

NOTIFICATION FORM

Section 1 Market definition

1.1 The relevant product/service market. Is this market mentioned in the Recommendation on relevant markets?

Wholesale local access provided at a fixed location.

Wholesale local access provided at a fixed location is included in the Annex of the Commission Recommendation 2014/710/EU of 9 October 2014 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 communications networks and services (hereinafter – the Recommendation of 2014) as **Market 3a**.

1.2 The relevant geographic market

The geographic scope of Market 3a corresponds to the area of the Republic of Lithuania.

1.3 A brief summary of the opinion of the national competition authority and market players where provided.

National public consultation ran from 29 September 2015 to 9 November 2015. RRT received comments from three operators (TEO LT, AB, AB Lietuvos radijo ir televizijos centras and operator which asked to keep its comments confidential) and The Competition Council of the Republic of Lithuania.

TEO LT, AB (hereinafter – TEO) provided a few comments:

- a) TEO suggested including local wireless communication lines into the definition of the Market 3a.
- b) TEO asked for the clarification regarding the technical protocols which are used for the provision of wholesale local access at a fixed location (hereinafter – wholesale local access).
- c) TEO expressed an opinion that communication lines do not meet any of the characteristics of the wholesale local access therefore communication lines should be eliminated from the auxiliary facilities used for the provision of wholesale local access.
- d) TEO did not agree that the prices of access to the communications cable duct system (hereinafter – access to the ducts) and access to the dark fiber are too high and that the terms of provision of these services are too long.
- e) TEO asked to mention in the draft report of the Market 3a the fact that since 1 April 2015 it started testing technical possibilities remotely.
- f) TEO emphasized that in 2010 and 2015 TEO and alternative operators negotiated the terms and conditions of the provision of wholesale local access therefore TEO is of the opinion that alternative operators have countervailing buyer power.
- g) TEO asked to provide the data of the audit of TEO which took place in 2013.

- h) TEO asked to provide the comparative price of the access to the ducts in the European Union.
- i) TEO suggested conjoining the terms “auxiliary facilities” and “vertically related services”.

AB Lietuvos radijo ir televizijos centras did not have any comments and agreed with the results of the Market 3a analysis.

Operator which asked to keep its comments confidential (hereinafter – confidential operator) provided a few comments. The comments are as followed:

- a) Confidential operator expressed an opinion that competition in the retail internet access services provision market is not effective and that the market share of TEO would increase even more if internet access services provided using mobile communications networks would be included.
- b) Confidential operator expressed an opinion that business centres and other administrative services providers are restraining competition because they resell TEO’s retail services while TEO does not allow alternative operators to resell its retail services.
- c) Confidential operator stressed out that the prices of TEO’s retail services are lower than the prices of TEO’s wholesale services, meaning that there is a price squeeze in the Market3 a.
- d) Confidential operator emphasized that the period during which TEO provides information and tests technical possibilities is too long.
- e) Confidential operator asked to solve the issue with the networks interconnection, because at the moment only the operator which initiates the interconnection is forced to cover all the costs.
- f) Confidential operator pointed out that the term of provision of wholesale local access is too long and should be shortened.
- g) Confidential operator suggested that a certain period should be specified during which TEO would be obliged to provide information regarding wholesale local access, access to the ducts and access to the dark fiber. What is more, confidential operator also proposed that TEO would be obligated to provide information about its infrastructure publicly, including interactive maps of duct network.
- h) Confidential operator suggested that TEO should be obligated to grant access and share its network with alternative operators. What is more, confidential operator asked to oblige TEO to provide alternative operators with an opportunity to buyout its infrastructure.
- i) Confidential operator suggested imposing obligation of functional separation.

The Competition Council of the Republic of Lithuania did not have any comments and agreed with the results of the Market 3a analysis.

1.4. A brief overview of the results of the public consultation to date on the proposed market definition (e.g. how many comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it).

Only TEO had comments regarding the market definition. TEO suggested including local wireless communication lines into the definition of the Market 3a. RRT did not agree with this comment because, despite the fact that local wireless communication lines are substitutes to other fixed local lines, technically it is impossible to unbundle local wireless communication lines.

That is why local wireless communication lines cannot be included into the definition of the Market 3a.

1.5 Where the 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 Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications and services, 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.

The defined market of wholesale local access provided at a fixed location corresponds to that in the Recommendation of 2014.

Section 2

Designation of undertakings with significant market power

2.1 The name of the undertakings designated as having, individually or jointly, significant market power.

The undertaking TEO is designated having significant market power.

Where applicable, the name of the undertakings considered no longer to have significant market power.

Not applicable.

