

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

Working Party No. 3 on Co-operation and Enforcement

GEOGRAPHIC MARKET DEFINITION

-- Note by Romania --

28-29 November 2016

This document reproduces a written contribution from Romania 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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JT03404910

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-- ROMANIA --

1. The Romanian Competition Council (RCC) can use isochrones to define relevant geographic markets. For example, in food retail, the relevant geographic market is defined as an area surrounding the target store, within 10 to 30 minutes driving time. Depending on the type of store (supermarket vs hypermarket), the drive time is lower or higher. In pharmaceutical retail, the area is defined as a 3km drive around the target pharmacy. RCC had cases where remedies were imposed regarding those two sectors, taking into account this type of market definition. In most situations, the remedies involved the divestment of one of the acquired assets.

2. The most accurate definition of the geographical market is always a priority for RCC. This is why the authority is constantly doing market research regarding those aspects, using its own resources or third party specialized companies. At the present time, the authority commissioned a study on the retail market, following the recent acquisitions in this sector and the constant reorganizing of the market. Its main focus is to assess if the isochrones that RCC uses are still relevant or a new dimension must be taken in account. Also, the study will assess if there could be differences between types of stores and the means of transportation that the customers use to reach the favorite store. The impact of the online selling platforms on the brick and mortar retail stores will also be taken into account.

3. The national *Instructions for defining the relevant market*, adopted in 2010, follow closely the EU guidelines for defining the relevant market. RCC can use the SSNIP test to assess if there is substitutability of demand, by determining which is the narrowest relevant market in which a hypothetical monopolist could profitably and permanently increase prices by 5-10%, taking in account the reaction of customers.

4. Therefore, the starting point in defining the relevant market is to identify the type of products marketed by the undertakings and the geographical area. Subsequently, it will be tested whether other geographical areas have the ability to exercise sufficient competitive pressure on the price policy of the concerned undertakings with immediate results, and assess if they should be included in the relevant market.

5. The effective structure and evolution of trade flows offers useful supplementary indications, regarding both the economic importance of each factor that influences demand or supply, and the extent to which these flows can or cannot be real barriers that lead to the creation of distinct relevant geographic markets. In general, trade flow analysis addresses the question of transport costs and the extent to which they constitute an obstacle to trade between different geographical areas, taking account the location of the production unit, manufacturing costs and price levels. Geographic market is not necessarily overlapping with administrative units - counties, cities; a local market may be narrower than such unit or, on the contrary, it may cover several municipalities or counties, or parts thereof.

6. There are elements that can be used to define the relevant geographic market:

- past data and information regarding diversion orders to other areas
- basic demand characteristics
- the views of customers and competitors
- the geographic scope of the purchasing behaviour of customers
- trade flows
- barriers and costs associated with order transfer to undertakings situated in other areas.

7. In some cases, the existence of "chains of substitution" could lead to the definition of a relevant market where products or areas of the market are not directly substitutable. An example is the geographic dimension of a product whose transport costs are significant. In such cases, deliveries from a particular company are limited to a certain area around it, because of the impact of transport costs. In principle, this area could be the relevant geographic market. However, if the division of the undertakings in the territory is such that there are overlaps between the areas around them, it is possible that a substitution chain effect exercises constraints on the prices for the products and thus leads to a broader definition of the relevant geographic market.

8. So far, RCC has defined the geographical markets up to a national level, as it can be postulated that the competition conditions are different in neighboring EU countries. Although the TFUE provides the conditions for free movement of goods, services and persons, the national regulations often make the drawing of the isochrones difficult. For example, the different regulations in pharmacy medicine disbursement will prevent a Romanian national from having a prescription dispensed in Hungary. Moreover, the fact that Romania is not yet part of the Schengen space means that crossing the border to other EU countries is not that facile, due to the fact that there are still controls on both sides of the border, this being sometimes time-consuming. Besides, as Romania is adjacent to countries that are not members of the EU, this makes for even more difficult movement of goods and Romanian nationals.

9. RCC considers that the above reasons might be why the isochrones have been determined at up to maximum national level, even if the legislation doesn't specify a maximum level of market definition at national level. The isochrones across nations can be more easily determined between countries where there are no taxation restrictions and where the movement of natural persons is easy and does not imply border checks.

10. Where supply markets are concerned, there have been several merger procedures where the markets could be defined at EEA level and even worldwide, although the markets were left open, as the mergers did not raise concerns even when the market was defined at the most restrictive level. Furthermore, in most cases, the geographical market can be viewed as national due to the fact that most foreign companies have subsidiaries registered in Romania and therefore the acquisitions are done through these subsidiaries. Only in some of the cases when international companies present in Romania choose to source their merchandise from other international companies, the negotiations can be done at European and even global level in order to achieve the best prices guaranteed by the increased traded volumes.

11. Of course, there are cases where the national definition is reached as a result of the products' characteristics, such as packaging and labeling regulations.

12. As Romania has been in the top ten world countries in terms of internet speed, the online commerce sees a steady growth. The expansion of the online selling platforms is noticeable and must be taken in account.

13. Although the mobile penetration rate is above 100% (there are more SIM cards than inhabitants), the main concerns when making an acquisition are the price and the services, especially the warranty. As transportation costs from other EU countries are still relatively high, and the warranty system works better if the goods are bought from a national online retailer, the acquisitions from online retailers shipping the products from other countries is still rather low. Therefore, even in the online IT&C and home appliances mergers, the parties agreed to RCC's definition of the market, set at national level.

14. For example, in a recent ongoing merger case in the IT&C and home appliances online market, the geographic market was analyzed at the national level, while the parties argued that the market should be wider than national. RCC rejected this statement, due to several factors. First, the Romanian population still presents a reluctance to use a credit or debit card for online payments, most of the buyers choosing to pay the package cash on delivery. Since most online retailers active outside Romania do not offer cash on delivery services, the choices of Romanian buyers shift towards buying nationally. Moreover, there are online retailers that do not deliver to Romania, therefore making purchases impossible. Where transportation costs are concerned, they are generally small enough not to be deterrent only for small items, that can be easily transported, but for large household appliances there are no incentives for Romanian customers to buy them online from another country, since the majority of the products can be found nationally. There were also other considerations for RCC to choose this national market. The taxes paid for goods brought from outside the EU were also taken into account, as they are comprised of customs tax and VAT, both of which needing to be paid upon the receipt of the parcel.

15. Naturally, the markets are evolving towards expansion, and RCC is constantly monitoring for changes in both the consumer behavior and the behavior of the competitors.