

**FiberTech responses to Public Consultation Document Implementation of a Margin Squeeze
Test for local access and broadband access**

Q1&Q2: Efficiency level for the retail MSQT and Wholesale retail

FiberTech totally agree with the TRC conclusion that an Efficient Economic Operator (EEO) approach should be considered for estimating downstream costs in the Retail & wholesale Margin Squeeze Quantitative Test (MSQT) due to the following points.

- **Alignment with Market Dynamics:** The telecom market in Jordan has shown a trend toward increasing competition. This growth suggests that operators are achieving efficiencies through economies of scale.
- **Availability of Data:** The TRC's analysis suggests that the regulated operator's data can serve as a reliable starting point. This access to data allows for a fair evaluation of downstream costs, as it reflects real operational costs within the same market environment.
- **Self-provisioning Trends:** The fact that most operators self-provide WLA/WBA services indicates that retail market shares are directly correlated with wholesale market dynamics. This further validates the use of EEO, as the regulated operator's efficiencies are more representative of the costs faced by all operators in the market.

Countries like the UK and Australia have successfully applied the EEO standard to ensure that the test reflects the cost structures of operators that are efficient and can compete effectively in the market.

Q3 & Q5 Timing of the retail & wholesale MSQT

Timing of the retail MSQT:

FiberTech believes that applying both ex-ante and ex-post MSQT approaches as proposed could pose operational and compliance challenges.

FiberTech believe ex-anti test should be applicable only to the major retail offers provided by SMP operators only, and for the ex-post MSQT instead of being conducted every six months, we recommend that ex-post reviews be trigger-based. This would mean conducting an ex-post MSQT only in response to specific market changes, such as:

- Significant price changes by a dominant operator.
- Market structure changes such as new entrants or exits.





- Specific complaints from competitors or customers regarding potential anti-competitive behavior.

In the UK, Ofcom adopts an ex-ante approach for critical retail markets but limits ex-post reviews to situations where specific complaints are raised or there are significant changes in the market structure

In France, ARCEP applies an annual ex-post review to retail markets, focusing primarily on significant market developments rather than applying frequent reviews.

Timing of the wholesale MSQT:

FiberTech believes that applying ex-ante wholesale MSQT across the board could pose operational challenges and unnecessary regulatory burdens.

The time and resources required for compliance could reduce their market responsiveness. Non-SMP operator needs the flexibility to adjust prices quickly to compete effectively. An ex-ante MSQT would slow down this process and potentially stifle Non-SMP operator growth. Instead of a blanket ex-ante approach for all operators, FiberTech recommends adopting a tiered approach based on the market power of the operator by considering implementing a trigger-based ex-ante MSQT. This would require ex-ante testing only when certain conditions are met, such as:

- Significant price changes by the SMP operator.
- Introduction of new wholesale services.
- Complaints from other operators regarding possible anti-competitive behavior.

In the UK, Ofcom applies ex-ante regulations only to operators with Significant Market Power (SMP). Non-SMP operators are regulated using ex-post measures, ensuring flexibility while maintaining a fair market.

In Spain, the Comisión Nacional de los Mercados y la Competencia (CNMC) has implemented ex-ante measures selectively, focusing primarily on dominant operators to prevent margin squeeze while allowing more flexibility for Non-SMP providers to innovate and compete.

In Germany, the Bundesnetzagentur applies ex-ante regulations selectively, focusing on markets where operators hold national dominance. Regional players benefit from lighter regulatory measures, ensuring they can compete effectively in their respective areas.





In France, the ARCEP applies ex-post regulations for smaller operators, focusing ex-ante controls only on dominant players. This ensures that smaller operators can adjust prices and innovate without excessive regulatory burdens

In the EU, the European Commission recommends applying ex-ante regulation to operators with SMP, ensuring that dominant players do not engage in anti-competitive pricing while allowing smaller operators more flexibility.

The Australian Competition and Consumer Commission (ACCC) applies a trigger-based approach, activating ex-ante reviews only in response to significant market changes or complaints, balancing regulatory oversight with operational flexibility.

Q6, Q7 & Q8 Level of aggregation of the retail ex-ante/ex-post MSQT & wholesale MSQT

Retail ex-ant MSQT at the Individual offers level:

FiberTech believes applying ex-ant MSQT to individual offers could create challenges for Non-SMP operators. We believe this approach may unintentionally lead to regulatory inefficiencies, slow down market responsiveness, stifle innovation and reduce the flexibility needed to introduce competitive packages and place disproportionate compliance burdens on non-SMP operators.

