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Compose Responses to Filings in MobileCom Complaint and Draft TRC Decision on Fastlink Appeal

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Compose Responses to Filings in MobileCom Complaint and Draft TRC Decision on Fastlink Appeal

I. Background

The MobileCom complaint contends that Fastlink is preventing effective competition via its charging structure and argues that two measures prove their case. First, the average gross margin (price less terminating access charge) for the weighted average price for Fastlink subscribers' calls to MobileCom exceeds 150 percent and second, the average gross margins for Fastlink on-net calls – assuming the utilization of the 70 fils/minute terminating access charge – are negative.

Fastlink's response argues that its pricing structure cannot support 'break-even' cross-subsidization as there is far more on-net than off-net traffic and the off-net price would have to be much higher than is currently charged to counter-balance what MobileCom terms 'losses' incurred for its on-net calls. Rather, Fastlink states that its pricing reflects economically rational pricing for off-peak time periods when FASTLINK has excess capacity "which comes at zero marginal cost." Fastlink argues that low off-peak prices support efficient use of the network.

Fastlink then provides some limited comparative price data for 'selected' Fastlink service packages (EZ Link and Razor) and MobileCom (CardCom and Sawa) services which reflect Fastlink prices that are below the terminating access rate only during 'night' periods. Fastlink does not offer a complete showing of its prices such as Keep Close, corporate and Army offerings.

The TRC's Economics Department has conducted a comprehensive review of Fastlink pricing for <u>all</u> Fastlink services. This analysis has resulted in a compilation of data by: a) on and off-net rates and b) peak and off-peak periods. The TRC data provides the basis for a comprehensive economic evaluation of Fastlink's pricing structure.

Fastlink services differ dramatically across market segments: low-volume users (largely residential); corporate and Army. All services have a peak/off-peak pricing structure as well as differential off-net rates to Jordan Telecom and MobileCom. Some services also provide for volume discounts while others include a monthly per line charge as well as a usage charge.

There are, however, some significant common elements in the Fastlink pricing structure:

1. Prices for a call from the Fastlink network to a MobileCom subscriber – for peak <u>and</u> off-peak periods – are <u>always</u> greater than the mobile-to-mobile terminating access charge. This is true for all Fastlink services.

2. Prices to the Jordan Telecom network (net of the mobile-to-fixed terminating access charge) - in every instance except two – are less than the net price to MobileCom.

3. Fastlink on-net prices for low volume (e.g. Keep Close, Razor and EZ Link) users during peak usage times are normally above the mobile-to-mobile terminating access charge. Only for the largest Keep Close subscribers does the price fall below the terminating access charge. Fastlink does, however, offer an on-net 'night' rate to all Keep Close, Razor and EZ Link subscribers of 30 fils/minute.

4. On-net prices for corporate users and the Army – even in peak periods- with one exception are <u>always</u> below the terminating access charge.

This is true for the usage price per se but also when non-usage based revenue from the monthly line charge is allocated on a per MoU basis. Fastlink utilizes a number of two-part tariffs that involve a per line charge as well as per minute charges. An allocation of per line revenue (by the percentage of traffic terminating on Fastlink's own network relative to the percentages terminating on the networks of Jordan Telecom and MobileCom) to on-net MoUs does not change this conclusion.

II. Analysis

The Fastlink response to the TRC inquiry is largely irrelevant to the issues raised in the MobileCom complaint. The TRC request for information concerning on-net/off-net service costs, cost components and computation methodology has been completely ignored. Additionally, the traffic distribution data that was provided does not include MoU nor is there any explanation or description of the weighted averages by service based on MoU for different time periods along with the prices for each time period. Only very broad categories and 'blended rates' are provided that are essentially useless for an analysis of pricing structures.

Furthermore, the Fastlink response ignores the clear concern of the TRC that Fastlink as the dominant mobile operator is engaging in anti-competitive behavior and affecting the development of competition. The Fastlink response addresses only a narrow definition of 'cross-subsidy' and in particular whether short-term 'break-even' is possible. There is no consideration of the total revenue contributed by the average consumer which would include interconnection revenue from Jordan Telecom and MobileCom.

The Fastlink pricing structure is obviously complex – which in and of itself is not anti-competitive and could merely reflect the economics of any network industry. Such industries exhibit high fixed – often sunk costs that cannot be recovered if the firm exits the industry – and very low marginal costs. Economically efficient pricing in such industries normally involves peak-load pricing and price discrimination (i.e., charging different prices for the same service to different consumers).

