

Date: Jan 21, 2010

## **wi-tribe limited – Jordan**

### **Response to the TRC public consultation on Fixed Broadband markets Consultation Questions**

#### **MARKET FOR RETAIL BROADBAND INTERNET ACCESS PROVIDED AT A FIXED LOCATION (IN THE ABSENCE OF ANY EX ANTE REGULATION)**

*Q1. Do you agree with the TRC's preliminary conclusions regarding the product and geographic definition of the relevant market for retail broadband Internet access?*

*wi-tribe mostly agrees, with the following exceptions.*

1. wi-tribe believes that 3G Internet services fall within the definition given the capabilities of 3G. Moreover, given that Orange is the sole 3G operator, the fact that it is the dominant service provider in the retail broadband Internet access market should result in 3G falling within this definition. The TRC hints at the same argument in another context at the bottom of page 26.
2. Exclusion of Internet over leased lines from the product definition does not make sense given that SDSL and business services fall within the definition.
3. The TRC needs to take a stand now whether SDSL and VDSL are part of the DSL market.

*Q2. Do you agree with the TRC's preliminary conclusions that the three criteria are fulfilled for the market for retail broadband Internet access in the absence of any ex ante regulation at wholesale and retail level?*

wi-tribe agrees, but note that competition seems to include ADSL, but not all DSL, such as SDSL and VDSL. We would ask to expand the definition given that Orange, the dominant player, is the only one that can offer SDSL and VDSL.

#### **MARKET FOR WHOLESALE PHYSICAL NETWORK INFRASTRUCTURE ACCESS (INCLUDING FULL AND SHARED ACCESS TO UNBUNDLED LOCAL LOOPS)**

*Q3. Do you agree with the TRC's preliminary conclusions regarding the product and geographic definition of the relevant market for wholesale physical network infrastructure access including full and shared access to unbundled local loops?*

wi-tribe agrees on the conclusions.

*Q4. Do you agree with the TRC's preliminary conclusions that the three criteria are fulfilled for the market for wholesale physical network infrastructure access (including full and shared access to unbundled local loops) and, thus, this market is susceptible to ex ante regulation?*

wi-tribe agrees on the conclusions.

*Q5. Do you agree with the TRC's preliminary conclusions that Orange Fixed has a dominant position in the market for wholesale physical network infrastructure access (including full and shared access to unbundled local loops)?*

wi-tribe agrees on the conclusions.

*Q6. Do you agree with the TRC's preliminary conclusions that the potential competition problems related to the dominant position of Orange Fixed include denial of access to unbundled local loops (and associated facilities and services), discrimination and excessive wholesale charges?*

wi-tribe agrees on the conclusions.

*Q7. Do you agree with the TRC's preliminary conclusions about the appropriate remedies to be imposed on Orange Fixed to deal with the competition problems identified?*

wi-tribe agrees on the conclusions.

#### **MARKET FOR WHOLESALE BROADBAND ACCESS**

*Q8. Do you agree with the TRC's preliminary conclusions regarding the product and geographic definition of the relevant market for wholesale broadband access?*

wi-tribe agrees on the conclusions.

*Q9. Do you agree with the TRC's preliminary conclusions that the three criteria are fulfilled for the market for wholesale broadband access and, thus, this market is susceptible to ex ante regulation?*

wi-tribe agrees on the conclusions.

*Q10. Do you agree with the TRC's preliminary conclusions that Orange Fixed has a Dominant position in the market for wholesale broadband access?*

wi-tribe agrees on the conclusions.

*Q11. Do you agree with the TRC's preliminary conclusions that the potential competition problems related to the dominant position of Orange Fixed include the denial of wholesale broadband access (or at least some of the relevant wholesale broadband access options, and associated facilities and services), discrimination and excessive wholesale charges?*

wi-tribe agrees on the conclusions.

*Q12. Do you agree with the TRC's preliminary conclusions about the appropriate remedies to be imposed on Orange Fixed to deal with the competition problems identified?*

wi-tribe agrees on the conclusions.

*Q13. Do you agree with the TRC's preliminary conclusion that the current obligations of price control of retail DSL connections and price control of backhaul should be maintained for a transitory period until the obligations with regard to wholesale broadband access become fully implemented and effective? Do you believe that other transitional remedies are necessary?*  
wi-tribe agrees on the conclusion. Not other remedies are needed.

**MARKET FOR RETAIL BROADBAND INTERNET ACCESS PROVIDED AT A FIXED LOCATION WITH EX ANTE REGULATION OF UNBUNDLED LOCAL LOOPS AND WHOLESALE BROADBAND ACCESS IN PLACE**

*Q14. Do you agree with the TRC's preliminary conclusion that the market for retail broadband Internet access provided at a fixed location does not fulfill the three criteria test once ex ante regulation of unbundled local loops and wholesale broadband access becomes fully and effectively implemented and, as such, is a market which is not susceptible to ex ante regulation?*  
wi-tribe disagrees. we think that Orange Fixed is dominant in the retail space now, that its dominance is derived from its previous monopoly position, which allowed it to pass on the cost of building its access network to a captive customer base that had no other choice but to accept such passed costs (something that FBWA and FTTH operators cannot do), that this access network is likely depreciated by now, which gives it tremendous pricing advantages, that the very high spectrum fees paid by FBWA operators provide Orange Fixed with an even greater advantage as it does not have to pay anywhere near such fees for its access network, and that its head start is difficult to overcome because churning customers is very hard. Finally, it will take time for the TRC to implement and enforce the upstream remedies, so retail remedies should also be applied over the next 3 years. The point of the analysis is that the TRC has decided to limit its analysis at the retail level to Orange Fixed sharing its position with other DSL providers that seek to work through an unbundled local loop. However, this approach leaves the FBWA and FTTH operators disadvantaged.

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### **Other Comments /observations and concerns:**

1. wi-tribe believes that retail regulation should be imposed in Jordan to set a floor on retail broadband rates so as to allow all (or certain) service providers to offer viable service offerings. The TRC will be concerned to ensure that the most efficient offerings are provided for in the market at the most competitive rates. It would be untenable for the TRC to prevent a service provider from lowering its retail prices, (even where it has been declared dominant in the retail market), provided that such prices are above the service provider's cost of provision and satisfy all other relevant competition law requirements.
2. International benchmarking showing that the cost of spectrum for WiMAX technology is too high in Jordan and is therefore preventing wi-tribe from being able to effectively compete against other technologies that do not utilize such spectrum should continue to be argued for. A persuasive argument is along the lines of - in order for broadband penetration to grow in Jordan, lower pricing of offerings should be encouraged - lower spectrum fees based on international best practices will allow wi-tribe to offer more competitive prices and to be able to fairly compete with other providers which in turn will promote the uptake of broadband services.
3. wi-tribe believes that the IP transit prices are very high compared with other countries, these prices are also considered a barrier to entry due to lack of competition.
4. wi-tribe believes that 3G will compete with the FBWA and accordingly mobility rights must be granted to the FBWA operators in order to have fair competition in the broadband services.
5. The reference to wi-tribe in Table 8 on page 17 is incorrect, sine we don't have a standard offer/ package for Business.

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