

Notification of Draft Measures Pursuant to Article 7(3) of the Directive 2002/21/EC

Section 1 - Market Definition

Please state where applicable:

1.1	The affected relevant product/service markets. Is this market mentioned in the Recommendation on relevant markets?	Wholesale high-quality access provided at a fixed location up to 2 Mb/s inclusive (4/2014) Yes	section 2.3
1.2	The affected relevant geographic markets	The territory of the Republic of Poland	section 2.4
1.3	A brief summary of the opinion of the national competition authority where provided;	President of the Office of Competition and Consumer Protection (UOKiK) did not take a position.	
1.4	A brief overview of the results of the public consultation to date on the proposed market definition (for example, how many comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it)	During public consultation 3 comments were received: <ol style="list-style-type: none"> 1. Emitel S.A.; 2. Orange Polska S.A.; 3. Krajowej Izby Gospodarki Cyfrowej. No participants were against of the market deregulation.	
1.5	Where the defined relevant market is different from those listed in the recommendation on relevant markets, a summary of the main reasons justifying the proposed market definition by reference to Section 2 of the Commission's Guidelines on the market analysis	Not applicable	

	and the assessment of significant market power ¹ , and the three main criteria mentioned in recitals 5 to 13 of the Recommendation on relevant markets and Section 2.2 of the accompanying Explanatory Note ² .		
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Section 2 - Designation of undertakings with significant market power

Please state where applicable:

2.1	The name(s) of the undertaking(s) designated as having individually or jointly significant market power. Where applicable, the name(s) of the undertaking(s) which is (are) considered to no longer have significant market power	The undertaking – Orange Polska S.A. with its seat in Warsaw has no longer significant market power in the relevant market	Section 4
2.2	The criteria relied upon to designate an undertaking as having significant market power, individually or	<ul style="list-style-type: none"> • Market shares • Entry barriers • Analysis of the prices • Absence of technical and economic justification for building an alternative telecommunications infrastructure 	<ul style="list-style-type: none"> • section 3.2 • section 3.3 • section 3.4 • section 3.5

¹ Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications and services, OJ C 165, 11.7.2002, p. 6.

² Explanatory Note accompanying the Commission Recommendation of 17.12.2007 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, C (2007)5406 published at http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/article_7/sec_2007_1483_2.pdf

