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

Working Party No. 3 on Co-operation and Enforcement

EXECUTIVE SUMMARY OF THE ROUNDTABLE ON GEOGRAPHIC MARKET DEFINITION ACROSS NATIONAL BORDERS

28 November 2016

This Executive Summary by the OECD Secretariat contains the key findings from the discussion held during Item III of the 124th Meeting of Working Party No. 3 held on 28 November 2016.

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EXECUTIVE SUMMARY

*By the Secretariat**

Working Party No. 3 held a roundtable discussion on 28 November 2016 to discuss geographic market definition across national borders. Considering the roundtable discussion, the delegates' written contributions, presentations from the expert panellists and the Secretariat's background note, the following key points emerge:

- 1. Geographic market definition requires the consideration of a broad range of evidence in order to fully capture the scope of competition in a market. A holistic approach, when clearly distinguished from the competitive assessment, can help avoid erroneous results from empirical tools during the market definition process.**

There is a wide range of evidence considered by competition authorities when defining the geographic scope of markets. Transport costs will, for example, suggest a narrower geographic market if they are significant relative to the price of the good or service in question. Product characteristics, such as linguistic and cultural factors, can also lead to differing competitive conditions, and thus separate markets geographically. Other factors that can shape the geographic scope of competition include regulatory and trade barriers (including import duties, licensing requirements and differences in product regulations), consumer preferences, purchasing patterns, exchange rate variations, and the existence of local distribution or retailing networks. Price discrimination based on consumer location can be determinative evidence for geographic market definition as well.

Common techniques for the analysis of geographic markets include the use of isochrones, which are lines representing the distance or travel time from a given supplier location, to develop catchment areas. This type of analysis applies to markets that could stretch beyond national borders – particularly when distance, rather than regulatory or trade barriers, is most relevant. Chains of substitution are another related concept, in which, for example, two unconnected areas are considered as belonging to the same geographic market due to the competitive dynamics in the connecting areas. The analysis of price levels and movements, as well as the responsiveness of imports to price increases, are other approaches.

If not considered in context, this range of evidence can generate misleading results. For instance, pricing correlation analysis can be influenced by common trends (such as input cost changes) or other unique market characteristics that do not convey the true geographic scope of competition in a market. Thus, a high degree of price correlation between two areas is not on its own decisive in defining a geographic market. Similarly, the fact that imports exist in a market is not sufficient to conclude that the market should be widened to include other countries.

* This executive summary does not necessarily represent the consensus view of Working Party No. 3. It does, however, identify key points from the discussion at the roundtable on Geographic Market Definition, including the views of a panel of experts, the delegates' oral and written contributions, and the background note prepared by the OECD Secretariat.

2. The broadening of geographic markets on the basis of current or potential competition by suppliers located outside a candidate market should be considered carefully. An appropriate balance between the analysis of outside competition in market definition versus competitive assessment is required to mitigate the risks of erroneous enforcement decisions.

Globalisation has led to greater foreign presence in national (or regional) markets. However, this presence is not a sufficient condition for geographic market definition that extends beyond national borders. A global, or multi-country market definition implies that the suppliers in all included countries face similar competitive conditions and constraints with a similar set of consumers. Thus, imports in a domestic market may not lead to a broader-than-national geographic market definition if the importing firms are subject to a different set of competitive pressures in their home country. Domestic firms' market shares can be distorted by the inclusion of foreign countries' market volume when competitive conditions in the included countries materially differ from domestic conditions.

Similarly, potential entry by foreign firms not yet competing in a market (sometimes termed "supply-side substitution") should only broaden geographic market definition in a limited set of circumstances. A determination must be made of the degree to which such firms have spare capacity, and their ability to rapidly begin to supply the market in question (in terms of having access to distribution and retail networks without incurring significant costs, etc.). Assessing the availability of spare capacity can be challenging, given that it requires evidence of firm strategy, capacity and opportunity costs, which may not always be available. The proportion of firms in the foreign market whose products are substitutable with domestic ones must also be considered (and indeed some authorities' guidelines require such substitutability to be near-universal among an area's suppliers as a condition for including this area in the geographic market definition). Further research and case experience may assist competition authorities in dealing with these challenges.

When the conditions for broadening a geographic market definition based on actual or potential import competition are not met, competitive pressures from importers are more appropriately considered in the competitive assessment of a case.

3. Digital services, including online platforms, present a unique set of circumstances for market definition, but they should not automatically be associated with broader than national markets.

Digital platforms have the potential to broaden the geographic scope of markets given that they offer services without regard to distance, national borders or transportation costs. However, there are several other barriers that remain unchanged in online markets, including variations in regulation across countries, duties and border costs for physical goods, and cultural differences. Further, the language of service can have a decisive effect on consumer choice and the range of competitors appropriately considered to be a part of the geographic market, although low-cost translation services may mitigate this effect. Thus, digital markets are not always synonymous with broader geographic scopes. In addition, these markets should be analysed carefully when they are two-sided, as the geographic definition may differ between the two sides of a market, with implications for the application of traditional market definition and competitive assessment tools.

4. Co-operation among competition authorities is important for markets whose geographic scope may extend beyond national borders. In particular, authorities may require access to information located outside their jurisdiction in order to evaluate claims of international (or global) geographic market definitions.

International co-operation and co-ordination among competition authorities can be particularly important when faced with markets that extend beyond their jurisdiction. For instance, competition authorities may require information from foreign market participants that are not party to merger or enforcement proceedings (including spare capacity, strategic plans, sales volumes and pricing strategies). This information can only be collected voluntarily from the foreign market participant, unless the competition authority in that jurisdiction is permitted to share information it has already acquired, or it possesses the power to compel the provision of information from the market participant for investigations by other jurisdictions. So formal information-sharing agreements and collection powers can be an important tool for ensuring that geographic market definition reflects competitive realities.