TRC could consider a trigger-based ex-ante MSQT for SMP operator only. This would require ex-ante testing only in cases where certain market conditions or price changes raise red flags. For example, significant price reductions or new services introduced by SMP operator could trigger an ex-ante MSQT, while other offers could bypass this process. This targeted approach would prevent anti-competitive behavior while avoiding unnecessary delays for offers that are unlikely to distort competition.

In Spain, the CNMC focuses ex-ante regulations on SMP operators, while Non-SMP providers are subject to more flexible oversight, allowing them to innovate without excessive regulatory delays.

The ACCC implements a trigger-based approach, applying ex-ante MSQT only when specific conditions are met, such as price reductions that could indicate potential margin squeeze.

Retail ex-post MSQT at the portfolio offers level:

FiberTech believes that this approach may not fully address the specific market dynamics of non-SMP regional operators who face different realities compared to SMP nationwide operators, as applying the MSQT at the portfolio level assumes that operators bundle all their offers into a



single comprehensive portfolio. However, for operators that only operate in specific geographical areas, this approach may overlook the unique market conditions they face. For example, some operators may offer niche services or targeted retail products that serve specific business or residential needs in certain geographical areas, while other operators offers more diversified portfolios across the entire country.

Applying the MSQT at the portfolio level may risk overlooking anti-competitive behavior within individual offers. A SMP operator could engage in margin squeeze practices for specific high-demand offers while ensuring the overall portfolio remains compliant. This could disadvantage Non-SMP operators, which may not have the resources to counteract such strategies.

FiberTech recommends a more targeted approach that focuses on key offers within the portfolio offered by SMP operator. This approach would ensure that critical offers—those that have a significant market impact or are subject to pricing changes—are tested individually, while still allowing non SMP operators the flexibility to innovate and price competitively within their broader portfolio.

The CNMC in Spain applies ex-post regulation on a case-by-case basis, ensuring that individual offers, especially those that could significantly impact competition, are evaluated for potential anti-competitive practices.

The Bundesnetzagentur in Germany has adopted a more flexible approach, ensuring that the ex-post MSQT is applied in a way that allows Non-SMP operators to differentiate their local services without being constrained by broader portfolio-level evaluations

The ARCEP in France applies ex-post regulation selectively, targeting key offers that may impact competition, while giving Non-SMP operators more flexibility in their broader portfolio.

The ACCC in Australia applies ex-post measures to individual offers when there is a potential for anti-competitive behavior, ensuring that SMP players cannot abuse their market position through selective pricing strategies.

Wholesale MSQT at the Offer-by-offer level:

FiberTech believes that this approach, if applied across the board, may not fully reflect the diverse market dynamics and the operational realities of Non-SMP regional players.

Requiring MSQT evaluations on an offer-by-offer basis will impose significant burdens, for companies who need flexibility to adjust pricing in a dynamic market. As some licensees only operates in specific geographical areas due to different barriers like (ex: municipality



requirements, high investment cost,...etc) applying the MSQT offer-by-offer fails to account for such differences and could result in unnecessary regulatory delays that hinder competitive responsiveness and market adaptability.

FiberTech proposes that the TRC focus the MSQT on key wholesale offers—those that are significant in terms of market share offered by SMP operators. This would reduce the regulatory burden on Non-SMP operators whom require flexibility to offer competitive services. Applying the MSQT selectively will allow the TRC to monitor critical market segments while giving operators more freedom to innovate.

For non-SMP operators, we recommend applying the MSQT on an ex-post basis for most offers. This would allow them to compete more effectively and respond to market demands, with the understanding that the TRC can review any potential margin squeeze situations after the fact. Ex-post regulation ensures flexibility while still protecting against anti-competitive practices.

In Spain, the Comisión Nacional de los Mercados y la Competencia (CNMC) applies ex-post MSQT selectively to avoid overregulating Non-SMP operators and encourages innovation in pricing and service delivery.

The ARCEP applies margin squeeze tests to major wholesale offers, particularly those that have a significant impact on competition or are provided by SMP players. This allows Non-SMP operators more room to introduce flexible pricing strategies.

The Australian Competition and Consumer Commission (ACCC) employs a trigger-based approach for applying regulatory oversight, ensuring that market interventions are proportional to the potential risks of anti-competitive behavior

Q9 & Q10 Profitability method & Time horizon for the retail and wholesale MSQT.

FiberTech concur with TRC conclusions.

