THE HASHEMITE KINGDOM OF JORDAN

TELECOMMUNICATIONS REGULATORY COMMISSION

Regulatory Decision on the Mobile Markets Review

21 December 2010

I. INTRODUCTION

On the 20th January 2010, the Telecommunications Regulatory Commission ("TRC") of Jordan published a *Public Consultation Document* on its assessment of Mobile Markets. The analysis and the proposed *ex ante* regulatory obligations set forth by the TRC in that *Public Consultation Document* were made in performance of its duties and responsibilities under the *Telecommunications Law*[1] and the *Statement of Government Policy 2007 ICT & Postal Services* (the "*Policy*") [2].

The *Telecommunications Law* and the *Policy* provide the TRC with the legal competence and guidelines to conduct market reviews and to impose regulatory obligations on any operator found to be dominant on the relevant markets reviewed. A finding of dominance is equivalent to a conclusion being reached that the relevant market(s) in question is/are not subject to effective competition. As such, the dominant operator(s) on such a relevant market will need to be subject to those *ex ante* regulatory obligations deemed to be necessary in order to restore or to create conditions of effective competition. The methodology used by the TRC to perform the various analytical steps under the market review process is set out in detail by the TRC in the *White Paper on Market Review Process* (the "*White Paper*") [3].

Formal responses to the *Public Consultation Document* were received from Umniah Mobile Company (Umniah), Jordan Mobile Telephone Services Company (Zain), and Jordan Telecommunications Company (Orange Mobile). Formal comments on the above responses were, in turn, received from Orange Mobile, Zain, and Umniah.

Following the public consultation process, the TRC hereby issues this Regulatory Decision, which sets out the TRC's findings regarding the outcomes of the review of Mobile Markets. This Decision is supplemented by an Explanatory Memorandum, which includes a summary of the responses received from interested parties, the TRC's analysis of those responses and the ultimate findings based on those responses. As such, the text of the *Public Consultation Document*, and the *Explanatory Memorandum* shall be deemed to constitute an integral aspect of this Decision insofar as it is necessary to support any material findings in the conduct of the market review process.[4]

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[1] See the *Telecommunications Law* No. 13 of 1995. In particular, refer to the *Telecommunications Law* at Article 6(e) and Article 6(o).

[2] Paragraph 47 of the *Policy* clearly points out the need to base *ex ante* regulation on a prior analysis and definition of relevant retail and wholesale markets, with appropriate levels of specificity.

[3] TRC, *White Paper on Market Review Process*, released 14th of May 2009.

[4] The TRC's Decision reflects the conclusions drawn from the analysis set out in the Public Consultation Document. Insofar as the TRC departs in any material way from the preliminary conclusions reached in the Public Consultation Document, that departure can be explained by reference to the Explanatory Memorandum accompanying this Decision, based on the industry responses to the Public Consultation Document.

This Regulatory Decision sets out the TRC's findings on the following issues:

- The definition of relevant markets in relation to the supply of mobile-related services. (Chapter III).
- The identification of those relevant markets that are susceptible to *ex ante* regulation (Chapter IV).
- The identification of those relevant markets that are susceptible to *ex ante* regulation that are also characterized by a lack of effective competition, and the designation of Dominant Operators on these markets (Chapter V).
- The prescription of *ex ante* regulations appropriate to remedy the identified competition problems related to dominance (namely, the maintenance, revision, withdrawal, and/or introduction of new *ex ante* regulations, as the case may be) (Chapter VI).

This Regulatory Decision shall come into effect as of the date of its approval by the Board of Commissioners of the TRC and publication at the TRC website, and shall remain in force until such time as it is replaced, modified or otherwise changed by the Board of Commissioners of the TRC.

II. DEFINITIONS

In this Regulatory Decision, the following terms shall have the meanings assigned hereunder unless the context indicates otherwise; terms not defined hereunder shall have the meanings assigned thereto in the Telecommunications Law Number (13) of the Year 1995 as amended, and the instructions issued pursuant thereto:

TRC	:	The Telecommunications Regulatory Commission of Jordan.
Board/ Board of Commissioners	:	The Board of Commissioners of TRC.
Law/ Telecommunications Law	:	The Telecommunications Law Number (13) of the year 1995 as amended.
Competition Law	:	The Competition Law Number (33) of the Year 2004 as amended.
Interconnection Instructions	:	Interconnection Instructions issued pursuant to Board Decision No.(2-1/2005) Dated (5/1/2005) as amended.
Competition Safeguards	:	The Instructions on Competition Safeguards in the Telecommunications Sector issued pursuant to Board Decision No.(1-3-2006) Dated (14/2/2006) as amended.
License	:	The authorization granted by the TRC, or the contract or license agreement signed between the TRC and a Person (including all appendices and schedules attached thereto), to allow a Person to establish, operate, and manage a Public

		Telecommunications Network, or provide Public Telecommunications Services, or use Radio Frequencies pursuant to the provisions of the Telecommunications Law and the by-laws and instructions issued pursuant thereto.
Licensee	:	A Jordanian company established under the Companies Law that holds a License.

