

THE HASHEMITE KINGDOM OF JORDAN



TELECOMMUNICATIONS REGULATORY COMMISSION

**Explanatory Memorandum
to the Regulatory Decision
on the Dedicated Capacity
Market Reviews**

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CHAPTER I: INTRODUCTION

This Explanatory Memorandum summarises and evaluates the comments of telecommunications operators in Jordan in response to the Dedicated Capacity (Leased Lines) Markets Public Consultation Document published by the TRC in July 2019.

Formal responses to the above Public Consultation Document were received from Jordan Telecommunications Company (Orange Fixed) and Umniah Mobile Company (Umniah). Further comments to those respondents' comments were received from Jordan Mobile Telephone Services Company (Zain) and Orange Fixed.

In the Public Consultation Document, the TRC defined the following markets:

- Retail Market for Traditional Interface (TI) leased lines
- Retail Market for Modern Interface (MI) leased lines
- Wholesale Market for TI trunk segments of leased lines
- Wholesale Market for MI trunk segments of leased lines
- Wholesale Market for TI terminating segments of leased lines
- Wholesale Market for MI terminating segments of leased lines

The TRC's preliminary findings were that barriers to entry had been largely overcome in the retail and wholesale markets for modern interface leased lines, and that these markets were no longer susceptible to ex ante regulation. Further, the TRC's preliminary findings were that Orange Fixed had significant market power (SMP) on the markets for wholesale TI trunk segments; wholesale TI terminating segments; and retail TI leased lines. Consequently, the TRC proposed certain ex ante remedies for each of these three markets.

During the conduct of the market review, the TRC has continued to examine developments in the wholesale and retail leased lines markets, and this has underpinned its analysis. As shown in the below Exhibit I.1, while Orange Fixed is the main supplier of wholesale and retail TI leased lines, it is also the main purchaser, as wholesale TI leased lines are self-supplied, and Orange Fixed supplies close to 90% of the retail TI leased lines.

Market Share of Orange Fixed in TI Leased Lines (% of connections)	2017	2018	2019
Retail	91%	87%	88%
Wholesale	99%	98%	99%

Exhibit 0.1 Market Share of Orange Fixed in TI Leased Lines

[Source: TRC]

Further, as shown in Exhibit I.2 below, the wholesale market for TI leased lines remains limited, as retail customers migrate or purchase MI leased lines.

Number of TI Leased Lines (# of connections)	2017	2018	2019
Retail	1794	1860	1687
Wholesale	156	189	187

Exhibit 0.2 Number of TI Leased Lines

[Source: TRC]

For these reasons, the TRC has decided that it is not proportionate to find any operator with SMP in the market for wholesale trunk or terminating segments of TI leased lines. Therefore, no ex ante remedies will be imposed in the wholesale markets for trunk and terminating segments of TI leased lines, and existing remedies will be withdrawn.

Market Share of TI Leased Lines (% of connections)	2017	2018	2019
Retail	14%	11%	9%
Wholesale	2.5%	2.9%	2.5%

Exhibit 0.3 Market Share of TI Leased Lines in DC Market [Source: TRC]

Although the market share of TI leased lines in the retail market continues to decline, as shown in Exhibit I.3 above, there remains an installed base of customers. The TRC recognises that these customers should not be left exposed to price increases by Orange Fixed. However, the TRC has limited ex ante measures in the retail TI leased line market to those providing a safeguard price cap. There is no need for remedies associated with the introduction of new products, or with sales to new customers, because there is unlikely to be such activity in this market.

Chapter II of this Explanatory Memorandum provides a summary of the comments received by the above operators and TRC's reasoned response, broken down by reference to the following 10 questions put to consultation:

1. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for retail leased line services?
2. Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for wholesale leased line services?
3. Do you agree with the TRC's preliminary conclusions regarding the wholesale leased line markets found to be susceptible to ex ante regulation?
4. Do you agree with the TRC's preliminary conclusions regarding the retail leased line markets found to be susceptible to ex ante regulation?
5. Do you agree with the TRC's preliminary competition assessment and SMP designations on the market for wholesale TI trunk segments of leased lines?
6. Do you agree with the TRC's preliminary competition assessment and SMP designations on the market for wholesale TI terminating segments of leased lines?

7. Do you agree with the TRC's preliminary competition assessment and SMP designations on the market retail TI leased lines?
8. Do you agree with the TRC's preliminary assessment of competition problems and appropriate remedies in the wholesale market for TI trunk segments of leased lines?
9. Do you agree with the TRC's preliminary assessment of competition problems and appropriate remedies in the wholesale market for TI terminating segments of leased lines?
10. Do you agree with the TRC's preliminary assessment of competition problems and appropriate remedies in the retail market for TI leased lines?

In the discussion that follows, the TRC has maintained the original sequence of questions set out in the consultation, and, where relevant, provides its assessment of responses to other issues within this framework.

The TRC notes that the respondents have also commented on issues outside the questions posed in the consultation. Annex 1 addresses such points. Annex 2 discusses certain additional, detailed, comments provided by Orange Fixed.

CHAPTER II: SUMMARY OF RESPONDENTS' COMMENTS AND TRC'S RESPONSE

Q1: Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for retail leased line services?

Orange Fixed disagreed with the distinction between TI and MI markets, arguing that the DC market definition should be technology neutral. As regards the relevant product market definition, Orange Fixed claimed that, by themselves, price differences between TI and MI leased lines are not evidence of a lack of substitution or competitive pressure. According to Orange Fixed, TRC has not investigated why customers are willing to accept a much higher price for TI. Orange Fixed claimed that consumers might be willing to switch if the price differential becomes larger than the cost of switching from legacy TI equipment to MI equipment. In any case, it noted that all TI users are expected to switch to MI at some stage, the key question being when; but that while this lasts, TI will exercise competitive constraints over MI and should be therefore considered part of the same market. Finally, Orange Fixed argued that, instead of taking MI leased lines as the "focal product" for the market definition exercise, TRC should have chosen the TI market as the focal product.

