orange

Orange fixed

P.O. Box 1689 Amman 11118 Jordan
Tel.: +962 6 460 6666
Fax: +962 6 460 6111
www.orange.jo

H.E. Chairman of the Board/CEO
Telecommunications Regulatory Commission
P.O. Box 850967
Amman 11185

Our ref: 6/19/15/11/ 128
Amman, 8 /1/ 2013

Subject: Accounting Separation Instructions

Your Excellency,

In accordance with Article (17) of TRC's Instructions on the Procedural Rules of Issuing Instructions, please find attached the Request for Reconsideration of Articles (5), (7) , (9), (10) & (11) of the "Accounting Separation Instructions" as published by the TRC on its official website on 9/12/2011.

Jordan Telecommunications Company "JTC" would like to draw the TRC's attention that this letter and the said attachment by JTC do not mean nor should it be interpreted in any way as a waiver of any legal rights it has acquired or may be entitled for, and accordingly JTC stresses and reaffirms its complete legal right of seeking any available legal channel to protect itself and its shareholders from any decision issued or to be issued by the TRC with regard to the markets review process in general and any of its outcomes as a result. Meeting the deadlines -determined by the TRC- is not considered in all means a waiver of all the legal actions and /or procedures JTC has conducted or will conduct; in addition, this also does not mean at all that JTC has accepted the TRC's decisions for the markets review.

Yours Faithfully
Dr. Ibrahim Harb
Chief Legal and Regulatory Officer
Jordan Telecommunications Company

المملكة الأردنية الهاشمية
هيئة تنظيم قطاع الإتصالات
التاريخ ١٣ كانون الثاني ٢٠١٣
الوارد ٢٩٩
الملف ٤/٥/٢

JORDAN TELECOMMUNICATIONS COMPANY

(Orange Fixed)

Objection and Request for Reconsideration

On the

"Accounting Separation Instructions"

Issued by TRC Board Decision No.(1-18/2012) dated (8/11/2012)

Objection and Request for Reconsideration on the " Accounting Separation Instructions"

Pursuant to Article (17) of the Rule-making Instructions, Jordan Telecommunications Company (Orange Fixed) is submitting to the TRC this official Objection and Request for Reconsideration (Request) for Articles (5/a), (5/b) paragraphs (3), (6) and (7) of Article (7), (9/c) and paragraphs (a) and (b) of Article (10) and Article (11/d) of the "Accounting Separation Instructions" as published by the TRC on its official website on 9/12/2011 and the related sections of Articles in the Explanatory Memorandum, all hereinafter referred to as the ("Instructions").

A) **Orange Fixed objects to the following Articles and requests their re-consideration:**

1- The TRC has stated that these Accounting Separation Instructions are applicable to all designated Dominant Licensees who are liable to implement Accounting Separation by a regulatory decision of TRC (Wholesale physical infrastructure access, Wholesale broadband access, Wholesale markets for dedicated capacity (terminating segment, trunk segment), Retail markets for dedicated capacity (retail local and national dedicated capacity <= 2Mbps, retail international dedicated capacity <= 2 Mbps). However, as the elements of these markets included in TRC market review decision are not implemented yet, it is not possible to have them reflected in the accounting separation system. Orange Fixed strongly believes that the accounting separation must be postponed till these markets are ready.

2- Orange Fixed also objects to paragraph (a) of Article (5) of TRC's Accounting Separation Instructions. The TRC should conduct a public consultation with the industry regarding this FAC model to set the proper principles to be applied for the model, to specify who is going to build the model, the time needed, and the process of finalizing and validating this model.

3- Regarding paragraph (b) of Article (5) of TRC's above-mentioned Accounting Separation Instructions, Orange Fixed will agree to implement both the HCA and the CCA. However, due to the fact that the TRC has published these Instructions in December, 2012 and the time limitation in which Orange Fixed did not have the time to implement the CCA and book the results in the financial systems prior to the closing of the fiscal year 2012, accordingly, Orange Fixed is unable to implement the CCA due to the shortage of time. The appropriate timing would be to implement the CCA at the end of 2013 and start implementation of the Accounting separation in 2014. Any implementation of accounting separation prior to 2014 will result in the

CCA being out of accounts/financial systems and thus this will be an obstacle to the independent auditor who will accordingly refuse to audit out of accounts CCA. It will be impossible to implement the Accounting Separation in June, 2013 for the fiscal year 2012 as Orange does not have any comparative figures based on CCA. **Orange Fixed can implement accounting separation in year 2014. Any year prior to 2014 would be unrealistic and impossible to meet.**

4- Paragraphs (3), (6) & (7) of Article (7) are unclear. Certain terms used are unclear or ambiguous. Below we set out what we believe are the appropriate interpretation such as 'consistent from year to year' – this must be understood as consistent from year to year subject to changes and improvements that may become necessary from time to time. Paragraph 6: '*The charge for internal usage shall be equivalent to the charge that would be levied if the product or service were sold externally rather than internally*' under a condition that the routing factors (Network elements usage and frequency of network element usage) are the same for both upstream and downstream services. This is the correct approach where a wholesale price has been derived, i.e. in cases where the product is actually on offer on a wholesale basis. For other cases, see paragraph 7. Paragraph (7) states that '*In cases where wholesale services are not currently on offer (i.e. no wholesale tariffs exist) the transfer charges for the network part of retail services shall be calculated on the same basis and methodology, and using the same network element costs, as the wholesale services.*' This case does not currently exist as prices for all services provided upstream and downstream SMP markets are set by the TRC's cost models.

