THE HASHEMITE KINGDOM OF JORDAN

TELECOMMUNICATIONS REGULATORY COMMISSION

Regulatory Decision

on

the Mobile Markets Review

Issued by TRC board decision No.(6-12/2020) dated (30/9/2020) amended by decision NO(15-1/2021) dated (31/01/2021)

TABLE OF CONTENTS

I. INTRODUCTION

On 28 July 2019, the Telecommunications Regulatory Commission ("TRC") published a *Public Consultation Document on the Review of Mobile Markets in Jordan*. 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 Ministry's *General Policy for the Information & Communications Technology and Postal Sectors, 2018*.[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 in 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 licensee(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 Mobile Telephone Services Company (Zain), Umniah Mobile Company (Umniah), Petra Jordanian Mobile Telecommunications Co. Ltd. (Orange Mobile) and Central E-Commerce Co. Ltd (JorMall). 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 the 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]

---

1 See the Telecommunications Law No. 13 of 1995 and, in particular, its Article 6(e) and Article 6(o).

2 Paragraph 21 of the Policy requires the TRC to review its instructions and regulatory decisions periodically and, where market conditions allow and where, in the judgment of the TRC this is appropriate, to amend such instructions and regulatory decisions in line with these conditions. In this respect, Government requires the TRC to favour a presumption of withdrawal of ex ante regulation where market conditions allow so.

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 out in the *Public*

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

- The definition of the relevant markets for mobile communications (Chapter III).
- An analysis of whether these relevant markets are susceptible to *ex ante* regulation (Chapter IV).
- Assessment of the conditions of competition in these markets and the designation of any Dominant Licensee(s) on these markets (Chapter V).
- The imposition, amendment or removal of *ex ante* remedies in these markets. (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 at 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.

Consultation Document. Insofar as the TRC departs in any material way from the preliminary conclusions reached in the *Public Consultation Document*, that departure is further explained by reference to the *Explanatory Memorandum* accompanying this Decision, based on the industry responses to the *Public Consultation Document*.

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
Interconnection Instructions	:	Interconnection Instructions issued pursuant to Board Decision No. (2-1/2005) Dated (5/1/2005) and its amendments by Board Decision No.(18-11/2010) Dated (15/6/2010)
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
The Dominant Licensee	:	The Licensee(s) designated as dominant by the TRC in Chapter V of this Regulatory Decision

III. DEFINITION OF RELEVANT MARKETS

The TRC hereby defines the following relevant product markets:

1. A **retail mobile market** consisting of a cluster of voice and data-related services, which includes the provision of access; national, international and roaming calls; SMS and other value-added services, and has the following further characteristics:

    a. The relevant product market comprises both pre-paid and post-paid services; both business and residential services; and all of the technologies used for the provision of mobile services; and

    b. The relevant product market does not include fixed services and OTT services.

2. A **wholesale mobile voice call termination** market, which includes the termination of voice calls on each individual mobile network in Jordan (with a different market for each individual mobile network), regardless of the underlying technology, but excluding SMS termination or fixed call termination.

3. A **wholesale mobile SMS termination market**, which includes the termination of SMS on each individual mobile network in Jordan (with a different market for each individual mobile network), regardless of the underlying technology, including both A2P and P2P SMS termination but excluding voice call termination.

4. A **wholesale market for mobile access and voice call origination** (MACO), consisting of all wholesale access and call origination services that can be offered over a mobile network in Jordan, also including self-supplied mobile access and call origination services by all three of the vertically integrated mobile network operators (MNOs) currently operating in Jordan.

The relevant geographic market for all of the above product markets is national in scope, covering the whole of Jordan.

IV. SUSCEPTIBILITY OF THE RELEVANT MARKETS TO *EX ANTE* REGULATION

In determining whether the relevant market defined in Chapter III of this Decision should lead to the imposition of *ex ante* regulatory obligations, the TRC has relied on the “three criteria test”. The cumulative fulfilment of the following three criteria would render the relevant market in question susceptible to *ex ante* regulation:

(i) Existence of high and persistent barriers to entry;

(ii) Lack of dynamic trend towards competition; and

(iii) Insufficiency of ex *post* intervention alone.

All of these three criteria have been found by the TRC to be fulfilled in relation to:

(i) the wholesale mobile voice call termination, and

(ii) the wholesale SMS termination markets.

TRC has determined that (i) the retail mobile market and (ii) the wholesale market for mobile access and voice call origination (MACO) are not susceptible to ex ante regulation.

