defined in Article 31 (a) of the Telecommunications Law, for the provision of telecommunications service.
- d. With respect to the users of public rights of way, the TRC proposed to include any facilities-based operator of telecommunications services that utilizes cables or wires buried under or along public streets, highways, publicly-owned railways or electric installations or other government-owned land and/or wires or cables suspended from utility poles and towers to provide service. This definition included any operator that utilizes public land to string its wires, cables or other physical facility.
- e. The TRC also proposed that all users of numbering resources requiring allocation of blocks of numbers would be required to obtain Individual licenses. It was proposed that service providers merely seeking allocation of a dialing code for carrier selection would not require an Individual license. For purposes of clarity, it was stated that only service providers that provide specific phone numbers to individual subscribers, such as the existing mobile operators and fixed operator, require the use of such scarce resources. Service providers that merely provide outbound calling capability via resale or other means do not require such numbering resources.

### **2.2 Views of Respondents – Scarce resources**

#### **2.2.1 Regarding the definition and treatment of scarce resources:**

- a. Most stakeholders were in agreement with the approach of using scarce resources as a differentiator between licenses, although there remained concern with regard to the practical implementation of such a scheme.
- b. Some stakeholders had an issue with the proposal related to numbering; questioning whether this should be included in the definition at all or in the manner suggested. They suggested that while it is important that the regulator be able to identify who has numbering responsibilities and to affix regulatory obligations to those licensees to ensure numbering integrity, this need not be

done through Individual licenses, but can be effectively done through the Class license regime.

- c. Other respondents questioned whether numbers can really be considered a scarce resource within the context of the realities of the Jordanian market and therefore question whether the application of Individual licensing is appropriate given the relative lack of scarcity.
- d. Several stakeholders suggested that the TRC may also wish to consider whether rights of way should include those relating to land in private ownership.
- e. One respondent clearly stated opposition to the use of scarce resources to differentiate between the suggested categories of licenses. This opposition apparently stemmed from a perception of lack of clarity as to how the proposed distinction between Individual and Class licenses arrived at by that means can be objective and transparent. The respondent was of the view that the distinction between a reseller and a facilities based provider is very clear, and creates much less problems in differentiation than the scarce resource approach proposed by the TRC.
- f. Another respondent, while agreeing with the proposed distinction, underlined that it is critically important that regulatory remedies are not differentiated according to license categorization, but rather, according to the competition law concept of market definition. This respondent's principal concern is that the application of regulatory remedies will in practice differ according to the type of license held.

### **2.3 Conclusions reached by TRC – Scarce resources**

- a. The conclusion reached by the TRC is that the distinction between the two categories of licenses should, as proposed in the Consultation, be based on whether the licensee uses scarce resources in order to provide some or all of its services. Accordingly the following will apply:
  - All further providers of public telecommunications services and underlying networks that use scarce resources will require Individual licenses. Scarce resources are defined, as in the Consultation, as radio spectrum, public rights of way and telephone numbers. It should be particularly noted however that the grant of an Individual license does not confer an automatic right to the use of scarce resources. Such resources must be secured separately through the mechanisms and procedures that are relevant to the type of resource that is sought.
  - For the avoidance of doubt, it is not intended to withdraw rights and privileges in relation to scarce resources that rest with existing licensees, notwithstanding that the licenses held by such licensees may not currently be designated as Individual licenses.

- All further providers of public telecommunications services that do not use scarce resources, or those whose use of scarce resources is exempted by TRC, by means of a determination under its discretion, will require Class licenses.
- b. The TRC will have the discretion stated in applying the scarce resource test and has at this time concluded that it will exempt certain uses of scarce resources from the requirement that an Individual license be obtained. TRC presently intends to apply this discretion with regard to scarce resources to the following:
  - Providers of public VSAT based services, to the extent that the only scarce resource used is radio spectrum directly related to VSAT operation. Such use of radio frequency spectrum will remain subject to TRC radio spectrum licensing procedures.
  - Radio spectrum used on a secondary or non-interference basis, e.g. Internationally unlicensed spectrum typically used for WiFi.
  - Use of dialing codes for routing to enable carrier pre-selection functions.
  - International Signaling Point Codes (ISPC).
- c. The TRC confirms that it is its intention to progressively apply regulation according to general competition assurance principles.

## **2.4 TRC Proposals in the Consultation – Scope of Licenses**

### **2.4.1 Scope of Licenses:**

The TRC proposed to allow Individual licensees broad latitude to provide a wide range of services under the applicable Individual license without the need for any additional authorization from the TRC. The Individual licensees would be required to comply with the same service-specific regulations that also apply to the Class licensees for the specific services provided.

- a. In defining the approach, the TRC put forward two issues to consider. The first was whether license applicants will receive a single authorization to provide all telecommunications services or whether applicants will be required to specify the individual services they seek to provide. The second issue related to the definition of the services that could be provided.
- b. In the Consultation, the TRC proposed that existing providers of services covered under the new Class license framework, including current providers of data communications, prepaid card services, and GMPCS service providers would all be issued an identical license. Such licenses, however, would specify the service category the licensee has declared its intent to provide. A licensee seeking to provide other covered services could do so without reapplying, by notifying the TRC of its intent to provide the additional service,

paying the applicable license fee and agreeing to abide by any of the TRC's service-specific rules.

- c. The TRC proposed to approach the issue of defining the service categories in a manner that allows a broad interpretation of the existing service definitions. To the extent that it is necessary for the TRC to develop new license categories not currently defined, it proposed to do so based on input from potential licensees.

#### 2.4.2 Exemption

- a. Bearing in mind the terms of the Government's Policy Statement, which in paragraph 40 states "where there is no objective case for licensing or regulation of any services that are introduced, Government will support the prerogative of the TRC, under the Law, to forbear from such action," and the provisions of Article 6(o) of the Telecommunications Law, the TRC possesses the requisite authority to forbear from regulation in the appropriate circumstances.<sup>3</sup>
- b. The TRC considered two issues in this respect: The first is how facilities or services that would normally fall within the category of an Individual license by virtue of its use of scarce resources but that require a significantly lesser amount of such scarce resources would be treated, and, whether exemptions or differences in treatment from the normal rule could be foreseen. The second issue is whether there are services that otherwise would require a license which the TRC may allow parties to provide without a license.

### 2.5 Views of Respondents

#### 2.5.1 Regarding the scope of the licenses:

- a. Several respondents commented that the scope of the licenses is not clear in the proposals and is confusing; in particular the statement: "... ..that may contain some specific elements that may be tailored to the particular licensee, depending on that licensee's particular situation." The TRC's proposed approach, they claimed, does not ensure transparency. They requested that the scope of each Individual license should be clearly defined. In order to ensure that transparency is always maintained, 'specific elements' and any other criteria have to be made clear and publicly available prior to granting or even applying for that license provided that all this shall guarantee parity for identical services in the scope of service provided.
- b. Some respondents claimed that the intention to allow Individual licensees to provide any type of service it deems appropriate, as long as they comply with

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<sup>3</sup> Article 6 states:

The Commission shall under take of the following duties and responsibilities:

\* \* \*

(o) To assess the need for the adjustment of the level of regulation of any telecommunication service, or specific type or group thereof, with regard to competition or any other factor that may require such adjustment or forbearance, and to recommend the same to the Board for approval.
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the TRC's applicable regulations, is subjective and allows the TRC to impose more requirements than those internationally applied for the provision of such services.

