

ANNEX (3)

Batelco comments on the draft Update to the Competition Safeguard Instructions

Question 1

*Does the industry agree with the updates to the **market definition process** as set out in Article (5) of the draft updated Instructions? In particular, the TRC proposes to remove any references to pre-defined product or geographic markets, and instead undertake a market definition exercise on a case-by-case basis, based on evidence around demand-side and supply-side substitutability, and other relevant considerations. If not, please state why this is not the case, with reasons, and propose alternative definitions.*

1. The case-by-case approach offers greater flexibility to adapt to the rapid changes in telecom markets, particularly with the pace of technological advancements. Pre-defined markets risk becoming outdated quickly, making an adaptable framework more suitable for addressing evolving market conditions.
2. By removing rigid geographic definitions, the TRC can more accurately account for diverse regional factors such as infrastructure variations, network capacity, and market demand. In Jordan, this could include differences in network investment across regions, varying population densities, and differing levels of consumer uptake in specific areas, all of which require a more granular regulatory response.
3. A case-by-case market definition allows for a more detailed examination of local competitive conditions, such as the presence of exclusive agreements with property developers, real estates or municipalities, which may create localized monopolies or barriers to entry. This approach also supports targeted interventions, reflecting the competitive realities in each distinct area.
4. The flexibility of a case-by-case review, grounded in actual market data, enables a more accurate assessment of market power. It ensures that regulatory measures are tailored to specific market dynamics, including the varied availability of network resources and consumer behavior across different parts of the country. This results in more effective and precise regulatory actions.

Given that the new regulatory instructions (update competition safeguard instructions) explicitly authorize the TRC to conduct case-by-case competition analyses, we recommend that such interventions be clearly defined to occur under specific circumstances, such as addressing anti-competitive practices or responding to market failures that cannot be effectively managed through the standard ex-ante market review process.

We strongly support the TRC's proposed shift from pre-defined product and geographic market definitions to a case-by-case review when specific circumstances arise, while emphasizing the importance of maintaining the defined market structures in key sectors like fixed broadband and mobile

services. While the ex-ante market review should remain a reference point for investigating anti-competitive practices by dominant licensees in defined markets, it is crucial for the TRC to retain the authority to intervene in specific instances to tackle anti-competitive behavior or significant market changes through a case-by-case approach.

Question 2

*Does the industry agree with **the definition and proposed categorisation of the Impact Factors** that the TRC proposes to consider when assessing whether a Licensee holds a position of single or joint dominance in the relevant market(s) as set out in Article 7(a)? In addition, does the industry agree with the distinction in the approach to dominance designation in the context of ex-post competition investigations, compared to ex-ante market reviews? If not, please state why this is not the case, with reasons, and propose an alternative approach.*

1. The TRC's provisions are robust, incorporating various necessary elements for determining dominance in line with international standards. By combining market share analysis with qualitative Impact Factors and a flexible, case-specific approach, the TRC enhances its ability to accurately assess market dynamics and promote fair competition. This structure not only serves to identify potential market power abuses but also establishes a framework for regulatory oversight that can adapt to changing market conditions.
2. While the TRC's methodology is aligned with international standards, there may be differences in how strict or flexible the regulatory enforcement is in practice; where the TRC may need to adapt international methodologies to the specific characteristics of Jordan's telecom market, which could have unique factors such as lack of number portability, limited infrastructure sharing. These may necessitate more tailored assessments of market dynamics compared to larger and more developed telecom markets.
3. The proposed Impact Factors outlined in the draft regulation represent a robust framework for assessing Significant Market Power (SMP) and understanding competitive dynamics in the telecommunications sector. We strongly support the inclusion of these factors, as they provide a comprehensive lens through which to evaluate both historical and current market conditions, operator characteristics, and the overall market outlook.
4. The emphasis on historic and current market outcomes, such as customer switching rates and competitive advantages, is essential for understanding the realities of consumer behavior and market competition. Recognizing the operator characteristics, including control of essential facilities and vertical integration, ensures that the regulatory assessment reflects the real competitive landscape, enabling fair evaluations of market power.

Overall, we support the TRC for incorporating these Impact Factors into the regulatory framework and believe that their application will lead to more informed decisions regarding market dominance designations. This will ultimately contribute to a fairer and more competitive telecommunications market in Jordan.