However, a fundamental consideration of network industries is that the value of a network – e.g. one operator's network – will be more valuable to the marginal consumer the larger the existing network becomes. Metcalf's Law states that the value of the network to a user grows exponentially with the size of the network.

Accordingly, market behavior is focused on acquiring additional customers and Fastlink's approach has been – for every customer – to set an on-net price for at least one time period below the terminating access rate charges to its competitors. Such pricing requires Jordan Telecom and MobileCom to incur an explicit loss in providing service to their customers (or potential customers) that terminate on the Fastlink network.

This strategy plays upon the externality inherent in network industries - referred to in the Fastlink response to the TRC as a 'community effect' - and is focused upon capturing the marginal customer. The larger the Fastlink network, the higher the probability that any new customer will choose Fastlink in order to take advantage of on-net rates that competitors cannot match without incurring an explicit loss.

Fastlink has tailored its on-net discounts to larger users, and in doing so, specifically 'internalizes' this network externality. This is often termed a 'pecuniary externality'. The 'on-net' presence of large users creates a bias in the operator selection of other users, especially those just selecting a mobile operator. MobileCom's inability to provide service to existing Fastlink customers due to the fact that the terminating access charge exceeds the Fastlink on-net retail price, lessens both the degree of competition in the market and the actual 'connectivity' between customers of each operator. The influence of this factor is indicated by the low percentage of traffic that is cross-operator, merely 8 percent. This lack of connectivity reduces the usefulness of the existence of alternative networks to mobile subscribers.

Fastlink, by definition, had a 'first-mover' advantage by being the first licensee. Monopoly prices were charges in order to achieve classic profit maximization. With the introduction of MobileCom, the strategy evolved to one of 'lock-in' for consumers through the use of on-net/off-net pricing differentials. Once on the Fastlink network, the direct and indirect costs for a consumer of changing operators (in the absence of number portability) creates a 'lock-in' of the consumer, reducing competition and increasing the dominance of the larger operator.

This behavior by the dominant operator can prevent the non-dominant operator from achieving its own network externalities and 'tip' the market to the dominant operator in a 'winner take all' (or most) type of outcome which marginalizes or even eliminates smaller operators.

As noted, Fastlink engages in price discrimination by charging different users different prices for the same service. The standard model of perfect competition defines efficient levels of production as that level which equates price and marginal cost. This model, however, assumes cost characteristics in the industry such that marginal and average variable cost per unit rises in the relevant range of production. This is not true in network

industries. As marginal costs for network industries are very low, it is not possible to recover fixed cost if prices are set at marginal cost. Accordingly, prices are set above marginal cost for some consumers, (e.g., low volume) whereas prices may approximate marginal cost for large users that have more alternatives.

Fastlink's on-net/off-net pricing differential, however, is not efficiency-improving 'discrimination'. Rather, it involves charging the same consumer different prices depending upon the network on which the call terminates. If the costs of different network termination differed significantly, this would be efficient pricing. However, TRC regulation imposes identical pricing for terminating access. Accordingly, for the same service, consumers are charged different rates depending solely on the carrier that terminates the call.

The principle underlying all pricing structures, however, is that economically efficient prices are no less than the marginal cost of providing the service – including the opportunity cost of the product. If prices are below marginal cost, especially for the dominant firm, it is presumed that anti-competitive behavior exists.

Anti-competitive pricing (often termed 'predatory pricing') is well developed in economic literature. The standard defined by Areeda and Turner[1] rests on whether price is below marginal cost. As a practical matter, average variable cost is normally used as a proxy for marginal cost.

The Areeda/Turner test can be determined through examining a few situations:

1. if the dominant firm is operating at full capacity, average total cost is the appropriate standard to compare to price

2. if the dominant firm has excess capacity, average variable cost is the appropriate standard

3. for a 'perishable inventory' prices can be set below average variable cost

These standards relate directly to the Fastlink pricing structure.

First, Fastlink faces a shortage of spectrum in Amman, so that during peak periods it is operating at full capacity. The Areeda/Turner test thus indicates that average total cost is the standard for 'predation,' yet for numerous tariffs (Keep Close 300 and above; Corporate 1 & 2; Corporate Packages; Army Prepaid and Postpaid and PreCorp) Fastlink in the peak period for on-net calls charges below the terminating access rate – clearly below average total cost and even below average variable cost. Yet during these peak periods, off-net calls are much higher and always above the terminating access charge.

