

Pursuant to Article 7 paragraph (2) of the Competition Act (Official Gazette, No 122/2003), the Government of the Republic of Croatia in its session held on 15 April 2004, adopted the following

REGULATION ON THE DEFINITION OF RELEVANT MARKET

I GENERAL PROVISIONS

Subject Matter of the Regulation

Article 1

(1) This Regulation shall stipulate the method, criteria and the procedure in defining the relevant market which represents the basis for the calculation of market shares in the proceedings carried out by the Competition Agency pursuant to the provisions of the Competition Act (hereinafter: the Act).

(2) Within the meaning of paragraph (1) hereof, this Regulation shall apply for the purposes of assessing the agreements between undertakings, defining the abuse of dominant position of undertakings and assessment of the compatibility of concentrations of undertakings in the market.

Definitions

Article 2

For the purpose of this Regulation:

- a) "the Agency" means the Competition Agency;
- b) "supplier" means the manufacturer or any undertaking from which the goods and/or services are purchased with the aim of reproduction and/or reselling them, and final use;
- c) "Croatian undertaking" means the undertaking with its address or seat in the Republic of Croatia;
- d) "product" is a technically legal term for goods and/or services;
- e) "complementary product" means a product made up of two or more component products which are usually used as one integral product, thereby increasing the value of each constituent product when used as a whole by the customers;
- f) "relevant product" means a product that is closely connected with the relevant product market;
- g) "potential competitors" means undertakings that would on realistic grounds undertake the necessary additional investments and/or other necessary switching costs so that they could enter the relevant market, in response to a small but permanent increase in relative prices;
- h) "customer" means a natural person who buys or uses, or in some particular situation might use a particular product;
- i) "competitors" means undertakings operating in the same relevant market, competing in the supply and the sales of products;
- j) "market share" means the measure for the relative size of an undertaking in the relevant market, in terms of proportion of total output and/or sales of a particular product in the relevant market within a specified time period;
- k) "the Act" means the Competition Act;

- l) "substitute" means a product which by its characteristics, price, intended use and customers' patterns of purchases can serve as a substitute for another (relevant) product thereby satisfying the equivalent need of the customers;
- m) "barriers to entry" means all the factors that deter or hinder new competitors to enter a specific market.

2. RELEVANT MARKET

The Purpose of Definition of Relevant Market

Article 3

(1) Within the meaning of Article 7 of the Act relevant market is defined as a market of certain products which are the subject of the business operations performed by the undertaking in the specific geographic territory.

(2) The definition of relevant market is a tool to identify and define products which are the subject of competition, as well as to set the geographic area in which the undertakings concerned compete.

3. THE METHOD OF RELEVANT MARKET DEFINITION

The Method of Relevant Market Definition

Article 4

(1) The definition of relevant market shall be considered as identifying its product (relevant product market) and geographic dimension (relevant geographic market).

(2) Relevant market shall be defined applying the case by case method.

Relevant Product Market

Article 5

A relevant product market comprises all products which are regarded as interchangeable or substitutable, by reason of the products' characteristics, their prices and their intended use (substitute products).

Relevant geographic market

Article 6

(1) The relevant geographic market comprises the whole or a part of the territory of the Republic of Croatia, the area in which the undertakings compete in the sales and/or supply of products, in which the conditions of competition are equal or sufficiently homogeneous and which can be distinguished from the neighbouring areas because the conditions of competition are appreciably different.

(2) In approaching the assessment of market position as regards its geographic dimension the initial analysis shall include all dimensions of the market in question

based on the general indicators of market shares between the competitors, especially national and international, as well as the indication of prices and price differences on the national and international level.

(3) The analysis of all market dimensions under paragraph (1) and (2) hereof shall especially include the examination of the conditions for entry to the market, particularly the transport costs, access to distribution channels and associated costs, the presence or influence of regulatory barriers to entry, current pattern of purchases and customers' usage patterns, and other relevant facts relating to establishing of the international market integration level.

(4) Under regulatory barriers to entry within the meaning of paragraph (3) hereof shall be considered particularly quotas and tariffs, administrative authorisations, regulatory barriers arising from public procurement and technical standards.

The Criteria for Relevant Market Definition

Article 7

(1) In the process of the definition of relevant market the first step is the investigation of the demand substitutability for the particular product, or the supply substitutability of the particular product, and when necessary also the criteria of the existing potential competitors or barriers to entry.

(2) The relevant market shall be defined applying the criteria under paragraph (1) hereof, with the view to defining and differentiating the market segments of particular products in which the undertakings compete.

Demand Substitutability

Article 8

(1) Demand substitutability shall entail the determination of the products or the range of products which are viewed as substitutes by the customers, within the meaning of Article 5 of this Regulation.

(2) It shall be assumed that a product is a substitute product particularly in the following cases:

- a) when it can be reasonably expected that the buyers, i.e. customers of the relevant product would switch to readily available substitutes in response to hypothetical small (in the range 5% to 10%) but permanent relative price increase in the relative product; and/or
- b) when it can be reasonably expected that the buyers, i.e. customers of the relevant product would switch to equivalent or related product of a different supplier in response to or as a reaction to hypothetical small (in the range 5% to 10%) but permanent relative price increase in the relative product.