Regarding the relevant geographic market, Orange Fixed claimed that TRC did not take account of regional differentiation between the market in Amman and those in other areas. According to Orange Fixed, defining local geographic markets with sufficient competition between fibre networks and not imposing regulation in such areas would be in line with best international practice, and it mentioned the UK, Italy and Finland as examples.

Umniah agreed with the majority of the TRC's preliminary conclusions relating to the product market definition, except for the treatment of xDSL and an (alleged) lack of clarity on contention ratios. As regards contention ratios, Umniah asked TRC to state explicitly whether its definition of the market covered only a 1:1 contention ratio or all contention ratios. If the Dedicated Capacity Markets include only symmetric connections with 1:1 contention ratio, xDSL connections over metallic loops that provide for symmetric dedicated connections should be included in the DC markets.

In its response to the comments of Orange Fixed, **Zain** completely disagreed with the view that there are sub-national geographic markets for DC (as argued by Orange Fixed) and agreed with TRC that the market should be defined as national in scope. In Amman, other operators' infrastructure to support DC is not available across the whole city, whereas the Orange Fixed network is ubiquitous. According to Zain, if the TRC were to accept Orange's advice of examining competitive conditions in Amman it would find that the area with alternative networks sufficient to create a competitive market is so small that Orange should inevitably be considered dominant across the city; and the same would apply in other governorates. Zain also agreed with the TRC's view that, contrary to the position held by Orange Fixed, the fact that alternative networks are still being rolled out is an obstacle to finding geographic markets. Zain cited the European Commission's Guidelines to support this, as these

require “clear and stable boundaries over time” for the definition of smaller than national geographic markets, therefore Zain supports the TRC’s findings on this matter. Zain also agreed with Umniah’s request that that TRC should make it clear what contention ratio is required for capacity to be “dedicated”. Like Umniah, Zain assumed this would be 1:1 and agreed that more clarity was needed.

Response of the TRC

TRC finds the statement made by Orange Fixed about the inevitable migration from TI to MI (with which TRC agrees), but not the other way around, inconsistent with the contention of Orange Fixed that TI still exercise competitive constraints over MI. However, even if the presence of such competitive constraints could be accepted, this would still not be sufficient to point to a single product market: competitive constraints can be also exercised from neighbouring (separate) product markets.

Among other factors, price differences between TI and MI, still justify their treatment as parts of two different markets. While Orange Fixed claimed that TRC has not investigated why customers are willing to accept a much higher price for TI it also provided the answer for this, namely the presence of legacy equipment for TI, which leads to different prices and is therefore a factor that differentiates TI and MI as two separate markets.

Further, in TRC’s view, Orange misunderstands the OECD document it refers to (which also follows, for example, the EU approach): the “focal product” is generally the prevalent product, and not the product where “competitive problems are considered to lie.” In Jordan (as in other jurisdictions), the focal product is Ethernet – MI circuits. where MI circuits till the end of 2019 form about 86% of the total DC circuits.

In response to issues raised by Zain and Umniah regarding the technical definition of leased lines, the TRC confirms that leased lines are dedicated, high quality, symmetric connections, and that their contention is typically 1:1. The TRC maintains the view set out in the consultation that customers who seek a product with such characteristics would not find xDSL to be a good substitute.

On geographic markets, for the reasons mentioned by Zain, TRC affirms its position that it would be premature to define sub-national geographic markets for DC while networks are still being rolled out, given that the condition of “clear and stable boundaries over time” is not met. In any event, the question of such potential sub-national (competitive) geographic markets only concerns MI, and since this is found to be a competitive market across Jordan, the whole question of a potentially narrower geographic market definition becomes immaterial.

Consequently, the TRC sees no justification for any change to its conclusions regarding the relevant product and geographic market definitions for retail leased line services.

Q2: Do you agree with the TRC's preliminary conclusions regarding the relevant product and geographic market definitions for wholesale leased line services?

The replies of **Orange Fixed** to this question were generally similar on substance to the ones provided in relation to retail markets (for **Q1**), and relied on similar arguments. Orange Fixed argued that there should be a single wholesale market for TI and MI and that TI should have been chosen as the “focal product”. It also added that all interconnected licensees are ready for IP interconnection, with no more demand expected on the TI interconnection for wholesale DC services.

Umniah generally agreed with the TRC’s preliminary conclusions on product and geographic market definition, and emphasized that wholesale DC markets need to be defined as input markets for any type of use that OLOs choose to make, such as self-provision to support interconnection and backhaul, wholesale to third parties and partners, and retail services of any kind. In its later comments, **Orange Fixed** disagreed with this statement, arguing that wholesale inputs for other retail services were already included in the markets for local access and wholesale broadband access. However, Orange Fixed agreed that the market should be defined more broadly and in a technologically neutral manner, and should include all leased lines regardless of technology.

Zain noted that Orange Fixed made no comment on the TRC's finding that the wholesale market for all types of leased lines is national. Zain assumed, therefore, that Orange Fixed agreed with the TRC on this point but found it confusing that Orange Fixed believed there were sub-national markets at retail level but not at wholesale level. Zain also agreed with Umniah that wholesale DC markets need to encompass any type of use of a DC circuit, including self-supply.

Response of the TRC

TRC believes that the consultation set out the reasoning for the distinction between TI and MI at the wholesale level sufficiently clearly. Similar findings have been reached elsewhere, e.g. in the UK or Ireland.

