

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 the facilities to deliver broadcasting transmission services.

This market is not included in any of the following Commission Recommendations: Commission Recommendation 2014/710/EU, Commission Recommendation 2007/879/EC, Commission Recommendation 2003/311/EC. Market of the facilities to deliver broadcasting transmission services was first time analyzed separately from Market of broadcasting transmission services, to deliver content to end users in 2014.

On 25 April 2016, the second round of analysis of Market of the facilities to deliver broadcasting transmission services was launched. In the course of the analysis, the Communications Regulatory Authority of the Republic of Lithuania (hereinafter – RRT) established that the said market consists of 2 individual submarkets:

- a) Market of the facilities to deliver terrestrial television broadcasting transmission services in the territory of the Republic of Lithuania (hereinafter – Submarket 1).
- b) Market of the facilities to deliver terrestrial radio broadcasting transmission services in the territory of the Republic of Lithuania (hereinafter – Submarket 2).

In order to identify whether the relevant market defined is susceptible to *ex ante* regulation, the three criteria test was applied in every submarket listed above. It was established that Submarkets 1 and 2 are susceptible to *ex ante* regulation.

1.2 The relevant geographic market

The geographic scope of Market of the facilities to deliver broadcasting transmission services corresponds to the area of the Republic of Lithuania, meaning that the geographical scope of Submarkets 1 and 2 is **the territory 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 3 April 2017 to 5 May 2017. RRT received comments from two operators – AB Lietuvos radijo ir televizijos centras (hereinafter – Telecentras) and Telia Lietuva, AB (former TEO LT, AB, hereinafter – Telia) – and the Competition Council of the Republic of Lithuania.

Telia agreed with the results of the analysis of Market of the facilities to deliver broadcasting transmission services and stated that Submarkets 1 and 2 are susceptible to *ex ante* regulation; however, Telia noted that cost accounting obligation in Submarket 1 may not be in line with the new Rules of Cost Accounting under Fully Distributed Cost Accounting. The Rules allow

changing the prices once a year, but the cost accounting obligation in Submarket 1 allows changing the prices every quarter.

Telecentras did not agree with the results of the analysis of Market of the facilities to deliver broadcasting transmission services and provided the following comments:

- a) Both demand and supply side substitution exists among vertically related retail television broadcasting transmission services provided via digital terrestrial television networks, cable television, IPTV and satellite networks.
- b) Competition in vertically related retail television broadcasting transmission services provided via digital terrestrial television networks market is effective and would be effective without regulation in vertically related wholesale markets. Therefore, the aforementioned regulation is excessive.
- c) When it comes to wholesale services, RRT incorrectly carried out a substitution test on supply and demand side. It is also believed that both demand and supply side substitution exists among facilities to deliver television broadcasting transmission services and facilities to deliver radio broadcasting transmission services.
- d) Submarkets 1 and 2 should not only be analysed as national markets but as different local submarkets.
- e) Submarkets 1 and 2 do not meet the first criterion of the three criteria test because there are no barriers to entry.
- f) The second criterion of the three criteria test was carried out incorrectly in Submarket 1 and Telecentras faces countervailing buying power.
- g) The third criterion of the three criteria test was carried out incorrectly in Submarkets 1 and 2 as well, as RRT did not provide enough justification that *ex post* regulation would not be sufficient enough and that there is a need for *ex ante* regulation.
- h) Telecentras does not agree that the competition in vertically related retail radio broadcasting services market is effective due to the regulation of Submarket 2.
- i) Telecentras believes that the services of radio broadcasting via IPTV and cable networks can substitute analogue terrestrial radio broadcasting services; therefore, these services must be included in a single retail radio broadcasting services market.
- j) Telecentras believes that the services of radio broadcasting via internet (OTT services) can substitute analogue terrestrial radio broadcasting services; therefore, these services must be included in a single retail radio broadcasting services market.
- k) Telecentras believes that a supply side substitution exists among facilities to deliver radio broadcasting transmission services and facilities to deliver television broadcasting transmission via IPTV and cable television services.

The Competition Council of the Republic of Lithuania agreed with the results of the analysis of Market of the facilities to deliver broadcasting transmission services; however, the Competition Council of the Republic of Lithuania provided the following comments:

- a) It is not fully clear whether there is no demand side substitution between television broadcasting services and radio broadcasting services.
- b) The division of retail television broadcasting services market into separate submarkets according to the type of transmission (via digital terrestrial television networks, cable television, IPTV and satellite networks) lacks justification.

