

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



**The Transition to the Integrated Regime of Licensing and  
Regulation of the Activities of Jordan Telecom, and Four Existing  
Holders of Licenses that Related to the Provision of Various Forms  
of Public Mobile Wireless Services**

**Report on Responses to and Further Actions Arising from a  
Consultation together with Conclusions Drawn by the TRC**

**TRC Board Decision No.(4-19/2006) Date(1/8/2006)**

## 1. INTRODUCTION

### 1.1 Background to the Consultation

In its “Information Memorandum related to a Program of licensing within the Fixed Telecommunications sub-sector and the evolution to an Integrated Licensing and Regulatory Regime”, dated 2<sup>nd</sup> January, 2005 the TRC set out its intention to transition the activities of Jordan Telecom and four licensees that provide various forms of Public Mobile Wireless Services (together ‘Existing Non-Class Licensees’) to the Integrated Regime of Licensing and Regulation, by 2006.

The TRC, as a result of its own studies and contacts with licensees and others, had been aware that a number of questions and issues would arise in relation to that transition.

Accordingly, an Advance Notice of consultation was published in February 2005 seeking the views of all stakeholders as to what issues, in addition to those already identified by the TRC, merited discussion through a consultation on the proposed transition of existing non-Class licensees.

Following the responses to the Advance Notice, the TRC reviewed the issues to be consulted upon and published the consultation “Notice requesting comments on Issues related to the Transition to the Integrated Regime of Licensing and Regulation of the activities of Jordan Telecom, and four existing holders of licenses that relate to the provision of various forms of Public Mobile Wireless Services” on 6<sup>th</sup> April 2005 (The Consultation Paper). The issues to which responses were sought encompassed those proposed by the TRC and certain of the suggestions made by stakeholders.

Issues which the TRC itself put forward may be summarised as follows:

- Differences and anomalies between existing licenses
- Duration of licenses on transition
- Revenue share obligations
- The impact of special taxation on demand conversion
- Special taxation as a potential distorting influence between sub-sectors
- Assignment of radio spectrum to licensees
- The scope of permitted services
- Financial or other material consequences for licensees

In addition, suggestions and observations were made by respondents to the Advance Notice and these were set out in Section 10 of the Consultation Paper. A number of these were identified as items in relation to which the TRC did not consider it appropriate to seek comment. In general, items so marked represented areas in which the TRC was already consulting, or intended, to consult separately, and in depth. Certain input from Stakeholders represented generalised comment or observations, which in the judgement of the TRC did not yield a basis for reasoned consultation. Jordan Telecom sought that the consultation should extend to consideration of the continued relevance and appropriateness of provisions of the Telecommunications Law. The TRC considered this issue to be too broad and fundamental in effect to be consulted upon other than as an entirely separate issue in a separate consultation, were the TRC to come forward with proposals for changes in due course. Overall, in making its judgements the TRC sought to ensure manageability and appropriate focus within the consultation process.

However, licensee propositions on which the TRC indicated it would be pleased to accept comment were as follows:

- Dispute by some licensees that the Telecommunications Law permits a Regulation that has been duly developed by the TRC, through transparent due process, to take appropriate precedence over a license provision ('Order of Precedence').
- The proposition that TRC decisions in relation to regulatory matters should be referred to International or other National bodies or institutions for review, in the event of dispute.
- The proposition that amendments to license agreements be made only on the basis of specific mutual consents.
- The proposition that specific and advantageous rights that are enjoyed by a limited number of licensees within existing non-Class licenses be preserved for those limited number of licensees within the Integrated regime of Licensing and Regulation.
- The proposition that the transition of existing Class-licensees to the Integrated Regime of Licensing and Regulation provides those licensees with an unfair 'head-start' over Existing non-Class licensees.

This report sets out the TRC's Positions on all the above issues within the context of an overall package of measures; following its analysis of all the responses received to the Consultation.

## 1.2 Responses received

The Consultation posed a set of questions, framed around certain of the issues that have been identified above. Interested parties were not, however, constrained to answering the questions posed.

Several parties, notably Jordan Telecom, did not recognise the limitation upon topics for comment that TRC sought to encourage in the interests of manageability and focus, and accordingly provided comment on a wide range of issues. Where these views are considered relevant, the additional material has been inserted in the most appropriate location within this report, given the nature of its subject matter.

Formal responses to the consultation were received from the following parties and posted on the TRC website:

- Jordan Telecom
- MobileCom (affiliate of Jordan Telecom)
- Fastlink
- Umniah
- XPress

Formal comments on the responses posted on the TRC website were subsequently received from the following parties:

- Jordan Telecom
- Umniah

## 1.3 Further actions arising from the consultation

- Two licensees, Fastlink and Umniah, have followed their responses to the consultation with requests to transition their licenses, by amendment, to the Integrated Regime within 2005. In the case of Fastlink, this request has been made on a conditional basis.
- A meeting was held with the five licensees (Jordan Telecom, Mobilecom, Fastlink, Umniah and XPress) to consider the conditional request by Fastlink to transition.

- The TRC has conducted a dialogue with Government on matters of government policy as relevant to the consultation.

#### 1.4 Public Comment:

The TRC has prepared a Report On Responses To And Further Actions Arising From A Consultation Together With Conclusions Drawn By The TRC, that sets out a summary of the responses to the public consultation dated 6<sup>th</sup> April, 2005 received by the TRC along with the statement of TRC's conclusions on the issues consulted upon. The TRC has published the said report for public consultation on 26<sup>th</sup> Feb. 2006 for a period of 15 days till 12 March, 2006 in order to receive final comments on it. The TRC extended the above-mentioned deadline to receive final public comments on the report till the date 32/3/2006 upon the request of some telecommunications operators. The TRC received final comments on the report from Jordan Telecom (JT), Mobilecom and XPress. Based on the above, this Report sets forth a summary of the responses to the public consultation dated 6<sup>th</sup> April, 2005 received by the TRC and a summary of the responses to the public consultation on the report dated 26<sup>th</sup> February, 2006 along with the statement of TRC's final conclusions on the issues consulted upon.

#### 1.5 Transition

Following the publication of this Report, the TRC will proceed with licence transition for Non-Class Licensees who have not transitioned yet, in accordance with the Telecommunications Law and with procedures and timetables that will be set out by the TRC for this purpose..

#### 1.6 Transition by Consent

The Processes described in Section 1.5 above will be followed without prejudice to the position of any licensee which have requested or may request to transition by consent to the Integrated Regime of Licensing and Regulation.

## **2 SPECIFIC RESPONSES TO THE CONSULTATION AND CONCLUSIONS REACHED BY THE TRC**

This section summarises the specific responses made to the questions set out in the consultation and provides an overview of the TRC's preliminary analysis and views following consideration of these responses.

### 2.1 Differences and anomalies

#### 2.1.1 Summary of the TRC Analysis and Questions Posed within The Consultation

The TRC identified in the consultation certain differences and anomalies in the terms of the respective license agreements entered into with 'Jordan Telecom', 'MobileCom', 'Fastlink', 'XPress' and 'Umniah' that have inevitably arisen over the years as markets and licensing evolved. The TRC questioned whether these give rise to distortions of the competitive mechanism within telecommunications markets in the Kingdom.

The TRC expressed the view that the present structure of telecommunications markets and associated regulation and licensing is, at least in part, a product of the history of the sector, and, that history of the sector is rooted in policies that were not based on full competition.

By way of example the TRC cited the following:

"Two licensees that provide forms of Public Mobile Wireless Services, and have been established for some years, pay significantly less for the use of Radio Spectrum than two licensees also providing forms of Public Mobile Wireless Services that have recently

entered the Jordanian market. The TRC estimates the present advantage to the longer established licensees to amount to some JD 2.5 millions p.a., per licensee."

The TRC further stated that its analysis leads it to the view, subject to the outcome of The Consultation, that the differences described above do not represent Appropriate Equivalence of Treatment. The TRC considers that they may represent a further compounding distortion of competition within markets where historical restrictions on entry already mean that competition is imperfect and in which one licensee holds, and is able to exercise, significant market power.