Question 3

*Does the industry agree with the **provisions regarding the identification of joint dominance**, including the considerations that the TRC will take into account in its assessment, as set out in Article 7(b)? If not, please state why this is not the case, with reasons, and propose an alternative approach.*

We believe that the designation of joint dominance requires more detailed clarification to prevent uncertainty among operators:

1. The designation of joint dominance can create apprehension among operators regarding their competitive behavior. Operators may become hesitant to adjust pricing or adopt strategic initiatives for fear that such actions could be misinterpreted as collusion. This uncertainty may lead to overly cautious strategies that stifle innovation and hinder the ability to respond effectively to market dynamics.
2. The fear of potential regulatory scrutiny for actions perceived as retaliatory against competitors could lead to a chilling effect on legitimate competitive strategies. In a market with limited number of players, operators might react in parallel to competitors' actions (i.e competition on brand advertising, competition on retaliate offers and promotional offers) which is a behavioral issue, this could unintentionally trigger a designation of collusion.
3. Given the unique circumstances of the Jordanian market—such as varying costs, regulatory environments, and market challenges—it is essential that operators understand the boundaries of acceptable competitive behavior to mitigate the risk of regulatory action based on misinterpretation.

Accordingly, we urge the TRC to clearly define the parameters and implications of joint dominance designations to foster a more certain and stable competitive environment. This should include guidelines that delineate acceptable competitive practices and clarify the distinction between healthy competition and collusion.

In conclusion, while we recognize the importance of preventing anti-competitive behavior, we believe that a well-defined approach to joint dominance designations is crucial. Clarifying these designations will provide operators with the certainty needed to engage in competitive practices that promote market health while addressing the unique challenges faced in the Jordanian telecommunications landscape.

Question 4

*Does the industry agree with the **overall, proposed complaint and assessment process (and the key process steps within it)** set out in Article (9) of the draft updated Instructions? Additionally, does the industry agree with the proposed timelines set out by the TRC as part of the guidance on the complaint and assessment process? If not, please state why this is not the case, with reasons, and propose specific amendments to the overall process or timelines.*

1. The outlined process provides a clear framework for how competition investigations will be conducted, it sets expectations for how complaints will be handled and the timeline for investigations.
2. Consider including a provision for engaging with stakeholders during the investigation process to gather additional insights or clarify information. This could enhance the quality of the investigation and foster collaboration.
3. It may be beneficial to provide general timelines for each phase of the investigation to set clear expectations for complainants and Licensees.

Question 5

*Does the industry agree with the **proposed amendments to the substantive assessments that the TRC will look to undertake when assessing each of the anti-competitive behaviours** outlined in Articles (11) to (20)? If not, please state why this is not the case, with reasons, and propose alternative substantive approaches.*

1. It may be beneficial for the TRC to develop clearer and more specific guidelines for assessing these anti-competitive behaviors, drawing on established international practices.
2. Emphasizing economic analyses and models used internationally could strengthen the TRC's assessments and ensure they are grounded in rigorous economic theory.
3. Ensuring that assessments are transparent and based on objective criteria can help enhance stakeholder trust and compliance.
4. TRC introduce a new anti-competitive practice “ **Excessive Pricing**”: Excessive pricing cases often require a robust analysis of market conditions and consumer harm, along with a clear definition of what constitutes "excessive." The TRC should enhance clarity around benchmarks for assessing excessive pricing.

Overall, while the TRC's proposed amendments exhibit a comprehensive framework for assessing anti-competitive behaviors, we suggest that TRC to align more closely with established international practices that emphasize clarity, economic analysis, and objective benchmarks. This alignment could enhance the efficacy of competition regulation in Jordan's telecommunications sector.

Question 6

*Does the industry agree with the **detailed guidance presented on the substantive approaches** that the TRC will look to adopt in its assessment of proposed transfers of ownership or control, as set out in Article (21) of the draft updated Instructions?*

1. Internationally, merger control is more flexible, with no fixed market share threshold in many cases. The TRC might benefit from incorporating a more nuanced assessment based on broader market conditions rather than a fixed 40% share threshold. We suggest refining the rigidity of market share thresholds and increase transparency around the interpretation of quantitative tools in decision-making. Adopting a more flexible, case-by-case approach in line with international norms may improve the TRC's ability to respond to dynamic market conditions in Jordan's telecommunications sector.
2. While the TRC's proposed use of quantitative tools like market shares, HHI, UPP, and diversion ratios is robust, it would help to provide more detailed guidance on how the results from these tools will influence the final decision.

Question 7

Does the industry agree with the information that the TRC proposes to be included as part of a formal notification of a transfer of ownership in Article (22)? Is there any additional information that the TRC should request as part of the initial notification to potentially streamline the TRC's formal investigation? Further, does the industry agree with the proposed investigation process and associated timelines proposed by the TRC? If not, please state why this is not the case, with reasons, and propose specific amendments to the overall process or timelines.

1. Requiring parties to highlight potential efficiencies (cost savings, innovation, etc.) and consumer benefits may assist the TRC in determining the broader impact of the transaction beyond market share metrics.
2. Additional required details on whether the transaction involves technology transfers or innovation synergies that could enhance competition or lead to better services for consumers.

