

THE GOVERNMENT OF THE REPUBLIC OF CROATIA

Pursuant to Article 7 paragraph (4) of the Competition Act (Official Gazette, No 79/2009), the Government of the Republic of Croatia in its session held on 7 January 2011, 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 and the criteria in defining the relevant market which represents the basis for the calculation of market shares in the proceedings carried out by the Croatian Competition Agency (hereinafter: the 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 carrying out preliminary investigations in the relevant market with the view to defining sufficiently indicative competition concerns on the basis of which it initiates the proceedings, and in the proceedings in which it establishes prohibited agreements between undertakings, abuse of dominant position of undertakings and assesses the compatibility of concentrations between undertakings in the market.

Definitions

Article 2

For the purpose of this Regulation:

- a) "undertaking" means a person laid down in Article 3 of the Act;
- 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) "product" is a technically legal term for goods and/or services;
- d) "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;
- e) "relevant product" means a product that is closely connected with the relevant product market;
- f) "substitute product or substitute" means a product which by its characteristics, price, intended use or customers' patterns of purchases can serve as a substitute for another (relevant) product thereby satisfying the equivalent need of the customers and/or consumers;

- g) "competitors" means undertakings operating in the same relevant market, competing in the supply and the sales of goods and/or services;
- h) "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;
- i) "customer" means an undertaking who buys the product from the supplier for the purpose of its integration in a new product and/or buys the product from the supplier for the purpose of resale or sale to the final customer or consumer;
- j) "consumer" means a natural person who buys or uses the goods and/or services, or he/she may do so in a particular situation;
- k) "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 particular goods and/or services in the relevant market within a specified time period;
- l) ""barriers to entry" means all the factors that deter or hinder new competitors to enter a specific market.

II THE METHOD TO DEFINE RELEVANT MARKET

The Purpose of Relevant Market Definition

Article 3

(1) Relevant market is defined as a market of certain goods and/or services which are the subject of the business operations performed by the undertaking in a specific geographic territory.

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

Dimensions 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 and customers' patterns.

Relevant Geographic Market

Article 6

(1) The relevant geographic market comprises the area in which the undertakings compete in the sales or supply of products.

(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 in the market, 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.

Particular Cases of Relevant Market Definition

Article 7

(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 customers 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 customers - 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 bid for tenders internationally).

III CRITERIA FOR RELEVANT MARKET DEFINITION

Basic Criteria for Relevant Market Definition

Article 8

(1) When defining the relevant market the most immediate criterion is the demand substitutability for the particular product, then also the supply substitutability of the particular product, and when necessary, 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 9

(1) Demand substitutability shall entail the determination of the products or the range of products which are viewed as substitutes by the customers.

(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 between undertakings, the estimation of the relevant market shall take into account the prevailing market price of the particular product in the Republic of Croatia. In cases where 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 10

Supply substitutability shall mean the capacity of the manufacturer and/or supplier, in the 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 11

(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 12

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.

IV 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 time-frame within the meaning of paragraph (1) hereof shall be set by the Agency in every particular case.

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 legal and natural persons that are not the parties in the proceeding concerned (e.g. competitors);
 - b) studies received from trade associations or employers' associations;
 - c) data received from central administration authorities;
 - d) data from independent institutions involved in market inquiry;
 - e) data from local and regional self-government units;
 - f) data from public authorities;
 - g) estimates of the Agency.
- (2) Upon the request of the Agency, pursuant to Article 66 paragraph (3) of the Act, the authorities referred to in paragraph (1) items (c), (e) and (f) shall submit all requested data and documentation to the Agency free of charge.
- (3) 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.

V TRANSITIONAL AND FINAL PROVISIONS

Article 15

This Regulation shall apply accordingly to the procedures of authorising, monitoring the implementation and recovery of State aid carried out by the Agency within the meaning of the provisions of the State Aid Act.

Article 16

This Regulation, as of the day of entry into force, replaces the Regulation on the definition of relevant market published in the Official Gazette, No 51/2004.

Entry into force

Article 17

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

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Zagreb, 7 January 2011

Prime Minister
Jadranka Kosor