The TRC sought comments on the following questions:

*a) Stakeholders are invited to provide their rationalized views, as to whether they agree with the TRC analysis that differences and anomalies relative to license agreements represent material distortions to competition within markets or between sub-sectors within the telecommunications sector, such that they materially prejudice the interests of suppliers and/or consumers within those markets or sub-sectors.*

*b) Stakeholders are further invited to provide their views as to whether and to what extent the identified differences and anomalies represent factors that have the potential to prejudice the optimal development of markets and the penetration of services amongst the population.*

*c) Where stakeholders do not accept the analysis by the TRC that differences and anomalies within license provisions give rise to material distortions they are invited to state the reasons leading to their alternative analysis and provide supporting information.*

*d) Stakeholders may also wish to express their views as to whether there are reasons why it would not be appropriate to establish Appropriate Equivalence of Treatment between licensees in these matters.*

#### 2.1.2 The Views of Respondents

In making its responses, Jordan Telecom (JT) chose not to respond directly to questions posed by the TRC, but instead made a more generalised response. It is accordingly, in some instances, necessary to apply some interpretation to establish the JT position on specific issues. JT was candid in stating that its responses are in effect principally concerned with the protection of shareholder value associated with a transaction by some JT shareholders with Government, entered into in 1999. Within this context, it would appear that JT did not ascribe any serious weight to the presence of anomalies within license terms and did not regard these as creating significant distortions to competition. In relation to distortions, JT complained that regulatory treatment differs between the Fixed and Mobile sub-Sectors, to the detriment of its interests, and suggested that attention to such regulatory asymmetry would be more productive than attempts to remove asymmetric license rights, acquired by JT and others over time. JT offered advice to the TRC as to the necessary regulatory measures to be applied to the operations of another licensee.

Fastlink complained of an inability to determine the license terms applied to other licensees and thus an inability to form a definitive view as to the nature or effect of anomalies in license terms. It offered the view that any distortion of competition that may exist is the result of the "recency" of liberalisation and the policies that TRC has pursued. Fastlink took the position that the effect of anomalies may be controlled by TRC but that such control should not extend to the removal of rights granted to it within its license agreement. No specific proposals were made as to the nature of the control to be applied by the TRC, nor the areas to which it should be applied.

Mobilecom acknowledged the existence of anomalies and what it terms the "theoretical distortion to markets". It attributed anomalies to factors arising over time, therefore apparently supporting the analysis by the TRC. It indicated that it "reluctantly" supported moves to remove distortions, but placed most weight on the necessity of regulation of dominant operators. It suggested that a full proper market review should be conducted to identify what measures are objectively justified.

XPress agreed with the TRC's view that differences and anomalies between licenses will result in distortions to competition within and across markets and supported the TRC's programme to establish a licensing basis to attain Appropriate Equivalence of Treatment. XPress argued that

differences in licensing terms may only be justified for economic reasons, e.g. recognising the impact of market power, or as a result of technical specifications, constraints or differences.

Umniah ascribed the main anomalies in licensing to be the result of the timing of the introduction of competition. Umniah considers that its competitors, who have previously enjoyed a period of exclusivity, are abusing market power, and this abuse has the potential to be the greatest source of market distortion. It looked to the TRC to address the issue of market power.

JT (in its subsequent comments) supported the concern expressed by Fastlink that licences were not publicly available and thus, anomalies and differences between licences were difficult to discern.

### 2.1.3 Conclusions reached by the TRC

The TRC observes that there is overall acceptance that anomalies exist and that some of them lie outside the jurisdiction of the TRC. The smaller operators/market entrants regarded the impact of the anomalies and the resultant distortions to competition to be more serious than the established licensees. The TRC has concluded that anomalies and distortions that exist tend to favour the established or larger operators. The TRC notes the concerns expressed by licensees regarding issues of market power in the Mobile sub-Sector and the claims of asymmetric treatment between sub-Sectors. However, the TRC is firmly of the view that such matters, should they prove to have substance, do not obviate the need to remove anomalies within license provisions. As the regulator of the Telecommunications Sector, within the context of the Telecommunications Law, the TRC must principally concern itself with the competitive status of markets, as they prevail from time to time, and the activities of licensed entities within those markets. It follows that where the interests of competition are not served by the existing licensing frame work, the TRC must act to remove distorting effects, notwithstanding that such actions may be claimed by some to be inconsistent with past understandings reached between third parties, or, that the interests of all or some of the shareholders of licensed entities may be represented to be prejudiced.

Much of the regulatory work undertaken over the last year and to be completed in coming months sets in place a fair and transparent regulatory regime that will enable competitive distortions and abuses of market power to be addressed. The TRC remains of the view that the current process of transition to the integrated licensing regime represents the most appropriate method to resolve and remove from the licensing framework anomalies and distortions arising, that may adversely affect the development of competition in the future.

In the first instance the TRC will seek to remove anomalies by agreement, but may ultimately apply its rights under the Law to effect amendments to licenses where such amendments are clearly in accordance with Government policy or in the Public Interest.

Abuses of market power that may be present in the market place will be addressed using the appropriate instruments that have been or are being created within the Integrated Licensing Regime.

## 2.2 Duration of Licenses upon Transition

### 2.2.1 Summary of the TRC analysis and Questions Posed within the Consultation

The TRC questioned whether there is a case to be made on investment incentive, equivalence of treatment, fair competition or other grounds for departing from the general intention set forth in the Information Memorandum that upon transition all license agreements should retain the duration and expiration that are presently stated within each license agreement.

In section 6.3 b) of the Information Memorandum the TRC states:

“The activities of the JT, and, four 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 the 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.”

The licenses of JT, and, the four Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services have been issued at various times and for varying durations; thus, if the intention stated in section 6.3 b) of the Information Memorandum is carried out licensees will enter the Integrated Regime with varying remaining durations of licenses. Licenses are also presently subject to varying conditions related to the renewal of licenses at the time of their expiry. Thus, licensees will enter a period of enhanced competition and associated regulation with varying levels of certainty, and thus varying levels of risk.

The TRC stated a view that institutional matters, such as uncertainty as to license renewal provisions, should not unreasonably influence the risk profile of licensees. Accordingly, it was the intention of the TRC, subject to the Consultation, that licensees in similar circumstances should be subject to common provisions related to renewal of licenses and that such provisions should provide assurance that renewal will be effected, provided only that necessary and reasonable conditions are met. One such condition might relate to the payment of a renewal fee.

The TRC sought comments on the following questions:

*a. Stakeholders are invited to provide views on the appropriateness, or otherwise, of the intention stated by the TRC within the Information Memorandum that for the purpose of transitioning to the Integrated Regime, all existing licenses will be amended so that the remaining duration is unchanged.*

*b. Stakeholders are invited to provide views as to whether it would be appropriate to treat existing Class Licensees differently, in relation to license duration upon transition, to Jordan Telecom and the four Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services.*

*c. Stakeholders are invited to comment upon the view formed by the TRC, subject to this Consultation, that all licensees should be subject to common license renewal terms within licenses and that, upon expiry of licenses, renewal be effected by the TRC for a period of ten years, provided only that an evaluation report prepared and published by the TRC evidences that the licensee that seeks renewal has a record, in relation to the supply of services and all related matters, of compliance with the Law, license terms and regulatory instructions issued by the TRC, including the payment of fees. The TRC considers that any intention to renew a license on the basis described should be published for public comment.*

*d. Views are also sought on the basis on which any fee charged by TRC upon renewal of a license should be calculated. Should such a fee seek to merely recover an approximation of costs incurred by the TRC associated with the renewal process, or, should it be charged on some other basis that does not itself represent a distortion to market forces? In the latter regard specific suggestions are solicited.*

### 2.2.2 Views of Respondents

JT linked the duration of its license to a share transfer transaction in 1999, and the consideration paid in relation to that transaction, and accordingly rejects any implied suggestion that its current licence duration, or, fee obligations might be altered in any way, as it claims that this would represent a threat to shareholder value, and, in its opinion, potentially damage the prospects for further inward investment in Jordan. JT appeared to offer no specific response to the other questions posed by the TRC.