3. The potential for an additional 90-day extension could be problematic for the industry, especially if complex transactions are involved. We suggest a mandatory explanation for the extension and under what conditions would TRC extend the review period to a maximum of 180 days. This would provide clarity for the parties involved and reduce uncertainty.

Article	Comments
<p>Article (4) Scope of Instructions</p> <p>a) These Instructions shall be adopted and applied by the TRC, and adhered to by all Licensees. The TRC will apply the provisions of these Instructions to inform:</p> <ol style="list-style-type: none"> (1) its ex-post assessments of potential anti-competitive behavior by any Licensees; (2) its assessment of the competitive implications of an acquisition or a transfer of interests involving a Licensee; and (3) its ex-ante market reviews within the telecommunications sector, including, but not limited to, the designation of dominant licensees and the resulting imposition of obligations under the Telecommunications Law. 	<p>We believe that the TRC should retain the provision exists in the current instructions regarding the scope of instructions as follows:</p> <p>(4)“Cases brought by the TRC alleging anti-competitive behavior by Licensees, including dispute resolution processes, such as when a third party submits a complaint to the TRC alleging anti-competitive behavior by a Licensee.”</p> <p>Including this provision is crucial as it ensures that the TRC can effectively address instances of alleged anti-competitive conduct and facilitate dispute resolution in a timely manner. This provision reinforces the TRC's commitment to maintaining a competitive environment within the telecommunications sector.</p>
<p>Article (5) Competition Analysis – Market Definitions</p> <ol style="list-style-type: none"> a) As a starting point to any analysis or investigation carried out under these Instructions, the TRC shall, on a case-by-case basis, define the boundaries of the relevant market, covering both its product and geographic boundaries b) The product market definition will be carried out following an assessment of the demand-side and/or supply-side substitutability between different products or services, including the implementation of the Hypothetical Monopolist Test (HMT) to assess the competitive constraint imposed by the products or 	<ul style="list-style-type: none"> • (Article 5.a) please to consider our answer to question 1, as a case-by-case competition analysis, should be conducted in specific circumstances arise, such as the need to address anti-competitive practices or respond to market failures that cannot be effectively managed under ex ante market review. • (Article 5.b): While the focus on demand-side and supply-side substitutability is appropriate, a cleared criteria for what constitutes sufficient substitutability should be defined.

services on each other. The TRC may require evidence from the Parties for this analysis.

- c) As part of this, the TRC may also consider specific information about the products and services, including, but not limited to:
- (1) service characteristics and general price levels;
 - (2) the importance of the product(s) or service(s) for the end users over recent years, as well as the expected outlook; and
 - (3) the trends in the supply and development of these products and services in Jordan over recent years, as well as the expected outlook.
 - (4) whether there are any chains of substitutions for the products or services under consideration that need to be included in the product market.
 - (5) when defining wholesale markets, whether any indirect pricing constraints from downstream markets exist that may impact the demand for the wholesale services under consideration.
1. However, the HMT does not require a quantitative assessment, and may be carried out on the basis of qualitative arguments where such data is unavailable or insufficiently captures expected market dynamics.
- d) As part of the product market definition, the TRC may also consider new services that have not historically formed part of relevant markets. These services may be defined to form part of the same product market as existing services, or form a separate product market, based on the TRC's assessment as set out above.
- e) The relevant geographic market(s) will also be defined on a case-by-case basis.
- f) This may be national, or defined on the basis of political or administrative boundaries, or network topology of the relevant Licensees. The TRC may start with a high-level consideration of whether there are any competitive or structural differences across

Currently, it's not entirely clear what level of substitution would justify placing different products or services in the same market. Without clear guidelines on substitutability, there may be inconsistent outcomes or unexpected classifications that affect product positioning. This could lead to markets being defined too broadly, grouping non-competing products together, or too narrowly, fragmenting markets in ways that are not reflective of real-world competition.

We suggest that clear thresholds or factors should be established that demonstrate when demand-side and supply-side substitutability exist. Furthermore, there should be clear guidance on how qualitative vs. quantitative data will be balanced in these determinations.

- The proposal mentions that the Hypothetical Monopolist Test (HMT) may be performed using qualitative arguments if data is insufficient or unavailable. The reliance on qualitative arguments without a quantitative basis can lead to subjective assessments and may create regulatory uncertainty for businesses. We suggest that the TRC should provide clear guidelines on what qualitative evidence will be deemed acceptable and how it will be evaluated. Moreover, TRC should specify when the absence of quantitative data will necessitate reliance on qualitative evidence and what safeguards are in place to ensure objective outcomes.
- **(Article 5.c.4)** : While chains of substitution are mentioned, the process by which these chains will be identified and assessed is

different geographical areas to arrive at preliminary view of whether the relevant geographic market is national or sub-national. In so doing, the TRC will aim to identify a geographic unit that has stable and transparent boundaries.

g) Where the preliminary analysis is insufficient, the TRC will assess any differences in the competitive conditions across different geographic units. This may be based on factors including, but not limited to:

- (1) an assessment of potential supply-side substitution;
- (2) structural differences in the competitive conditions between different types of geographical areas;
- (3) the coverage of the parties' fixed or mobile telecommunications networks; and
- (4) geographic variation in observed price levels.

