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Guidelines on the Definition of Relevant Market

(1) Market definition is an instrument used in establishing the limits of competition between undertakings. This instrument allows the Competition Board (the Board) to set the framework for the application of the competition policy. The main goal of competition policy is to determine the competitive conditions faced by the undertakings under examination*. The goal in defining a market in both product and geographic dimensions is to ascertain which competitors have the power to restrict the behavior of the undertakings under examination, and to prevent these from behaving independently of an efficient competitive pressure. In relation to market power, market definition facilitates the market share calculations, which are particularly important for the implementation of Articles 6 and 7 of the Act no 4054 on the Protection of Competition, dated 07.12.1994 (the Act).

(2) In general, undertakings use the concept of market to mean the area in which they sell their products or, in a larger sense, the industry or sector in which they operate. However, in competition law practice, the concept of relevant market is somewhat different from market concepts used in other areas. The goal of publishing this guideline is to state, as clearly as possible, the method used for defining a market and the criteria followed for taking a decision by the Board, in order to minimize the uncertainties undertakings may face.

1. RELEVANT MARKET

1.1. Relevant Product and Relevant Geographical Markets

(3) Article 4 of the Communiqué No. 1997/1 on the Mergers and Acquisitions Which Require the Authorization of the Competition Board, published in the Official Gazette No. 23078, dated 12.08.1997, includes the definitions of relevant product and relevant geographical markets and, similarly, this definition is also included in Article

* For the purposes of this guideline, undertakings under examination are the parties to the concentration in a concentration case, relevant undertaking(s) in an evaluation conducted under Article 6 and the parties of the agreement, concerted practice or decision in an evaluation conducted under Article 4.

3 of the Notification Form of Guidelines on the Voluntary Notification of Agreements, Concerted Practices, and Decisions of Associations of Undertakings**.

In Communiqué No 1997/1, it is stated that the following factors shall be taken into consideration when determining the relevant product market:

"In determining the relevant product market, the market comprising the goods or services which are the subject of a merger or an acquisition, and the goods or services which are deemed identical in the eye of consumers in terms of their prices, intended use and characteristics is taken into account; other factors that may affect the market determined shall also be assessed."

The definition of relevant geographical market in Communiqué No. 1997 is as follows:

"The geographical markets are areas in which undertakings operate in the supply and demand of their goods and services, in which the conditions of competition are sufficiently homogenous, and which can easily be distinguished from neighboring areas, as the conditions of competition are appreciably different from these areas."

(4) The Board takes the criteria in this guideline into consideration both in the interpretation of the aforementioned definitions and in the application of the Act and the communiqués related to the relevant market concept.

1.2. The Concept of Relevant Market and the Goals of Competition Policy

(5) The concept of relevant market is closely related to the goals that the Board wishes to achieve through competition policy. For instance, the aim of the Board in concentration control policy is to prevent a significant reduction in competition in the whole or part of the country by the creation or strengthening of a dominant position. According to the competition policy of the Board, a dominant position is when one or

** Similarly, definitions for product markets are given in Article 3 of the Block Exemption Communiqué no 2002/2 on Vertical Restraints as well as in Article 3 of the Block Exemption Communiqué no 2005/4 on Vertical Agreements and Concerted Practices in Motor Vehicles Sector.

more undertakings have the power to determine economic parameters by acting independently of their competitors and customers^{***}. Such a situation generally arises when the undertaking/undertakings is/are responsible for most of the supply in the market and when some other factors (barriers to entry, the capacity of consumers to respond, etc.) also point in the same direction.

(6) The Board follows the same approach when applying Article 6 of the Act to undertakings which hold dominant position individually or jointly as well. Under Article 6, in order to establish the existence of a dominant position, definition of relevant market is required. Market definition may also be used for the application of Articles 4 and 5 of the Act.

(7) A market definition for a concentration analysis study, which concerns the future, may be different than one created for an analysis concerning past behavior such as dominant position or competition limiting practices. Additionally, in time, different market definitions may also arise owing to consumer preferences, sales regions and product prices.

