



SPC Network

**Reply Comments to TRC Public Consultation Document
Implementation of a Margin Squeeze Test for local access and
broadband access**

Prepared for Zain Jordan

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About SPC Network

SPC Network was founded in 2003 and has worked for over 50 clients worldwide. We undertake Strategic Policy Development in platform and networked industries, by combining the knowledge of our consultants with specific and valuable skills to ensure rigorous analysis and exceptional advice. Our core consultancy team and network of partners have substantial experience in industry and consulting meaning that we understand the practical issues and challenges facing the market. Through advanced academic training, we have developed the key skills and rigorous approach needed to support our clients in the policy debate.

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1 INTRODUCTORY COMMENTS

1. Zain has asked SPC Network (www.spcnetwork.uk), a UK based consultancy specialising in economic regulation of electronic communications markets, to review the responses received on TRC's Public Consultation Document "Implementation of a Margin Squeeze Test for local access and broadband access" and to make relevant comments on its behalf. SPC Network has worked with Zain on a number of matters in the past and has thus developed a deep understanding of the Jordanian telecoms market. We have also worked on, and developed margin squeeze tests for telecoms operators and regulatory authorities in Europe and elsewhere.
2. In our original response, and as this is the first Margin Squeeze Test (MSQT) to be introduced in the Jordan telecoms sector, we provided particularly detailed answers that we expected would help to ensure that the TRC's MSQT will be fit for purpose. We also noted that since the last market review in 2020 a new company, FibreTech, has entered the fixed access market and that this company is closely linked with Umniah whilst also selling wholesale access to other retail broadband providers.
3. In these comments to the responses provided by other operators we have provided a summary conclusion comment for each of the 19 questions raised in the consultation document, rather than going through a line-by-line critique. We did this as we felt a line-by-line critique would not be beneficial given that there is only scope for one round of comments on responses. We therefore felt it more important to summarise our view of the various positions made, adding a caveat as an when we felt it appropriate for the TRC to consider.
4. We are, of course, willing to engage in further discussion with the TRC should this be needed.



2 GENERAL COMMENTS BY OTHER LICENSEES

5. Orange invested a significant proportion of its response on the need for the TRC to undertake a new market review of the fixed broadband markets. Given that the last review was completed in 2020, we agree and are also of the opinion that a new review is needed.
6. Whilst Orange's statements that following a new review it will no longer be deemed dominant are open to question, the possibility cannot be ignored – as indeed the possibility of other operators also achieving dominant status in some product and geographic markets.
7. We would therefore like to propose that the TRC considers the following course of action:
 - The TRC proceeds as soon as practical with a new, formal market review.
 - In parallel with this review, the TRC continues to progress with its work on the MSQT – and emphasising that the MSQT obligations will *only* be applied to those operators that have been deemed to be dominant following the new market review process.
8. One benefit of this approach would be that all operators would consider the MSQT process (and the model to be developed) both seriously and fairly – given that the tests could, at least in theory, end up applying to them in some manner. This might in turn result in a more considered (and indeed fair) outcome of the overall MSQT process.



3 COMMENTS ON SPECIFIC QUESTIONS

3.1 Section 4.1: Efficiency Level

Question 1

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.

Question 2

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.

9. Orange and FiberTech were both happy with a pure Equally Efficient Operator (EEO) approach. We were happy to use the EEO as a starting point but suggested that the TRC keep an open mind for any areas where it might be necessary to depart from a pure EEO. Batelco/Umniah took this view a stage further and suggested that either the Adjusted EEO or the Reasonably Efficient Operator (REO) standard should be considered from the outset.
10. We remain of the view that starting with an assumption of EEO is still appropriate, but with the caveat that the TRC retains the right to depart from that stance should it encounter any significant reasons to do so.

3.2 Section 4.2: Timing

Question 3

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.

Question 5

Do you agree with TRC’s preliminary conclusion that the wholesale MSQT should be applied on an ex-ante basis? If not, please indicate your alternative views and provide evidence to substantiate your position.