The geographic market definition will also consider whether an activity performed by any of the parties outside Jordan affects the telecommunications market in Jordan.

h) If there are no differences in the competitive conditions between the different geographic units, the TRC is unlikely to consider a case for a sub-national market definition.

not fully clear. Misidentifying chains of substitution could lead to market definitions that inaccurately capture competitive dynamics, potentially affecting pricing, product differentiation, and investment decisions.

We suggest TRC clarify how chains of substitutions will be evaluated, and whether the burden of proof for identifying such chains rests with the licensees or the TRC.

- **(Article 5.c.5):** The consideration of indirect pricing constraints from downstream markets is a positive step, but more detail is needed on how this will be assessed and factored into market definitions. However, TRC should outline specific criteria for identifying and analyzing indirect pricing constraints, as well as how these constraints will be factored into market reviews.
- **(Article 5.d) :** We believe that TRC clarifies the timeline and process for reassessing market definitions when new services are introduced. Specifically, TRC should outline how frequently market boundaries will be revisited to accommodate new technologies or business models.
- **(Articles 5.e-g):** The geographic market definition criteria are generally thorough, the TRC should clarify how it will determine when structural differences in competitive conditions across regions are significant enough to justify sub-national markets. Establish clear parameters or benchmarks for determining when sub-national markets are appropriate. Moreover, ensure that licensees are able to provide input during this process, especially if their services or market conditions differ

	<p>significantly across regions.</p> <p>This Article (5) appropriately considers market and geographic definitions, but it omits a crucial element of customer segmentation under Customer markets, where different customer segments—such as business vs. residential—often exhibit varying competitive dynamics that can substantially affect market outcomes. These segments can differ in terms of demand elasticity, switching behavior, and the level of competitive pressures faced by operators. Business customers, for instance, may have distinct service requirements or exhibit different price sensitivities compared to residential users. Similarly, prepaid and postpaid mobile customers have contrasting usage patterns, pricing sensitivities, and contractual obligations, which impact competition. Failure to account for these differences may lead to inaccurate market power assessments and inappropriate regulatory obligations. Therefore, we believe that the said instructions (Article 5) explicitly recognize these key customer segments to ensure a more accurate and fair analysis of market competition.</p>
<p>Article (6) Competition Analysis – Market Share</p> <p>Where appropriate after defining the relevant market pursuant to Article (5) of these Instructions, the TRC shall determine the measurement of the relevant Licensee’s market share by examining, as an initial matter, that Licensee’s share of revenue in the defined market. The TRC may also consider other appropriate measures of market share (such as, based on the number of customers or subscriptions) supported by evidence placed in the record by the parties to a particular proceeding.</p>	<ol style="list-style-type: none"> 1. The phrase "where appropriate" may introduce ambiguity about the circumstances under which market share will be a key determinant in defining relevant markets. It is essential for the TRC to provide clear guidelines on the criteria that will be used to assess appropriateness. This transparency will help stakeholders understand the TRC's approach and rationale, fostering trust in the regulatory process. 2. The market share analysis does not clearly indicate whether

	<p>market share will be assessed on a static (single point in time) or dynamic (trend over time) basis. Static market share assessment may not capture the full picture, especially in fast-evolving markets, where market shares can fluctuate due to factors such as promotional campaigns, regulatory changes, or new technology rollouts (e.g., 5G). A dynamic approach would be more reflective of the competitive landscape and give operators a better chance to demonstrate competitiveness in evolving markets.</p>
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Article (7) Competition Analysis – Designation of Dominant Licensees

A Licensee may be found to hold single dominance or a group of Licensees may be found to hold joint dominance in a relevant market(s).

Article (7a) Competition Analysis – Single Dominance

- a) A Licensee shall be deemed to hold single dominance in a relevant market when it is sufficiently able to unilaterally influence or control key market outcomes in the relevant market(s).
- b) To arrive at a preliminary determination of whether a Licensee has sufficient unilateral influence on a relevant market to be designated as dominant in that market, the TRC shall first apply a test based upon specified percentage thresholds of market share, as determined in Article (6) of these Instructions, combined with an evaluation of the Licensee’s impact on the market. Specifically:
 - (1) In line with the provisions of Article 6C of the Competition Law, a Licensee with a market share of 40% or more of a relevant market shall be presumed to hold single dominance in that market, unless it can prove that it is facing effective competition, or it does not have significant market power. The presumption of dominance can be overcome by consideration of evidence establishing that the Licensee does not have the ability to control and affect the activity of the market, based on factors including, but not necessarily limited to, the Impact Factors listed in subparagraph C of this Article.
 - (2) A Licensee with a market share of less than 40% in a relevant market shall be presumed to not hold a single dominant position in that market. The presumption of non-dominance can, however, be overcome by consideration of evidence establishing that the Licensee has the ability to control and

