

الرقم: 10295 / 11 / 15 / 19 / 6

التاريخ: 2024 / 12 / 18

عطوفة الرئيس التنفيذي لهيئة تنظيم قطاع الاتصالات المحترم

الموضوع : الملاحظات الواردة من الشركات حول مسوداتتعليمات (تطبيق مخرجات مراجعة الأسواق)

تحية طيبة وبعد،

اشارة الى الملاحظات الواردة الى هيئتكم الكريمة حول الموضوع أعلاه، والمتعلق بمسودة تعليمات Implementation of a Margin Squeeze Test for local access and broadband access والتي تم نشرها على موقع الهيئة الالكتروني، تجدون مرفق طيه رد شركتنا على هذه الملاحظات آمليين اخذها بعين الاعتبار.

وتفضلوا بقبول فائق الاحترام،

المدير التنفيذي للشؤون القانونية والتنظيمية والمصادر والتزويد

د. ابراهيم حرب

شركة الاتصالات الأردنية - أورانج



is here

AutoText entry not defined.

Orange Fixed, Orange Mobile, Orange Internet (Orange) Comments on responses to the consultation: Implementation of a Margin Squeeze Test

18 November 2024

Orange

About this document

This is Orange Fixed, Orange Mobile, Orange Internet (Orange) Comments on responses to the TRC's Implementation of a Margin Squeeze Test consultation.

Contents

1	Introduction	4
2	General observations on responses	5
3	Responses to the TRC's questions	6
3.1	Question 1 on retail efficiency levels	6
3.2	Question 2 on wholesale efficiency levels	7
3.3	Question 3 on timings for retail margin squeeze tests	7
	Question 4 on identifying flagship offers	8
	Question 5 on timings for wholesale margin squeeze tests	9
	Question 6 on levels of aggregation for ex-ante retail tests	10
	Question 7 on levels of aggregation for ex-post retail tests	11
	Question 8 on levels of aggregation for ex-ante wholesale tests	12
	Question 9 on net present value calculation	13
	Question 10 on the time horizon	14
	Question 11 on reasonable rates of profit	14
	Question 12 on the cost standard for retail ex-ante tests	15
	Question 13 on the cost standard for retail ex-post tests	16
	Question 14 on the cost standard for wholesale ex-ante tests	17
	Question 15 on relevant retail services	17
	Question 16 on relevant wholesale services	18
	Question 17 on bundling	18
	Question 18 on promotions	19
	Question 19 on non-residential offers	20

1 Introduction

Orange welcomes the opportunity to provide comments on the responses submitted to the Jordan Telecommunications Regulatory Commission's (TRC's) proposals for a Margin Squeeze Test to be applied to local access and broadband access.

Orange's comments to the responses of submitters, along with Orange's own response to the consultation, was developed with the support of its consultants, Plum Consulting (Plum). Plum was commissioned by Orange to assist it review the TRC's four consultations, analyse the telecommunications markets in Jordan and develop responses to the consultations. Plum is an independent consulting firm, focused on the telecommunications, media, technology, and adjacent sectors. Plum applies extensive industry knowledge, consulting experience, and rigorous analysis to address challenges and opportunities across regulatory, radio spectrum, economic, commercial, and technology domains.

The TRC published four consultations on 8 August 2024. Orange submitted its response to each of the consultations on 16 October. The TRC published copies of the responses it received on its website on 10 November. This report provides Orange's comments on the other responses received by the TRC to this consultation.

For this consultation, *Implementation of a Margin Squeeze Test for local access and broadband access*, responses were received from four stakeholders:

- Zain;
- Umniah;
- Batelco; and
- FiberTech.

The responses from Batelco and Umniah are identical, other than the company name. As such in this document they are considered only once.

This report is set out with:

- **Section 2** providing general observations of responses.
- **Section 3** providing comments on responses provided in answering questions posed in the consultation.

2 General observations on responses

In Orange's response to the TRC's consultation we have noted a number of fundamental points.

First, Orange believes that it is crucial that a new market review is carried out before any changes to regulation are made. The telecommunications market in Jordan has changed considerably since 2019, when the last market review occurred, and any regulation designed around the market discovered in that review may be ill specified and even damaging to the market. Both Zain and FiberTech indicate in their responses to the TRC that they believe that there should be a new market review, and Batelco highlight the fast-changing nature of the industry. The responses made here do not alter Orange's key arguments set out in its previous submission of comments to the consultation, that an immediate market review should be carried out ahead of new regulation being introduced.

Second, no other operator has recognised the extensive submissions that Orange currently makes to the TRC. Before introducing a new tariff that is intended to assist the TRC in conducting a replicability analysis, Orange currently submits comprehensive submissions to the TRC. Many of the points raised by other operators are satisfied by these existing submissions, and the TRC should have made it clear in the initial consultation that these margin squeeze tests would be building on an existing framework rather than being entirely novel.

Third, it is clear that there is significant disagreement with many aspects of the TRC's proposals. While Batelco agree with the majority of points, there are some aspects where they ask for clarity or confirmation that the regulation will be limited. Both FiberTech and Zain echo many of Orange's concerns over the application of margin squeeze, and indeed both go further to the extent that they disagree with aspects such as the cost of capital, time horizon, or treatment of bespoke non-residential offers. This level of disagreement indicates that there is still significant work to be done on the formation of a margin squeeze testing regime, and we expect there will need to be further consultations if the TRC persists in following this path.

Fourth, there are many areas where respondents (including Orange) have noted that there needs to be greater detail on how the calculation would be carried out before any agreements can be reached. For example, Batelco argue that the threshold for retail offers should be reduced to as low as 50%, but all other operators note that the TRC has not described how it will be determined which offers are included in this threshold. FiberTech and Orange have both noted that the retail costs to be considered as incremental have not been defined.

