

THE HASHEMITE KINGDOM OF JORDAN



TELECOMMUNICATIONS REGULATORY COMMISSION

**Regulatory Decision
on the Fixed
Narrowband Markets
Review**

1 NOV 2011

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I. INTRODUCTION

On 17 July 2010, the Telecommunications Regulatory Commission (“TRC”) published a *Public Consultation Document* on its assessment of Fixed Narrowband 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 characterized by lack of 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 are 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 Jordan Telecommunications Company (Orange Fixed), Umniah Mobile Company (Umniah) & Batelco Jordan, and Jordan Mobile Telephone Services Company (Zain). Formal comments on the above responses were, in turn, received from Orange Fixed, Umniah & Batelco Jordan and Zain.

Following the public consultation process, the TRC hereby issues this Regulatory Decision, which sets out its findings regarding the outcomes of the review of Fixed Narrowband 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

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* points to 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 14 May 2009.

⁴ The TRC’s Decision reflects the conclusions drawn from the analysis set forth in the Public Consultation Document. Insofar as the TRC departs in any material way from the preliminary conclusions reached in the Public Consultation Document, the rationale for such departure can be explained by reference to the Explanatory Memorandum accompanying this Decision, and is based on a review of the industry responses to the Public Consultation Document.

This Regulatory Decision sets out the TRC's findings with respect to the following issues:

- The definition of relevant markets in relation to the supply of Fixed Narrowband Services (Chapter III).
- The identification of those relevant markets that are susceptible to *ex ante* regulation (Chapter IV).
- The identification of those relevant markets 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 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 its publication on the TRC's 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. D E F I N I T I O N S

In this Regulatory Decision, the following terms shall have the meanings assigned below unless the context indicates otherwise; terms not defined below shall have the meanings given to them 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 sets out definitions of the following six relevant markets in relation to the supply of Fixed Narrowband Services.

The relevant product markets are:

- a retail market for fixed telephony access connections for residential and non-residential users which includes PSTN, ISDN-BRA, ISDN-PRA and telephony access achieved through broadband connections;
- a retail market for fixed domestic telephony calls, for prepaid/postpaid residential and non-residential users, including local, national, fixed-to-mobile, and calls to service providers;
- a retail market for international calls, both for prepaid/postpaid residential and non-residential users;
- a wholesale market for the termination of voice calls on individual fixed networks (“fixed call termination”), including those that are self-supplied;
- a wholesale market for call origination over all fixed networks (“fixed call origination”), which includes the wholesale provision of fixed call origination through CS/CPS and NTTO services for all types of calls (including calls to end-users and calls to service providers) and the self-supply of fixed call origination for all types of calls (including calls to end-users and calls to service providers); and
- a wholesale market for transit services over all fixed networks (“transit”), which includes the wholesale provision of transit services for national calls and the national portion of international calls for all types of calls (including calls to end-users and calls to service providers).

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

I V . S U S C E P T I B L I T Y O F R E L E V A N T M A R K E T S T O *EX ANTE* R E G U L A T I O N

In determining whether any of the relevant markets defined in Chapter III of this Decision require 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 fulfillment of the following three criteria renders the relevant market in question susceptible to *ex ante* regulation. Those three criteria are:

- (i) the existence of high and persistent barriers to entry;
- (ii) the lack of dynamic trend towards competition; and
- (iii) the insufficiency of *ex post* intervention alone.

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

- the market for wholesale fixed call termination;
- the market for wholesale fixed call origination; and
- the market for wholesale transit services.

Moreover, each of the three cumulative criteria has been fulfilled in relation to the following relevant **retail markets**:

- the market for retail fixed telephony access connections, and
- the market for retail fixed domestic telephone calls.

The retail fixed international calls market has a tendency towards effective competition, which is supported by the implementation of the proposed *ex ante* regulation for wholesale interconnection markets. Consequently, it is no longer susceptible to *ex ante* regulation, since it does not cumulatively fulfill the three criteria. However, the TRC reserves the right to treat the retail markets for retail international calls as also being susceptible to *ex ante* regulation if the conditions of the market would indicate a lack of effective competition at some future point in time.