Article 7a-b-1: As Licensee with a market share of more than 40% is presumed to hold single dominance in that market unless it can demonstrate the presence of effective competition or the absence of significant market power. We believe that it is essential for the TRC to conduct a thorough analysis in situations where the licensee may not have access to comprehensive information about the market dynamics and the market shares of its competitors, which could hinder its ability to effectively demonstrate a lack of dominance. Therefore, it would be prudent for the TRC to engage in this assessment proactively, ensuring that the regulatory framework takes into account the complexities of the market and the limitations faced by licensees in gathering competitive data.

By undertaking this exercise, the TRC can better support a fair evaluation of market power and ensure that regulatory decisions are based on a complete understanding of the competitive landscape.

Accordingly, we suggest the following amendment to article 7a-b-1 as following:

“In line with the provisions of Article 6C of the Competition Law, a Licensee with a market share of **more than** 40% of a relevant market shall be presumed to hold single dominance in that market, **unless it is demonstrated** that the designated Licensee is facing effective competition or that it does not have significant market power. The presumption of dominance can be overcome **by the TRC’s** evaluation

affect the activity of the market, based on factors including, but not necessarily limited to, the Impact Factors listed in subparagraph C of this Article.

- c) In addition to the market share thresholds, the TRC will also consider additional Impact Factors to better reflect the underlying competitive mechanisms in the market(s). The Impact Factors can be categorized across three dimensions:

Historic and current market outcomes

- (1) Observed rates of customer switching, such as through data on historic and current churn rates
- (2) Whether any Licensees enjoy a competitive advantage due to economies of scale or scope
- (3) Presence of countervailing buyer power which may restrain the ability of a Licensee from exercising its market power due to other buying relationships that the Licensee may have in the relevant market(s)

Operator characteristics

- (4) Overall size of the Licensee, relative to other market participants, in terms of its revenue, profitability, employment, number of subscribers, or network capacity. The relative size of the Licensee may either confer an advantage (in the form of greater resources and capacity), or a disadvantage (if smaller operators have not reached the minimum efficient scale). The implication of the relative size of a Licensee on its ability to influence market outcomes will be assessed on a case-by-case basis
- (5) Its control of essential facilities and infrastructure that is not economically duplicable. This includes physical infrastructure like ducts and transportation networks that incur high fixed costs to install, as well as resources that are scarce, such as spectrum frequencies.

of evidence establishing that the Licensee does not have the ability to control and affect the activity of the market. This evaluation shall consider various factors, including but not necessarily limited to the Impact Factors listed in subparagraph C of this Article.”

Article (7a)-c-5:

Essential facilities and infrastructure should be defined clearly that are critical for the provision of telecommunications services and cannot be feasibly duplicated by competitors, i.e. Ducts, poles, and transmission networks, Mobile towers, and also the rights of way which grant access to public properties or private properties to install infrastructure such as (cables , poles, indoor mobile coverage), where these rights are often difficult to obtain and are often granted exclusively, making it challenging for competitors to build alternative networks.

Article (7b):

Under the Telecommunications Law, the TRC’s role is proactive, using ex-ante regulatory remedies to prevent competition issues and ensure market structures support fair competition. This contrasts with the Directorate of Competition’s reactive role under Competition Law, where issues like collusion or abuse of dominance are addressed after competition harm is detected through ex-post interventions.

Accordingly, article (7b) gives the TRC the responsibility to designate joint dominance through a case-by-case market analysis. This

- (6) Whether the Licensee is vertically integrated in a Upstream market that provides an essential input into the Downstream market(s). In such a situation, the TRC will assess the potential capability and incentive of the Licensee to foreclose Downstream competitors by refusing to supply or dealing with unfavorable terms.
- (7) Any non-temporary technological advantages enjoyed by the Licensee
- (8) Any non-temporary network externalities enjoyed by the Licensee, for example through the presence of material differences in on-net and off-net rates offered
- (9) More privileged access to financial resources and capital, relative to other competitors. The audited accounts of the Licensees may be required to provide information on the cost of capital incurred, to be compared to the appropriate market rate.
- (10) The ability of Licensees that operate in related markets to leverage a position of market power in one market, into a related market through bundling or tying of related products or services.

