

ANNEX I

STANDARD NOTIFICATION FORM

DRAFT MEASURE RELATED TO MARKET ANALYSIS AND IMPOSITION OF REMEDIES (ARTICLES 64, 67 AND 68 OF THE CODE)

(REFERRED TO IN POINTS 16 (A) AND (B))

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| Section 1 – Market definition | |
| The affected relevant product/service market is the market of wholesale local access at a fixed location (Market 3a) and wholesale central access at a fixed location (Market 3b). | |
| The affected relevant geographic markets cover part of the territory of Poland because part of its territory (51 communal areas at Market 3a and 151 communal areas at Market 3b) was deregulated according to SMP decision issued on 22 nd October 2019. | |
| Please provide information on the following, where applicable: | |
| 1.1 The relevant product/service market. | <i>[not applicable]</i> |
| 1.2. The relevant geographic market/s | not applicable |
| 1.3. If the National Competition Authority (“NCA”) issued an opinion, indicate whether it agrees with the proposed draft analysis of the relevant market | Agrees Disagrees <input type="checkbox"/> <input type="checkbox"/> <i>[not applicable]</i> If the NCA disagrees, please outline the reasons: <i>[not applicable] - Detailed explanations are presented in point 2.6 below.</i> |
| 1.4 Dates of the national public consultation | From _____ to _____ <i>[not applicable] - Detailed explanations are presented in point 2.6 below.</i> |
| 1.5 A brief overview of the results of the public consultation on the proposed market definition. Please indicate whether any changes have been made to the draft measure following the public consultation, and, if so, briefly describe these changes. | <i>(e.g. how many comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it and for which reasons).</i> <i>[not applicable]</i> |
| 1.6. Where the relevant market is different from those listed in the Recommendation (EU) 2020/2245, a summary of the main reasons justifying the proposed market definition in light of the | <i>[not applicable]</i> |

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| three criteria set in Article 67(1) of the Code ¹ . | |
| <p>Section 2 – Designation of undertakings with Significant Market Power (SMP)</p> <p>Please provide information on the following, where applicable:</p> | |
| <p>2.1. The name of the undertakings designated as having, individually or jointly, SMP.</p> <p>Where applicable, the name of the undertakings considered as no longer having SMP.</p> | <p>Orange Polska S.A.</p> |
| <p>2.2. The criteria used to designate whether or not an undertaking has individual or joint SMP.</p> | <p><i>[not applicable]</i></p> |
| <p>2.3. The name of the main undertakings (competitors) active in the relevant market.</p> | <p><i>[not applicable]</i></p> |
| <p>2.4. The market shares of the undertakings mentioned above and the basis for calculation of market share (e.g. turnover, number of subscribers).</p> | <p><i>[not applicable]</i></p> |
| <p>2.5. If the National Competition Authority (“NCA”) issued an opinion, indicate whether it agrees with the proposed draft SMP assessment.</p> | <p>Agrees Disagrees</p> <p><input type="checkbox"/> <input type="checkbox"/></p> <p>If the NCA disagrees, please outline the reasons:</p> <p><i>[not applicable]</i></p> |
| <p>2.6. The results of the public consultation on the proposed designation(s) as undertakings having SMP (e.g. total number of comments received, number of respondents agreeing/disagreeing). Please indicate whether any change have been made to the draft measure following to the public consultation, and if so, briefly describe the changes.</p> | <p>Decision defining WACC pursuant to art. 53 par. 1 (Telecommunications Law: Journal of Laws of 2021, Pos. 576, hereinafter "TL", to which the President of UKE is obliged) is therefore not a decision subject to consultation proceedings, in particular a decision on the imposition / maintenance / change / withdrawal of regulatory obligations. For these reasons, the draft decision did not have to become and has not been subjected to consultation proceedings.</p> <p>The WACC indicator determined on the basis of the decision as an independent element is not used / applied and as such does not affect the amount of fees, this takes place only at a later stage - calculation and approval of fees.</p> <p>The issuance of the WACC decision does not in itself</p> |

¹ Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code.