Fifth, the purpose of this regulation seems to not be consistently understood. Operators seem to think that this regulation is designed to take place after a competition complaint, or alongside general cost-orientation for wholesale prices. Other operators have not recognised that the margin squeeze for wholesale services does not make any sense given the cost-based pricing of these services, but they do acknowledge that appropriate inputs for the retail margin squeeze test are a cost-based network value.

Alongside this consultation process, the TRC has sent Orange a sample data request to illustrate the types of information needed to undertake the margin squeeze test. Orange will respond to this separately, as the TRC has not followed the standard Rules of Making Instructions process required when sending this and asking for feedback. However, it should be noted that this data request does not make it clearer how the margin squeeze test tool would be constructed, or how it would be used.

3 Responses to the TRC's questions

In this section we consider the responses to each of the questions posed by the TRC. It should be noted that some respondents have grouped their answers to questions; where this is the case we will note that our responses are the same.

Question 1 on retail efficiency levels

Do you agree with TRC's preliminary conclusion that an EEO approach should be considered for estimating downstream costs in the retail MSQT? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco do not agree that the appropriate approach is to use EEO. It states that it is unreasonable to expect other operators to have the same retail costs and efficiency. New entrants could be disadvantaged and have an undue burden placed on them. Batelco seem to assume that the imposition of an adjusted EEO or a REO approach will necessarily make retail cost estimates increase. In this section Batelco also raise concerns over regional differences in market shares and competitiveness in infrastructure. This does not seem relevant to retail efficiency.	Orange believes that EEO is the correct approach to use. There is no guarantee that other methods would give higher retail costs as estimates, and there is no reason why the TRC should look to reward inefficiencies in retail provision. Use of a REO or adjusted EEO could give values which are unrealistic in the Jordanian market, further discouraging competition.
FibreTech agree with the use of EEO. It notes three reasons for this: it ensures alignment with market dynamics, there is data available to measure this, and self-provisioning of fibre products means that retail prices for all operators are likely to be similar.	Orange agrees with FibreTech's assessment, in particular the implication that FibreTech's own market share is similar to that of Orange, therefore allowing it to obtain the same economies of scale.
FibreTech notes that the EEO approach has been successfully used in the UK and Australia.	
Zain does not believe a REO approach is relevant, as it would rely on data being provided by a third party, and Zain believes that the regulatory burden should fall on the regulated entity.	Orange agrees that it is reasonable to use an EEO approach as this is based on actual data provided by the regulated entity, rather than estimates provided by a third party. Orange does not agree that this should be justified through some sort of responsibility for shouldering a regulatory burden in general, however; this is a practical consideration that using actual data will be guaranteed to give a reasonable and realistic outcome.
Overall, Zain agrees with the TRC that there are two scenarios where it might be appropriate to deviate from the EEO standard: when market entry or expansion has been frustrated in the past; and in markets where alternative operators have low volumes and significantly limited geographic reach compared to the SMP operator. However Zain looks to add a third option here, "any other scenario that comes to light either during the development and population of the MSQT model, or at some later date".	While Orange accepts that there may be unforeseen circumstances under which an EEO approach is suboptimal, we do not agree that this should be adjusted for through a generic and vague allowance for the TRC to impose a change of regulation for no justified reason. Zain has not provided any examples of where EEO would not be optimal, and there is no consideration of how this reduction in certainty over regulation would impact on the way that any designated operator would need to set pricing strategy.
Zain provide revised text which states: <i>An EEO approach should be used as the starting point for the estimation of downstream costs in the retail MSQT. Although at this stage</i>	

Stakeholder response	Orange comments
<i>the TRC does not envisage it will be necessary to make adjustments, for the avoidance of doubt it reserves the right to do so at some future date should circumstances require such adjustments to ensure that other operators can compete fairly with the dominant operator when using its wholesale services as upstream inputs to their own retail offers</i>	Orange therefore rejects the possibility of the TRC being able to move to an alternative efficiency standard without consultation in the future.

Question 2 on wholesale efficiency levels

Do you agree with TRC's preliminary conclusion to consider an EEO approach for estimating downstream costs in the wholesale MSQT? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco respond to Question 2 at the same time as its response to Question 1. There are no additional points raised.	See Orange's comments above.
FiberTech also responded to Question 2 at the same time as its response to Question 1. There are no additional points raised.	See Orange's comments above.
Zain repeat much of its response for Question 1, although it does note that downstream activities are simpler for the wholesale market and therefore it may be more likely that a REO could be utilised – however, concerns over how the alternative operator is defined would remain.	Orange agrees that it is not possible for the TRC to have a definitive answer as to which operator a REO would be designed around, and this would lead to considerable uncertainty around regulation. However, at the same time, Zain does not acknowledge the significant burden that data collection for EEO analysis would have on a designated operator.

Question 3 on timings for retail margin squeeze tests

Do you agree with TRC's preliminary conclusion that the retail MSQT should be applied on an ex-ante basis, complemented with an ex-post MSQT every six months? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agree with the TRC's proposals for ex-ante analysis, but suggest that the ex-post aggregated analysis should be carried out quarterly rather than every six months. Batelco highlight the fast-moving nature of the market and state that "shorter interval would provide a more frequent review of actual costs and ensure that emerging competitive concerns are addressed promptly".	As per Orange's response to the consultation, we do not believe the ex-ante regime proposed by the TRC is optimal or even needed, particularly considering Orange's existing data submissions ahead of new tariffs being introduced. Further, an aggregated ex-post analysis will incur significant data analysis and collection costs for a designated operator. This will include a need for annual costs to be allocated over the period of the analysis. Carrying out this analysis every three months rather than every six months would give little additional benefit to the TRC but would impose a significantly higher burden on operators.