V . D E S I G N A T I O N O F D O M I N A N T L I C E N S E E S

To determine whether any of the markets identified in Chapter IV of this Decision are characterized by a lack of effective competition (*i.e.*, dominance), the TRC has assessed whether any given operator (or operators) has (or 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 has taken into account the various "impact factors" listed in the *Competition Safeguards* and the matters listed in the *White Paper*.

The TRC has found that all existing licensed Fixed Network Operators (FNOs) **hold a dominant position on the markets for the wholesale termination on their respective individual fixed networks**. This finding is established on the basis of the factors included in Article 8 of the *Competition Safeguards*, predominantly those in relation to:

- i. The existence of high market shares (*i.e.*, 100%) held by each of them (Article 8(b) of the *Competition Safeguards*).
- ii. The existence of very high barriers to entry (*i.e.*, the technical inability to terminate voice calls other than on the number of the subscriber attached to a particular fixed network operator) in relation to the relevant markets identified (Articles 8(c) (13)-(14) of the *Competition Safeguards*).
- iii. 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 **Orange Fixed holds a dominant position on the respective markets for wholesale fixed call origination, wholesale transit services, retail fixed domestic telephony access connections, and retail fixed domestic telephony calls**. In each case, these findings are based on Orange Fixed having a very high market share in each respective relevant market (Article 8(b) of the *Competition Safeguards*), which is in turn further supplemented by the control of essential facilities, the presence of economies of scale, scope and density, the extent of vertical integration, and the existence of high barriers to entry into the market (Articles 8(c) (2), (9), (10), (13), (14) of the *Competition Safeguards*) and the lack of countervailing buyer power on the part of access seekers that might otherwise constrain the supply-side market power of Orange Fixed (Article 8(c)(6) of the *Competition Safeguards*).

Based on these findings, the TRC hereby determines to designate:

- **All Licensees** that provide voice call termination services over their own fixed networks within the lifetime of this review, as Dominant Licensees for the provision of **wholesale fixed call termination services over their individual networks**.
- **Orange Fixed** as a Dominant Licensee in the following relevant markets:
 - i. the market for **wholesale fixed call origination**;

- ii. the market for **wholesale transit services**;
- iii. the market for **retail fixed telephony access connections** ; and
- iv. the market for **retail fixed domestic telephony calls**.

V I . *EX ANTE* R E G U L A T I O N T O R E M E D Y T H E I D E N T I F I E D C O M P E T I T I O N P R O B L E M S

In order to address the competition problems related to the dominance of:

- **All Licensees** in the markets for wholesale fixed call termination on their respective individual networks, and
- **Orange Fixed** in the markets for wholesale fixed call origination, for wholesale transit services, for retail fixed telephony access connections, and for retail fixed domestic telephony calls,

the TRC determines the following:

1. **The Markets for Wholesale Call Termination on Fixed Networks**

The TRC has identified a number of potential competition problems which usually arise in relation to individual dominance in the markets for wholesale fixed voice call termination, in the absence of *ex ante* regulation. These problems are: the incentive to deny the provision of wholesale call termination to smaller operators, the incentive to engage in delaying tactics in interconnection procedures, the incentive to impose unjustified contractual terms, the incentive to impose unjustified interconnection terms in order to raise the interconnection costs of rivals, and the incentive to impose excessive termination charges.

In order to address the potential competition problems related to the dominance of Licensees on the markets for wholesale fixed voice call termination over their own individual networks, the designated Licensees shall be subject to the following *ex ante* regulatory obligations.

1.1 **Access Upon Reasonable Request**

Each designated Licensee shall provide access to call termination services upon reasonable request, supported by an obligation of transparency, including the publication of the terms and conditions for the provision of call termination.

More specifically, the access obligation shall comprise the following:

- i. Each designated Licensee shall provide call termination services upon reasonable request. Access “upon reasonable request” implies that requests should only be refused on the basis of objective criteria such as technical feasibility or the need to maintain network integrity. The onus of proof shall be on the designated Licensee to prove that such objective criteria exist. More specifically, Orange Fixed shall provide both local and single call termination. Orange Fixed shall also provide double call termination once this service becomes technically feasible.
- ii. Each designated Licensee shall provide access to its associated facilities (*e.g.*, collocation and infrastructure sharing) and services in relation to the provision of call termination in response to access demands by other operators.

