Annex (3): Umniah's Responses to Licensee's Comments on the draft "Competition Safeguard Instructions"

Zain Comments	Umniah Comments
Predefined Markets 18. There appears to be some cross-over between the market definition process set out in Article 5 and that referred to in Article 24. However, this cross-over could lead to some confusion as there are some contradictory points. 19. In Article 5(a) the Instructions state that markets will be defined on a "case-by-case basis" and removes the four pre-defined product markets included in the 2006 Instructions. However, Article 24(a) states that the TRC will start the process of identifying candidate markets for ex ante market reviews "from any markets defined in a previous review, or any international benchmarks, where relevant". Article 5(b) goes on to say that "following the identification of the candidate markets, the TRC will look to define the relevant product and geographic markets. The TRC will follow the principles set out in Article 5 of these Instructions". 20. This wording could lead to some confusion as the candidate markets will be based on the previous review, but the revised Article 5 removes the predefined markets. 21. There is a clear distinction between the roles of investigations under competition law and ex ante market reviews. The former are designed to protect competition from the actions of dominant undertakings and the latter to promote competition in markets that have not historically been competitive. A competition law investigation generally examines actions by allegedly dominant firms at a point in time and may not be carried out	Regarding Zain's Comment 18-19, the claimed cross-over between Article 5 and Article 24 requires clarification. We believe that the flexibility provided in defining markets on a "case-by-case" basis in Article 5 ensures the TRC can adapt its reviews to evolving market dynamics. Starting the review from previously identified candidate markets or international benchmarks (Article 24) ensures continuity without mandating rigid adherence to outdated definitions. This approach strikes a balance between consistency and adaptability. In response to Zain's Comment 20-21, we believe that the removal of predefined markets aligns with international best practices, as predefined markets may no longer reflect the current competitive landscape. The "case-by-case" basis enables the TRC to tailor market definitions to the specific characteristics and dynamics of the Jordanian telecommunications market. Concerning Zain's Comments 22 and 24, we believe that while consistency is important, over-reliance on past market definitions could stifle the necessary regulatory flexibility. TRC's methodology should account for both historical trends and emerging market dynamics, ensuring a fair and transparent process. Operators should be prepared for regulatory updates to maintain a competitive edge in evolving markets. Regarding Zain's Comment 23, we believe that the distinction between competition law investigations and ex ante market

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again. However, market reviews are carried out on a regular basis to review how well competition is developing in the market. 22. For this reason, it is important that there is consistency in the market definitions used for ex ante market reviews over time. Any substantial variations in the market definitions used in consecutive market reviews could lead to inconsistent regulation, which will affect the ability of companies in the market to make consistent investment and operation plans. Substantial variations in market definitions will lead to uncertainties that could affect Licensees' ability to compete. 23. Further, it is increasingly the case that best practice for competition law investigations is that the analysis starts with the potential anticompetitive behaviour and works from that starting point backwards towards the market definition. This requires the competition authority to develop its "theory of harm"2 and then show the market or markets to which it applies. This is contrast to an ex ante market review in which no specific anticompetitive behaviour is alleged, but where a firm may be dominant in a specific market and remedies need to be applied to prevent it abusing that position. 24. We are therefore of the opinion that for market reviews, there needs to be consistency of market definition so that any regulation that is imposed following the market review applies to the same markets over time with only minimal variation. Without such consistency, all operators' ability to compete and invest will be put at risk. 25. We therefore propose that the Instructions make an explicit statement that the market review process differs between that used for competition law investigations, where markets can be defined	reviews is should be clearer in the Instructions. However, it is unnecessary to mandate consistent market definitions across reviews. Market definitions should evolve in response to technological advancements, changes in consumer behavior, and competitive pressures.