The TRC clarifies that wholesale leased lines may be used as inputs by operators to provide retail services to end users (generally large organisations) and to provide backhaul services. The market for wholesale leased lines includes leased lines used by an operator for its own purposes (self-supply) and leased lines sold to another operator (merchant market).

Consequently, the respondents’ remarks do not warrant any changes to the TRC's preliminary conclusions on the relevant product and geographic market definitions for wholesale leased line services.

Q3: Do you agree with the TRC's preliminary conclusions regarding the wholesale leased line markets found to be susceptible to ex ante regulation?

Orange Fixed agreed with the TRC that the wholesale market for MI is not susceptible to ex ante regulation, but disputed that this was the case for the wholesale market for TI. Referring to its rapid decline of market share in the overall retailed leased lines markets, and the competitive conditions for MI, with 8 providers on the market offering alternatives almost solely on own infrastructure, Orange Fixed argued that wholesale TI leased lines offered by Orange Fixed are subject to strong competitive constraints and should not, therefore, be susceptible to ex ante regulation. Orange Fixed stated that it was difficult to understand why in conducting a prospective competitive analysis, the TRC used 2-year old market shares and failed to conduct the analysis prospectively by ignoring the rapid decline of Orange Fixed market shares.

Umniah agreed with the TRC that (i) the relevant markets for wholesale leased line markets are clearly characterized by high and persistent structural barriers to entry and (ii) Orange Fixed is the predominant provider of the wholesale terminating segment and wholesale trunk segment for the TI services, which are legacy services. In Umniah's view, any new entrant seeking to provide wholesale terminating leased lines will do so using MI technology.

Contrary to Orange Fixed, **Zain** submitted that the wholesale market for TI lines fulfils the three-criteria-test and is therefore susceptible to ex ante regulation. Zain also thought that the TRC had understated the competitive problems in the MI market. Zain provided detailed arguments, partly referring to Ofcom's 2019 document 'Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets', to support its view that each of the three criteria required for susceptibility to ex ante regulation were fulfilled in this case.

Response of the TRC

The TRC believes that while the statistical data and trends cited by Orange Fixed apply to MI leased lines, they are irrelevant in relation to the wholesale TI leased lines' market's susceptibility to ex ante regulation. As mentioned above, the TRC's view is that the consultation set out sufficiently clearly the reasoning for the distinction between TI and MI as two separate markets at the wholesale level. Given the effective quasi-monopoly of Orange Fixed on the wholesale TI leased lines market, and the absence of any prospects of entry by alternative operators, the susceptibility of this market to ex ante regulation cannot be reasonably disputed, as all of the three relevant criteria are met.

With reference to Orange Fixed's point on data, the TRC notes that it is reliant on data provided by operators and that, in some cases, operators (including Orange Fixed) did not provide complete data in a timely manner. Where possible, the TRC

has cross-referenced data provided for the market review with data provided to the TRC for other purposes. The TRC has continued to update data during the market review process.

The TRC does not agree with Zain that it has understated the competitive problems in the MI market. The TRC maintains its view that barriers to entry in the wholesale market for MI leased lines have been largely overcome, as evidenced by infrastructure-based competition from a number of operators, and wholesale supply from several operators.

For these reasons, the responses received in the consultation do not warrant any changes to the TRC's preliminary conclusions that the wholesale TI leased lines market is susceptible to ex ante regulation, and that the wholesale MI leased lines market is not susceptible to ex ante regulation.

Q4: Do you agree with the TRC's preliminary conclusions regarding the retail leased line markets found to be susceptible to ex ante regulation?

Orange Fixed agreed with the TRC that the retail market for MI is not susceptible to ex ante regulation, but disputed TRC's preliminary conclusion that the retail market for TI is susceptible to ex ante regulation. Orange Fixed supported this view by referring to its decreasing and relatively low market share in the leased lines retail market, and the presence of 8 providers in Jordan with alternative retail offers of leased lines based almost solely on own infrastructure. Orange Fixed also disagreed with TRC's statement that "*Orange Fixed and Orange Data are considered to be a single economic entity*" and also that "*Orange has a virtual monopoly in this [TI retail] market, which is likely to persist*".

Umniah agreed that the relevant markets for retail DC services are characterized by the presence of strong economies of scale, scope and density in access and core networks, and sunk costs create a major structural barrier to entry. Replication of a copper fixed local access network will not occur. Progress towards the roll-out of alternative fixed local access networks requires a ladder of investment, enabling competitors to acquire a sizeable customer base and progressively reduce their reliance on the incumbent fixed network operator.

In its response to Umniah's comments, **Orange Fixed** strongly disagreed with Umniah's view that wholesale and retail leased lines are susceptible to regulation. In Orange Fixed's opinion, the market for DC is competitive. There are six operators providing DC using their own infrastructure. The revenue market shares of Orange Fixed and Orange Internet are below 50% both in wholesale and retail markets, and Orange Internet's market share has been rapidly decreasing. In Orange Fixed's view, this shows that the market for dedicated capacity in Jordan is already characterised by effective infrastructure competition. Regulation introduced in 2010 has played no role in this development of competition, and if introduced now, it will not stimulate future competition. To the contrary, regulating TI will have a negative impact on the market, slowing down migration to MI and thereby hampering technological progress. Orange Fixed also stated that it was unclear whether Umniah referred to the ladder of investment in the provision of TI, or of all leased lines. If Umniah meant the latter, its analysis was flawed because there was already sufficient competition on the market.

Zain took issue with the position of Orange Fixed that it should not be considered to be a single economic entity with Orange Data, and it cited relevant literature to support the opposite. While Zain did not see an immediate need for vertical separation as a remedy (beyond accounting separation), it argued that if Orange persists with its previous behaviour and fails to implement the TRC's proposal properly, or if those remedies are not effective, the TRC should give serious consideration to the vertical separation of Orange. Zain also agreed with Umniah that DC circuits are subject to economies of scale and scope that create a structural barrier to entry. As Zain explained in its comments on Orange's response, the use of

alternative physical infrastructure was an imperfect substitute that did not fully address these economies.

