

# Telecommunications Trade Liberalisation and Individual Privacy in Jordan: Some Perspectives and Evolving Concerns

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## Abstract

During the past few years, the Jordanian economy has been transformed. Economic reform in Jordan covered several areas, including the deregulation of business sectors, the privatisation of public services, and the elimination of trade barriers. These reforms may be interlocked. For example, the rapid development of ICTs made it necessary for the telecommunications sector in Jordan to become the first public enterprise to be privatised. Currently, this sector provides customers with variety of services and products that were unavailable to them before the start of privatisation process.

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## Index terms—

## 1 Introduction

During the past few years, the Jordanian economy has been transformed. Economic reform in Jordan covered several areas, including the deregulation of business sectors, the privatisation of public services, and the elimination of trade barriers. These reforms may be interlocked. For example, the rapid development of ICTs made it necessary for the telecommunications sector in Jordan to become the first public enterprise to be privatised. Currently, this sector provides customers with variety of services and products that were unavailable to them before the start of privatisation process.

Further, the recent economic reform has made Jordan an active actor in the 'globalised' world. Jordan's accession to the World Trade Organisation (WTO) and signing of trade agreements with important partners including the US and the EU has signalled its broader participation. These agreements are strong factors in making Jordan's economy accessible to multinational institutions. Multinational and foreign companies are engaging in the Jordanian markets to provide customers with a range of products and services, particularly in the area of telecommunications. Because of its international trade commitments, Jordan has introduced new laws and regulations to reform its ICT industry. The significant laws adopted include: the Telecommunications Law No 13 of 1995, ?? the Electronic Transactions Law No 85 of 2001, 2 and the Information Systems Crime Law No 30 of 2010. 3 This paper examines the issue of individual privacy in one important sector in Jordan that was subject to reform and liberalisation: the telecommunications sector. The method adopted in this paper to address individual privacy issues is based on ?? Telecommunications Law No 13 of 1995 an empirical analysis of the information privacy practices of the above mentioned sector in Jordan.

The study of these practices is undertaken to determine whether it provides adequate protection for individual privacy. To achieve this goal, the study relies on one source: the privacy 'policies or statements' which are available on the websites of telecommunications companies in Jordan. These privacy 'policies/statements' directly address a company's obligations and responsibilities regarding the protection of the personal information they obtain.

The first section (below) examines the telecommunications sector in Jordan. It gives a brief overview of the developments of this sector in Jordan. Then in a case study, the paper goes to examine individual privacy implications in this sector.

## 2 II. The Telecommunications Sector in Jordan

Globally, there is no sector that has undergone more rapid change in the past two decades, in terms of new technologies and policies, than the telecommunications sector. ?? This is the result of a number of phenomena, including the rapid evolution of technology, the introduction of many new services, the liberalisation of the market and the privatisation of many government owned networks. ?? At the national level, the Jordanian telecommunications sector has witnessed significant changes in many aspects including: the adoption of regulatory policies, a government commitment to liberalise the telecommunications market (Jordan was the first Arab country to fully liberalise this sector), the adoption of a deregulation process, and the readiness of the Jordanian market to introduce new and advanced services to meet the needs of businesses and consumers in this sector. ?? infrastructure, ?? the telecommunications sector is set to become a key industry for the Jordanian economy with 10 per cent contribution to GDP in 2006. ?? In the telecommunications sector, Jordan incurred significant trade liberalisation and competition obligations under GATS, in relation to both basic and value added services. Under its general GATS obligations, Jordan is obliged to extend most favoured nation (MFN) status to other WTO member countries and 'ensure transparency of local' regulations. 9 Those obligations and more specific ones spelt out in under the WTO Basic Telecommunications Agreement (the relevant sector specific agreement) involve basic telecommunications service provision (including voice telephone services, telegraph services, facsimile services, private leased circuit services, packet-switched data transmission services (internet), and circuitswitched data transmission services); and value added service provision (including e-mail, voice mail, online information and data base-retrieval, electronic data interchange and code and protocol conversion). 10 Jordan was obliged to terminate the state's monopoly over telecommunications, with the exclusive rights of the Jordan Telecommunications Company (JTC) to be withdrawn by 2004. Also to be considered were the prevention of anti-competitive practices in the sector, and security of regulatory independence. 11 Further, Jordan is committed to meet the obligations included in the 1996 Reference Paper for the WTO Agreement on Basic Telecommunications Services that was later integrated into GATS. 12 1. Implement laws and regulations to prevent major suppliers from engaging in anti-competitive practices in telecommunications (for example, engaging in anti-competitive cross-subsidisation, Therefore, Jordan must: and the use sensitive information from competitors with anti-competitive results). 2. Administer universal service obligations (USO) in a transparent, non-discriminatory, and competitively neutral manner. The 1996 Reference Paper specifies that USOs will not as regarded as anticompetitive per se.