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on a case-by-case basis, and ex ante market reviews where the same definition of candidate markets will be used over time.	
The Hypothetical Monopolist Test 26. The TRC states, in Article 5(c)(5), that the Hypothetical Monopolist Test (HMT) does not require a quantitative assessment and may be carried using qualitative assessments. We agree this is the case and note that many regulators and competition authorities are strongly informed by qualitative assessments. However, we wish to make two points in response to the TRC's statement. 27. First, before resorting to qualitative techniques, the TRC should explore all possible options for quantitative analysis and whether they have, or can acquire, the necessary data. The TRC will no doubt be aware of econometric methodologies such Critical Loss Analysis that are successfully used when relevant data can be acquired and should also explore the possibility of acquiring such data.3 28. Second, qualitative techniques should be just as rigorous and objective as any quantitative techniques. In undertaking a qualitative technique, the TRC should follow a rigorous process explaining its methodology and how it reaches its findings in a non-biased manner. 29. A qualitative HMT needs to assess how consumers are likely to behave in the event of a Small but Significant Non-transitory Increase in Price (SSNIP) by a hypothetical monopolist. This would require demonstrating that the potential substitute product is functionally similar to the focal product and that the price difference is within the 5 - 10% difference envisaged by the HMT. Thus, if the focal product were, for example, fixed broadband	Regarding Zain's Comment 26, we agree that both qualitative and quantitative assessments are valuable tools for conducting the HMT. However, we support the TRC's acknowledgment in Article 5(c)(5) that qualitative assessments are sufficient when quantitative data is unavailable or impractical to acquire. This aligns with international best practices where qualitative evidence can often provide actionable insights without the heavy reliance on data-intensive methods. On Zain's Comment 27, we recognize the importance of exploring quantitative analysis options, including methodologies like Critical Loss Analysis. However, the practicality of acquiring relevant data in the Jordanian market context must be considered. Many developing markets face limitations in the availability of robust, granular data, and the TRC's flexibility to rely on qualitative techniques ensures that market assessments are not unduly delayed or constrained. Regarding Zain's Comment 28, we concur that qualitative techniques should be rigorous and transparent. The TRC's statement in Article 5(c)(5) already implies that a structured and methodical approach will be adopted. We suggest that the TRC include in its reports clear documentation of its qualitative methodologies and the rationale behind its conclusions to ensure stakeholder confidence and credibility. On Zain's Comment 29, while we agree that qualitative HMT must assess consumer behavior under a Small but Significant Non-transitory Increase in Price (SSNIP) scenario, the example provided by Zain (fixed vs. mobile broadband access) may not always hold

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access and the TRC were testing whether mobile broadband access was an effective substitute and so in the same relevant market, it would need to show that fixed and mobile broadband access had similar product characteristics and similar prices. Product characteristics may include speeds available, reliability, latency and so forth. 30. We agree with Article 5(d) that the HMT should be forward-looking so that new services that may be in the market in future can be included. In particular, we agree with the final sentence of that Article that potential substitutes may enter the focal product market from a separate market. An example here would be public voice call apps, such as WhatsApp, that can be used as a substitute for traditional voice calls over fixed or mobile phones.	true in practice. Functional similarities and substitutability between products depend significantly on local market conditions, consumer preferences, and infrastructure availability. The TRC should retain the discretion to determine such substitutability based on contextual evidence rather than predefined criteria. Concerning Zain's Comment 30, we agree with the forward-looking approach described in Article 5(d). Anticipating future market dynamics, such as the potential inclusion of new substitutes, is crucial for maintaining a robust and adaptable regulatory framework. However, we note that the example of public voice call apps like WhatsApp does not universally apply as a substitute for traditional voice calls, as it depends on factors such as internet penetration, consumer habits, and service quality.
Geographic Markets 31. We suggest that a definition of a geographic market is included in the Instructions such as the definition adopted by the European Commission in its 2018 SMP Guidelines, which we have inserted below. “the relevant geographic market comprises an area in which the undertakings concerned are involved in the supply and demand of the relevant products or services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are significantly different. Areas in which the conditions of competition are heterogeneous do not constitute a uniform market.”4 32. Experience in other countries that have adopted geographic markets strongly suggests that sub-national geographic markets	Regarding Zain’s Comment 31, we acknowledge the value of adopting a clear definition of geographic markets, such as the one from the European Commission's 2018 SMP Guidelines. However, we believe that directly transposing definitions from other jurisdictions without considering Jordan's unique market dynamics and regulatory context may not fully capture the local competitive landscape. The TRC should retain flexibility to define geographic markets based on empirical evidence from the Jordanian market. On Zain’s Comment 32, the example from the UK demonstrates, defining such markets requires substantial data and analysis of network footprints, which may not be readily available in Jordan. We recommend that the TRC evaluate whether the necessary data for such segmentation is accessible before committing to sub-national geographic market definitions.

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are more relevant in fixed than mobile networks. For example, in the Wholesale Local Access (WLA) market for fibre, the UK regulator, Ofcom, has found three geographic markets based on the level of competition: Area 1 where there is competition between BT Openreach and two or more wholesale fixed network operators; Area 2 where there is potential for competition to BT Openreach; and Area 3 where competition between network operators is unlikely. These geographic markets are based on the footprint of the various networks. Ofcom, has determined that the conditions of competition in an area where BT Openreach faces competition from two other networks are sufficiently different to an area where it faces no competition that these areas form distinct geographic E3markets. 33. Similar geographic market definitions are used in other European countries, for example Denmark, Finland, the Netherlands and Poland. 34. We are not aware of any country of a similar size to Jordan where geographic markets have been found to exist in the mobile markets. This is because Licenses to provide mobile networks tend to be national and so all Licensees cover the same geographic areas (with perhaps some difference at the margins). This means that the conditions of competition tend to be same nationwide and so there is a single geographic market covering the whole country. This definition would not preclude one Licensee being more successful in some areas than others, but such success is likely to be a result of competition rather than conditions of competition. 35. We understand that the TRC must always keep an open mind as to whether geographic markets exist for both competition law investigations and ex ante market reviews. We also think that the TRC is right to emphasise the "structural difference in	Regarding Zain's Comment 33, while the adoption of geographic market definitions in European countries provides useful insights, it is important to note that these examples come from markets with significantly different economic, competitive, and regulatory conditions (Availability of number portability, infrastructure sharing obligations,…). These may necessitate more tailored assessments of market dynamics compared to larger and more developed telecom markets. Applying these international practices to Jordan should be done with caution, ensuring alignment with local market realities. Concerning Zain's Comment 34, the TRC must remain open to identifying potential geographic variations if evidence shows differences in competitive conditions within specific areas. On Zain's Comment 35, we support the TRC's focus on "structural differences in competitive conditions" (Article 5(g)(2)) and "coverage of the parties' fixed or mobile telecommunications differences" (Article 5(g)(3)). This approach provides a robust foundation for determining the existence of geographic markets in both fixed and mobile sectors. We encourage the TRC to ensure transparency in its methodology and to engage stakeholders through consultations to validate any geographic market definitions it proposes.