[1] P. Areeda and D. Turner, "Predatory Pricing and Related Practices under Section Two of the Sherman Act", Harvard Law Review, March 1975.

It is only for small user Keep Close plans (Keep Close 200 and below) and Razor and EZ Link that Fastlink charges on-net calls above the terminating access rate. Yet for off-net off-peak calls, the Razor and EZ link tariffs charge exactly the terminating access rate.

Fastlink raises the issue of 'perishable' capacity in the context of off-peak network utilization. While there is some logic for this pricing rationale (below average variable cost is not necessarily predatory) consistency in the logic argues for a comparable approach to terminating access charges. If Fastlink charges an off-peak termination access rate based on marginal cost, then comparably based retail rates would not distort the market. However, combining – in theory – off-peak pricing without a comparable terminating access structure creates a 'price squeeze' by the dominant operator.

There is another concept that needs to be considered in this analysis. The 'opportunity cost' of a product or service, as a matter of definition, is the value that is forgone by not using the resources that produce the product in their next best use. Opportunity costs can be variable or fixed. For example, Fastlink has an opportunity cost of the capital (that is, the return the capital could earn in its best alternative use which is used in determination of any cost-of-capital computation) employed to construct its network and clearly must recover that implicit 'cost' in its prices for the business to be viable. The opportunity cost of resources, along with explicit costs, establishes the <u>minimum</u> price that a non-dominant firm would charge in a competitive market.

Calls which terminate on-net or off-net are substitutes from a subscriber's perspective. Similarly, an operator should see inbound calls – from its own or a competitor's subscribers – as substitutes for using its network. This point was formally recognized by the TRC in its Fixed Cost Allocation Principles where it stated 'interconnect uses the same network as retail traffic.'

Accordingly, the 'opportunity cost' of carrying an on-net call is the revenue that could be earned by carrying a call that originated on a competitor's network. This opportunity cost should be included in the price charged for an on-net call to generate economically efficient prices.

From a different perspective, Nicholas Economides[2] has demonstrated that requiring a dominant operator to 'impute' the terminating access charge into its own on-net prices can 'neutralize dominance' and thereby encourage entry and competition. This occurs largely by eliminating a 'price squeeze' on non-dominant operators.

Imputation of the terminating access charge into prices, along with the introduction of mobile number portability, would eliminate Fastlink's network size as a factor causing subscriber 'lock in.'

The terminating access rate for mobile-to mobile calls is the industry marginal cost. For off-net calls this is the *explicit* marginal cost to either operator and for on-net calls is the

[2] "Regulatory Pricing Rules to Neutralize Dominance", N. Economides, G. Lapoma and G. Wirsch, Consortium for Research on Telecommunications Policy, Northwestern University, May 1996.

implicit marginal cost due to the opportunity cost of providing the service. Due to the fact that the terminating access charge is the same for both peak and off-peak calls, this standard is true at all time periods.

III. Conclusion

There is reason to believe that Fastlink is engaging in strategic behavior to prevent the development of competition. In the absence of mobile number portability, Fastlink's practice of pricing on-net service for large customers below the charge for terminating access has created a 'lock-in' effect which makes it extremely difficult for Jordan Telecom and MobileCom (or an entrant) to induce a customer (large or small) to switch networks and also, given the size of Fastlink's on-net customer base, to attract those customers just entering the market.

Additionally, by providing the option for low-volume users of a 'night' rate of 30 fils/minute (which competitors cannot match without incurring an explicit loss), Fastlink's pricing structure makes it even more likely that a new user will select it as the chosen operator . While such traffic is not highly valued (only 13 percent of FL's on-net calls occur at 'night' even with this low price), it is another means of "locking-in" the customer. This 'lock-in' has frozen customer bases of competitors and has the potential to stifle market development by marginalizing competition and possibly preventing further entry.

In order to promote and support the development of full network competition, the appropriate focus of regulatory policy is the relationship between retail price and terminating access. The TRC should, as a matter of principle, require the dominant operator – Fastlink – to 'impute' the terminating access charge into its retail prices. This will establish a price floor, based upon legitimate economic costs that will prevent any anti-competitive effect on competitors.

Given the current level and structure of termination charges service specific imputation – or price floors - could result in a price increase for some large users for on-net services. However, introduction of an off-peak termination rate (including a 'night' rate) could ameliorate at least some of this impact.