Mobilecom suggested that maintaining existing licence durations would preserve existing anomalies. It suggested that the TRC should follow what Mobilecom considers to be best international practice and adopt unlimited licence durations. As a consequence, Mobilecom is silent on the question of the mechanism of charging for licence renewal fees, but does seek further consultation on the question of annual licence fees. Mobilecom displayed concern related to the duration of its spectrum licence and suggested that this should be re-issued for a further 15 years

from 2006. And In its final submission of comments, MobileCom stated that it was not clear to it how the total of JD 45.9 million of renewal fees is made up. Mobilecom also stated that it is concerned about what it considered to be a lack of transparency in the TRC approach and enquired about what the fees were designed to cover.

Fastlink expressed its inability to understand the rationale for keeping licence durations unchanged upon transition. Fastlink appeared to argue that the economics of telecommunications and other utility businesses are such that licensees should be able to rely on holding licenses indefinitely, subject to the operator having a good record of service and compliance with the Law, licence terms and regulatory instructions. Renewal should only be dependent on the positive evaluation of the operator's performance, and renewal fees would be best calculated on the basis of TRC's administrative costs.

XPress acknowledged the need for a policy on licence duration but proposed the alternative option of removing duration constraints from licenses. XPress believes that such a removal would support competitive equity and remove institutional or financial risk for the operators associated with renewal and obviate the need for renewal or termination procedures (apart from procedures to do with breach or non-compliance). Were such an option not to be available, XPress argues strongly that licence terms should remain unchanged upon transition, as to do otherwise would damage investment and commercial incentives. XPress considered it inappropriate to treat class licences in a different manner to individual licences regarding duration, and certainly no license duration should be shortened as this amounts to expropriation of revenues. XPress considered that renewal fees should be based on the administrative costs alone.

Umniah was emphatic that the remaining durations of current licences must be unchanged upon transition, as to do otherwise would be unfair on the most recent entrant. Umniah could see no justification for treating class licensees in a different manner to individual licensees with regard to duration, and the duration of class licenses should, in the view of Umniah, also remain unchanged on transition.

Umniah was strongly opposed to the view that renewal fees should be based only on administrative costs. Umniah put forward the view that renewal fees should be spread equally across all mobile users and, as such, operators with large market share would pay proportionately more to renew their licenses than operators with small shares. It believed that this would represent Appropriate Equivalence of Treatment.

At a meeting held on 29th August, 2005, which is referenced in section 1.3, the five attending licensees were informed of the conditional indication of a desire to transition within 2005 that had been made by Fastlink. The conditionality of the indication was discussed, together with the nature of the fees that should be associated with such conditionality and license renewal generally. Whilst discussion was wide-ranging, the TRC gained the general understanding from the meeting that, at the level of principle, licensees held no objection to the conditionality associated with the Fastlink indication of a desire to transition, and, in relation to renewal fees, licensees broadly remained aligned to the views that they had expressed in their written responses to the consultation.

### 2.2.3 Conclusions reached by the TRC

On the issue of licence durations, responses encompassed views on three broad options;

- a) the adoption of provisions that effectively render license durations to be unlimited, subject to compliance with appropriate conditions,
- b) the modification of license durations upon transition to the Integrated Regime
- c) the retention of remaining licence durations upon transition to the new integrated licence regime.

The TRC notes the considerable diversity of views expressed. However, it finds itself able to accommodate a number of the advocated positions without giving rise to concerns related to



distortions to competition or inhibition of the development of the sector and is accordingly prepared to depart from the position set out in the Information Memorandum dated 2<sup>nd</sup> January, 2005 to the following extent:

- Renewal provisions in all licenses will reflect the retention of remaining license durations upon transition, but renewal to be certain for periods of 15 years, subject to a review by TRC of the extent to which the licensee has complied with its obligations under the license agreement and is in compliance with the relevant TRC regulations. Renewal shall be subject to payment of an appropriate fee. The latter arrangements will give rise to the adoption of common renewal provisions, to that effect, in both Class and Individual licenses. Clearly, all licenses will remain subject to termination and other appropriate measures in relation to material breaches of license terms.
- The TRC is, additionally, willing to exceptionally permit the extension (re-basing) of license durations in the process of transition to the Integrated Regime, to a period of 15 years measured from the date of transition to any licensee which requests a transition to the integrated regime in 2005. Such a re-basing of license duration upon transition would be subject to a review by TRC of the extent to which the licensee has complied with its obligations under the license agreement and is in compliance with the relevant TRC obligations, and, to the payment of a Fee to be calculated upon receiving such a request.

With regard to the appropriate fees for the renewal of a licence, the balance of responses, where comments were made, supported the approach of administrative pricing of licence renewal. However, alternative arguments were put forward in relation to renewal fees within the Mobile sub-sector, where it has been international practice to charge fees that substantially exceed administrative costs as a condition of the award of licenses. Arguments related to the competitive distortions that could arise were a renewal fee not charged, and, the further distortions that could arise were fees to be imposed on a basis that does not reflect market shares that prevail within the sub-sector.

The TRC is concerned that license renewal fees should not be set at a level that would have the effect of their being a) passed to consumers on a basis that would materially disadvantage those consumers, b) prejudicial to investment in and/or the development of the sector, or, c) distorting to competition.

However, the TRC acknowledges the relative merits of the various arguments put forward and will act to achieve an appropriate balance through the mechanisms that are now described:

- The TRC's conclusion, in relation to licenses, other than those issued in circumstances where competition is limited through the application of Government Policy, scarcity of resources or other means of Government control related to the number of licenses issued, as described in the following paragraph, is that renewal fees should be restricted to an approximation of the costs incurred by the TRC directly associated with the renewal process, including legal and advisory costs and an appropriate proportion of its internal costs.
- In relation to licenses issued in circumstances where a) prevailing Government Policy or other means of Government control effectively restricts competition through the limitation directly or indirectly of the number of licenses of any relevant type that may be issued, and, b) fees that materially exceed the associated administrative costs of the TRC are or have been charged as a condition of the issue of such licenses, the TRC's conclusion is that a different approach to that applied to other licenses is appropriate.
- In accordance with such conclusion, the TRC will set renewal fees expressed as related to "combinations" as specified from time to time by the TRC, such combinations typically corresponding to total markets addressable or total activities that may be undertaken under the terms of those licenses or associated scarce resource licenses. The TRC will designate those licensees that shall be subject to the renewal fee that exceeds administrative costs

associated with license renewal for particular combinations. The total fee so set for each combination shall be payable by the designated licensee in proportion to the share of the combination held by the licensee at the date of its own license renewal. Share to be determined, for the purposes of what has been described, by application of a practical measure determined by the TRC that is appropriate to the combination.

- The renewal fee that is expressed as related to combinations shall be paid in addition to the TRC's estimate of the costs incurred by the TRC directly associated with the renewal process.

At the present time the TRC considers that only the licensing of those providing various forms of Public Mobile Wireless Services merits consideration of the application of a renewal fee that exceeds the costs of the TRC associated with the renewal process. However, the TRC notes that the period in which XPress is protected from competition related to its technology has passed and that the terms of its license presently exclude it from substantive participation in markets addressed by the further three licensees. The TRC accordingly concludes that XPress should, at the present time, be subject to a renewal fee that reflects the costs of the TRC associated with renewal.

Accordingly the TRC designates the further three licensees as being subject to a renewal fee that is set at a level that exceeds the administrative costs of the TRC related to the renewal process.