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competitive conditions" (Article 5(g)(2)) and the "coverage of the parties' fixed or mobile telecommunications differences" (Article 5(g)(3)) as it is these conditions of competition that determine the existence or otherwise of geographic markets.	
Definition of Dominance 36. We recognise that the definition of a Licensee with single dominance reflects that used in the Competition Law. However, we consider that this definition is rather weak as all Licensees will have some degree of influence over the market and no Licensee, not even a monopolist, will be able to control the market. 37. We would prefer to see the definition of dominance changed to reflect that used in the European Union where a dominant firm is defined as one that enjoys "a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and consumers".5 38. Failing a change in the wording, we would like to see the Instructions amended to state that TRC shall interpret the definition in Article 7a(a) along the same lines as that used in the EU. Market Share at which Dominance is Presumed 39. The market share used in the Jordanian Competition Law to presume dominance (40%) is low by international standards. Case law in the EU, the UK and the USA all point to a market share of 50% in the relevant market as the level at which dominance may be presumed6. 40. In our view, therefore, to counterbalance the low market share at which dominance is presumed and to align with international best practice, the TRC should take especial note of	Definition of Dominance (Comment Nos. 36–38): We believe that while we appreciate the EU's approach, the TRC's definition should be crafted to reflect local market conditions and the need for a balanced regulatory framework. The broader definition in Article 7(a) is meant to provide flexibility, considering the specific context of the Jordanian market. Market Share at which Dominance is Presumed (Comment Nos. 39–40): While international case law is helpful for comparison, we believe the threshold at 40% aligns with the need to prevent undue market concentration and protect competition in the Jordanian market. The TRC should be mindful that market share is only one factor among many, with Article 7(a)(c) providing additional impact factors to ensure a comprehensive and nuanced analysis of dominance. Impact Factors (Comment Nos. 41–45): Comment No. 41: We believe the removal does not substantially alter the meaning and could help streamline the impact factor definition. Comment No. 42: Regarding Zain's proposed change to the wording in Article 7a(c)(5), we agree the suggestion to refine the

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the additional Impact Factors listed in Article 7a(c). These Impact Factors are likely to provide a more rounded picture of any firm's market position than a simple market share threshold, especially when that threshold is quite low. Impact Factors 41. The proposed wording of Article 7a(c)(3) is confused by the second part of the sentence. We propose deleting the words "due to other buying relationships that the Licensee may have in the relevant market(s)". 42. We suggest amending Article 7a(c)(5) as below to bring the definition of the Impact Factor in line with best practice (addition underlined/deletion struck through): "Its control of essential facilities and infrastructure that is not economically duplicable easily duplicated." 43. In the same clause, we note that the TRC defines spectrum as a scarce resource. Whilst spectrum is limited and cannot be duplicated, the amount of spectrum that is released is under the control of the TRC. Therefore, spectrum licences are not economic barriers to entry, such as the cost of building an alternative fixed network, but legal barriers to entry that can be removed by the TRC itself. 44. At the extreme, if the TRC determined that more competition was desirable in the mobile market, it could issue new spectrum in relevant bandwidths reserved for a new entrant thus removing access to spectrum as a barrier to entry. 45. The wording of Article 7a(c)(12) suggests that expansion is only possible in a market if part of the market remains unserved, and so penetration levels are below their potential. Whilst this is	definition to say "not economically duplicable" instead of "easily duplicated." This clarifies the threshold for control over essential facilities, which is a key factor in assessing dominance. Comment Nos. 43–44: On Zain's point about spectrum as a legal barrier to entry, but to consider that spectrum access is still a significant market entry factor. While the TRC has the authority to release additional spectrum, its limited availability makes it a valuable resource, and in many cases, it still constitutes an economic barrier, especially in the short to medium term. Comment No. 45: Zain's observation about the static view of market expansion in Article 7a(c)(12) is valid, particularly with the introduction of substitutes like messaging apps and smartphones. However, the TRC's analysis should include such factors to ensure the regulatory framework remains flexible and responsive to new market developments. Comment No.46: the inclusion of substitute products as an impact factor requires careful consideration of the substitutability criteria. The TRC should define what constitutes a "substitute" in the context of telecommunications services to ensure clarity and consistency in its application. Comment No.47: Zain proposes a more precise focus for remedies by limiting them to the "relevant market" only. We agree that remedies should be tailored to the specific market where dominance is found, ensuring that they are both effective and proportionate. The proposed revision to Article 7a(d) would help clarify the scope of remedies and avoid the imposition of excessive or irrelevant obligations on market players outside the designated dominant market. Comment No.48:We agree that incorporating a forward-looking approach will add depth to the TRC's analysis, particularly for