III. Definition Of Relevant Markets

The TRC hereby determines the definition of the following relevant markets in relation to the supply of mobile services.

The relevant product markets are:

- **A retail market for the provision of mobile services ("retail mobile services")**. This relevant product market includes a cluster of voice and data-related services (in both post-paid and pre-paid forms) that includes the provision of access, national, international and roaming calls, SMS and other value-added services.

- **The wholesale markets for the provision of mobile voice call termination ("wholesale mobile voice call termination")**. This relevant market for wholesale mobile voice call termination is that for the termination of voice calls on individual mobile networks.

- **A wholesale market for the provision of SMS termination ("wholesale SMS termination").** This relevant product market includes all wholesale SMS termination services, which are separate and distinct from voice call termination services.

- **A wholesale market for the provision of mobile access and call origination ("wholesale mobile access and call origination").** The relevant product market for **Mobile Access and Call Origination** ("MACO") is an integrated multi-mobile network operator market, which incorporates both the wholesale access element and the wholesale provision of origination services

The geographic scope of all relevant product markets above is national.

IV. Susceptibility Of Relevant Markets To *Ex Ante* Regulation

In determining whether any of the relevant markets defined in Chapter III of this Decision should lead to the imposition of *ex ante* regulatory obligations, the TRC has subjected each of the defined relevant markets to the application of the "three criteria test". The cumulative fulfilment of the following three criteria renders the relevant market in question potentially susceptible to *ex ante* regulation. Those three criteria are:

(i) Existence of high and persistent entry barriers;

(ii) Lack of dynamic trend towards effective competition; and

(iii) Insufficiency of *ex post* intervention alone to deal with the competition problems identified.

Each of these three criteria has been found by the TRC to be cumulatively fulfilled in relation to the following relevant markets.

- **The market for wholesale mobile voice call termination.**
- **The market for wholesale mobile access and call origination (MACO).**

By contrast, the TRC has found that, in principle, the wholesale market for SMS termination should not be susceptible to *ex ante* regulation. In addition the TRC has found that the retail mobile services market is not susceptible to *ex ante* regulation, as it does not fulfil the three-criteria test when appropriate wholesale *ex ante* regulatory obligations have been effectively implemented.

Based on these findings, the TRC hereby determines that the following markets should be susceptible to regulation:

- The markets for wholesale mobile voice call termination.
- The market for wholesale mobile access and call origination (MACO).

The TRC, however, reserves the right to re-assess the susceptibility of the retail market for the provision of mobile services ("retail mobile services market") to regulation if the wholesale regulations imposed by virtue of this Decision are not timely, fully and effectively implemented by the dominant Licensee(s).

V. DESIGNATION OF DOMINANT LICENSEES

To determine whether any of the markets identified in chapter IV of this Decision is characterized by dominance, the TRC assessed whether any given Llicensee (or Licensees) has (have) "*such a sufficient impact on the market that it can control and affect the activity of the relevant market*", as stipulated in Article 8(a) of the *Competition Safeguards.* In assessing dominance in these markets, the TRC considered the "impact factors" listed in the *Competition Safeguards* and the factors listed in the *White Paper.*

The TRC has found that Zain, **Orange Mobile**, **Xpress**, and **Umniah** each holds a **dominant position** in the relevant wholesale markets for **wholesale mobile voice**

call termination on their individual networks[5]. This finding is established on the basis of the factors included in Article 8 of the *Competition Safeguards*, and predominantly in relation to:

- The existence of **high market shares** (*i.e.*, 100%) held by each of them (Article 8(b) of the *Competition Safeguards*).

- The existence of **very high barriers to entry** (*i.e.*, the technical inability of to terminate voice calls other than on the number of the subscriber attached to a particular mobile network operator) into the relevant markets identified (Articles 8(c) (13)-(14) of the *Competition Safeguards*).

- The absence of a sufficiently strong element of **countervailing buyer power** on the part of retail and wholesale customers so as to be able to offset the market dominance being exercised in relation to the provision of voice call termination services (Article 8(c)(6) of the *Competition Safeguards*).