V. DESIGNATION OF DOMINANT LICENSEES

To determine whether the market defined in chapter IV of this Decision is characterized by dominance, the TRC assessed whether any given operator (or operators) 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 this market, the TRC considered the “impact factors” listed in the *Competition Safeguards* and the factors listed in the *White Paper.*

1. Wholesale Mobile Voice Call Termination Markets

The TRC has found that each of the three MNOs currently operating in Jordan meets several of the conditions associated with a dominant position in the wholesale mobile voice termination market. In particular:

(i) Each of the three MNOs can terminate voice calls on its own mobile network and has 100% market share for the termination of such calls. Therefore, all MNOs’ market shares are well in excess of 50%, the threshold for the presumption of dominance established required by Article 8(b) of the *Competition Safeguards*.

(ii) The three MNOs’ monopoly positions have not changed over the course of time, and will not change going forward, as the issue is structural. Each mobile network operator is an outright monopolist in the termination of calls to its own subscribers. An individual MNO’s monopoly position is not contestable, as no other supplier could provide voice call termination services on another operator’s network. There is, therefore, a lack of actual and potential competition (see *Competition Safeguards*, Article 8(c), Number 12).

(iii) Given the outright monopoly on termination of calls to any particular MNO subscriber, there can be no constraints on that MNO's power from direct competition. Other operators cannot credibly threaten to refuse to interconnect in response to high termination rates, as they would expect to lose a significant number of users if their network does not provide access to all Mobile operators. Furthermore, they have a general duty to interconnect under existing Interconnection Instructions. Further, for end users, given the "calling party pays" (CPP) principle, there are limitations to the way that they can constrain the power of the terminating operator, unless they are able to co-ordinate amongst their calling circle to ensure everyone is on the same network and thus benefit from lower on-net rates where termination is self-supplied by the same operator as the call is originating from. Generally therefore, there is no countervailing power of competitors or customers, including end-users (see *Competition Safeguards,* Article 8(c) Number 6).

(iv) In some cases, consumers may be able to use voice calls via over-the-top (OTT) services as a substitute for traditional voice calls that incur termination fees. Whilst this may lead to a reduction in traditional voice call traffic, it does not alter the underlying structural issue in the voice call termination market, such that any traditional voice calls will still require the purchase of wholesale termination services from an operator, as a monopolist on the termination of calls to its own subscribers. Providers of OTT services cannot, therefore, be considered actual or potential competitors in this market (*Competition Safeguards*, Article 8(c) Number 12).

The above considerations are linked to structural issues that are not expected to be different in the case of any MNO that enters the market in the future and provides voice call termination services to its subscribers. Further, the same considerations also apply with regard to the termination of voice calls by MVNOs to their subscribers, a market over which MVNOs have a similarly incontestable monopoly.

Based on the above, the TRC hereby determines to designate:

(i) Orange Mobile as a Dominant Licensee in the market for wholesale termination of voice calls to the mobile network of Orange Mobile.

(ii) Zain as a Dominant Licensee in the market for wholesale termination of voice calls to the mobile network of Zain.

(iii) Umniah as a Dominant Licensee in the market for the wholesale termination of voice calls to the mobile network of Umniah.

(iv) Any future Mobile Network Operator (MNO) as a Dominant Licensee in the market for the wholesale termination of voice calls to its mobile network.

(v) Any future Mobile Virtual Network Operator (MVNO) as a Dominant Licensee in the market for the wholesale termination of voice calls to its subscribers.

This designation also extends to any existing or future affiliates of each of the above existing or future MNOs and MVNOs that (i) forms a single economic entity with that MNO (or MVNO), by reason of common ownership or control, and (ii) offers, directly or indirectly, voice call termination services on that MNO's network or to that MVNO's subscribers.

2. Wholesale SMS Termination Markets

The TRC has found that each of the three MNOs currently operating in Jordan meets several of the conditions associated with a dominant position in the respective wholesale SMS termination market. In particular:

(i) Each of the three MNOs can terminate SMS on its own mobile network and has 100% market share for the termination of such SMS. Therefore, all MNOs' market shares are well in excess of 50%, the threshold for the presumption of dominance established required by Article 8(b) of the *Competition Safeguards*.

(ii) The three MNOs' monopoly positions have not changed over the course of time, and will not change going forward, as the issue is structural. Each mobile network operator is an outright monopolist in the termination of SMS to its own subscribers. An individual MNO's monopoly position is not contestable, as no other supplier could provide SMS termination services on another operator's network. There is, therefore, a lack of actual and potential competition (see *Competition Safeguards*, Article 8(c), Number 12).