3. Ensure public liability of licensing criteria. 4. Establish an independent regulator to monitor the telecommunications market. The regulatory body could be a government ministry or an independent commission with the power to issue decisions, instructions and procedures which must be impartial with regard to telecommunications actors. 5. Allocate and use of scarce resources, which may include: radio spectrum, numbers and rights of way. This must be carried out in an objective, timely, transparent and non-discriminatory manner.

Jordan's commitments to the above in the telecommunications sector entail a number of legal obligations in regarding to: (1) market access, (2) foreign ownership and national treatment, (3) anticompetitive laws and regulations, (4) establishment of an independent regulator; (5) market liberalisation; and finally, (6) measures enacted in order to effect such commitments. 13 Liberalisation of the telecommunications sector is one of the most noticeable changes that have occurred and has led to many positive impacts on Jordan's economy, particularly on the ICT sector. Prices of services in this sector have decreased, the number of internet services (ISPs) and communication product suppliers has increased, and foreign telecommunications products are now freely imported into Jordan. Further, consumer demand for telecommunications services in key services sectors such as financial and banking services has increased. 14 Figure 1 below shows that in year 2009 there were 6.01million mobile phone customers in Jordan, which is equivalent to a penetration rate of 101 per cent, representing an increase of 44 per cent since year 2005. Business Monitor International predicted that over 8.45 million mobile users by the end of 2013, giving a penetration rate of almost 120 per cent. The ongoing growing number of mobile users in Jordan as reflected in Figure 1 is a clear evidence of the impact of the liberalisation program on the telecommunications sector in Jordan. Liberalisation facilitated strong competition between local and foreign telecommunications companies which resulted in a significant drop in mobile prices, thus making them more accessible to a more people and resulting in an increased uptake of the technology. 16 16 With respect to the internet users in Jordan, Figure 2 below shows a slight increase of the number of internet users. In 2009, the number of internet users was 1,742 million with an increase of 15.8 per cent since year 2005. Although, this is still below desired levels due to on-going affordability issues, the number of internet users is expected to reach 3.066 million by the end of 2013. This would give a penetration rate for Internet usage of 43 per cent. 17 A number of factors have been identified as obstacles to growing number of internet users including the high cost of internet access and of personal computers (PC) themselves and of related equipment (for example, software) and for repairs. Mobile for fixed substitution and the use of Voice Internet Protocol (VoIP) as well as the high cost of a fixed line has caused fixed line telephone services to drop. Figure ?? shows the number of fixed line subscribers has reached 614,000 customers which is equivalent to a penetration rate of 10 per cent. 20 The law has ended state monopoly of the above services. The legislation was designed to create a fair and competitive regulatory framework, to address the issuance of licences, to separate regulatory and operating sectors, and to facilitate the privatisation process. The law has established two regulatory bodies to regulate and monitor the telecommunications services: the MoICT and the Telecommunications Regulatory Commission (TRC), Jordan's national telecommunications authority, 21

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### 3 Ministry of Information and Communications

#### 4 a) The Ministry of Information and Communications

Technology (MoICT) which has the responsibility to implement Jordan's obligations in accordance with GATS. (The role of the TRC is discussed in a separate section, further below). The next two sections provide a brief account of these governmental regulators and their roles.