The TRC has also found that Zain holds dominant position in the relevant multi-operator market for **wholesale mobile access and call origination (MACO).**

The dominance held by **Zain** in relation to the provision of MACO has been established on the basis of the factors listed in Article 8 of the *Competition Safeguards*, which among others as reported and analysed in the accompanying explanatory memorandum, which among others include:

- The existence of **very high market shares** (*i.e.*, in many cases above the presumptively dominant level of 50%) in relation to a broad range of criteria such as subscriber numbers, revenues, traffic volumes, and so forth (Article 8(b) of the *Competition Safeguards*).

- The existence of **high barriers to entry** (*i.e.*, the scarcity of spectrum resources) into the relevant market (Articles 8(c) (13)-(14) of the *Competition Safeguards*).

- Various aspects of historical conduct, including, among others, consistently **high levels of profitability**, and the lack of competitive wholesale offers for MACO. (Article 8(c) (7) of the *Competition Safeguards*).

The TRC hereby determines to designate **Zain**, **Orange Mobile**, **Xpress**, **Umniah** and any other licensees that provide voice call termination on its own mobile network within the lifetime of this market review, to be dominant licensees in the **wholesale mobile voice call termination** on their individual

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[5] By direct analogy, any future licensee - whether a Mobile Network Operator (MNO) or a Mobile Virtual Network Operator (MVNO) - which terminates calls directly for its customers, would be deemed to be dominant over the provision of termination services to its customer base (or network).

networks. The TRC also determines to designate Zain to be Dominant operator in the relevant multi-operator market for **wholesale mobile access and call origination (MACO).**

VI. *EX ANTE* REGULATION TO REMEDY THE IDENTIFIED COMPETITION PROBLEMS

In order to address the competition problems identified in the course of its market review, the TRC determines the following:

1. THE MARKET FOR WHOLESALE MOBILE VOICE CALL TERMINATION

In order to address the potential competition problems related to the individual dominance in the **markets for wholesale mobile voice call termination** (notably, incentive to price fixed-to-mobile calls above incremental cost, incentive to set mobile-to-mobile prices at suboptimal levels, incentive exploit on-off net price differentials to foreclose smaller competitors, the potential rising of the costs of fixed operators leading to further fixed-to-mobile substitution due to the higher non-cost based fixed-to-mobile charging), the TRC determines that all Licensees providing **wholesale mobile voice call termination** shall be subject to the following ex ante regulatory obligations (remedies):

1.1 ACCESS UPON REASONABLE REQUEST

Each designated licensee operating in this market shall provide **termination services upon reasonable request**, supported by an obligation transparency, including the publication of a Reference Offer. Access "upon reasonable request" implies that the requests should only be refused on the basis of objective criteria such as technical feasibility or the need to maintain network integrity.

More specifically, the access obligation shall be comprised of the following:

(i) Each designated licensee shall offer **access to its associated facilities and services** (*e.g.*, collocation and infrastructure sharing) in response to access demands by other operators.

(ii) Each designated licensee shall not **withdraw access** which it has already granted without the TRC's prior approval.

1.2 TRANSPARENCY

Each designated licensee shall publish terms and conditions and prices in a **Reference Offer** required for the implementation of interconnection. Each designated licensee is obliged to submit the draft Reference Offer to the TRC. The Reference Offers shall be subject to a Public Consultation process, and ultimately to the amendment and prior approval by the TRC.

Each designated licensee shall also publish the relevant Quality of Service information (*i.e.*, Key Performance Indicators, "KPIs") (subject to confidentiality restrictions) on its website. In addition, each designated licensee shall also provide all the required technical information on access points to other operators, upon receipt of a relevant request, but may render the provision of that information subject to the signature of a confidentiality agreement between the designated licensee and the other operator in question.

1.3 NON-DISCRIMINATION

Without prejudice to the obligation on each designated licensee to respect the price control obligations regarding the provision of voice call termination and associated facilities and services (see Section 1.5 below), each designated licensee shall not be allowed to discriminate on all material non-price elements related to the termination services, thereby offering equivalent conditions, prices, and quality in equivalent circumstances.

In addition, the non-discrimination obligation imposed specifically in relation to **Zain** should also include all the various elements of **TRC Decision No. 9-1/2004** which address the possible discrimination that might occur *vis à vis* third operators as a result of Zain’s on-net prices and the ratio of on-net to off-net calls, subject to its review in light of the adoption of the LRIC method, described in Section 1.5 below.

