

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

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

**GEOGRAPHIC MARKET DEFINITION**

-- Note by Ukraine --

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*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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**-- UKRAINE --**

**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. Antimonopoly Committee of Ukraine's both regulations and practices stipulate approach under which territorial (geographic) market of certain goods (group of goods) is defined by setting a minimal territory outside which purchasing goods (group of goods) within the group of substitute goods (group) is impossible or impractical for consumers.

2. Consumer goods characteristics that form the relevant market are analyzed in the process of defining such territory in order to identify possibility of territorial displacement of demand. For example, metal products can be transferred throughout national territory without losing their consumer characteristics. Whereas in contrast, food products can be consumed only near the place of their production. Some services, such as telecommunications, are provided over the whole territory of the country, and some, such as centralized heat or water supply, can be provided only within a particular locality or even part of it.

3. Subject to such analysis are:

- physical and technical characteristics of goods (products, works, services)
- technological relations between producers and consumers
- in case if consumer goods requires obtaining additional services (for example - cars, complex equipment) – opportunities for technical, warranty, subscriber service
- availability of trademarks for goods and services that induce consumers to purchase these products
- the ability to maintain the quality and consumer characteristics of goods (groups of goods) during transportation.

4. During such analysis, the elements of commodity research are mostly used.

5. Another element of the geographic market definition is analysis of price conditions of the goods turnover. The subject of analysis here is the difference of prices for a good (group of goods that are substitutes) within the territory, which is regarded as hypothetical geographic market, its quantitative parameters, impact on the capabilities and intentions of consumers on purchasing this good, the price level for this product in adjacent areas. At the same, information obtained from market participants, other government agencies (State Statistics Service, State Fiscal Service), analysts and experts of specialized consulting companies, industry associations, and public Internet resources is used. In addition, this analysis requires obtaining a significant amount of background information, which in practice can be quite a challenge.

6. Analysis of possibility of territorial displacement of supply is another element of geographic market definition. This analysis provides, inter alia, research of the location of specific groups of consumers, the level of transport costs due to the peculiarities of goods transportation, availability of retail space and warehouses, points of primary processing (e.g., in the markets of certain agricultural goods), possibility to provide loading and off-loading services, pre-sales preparations. One of the most important points of analysis of possibility of territorial displacement of supply is investigation of barriers for territorial displacement of relevant goods, namely:

- administrative barriers
- economic and organizational constraints
- the impact of vertical (horizontal) integration
- barriers associated with the economy of scale
- barriers based on absolute superiority of costs
- barriers associated with the size of capital costs or the amount of investment required for entrance to a commodity market
- restrictions on demand
- environmental constraints
- barriers to exit from the market, etc.

7. It is recommended to perform the analysis of changes in consumers' behavior in case price change is not less than 5% for period of time not less than one year as the criterion of possibility of territorial displacement of supply. If consumers of a certain good in one region in response to the insignificant (usually up to 10%), but sustained (over relevant period of time) price increase, buy this good in another region, it is believed that these two regions are within the same geographic market for this good. The accuracy of territorial (geographic) market definition may be checked by the research of market openness in regard to inter-regional and/or international trade. The level of market openness index is calculated as a percentage ratio of the total amount of bringing in (import) goods on the market from the territories of other regions of the country (other countries) to the total market volume.

8. Thus, the model geographic market definition adopted by the Antimonopoly Committee of Ukraine does not involve the use of special tools in cases of research of markets, which are considered national.

***1.2 Does your authority define the geographic market in all cases involving markets that are national or broader in scope? Are there cases where it is not necessary to define the geographic scope of the relevant market?***

9. Bodies of the Antimonopoly Committee of Ukraine define the territorial limits of markets in all cases of applications consideration, cases on concentration of undertakings and cases on abuse of monopoly (dominant) position on the market. However, during investigations of cases on anticompetitive concerted actions of undertakings, the definition of the market, including its geographic boundaries, is carried out not in all cases, but only if it is necessary to evaluate the cumulative effect of the concerted actions participants on the market situation, the primary indicator of which is their total market share.