Q11: Reasonable profit for the retail and wholesale MSQT

FiberTech believes that applying a unified WACC for determining the reasonable rate of profit may not fully reflect the operational and market realities for all operators, especially the Non-SMP who operates in certain geographical area, as Different operators have varying business models, risk profiles, and capital structures

While WACC reflects the general cost of capital, it may underestimate specific market risks faced by operators. These include the regulatory risks associated with expanding beyond certain geographical area and the competitive risks from SMP operators who dominate the nationwide



market. To ensure a more accurate reflection of market realities, it is essential that the rate of profit consider additional factors beyond WACC, such as local market conditions and business risk factors.

By basing the reasonable rate of profit solely on WACC, Non-SMP operators may face lower margins than are needed to cover the higher operating costs associated with operating in a single region. This could disincentivize investment in network expansion and innovation, ultimately undermining competition. Ensuring that Non-SMP operators can maintain a reasonable profit margin is crucial for promoting market diversity and preventing monopolistic practices by SMP operators.

FiberTech believes in addition to the approved WACC rate, the TRC should consider applying a risk premium for Non-SMP operators. This risk premium would reflect the higher market risks, operational costs, and regulatory barriers they face in providing wholesale broadband services. By doing so, the TRC would ensure that the profit rate remains sustainable and competitive for all players, including Non-SMP operators.

In the UK, Ofcom tailors its cost of capital calculations for different operators based on their size, risk exposure, and market position, recognizing that a one-size-fits-all approach may not be appropriate.

The Bundesnetzagentur incorporates additional risk adjustments when calculating the reasonable rate of return for smaller, regional telecom operators, ensuring that market-specific risks are adequately reflected.

The ACCC ensures that non-SMP operators can recover not only their cost of capital but also their operational and regulatory costs, recognizing that WACC alone may not be sufficient to reflect the challenges faced by these operators.

ARCEP applies a risk-adjusted cost of capital for operators facing higher market risks, ensuring that the reasonable rate of profit takes into account their unique operational environment.

The CNMC differentiates WACC rates based on the operator's market position and geographic footprint, ensuring that local operators are not disadvantaged by a one-size-fits-all approach.

The European Commission allows for local market conditions to be considered when calculating the reasonable rate of return, ensuring that Non-SMP operators are not disproportionately affected by national-level regulations.

Q12: Cost standard for the ex-ante retail MSQT





The TRC's proposed approach to estimating costs appears to assume uniform cost structures across operators. However, Non-SMP operators face higher costs per user, given the limited economies of scale available to them compared to larger operators with a nationwide footprint.

In the UK, Ofcom tailors cost estimation approaches based on an operator's size and scope, recognizing that Non-SMP, regional operators often face higher per-unit costs and should not be judged by the same standards as SMP, nationwide providers.

The TRC's approach does not appear to account for investment and operational expenditure cost variations, such as the higher municipal fees in other areas outside Amman. These cost factors significantly affect operators' ability to offer competitive retail services, particularly when compared to operators that can spread costs over a larger customer base across the country.

FiberTech suggest using Long Run Incremental Costs plus shared costs (LRIC+) would better reflect the economic realities of providing retail broadband services. LRIC+ allows for the recovery of both incremental and shared costs, ensuring operators like Fibertech can achieve a reasonable return on investment.

An ex-ante approach based on AAC may hinder new entrants and smaller ISPs by failing to account for essential shared costs that are critical for competitive viability. A more comprehensive cost standard like LRIC+ fosters a healthier competitive environment.

The European Commission supports LRIC+ as it encourages efficient pricing and investment, ensuring that costs are accurately reflected in retail offers. This methodology has been adopted by regulators in multiple EU countries to promote competition and investment in broadband

Q13 & 14: Cost standard for the ex-post retail MSQT and Wholesale MSQ

FiberTech concur with TRC conclusion

Q15& 16: Relevant wholesale services for the retail & wholesale MSQT

FiberTech concur with TRC conclusions

Q17: Assessment of bundles in the retail MSQT

Bundled services typically combine multiple products (e.g., broadband, TV, mobile, etc.), but these products can have very different cost structures and competitive dynamics. By applying an aggregate approach to bundles, the TRC may inadvertently overlook the competitive risks posed





by certain products within the bundle (e.g., broadband) where SMP operators have significant market power. This may allow margin squeeze practices to go undetected in the broadband segment, even if the overall bundle passes the MSQT.

Ofcom separates bundle components when assessing margin squeeze risks. By doing so, it ensures that the most important services—such as broadband—are properly scrutinized, even when sold as part of a bundle.

FiberTech believe that SMP vertically integrated operators are capable of bundling a wide range of services at discounted prices. Smaller operators, which may offer more specialized services (e.g., wholesale broadband only or without other services like mobile or TV), could find it difficult to compete if the aggregate approach allows cross-subsidization within bundles. This could result in anti-competitive pricing, making it challenging for Non-SMP operators to maintain a sustainable market position.