(3) The definition of demand substitutability shall also take into account the groups of customers who shall notwithstanding the change in pricing of the relevant product not accept the substitute product.

(4) The definition of demand substitutability shall also take into account the time-frame for the suppliers to adjust to normal supply of the market with the substitute.

(5) As a rule, and especially in the cases of assessment of concentrations, the estimation of the relevant market shall take into account the prevailing market price of the particular product in the Republic of Croatia. In the cases when the market price is formed in the absence of some other competitive product, it shall be defined, if the price in question has been appreciably increased in the past exactly owing to the lack of competition.

Supply Substitutability

Article 9

Supply substitutability shall mean the capacity of the supplier, in case of the price increase in the relevant product, to switch production to the substitute product and/or market it in the short term without incurring significant additional costs.

Potential Competitors

Article 10

(1) The assessment analysis regarding the potential competition shall cover the level of competition and conditions under which new competitors can enter to the relevant market.

(2) The existence of potential competitors shall be also determined according to the foreseeable changes in market conditions, especially relating to the barriers to entry.

Barriers to Entry

Article 11

Barriers to entry shall be considered all circumstances that present an obstacle for the potential competitors to entry to the market, particularly those which are the result of the market behaviour and operations of the incumbent undertakings by means of deterring and hindering the entry to the market in question for other undertakings.

5. PARTICULAR CASES OF RELEVANT MARKET DEFINITION

Article 12

(1) The relevant product market may be in particular cases defined for one product or a set of products, depending on the market structure and the customers' usage patterns.

(2) In the process of defining of the relevant market within the meaning of paragraph (1) hereof, other particular circumstances and conditions in the market shall be taken into account. This applies as a rule to the complementary products, especially if the price increase of any of the products (secondary product i.e. secondary market) which is the constituent part of the complementary product, directly influences the price increase of the relevant product (primary product i.e. primary market).

(3) By way of derogation from Article 6 paragraph (1) hereof, the relevant geographic market may be defined on the international level.

(4) Under particular conditions, taking into account all material circumstances and facts, the relevant geographic market may be defined within the meaning of paragraph (3) hereof on the international level or worldwide, and particularly in the following cases:

- a) when certain groups of buyers or undertakings with their address or seat in the Republic of Croatia purchase the products in question from natural or legal persons or their associations or undertakings with their address or seat outside the territory of the Republic of Croatia (e.g. when owing to the transport costs the relevant products at the boundaries of the market laid down by the provisions of Article 6 paragraph (1) of this Regulations are not substitutable), and/or
- b) when Croatian undertakings sell the products in question to the buyers - natural or legal person or their associations with their address or seat outside the territory of the Republic of Croatia (e.g. when the Croatian undertakings submit bids at international tendering procedures).

6. CALCULATION OF MARKET SHARES

Market Share Calculation Method

Article 13

(1) The market share for any of the undertakings operating in the particular relevant market shall be calculated on the basis of their production and/or sales of the relevant product in the relevant market within a specified time-frame.

(2) The market share under paragraph (1) hereof shall be calculated on the basis of production and/or sales value (expressed in HRK) or on the basis of production and/or sales volume (expressed in number of units or other measure).

(3) The time-frame referred to in paragraph (1) hereof shall be as a rule one year, although it may be defined as a shorter or a longer period if necessary.

(4) The total duration of the time-frame covering the collection and definition of estimates on market shares within the meaning of paragraph (3) hereof may not exceed five years.

Market Share Calculation Estimates

Article 14

(1) For the purpose of calculation of the market shares all available estimates and documentation shall be used, and in particular:

- a) estimates delivered by the undertakings including the undertakings that are not the parties in the proceedings (e.g. competitors);
- b) studies received from trade associations, employers' associations, consumers' associations;
- c) data from the Croatian Bureau of Statistics;
- d) data received from ministries and other public administration authorities;
- e) data supplied by regulatory bodies;

- f) data from independent institutions involved in market inquiry;
- g) data from local and regional self-government units;
- h) estimates of the Agency.

(2) When it deems necessary in some particular case and within the meaning of paragraph (1) hereof the assessments based on the responses of customers' surveys and/or undertakings that are not the parties in the proceedings and their competitors, being assumed to have the knowledge on the relations in some particular relevant market, shall also be taken into account.

7. TRANSITIONAL AND FINAL PROVISIONS

Article 15

This Regulation shall apply accordingly to the procedure of authorising, monitoring the implementation and recovery of general and individual state aid carried out by the Agency within the meaning of the provisions stipulated in the State Aid Act (Official Gazette No 47/2003).

Article 16

This Regulation shall enter into force on the eighth day following its publication in the Official Gazette.

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Zagreb, 15 April 2004

Prime Minister

Ivo Sanader