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Competition *policy brief*

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Market definition in a globalised world

1. Introduction

How do globalisation and EU integration affect the Commission's geographic market definitions? By looking at statistical evidence and cases in the EU and US, this *Policy Brief* analyses the evolution of market definition in the Commission's case practice over the last decade.

2. Geographic market definition: the principles

Market definition frames the analysis of a merger's impact on competition. It identifies alternatives for customers of the merging companies, and makes it possible to calculate market shares, which are a first indication of the competitive strength of companies in a market. This makes market definition the starting point for an analysis of competition forces. The Commission's Relevant Market Notice defines a relevant geographic market as the geographic area in which the merging companies offer their products and in which the conditions of competition are sufficiently homogeneous[1]. In terms of geographic market definition, the key question is whether after the merger, competitors from other geographic areas will be able to exercise sufficient competitive pressure on the merging companies.

Many companies operate on a global scale and compete with various suppliers in different parts of the world. Market definition is essentially a customer-focused exercise: it is all about finding out what alternative suppliers are available to customers in a given area. If customers cannot rely on suppliers located outside of this area, those other suppliers are not part of the relevant geographic market.

Market definition is based on business realities: it is a factual and empirical exercise undertaken on a case-by-case basis. It is not a bureaucratic assessment – with every case, we investigate markets afresh by seeking up-to-date hard facts such as sales data and trade statistics, and asking for latest views from customers and suppliers.

In a nutshell

The analysis of merger decisions since 2003 suggests the Commission is increasingly focussing on wider geographic markets: in the last two years, no fewer than 61% of Commission merger decisions assessed a market that was EEA or wider in scope, compared to 48% ten years ago.

Over time, the Commission has changed its market definitions, adapting its decisions to new developments in the market.

Market definition is not a policy statement. The Commission doesn't define markets, markets define themselves. A market definition is based on business reality: it is a factual and empirical exercise undertaken on a case-by-case basis. Its goal is to identify the effective alternatives for customers of the merging parties.

This explains why, despite globalisation and increased European integration, many markets still remain national. Topical examples of various cases from industries like consumer goods, beverages or telephony services illustrate why this is the case. Examples of US merger cases reveal that our counterparts analyse these markets very similarly.

Defining a market is by its very nature a dynamic exercise. The Commission needs to predict the most likely developments after a merger and has to take possible future changes into account. Market definitions are not carved in stone, and are revised if evidence shows that circumstances have changed over time.

Defining the relevant market is only the first step in the competitive assessment of a merger's impact on competition.

[1] Commission notice on the definition of the Relevant Market for the purposes of Community competition law OJ C 372, 09.12.1997, p. 5.

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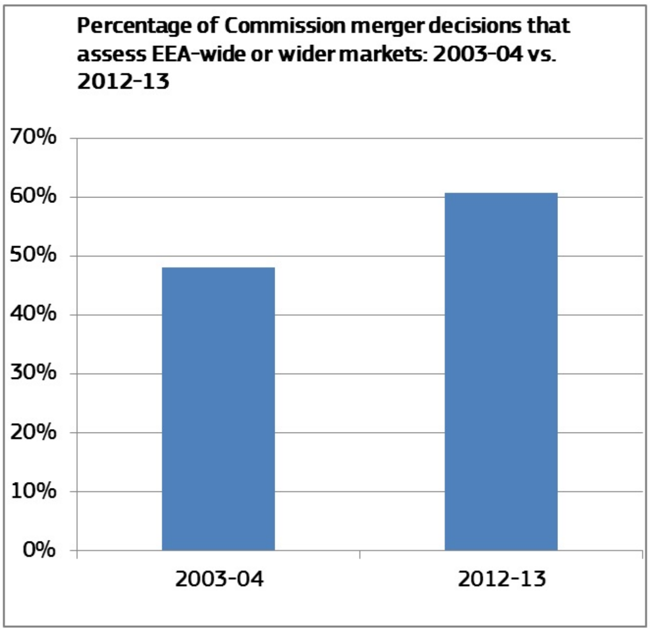
The Commission not only analyses market shares within the defined market. It also assesses the competitive pressure of imports from outside the market, irrespective of how the geographic market is defined. The analysis of customer and competitor reactions to a merger always includes the question of whether additional imports will flow into a market after the merger and be able to prevent a price increase.

