*THE HASHEMITE KINGDOM OF JORDAN*

*TELECOMMUNICATIONS REGULATORY COMMISSION*

# Regulatory Decision

# on the Dedicated Capacity Markets Review

*Issued by TRC board decision No.(7-12/2020 ) dated ( 30/9/2020)*

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# I. INTRODUCTION

On 28 July 2019, the Telecommunications Regulatory Commission ("TRC") published a *Public Consultation Document on the Review of Dedicated Capacity (Leased Lines) 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 (*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 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 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) and Umniah Mobile Company (Umniah). Further comments to those respondents' comments were received from Jordan Mobile Telephone Services Company (Zain) and Orange Fixed.

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 Retail Market for Traditional Interface (TI) Leased Lines. 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 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 Leased Lines (Chapter III).
- An analysis of whether these relevant markets are susceptible to *ex ante* regulation (Chapter IV).
- Assessment of the conditions of competition in that markets and the designation of any Dominant Operator(s) on that 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.

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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 and data updates which reflect developments in the market*

## 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) as amended 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 Operator | : | The Licensee(s) designated as dominant by the TRC in Chapter V of this Regulatory Decision |
| Alternative Operator | : | Any Licensee other than the Dominant Operator or its affiliates |

## III. DEFINITION OF RELEVANT MARKETS

The TRC hereby defines the following relevant markets:

1. **Retail Market for Traditional Interface (TI) Leased Lines,** i.e. legacy leased lines with analogue or digital interfaces**.** This relevant product market:

   - includes all local, national and international TI retail leased lines, of all bandwidths, that originate in Jordan;
   - does not include the provision of broadband services, VPNs or dark fibre;
   - includes point-to-point (P2P) wireless retail leased lines;
   - does not differentiate between analogue or digital (TDL-based, including both PDH and SDH) traditional interface (TI) leased lines.

The geographical scope of this product market is national.

2. **Retail Market for Modern Interface (MI) Leased Lines**, i.e. digital leased lines using Ethernet or other modern technologies, also including Wavelength Division Multiplexing (WDM)**.** This relevant product market:

   - includes all local, national and international MI retail leased lines, of all bandwidths, that originate in Jordan;
   - does not include the provision of broadband services, VPNs or dark fibre;
   - includes point-to-point (P2P) wireless retail leased lines;

The geographical scope of this product market is national.

3. **Wholesale market for the provision of traditional interface (TI) terminating segments of leased lines,** i.e., the segments between an end point of the network and the leased line serving exchange. Further, this relevant product market:

   - includes traditional interface (TI) terminating segments of leased lines of any bandwidth;
   - does not include the provision of broadband services, VPNs or dark fibre;
   - includes point-to-point (P2P) wireless leased lines;
   - does not differentiate between analogue or digital (TDL-based, including both PDH and SDH) traditional interface (TI) leased lines.

The geographical scope of this product market is national.

4. **Wholesale market for the provision of modern interface (MI) terminating segments of leased lines,** i.e., the segments between an end point of the network and the leased line serving exchange. Further, this relevant product market:

- includes modern interface (MI) terminating segments of leased lines of any bandwidth;
- does not include the provision of broadband services, VPNs or dark fibre;
- includes point-to-point (P2P) wireless leased lines.

The geographical scope of this product market is national.

5. **Wholesale market for the provision of traditional interface (TI) trunk segments of leased lines**, i.e., the segments between two leased line serving exchanges, up to and including international gateways in Jordan. Further, this relevant product market:

   - includes traditional interface (TI) trunk segments of leased lines of any bandwidth;
   - does not include the provision of broadband services, VPNs or dark fibre;
   - includes point-to-point (P2P) wireless leased lines;
   - does not differentiate between analogue or digital (TDL-based, including both PDH and SDH) traditional interface (TI) leased lines.

The geographical scope of this product market is national.

6. **Wholesale market for the provision of modern interface (MI) trunk segments of leased lines**, i.e., the segments between two leased line serving exchanges, up to and including international gateways in Jordan. Further, this relevant product market:

   - includes modern interface (MI) trunk segments of leased lines of any bandwidth;
   - does not include the provision of broadband services, VPNs or dark fibre;
   - includes point-to-point (P2P) wireless leased lines.

The geographical scope of this product market is national.

## IV. SUSCEPTIBILITY OF THE RELEVANT MARKET 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 the:

(i) Retail Market for Traditional Interface (TI) Leased Lines;

(ii) Wholesale market for the provision of traditional interface (TI) terminating segments of leased lines;

(iii) Wholesale market for the provision of traditional interface (TI) trunk segments of leased lines.

