

NOTIFICATION FORM

Section 1 Market definition

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

Wholesale central access provided at a fixed location for mass-market products.

Wholesale central access provided at a fixed location for mass-market products 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 3b**.

1.2 The relevant geographic market

The geographic scope of Market 3b 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 7 December 2015 to 25 January 2016. RRT received comments from four operators (TEO LT, AB, UAB “Bitė Lietuva”, AB Lietuvos radijo ir televizijos centras and operator which requested to stay confidential) and the Competition Council of the Republic of Lithuania.

TEO LT, AB (hereinafter – TEO) provided the following comments:

- a) TEO noticed that there is a typo in the draft report.
- b) TEO did not agree with the geographical analysis conducted by RRT. TEO commented that RRT has not carried out a detailed analysis of different competition conditions in different geographical areas and wherefore has made incorrect conclusion regarding geographical definition of the market. According to the operator, RRT has to collect information about services conditions and prices in different geographical territories and only after collecting such information RRT would be able make correct conclusions on geographical segmentation.
- c) 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.

UAB “Bitė Lietuva” (hereinafter – Bitė) provided the following comments:

- a) Bitė expressed an opinion that TEO’s actions, including pricing, regarding wholesale central access at a fixed location for mass-market products (hereinafter – wholesale central access) disables the competition in the retail internet access services market. According to Bitė, TEO sets charges for network interconnection which are not cost based

and due to this replicating TEO's retail offers becomes impossible. Bitė suggested including network interconnection services into the scope of auxiliary facilities and imposing them with appropriate obligations.

- b) Bitė expressed uncertainty whether infrastructure based competition is a good thing, because it shows that there are no incentives to buy wholesale central access.
- c) Bitė asked to give the number of operators using wholesale central access over fiber and metal twisted pair lines.
- d) Bitė asked to present standard retail prices, i.e. not the ones in the special offers, in the draft analysis report.
- e) Bitė suggested adding the following competition problem: "TEO has motives and, absent regulation, possibilities to apply excessive prices of network interconnection between the wholesale central access provider and wholesale central access receiver, and control the conditions of the provision of these services."

Operator which requested to stay confidential (hereinafter – confidential operator) provided the following comment:

- a) Confidential operator expressed an opinion that the regulation in Market 3b should be tightened because TEO is applying excessive prices for wholesale services.

AB Lietuvos radijo ir televizijos centras and the Competition Council of the Republic of Lithuania did not have any comments and agreed with the results of the Market 3b 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).

TEO disagreed with the geographic definition of the relevant market. There were no other comments regarding the market definition.

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 as 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 3b at the end of 2014 totaled 82, including the SMP operator TEO. Out of other 81 operator active on the Market 3b, the only closest TEO competitor was UAB “Cgates”.

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 market shares of the SMP operator TEO and the other operators active on the Market 3b were calculated on the basis of actually used and owned local loops in 2014.

The market shares of TEO amount to 56.6 per cent calculated on the basis of the actually used local loops and total to 67.9 per cent calculated on the basis of own local loops.

The market shares of TEO’s closest competitor UAB “Cgates” amount to 9.7 per cent calculated on the basis of the actually used local loops and total to 6.7 per cent calculated on the basis of own local loops.

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 3b 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 four operators (TEO, Bitė, AB Lietuvos radijo ir televizijos centras and confidential operator) and the Competition Council of the Republic of Lithuania.

TEO provided the following comments:

- a) TEO noticed that there is a typo in the draft report. RRT took that into account and corrected the typo.
- b) TEO did not agree with the geographical analysis conducted by RRT. TEO commented that RRT has not carried out a detailed analysis of different competition conditions in different geographical areas and wherefore has made incorrect conclusion regarding geographical definition of the market. According to the operator, RRT has to collect information about services conditions and prices in different geographical territories and only after collecting such information RRT would be able make correct conclusions on geographical segmentation. While conducting the Market 3b analysis RRT has established that the geographic scope of the Market 3b corresponds to the area of the Republic of Lithuania, where conditions of competition are homogeneous enough. RRT evaluated the factual situation in the retail markets and not the hypothetical one. The factual situation is that retail prices are not differentiated geographically and TEO's network is not geographically segmented, but is run as a national network. That is why RRT believes that at this moment, in order to preserve the legal certainty of the regulation, geographical segmentation should not be implemented.
- 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, in the absence of 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.

Bitė provided the following comments:

- a) Bitė expressed an opinion that TEO's actions, including pricing, regarding wholesale central access at a fixed location for mass-market products (hereinafter – wholesale central access) disables the competition in the retail internet access services market. According to Bitė, TEO sets networks interconnection charges which are not cost based meaning that replicating TEO's retail offers becomes impossible. Bitė suggested including networks interconnection into the auxiliary facilities and imposing them with appropriate obligations. RRT complemented the draft report and specified auxiliary facilities.
- b) Bitė expressed uncertainty whether infrastructure based competition is a good thing, because it shows that there are no incentives to buy wholesale central access. RRT is of the opinion that infrastructure based competition is a positive thing, which creates benefits for both operators and end users. What is more, RRT believes that the suggested regulation sends a clear “build or buy” signal.
- c) Bitė asked to give the number of operators using wholesale central access via fiber and metal twisted pair lines. RRT replied that on 31 December 2013 there was one operator using wholesale central access via fiber lines and 5 operators using wholesale central access via metal twisted pair lines; on 31 December 2014 there were 3 operators using wholesale central access via fiber lines and 4 operators using wholesale central access via metal twisted pair lines.
- d) Bitė asked to present standard retail prices, i.e. not the ones in the special offers. RRT replied that in the draft report all prices (retail and wholesale) are standard and without VAT.

- e) Bitė suggested adding the following competition problem: “TEO has motives and, without regulation, possibilities to apply excessive prices of network interconnection between the wholesale central access provider and wholesale central access receiver, and control the conditions of the provision of these services.” RRT replied that it had already taken this problem into account. It is mentioned in the draft report that TEO has motives and, without regulation, possibilities to apply different prices and other conditions for the provision of wholesale central access (and auxiliary facilities) for itself and other operators, and TEO has motives and, without regulation, possibilities to apply excessive prices and control other conditions for the provision of wholesale central access (and auxiliary facilities).

Confidential operator provided the following comment:

- a) Confidential operator expressed an opinion that the regulation in Market 3b should be strengthened because TEO is applying excessive prices. RRT did not agree with this comment because RRT is of an opinion that suggested regulation is proportionate to the competition problems identified in the market and therefore currently the regulation should not be changed.

AB Lietuvos radijo ir televizijos centras and the Competition Council of the Republic of Lithuania did not have any comments and agreed with the results of the Market 3b 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 2012 as relates to wholesale central access provided at a fixed location for mass-market products are amended in order to enhance legal certainty as far as auxiliary facilities, needed for the provision of wholesale central access, are concerned:

- 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;
- Transparency obligation - Article 9 of Access Directive; Article 18 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.

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 of Market 3b analysis.

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.