Market is not usually being defined in cases on bid rigging. Market definition is also not conducted in most of cases on the preliminary and follow-up control over public authorities' activity that could affect the competition (in this case the nature of state intervention in business processes is being investigated) and in the cases on unfair competition. In addition, the need or lack of need for the market definition, including defining of its geographical boundaries, depends on the content and nature of the measures taken by the Antimonopoly Committee of Ukraine, instead of the expected geographical borders of the relevant market.

**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?***

10. According to paragraph 2 Article 2 of the Law of Ukraine "On Protection of Economic Competition" the Ukrainian legislation on protection of economic competition shall be applied to such relations that ensure from or can have an impact on economic competition in the territory of Ukraine. A sub law "Methodology Applied to Determine Monopoly (Dominant) Market Position of Economic Entities" envisages the definition of national or regional markets. Consequently, there is no legal basis for taking decisions on markets geographic boundaries of which are wider than the territory of Ukraine. However, when considering individual cases on concentrations, cases on abuse of dominant position, in practice the Committee had to deal with situations where product market actually exceeded the national territory of Ukraine. For example, cement market covered the western and southern regions of Ukraine and also south-eastern region of Poland; the market of iron ore pellets covered Ukraine, the European part of Russia and Kazakhstan. In these cases, the Committee considered the movement of goods between different national parts of the economically sole market territory as import revenues.

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

11. An essential part of geographic market definition in cases when place of production of the goods and the place of consumption are not geographically identical is defining a distance of transportation of a good and period of time needed for it. Thus, following the results of these definitions geographic boundaries of markets may be defined as regional, interregional, national. Thus, markets of such products as bread and whole milk are defined as regional and interregional due to the fact that distance needed for their possible and appropriate transportation is up to 400 km. Geographic boundaries for markets of bread and bakery products are separate districts, regions, cities. The key factor in determining the territorial boundaries of these markets is the limited sell by date of its products. On the other hand, chilled poultry meat, eggs, buckwheat, sunflower oil, sugar can be moved throughout the territory of Ukraine over a distance of over 1 000 km. Accordingly, the geographical scope of these markets is defined as the territory of Ukraine.

**1.4 *What methodology does your authority use to analyse transport costs defining geographic markets? In this methodology part of an established documented procedure?***

12. Usually, during the analysis of transport costs, as part of the defining geographic markets, analyses of transport perform by cost per unit of the product at a certain distance (for example, 1 ton to 1 km) by transport, which is usually used for such carriage (indeed, for certain goods can only be used rail, for some - rail and road, for some - rail and river, some transported by road). The corresponding value compared to the price of the goods which regraded at the point of shipment. It is assumed that, if under normal conditions the costs of transporting goods to a distance are not exceeding 10% of the price at the point of shipment, the transporting of goods at such distance is economically reasonable (in case when the place of origin of goods is not its unique characteristic). Therefore, the area within a radius of relevant distance (in AMCU terminology – "logistics leg") from the point of shipment (point of receipt of goods by consumer/buyer) may be maximum territorial borders of the market. However, these geographical borders may be narrower due to other factors, which segment the territory, where it may be possible and suitable to buy relevant goods for the consumer.

13. On top of that, in some cases, the factor of traffic congestion is crucial. For example, during the study of the whole milk geographical market for industrial processing, it was found that on the route with length 400 km and capacity of the truck 3.9 tons of milk, the transport and procurement costs of 1 ton of milk will amount UAH 170 (Ukrainian hryvnia). At the same time, on a route with length 100 km and capacity of the truck 0.7 tons the transport and procurement costs of 1 ton of milk will amount UAH 260. Thus, cost-efficiently is milk harvesting in industrial processing within a radius of 100 km from the factory in tank with capacity of up to 4 000 liters. At the same time, transportation of the harvested milk in truck with tanks capacity 16 000 liters is cost-efficiently within a radius of 300 km, and in truck with capacity up to 24 000 liters, even within a radius of 700 km.

