

ANNEX I

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))

<p>Section 1 – Market definition</p> <p>The affected relevant product/service market is the national wholesale market of radio broadcasting transmission services to deliver radio content to end users and the national wholesale market of tv broadcasting transmission services to deliver tv content to end users.</p> <p>The defined relevant market is not listed in the current recommendation on relevant markets. The affected relevant geographic market is the national territory of Poland.</p> <p>Please provide information on the following, where applicable:</p>	
1.1 The relevant product/service market.	not applicable
1.2. The relevant geographic market/s	not applicable
1.3. If the National Competition Authority (“NCA”) issued an opinion, indicate whether it agrees with the proposed draft analysis of the relevant market	<p>Agrees Disagrees</p> <p><input type="checkbox"/> <input type="checkbox"/></p> <p>If the NCA disagrees, please outline the reasons: During the public consultation NCA did not submit an opinion.</p>
1.4 Dates of the national public consultation	From 02.08.2021 r. to 01.09.2021 r. the draft decision was consulted for the second time. The first public consultation of the project was from 27.07.2020 r. to 26.08.2020 r.
1.5 A brief overview of the results of the public consultation on the proposed market definition. Please indicate whether any changes have been made to the draft measure following the public consultation, and, if so, briefly describe these changes.	<p><i>(e.g. how many comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it and for which reasons).</i></p> <p>4 comments were received:</p> <ul style="list-style-type: none"> • 31.08.2021 r. – Emitel S.A. • 31.08.2021 r. – TVN S.A. • 01.09.2021 r. – Krajowa Izba Komunikacji Ethernetowej • 02.09.2021 r. - Krajowa Izba Gospodarcza

	<p style="text-align: center;">Elektroniki i Telekomunikacj</p> <p>Participants submitted a number of comments e.g. to the definitions in the draft decision concerning: infrastructure, virtual collocation, transmitter, free resource; procedure for submitting applications for access, procedure for concluding a contract, provisions on contractual penalties and calculating discounts, proposals for modification of annexes to the reference offer. Comments have been taken into the draft decision. The changes did not require re-consultation.</p>
<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 of the three criteria set in Article 67(1) of the Code¹.</p>	<p>Markets compatible with SMP decisions issued on 17th January 2018.</p>
<p>Section 2 – Designation of undertakings with Significant Market Power (SMP)</p> <p>Please provide information on the following, where applicable:</p>	
<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>Emitel S.A.</p>
<p>2.2. The criteria used to designate whether or not an undertaking has individual or joint SMP.</p>	<p>not applicable</p>
<p>2.3. The name of the main undertakings (competitors) active in the relevant market.</p>	<p>not applicable</p>
<p>2.4. The market shares of the</p>	<p>not applicable</p>

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

<p>undertakings mentioned above and the basis for calculation of market share (e.g. turnover, number of subscribers).</p>	
<p>2.5. If the National Competition Authority (“NCA”) issued an opinion, indicate whether it agrees with the proposed draft SMP assessment.</p>	<p>Agrees Disagrees</p> <p><input type="checkbox"/> <input type="checkbox"/></p> <p>If the NCA disagrees, please outline the reasons: During the public consultation NCA did not submit an opinion.</p>
<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, number of respondents agreeing/disagreeing). Please indicate whether any change have been made to the draft measure following the public consultation, and if so, briefly describe the changes.</p>	<p>4 comments were received. Participants agree with the need to change a reference offer. Participants submitted a number of comments e.g. to the definitions in the draft decision concerning: infrastructure, virtual collocation, transmitter, free resource; procedure for submitting applications for access, procedure for concluding a contract, provisions on contractual penalties and calculating discounts, proposals for modification of annexes to the reference offer.</p> <p>Comments have been taken into the draft decision. The changes did not require re-consultation. The draft reference offer has been changed as described in the attached Decision.</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>Article 43 (1) of the Telecommunications Act of July 16, 2004 (Office Journal from 2021, item 576, hereinafter referred to as "the Telecommunications Act"), the President of UKE approves the draft reference offer if it meets the legal provisions and market needs indicated in the decision imposing the obligation to submit a reference offer or changes the submitted draft reference offer and approves it, and in the event of failure to submit a reference offer on time - independently determines the reference offer.</p>

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.

According to Article 42 (1) of the Telecommunications Act, the President of UKE may impose, in accordance with the conditions referred to in Article 24(2)(a), by way of a decision, on an operator with significant market power on which an obligation of equal treatment has been imposed in accordance with Article 36, or together with that obligation, an obligation to prepare and submit, within a specified period, a draft reference offer on telecommunications access, the level of detail of which shall be determined in the decision.

Currently, the President of UKE decided that Emitel S.A. is the operator with SMP on the national wholesale market of radio broadcasting transmission services to deliver radio content to end users and the national wholesale market of tv broadcasting transmission services to deliver tv content to end users. Consequently, the President of UKE imposed on Emitel regulatory obligations.

In order to counteract the problems identified on the market, the President of UKE imposed on OPL the following regulatory obligations:

- access obligation – Article 34 (1) and 34 (2) of the Telecommunications Act (Pt),
- non-discrimination obligation – Article 36 of the Pt,
- transparency obligation – Article 37 (1) and 37 (2) of the Pt,
- obligation of accounting separation – Article 38 (1) of the Pt,
- obligation of setting fees for telecommunications access based on the cost incurred – Article 40 (1) of the Pt,
- obligation of publication of the reference offer – Article 42 (1) of the Pt.

The Decision of the President of UKE approving reference offer does not change the obligations provided for in Article 68 of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.

<p>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.</p>	<p>not applicable</p>
<p>Section 3a - Draft measures under Article 76(2) of the Code</p> <p>Please provide information on the following, where applicable:</p>	
<p>3a.1. Short description of the commitments offered by the SMP operator and their compatibility with the conditions of Article 76(1).</p>	<p>not applicable</p>
<p>3a.2. A description of the regulatory treatment of the new VHCN network elements subject to the commitment under Article 76(2), first subparagraph.</p>	<p>not applicable</p>
<p>3a.3. If applicable, a description of the remedies imposed on the basis of Article 76(2), third subparagraph</p>	<p>not applicable</p>
<p>Section 3b – Draft measures under Article 79 of the Code</p> <p>Please provide information on the following, where applicable:</p>	
<p>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);</p>	<p>not applicable</p>
<p>Section 3c – Draft measures under Article 80 of the Code</p> <p>Please provide information on the following, where applicable:</p>	
<p>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</p>	<p>not applicable</p>

to be found).	
3c.2. If applicable, a description of the remedies imposed or withdrawn.	not applicable