

**Notification of Draft Measures Pursuant to Article 7(3) of the Directive  
2002/21/EC**

**Section 1 - Market Definition**

**Please state where applicable:**

<b>1.1</b>	<p>The affected relevant product/service markets.</p> <p>Is this market mentioned in the Recommendation on relevant markets?</p>	<p>The national wholesale market of radio broadcasting transmission services to deliver radio content to end users</p> <p>No</p>	section 1.3
<b>1.2</b>	The affected relevant geographic markets	The territory of Republic of Poland	section 1.4
<b>1.3</b>	A brief summary of the opinion of the national competition authority where provided;	<p>The President of Polish national competition authority generally regards the regulation as justified and had the following remarks:</p> <ul style="list-style-type: none"> <li>• The President of UKE should not make use of Recommendation on relevant product and service markets within the electronic communications sector susceptible to <i>ex ante</i> regulation from 2003 even as an auxiliary tool,</li> <li>• The point's 3.2.3. title "<i>Price trends</i>" is misleading because no trends were described in the project,</li> <li>• One of the factors was wrongly indicated as a</li> </ul>	

		<p>third criterion substantiation,</p> <ul style="list-style-type: none"> <li>• Technological advantage on the EmiTel's side is doubtful</li> </ul>	
<b>1.4</b>	<p>A brief overview of the results of the public consultation to date on the proposed market definition (for example, how many comments were received, which respondents agreed with the proposed market definition, which respondents disagreed with it)</p>	<p>UKE received 20 opinions in the consultation process, one opinion was neutral, three against the regulation (from EmiTel, American Chamber of Commerce in Poland and Polish Chamber of Information Technology and Telecommunications) and 16 for, most of them from radio broadcasters.</p>	
<b>1.5</b>	<p>Where the defined 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's Guidelines on the market analysis and the assessment of significant market power<sup>1</sup>, 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.</p>	<p>The defined relevant market is not listed in the current recommendation on relevant markets. However The President of UKE performed three criteria test and found out that all three criteria were met.</p> <ol style="list-style-type: none"> <li>the presence of high and non-transitory barriers to entry:  Sunk costs of new infrastructure development are very high and some, especially high power EmiTel's sites are effectively nonreplicable.</li> <li>Market structure which does not tend towards effective competition within the relevant time horizon:  EmiTel has very high and steady market share. Free</li> </ol>	

<sup>1</sup> Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications and services, OJ C 165, 11.7.2002, p. 6.

		<p>market processes in absence of regulatory intervention are not effective to overcome the faulty market structure.</p> <p>c. Insufficiency of competition law to remove the market failure</p> <p>NCA has insufficient tools and resources to monitor and regulate very specialized relevant market. Additionally, taking into account market structure and development, <i>ex ante</i> and not <i>ex post</i> regulation is more adequate.</p>	
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## Section 2 - Designation of undertakings with significant market power

Please state where applicable:

<b>2.1</b>	The name(s) of the undertaking(s) designated as having individually or jointly significant market power. Where applicable, the name(s) of the undertaking(s) which is (are) considered to no longer have significant market power	EmiTel sp. z o.o. with its seat in Warszawa	section 2.1
<b>2.2</b>	The criteria relied upon to designate an undertaking as having significant market power, individually or jointly, or not	<ul style="list-style-type: none"> <li>• Market Share (decisive)</li> <li>• Absence of technical and economic justification for building an alternative telecommunications</li> </ul>	<p>section 4.1</p> <p>section 4.3</p>

		<p>infrastructure</p> <ul style="list-style-type: none"> <li>• Absence of or low Countervailing Buying Power</li> <li>• Economies of scale</li> <li>• Economies of scope</li> <li>• Vertical integration</li> <li>• Absence of potential competition</li> <li>• Existence of the potential new entrants, barriers to further expansion of the undertakings and the relevant market</li> <li>• Entry barriers</li> </ul>	<p>section 4.7</p> <p>section 4.4</p> <p>section.4.5</p> <p>section 4.6</p> <p>section 4.8</p> <p>section 4.9</p> <p>section 4.2</p>
<b>2.3</b>	The name of the main undertakings (competitors) present/active in the relevant market.	<ul style="list-style-type: none"> <li>• EmiTel sp. z o.o.,</li> <li>• DIGIB sp. z o.o.,</li> <li>• Bcast sp. s o.o.,</li> <li>• Arkena sp. o o.o.</li> </ul>	section 2
<b>2.4</b>	The market shares of the undertakings mentioned above and the basis of their calculation (e.g., turnover, number of subscribers)	EmiTel sp. z o.o. – 94% other operators – 6% based on the criterion of turnover	section 3.2 point 1

**Please provide a brief summary of:**

<b>2.5</b>	The opinion of the national competition authority, where provided	With some small remarks generally positive opinion. The notified project was amended accordingly to the national competition authority's opinion.	
<b>2.6</b>	The results of the public consultation to date on the proposed designation(s) as undertaking(s) having significant	Decisive majority of parties which provided UKE with opinions are for the regulation (see numbers in point 1.4	section 7

	market power (e.g., total number of comments received, numbers agreeing/disagreeing)	above)	
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### Section 3 - Regulatory Obligations

Please state where applicable:

3.1	The legal basis for the obligations to be imposed, maintained, amended or withdrawn (Articles 9 to 13 of Directive 2002/19/EC (Access Directive))	<p>The following obligations are proposed:</p> <ul style="list-style-type: none"> <li>▪ network access obligation – art. 12 of Access Directive (art. 34 of Polish telecommunication law)</li> <li>▪ non discrimination obligation – art. 10 of Access Directive (art. 36 of Polish telecommunication law)</li> <li>▪ transparency obligation - art. 9 of Access Directive (art. 37 and 42 of Polish telecommunication law)</li> <li>▪ accounting separation obligation – art. 11 of Access Directive (art. 38 of Polish telecommunication law)</li> <li>▪ cost orientation of prices obligation – art. 13 of Access Directive (art. 40 of Polish telecommunication law)</li> </ul>	<p>section 6.4. point 1</p> <p>section 6.4. point 2</p> <p>section 6.4. point 3 and section 6.4 point 6</p> <p>section 6.4. point 4</p> <p>section 6.4 point 5</p>
3.2	The reasons for which the imposition, maintenance or amendment of obligations on undertakings is considered	Such information can be found in section 6 of the decision. Proposed obligations are adequate and proportional to	

	proportional and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). Alternatively, indicate the paragraphs, sections or pages of the draft measure where such information is to be found	identified problems. The purpose of these obligations is to prevent Emitel sp. z o.o. from abusing its market power and to ensure effective market competition. Remedies applied are also technologically neutral.	
<b>3.3</b>	Where the remedies proposed are other than those set out in Articles 9 to 13 of Directive 2002/19/EC (Access Directive), please indicate what are the '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**

**In relation to the third indent of the first subparagraph of Article 8(3) of Directive 2002/19/EC (Access Directive), please state where applicable:**

<b>4.1</b>	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 (Access Directive)	Not applicable	
<b>4.2</b>	The name(s) of the undertaking(s) concerned	Not applicable	
<b>4.3</b>	What international commitments entered into by the Community and the Member States are to be met	Not applicable	

