

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 broadcasting transmission services, to deliver content to end users.

This market is not included in the Annex of the Commission Recommendation 2014/710/EU nor it is included in the Annex of the Commission Recommendation 2007/879/EC; however, Market of broadcasting transmission services, to deliver content to end users is included in the Annex of the Commission Recommendation 2003/311/EC as **Market 18**.

On 25 April 2016, the fourth round of analysis of Market 18 was launched. In the course of the analysis, the Communications Regulatory Authority of the Republic of Lithuania (further referred to as RRT) established that Market 18 consists of 15 individual submarkets:

- a) Market of digital terrestrial television broadcasting transmission services provided by AB Lietuvos radijo ir televizijos centras in the territory of the Republic of Lithuania (further referred to as Submarket 1).
- b) Market of digital terrestrial television broadcasting transmission services provided by Telia Lietuva, AB, in the territory of the Republic of Lithuania (further referred to as Submarket 2).
- c) Market of digital terrestrial television broadcasting transmission services provided by Česlovas Rulevičius in Trakai city and its district (further referred to as Submarket 3).
- d) Market of digital terrestrial television broadcasting transmission services provided by UAB „Balticum TV“ in Plungė city and its district, and in Klaipėda city and its district (further referred to as Submarket 4).
- e) Market of digital terrestrial television broadcasting transmission services provided by UAB „Ilora“ in Venta city and its district (further referred to as Submarket 5).
- f) Market of digital terrestrial television broadcasting transmission services provided by UAB „Pūkas“ in Kaunas city and its district (further referred to as Submarket 6).
- g) Market of digital terrestrial television broadcasting transmission services provided by UAB „Roventa“ in Mažeikiai city and its district (further referred to as Submarket 7).
- h) Market of digital terrestrial television broadcasting transmission services provided by UAB Šiaulių apskrities televizija in Šiauliai city and its district (further referred to as Submarket 8).
- i) Market of digital terrestrial television broadcasting transmission services provided by UAB „TV7“ in Jonava city and its district (further referred to as Submarket 9).
- j) Market of digital terrestrial television broadcasting transmission services provided by UAB Kėdainių krašto televizija in Kėdainiai city and its district (further referred to as Submarket 10).
- k) Market of digital terrestrial television broadcasting transmission services provided by VšĮ Alytaus regioninė televizija in Alytus city and its district (further referred to as Submarket 11).

- l) Market of digital terrestrial television broadcasting transmission services provided by VŠĮ Marijampolės televizija in Marijampolė city and its district (further referred to as Submarket 12).
- m) Market of cable television broadcasting transmission services provided in the territory of the Republic of Lithuania (further referred to as Submarket 13).
- n) Market of IPTV television broadcasting transmission services provided in the territory of the Republic of Lithuania (further referred to as Submarket 14).
- o) Market of satellite television broadcasting transmission services provided in the territory of the Republic of Lithuania (further referred to as Submarket 15).

To identify whether the relevant market defined is susceptible to *ex ante* regulation, the three criteria test was performed in every submarket listed above. Only two of the fifteen submarkets were found to be susceptible to *ex ante* regulation, namely Submarkets 1 and 2.

1.2 The relevant geographic market

The geographic scope of Market 18 corresponds to the area of the Republic of Lithuania and particular cities with their districts:

- a) The geographical scope of Submarkets 1, 2, 13, 14 and 15 is **the territory of the Republic of Lithuania**.
- b) The geographical scope of Submarkets 3 is **Trakai city and its district**.
- c) The geographical scope of Submarkets 4 is **Plungė city and its district, and Klaipėda city and its district**.
- d) The geographical scope of Submarkets 5 is **Venta city and its district**.
- e) The geographical scope of Submarkets 6 is **Kaunas city and its district**.
- f) The geographical scope of Submarkets 7 is **Mažeikiai city and its district**.
- g) The geographical scope of Submarkets 8 is **Šiauliai city and its district**.
- h) The geographical scope of Submarkets 9 is **Jonava city and its district**.
- i) The geographical scope of Submarkets 10 is **Kėdainiai city and its district**.
- j) The geographical scope of Submarkets 11 is **Alytus city and its district**.
- k) The geographical scope of Submarkets 12 is **Marijampolė city and its district**.

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

National public consultation ran from 28 March 2017 to 28 April 2017. RRT received comments from one operator – AB Lietuvos radijo ir televizijos centras (hereinafter – Telecentras) – and the Competition Council of the Republic of Lithuania.

Telecentras did not agree with the results of Market 18 analysis 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 on the market of vertically related retail television broadcasting transmission services provided via digital terrestrial television networks is effective and would be

effective without regulation in vertically related wholesale markets. Therefore, the aforementioned regulation is excessive.