1.3. Basic Principles of Market Definition

1.3.1. Demand Substitution

(8) The evaluation of demand substitution requires determining other products which consumers deem substitutable for the relevant product¹. A way to determine this is to assume a small, non-transitory change in prices and assess the potential responses of the consumers to this change. That is to say, market definition study takes the demand substitution arising from small, non-transitory changes in relative prices into consideration.

(9) Market definition shall start from the products and sales regions of the relevant undertakings. Other certain products and regions shall be added to the market definition based on their ability to affect and limit the short-term pricing decisions of these undertakings.

^{***} Definition of Article 3 of the Act.

(10) In the products and regions under examination, it is important to see whether the customers switch to easily accessible substitute products or to suppliers in other places when faced with a small but evident and non-transitory hypothetical price increase. If the reduction in the sales of the product caused by the price increase is on a scale to prevent profits, other substitute products and regions are included in the market definition. This operation continues until a combination of products and regions is reached which enables profitable small and non-transitory increases in relative prices. A similar analysis may also be conducted in cases of concentration of purchasing power. In this case the analysis starts at the supplier and the price test is employed in determining the existing alternatives for the products of the supplier. When applying these principles, some special circumstances emphasized in paragraphs 44 and 46 must be taken into consideration.

(11) A merger between undertakings producing beverages maybe given as an example for demand substitution analysis. The critical point in this merger transaction is whether or not beverages of different flavors belong to the same market. It is important to see if the customers of flavor A will switch to different flavors when faced with a small and non-transitory increase in the price of flavor A. If a sufficient number of customers switch to flavor B and if, consequently, the reduction in the sales of flavor A makes the increase in its price non-profitable, it is concluded that the market includes the flavors A and B. This process shall continue including other existing flavors in the market into the analysis, until a product group is found where hypothetical increases in price do not create sufficient demand substitution.

(12) In markets where concentration is not high, in general the price to consider shall be the existing market price. However this situation may not be valid if the existing market price was determined in a situation where there was not sufficient competition. In particular, in abuse of dominant position investigations, existing market price is generally significantly higher than the competitive price, due to the existence of market power.

1.3.2. Supply Substitution

(13) Supply substitution may also be taken into consideration where it has equivalent effect to demand substitution². For this, suppliers must be able to switch their production to other products when faced with small and non-transitory increases in relative prices and they must be able to market these products without having to tolerate significant additional costs and risks in the short term. When these conditions are met, the additional production introduced to the market shall create competitive pressure on the undertakings under examination. Such an affect is equivalent to demand substitution in terms of efficiency and fast results.

(14) Supply substitution in paper production may be given as an example to this. Paper is generally introduced to the market in a range that includes products of various quality, changing from standard writing papers to high-quality papers used in the printing of art books. From the perspective of demand, it can be seen that papers of different quality cannot be used in the printing of the same publications. For instance, low-quality paper cannot be used when printing an art book or a high-quality book. Nonetheless, since paper mills are ready to manufacture papers of all qualities, they can switch from manufacturing paper of one quality to another with negligibly low costs and in a short time. In cases where there are no special problems related to distribution and especially where delivery period for orders are long enough to allow the necessary changes in the mill of the paper manufacturer, paper manufacturers can compete with each other to win the orders for different qualities of paper. In such cases the Board shall not define separate markets for each quality of paper and their areas of use. All papers shall be included in the relevant market and the total market value and volume shall be calculated based on the total sales thereof.

(15) In case the suppliers have to make significant changes to their material and non-material properties, make additional investments, take strategic decisions and spend significant time for all these operations in order to switch their production to different products, supply substitution shall not be taken into consideration during market definition stage. Branded beverages may be given as an example to this. Even though basically bottling facilities have the ability to bottle all kinds of beverages,

various costs and preparation periods (for advertisement, products tests and distribution) are involved until the products are ready for sale³.

1.3.3. Potential competition

(16) Since it is not equally efficient as demand substitution in terms of fast results, potential competition is not generally taken into consideration for market definition.