true, it suggests a somewhat static view of the market and ignores the potential for new substitute products entering the market and taking market share from existing suppliers. There are many examples of such substitute expanding in a market, for example messaging and calling apps taking over from SMS and voice calls and the smartphone taking over from the feature phone.	markets where technological innovation or the introduction of new competitors may shift competitive dynamics in the near future. However, as Zain notes, the assessment of whether these developments are "timely, likely, and sufficient" should be flexible and based on the specific context of each case. Comment No.49: We support the inclusion of such considerations as long as they are assessed on a case-by-case basis, allowing the TRC to apply the framework flexibly while maintaining consistency in its approach.
50. Joint dominance is a concept that has emerged from competition law. In the European Union there are two seminal cases (Compagnie Martime Belge (2008) and Airtours/First Choice 1999) that have set much of the economics of assessing joint dominance. 51. Key to both of these cases is the observed behaviour of the jointly dominant firms. In Airtours/First Choice the European Commission, which was the competent authority investigating the case, found a three-step procedure for finding joint dominance: • Each firm has the ability to monitor that other suppliers are adopting a common policy. • All jointly dominant firms have the Incentive not to depart from common policy • The foreseeable reaction of competitors and consumers would not jeopardise results of common policy. 52. However, despite some successful cases, joint dominance has proved extremely hard to prove and, even where found by the competition authority, it has often been overturned in the courts. This is particularly true of findings of joint dominance under ex ante market reviews in the telecoms sector. Most recently, the	We agree with Zain's skepticism about the practical application of joint dominance in ex-ante market reviews, but we believe that if joint dominance is to be considered, it must be based on a rigorous, evidence-based approach that minimizes the risk of overregulation. Zain's comment about sub-paragraph 2 in Article 7b(c), which refers to "an explicit agreement between two or more Licensees to act in combination," is valid. This definition seems to blur the line between joint dominance and cartel behavior, which is more explicitly prohibited under Article 5 of the Competition Law (as amended in 2023). We suggest that the TRC not abandon the concept of joint dominance but rather refine its application to ensure that it is used only when the evidence is clear, and when the behavior of market players demonstrates tacit collusion that undermines competition. A more detailed framework would mitigate risks of misuse while protecting against anti-competitive practices.

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Dutch Authority for Consumers and Markets (ACM) found KPN and Vodafone Ziggo to have joint dominance in the wholesale broadband markets in 2018. The decision was appealed to the court by Vodafone Ziggo and that appeal was upheld. 53. The ACM claimed that the two firms were symmetrical in the services they supply and the way they produce them. Vodafone Ziggo successfully demonstrated that they did not provide a wholesale service in competition with KPN and that it would be expensive for them to set one up. The court agreed and therefore threw out the ACM's findings. 54. Other joint dominance findings in ex ante regulation, in Spain and Ireland were also rejected by the courts. 55. So, whilst we have no objection to an Article in the Instructions concerning joint dominance, we are highly sceptical that it will ever be used as it is extremely hard to prove. 56. We have one specific comment to make regarding Article 7b(c) where the TRC sets out two ways in which joint dominance can be exercised. In particular we are concerned with sub-paragraph 2 which refers to "an explicit agreement between two or more Licensees to act in combination…". 57. The definition provided in this paragraph is more akin to a cartel than the tacit collusion that is normally the result of joint dominance. Cartel-like behaviour is already prohibited under Article 5 of the Competition Law as amended in 2023 and in our view this prohibition is sufficient.	
58. We have no objection to the process. However, we are concerned that no timeline is given in the Article for either phase of the investigation to be completed. We propose that the timeline	We fully support the inclusion of specific timelines for both phases of the investigation to enhance clarity and accountability. Adopting the 30-day timeline for Phase 1 and Phase 2, as proposed by Zain, could help in setting realistic expectations for both