Response of the TRC

TRC and the respondents are effectively in agreement as regards the non-susceptibility of the retail MI market to ex ante regulation; and as regards the retail TI market, susceptibility to ex ante regulation is justified in light of, in particular, unquestionable virtual monopoly of Orange Fixed. There are no serious grounds to dispute that all of the three criteria required for the susceptibility of this market to ex ante regulation are met.

The TRC also objects to Orange Fixed's interpretation of the concept of a "single economic entity". Orange Fixed argued that it does not constitute a single economic entity with Orange Data, as they are two separate legal entities, each with its own license. In line with the TRC's policy applied and explained in its previous (2010) regulatory decisions on market reviews, where individual operators are affiliated with one another by reason of common ownership they should be deemed, from an economic prospective, to constitute a single economic entity for the purposes of the TRC's market assessment, as they can be assumed to adopt a common course of commercial strategy in the market(s) concerned. The fact that such operators may be separate legal entities, holding separate licences, does not affect this conclusion. If an operator could avoid regulation by simply creating separate legal forms for its constituent parts, the net result would be that regulators could not address any critical anti-competitive practices. This principle has been applied by the TRC consistently to all market reviews and with respect to all operators.

Consequently, the TRC sees no reasons justifying any change to its preliminary conclusions regarding the retail leased line markets' susceptibility to ex ante regulation.

Q5: Do you agree with the TRC's preliminary competition assessment and SMP designations on the market for wholesale TI trunk segments of leased lines?

Orange Fixed disagreed with the TRC's preliminary conclusion on Orange Fixed's SMP in all retail and wholesale markets for TI leased lines. It claimed that TRC had adopted an incorrect, non-technology neutral, market definition; ignored the presence of several leased lines provider in Jordan and the declining market shares of Orange Fixed; and that the TRC's conclusions were based on incorrect information. It also reiterated its position that Orange Fixed and Orange Data should not be considered a single economic entity. In Orange Fixed's opinion, when a correct, technology-neutral market definition is adopted, it is clear that the retail market for DC is fully competitive and therefore not susceptible to regulation.

The above comments of Orange Fixed also applied to Questions 6 and 7 that follow.

Umniah agreed with the TRC's preliminary conclusions that Orange Fixed has an obvious dominant position on this market. According to Umniah, this finding was consistent with relevant international precedent. In response to Umniah's comments, Orange Fixed argued that, in the current market environment, other operators are not dependent on Orange Fixed's inputs to provide DC services

Zain stated that, in contrast to Orange, the TRC set out clear and conclusive evidence of Orange's SMP in the market in its consultation document. It added that, in the absence of an effective counter argument from Orange, supported by hard evidence, the TRC should stick to its initial finding that Orange has SMP in the TI markets. Consistently with this view, Zain also supported Umniah's views in relation to questions 5 to 7 (namely that Orange has SMP in the TI wholesale and retail markets).

Response of the TRC

The TRC notes that Orange Fixed's contention that the retail market is competitive is based on Orange Fixed's view that TI and MI leased lines are in the same product market. The TRC does not agree that there is a single market for all leased lines, and has explained clearly in the Consultation Document why TI and MI leased lines do not belong in the same product market. The TRC's view is based on evidence regarding a number of factors including product characteristics, intended use and pricing. The TRC has not received further evidence that would challenge its view.

However, the TRC has taken note of the respondents' replies to the above question, and has also considered the latest available market data and other information. These justify a re-examination of the TRC's preliminary conclusions on SMP in the market for wholesale TI trunk segments of leased lines.

In particular, as evidenced by the latest market trends and the respondents' comments, there is an uncontested, unidirectional and irreversible move of retail customers from TI to MI leased lines. Consistent with this trend in retail market

demand, alternative operators offer only MI leased lines. Further, there are currently no third party wholesale customers for the TI leased lines offered by Orange Fixed – this conclusion would be different only if, contrary to the TRC’s views, Orange Data were to be considered a separate entity and not part of the same economic unit with Orange Fixed.

The concept of dominance (or SMP) under the White Paper on Market Review Process “*relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers.*” It is thus predicated on, among other conditions, the existence of customers. It is the TRC’s view that there are unlikely to be new customers for wholesale TI leased lines, because the technology is end-of-life. This view was confirmed in meetings with alternative operators, where there was no demand or potential demand for wholesale TI leased lines. Alternative operators offer only MI leased lines, and Orange is attempting to migrate retail customers still using TI leased lines to MI leased lines. In the TRC’s view, the wholesale market for TI leased lines is not likely to exist at the time of the next review, as even Orange’s self-supply is in decline.

The TRC has therefore concluded that, in the interests of proportionality, there is no merit in finding Orange dominant in a declining market in which the products are becoming obsolete, and where there are no current (other than self-supply) or prospective wholesale customers.

Based on the above considerations, and in light of the current market conditions and the responses to the consultation, the TRC concludes that Orange Fixed does not have SMP on the wholesale market for TI trunk segments of leased lines. This means that ex ante regulatory remedies will not be imposed in this market.

Q6: Do you agree with the TRC's preliminary competition assessment and SMP designations on the market for wholesale TI terminating segments of leased lines?

Orange Fixed provided the same set of comments for Questions 5 to 7.

Umniah agreed with the TRC's preliminary conclusions that Orange Fixed has an obvious dominant position on this market. According to Umniah, this finding was consistent with relevant international precedent.

Zain provided the same set of comments for Questions 5 to 7.

