

Annex (4)

Umniah comments on the draft Implementation of a Margin Squeeze Test for local access and broadband access

Error! Reference source not found. Efficiency Level	
1.	Efficiency level for the retail MSQT: 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.
2.	Efficiency level for the wholesale MSQT: 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.
<p>1. Efficiency Level (EEO, Adjusted EEO, REO):</p> <p>We note the TRC's proposal to apply the Equally Efficient Operator (EEO) approach for both retail and wholesale MSQT. While the EEO model is widely recognized for its focus on static efficiency, we believe that alternative approaches, such as the Adjusted EEO or the Reasonably Efficient Operator (REO) models, may be more appropriate in the Jordanian context, especially given the market's structural dynamics.</p> <ul style="list-style-type: none">• Challenges with the EEO Model: The EEO approach assumes that alternative operators have the same scale and efficiency as the designated SMP operator, in this case, Orange. However, this assumption may not reflect the reality of the Jordanian market, where significant differences in scale, geographic coverage, and cost structures exist between operators. For example, newer entrants and smaller operators may face higher customer acquisition costs, limited regional infrastructure, and differing access to capital. These differences, if unaccounted for, could lead to an unintended dampening of competition, as the EEO standard may disproportionately benefit the incumbent operator by failing to account for these structural imbalances.• In light of these considerations, we propose that the TRC adopt either the Adjusted EEO or the REO model, both of which would allow for adjustments based on market realities, such as differences in scale, operational efficiencies, and regional presence. This would ensure that the MSQT does not unfairly penalize smaller or regional operators and would encourage more robust competition in both the retail and wholesale markets. Such adjustments would also align with the TRC's stated goal of fostering market entry and expansion, particularly in markets where	

operators have historically struggled to gain a foothold.

2. Geographic and Market Share Considerations:

The consultation document highlights the varying market shares of operators in different regions of Jordan, particularly in the fixed broadband and wholesale markets. While there is evidence that certain operators are gaining market share outside of Amman, it is important to recognize that regional market share does not necessarily translate to national market power. The TRC should consider the following points when assessing the competitive landscape:

- **Infrastructure Limitations:** Some operators may have regional market strength due to specific infrastructure arrangements, such as partnerships with utility companies in certain regions. However, this regional strength should not be equated with national dominance, as these operators often lack the nationwide infrastructure and resources that incumbents like Orange possess. This distinction is crucial when determining the appropriate efficiency level for the MSQT.
- **Wholesale Fiber Services:** As noted, Orange has yet to provide wholesale fiber services to its retail competitors, despite its dominance in the market. This lack of wholesale access hinders competition and reinforces the need for regulatory flexibility in applying the MSQT. The development of competition in the wholesale broadband market should be encouraged, and any MSQT application should ensure that newer entrants are not discouraged from expanding due to overly strict or inappropriate regulatory frameworks.

3. Supporting Market Entry and Promoting Long-Term Competition:

In Jordan's evolving telecom market, promoting competition is critical to ensuring innovation, service quality, and consumer choice. Adopting a transitory approach to the MSQT that takes into account the market's structural realities would provide a more balanced competitive environment. This is especially important for the operators that may not yet have achieved the same scale or geographic reach as the incumbent.

4. Mitigating the Risk of Anti-Competitive Practices: The primary goal of the MSQT is to prevent dominant operators from engaging in anti-competitive margin squeeze practices. However, if applied rigidly through the EEO model, the test could inadvertently harm competition by placing an undue burden on smaller operators. A more flexible approach, such as Adjusted EEO or REO, would allow the TRC to assess the competitive dynamics more accurately and ensure that all operators are incentivized to continue investing in infrastructure and expanding services.

We respectfully disagree with the TRC's preliminary conclusion to apply the **EEO approach** for both retail and wholesale MSQT without any adjustments. Given the structure of the Jordanian telecom market, we recommend that the TRC consider either the **Adjusted EEO** or **REO** approaches, which would provide a more accurate reflection of market conditions and promote long-term competition.

Additionally, we urge the TRC to ensure that any MSQT application does not inadvertently stifle the growth of smaller or regional operators, particularly those expanding in areas where the incumbent's wholesale services yet to be provided. A more flexible regulatory framework will help foster innovation and competition, ultimately benefiting consumers through improved service quality and pricing.

Error! Reference source not found. **Timing**

3. Timing of the retail MSQT: 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.

Umniah agrees with the TRC's proposal to apply the retail MSQT ex-ante. The ex-ante approach ensures that any new offers from the regulated operator do not cause a margin squeeze from the outset, thus protecting emerging competition. However, the proposed ex-post MSQT every six months is reasonable, but we suggest shortening the interval to a quarterly basis in the initial phase. Given the dynamic nature of fibre broadband services and the potential for rapid market developments, a shorter interval would provide a more frequent review of actual costs and ensure that emerging competitive concerns are addressed promptly.