2. CRITERIA TO CONSIDER IN THE DEFINITION OF RELEVANT MARKET

2.1. Definition of Relevant Market

2.1.1. Relevant Product Market

(17) When defining the product market, first of all, a preliminary opinion is prepared based on the existing information or the information provided by the undertakings parties to the case. It is important in this preliminary opinion to see whether or not alternative products are substitutes for each other.

(18) There are various criteria that determine substitution. These criteria may vary depending on the characteristics of the industry, goods or services under examination. A criterion used in an examination may be completely irrelevant for another investigation. When determining substitution, the Board avoids adopting a strict hierarchy concerning the various information sources or analysis types.

2.1.2. Relevant Geographical Market

(19) When defining the geographical market, first of all, a preliminary opinion is prepared based on the indications concerning the distribution of the market shares of the parties and competitors, as well as on the price differentiations. Afterwards, it is examined to see whether undertakings in different regions really serve as an alternative source of supply for the customers. In this examination, demand structure is taken into consideration. Whether or not undertakings under examination can

switch the orders of their customers to undertakings at other regions in a short period of time and at negligible costs shall constitute the basic point.

(20) However, in case the transaction under examination does not pose concerns for competition within the framework of potential alternative market definitions in terms of both product and geography, or in case there are competition distorting effects for all alternative definitions, a market definition may not be prepared⁴.

2.2. Information Gathering Process

(21) Where a definitive market definition must be made, chief customers and undertakings in the industry may be contacted, in order to acquire the necessary information for the relevant market definition. Sometimes it may be necessary to define separate relevant product markets concerning different levels of the production or distribution of the goods/services under examination. In such cases, in order to define the aforementioned markets, professional organizations or undertakings in the downstream/upstream markets may be contacted.

(22) When deemed necessary, letters requesting information may be sent to the abovementioned players of the market. In these letters, information required for determining the borders of the relevant market is requested. Additionally, professional staff conducts interviews with the officials of the undertaking under examination and get more information on the subject of market definition. Professional staff may also visit and conduct examinations in the facilities of the parties, their customers and/or competitors in order to better understand how the products are manufactured and sold.

2.2.1. Factors Which May Be Used in the Definition of Relevant Product Market

(23) The characteristics and intended use of the relevant product is the first step in determining substitute products. However, on their own, the possibility to use one product instead of another one and existence of similar characteristics between products are not decisive factors when the definition of the relevant product market is concerned⁵. That is because the response of the customers to relative prices may be

determined by the effect of other factors. For instance concerning automobile parts, competitive conditions in the original parts market may be very different from those for spare parts market. In this case, it may be necessary to define two different markets for automobile parts, such as original spare parts market and spare parts market. And on the other hand, the differences between product characteristics are not sufficient on their own to decide that there is no demand substitution between the products.

(24) The criteria the Board shall take into consideration when assessing whether or not two products have demand-side substitutability may be classified as follows:

(25) *Findings indicating the products substituted each other in the recent past:* In some examinations, it may be possible to analyze information concerning cases in the recent past or changes in the market which may constitute examples that two products were substitutes for each other. Naturally, such information is taken as a basis for market definition. Where there was a change in relative prices in the recent past (other factors being equal) responses in demand shall be decisive in determining the substitution level. If it is possible to conduct an analysis concerning which products lost sales where new products were introduced into the market in the past, valuable information for relevant product market definition may be gathered.

(26) *Quantitative tests specifically developed for determining the market:* These tests include various econometric and statistical approaches such as demand elasticity and cross-price elasticity calculations for a certain product, analysis for similarity of price changes in time, causality between price series and similarity of price levels⁶. The Board takes quantitative analysis with sound basis into consideration for market definition.

(27) *Opinions of the customers and competitors:* Main customers and competitors of the undertakings under examination may be contacted, in order to gather opinions concerning the borders of the product market and required information. Where they are supported by sound findings, opinions of the customers and competitors on potential product and geographical market definitions are taken into consideration.

(28) Consumer choices: Marketing analysis conducted and used by the undertakings in their own decision-making processes on marketing may provide useful information to the Board in relation to market definition⁷. However, consumer surveys conducted by the relevant undertakings or their competitors specifically for an examination/investigation under the Act shall be examined in a very thorough manner⁸. This is because unlike previously conducted analysis, these surveys are not prepared to serve as a basis to the commercial decisions of the undertakings.