During the discussions that took place on 12 May 2017 regarding the results of the national public consultation, two other market players – VŠĮ „Marijos Radijas“ and UAB „M-1“ – also expressed their opinions regarding the results of the analysis of Market of the facilities to deliver broadcasting transmission services. Both of these market players agreed with the results of the analysis of Market of the facilities to deliver broadcasting transmission services and emphasized that the services of radio broadcasting via internet (OTT services), IPTV and cable networks cannot substitute analogue terrestrial radio broadcasting services; therefore, these services should not be included in a single retail radio broadcasting services market.

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 Telecentras had comments regarding the market definition. Telecentras believes that both submarkets should be included into one single broadcasting transmission services market due to the fact that **demand and supply side substitution exists among:**

- a) vertically related retail television broadcasting transmission services provided via digital terrestrial television networks, cable television, IPTV and satellite networks,
- b) services of radio broadcasting via internet (OTT services), IPTV and cable networks, and analogue terrestrial radio broadcasting services,
- c) Submarket 1 and Submarket 2 products. What is more, Telecentras also believes that Submarkets 1 and 2 should be divided into local markets.

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

During the discussions that took place on 12 May 2017 regarding the results of the national public consultation, Telia expressed their agreement with the proposed definition of relevant markets.

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.

Submarkets 1 and 2 are not included into any of the following Commission Recommendations: Commission Recommendation 2014/710/EU, Commission Recommendation 2007/879/EC, Commission Recommendation 2003/311/EC. The notified market analysis includes the review of the two submarkets – Submarkets 1 and 2 – which were defined in the analysis of Market of the facilities to deliver broadcasting transmission services in 2014 (case LT/2014/1569) and which have been subject to *ex ante* regulation until now. In order to review whether *ex ante* regulation was still reasoned, RRT had to carry out analysis of Market of the facilities to deliver broadcasting transmission services, i.e. RRT had to define relevant market (markets) and to assess whether this market (those markets) were susceptible to *ex ante* regulation. The definition of a relevant market of the facilities to deliver terrestrial television broadcasting transmission

services and market of the facilities to deliver terrestrial radio broadcasting transmission services involved the following procedures:

First of all, RRT analysed the facilities whereby broadcasting transmission services are delivered in the Republic of Lithuania, namely via:

- a) satellite networks;
- b) cable networks;
- c) IPTV networks;
- d) terrestrial networks.

The analysis showed that facilities to deliver terrestrial broadcasting services could be split into the facilities to deliver terrestrial radio broadcasting services and facilities to deliver terrestrial television broadcasting services.

At the next stage of market definition, RRT performed the substitutability test on demand and supply side whereby two relevant service markets were defined – Submarkets 1 and 2.

Finally, a three criteria test was performed and RRT established that Submarkets 1 and 2 passed the three criteria test and were 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.

Telecentras is designated as having significant market power in Submarkets 1 and 2.

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 Telecentras as having significant market power in Submarkets 1 and 2 are as follows:

1. Market structure (market shares).
2. Barriers to enter the market.
3. Economies of scale and scope.
4. Absence of countervailing buying power.
5. Absence of potential competition.

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

The main undertaking acting Submarkets 1 and 2 is Telecentras.

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 share of Telecentras in Submarket 1 at the end of 2015 was 90.7% in terms of facilities to deliver terrestrial television broadcasting transmission services provided.

The market share of Telecentras in Submarket 2 at the end of 2015 was 70.7% in terms of facilities to deliver terrestrial radio broadcasting transmission services facilities provided.

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

The Competition Council of the Republic of Lithuania had no comments, objections, or proposals for the market definition, designation of undertakings having significant market power, and imposition of remedies. However, The Competition Council of the Republic of Lithuania provided a few comment regarding vertically related retail services. This information is provided in Section 1.3 of this notification.

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)

This information is provided in Sections 1.3 and 1.4 of this notification.

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 Telecentras in 2014 as relates to Submarkets 1 and 2 are maintained:

- Obligation to provide access – Article 12 of Access Directive; Article 21 of the Law on Electronic Communications of the Republic of Lithuania;
- Obligation of non-discrimination – Article 10 of Access Directive; Article 19 of the Law on Electronic Communications of the Republic of Lithuania;
- Obligation of transparency – Article 9 of Access Directive; Article 18 of the Law on Electronic Communications of the Republic of Lithuania;
- Price control and cost accounting obligations – Article 13 of Access Directive; Article 23, of the Law on Electronic Communications of the Republic of Lithuania;
- Accounting separation obligation – Article 11 of Access Directive; Article 20, paragraph 1 of the Law on Electronic Communications of the Republic of Lithuania.

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 Chapters 4.1 and 4.2 of the draft report of Market 19 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.