

*THE HASHEMITE KINGDOM OF JORDAN*



*TELECOMMUNICATIONS REGULATORY COMMISSION*

**EXPLANATORY MEMORANDUM To The Decision on the  
Reference Unbundling Offer**

25 July 2017

## **EXPLANATORY MEMORANDUM:**

### **I. Introduction**

Under the laws of Jordan, the Telecommunications Regulatory Commission (TRC) is the competent body to decide on matters relating to the telecommunications market. Its powers are laid down in the Telecommunications Law No. (13) of 1995 and its amendments. According to Article 6 of this Act, the TRC has been given specific tasks and the TRC is among others entitled to approve reference offers, to stimulate competition and thus also take decisions on reference offers submitted by enterprises that enjoy significant market power.

On 14 July 2010 the Telecommunications Regulatory Commission issued its decision “Regulatory Decision on the Fixed Broadband Markets Review”. This decision encompasses the obligation of JT to submit a Reference Offer in the market for “wholesale physical network infrastructure access”.

This explanatory memorandum describes the history of the case and encompasses the comments of the various members of the telecommunications industry in Jordan within the public consultation on the JT Reference Offer for Local Loop Unbundling and the Interference Management Plan. The consultations were initiated by TRC and the deadline for submitting comments was set to 13 October 2011. The explanatory memorandum also outlines all changes that are ordered by TRC regarding the Reference Offer and the Interference Management Plan, and provides a reasoning for each aspect where TRC’s decision deviates from JT’s Reference Offer and the Interference Management Plan.

### **II. Background and history of the case**

#### **1. TRC’s Remedy decision**

On 14 July 2010 the Telecommunications Regulatory Commission issued its “Regulatory Decision on the Fixed Broadband Markets Review”. In this decision (hereinafter the “Remedy decision”) it defined the relevant product markets to be as follows:

- A retail market for the provision of broadband Internet access at a fixed location (“retail fixed broadband Internet access”): This relevant product market includes fixed broadband access (connection) and Internet connectivity as two components of a single, integrated service. It includes all fixed broadband access technologies offered

and utilized in Jordan (i.e., xDSL, FBWA, FTTH) at all speeds and contention ratios offered. Additionally, all fixed broadband Internet connections, whether offered as a stand-alone service or as part of a multi-play bundle for residential or business users, are included within the relevant market definition.

- A wholesale market for the provision of physical network infrastructure access (“wholesale physical network infrastructure access”). This relevant product market includes the wholesale provision of fully unbundled and shared access to local loops and sub-loops at Main Distribution Frames (MDF or equivalent sites) and Street Cabinets. It also includes the self-supply of copper loops.
- A wholesale market for the provision of broadband access at a fixed location (“wholesale broadband access”). This relevant product market includes the wholesale provision of the access link and any backhaul to all feasible access points at all speeds and contention ratios. It includes wholesale broadband access to xDSL (with hand-over at the DSLAM level and at BRAS level) and FBWA connections. It also includes the self-supply of xDSL, FBWA and FTTH operators.

According to the Market Review Decision, the geographic scope of all three product markets above is national.

Based on the following market analysis, TRC finally determined that the following markets are susceptible to ex-ante regulation:

- The market for wholesale physical network infrastructure access.
- The market for wholesale broadband access.

The analysis furthermore resulted in a designation of dominant licensees. Thereby for both markets mentioned above, JT is designated to be the dominant licensee.

## 2. Remedies levied by TRC regarding the market for Wholesale Physical Network Infrastructure Access

In order to address potential competition problems that arise from the dominance of JT, the TRC in the Remedy decision also set ex-ante remedies to address the identified competition problems. In the Remedy decision the following remedies were defined for the market for “Wholesale Physical Network Infrastructure Access”:

- Access upon reasonable request

- Transparency
- Non-discrimination
- Accounting separation
- Cost-based prices

Following 1.1 of the Market Review Decision, JT has been obliged to submit an Interference Management Plan for approval by TRC.

