

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

GEOGRAPHIC MARKET DEFINITION

-- Note by Lithuania --

28-29 November 2016

This document reproduces a written contribution from Lithuania submitted for Item 3 of the 124th meeting of the OECD Working Party No. 3 on Co-operation and Enforcement on 28-29 November 2016.

More documents related to this discussion can be found at ww.oecd.org/daf/competition/geographic-market-definition.htm

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JT03404701

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-- LITHUANIA --

1. Approaches to defining geographic markets with a national or broader scope

1.1 *Which analytical tools does your authority use to define geographic markets (e.g. import elasticities, chains of substitution¹)? Are any additional tools or methodologies applied to markets that may be national or broader in scope?*

1. When defining geographic markets the Competition Council of the Republic of Lithuania (the CC) applies certain models depending on the case (e.g., import elasticities, isochrones, price correlation analysis and SSNIP test). These models are usually simplified. Although the CC has not used chains of substitution as a tool to define geographic markets yet, the CC is fully aware of this model and might use it if needed. In addition to that, when defining geographic markets the CC relies on qualitative data (e.g., answers by competitors and customers to questionnaires). Independently of how the geographic markets might be defined (narrower than national, national or broader in scope), the tools and methodologies used are the same.

1.2 *Does your authority define the geographic market in all cases involving markets that are national or broader in scope?*

2. The decision whether (and how) to define a geographic market depends on a specific case and not on the geographic market being national or broader in scope. The CC usually does not define the geographic market (though can choose to do so) in the following three instances:

- Regardless of which of the alternative geographic market definitions is chosen the merger does not cause any competition concerns. In these cases geographic market definitions are left open.
- When the anticompetitive conduct in question is a competition infringement by object.
- When remedies effectively solve problems related to either suspected infringements in antitrust cases or competition issues in merger cases.

3. However, the CC has never reviewed a problematic merger (where the relevant market has been defined) or investigated an antitrust case where the relevant geographic market is defined as being broader than national.

¹ A chain of substitution can be used to define a market when, for instance, a firm exerts competitive pressure on another firm, which in turn exerts competitive pressure on a third firm. So, while the first firm does not directly exert pressure on the third firm, they could be considered to be part of the same market. Chains of substitution among grocery stores, for example, could lead to two stores with unconnected isochrones being included in the same market due to overlaps with a third store.

1.3 Does the legislation in your jurisdiction specify the broadest possible geographic market definition (e.g. national)? If so, how does your authority consider whether competitive constraints exist beyond national borders?

4. The Lithuanian legislation does not specify the broadest possible geographic market definition.

1.4 Are there cases where it is not necessary to define the geographic scope of the relevant market?

5. As mentioned above, the CC usually does not define the geographic market (though might choose to do so) in the following two instances:

- regardless of which of the alternative geographic market definition is chosen, the merger will not cause any competition concerns. In these cases geographic market definitions are left open
- when the anticompetitive conduct in question is a competition infringement by object.

6. When remedies effectively solve problems related to either suspected infringements in antitrust cases or competition issues in merger cases.

1.5 Does your authority apply isochrones² across national borders to define geographic markets?

7. The CC has never applied isochrones across national borders to define geographic markets. However, it would be a perfectly viable option if needed.

1.6 What market characteristics have been determinative in defining markets with a national or broader scope (e.g. after-market structure, regulatory and trade barriers, cultural and linguistic factors, current trade flows)?

8. When defining markets with a national or broader scope, determinative geographic market characteristics significantly depend on the product market definition. Depending on a case various major market characteristics (regulatory and trade barriers, cultural and linguistic factors, current trade flows etc.) have been determinative either by themselves or in combinations. In addition to that, the CC takes into account other characteristics such as willingness of consumers to import, the need for a local presence, transportation restrictions, price differences in regions etc.

1.7 What methodology does your authority use to analyse transport costs when defining geographic markets? Is this methodology part of an established and documented procedure?

9. Although pursuant to the Resolution of the CC concerning the definition of the relevant market transport costs are considered as part of evidence relevant when defining geographic market, the CC does not have a documented procedure for transport cost analysis.

10. Nonetheless, in order to analyse transport costs for a product in question the CC gathers factual data from plausible market players (including, if possible, their own evaluation of transportation costs). The CC uses a conservative approach when it comes to estimating transport costs for geographic market definition, i.e., transport costs are determined by choosing the most suitable approach for merging parties in case there is more than one approach and they are viewed as interchangeable by the CC. This means that in most of such cases the geographic market will be broader compared to the geographic market that would be defined applying other possible interchangeable approaches.