An alternative solution that provides some additional flexibility for the operator is to apply the same price floor to an average of an operator's prices rather than for each specific service. This average would be computed by weighting the on-net prices for each service (off-net prices are already at or above the termination rate) by the traffic for that service. This flexibility would be valuable as the TRC transitions from the current terminating access rate to more cost-based rates.

Enhanced competition along with potentially lower termination rates could bring about an overall reduction is mobile rates.

Annex 1
Compose Responses to Filings in MobileCom Complaint and Draft TRC Decision on Fastlink Appeal

Dear

This letter is in response to your communication of 8/10/2003 regarding Commissioner Kawar's Decision concerning the MobileCom complaint of 14/4/2003.

Your letter asks that the TRC consider a number of questions related to that Decision.

This response will consider each question (points 3, 4, 6 and 8 through 12) in turn:

3. The Decision language regarding Fastlink's dominance was specifically in relation to market power 'at the network level' as described in the TRC's March 17, 2003 Decision and the facts as alleged in MobileCom's complaint. To the extent that MobileCom has proposals for services that it believes should be offered by Fastlink, based on this Decision or based on Fastlink's position in the market, the TRC will consider such proposals when formally submitted and accompanied by appropriate justification.

   The TRC Decision is very clear on this point. The last paragraph on page four states explicitly that 'the TRC will keep under review the call origination and call termination services market…'

4. The MobileCom interpretation is correct in establishing the upper boundary for off-net prices. To scale this boundary in line with the presentation of data in the Decision, i.e. as a percentage:

   Differential = $[(F_t – N_t)/N_t \times 100\%] + 100\%$ for time period 't'

6. The issues decided in the context of the Decision are meant to apply only to the facts and circumstances as alleged in the complaint filled by MobileCom and the resolution of those issues by the TRC. That Decision is not intended to establish a future regulatory approach. Such a regulatory approach will be decided according to the relevant procedures.

8. The TRC would welcome any specific models developed by MobileCom in this regard. At this time, due to concerns regarding confidentiality of information, it is not envisioned that any mathematical model will be made available for public comment.

9. The statement concerning a price review after January 1, 2004 contained in the TRC Decision of July 1st is applicable to Jordan Telecommunications Corporation.

   However, as Commissioner Kawar's Decision indicates, his Decision is an 'interim measure until the appropriate regulatory framework is established…' The TRC intends to develop a comprehensive policy, appropriate to the current state of the Jordanian mobile market, which will incorporate market power and the appropriate relationship between prices and costs at a date in the near future.

10. The TRC will publish relevant information and findings when this matter has been finally settled and Fastlink's appeal has been finalized. The TRC believes in processes that are transparent to the public – while maintaining confidentiality for proprietary information.

11. MobileCom is incorrect on this matter. Footnote eight of Commissioner Kawar's Decision clearly states that 'different rates for different time periods' will be taken into account in computing the 'weighted average' wholesale price. Further, the TRC will address this matter in the context of future interconnection decisions.

12. The principles in the Decision are applicable to all Fastlink tariffs including the issues raised by MobileCom in its October 8th, 2003 correspondence.

Annex 2
Compose Responses to Filings in MobileCom Complaint and Draft TRC Decision on Fastlink Appeal

Per your request we have developed the economic and legal basis for the TRC to take regulatory action against Fastlink due to its excessive on-net pricing practices. The findings and sanctions set forth in this memorandum would be imposed by the TRC through a resolution, decree, decision or any other appropriate legal instrument.

I. ISSUE

1. The focus of MobileCom's complaint is that Fastlink charges excessively high rates to its customers for calls to customers of MobileCom and yet it provides service to its retail customers for many on-net calling services at less than the interconnection rate charged to MobileCom. According to MobileCom, this activity is preventing the development of competition in the Jordanian mobile market.

2. The charge for off-net calls to MobileCom range from 200% to 2000% over Fastlink's on-net tariff, for any given customer group.[3]Additionally for every one if its customers, Fastlink offers some on-net service that is priced below the interconnection charge. For most large customers, even when revenues associated with monthly fees or per line charges are considered, peak as well as off-peak rates for on-net service are below the interconnection charges. Additionally, even for the smallest users of Keep Close, Razor and EZ Link (Fastlink services packages), the 'night rate' and some other rates are below the interconnection charge.