4. Criteria to identify retail fibre 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.

While we agree with the general principle of identifying **flagship offers** based on their market significance, we propose the following adjustments to enhance clarity and fairness:

1. Threshold for Flagship Offers: The threshold of **75%** of the operator's customer base or revenues may unintentionally exclude certain offers that could have a significant competitive impact despite accounting for a smaller share of revenues or customer base. We recommend lowering this threshold to **50-60%** to capture a broader range of potentially impactful offers, especially given the concentrated nature of the Jordanian market.

2. Criteria for Identifying New Flagship Offers: We agree with the TRC's inclusion of factors such as customer segments, services offered, and retail distribution channels to determine whether a new offer could have a significant market impact. However, we suggest that TRC explicitly add pricing strategies and promotional tactics as additional criteria, as these elements often play a critical role in shaping competitive dynamics, particularly in a rapidly evolving broadband market.

3. Market Impact Consideration: It would be beneficial for the TRC to further clarify how it will assess whether an offer has the potential to exert a significant market impact. We recommend developing a pre-launch impact assessment framework that includes consultation with industry stakeholders to ensure transparency and a shared understanding of the criteria.

Timing of the wholesale MSQT: Do you agree with TRC's preliminary conclusion that the wholesale MSQT should be applied on an ex-ante

5.	basis? If not, please indicate your alternative views and provide evidence to substantiate your position.
<p>Umniah support the TRC's proposal to apply the wholesale MSQT on an ex-ante basis. Wholesale services are foundational to maintaining a competitive retail broadband market, and ensuring that these services are priced and structured in a way that does not cause margin squeeze is essential. However, we have the following comments:</p> <p>1. While the ex-ante test for wholesale reference offers is appropriate, 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.</p> <p>2. Although the TRC has not proposed a regular ex-post review for wholesale offers, we recommend introducing an ex-post MSQT for wholesale services on an annual or bi-annual basis, particularly as the market evolves. This would provide a safeguard against unforeseen changes in costs or market dynamics that may not have been apparent at the time of the ex-ante test.</p>	
<p>Error! Reference source not found. Level of aggregation</p>	
6.	<p>Level of aggregation of the retail ex-ante MSQT: 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.</p>
<p>Umniah agrees with TRC's proposal to apply the ex-ante MSQT at the level of individual offers for fixed broadband. 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. This is especially important in markets where competition is still developing, and retail dominance by a designated operator could lead to anti-competitive pricing structures.</p> <p>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.</p>	
7.	<p>Level of aggregation of the retail ex-post MSQT: 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.</p>

Umniah agrees with TRC's approach to apply the ex-post MSQT at the portfolio level. The ex-post assessment allows the TRC to analyze 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.

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.

8. **Level of aggregation of the wholesale MSQT:** 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.

Umniah agrees with TRC's preliminary conclusion to apply the wholesale MSQT on an offer-by-offer basis. 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 and, by extension, their retail customers.

Error! Reference source not found. **Profitability method and time horizon for the test**

9. **Profitability method for the retail and wholesale MSQT:** 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.

Umniah agrees with TRC's conclusion that the Net Present Value (NPV) approach is the most appropriate method for both the retail and wholesale MSQT. This method better reflects the long-term nature of investments in broadband infrastructure, particularly in the telecommunications industry, where

upfront costs are significant and returns are realized over time.

The NPV approach aligns with how operators typically make business decisions, focusing on the overall lifetime profitability of an offer rather than short-term fluctuations in costs and revenues. It ensures that investments are assessed in a manner that accounts for the time value of money, and it avoids distortions caused by accounting conventions, such as how depreciation is handled.

However, we would like to seek TRC's perspective 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 behavior 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?

10.	Time horizon for the retail and wholesale MSQT: 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.
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Umniah agrees with the TRC's proposal to use the average customer lifetime as the time horizon for both the retail and wholesale MSQT. The average customer lifetime is a reasonable and practical metric for assessing the profitability of broadband services, as it directly reflects the period over which revenues are generated and costs are recovered.

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.

11.	Reasonable profit for the retail and wholesale MSQT: 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.
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Umniah agrees with the TRC's use of the approved Weighted Average Cost of Capital (WACC) rate, currently set at 11.9%, as a benchmark for

determining reasonable profit in the MSQT. The WACC reflects the opportunity cost of capital and ensures that the margin between retail revenues and wholesale costs is sufficient for a reasonably efficient operator to earn an adequate return on invested capital.

Using WACC as the benchmark aligns with standard regulatory practices and ensures consistency in evaluating profitability across operators. It also provides transparency and predictability in regulatory assessments, which is important for investment planning.

Alternative view: 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. Nonetheless, the approved WACC is a solid basis for current evaluations.

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12. **Cost standard for the ex-ante retail MSQT:** 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.

Umniah agrees with the TRC's proposed approach for estimating costs in the ex-ante retail MSQT. Utilizing a cost standard that excludes non-incremental costs, such as shared general advertising costs, is essential for accurately assessing the profitability of individual offers. This approach ensures that only the costs directly associated with providing the specific retail offers are considered, thereby preventing any distortion in the margin squeeze evaluation.

