

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 affected relevant product/service market is the market of wholesale local access provided at a fixed location (Market 3a/2014) and wholesale central access provided at a fixed location for mass-market products (Market 3b/2014).				
1.2. The relevant geographic market/s	The affected relevant geographic markets cover part of the territory of Poland as parts of its territory (51 communal areas at Market 3a/2014 and 151 communal areas at Market 3b/2014) were deregulated according to SMP decisions issued on the 22 nd of October 2019.				
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	<table style="width: 100%; border: none;"> <tr> <td style="text-align: center; width: 50%;">Agreement</td> <td style="text-align: center; width: 50%;">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: During the public consultation NCA did not submit an opinion.</p>	Agreement	Disagreement	<input type="checkbox"/>	<input type="checkbox"/>
Agreement	Disagreement				
<input type="checkbox"/>	<input type="checkbox"/>				
1.4 Dates of the national public consultation	From 11.03.2024 to 10.04.2024				
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><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"> • 10.04.2024 – Krajowa Izba Gospodarcza Elektroniki i Telekomunikacji, • 05.04.2024 – Orange Polska S.A., • 10.04.2024 – Netia S.A., • 10.04.2024 – Fundacja Open Allies. <p>Participants submitted number of comments, e.g. fees and service automatism, rules of contractual penalties and declaration of voluntary submission to enforcement. The President of UKE hasn't</p>				

	changed draft measure subsequently to the public consultation.				
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 Code ¹ .	<i>[not applicable]</i>				
Section 2 – Designation of undertakings with Significant Market Power (SMP)					
Please provide information on the following, where applicable:					
2.1. The name of the undertakings designated as having, individually or jointly, SMP. Where applicable, the name of the undertakings considered as no longer having SMP.	Orange Polska S.A.				
2.2. The criteria used to designate whether or not an undertaking has individual or joint SMP.	<i>[not applicable]</i>				
2.3. The name of the main undertakings (competitors) active in the relevant market.	<i>[not applicable]</i>				
2.4. The market shares of the undertakings mentioned above and the basis for calculation of market share (e.g. turnover, number of subscribers).	<i>[not applicable]</i>				
2.5. If the National Competition Authority (“NCA”) issued an opinion, indication of whether it agrees or not with the proposed draft SMP assessment.	<table border="0"> <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: During the public consultation NCA did not submit an opinion.</p>	Agreement	Disagreement	<input type="checkbox"/>	<input type="checkbox"/>
Agreement	Disagreement				
<input type="checkbox"/>	<input type="checkbox"/>				
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	<p>4 comments were received.</p> <p>Participants submitted a number of comments, e.g. fees and service automatism, rules of contractual penalties and declaration of voluntary submission to enforcement.</p> <p>The President of UKE hasn’t changed draft measure subsequently to the public consultation.</p>				

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

public consultation, and if so, briefly describe the changes.	
<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>According to Article 43 (1) of the Telecommunications Act of July 16, 2004 (Office Journal from 2004, item 34 with changes, hereinafter referred to as "the Telecommunications Act" - TA), 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>
<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.</p>	<p>According to Article 42 (1) TA, 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.</p> <p>The President of UKE in 2019 decided that Orange Polska S.A. (OPL) is the operator with SMP on the Market 3a and Market 3b. Consequently, the President of UKE imposed on OPL regulatory obligations.</p> <p>In order to counteract the problems identified on the market, the President of UKE imposed on OPL the following regulatory obligations:</p> <ul style="list-style-type: none"> • access obligation – Article 34 (1) and 34 (2) TA • non-discrimination obligation – Article 36 TA, • transparency obligation – Article 37 (1) and 37 (2) TA, • obligation of accounting separation – Article 38 (1) of TA,

	<ul style="list-style-type: none"> • obligation of setting fees for telecommunications access based on the justified cost incurred – Article 39 (1) of TA, • obligation of setting fees for telecommunications access based on the cost incurred – Article 40 (1) TA, • obligation of publication of the reference offer – Article 42 (1) TA. <p>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> <p>The decision of the President of UKE currently presents for notification partially maintains the decision from the 26th of June 2022 and partially amends it.</p> <p>The amendment concerns supplementing the reference offer with colocation services and accompanying services. In addition, fees have been updated due to the change in the financial year. The basis for determining the fees were justified costs (Article 39 TA), which are consistent with the Long Run Incremental Cost (LRIC+) methodology, and were verified by an independent auditor in accordance with Article 53 section 5 TA and received a positive opinion.</p>
<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><i>[not applicable]</i></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 how they comply with the conditions of Article 76(1).</p>	<p><i>[not applicable]</i></p>
<p>3a.2. A description of the regulatory treatment of the new VHCN network elements</p>	<p><i>[not applicable]</i></p>

subject to the commitment under Article 76(2), first subparagraph.	
3a.3. If applicable, a description of the remedies imposed on the basis of the third subparagraph of Article 76(2).	<i>[not applicable]</i>
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).	<i>[not applicable]</i>
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).	<i>[not applicable]</i>
3c.2. If applicable, a description of the remedies imposed or withdrawn.	<i>[not applicable]</i>