Response of the TRC

The TRC's considerations discussed above for the market for wholesale TI trunk segments of leased lines fully apply to the market for wholesale TI terminating segments of leased lines: this is a market which is in decline due to the TI technology being superseded by MI technology. There are neither competitors nor existing or potential customers for wholesale TI terminating segment products.

Accordingly, based on the same considerations, and in light of the current market conditions and the responses to the consultation, the TRC concludes that Orange Fixed does not have SMP on the wholesale market for TI terminating segments of leased lines. This means that ex ante regulatory remedies will not be imposed in this market.

Q7: Do you agree with the TRC's preliminary competition assessment and SMP designations on the market for retail TI leased lines?

Orange Fixed provided the same set of comments for Questions 5 to 7.

Umniah agreed with the TRC's preliminary conclusions that Orange Fixed has an obvious dominant position on this market. According to Umniah, this finding was consistent with relevant international precedent.

Zain provided the same set of comments for Questions 5 to 7.

Response of the TRC

The situation in this market is different from the one discussed above for the upstream (wholesale) markets for trunk and terminating segments of TI leased lines. Orange Fixed does not have any competitors in this market but it does have (legacy) customers – and an unquestionable quasi-monopoly over customers for the products in question. By itself, this is compelling evidence of SMP, and is further strengthened by the factors discussed in the consultation's subsection 5.5. The fact that the number of these customers may be shrinking does not affect the conclusion that Orange Fixed's quasi-monopoly position allows it to behave independently of "*its customers and ultimately of consumers*".

In conclusion, there are no arguments provided by the respondents or other market information that would justify any change to the TRC's conclusion that Orange Fixed has SMP in the market for retail TI leased lines.

Q8: Do you agree with the TRC's preliminary assessment of competition problems and appropriate remedies in the wholesale market for TI trunk segments of leased lines?

Orange Fixed disagreed with the TRC about the need to impose these remedies in this market. It argued that TRC had adopted an incorrect market definition, which did not take into account substitution and competitive pressure from TI to MI, despite having acknowledged that such substitution exists. Orange Fixed considered it disproportionate to impose regulation on wholesale products for which there is no or only limited demand. Orange Fixed noted that all operators provide services based on their own infrastructure and the demand for wholesale services is very low and decreasing.

Orange Fixed made some specific points on the appropriateness of the proposed remedies. It noted that it is costly for operators to maintain both TI and MI technology, and that it would be more cost-efficient if all users switched to MI. Relatively higher TI prices may encourage customers to switch to MI, thereby speeding up migration. Reduced TI prices via price regulation would slow down the migration process and perpetuate an obsolete technology.

In Orange Fixed's view, given that TI services are in decline and that migration to MI services continues, the TRC could consider whether it should implement a regime that fosters continued migration and applies ex post competition law to issues if and when they arise. Orange Fixed suggested that the TRC should consider broader policy objectives, duties and obligations, together with the potential costs of its regulatory proposals. The price differentials between TI and MI should not be kept artificially low but should be allowed to increase to foster migration, especially where there are customer switching costs (such as the necessity to purchase new equipment).

According to Orange Fixed, TRC should have conducted an impact assessment of its proposed remedies; had it done so, it would have most likely concluded that the costs of regulation do not outweigh the largely non-existent benefits. Orange Fixed then cited a number of objections to the specific ex ante obligations proposed by the TRC.

Umniah generally accepted all the remedies proposed by the TRC except for the accounting separation remedy, but emphasised that these remedies needed to be strengthened to have the desired effect. In particular, Umniah stated that, in its view:

- While the wholesale access obligations put forward by the TRC are clear, the notion of "reasonable request" is not sufficiently developed;
- The content of the Statement of Compliance should be explicit. The TRC should be targeting any discrimination between internal and external provision of wholesale DC in price and non-price terms, the vertical leveraging of market power from the wholesale market into all downstream retail markets, and margin squeezes, which each are key in DC and downstream markets; and

- a reference offer for wholesale trunk DC, and KPIs, is necessary. An annual cycle of review of the reference offer would be suitable, but there must also be a possibility for the TRC to mandate, unilaterally (after consultation) deletions and additions on the reference offer and its associated contractual, technical, etc. documentation. This has proven to be essential in making wholesale access fit-for-purpose in many jurisdictions, especially in the early stages of its introduction.

In its response to Umniah's comments, **Orange Fixed** strongly opposed any remedies, and reiterated its view that it has no SMP in the DC market which is effectively competitive. Imposing strict reporting obligations to monitor regulation in a small segment in decline leads to a high administrative burden and provides no benefits to customers.

As regards accounting separation, Umniah was concerned that, as the detailed specification of the relevant accounting information was unclear in the consultation document this seemed to give excessive freedom to Orange Fixed in the follow up definition and implementation of accounting information.

Zain agreed with Umniah's remarks on accounting separation and that the proposal made by the TRC is not sufficient to make price discrimination visible.

Response of the TRC

The TRC has carefully considered points made by respondents. As set out under Q5, the TRC has taken into account changes in the market during the time of the market review, and has decided that no operator has SMP in the wholesale market for TI trunk segments of leased lines. There is therefore no rationale for imposing ex ante regulation, and existing ex ante regulation will be withdrawn.

Q9: Do you agree with the TRC's preliminary assessment of competition problems and appropriate remedies in the wholesale market for TI terminating segments of leased lines?

Orange Fixed disagreed with the TRC about the need to impose these remedies in this market, and its more specific comments and arguments were generally similar to those referred to above, under question 8, for the wholesale market for TI trunk segments of leased lines.

Umniah generally accepted all the remedies proposed by the TRC except for the accounting separation remedy, and its comments were similar to the ones referred to above, under question 8.

Zain agreed with **Umniah's** remarks on accounting separation and that the proposal made by the TRC is not sufficient to make price discrimination visible.