(iii) Other operators cannot credibly threaten to refuse to interconnect in response to (hypothetically) high termination rates for SMS, as they would expect to lose a significant number of users if their network does not provide SMS access to all mobile operators. There is, therefore, no countervailing power of competitors or customers, including end-users (see *Competition Safeguards*, Article 8(c) Number 6).

(iv) In some cases, consumers may be able to use messages provided by over-the-top (OTT) services/applications as a substitute for traditional SMS that otherwise incur a charge. Whilst this may lead to a reduction in SMS traffic, it does not alter the underlying structural issue in the wholesale SMS termination market, such that any SMS will still require the purchase of wholesale termination services from an operator that is an outright monopolist on the termination of SMS to its own subscribers. Providers of OTT services cannot, therefore, be considered actual or potential competitors in this market (*Competition Safeguards*, Article 8(c) Number 12).

The above considerations are linked to structural issues that are not expected to be different in the case of any MNO that enters the market in the future and provides SMS termination services to its subscribers. Further, the same considerations also apply with regard to the termination of SMS by MVNOs to their subscribers, a market over which MVNOs have a similarly incontestable monopoly.

Based on the above, the TRC hereby determines to designate:

(i) Orange Mobile as a Dominant Licensee in the market for the wholesale termination of SMS to the Orange Mobile mobile network.

(ii) Zain as a Dominant Licensee in the market for the wholesale termination of SMS to the Zain mobile network.

(iii) Umniah as a Dominant Licensee in the market for wholesale termination of SMS to the Umniah mobile network.

(iv) Any future Mobile Network Operator (MNO) as a Dominant Licensee in the market for the wholesale termination of SMS to its mobile network.

(v) Any future Mobile Virtual Network Operator (MVNO) as a Dominant Licensee in the market for the wholesale termination of SMS to its subscribers.

This designation also extends to any existing or future affiliates of each of the above existing or future MNOs that (i) forms a single economic entity with that MNO (or MVNO), by reason of common ownership or control, and (ii) offers, directly or indirectly, SMS termination services on that MNO's network or to that MVNO's subscribers.

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

Ex ante remedies in the two markets concerned must address actual or potential competition problems related to the dominance of each operator with SMP and, in particular, the risk of excessive retail pricing, withdrawal of service or discrimination between customers.

1. Wholesale Mobile Voice Call Termination Markets

The TRC hereby determines that each Dominant Licensee in the market for wholesale termination of voice calls to its own mobile network shall be subject to the following *ex ante* regulatory obligations:

1.1 Access upon reasonable request

All Dominant Licensees must provide access to wholesale voice call termination on their own mobile network or (in the case of MVNOs) to their subscribers, upon reasonable request. Such access shall also include access to associated facilities and services (e.g., collocation and infrastructure sharing). A request for such access shall be presumed to be reasonable, unless the Dominant Licensee can justify its refusal to provide such access. In addition:

i. The Dominant Licensee must not withdraw access to any wholesale termination service or associated facility without the TRC's prior approval.

ii. The Dominant Licensee must negotiate in good faith with access seekers;

iii. The Dominant Licensee must consider and conclude access agreements in a fair, reasonable and timely manner.

1.2 Transparency

a. All Dominant Licensees must publish and keep up-to-date a Reference Offer for their wholesale voice call termination services and any associated products, services or facilities, whose minimum content must comply with any more detailed requirements specified by the TRC and be subject to the TRC's approval.

b. All Dominant Licensees must provide information to the TRC on a set of Key Performance Indicators (KPIs), to be defined by the TRC subject to public consultation, whose purpose shall be to demonstrate compliance with the MNOs' above access and non-discrimination obligation for the treatment of orders initiated by other operators and the Dominant Licensee's own downstream arm, and the treatment of faults and repairs.

1.3 Non-Discrimination

a. All Dominant Licensees must provide all products, services and associated facilities in the market for voice call termination without discrimination on any price or material non-price elements, and offer equivalent conditions, prices and quality in equivalent circumstances.

b. All Dominant Licensees must provide an annual Statement of Compliance with their above non-discrimination obligations, to be signed by an appropriate signatory within their organisation. The Statement of Compliance should adequately demonstrate the Dominant Licensee's compliance with its ex ante regulatory obligations on non-discrimination, with respect to both price and non-price components. The minimum content of a Statement of Compliance shall be further specified by the TRC.