TRC has determined that all wholesale and retail modern interface (MI) dedicated capacity markets 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. Retail Market for Traditional Interface (TI) Leased Lines

The TRC has found that Orange Fixed meets several of the conditions associated with a dominant position in the retail market for traditional interface (TI) leased lines. In particular:

- Orange Fixed holds close to a 90% market share in the retail market for TI leased lines, and this has been consistent for the last three years. This market share is well in excess of 50%, the threshold for the presumption of dominance established by Article 8(b) of the *Competition Safeguards*.

- The position of Orange Fixed in the provision of retail TI leased lines is protected by high barriers to entry (see Competition *Safeguards*, Article 8(c), Impact Factor 14).

- Orange Fixed also has a legacy advantage of a ubiquitous network (see Competition Safeguards, Article 8(c), Impact Factor 3).

- There exist substantial economies of scale, scope and density in the access network which, in combination with the high share of sunk costs involved, make it unrealistic that another potential entrant could replicate the Orange Fixed network (see Competition Safeguards, Article 8(c), Impact Factor 9). For the same reason, TRC expects that there will be a lack of actual and potential competition (see *Competition Safeguards*, Article 8(c), Impact Factor 12).

Traditional interface technologies are a declining market, with products coming to end of life and being replaced by the preferred Modern Interface (MI) leased lines, which are provided over an Ethernet connection. For this reason (in addition to the high barriers to entry) the TRC considers it unlikely to see market entrance in the retail provision of TI leased lines (see *Competition Safeguards*, Article 8(c), Impact Factor 5).

While Orange Fixed does not have any competitors in this market, it does have a small but significant number of customers for TI retail leased lines. The fact that the number of these customers may be shrinking does not affect the conclusion that the very high market share in this market and the other factors mentioned above allow it to behave independently of its customers and ultimately of consumers in the relevant market.

Consequently, **Orange** Fixed is **hereby designated as a Dominant Operator in the retail market for TI leased lines**. This designation also extends to any existing or future affiliates of Orange Fixed that (i) form a single economic entity with Orange Fixed, by reason of common ownership or control, and (ii) offer, directly or indirectly, any retail TI leased lines that make use of any network elements or facilities of Orange Fixed.

### 2. Wholesale Market for Traditional Interface (TI) Terminating Segments of Leased Lines

The TRC has found that Orange Fixed meets several of the conditions associated with a dominant position in the **wholesale market for traditional interface (TI) terminating segments of leased lines**. In particular:

- Orange Fixed holds close to a 100% market share in the wholesale market for traditional interface (TI) terminating segments of leased lines, and this has been consistent for the last three years. This market share is well in excess of 50%, the threshold for the presumption of dominance established by Article 8(b) of the Competition Safeguards.

- The position of Orange Fixed in the provision of wholesale TI terminating segments of leased lines is protected by high barriers to entry (see Competition Safeguards, Article 8(c), Impact Factor 14).

- Orange Fixed also has a legacy advantage of a ubiquitous network (see Competition Safeguards, Article 8(c), Impact Factor 3).

- There exist substantial economies of scale, scope and density in the access network which, in combination with the high share of sunk costs involved, make it unrealistic that another potential entrant could replicate the Orange Fixed network (see Competition Safeguards, Article 8(c), Impact Factor 9). For the same reason, TRC expects that there will be a lack of actual and potential competition (see Competition Safeguards, Article 8(c), Impact Factor 12).

- Traditional interface technologies are a declining market, with products coming to end of life and being replaced by the preferred Modern Interface (MI) leased lines, which are provided over an Ethernet connection. For this reason (in addition to the high barriers to entry) the TRC considers it unlikely to see market entrance in wholesale provision of TI terminating segments of leased lines (see Competition Safeguards, Article 8(c), Impact Factor 5).

- Notwithstanding existing and potential barriers to entry, the TRC notes that the concept of dominance (or SMP) under the White Paper on Market Review Process "relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers." It is thus predicated on, among other conditions, the existence of customers. It is the TRC's view that there are unlikely to be new customers for wholesale TI leased lines, because the technology is end-of-life, and alternative operators offer only MI leased lines. In the TRC's view, the wholesale market for TI leased lines is not likely to exist at the time of the next review, as even Orange Fixed's self-supply is in decline.