II. RELEVANT LEGAL PROVISIONS IN FASTLINK'S LICENSE

Paragraph 4.6.1 of Fastlink's license provides: "In all areas required to be served, the Licensee shall provide its Services to **any person wishing to obtain them and willing to pay the Licensee's published prices** and abide by other generally applicable terms and conditions established by the licensee in accordance with this License Agreement."

Paragraph 4.6.2 specifically addresses the issue of discriminatory pricing practices as follows:

> "Except as otherwise permitted by the Telecommunications law or this license agreement, the licensee shall comply with Section 29 (h) of the Telecommunications

[3] This ratio contrasts with an off-net/on-net price ration in other countries as shown: (NOTE : WE WILL PROVIDE MORE DATA EARLY NEXT WEEK)
-Italy 200%
-Brazil: TIM 121%
Telemar 100%

> law and **shall not unduly discriminate in the provision of its service or in the charging of its rates for its Service between similarly situated Customers or groups of customers or grant any undue preferences between them,** provided that nothing herein shall prevent the Licensee from engaging in marketing practices, such as the offering of free or subsidized handsets, or promotional or volume discounts, to the extent such practices do not constitute undue preferences or undue discrimination."

Fastlink's license agreement also provides in paragraph 4.19 that the "Licensee will not alone or together with others, engage in or continue or knowingly acquiesce in any anticompetitive practices and in particular, the Licensee shall:

> 4.19.2. "Not to engage in the abuse of dominant position if any."

III. PUBLIC POLICY GOALS DAMAGED BY FASTLINK'S PRACTICES

The Ministry of Information and Communications Technology (MOICT) recently issued a Statement of Government Policy regarding the telecommunications sector in Jordan. In the section regarding the mobile telecommunications subsector policies, the specific goals and objectives of this policy are articulated as follows:

> 31. It is a policy goal that through the effects of competition, the costs of services to businesses and consumers be lowered from present levels, with the particular aim of mobile service being made affordable to a greater proportion of the population than at present
> 32. It is a policy goal objective that at least 50% of the population will be direct subscribers to mobile services, within 10 years, paying unit charges for basic voice services that are at least 25% lower than at present, in real terms.
> 33. It is a policy goal to stimulate the direct and indirect employment creation potential of a more competitive, technologically advanced and much expanded mobile sector, which will have enjoyed the benefit of private sector and foreign investment.

The following findings demonstrate that Fastlink's practices are contrary to the Ministry of Information and Communications Technology Statement of Government Policy and specifically against the goals of the Mobile Telecommunications Subsector Policies stated above.

IV. TRC FINDINGS

1) Based on the available information summarized in the first section of this memo, the TRC finds that Fastlink does charge excessively high – and varying – rates for off-net calls.

2) The TRC has reviewed the Fastlink response filed on July 28, 2003, and having thoroughly investigated this matter determined that Fastlink's current pricing practices, in view of its position in the market and relevant TRC decisions, constitute a violation of **Articles 4.6.1, 4.6.2 and 4.19, and 4.19.2** of its license agreement and the Jordanian telecommunications legal regime and MoC policies for the mobile sector as they constitute anticompetitive practices of discrimination and acts of abuse of a dominant position in the market.

3) In addition to high off-net prices, Fastlink has – for every customer – set an on-net price for at least one time period below the terminating access rate charged to MobileCom. Matching such pricing would require MobileCom to incur an explicit loss in providing service to their customers (or potential customers) that terminate on the Fastlink network. Fastlink's practice of setting retail price for many on-net services below the terminating access rate charged to MobileCom creates a 'price squeeze' on the smaller operator. This practice clearly violates article **4.19 of Fastlink's license** agreement. Thus, the TRC believes that this pricing practice has damaged the development of competition and will continue to do so if continued.

