

NOTIFICATION FORM

Section 1 Market definition

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

Market of access to the public network at a fixed location for residential and non-residential customers.

Market of access to the public network at a fixed location for residential and non-residential customers is not 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). The market is included in the Annex of the Commission Recommendation 2007/879/EC of 17 December 2007 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 2007) as **Market 1** and in the Annex of the Commission Recommendation 2003/311/EC of 11 February 2003 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 communication networks and services (hereinafter – the Recommendation of 2003) as markets 1 and 2.

This is the second notification regarding Market 1. The first round of analysis of Market 1 was notified to the European Commission in 2006 as markets 1 and 2 of the Recommendation of 2003 and registered under case LT/2006/0412 where both markets were defined and were found susceptible to *ex ante* regulation.

After carrying out the substitution analysis, the Communications Regulatory Authority of the Republic of Lithuania (hereinafter – RRT) defined two separate markets:

1. Market of access to the public network at a fixed location for residential customers (hereinafter – Residential market);
2. Market of access to the public network at a fixed location for non-residential customers (hereinafter – Non-residential market).

1.2 The relevant geographic market

The geographic scope of the Residential market and Non-residential market 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 22 May 2015 to 19 June 2015. RRT received comments from three operators (“CSC TELECOM” UAB, Lietuvos radijo ir televizijos centras AB, TEO LT, AB) and The Competition Council of the Republic of Lithuania.

Lietuvos radijo ir televizijos centras AB considered that standard offer for the Wholesale Line Rental (WLR) must include not only prices of access to the public network at a fixed location, but also the conditions of provision and terms of use of associated facilities and associated services together with the prices related to that.

“CSC TELECOM” UAB provided several comments. First of all, the service provider noted that the definition of Market 1 should include not only provision of access to the public network at a fixed location when access line is owned by the operator, but also the provision of access to the public network at a fixed location services when they are provided based on infrastructure (i.e. access lines) owned by other operators. Moreover, the operator complained that the prices of wholesale electronic communications services provided by TEO LT, AB are too high as compared to the prices of access to the public network at a fixed location services offered by TEO LT, AB. “CSC TELECOM” UAB stated that WLR prices and technical feasibility study charges are too high, WLR service implementation deadlines are too long. For the abovementioned reasons, operator claimed that it is necessary to leave TEO LT, AB existing obligations so that alternative operators could compete in the Residential market and in the Non-residential market. The service provider also claimed that TEO LT, AB should be separated into two separate entities providing wholesale and retail services and regulation of retail call services should be brought back.

TEO LT, AB provided several comments. First of all, TEO LT, AB claimed that retail access to fixed networks and retail access to mobile networks are substitutes and therefore retail access should be included in market definition. Moreover, the operator indicated that there are neither barriers to entry nor to the development of competition in the Residential market and the Non-residential market. Moreover, TEO LT, AB pointed out that there are several factors which enable internet service providers to start providing access to the public network at a fixed location services in a short period of time and at minimum costs, i.e. alternative operators have their own networks, newer technologies are being used and internet access is becoming more and more widespread. Finally, TEO LT, AB noted that the Residential market and the Non-residential market lean towards effective competition due to a reduction of price of fixed access services. Operator also noted that the number of market participants in the Residential market has increased. In addition, TEO LT, AB expressed an opinion that it is not acceptable to consider that TEO LT, AB may eliminate current and potential competitors by reducing prices of access to the public network at a fixed location services while using economies of scale and scope and because it is a vertically integrated operator. According to TEO LT, AB, without reducing price of access to the public network at a fixed location services the operator would lose competition against alternative fixed operators and mobile operators. Based on the comments provided, TEO LT, AB concluded that ex ante regulation in the Residential market and the Non-residential market is not justified.

The Competition Council of the Republic of Lithuania indicated that competition problems identified in this market analysis are identical to the ones assessed during the Market 1 and 2 analysis of 2006; therefore, the Competition Council of the Republic of Lithuania has doubts whether data and its analysis presented in the draft measures of the Market 1 report underlie a strong ground to withdraw regulation of retail prices in the Residential market and Non-residential market and whether obligations proposed are sufficient enough to resolve competition problems indicated in the market analysis. However, in the end, the Competition council of the Republic of Lithuania stated that, taking into account tasks and responsibilities of RRT and taking into account that RRT possess particular information, RRT should decide what obligations should be lifted and what obligations should be imposed in the Residential market and Non-residential market.

On 29 June 2015 a public hearing of the results of public consultation was organized with the stakeholders. 6 fixed and mobile network operators participated in the public hearing.

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).

The Competition Council of the Republic of Lithuania had no comments regarding the definitions of relevant markets.

Lietuvos radijo ir televizijos centras AB agreed with the definitions of relevant markets.