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| | <p>affect the level of fees for regulated services and directly affect the scope/shape of regulatory obligations and the way in which they are performed. These can only change in the decision approving the fees in the reference offer. Fees determined taking into account the WACC will be submitted for consultation and notification to the EC.</p> <p>Regulations of the National Legal Order (TL, to which the President of UKE is obliged) do not provide for consulting the national draft decisions issued pursuant to art. 53 paragraph 1 TL on the determination of the WACC indicator.</p> <p>According to art. 15 TL [CONSULTING] President of UKE before taking a settlement:</p> <ol style="list-style-type: none"> 1) determining the relevant market referred to in art. 22 par. 1 point 1, as well as its analysis and designation of a telecommunications offer with a significant market position or telecommunications operators dealing with a collective significant position, or repealing a decision in this matter; 2) imposing, withdrawing, maintaining or changing regulatory obligations in relation to a telecommunications operator with a significant position or without such a position; 3a) Access decisions referred to in art. 139 3b) Decision on telecommunications access referred to in art. 28-30 if the obligation to provide this access does not follow the telecommunications regulatory obligations imposed on the operator 4) other indicated in the TL and in the Act of 7 May 2010 on supporting the development of services and telecommunications networks; <p>- conducts consultation proceedings, enabling interested entities to express in writing within a specified period of positions to the draft resolution.</p> <p>Taking into account the subject of the decision to determine the WACC indicator, decisions referred to in art. 15 in the above-mentioned point 1), 2), 3a), 3b) and 4) TL should be excluded. However, according to art. 22 par. 2 TL the regulatory obligation (which refers to the decision referred to in Article 15 point 2 TL) is understood as the obligation referred to art. 34, art. 36-40, art. 42, art. 44, art. 44B, art. 45, art. 46 or art. 72 par. 3 TL.</p> <p>Art. 34 TL - the obligation to take into account justified requests from telecommunications operators to provide them with telecommunications access,</p> |
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| | <p>including use of network elements and accompanying facilities, in particular taking into account the level of competitiveness of the retail market and the interest of end users;</p> <p>Art. 36-40 TL - the obligation to equal treatment for telecommunications operators, telecommunications access, the obligation to publish or provide information on ensuring telecommunications access, the obligation to conduct regulatory accounting, the obligations of the calculation of legitimate costs of telecommunications access and the application of telecommunications access costs, taking into account the reimbursement of the justified operator's costs, the obligation to determine the fees due to telecommunications access based on incurred costs;</p> <p>Art. 42 TL - the obligation to prepare on a specific period of the project of the reference offer on telecommunications access;</p> <p>Art. 44 TL - other than the aforementioned obligations for the telecommunications access that the President of UKE may impose;</p> <p>Art. 44B TL - Obligation of functional separation;</p> <p>Art. 45 TL- regulatory obligations necessary to provide the end users of the telecommunications operator communication with users of another telecommunications operator, including the obligation to interconnect the network;</p> <p>Art. 46 TL - obligations on the retail services market;</p> <p>Art. 72 par. 3 TL - Obligation for subscribers connected to the network of an operator with significant market position, permissions to choose any provider of publicly available telephone services whose services are available in the interconnected networks.</p> <p>Art. 15 TL in conjunction with art. 22 par. 2 TL indicates what kind of draft decisions are subject to the consultation proceedings, and what should be understood as a regulatory obligation. At the same time, the enumeration of the regulatory obligations referred to in art. 22 par. 2 TL, is comprehensive, which means that any other obligations imposed by the President of UKE, referred to in the provisions of TL, are not regulatory obligations whose imposition / maintenance / change / withdrawal would require consultative proceedings in accordance with art. 15 TL.</p> <p>The decision specifying the amount of the WACC</p> |
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index is issued as a result of administrative proceedings, in accordance with the provisions of the Code of Administrative Procedure. Pursuant to the Code of Administrative Procedure, public administration bodies (in this case the President of UKE) are obliged to ensure the parties' active participation in every stage of the proceedings, and before issuing the decision, enable them to comment on the collected evidence and materials as well as on the requests submitted.

When initiating the procedure for determining the WACC indicator, the President of UKE in the letter of 4 November 2020, beyond the party to the proceedings (in this case OPL), notified about this fact (pursuant to art. 31 kPa) also social organizations associating telecommunications entrepreneurs operating in Poland: KIGEiT, PIIT, PIKE, KIKE. President of UKE, taking the above- mentioned activities of broadly notification of market participants, found that these organizations, due to their statutory goals, may be interested in participating in this proceeding.

As a result of this notification, requests for admission to participate in the above - mentioned procedure, were reported by KIGEiT and PIIT, which were admitted on the rights of the parties to conduct. Regardless of which, as long as the proceedings are not completed, other social organizations may also join it (admission takes place at the request of a given organization).

In addition, in a letter of 4 November 2020, the President of UKE informed social organizations (pursuant to art. 31 § 5 of the Code of Administrative Procedure) that they may, with the consent of the public administration authority, present their view on the matter, regardless of the admission to participate in the proceedings on the rights of the Parties . The President of UKE advised that pursuant to Art. 73 § 1 of the Code of Administrative Procedure, a party has the right to inspect the case files and to make notes, copies or excerpts from them. This right also applies after the end of the proceedings. In response to the letter from the President of UKE of 4 November 2020 OPL and KIGEiT presented its position on the matter. Thus, all involved entities in the proceedings to determine the WACC index (both the party and entities with party rights) received the same information and have the right to access the files of the entire case.