14. Recommendations concerning analysis of the transport costs in studies of particular markets are stated in the organizational and methodical documents, so-called “technological maps of the market studies”. Universal normative guidance on the analysis of transport costs during defining geographical market is lacking in the AMCU at present.

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

15. The biggest challenge with respect to geographical market definition is a scope of markets of differentiated products with big amount of vertical distribution links, especially, when one link operates with different mechanisms of goods flow (e.g., ordinary and Internet trading). Moreover, physically one and the same products at the different distribution links on markets may form different geographical market borders. An example may be markets of medicines. In these markets, one and the same drug, when it is realized by the producer or importer to large channel provider, forms, in generally, national geographical market, but on the link of resale by large channel provider to pharmacies, the relevant drug market narrows to inter-regional or regional geographical market, and on the link of retail it becomes local, in certain specific cases (medicines consumed by patients of hospitals). The problem is distinguishing various links of distribution, which operate with different geographical markets borders, especially in the segment of the wholesale resale. Similar problems arise in any other markets of goods imported into the national territory of Ukraine and the end-consumers are individuals.

16. Certain difficulty defining territorial market borders in the case of network services markets, e.g. certain groups of consumers who use these services not within the entire network, but only within certain parts of it. At that same time, there are groups of consumers who use other parts of the network, including those that overlap with part of the network services which are used by the first group of consumers and consumers who use the entire network. Accordingly, the question arises, if there is appropriateness and validity of the markets definition within the territory served by the parts of the network used by consumers each individual group.

17. A similar situation occurs in the transport market, where there are groups of consumers who use only part of the transport route. Accordingly, there is problem of appropriateness and reasonableness in markets definition within regional parts of transport routes used by certain groups of consumers.

18. At the hearing on the grounds of abuse of monopoly (dominant) position of the JSC “Gazprom”, which realizes entire amount of gas purchased by Ukraine, on the Ukraine-Russia border, the question arose whether to consider the specified business entity as such, which carrying out economic activities on the natural gas market in Ukraine.

**1.6 *How has your authority evaluated the likelihood and extent that supply would be diverted<sup>1</sup> in geographic market definition? Does your authority use concepts such as “rapid entrant” and “swing capacity”?***

19. The geographical market borders as described above, are defined by the AMCU based on the concept that this is a space where may be interaction of supply and demand. Therefore, changes in the proposal only, including the appearance of an additional supply in the adjacent territory, if it does not affect the possibility and feasibility of demand carriers to use this offer, by itself has no impact on the territorial boundaries of the market. The territorial borders of the market may be extended if the purchase of goods from suppliers at the new location is possible and reasonable for consumers/buyers who purchase it in the space within the initially defined relevant market. At the same time, the probability of participants to enter into a new market, speed forecast and scale of this entry are taken into account during assessing the state of competition in the relevant market. However, the territorial borders market introduced by consumers/customers possibilities, are not revised.

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

20. The definition of the parts of entities that operate on market and assessment of the competitive pressures that they may have usually depends on the market territorial borders definition. The more narrowly defined market territorial borders, the greater turns out the market share of individual separate entity, the fewer competitors it has. Accordingly, the greater the probability that it will be defined as such entity, as has the monopoly (dominant) position. In many cases, correct or incorrect recognition of the monopoly (dominant) position of undertakings, and therefore presence in their actions signs of violations of competition law in the form of abuse monopoly (dominant) position, depends from definition of the market territorial borders. However, the definition of the market territorial borders depends on determination of the scope of the relevant markets, including the case of qualification the specific entity actions as a law violation on economic competition protection, sales volume of goods, associated with the violation. Whereas, when the AMCU determining amount of the fine, as a starting point using the amount of income associated with the violation. The correct definition the market territorial borders may affect the penalty rate imposed on the offender.

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<sup>1</sup> 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 lowercost 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.