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should be consistent with Article 22: i.e. 30 days for the Phase 1 and a further 30 days for Phase 2. 59. We also suggest that the TRC should recognise that other parties do not have the investigative powers of the TRC so cannot expect the high level of evidence to be presented apparently required under Article 9(a)(1)(b). Instead, we propose that the TRC should only require other operators to provide sufficient prima facie evidence that shows the behaviour of the allegedly dominant firm is consistent with conduct that has the intention or effect of reducing competition. It would then be for the TRC to use its investigatory powers to seek more detailed evidence from relevant parties.	complainants and Licensees, preventing delays that might hinder the effectiveness of the competition process. Clear timelines can also assist in ensuring that the TRC's investigations remain efficient.
60. Although the final sentence of Article 11(a) is unchanged from the 2006 Instructions, the requirement to prove the expectation of recouping losses raises the bar for a successful finding of predatory pricing. We believe that the TRC should follow the example of the European Union and not require that proof of recoupment is necessary for demonstrating predatory pricing. 61. A predatory price sacrifices profits in the short run with the expectation of higher profits in the long run by driving competitors out of the market as they cannot match the predatory price set by the dominant Licensee. Indeed, jurisprudence in the USA assumes that not having the intention to recoup the investment would be an irrational policy by the firm. Thus, if recoupment cannot be proved, the dominant firm is presumed not to have the intention of harming competition.	Zain comment No. 60-64: We understand Zain's argument and see merit in adopting the EU's approach, which does not require the demonstration of recoupment for predatory pricing. As Zain points out, predatory pricing is often aimed at driving out competitors, and the harm to competition can occur regardless of whether recoupment is achieved. Thus, focusing on the anticompetitive effects of the pricing behavior itself, rather than requiring evidence of recoupment, could improve the effectiveness of the regulation. However, we also recognize that the lack of a recoupment requirement may lead to challenges in determining the intent of the pricing behavior, so a balanced approach that considers market dynamics, such as the likelihood of recoupment and other factors, would be beneficial. Zain comment No.65: We support this approach that allowing the TRC to remain open to evolving economic theories, including the impact of signaling games and algorithmic pricing, is crucial given the fast-changing nature of pricing strategies in the

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62. In Europe, however, the competition authorities take a different approach and do not require actual or intended recoupment to be demonstrated. 63. European case law considers that the longer term profits expected from predatory pricing may not be achieved for reasons outside the control of the dominant firm, such as a change in market demand. Requiring recoupment could, therefore, allow the predator to get away with an anticompetitive action just because it failed to meet its aim due to other circumstances. Further, setting a predatory price may drive out competitors and so harm competition which is anticompetitive in and of itself whether lost profits are recouped or not. 64. It is our view that it should not be necessary for the TRC to prove recoupment and that therefore the phrase "and with the expectation of recouping such losses through subsequent higher prices" should be deleted from Article 11(a). 65. Article 11(b)(3) refers to the TRC identifying the relevant cost benchmark on a case-by-case basis. We agree with this statement but urge the TRC to always be open to new and developing economic thinking on predatory pricing. A simple benchmark of a predatory price being below variable (or incremental) costs is a reasonable starting point, but the TRC should also consider how dominant firms may play signalling games and/or use algorithms to set prices in a manner designed to exclude rivals. 66. Article 12 prohibits anticompetitive cross-subsidisation. Whilst we accept that a dominant firm should not be allowed to leverage its dominance in one market into another where it does not have dominance, the TRC must also be aware that even a dominant firm may invest in new products that in the early stages	telecommunications sector. Such flexibility ensures that the TRC can adapt to new market behaviors, such as those driven by technological advancements and complex pricing mechanisms used by dominant players. Zain comment No.66: We agree with Zain's comment on the need for clear distinctions between anti-competitive cross-subsidization and legitimate business practices such as supporting new product development. The TRC should ensure that its approach recognizes the legitimate cost allocation practices necessary for innovation and market expansion. Any regulatory actions should be proportional and based on clear guidelines to avoid stifling legitimate investments and competition.

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of their product lifecycles may require cross- subsidies. The TRC therefore needs to be careful to distinguish between anticompetitive cross-subsidies and legitimate investments and should allow a fair allocation of common costs between products and markets. 67. Article 13(a) – (f) are concerned with price discrimination and we have no comments on these clauses.	
68. Article 13(g) is concerned with non-price discrimination, and we are concerned that the Instructions only have one clause on this form of anticompetitive behaviour, which has been found to be a significant problem in other countries that required radical solutions. For example, in Italy, New Zealand and the UK, the problem of non-price discrimination was sufficiently severe that the regulator forced the vertical separation of the fixed line incumbent operator. We, therefore, believe that more can and should be said about non- price discrimination as there is no reason why this competition problem would be any the less in Jordan than elsewhere. 69. To minimise the changes required to the Instructions, we suggest that Article 13 is simply renamed as "Abuses of Dominant Position – Anti-competitive Price and Non-Price Discrimination" and clauses a – f slightly amended to reflect that they cover both forms of discrimination as set out in the table below. Clause g can be deleted. In our view these changes will make it clear how the TRC will investigate complaints of both price and non- price discrimination. 70. The text of the old Article 14(d) that read "with the confidentiality of the information protected in accordance with the terms of its License and the Rulemaking Instructions. Any failure	Zain comments 68-69: We agree with Zain that non-price discrimination can present significant anti-competitive risks and should be more explicitly addressed in the TRC's regulations. By renaming and amending Article 13 to cover both price and non-price discrimination, the TRC can enhance the clarity of its regulatory framework and make it easier to investigate and address complaints of anti-competitive behavior. Additionally, eliminating clause (g) would prevent unnecessary redundancy and provide more comprehensive coverage of anti-competitive conduct. The suggested approach will align with international best practices and enhance the TRC's ability to address evolving market behaviors. Zain comment No.70: We agree with Zain's suggestion to retain this provision. The deletion of this clause may reduce the TRC's ability to effectively investigate margin squeeze complaints, especially if dominant firms are unwilling to provide crucial cost information. Reinstating the presumption of abuse when requested information is withheld would act as a deterrent, ensuring that the TRC has the necessary tools to identify anti-competitive practices and strengthen its enforcement capabilities.