Stakeholder response	Orange comments
	Orange believes that the suggestion from Batelco is not based on genuine concern for the telecommunication sector's interests, as it gives no clear justification or advantage that comes from this. Instead, the suggestion would simply place more burden on any designated operator. There has been no consideration of whether the necessary data is available and could be provided within the six-month period proposed by the TRC or not; or the logistics of supplying it. As Orange affirms that the situation cannot be handled within the TRC's suggested 6-month-period, then it stands to reason that it could not be completed within the proposed 3 months.
FiberTech believe that ex-ante tests should be restricted to "major retail offers provided by SMP operators only", and that ex-post aggregated tests should only be imposed based on triggers such as significant price changes, changes in market structure, or specific complaints. FibreTech highlight that this is consistent with regimes in France and the UK.	Orange agrees with FibreTech that the ex-post analysis should be carried out only when needed, in a reactive way, rather than proactively. As stated in our original submission, Orange believes that there would be no need for an extra margin squeeze testing regime because any claims of abuse of dominant position would be thoroughly investigated in compliance with the Competition Safeguards Instructions. Orange Fixed also wants to alert the TRC to the relevant section of the Competition Safeguards Instructions (specifically, Article 14), which outlines the TRC's ability for investigating any complaints or allegations of abuse of a dominant position or violations of the market, which will be thoroughly examined. Orange believes that the MSQT's objectives are adequately met by referring to this article, hence the additional margin squeeze testing regime that has been suggested is unnecessary.
Zain believe that once a margin squeeze test tool (MSQT) has been developed it would not be overly onerous for a designated operator to carry out its own ex-ante analysis of every new tariff, rather than only those significantly large. It also notes that margin squeeze tests should also be used in the case of a complaint being raised.	Orange disagrees that the construction of the MSQT will enable an ex-ante analysis to be carried out for each and every tariff proposed by a designated operator. The structure and complexity of the MSQT is not yet known, and the data request which has been circulated by TRC indicates that there will be a very complex calculation to be undertaken. Rather than increasing the number of margin squeeze regimes, Orange continues to argue that there should be a lesser number, with margin squeeze reserved only for when there is a complaint or allegation of abuse of market power. Existing replicability tests and Orange's accompanying submissions should be considered as sufficient.

Question 4 on identifying flagship offers

Do you agree with TRC's preliminary conclusion on the criteria proposed to identify retail fibre flagship offers? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agree with the concept of only flagship offers being included in an ex-ante margin squeeze regime, but make a number of recommendations on adjustments: • Lowering the threshold to 50-60%; • Add pricing strategies and promotional tactics as criteria for determining which are flagship offers; and • The TRC should clarify how it will assess whether an offer will have market impacts.	Orange agrees that, if ex-ante tests are required, the threshold for flagship offers could be reduced down to 50%. Including only the largest and most significant offers would mean that analysis was focussed on the offers that would have the largest impact on the market, and also by considering larger offers the volume of analysis would be reduced. Batelco's other points do not alter Orange's fundamental argument that ex-ante tests should not be required; however, any certainty over the instructions would be an improvement over the current situation.
FiberTech do not directly answer Question 4 but do note that it agrees that an ex-ante regime should only be applicable to the largest retail offers from SMP operators.	This response is covered by Orange's response to Batelco's answer above.
Zain notes that there are multiple ways in which the total of 75% of retail offers can be reached, including revenue, subscribers, and so on. It notes that "the importance of a particular offer in the dynamic landscape might not necessarily reflect the current amount of customers it has and revenues that result from that" – and therefore a threshold of 75% may not include the most important offers which will shape the future of the market.	Orange agrees that the way that the 75% threshold is defined is unclear, and in our submission to asked the TRC to clarify its composition. There are multiple ways this could be formed, and it is important that a dominant operator has clarity over which services and tariffs are to be covered ahead of making commercial decisions.
Zain recommend that the TRC involve other operators in the selection of flagship offers, since "the other operators would be able to provide guidance to the TRC on the current market dynamics and with which particular offers they are currently most keen to be able to compete fairly".	If an ex-ante regime is imposed, which again Orange would argue against, then the threshold and a definition of what is and is not included must be known in advance and clearly defined using objective criteria. It is not acceptable for other operators to pick and choose which tariffs they wish to include in ex-ante regulation. If there are tariffs where other operators have particular concerns and believe that a margin squeeze is taking place, then there is the possibility of an ex-post competition analysis to examine this.
Finally Zain ask the TRC to continually monitor the composition of the flagship offers group.	

Question 5 on timings for wholesale margin squeeze tests

Do you agree with TRC's preliminary conclusion that the wholesale MSQT should be applied on an ex-ante basis? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agree with the TRC's proposals for ex-ante analysis for all wholesale products, and also ask that there should be a regular ex-post analysis covering the entire market.	As per Orange's response to the consultation, we do not believe there is any need for ex-ante margin squeeze testing in the wholesale market, since existing products are already regulated at cost level.
As well as this margin squeeze testing, Batelco ask that "the TRC should also ensure proactive market monitoring to identify any emerging anti-competitive concerns before they materialize. This could include regular engagement with operators to review wholesale price trends, changes in service offerings, and any emerging competitive threats."	Further, a regular ex-post analysis will incur significant data analysis and collection costs for a designated operator. If an ex-post analysis revealed that changes to the market structure or volumes had led to the regulated price falling foul of margin squeeze testing, then the designated operator would be sanctioned for something outside of its control.