(29) Costs and barriers related to switching the demand to potential substitute products: Some barriers and costs related to the sector may cause the Board to decide that two products which, at first glance, appear to be substitutes in fact belong to separate markets. It is not possible to make a full list of the factors which prevent substitution and the costs for switching from one product to the other. Limitations arising from various legal regulations and state interventions, limitations in the downstream markets, significant capital investments, areas where the customers live, investments to the production process, investments to training and human resources, reprocessing costs may be given as examples to this subject.

(30) Different customer categories and price discrimination: Where there are distinctly different customer groups, the borders of the product market may be reduced. A different group of customers for the relevant product may form a smaller and separate market in case there is price discrimination to its disadvantage. This situation generally occurs when two conditions are met: (a) if it is not possible to determine which group a customer belongs to during the sale of the relevant product, and (b) if trade between the customers or arbitrage by third parties is not economical or possible.

2.2.2. Factors Which May Be Used in the Definition of Relevant Geographical Market

(31) The criteria the Board shall take into consideration when taking a decision concerning geographical markets may be classified as follows:

(32) Findings that indicate orders were switched to different regions in the past: Price differences between different regions and customer responses provide important information concerning the definition of geographical market.

(33) Quantitative tests specifically developed for determining the market: In general, quantitative tests used in product market definition may also be used in geographical market definition. As in product markets, the Board shall take analysis with sound basis into consideration.

(34) Basic characteristics of demand: The structure of demand for the relevant product can determine the scope of the geographical market on its own. Factors such as regional preferences, loyalty to local brands and the necessity for an active presence in the regional market have a strong potential to limit the geographical scope of competition.

(35) Opinions of customers and competitors: Main customers and competitors of the parties under examination may be contacted in order to determine the scope of the market⁹.

(36) Existing geographical trends of purchases: Examination of the geographical trends of customers' purchases provide useful information concerning the potential scope of the geographical market. In general, where customers purchase from undertakings at different areas of Turkey under the same terms, or where they can meet their needs via tenders in which undertakings operating at any area of Turkey may bid, the geographical market is the Republic of Turkey.

(37) Trade flow / Goods Delivery trends: In case sufficient statistics on the relevant products are available, trade flow information may be used¹⁰. While trade flows and, more importantly, the reasons behind these flows provide opinions and information very valuable for determining the scope of geographical market, they are not sufficient on their own to arrive at a decisive conclusion.

(38) Barriers related to shifting orders to undertakings at other regions and switching costs: High shipping costs or various limitations caused by the nature of the product

may prevent customers' switching their purchases to other regions¹¹. The effects of shipping costs are generally apparent in large-sized, low-value products. However, in this situation, it should be noted that shipping disadvantages may be offset by relative advantages in other costs (such as costs related to the labor force or raw materials). Conditions of access to a distribution system in a region and limitations tied to legal regulations in some sectors may also isolate that region from the competitive pressure of the undertakings which are outside of that region.

(39) Based on the available information, the Board shall define a market the size of which may vary from local to international. Examples for local and international market definitions are available in the past decisions of the Board¹².

(40) In the above paragraphs information is given related to various criteria which may be significant in market definition. This does not mean that each of these criteria should be taken into consideration for every examination. As is apparent from the previous Board decisions, in practice only some of these criteria have been sufficient to reach a conclusion most of the time.

3. CALCULATION OF MARKET SHARES

(41) Definition of relevant product market and relevant geographic market enables the determination of suppliers and buyers/consumers active in that market. From this point, based on the suppliers' sales of the relevant product in the relevant region, total market size and the market share of each supplier may be calculated. Total market size and market shares can mostly be calculated from the data of research companies or from the studies of the professional associations. When this is not possible or when available estimations are deemed unreliable, each supplier may be requested to provide its own sales numbers in order to calculate the total market size and market shares.