Following 1.2 of the Market Review Decision, JT has been obliged to publish terms and conditions and prices for unbundled local loops and associated facilities and services in a Reference Offer. In addition, a minimum list of items that should be addressed in the Reference Offer is contained in Annex 2 of the Market Review Decision.

### 3. Consultation and comments

As regards the Reference Unbundling Offer, JT has subsequently submitted such a Reference Offer to TRC. This has on the one hand been subject to a national consultation, and on the other hand change requests have been sent by TRC to JT and JT has replied to these comments. More specifically, the following steps have taken place.

On 29 August 2011, JT submitted a draft Reference Offer to TRC. This was published for national consultation with the deadline 13 October 2011.

On 30 October 2011, as a result of the national consultation, comments from Zain, Umniah and Batelco to the draft Reference Offer were received by TRC. On 12 April 2012 change requests were submitted to JT requiring JT to alter and amend the Reference Unbundling Offer provided to TRC.

On 20 May 2012, comments from JT were received by TRC.

On 12 June 2012, after analysing the comments by JT, TRC sent a new and revised set of change requests to JT obliging JT to incorporate these comments.

On 25 July 2012, JT submitted a response to TRC's comments and modifications.

Another round of analysis was conducted by TRC to the comments received by JT and sent new modifications to JT in 2016 and 2017 reacted to the submission of new reference offer on 27 April 2017

With regard to the Interference Management Plan, the last version was submitted by JT on 27 April 2017. Previous to this submission, JT had provided a version of the Interference Management Plan on 12 July 2011 and 2 April 2012. TRC sent change requirements to these documents on 3 May 2012 as well as holding a meeting with JT on 16 April 2012 for discussions at the premises of JT. The Interference Management Plan submitted on 24 April 2017 has been used as the basis for this decision.

### **III. Comments from market participants**

Formal responses to the public consultation document were received from Umniah and Batelco in a joint submission (Umniah/BTJ) and Jordan Mobile Telephone Services Company (Zain). JT submitted several rounds of comments based on the change requests made by TRC (see above).

Umniah/BTJ has the following comments to the draft Reference Offer from JT (status 28 August 2011) which were submitted on 13 October 2011.

- Umniah/BTJ requires that TRC immediately reject JT's proposal for a "Jordan Telecom Reference Unbundling Offer" on the grounds that it fails to meet the elementary requirements of the TRC Decision of 17 July 2010.
- Umniah/BTJ requires that the provision of full local loop unbundling and shared access to the local loop (LLU/SA) is subject to strict non-discrimination obligations. This includes the permitted usage (i.e. the TRC should require JT to remove any restriction on the usage of LLU/SA to serving "end-users"/"retail customers"), ordering and provision processes and time-frames (i.e. the TRC should prohibit the purchase requirement/commitment on any percentage of MDFs; the TRC should ensure that there are no different time-frames to serve each individual customer be it by JT and JT affiliates and any other Licensees; the TRC should prohibit the 100-line batch per MDF provisioning minimum; the TRC should prohibit the extreme financial guarantees demanded).