- c. Respondents generally agreed that Class licensees should receive a single authorization to provide service, but that such licenses should also specify the particular service(s) the licensee is authorized to provide at licensing and only be required to notify the TRC when a new service within the same category has been launched. This, respondents believe, would make the process more simple and friendly for operators.
- d. Some respondents suggested that the award of a Class license must be accompanied by a definitive list of services subject to the approval of the TRC, in order to prevent an operator in breach of its license obligations from launching further services.
- e. Respondents in general agreed, against the background of the changing nature of the sector and in view of evolving technologies, that licensees should be allowed to upgrade the type of services provided under their applicable licenses from time to time without having to resort to a formal amendment of their licenses or for the need to apply for a new license.
- f. Respondents suggested that using the existing service provider categories and definitions developed by the TRC would be an appropriate approach to adopt in new licenses.

#### 2.5.2 Regarding Exemptions:

- a. One respondent suggested the following criteria could be added to the ones proposed by the TRC as possible grounds for unlicensed treatment or exemption:
  - whether there is an imbalance between the upfront license fee and the addressable market for such a license.
  - whether the “scarce resources” are truly scarce
  - whether the service is in a small niche market where licensing would make it uneconomical
  - whether international best practice would suggest unlicensed treatment

Others were concerned by the possibility of any exemption from licensing; apparently being of the view that by nature there will always be a public interest related to pricing and quality of service. A license is needed, they claimed, whenever a scarce resource is used even when a significantly lesser amount of such scarce resources is required, and whenever interoperability issues are encountered. Some stakeholders questioned whether an “exemption” granted by virtue of limited use of scarce resources as discussed in the Consultation Document relates to the entire license, or only to that aspect of the license that relates to the use of scarce resources. If the former, then such respondent strongly disagrees on the grounds that there will still be

a need to ensure that the activities of such operators are supportive of public interest objectives (such as quality of service, transparency, provision of emergency services and others).

## **2.6 Conclusions reached by TRC – Scope of licenses**

The input received from stakeholders related to scope of licenses and exemptions has proven to be of particular value to the TRC, and the conclusions reached are as follows:

### **2.6.1 Individual and Class Licenses:**

- As of January 1, 2005, all new licenses will be granted in the form that will allow for the evolution to the full Integrated scheme that is described in Section B.
- Existing Class licensees will be granted licenses in the new form for a term equal to the unexpired term of their current license.
- All further providers of public telecommunications services and underlying networks that use scarce resources in the provision of some or all of their services will require Individual licenses.
- It should be again noted that the grant of an Individual license does not confer an automatic right to the use of scarce resources. Such resources must be secured separately through the mechanisms and procedures that are relevant to the type of resource that is sought.
- All further providers of public telecommunications services that do not require the use of scarce resources, or those whose use of scarce resources is exempted by TRC, will require Class licenses.
- The application requirements and associated criteria for the award of an Individual License are more stringent than those applied to Class licenses. Details can be found in Section C.

### **2.6.2 No constraints on services provided or the means of provision:**

- a. There will be no undue limitation on the number of Licenses that will be issued, or upon the type and range of services that may be provided, other than that Public Mobile Wireless Services shall not be provided under the terms of the licenses that will be granted, except when Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services choose to transition to the Integrated Regime by grant of a replacement license, or, should at some future date TRC determine, outside the scope of the 2005 Program of Licensing and following further consultation, to grant licenses that permit the supply of Public Mobile Wireless Services.
- b. Similarly, there will be no undue limitation upon the types of associated networks and technologies used, except as required by considerations relating to normal network safeguards, security, use of scarce resources, and technical limitations. The TRC will lend its support to the introduction of new technologies within its type approval mechanisms and by expediting consideration of proposals.

- c. Applicants will be required, when applying for licenses, to advise both the details of technology to be used and the services to be provided, and subsequently to advise TRC of any changes to services or technologies. Changes to services shall not encompass Public Mobile Wireless Services.
- d. Beyond these requirements, and those pertaining to the need to apply for an Individual versus Class license, licenses will not be granted for specific services or technologies but for all and any activities, except the provision of public mobile wireless services.
- e. It may prove necessary and appropriate for TRC to publish specific regulations or terms related to particular types or forms of service or technologies. This need cannot be foreseen, but publication will only follow public consultation.
- f. TRC does not intend, in general, to impose geographic service coverage obligations or limitations upon new licensees. It prefers that market forces should determine the extent of coverage. However, situations may exceptionally arise where a coverage obligation may be an appropriate measure to be applied in the interests of fair competition or for other compelling reasons such as compliance with Government Policy including that related to universal service obligations. Should such circumstances arise, the TRC will consult publicly, before imposing such an obligation. The obligation may be imposed by means of a schedule appended to licenses or through specific Regulation, as appropriate.

### 2.6.3 Equal opportunities for existing and new licensees:

- a. It is important not to disadvantage existing licensees that are not required to transition their licensed activities to the Integrated Regime until 2006. Accordingly, from January 1, 2005, if JT or any of the Existing Holders of Licenses that relate to the provision of Public Mobile Wireless Services wishes to provide telecommunications services, other than services already permitted under their existing licenses, they may apply for a license under the 2005 licensing arrangements that have been described.
- b. Such a license would only be granted to a subsidiary or affiliate entity of JT or the existing holders of licenses that relate to the provision of various forms of public mobile wireless services. The subsidiary or affiliate entity must not be undertaking business activities at the time of the grant of a license and activities under the new license must both, be conducted by the entity, and, kept separate from activities that continue to be conducted under existing licenses. The grant of a new license would, for example, permit the independent provision of international services by subsidiaries or affiliates of the Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services<sup>4</sup>, in a manner that ends the monopoly of JT in that area.

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<sup>4</sup> Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services means licensees that are as at December, 2004 permitted to provide Public Mobile Wireless Services, in the form, manner and to the extent specified by their license agreements, and, appended operating and spectrum licenses.

- c. In the event that JT or any Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services choose to transition its existing licensed activities to the Integrated regime in 2005, it will remain a requirement that activities beyond those that are currently licensed be conducted through subsidiary or affiliate corporate entities.

#### 2.6.4 Market entrants must have assurance:

- a. It is equally important that market entrants and those existing licensees that transition before 2006 be assured that in due course appropriate equivalence of terms between all licenses will apply.
- b. Accordingly, licenses issued to a subsidiary or affiliate of JT or the existing holders of licenses that relate to the provision of various forms of Public Mobile Wireless Services, under the 2005 Program, will incorporate amongst attached schedules an acknowledgement, by the existing licensee, that in accepting the grant of a license to a subsidiary or affiliate it will transition its existing licensed activities, by license amendment or new licensing, to the Integrated Licensing and Regulatory regime in 2006 (Target date, January, 2006).

#### 2.6.5 An evolving environment:

- a. Elements of the liberalization process, and in particular the progression toward an Integrated Licensing and Regulatory Regime, are evolutionary in nature. The approach to licensing that has been adopted means that licensees will be progressively governed by the terms of generally applicable Regulations as these are developed, rather than by detailed terms within, or appended as schedules to, licenses.
- b. By 2006, the full 'body of regulation' will be in place within the Integrated Regime. By this means it will be possible to bring all licensees within the Integrated regime by establishing Appropriate Equivalence of Treatment between licenses, whether between new licenses that are granted or existing legacy licenses, the terms of which are appropriately amended.
- c. In acknowledgement that there can be concern that the imposition of Regulations may provide opportunities for TRC to act in an arbitrary manner, TRC undertakes that, except in circumstances of self-evident emergency, proposals for Regulations will be submitted for public consultation and the results of that consultation will be published before any subsequent Regulation is put in place.
- d. In any evolutionary environment, and particularly in one in which certain licensed activities may not be transitioned until 2006, issues of disparity of licensing and regulation between licensees might arise within 2005. TRC acknowledges its obligations to existing licensees and will so order its Licensing and introduction of Regulations so as to maintain Appropriate Equivalence of Treatment between licenses.