- c) Both demand and supply side substitution exists among digital terrestrial television broadcasting transmission services, cable television broadcasting transmission services, IPTV television broadcasting transmission services and satellite television broadcasting transmission services; therefore, all of these services should be included into a single wholesale television broadcasting transmission services market.
- d) The evaluation of the impact of broadcasting license on the ability of the broadcaster to change the transmission services provider was faulty; RRT incorrectly evaluated the impact of broadcasting licensing on the ability to switch between the providers of digital terrestrial television broadcasting transmission services.
- e) The second criterion of the three criteria test was carried out incorrectly because the structure of Submarket 1 does tend toward effective competition within the relevant time horizon, meaning that this market is not susceptible to *ex ante* regulation.
- f) The third criterion of the three criteria test was also carried out incorrectly, 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.

The Competition Council of the Republic of Lithuania had no comments and agreed with the results of the Market 18 analysis.

During the discussions on 12 May 2017 regarding the results of the national public consultation, Telia Lietuva, AB, (former TEO LT, AB, hereinafter – Telia) also expressed its opinion regarding the results of the Market 18 analysis. Telia agreed with the results of the Market 18 analysis and stated that Submarkets 1 and 2 are susceptible to *ex ante* regulation.

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 states that due to the fact that 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, and demand and supply side substitution exists among digital terrestrial television broadcasting transmission services, cable television broadcasting transmission services, IPTV television broadcasting transmission services and satellite television broadcasting transmission services, all of the fifteen submarkets should be included into one single television broadcasting transmission services market.

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

During the discussions 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 1–15 of Market 18 were defined in the Commission Recommendation 2003/11/EC and not listed in the Commission Recommendation 2007/879/EC nor listed in the Commission Recommendation 2014/710/EU. The current market analysis includes the review of the two submarkets – Submarkets 1 and 2 – which were defined in the analysis of Market 18 in 2014 (case LT/2014/1557) and which have been subject to *ex ante* regulation until now. To review whether *ex ante* regulation was still reasoned, RRT had to carry out analysis of Market 18, i.e. RRT had to define relevant market (markets) and assess whether that market (those markets) was susceptible to *ex ante* regulation. The definition of a relevant market of television broadcasting transmission services, to deliver content to end users involved the following procedures:

Firstly, RRT analysed retail television broadcasting services. RRT carried out a substitution test that revealed that there was no demand and supply side substitution among retail television broadcasting transmission services provided via digital terrestrial television networks, cable television, IPTV and satellite networks. That is why it was decided to divide retail television broadcasting transmission services into four submarkets: retail television broadcasting transmission services provided via digital terrestrial television networks market, retail television broadcasting transmission services provided via cable television market, retail television broadcasting transmission services provided via IPTV market, and retail television broadcasting transmission services provided via satellite networks market.

Secondly, RRT analysed the competition conditions in the aforementioned retail submarkets. It was established that the competition in these retail submarkets is effective; however, the competition in retail television broadcasting transmission services provided via digital terrestrial television networks market is only effective due to regulation in relevant vertically related wholesale market (markets).

At the third stage, RRT carried out a substitution test on supply and demand side of various wholesale television transmission services whereby RRT established that television broadcasting transmission services via digital terrestrial television networks, cable television, IPTV and satellite networks are not substitutes on supply and demand side. Then RRT analysed whether digital terrestrial television broadcasting transmission services provided by different television transmission service providers fell in the same market. 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 carried out a three criteria test for every relevant market defined. The summary of the Submarkets that have passed the first, the second or all the criteria is provided in Section 1.1 of this notification.

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.

1. Telecentras is designated as having significant market power in Submarket 1 (Market of digital terrestrial television broadcasting transmission services provided by Telecentras in the territory of the Republic of Lithuania).
2. Telia is designated as having significant market power in Submarket 2 (Market of digital terrestrial television broadcasting transmission services provided by Telia in the territory of the Republic of Lithuania).

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.

Criteria used to designate Telecentras as having significant market power on Submarket 1 were 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.

Criteria used to designate Telia as having significant market power on Submarket 2 were as follows:

1. Market structure (market shares).
2. Barriers to enter the market.
3. Absence of countervailing buying power.
4. Vertical integration.
5. Absence of potential competition.

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

The undertaking acting on Submarket 1 is Telecentras. The undertaking acting on Submarket 2 is Telia. There are no other undertakings acting on Submarkets 1 and 2. Though both Telecentras and Telia provide digital terrestrial television broadcasting transmission services, the competition between Telecentras and Telia is very limited or currently impossible due to limited frequency resources, full usage of digital terrestrial networks and licensing of broadcasters.

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

Telecentras is the only undertaking acting on Submarket 1 and therefore the market share of Telecentras is considered to be 100 per cent.

Telia is the only undertaking acting on Submarket 2 and therefore the market share of Telia is considered to be 100 per cent.

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.

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 Submarket 1 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.

The following obligations imposed on Telia in 2014 as relates to Submarket 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 6.1 and 6.2 of the draft report of Market 18 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.