TEO LT, AB disagreed with the definition of the Residential market and Non-residential market. In TEO LT, AB opinion, there is a substitution between mobile telephone access services and access to the public network at a fixed location services, therefore, one market of access to public network services should be defined.

“CSC TELECOM” UAB disagreed with the Market 1 definition. According to the service provider, all forms of access services to the public network at a fixed location, whether it is owned by services provider or leased by service provider from the other operator, should be included in Market 1 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.

Market 1 is included in the Recommendation of 2007 and not listed in the Recommendation 2014. To review whether *ex ante* regulation was still reasoned, RRT defined Residential market and Non-residential market and carried a 3 criteria test. This involved several procedures.

Firstly, RRT analysed whether access to the public network at a fixed location for residential and non-residential customers still constituted two separate markets. The analysis showed that access to the public network at a fixed location for residential and non-residential customers satisfy different needs of end users and therefore two separate markets should be defined.

Secondly, RRT carried out a substitutability test on supply and demand side of access to the public network at a fixed location services taking into account the functionality of services, technology of access lines, price levels and substitutability between access to the public network at a fixed location and access to the mobile network. The demand and supply side substitution tests are described in detail in sections 2.3 and 2.4 of the draft report of Market 1. After several sets of substitution analysis on demand and supply side were performed, the markets listed in Section 1.1 of this notification were defined.

At the fourth stage, RRT conducted the three criteria test for every relevant market defined. RRT started its analysis from the first criterion. If the first criterion had failed, analysis of the second and third criteria was not carried out anymore. If the first criterion was met, the analysis of the second criterion was carried out. If the second criterion had not been met, the third criterion was not analyzed anymore. If the second criterion was met, the analysis of the third criterion was carried out. If the third criterion had not been met, the market is not susceptible to *ex ante* regulation. If the third criterion was met, the market is susceptible to *ex ante* regulation. The analyses of three criteria tests for Residential market and Non-residential market are described in detail in section 2.5 of the draft report of Market 1. While performing a three criteria test, it was established that Residential market and Non-residential market meet all the criteria of the three criteria test and are susceptible to *ex ante* regulation.

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.

TEO LT, AB was designated as having significant market power in both markets: the Residential market and the Non-residential market.

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 criteria used to designate TEO LT, AB as having significant market power both in Residential market and Non-residential market are as follows:

1. Market structure (market shares).
2. Barriers to enter the market.
3. Vertically related services.
4. Absence of potential competition.

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

The number of undertakings active in the Residential market totaled to eighteen, including the SMP operator TEO LT, AB.

The main four undertakings active in the Residential market: TEO LT, AB, “Cgates” UAB, “SPLIUS” UAB, “Telekomunikacijų grupė“ UAB (until 18 March 2013 the name of the undertaking was “Telekomunikacijų grupa“ UAB), other fourteen undertakings had a market share 0.3 per cent.

The other fourteen undertakings active in the market of access to the public telephone network at a fixed location for residential customers: A. Judicko personal enterprise, “Lietuvos geležinkeliai” AB, Lietuvos radijo ir televizijos centras AB, “BALTICUM TV” UAB, “CSC TELECOM” UAB, “Init” UAB, “KAVAMEDIA” UAB, “Marsatas” UAB, “Nacionalinis telekomunikacijų tinklas” UAB, “Penkių kontinentų komunikacijos centras” UAB, “RADIJO ELEKTRONINĖS SISTEMOS” UAB, “Roventa” UAB, “TELETINKLAS” UAB, “Zirzilė” UAB.

The number of undertakings active in the Non-residential market totaled to fourteen: TEO LT, AB, A. Judicko personal enterprise, “Lietuvos geležinkeliai” AB, Lietuvos radijo ir televizijos centras AB, SPLIUS, UAB, TEO LT, AB, “BALTICUM TV” UAB, “BALTNETOS KOMUNIKACIJOS” UAB, “CSC TELECOM” UAB, “Gisnetas” UAB, “Init” UAB, “Nacionalinis telekomunikacijų tinklas” UAB, “Penkių kontinentų komunikacijų centras” UAB, “RADIJO ELEKTRONINĖS SISTEMOS” UAB, “TELETINKLAS” UAB.

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 eighteen undertakings active in the Residential market:

TEO LT, AB – 96.9 percent;

“Cgates” UAB – 1.6 percent;

“SPLIUS” UAB – 0.7 percent;

“Telekomunikacijų grupė“ UAB (until 18 March 2013 the name of the undertaking was “Telekomunikacijų grupa“ UAB), – 0.5 percent;

Other fourteen undertakings (A. Judicko personal enterprise, “Lietuvos geležinkeliai” AB, Lietuvos radijo ir televizijos centras AB, “BALTICUM TV” UAB, “CSC TELECOM” UAB, “Init” UAB, “KAVAMEDIA” UAB, “Marsatas” UAB, “Nacionalinis telekomunikacijų tinklas” UAB, “Penkių kontinentų komunikacijos centras” UAB, “RADIJO ELEKTRONINĖS SISTEMOS” UAB, “Roventa” UAB, “TELETINKLAS” UAB, “Zirzilė” UAB) together – 0.3 percent.