Moreover, the TRC's choice to utilize network costs from the TSLRIC+ hybrid model is commendable, as this methodology promotes an accurate reflection of the incremental costs associated with network provision. It is crucial that the MSQT aligns with economic principles to foster competition while allowing operators to recover their costs.

13. **Cost standard for the ex-post retail MSQT:** 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.

Umniah agrees with the TRC's proposed approach for estimating costs in the ex-post retail MSQT. The consideration of incremental costs for the analyzed portfolio of offers is appropriate, as it reflects the actual costs incurred in competing effectively in the retail market. Including costs that are incremental, such as advertising expenditures necessary for promoting the service, is vital for a realistic assessment of the profitability and competitiveness

of offers.

The distinction between the ex-ante and ex-post approaches is crucial in recognizing the evolving nature of costs when assessing a portfolio of services. This adaptability enables a more comprehensive evaluation of the cost structure faced by operators and ensures that the MSQT remains relevant and fair.

14. Cost standard for the wholesale MSQT: 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.

Umniah agrees with the TRC's proposed approach for estimating costs in the ex-ante wholesale MSQT. Utilizing LRIC+ costs from the TSLRIC+ hybrid model for network costs is a sound strategy, as it effectively captures the necessary costs for providing wholesale services while considering both fixed and incremental costs. This approach aligns with the objective of promoting fair competition in the wholesale market by ensuring that operators can recover their costs without leading to anti-competitive pricing practices.

By also relying on data submitted by regulated operators for non-network costs, the TRC ensures that the estimates reflect the actual cost structure faced by the operators in the market. This method fosters transparency and accountability in cost assessments.

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15. Relevant wholesale services for the retail MSQT: 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.

Umniah agrees with the TRC's preliminary conclusion that the retail MSQT should be implemented separately for VULA, bitstream copper, and bitstream fibre services when these are relevant for the provision of retail broadband services.

This separate implementation approach allows for a more precise assessment of the costs associated with each wholesale service, ensuring that the unique characteristics and competitive dynamics of each input are appropriately accounted for. Each of these wholesale services has distinct cost structures and market conditions, which can significantly affect retail pricing and competition.

Furthermore, evaluating them separately will help ensure that alternative operators can effectively replicate retail offerings based on the specific wholesale inputs they utilize. This will lead to more effective price regulation and promote fair competition in the market.

We would like to raise the following comment regarding the exclusion of FACO from the services covered by the MSQT, as it seems to be an inconsistency with the last market review that has already designated Orange as dominant in the FACO market. In the introduction of the consultation document, the TRC notes that Orange has been designated as a dominant operator in the Wholesale Local Access (WLA), Wholesale Broadband Access (WBA), and the Retail market for Fixed Telephony Access and Call Origination (FACO). However, it appears that FACO is not included in the scope of the proposed MSQT, despite its significance as a designated market in the Fixed Market Review. 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 (section 2.1 Scope of the MSQT)?

16. Relevant wholesale services for the wholesale MSQT: 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.

Umniah agrees with the TRC's preliminary conclusion to implement the wholesale MSQT using VULA as the relevant input. VULA is a crucial input for alternative operators to provide competitive retail broadband services, and focusing on it will ensure that the wholesale MSQT accurately reflects the costs associated with this essential service.

By centering the wholesale MSQT around VULA, the TRC acknowledges the importance of this service in enabling competition and fostering a level playing field in the retail market. VULA facilitates the provision of high-speed broadband and supports operators in meeting consumer demands effectively.

Implementing the wholesale MSQT based on VULA will also simplify the regulatory oversight process and ensure that the pricing structures remain conducive to competition and investment in network infrastructure.

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17. Assessment of bundles in the retail MSQT: 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.

Umniah agrees with the TRC's preliminary conclusion to assess bundles in the retail MSQT using an aggregate approach. This approach is

advantageous for several reasons:

1. 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.

2. 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.

3. Avoiding Cross-Subsidization Issues: While the aggregate 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.

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.

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18.	Consideration of promotions in the MSQT: 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.
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We agree with the TRC's preliminary conclusion that promotional costs incurred by the regulated operator should be factored into the ex-post retail MSQT. This inclusion is essential to ensure that alternative operators can sustainably replicate promotional offerings and compete effectively in the market.

We seek clarification on why the proposed ex-post control is limited to retail MSQT and not extended to wholesale promotions. Given that promotions can also influence wholesale market dynamics, a consistent approach across both retail and wholesale levels may be warranted.

As market conditions evolve, we recommend that the TRC establishes a framework for ongoing assessments of promotional strategies. This will

ensure that regulatory measures remain relevant and effective in promoting competition.

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19. Consideration of non-residential offers in the retail MSQT: 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.

Umniah agrees with TRC's preliminary conclusion to limit the application of the retail MSQT to residential and standardized non-residential broadband offers.