2.2 The criteria used to designate an undertaking as having significant market power, individually or jointly, or not.

The following criteria were used to designate TEO as having significant market power:

1. Market structure (market shares).
2. Vertically related services.
3. Barriers to entry.
4. Countervailing buying power.
5. Absence of potential competition.

2.3 The name of the main undertakings (competitors) active in the relevant market.

The number of undertakings active in Market 3a totals to 82, including the SMP operator TEO. However, the closest TEO's competitors which are constantly increasing their market shares are the following five:

1. UAB "Cgates".
2. Splius, UAB.
3. UAB "Dokeda".
4. UAB "Balticum TV".
5. UAB "Penkių kontinenų komunikacijos centras".

2.4 The market shares of the undertakings mentioned above and the basis for calculation of market share (e.g. turnover, number of subscribers).

The provided market shares have been calculated on the basis of the number of local loops in 2014.

The market share of the SMP operator TEO LT, AB amounts to 67.9 per cent.

The market shares of the five largest competitors on Market 3a are as follows:

1. UAB “Cgates” – 6.7 per cent.
2. Splus, UAB – 3.3 per cent.
3. UAB “Dokeda” – 3.2 per cent.
4. UAB “Balticum TV” – 3.1 per cent.
5. UAB “Penkių kontinenų komunikacijos centras” – 3.1 per cent.

The market shares of the rest 76 alternative operators are below 2 per cent on the Market 3a.

2.5 The opinion of the national competition authority, where provided.

The Competition Council of the Republic of Lithuania did not have any comments and agreed with the results of the Market 3a analysis.

2.6 The results of the public consultation to date on the proposed designation(s) as undertakings having significant market power (e.g. total number of comments received, numbers agreeing/disagreeing)

RRT received comments from three operators (TEO, AB Lietuvos radijo ir televizijos centras and confidential operator) and The Competition Council of the Republic of Lithuania.

TEO provided a few comments:

- a) TEO asked for the clarification regarding the technical protocols which are used for the provision of wholesale local access. RRT emphasized that access provider itself chooses and defines technical protocols. However, RRT in order to limit excess and unnecessary information and taking into account that in Market 3a backhaul and auxiliary facilities would be passive infrastructure, agreed not to single out technical protocols when defining auxiliary facilities.
- b) TEO expressed an opinion that communication lines do not meet any of the characteristics of the wholesale local access therefore communication lines should be eliminated from the auxiliary facilities used for the provision of wholesale local access. RRT agreed to change the term “communication lines” to “connective cables”, which is more suitable in the scope of the Market 3a.
- c) TEO did not agree that the prices of access to the ducts and access to the dark fiber are too high and that the terms of provision of these services are too long. RRT explained that this statement was provided by alternative operators. However, RRT is of the opinion that

without regulation TEO has motives and possibilities to increase the prices of access to the ducts and access to the dark fiber, and extend the terms of provision of these services.

- d) TEO asked to mention in the draft report of the Market 3a the fact that since 1 April 2015 it started testing technical possibilities remotely. RRT agreed to include this statement into the draft report of the Market 3a.
- e) TEO emphasized the fact that in 2010 and 2015 TEO and alternative operators negotiated the terms and conditions of the provision of wholesale local access therefore TEO is of the opinion that alternative operators have countervailing buyer power. RRT took into account that TEO negotiated with certain alternative operators. However, RRT stressed out that these negotiations were started and the settlements were reached only because of the intervention of RRT, meaning that without the intervention of RRT alternative operators would not have any countervailing buyer power.
- f) TEO asked to provide the data of the audit of TEO which took place in 2013. RRT informed TEO that this information was already provided to TEO in 12 December 2014 and it cannot be included into the draft report of Market 3a due to confidentiality.
- g) TEO asked to provide the comparative prices of the access to the ducts in the European Union. RRT agreed to provide the comparative prices of the access to the ducts in the European Union and include this information into the draft report of Market 3a.
- h) TEO suggested conjoining the terms “auxiliary facilities” and “vertically related services”. RRT explained to TEO that, despite the fact that both auxiliary facilities and vertically related services are regulated equally, they are not the same services, i.e. they differ in terms of the content. Auxiliary facilities are means which enable using wholesale local access, access to the ducts and access to the dark fiber, while vertically related services are services which are vertically related with wholesale local access, i.e. access to the ducts and access to the dark fiber.

AB Lietuvos radijo ir televizijos centras did not have any comments and agreed with the results of the Market 3a analysis.

