

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 because 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 22 nd 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 24.03.2023 to 24.04.2023				
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>3 comments were received:</p> <ul style="list-style-type: none"> • 24.04.2023 r. – Krajowa Izba Gospodarcza Elektroniki i Telekomunikacji • 21.04.2023 r. – T-Mobile Polska S.A. • 21.04.2023 r. – Orange Polska S.A. <p>Participants submitted a number of comments concerning the reconsideration of the NGA risk premium and WACC calculation for the fiber network, as well as selected WACC parameters specified in the BEREC Report. President of UKE</p>				

	hasn't 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 style="width: 100%; border: none;"> <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>3 comments were received.</p> <p>Participants submitted a number of comments concerning the reconsideration of the NGA risk premium and WACC calculation for the fiber network, as well as selected WACC parameters specified in the BEREK Report. 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 53 (1) of TL, the President of UKE shall specify on an annual basis, by means of a decision, weighted average cost of capital to be applied in cost calculation by the telecommunications operators on which he/she imposed a cost calculation obligation, taking account of documented costs of acquiring the capital, the company's position in the capital market, typical risk related to employing the capital, in particular for new investment projects, and the costs of capital commitment in comparable markets.</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 39 (1) of TL, the President of UKE may, in line with the objectives referred to in Article 24 point (2a), by means of a decision, impose on the SMP operator obligations:</p> <ul style="list-style-type: none"> • calculate justified costs of providing telecommunications access, indicating methods of cost calculation which should be applied by the operator on the basis of the provisions of the ordinance referred to in Article 51 of TL, according to the cost calculation description approved by the President of UKE; • apply fees for telecommunications access, taking account of the recovery of justified costs by an operator. <p>Currently, the obligation to calculate the justified costs of Orange Polska S.A. is imposed on Market 3a/2014 and Market 3b/2014. Thus, the premise obliging the President of UKE to define, according to Article 53 (1) of TL, the WACC index for Orange Polska S.A. with regard to services on Market 3a/2014 and Market 3b/2014, i.e. the premise for imposing an obligation on a given entity to conduct cost calculation (Article 50 (2) of TL and Art. 39 (1) of TL) with regard to these services has been met.</p> <p>According to Article 53 (1) of TL, the President of UKE determines the WACC index annually. Therefore, in the decision, the WACC index was determined for the purposes of calculating the</p>

	<p>costs, which results from the fact that, in accordance with the content of the SMP Decision for Market 3a/2014 and Market 3b/2014, Orange Polska S.A. is obliged to calculate the reasonable costs of telecommunications access on the basis of future-oriented long-term incremental costs according to the cost calculation description approved by the President of UKE.</p> <p>The proposed decision determines the WACC index for Orange Polska S.A. with regard to copper infrastructure, in accordance with the calculation methodology resulting from the Notice of the European Commission of November 6, 2019 on the calculation of the cost of capital for copper infrastructure entitled <i>“Commission Notice on the calculation of the cost of capital for legacy infrastructure in the context of the Commission’s review of national notifications in the EU electronic communications sector”</i> and takes into account the parameter values determined by BEREK in the <i>“Report on WACC parameter calculations according to the European Commission’s WACC Notice”</i>.</p> <p>The decision of the President of UKE currently presented for notification partially maintains the decision from 20th of December 2022 in field of copper infrastructure amounted to 6.62% and partially change it.</p> <p>The change concerns the level of the WACC indicator for the optical fiber infrastructure from 8.46% to 8.38%.</p> <p>Finally WACC indicator for Orange Polska S.A. in the scope of copper infrastructure amounted to 6.62%. The WACC indicator in relation to optical fiber infrastructure is 8.38%.</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>

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).	<i>[not applicable]</i>
3a.2. A description of the regulatory treatment of the new VHCN network elements subject to the commitment under Article 76(2), first subparagraph.	<i>[not applicable]</i>
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>