- Umniah/BTJ finds that JT's draft Reference Offer, in particular Section 3 "LLU Service Descriptions", Section 4 "Service Terms", Annex A: "Definitions", Service Schedule 2.01, and Service Schedule 2.02, as well as throughout the entire set of draft documents, aims to restrict other Licensees' usage of Local Loop Unbundling (LLU) and Shared Access to the Local Loop (SA) to serving "end-users"/"retail customers".
- Umniah/BTJ criticizes the draft Reference Unbundling Offer because they think it prevents other Licensees from: (i) using LLU/SA to self-provide services (e.g. wireless/mobile backhaul and other internal use); (ii) providing services at sites not directly controlled by end-users or retail customers (e.g. company and administration branches/offices, affiliates and agents of corporations, campuses, bases, housing others than end-users); (iii) providing wholesale transmission services and resale and subletting services to other operators and service providers, etc.; and (iv) other examples are likely, which cannot be exhaustively listed here. For instance the reservation of capacity in 4.1 and 4.2 and the requirement for testing in 4.3 as well as the time for pre-announcement of planned works in 4.14 will lead to unjustified discrimination.
- Umniah/BTJ criticizes the ruling in Service Schedule 2.01 and in Service Schedule 2.02, in both cases at paragraph 3.3. Here JT puts forward a required purchase commitment expressed as: "The Alternative Operator must purchase the service from at least 70% of JT Central switches as defined below, considering that 50% of the purchased sites should be outside Amman, Zarqa, and Irbid". Umniah/BTJ has the view that this requirement prevents any operator from acquiring the services in the Reference Offer.
- In Annex E – LLU Processes, Section 2.2, JT introduces the notion of ordering requirements in batches of 100 metallic pairs per MDF. This is criticized by Umniah/BTJ as such requirements are not international best practice. Further, such an ordering/provisioning procedure would imply that any customer acquired by an alternative operator cannot be given a firm service delivery date upon contract signature, and indeed that signed customers may never receive the service they contracted for, if the Alternative Operator is not able to reach the unreasonable wholesale ordering requirements set by JT.
- Umniah/BTJ also claims that paragraph 4.36 of the Main Offer Document is unbalanced, as it requires forecasting by those Licensees taking-up LLU/SA, but no obligation on JT to satisfy forecasted orders.

- With regard to Annex E.2.1.1, 2.1.3, 2.1.5, 2.1.18, Umniah/BTJ find the procedural rules put forward by JT difficult to understand. Umniah/BTJ call upon the TRC to require ordering/provisioning and migration processes (migration is not provided for at all in the JT draft, in spite of being an elementary requirement) which make it unequivocally clear that a customer only has to interact with its new operator, and in no way with the operator that it is leaving.
- In Annex E 2.1.8 JT lists reasons to reject orders. Umniah/BTJ requires that JT should be constructive rather than obstructive on each of the points listed in E.2.1.8.
- With regard to Annex E – LLU Processes, Section 1.1.1, 1.1.3, 2.1.7, 2.1.8, 2.1.11, 2.2.3, 2.3.2, 2.3.4, and other clauses, Umniah/BTJ criticizes that the provisioning time-frames are excessive.
- According to Umniah/BTJ, it must be made clear in Annex E who should install the splitter.
- Umniah/BTJ has stated that the financial guarantees are excessive and should be changed. Especially, Umniah/BTJ asks TRC to intervene to prohibit JT from imposing per-site financial guarantees in the context of LLU/SA.
- Umniah/BTJ requires that the paragraphs 1.6 of the main offer shall be deleted.
- The paragraphs 1.4, 1.6 and 9.13 of the main offer are biased in favour of JT and the paragraphs 4.7, 4.9, 4.10, 4.20, 4.27 and 4.37 are regarded as not clear.
- Umniah/BTJ misses prices and clear statements regarding charges in the offer.
- The minimum lease of one year is criticized.
- The rulings on quality of service and SLOs are discriminatory, unreasonable and unacceptable according to Umniah/BTJ.
- With regard to the service schedules, Umniah/BTJ requires that the Alternative Operator shall provide the backhaul connectivity, that resale should be possible, and points out that a migration solution for all types of customers that are already contracted is missing in the offer.
- The operations and maintenance manual is discriminatory, the fault closure acceptance is too short, paragraph 3.2.13 is unclear and the escalation times are too slow.

Umniah/BTJ has also provided comments regarding the Interference Management Plan. Umniah/BTJ requests that the requirement for pre-testing of Alternative Operator's equipment by JT should be removed. They also require that the alternative operators shall have the right to deploy the equipment they like. Moreover, Umniah/BTJ demands that there

should be a committee with TRCs participation which determines the rules in the Interference Management Plan. With regard to paragraphs 1.8, 2.4, 3.1, 3.3, 3.13 and 3.14, Umniah/BTJ finds the Interference Management Plan to be discriminatory or biased in favour of JT.