- The TRC concludes that until such time that the TRC determines that the circumstances require otherwise, the renewal fees shall be determined in relation to a combination that represents the activities of the three licensees that are permitted by licenses or associated spectrum licenses immediately following their transition to the Integrated Regime.
- At the present time, renewal fees to be applied to each licensee shall be determined by the following formula that references the license acquisition fees originally paid and subsequent market growth in the relevant licensed activities and calculates the total renewal fee that is set for the entire combination of activities for 2005.

$$\Sigma \{ a * (1+w)^{na-1} \} + \{ b*(1+w)^{nb-1} \} + \{ c*(1+w)^{nc-1} \}$$

Where:

a = License acquisition fee paid by FastLink in 1995

b = License acquisition fee paid by JT (MobileCom) in 1999

c = License acquisition fee paid by Umniah in 2004

w = WACC for mobile operators in Jordan (14%)

na = Number of years since FasLink acquired the license until 2005

nb = Number of years since MobileCom acquired the license until 2005

nc = Number of years since Umniah acquired the license until 2005

Following application of the said formula, the TRC determines this total renewal fee to be JD 45.9 Million for the entire combination of activities for 2005. The total renewal fee is to be apportioned by the market share of the licensee, as determined by its share of total operational revenues arising in the relevant combination.

The total renewal fee calculated for 2005 is to be adjusted for application to renewal of licenses in future years by applying the same formula, adjusted to suit the relevant year of renewal as follows:

$$\Sigma \{ a * (1+w)^{na-1} \} + \{ b*(1+w)^{nb-1} \} + \{ c*(1+w)^{nc-1} \}$$

Where:

a = License acquisition fee paid by FastLink in 1995

b = License acquisition fee paid by JT (MobileCom) in 1999

c = License acquisition fee paid by Umniah in 2004

w = WACC for mobile operators in Jordan

na = Number of years since FasLink acquired the license until the year of the renewal of the license

nb = Number of years since MobileCom acquired the license until the year of the renewal of the license

nc = Number of years since Umniah acquired the license the until year of the renewal of the license

- The adjusted total renewal fee is to be apportioned by the market share of the licensee, as determined by its share of total operational revenues arising in the relevant combination.
- In the interests of clarity, the TRC states that in the event of new circumstances and/or a broadening or narrowing of the scope of relevant licenses, through for example an adjustment to the activities permitted under licenses, schedules thereto or associated radio spectrum licenses, the TRC may apply a new mechanism for the calculations of renewal fees or adjust the level of the renewal fee from that stated above, or, set a supplementary fee related to combinations that relate to the new circumstances and/or the enhanced activities.

The TRC will set an Additional Exceptional Fee Element to be payable only by those licensees, if any, that take the opportunity to extend their license duration within the transition process. This fee is calculated to indemnify the TRC and Government for lost revenue arising from the transaction.

- It is concluded that the exceptional fee related to the extension of a license within the transition process should represent the net present value of direct annual charges that would have been payable, post transition, until the stated expiry date of the license that is transitioned plus a notional 15 year licence renewal period, minus the discounted annual fees and charges payable for the 15 year term that arises on transition.
- Since, in some cases, the level of such direct annual charges, typically revenue share, annual license fees and radio spectrum fees, that are needed to effect the calculations is dependent on future market development, the calculation of the exceptional fee shall be based on the relevant charges applicable in the full year immediately prior to the date of transition, and a projected growth percentage to be applied for the duration of the concerned period. The concerned discount rate to be applied to the sums is 6.75%. Where the term full year is used, it means the calendar year to 31<sup>st</sup> December or the date to which the licensee has habitually made-up its annual accounts.

- Where either 2004 or 2005 is used as the year from which such direct charges are to be derived the charges shall be calculated at rates that would have applied post transition of the license.

Any licensee which takes the opportunity to extend its license duration within the transition process would pay a fee, upon transition, as mentioned above that contains two elements:

- Element 1. A fee element calculated as at the date of license transition, on the basis described above in relation to renewal fees, notwithstanding that the transaction relates to amendment of the license, rather than a renewal of the license.
- Element 2. The Additional Exceptional Fee element that has been described above.

For the avoidance of doubt it remains the view of the TRC as set forth in the Information Memorandum that licensees which transition and do not opt to extend the term of their licenses within the transition process will pay no fees whatsoever associated with that transition.

It is the intention of the TRC to separately publish an Instruction related to conditions related to renewal, as required by Article 38 of the Telecommunications Law.

## 2.3 Revenue Share Obligations

### 2.3.1 Summary of the TRC analysis and Questions Posed within the Consultation

The TRC sought to explore whether the calculation of sums payable in respect of Revenue Share obligations by means of a fixed percentage of revenues act as a disincentive, presently or in the longer-term, to consumer take-up of services supplied by Licensees providing various forms of Public Mobile Wireless Services, and, if present mechanisms give rise to disincentives, what would be the most suitable alternative mechanism for determining the amounts payable.

TRC linked its concerns in this area to a key objective of Government of Policy:

“It is a policy objective that at least 50% of the population will be direct subscribers to mobile services, within 10 years, paying unit charges for basic voice services that are at least 25% lower than at present, in real terms.”

At the present time four licensees that provide various forms of Public Mobile Wireless Services share revenues with Government to the extent of a fixed percentage of 10% applied to relevant revenues. The TRC acknowledged that it passes to Government all Revenue Share payments received. Whilst, to that extent, the TRC presently has no formal powers in the matter of Revenue Share, it is appropriate within the context of its obligations under the Telecommunications Law, particularly Articles 6 a) and e), to consider its impact upon the development of the telecommunications sector and to make recommendations to government in that regard.

The TRC expressed the view that the nature of Revenue Share is that it is a mechanism to extract economic rents obtained from certain markets within those served, or potentially served, by four Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services. TRC expressed the view that extraction of economic rents is in the public interest and that is clear evidence that relevant economic rents have arisen in Jordan.

The TRC expressed the further view that it is appropriate, so long as markets remain less than fully competitive, that the extraction of economic rents continues until a fully competitive state exists.

The TRC expressed its own opinion that the continued application of a fixed percentage in the Revenue Share calculation has the potential to have a disincentive effect upon demand conversion for Public Mobile Wireless Services and thus may prejudice the attainment of policy objectives. To that extent, TRC considered that the present Revenue Share calculation mechanism has the potential to distort markets and competition between services and suppliers and may not prove to

best serve the public interest in the longer-term and that accordingly some other more economically efficient means of calculation should be sought.

The TRC sought comments on the following questions:

*a. Stakeholders are invited to provide views as to whether they concur with the view of the TRC that the fixed percentage calculation basis applied in present Revenue Share provisions will act as a disincentive to the conversion of some forms of demand. In responding, stakeholders are asked to rationalize and, where possible, quantify the conclusions that influence their views.*

*b. Stakeholders are invited to provide views as to whether the fixed percentage calculation basis applied in present Revenue Share provisions creates distortions to competition between suppliers or services.*

*c. Stakeholders are invited to supply their views on the conclusion that has been drawn, subject to consultation, by the TRC that the Revenue Share calculation might practically be adjusted from a fixed percentage basis to a more economically efficient calculation mechanism, whilst still meeting the public interest.*

*d. Stakeholders that consider that the calculation of Revenue Share should be adjusted to a more economically efficient basis are invited to provide proposals in that regard.*

### 2.3.2 Views of Respondents

In its response JT linked Revenue Share with special sales tax under the same heading of “taxes” and expressed the view that the TRC has no locus in this matter – it is entirely the responsibility of the appropriate Government Ministries. JT expressed the further view that “it would seem more appropriate for the TRC to concern itself with the issue of enforcing appropriate regulations which would limit the effect of any licensee to enjoy supernormal profits”.

Fastlink, in its response, advanced the view that the maintenance of the revenue share obligation is a market distortion, and cites the cancellation of revenue share from the fixed sub-sector upon liberalisation to support its contention that the current 10% revenue share should be reduced following the introduction of the third mobile operator. In this connection, Fastlink brought to the attention of the TRC the claimed existence of what it describes as “the Ministers Cabinet decree No11 A/3/1/9448 of 21<sup>st</sup> September, 1999 stating that Government is committed to lowering the Revenue Share as a third Mobile Operator is licensed”. Fastlink states that it believes that a reduction in the revenue share obligation would serve to increase penetration and lower prices helping to meet Government objectives.

