

STANDARD NOTIFICATION FORM

DRAFT MEASURE RELATED TO MARKET ANALYSIS AND IMPOSITION OF REMEDIES (ARTICLES 64, 67 AND 68 OF THE CODE)

(REFERRED TO IN POINTS 16 (A) AND (B))

Section 1 – Market definition	
Please provide information on the following, where applicable:	
1.1 The relevant product/service market.	The wholesale markets of voice call termination on individual public mobile networks of Orange Polska S.A., T-Mobile Polska S.A., Polkomtel sp. z o.o., P4 sp. z o.o. and Aero2 sp. z o.o.
1.2. The relevant geographic market/s	The scopes of the individual operators' networks
1.3. If the National Competition Authority (“NCA”) issued an opinion, indication of whether it agrees or not with the proposed draft analysis of the relevant market	<p>Agreement Disagreement</p> <p><input type="checkbox"/> <input type="checkbox"/></p> <p>If the NCA disagrees, please outline the reasons: No opinion from the NCA</p>
1.4 Dates of the national public consultation	From 5. July to 4. August 2021
1.5 A brief overview of the results of the public consultation on the proposed market definition. Please indicate whether any change was made to the draft measure subsequently to the public consultation, and if so, briefly describe the changes.	<p>During public consultations UKE received 5 comments from the following organisations:</p> <ol style="list-style-type: none"> 1. Krajowa Izba Komunikacji Ethernetowej (National Chamber of Ethernet Communication) – supported stricter regulation 2. Polska Izba Informatyki i Telekomunikacji (Polish Chamber of Informatics and Telecommunication) – supported deregulation 3. Orange Polska S.A. – supported deregulation 4. T-Mobile Polska S.A. – supported deregulation 5. P4 sp. z o.o. – supported deregulation <p>No substantial, only editorial changes were made subsequently to the public consultations. No comments were made in regards to market definition.</p>
1.6. Where the relevant market is different from those listed in the Recommendation (EU) 2020/2245, a summary of the main reasons justifying the proposed market definition in light	The market analyzed in the proceedings is not listed in the Recommendation (EU) 2020/2245 as subject to ex ante regulation. Market definition is similar to the one used in 2012 regulation.

<p>of the three criteria set in Article 67(1) of the Code¹.</p>	<p>The main reasons justifying the proposed market definition in light of the three criteria set in Article 67(1) of the Code:</p> <ul style="list-style-type: none"> • Inability to reach the MNO's users without access to the MNO's network, the need to have exclusive access to bands and frequency resources determine the existence of significant structural barriers on this market, • This market is characterized by the need to maintain and develop both passive and active infrastructure distributed throughout the country. This causes a number of difficulties in obtaining local permits and approvals from communes and local governments. Furthermore each operator needs to get a permit to use frequency resources. These factors determine the existence of permanent legal and regulatory barriers on the market. • Fragmentation of FTR Market in Poland (191 operators have been regulated on FTR market in 2019 review) causes lack of bargaining power with large MNOs. This kind of market structure creates environment in which MNOs may potentially apply various types of measures that hinder access, such as: prolonging negotiations, imposing access conditions that are impossible to meet by small entities. Market structure does not tend towards effective competition within the relevant time horizon. • Ex post competition law alone cannot yet address the bottlenecks in call termination markets such as making sure that interconnection agreements are reached or imposed in effective and timely manner.
<p>Section 2 – Designation of undertakings with Significant Market Power (SMP)</p> <p>Please provide information on the following, where applicable:</p>	

¹ Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code.

<p>2.1. The name of the undertakings designated as having, individually or jointly, SMP.</p> <p>Where applicable, the name of the undertakings considered as no longer having SMP.</p>	<p>Names of the undertakings having individually SMP position:</p> <ol style="list-style-type: none"> 1. Orange Polska S.A., 2. T-Mobile Polska S.A., 3. Polkomtel sp. z o.o., 4. P4 sp. z o.o., 5. Aero2 sp. z o.o. 				
<p>2.2. The criteria used to designate whether or not an undertaking has individual or joint SMP.</p>	<ul style="list-style-type: none"> • Market share (decisive), • Absence of or low countervailing buying power, • Absence of technical and economic justification for building alternative telecommunications infrastructure, • Absence of potential competition, • Economy of scale 				
<p>2.3. The name of the main undertakings (competitors) active in the relevant market.</p>	<p>Not applicable – natural monopoly</p>				
<p>2.4. The market shares of the undertakings mentioned above and the basis for calculation of market share (e.g. turnover, number of subscribers).</p>	<p>100%</p>				
<p>2.5. If the National Competition Authority (“NCA”) issued an opinion, indication of whether it agrees or not with the proposed draft SMP assessment.</p>	<table border="0" style="width: 100%;"> <tr> <td style="text-align: center;">Agreement</td> <td style="text-align: center;">Disagreement</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> <p>If the NCA disagrees, please outline the reasons: No opinion from the NCA</p>	Agreement	Disagreement	<input type="checkbox"/>	<input type="checkbox"/>
Agreement	Disagreement				
<input type="checkbox"/>	<input type="checkbox"/>				
<p>2.6. The results of the public consultation on the proposed designation(s) as undertakings having SMP (e.g. total number of comments received, numbers agreeing/disagreeing). Please indicate whether any change was made to the draft measure subsequently to the public consultation, and if so, briefly describe the changes.</p>	<p>The consultations had no effect on proposed designations as undertakings having SMP position.</p>				
<p>Section 3 - Regulatory obligations</p> <p>Please provide information on the following, where applicable:</p>					
<p>3.1. The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 69 to 74 and Articles 76 to 81 of the Code).</p>	<p>The following obligations to be maintained:</p> <ul style="list-style-type: none"> • Obligation to provide network access, • Obligation of non discrimination, • Obligation of transparency. 				

	The cost obligation (MTR rate set by NRA in 2012 decision) expired <i>ex lege</i> due to MTR harmonisation on the EU level (Delegated Act)
3.2. The reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered proportional and justified in light of the legal provision they are based on. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.	Such information can be found in sections 4.2 and 5.2 – 5.4 of the decisions
3.3. Where the remedies proposed are other than those set out in Articles 69 to 74, and Articles 76 and 80 of the Code, please indicate what ‘exceptional circumstances’ within the meaning of Article 68(3) of the Code 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 3a - Draft measures under Article 76(2) of the Code	
Please provide information on the following, where applicable:	
3a.1. Short description of the commitments offered by the SMP operator and how they comply with the conditions of Article 76(1).	Not applicable
3a.2. A description of the regulatory treatment of the new VHCN network elements subject to the commitment under Article 76(2), first subparagraph.	Not applicable
3a.3. If applicable, a description of the remedies imposed on the basis of the third subparagraph of Article 76(2)	Not applicable
Section 3b – Draft measures under Article 79 of the Code	
Please provide information on the following, where applicable:	
3b.1. Short description of the attached commitment decision (or, indication of the paragraphs, sections or pages of the draft measure where such information is to be found);	Not applicable

Section 3c – Draft measures under Article 80 of the Code

Please provide information on the following, where applicable:

3c.1. Short description of the structure of the undertaking (or indication of the paragraphs, sections or pages of the draft measure where such information is to be found).	Not applicable
3c.2. If applicable, a description of the remedies imposed or withdrawn.	Not applicable