The comments of Zain submitted to TRC on 13 October 2011 focus on the following points:

- Zain criticizes the sections 7 and 15.4.5.5 of the main offer and states that the bank guarantee is excessive.
- Zain comments that LLU is only offered at 32 sites and states that sub-loop unbundling should be added to the offer.
- The prices are missing in the offer and there are vague specifications of the costs and charges which shall apply. Further, all charges must be approved by TRC. Zain refers in this regard to e.g. section 1.6 and 4.32 of the main offer, the Annex B as well as E.2.1.9 in Annex E. Further sections referred to are section 5.2.5 and 9 of the service schedule for full LLU, section 4.f in the Annex for other associated services as well as section 3.2.17 of the operation and maintenance manual.
- There are a number of technical limitations and restrictions in e.g. the sections 3.4.3, 4.3, 4.8 and 4.11 of the main offer as well as in section 1.c.vii of the annex for other associated services.
- Further, according to Zain, the provisioning of LLU is limited in several sections of the offer (section 4.1, 4.2, 4.27 and 4.32 of the main offer as well as section E.1.1.1 in Annex E as well as in section 2.d of the annex for other associated services).
- Zain criticizes that reselling of the unbundled lines is prohibited in the offer (section 4.5 of the main offer as well as in the service schedule for full unbundling, section 3.4 and 3.5).
- The time frames for provisioning, maintenance and processes are too long or too short but always in favour of JT according to Zain (e.g. in section 4.9, 4.21 and 4.22 of the main offer, E.2.1.4, E.2.1.7, E.2.1.11, E.2.4.3, E.3.3.2, E.3.3.4, E.3.4.1 and E.3.4.3 in Annex E as well as in section 2.g, 2.i, 4.b.v.3 and 4.e.i of the annex for other associated services).
- Zain criticizes the way the Alternative Operator is held liable according to the reference unbundling offer (sections 4.9, 4.10, 4.26, 15.5, 20.8 and 20.10 of the main offer).
- The reference unbundling offer is according to Zain very unfavourable to the alternative operators and makes statements with this regard to section 4.35, 4.36, 15.3 and



15.4.5.3 of the main offer and with regard to the definition of the interest rate in the Annex for definitions. Further statements regarding unfavourable rules are identified by Zain in E.2.1.3, E.2.1.18 and E.2.5.3 in Annex E, section 1, 3.3, 3.7 to 3.11 and 7 of the service schedule for full LLU, section 4.b.vi of Annex for other associated services as well as in section 3.2.10, 3.4.6 and 3.4.2 of the operation and maintenance manual.

- Zain criticizes that the orders must be made for bundles of 100 pairs (section 4.37 of the main offer and E.2.2.1 in Annex E). Further, the maximum limit to order only 200 requests over a three week period as set out in E.2.2.3 in Annex E is criticized.
- The specifications for quality of services and the service level offer is not acceptable (section 10 of the main offer, section 4.1.3 of the service schedule for full LLU and the service level offer).
- The dispute resolution and the payment rules are unreasonable and must be changed (section 13, 15.2 and 15.4.3 of the main offer, section 12.1 of the service schedule for full LLU as well as section 4.b.viii of the Annex for other associated services).
- Zain criticizes that several sections of the Reference Unbundling Offer are not clear and not well written (section 19.9, 15.4.5.1, 15.4.5.2, 20.9 and the Annex with definitions, E.1.2.1, E.2.1.1 and E.2.1.2 in Annex E, section 4.2.1, 5.2.3 and 10.2 of the Service Schedule for full LLU, section 4.b.iii.3 of the Annex for other associated services as well as in section 1.1 and 3.2.13 in the operations and maintenance manual).
- Zain comments that they do not see any reason for JT to decide on the type of equipment used by the Alternative Operator (section 3.7 of the service schedules).

#### **IV. Decision and explanation regarding the Reference Unbundling Offer**

The following section contains, for each element of the decision that orders a change in the most recent Reference Offer submitted by JT, the text of the provision ordered as well as the reasoning for ordering this change.

- 1) Main offer document, Section 4.5: The section shall be rephrased to be “ Alternative Operators are allowed to sell the LLU to their retail customers and to resell the LLU Service to another Licensee.