- iii. Each designated Licensee should not withdraw access in relation to fixed call termination services which it has already granted without the TRC's prior approval.

1.2 Transparency

Each designated Licensee shall publish specified information on its website in relation to wholesale fixed call termination provision, which shall include matters such as the location and characteristics of interconnection sites and wholesale prices. The provision of specified information and the procedures of access to this information by way of public or Intranet access will be further specified by the TRC after the adoption of the proposed obligations.

In addition to the above obligation imposed on all designated Licensees, Orange Fixed shall publish terms and conditions and prices for the provision of fixed call termination in a Reference Offer (Reference Interconnection Offer), which will be subject to a prior public consultation process, with the approval of the terms of the Reference Offer and amendments thereto vesting in the TRC. *Annex I* hereto contains a minimum list of items that should be addressed in the Reference Interconnection Offer. For the purpose of facilitating the transfer of information to alternative operators and to the TRC relevant to the provision of wholesale fixed call termination services (such as alternative operators' requests for wholesale fixed call termination services, access to Key Performance Indicators - KPIs), Orange Fixed should develop its Wholesale Customer Relations Management ("WCRM") system.

1.3 Non-discrimination

Each designated Licensee shall not be allowed to discriminate between the internal and external provisioning of fixed call termination service on either price and non-price terms, and is thereby obliged to offer equivalent conditions, prices, and quality in equivalent circumstances. In furtherance of this obligation, each designated Licensee shall monitor compliance with the non-discrimination and transparency obligations by measuring its KPIs, and shall provide the relevant information to interconnected parties and to the TRC.

1.4 Accounting Separation

Orange Fixed shall provide a separate set of accounts for fixed call termination services in order to reflect the performance of the provision of fixed call termination services as if operated as a separate business.

To this end, Orange Fixed shall prepare the following financial information on an annual basis:

- Financial statements for wholesale fixed call termination services: These shall comprise a profit and loss (P&L) statement and a mean capital employed (MCE) statement.
- All relevant supporting information: This includes the consolidation of P&L and MCE statements and a reconciliation with statutory accounts or other source of

costing information; a description of the costing methodologies (including reference to cost base and standards, allocation and valuation methodologies, identification and treatment of indirect costs); non-discrimination notes (detailed transfer charges); a description of accounting policies and regulatory accounting principles; and other supplementary schedules, as required.

The specific accounting rules and reporting formats and the publication requirements for all services that relate to the obligation of 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 wholesale fixed call termination service and associated facilities and services. The appropriate cost standard applied shall be that of forward looking long-run incremental costs (“FW-LRIC”), 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 full specification of the obligation to use cost-based prices for wholesale fixed call termination services and associated facilities and services will be applied by the TRC as part of the remedy implementation exercise.

1.6 Existing Remedies

The existing obligations imposed on designated Licensees in relation to fixed call termination under the *Interconnection Instructions* shall be reviewed with regard to their compatibility in relation to the obligations imposed under this Decision.

In order to effectively implement the remedies listed above, the TRC will satisfy the due process procedures associated with the amendment of the current *Interconnection Instructions* and Orange Fixed’s current *Reference Offer*.

2. The Market for Wholesale Fixed Call Origination

In order to address the potential competition problems specified in the Public Consultation document in relation to the dominance of Orange Fixed in the market for wholesale fixed call origination, Orange Fixed shall be subject to the following *ex ante* regulatory obligations.

2.1 Access Upon Reasonable Request

Orange Fixed shall provide access to fixed call origination services upon reasonable request, supported by an obligation of transparency, including the publication of the terms and conditions for the provision of fixed call origination.

Access “upon reasonable request” implies that requests should only be refused on the basis of objective criteria such as technical feasibility or the need to maintain network integrity. The onus of proof shall be on the dominant operator to prove that such objective criteria exist. More specifically, Orange Fixed shall provide both local and single call origination. Orange Fixed shall also provide double call origination once this service becomes technically feasible.

More specifically, the wholesale call origination access obligation imposed on Orange Fixed shall comprise the following:

- i. The provision of call origination service in response to access demands by other operators by means of the provision of Carrier Selection (CS) and Carrier Pre-selection (CPS) for all types of calls, including: calls to fixed end-users (Local and National calls), calls to mobile end-users, calls to non-geographic numbers and calls to international destinations;
- ii. The provision of access to its associated facilities (e.g., collocation and infrastructure sharing) and services in relation to call origination service, in response to access demands made by other operators.
- iii. Not withdrawing access in relation to fixed call origination service which it has already granted without the TRC’s prior approval.