Established in April 2002, the MoICT is the governmental entity responsible for articulating policy in the areas of IT, telecommunications, and post in Jordan. The Ministry's policy calls for market liberalisation, public-private partnership (PPP), and an end to government monopoly, which would include the government disposing of its majority shareholding in the telecom and postal sectors. ??2 The MoICT is charged with the developing, incubating, and supporting ICT initiatives at the national level, stimulating local and foreign technology investments, as well as promoting awareness of the significance of ICT and encouraging its use by all segments of the population. ??3 Furthermore, the MoICT is also responsible (in collaboration with other government agencies and to present them to the Council of Ministers) for the preparation of draft laws on telecommunications and information technology. ??4 Its role is to ensure that the ICT resources are exploited by 20 Government entities in the most efficient way possible, consistent with best practices and free market principles. ??5 However, day-to-day regulation of Jordan's telecommunications and postal markets is delegated to the Telecommunications Regulatory Commission (TRC). The role of TRC in regulating the telecommunications market is now examined in detail.

#### 5 b) Telecommunications Regulatory Commission (TRC)

Established in 1995 under the Telecommunications Law No 13 of 1995, the TRC is an independent agency. It is not responsible to the MoICT, but rather reports to the Prime Minister. The TRC's primary responsibilities are included within Article 6 of ??5 the Telecommunications Law No 13 of 1995. 26 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 telecommunications and information technology services to beneficiaries at reasonable prices; and, by doing so, to make possible the optimal performance of the telecommunications and information technology sectors.

Among those responsibilities are: b. To protect the interests of Beneficiaries and monitor the actions of persons and licensed parties to ensure that the conditions of Licenses are observed, including specified services standards, service quality, and prices and to take necessary actions in this regard and to penalise those who violate these conditions. c. To stimulate competition in the telecommunications 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 regulation is sufficient and effective to forbid or curtail illegal competitive practices or prevent any person with a dominant position in the market from abusing his position, and to take all necessary actions in this regard. As of the end of 2009, Jordan had a total of 78 telecommunications service providers. An individual licence issued for 24 public telecommunications service providers who require the use of scarce resources (radio frequency spectrum, public rights of way, and telephone numbers). A class licence issued for 54 public telecommunications service providers who do not use those scarce resources. ??9 With regards to market competition, the TRC has been influential in allowing multinational (local and foreign) telecommunications service providers to operate in Jordan and provide a variety of services and products such as: mobile telephone services, land line telephone services, internet, paging services, data networks, prepaid telephone cards and public pay phones.

Currently, there are three major telecommunication companies providing such services and products: Zain (with its parent company based in Kuwait), MobileCom (a subsidiary of Jordan Telecom), and Umniah (a subsidiary of Batelco Bahrain). In The role of the TRC is to draft laws and issue instructions to address any arising matters. This is an important role. For example, in response to public pressure, the TRC has issued a set of instructions to addition, there is the New Generation Telecommunications Company, Xpress, a company licensed to provide radio trunking services, SMS and other information services.

prevent the sending of bulk SMS (Short Message Service) to individuals (mobile phone users). These instructions provide individual with the following protections: 30 1. Telecommunications service providers must provide individuals, free of charge, with an easy and accessible mechanism to request a stoppage on receiving SMS. 2. Telecommunications service providers must not send SMS to individuals who wish to opt out.

3. Telecommunications service providers must not send SMS to individuals who opted out which has been originated from a third party. 4. Telecommunications service providers must not send SMS to individuals on a public holiday and on weekdays between 9am-7pm. Although these instructions are a step in the right direction in the area of privacy protection in the telecommunications sector in Jordan, the author believes that they suffer from a number of shortcomings that make them insufficient to protect individual privacy in this sector. These shortcomings are: 1) They are only applicable to one type of telecommunications services, namely telemarketing via SMS, and do not extend their application to telemarketing via telephone calls or e-mails.

2) The current instructions give individuals the right to opt out rather than opt in. As discussed earlier in Chapter Four, an effective opt-out method relies upon individuals being able to understand how

telecommunications service providers are using their personal information. It also relies upon individuals being informed that they have the right to opt-out of this information practice (that is, receiving SMS).

3) The application of these instructions does not extend to government agencies, which means that governmental departments and their affiliates (private entities) can still send unwanted SMS to individuals.

