

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

**Working Party No. 3 on Co-operation and Enforcement**

**GEOGRAPHIC MARKET DEFINITION**

-- Note by Belgium --

**28-29 November 2016**

*This document reproduces a written contribution from Belgium 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](http://www.oecd.org/daf/competition/geographic-market-definition.htm)*

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## BELGIUM

### 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 substitution)? Are any additional tools or methodologies applied to markets that may be national or broader in scope?*

1. The emphasis with respect to analytical tools for geographic market definition has been on the definition of local geographic markets. The BCA used e.g. data provided from a UPP study and defined markets on the basis of isochrones.

2. In the cases in which the BCA has defined markets as broader than national, the BCA relied mostly on EU precedents and data provided in the market test (see e.g. decision of 8 September 2015, *Covalis/Westvlees* a merger control decision concerning the porcine meat sector in which the BCA also applied isochrones that went significantly beyond the national borders).

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

3. There has not yet been a case in which it was not necessary to look at any geographic market definition. However, the BCA only goes into the geographic market definition with regard to product markets that are likely to raise competition issues.

#### 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. No.

5. Articles IV.1 and IV.2 of the Code of Economic Law (CEL, the equivalents of articles 101 and 102 TFEU) stipulate on the contrary that the relevant geographic market may not be smaller than a significant part of the Belgian market. When the BCA defined small local markets (e.g. in the merger control decision of 15 March 2016, *Ahold-Delhaize*), the aggregate of the local markets constituted a significant part of the Belgian market.

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

6. Please see previous response.

#### 1.5 *Does your authority apply isochrones across national borders to define geographic markets?*

7. The BCA has mainly applied isochrones in respect of the definition of local markets. In at least one case, *Covalis/Westvlees*, the authority applied isochrones that went significantly beyond the national borders.

**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. The evidence referred to in respect of the *Westvlees/Covalis* case was based on current trade flows (transport distances).

**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. In the abovementioned case, the BCA relied on data provided in the market test.

## **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?*

10. N/A

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

11. Not in decisions concerning markets that were found to be national or broader than national.

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

12. Not in recent decisions.

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

13. Not yet in decisions with regard to distribution cases or the definition of geographic markets. The distinction between printed press and online services has been discussed in respect of product market definitions.

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

14. The establishment of competition concerns depends on the geographic market definition. This is illustrated e.g. by the merger control decision of 15 March 2016, *Ahold-Delhaize*.

**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?***

15. Not in recent cases.

**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.***

16. We have mostly been able to rely on precedents in decisions of the European Commission or of other NCAs.