The provision of Number Translation Transit Origination (NTTO) services for calls such as *Auto Freephone, Local Fee Call, National Call Fee, Internet Service Provider* and *Calling Card selection* 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

Orange Fixed shall publish specified information on its website in relation to the provision of wholesale fixed call origination that includes matters such as the location and characteristics of interconnection sites and wholesale prices. The provision of specified information and the procedures of access to this information by way of public or Intranet access will be further specified by the TRC after the adoption of the proposed measures.

Orange Fixed shall publish terms and conditions and prices for the provision of fixed call origination services in a Reference Offer (Reference Interconnection Offer), which will be subject to a prior public consultation process, with the approval of the terms of the Reference Offer and any amendments thereto vesting in the TRC. *Annex I* hereto contains a minimum list of items that should be addressed in the Reference Interconnection Offer. For the purpose of facilitating the information transfer to alternative operators and to the TRC that is relevant

in the provision of wholesale fixed call origination services (such as alternative operators' requests for wholesale fixed call origination services, access to Key Performance Indicators - KPIs), Orange Fixed should develop its Wholesale Customer Relations Management ("WCRM") system.

2.3 Non-discrimination

Orange Fixed shall not be allowed to discriminate between the internal and external provisioning of fixed call origination service on either price or non-price terms, and is thereby obliged to offer equivalent conditions, prices, and quality in equivalent circumstances. Orange Fixed shall monitor compliance with the non-discrimination and transparency obligations by measuring its KPIs, and shall provide the relevant information to interconnected parties and to the TRC in this respect.

2.4 Accounting Separation

Orange Fixed shall provide a separate set of accounts for fixed call origination services in order to reflect the performance of the provision of fixed call origination services as if it has been operated as a separate business.

To this end, Orange Fixed shall prepare the following financial information on an annual basis:

- Financial statements for wholesale fixed call origination services: These shall comprise a profit and loss (P&L) statement and a mean capital employed (MCE) statement.
- All relevant supporting information: This includes the consolidation of P&L and MCE statements and a reconciliation with statutory accounts or other source of costing information; a description of the costing methodologies (including reference to cost base and standards, allocation and valuation methodologies, identification and treatment of indirect costs); non-discrimination notes (detailed transfer charges); a description of accounting policies and regulatory accounting principles; and other supplementary schedules, as required.

The specific accounting rules and reporting formats, and the publication requirements for all services that relate to the obligation of accounting separation, shall be subject to a Public Consultation process prior to their implementation.

2.5 Cost-based Prices

Orange Fixed shall charge cost-based prices for wholesale fixed call origination services and associated facilities and services. The appropriate cost standard applied shall be that of forward looking long-run incremental costs ("FW-LRIC"), 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 full specification of the obligation to use cost-based prices for wholesale fixed call origination services and associated facilities and services will be applied by the TRC as part of the remedy implementation exercise.

2.6 Billing Arrangements

The TRC determines that Orange Fixed 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 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 fixed sector relative to the costs of implementing consolidated billing.

2.7 Existing remedies

The existing obligations imposed on designated Licensees in relation to fixed call origination under the *Interconnection Instructions* shall be reviewed with regard to their compatibility in relation to the obligations imposed under this Decision.

In order to effectively implement the remedies listed above, the TRC will satisfy the due process procedures associated with the amendment of the current *Interconnection Instructions* and Orange Fixed's current *Reference Offer*.

3. The Market for Wholesale Transit

In order to address the potential competition problems specified in the Public Consultation document which relate to the dominance of Orange Fixed in the market for wholesale transit, Orange Fixed shall be subject to the following *ex ante* regulatory obligations.

3.1 Access Upon Reasonable Request

Orange Fixed shall provide access to wholesale transit service upon reasonable terms of request, supported by an obligation of transparency, including the publication of the terms and conditions for wholesale transit service provision.