## 2.6.6 Activities falling outside the 2005 Program of Licensing

In determining the scope of licensing for 2005, it is also necessary to determine the activities that can take place without the need for licensing.

### 2.6.6.1 International capacity and connection points

- a. An important factor in the development of the fixed telecommunications sub-sector in Jordan, and also the market for IT and telecommunications based services, is the availability of international transmission capacity. This capacity, the most important of which has been the FLAG submarine cable that provides optical fiber based transmission facilities, has been under the control of JT and accordingly the issue of separate licensing and regulation has until now not arisen.
- b. TRC has determined that submarine cable operators do not need licenses for the provision of cable to Jordan to the point where it connects to another public telecommunications network within Jordan. The provision of service from the connection point inward to Jordan is a licensable activity. Similar stipulations apply to systems of satellite telecommunications.
- c. In relation to points of connection for international capacity, it is the intention of TRC to regulate to ensure that these points become open to use by providers other than JT.
- d. Present regulation upon JT, to the extent that the need for it arises because of its control of those points, will be eased as competition develops at those points of connection or in the provision of new capacity.

### 2.6.6.2 Assets that may be utilized

- a. Jordan has sources of basic telecommunications transmission media that are presently not utilized for the provision of public telecommunications services. This exclusion is not economically efficient. However, it is necessary to determine at what point the making available of such assets and other rights for the ultimate provision of public services become licensable activities. TRC has determined that the following should apply:
  - If the activities of owners of assets are restricted to the transfer, by means of a transaction with an unconnected third party, of an ownership interest in the asset or elements divided from the greater whole of the asset, no telecommunications license is required. Such assets could include, for example, unlit strands of fibre optic cable or so called 'dark fibre'. This position applies notwithstanding that the party to whom the ownership interest is conveyed exploits the asset for the provision of telecommunications services and must accordingly be licensed.
  - The simple grant of rights of way to third parties over, for example, poles, pylons, railways or land does not place the grantor in the position of providing a telecommunications service, notwithstanding the fact that the grantee may exploit the rights of way for the provision of telecommunications services and thus must be licensed.

### 2.6.7 Premium Rate services (PRS)

- The provision of premium rate services will continue to be an activity that is not subject to telecommunications licensing.

## 3. QUALIFICATIONS REQUIRED

### 3.1 TRC Proposals in the Consultation – Qualifications required

- a. A key aspect of the proposals within the Consultation was the qualifications that applicants will be required to demonstrate in order to be granted an Individual license or Class license. The TRC proposed that the licensing qualifications would contain no unnecessary regulatory barriers to market entry or restrictions on choices operators may make concerning available technologies, except where restrictions are justifiable for reasons of scarcity or within the limits of normal safeguards, security and technical limitation considerations.
- b. In the case of Individual licenses, the TRC proposed to adopt qualification criteria that sought to ensure that the licenses to provide telecommunications services that utilize radio spectrum and other scarce resources are awarded only to applicants who are financially and technically capable of utilizing those scarce resources efficiently. Such a position would give rise to a need for detailed information to be provided by the applicant, including that related to financial resources and business plan.
- c. In the case of Class licenses, the TRC proposed considering each application for a Class license together with its accompanying information as much as possible on an objective basis. It was proposed that information contained in each application would be evaluated against a set of transparent and published qualification criteria, aimed only at ensuring the applicant meets applicable legal and administrative criteria and that technical and financial information submitted are consistent with the proposed provision of service.

### 3.2 Views of Respondents - Qualifications

- a. The main concern amongst stakeholders was that the qualification process be clear, objective and transparent.
- b. Stakeholders urged the TRC to ensure the process would provide a way of objectively determining whether applicants are committing sufficient resources and/or whether a particular applicant would pose risks to the public interest or an undue administrative burden on the TRC.
- c. Some respondents contested the need for different qualification requirements to be applied when scarce resources were to be used. They argued instead that economic incentives should determine the use of scarce resources. The view being that in both Class and Individual licensing the assessment should be “as much as possible on an objective basis” and that this objectivity might be more possible in a Class licensing process than in an Individual licensing process.

- d. Others, while understanding that Jordan may not wish to constrain entry to the market, urged the TRC to deny or delay license awards if any doubts over the applicants' good intentions are suspected. The TRC, they indicated, should at the very least consider detailed compliance procedures to ensure that those who have been arbitrageurs and strong dominators in other markets do not enter the Jordanian market and damage and abuse the opportunity for market entry. In addition, such respondents argued, the TRC may wish to consider the financial assurance measures such as those included in the Jordan Telecom Reference Interconnection Offer in order to deselect those operators who have not endured independent financial scrutiny.
- e. Others argued that in evaluating license applications for both Class licenses and Individual licenses, it is essential that the TRC take past behavior of the applicant into consideration (e.g. repetitive abuse of dominant position, fraudulent behavior, lack of a clear understanding of Jordanian telecommunications and competition law, lack of financial rigor, insufficient telecommunications experience).
- f. In addition, some respondents recommended that the license application should require applicants to explain the processes they intend to use to comply with each condition in the license.

### **3.3 Conclusions Reached by TRC - Qualifications**

- a. The TRC has concluded that licensing qualifications should contain no undue regulatory barriers to market entry or restrictions on choices operators may make concerning available technologies. As previously stated, in practical terms this means that licenses for the supply of services, other than Public Mobile Wireless Services, will be granted to all qualified applicants that satisfy criteria set out in Section C of this information memorandum, unless there are objectively justifiable reasons for TRC not to do so. Objectively justifiable reasons not to grant licenses may include, but are not limited to, constraints related to national security, safety, scarce resource, technical limitations, and, when, in accordance with Article 28 of the Telecommunications Law, award of the license to an Applicant would "lead to an anti-competitive environment in the market" for public telecommunications services in Jordan, together with normal network safeguards. In adopting this position, the TRC considers that it is complying with Government Policy.
- b. TRC has concluded that it will not seek to determine whether a potential entrant will be successful or unsuccessful in the market.
- c. The TRC has, however defined a process, which is set out in Section C of this memorandum, that will allow it to decide in an objective way whether applicants meet the specific legal, financial, technical and administrative requirements for the application they are submitting and, if relevant, whether they are qualified to make appropriate use of the scarce resources.

- Qualification requirements for Individual licenses will be focused on ensuring that applicants present an appropriate level of financial, managerial and technical means, experience and capabilities which indicate that they will use the associated scarce resources in a manner that is efficient. The associated consideration of applications will require the applicant to provide detailed information relating to his legal status, business and technical plan, financial resources, management and technical experience and, if applicable, regulatory compliance in Jordan or other jurisdictions. It is once again stressed that the grant of an Individual license does not confer an automatic right to the use of scarce resources. Such resources must be secured separately through the mechanisms and procedures that are relevant to the type of resource that is sought.
- In the case of Class licenses, the TRC will consider each application for a Class license together with its accompanying information, to the extent possible, on an objectively common basis. The evaluation need accordingly be less rigorous than for an Individual license.
- The various positions that have been described related to qualifications for licenses are reflected in the material related to criteria for grant of a license and information requirements related to license applications, which are set out in Section C.