Mobilecom also regarded the current revenue share arrangements as a market distortion. It put forward the view that, with the introduction of a third mobile licensee, revenue share should be gradually reduced over a period of 2-3 years, with a final goal of 0% if a review of Mobile markets provided evidence of full competition in the market. Mobilecom put forward the alternative scheme of linking the calculation of Revenue Share obligations to EBITDA attained by each licensee. In its final submission of comments, MobileCom stated that it was "surprised by the government's responses regarding the revenue sharing issue" and expressed its belief "that the TRC should place more pressure on the government to ensure that this disincentive to fair competition is removed as soon as possible".

Umniah put forward the view that revenue share in any form is a discriminatory disincentive to adoption of services, due to its claimed impact on the licensees’ underlying costs that must inevitably raise the prices to end customers. Umniah put forward the view that the Government should be willing to relinquish some of its revenues to achieve its stated goal of higher penetration. Hence it argued that the revenue share should be removed or at least drastically reduced. Umniah further argued that the “incumbent” operators had a period of exclusivity in which to recover start up costs and charge high prices, whereas Umniah is entering the market in a period of intense competition and accordingly requested a 5-year exemption from paying revenue share to achieve, what it terms Appropriate Equivalence of Treatment.

As a further alternative option, Umniah suggested changing to a progressive revenue share scheme using operating revenue ranges with 0% revenue share payable on revenues below, for example JD 20m per year, 5% share payable on revenues between JD 20m and JD 40m, and 10% share payable on revenues over JD 40m.

XPress put forward the view that the extraction of economic rents via the revenue share mechanism will hinder the industry's ability to meet Government objectives. XPress argued that effective competition should drive down prices and thus economic rents should diminish, rendering the revenue share in its current form inappropriate. XPress made the point that the ability to generate alleged economic rents varies across industry players: new entrants must price at a competitive level which means that for these providers, economic rents would be zero and thus the current revenue share obligation that is based on revenues has discriminatory effect. XPress argued that the economically efficient method of dealing with the ability to generate economic rents is to focus regulation, using retail price controls, on players with market power, and to phase out revenue share, possibly using a "sunset clause".

In its further comments on comments, Umniah concentrated on refuting Fastlink's contention that Fastlink had paid a higher amount to acquire its licence than other operators. Umniah compared prices charged by Fastlink upon the introduction of its service and prices charged by the original MTS car telephone system it superseded, apparently in order to illustrate its view that Fastlink had the capability to make significant profits to comfortably cover start-up costs and pay the required revenue share of 20%.

In its comments on the responses, JT put forward an alternative interpretation on the revenue share obligation; that it represents a corporate tax that the government is using to establish "equilibrium by redistributing profits to the population derived from imperfect competition in the mobile market". JT concurred with Mobilecom in suggesting that a review to measure the degree of effective competition would be the most appropriate basis on which to determine whether the revenue share was discriminatory and market distorting. Additionally, in suggesting that the concept of Significant Market Power (SMP) was brought into the Jordanian Law or regulations, Jordan Telecom stated that it would be reasonable that the obligation to pay revenue share should be linked to findings of market power.

### 2.3.3 Conclusions reached by the TRC

The TRC is grateful for the arguments set out by the respondents.

The TRC considers that it to be irrefutable that competition in the provision of public mobile wireless services remains limited by government policy related to the sub-sector (i.e. no unconstrained entry), and that there is accordingly, in principle, a valid economic case for retaining a mechanism that gives Government a reasonable share of economic rents in the public interest. As has been stated by Jordan Telecom, the imposition of revenue share is a matter for Government to determine through policy, over which the TRC can seek to have influence in the interests of the development of the sub-Sector, but no direct control.

Accordingly, the TRC has made representations to Government for the application of some level of flexibility in the basis of calculation of revenue share obligations. Notwithstanding the representations made Government has indicated that it is not persuaded that any variation from the existing principles applied to revenue share is appropriate at the present time.

Accordingly, terms that reflect present relevant arrangements related to revenue share will continue to be associated with licenses following transition to the Integrated Regime.

## 2.4 The Impact of Special Taxation on Demand Conversion

### 2.4.1 Summary of the TRC analysis and Questions Posed within the Consultation

The TRC sought to explore whether the Special Tax of 4% that is currently applied to services supplied by licensees providing various forms of Public Mobile Wireless Services represents a significant constraint on the take-up of service by all or particular social groups. The services supplied other than by Public Mobile Wireless Service licensees are, in general, presently subject only to Sales Tax levied at 16%, whilst those supplied by Public Mobile Wireless Service licensees are subject to both Sales Tax and Special Tax.

The TRC sought to explore these issues, notwithstanding that fixing the level of the particular sales related taxation is beyond the jurisdiction of the TRC, because it must in fulfilling its specific duties under Articles 6 a) and e) of the Telecommunications Law, relating to the development of the telecommunications sector, consider whether any material distortion effect arises, to competition or demand, from the application of taxation that is applied by Government in the present manner. The issue was highlighted in “The National Strategic Plan on the Information and Communications Technology Sectors and the Postal Sector”.

In its appraisal of the issues associated with Special Taxation, the TRC had considered whether demand for services is elastic and thus may be suppressed by the application of taxation. It has formed the view that there is evidence that demand for voice services supplied by licensees that supply forms of Public Mobile Wireless Services is elastic, in that the level of demand from consumers may respond demonstrably to adjustments to prices of the services.

TRC stated that it would fall to the TRC under Article 6a) of the Telecommunications Law to make representations to Government in relation to the application of Special Taxation.

The TRC sought comments on the following questions:

- a. Stakeholders are invited to supply rationalized views, and, where possible, quantified supporting evidence, as to the effect, if any, of the 4% additional sales related tax upon the ability of licensees to convert demand and thus enhance the penetration of services amongst the population.*
- b. Where a view is held that demand conversion is prejudiced by the additional tax burden, stakeholders are requested to supply information as to the nature and extent of demand that is prejudiced.*
- c. Stakeholders are also invited to supply views as to the appropriate approach to rectification of any detrimental effect of the special taxation.*
- d. Stakeholders are requested to supply rationalized comment as to whether it is appropriate for TRC to make representations to Government, specifically in relation to the demand constraining effects of the special taxation*

### 2.4.2 Views of Respondents

Respondents for the most part were of the view that any additional cost to the end user, such as taxation, was a disincentive to demand conversion, but no quantification of this view was provided by any of the respondents.

JT was equivocal as the effect of the special tax on demand, but suggested that resolving the tax issue was a lower priority than proper regulation of the mobile sector to limit the opportunity of any licensee to enjoy supernormal profits.

Mobilecom saw no continuing economic justification for the tax and suggests that it should have been a short-term requirement if its purpose was to replicate customs duties on handsets.

Fastlink argued strongly that the special tax was a restraint on service adoption and was inconsistent with the Government's stated objective to enhance penetration of the services amongst the population. Fastlink's response refers to the MoICT Strategic Plan that identified discriminatory taxation as a major challenge to the achievement of strategic objectives.

Both XPress and Umniah argued that customers are price sensitive and maintenance of any charges in the end user price that are un-necessary would mean that the conversion of demand did not meet its full potential. They believed that Government should forego its special tax, in response to which sector revenues would increase and Government revenues, would in some part, be restored through increased sales tax returns and income tax revenues.

#### 2.4.3 Conclusions drawn by the TRC

The view of the Public Mobile Wireless Licensees that special tax is a constraint on demand conversion is not unexpected. However, no quantification of this view was provided by any of the licensees.

Notwithstanding this, the TRC has made representations to the Government regarding the impact of special taxation.

Government has, however, stated that it will not remove the special tax and consequently the TRC is unable to pursue this issue further at this time.

## 2.5 Special Taxation as a Potential Distorting Influence between Subsectors

### 2.5.1 Summary of the TRC analysis and Questions Posed within the Consultation

The TRC sought to explore whether the Special Tax that has been referenced in section 4.4, alternatively or additionally to its effects upon the conversion of demand, represents a distortion between fixed and mobile sub-sectors within telecommunications.