	jointly, or not	<ul style="list-style-type: none"> • Technological advantages • Economies of scale • Economies of scope • Vertical integration • Easy or privileged access to capital markets/financial resources • Lack of potential competition • Market transparency • Low elasticity of demand 	<ul style="list-style-type: none"> • section 3.6 • section 3.7 • section 3.8 • section 3.9 • section 3.10 • section 3.11 • section 4.2 • section 4.3 																																													
2.3	The name of the main undertakings (competitors) present/active in the relevant market.	<ul style="list-style-type: none"> • ATM S.A. • EMITEL S.A. • Exatel S.A. • GTS Poland sp. z o.o. • INEA S.A. • Intelligent Technologies S.A. • Internetia sp. z o.o. • Multimedia Polska S.A. • Naukowa i Akademicka Sieć Komputerowa – Państwowy Instytut Badawczy • Naukowa i Akademicka Sieć Komputerowa S.A. • Netia S.A. • Orange Polska S.A. • PGE Group • PKP Telkol sp. z o.o. • Polkomtel sp. z o.o. • TK Telekom sp. z o.o. • T-Mobile Polska S.A. • UPC Polska sp. z o.o. • Vectra S.A. 	<ul style="list-style-type: none"> • section 3 																																													
2.4	The market shares of the undertakings mentioned above and the basis of their calculation (e.g., turnover, number of subscribers)	<p>Market shares 4/2014 up to 2Mb/s inclusive (without analog leased lines). Percentage share in revenues</p> <table border="1"> <thead> <tr> <th>Operator</th> <th>2017</th> <th>2018</th> <th>2019</th> <th>Average 2017-2019</th> </tr> </thead> <tbody> <tr> <td>Orange Polska</td> <td>29,90%</td> <td>27,60%</td> <td>23,70%</td> <td>27,10%</td> </tr> <tr> <td>Exatel</td> <td>19,70%</td> <td>21,60%</td> <td>24,70%</td> <td>22,00%</td> </tr> <tr> <td>Netia</td> <td>18,60%</td> <td>18,40%</td> <td>18,00%</td> <td>18,30%</td> </tr> <tr> <td>ATM</td> <td>9,70%</td> <td>10,10%</td> <td>11,50%</td> <td>10,40%</td> </tr> <tr> <td>Emitel</td> <td>8,80%</td> <td>9,70%</td> <td>8,70%</td> <td>9,10%</td> </tr> <tr> <td>TK Telekom</td> <td>6,50%</td> <td>4,00%</td> <td>3,90%</td> <td>4,80%</td> </tr> <tr> <td>T-Mobile</td> <td>3,10%</td> <td>4,30%</td> <td>6,00%</td> <td>4,50%</td> </tr> <tr> <td>Polkomtel</td> <td>1,00%</td> <td>1,50%</td> <td>0,50%</td> <td>1,00%</td> </tr> </tbody> </table>	Operator	2017	2018	2019	Average 2017-2019	Orange Polska	29,90%	27,60%	23,70%	27,10%	Exatel	19,70%	21,60%	24,70%	22,00%	Netia	18,60%	18,40%	18,00%	18,30%	ATM	9,70%	10,10%	11,50%	10,40%	Emitel	8,80%	9,70%	8,70%	9,10%	TK Telekom	6,50%	4,00%	3,90%	4,80%	T-Mobile	3,10%	4,30%	6,00%	4,50%	Polkomtel	1,00%	1,50%	0,50%	1,00%	<ul style="list-style-type: none"> • section 3
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		Multimedia	1,10%	0,80%	0,70%	0,80%	
		Intelligent Technologies	0,50%	0,70%	0,80%	0,70%	
		Rest	1,30%	1,50%	1,40%	1,40%	

Please provide a brief summary of:

2.5	The opinion of the national competition authority, where provided	President of UOKiK did not make comments.	
2.6	The results of the public consultation to date on the proposed designation(s) as undertaking(s) having significant market power (e.g., total number of comments received, numbers agreeing/disagreeing)	<p>During public consultation 3 comments were received:</p> <ol style="list-style-type: none"> 1. Emitel S.A.; 2. Orange Polska S.A. 3. Krajowej Izby Gospodarki Cyfrowej. <p>No participants were against of the market deregulation.</p>	

Section 3 - Regulatory Obligations

Please state where applicable:

3.1	The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 9 to 13 of Directive 2002/19/EC (Access Directive))	<p>Obligations withdrawn:</p> <ul style="list-style-type: none"> • access, • non-discrimination, • transparency incl. reference offer, • wholesale price control, • regulatory accounting. 	<ul style="list-style-type: none"> • section 6
3.2	The reasons for which the imposition, maintenance or amendment of obligations on	Not applicable	

	undertakings is considered proportional and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found		
3.3	Where the remedies proposed are other than those set out in Articles 9 to 13 of Directive 2002/19/EC (Access Directive), please indicate what are the 'exceptional circumstances' within the meaning of Article 8(3) of that directive justify the imposition of such remedies. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found	Not applicable	

Section 4 - Compliance with international obligations

In relation to the third indent of the first subparagraph of Article 8(3) of Directive 2002/19/EC (Access Directive), please state where applicable:

4.1	Whether the proposed draft measure intends to impose, amend or withdraw obligations on market players as provided for in Article 8(5) of Directive 2002/19/EC (Access Directive)	Not applicable	
4.2	The name(s) of the undertaking(s) concerned	Not applicable	
4.3	What international commitments entered into by the Community and the Member States are to be met	Not applicable	