#### **4. RIGHTS AND OBLIGATIONS OF LICENSEES**

##### **4.1 TRC Proposals in the Consultation – Rights and Obligations**

- a. In the Consultation, the TRC sought comment on potential rights of licensees and the obligations that they are obliged to fulfill after being granted licenses.
- b. The TRC proposed to subject Class licensees to a general set of rights and obligations. The TRC also proposed to subject Individual licensees to both general rights and obligations and a set of specific rights and obligations linked to their use of scarce resources. Such obligations would primarily be for the purpose of ensuring that those scarce resources are put to proper use.
- c. In the interest of transparency and regulatory certainty, the TRC proposed to draw up specific rules regarding the rights and obligations that will be applicable to each category of licensee in accordance with Article 29 of the Telecommunications Law.
- d. The TRC sought comment on the approach outlined above, and specifically on whether there are other rights and obligations the TRC needs to take into account in this respect.

##### **4.2 Views of Respondents – Rights and Obligations:**

- a. Most respondents stressed that of equal importance to the structure of the licenses themselves, are the rights that will be attached to them. For example, one respondent stated that there must be full access rights for new entrants

(whether they are holding Class or Individual licenses) to facilities held by the fixed line incumbent, such as to the international facilities on the FLAG cable system being provided through the landing station at Al Aqaba.

- b. Some respondents suggested that the following rights and obligations could also be considered:
  - Obligation to implement Number portability requirements (if or when they arise).
  - Obligation to provide wholesale offers of incumbents services to competitors (including infrastructure sharing).
  - Obligation to give access to essential facilities as decided by the TRC on terms decided by the TRC.
- c. Respondents generally agreed that a number of the rights and obligations listed in the Consultation as applicable to Individual licensees, are appropriate as they are linked to the 'scarce resources' being used by the Individual licensee:
  - the right to deploy network on public land;
  - the right to use public rights of way; and
  - build out obligations,
- d. These respondents also consider that the following rights (which the TRC says will be attached to Individual licensees) are not inevitably associated with infrastructure as compared to services, and should therefore be attached to the Class licensees:
  - an obligation to provide cost-based interconnection;
  - an obligation to provide carrier pre-selection (where the licensee is in a dominant position); and
  - the provision of emergency numbers and directory inquiries.
- e. One respondent emphasized its view that any interpretation of Article 29 of the Telecommunications Law in a manner which allows the TRC to draw up specific rules separate from the license agreement, or to allow it to draw up general rules, is an erroneous interpretation of the said Article.
- f. The same respondent required that the acquired rights of existing licensees should always be taken into consideration and that further rights should be considered including parity of licensing and rights of objection and challenge to decisions by the TRC.

#### **4.3 Conclusions Reached by TRC– Rights and Obligations**

- a. Under the Program of Licensing, all licensees will continue to be regulated in accordance with the regulatory frameworks established by the TRC, which are formulated under the provisions of the Telecommunications Law and the terms of existing licenses. No licensee shall be free from this regulatory regime.

- b. Based on its analysis of the market and on the comments from respondents, the TRC has decided to adopt an approach of general applicability of rights and obligations, under which all holders of a telecommunications license should have a basic set of rights and obligations and that these conditions will be applicable to all licensees.
- c. Obligations may however be varied through regulations or by means of schedules appended to licenses, where exceptionally justified as a response to issues of market power, other competition related factors, where existing special obligations must be preserved, or, where necessary because of the form or type of service or technology that is deployed. Such variations may typically apply, to a greater or lesser degree, to JT and Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services
- d. The progress to an Integrated regime has already been described as creating an evolving environment. The progressive publication of Regulations will replace schedules that are appended to licenses.
- e. The program for introduction, within 2005, of regulations and determinations that may supplement or replace rights and obligations that are contained within or appended to licenses, will be found in Section D. It will be noted that the program addresses a range of matters that were raised by respondents, including both Interconnect and Access, Number Portability, Carrier Selection/Pre-Selection, and, the designation of licensees with Market Power in defined markets.
- f. A rule making Regulation and Dispute Resolution Procedures will also be brought forward, which will ensure mechanisms for exercise of rights of challenge that have been sought by respondents.

## **5. PROCEDURAL MATTERS**

### **5.1 Proposals in the Consultation - Application Procedures**

In the Consultation, the TRC proposed to adopt application criteria and procedures that are closely modeled on the existing procedures that apply to the current Class licenses. The TRC questioned stakeholders on how well the existing license application process for Class licenses works, and whether there are specific improvements that could be made to the license application process for Class licenses.

### **5.2 Views of Respondents – Application Procedures**

- a. Some respondents recommended that scarce resource usage not be the only determinant factor for the TRC to develop detailed application criteria for Individual licenses.
- b. Others proposed that in the initial stages of liberalization, the TRC should consider imposing limits on the number of license awards to ease the burden

on its administrative resources and on the interconnection and network planning resources of Jordan Telecom.

- c. Some respondents expressed concern that the license application and award procedures may be circumvented by TRC in the interests of gaining the maximum possible number of simultaneous entrants, in order to encourage competition. In such circumstances, the organizational capacity of the incumbent, for example, to negotiate interconnection with each of these licensees is limited, not only by the availability of its own resources, but by the availability of suitable resources in Jordan which might be acquired to manage short term peaks in demand.
- d. Some respondents suggested that a detailed record of entrants could be maintained for public access showing where each is in relation to the different stages of application and interconnection procedure. Necessarily, this must be managed by the TRC and kept up to date.
- e. Respondents also urged the TRC to discourage undesirable competitors who will require disproportionately large amount of regulatory and interconnect resource with little long-term impact on effective competition. This, they suggest can be implemented in a number of ways, including in the application procedure, where incomplete applications or applications causing doubts about finances or regulatory compliance are sent back for clarification or turned down.

### **5.3 Conclusions Reached by TRC– Application Procedures**

- a. TRC recognizes the need for an objective and transparent application and qualification process. Section C contains details of the procedures and criteria that have been adopted.
- b. TRC will not make subjective judgments on who will have a better impact on the market. The TRC will however, seek to prevent operators with a history of non-compliance with Laws or Regulations, abuse of dominant position, and, those presenting untrue or incorrect information from entering the market.
- c. TRC will therefore require all applicants who hold, or have held, telecommunications licenses in other jurisdictions to demonstrate that they or any of their significant stakeholders (meaning any stakeholder with more than 10% interest in the applicant) have not been found to be materially or repeatedly non-compliant with the legal and regulatory system in which they have been operating.
- d. In the interest of transparency and in order to provide the public with an opportunity to provide information relevant to the licensing process, the TRC will publish information regarding each license application; comprising the identity of the applicant and the license for which application is made, and invite comment within a defined period.

- e. Section C sets out the target timescales for evaluation of applications. The targets assume a normal pattern of application. In the event of an abnormal number of applications for licenses, the period of evaluation may become extended. The TRC believes that the best approach is to treat applications on a first-come first-served basis. In such circumstances applicants will be informed as to the number of applications to be processed and will be informed of the order of evaluation.

#### **5.4 Proposals in the Consultation -License Fees:**

- a. With respect to Class licenses, the TRC proposed that fees charged should be based on the fees charged to existing Class licensees, and that there should be separate non-recurring fees charged for each service that a particular licensee seeks to provide. Recurring fees would be based on the annual cost of the TRC regulatory activities, divided among all licensees in proportion to revenues.
- b. With respect to Individual licenses, the TRC proposed to adopt a fee structure with non-recurring fees established according to the economic value of the scarce resource that will be utilized by the licensee as well as other applicable amounts that may be required. Such fees to be determined according to internationally accepted methods of valuation of such resources.