4) Given Fastlink's advantage as the 'first mover' in the mobile market and its monopoly legacy customer base, a bias in consumer decisions is created, based on Fastlink's large market share and the high differential between on-net and off-net prices. This pricing practice clearly works to the detriment of the competing operator that earns less interconnection revenue due to high Fastlink off-net rates and has difficulty attracting potential customers who are likely to consider the reduced connectivity (call reception and origination) effects resulting from Fastlink pricing. This practice constitutes an abuse of Fastlink's dominant position in the market and thus **a violation of article 4.19.2 of its license agreement.**

5) Prices for a call from the Fastlink network to a MobileCom subscriber –for peak and off peak periods vary dramatically for different user groups and are always greater than the mobile to mobile terminating access charge as well as the on net rates charged to a given customer group. This is true for all Fastlink services. Thus, a potential consumer of MobileCom will have an obvious concern that their effective 'connectivity' to Fastlink customers will be impeded. The high cost of off-net service for Fastlink customers to call a MobileCom customer will reduce this inward traffic. Connectivity is further affected as outbound calls from a MobileCom customer to a Fastlink customer are far more expensive than a Fastlink on-net call (due to Fastlink's practice of pricing below the termination rate, a price that MobileCom cannot match without incurring an explicit loss). Accordingly, a mobile customer – due to the Fastlink pricing structure- will have less 'connectivity' to the Fastlink customer base – receiving fewer calls and making fewer calls - if that customer selects MobileCom, rather than Fastlink, as its service provider. The TRC therefore finds that the current practice not only amounts to **an anti-competitive discrimination**, but also because it relies on Fastlink's high numbers of subscribers vis-à-vis the other mobile operator the current pricing structure amounts to **an abuse of Fastlink's dominant position in the market place. Thus, Fastlink's**

practices constitute a violation of articles 4.6.1, 4.6.2 and 4.19.2 of its license agreement.

6) Fastlink services differ dramatically across market segments: low-volume users (largely individuals); corporate, and Army. All services have a peak/off-peak pricing structure as well as differential off-net rates to Jordan Telecom and MobileCom. Some services also provide for volume discounts while others include a monthly per line charge as well as a usage charge. The TRC finds that Fastlink engages in price discrimination by charging different users different prices for the same service. The standard model of perfect competition defines efficient levels of production as that level which equates price and marginal cost. This model, however, assumes cost characteristics in the industry such that marginal and average variable cost per unit rises in the relevant range of production. This is not true in network industries. As marginal costs for network industries are very low, it is not possible to recover fixed cost if prices are set at marginal cost. Accordingly, prices are set above marginal cost for some consumers, (e.g., low volume) whereas prices may approximate marginal cost for large users that have more alternatives. **This practice constitutes a violation or article 4.6.2 of FastLink's License agreement.**

7) Fastlink is engaging in strategic behavior to prevent the development of competition in Jordan. Fastlink's off-net/on-net pricing differential, along with charging many on-net services below the terminating access charge (which is MobileCom's marginal cost of terminating a call to the Fastlink network) has created a 'lock-in' effect which makes it extremely difficult for MobileCom to induce a customer (large or small) to switch networks and also, given the size of Fastlink's customer base, to attract those customers just entering the market. This lock-in has maintained Fastlink's market share at approximately 75%, a level substantially above that for other mobile markets at comparable stages of liberalization. Three years after the entry of competition, the market share of the dominant operator in other countries was much lower than Fastlink's current position: (to examine the functioning of the market in Jordan it is useful to use the Hirfandal –Hirsman Index (HHI)[4] to consider the degree of intensity of competition in the market.

[4] The degree of competitiveness (or inversely market power that exists) is commonly measured using the Hirfandahl – Hirschman Index (HHI), which is a specific measurement of market concentration. The HHI is calculated as the sum of the squares of the market shares of operators and has a maximum value of 10,000 – for a monopolist with 100 percent market share – and a limiting value of 0 – for atomistic, perfect competition. The U.S. Department of Justice Antitrust Division as well as the standard literature related to Industrial Organization utilizes thresholds of:

- an HHI of under 1,000 indicates a fully competitive market
- an HHI between 1,000 and 1,800 indicates a reasonably competitive market, and
- an HHI over 1,800 indicates some concentration that increases as the index rises towards a maximum value of 10,000.

Country	Dominant Operator Share	HHI
Belgium	56%	5072
Ireland	59%	5168
Croatia	64%	5392
Egypt	61%	5242
Singapore	65%	5450
Hong Kong	48%	3656
Jordan	***75%***	***6250***

In light of the foregoing, the TRC views Fastlink's practices as damaging the Jordanian government's Mobile Telecommunications sector Policies, as they create an environment of
"Monopolistic competition" or "price leadership model". This situation prevents the accomplishment of the goals of the government policy described in section III.