With the implementation of a Reference Offer. With this decision, the agreement is approved to be used for all other licensees acquiring the local loop unbundling service from JT. This is implied by the relevant Market Review Decision by TRC, stating that a Reference Offer shall be implemented and that there should be no discrimination. Internationally, there are business models pursued by Alternative Operators where one operator rents Local Loops and resells these as bitstream access at a central node in the network. There are no reasons to hinder this in Jordan

JT has stated that they might not cover their costs when resale is allowed due to the fact that charges are imposed per site.

TRC would like to clarify that this might be relevant for the way the prices are implemented and might impact on the way tariffs are approved, but this is no viable reason to prohibit resale. Hence, even if the resale is allowed, JT should have the right to cover its costs based on the standards set out in the Market Review Decision.

Another important thing that all licensees have the right to resell other licensees service according to paragraph 3.7 of the licenses agreement so this section shall be rephrased to be in line with the license agreement.

- 2) Annex E, Section E.2.2.3 and section E.3.2.2: shall be rephrased as follows" the maximum number of batches that can be handled is 2 batches per day for all alternative operators on first come first served basis.

JT has proposed a maximum limit of 2 batches for the whole of Jordan. This limit is far too low as it means that less than 2 % of the copper lines can be unbundled per year. As JT has not come up with any alternative limit, although it has been requested to do so, TRC used the limit used in Bahrain as an accepted benchmark.

- 3) Service schedule 2.01 and 2.02: the list of central switched deleted since the LLU services shall be provided where MDF available.
- 4) Service Schedule 2.01, Section 3.2: The section shall be removed.

The Section 3.2 is not consistent with the Market Review Decision, Section VI, No. 1.1, stating that the Alternative Operators shall not be required to seek access in order to cover a minimum number of access points. Also this section considered as barriers to entry, Hence 3.2 shall be removed.

JT justified this terms as a sharing of universal service obligation among service providers and any alternative operator shall share the cost of universal service obligation, in response to this TRC believes that the universal service obligations has a different regulatory framework and it is unjustified to put any requirements on LLU reference offer regarding USO.

In this regard TRC reaffirms that the USO policy for 2004 designates JT as a USP and will bear all the cost of USO without any reimbursement till effective competition with JT is seen, when effective competition appears in the market the cost and the designation of USP will be revisited according to the sharing USO cost instructions issued by TRC. The aim of LLU is to create effective competition, so; successful implementation for LLU will help JT to mitigate the effect of USO.

- 5) Service Schedule 2.01, Section 3.3, Section 3.4 and Section 3.5: The sections shall be removed.

Internationally, there are business models implemented by Alternative Operators where one operator rents local loops and resells these as bitstream access at a central node in the network. There are no reasons to disallow this in Jordan, and hence the sections 3.3 to 3.5 shall be removed as they reduce the possibility for market entrants to resell their network and thereby these have less ability to finance their investments. Hence, the sections 3.3 to 3.5 aim at reducing competition in the market and shall be removed.

From another point of view, TRC acknowledges that it is premature for licensees to resell the bitstream product based on the local loop unbundling provision by JT; however, according to paragraph 3.7 in the license agreement: "*The Licensee is authorized under the terms of this License Agreement and applicable Regulations to resell the services of other licensees*". Hence; and as discussed with JT, the sections 3.4 - 3.6 contradict with the license agreement terms.

- 6) Service Schedule 2.02, Section 3.3: The section shall be removed.

Please refer to change request for service schedule 2.01, section 3.2

- 7) Service Schedule 2.02, Section 3.5: The section shall be removed.

Please refer to change request for service schedule 2.01, section 3.3

- 8) Service Schedule 2.02, Section 3.6: The section shall be removed.

Please refer to change request for service schedule 2.01, section 3.4

- 9) Service Schedule 2.02, Section 3.7: The section shall be removed.

Please refer to change request for service schedule 2.01, section 3.5

- 10) Service Level Offer, Section 2.1: The following QoS parameters shall be amended for consistency purposes "For the available LLU Service, the Delivery Lead time for new connections that do not require civil work at JT site:

80% within fifteen (15) working Days and 20% within one (1) month