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by a Licensee to submit such requested cost information may result in a presumption of abuse of dominance against the Licensee" has been deleted. We believe that this text should be retained to provide the necessary incentives for the alleged perpetrator to provide the information to the TRC. Without these conditions in place, we suspect that a firm practicing a margin squeeze will be unwilling to provide the necessary information and this will harm the TRC's ability to investigate the complaint. 71. In Article 15(a), we propose that the words "or effect" are added after "objective". This will allow the TRC to investigate complaints without having to prove intent if such contracts still have an anticompetitive effect. 72. When investigating a long-term contract, the TRC should not apply an arbitrary term to all contracts that it considers excessive. Rather, the TRC should recognise that for some contracts the Licensee will have made significant investments in infrastructure and a long enough contract term must be allowed to ensure that the Licensee can recoup that investment together with its cost of capital. 73. In some business markets the customer may request a contract term of sufficient duration that the supplier may recover any initial costs over the term of the contract at a rate that keeps annual charges low or prevents the supplier pulling out of the contract after a short period. In these instances, the term would be set as a condition of purchase by the customer and not by the supplier, whether or not that supplier is dominant, and the TRC should recognise that such a contract term is in the best interests of the customer. Such a situation should not be covered by these Instructions as it is not likely to harm competition.	Zain comments No.71: We support this proposed amendment. This aligns with modern competition law approaches, which recognize that harmful effects can occur without necessarily proving malicious intent. The TRC should have the flexibility to act on such cases, focusing on outcomes rather than intentions. Zain comment No.72-73: We agree with Zain's comments regarding the need for flexibility in evaluating long-term contracts. The TRC should not impose arbitrary limits on contract terms but should instead take into account the nature of the investments and the need for suppliers to recover those costs over a reasonable period. Moreover, recognizing customer-driven contract terms is essential, as these agreements may reflect the best interests of the customer and may not necessarily harm competition. The TRC should assess each contract on a case-by-case basis to avoid discouraging legitimate business practices that are beneficial to both suppliers and consumers. Zain comment No.74-77: We support Zain suggestion of replacing "economic value" with "cost" in Article 16(a), as this would provide a clearer and more objective basis for determining excessive pricing. Additionally, Zain's point about recognizing the need for Licensees to set prices that reflect their investments and efficiencies is crucial. The TRC should consider the significant investments made by firms in infrastructure and innovation, such as the rollout of 5G networks. Regulating prices in a way that caps potential returns while ignoring the risks associated with these investments could discourage future innovation and undermine the incentives for firms to continue improving services. The TRC should ensure that prices are not perceived as excessive simply

74. Article 16 is new and there is no equivalent in the 2006 Instructions. We have no objection in principle to an Article that prevents a dominant firm from charging excessive prices that harm consumers. However, we do have two comments in the draft Article. 75. First, we believe that Article 16(a) would be more precise if the words "economic value" were replaced with "cost". The precise measure of cost would need to be determined by the TRC as set out in the Article.	because they reflect the costs of innovation and the risks inherent in long-term investments.
Orange Comments	**Umniah Comments**
Orange broadly agrees with the provisions of Article 5 on product market definitions and with the TRC's proposal to remove any specification of predefined markets. However, there are several clauses within Article 5 that raise concerns: • Clause e) states that "The relevant geographic market(s) will also be defined on a case-by-case basis". Orange considers this Clause should be redrafted similarly to Clause 6(d) of the 2006 Instructions, wherein markets should be presumed to be national in scope, unless there is: – Compelling evidence to suggest that distinct sub-national markets exist, and – Evidence that defining sub-national markets would be in the public interest and not disproportionate (i.e. likely to generate substantial extra cost and regulatory burden). Orange considers that such an addition would lead to proportionate remedies and	On Clause (e): Geographic Market Definition: While we recognize Orange's preference for presuming national markets, we caution against such a presumption becoming a default position. The telecom sector in Jordan is characterized by significant regional disparities in infrastructure and competition. A more nuanced approach, where markets are evaluated based on concrete evidence without an inherent bias towards national definitions, is essential to address these challenges effectively. On Clause (f): Geographic Boundaries and Political or Administrative Considerations: We agree that geographic market definitions should primarily rely on economic evidence. However, dismissing the relevance of political or administrative boundaries entirely may overlook cases where such boundaries align with real market dynamics. For instance, regulatory / licensing frameworks often reflect administrative divisions, which could be relevant to assessing competitive conditions. On Clause (g): Sub-National Market Assessment:

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avoid the difficulties of a complex and unworkable fragmentation of the certain markets. • In regard to Clause f), it is correct that all geographic markets should be presumed first to be national and any move away from this needs strong evidence. However, Orange rejects completely the proposal that, for the purposes of considering issues of competition, geographic boundaries might be set by 'political or administrative' considerations and sees such a proposal being in direct conflict with the latter part of Clause f). • Clause g) specifies particular conditions will be assessed in determining the existence of sub-national geographic market should meet. Orange supports the specification of conditions necessary to be considered in contemplating a geographic market other than national. However Orange notes a rote application of these conditions could risk leading to a fractured, complex and unworkable set of ex-ante regulated wholesale markets. As set out above, Orange is concerned with the proposed abandonment of the 2009 White paper on Market Review Process and the way in which the TRC has specified the use of the Modified Greenfield Approach.	While we share Orange's concern about avoiding excessive fragmentation, the conditions outlined by the TRC provide sufficient safeguards to prevent arbitrary sub-national definitions. The focus on evidence-based assessments ensures that sub-national markets are only defined where justified by significant differences in competitive or infrastructure conditions.
Orange disagrees fundamentally with: • the definition of dominance as the ability to "unilaterally influence or control key market outcomes"; and • the proposal to set the presumption of dominance threshold in the telecommunications sector at 40%.	We believe the definition of dominance is consistent with international best practices and provides a clear framework for assessing market power. Dominance inherently involves the capacity to operate independently of competitive pressures, and the current definition aligns with this principle. A 40% threshold is commonly used in many jurisdictions to indicate significant market power, subject to further assessment of

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See Section 4.4 above for Orange's alternative proposals and their supporting rationale. Orange agrees that the other impact factors specified in Article 7a are all relevant to an assessment of single dominance. It also agrees that the same definition of dominance should be used for ex-ante and ex-post regulation while recognising that the temporal application of this definition is likely to differ – between a forward-looking approach for ex-ante regulation and a current or historic perspective for ex-post regulation.	other impact factors. We believe that the TRC maintains this threshold while ensuring that it is not used as an absolute measure but rather as a starting point for a comprehensive dominance analysis. We concur with Orange's agreement that the other impact factors specified in Article 7(a) are relevant for assessing single dominance. These factors provide a holistic view of the market dynamics, ensuring that dominance is not determined solely by market share but also by structural and behavioral elements. While Orange supports using the same definition of dominance for both ex-ante and ex-post regulation, we emphasize the importance of a flexible temporal application. A forward-looking approach for ex-ante regulation ensures proactive measures to address potential competition issues, while the retrospective perspective for ex-post regulation ensures fair evaluation of past conduct.
Orange welcomes the inclusion of an article on joint dominance. But it disagrees with much of the article. Clause a) defines joint dominance as a situation in which two or more licensees can "jointly influence or control key market outcomes". Orange asks the TRC to reword this text to "jointly influence and control key market outcomes" – in line with the arguments it sets out in its response to Article 7a. In Clause d) Orange seeks clarification on whether the TRC intends that all five of the conditions it lists must be met or whether it can find joint dominance if a subset of these five	We believe that the conditions listed in Clause d) seem to offer a broad set of criteria for assessing joint dominance. However, we agree with Orange that these should be differentiated clearly into "mandatory conditions" and "indicators." We suggest that TRC should adopt a more structured approach, clarifying that the mandatory conditions (such as market transparency, effective deterrents, and non-endangerment of common policy by competitors) must be met for joint dominance to be found, as per the EU model. These conditions are crucial in determining whether market behavior could likely lead to anti-competitive outcomes, while the other characteristics (such as market concentration and homogeneity) should serve as indicators