Access "upon reasonable request" implies that requests should only be refused on the basis of objective criteria such as technical feasibility or the need to maintain network integrity. The onus of proof shall be on the dominant operator to prove that such objective criteria exist.

More specifically, the wholesale transit access obligation imposed on Orange Fixed shall comprise the following:

- i. The provision of wholesale transit service in response to access demands by other operators.
- ii. The provision of access to its associated facilities (*e.g.*, collocation and infrastructure sharing) and services in relation to wholesale transit service, in response to access demands by other operators.
- iii. Not withdrawing the access in relation to wholesale transit service which it has already granted without the TRC's prior approval.

3.2 Transparency

Orange Fixed shall publish specified information on its website in relation to wholesale transit provision, which shall include matters such as the location and characteristics of interconnection sites and wholesale prices. The provision of specified information and the procedures of access to this information by way of public or Intranet access will be further specified by the TRC after the adoption of the proposed measures.

Orange Fixed shall publish terms and conditions and prices for wholesale transit in a Reference Offer (Reference Interconnection Offer), which will be subject to a prior public consultation process, with amendments and approval of the terms of the Reference Offer vesting in the TRC. *Annex I* hereto contains a minimum list of items that should be addressed in the Reference Interconnection Offer. For the purpose of facilitating the information transfer to alternative operators and to the TRC, which is very relevant to the provision of wholesale transit services (such as alternative operators' request for wholesale transit services, access to Key Performance Indicators - KPIs), Orange Fixed should develop its Wholesale Customer Relations Management ("WCRM") system.

3.3 Non-discrimination

Orange Fixed shall not be allowed to discriminate between the internal and external provisioning of transit services whether in price or non-price terms, and will be required to thereby offer equivalent conditions, prices, and quality in equivalent circumstances. Orange Fixed shall monitor compliance with the non-discrimination and transparency obligations by measuring its KPIs, and shall provide the relevant information to interconnected parties and to the TRC.

3.4 Accounting Separation

Orange Fixed shall provide separate set of accounts for the provision of transit services in order to reflect the performance of the provision of transit services as if it had been operated as a separate business.

To this end, Orange Fixed shall prepare the following financial information on an annual basis:

- Financial statements for wholesale transit services: These shall comprise a profit and loss (P&L) statement and a mean capital employed (MCE) statement.
- All relevant supporting information: This includes the consolidation of P&L and MCE statements and a reconciliation with statutory accounts or other source of costing information; a description of the costing methodologies (including reference to cost base and standards, allocation and valuation methodologies, identification and treatment of indirect costs); non-discrimination notes (detailed transfer charges); a description of accounting policies and regulatory accounting principles; and other supplementary schedules, as required.

The specific accounting rules and reporting formats and the publication requirements for all services that relate to the obligation of accounting separation shall be subject to a Public Consultation process prior to their implementation.

3.5 Cost-based Prices

Orange Fixed shall charge cost-based prices for wholesale transit service and associated facilities and services. The appropriate cost standard applied shall be that of forward looking long-run incremental costs (“FW-LRIC”), 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 full specification of the obligation to use cost-based prices for wholesale fixed transit services and associated facilities and services will be applied by the TRC as part of the remedy implementation exercise.

3.6 Existing Remedies

The existing obligations imposed on designated Licensees in relation to fixed transit under the *Interconnection Instructions* shall be reviewed with regard to their compatibility in relation to the obligations imposed under this Decision.

In order to effectively implement the remedies listed above, the TRC will satisfy the due process procedures associated with the amendment of the current *Interconnection Instructions* and Orange Fixed’s current *Reference Offer*.

4. The Markets for Retail Fixed Telephony Access and Retail Fixed Domestic Telephony Calls

In order to address the potential competition problems related to the dominance of Orange Fixed in the markets for Retail Fixed Telephony Access and Retail Fixed Domestic Telephony Calls, Orange Fixed shall be subject to the following *ex ante* regulatory obligations.

4.1 Non-discrimination / Transparency

Orange Fixed shall ensure that each end-user can obtain fixed telephony access and fixed domestic telephony calls services within the same timeframe as other end-users in equivalent circumstances (non-discrimination in terms of provisioning times).

Orange Fixed shall process requests for information, operation and maintenance by each end user within the same timeframe as equivalent requests made by other end-users (non-discrimination in terms of service management).