The market shares of the undertakings active in the Non-residential market:

TEO LT, AB – 83.2 percent;

“CSC TELECOM” UAB – 10.4 percent;

“Lietuvos geležinkeliai” AB – 3.6 percent;

Lietuvos radijo ir televizijos centras AB – 1 percent;

“BALTNETOS KOMUNIKACIJOS” UAB – 1 percent;

Other nine undertakings (A. Judicko personal enterprise, SPLIUS, UAB, “BALTICUM TV” UAB, “Gisnetas” UAB, “Init” UAB, “Nacionalinis telekomunikacijų tinklas” UAB, “Penkių kontinentų komunikacijų centras” UAB, “RADIJO ELEKTRONINĖS SISTEMOS” UAB, “TELETINKLAS” UAB) together – 0.8 percent.

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

The Competition Council of the Republic of Lithuania indicated that competition problems identified in this market analysis are identical to the ones assessed during the Market 1 and 2 analysis of 2006, therefore, the Competition Council of the Republic of Lithuania has doubts whether data and its analysis presented in the draft measures of the Market 1 report underlie a strong ground to withdraw regulation of retail prices in the Residential market and in the Non-residential market and whether obligations imposed are sufficient enough to resolve competition problems indicated in the market analysis. But in the end the Competition Council of the Republic of Lithuania stated that taking, into account tasks and responsibilities of RRT and taking into account that RRT possess particular information, RRT should decide what obligations should be lifted and what obligations should be imposed in the Residential market and Non-residential market.

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)

The national public consultation ran from 22 May 2015 to 19 June 2015. RRT received comments from three operators (“CSC TELECOM” UAB, Lietuvos radijo ir televizijos centras AB, TEO LT, AB) and The Competition Council of the Republic of Lithuania.

The details of the comments are set out under point 1.3 of this notification form.

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 LT, AB in 2006 are maintained on the Residential market:

- Obligation to ensure selection of a provider of publicly available telephone services (carrier selection, pre-selection) – Article 33(1) of the Law on Electronic Communications;

- Accounting separation obligation with regard to the provision of Access for residential customers – Article 17 of Universal Service Directive; Article 32 of the Law on Electronic Communications;
- Obligation to provide wholesale line rental service (WLR) – Article 17 of Universal Service Directive; Article 32 of the Law on Electronic Communications;
- Obligation of non-discrimination with regard to the provision of wholesale line rental service – Article 10 of Access Directive; Article 19(1) of the Law on Electronic Communications;
- Price control and cost accounting obligation with regard to the provision of wholesale line rental service – Article 13 of Access Directive; Article 23(1) of the Law on Electronic Communications.

The following obligations imposed on TEO LT, AB are amended on the Residential market:

- Price control and cost accounting obligation with regard to the provision of Access for residential customers is replaced with cost accounting obligation – Article 17 of Universal Service Directive; Article 32 of the Law on Electronic Communications;
- Obligation of transparency with regard to the provision of wholesale line rental service – Article 9 of Access Directive; Article 18 of the Law on Electronic Communications.

The following obligations imposed on TEO LT, AB in 2006 are maintained on the Non-residential market:

- Obligation to ensure selection of a provider of publicly available telephone services (carrier selection, pre-selection) – Article 33(1) of the Law on Electronic Communications;
- Accounting separation obligation with regard to the provision of Access non-residential customers – Article 17 of Universal Service Directive; Article 32 of the Law on Electronic Communications;
- Obligation to provide wholesale line rental service (WLR) – Article 17 of Universal Service Directive; Article 32 of the Law on Electronic Communications;
- Obligation of non-discrimination with regard to the provision of wholesale line rental service – Article 10 of Access Directive; Article 19(1) of the Law on Electronic Communications;
- Price control and cost accounting obligation with regard to the provision of wholesale line rental service – Article 13 of Access Directive; Article 23(1) of the Law on Electronic Communications.

The following obligations imposed on TEO LT, AB are amended on the Non-residential market:

- Price control and cost accounting obligation with regard to the provision of Access for non-residential customers is replaced with cost accounting obligation – Article 17 of Universal Service Directive; Article 32 of the Law on Electronic Communications;

- Obligation of transparency with regard to the provision of wholesale line rental service – 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 1.

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.