Market outlook

- (11) The presence of legal, regulatory, structural, or commercial barriers to market entry, relative to the number of players already in the market.
- (12) The presence of barriers to expansion of existing players in the market. The TRC may base this on a comparison of the actual and potential customer penetration levels to assess whether there remains significant opportunity that might be conducive to entry or expansion.
- (13) The absence of potential entrants from adjacent markets.

approach would help identify and mitigate joint dominance ante competitive practices. Where to consider the following key points:

- Telecom regulations under the Telecommunications Law take a preventive role by imposing ex-ante obligations in markets with potential joint dominance, promoting competition proactively.
- Competition authorities rely on ex-post assessments, addressing joint dominance through investigations into collusion or abuse of dominance after harm has occurred.

We suggest a balanced framework where the TRC continues to take proactive measures to foster competition, and once the market reaches a competitive equilibrium, general competition law can assume responsibility for ensuring sustainable market conditions.

We believe that the TRC should focus on promoting competition through ex-ante measures until the market is sufficiently competitive for ex-post Competition Law to take over.

(14) The existence of non-transient barriers to customer switching between operators or tariffs, as measured by current and expected churn rates as well as customer access to information on tariffs and retail offers.

- d) Any designations of dominance pursuant to this Article shall be used both to: (1) impose ex ante regulatory obligations applicable to dominant Licensees, and (2) evaluate alleged anti-competitive misconduct by Licensees on an ex post basis.
- e) The specific Impact Factors that the TRC will consider will vary on a case-by-case basis. These Impact Factors include both, backward-looking and forward-looking considerations, with the former more likely to be relevant for investigations into possible anti-competitive behavior and the latter more likely to be relevant for ex-ante market reviews. Whether a factor is forward-looking or backward-looking must be determined based on the specifics of the case.

Article (7b) Competition Analysis – Joint Dominance

- a) Two or more Licensees shall be deemed to hold joint dominance in a relevant market if they can jointly influence or control key market outcomes in the relevant market(s), independently of other competitors in the market(s).
- b) A joint dominance finding will be based on evidence that two or more Licensees have adopted, or are able to adopt, a common policy on a lasting basis, with the aim to distort competition in the market and negatively affect other competitors or end users in the market. The TRC will investigate the existence of such common policies including, but are not limited to:
 - (1) Coordinated price movements
 - (2) Joint refusal to deal or supply
 - (3) Market segmentation based on geography or customer

segments

(4) Synchronized investment and network expansion

c) Joint dominance can be exercised through tacit or explicit collusion.

(1) Tacit collusion refers to a situation where coordination is achieved without explicit agreement between the parties but where the parties consciously behave in parallel ways

(2) Explicit collusion refers to an explicit agreement between two or more independent Licensees to act in combination, conspiracy, cooperation or concert to pursue a common interest or outcome in the form of a 'cartel'

d) For a relevant market to facilitate joint dominance, it must fulfil several conditions relating to internal and external stability. The TRC will consider whether these conditions are present and how they holistically contribute to the presence of joint dominance. These conditions are:

Internal stability

(1) Transparency: Whether information on key outcomes (such as prices or quantities) can be easily monitored by the parties, such that deviation from agreed behaviors can be observed. In this regard, the TRC may assess the availability of such information on Licensee websites and financial statements.

(2) Symmetry: The extent to which the parties have similar cost structures and commercial strategies, thus making it more straightforward to act jointly and symmetrically. The TRC may consider the existence of such symmetry in Licensees' strategic statements and financial accounts.

(3) Credible punishment: Whether the potential forms of punishment for deviation from the agreed behavior can be credibly implemented. As part of this, the TRC may consider

<p>the forms of punishment that may be applicable, and whether the market conditions are conducive to their implementation.</p> <p>External stability</p> <p>(4) High barriers to entry: Since collusive behavior can be disrupted by new competitors, an assessment of the barriers to market entry is necessary</p> <p>(5) An absence of countervailing buyer power: If the buyers (at the retail or wholesale level) have sufficient power, it can restrain the ability of the Licensees to act jointly in a way that is detrimental to market outcomes.</p> <p>e) The TRC will assess the Impact Factors listed in paragraph c) of Article (7a) of these Instructions, where relevant. For ex-ante market reviews, a joint dominance finding can be established based on evidence that the relevant market(s) is conducive to such behavior, without the TRC proving active collusive behavior. On the other hand, for ex-post investigations, a determination of joint dominance and the subsequent imposition of sanctions requires evidence of actual collusive behavior between the parties, whether tacit or explicit.</p>	
<p>Article (8) Competition Analysis – Anti-Competitive Conduct</p> <p>a) The following forms of anti-competitive conduct shall be forbidden:</p> <p>(1) Abuse of dominant position, as described in Article (10) of these Instructions, and</p> <p>(2) Collusion, as described in Article (20) of these Instructions.</p> <p>b) In the event a Licensee violates the general prohibitions of these Instructions, such Licensee shall be subject to appropriate sanctions pursuant to the Telecommunications Law, any Instructions adopted pursuant thereto, and/or the terms of the Licensee’s License, as the</p>	<p>Our understanding is that this provision should apply to the ex-ante market review, where markets and the designation of dominant licensees are already established. In this context, anti-competitive practices would be assessed based on the conduct of the designated licensees within the relevant defined market. In this case the sanction outlined in Article 8-b below is legally grounded in the Telecommunications Law and the terms of the license agreement.</p> <p>If the case does not pertain to the defined market of dominant licensees established through the ex-ante market review, a case-by-case approach (ex-post investigation) will proceed as outlined in this</p>