3. Finding wider markets

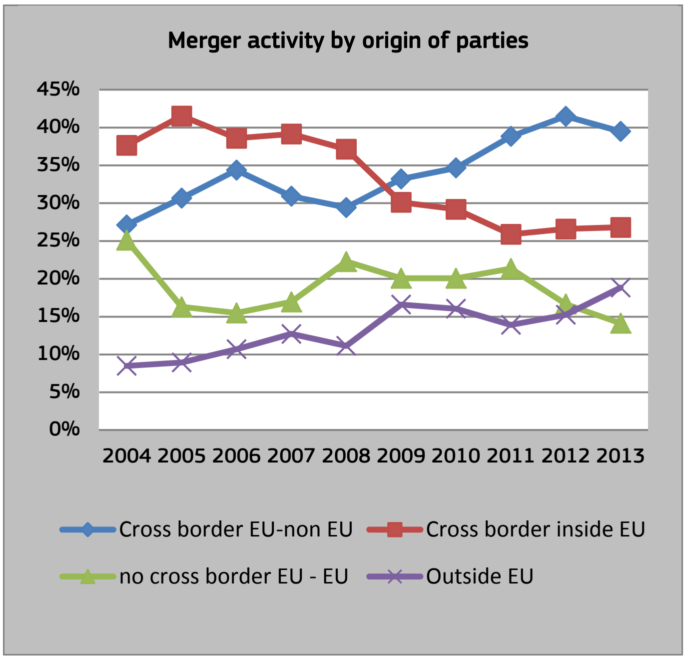
Some statistics

The Commission has no bias against wide markets. Whenever the facts support the conclusion, the Commission finds European or global markets. In fact, in no less than 61% of the Commission's merger decisions in 2012 and 2013, the Commission found geographic markets that were at least EEA-wide or wider. Ten years ago this was figure was 48%.



Globalisation in the Commission's merger cases

The globalising economy is reflected in the **increasing cross-border nature of mergers** notified to the Commission. Indeed, data based on the origin of company headquarters (which is taken as a proxy of the firm's origins) suggests that the percentage of mergers taking place in only one Member State has declined from 25% to less than 15% over the past ten years. Conversely, the percentage of mergers notified to the Commission that involve non-EU companies has increased from 36% to 58%[2].



How market definitions change over time

In several instances the Commission revised its geographic market definition in subsequent cases dealing with the same market, because of developments affecting the nature of the market in question. This has **usually led to a widening of the geographic scope** of the relevant market.

The Commission has increasingly been finding regional and EEA-wide markets rather than national markets. This is a result of **the creation and development of the single market** over the past twenty years, which has led to lower trade barriers, changing business practices, regulatory harmonization and lower transport and business costs at the EU level.

When analysing **Alstom's acquisition of the industrial and electrical equipment businesses of Areva** in 2010[3], the Commission found that the markets for rail power systems had become at least EEA-wide, while in 2005 it had still found national markets when scrutinizing deals in the industry. This development has been largely brought about by the introduction of EU legislation fostering interoperability of rail networks and an increasing trend toward setting up train services running though different Member States.

A movement towards EEA-wide markets can be observed, for instance, in the **food and drinks distribution machines** market.

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[2] Including deals where non-EU companies were involved in a cross-border merger together with EU companies, and deals between companies located outside EU. Again, the origin of the company is determined by the country where the group is incorporated.

[3] COMP/M.5754 - Alstom Holdings/Areva T&D, decision of 26/03/2010.

In 2010 the Commission still left the question open whether the relevant geographic market for this product was national or EEA-wide. In 2013 however[4], the Commission found an EEA-wide market because the same machines are being used across Europe and are being supplied by the same limited number of manufacturers, and the largest customers operated at least on a European level.

The Commission also recognised a movement towards **regionalisation of markets** in merger decisions, for example in sectors like fish feed, daily advertisement newspapers and glass packaging.

Because of the high transport costs involved, the Commission had previously considered the market for fish feed to be national in scope. However, in 2005 the Commission left the precise scope of the market open because it had observed that the market for salmon fish feed was in the process of becoming a wider, regional market for the North Sea basin[5].

Although previously the Commission considered the daily advertising newspaper market to be national in scope, in 1999 the Commission allowed for the possibility of a larger German-speaking market, including Germany, Austria and Switzerland[6].

While the Commission previously considered markets for glass packaging to be national, the Commission revised its position in 1999 when it found a Northern Continental European market for glass containers (encompassing France, Germany and the Benelux countries)[7].

In the **telecommunications equipment** sector, the Commission's decisions demonstrate a successive widening of the geographic scope of market definitions. In 1991, the markets for telecommunications equipment were considered to be national in scope[8]. Driven by the increasing degree of harmonisation of international standards of equipment, first at European level and then at global level, these markets have been opening up to international competition. The Commission recognised this trend in its decisions and in 2003 it considered some of the telecommunications system markets to have become at least EEA wide[9]. This evolution was confirmed in more recent decisions in 2006[10], where the Commission recognized that telecoms equipment markets were becoming at least EEA-wide if not global.

In some cases **technological innovation** drives the move towards a wider geographic market.