The TRC has therefore concluded that, in the interest of proportionality, there is no merit in finding Orange Fixed dominant in a declining market in which the relevant products are becoming obsolete, and where, other than self-supply, there are no current or prospective wholesale customers. Accordingly, **no operator is designated as dominant in the wholesale market for traditional interface (TI) terminating segments of leased lines.**

## 3. Wholesale Market for Traditional Interface (TI) Trunk Segments of Leased Lines

The TRC has found that Orange Fixed meets several of the conditions associated with a dominant position in the wholesale market for traditional interface (TI) trunk segments of leased lines. In particular:

- Orange Fixed holds close to a 100% market share in the wholesale market for traditional interface (TI) trunk segments of leased lines, and this has been consistent for the last three years. This market share is well in excess of 50%, the threshold for the presumption of dominance established by Article 8(b) of the Competition Safeguards.

- The position of Orange Fixed in the provision of wholesale TI trunk segments of leased lines is protected by high barriers to entry (see Competition Safeguards, Article 8(c), Impact Factor 14).

- Orange Fixed also has a legacy advantage of a ubiquitous network (see Competition Safeguards, Article 8(c), Impact Factor 3).

- There exist substantial economies of scale, scope and density in the access network which, in combination with the high share of sunk costs involved, make it unrealistic that another potential entrant could replicate the Orange Fixed network (see Competition Safeguards, Article 8(c), Impact Factor 9). For the same reason, TRC expects that there will be a lack of actual and potential competition (see Competition Safeguards, Article 8(c), Impact Factor 12).

- Traditional interface technologies are a declining market, with products coming to end of life and being replaced by the preferred Modern Interface (MI) leased lines, which are provided over an Ethernet connection. For this reason (in addition to the high barriers to entry) the TRC considers it unlikely to see market entrance in wholesale provision of TI trunk segments of leased lines (see Competition Safeguards, Article 8(c), Impact Factor 5).

- Notwithstanding existing and potential barriers to entry, the TRC notes that the concept of dominance (or SMP) under the White Paper on Market Review Process "relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers." It is thus predicated on, among other conditions, the existence of customers. It is the TRC's view that there are unlikely to be new customers for wholesale TI leased lines, because the technology is end-of-life, and alternative operators offer only MI leased lines. In the TRC's view, the wholesale market for TI leased lines is not likely to exist at the time of the next review, as even Orange Fixed's self-supply is in decline.

The TRC has therefore concluded that, in the interest of proportionality, there is no merit in finding Orange Fixed dominant in a declining market in which the relevant products are becoming obsolete, and where, other than self-supply, there are no current or prospective wholesale customers. Accordingly, **no operator is designated as dominant in the wholesale market for traditional interface (TI) trunk segments of leased lines.**

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

*Ex ante* remedies must address actual or potential competition problems related to the dominance of the Dominant Operator and, in particular, the risk of excessive retail pricing, withdrawal of service or discrimination between customers. At the same time, such remedies should not be disproportionate or open ended, in light of the ongoing and irreversible transition of retail customers to MI leased lines.

Consequently, the TRC hereby determines that the Orange Fixed shall be subject to the following *ex ante* regulatory obligations in the **retail market for traditional interface (TI) leased lines:**

**Price control:**

a. The per unit or other charges of the Orange Fixed for retail customers of TI leased lines shall be subject to a price cap (based on a Retail Price Index (RPI)-0%) and may be increased only subject to a reasoned request by the Orange Fixed and TRC's prior approval.

b. The Orange Fixed must report annually to the TRC the volume of retail TI circuits it has leased over the relevant year (or a shorter period within that year) and its associated revenues, provide samples of relevant contracts, and confirm that its relevant retail prices for such leased lines have not increased since the last report, unless such price increases have been approved by the TRC.

c. The above obligation of the Orange Fixed shall be maintained for as long as less than 95% of all retail customers for leased lines in Jordan (and not just those of the Orange Fixed ) have a contract in place for MI leased lines. As soon as this threshold is exceeded, based on information verified to the TRC's satisfaction, TRC will issue a relevant confirmation, and the above obligations of the Orange Fixed will be maintained for a further 12 months, after which they will automatically and fully expire.

## VII. REMOVAL OF EX ANTE REMEDIES

The existing ex ante obligations imposed on Orange Fixed as a Dominant Operator in the relevant markets under Regulatory Decision on the Dedicated Capacity Market Reviews No (10-25/2010) dated 21 December 2010 shall cease to apply, as of the date of this Decision's entry into effect. Remedies proposed in the Consultation Paper but not confirmed in this Decision shall not enter into effect.

In the event of any conflict between any obligations defined in this Decision and those applying under the Interconnections Instructions of 5 January 2005, those set out in this Decision shall prevail. During the implementation phase, the TRC will follow the due process for amending the current text of the Interconnection Instructions accordingly.