

**GUIDELINES**  
**on relevant market definition**  
**with a view to determining the significant market share\***

**Introduction**

The concept of market represents a basic notion when analyzing the economic competition. The notion of relevant market is used in order to identify the products and undertakings which are directly competing in a business. Therefore, the relevant market is the market where the competition takes place.

The enforcement of the provisions of Competition Law No.21/1996, further named the Law, would be not possible without referring to the market where competition takes place; therefore it is necessary to define the relevant markets for the different cases which fall under the present Law.

The most harmful agreements, banned under Article 5 al. (1) of the Law, are those among competitors acting on the same relevant market.

The abusive use of dominance, banned under Article 6 of the Law, is possible where an undertaking owns a dominant position on a market on which are acting competing undertakings, i.e. on the relevant market, by resorting to anti-competitive practices.

It is also necessary to define the relevant market or markets for enforcing the provisions of the Law concerning those economic concentrations which by creating or strengthening a dominant position, prohibited by Art. 13 of the Law, cause or may cause a restriction, prevention or distortion of competition. The assessment of the compatibility of an economic concentration with a normal, competitive environment, pursuant Article 14 of the Law, is also based on the relevant market definition since market is the environment where the competition is evaluated.

The present guidelines are aimed to support the undertakings when filling in: the applications for exemption from the prohibition set out in Article 5 par. (1) of the Law; the notifications for obtaining the benefit of qualifying in one of the agreement categories exempted from the prohibition set out in Art. 5 par. (1); and the notifications of economic concentrations based on the Guidelines issued by the Competition Council. Both for applications and notifications, it is necessary to define the relevant markets and to supply supporting information justifying the defined relevant markets.

**1. General principles of the relevant market definition**

A relevant market comprises a product or group of products and the geographic area in which these products are produced and/or traded. Therefore, the relevant market has two components: the product market and the geographic market.

a) *The relevant market of the product* comprises all those products considered as interchangeable or substitutable by the consumers in terms of characteristics, prices and intended use. These products must be likewise enough, so that they could be taken into consideration by the consumers or beneficiaries when they take their buying decisions.

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\* The Guidelines has been approved by the Plenum of the Competition Council and enforced through Order no. 34/1997, published in the Official Gazette of Romania, Part I, issue 49 of March, 21,1997.

Identification of the relevant product market requires an analysis establishing those products belonging to that market, taking into consideration the significant factors as: substitutability, competition, prices, product demand elasticity depending on the prices of other products, etc.

For two products to be considered by the buyers as substitutable or interchangeable, they do not have to be identical from the point of view of their physical and functional characteristics, price or quality. Decisive is a sufficient degree of the substitutability of the products to satisfy the needs and desires of buyers, so that each of these products may constitute a real economic alternative to the other product; the consumer may choose when taking the decision to buy. To this set of products, considered as substitutable by the buyers and which constitutes the product market, from the demand point of view, will be added the products which are not currently substitutable from the demand point of view but from the point of view of the supply. It is the case of the products which might be produced easily and economically acceptable by some of the producers by increasing their output capacities or by converting some of the existing capacities so that these products would become within a reasonable period of time substitutes for the products already included in the relevant product market.

These principles also apply to the relevant market definition in the case of services; to simplify the terminology, the present guidelines use the notion of *product relevant market*.

b) *The geographic relevant market* comprises the area where are located the undertakings involved in the delivery of products included in the product market, area where the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighboring geographic areas particularly because the competition conditions are substantially different. Similarly, the notion of *geographic market* covers also the services.

The elements to be taken into consideration when defining the relevant geographic market include the nature and characteristics of the concerned products, the existence of entry barriers, consumers' preferences, differences among the market shares of undertakings in the neighboring geographic areas, as well as significant differences between suppliers' prices and transport costs levels.

The geographic market where are located the competing producers will be defined taking into account the above outlined factors. This may also include the producers the consumers are not aware about but which may bring their products from other areas easily and economically acceptable.

To be considered as belonging to the same relevant market, it is not necessary that the products be produced in the same locality or a neighboring one. Of importance is the fact that all these products should be available to the same buyers, i.e. each of them to be a real economic alternative for the others.

For some products and services, the relevant geographic market may be a part of a locality, a locality, a county, a region or a zone of Romania, while for other products this may be the whole country.

The progress in the field of transports and communications and the tendencies of abolishing the barriers and of liberalizing the international trade may alter, in time, the limits of the relevant geographic market, going beyond the borders of a country.

## **2. Definition of relevant market in cases of anti-competitive practices regulated under Art. 5 and 6 of the Law**

The principles mentioned in the above first section will be taken into consideration by the undertakings which have to determine their own relevant market within their applications for exemptions, respectively in their notifications for qualifying in one of the exempted categories from the prohibitions set out in Art. 5 al. (1) of the Law, pursuant to the Regulations issued by the Competition Council. The same principles will be used by the Competition Council and Competition Office when investigating the cases of anti-competitive practices, respectively of abuse of dominant position, in order to determine which products are affected and which undertakings (competitors, customers and/or suppliers) are or may be affected.

For each investigated product there should be determined the products which constitute substitutes to this product as well as their producers which are located close enough to the area and taken into consideration by the buyers when making their buying decisions. This determination - for the investigated product - should be made both on current prices and on the lower prices estimated to be practiced if the presumed anti-competitive practices did not exist.

The Competition Council and Competition Office will investigate whether the available substitutes on current prices exist only as a result of the price increases or as a result of some other presumed anti-competitive practices.

## **3. Definition of relevant market in cases of economic concentration**

The first step to be made in the analysis of economic concentrations is to define the product and geographic market affected by the notified economic concentration.

The product and geographic market will represent the context in which should be determined the market power of the new economic entity resulting from concentration.

For the purpose of defining the relevant market in an economic concentration case, there should be taken into consideration the impact of the concentration upon dynamic competition, i.e. upon the relevant market new structure resulting from the consummated economic concentration. For this reason is used the notion of *affected market*.

The affected market represents the relevant market of the product, where:

- a) two or more of the parties involved in the economic concentration operate on the same product market and as a result of concentration their market share exceeds 15% (*horizontal relations*);
- b) one or more of the involved parties operate on a product market located upstream or downstream to any other market where other involved parties exist, and, additionally, their individual or combined market share is at least 25%, disregarding whether there is or there is not a supplier-customer relation between the parties participating in the economic concentration (*vertical relations*).

In order to define the relevant market affected by the proposed economic concentration, one should proceed from the identification of the products produced and/or traded by the undertakings involved in the economic concentration.

Afterwards, one should determine which are the products (and their producers) which are close enough to be substitutable or the substitutes for the products produced and/or traded by the undertakings involved in the economic concentration, thus defining the product market and, if case should be, the relevant product market.

The geographic market comprises the producers of the products included in the relevant product market, located in those places taken into account by the consumers when they make their buying decisions.

A special attention should be paid to the economic concentrations in which the involved undertakings produce and/or trade products included in the same product market, this kind of economic concentrations having direct and significant effects upon the geographic area affected by the concerned economic concentration, if the undertakings involved in the concentration usually trade products for a significant group of buyers located in a certain geographic area.