Technological innovation made the development of a market for **digital distribution of music** possible. Traditionally, the Commission considered the market for the wholesale of physical recorded music to be national. However, the advent of the internet and the possibility of digitally distributing music have fundamentally changed the way the music industry operates. Digital music distributors have increasingly offered a pan-European service and correspondingly EEA-wide agreements with record companies. Already in 2004, the Commission observed that the geographic scope of digital distribution of music was evolving beyond the national. This view was confirmed, first in 2008[11] and then in 2012, when the Commission assessed the competitive impact of proposed mergers at both EEA-wide and national levels and concluded that the market for digital distribution of music was evolving towards an EEA-wide market[12].

Impact of globalisation and market integration beyond market definition

Market definitions can change over time, but the impact of globalisation and market integration on merger review extends **beyond the Commission's assessment of the relevant geographic market**. Possible future developments also need to be taken into account. Even if the level of imports is too low to justify widening of the geographic market, the **growing competitive pressure of imports** may be enough to clear a merger.

For example, in a case concerning carton board products[13] the Commission noted that imports were still at a very low level, concluded that the geographic market had not yet become worldwide, and, in line with information gathered from market participants, defined an EEA-wide market. Despite the fact that the merging companies had a combined market share of around 50% in some segments of the market, the Commission did not expect harmful effects and still cleared this merger. One of the reasons for clearing the case was the expected increase in competitive constraints exercised by two reputed foreign market players which were in the process of expanding capacity in South America and Asia, which would also affect volumes available in Europe.

European customers confirmed that they would switch to non-European carton board suppliers in the near future, if European prices were to increase after the merger.

[4] COMP/M.6867 – Crane Co/MEI Group decision of 19/07/13.
[5] COMP/M.3722 – *Nutreco/Stoltnielsen/Marine Harvest J.V*, .decision of 12/04/05.
[6] IV/M.1455 – *Gruner+JAHR/Financial Times/JV*, decision of 20/04/99.
[7] IV/M.1539 – *OCVC/Danone/Gerresheimer*, decision of 05/07/99.
[8] Decision 91/251/EEC- *AlcatelElectra*, decision of 17/05/91.
[9] COMP/M.2851 – *Intracom/Simens/STI*, decision of 10/02/03.
[10] COMP/M.4214 – *Alcatel/Lucent Technologies,* decision of 24/07/06 and COMP/M.4297 – *Nokia/Siemens*, decision of 13/11/06.
[11] COMP/M.5272 – *Sony/BMG*, decision of 15/09/08.
[12] COMP/M.6458 – *Universal Music Group/EMI*, decision of 21/09/12.
[13] COMP/M.4057 – *Korsnäs/Assidomän Cartonboard*, decision of 12/05/2006.

This example clearly illustrates that market definition is not an end in itself, but a first step in the Commission's merger analysis, and that other factors can be decisive in the full competitive assessment.

4. When do the Commission and US agencies define wider or narrower markets?

Some examples of global markets

In industries where customers purchase products or services on a global level, such as information technology, natural resources and mining or avionics, the Commission has found worldwide markets in numerous cases.

When **hard disk drive** manufacturer Western Digital acquired Hitachi's competing business[14], the Commission identified a worldwide market: customers, in particular computer manufacturers, buy hard disk drives from around the world, the prices for hard disk drives are broadly similar on different continents, and customer needs do not vary between regions. Other worldwide agencies reviewing the same merger, including the US, drew the same conclusion.

As customers buy **copper and cobalt metals** globally, the Commission found global markets for these metals when assessing the merger of two Europe-based mining giants, Glencore and Xstrata[15]. The Commission also found global markets for **conversion of Airbus passenger aircrafts to freighters**[16] and for **aircraft components**[17].

Regional (European) markets - examples

In several sectors, the geographic scope of the relevant market is not global but regional. The European Economic Area is such a market.

A good example of a merger case where the Commission identified Europe as the geographic scope of the market was Finnish steel producer Outokumpu's acquisition of ThyssenKrupp's **stainless steel** business Inoxum. A number of factors pointed to a European market. Imports would not have been able to satisfy European customer demands concerning quality, pricing and timely delivery of stainless steel supplies. This constraint arising from imports was fully taken into account in the competitive assessment.

In the US, too, competition authorities found regional markets in the steel sector. In 2006, Mittal Steel acquired Arcelor. The deal was subject to divestment. The Department of Justice characterised the eastern half of the United States as the geographic market for some types of carbon steel products[18]. Due to the high cost of freight shipping, manufacturers in the west of the US did not sell significant quantities of the product in the eastern US and vice versa. If the merger would lead to price increases, customers would not be able to find an alternative supply, which is why the DoJ found the eastern United States to be the relevant geographic market. In 2006, when assessing the same merger in Europe, the European Commission found the relevant geographic market of the same product to be at least EEA-wide, which reflects the different business realities on the opposite sides of the Atlantic[19].