Stakeholder response	Orange comments
FiberTech believe that ex-ante tests should not be required for all tariffs and services, but instead should be tiered based on the market power of an operator, where an ex-ante test is only required if there is: • A significant price change; • Introduction of new services; or • Complaints from other operators regarding possible anti-competitive behaviour. FibreTech describe a number of regulators around the world who do not require ex-ante tests for all wholesale products. Zain state that a dominant operator has an incentive to encourage retail operators to connect at the "highest level allowable" so as to keep as much of the network provision for themselves. There is therefore a higher incentive for margin squeeze between WLA and WBA and the TRC should therefore require ex-ante margin squeeze testing for each and every new service. Since the wholesale market is more stable, Zain believes this would not represent an unfair burden.	Finally, proactive market monitoring should not be considered dependent on a margin squeeze testing regime but instead would be a general regulatory decision. Orange agrees with FibreTech regarding the fact that ex-ante tests should not be expected for all new tariffs. However, FibreTech do not acknowledge that the tariffs and services examined here are already regulated at a cost-based level and so even the triggers that it lists for an ex-ante test would be irrelevant. Further, of the three triggers, only the first two could realistically be achieved; the last of these would necessarily require an ex-post test unless the TRC would require any new tariff to be sent to competing operators before it was introduced. Again, Zain does not acknowledge that wholesale copper-based products are already price-regulated, and so while there may be an incentive for Orange to reduce the margin between the services, there is no potential for this to happen.

Question 6 on levels of aggregation for ex-ante retail tests

Do you agree with TRC's preliminary conclusion to apply the ex-ante MSQT at the level of individual offers? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agrees with TRC's proposal to apply the ex-ante MSQT at the level of individual offers for fixed broadband. It states that "this level of aggregation provides a granular approach, ensuring that each individual offer can be evaluated to ensure alternative operators can replicate it under competitive conditions". Further, "the individual offer approach ensures that no single product launch distorts competition, even if it's part of a broader product portfolio. It allows the TRC to ensure that each offer is replicable without cross-subsidization across products or services that could harm competitors." FiberTech believes that requiring ex-ante tests for individual services would give significant issues to non-SMP operators, due to overly harsh compliance burdens. There is no discussion on individual or portfolio approaches.	Batelco's comments here are partially at odds to its response to Question 4, where it suggests reducing the threshold of offers to be included in the ex-ante regime. If Batelco are concerned that a single product could distort the market, then it does not make sense that it wishes to reduce the number included in ex-ante testing. In any case, Batelco do not consider the complexities of individual product ex-ante testing, with the necessary disaggregation and allocation of costs, and lack of clarity over which retail costs are to be included. Orange agrees that ex-ante regulation for individual offers would place a compliance burden on operators which may lead to slower market responsiveness, stifled innovation, and reduced flexibility. FiberTech does not explain why this should be different between non-SMP and SMP operators,

Stakeholder response	Orange comments
	and Orange argues that there is in fact no difference, meaning that there is another reason why individual ex-ante margin squeeze testing is suboptimal.
Zain argue that the TRC's definitions of aggregation are overly simplistic and the three levels of aggregation (offer-by-offer, product-level, and portfolio-level) should instead be thought of as a continuum.	Zain does not offer a detailed explanation of how its continuum of levels of aggregation would work, but rather focusses only on the extreme end of this spectrum where an individual price point would need a bespoke margin squeeze test. This would mean, for example, that if a designated operator were to launch a new offer which had a choice of five broadband speeds, and five different CPEs, then the operator (and the TRC) would need to complete 25 different margin squeeze tests. If, instead, the test was run at a more aggregated level for the tariff as a whole, and experience then showed that one particular configuration was more popular than others (and was comparatively cheaper), then a more detailed ex-post competition test could be carried out.
Zain agrees that ex-ante retail tests should be carried out at the individual level, but wants the TRC to tightly define how these services are defined, since it believes that anti-competitive behaviour can be concentrated in certain parameters or add-ons to a tariff. Effectively Zain wishes the individual offer to be defined as a single option with a single price, rather than allowing for analysis on a range of speeds or additional services.	
Zain wishes the TRC to publish all details of the offers, including add-ons and variable parameters.	Orange also firmly disagrees with the proposal to publish all tariff details. While the TRC may need to receive these to carry out the margin squeeze test, these should be considered as commercially confidential and not shared with other retail operators.

Question 7 on levels of aggregation for ex-post retail tests

Do you agree with TRC's preliminary conclusion that the ex-post MSQT should be applied at the portfolio level? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agrees with TRC's proposal to apply the ex-post MSQT at the portfolio level. It states that "the ex-post assessment allows the TRC to analyse a broader set of offers based on actual market data, including user and traffic volume information. This portfolio-level aggregation gives the regulated operator greater flexibility in recovering common costs across multiple products, which can enhance innovation and allow for competitive pricing in the market.	Again, Batelco does not consider the complexities of margin squeeze testing in its response. Orange partially agree that an ex-post analysis can be carried out at the portfolio level to allow for a higher-level analysis of whether the designated operator is making suitable profits. However, as mentioned in Orange's response to the consultation the TRC must take care to ensure that not all retail costs are included in the portfolio calculation, since this would present an unrealistic picture of the decisions made by a commercial efficient operator.
Further, "by focusing on a portfolio level, TRC can ensure the overall profitability of the operator's business is competitive while monitoring that no cross-subsidization across offers leads to a margin squeeze for competitors."	
FiberTech does not agree with the use of an aggregated portfolio approach. First, it highlights that this may disadvantage non-SMP operators who operate only in selected regions, which may not have the same overall cost base as a national operator. Second, it highlights that a portfolio-level approach may hide margin squeeze on some individual offers. Instead, FibreTech recommend that ex-post analysis should be carried out on key offers within the portfolio.	Notwithstanding Orange's belief that an aggregated ex-post assessment is not needed, due to the existing replicability data submissions and the availability of competition remedies, Orange believes that a regular regime of aggregated portfolio-level ex-post margin squeeze tests would be preferable to individual offers, since: the latter would simply replicate the ex-ante tests which the TRC has proposed; and