Orange Fixed shall charge all types of calls included in the fixed domestic telephony market on a per-second billing basis. Orange Fixed is not permitted to charge set-up fees per individual telephony call, or to charge for a minimum duration per telephone call independent of the duration of that particular telephone call.

Orange Fixed shall offer Service Level Agreements (“SLAs“) relevant to the provision of fixed telephony access and fixed domestic telephony calls services, with appropriate compensation in the case of non-compliance with the agreed service levels.

Orange Fixed, whether acting in its own right or through any of its affiliated or otherwise related entities, shall not unreasonably bundle offers for retail fixed telephony access and domestic telephony services, whether together or in combination with other services, in a way that leads to a margin squeeze situation or to predatory pricing for the service bundle. In this regard, Orange Fixed or its relevant affiliated or otherwise related entity supplying the bundle, shall submit the following to the TRC, at least four weeks prior the commercial availability of bundled offers, assuming that the TRC has received full disclosure of the commercial elements of the bundled offer:

- i. A detailed description of the new bundle offer, accompanied by data predictions.
- ii. A declaration that its bundled tariff offering is in conformity with a series of fundamental regulatory principles, developed as part of the implementation exercise.

For the avoidance of doubt, this obligation regarding the pre-notification of bundled service offerings complements the existing obligation imposed in the TRC’s Regulatory Decision on the Fixed Broadband Markets Review on 14 July 2010, under Article 2.3 of that Decision (“Non-discrimination”) which relates to the prior notification of tariffs that include (whether as a bundled service or otherwise) new retail broadband Internet access products or changes in the tariffs to such existing products. The scope of the respective provisions is therefore identical, with the greater detail being afforded to Article 4.1 of this Decision because it also relates expressly to a retail market obligation, whereas the obligation referred to under Article 2.3 of the Decision of 14 July 2010 relates to a wholesale obligation which, by necessity, must also involve the retail level.

The TRC may raise additional questions relevant to the assessment of whether the bundled tariff might have anti-competitive implications, and which should be answered by Orange Fixed at least two weeks prior the commercial availability of bundled offers.

The TRC also has the power to assess the compatibility of the bundled tariff offering under its competition law powers after it has been released onto the market after one month from the time of its notification to the TRC.

4.2 Separate accounting

Orange Fixed shall provide separate accounts for retail fixed telephony access and domestic telephony services respectively in order to reflect the performance of the provision of retail fixed telephony access and domestic telephony services as if they had been operated as a separate businesses.

To this end, Orange Fixed shall prepare the following financial information on an annual basis:

- Financial statements for retail fixed telephony access and domestic telephony services respectively. These shall comprise a profit and loss (P&L) statement and a mean capital employed (MCE) statement.
- All relevant supporting information: this includes the consolidation of P&L and MCE statements and a reconciliation with statutory accounts or other source of costing information; a description of the costing methodologies (including reference to cost base and standards, allocation and valuation methodologies, identification and treatment of indirect costs); non-discrimination notes (detailed transfer charges); a description of accounting policies and regulatory accounting principles; and other supplementary schedules, as required.

The specific accounting rules and reporting formats and the publication requirements for all services that relate to the obligation of accounting separation shall be subject to a public consultation process prior to their implementation.

4.3 Price Control and cost accounting

Orange Fixed shall charge below or equal to a price cap for the following retail fixed telephony and domestic telephony sets of services, whether for residential or non-residential customers:

- i. connection and monthly fees for the following types of telephony access services (PSTN, ISDN-BRA and ISDN-PRA); and
- ii. call tariffs for local, national, fixed to mobile calls, and calls to service providers (including dial-up connections to Internet service providers).

The basket of services included in any price caps, and the procedures for the implementation of the price cap obligation, will be developed by the TRC as part of the remedy implementation exercise, and will be based on the price cap mechanism currently in place. For the avoidance of doubt, the price ceiling on dial-up connections to Internet Service Providers is maintained.

Orange Fixed shall prescribe a suitable top-down cost accounting system based on accounting rules and reporting formats specified by the TRC. The TRC will consult on accounting rules and reporting formats with the industry prior to their implementation, in the context of a Public Consultation process.