Response of the TRC

The TRC has carefully considered points made by respondents. As set out under Q5, the TRC has taken into account changes in the market during the time of the market review, and has decided that no operator has SMP in the wholesale market for TI trunk segments of leased lines. There is therefore no rationale for imposing ex ante regulation, and existing ex ante regulation will be withdrawn.

Q10: Do you agree with the TRC's preliminary assessment of competition problems and appropriate remedies in the retail market for TI leased lines?

Orange Fixed disagreed with the remedies of non-discrimination, transparency and accounting proposed by the TRC. Its objections were based on the claim that TRC has adopted an incorrect market definition, which did not take into account substitution and competitive pressure from TI to MI, and was not technology neutral. Orange Fixed strongly objected to regulating ex ante services that have not been regulated until now, namely retail and wholesale TI services with speeds above 2Mbps.

According to Orange Fixed, reduced TI prices via price regulation will slow down the migration process and perpetuate an obsolete technology. The TRC should consider its broader policy, obligations and duties within the sector. A narrow regulatory focus on a perceived short run issue with accompanying remedies would be damaging for the sector in the medium and longer term.

Orange Fixed further objected, more specifically, to the following remedies proposed by the TRC for this market:

- The obligation to publish and keep up-to-date information on retail products, including their tariffs, which Orange Fixed considered unworkable as most tariffs are negotiated individually with business customers, it would be a great burden to publish tariffs for all customers, and customers would object to disclosing this information.
- The obligation to provide information in order to assess compliance with the price cap, along the lines described in the consultation. Orange Fixed considered this a very heavy obligation, which would place a high administrative burden on this operator.

Overall, Orange Fixed considered these remedies very heavy and disproportionate when imposed on a low-volume, declining service such as TI which, according to Orange Fixed, is subject to a strong competitive pressure from MI. Any benefits from such a regulation would not outweigh the cost that implementing them would impose on Orange Fixed.

Umniah generally accepted the remedies proposed by the TRC, except for the accounting separation remedy, and argued that these remedies needed to be strengthened to have the desired effect. In particular, Umniah welcomed the TRC proposal of (i) a safeguard price cap to certify that Orange Fixed retail prices have not increased, (ii) an obligation for Orange Fixed to report annually on volume and revenue of retail TI circuits sold, and a confirmation that prices have not increased; and (iii) an obligation for Orange Fixed to submit a sample of contracts and invoices to the TRC, showing that retail prices have not increased.

Zain had no particular comments on Question 10.

Response of the TRC

The TRC has reconsidered its position on the wholesale markets for TI leased lines in light of respondents' comments and the evolving market situation, and has decided that no operator has SMP in the wholesale TI markets. Ex ante remedies should be targeted at the competition problems likely to exist in the absence of ex ante regulation.¹ For retail markets, if excessive pricing is identified as a potential competition problem, price control measures may be imposed as a primary remedy, combined with a cost accounting obligation as a supporting remedy.²

While the retail market for TI leased lines is in decline, there remains a small but significant base of retail customers. The Consultation has identified excessive pricing as a potential problem in the retail market for TI leased lines and has proposed a number of ex ante remedies to address it.

The TRC's principal concern for this market is that the installed base of retail customers should not be left exposed to price increases by Orange Fixed. At the same time, any ex ante remedies imposed should be reasonably sufficient to address this specific and increasingly limited concern, without being disproportionate or open ended, as a full transition to MI leased lines seems inevitable. The TRC must thus draw a balance between these priorities. Responses to the consultation have not provided sufficient evidence to dispute the need for any form of ex ante remedies in this market.

The TRC considers that ex ante remedies associated with the supply of new products, or to new customers, are unnecessary because there are unlikely to be new products or new customers for retail TI leased lines. This means that there is no need for obligations dealing with non-discrimination, transparency, or accounting separation.

Based on these considerations and the latest market data available, the TRC believes it is appropriate to (i) remove the existing regulatory obligations associated with non-discrimination, transparency and accounting separation, and (ii) limit the ex ante remedies proposed in the Consultation to price control i.e. safeguard cap, as follows:

- As proposed in the Consultation, the bills of Orange Fixed for retail customers of TI leased lines should not increase in real terms, based on a Retail Price Index (RPI)-0% cap.
- Orange Fixed will be allowed to increase retail prices for TI leased lines only subject to a justification and TRC's prior approval.
- Orange Fixed will be required to report annually to the TRC the volume of retail TI circuits it has leased over the relevant year (or a shorter period within

¹ White Paper on Market Review Process, page 38.

² White Paper on Market Review Process, page 41.

that year) and its associated revenues, provide samples of relevant contracts and confirm that its relevant retail prices have not increased

- This obligation of Orange Fixed will be maintained for as long as less than 95% of all retail customers for leased lines in Jordan (and not just those of Orange Fixed) have a contract in place for MI rather than TI leased lines. As soon as this threshold is exceeded, based on information verified to the TRC's satisfaction, TRC will issue a relevant confirmation, and the price cap obligations will be maintained for one more calendar year, after which they will automatically and fully expire. This would give sufficient time to the remaining customers of Orange Fixed's TI leased lines to re-negotiate their commercial contracts with Orange Fixed if they so wish or replace them through MI leased lines offered by Orange Fixed or its competitors.

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ANNEX 1: SPECIFIC ISSUES

Respondents raised a number of issues outside the structure of the consultation questions. Insofar as these comments have not been addressed under one of the consultation questions, they are summarised below, and followed by the TRC's response.

Orange Fixed suggested the following:

- The TRC did not recognise the specific features and trends in the electronic communications markets in Jordan;
- The TRC should have considered a much longer time horizon for its prospective analysis;
- Orange Fixed provided a list of information that was, in its view, incorrect or incomplete in the Public Consultation document;
- Orange Fixed argued that the TRC should have carried out an impact assessment;
- In Orange Fixed's view, the TRC's approach was high level, lacked detail and generally was not substantiated with evidence.

