



Competition: Commission seeks feedback on draft revised Market Definition Notice

Brussels, 8 November 2022

The European Commission has launched today a public consultation inviting all interested parties to comment on the [draft revised Market Definition Notice](#). Market definition is an important first step in the assessment of mergers and of most antitrust cases. It serves to define the boundaries of competition between companies. The Market Definition Notice is being revised for the first time since its adoption in 1997, taking into account the significant developments of the intervening years, in particular digitalisation and new ways of offering goods and services, and to reflect the interconnected and globalised nature of commercial exchanges.

The draft revised Market Definition Notice follows a thorough review process launched in April 2020. [In July 2021](#), the Commission published the results of its evaluation, which showed that while the current Notice remains highly relevant and is generally fit for purpose, certain updates and clarifications are necessary to bring it in line with developments in the Commission's practice, the EU courts' case law as well as new market realities. More than 100 stakeholders made their views known and those have been taken into account in the draft text presented for consultation today.

The proposed changes

The main objective of the draft revised Market Definition Notice is to offer more guidance, transparency and legal certainty for businesses to facilitate compliance, including through concrete examples. It also aims at contributing to a more efficient enforcement by the Commission and National Competition Authorities.

The proposed changes **provide new or additional guidance on various key market definition issues**:

- Explanations on the **principles of market definition** and the way market definition is used for the purpose of application of competition rules.
- Greater **emphasis on non-price elements** such as innovation and quality of products and services.
- Clarifications regarding the forward-looking application of market definition, especially in **markets that are expected to undergo structural transitions**, such as technological or regulatory changes.
- New guidance in relation to market definition in **digital markets**, for example multi-sided markets and "digital eco-systems" (e.g. products built around a mobile operating system).
- New principles on **innovation-intensive markets**, clarifying how markets should be assessed where companies compete on innovation, including through pipeline products.
- More guidance on **geographic market definition**, including the conditions to define global markets, the approach to assessing imports as well as the Commission's approach to local markets defined by catchment areas (e.g. in the retail sale of consumer goods).
- Clarifications as regards the **quantitative techniques**, such as the small but significant and non-transitory increase in price/SSNIP test, that the Commission may use when defining a market.
- Expanded guidance on possible **sources of evidence and their probative value**, based on the Commission's material experience and fact-based approach to market definition.

Next steps

Interested parties are invited to submit their comments on the draft Notice by 13 January 2023.

More information including on how to submit a contribution is available [here](#).

On the basis of the evidence gathered during the review, including the comments received in this

public consultation, the Commission will revise and finalise the draft published today with a view to having a new Market Definition Notice in place in Q3 2023.

Background on the review process

In April 2020, the Commission launched an [evaluation](#) of the current Market Definition Notice. As part of that evaluation, the Commission published the results of an open public consultation, including a [summary of the contributions received](#) and a [summary of the contributions of the National Competition Authorities](#), as well as the results of [a support study](#).

In July 2021, the Commission published a [Staff Working Document](#) setting out the results of the evaluation.

Following the evaluation, the Commission addressed the subject of market definition by reference to broader competition policy considerations in its [Communication 'A competition policy fit for new challenges'](#) in November 2021, and announced the review of the current Notice. It published a [call for evidence](#) in January 2022 to start the review.

Background on the Market Definition Notice

Market definition is a tool to identify the boundaries of competition between companies. The objective of defining the relevant product and geographic market is to identify the actual and potential competitors that constrain the commercial decisions of the companies, such as their pricing decisions. It is from this perspective that the market definition makes it possible, among other things, to calculate market shares that may convey meaningful information for the purposes of assessing market power.

Market definition helps to understand the competitive environment in which firms operate, both at a given time and more dynamically. Since markets are not static, this analysis needs to be repeated for each case, to take account of changes in production processes, consumer preferences, and other market specificities, such as innovation cycles, supply chains, the specificities of digital markets and related business models, and ease of access to new suppliers, or in response to regulatory changes. Similarly, the geographical scope of a market is also subject to a fresh assessment in every case, which can lead to markets being defined from local (such as for the retail sale of consumer goods) to global (such as for the sale of aviation components), depending on how they actually work in practice, in particular from the perspective of consumers and customers.

The [Market Definition Notice](#) provides guidance on the principles and best practices of how the Commission applies the concept of relevant product and geographic market in its enforcement of EU competition law.

For More Information

See the dedicated [webpage of DG Competition](#), which contains a link to the draft revised Market Definition Notice as well as instructions on how to submit observations.

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Members of the college said:

Our rule book needs to be clear, accurate and up to date to ensure legal certainty and predictability for businesses. As the world has become more digitised and our economies are interconnected, some markets work differently today than they did in the past. The draft revised Market Definition Notice aims to reinforce sound principles that have stood the test of time, provide necessary clarifications and fill gaps in our guidance. Today we invite interested parties to comment on the proposed changes.

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