1.4 ACCOUNTING SEPARATION

Orange Mobile and **Zain** shall provide a **separate set of accounts for its provisioning of wholesale mobile voice call termination,** in order to reflect the performance of the wholesale business, as if it were being operated as a separate business. To this end, Orange Mobile and Zain shall prepare the following financial information on an annual basis:

- Financial statements for mobile termination: These shall include a profit and loss (P&L) statement and a mean capital employed (MCE) statement.
- All relevant supporting information: This shall include the consolidation of P&L and MCE statements and a reconciliation with statutory accounts or other source of costing information, non-discrimination notes (detailed transfer charges), and other supplementary schedules, as required.

The TRC determines that it would be disproportionate, within the lifetime of this market review, to subject Umniah, Xpress and other licensees that may provide voice call termination on their own respective mobile networks, to an accounting separation obligation given the respective scale and scope of their operation relative to the costs of effective implementation.

The specific accounting rules and reporting formats for mobile accounting separation shall be subject to a Public Consultation process prior to their implementation.

1.5 COST-BASED PRICES

Each designated licensee shall charge cost-based prices for its wholesale voice call termination services and associated facilities and services. The appropriate cost standard applied shall be based on a **long-run incremental costs** ("LRIC") method in accordance with the terms currently prescribed under existing legislation namely, *Instructions on the Adoption of Long Run Incremental Cost Methods & Interconnection Rate Structure* (as amended) and *The Regulatory Decision on The Principles to be Used in the Construction of TSLRIC+ Models for the Costs of Interconnection Services*.

The wholesale charges for the voice call termination services of an MVNO should in principle be equal to those charged by the hosting MNO to other operators, unless the MVNO in question demonstrates to the TRC that a deviation from this principle is justified.

The price control obligation will be supported by an obligation of cost accounting in order to target excessive charges.

The TRC will consult on accounting rules and reporting formats with the industry prior their implementation in the context of a Public Consultation process.

2. THE MARKET FOR WHOLESALE MOBILE ACCESS AND CALL ORIGINATION (MACO)

Upon consideration of the various comments submitted by the operators during the public consultation process, and given the ongoing developments regarding the possible hosting of an MVNO on the Zain network in the absence of explicit *ex ante* regulation[6], the TRC determines the following remedies in relation to MACO.

2.1 MOBILE WHOLESALE CALL ORIGINATION ACHIEVED THROUGH CARRIER SELECTION (CS) & CARRIER PRE-SELECTION (CPS)

Zain shall be obliged to provide **wholesale Call Origination** achieved through the provision of **CS/CPS for international calls**, on the terms and conditions prescribed under the *Instructions for implementing CS/CPS: TRC Decision 1-15/2005*, unless otherwise specified in this Regulatory Decision.

Given the absence of appropriate implementation of such remedy sinceits enactment in 2005, the TRC considers the imposition of this remedy to be appropriate in the

[6] In the exercise of its *ex post* competition powers, the TRC has the legal competence to review agreements between MNOs and MVNOs to ensure that they do not include any anti- competitive terms.

context of this market review which is conducted in line with the methodology set forth in the TRC's *White Paper*.

These services are mandated without prejudice to the availability of symmetric regulatory obligations contained in, amongst other matters, Number Traffic Translation Origination (NTTO) services, as in the *Interconnection Instructions*.

2.2 TRANSPARENCY

Zain shall publish terms and conditions and prices in a **Reference Offer** required for the implementation of call origination, which shall also include the terms and conditions for the provision of CS and CPS. This Reference Offer can also be incorporated into the terms of a broader Reference Interconnection Offer.

Zain is obliged to submit the draft Reference Offer to the TRC. The Reference Offer shall be subject to a Public Consultation process, and ultimately to the amendment and prior approval by the TRC.

2.3 COST-BASED PRICES

Zain shall charge cost-based prices for the provision of wholesale call origination services to CS/CPS operators and associated facilities and services. The appropriate cost standard applied shall be based on a **long-run incremental costs** ("LRIC") method.

2.4 BILLING ARRANGEMENTS

The TRC determines that Zain shall provide wholesale call origination to CS/CPS operators with independent billing, within a maximum period of three months from the publication of this Regulatory Decision. The TRC also defers the implementation of wholesale call origination to CS/CPS operators with consolidated billing. In this respect, due consideration will be taken of the developments of competition in the provision of international calls, the impact of Mobile Number Portability (MNP) when introduced, as well as the competitive dynamics of the mobile sector relative to the costs of implementing consolidated billing.

VII. TIME PLAN FOR IMPLEMENTATION

The TRC will issue a time plan for the implementation of the remedies not yet in place within a month from the date of publication of this Regulatory Decision.