Umniah suggested the following:

- The TRC should undertake a thorough impact assessment to demonstrate that the impact of Orange Fixed not implemented the remedies imposed in the previous market review conducted in 2010 on the retail and wholesale leased lines markets or increase market share of smaller operators.
- The TRC needs to consider in its assessments the new business model introduced in the market of exclusive telecom service provider, such as the airport zone being dominated by Zain, the Boulevard's dominated by Orange, and other major projects where Umniah has to pay extra charges for service availability and coverages in the relevant areas. Umniah and other licensed operators are facing unfair competition against the exclusive operator, which has no published or fixed price list for the telecom services provided.

Response of the TRC

- *TRC did not recognise the specific features and trends in the electronic communications markets in Jordan*

The TRC disputes Orange Fixed's claim that the market review did not recognise the specific features and trends in the electronic communications markets in Jordan. First of all, the market review collected data from all operators in Jordan, and while the analysis drew on experiences in other jurisdictions, the conclusions were specific to the situation of the market in Jordan.

It is true that there are differences between the evolution of fixed networks in many European countries and in Jordan, and there is certainly a lower level of penetration of fixed services in Jordan compared with most European jurisdictions. Orange Fixed has claimed that this is because of features specific to Jordan, while Zain has

claimed that Orange's behaviour in the market has contributed to the relatively low penetration of fixed telecoms.

In the TRC's view, it is not possible to draw a single causal link. However, the development of legacy monopoly infrastructure is similar in Jordan and in other jurisdictions. The competition problems in the fixed market in Jordan are similar to those in fixed markets in other jurisdictions, and the competition problems in the mobile markets in Jordan are similar to those of mobile markets in other jurisdictions. While the TRC does not intend to discuss in detail on-going legal disputes between operators, it has been repeatedly informed (also in the framework of this public consultation) of alleged refusals, by the dominant operator, to supply access or develop wholesale products; and repeated instances of its apparent non-compliance with various regulatory obligations. Similar disputes arise frequently in other jurisdictions and are invariably associated with abuses of a dominant position.

In response to Orange Fixed's contention that the analysis did not recognise that mobile communications are more important than fixed communications, the Consultation Document considered whether mobile access and call origination was a good substitute for fixed access and call origination, and found (on a preliminary basis) that it was not. This finding was based on a comparison of, amongst other things, functional characteristics, pricing, and use. This finding is in line with the findings of almost all other NRAs. The Consultation Document also considered whether mobile broadband was a good substitute for fixed broadband and found (on a preliminary basis) that it was not. The key reasons were differences in functional characteristics and pricing. Again, this finding is in line with the findings of almost all other NRAs.

Although mobile services were not found to be a substitute for fixed services in the retail market definitions, the Consultation Document further considered whether mobile acts as an indirect competitive constraint on wholesale fixed services. The Consultation Document recognised that mobile communications are more prevalent than fixed communications. However, this does not negate the finding that there are competition problems in the fixed retail and wholesale markets, and that these are structural problems requiring an ex ante approach.

- *The TRC should have considered a much longer time horizon for its prospective analysis*

In Orange Fixed's view, the time that has elapsed since the last market review means that regulation becomes obsolete. Given the length of time, Orange Fixed proposed that a significantly longer time horizon should have been considered in this market review. In particular, Orange Fixed expressed a view that mobile is becoming more comparable to fixed; Orange's market share is decreasing; and the decline of fixed telephony was not taken into account.

The TRC notes that remedies imposed in the last market review were not fully implemented in a timely manner by dominant operators, and the time lapsed is at least partly explained by the time required for SMP operators to meet their obligations. In the TRC's view, it would be very unreliable to attempt to conduct a

prospective review that would last for the next 8-9 years, and the TRC is not aware of any examples where such a review period has been contemplated. The dominant operators have a big role in the success of market reviews by implementing the remedies without delay. Overall, the time horizon for market reviews is determined by the rate of change in the market, and by the effective implementation of remedies already imposed.

With regard to the length of time between market reviews, “international best practice” is not considered to be 2-3 years. For example, the EU has relaxed this recommendation, and in fact, it was not strictly or consistently complied with in any case.

With reference to Orange Fixed’s claim that the regulation of traditional fixed telephony will slow down technological development, the opposite is in fact the case. The TRC proposal to reduce and minimise regulation of legacy services such as fixed voice telephony is designed to encourage migration to modern services. The remaining (reduced) regulation on legacy services is required to protect the remaining installed customer base from the dominant operator’s ability to, for example, unreasonably increase prices.

- *Orange Fixed provided a list of information that was, in its view, incorrect or incomplete in the Public Consultation document.*

The TRC reviewed and analysed in detail every point raised by Orange Fixed. The TRC notes that it has relied on data provided by operators and that, in some cases, operators (including Orange Fixed) did not provide complete data in a timely manner. Where possible, the TRC has cross-referenced data provided for the market review with data provided to the TRC for other purposes. The TRC has updated information in this Explanatory Memorandum where Orange Fixed made a valid and substantiated point. The TRC notes that items on the list provided by Orange Fixed did not have a material impact on the TRC’s analysis or conclusions in the Consultation Document.

- *Orange Fixed believes that the TRC should have carried out an impact assessment.*
- *Umniah noted the lack of assessment of the impact of Orange Fixed failing to implement the remedies imposed in the previous market review conducted in 2010 on the retail and wholesale leased lines markets*

The TRC has been conducting an impact assessment throughout the course of its work, and this market review is a result of this assessment. At an early stage of the project, the TRC identified the impact of previous regulatory measures, and at each stage of the project it has considered options and alternatives. At all times, the TRC has been concerned to ensure that any proposed remedies are appropriate and proportionate, and that therefore the regulatory costs do not outweigh the benefits. The consideration of the impact of proposed measures has therefore been embedded in the conduct of the whole analysis.