11. These two questions brought a significant amount of dissent from Orange. Much of this, we suspect, might be to do with the fact that Orange (as the current operator deemed to be dominant) already submits a considerable amount of data to the TRC to get approval for new tariffs. Clearly there is already a process in place whereby Orange carefully checks that its proposed new tariffs will be profitable – and then submits supporting evidence to the TRC. In many respects this is similar to our suggestion that it should be the dominant operator that undertakes the ex-ante MSQT, using a model developed and released by the TRC for this purpose.



12. On that basis, we would like to suggest to the TRC that it considers adapting the process already undertaken by Orange such that the evidence is based around the to-be-developed MSQT model instead of the existing calculations currently performed. This would then relieve the TRC from the considerable burden of running the tests itself and allow it to continue adopting more of a checking role on the data submitted by the dominant operator.
13. With regards to ex-post testing, we note that Batelco/Umniah would prefer quarterly testing, whereas FiberTech is of the opinion that it should only be carried out when deemed necessary (trigger-based). Our view remains that every six months would be acceptable, with the caveat that additional tests could be carried out if deemed necessary.

Question 4

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.

14. Although a range of views was expressed, we did feel that there was a general acceptance of the proposal made by the TRC.
15. We did, however, notice that other operators agreed with us that there is a need for the TRC to clarify in detail both what the 75% figure should apply to (customers, revenues, or another metric) and how the constituent offers should be derived. The second point here is important since after the largest few offers have been included there might be various ways in which the 75% level could be reached – for example, by adopting different mixes of a number of the smaller offers.

3.3 Section 4.3: Level of Aggregation

Question 6

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.

16. There seems to be a general acceptance of the need for the ex-ante MSQT to apply to dominant operators at the level of individual offers – with the exception of Orange, though it seems concerned that the TRC are meaning “each and every” rather than just those covered by the flagship offers provision.
17. However, we would like to take the opportunity to repeat our concern that what constitutes an “individual” offer needs to be clarified by the TRC, as it is open to considerable interpretation.



Question 7

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.

18. We note that there does not seem to be any agreement in the responses to this question. However, this might perhaps be on the basis that it is not clear how it would be done in practice and what is expected to be gained by such *ex-post* tests. The overall principle of conducting *ex-post* tests seems to be generally acceptable, with the possible exception of FiberTech although its response is not all that clear to us.
19. On balance, we feel that the TRC needs to do more work here on clarifying in detail how these tests would be carried out and for what purpose. To us it seems that the main issue is how shared/common costs not captured in the *ex-ante* tests are both included and assessed in the *ex-post* tests. This is of a particular concern to us given that we suspect that nearly all of the costs excluded from the *ex-ante* tests could easily also be excluded from the *ex-post* tests – unless the “portfolio” is expanded to cover all offers made by the dominant operator.

Question 8

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.

20. There is general agreement with the responses to this question, with the exception of Orange. However, if we understand it correctly, Orange is of the opinion that both VULA and Fibre Bitstream will have cost-oriented prices calculated in accordance with TSLRIC+. If that is indeed the intention of the TRC, then we can understand and in principle agree with Orange’s viewpoint. However, if a dominant operator is to be permitted a degree of pricing freedom with either VULA and/or Fibre Bitstream, then we would argue that an MSQT is essential to promote a fair market at the level of Fibre Bitstream. We would also argue that the MSQT should indeed be carried out on an offer-by-offer basis.

3.4 Section 4.4: Profitability Method and Time Horizon for the Test

Question 9

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.

21. All operators seem to agree with the TRC’s proposal here.



Question 10.

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.

22. All operators agree with the TRC’s proposal here. We would, however, take the opportunity to repeat our concern about the need for clarity in exactly what “average customer lifetime” will mean in practice and how it will be assessed.

23. We discussed the concept of an average customer lifetime in our initial response covering points such as:

- Should it be set at the “real” average customer lifetime of the dominant operator?
- Should it take into account perhaps a lower average lifetime for other operators?
- Should it instead reflect the considered view of the TRC as to how long an “efficient” operator should be expected to need in order to recover initial one-off costs and/or discounts?
- Should it take account of EU practice, which tends towards a figure of 36 months?
- Should it take account of “typical” customer behaviour at the end of the initial contract period?

Question 11

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.

24. All operators agree with the TRC’s proposal here.

3.5 Section 4.5: Cost Standard

Question 12

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.

Question 13

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.