Why are some markets still national even in times of globalisation?

Despite globalisation and the increased integration of the single market, many markets will remain national or even smaller.

National markets are prevalent in markets such as fast-moving consumer goods or beverages. Because of product characteristics, branding and marketing strategies, tastes and preferences and distribution systems, competition takes place at national (or even local) levels. In other types of markets, like telecoms, regulatory restrictions and separate telecom licences at national level shape the market's national dimension. The decisive question is not whether the companies are active globally, but to which alternative suppliers the customers in a geographic area can turn to if the merger removes a competitor.

Global competition and national markets: the telecoms example. As spectrum licenses are still awarded at national level, a customer in France, for instance, can only choose providers active on the French market, and cannot shop around in other countries to find a mobile operator. Providers active in neighbouring countries like Italy or Spain cannot be realistic alternatives for the French customer, even though they may well compete with French providers for customers in other countries. The fact that suppliers like *Orange* or *Telefónica* operate across different territories in the world does not make mobile telephony markets global.

[14] COMP/M.6203 – *Western Digital Ireland/Viviti Technologies*, decision of 23/11/2011.

[15] COMP/M.6541 – *Glencore/Xstrata*, decision of 22/11/2012.

[16] COMP/M.6554 - *EADS/STA/Elbe Flugzeugwerke JV*, decision of 3/09/2012.

[17] COMP/M.6844 – *GE/Avio*, decision of 1/7/2013 and COMP/M.6410 - *UTC/Goodrich*, decision of 26/7/2012.

[18] Complaint at 7, United States v. Mittal Steel Co. N.V., No. 1:06-CV-01360 (D.D.C. Aug. 1, 2006), available at http://www.justice.gov/atr/cases/f217400/217493.htm.

[19] COMP/M.4137 – *Mittal/Arcelor*, decision of 02/06/06.

Example of a national market: the dairy industry. In the case of *Friesland Foods/Campina*[20], the Commission found the geographical market for fresh dairy products to be national, because Dutch consumers had a clear preference for products of Dutch origin and imports were almost non-existent. Even if the fresh milk produced in Germany or Belgium had the same properties (and similar taste), the typical Dutch consumer would only drink fresh milk if the packaging mentioned the Netherlands as country of origin. These consumer patterns had an impact on how competition operates on the market and contributed to the national dimension of the geographic market definition, in line with other competition considerations.

National and local markets in US merger cases

Supermarkets: The FTC intervened in the 2007 merger between organic grocery chains Whole Foods and Wild Oats on the grounds that the merger would harm consumers in the submarket for natural and organic supermarkets. Although the chains were operating across the US, the FTC identified **21 local geographic markets** where Whole Foods and Wild Oats were one another's closest competitors. The FTC's complaint described the relevant geographic market as "an area as small as approximately five or six miles in radius or as large as a metropolitan area"[21].

Beer markets: During the 2013 Anheuser-Busch InBev acquisition of US-based beer maker Modelo, the DOJ looked at the geographic market from a national perspective, and also divided the country into **26 distinct local marketS**[22]**.** The DOJ found that pricing and promotional strategies were based on an assessment of local demand for their beer, local competitive conditions and local brand strength. Additionally, distributors' contracts with brewers and their importers contained territorial limits. The price for a brand of beer could and did vary by local market.

5. Conclusion

The analysis of past Commission cases demonstrates that market definitions evolve constantly, and the Commission does not hesitate to adapt them over time if markets change. The inherent features of some markets, however, do not allow for a wider definition, as the assessment is determined by objective market realities which the Commission and other competition agencies worldwide are bound to respect.

Accurate market definitions allow the Commission to assess the impact of mergers on competition, with the aim of preventing harmful effects for consumers and industrial customers. Broadening market definitions artificially could lead to the clearance of harmful mergers. This would be very costly for the EU economy – it would mean higher prices for input products for EU industries and SMEs, which would reduce their competitiveness. In addition, less competition would also mean that firms would be no longer pushed to invest and innovate. In order for the Commission to protect the EU economy from such harmful effects, it must continue to make the best of its tools – such as market definition.

[20] COMP/M.5046 *Friesland Foods/Campina*, decision of 17/12/2008.

[21] Complaint at 8, In the Matter of Whole Foods Market, Inc. and Wild Oats Markets, Inc., FTC Docket No. 9324 (June 28, 2007), available at http://www.ftc.gov/sites/default/files/documents/cases/2007/06/070628admincmplt.pdf.

[22] United States v. Anheuser-Busch InBEV SA/NV, No. 1:13-cv-00127 (D.D.C. Jan. 31, 2013), *available at* http://www.justice.gov/atr/cases/f292100/292100.pdf