Stakeholder response	Orange comments
FibreTech provide a number of international examples of how ex-post margin squeeze tests are carried out on individual offers. However it is not explained whether these are a routing testing regime or whether these are used only in cases of complaints.	individual ex-post tests are available for use as part of the competition safeguards instructions. The international benchmarks highlight that ex-post regulation is used only selectively in a number of countries, further underlining the unsuitability of a general ex-post testing regime.
Zain firstly argues that the TRC should retain the right to undertake ex-post analysis on individual offers where there are causes for concern. Secondly, it voices concerns that the portfolio of offers would only include the 'flagship offers' which were defined for the ex-ante analysis. To overcome this it suggests there be three portfolios considered: - A portfolio of all individual offers included in the 75% threshold; - A portfolio of all other offers; and - A portfolio containing all offers in total. Zain's final suggestion is that "the TRC also undertakes ex-post testing on individual offers too, but with the "pass mark" based on the parameters set for ex-post tests rather than for ex-ante tests. The concern here is that the TRC is considering how best to treat shared/common costs in each of the two types of MSQT and, depending on the final view taken by the TRC, there may be significant differences between a test that excludes most/all of the shared and common costs (at the limit being based on so-called Pure LRIC) and one that includes most/all of those costs.	Orange does not agree with Zain's interpretation of the TRC's instructions. There is no indication that the portfolio would only include offers included in the ex-ante tests, other than the statement that the aggregated analysis would effectively comprise of a sum of the individual tests. Orange maintains that the only relevant portfolio from the TRC's point of view is the last of those listed by Zain. Orange agrees with Zain that the TRC must pay a lot of attention to the relevant cost standard and which costs are included. As stated in our response to the consultation there is a danger that an aggregated ex-post test would include more retail costs than individual ex-ante tests, as common retail costs would be newly included – this could lead to a margin squeeze infringement where previously tariffs had been approved for use.

Question 8 on levels of aggregation for ex-ante wholesale tests

Do you agree with TRC's preliminary conclusion that an offer-by-offer approach is the appropriate level of aggregation to be considered in the wholesale MSQT? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agrees with TRC's proposal to apply the ex-post MSQT at the portfolio level. It states that "given the nature of wholesale broadband access (WBA) services and the importance of replicability in the market, it is critical that each wholesale offer can be independently assessed. This approach ensures that all wholesale products, especially those linked to VULA (Virtual Unbundled Local Access), are replicable by alternative operators and priced fairly. An offer-by-offer approach at the wholesale level is crucial in markets where the regulated operator has significant control over essential infrastructure. It provides the necessary safeguards against margin squeeze and anti-competitive practices that could limit access for alternative operators	Batelco does not acknowledge in its response that copper-based wholesale products are currently price-regulated, and therefore there does not need to be a safeguard against anti-competitive practices. As set out in our original consultation submission, Orange does not agree with an offer-by-offer method for the wholesale MSQT. We propose that a portfolio-level approach is not only more convenient and expedient, but also alleviates administrative complexities while enabling a thorough evaluation of the competitive market. This approach offers the necessary flexibility to respond to market shifts, promotes creativity and investment, and

Stakeholder response	Orange comments
and, by extension, their retail customers."	guarantees fair pricing through rigorous monitoring. In essence; it strikes an appropriate equilibrium between regulatory efficiency, market flexibility, and protection against anti-competitive behaviours.
FiberTech believes that requiring ex-ante tests for individual services would give significant issues to non-SMP operators, due to overly harsh compliance burdens. Instead, ex-post testing should be used where there are concerns.	Orange agrees that ex-ante regulation for individual offers would place a compliance burden on operators which may lead to slower market responsiveness, stifled innovation, and reduced flexibility. FiberTech does not explain why this should be different between non-SMP and SMP operators, and Orange argues that there is in fact no difference, meaning that there is another reason why individual ex-ante margin squeeze testing is suboptimal.
Zain "fully agree with this proposal given the importance of ensuring that there is no margin squeeze at all between the upstream (WLA) and downstream (WBA) wholesale services, coupled with the fact that the number of WBA services that will need to be considered (and thus tests to be conducted) will be relatively low compared to the retail services. Furthermore, the prices of both WBA and WLA will most likely only change every twelve months or so, again limiting the number of tests that will need to be carried out."	Zain does not acknowledge in its response that Orange's existing wholesale products are currently price-regulated, and therefore there does not need to be a safeguard against anti-competitive practices. It notes that prices for these products do not change often, but do not recognise that this is due to regulatory pricing restrictions.

Question 9 on net present value calculation

Do you agree with TRC's preliminary conclusion that an NPV approach should be used in the retail and wholesale MSQT for broadband offers? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agrees with TRC's proposal to use NPV methods in the assessment of long-term profitability.	Orange does not understand Batelco's concerns over the use of NPV methods for ex-post analysis. NPV is used by operators to make investment decisions, which by their nature are long-term. It is not relevant to consider period-by-period capital expenditure as this is necessarily lumpy over time.
Batelco express concerns on "the efficiency and applicability of the NPV method in ex-post assessment for certain cases. Given that ex-post evaluations often require a more immediate reflection of market conditions, does TRC consider the NPV approach as suitable for accurately capturing short-term market behaviour in such cases? If not, would TRC consider recommending alternative methodologies, such as the period-by-period approach, for ex-post assessments to complement the NPV model?"	
FiberTech agree with the TRC.	No comment.
Zain agree with the TRC, noting that a period-by-period analysis would only be relevant if the market were in a steady state, which is not the case in Jordan. However, Zain recommend that analysis be carried out on a monthly basis rather than annual.	Orange understand but do not agree with Zain's proposals that analysis should be carried out month by month, so all costs and revenues are discounted by the correct amount. In practice data provision would not allow this level of detail While an NPV approach provides a long-term view, a monthly analysis introduces unnecessary volatility and administrative burden, especially in a market like Jordan with

Stakeholder response	Orange comments
	evolving dynamics. Broadband markets typically exhibit seasonality and short-term fluctuations that do not reflect sustainable competitive behaviour or long-term market conditions. An annual assessment aligns better with strategic investments and regulatory stability, avoiding distorted conclusions from transient market variations.