5- Orange Fixed objects to paragraph (c) of Article (9) of the Accounting Separation Instructions, in its entirety, regarding the costs of the additional auditor to be paid by the dominant licensee. Audit fees are significant and extremely costly. The re-audit process is an unnecessary burden on the regulated entity. This will entail an additional significant burden on the operator. This will have the effect of further increasing the costs of implementing accounting separation.

In addition to the above, Section (10.1) regarding Accounting & Reporting of our License clearly states that "*All financial information submitted by the Licensee to the TRC for any purpose shall be prepared and presented in accordance with accounting standards applicable in Jordan or as directed by the TRC, **provided that such direction does not result in any unreasonable additional costs being incurred by the Licensee.***"

Regulatory audit fees are extremely costly and should the TRC proceed in appointing an additional auditor, then the TRC should pay for this not Orange Fixed. Imposing Orange Fixed to pay the additional auditor fees will be a breach of the above-mentioned Section 10.1 of the License as these costs are unreasonable.

In addition to the above, Section (2.2) of our License also states that the « licensee pays an annual fee of 1% based on a percentage of the operating revenues arising from its Licensed Activities. T*he percentage shall be determined by the TRC, but shall not exceed 1% of such revenues.* ***This annual License fee shall be recovered from all Licensees in order to recover the costs of the TRC in regulating the Jordanian telecommunications and information technology sector, as detailed in this License Agreement and/or Regulations."***

In accordance with Section 2.2 of our License referred to above, should the TRC appoint an additional auditor, the TRC should be able to pay for the auditor expenses through the (1%) annual fees paid by the licensees. In this case, any auditor appointed by the TRC should be one of the big four internationally renowned auditors: KPMG, Ernst & Young (EY), PricewaterhouseCooperse (PwC) or Deloitte.

6- In addition to point No. (3) above in this letter, Orange Fixed objects to paragraph (a) of Article (10) as Orange Fixed can implement accounting separation in year 2014. Any year prior to 2014 would be unrealistic and impossible to meet due to the time limitation in which Orange Fixed did not have the time to implement the CCA and book the results in the financial systems prior to the closing of the fiscal year 2012, accordingly, Orange Fixed is unable to implement the CCA due to the shortage of time.

Orange Fixed objects to paragraph (b) of Article (10) of the Accounting Separation Instructions, Orange Fixed agrees that accounting separation documentation should be on a yearly basis. Orange Fixed does not agree that TRC requires accounting separation documentation on an ad-hoc basis (within the year or more than one time per year).

7- Orange Fixed objects to paragraph (d) of Article (11) of the Accounting Separation Instructions along with Section 7.3 of the Accounting Separation Instructions Explanatory Memorandum. The accounting separation information are commercially sensitive information and must be treated as confidential and should not be made public. In addition to the above, ERG also states on the Review of the Recommendation on cost accounting and accounting separation that: "*Confidentiality* *is an issue that needs to be addressed in order to assure notified operators that sensitive information provided to the NRAs **<u>will remain confidential and not made public, potentially putting the notified operator at a competitive disadvantage</u>**.*"

Based on the above, accounting separation information is commercially sensitive and should not be made public. Any exceptional publication of accounting separation information must be robustly justified, when it can be demonstrated by TRC that publication would not harm the operator concerned and the concerned operator's prior approval is obtained regarding any publication.

8- There are court cases pending before the Jordanian courts regarding the TRC's Market Review Determination. The TRC should consider and bear in mind the financial impact on Orange Fixed in implementing these Accounting Separation Instructions regarding all the expenses incurred and to be incurred by Orange Fixed in implementing these Accounting Separation Instructions in case of any Ruling in this matter to be issued by the competent Jordanian courts in favor of Orange Fixed. These costs are significant and onerous.

<u>REQUEST:</u>

Based on all of the above, Orange Fixed re-affirms its main position stated above and without undermining any legal rights that our company has or can proceed with, we kindly request that the TRC:

1- To accept our Request for its submission in due course.

2- To consider and adopt our amendments and comments on the Instructions as stated above and to proceed in amending same through the suspension of these Instructions and the issuance of the modified Instructions.

3- To conduct a public consultation with the concerned parties in the Sector to thoroughly discuss the implementation of FAC model as stated above.