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| | <p>On June 25, 2021, KIGEiT submitted an application for reconsideration of the case ended with the decision of the President of UKE of June 11, 2021.</p> <p>At the stage of the second instance proceedings, the participants (KIGEiT) submitted comments on the following issues, which were described in detail in the draft notified decision:</p> <ul style="list-style-type: none"> - validity of the data from the BEREC 2020 report, which was used in the decision of the President of UKE of June 11, 2021; - the issue of determining the capital structure and the gearing formula; - the issue of determining the WACC index for optical fiber infrastructure; - the issue of using ERP arithmetic average rather than average geometric, as expected by KIGEiT. |
| <p>Section 3 - Regulatory obligations</p> <p>Please provide information on the following, where applicable:</p> | |
| <p>3.1. The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 69 to 74 and Articles 76 to 81 of the Code).</p> | <p>According to Article 53 (1) of TL, the President of UKE shall specify on an annual basis, by means of a decision, weighted average cost of capital to be applied in cost calculation by the telecommunications operators on which he/she imposed a cost calculation obligation, taking account of documented costs of acquiring the capital, the company's position in the capital market, typical risk related to employing the capital, in particular for new investment projects, and the costs of capital commitment in comparable markets.</p> |
| <p>3.2. The reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered proportional and justified in light of the legal provision they are based on. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found.</p> | <p>According to Article 39 (1) TL, the President of UKE may, in line with the objectives referred to in Article 24 point (2a), by means of a decision, impose on the SMP operator obligations:</p> <ul style="list-style-type: none"> • calculate justified costs of providing telecommunications access, indicating the methods of cost calculation which should be applied by the operator on the basis of the provisions of the ordinance referred to in Article 51 TL, according to the cost calculation description approved by the President of UKE; • apply fees for telecommunications access, |

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| | <p>taking account of the recovery of justified costs by an operator.</p> <p>Currently, the obligation to calculate the justified costs of Orange Polska S.A. is imposed on Market 3a and Market 3b. Thus, the premise obliging the President of UKE to define, according to Article 53 (1) of the Telecommunications Act, the WACC index for Orange Polska S.A. with regard to services on Market 3a and Market 3b, i.e. the premise for imposing an obligation on a given entity to conduct cost calculation (Article 50 (2) of TL and Art. 39 (1) of the TL) with regard to these services has been met.</p> <p>According to Article 53 (1) of the TL, the President of UKE determines the WACC index annually. Therefore, in the decision, the WACC index was determined for the purposes of calculating the costs expected for 2022, which results from the fact that, in accordance with the content of the SMP Decision 3b and 3a, Orange Polska S.A. is obliged to calculate the reasonable costs of telecommunications access on the basis of future-oriented long-term incremental costs according to the cost calculation description approved by the President of UKE.</p> <p>The proposed decision determines the WACC index for Orange Polska S.A. with regard to copper infrastructure, in accordance with the calculation methodology resulting from the Notice of the European Commission of November 6, 2019 on the calculation of the cost of capital for copper infrastructure entitled <i>“Commission Notice on the calculation of the cost of capital for legacy infrastructure in the context of the Commission’s review of national notifications in the EU electronic communications sector”</i> and takes into account the parameter values determined by BEREC in the <i>“Report on WACC parameter calculations according to the European Commission’s WACC Notice”</i>.</p> <p>WACC indicator for Orange Polska S.A. in the scope of copper infrastructure amounted to 7.04%. The WACC indicator in relation to optical fiber infrastructure is 8.88%.</p> |
| <p>3.3. Where the remedies proposed are other than those set out in Articles 69 to 74,</p> | <p><i>[not applicable]</i></p> |

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| and Articles 76 and 80 of the Code, please indicate what 'exceptional circumstances' within the meaning of Article 68(3) of the Code justify the imposition of such remedies. Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found. | |
| Section 3a - Draft measures under Article 76(2) of the Code | |
| Please provide information on the following, where applicable: | |
| 3a.1. Short description of the commitments offered by the SMP operator and their compatibility with the conditions of Article 76(1). | <i>[not applicable]</i> |
| 3a.2. A description of the regulatory treatment of the new VHCN network elements subject to the commitment under Article 76(2), first subparagraph. | <i>[not applicable]</i> |
| 3a.3. If applicable, a description of the remedies imposed on the basis of Article 76(2), third subparagraph | <i>[not applicable]</i> |
| Section 3b – Draft measures under Article 79 of the Code | |
| Please provide information on the following, where applicable: | |
| 3b.1. Short description of the attached commitment decision (or, indication of the paragraphs, sections or pages of the draft measure where such information is to be found); | <i>[not applicable]</i> |
| Section 3c – Draft measures under Article 80 of the Code | |
| Please provide information on the following, where applicable: | |
| 3c.1. Short description of the structure of the undertaking (or indication of the paragraphs, sections or pages of the draft measure where such information is to be found). | <i>[not applicable]</i> |
| 3c.2. If applicable, a description of the remedies imposed or withdrawn. | <i>[not applicable]</i> |