4.4 Existing remedies

The existing obligations imposed on Orange Fixed in relation to retail fixed telephony access and domestic telephony services shall be reviewed with regard to their compatibility in relation to the obligations imposed under this Decision, including those under *TRC Decision 2005/43-19*, *TRC Decision 3-18/2009* and the “*Code of Practice for customers affairs and the employees of the company.*”

For the purpose of implementing the remedies prescribed above, the TRC will follow the due process procedures which currently exist for the amendment of the *TRC’s Decision (2005/43-19)* and the current “*Code of Practice for customers affairs and the employees of the company.*”

V I I . T i m e p l a n f o r i m p l e m e n t a t i o n

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 Decision

V I I I . A N N E X E S

Annex 1: Minimum List of Items to be Addressed to Orange Fixed's Reference Interconnection Offer

The following constitutes the minimum list of items to be included in the Reference Interconnection Offer (RIO) of Orange Fixed.

- (A) Conditions required in order to obtain access to interconnection services:
 - 1. Network elements to which access is being offered:
 - 2. Information concerning the locations of physical access sites, including information about Points-of-Interconnection
 - 3. Quality of service
 - 4. Technical conditions
 - 5. Ordering, migration and provisioning procedures
 - 6. Capacity forecasting and future network planning

- (B) A list of relevant Orange Fixed services:
 - 1. Call termination
 - 2. Call origination
 - 3. Transit

- (C) Collocation services
 - 1. Information on the designated operator's relevant sites
 - 2. Collocation options at the sites indicated (including physical collocation and, as appropriate, distant collocation and virtual collocation)
 - 3. Equipment characteristics: restrictions, if any, on equipment that can be co-located
 - 4. Security issues: measures implemented by notified operators to ensure the security of their locations
 - 5. Access conditions for the staff of competitive operators
 - 6. Safety standards
 - 7. Rules for the allocation of space where collocation space is limited

8. Conditions for beneficiaries to inspect the locations at which physical collocation is available, or sites where collocation has been refused on grounds of lack of capacity
2. Information systems
 - Conditions for access to the designated operator's operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing
 3. Supply conditions
 - Lead times for responding to requests for supply of services and facilities, fault resolution, procedures to return to a normal level of service, and quality of service parameters
 - Standard contract terms, including, where appropriate, compensation provided for failure to meet lead times
 - Prices or pricing formulae for each feature, function and facility listed above
 4. Service Level Agreement(s) for the offered services (for ordering and fault resolution)

Annex 2: Glossary

The terms defined below are used in the Decision and/or in the accompanying Explanatory Memorandum.

Carrier Selection (CS): It is a mechanism that allows end-users to select alternative Telephony Operators to carry their calls by dialing a prefix on a call-by-call basis,

Carrier Pre Selection (CPS): It is a mechanism that allows end-users to select, in advance, alternative Telephony Operators to carry their calls without having to dial a prefix or install any special equipment at their premises.

Double termination/origination: The provision of call termination/origination by Orange Fixed to other Licensees that are connected to a transit switch of Orange Fixed, and where the call is delivered to/originated from subscribers whose number depends on another transit switch.

Integrated Service Digital Network – Basic Rate Access (ISDN-BRA): A telephony system used for digital transmission of voice and data over PSTN networks. The basic ISDN line has several additional features compared to PSTN lines, namely (i) the simultaneous usage of two telephony channels (the end-user can use two telephony lines in parallel); and (ii) the provision of data rate connectivity up to 64kpbs (or 128kpbs in case both channels are used for data connections)

Integrated Service Digital Network – Primary Rate Access (ISDN-PRA): A telephony system which consists of 30 voice channels (the end-user could use 30 telephony lines in parallel), and provides data rate connectivity up to 2Mbps.

Local termination/origination: The provision of call termination/origination by Orange Fixed to other Licensees that are connected to a transit switch of Orange Fixed, and where the call is delivered to/originated from subscribers whose number depends on this local switch.

Plain Switched Telephony Network (PSTN): A telephony system which allows end-users to make and receive calls (one telephony channel per PSTN line), while also providing data rates of up to 34kpbs.

Single termination/origination: The provision of call termination/origination by Orange Fixed to other Licensees that are connected to a transit switch of Orange Fixed, and where the call is delivered to/originated from subscribers whose number depends on this transit switch.