#### **5.5 Views of Respondents - License fees**

- a. Some respondents reminded the TRC that according to the WTO commitments and good practice in general, licensing (including the fees) should be objective and should not act as a barrier to entry.
- b. Some also argued that high upfront fees are not in line with global trends. Suggestions were made that benchmarking be used relative to fees in the EU, adjusted for purchasing power parity (PPP).
- c. To the extent that taxation by government arises, respondents considered this best done directly and separately and not as a result of telecommunications licensing.
- d. One respondent argued that telecom providers today want to provide converged services (data, voice and video). The license fee structure should not make it prohibitive to provide a combination of voice, data, and satellite services.
- e. Other respondents suggested that there should not be separate non-recurring fees charged for each service a particular Class licensee intends to provide. A flat non-recurring fee charged to all Class license applicants regardless of what services they intend to offer might be acceptable. In addition, it was suggested that recurring fees could be based on the annual cost of TRC regulatory activities divided proportionally among all licensees according to revenues.

- f. However, respondents suggested that there be a cap on the maximum amount the TRC can charge as a percentage of revenue for each licensee. In addition, there should be a cap on the growth of these recurring fees from year to year.
- g. Regarding Individual license fees, some respondents sought further clarification regarding the applicability of such fees. As far as the methods of valuation of “scarce resources,” some believed that internationally accepted methods, modeled to the individuality of the local Jordanian market and which takes into account GDP and other socio-economic factors, should be considered.
- h. Other respondents expressed concerns that the value-based allocation of scarce resources can create market distortions.

## **5.6 Conclusions Reached by TRC – License fees**

- a. Influenced by input from respondents, the TRC has concluded that the issues of scarce resource allocation and initial license fees should be separated. It will be noted that the Individual license contained in Section C grants approval only for the licensee to apply separately for the use of necessary scarce resources.
- b. TRC has concluded that the standard initial fee for an Individual License shall be JD 100,000, payable upon grant of the license. The standard initial fee for a Class License shall be JD 30,000. Both fees seek to recover the estimated economic costs arising from processing of applications and grant of licenses.
- c. TRC recognizes that initial fees charged for licenses can represent barriers to entry to markets and will keep the level of fee under periodic review.
- d. Notwithstanding the above, TRC reserves the right to apply fees that exceed standard levels when such fees can be objectively justified by the non-standard circumstances of the offer of a license, or the process of licensing, and are published in advance of application for licenses.
- e. TRC will also charge an annual fee to licensees. This fee will recover the economic cost of the operations of the TRC, but will exclude those costs that are properly associated with the initial fee, and, any costs incurred in the management of the radio spectrum or in regulation of the Postal Sector.
- f. The separation of licensing and scarce resource allocation leaves open the issue of how the allocation of, and charging for, scarce resources should be approached. It will be noted that the program of regulation and determinations that is set out in Section D will bring forward consultations and regulations related to both scarce resources generally, and radio spectrum in particular.

## **6. TRANSITIONAL ARRANGEMENTS**

### **6.1 TRC Proposals in the Consultation – Transitional arrangements**

- a. The TRC recognized that all existing licensees (including Jordan Telecom) would need to be accommodated within the new Program of Licensing. A number of issues that the TRC considered included: license fees, the fees already paid, the rights and obligations related to the new categories as opposed to the existing ones, the duration of the grace period for existing licensees to re-apply; the duration of the new license, qualifications to be submitted by existing licensees, etc.
- b. Several options had been evaluated by the TRC to resolve these issues, including the option of adapting the existing licenses to the new framework by amending the licenses.
- c. In view of the fact that the licenses of Jordan Telecom, and the licenses of providers of public mobile wireless services already contemplate shifting to a regime as described above, the TRC proposed that it would move its regulatory regime in the direction of those regimes that exist in more advanced telecommunications markets.
- d. In line with the approach outlined above, the TRC therefore proposed to adopt a new licensing framework that would apply to the licensing of fixed telecommunications services. The TRC proposed to apply this framework to all licensed operators as the TRC developed a regulatory program that would enable the transition to this more generalized framework.

### **6.2 Respondent Views – Transitional provisions**

- a. Some respondents were of the view that existing licenses, except Jordan Telecom, should be left untouched until they expire and have to be renewed.
- b. Some respondents supported the TRC proposition that existing licensees need not reapply for licenses and that existing licensees should immediately be accommodated within the new framework.
- c. Respondents expressed the view that the TRC could not put any operator renewing its license under the new licensing regime at a disadvantage relative to other operators still operating under un-expired licenses from the previous licensing regime (parity), and, that the acquired rights of the existing licensees must always be protected.
- d. Some claimed that the TRC could not impose any regulatory requirements that are in breach of the license agreements already granted in accordance with the Law.
- e. Regarding the JT license, several respondents identified the fundamental issue to be faced in the liberalization process as being the continued control of assets by JT, and most notably the control of international facilities. Particular

emphasis, they advocated, should be put upon the need to ensure that continued control by JT could not stifle national development, of either the telecoms market or the development of job creating businesses based on telecoms capacity.

- f. Some respondents called upon the TRC to modify or add an addendum to the JT license or quickly institute codified regulations to address issues associated with the control of assets by JT, and thus reassure market entrants that a robust approach would be taken to JT's dominance.
- g. Some suggested that in relation to the transitioning of licenses, TRC and existing licensees create a small working group to further discuss the transitional arrangements details.

### **6.3 Conclusions Reached by TRC– Transitional provisions**

- a. TRC has determined to adopt an approach to the transition of existing licensed activities that is intended to be more seamless in nature than the approach set out in the Consultation. The Program of Licensing for 2005 that is described in Section B is consistent with the implementation of an Integrated Licensing and Regulatory Regime in 2006.
- b. The activities of JT, and, the Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services will be transitioned to the Integrated Regime by 2006, following completion of procedures, if, and to the extent, required by the Telecommunications Law and existing licenses. Those licensees may, however, transition earlier than 2006 should they so choose. The means of transition may take the form of new licensing or amendment of existing licenses. In either case licenses will only be granted with a term that is equal to the remaining term of the existing licenses.
- c. Where a license is held, it will not be necessary for the licensee to pay the standard initial fee upon transition.
- d. Once all licensees are brought within a common regime it will be possible for TRC to assure fair competition within the market through regulations that take an overall view of the supply of services rather than, as now, through enforcement of narrow license terms.
- e. This regime will, within the limits of availability of scarce resources and normal safeguards, free existing licensees to expand the scope of their business and allow all market entrants to innovate and compete on equal terms, other than in the provision of Public Mobile Wireless Services.
- f. The “body of regulation” that will be required and the program for its development is set out in Section D.
- g. TRC acknowledges its obligations to existing licensees and will so order its Licensing and introduction of Regulations so as to maintain Appropriate Equivalence of Treatment between licenses.

- h. A specific area where disparity of treatment between licensees will remain legitimate, in terms of Appropriate Equivalence of Treatment, lies in the obligation of certain licensees to share revenues with Government.
- i. The provision of service will continue to be protected by Universal Service Obligations placed upon designated Universal Service Providers, the terms of which obligations will accord with Government Policy. The obligation may be associated with the establishment of a Universal Service Fund.
- j. The existing license agreement related to the fixed service business of JT contains Appendix 4, which sets out the obligations of JT with regard to Universal Service Provision. Clause 2.6 of Appendix 4 places an obligation upon the TRC, in the following terms “The TRC shall establish a regime for the sharing of USO costs before the start of operations of any Public Switched Voice Service in competition with the Licensee.” Accordingly, the Program of Licensing that is set out in Section B sets out the regime that shall apply to the sharing of USO costs from 1<sup>st</sup> January, 2005.
- k. Examination of licenses that are set out in Section C will reveal that they have certain schedules appended to them. These schedules will be seen to cease to have validity when replaced by relevant regulation.