Question 10 on the time horizon

Do you agree with TRC's preliminary conclusion that the retail and wholesale MSQT should use the average customer lifetime for the time horizon? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agrees with TRC's proposal to use customer lifetime in the assessment of long-term profitability. It notes that "since broadband services typically involve long-term contracts and high upfront infrastructure costs, assessing profitability over the customer's average lifetime allows for a more accurate calculation of returns on investment. This approach also ensures that the MSQT remains relevant and reflective of the actual market dynamics."	Orange agrees that customer lifetime is an appropriate period, but notes that if there are assets which would continue in use beyond the average lifetime, a disposal value should be used to ensure that actual capital expenditure is reflected.
FiberTech agree with the TRC.	No comment.
Zain seem to argue that the average customer lifetime used in the analysis may not be the average experienced by the dominant operator, and new entrants may experience a shorter average customer lifetime which would lead to them suffering from uncompetitiveness. It suggests that contract lengths are used instead, or a period for 36 months be used as a compromise.	Orange disagrees with this suggestion. When making investment decisions, it is crucial to consider how equipment will actually be used, and also allow for residual value. Artificially shortening customer lifetime to 36 months would mean that network costs were significantly higher than in reality, and under such a scheme the designated operator would not be able to make any profits.

Question 11 on reasonable rates of profit

Do you agree with TRC's preliminary conclusion that the reasonable rate of profit should consider the approved WACC rate? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agrees with the use of regulated WACC for determining a reasonable rate of return. It notes that: "if market conditions significantly change, or if operators face increased risks or investment requirements, the WACC might need to be reassessed to ensure it continues to reflect a fair return".	No comment.
FiberTech believe that WACC does not fully reflect operating realities for all operators, particularly new entrants and non-SMP operators. WACC will not include the risks faced by these operators and so there should be an	Orange is unsure how this analysis should be included in the margin squeeze test analysis. The WACC here is used to estimate the reasonable rate of return for the designated operator, not a new entrant or the non-SMP alternative

Stakeholder response	Orange comments
additional risk premium.	operator. If the higher WACC were to be used it would be forcing the SMP operator to be charging a price with excess profits, which would be economically inefficient. Given this, we are in firm opposition to the stance taken by FiberTech. The WACC is a recognized regulatory benchmark aimed at indicating an equitable rate of return while promoting market efficiency. The introduction of supplemental risk premiums for particular entities, such as new market entrants or operators classified as non-Significant Market Power (SMP) players, would disrupt competitive dynamics by improperly subsidising inefficiencies or exposing higher risk profiles. Regulatory determinations should be founded on overarching market principles rather than customized to the specific situations of individual operators, in order to uphold a fair competitive environment.

Zain agrees with the use of regulated WACC for determining a reasonable rate of return. It notes that smaller operators may have a higher risk rate, but also note that the main competitors in the market are all larger operators.

No comment.

Question 12 on the cost standard for retail ex-ante tests

Do you agree with TRC's proposed approach for estimating the costs to be used in the ex-ante retail MSQT? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agrees that only incremental costs should be used for estimating the retail margin squeeze. Batelco give an example of a non-incremental cost as "shared advertising costs". It also agrees with the use of TSLRIC+ for all network costs included in the wholesale portion of the retail margin squeeze test.	Orange do not agree that TSLRIC+ is a reasonable cost standard for setting network costs for fibre wholesale products, since there has been no TSLRIC+ model developed for regulatory purposes and wholesale prices for fibre products are not required to be cost oriented in this way. The appropriate margin for analysis is between the wholesale price and the retail price, not an unrealised theoretical network cost. Orange also note that "shared advertising costs" is an unclear indication of which retail costs are incremental. It is possible, for example, for an advertising campaign to include two different speeds of connection, meaning that it is incremental for the larger product level but not incremental to each individual offer. Orange reiterates that a very clear definition of incremental costs is needed before it can be implemented.
FiberTech believe that all costs should be set at the level of LRIC+, including a share of common costs, as this "reflects the economic realities of providing retail broadband services".	Orange disagrees that retail costs should be set using a LRIC+ model. Efficient commercial decisions, which are the aim of effective regulation, would consider only the incremental part of a retail cost.

Stakeholder response	Orange comments
	LRIC+ is a methodology which is generally intended for the allocation of network and wholesale costs, rather than for the assessment of retail costs. Utilising LRIC+ for retail cost evaluations is unsuitable, as it does not accurately represent the true structure of retail costs or the competitive dynamics of the retail sector. Retail costs ought to be determined based on fully allocated costs (FAC) to provide a thorough and precise representation of all cost elements associated with the provision of retail broadband services. The inappropriate application of LRIC+ could lead to a distortion in the findings of the margin squeeze test and may result in unwarranted regulatory interventions.
Zain provides a long and detailed description of different cost standards, including difficulties with defining what the appropriate increment is, what "long run" should be taken to mean, and a consideration that under some interpretations, all retail costs could be considered as non-incremental. Zain note that it is crucial that the TRC provides a great deal more detail over how increments are to be defined and also how products are to be disaggregated. The overall conclusion is that the TRC should be using LRIC+ for a cost standard – with all discussion looking at retail costs rather than network or wholesale costs.	Zain's argument appears to be that LRIC+ should be used simply because it is too difficult to regulate based on pure incremental cost. Orange disagrees with this; while we agree that the TRC must provide more detail on how costs should be defined, it is not impossible to clearly define the rules over how costs are tied to different products or classes.