<p>TRC deems applicable and appropriate.</p>	<p>instruction. If the case is deemed valid and the TRC concludes an abuse of dominant position, TRC will take action in accordance with Article (9-3) below.</p> <p>Kindly clarify and confirm our understanding outlined above. If this is the case, we suggest to TRC of rephrasing the related provisions to clearly reflect the context described above.</p>
<p style="text-align: center;">Article (9) Competition Analysis – Process</p> <p>a) The TRC will structure its ex-post competition investigation as follows:</p> <p>(1) An ex-post competition investigation may commence following a complaint or claim from a Licensee, or as an own-initiative investigation by the TRC which may be triggered by a complaint from any affected end-users or other interested parties.</p> <ul style="list-style-type: none"> a. If the complaint or claim raises concerns regarding the protection of fair and sustainable competition, the TRC may open a competition investigation. b. The complainant or claimant must provide, along with the complaint, evidence to substantiate its allegations. This evidence may be in the form of observed parameters (such as prices), or internal or public documents that point to potential abuse. c. An own-initiative investigation may be carried out following observations from an ex-ante market review. Additionally, in its role as sector regulator, the TRC monitors regularly market outcomes and so may begin an assessment if it notices practices which it believes may be harmful to consumers or competition. <p>(2) The TRC will then undertake its investigation over two phases:</p>	<p>Article (9): Our understanding is that this provision applies to competition investigations using a case-by-case approach, as outlined in these instructions, when the case does not pertain to the designated licensees in the defined market from the ex-ante market review.</p> <p>Kindly confirm and clarify this understanding. If accurate, we suggest rephrasing the related provisions to clearly reflect this context.</p> <p>Article (9-3): While the Competition Law grants the TRC the right to file cases directly with the court under Article 17 of the Competition Law, it should be noted that the Competition Directorate within the Ministry of Industry, Trade, and Supply is considered a complainant in all competition cases brought to court as per Article 17/b of the Competition Law. The TRC should also recognize that the instructions it relies on primarily describe anti-competitive practices and the methodologies for analysis based on TRC regulations. However, since the cases will be filed under the Competition Law, the scope of violations will be restricted to what is explicitly stated in that Competition Law, not the TRC’s regulations.</p> <p>Therefore, we recommend that cases be submitted to the Competition</p>

<p>a. The TRC will undertake a Phase 1 investigation which will encompass an initial review of high-level indicators and assessments (such as observed impact of alleged behavior on key outcomes such as market shares and prices) to identify any concerns, the TRC will either present its final decision, or will indicate the need for further investigation.</p> <p>b. Cases that require further assessment following Phase 1 will proceed to the Phase 2 investigation for a more in-depth analysis of the alleged behavior, utilizing the methods and approaches outlined in these Instructions.</p> <p>(3) Following the TRC's investigation, the TRC will take all necessary actions to end the anti-competitive behavior and/or present its conclusions to the Court, which will then deliver a final verdict in line with the provisions of Articles (20), (21) and (22) of the Competition Law.</p>	<p>Directorate, which can build the case based on the TRC's investigations and then file it accordingly. This approach ensures that the legal framework of the Competition Law is properly followed when pursuing such cases in court.</p> <p>Knowing that if the TRC finds that the competition law is not sufficient to cover certain cases, that means an ex-ante market review should be conducted by TRC to prevent such anti-competitive cases.</p>
<p>Article (21) Review of Acquisition or Transfer of Interests in Licenses for Anti-Competitive Effects</p> <p>a) No Person shall be authorized to acquire or transfer, directly or indirectly, an interest in or Control of a License if the effect of such acquisition or transfer of an interest in or Control of a License is to lessen substantially competition.</p> <p>b) All changes of Control of the Licensee shall require the prior written approval of the TRC. All assignments or transfers of a License shall require the prior written approval of the TRC.</p> <p>c) If the total transaction market share of the Enterprises involved in such an operation exceeds 40%, or the combined net annual income of the Enterprises exceeds a preset threshold as determined by the Council of Ministers, then the approval of such an operation must also be granted by the Directorate of Competition, before the transaction can be completed. Any assessment of such an operation will be led by the Directorate of</p>	<p>Article 21-d-8: We have noted the inclusion of "whether competitors' property, licensing of technology, shared research and development or similar activities shall be negatively affected by the transaction" as a factor in the TRC's evaluation of economic concentration operations. However, the regulatory instructions do not provide sufficient clarity on how the TRC intends to assess the impact on Shared Research and Development (R&D) activities as part of this process. Specifically, we would appreciate clarification on what types of R&D collaborations will be considered as part of the assessment, and what specific factors will the TRC examine to determine whether a transaction negatively affects shared R&D activities.</p> <p>Article (21-e):</p>