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## 6 B

The author believes that the above instructions adopted by the TRC are insufficient to protect individual privacy in the whole telecommunications sector in Jordan. In order to propose an alternative comprehensive and adequate regulatory framework for privacy protection, a number of telecommunications service providers in Jordan were subject to investigation to identify individual privacy concerns within this sector in relation to its adoption and use of ICTs.

IV.

## 7 The Privacy Implications in the Telecommunications Sector in Jordan

As stated above, the TRC in Jordan has issued licences to 78 telecommunications service providers as at 31 December 2009. These companies handle personal information about their customers in order to supply them with services and products, including landline telephone services, mobile telephone services, internet services, and pre-paid telephone cards. 32

## 8 a) Methodology: An Online Case Study

Jordan has no law regulating privacy in this sector and online privacy is self-regulated. However, in order to determine whether self-regulation is adequate, the study will look into the privacy policies/statements of nine telecommunications service providers in the country. The study adopts the following method.

An online method was utilised in a survey conducted during 10 to 25 September 2009 to examine privacy policies/statements on a sample of 9 telecommunications service providers listed in Table ?? below. The remaining companies with an online presence in Jordan were excluded from this study because their websites either could not be accessed via online (for example, due to technical difficulties) or because these companies do not have privacy policies/statements on their websites. The purpose of this study is to measure whether or not these privacy policies/statements implemented by telecommunications companies in Jordan provide adequate protection to individual privacy. The privacy policies/statements are the only available provisions concerning individual personal information that can be assessed in this context. Jordan's lack of privacy legislation or regulation to deal with the privacy issue, and particularly, in the telecommunications sector is the driving force behind this study.

The adequacy of these privacy policies/statements is measured against the principles of the Information Practice Privacy Principles (FIPs). These principles are: (1) Notice, (2) Choice, (3) Access, (4) Security, and (5) Enforcement. The reason for using the FIPs as the benchmark for this study is because they were developed to become a cornerstone of the selfregulation regime. As claimed above, the telecommunications sector in Jordan chose the selfregulation approach to protect personal information. This is documented in the Jordan-US Joint The online study examines the following issues:

1. Do telecommunications companies in Jordan collect use, store, and transfer customers' personal information?
2. Do telecommunications companies in Jordan have one standard privacy policy/statement? 3. Do these privacy policies/statements meet the standards of the FIPs? And, 4. How do telecommunications companies in Jordan attend to customer complaints in regard to their privacy? b) Results

Table ?? above reveals that all 9 or 100 per cent of the telecommunications companies whose online presence has been here surveyed have the ability through their websites to collect customers' (visitors) personal information. This practice can occur when customers use hyperlinks such as 'Contact us', 'Sign Up', 'Register', or 'Suggestions & Complaints'. The use of these hyperlinks enables companies to collect personal information including: name, postal address and contact details (telephone number and email addresses).

The survey also shows that some companies placed information regarding their information privacy practices under the name of 'privacy policy' while other companies preferred the term 'privacy statement'. The difference between privacy 'policy' and privacy 'statement' is that a privacy statement communicates company's information practices to the public while privacy 'policy' describes company's standards for the collection of personal information and this information is used and managed by the company. This difference may lead to the conclusion that these privacy policies/statements may have been obtained from different sources.

Table ?? above also shows that privacy policies/statements placed on the home page of the telecommunications companies surveyed do not have standard provisions to address the issues included in the FIPs. These issues are:

The online study shows that 7 of the 9 websites surveyed (or 77.7 per cent) have information related to the 'notice' dimension. As chapter, this dimension is considered by the US FTC as the most fundamental dimension

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of the privacy policy/statement. Without a notice, an individual cannot make an informed decision as to whether or not and to what extent personal information is to be disclosed. ??5

## 9 ii. Choice

With regard to the dimension of choice, the above study shows that only 5 of the 9 companies assessed (or 55.55 per cent) provide individuals with choices regarding the use of their personal information. The availability of this offers individuals the option to whether or not their information can be used or collected personal information disclosed to third parties.

## 10 iii. Access

With regard to the principle of access, the study also shows that the same number of companies, that is 5 of the 9 surveyed (or 55.55 per cent) give individuals a right to access to their information. These companies provide individual with information on how to correct or amend their personal information.