² A geographic area around a firm that is drawn based on distance or travel time. Isochrones are used to determine the degree to which competitors' geographic presence overlaps with the firm in question.

2. Challenges and limitations to existing geographic market definition tools

2.1 *How have online services, online retailers and multi-sided platforms challenged established geographic market definition approaches (e.g. applying the SSNIP test to multi-sided markets, each with different geographic scopes)? Have any alternative tools, approaches or guidelines been adopted in response to these challenges?*

11. The CC has not had cases related to the sectors mentioned above that would be challenging geographic market definition approaches. However, the CC is aware of possible complications when defining geographic markets related to these sectors in the future.

2.2 *Have any markets or industries posed particular challenges for your authority with respect to market definition?*

12. There have been a number of cases when defining the relevant geographic market might have been more complicated than in other cases. Please find short descriptions of two relevant merger cases below:

2.2.1 *Case 1*

13. A concentration between two sole owners of quays that at the time of the merger were/could be used to moor cruise ships in the port of Klaipėda.

14. During the merger investigation the CC found out that the operators of cruise ships tend to create a cruise itinerary by sending out requests for offers to the owners of various quays in various ports in the region where the cruise trip is going to take place. Then with the offer they also learn whether the quays are free and choose which ports and quays will be included in the itinerary. The CC also found out that in various international events and exhibitions cruise lines are for the most part attracted to Klaipėda by government officials and institutions that actively advertise the port itself rather than specific quays.

15. Certain ports in the Baltic Sea (e.g., Saint Petersburg, Stockholm, Copenhagen, and Tallinn) are included in most of the itineraries of cruise ship operators since they are conveniently located for shipping, have many tourist attractions and/or are capitals. Klaipėda is a significantly less popular choice by the cruise lines for cruises in the Baltic Sea since it is not a capital city and lacks tourist attractions within the town itself (in order to compensate for that, trips to other towns or resorts are organised for cruise ship passengers). Thus, the CC concluded that quays in Klaipėda are not in the same category to compete with quays in such ports like Saint Petersburg, Stockholm, Copenhagen or Tallinn as mentioned previously.

16. Since cruise ships tend to sail during the night and moor during the day, the CC also looked at ports closest to Klaipėda as possibilities for cruise ships to moor in that area. The CC found out that ports closest to Klaipėda are Riga in Latvia as well as Gdynia and Gdansk in Poland. The CC concluded that Klaipėda and these ports are of similar attractiveness to cruise lines judging by the number of times they appeared in the itineraries of cruises in the Baltic Sea each year. In addition to that, none of these ports are capitals (except for Riga) or major towns in the Baltic Sea region. Although Riga is the capital, it is located in the bay which is considered inconvenient for cruise ships. At the time of the investigation the CC found out that these ports together would not have been included in the same cruise itinerary for 2015.

17. Thus, from the CC's perspective, the geographic market was not narrower than a region in the Baltic Sea which includes Klaipėda and ports closest to it (i.e., Riga, Gdynia, Gdansk). Since in the CC's view, the merger would not have caused any problems, the CC left the geographic market definition open.

2.2.2 Case 2

18. A concentration between two providers of administrative service for apartment buildings both of which are active in Vilnius city.

19. The CC found out that even though providers of administrative service for apartment buildings can easily operate all over Vilnius city without incurring any significant costs, each of the absolute majority of such firms operated in a particular region of the city where the presence of other firms was relatively limited. Such geographical division was also the case for the merging parties.

20. Such division can partly be explained by historical reasons: originally the municipality was the sole establisher of the majority of these firms and each firm was established to serve a particular district in Vilnius. During 2001 – 2010 these firms were privatised. However, up until now a clear geographical division has remained due to the following reasons. Firstly, in order for an apartment building to switch suppliers the majority of its owners have to come together and choose another supplier of administrative services. Secondly, Vilnius municipality sets the maximum price that can be charged by these administrative service providers.

21. Nonetheless, a few firms that have not been historically established by the municipality tend to operate all over Vilnius. Such firms attract their customers by actively taking over clients from incumbent firms (actively encouraging and organising communities to change their suppliers themselves), offering to service newly built apartment buildings and by being approached by the representatives of active communities in some older apartment buildings. Because of these reasons, the CC did not find any obstacles for firms to operate freely anywhere in Vilnius.