(42) Even though the reference point in determining market shares are generally sales numbers, depending on the characteristics of the relevant product or industry, other indicators such as capacity¹³, number of actors in the tender market, fleet size

in aviation or the amount of reserves controlled in sectors like mining¹⁴ can provide useful information.

(43) As a rule, sales numbers both in volume and in value provide useful information. In case of differentiated products, in general, it may be accepted that sales numbers in value and the related market shares reflect the status of the suppliers relative to each other as well as their market power.

4. OTHER POINTS TO TAKE INTO CONSIDERATION

(44) Some situations require additional care in the application of the foregoing principles. In particular, when it is necessary to examine the behaviors of undertakings under Article 6, this is a consideration in the assessment of primary and secondary markets. In such cases, the method used is that of assessing the responses of the consumers to the changes in relative prices. However, this time the limitations on product substitution caused by the conditions in connected markets are also taken into consideration. Where compatibility with the primary product is important, this may cause a narrow market definition for secondary products such as spare parts¹⁵. When combined with the problems faced in finding compatible secondary products, the durability and high prices of the primary products may make relative price increases in secondary products profitable. If there is a possibility of substitution between secondary products, or if the characteristics of the primary products make it possible for the consumers to react promptly and directly to relative increases in the prices of the secondary products, a larger market definition for secondary products may emerge.

(45) In certain cases, the existence of substitution chains may cause a relevant market definition in which the products and regions at the fringes of the market can not be substitutes for each other. An example to this can be seen in the geographical market of a product with significant shipping costs. In such cases, sales from a factory are limited with a region around the factory due to the effects of transportation costs. Basically, geographical market is also expected to be comprised of the same region. However, in case there is substantial overlap between these regions due to the positions of the factories which manufacture the same product, it is possible to

limit the pricing of the relevant products through a chain substitution effect and to arrive at a larger geographical market as a result. The same logic may also be valid where product B is a demand-side substitute for products A and C. Even though A and C are not substitutes, the limitations on their pricing caused by the fact that they both can be substituted by B may lead to their inclusion in the same relevant product market.

(46) In practice, in order to enlarge the relevant market, the concept of substitution chains must be verified through sound findings (for instance, findings indicating interdependency between the prices at the fringes of substitution chains). Price levels at the fringes of the chains must display a similar structure as well.

¹References

Board Decisions no. 07-67/836-314, dated 23.8.2007; no. 07-31/323-119, dated 11.4.2007; no. 00-11/109-54, dated 23.3.2000; no. 06-33/411-108, dated 11.5.2006.

² Board Decisions no. 07-01/6-3, dated 11.1.2007; no. 07-65/798-294, dated 21.8.2007; no. 07-01/11-6, dated 11.1.2007; no. 99-59/639-406, dated 15.12.1999; no. 07-11/65-20, dated 1.2.2007.

³ Board Decision no. 99-12/93-35, dated 3.3.1999.

⁴ Board Decisions no. 06-44/551-149, dated 15.6.2006; no. 07-29/278-104, dated 29.3.2007.

⁵ Board Decisions no. 07-30/294-111, dated 5.4.2007; no. 05-55/836-228, dated 8.9.2005.

⁶ Board Decisions no. 03-40/436-187, dated 9.6.2003; no. 04-07/75-18, dated 23.1.2004.

⁷ Board Decision no. 07-70/863-326, dated 10.9.2007.

⁸ Board Decision no. 04-32/377-95, dated 4.5.2004.

⁹ Board Decision no. 07-27/252-87, dated 22.3.2007.

¹⁰ Board Decisions no. 02-32/367-153, dated 28.5.2002; no. 05-86/1192-344, dated 20.12.2005.

¹¹ Board Decisions no. 07-11/70-22, dated 1.2.2007; no. 07-56/630-212, dated 4.7.2007.

¹² Board Decision no. 02-32/367-153, dated 28.5.2002.

¹³ Board Decision no. 07-59/675-234, dated 11.7.2007.

¹⁴ Board Decision no. 07-09/53-18, dated 24.1.2007.

¹⁵ Board Decision no. 01-22/192-50, dated 8.5.2001.