1.4 Accounting Separation

All Dominant Licensees must provide relevant accounting information as further specified by the TRC, subject to public consultation.

1.5 Price Control and Cost Accounting

a. All Dominant Licensees must offer cost-based prices for their wholesale voice call termination services and any associated products, services or facilities. The appropriate cost standard applied shall be based on a long-run incremental costs ("LRIC") method

b. All Dominant Licensees must follow the existing TSLRIC hybrid model developed by the TRC, and apply the regulated rates for mobile call termination specified in the TRC's 2017 Regulatory Decision on Charges for Mobile Interconnection, subject to any other TRC Decision that amends or supersedes it in the future

c. The wholesale charges for the voice call termination services of an MVNO must, 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.

2. Wholesale SMS Termination Markets

The TRC hereby determines that each Dominant Licensee in the market for wholesale termination of SMS to its own mobile network or its subscribers shall be subject to the following *ex ante* regulatory obligations:

2.1 Access upon reasonable request

All Dominant Licensees must provide access to wholesale SMS termination on their own mobile network or (in the case of MVNOs) to their subscribers, upon reasonable request. Such access shall also include access to associated facilities and services (e.g., collocation and infrastructure sharing). A request for such access shall be presumed to be reasonable, unless the Dominant Licensee can justify its refusal to provide such access. In addition:

i. The Dominant Licensee must not withdraw access to any SMS termination service or associated facility without the TRC's prior approval.

ii. The Dominant Licensee must negotiate in good faith with SMS termination access seekers;

iii. The Dominant Licensees must consider and conclude access agreements in a fair, reasonable and timely manner.

2.2 Transparency

a. All Dominant Licensees must publish and keep up-to-date a Reference Offer for their wholesale SMS termination services and any associated products, services or facilities, whose minimum content must comply with any more detailed requirements specified by the TRC and be subject to the TRC's approval.

b. All Dominant Licensees must provide information to the TRC on a set of Key Performance Indicators (KPIs), to be defined by the TRC subject to public consultation, whose purpose shall be to demonstrate compliance with the MNOs' above access and non-discrimination obligation for the treatment of orders initiated by other operators and the Dominant Licensee's own downstream arm, and the treatment of faults and repairs.

2.3 Non-Discrimination

a. All Dominant Licensees must provide all products, services and associated facilities in the market for SMS termination without discrimination on any price or material non-price elements, and offer equivalent conditions, prices and quality in equivalent circumstances.

b. All Dominant Licensees must provide an annual Statement of Compliance with their above non-discrimination obligations, to be signed by an appropriate signatory within their organisation. The Statement of Compliance should adequately demonstrate the Dominant Licensee's compliance with its ex ante regulatory obligations on non-discrimination, with respect to both price and non-price components. The minimum content of a Statement of Compliance shall be further specified by the TRC.

2.4 Accounting Separation

All Dominant Licensees must provide relevant accounting information as further specified by the TRC, subject to public consultation.

2.5 Price Control and Cost Accounting

a. If a Dominant Licensee withdraws from the current bill-and-keep system, this and the other Dominant Licensees must offer cost-based prices for their wholesale SMS termination services and any associated products, services or facilities. The appropriate cost standard applied shall be based on a long-run incremental costs (“LRIC”) method.

b. Dominant Licensees must apply the termination rates determined by decision of the TRC.

c. The wholesale charges for the SMS 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.

3. Removal of ex ante remedies

Decision No (9/1-2004) imposing remedies on Zain shall cease to be in force, as of the date of this Decision.

The existing ex ante obligations imposed under the Regulatory Decision on the Mobile Markets Review, No. (9-25/2010) dated 21 December 2010, are hereby replaced and superseded by those set out in this Decision.

Any Reference Offer, and any decision or other measure of the TRC adopted in implementation of the Regulatory Decision on the Mobile Markets Review, No. (9-25/2010) dated 21 December 2010, shall remain in force as long as it is not expressly replaced or amended through a measure adopted in implementation of the present Decision.

In the event of any conflict between any obligations defined in this Decision and those applying under the currently approved Interconnections Instructions, those set out in this Decision shall prevail. During the implementation phase, the TRC will follow the due process for amending the currently approved Interconnection Instructions.

4. Transitional provisions and implementation

Within a month from the date of publication of this Regulatory Decision, the TRC will issue a time plan for the implementation of the above remedies.