22. Thus, from the CC's perspective, the geographic market could have been defined as either Vilnius city or specific districts within Vilnius city. However, since in the CC's view the merger would not have caused any problems regardless of how the relevant geographic market was defined, the CC left the geographic market definition open.

2.3 *How has your authority evaluated the likelihood and extent that supply would be diverted³ in geographic market definition? Does your authority use concepts such as "rapid entrant" and "swing capacity"?*

23. The CC always evaluates possible supply diversion and it has been done mostly by using the "rapid entrant" concept. Even though the CC has not recently had a case where the concept of "swing capacity" has been used, the CC is fully aware of this concept and would apply it if needed.

2.4 *How has the evolving distinction between online and "bricks and mortar" firms affected the way you define geographic markets?*

24. The CC has not had any cases yet with significant differences between online and "bricks and mortar" firms and, thus, somewhat complicated geographic market definitions. However, the CC does keep in mind that such a distinction is evolving and, thus, observe recent developments in this field from other authorities as well as academic community.

³ Including the ability of firms to begin supplying the products in question to the defined geographic market, either by modifying (or adding to) their product offering or by beginning to supply the geographic market with the product, which they already sell elsewhere. For example, the potential for foreign suppliers (often from lower-cost economies) to begin supplying a market is often cited by merging parties as an effective source of competitive pressure, and therefore an argument for a broader geographic market definition.

2.5 *What is the impact of geographic market definition on determinations regarding the presence of competition issues, and on the design of remedies?*

25. The CC holds the view that geographic market definition usually comes prior to determining whether there are any competition issues in that particular market. However, as mentioned above, the exception to this could be any anticompetitive conduct which is viewed as a competition infringement by object (please refer to Part I).

26. When it comes to remedies, the CC holds the position that remedies have to be designed in such a way so that they would solve competition issues. This means that if a geographic market in merger cases is defined in a certain way and that merger is viewed as problematic by the CC, then remedies have to be applied to the whole geographic market. However, in certain cases remedies can be applied without necessarily defining the relevant geographic market. This happens when remedies effectively solve problems related to either suspected infringements in antitrust cases or competition issues in merger cases.

3. *Investigation challenges with respect to the definition of markets that are potentially national or broader*

3.1 *Has your authority experienced any difficulties with obtaining information to determine whether a market is national, or broader, in scope (e.g. lack of international sales data or lack of power to request information from market players outside the jurisdiction)? What was the impact of these challenges?*

27. Most of the time the CC faces a lack of publicly available and/or sufficiently detailed information on the national as well as international level (e.g., sales data). Although the CC can solve this problem by obtaining information from firms active on the national level, the CC faces problems when obtaining information from firms abroad. The experience by the CC has been twofold - while some firms abroad provide all the information requested, other firms abroad either are not willing to do so or do not confirm in writing what they had communicated on the phone before. The firms are more willing to co-operate, when the CC requests information that can easily be provided by these firms (i.e., the amount of information requested is not excessive, the companies already have the data requested at their disposal, there is no need for the firms to conduct additional data analysis or collection), formulates questions in a very clear manner etc.

28. Additional problems that might arise with the information needed in order to define the geographic market (whether national or broader) are as follows. Different firms store the same information in different formats and/or collect different types of information, some firms do not store some types of information, there are a huge number of firms in a particular market and, therefore, it is complicated or nearly impossible to request and obtain information from all or even the majority of them etc.

3.2 *Have you engaged in co-operation with other competition authorities in order to obtain data from undertakings or about markets within their jurisdiction? Please give examples of successful co-operation and obstacles to co-operation.*

29. The CC co-operates with other national competition authorities in various instances and in the past there were cases when the CC asked a few other European authorities to collect information on the CC's behalf.

30. Such co-operation with other European competition authorities in antitrust cases (i.e., when applying Articles 101 and 102 TFEU and its national equivalents) is facilitated by the European Union legal framework. Article 22 of Regulation 1/2003 enables national competition authorities to carry out any fact finding measures the requesting authority considers to be necessary.

31. However, in merger cases obtaining data from abroad might still be complicated even when cooperating with other national competition authorities. Because of that and due to time constraints in most cases the CC sends out the questionnaires directly to firms abroad (at the same time informing relevant competition authority in that particular country about the requests being sent) and relies on their willingness to help.