Zain Response to Orange's Request for Reconsideration of TRC Market Review of the Dedicated Capacity Markets

DRAFT

1. Zain has carefully read the document entitled "Orange Fixed objections and Request for Reconsideration of the TRC Market Review Decision on the Dedicated Capacity Markets" (Request) and wishes to make the comments set out below. Our overall view is that Orange has failed to provide any evidence to support a reconsideration by the TRC and that the TRC should therefore refuse Orange's request. It is Zain's opinion that the TRC conducted a thorough review of the market and provided an objective and evidence-based assessment of the market definitions and assessment of Significant Market Power (SMP) and the appropriate remedies imposed on Orange.

2. We have three specific comment to make on Orange's Request.

3. First, Orange argues that "*technology neutrality is one of the basic principles of the market review process*" (para. 12). On this basis, it argues that Traditional Interface (TI) and Modern Interface (MI) leased lines should be in the same relevant market.

4. The TRC is no doubt aware that other jurisdictions, e.g. the UK, have defined separate markets for TI and MI (which Ofcom refers to as Contemporary Interface, or CI) leased lines. It is, therefore, not a breach of the basic principle of technology neutrality to find that TI and MI leased lines are not in the same market.

5. Secondly, at para. 13 Orange states that a "logical conclusion" of the TRC's finding that users may switch from TI to MI is that rival suppliers of MI leased lines would exert competitive pressure on Orange's supply of TI leased lines.

6. Zain does not see the logic of Orange's argument. It is quite feasible that asymmetric substitution exists in a market and that users of TI leased lines may switch to the superior MI leased lines in the event of a SSNIP[1] by a hypothetical monopolist of TI. However, users may not be willing to trade down in quality from MI to TI to avoid the SSNIP. In this case, it would be appropriate to define separate markets as the TRC has done.

7. Finally, Orange argues in para. 18 of its Request that leased lines used to connect its own buildings should be deducted from the market. Zain disagrees with Orange and suggests that self-supplied leased lines are part of the relevant market for two reasons. First, the leased lines that Orange refers to support the economies of scale that Orange enjoys on the supply of leased lines and so the average cost of leased lines provided to external customers. Secondly, as it is extremely unlikely that Orange would consider buying those internally used lines from another supplier, this part of the market is foreclosed to competition, meaning rival operators can neither earn the revenue from that supply nor enjoy the economies of scale from their supply.

[1] Small but Significant Non-transitory Increase in Price.