- *In Orange Fixed’s view, the TRC’s approach is high level, lacks detail and generally is not substantiated with evidence.*

The consultation drew on a detailed data gathering exercise. Operators were required to complete data requests covering quantitative and qualitative data, and the analysis of this data forms the basis for the evidence used in the Consultation. In addition, data collected by TRC for other purposes was used to confirm and validate data provided by operators. The TRC updated and refreshed its data collection throughout the market review. The project team met with operators (in some cases, several times) during the process, and took account of all discussions. It is recognised that much of the data analysis had to be redacted in the public version. This is because the information is commercially sensitive.

- *The TRC needs to consider in its assessments the new business model introduced in the market of exclusive telecom service provider*

The TRC notes Umniah's concerns. However, the market review finding is that the markets for wholesale and retail MI leased lines are effectively competitive, and as such, no operator is dominant, and ex ante remedies are not required. In markets where ex ante regulation is not required, the presumption is that recourse to competition law is sufficient to address any anti-competitive behaviour.

ANNEX 2: COMMENTS FROM ORANGE FIXED

Orange Fixed has provided additional detailed comments on alleged errors and omissions in specific paragraphs of the TRC consultation, which are replicated below. TRC provides its response next to each comment.

Section	Paragraph	Comment	TRC Response
2.2	Exhibit II.1 Number of leased lines (retail)	The total figure (12,988) is inconsistent with footnote of page (22) where TRC states that the total active retail leased lines is (12,735), and in Exhibit III.1 page (23), the total number of leased lines by technology is (13,131).	<p>The leased lines information was requested to be provided disaggregated by technology and speed. The estimates were produced based on the received information only. During our meetings with the operators (Orange included), we raised the concern of mismatch in these figures in order, which required clarification. However, since the total numbers did not vary significantly, and adjustments would not have any impact on the conclusions to be drawn, we have not made any changes and have used the figures as provided.</p> <p>Inconsistencies are due to a mismatch of the speed breakdown and technology breakdown calculations of Orange Fixed, V-tel, Damamax, Al-Nayi and Batelco</p>
2.2	Six of the eight retail operators use only their own network to deliver the services (Orange Fixed, Zain, Damamax, Batelco, Mada, Al-Nayi); one uses own infrastructure plus a small number of lines provided using a wholesale input from another operator (V-Tel), with one (Orange Data) relying solely on wholesale inputs (from Orange Fixed).	Umniah is missing as it provides leased lines services to all public schools (3000 schools) across all Jordan using mainly wireless connections (microwave links).	This is already considered in the analysis. Footnote 6 mentions that "Batelco has stated in its response to the data request that it is only providing transmission capacity to Umniah."

Section	Paragraph	Comment	TRC Response
2.2	Exhibit II.5 Proportion of active wholesale termination lines by speed	Damamax should have been included.	Damamax did not provide any data based on speed breakdown of leased lines. Their numbers are very low and will not have any material impact on the conclusions.
2.2	Footnote: Damamax is not included as it did not provide information disaggregated by speed.	TRC should have ensured that all operators responded appropriately.	<p>It was clearly stated that reasonable assumptions will be made in the event of a failure to provide the requested information. In cases where we have not received the data (either directly or through the reports that the operator should have submitted to the TRCà, we have no alternative but to estimate the relevant number.</p> <p>Regarding Damamax, due to their very low figures, there is no impact on the conclusions drawn.</p>
2.3	Taking both volume and revenue data into account, the overall retail leased line market has three operators (Orange, Zain and Batelco) with significant market shares, and a further five operators with market presence.	Batelco Jordan is owned by Umniah. Recent MoE project won by Umniah should also be considered.	Ownership is not relevant. Equally, there will inevitably be market developments at the level of individual projects, which will be immaterial for the overall conclusions.
3.1	It should be noted, however, that hypothetical supply-side substitution is not sufficient, on its own, for the purposes of market definition; it is supply-side substitution that should be relied upon as the primary criterion.	Is this a typo and TRC should have stated "demand-side" as the primary criterion?	Yes, there is typo, and the reference to "supply-side" should be replaced with "demand-side" in the response to public consultation.

Section	Paragraph	Comment	TRC Response
3.3	<p>However, the focus for the purposes of this market review is on the connectivity, because it is the local access part of the circuit where competition problems are most likely to arise, and where barriers to entry are potentially highest.</p>	<p>It is not possible to assess changes in market structure objectively as no data on volumes/revenues by operator are provided. Limited data (snap shots) on prices are provided; no evidence on profitability. Please refer to snap shots of prices on page (25), (26) and (27).</p>	<p>The point made by Orange is not clear to us - again, we have taken account of the paucity of the available information in our analysis.</p>
4.2	<p>A TRADITIONAL INTERFACE (TI) WHOLESAL MARKET FOR TERMINATING SEGMENTS OF LEASED LINES</p>	<p>No mention is made of potential competition from wireless solutions yet the TRC stated in its conclusion on wholesale market definition at page (39) that Wireless leased lines belong to the same market as wired leased lines.</p>	<p>The impact of wireless solutions is limited - we have considered their role in our assessment.</p>
4.3	<p>A TRADITIONAL INTERFACE (TI) WHOLESAL MARKET FOR TRUNK SEGMENTS OF LEASED LINES</p>	<p>No mention is made of potential competition from wireless solutions yet the TRC stated in its conclusion on wholesale market definition at page (39) that Wireless leased lines belong to the same market as wired leased lines.</p>	<p>The impact of wireless solutions is limited - we have considered their role in our assessment.</p>