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conditions are met. It therefore asks the TRC to distinguish between the conditions that must be met and the market features that indicate the possibility of joint dominance. It considers that the three conditions used in the EU should all be met before there is a finding of joint dominance.26 These three conditions are as follows: • There is sufficient market transparency for the parties suspected of joint dominance to monitor each other's behaviour (as set out in Clause d)(1)). • Each party has an effective deterrent to ensure that the other party does not deviate from the common policy that they are pursuing (Clause d)(3)) • The reaction of customers and other market players must not endanger the common policy (Clause d)(5)) These conditions contrast to the market characteristics that indicate joint dominance. Such indicators include a high level of market concentration, product homogeneity, price inelastic demand, and similar cost structures. In Clause e) the TRC proposes that it should be able to find joint dominance ex-ante without the need to demonstrate actual collusive behaviour. Orange agrees with the TRC that it is often	of a potential risk for joint dominance but not as standalone determinants. Orange's suggestion that the TRC should provide evidence of excessive pricing or unreasonably high profits in cases where market conditions have remained stable over time is a valid concern. We believe that it would be beneficial for the TRC to provide more concrete examples or thresholds for excessive pricing or profit generation, ensuring that any finding of joint dominance is not based on speculative or inconclusive evidence. As we stated in our own response, clarity is essential to prevent uncertainty and the risk of misinterpretation, especially in a market like Jordan's, where the limited number of players can often lead to parallel behavior that might unintentionally be construed as collusion.

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difficult to provide concrete evidence of tacit collusion but asks the TRC, before it finds joint dominance on an ex-ante basis, to: • demonstrate that the three conditions of market transparency, an effective deterrent, and lack of effective response from rivals are all met; and • provide evidence that the parties to the joint dominance charge excessive prices and/or generate unreasonably high profits in situations where market conditions have remained broadly the same over the past several years.	
Orange welcomes a specification of the process that the TRC will follow in considering competition law cases and agrees with Clause a) on the way in which the TRC will initiate investigations. But it seeks further clarification in Clause b) on what the TRC will do in its Phase 1 investigation. In particular it would like to see the TRC issue a statement of objections to the parties concerned and provide access to its file of evidence on which the objections are based.	We agree with Orange that issuing a statement of objections and providing access to evidence during Phase 1 of the investigation would enhance the clarity of the process and support the principles of fairness and due process. This approach would help avoid misunderstandings and allow operators to address concerns more effectively during the early stages of an investigation.
Orange broadly agrees with the proposals in the new Articles 11 to 20 on anti-competitive conduct and agrees with the TRC's shift in many articles from a specific test to a more flexible approach in which the TRC defines an abuse and then considers whether it has taken place on a case-by-case basis after considering specific factors. Of course it is to be expected that undertakings alleged to have abused a dominant position may wish to engage with the TRC to explore and, if appropriate, challenge its analysis and findings based on this more general approach.	We support the suggestion for more detailed guidance on predatory pricing. Providing clarity on what constitutes predatory pricing and incorporating internationally recognized benchmarks, such as the AVC or AIC tests, would improve transparency and allow market players to better understand the boundaries of lawful pricing behavior. Clear guidance also helps ensure consistency in enforcement, which is crucial for regulatory certainty. We agree with this approach. Recoupment is a critical factor in assessing whether predatory pricing is anti-competitive, and it is essential to demonstrate a strong likelihood of recoupment under

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In addition Orange seeks amendments to selected articles as follows: • On Article 11 Orange asks the TRC to consider providing more specific guidance in Clause b) on what constitutes a predatory price. Such guidance would offer greater certainty to market players so that they can avoid any anti-competitive conduct. Orange notes that there is widespread use of the average variable cost or average incremental cost of supplying test in other jurisdictions. • Also on Article 11 Orange asks the TRC to amend Clause c). This currently implies that the TRC may consider evidence that the dominant operator will be able to recoup losses once it has successfully foreclosed competition. In Orange's view a necessary condition in establishing predatory pricing is to demonstrate, that, given the market conditions, there is a strong likelihood that the dominant operator would be able to recoup its losses. • Orange considers that Article 12, on anti-competitive cross-subsidisation, is unworkable. It seeks a redrafting that takes account of the points made in Section 4.8 above. • Article 15 deals with excessive contract periods. Orange asks the TRC to apply this prohibition to all licensees and not just to dominant licensees for the reasons set out in Section 4.10	the prevailing market conditions. Requiring this threshold would help avoid unnecessary or overly broad findings of predatory pricing, ensuring that only truly harmful conduct is targeted. We believe that addressing the concerns raised by Orange regarding cross-subsidization is important. The TRC should ensure that the language in Article 12 is clear and practical, offering concrete criteria that can be applied consistently. A well-defined approach would prevent confusion and ensure that cross-subsidization is effectively regulated in a way that protects competition without stifling legitimate business practices. As for Orange request the TRC to clarify Article 20, particularly regarding the subjects within a cooperation agreement that would be considered safe from allegations of collusion, we support this request for clarification. Cooperation agreements can sometimes be misinterpreted as anti-competitive, so clear guidelines on what constitutes legitimate collaboration versus anti-competitive behavior would reduce uncertainty and increase confidence in compliance. This would help stakeholders navigate the complexities of joint ventures and partnerships without fear of unjustified regulatory scrutiny.

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• Orange asks the TRC to clarify Article 20 as specified in Section 4.11. It also asks the TRC to make clear what subjects within a co-operation agreement with other parties will be safe from allegations of collusion.	

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