The Bundesnetzagentur uses a more granular approach to bundle assessments, focusing on specific services within the bundle to ensure that operators cannot leverage their dominance in one market to subsidize services in another.

One of the main risks of using an aggregate approach is that it can facilitate cross-subsidization within bundles. SMP operators can use profits from one service (e.g., mobile,router) to subsidize the cost of another (e.g., broadband), making it difficult for competitors to challenge the bundle as a whole. This could lead to distorted competition in the most crucial segment (broadband), which would be harmful to both smaller competitors and consumers.

In the European Commission has guidelines to prevent cross-subsidization in bundles by ensuring that SMP operators cannot use their strength in one service to unfairly compete in another segment. A more service-specific approach to assessing bundles helps to address this issue.

Therefore, FiberTech proposes that the TRC consider the following alternative approaches to ensure a more effective and fairer regulatory framework for assessing bundles in the retail MSQT:

Rather than adopting an aggregate approach, the TRC should consider assessing bundles on a component-by-component basis. This would ensure that dominant services like broadband are subject to appropriate scrutiny, even when included in a bundle. A component-based assessment would prevent SMP operators from using cross-subsidization to distort competition, and ensure that each key service (e.g., broadband, mobile, TV) is priced fairly and competitively.



The ARCEP in France applies component-based assessments to ensure that no single service within a bundle is subject to predatory pricing. This ensures a level playing field for smaller operators offering specific services.

The TRC could consider applying a service-specific MSQT for critical services like broadband within bundles. By ensuring that broadband, as the core service in most bundles, is assessed separately, the TRC can prevent SMP operators from underpricing broadband within a bundle and using other services (such as TV or mobile) to offset any potential margin squeeze. This would provide more effective consumer protection and market stability.

The CNMC in Spain uses a service-specific MSQT for broadband in bundled offerings, ensuring that the most competitive segments are not used as loss leaders to gain an unfair advantage in the retail market.

Q18: Consideration of promotions in the MSQT

FiberTech concurs with TRC conclusion

Q19: Consideration of non-residential offers in the retail MSQT

FiberTech believes that applying the retail MSQT only to these segments may not fully capture the competitive dynamics of the broader broadband market, particularly in the context of customized business offers and enterprise-level services.

Customized non-residential offers, such as enterprise-level broadband services, represent a significant portion of the market and are often tailored to specific business needs. By excluding these services from the retail MSQT, there is a risk of anti-competitive behavior in the business broadband segment, where SMP operators could use their market power to offer preferential pricing or engage in margin squeezing, or give a huge volume discount driving out smaller competitors offering similar services.

In the UK, Ofcom applies regulatory measures not only to residential but also to business broadband services, ensuring that competition is preserved across all market segments. Ofcom recognizes that business connectivity services are crucial for maintaining a level playing field.

By limiting the retail MSQT to standardized non-residential offers, there is a risk that dominant operators, may shift focus toward offering customized packages to large business clients or enterprise customers, circumventing the regulatory oversight provided by the MSQT. This could result in a form of market segmentation, where Non-SMP are left competing only in the



regulated segments, while SMP operators use their market power to exploit unregulated business segments.

The Bundesnetzagentur in Germany applies its MSQT to both residential and customized business broadband services. This ensures that SMP operators cannot engage in margin squeeze practices by shifting their competitive efforts to unregulated business offers.

The European Commission has guidelines to ensure that all broadband services, including enterprise-level offers, are subject to regulatory oversight to avoid market distortion. This ensures that smaller operators are not unfairly disadvantaged by dominant operators engaging in targeted margin squeeze practices.

FiberTech proposes the following alternative approaches to ensure that the retail MSQT covers a broader range of broadband services and protects competition across all market segments:

- TRC should consider including customized business broadband offers and enterprise-level services in the retail MSQT. Excluding these services may leave gaps in regulatory oversight, allowing SMP operators to engage in anti-competitive behavior in the unregulated segments.

The CNMC in Spain includes both residential and business broadband services in its MSQT, recognizing that enterprise customers are an important segment of the market where competition needs to be preserved.

- TRC could adopt a tiered approach to the retail MSQT, applying different criteria for residential, small and medium-sized enterprise (SME), and large enterprise broadband services. This would allow for customized regulatory oversight based on the market power of operators in each segment, ensuring that no single segment is left unregulated.

The ARCEP in France adopts a tiered regulatory approach for residential and business broadband services, recognizing the distinct competitive dynamics between these segments and applying appropriate regulatory scrutiny to both.

A handwritten signature in blue ink, located on the right side of the page.