The TRC stated that it acknowledges that inequality arises from the application of the additional 4% sales related tax to services supplied by the Mobile sub-sector but not to those of the Fixed sub-sector. However, whilst there is evidence, albeit not supplied by licensees, that demand for Public Mobile Wireless Services demonstrates price elasticity, there is less, if any, evidence of cross-elastic effects between Mobile and Fixed services within Jordan. The TRC made a particular appeal for licensees to provide evidence as to the effects of inequality of treatment.

The TRC remarked upon the potential mitigating factors that the importation of terminal equipment for use in mobile services is effected without customs duty, whilst terminal equipment used in the fixed service context remains subject to the imposition of duty.

The TRC sought comments on the following questions:

*a. Stakeholders are invited to supply views and supporting information, where available, related to the effects of inequality of sales taxation applied to the services of the Mobile and fixed sub-sectors within telecommunications.*

*b. Stakeholders are invited to offer views as to whether and how the TRC and Government should address such inequality, and in particular, whether the TRC should make representations to Government that reference inequality of treatment between sub-sectors as a material issue, separately or in addition to matters arising from the preceding section of this Consultation.*

### 2.5.2 Views of Respondents

The JT view reported in relation to Section 4.4, to the effect that addressing the issue of tax is of secondary importance to the question of abuse of market power in the Mobile sub-sector, appears also to apply to this topic.



Fastlink proposed that further analysis was undertaken to weigh the materiality of any discriminatory tax effect, and sought permission to submit further comments to the TRC on this matter at a later date.

Mobilecom only commented that artificial barriers based on technology realisations inhibit market development and innovation.

Umniah's view was that technological convergence between fixed and mobile and voice and data is removing any distinctions between the sectors and this means that any tax burden should be shared equally between all telecommunications users. Umniah believed that the Government was favouring the fixed network with its current tax and revenue share policy. The TRC therefore should address the tax question.

XPress supported the view that the special tax is a distorting influence and that TRC should make representations to Government on this matter, either in the context of inequality between sectors or in relation to the achievement of Government objectives.

### 2.5.3 Conclusions reached by the TRC

Respondents supplied no quantified information. The overall assertion by Mobile sub-Sector licensees is, in essence, that removal of the tax would benefit the development of the mobile market and remove a market distortion between the mobile and fixed sectors. The view of JT appears to be that the issue is an irrelevance.

As stated in section 2.4.3 above, Government has stated that the special tax will not be removed and the TRC is unable to pursue this issue further at this time.

## 2.6 Assignment of Radio Spectrum to Licensees

### 2.6.1 Summary of the TRC analysis and Questions Posed within the Consultation

The TRC sought to explore whether the present extent of the allocation of radio spectrum to licensees providing various forms of Public Mobile Wireless services will permit the most efficient development of the Mobile sub-sector, and, if not, what benefits would be derived should specific additional radio spectrum bands be made available.

TRC sought to explore this issue within the context of Government Policy, which states

“It is a policy goal that through the effects of competition, the cost of services to businesses and consumers be lowered from present levels, with the particular aim of mobile services being made affordable to a greater proportion of the population than at present.

It is a policy objective that at least 50% of the population will be direct subscribers to mobile services, within ten years, paying unit charges for basic voice services that are at least 25% lower than at present, in real terms.

Government requires that necessary scarce resources, for the further development of capacity and the enhancement or introduction of services by market entrants and established operators, be made available in a manner that is consistent with the explicit programme for further licensing. The resources, including radio spectrum in all frequency bands relevant to mobile telecommunications services, must be provided at pricing that is economically efficient, in relation to scarcity, and, in accordance with undertakings associated with WTO membership.”

- TRC indicated its view that a range of factors influence the development of the Mobile sub-Sector, but particular relevance must be attached to the fundamental radio spectrum resource that enables the expansion of services supplied by four Existing Holders of Licenses that relate

to the provision of various forms of Public Mobile Wireless Services. Radio spectrum is a finite National asset.

- The TRC stated that it would seek to weigh the views of stakeholders with regard to the assignment of spectrum within its wider considerations related to the allocation and pricing of scarce resources, upon which wider issues it will further consult.

The TRC sought comments on the following questions:

*a. The TRC seeks the views of stakeholders as to whether the present assignments of radio spectrum, in the 800, 900 and 1800 MHz bands, will support the achievement of the objectives of Government Policy.*

*b. The TRC further seeks to know from stakeholders whether an increased assignment in the radio frequency bands presently used will bring quantifiable benefits to Jordan.*

*c. Similarly, the TRC seeks to know whether frequency assignments in other spectrum bands will lead to service innovation and enhanced utility for users.*

*d. In the event that stakeholders consider that assignments should be made in bands not presently used for Public Telecommunications Services in Jordan, the TRC seeks to know what frequency bands would be favoured by stakeholders and what specific additional services and benefits would arise for Jordan and its consumers from assignments within such bands.*

#### 2.6.2 Views of Respondents

JT argued that application and award of scarce resources, such as radio spectrum, should be unconstrained, but that it should be priced in accordance with fair economic value and not just administrative costs. Fair economic pricing should ensure that resource utilization is not wasted and that economic rents can be derived, whereas administrative pricing is a market distortion in itself. In JT's subsequent submission of comments, JT stated that it should not re-apply for the authorisation of scarce resources as it already has the necessary right on scarce resources.

Neither Fastlink nor Mobilecom answered the specific questions posed by the TRC. Mobilecom suggested that Jordan should adopt a scheme for allocating radio spectrum based on the present EU Framework Directive. This, it was argued by Mobilecom, would create a fair and transparent mechanism rather than what it terms the current “artificial” arrangement. Fastlink chose to question the method by which earlier allocations of spectrum had been made, and to state its view that spectrum assignment should be a function of the number of subscribers obtained by an operator. It further criticised the TRC for failing to clear spectrum of other users and instead leaving that task to licensees.

XPress suggested that, while existing band allocations were sufficient for operators to provide their currently licensed services, if the TRC wished to encourage the introduction of innovative and enhanced utilities for users, then it will need to make more spectrum available. Xpress believed that any increase in allocated spectrum should be predicated on the introduction of new services that may require spectrum and this should be addressed between the TRC and each operator individually.

Umniah argued that increased allocations would facilitate improved network performance and quality and lead to reduced network costs for the operators. This should (in a competitive environment) lead to lower prices and increased customer satisfaction and contribute to the achievement of Government policy objectives. Umniah further discussed a range of wireless development opportunities and concluded that the allocation of spectrum to services or technologies should be determined only by market demand and competitive forces.

JT, in its further comments on the responses, pointed out that Fastlink’s original suggestion that spectrum should be allocated on the basis of users attained would lead to even greater distortion in the market, discourage efficiency and permit a dominant operator to increase its market power.

### 2.6.3 Conclusions reached by the TRC

The TRC notes that none of the licensees specifically indicated that current allocations of spectrum were insufficient for present needs. The respondents focussed on the appropriateness of allocation procedures and discussed how future allocations might be made in order to facilitate the development of innovative services and to ensure that a fair economic price was paid for spectrum.

The TRC is accordingly unable to identify any specific actions in this area that are associated with the transition to the Integrated Regime.

However, wider issues related to scarce resource allocation and pricing are currently being dealt with within two public consultation processes and the responses made within this consultation will duly be taken into account in the determination of TRC actions on the basis of those wider consultations.

Moreover, it should be noted that the License Agreement confers the right upon the Licensee to apply separately for the use of scarce resources. Such rights of use are specifically not granted by the License Agreement. However, the Licensee does not have to re-apply for the rights of use of Scarce Resources that were granted to the Licensee prior to date of transition to the new Integrated Regime of Licensing and Regulation.

## 2.7 The scope of permitted services

### 2.7.1 Summary of the TRC analysis and Questions Posed within the Consultation

The TRC sought to explore whether current license agreements place inappropriate restrictions upon the range of telecommunications services permitted to be supplied by licensees that exploit licensed radio spectrum.