In light of the foregoing, the TRC views Fastlink's off-net rates as excessive and damaging to competition and that its on-net rates that are below the current mobile to mobile interconnection rate to be anticompetitive and contrary to Articles 4.6.1, 4.6.2, 4.19 and 4.19.2 of its license agreement as well as in violation of the telecommunications legal regime and Jordanian government goals for the mobile sector.

IV. TRC'S LEGAL AUTHORITY

The TRC has the authority to mandate licensee FastLink to act in conformity with the Telecommunications Law and Regulations, to comply with the terms of its mobile license, and to impose the appropriate sanctions against the Licensee

Specifically, Article 6 of the Jordanian Telecommunications law provides that the TRC has the power to:

> **a) To regulate Telecommunications and Information Technology Services in the Kingdom** in accordance with the established general policy so as to ensure the provision of high quality services to users…at just, reasonable and affordable prices and by so doing, to make possible the optimal performance of the telecommunications and information technology sectors.
>
> d) To protect the interest of users and oversee the actions of persons and Licensees to ensure that the conditions of Licenses are observed, including specified service standards, service quality and prices and **to take the necessary steps in this regard to provide for the punishment of those who violate these conditions**;

At levels above 1,800, a comparative analysis with a difference of 100 points or more represents a measurable and statistically significant difference in the degree of market power.

e) **To stimulate competition** in the telecommunication and information technology sectors, relying on market forces, and so **regulating them** as to ensure the **effective provision** of telecommunications and information technology services and to ensure that its regulations are effective and efficient; **to forbid anticompetitive behavior or practices; to forbid actions by any person to abuse dominant position in the sector and to take all necessary actions in this regard.**

o) **Assess the need for the adjustment of the level of regulation of any telecommunication service,** or specific type or group thereof, **with regard to competition** or any other factor that may require such adjustment or forbearance and to recommend the same to the Board for approval.

Article 4.2.1 of Fastlink's license entitled "compliance with law" provides that: "The licensee shall comply with all laws of the kingdom of Jordan applicable to its operations, including the Telecommunications law, all decisions, rules and instructions of the TRC issued in accordance with law and all policies of the Government of Jordan. Notwithstanding the foregoing, the TRC shall not impose any regulatory requirements on the licensee where such action would constitute a breach of this agreement".

In addition, **Fastlink's license provides:**

8.6.1. The Director General of the TRC shall monitor the Licensee's adherence to this License Agreement and shall take appropriate measures **to <u>oblige</u> the Licensee to comply with this License Agreement, The Telecommunications Law, regulations, the rules, instructions and decisions of the TRC and the policies approved by the Council of Ministers**. Any decision of the Director General in exercising these responsibilities shall be final and binding on the Licensee until it is overruled by the Board of Directors of the TRC.

8.6.3. Without limiting any other right or remedy available to the TRC at law, if the Licensee fails to comply with:

8.6.3.1. any of its material obligations under the Telecommunications law,
8.6.3.2. any of its material obligations hereunder,
8.6.3.3. any of its material obligations under any rules, decisions or instructions of the TRC,

The Licensee shall be subject to a maximum fine payable to the TRC in an amount not to exceed JD 200,000 with respect of each such compliance failure. The amount of any sanctioned imposed pursuant to this Section 8.6.3 shall be determined with reference to the severity of Licensee's non- compliance.

V. CONCLUSION

The aforementioned provisions provide sufficient legal basis for the TRC to:

a) Declare the pricing practices in which the Licensee Fastlink has engaged as practices of abuse of its dominant position in the market, anticompetitive cross subsidization, and discriminatory practices that restrict competition and therefore declare such practices as illegal.

b) Prohibit such anticompetitive practices and direct the Licensee to stop immediately the application of charging structures that show undue preference to, or exercise undue discrimination against a particular person or persons of any class or description.

c) Direct Fastlink, pursuant to the Telecommunications Law and the terms of its mobile license, to develop a revised retail pricing scheme that no longer violates its license conditions. The revised pricing scheme shall have three components:

1. The maximum off-net/on-net pricing ratio for all services will be the ratio that currently exists for the Corporate 1 tariff offering, a competitive service. For the peak and off-peak periods, these ratios are 222% and 200% respectively.

2. MobileCom shall have the right to purchase Fastlink termination services at the lowest retail rate available, recognizing differences in peak, off-peak and ‘night’ rates.

3. Additionally, the licensee Fastlink shall ensure that discount schemes offered to its subscribers are fully transparent, and shall be published in advance according to TRC’s guidelines in this regard.