Question 13 on the cost standard for retail ex-post tests

Do you agree with TRC's proposed approach for estimating the costs to be used in the ex-post retail MSQT? If not, please indicate your alternative views and provide evidence to substantiate your position

Stakeholder response	Orange comments
Batelco agrees with using incremental costs for the portfolio of products. It notes that the distinction between ex-ante individual analysis and ex-post portfolio analysis enables a comprehensive view of the cost structure of operators.	Again, Orange wish the TRC to note that in the retail market the appropriate input cost should be set to the wholesale price, not the cost of the network. This is particularly important in the case of fibre-based products where the wholesale price is not regulated at a cost-based level. Setting a different cost base for ex-ante and ex-post analyses means that the TRC is introducing an inconsistency within competition regulation. Operators do not consider the entire portfolio of costs when setting prices for a single product.
FiberTech agree with the TRC's position.	No comment further to Orange's original response.
Zain again recommend that the TRC adopt a LRIC+ cost standard for all costs within the margin squeeze test, based on its analysis for Question 12.	While Orange agree that it is important that a consistent cost standard is used, we disagree that LRIC+ is appropriate. This does not reflect the way in which an efficient operator would make pricing and investment decisions, since the marginal cost is the most important metric in such analysis. If margin squeeze tests are to be implemented, they should use LRIC as a cost standard, with the TRC giving a clearer indication of which costs are to be included as an increment.

Overall, Orange expresses its dissent regarding the positions held by Batelco, FiberTech, and Zain. The application of incremental costs or a Long Run Incremental Cost Plus (LRIC+) standard for ex-post retail MSQT is deemed inappropriate, as it fails to accurately reflect the true cost structure and competitive dynamics inherent in retail operations. Incremental costs do not encompass the entirety of retail activities, and LRIC+ primarily focuses on wholesale methodologies, rendering it unsuitable for retail evaluations. It is imperative that ex-post MSQT be based on Fully Allocated Costs (FAC), which accurately convey the total expenses incurred in the provision of retail services, thus ensuring equity and congruence with actual market conditions. This methodology effectively mitigates the risk of misrepresenting cost structures and supports well-founded, evidence-based regulatory decisions.

Question 14 on the cost standard for wholesale ex-ante tests

Do you agree with TRC's proposed approach for estimating the costs to be used in the ex-ante wholesale MSQT? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agrees with the use of TSLRIC+ for determining network costs for the wholesale market.	Batelco do not acknowledge that copper-based products are already price regulated at TSLRIC+, and therefore there cannot be a margin squeeze test implemented; nor does it acknowledge that fibre-based products are not currently regulated at TSLRIC+ and so there is no regulatory model available to produce these cost estimates. Orange again argue that there is no need for a regular margin squeeze assessment given this existing regulation.
FiberTech agree with the TRC's position.	No comment further to Orange's original response.
Zain agree that the TRC should use LRIC+ in its calculation. It adds that non-network costs will be provided by the operator and these should also then be adjusted to reflect a LRIC+ terminology.	No comment further to Orange's original response.

Question 15 on relevant retail services

Do you agree with TRC's preliminary conclusion that the retail MSQT should be implemented separately for VULA, bitstream copper, and bitstream fibre whenever these services are relevant for the provision of the retail broadband service considered? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agrees that the retail margin squeeze test should separately consider VULA, bitstream copper and bitstream fibre.	No comment further to Orange's original response.
Batelco also ask why Fixed Telephony Access and Call Origination (FACO) has been excluded from the list of services covered by the consultation. "Given that the regulated operator is subject to specific ex-ante obligations in the FACO market to prevent anti-competitive practices, including margin squeeze, could the TRC clarify why FACO has been excluded from the scope of the MSQT?"	Orange believes that the FACO service is not included as the consultation concerns broadband access only.
FiberTech agree with the TRC's position.	No comment further to Orange's original response.

Stakeholder response	Orange comments
Zain agree with the use of separate services. It notes that "it would be acceptable to us to not test with VULA as the input as long as the wholesale MSQT is fully based on the LRIC+ standard, that is with no costs excluded on the basis that they are not "incremental". Our reasoning for this is that in such a case the test with VULA as the input would automatically pass if the test with Bitstream fibre as the input passes, and so it is not necessary to run the model with VULA.	Zain appear to recognise here that some wholesale products are inputs to other wholesale products. Orange concurs that the TRC must clarify how it handle situations in which numerous wholesale inputs are utilised for a single retail offer.

Question 16 on relevant wholesale services

Do you agree with TRC's preliminary conclusion to implement the wholesale MSQT, considering the VULA service as the relevant input? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agrees that the wholesale margin squeeze test should consider VULA as the input.	No comment further to Orange's original response.
FiberTech agree with the TRC's position.	No comment further to Orange's original response.
Zain agree with the use of VULA as the relevant input.	No comment further to Orange's original response.

Question 17 on bundling

Do you agree with TRC's preliminary conclusion to assess bundles in the retail MSQT adopting an aggregate approach? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agrees that bundles should be assessed using an aggregate approach. It notes that there are several advantages to this: 1. <i>As noted, competitors in the Jordanian market offer similar bundled services, which allows for a fair assessment of regulated operator's bundles against its competitors. This alignment promotes a competitive environment and ensures that all operators have an opportunity to replicate successful offerings without significant barriers.</i> 2. <i>Assessing bundles as a whole simplifies the complexity involved in allocating revenues and costs to individual services within the bundle. The intricacies of identifying and attributing costs accurately can be cumbersome and may lead to disputes or inaccuracies in the assessment process. An aggregated approach alleviates this burden, providing a clearer and more straightforward framework for evaluation.</i> 3. <i>Avoiding Cross-Subsidization Issues: While the aggregate</i>	Batelco does not acknowledge in its analysis that bundles may include both regulated and unregulated products, and as such it is not possible to use existing regulatory models to understand all aggregated costs. In regards to individual points: 1. Just because competitors currently offer similar bundled services, this does not mean that this will always be the case. By regulating the bundle in aggregate, the TRC would reduce any incentives for innovation in bundling, meaning that consumers may be worse off. 2. While it is true that assessing bundles in aggregate means that costs and revenues do not need to be allocated to different services, costs will need to be allocated in any case to regulated and unregulated services; further, there is a risk of cross-subsidisation on regulated services if services are not considered individually. 3. The question of whether alternative operators can offer