## 11 iv. Security

With regard to the principle of security, 5 of the 9 telecommunications companies listed in Table ?? above (or 55.55 per cent) have made reference to the issue of data security. Such a reference informs individuals as to how the security of personal information is maintained by the company concerned. It also urges individuals to take all necessary actions to ensure the safety of their personal information when such information is transmitted through company websites (with such actions including, for example, regularly changing their password, the use of a secure browser).

## 12 v. Enforcement

One of the most surprising findings is that none of the 9 companies examined included in their privacy policies any information (for example, contact details) to individuals regarding access to an independent agency that could enforce their privacy rights. Only general information was available, namely that for individuals who wished to contact the company if they had any complaints concerning their personal information. Individuals must have access to an independent enforcement mechanism that is free of charge, fast and effective -and preferably via the website of the communications companies themselves rather than rely on consumer knowledge of their rights and of independent avenues of complaint. 4. A company should obtain prior consent before transferring personal information to another company as a result of dissolving, merging with a new company, or changing its legal status. 5. In addition to having an enforcement mechanism, a telecommunications company should make available specific information relating to the management of personal information. It is recommended that a telecommunications company establish a specific position, namely a privacy officer, who is responsible for the company's compliance with its privacy policy/statement. ??4 V.

## 13 Conclusion

The paper has focused on the issue of privacy for the telecommunications sector in Jordan. The telecommunications sector was selected for empirical examination in relation to privacy protection policies. The paper has concluded that the protection of individual privacy is inadequate and insufficient for the current. As the empirical studies showed, most of the telecommunications companies in Jordan have the ability to collect, use, access and transfer personal information without the knowledge of the individuals supplying that information. It also showed that Jordan's telecommunication companies are under no legal obligations to inform individuals that their personal information may be transferred to other countries.

The absence of applicable privacy laws on the telecommunications sector in Jordan and the right given to formulate their own policies has allowed companies in this sector to adopt privacy policies/statement of their own devising and to place them on company's websites. However, this paper has shown that these policies/statements are inadequate and are unable address privacy concerns. And where they do exist, it is difficult for the average person to read them as they are often written in legal jargon. Even if customers could understand them, the amount of time required to read privacy policies is too great. 36

## 14 References Références Referencias

As the study also revealed, where they do exist such statements are often separated from the document or transaction page the user is accessing. Without an independent body (for example an ombudsman or authority) to which to appeal in regard to perceived privacy abuses (they cannot be breaches if legislation is non-existent),



Figure 1: 15

[Note: (4072), 1 October 1995.<sup>2</sup> Electronic Transaction Law No 85 of 2001, (Jordan) Official Gazette, No 4524, 31 December 2001, at 6010. <sup>3</sup> Information Systems Crime Law No 30 of 2010, (Jordan) [Arabic] Official Gazette, No 5056, 16 September 2010, at 5334.]

Figure 2:

[Note: <sup>21</sup> Karla J Cunningham, 'Factors Influencing Jordan's Information Revolution: Implications for Democracy' (2002) 56(2) Middle East Journal 240, 242. <sup>22</sup> Moict, <sup>23</sup> Business Monitor International, 'Jordan Telecommunications Report Q2 2009: Including 5-year industry forecasts' (2009) 41. <sup>24</sup> Telecommunications Law No 13 of 1995, art 3(k).]

Figure 3:

[Note: <sup>33</sup> See Appendix B, Exhibits 1-9.]

Figure 4:

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	Yes	No		No	No	No	No
9. Al-Raeh Li Khadamat Al-Lttisalat	Yes	Yes		Yes	Yes	Yes	No
<a href="http://www.aa-telecom.com/dev/privacy.php">http://www.aa-telecom.com/dev/privacy.php</a>							
Percentage of Telecommunications Company with FIP Principles	100%	77.7%	55.55%	55.55%	55.55%	0.00%	

Figure 5:

Figure 6:

272 statistical evidence other than that presented above is difficult to assemble. But that here presented clearly  
 273 reveals a lack of privacy provisions and therefore the possibility of abuses. <sup>1 2</sup>

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