The TRC acknowledged that issues considered could have wider applicability than the supply of Public Mobile Wireless Services. However, further penetration of the voice element of those services is a particular concern for the TRC and accordingly the TRC placed most emphasis on issues related to the permitted scope of services of the four licensees that provide some form of Public Mobile Wireless Services. In that regard the TRC saw potential for restrictions upon the scope of services specified within licenses and associated with the use of radio spectrum to inhibit the achievement of strategic goals and objectives.

The TRC pointed out that variations in the definition of the scope of supply have arisen over time and have their origin in historic competition policies and licensee selection procedures. Because of these factors, complex considerations may constrain the TRC in relation to any changes it could consider in the permitted scope of supply, following transition to the Integrated Regime. It is possible that the differing scope of permitted services may remain appropriate and does not give rise to concerns as to whether Appropriate Equivalence of Treatment exists.

The TRC sought comments on the following questions:

- a. Stakeholders are invited to provide views as to whether the present scope of permitted services acts as a material constraint to the development of the telecommunications sector generally and Public Mobile Wireless Services in particular.*
- b. Similarly, stakeholders are invited to supply views as to whether present differences in the scope of permitted services amongst licensees that provide various forms of Public Mobile Wireless Services distort competitive structures.*
- c. Stakeholders holding the view that changes to the scope of permitted services would be appropriate are invited to indicate the nature of any change that is considered appropriate.*
- d. Views are also sought as to how any change to the scope of permitted supply of forms of Public Mobile Wireless Services might equitably be effected within the historical context of licensee selection and other processes from which the present license provisions related to the permitted scope of supply may have been derived.*

### 2.7.2 Views of Respondents

JT did not respond specifically to questions posed relating to scope of services. It made a general statement that it does not favour any artificial constraint on any licensee applying to use scarce resources to offer any innovative services. JT saw unconstrained market entry as the best deterrent to abuses of dominant positions afforded by constraints on scope of services or resources. In its further comments upon the responses of others, JT re-iterated its view that service boundaries are artificial and only serve to constrain competition.

Mobilecom responded to the TRC's questions only in terms of comments related to what it perceives as complexity associated with the provision of new services through an affiliated company, and, its apparent perception that TRC raises the scope of services issue as a means of pressurising licensees into transitioning to the Integrated Regime.

Fastlink focussed its response on the differences in scope between Public Mobile Telephone (Cellular) licenses and the Trunked Radio Dispatch Licence, stating that the term "Public Mobile Wireless Services Licenses" was ambiguous, misleading and contradictory to Government policy". Fastlink seeks to maintain a specific distinction between these licenses, to the effect that the Dispatch licensee should not be permitted to compete with Fastlink. However, Fastlink stated that it would be concerned were there to be differences in scope between the licenses of the three remaining licensees.

Umniah's response did not directly address the questions but sought to clarify its understanding that under the proposed new licensing regime it would have the scope to introduce all or any service under its single individual license.

Xpress argued for a common Public Telecommunications Individual License Agreement that all operators providing publicly available telephony services would be awarded. These would provide common economic and legal regulation with only technical specifications and restriction constraining the scope of services that may be provided. XPress believes the TRC should allow licensees the discretion to offer the services they choose subject to the overarching technical and licensing constraints/specifications. This would allow the market, rather than the Regulator, to determine the most appropriate and efficient solutions. The TRC should seek to properly 'open' the market to competition, and allow operators to determine the markets they wish to serve and the scope of services they wish to supply. XPress put forward the view that only in this manner would the Government's objectives for the sub-Sector be achieved. In its final submission of comments, Express requested the removal of "the restrictions on the types and manner of offering its services, in line with the new licensing regime which is technology neutral and service free" and further requested "to be treated equally with the other Public Mobile Wireless Licensees who directly compete with XPress".

### 2.7.3 Conclusions reached by the TRC

The TRC notes that the respondents did not identify distortions to the market arising from differences in scope between current licenses, but, in the majority of cases, focused on the benefit that the removal of artificial boundaries of scope would bring in terms innovation and the introduction of new services.

The TRC welcomes these comments and takes them as supporting, in principle, any initiatives that TRC may take either to remove differences in scope from licenses that are intended to be identical, or, to extend the scope of licenses generally.

In this connection the TRC proposes to align the scope of permitted services to be supplied by means of spectrum assigned and licensed to those licensees applying GSM protocols (Fastlink, Mobilecom and Umniah).

At this time, the TRC considers it inappropriate to permit the Dispatch licensee to widen its scope, to equal to that of the GSM licensees. The TRC will, however, review the situation in light of further developments in the scope of services to be provided by other Licensees.

## 2.8 Financial or Other material Consequences for Licensees

### 2.8.1 Summary of the TRC analysis and Questions Posed within the Consultation

The TRC sought to explore whether transition to the Integrated Licensing and Regulatory regime will itself have specific financial or other material consequences for existing non-Class licensees and if so, what are those consequences and how and to what extent is it appropriate to take them into account.

TRC sought to understand whether the transition of the activities of Jordan Telecom and four Existing Holders of Licenses that relate to the provision of various forms of Public Mobile Wireless Services, to the Integrated Regime, which is described in the Information Memorandum, may directly give rise to positive or negative financial or other material consequences for those or other licensees. Consequences arising from the introduction of additional competition, the ending of monopoly rights and similar matters associated with the process of market liberalization that arise from Government Policy did not fall within the area of consultation.

The TRC sought comments on the following questions:

- a. Stakeholders are requested to respond by advising the TRC, in reasonably detailed and quantified form, of any positive or negative material consequences arising for them or for other stakeholders directly from the transition of the five described licensees to the Integrated Regime.*
- b. Stakeholders are further requested to provide views as to specifically how it is perceived that TRC should respond in the event that such material consequences are identified and quantified*

### 2.8.2 Views of Respondents

JT, Fastlink and Umniah offered no specific response to this set of questions.

While suggesting that there would be an impact, Mobilecom stated that it was premature to try and quantify the material effects of the issues raised in this consultation without receiving the final TRC decisions related to the matters.

Xpress stated the view that all of the issues raised in this consultation had the potential to have material consequences for its operations and provided some detail in the confidential sections of its response; however, no quantification was provided. XPress suggested a series of bilateral meetings between the TRC and individual operators should be arranged to explore the detailed material consequences of any proposed changes to the licensing regime.

### 2.8.3 Conclusions reached by the TRC

The responses to these questions, which sought a degree of quantification of the impact on licensees of the issues discussed in this consultation, did not assist the TRC in evaluating the relative importance and weight of each factor to each licensee.

The TRC therefore concludes that the Non-Class Licensees have been unable to identify any financial or other material consequences that directly arise from transition to the Integrated Regime that the TRC must specifically take into account in the transition process.

## 2.9 Dispute by some licensees that the Telecommunications Law permits a Regulation that has been properly developed by the TRC, as the result of transparent due process, to take appropriate precedence over a license provision in the hierarchy of instruments ('Order of Precedence').

Stakeholders requested the inclusion of this topic within the Consultation process. The TRC accordingly offered no analysis.

### 2.9.1 Views of Respondents

JT responded at some length in relation to this topic. However, the executive summary to its response summarises matters as follows:

“JT recognises the challenging task of creating a new regulatory regime that offers all market competitors the opportunity to compete fairly.”

“Of major concern to JT is the fact that our current license contains contract terms which reflect the value paid by the new shareholders in 1999. Therefore any proposal to alter license terms in a way that threatens this value is unacceptable to JT and should be of grave concern to Jordan’s policy to encourage inward investment.

The order of precedence permits the TRC to impose almost any license condition, regulation or decision it sees fit, without the legal obligation to comply with any code of practice or requiring the consent of any other party. Such a degree of power over some of Jordan’s most significant investment commitments without any check or balance is simply unacceptable to JT.”

Fastlink restricted its response to agreement with points previously made by other operators, in other contexts, in relation to what it terms “Order of Precedence and Over-Regulation” matters.