Competition.

d) To assess the potential competitive effects of a proposed economic concentration operation, the will look to undertake a counterfactual analysis to compare the likely evolution of competition in the relevant market(s) in a scenario where the proposed operation is approved (factual scenario), compared to a scenario where the proposed operation is blocked (counterfactual scenario). This counterfactual analysis will consider the incremental benefits and risks in the factual scenario over the counterfactual scenario to conclude whether, on balance, the benefits outweigh the risks. As part of its assessment, the TRC may consider the following non-exhaustive list of factors:

- (1) whether the transaction is between two Licensees in the same relevant product and geographic market(s) in the telecommunications sector,
- (2) whether the licensees are close competitors on the relevant market
- (3) the prevalent market shares and levels of market concentration and whether the transaction is likely to alter the market shares and concentration in the market in a way that could increase the risk of anti-competitive conduct;
- (4) whether the resulting Licensee shall remain or become dominant in a relevant market;
- (5) whether the products or services provided by the resulting Enterprise are offered competitively by other providers in the market;
- (6) whether the products and services of the Enterprises impose significant competitive constraints on each other such that the proposed transaction removes an important source of competition from the parties;
- (7) whether the transaction is likely to provide any public benefit;
- (8) whether competitors' property, licensing of technology, shared

As Jordan's telecom market may not have the same complexity as larger markets, making some of these advanced quantitative methods seem excessive. However, basic assessments such as market shares and concentration are still essential and likely fall within the telecom regulator's jurisdiction, especially when assessing anti-competitive behavior or market dominance.

Methods like the Herfindahl-Hirschman Index (HHI), diversion ratios and Upwards Pricing Pressure (UPP) are used globally for mergers and competition analysis. The effectiveness of these methods depends on the availability of accurate data, which could be challenging in a smaller market like Jordan.

We believe that applying the above methods comprehensively in a market like Jordan may not always be practical. It may be more beneficial for the TRC to adopt a balanced approach, using simpler quantitative measures where appropriate and reserving more advanced methods for cases with substantial market impact.

research and development or similar activities shall be negatively affected by the transaction; and

e) The TRC would expect that this assessment could include a variety of quantitative methods and tests, if the necessary information is available. The types of quantitative methods that the TRC may adopt include:

- (1) Market shares: The market shares of the Enterprises prior to and following the proposed operation can provide useful first indications of the market structure and of the competitive importance of parties as well as the other competitors in the relevant market(s). A high combined market share may suggest that the parties are important competitors in the market, and as such potentially exert material competitive constraints on each other. If these constraints are weakened or removed as a result of the proposed operation, the parties may have stronger incentives to engage in anti-competitive behavior.
- (2) Market concentration: Similar to market shares, an assessment of the level of concentration in the relevant markets pre- and post-operation can provide an indication of the scope of the likely competitive effects that may arise as a result of the transaction. The TRC may choose to apply the Herfindahl-Hirschman Index (HHI) which is calculated by summing the squares of the individual market shares of all the firms in the market. The absolute level of the HHI can give an initial indication of the competitive pressure in the market, whilst the change in the HHI (known as the 'delta') is a useful proxy for the change in concentration directly brought about by the proposed concentration.
- (3) Diversion ratios: In addition to measures of market structure, the TRC may also consider evidence of the degree of substitutability between the products and services offered by the parties to the transaction. Diversion ratios measure the proportion of customers that would substitute to one of the other merging parties, as a result of an increase in the price of the product offered by one of the merging parties. The

diversion ratio is linked to the own-price elasticity and cross-price elasticity of the products of the merging parties and can give an indication of the competitive pressure applied by the merging parties on one another and therefore, how much competitive pressure would be lost if the proposed operation was to proceed.

(4) Upwards Pricing Pressure (UPP): A related concept to diversion ratios is the Upward pricing Pressure which aims to quantitatively identify the expected increase in the price of the post-transaction entity's offering. The quantitative measure, termed the Gross Upward Pricing Pressure Index (or GUPPI), measures the post-transaction entity's incentives to raise price unilaterally, in the absence of any countervailing efficiencies, entry, or other change to the market structure.