## **Section B**

### **THE PROGRAM OF LICENSING**

#### **7. LICENSING IN 2005 AND EVOLUTION TO AN INTEGRATED REGIME IN 2006**

##### **7.1 The Aims of the 2005 Program of Licensing, and the context of an Integrated Regime**

7.1.1 A program of licensing of entrants to the Fixed Telecommunications sub-sector is necessary as rights, granted under the license of Jordan Telecom (JT), to exclusivity of supply of services by JT end at 31<sup>st</sup> December, 2004 and it is accordingly essential to enable the entry of competitors to JT at 1<sup>st</sup> January, 2005.

7.1.2 In order that the program of licensing to Fixed Telecommunications is set within a proper context, this document further informs of the evolution to an Integrated Regime of licensing and regulation that is common to all activities within telecommunications. The Integrated regime will be fully operational in 2006, following the completion of procedures if, and to the extent, required by the Telecommunications Law and existing licenses.

##### **7.2 2005 Program of Licensing**

###### 7.2.1 Motivations

- a. In formulating its Program, TRC has been motivated by a desire to open immediate opportunities for the private sector to innovate and invest, and, to bring existing National assets into play within the telecommunications market, in a proper and fair manner.

###### 7.2.2 Removing some constraints from JT

- a. The Program specifically recognizes that in subjecting JT to competition it is necessary to progressively remove or alter the regulation of JT activities. There must continue to be safeguards against the abuse of market power because most market entrants must use JT services in some form. However, as true competition arises JT can be freed of certain constraints.

##### **7.3 Evolution to the Integrated Regime**

7.3.1 The evolution to the Integrated Regime of licensing and regulation to be fully implemented in 2006, will further improve the efficiency of all markets within telecommunications.

- a) The present regime is based on the assumption that the fixed voice business of JT will be the dominant force in the market. JT fixed voice services remain an important element of the overall market, but increasingly mobile and data services are taking the leading role. It is also a fact that present and future technology developments mean that it is practically difficult, as

well as being unfair to some licensees, to continue to maintain the old distinctions between fixed and mobile services and between voice and data.

- b) TRC will implement an Integrated Regime that recognises these realities and removes outdated distinctions and prohibitions associated with narrow service and technology definitions in favour of a common approach to licensing of service activities. This will permit TRC to adopt a less interventionist and confrontational role in regulation of the market by placing less emphasis on the enforcement of license terms and more on the assurance of true competition.
- c) It is clearly necessary to anticipate this Integrated Regime, which will not be fully effective until 2006, when licensing in 2005.

## **8. WHAT IS WITHIN THE 2005 PROGRAM OF LICENSING**

### **8.1 The Law sets the requirement**

8.1.1 Article 20 of the Telecommunications Law states:

“The establishment, operation, and administration of public telecommunications networks, as well as the provision of public telecommunications services, is not permitted unless a license has been obtained pursuant to the provisions of this Law.”

### **8.2 Individual and Class Licenses**

8.2.1 Accordingly, as of January 1, 2005, all new service providers and existing Class licensees will be granted licenses in a format that will allow for the evolution to the full Integrated scheme that is described subsequently.

- a. All further providers of public telecommunications services and underlying networks that use scarce resources in the provision of some or all of their services will require Individual licenses. Scarce resources are defined as radio spectrum, public rights of way and telephone numbers. The standard initial fee upon award of an Individual license will be JD 100,000.

It should be particularly noted that the grant of an Individual license does not confer an automatic right to the use of scarce resources. Such resources must be secured separately through mechanisms and procedures that are relevant to the type of resource that is sought.

For the avoidance of doubt, it is not intended to withdraw rights and privileges in relation to scarce resources that rest with existing licensees, notwithstanding that the licenses held by such licensees may not be currently designated as Individual licenses.

- b. All providers of public telecommunications services that do not use scarce resources, or those whose use of scarce resources is determined by TRC not to be material, will require Class licenses. The standard initial fee will be JD 30,000.

Existing Class licensees will be granted licenses in the new format, under the 2005 Program, for the un-expired term of their present licenses and will not be required to make formal application for that license or pay the

standard initial fee, provided that they do not stand in breach of obligations under existing licenses.

- 8.2.2 The application requirements and associated criteria for the award of an Individual License are more stringent than those applied to Class licenses.
- 8.2.3 The standard initial fees to be charged for Individual and Class licenses are broadly in accord with existing practice in Jordan.
- 8.2.4 However, TRC reserves the right to apply initial fees that exceed standard levels when such fees can be objectively justified by the non-standard nature of circumstances or the process of licensing, and, are published in advance of application for licenses.
- 8.2.5 All licensees, existing and future, will be required to pay an annual license fee, representing a percentage of revenues arising from licensed activities, which recovers the costs of TRC in regulating telecommunications markets.
- 8.2.6 The form of licenses, standard application procedures, evaluation processes and criteria, qualifications of applicants and related materials are set out in Section C of this document.

### **8.3 Exclusions related to scarce resources**

- 8.3.1 It has been stated earlier that the test to be applied to determine whether an Individual rather than a Class license must be sought is whether the licensee intends to further apply for, or secure, the use of scarce resources. It has also been stated that TRC will have a level of discretion in applying this test.
- 8.3.2 TRC presently intends to apply its discretion with regard to scarce resources to the following:
  - a. Providers of public VSAT based services, to the extent that the only scarce resource used is radio spectrum directly related to VSAT operation. Such use of radio frequency spectrum will remain subject to TRC radio spectrum licensing procedures.
  - b. Radio spectrum used on a secondary or non-interference basis, e.g. internationally unlicensed spectrum typically used for WiFi.
  - c. Use of dialing codes for routing to enable carrier pre-selection functions.
  - d. International Signaling Point Codes (ISPC).

### **8.4 Treatment of JT and the existing holders of licenses that relate to the provision of various forms of public mobile wireless services**

- 8.4.1 Jordan Telecom and Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services will not be required to seek new licenses to be effective 1<sup>st</sup> January, 2005 but will instead have of the order of an additional year to move to their existing licensed activities to the new Integrated licensing and regulatory regime (target January 1, 2006). This will follow

completion of procedures if, and to the extent, necessary under the Law and existing licenses. Those licensees may, of course, voluntarily transition to the Integrated Regime within 2005, should they so wish.

Transition may be effected through new licensing or amendment of the terms of existing licenses. In the event that Jordan Telecom and the existing holders of licenses that relate to the provision of various forms of Public Mobile Wireless Services choose to transition by means of the grant of a new license, they shall not be required to make formal application for the license, nor, pay an initial license fee, provided that they do not stand in breach of obligations under existing licenses.