Stakeholder response	Orange comments
<i>approach does permit the possibility of cross-subsidization, the competitive nature of the market mitigates this risk. If alternative operators can offer comparable bundles, the regulated operator's ability to cross-subsidize should not distort the market dynamics significantly. Ensuring that alternative operators can match these offers is crucial for maintaining effective competition.</i> <i>4. Consumer Willingness to Pay: The aggregate approach avoids the challenges of estimating individual consumers' willingness to pay for each service within the bundle. By evaluating the bundle as a whole, regulators can focus on the overall profitability and market sustainability of the bundled offers without delving into the subjective value consumers place on each component.</i>	comparable bundles is the entire point of the margin squeeze test. Batelco seem to be arguing here that a margin squeeze test is not required if other operators are offering similar bundles of services. 4 It is unclear why Batelco believes that a margin squeeze test should consider consumers' willingness to pay, rather than looking at actual costs and revenues. The only area in which willingness to pay would feature is in the predictions of profitability for yet-to-be-introduced products. In this case it is absolutely necessary to consider the demand for each element of the bundle, and understand the value that consumers will place on each service.
FiberTech argue that services within bundles should be considered individually. • Different services may have different competitive risks and an aggregate approach may overlook these. This may mean that a margin squeeze in broadband may be overlooked within a bundle. • SMP operators have a wide variety of services that they can bundle, while smaller operators may not have all services available (and may need to buy services in from other providers). This means that smaller operators may find it difficult to compete. • Cross-subsidisation may lead to distorted competition. FiberTech suggest that the TRC should: • Assess bundles on a component-by-component basis, or • Apply a service-specific margin squeeze test for critical services like broadband within bundles.	Orange agrees that bundles should not be considered in aggregate. However, Orange does not agree with FiberTech's first suggestion that all components should be analysed, but instead believes the second suggestion, whereby only critical services are examined (which likely align with Orange's proposal for only regulated services to be included).
Zain question whether a designated operator should be allowed to offer a bundle which alternative operators cannot offer, due to some services being unavailable. "In such a situation, the TRC might choose to either prohibit that type of bundle or, as a compromise, insist that each component part is assessed separately for a potential margin squeeze". It also believes that if the broadband element of a bundle is available as an individual offer, then that element should be subject to a separate margin squeeze test. This will help to understand if cross-subsidisation is happening within any bundle	Overall Zain appear to argue that individual components of a bundle should be analysed separately to ensure there is no cross-subsidisation. Orange agrees with its last point (in paragraph 91 of its submission) that the broadband elements of a bundle should be assessed individually, but does not agree that the overall profitability of a bundle should be assessed since this would include unregulated products for which cost data is not available.

Question 18 on promotions

Do you agree with TRC's preliminary conclusion that the promotional costs incurred by the regulated operator in the ex-post retail MSQT should be considered? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agrees that promotional costs should be considered in the ex-post retail margin squeeze test. It believes this should also be extended to the wholesale market.	While Orange understand why the TRC believes costs of promotions should be included, the proposal that they are recovered over six months is unreasonable. Batelco does not mention this consideration. Given price regulation in the wholesale market, Orange does not think it is relevant to consider promotional costs. Although wholesale promotional offers which are made contingent upon volume or time commitments may be theoretically achievable, such instances are infrequent and subject to stringent regulation.
FiberTech agree with the TRC's position.	No comment further to Orange's original response.
Zain believe that promotional costs should be included in ex-ante tests as well as the ex-post testing regime. This is combined with Zain's believe that the margin squeeze test should be carried out by the designated operator, and only monitored by the TRC.	In theory, Orange does not have an issue with promotional costs being included in an ex-ante margin squeeze test, since this would allow promotional costs to be recovered over a longer period. Indeed, this may be preferable to the TRC's proposals that all costs should be considered over six-month intervals. However, Orange reiterates that it feels that the ex-ante regime proposed by the TRC is overly onerous, particularly given the current submissions by Orange and the level of competition in the market.

Question 19 on non-residential offers

Do you agree with TRC's preliminary conclusion to limit the application of the retail MSQT to residential and standardised non-residential broadband offers? If not, please indicate your alternative views and provide evidence to substantiate your position.

Stakeholder response	Orange comments
Batelco agrees with the TRC's proposal to limit the application of the retail MSQT to residential and standardized non-residential broadband offers.	No comment further to Orange's original response.
FiberTech does not agree with the TRC, and states that by excluding non-standardised offers from the margin squeeze it is possible that SMP operators would be able to leverage their market power to exploit unregulated business segments while other operators are only able to participate in regulated areas. It gives examples of the UK and Spain where both residential and commercial offers are included in margin squeeze tests, and Germany where specifically customised business broadband is included.	Orange does not believe that non-standardised offers should be included in the TRC's proposed margin squeeze testing regime. There is no reason to suspect that alternative operators would not be able to compete in the market for customised business broadband offers, particularly given Orange's wholesale products, and certainly Orange would have no incentive to operate this segment at a continuing loss – since other operators would not be driven out of the industry entirely and could re-enter the market as soon as prices were to rise. The examples given by FiberTech appear to be irrelevant as they relate only to "commercial" broadband (not specifically customised offers) and also countries which do not have ex-ante margin squeeze testing but instead rely on margin squeeze in an ex-post regime following complaints over competition concerns. The question over how margin squeeze tests would be used within the competition safeguards framework has not been addressed in this consultation process.

Stakeholder response	Orange comments
Zain believe that all standardised offers should be included within the retail margin squeeze test, but agree that bespoke offers are outside the scope of the regulation. Zain also ask that all standardised offers should be published on the website of the operator, so that they may be examined by competitors.	Orange disagrees with the requirement that all offers should be published. The offers available to commercial entities should be considered as commercially sensitive information, particularly given the asymmetry between the designated operator and other operators. Zain must be content that the TRC is able to effectively analyse margin squeeze without all other operators carrying out their own tests..