25. Significant differences exist here between the various responses. The overall issue is largely to do with the difference between LRIC and LRIC+, and more importantly how these terms would be applied in practice.



26. We accept that the TRC has a desire to allow a level of pricing freedom at the individual offer level, as long as overall all relevant costs are recovered across the full range of offers. However, as we explained in our response, adopting (Pure) LRIC would exclude all shared and common costs from an individual offer, and would most likely mean that the price floor would be set at the wholesale input price. In our view, this would allow the dominant operator far too much pricing freedom and almost be encouraging that operator to engage in practices that would be seen by most NRAs as an abuse of market power.
27. We urge the TRC to tread very carefully with how it determines which shared costs should be included within the *ex-ante* tests, and also which should remain excluded from the *ex-post* tests. In particular, we suggest that the TRC lays down in considerable detail exactly how it is thinking of proceeding, and then puts this out for discussion with the operators. We would suspect that it is only when the detail is laid out in writing that the operators and the TRC will be able to form a consensus on the way forward.

Question 14

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.

28. We suspect that the TRC is intending to use LRIC+ for the *ex-ante* wholesale MSQT, even though this is not stated explicitly for non-network costs at least. All of the responses except for Orange are agreeable on this, if we understand those responses correctly. Orange disagrees but this seems to be largely on the basis that it believes that both VULA and Fibre Bitstream will have cost-oriented prices (albeit also based on TSLRIC+) and, as such, there is no requirement for an MSQT at all.

3.6 Section 4.6: Relevant Regulated Wholesale Services

Question 15

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.

29. All of the operators seem to agree with the TRC with its proposal here.

Question 16

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.

30. All of the responses except for Orange are agreed on this, if we understand those responses correctly. Orange disagrees but this again seems to be largely on the basis that it believes that



both VULA and Fibre Bitstream will have cost oriented prices and, as such, there is no requirement for an MSQT at all.

31. We would, however, like to take the opportunity to stress once more that there must be a viable margin between VULA and Fibre Bitstream if other non-dominant infrastructure-based operators are to be in a position to compete fairly at the Bitstream level.

3.7 Section 4.7: Assessment of Bundles

Question 17

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.

32. We noted a range of views in the responses to this question and there does not seem to be any consensus at this stage as to which approach (individual or aggregate) is most appropriate. There does seem to be a concern though that the broadband element of a bundle should be assessed on an individual basis if the overall test on a bundle is to be performed at an aggregate level.
33. Having been involved in the development of margin squeeze models for NRAs in other jurisdictions, we are well aware of the complexities of assessing bundles and would recommend the TRC to proceed carefully when developing the actual model. We discussed this in our original response. We would suggest that the TRC shares drafts of the model with the operators to allow them to comment and provide valuable feedback to the TRC during the development phase. This might then enable some sort of consensus to be arrived at as to the best way forward.

3.8 Section 4.8: Consideration of Promotions

Question 18

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.

34. As with bundles, we noted a range of responses to the issue of promotions. Promotions are a key marketing tool used by companies across most industry sectors and can be vibrant – changing rapidly from month to month, as one company tries to gain an edge over others.
35. Sometimes promotions really are one-off in nature. However, sometimes promotions replace each other to such an extent that, for example, the promotion price level becomes seen by the consumer as the *de facto* actual price level. In such cases, it would be argued that the retail price used in even the *ex-ante* MSQT should be adjusted for the (almost permanent) discount on offer.



36. Our main suggestion, beyond what we discussed in our original response, is that the TRC retains an open mind over how to judge the acceptability of promotions and, when necessary, adapts its approach accordingly – perhaps as a result of justifiable concerns expressed by operators at a later date.

3.9 Section 4.9: Treatment for Non-Residential Offers

Question 19

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.

37. Only FiberTech seems to disagree with the TRC’s proposed approach to non-residential offers, with the company wanting the MSQT to apply to non-standard offers as well as standard offers. We remain of the view that it would not be practical to include bespoke non-residential offers within the scope of the MSQT.

38. We would, however, like to repeat our position that a dominant operator should be under an obligation to publish all of its standard non-residential offers on its website. Only in this manner will the other operators be able to have any confidence that the dominant operator is fulfilling its obligations not to indulge in margin squeeze activities.