## **8.5 No constraints on services provided or the means of provision**

- 8.5.1 Within the context of application procedures and initial fees, there will be no undue limitation on the number of Licenses that will be issued, or upon the type and range of services that may be provided except that Public Mobile Wireless Services shall not be provided under the Licenses that will be granted except when Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services choose to transition to the Integrated Regime by grant of a replacement license, or, should at some future date TRC determine, outside the scope of the 2005 Program of Licensing and following further consultation, to grant licenses that permit the supply of Public Mobile Wireless Services.
- 8.5.2 Similarly, there will be no undue limitation upon the types of associated networks and technologies used. The TRC will lend its support to the introduction of new technologies within its type approval mechanisms and by expediting consideration of proposals.
- 8.5.3 It follows that, in practical terms, licenses for the supply of services, other than Public Mobile Wireless Services, will be granted to all qualified applicants that satisfy criteria that are, from time to time, published by TRC, unless there are objectively justifiable reasons not to do so. Objectively justifiable reasons not to grant licenses may include, but are not limited to, constraints related to National security, safety, scarce resource technical limitations, and, when, in accordance with Article 28 of the Telecommunications Law, award of the license to an Applicant would “lead to an anti-competitive environment in the market” for telecommunications services in Jordan, together with normal network safeguards.
- 8.5.4 Applicants will be required, when applying for licenses to advise both the details of technology to be used and the services to be provided, and subsequently to advise TRC of any changes to services or technologies. Beyond these requirements, licenses will not be granted for specific services or technologies but for all and any activities, except the provision of Public Mobile Wireless Services.
- 8.5.5 TRC does not intend, in general, to impose geographic service coverage obligations or limitations upon new licensees. It prefers that market forces should determine the extent of coverage. However, situations may exceptionally arise where a coverage obligation may be an appropriate measure to be applied in the interests of fair competition or for other compelling reasons such as compliance

with Government Policy, including that related to universal service obligations. Should such circumstances arise the TRC will consult publicly, before imposing such an obligation by means of a schedule appended to licenses, or, through specific Regulation.

## **8.6 Equal opportunities for existing and new licensees**

8.6.1 It is important not to disadvantage existing licensees that are not required to transition their licensed activities until 2006. Accordingly, from January 1, 2005, if JT or any of the Existing Holders of Licenses that relate to the provision of Public Mobile Wireless Services wishes to provide services other than services already permitted under their existing licenses, they may apply for a license under the 2005 licensing arrangements that have been described, in order to provide the additional services.

8.6.2 Such a license would only be granted to a subsidiary or affiliate entity of JT, or any of the Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services. The subsidiary or affiliate entity must not be undertaking business activities at the time of the grant of a license, and activities under the new license must both, be conducted by the entity, and, kept separate from activities that continue to be conducted under existing licenses. The grant of a new license would, for example, permit the independent provision of international services by subsidiaries or affiliates of the existing holders of licenses that relate to the provision of various forms of Public Mobile Wireless Services, in a manner that ends the monopoly of JT in that area.

## **8.7 Market entrants must have assurance**

8.7.1 It is equally important that market entrants and those existing licensees that transition before 2006 be assured that in due course appropriate equivalence of terms between all licenses will apply.

8.7.2 Accordingly, licenses issued to a subsidiary or affiliate of JT or the Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services, under the 2005 Program, will incorporate amongst attached schedules an acknowledgement, by the existing licensee, that in accepting the grant of a license to a subsidiary or affiliate it will transition its existing licensed activities, by license amendment or new licensing, to the Integrated Licensing and Regulatory regime in 2006 (target date, January, 2006).

## **8.8 An evolving environment**

8.8.1 Elements of the liberalization process, and in particular the progression toward an Integrated Licensing and Regulatory Regime, are evolutionary in nature. The approach to licensing that has been adopted means that licensees will be progressively governed by the terms of generally applicable Regulations as these are developed, rather than by detailed terms within, or appended to, licenses.

8.8.2 By 2006, the full 'body of regulation' will be in place within the Integrated Regime. By this means it will be possible to bring all licensees within the

Integrated Regime by establishing Appropriate Equivalence of Treatment amongst licenses, whether between new licenses that are granted or existing legacy licenses, the terms of which are appropriately amended.

8.8.3 TRC undertakes that, except in circumstances of self-evident emergency, proposals for Regulations will be submitted for public consultation and the results of that consultation will be published before any subsequent Regulation is put in place.

8.8.4 In any evolutionary environment, and particularly in one in which certain licenses may not be transitioned until 2006, issues of disparity of licensing and regulation between licensees might arise within 2005. TRC acknowledges its obligations to existing licensees and will so order its Licensing and Regulation introduction program so as to maintain Appropriate Equivalence of Treatment between licenses.

## **9. ACTIVITIES FALLING OUTSIDE THE 2005 LICENSING REQUIREMENTS**

9.1.1 In determining an approach to licensing for 2005, it is also necessary to determine the activities that can take place without the need for licensing.

### **9.2 International capacity and connection points**

9.2.1 An important factor in the development of the telecommunications sector in Jordan, and also the market for IT and telecommunications based services, is the availability of international transmission capacity. This capacity, the most important of which has been the FLAG submarine cable that provides optical fiber based transmission facilities, has been under the control of JT and accordingly the issue of separate licensing and regulation has until now not arisen.

9.2.2 TRC has established that submarine cable operators do not need licenses for the provision of cable to Jordan to the point where it connects to another public telecommunications network within Jordan. The provision of service from the connection point inward to Jordan is a licensable activity. Similar stipulations apply to similar systems of satellite telecommunications.

9.2.3 In relation to points of connection for international capacity, it is the intention of TRC to regulate to ensure that these points become open to use by providers other than JT.

9.2.4 Present regulation upon JT, to the extent that the need for it arises because of its control of those points, will be eased as competition develops at those points of connection or in the provision of new capacity.

### **9.3 Assets that may be utilized**

9.3.1 Jordan has sources of basic telecommunications transmission media that are presently not utilized for the provision of public telecommunications services. This exclusion is not economically efficient. However, it is necessary to determine at what point the making available of such assets and other rights for the ultimate

provision of public services become licensable activities. TRC has determined that the following should apply:

- a. If the activities of owners of assets are restricted to the transfer, by means of a transaction with an unconnected third party, of an ownership interest in the asset or elements divided from the greater whole of the asset, no telecommunications license is required. Such assets could include, for example, unlit strands of fibre optic cable or so called 'dark fibre'. This position applies notwithstanding that the party to whom the ownership interest is conveyed exploits the asset for the provision of telecommunications services and must accordingly be licensed.
- b. The simple grant of rights of way to third parties over, for example, poles, pylons, railways or land does not place the grantor in the position of providing a telecommunications service, notwithstanding the fact that the grantee may exploit the rights of way for the provision of telecommunications services and thus must be licensed.

#### **9.4 Premium Rate services (PRS)**

The provision of premium rate services will continue to be an activity that is not subject to telecommunications licensing.

### **10. THE INTEGRATED REGIME TO BE FULLY IMPLEMENTED WITHIN 2006**

The description of the 2005 Program of Licensing has made it clear that it will be consistent, in form, with the Integrated Licensing and Regulatory regime to be implemented upon completion of procedures if, and to the extent, necessary under the Telecommunications Law and existing licenses.

#### **10.1 Licensing under Integrated Regime will share attributes of 2005 Program**

10.1.1 Licensing under the true Integrated Regime will share the attributes of the 2005 Program in that it will not discriminate between types of service, sectors, technologies or infrastructures. The Regime will, therefore, by 2006, encompass the activities of JT and the Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services.

10.1.2 Under the Integrated Regime the provision of service will continue to be protected by Universal Service Obligations placed upon designated Universal Service Providers, the terms of which will accord with Government Policy. The obligation may in due time be associated with the establishment of a Universal Service Fund.

#### **10.2 Enables a change of approach to market regulation – competition assurance**

10.2.1 Once all licensees are brought within a common regime it will better enable TRC to assure fair competition within the market through regulations that take an overall view of the supply of services rather than, as now, through enforcement of narrow license terms.

10.2.2 This regime will, within the limits of availability of scarce resources and normal safeguards free existing licensees to expand the scope of their business and allow all market entrants to innovate and compete on equal terms.