The element of the Mobilecom response, which the TRC assumes is principally directed at the topic of Order of Precedence (although it will be seen to have possible relevance elsewhere) makes a deeper point of disagreement with the TRC position, in the following terms:

“Mobilecom do not see the Individual License as an amendment that is requested by the TRC in accordance to Article 39 of the Telecommunications Law, in fact this is a new contract that needs the approval of both parties. Additionally this is not in accord with international practice where either change is by agreement or where the licensee has some form of statutory independent appeal. Again TRC have excluded this from the consultation but this is essential in the context of the revision of the existing licenses.”

The XPress response appears to restrict its complaint to what it perceives as the potential for the TRC to by-pass Article 39 procedures in effecting de facto changes to licenses through regulation.

In its response, Umniah states that the ‘Order of Precedence’ provisions that are proposed by the TRC are already incorporated within its license. It states that until others accept similar provisions, the TRC should not seek to invoke the relevant provisions of the Umniah license.

### 2.9.2 Conclusions reached by the TRC

The TRC considers that the majority of the points made by licensees are satisfactorily dealt with by the changes that the TRC has made to the provisions of licenses following hearings associated with the Class license transition process. It further believes that various remaining points are met by the Rule Making instructions that have been published for consultation purposes. In particular, the instructions require the TRC to initiate Article 39 procedures when a proposed regulation will amend an existing license condition, and, provide for licensees to make application that the procedures be initiated, should the TRC fail to do so.

On two matters it remains necessary for the TRC to take issue with responses by licensees.

With regard to the Mobilecom response, the TRC refutes any suggestion that the new form of license should not be implemented by means of amendment of existing licenses under the terms of Article 39 of the Telecommunications Law. Without prejudice to its position the TRC points out that the parties to the license are unchanged and the substance of the license is similarly unchanged. In such circumstances it remains the position of the TRC that a new license does not arise, merely the amendment of existing provisions.

With regard to the point raised by JT to the effect that its license terms reflect value paid by new shareholders in 1999, the TRC has to reiterate the essence of a position stated earlier in this report. This position is that the TRC regulates markets under the terms of the Telecommunications Law; it will accordingly regulate strictly according to the circumstances prevailing in markets and in relation to the activities of licensed entities within those markets. In day-to-day licensing, and regulation of markets, the TRC must concern itself with the interests of all stakeholders and not the specific interests of parties that may or may not have entered into agreements between themselves.

2.10 The proposition that TRC decisions in relation to regulatory matters should be referred to International or other National bodies or institutions for review, in the event of dispute.

Stakeholders requested the inclusion of this topic within the Consultation process. The TRC accordingly offered no prior analysis

#### 2.10.1 Views of Respondents

Fastlink offered the view that an “Independent Competition Bureau” should be considered in Jordan, for the apparent purpose of conducting competition studies and the evaluation of competitive mechanisms. Fastlink did not believe that the TRC “is always in a position to judge the level of competition nor the materiality of distortions to competitive mechanisms”.

Mobilecom offered the view that an independent appeals system, similar to that which it considers to apply in the EU, should be established.

No other licensees offered views in this area within their initial response. However, in its comments upon responses JT indicated a measure of support for the Fastlink position, in the following terms:

“However, on FastLink’s suggestion that an Independent Competition Bureau be created, JT would strongly agree provided that it was legally empowered and fully competent to address abuses of dominance in both a preventative and a curative manner. An alternative, however, would be for the TRC to take a proactive stance on regulating against abuses of dominance and making its own referrals to the existing Competition Directorate as is the case for many regulators in Europe.”

#### 2.10.2 Conclusions reached by the TRC

Respondents will be aware that the Telecommunications Law currently makes no provision for appeal or reference of regulatory issues to third-party bodies other than the Courts within Jordan.

The TRC accordingly has no powers, at the present time, to accede to suggestions related to independent appeal. In developing its Rule making procedures, the TRC has sought, within the limitations of the Telecommunications Law, to broaden the protection afforded to licensees.

At this time the TRC considers itself competent to judge matters related to the existence of competition and market power within markets. The suggestion by Fastlink, that gained a measure of support from JT, related to an “Independent Competition Bureau” with some form of jurisdiction over several sectors is clearly an institutional matter that would entail very wide consultation beyond the telecommunications sector and within Government. Accordingly, the TRC cannot itself agree to the suggestion, but, and without prejudice to the rights of TRC to consider complaints related to anti-competitive practices in the telecommunications sector, is happy to bring the views of Fastlink and JT to the particular attention of the Ministry of Trade and Industry, which has responsibility in the general area of Competition Law.

2.11 The proposition that amendments to license agreements be made only on the basis of specific mutual consents.

Stakeholders requested the inclusion of this topic within the Consultation process. The TRC accordingly offered no prior analysis.

#### 2.11.1 Views of Respondents

JT responded in the following terms, within the executive summary to its response:

“The current JT license agreement has acted to constrain the behaviour of the TRC in this respect to date by requiring that certain elements of the license may not be altered except by agreement between JT and TRC. To unilaterally alter this provision in the current JT license without any assurance of corresponding certainty is also unacceptable to JT.”

Fastlink did not address this issue separately and specifically.

MobileCom comments also did not address this matter separately and specifically, but its broader views expressed in relation to other aspects of the consultation appear relevant and are accordingly quoted here:

“MobileCom do not see the Individual License as an amendment that is requested by the TRC in accordance to Article 39 of the Telecommunications Law, in fact this is a new contract that needs the approval of both parties.”

XPress and Umniah did not directly respond in this area.

#### 2.11.2 Conclusions reached by the TRC

The TRC asserts its general right, as clearly stated within Section 39 of the Telecommunications Law, to bring forward amendments to existing licenses, subject to the procedures and limitations required by Article 39. The TRC considers that the procedures, in particular the Rule Making Procedures, currently being consulted upon enhance the positions of the Licensees in this respect.

2.12 The proposition that specific and advantageous rights that are enjoyed by a limited number of licensees within existing non-Class licenses be preserved for those limited number of licensees within the Integrated regime of Licensing and Regulation.

Stakeholders requested the inclusion of this topic within the Consultation process. The TRC accordingly offered no analysis. However, the TRC sees an element of overlap or duplication between this topic and that considered in Section 2.11.

#### 2.12.1 Views of Respondents

The TRC considers that the responses from JT, XPress and Umniah that have been reported in relation to Section 4.11 have relevance to this topic.

It would, however, seem appropriate, in the interests of balance, to report a generalised comment by Fastlink under this topic:



“...Fastlink would like to emphasise the importance of guaranteeing the licensees Rights stipulated in the Telecom Law, (Law), and in their existing Licenses. With respect to the subject of this Consultation, the general Programme of Transition to the Integrated Regime of Licensing as proposed by TRC, Fastlink believes that this program in its present form does not guarantee these rights.”

#### 2.12.2 Conclusions reached by the TRC

The TRC repeats earlier statements to the effect that it considers that nothing in its program removes the rights of licensees under the Law, indeed the TRC considers that the Rule Making procedures enhance the positions of licensees in that respect.

### 2.13 The proposition that the transition of existing Class-licensees to the Integrated Regime of Licensing and Regulation provides those licensees with an unfair ‘head-start’ over Existing non-Class licensees.

Stakeholders requested the inclusion of this topic within the Consultation process. The TRC accordingly offered no analysis.

#### 2.13.1 Views of Respondents

None of the respondents offered comment in relation to this topic.

#### 2.13.2 Conclusions reached by the TRC

The TRC concludes that stakeholders are now satisfied that the approach taken by the TRC is non-discriminatory.

## 3 CONCLUSION

This Report has set out above the final analysis and conclusions of the TRC. The TRC will now proceed to effect the transition of the licenses of the Non-Class Licensees, who have not so far chosen to transition by consent, to the Integrated Regime of Licensing and Regulation. For more clarity, Fastlink, Umniah and XPress had transitioned by consent to the Integrated Regime of Licensing and Regulation.