Confidential operator provided a few comments. The comments are as followed:

- a) Confidential operator expressed an opinion that competition in the retail internet access services provision market is not effective and that the market share of TEO would increase even more if internet access services provided using mobile communications networks would be included. RRT explained that the competition in the retail internet access services provision market is becoming more and more effective and there is a clear tendency of the infrastructure based competition. As for the internet access services provided using mobile communications networks, RRT has established that internet access services provided using fixed technologies and mobile technologies are not substitutable in Lithuania therefore internet access services provided using mobile communications networks should not be included into the analysis of the retail internet access services provided using fixed communications networks provision market.
- b) Confidential operator expressed an opinion that business centres and other administrative services providers are restraining competition because they resell TEO’s retail services while TEO does not allow alternative operators to resell its retail services. RRT has established that business centres and other administrative services providers do not resell TEO’s retail services. What is more, RRT emphasized that the provision of retail services is not the object of the Market 3a analysis.

- c) Confidential operator stressed out that the prices of TEO's retail services are lower than the prices of TEO's wholesale services, meaning that there is a price squeeze in the Market 3a. RRT noticed that this comment lacks reasoning and, according to the RRT's data, there is no price squeeze in the Market 3a.
- d) Confidential operator emphasized that the period during which TEO provides information and tests technical possibilities is too long. RRT established that the period during which TEO provides information and tests technical possibilities to alternative operators is no longer than the period during which TEO provides information and tests technical possibilities to itself.
- e) Confidential operator asked to solve the issue with the networks interconnection, because at the moment only the operator which initiates the interconnection is forced to cover all the costs. RRT explained that, due to the nature of the networks interconnection in the scope of Market 3a, only the operator which initiates the interconnection gains advantage from it therefore it must cover all the costs of the networks interconnection.
- f) Confidential operator pointed out that the term of provision of wholesale local access is too long and should be shortened. RRT established that the period during which TEO provides wholesale local access to alternative operators is no longer than the period during which TEO provides wholesale local access to itself.
- g) Confidential operator suggested that a certain period should be specified during which TEO would be obliged to provide information regarding wholesale local access, access to the ducts and access to the dark fiber. What is more, confidential operator also proposed that TEO would be obligated to provide information about its infrastructure publicly, including interactive maps of duct network. RRT emphasized that the period during which TEO has to provide information regarding wholesale local access, access to the ducts and access to the dark fiber has already been specified, i.e. it is 10 working days. As for the publicly available information about infrastructure and publicly available interactive maps of the duct network, RRT is of an opinion that at the moment this obligation would be too burdensome and not proportionate.
- h) Confidential operator suggested that TEO should be obligated to grant access and share its network with alternative operators. What is more, confidential operator asked to oblige TEO to provide alternative operators with an opportunity to buyout its infrastructure. RRT explained that TEO has already been obligated to grant access, i.e. access obligation. As for the network buyout, RRT explained that property rights are out of RRT's jurisdiction.
- i) Confidential operator suggested imposing obligation of functional separation. RRT is of an opinion that obligation of functional separation is the extreme measure, which would not be proportionate to the problems determined in the Market 3a.

The Competition Council of the Republic of Lithuania did not have any comments and agreed with the results of the Market 3a analysis.

Section 3

Regulatory obligations

3.1 The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 9 to 13 of Directive 2002/19/EC).

The following obligations imposed on TEO in 2006 and in 2011 as relates to wholesale local access (and the auxiliary facilities), access to the ducts (and the auxiliary facilities) and access to the dark fiber (and the auxiliary facilities) are maintained:

- Obligation to provide access – Article 12 of Access Directive; Article 21 of the Law on Electronic Communications;
- Obligation of non-discrimination – Article 10 of Access Directive; Article 19 of the Law on Electronic Communications;
- Price control and cost accounting obligation – Article 13 of Access Directive; Article 23 of the Law on Electronic Communications;
- Accounting separation obligation – Article 11 of Access Directive; Article 20 of the Law on Electronic Communications.

The following obligations imposed on TEO in 2006 and in 2011 as relates to wholesale local access (and the auxiliary facilities), access to the ducts (and the auxiliary facilities) and access to the dark fiber (and the auxiliary facilities) are amended:

- Obligation of transparency – Article 9 of Access Directive; Article 18 of the Law on Electronic Communications.

3.2 The reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered proportional and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.

The detailed reasoning is provided in Chapter 4 of the draft report on Market 3a.

3.3 Where the remedies proposed are other than those set out in Articles 9 to 13 of Directive 2002/19/EC, please indicate what « 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

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.

Not applicable.

4.2 The name of the undertakings concerned.

Not applicable.

4.3 What international commitments entered into by the Community and the Member States are to be met.

Not applicable.