10.2.3 The ‘body of regulation’ that will be required and the program for its development is set out in Section D.

### **10.3 A Regime related to the sharing of the cost of Universal Service.**

10.3.1 Clause 2.6 of Appendix 4 of the JT License Agreement places an obligation upon the TRC, as follows:

“The TRC shall establish a regime for the sharing of USO costs before the start of operations of any Public Switched Voice Service in competition with the Licensee.”

10.3.2 Accordingly, the TRC now states the regime that shall apply to the sharing of costs should Government Policy with regard to the provision of Universal Service or Access that prevails from time to time give rise to:

- a. A requirement for Universal Service or Access obligations (USOs), and,
- b. The designation of one or more Universal Service Providers (USPs), and
- c. Detailed and fully quantified claims by one or more USPs that it/they operate in a competitive market and is/are materially disadvantaged in competitive terms by the USO, and,
- d. The determination by TRC that a claim has merit and that costs be borne by other licensees in addition to the designated USP(s).
- e. In determining whether a claim has merit and costs may be borne by additional licensees TRC must take into account the fundamental requirement that the operation of any USO regime be fair, reasonable and non-discriminatory and that the purpose of sharing the cost of a USO is to correct any material competitive imbalance that is created by the obligation. Accordingly, the sharing of cost must not give rise to any undue distortion to investment and economic efficiency and have no undue discriminatory or disproportionate effect upon other licensees.

10.3.3 Provided that the stated conditions are met:

- Costs will be shared only by means of contributions to a Universal Service Fund that is established by the TRC under its powers, and for the purposes stated, under Article 86 of the Telecommunications Law.
- Contributions to the fund shall be made only by licensees operating in markets that are relevant to the scope of the USO, and, are deemed by the TRC to be advantaged by the USO.
- The TRC shall determine the basis of contribution to the fund in a transparent and non-discriminatory manner.
- Accordingly, the TRC will not impose any obligation to make contributions to a fund without prior public consultation.

## **Section C - Form of Licenses, Application Forms and Procedures**

The following are attached hereto:

1. [Instructions Regarding the Application Procedures and Criteria for the Award of Public Telecommunications Individual and Class Licenses](#)
2. [Public Telecommunications Individual License](#)
3. [Public Telecommunications Class License](#)

## Section D

### 1. PROGRAM FOR IMPLEMENTATION OF REGULATIONS AND DETERMINATIONS

The Program of Licensing that is set out in Section B is associated with parallel programs of Transition and Regulation.

#### 1.1 Transition

##### 1.1.1 Program of Regulation

The 2005 Program of Licensing will be carried out within the context of the existing regulatory regime. This means that the licenses that are set out in Section C have appended schedules that reflect present regulatory arrangements.

It will be noted, however, that the schedules specifically provide for their replacement, as appropriate, by regulations that will be introduced according to the Regulatory Program, currently estimated as follows:

	Regulatory Instruments and Determinations	Date of Implementation following consultation
1.	<b>Interconnection guidelines</b> update – governing obligations, practical procedures, pricing and other matters governing connection between licensees and associated matters. Guidelines currently exist but will be updated in response to changed circumstances.	Qtr 4, 2004
2.	<b>Carrier Selection</b> - Determination related to obligations placed upon certain licensees to provide the facility for users to gain access through their network services to the services of another licensee.	Qtr 4, 2004
3.	<b>Regime for sharing the cost of USO</b> – A regime for the sharing of costs, if any, is published in Section 10.3 of this Memorandum. The processes and criteria associated with the regime will be published following public consultation.	Qtr 4, 2004; Qtr 2, 2005
4	<b>Mobile Number Portability</b> – Related to the technical processes, administrative procedures and pricing to be applied when a customer ceases service with one licensee and seeks service from another licensee whilst retaining the telephone number or other identity previously used to receive service.	Qtr 1, 2005
5.	<b>Competition Safeguards</b> – Related to the processes and criteria to be applied for definition of relevant markets and assessment of market influence, together with associated measures that contribute to the development and maintenance of fair competition, over time.	Qtr 1, 2005

6.	<b>Rule making procedures</b> – Related to the establishment of mechanisms and formal processes by means of which market regulation is developed, which provide transparency and safeguards against arbitrary or disproportionate action by the TRC.	Qtr 1, 2005
7.	<b>Dispute Resolution Process</b> – Related to the establishment of mechanisms and procedures by means of which disputes; between licensees, between licensees and TRC, and, between licensees and consumers, may be resolved in a timely and cost effective fashion.	Qtr 1, 2005
8.	<b>Enforcement Provisions</b> – Measures and sanctions, and procedures for their imposition, by means of which the TRC may fulfil its obligations under the Law when a licensee or any other party is in breach of any license or other relevant condition of law, including the provision of services other than under an appropriate license, or, in manner that is prejudicial to safety or the public interest.	Qtr 1, 2005
9.	<b>Market definitions and market power</b> – Determinations under Competition Safeguard provisions described in 4, together, if appropriate, with the designation of certain licensees as in possession of market dominance or significant market power, or the removal or modification of such designation.	Qtr 1, 2005
10.	<b>Scarce Resources</b> – Related to the definitive identification of resources that are determined to be scarce for licensing purposes and the establishment of formulae or principles by which public scarce resources may be valued.	Qtr 1, 2005
11.	<b>Spectrum Licensing</b> – Related to the processes and procedures to be applied to issuance of Licenses for the use of radio frequencies by future fixed telecommunications providers.	Qtr 1, 2005
12.	<b>Cost of Capital</b> – Determination of the method by which the market-determined opportunity cost of capital of licensees, that are determined to hold market dominance or significant market power, shall be identified. Together with its estimation according to that method for measurement of competition efficiency purposes, and, in the assessment of the cost of provision of services.	Qtr 2, 2005
13.	<b>Quality of Service</b> – Related to the specification of standards of service, by means of technical parameters or other measures, that consumers and users may reasonably expect from licensees. The regulation shall also specify data collection and measurement reporting obligations.	Qtr 2, 2005

14.	<b>Access Markets</b> – Determination of services that must be provided amongst licensees that do not have the characteristics of interconnect but contribute to the creation of new markets or the economically efficient delivery of services.	Qtr 2, 2005
15	<b>Consumer Protection</b> – Related to such matters as terms and conditions of supply, access to emergency and directory services, complaints procedures, access to relevant information and codes of conduct and similar mechanisms that permit the TRC to fulfil its obligations under the Law in relation to consumers of services from licensees.	Qtr 2, 2005
16.	<b>Reference Access Offer</b> - Related to the establishment of offers to other licensees by certain licensees that are required to provide wholesale Access services.	Qtr 3, 2005
17.	<b>Accounting separation</b> – Determination related to those licensees that are required to account separately for various business activities and to establish transparent internal trading mechanisms. Together with specification of the appropriate accounting standards and cost allocation methodologies to be applied.	Qtr 3, 2005
18.	<b>Retail Price Controls</b> – Determination of those licensees whose retail charges shall be subject to individually or collectively determined price limitations. Together with the specification of the control mechanisms to be applied.	Qtr 4, 2005

### 1.1.2 Licenses that do not transition in 2005

The TRC will initiate the necessary processes under the Telecommunications Law and under existing license agreements that will bring those licensed activities within an Integrated Licensing and Regulatory Regime by 2006.

### 1.2 Regulation under an Integrated Licensing and Regulatory Regime

The aim of the Regulatory Program is to create an environment in which TRC may more fully concentrate its activities on the assurance and promotion of competition within defined markets. Greater reliance may accordingly be placed upon normal market mechanisms and regulatory interventions by the TRC may be minimized.